

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

In the Matter of the Request for Amendment No. 3  
of the Site Certificate for the Golden Hills Wind  
Project

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**PROPOSED ORDER ON  
AMENDMENT NO. 3 OF THE SITE  
CERTIFICATE**

SEPTEMBER 6, 2016

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WITHDRAWN

1 **I. INTRODUCTION**

2 The Oregon Department of Energy (Department) issues this proposed order in accordance with  
3 Oregon Revised Statute (ORS) 469.405 and Oregon Administrative Rule (OAR) 345-027-0070 for  
4 the request by Golden Hills Wind Farm LLC (Golden Hills or certificate holder), which is owned  
5 by the Orion Renewable Energy Group LLC (Orion), for Amendment 3 of the Golden Hills Wind  
6 Project Site Certificate.

7 The proposed amendment includes the following components:

- 8 1) Extend the construction start and completion deadlines by two years;
- 9 2) Change the allowed wind turbine type to be taller and with a larger rotor diameter, and  
10 reduce the maximum number of turbines from 267 to 125;
- 11 3) Modify the related and supporting facilities to eliminate one of two previously approved  
12 substations and the 11-mile, 500 kV transmission interconnection line; relocate the  
13 single remaining substation to a central location within the site boundary and expand  
14 the substation area from 2 to 5 acres; modify the alignment of the previously approved  
15 230 kV transmission line to run from the single substation to a Bonneville Power  
16 Administration (BPA) grid connection point; increase the height of six meteorological  
17 towers from 279 to 312 feet; and expand the width of temporary access roads from 36  
18 to 40 feet;
- 19 4) Amend the site boundary to remove approximately 2,800 acres of land no longer  
20 needed for the facility; and,
- 21 5) Expand the site boundary by approximately 122.5 acres to allow for construction of two  
22 short segments of 230 kV transmission line.

23 The Energy Facility Siting Council (EFSC or the Council) issued the original site certificate for the  
24 Golden Hills Wind Project (facility) in June 2009. The Council approved two previous  
25 amendments to the site certificate, most recently in January 2015.

26 Based upon review of Request for Amendment (RFA) No. 3, and the comments and  
27 recommendations received by state agencies, local government, and tribal organizations, the  
28 Department recommends that EFSC approve the request and grant an amendment to the site  
29 certificate for the Golden Hills Wind Project, subject to the existing site certificate conditions  
30 and amended conditions as recommended in this proposed order. The proposed amended site  
31 certificate is included as Attachment A to this proposed order.

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

33 Golden Hills Wind Farm LLC  
34 Reid Buckley, Vice President  
35 Orion Renewable Energy Group LLC  
36 155 Grand Avenue, Suite 706  
37 Oakland, CA 94612

1 Individuals Responsible for Submitting the Request:

2 Carrie Konkol  
3 CH2M HILL Engineers, Inc.  
4 2020 SW 4th Avenue  
5 Portland, Oregon 97201

6 Orion Renewable Energy Contact Person:

7 Ryan McGraw  
8 Head of Asset Management  
9 Orion Renewable Energy Group, LLC  
10 155 Grand Avenue, Suite 706  
11 Oakland, CA 94612

## 12 **I.B Description of the Approved Facility**

13 The Oregon Energy Facility Siting Council (Council) issued the site certificate for the Golden Hills  
14 Wind Project (facility) on June 18, 2009, authorizing a wind-energy generation facility with  
15 electrical capacity of up to 400 megawatts (MW). The Council approved an amendment to the  
16 site certificate in May 2012 and a second amendment to the site certificate in January 2015. As  
17 approved and amended, the facility would consist of up to 267 wind turbines as well as related  
18 and supporting facilities located within permitted survey corridors on privately owned land  
19 both east and west of Highway 97, between the cities of Wasco and Moro in Sherman County,  
20 Oregon. The requested amendments, as described below and in the RFA and associated  
21 supplemental material, would reduce the maximum number of turbines from 267 to 125, but  
22 would still produce the same peak generating capacity of 400 MW.<sup>1</sup> At the time of proposed  
23 order issuance (September 2016) for RFA No. 3, facility construction had not yet commenced.

## 24 **I.C Golden Hills Site Certificate History**

25 The Council issued the Final Order on the Application for Site Certificate for the Golden Hills  
26 Wind Project on May 15, 2009. The site certificate became effective upon execution on June 18,  
27 2009. In December 2011 the certificate holder submitted RFA No. 1 to the site certificate,  
28 requesting to extend the construction beginning and completion deadlines by two years. The  
29 Council issued the final order and amended site certificate in May 2012, approving the  
30 amendment request. That amendment extended the beginning construction date to June 18,  
31 2014 and the construction completion date to June 18, 2016.

32 In June 2014, Golden Hills submitted RFA No. 2 to the site certificate, again requesting an  
33 extension of the construction deadlines and also requesting a transfer of ownership to Orion  
34 Renewable Energy Group LLC from the previous owner. Council issued a final order approving  
35 both requests in January 2015 and executed an amended site certificate in February 2015.

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<sup>1</sup> RFA No. 3, Section 1.2 and 1.3, and Supplemental Information Report, pages 1-3.

1 **II. AMENDMENT DESCRIPTION**

2 **II.A Description of the Proposed Amendment**

3 As noted, Golden Hills requests an amendment to the site certificate to account for facility  
4 design changes, and also requests to extend the deadlines for beginning and completing  
5 construction by two years. If the amendment is approved, the deadline for beginning  
6 construction would be extended from June 18, 2016 to June 18, 2018; and the deadline for  
7 completing construction would be extended from June 18, 2019 to June 18, 2021. Golden Hills  
8 submitted the RFA on December 17, 2015, which satisfies the requirement in OAR 345-027-0030  
9 to submit the construction extension request at least six months before the construction  
10 commencement deadline.

11 As described by the certificate holder, in addition to the construction deadline extension  
12 request, Golden Hills proposes to amend its site certificate to account for facility design  
13 changes.<sup>2</sup> Specifically, design changes include:

- 14 • Reduce the maximum number of turbines to 125, from the previously approved 267
- 15 • Change the dimensions of the turbine type:
  - 16 – Increase maximum allowed turbine tower height to 312 feet (95 meters), from the
  - 17 previously approved 263 feet (80 meters)
  - 18 – Increase the diameter of the maximum allowed rotor-swept area to 413 feet (126
  - 19 meters), from the previously approved 315 feet (96 meters)
  - 20 – Decrease the minimum allowed ground clearance to 65 feet (19.8 meters), from the
  - 21 previously approved 105 feet (32 meters)
  - 22 – Increase the maximum allowed total turbine height, including rotor blades, to 518
  - 23 feet (158 meters), from the previously approved 420 feet (128 meters).
- 24 • Eliminate the previously approved 11-mile, 500 kV transmission line
- 25 • Eliminate one of the two previously approved substations, relocate the second
- 26 substation to a more central location within the site boundary, and expand the
- 27 substation area from 2 to 5 acres
- 28 • Increase the height of six meteorological towers from 279 feet (85 meters) to 312 feet
- 29 (95 meters)
- 30 • Expand the width of temporary access roads from 36 to 40 feet;<sup>3</sup> and,

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<sup>2</sup> Site certificate condition III.A.1 is a summary of the approved facility design parameters. The Department is recommending the condition be updated to reflect the requested changes to the facility design. Please see Attachment A, the recommended amended site certificate. In addition, the Department is recommending that provision (f) of condition III.A.1 be deleted; currently, provision (f) states that the certificate holder must request a site certificate amendment to change various facility design parameters; in fact, site certificate amendments are governed by EFSC rule at OAR 345-027-0050.

<sup>3</sup> The proposed width expansion of temporary access roads is needed to accommodate larger vehicles for delivery of the larger turbines proposed in this amendment request. Supplemental Information Report, page 3.

- 1 • Modify the route of the previously approved 230 kV transmission line to deliver  
2 electricity from the facility's single substation to the BPA grid. The modified design  
3 would also involve locating conductors on an existing 230 kV transmission line that  
4 currently connects another independent wind facility (Hay Canyon Wind Project) to the  
5 BPA grid. In total, the certificate holder states that it will need to construct 5 miles of  
6 new 230 kV transmission line to move electricity to the BPA grid.

7 Finally, RFA No. 3 requests to change the site boundary. The requested change would remove  
8 approximately 2,800 acres from the site boundary that is no longer necessary for the facility.  
9 Most of this land is located in the north/northwest portion of the existing site boundary,  
10 generally north of Highway 97. This area does not contain any turbine micro-siting corridors,  
11 rather, the previously approved 500 kV transmission line would have been located in this  
12 portion of the site boundary. A smaller portion of land to be removed as part of this  
13 amendment request is located in the southeast corner of the site boundary.

14 The amendment request also seeks to add approximately 122.5 acres to the site boundary.<sup>4</sup>  
15 This land is in two areas. One area is 82.5 acres adjacent to the eastern portion of the site  
16 boundary that is necessary to connect the facility's 230 kV transmission line to the existing Hay  
17 Canyon 230 kV transmission line. This portion of land is a triangle-shaped area northeast of  
18 Highway 206. As stated by the certificate holder, this area was surveyed for biological and  
19 cultural resources as part of the original 2007 application for site certificate, but was not  
20 included in the site boundary at that time because the certificate holder did not have site  
21 control of the land.<sup>5</sup> The second portion of land to be added to the site boundary is 40 acres,  
22 discontinuous from the remainder of the site boundary. This area would be used to construct  
23 approximately 700 feet of new 230 kV transmission line to interconnect the facility to a BPA  
24 transmission structure. The RFA does not include a request to change the locations of turbine  
25 micro-siting corridors. All turbines would be located within the same previously approved  
26 micro-siting corridors.<sup>6</sup> A map showing the facility site boundary, as amended, is included as  
27 Figure 1. A map showing the proposed site boundary changes, including the area to be removed  
28 from the previously approved site boundary and the area requested to be added to the site  
29 boundary, is included as Figure 2.

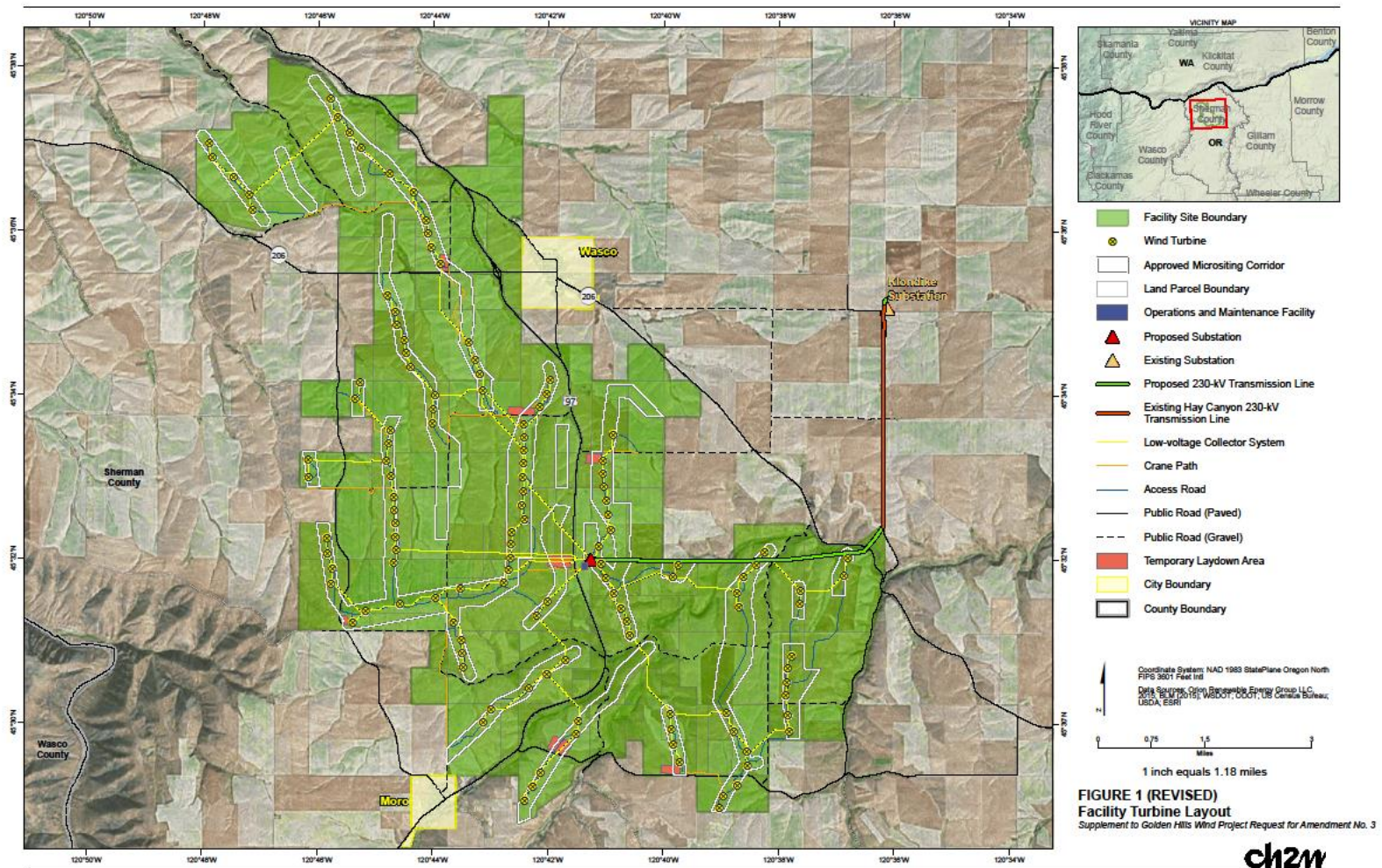
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<sup>4</sup> Initially, the RFA submitted in December 2015 requested to add approximately 200 acres of land to the site boundary, including the two areas as described above, but also a third area in the northwestern portion of the project area, northeast of Highway 206. This area was approximately 80 acres, and as described by Golden Hills, would have been used as a temporary construction laydown area. However, in supplemental material submitted in March 2016, Golden Hills decided that this area was no longer necessary, and is not seeking to add this land to the site boundary. Figure 2 of the supplemental information report shows these areas on a map, including the current site boundary, the area being removed from the site boundary, area being added, and the area requested to be added in December 2015 but no longer necessary or requested.

<sup>5</sup> Supplemental Information Report, page 2.

<sup>6</sup> RFA, Section 1.2 and 1.3, RFA Supplemental Information Report, pages 1-3.

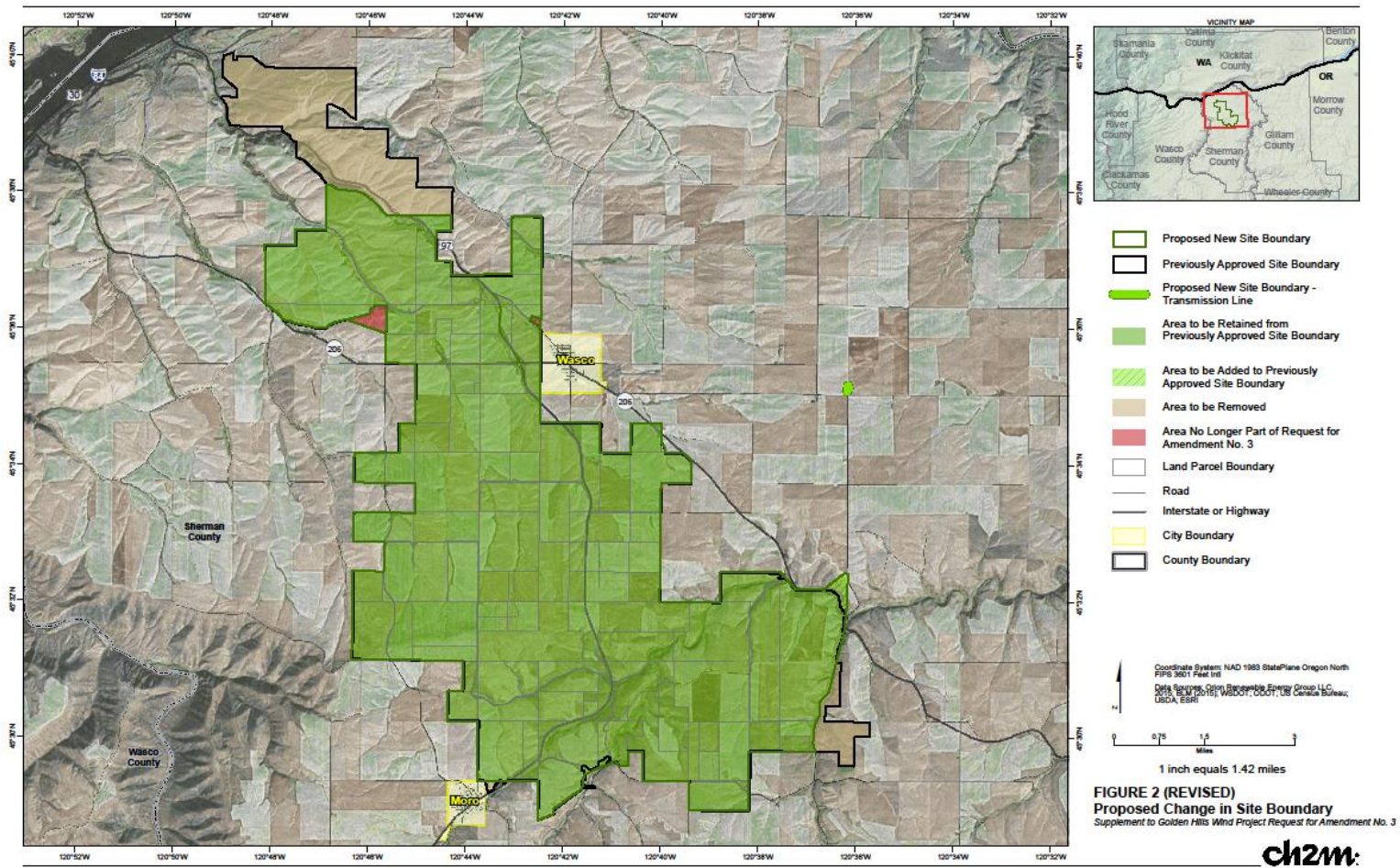
1 Figure 1 – Golden Hills Site Boundary, As Amended, and Turbine Micrositing Corridors



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1 Figure 2 – Requested Amendments to Golden Hills Site Boundary



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1 **III. AMENDMENT PROCESS**

2 **III.A Division 27 Rules**

3 The Council has adopted administrative rules to determine when a site certificate amendment  
4 is necessary (OAR 345-027-0030 and -0050) and rules establishing the procedure for amending  
5 a site certificate (OAR 345-027-0060, -0070, and -0100). The Council’s amendment rules, OAR  
6 Chapter 345, Division 27, apply to this RFA.

7 An amendment can be requested by a certificate holder under OAR 345-027-0030 to extend the  
8 construction beginning and completion deadlines of a facility that the Council has previously  
9 granted a site certificate. In accordance with OAR 345-027-0030(1) and as noted above, Golden  
10 Hills requested an amendment six months before the construction start deadline.

11 Under OAR 345-027-0050(1), a certificate holder must submit a request to amend the site  
12 certificate to design, construct, or operate a facility in a manner different from the description  
13 in the site certificate if the proposed change could:

- 14 *(a) Result in a significant adverse impact that the Council has not addressed in an earlier*  
15 *order and the impact affects a resource protected by Council standards;*
- 16 *(b) Impair the certificate holder’s ability to comply with a site certificate condition; or*
- 17 *(c) Require a new condition or a change to a condition in the site certificate.*

18 \*\*\*

19 An amendment to the Golden Hills Wind Project site certificate is necessary under OAR 345-  
20 027-0050(1)(c) because Golden Hills proposes to “operate [the] facility in a manner different  
21 from the description in the site certificate,” and the proposed amendment requires “a new  
22 condition or change to a condition in the site certificate.” Golden Hills requests to change the  
23 type of wind turbine allowed at the facility, as well as changes to related and supporting  
24 facilities and the site boundary as described above. In order to accommodate the requested  
25 change, changes to existing conditions and imposition of new conditions are recommended by  
26 the Department, as described below in this proposed order. Therefore, an amendment is  
27 required under OAR 345-027-0050(1)(c).

28 **OAR 345-027-0070 Review of a Request for Amendment**

29 \*\*\*

30 *(10) In making a decision to grant or deny issuance of an amended site certificate, the*  
31 *Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in*  
32 *effect on the date the certificate holder submitted the request for amendment and all other*  
33 *state statutes, administrative rules, and local government ordinances in effect on the date*  
34 *the Council makes its decision. The Council shall consider the following:*

- 35 *(a) For an amendment that would change the site boundary or the legal description of the*  
36 *site, the Council shall consider, for the area added to the site by the amendment,*  
37 *whether the facility complies with all Council standards;*

1 (b) For an amendment that extends the deadlines for beginning or completing construction,  
2 the Council shall consider:

- 3 A. Whether the Council has previously granted an extension of the deadline;
- 4 B. Whether there has been any change of circumstances that affects a previous Council  
5 finding that was required for issuance of a site certificate or amended site certificate;  
6 and
- 7 C. Whether the facility complies with all Council standards, except that the Council may  
8 choose not to apply a standard if the Council finds that:
- 9 i. The certificate holder has spent more than 50 percent of the budgeted costs on  
10 construction of the facility;
- 11 ii. The inability of the certificate holder to complete the construction of the facility  
12 by the deadline in effect before the amendment is the result of unforeseen  
13 circumstances that are outside the control of the certificate holder;
- 14 iii. The standard, if applied, would result in an unreasonable financial burden on the  
15 certificate holder; and
- 16 iv. The Council does not need to apply the standard to avoid a significant threat to  
17 the public health, safety or the environment;

18 (c) For any amendment not described above, the Council shall consider whether the  
19 amendment would affect any finding made by the Council in an earlier order.

20 (d) For all amendments, the Council shall consider whether the amount of the bond or letter  
21 of credit required under OAR 345-022-0050 is adequate.

22 RFA No. 3 would change the site boundary and extend the construction deadlines, and as such  
23 subsections (a) and (b) both apply. Subsection (c) also applies, as a component of RFA No. 3  
24 would be to change the allowed wind turbine type, as well as other changes to related and  
25 supporting facilities as described above and in the RFA.<sup>7</sup> Subsection (d) related to financial  
26 assurances is addressed in section IV.A.7 of this proposed order.

27 The applicable EFSC standards are established in OAR Chapter 345 divisions 22, 23 and 24, as  
28 further described in the proposed order. The Council must apply these standards to this  
29 amendment request. The Council must also find compliance with the applicable permitting  
30 requirements of other state agencies, other than permits delegated to another agency by the  
31 federal government.

### 32 **III.B Procedural History**

33 Golden Hills submitted RFA No. 3 on December 17, 2015. Golden Hills satisfied the requirement  
34 of OAR 345-027-0030 to submit a request for extension of construction deadlines at least six  
35 months prior to the construction deadline, which was on June 18, 2016. The Department then  
36 distributed a notice of the receipt of RFA to reviewing agencies, Tribal Governments, the Special

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<sup>7</sup> Id.

1 Advisory Group (Sherman County Board of Commissioners), the EFSC general mailing list, the  
2 special list maintained for the facility, and the adjacent property owners as listed by Golden  
3 Hills in the amendment request.<sup>8</sup> The amendment request was also posted to the ODOE  
4 website. The Department requested receipt of comments from all interested parties by  
5 March 4, 2016. Public and agency comments are, as applicable to Council standards, discussed  
6 in the appropriate Council standard sections in Section IV of this proposed order. On March 18,  
7 2016, the certificate holder submitted a supplemental information report to ODOE providing  
8 additional information regarding the amendment request. The supplement also included  
9 information in response to ODOE and reviewing agency questions. On May 13, 2016, ODOE sent  
10 the certificate holder an information request, and Golden Hills responded on June 3, 2016.  
11 Golden Hills also provided a formal response to the Oregon Department of Fish and Wildlife  
12 (ODFW) and Oregon Department of Aviation comment letters on June 10, 2016.

13 The Department received comments on RFA No. 3 from the following reviewing agencies:

- 14 • Oregon State Historic Preservation Office
- 15 • Oregon Department of Fish and Wildlife
- 16 • Oregon Department of Aviation
- 17 • Oregon Department of State Lands
- 18 • Sherman County (Special Advisory Group)
- 19 • Confederated Tribes of the Umatilla Indian Reservation<sup>9</sup>

20 The Department received one public comment on RFA No. 3, from Ms. Irene Gilbert/Friends of  
21 the Grande Ronde Valley (FGRV). Attachment B of this proposed order is a summary table of  
22 comments received on the RFA.

23 On September 6, 2016, the Department issued this proposed order, recommending approval of  
24 an amended site certificate. The Department issued notice of the proposed order to the  
25 persons, agencies, tribes and local governments who received notice of the amendment  
26 request. The notice states that the Department must receive any written comments on the  
27 proposed order, including any request for contested case, by 5 p.m. on October 7, 2016. All  
28 comments will be provided to Council for review and consideration in the final order.

#### 29 **IV. AMENDMENT REVIEW AND APPLICABLE STANDARDS**

30 Under ORS 469.405, “a site certificate may be amended with the approval of the Energy Facility  
31 Siting Council.” The Council has adopted rules for determining when a site certificate  
32 amendment is necessary (OAR 345-027-0030 and -0050) and rules setting out the procedure for  
33 amending a site certificate (OAR 345-027-0060 and -0070).

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<sup>8</sup> The Council appointed the Sherman County Board of Commissioners as the Special Advisory Group for the Golden Hills Wind Facility Project on August 17, 2007 following receipt of the Application for Site Certificate in July 2007.

<sup>9</sup> The comment letter from the CTUIR stated that the facility is outside its ceded lands and area of interest, and that they defer to the Confederated Tribes of the Warm Springs of Oregon for any concerns or issues with the facility. The Confederated Tribes of the Warm Springs of Oregon did not comment on the RFA.

1 OAR 345-027-0070 Review of a Request for Amendment

2 \*\*\*

3 *(10) In making a decision to grant or deny issuance of an amended site certificate, the*  
4 *Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in*  
5 *effect on the date the certificate holder submitted the request for amendment and all other*  
6 *state statutes, administrative rules, and local government ordinances in effect on the date*  
7 *the Council makes its decision. The Council shall consider the following:*

8 *(a) For an amendment that would change the site boundary or the legal description of the*  
9 *site, the Council shall consider, for the area added to the site by the amendment,*  
10 *whether the facility complies with all Council standards;*

11 *(b) For an amendment that extends the deadlines for beginning or completing construction,*  
12 *the Council shall consider:*

13 *A. Whether the Council has previously granted an extension of the deadline;*

14 *B. Whether there has been any change of circumstances that affects a previous Council*  
15 *finding that was required for issuance of a site certificate or amended site certificate;*  
16 *and*

17 *C. Whether the facility complies with all Council standards, except that the Council may*  
18 *choose not to apply a standard if the Council finds that:*

19 *i. The certificate holder has spent more than 50 percent of the budgeted costs on*  
20 *construction of the facility;*

21 *ii. The inability of the certificate holder to complete the construction of the facility*  
22 *by the deadline in effect before the amendment is the result of unforeseen*  
23 *circumstances that are outside the control of the certificate holder;*

24 *iii. The standard, if applied, would result in an unreasonable financial burden on the*  
25 *certificate holder; and*

26 *iv. The Council does not need to apply the standard to avoid a significant threat to*  
27 *the public health, safety or the environment;*

28 *(c) For any amendment not described above, the Council shall consider whether the*  
29 *amendment would affect any finding made by the Council in an earlier order.*

30 *(d) For all amendments, the Council shall consider whether the amount of the bond or letter*  
31 *of credit required under OAR 345-022-0050 is adequate.*

32 For new areas added to the site boundary, OAR 345-027-0070(10)(a) requires the Council to  
33 consider whether the expanded facility complies with all Council standards. OAR 345-027-  
34 0070(10)(b)(C) requires that for an amendment that would extend construction deadlines, the  
35 Council consider whether the facility continues to comply with all Council standards.  
36 Additionally, OAR 345-027-0070(10)(c) requires that for amendments that are not related to  
37 construction deadline extensions or expansion of a site boundary, the Council consider whether  
38 the amendment would affect any finding made by Council in an earlier order. In this case, RFA

1 No. 3 includes components that must be reviewed under each of these provisions. The  
2 Department has assessed the amended facility against all applicable Council standards below.

3 OAR 345-027-0070(10)(b)(A) requires the Council to consider whether it has previously granted  
4 an extension of the deadline. The Council previously considered and approved two construction  
5 deadline extensions in RFA No. 1 and RFA No. 2. For the first amendment, the construction  
6 deadline extension was requested due to a site certificate transfer resulting from a change in  
7 the certificate holder and parent company. The certificate holder explained that the first  
8 deadline extension was requested to allow the transferee suitable time to comply with  
9 preconstruction conditions. For the second amendment, the certificate holder explained that a  
10 deadline extension was warranted because the facility was under new ownership. The  
11 certificate holder further justified the deadline extension request by explaining that the site is  
12 an excellent and well-documented wind resource and holds a Large Generator Interconnection  
13 Agreement with BPA.

14 RFA No. 3 constitutes the third construction deadline extension request. The site certificate  
15 holder explains why additional time to begin and finish construction is necessary.<sup>10</sup> As stated by  
16 the certificate holder, the construction deadline extension request is driven by the need to  
17 complete the review process with the Federal Aviation Administration and to update final  
18 facility design in response to recent changes in the wind energy market using equipment  
19 currently available on the market. In RFA No. 3, the certificate holder explains that because the  
20 site is a well-documented, strong wind energy resource area, and because a Large Generator  
21 Interconnection Agreement with BPA has been signed, an extension of the construction  
22 deadlines would further enhance the feasibility of the facility by allowing the certificate holder  
23 time to receive approval for use of improved turbine technology.

24 OAR 345-027-0030 addresses “Amendments to Extend Construction Beginning and Completion  
25 Deadlines.” Under OAR 345-027-0030, a site certificate holder may request an amendment to  
26 extend the deadlines for beginning or completing the construction of a facility. The certificate  
27 holder must submit the request “no later than six months before the date of the applicable  
28 deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the  
29 request, no later than the applicable deadline.” If the Council grants such a request, the Council  
30 must specify new deadlines for beginning and/or completing construction that are not more  
31 than two years from the current deadlines. In this instance, Golden Hills submitted a request to  
32 extend the construction deadline six months before the June 18, 2016 deadline for starting  
33 construction, and therefore the demonstration of good cause is not required.

34 OAR 345-027-0070(10)(b)(B) requires that the Council consider “whether there has been any  
35 change of circumstances that affects a previous Council finding that was required for issuance  
36 of a site certificate or amended site certificate.” The certificate holder describes the requested  
37 change in turbine design as a change in circumstance which warrants a site certificate  
38 amendment. Additionally, the requested changes to related and supporting facilities and other  
39 site design features (e.g., site boundary additions to accommodate new 230 kV transmission  
40 segments) warrant consideration in a site certificate amendment request. An amendment

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<sup>10</sup> RFA No. 3, Sections 1.3.1 and 4.2.

1 request must also consider any changes in the existing environment within the analysis area  
2 that may have occurred since the original site certificate approval or previous amendments.  
3 Consistent with OAR 345-027-0070(1)(b)(C), the evaluation of these changes in circumstance  
4 and whether the facility, as amended, satisfies all Council standards is presented in  
5 sections IV.A.-IV.D of the proposed order.

6 As noted, OAR 345-027-0070(10)(a), OAR 345-027-0070(10)(b)(C), and OAR 345-027-0070(10)(c)  
7 require the Council to consider if the facility, as amended, complies with all applicable Council  
8 standards. Compliance with the applicable EFSC standards in OAR Divisions 22, 23 and 24 are  
9 evaluated in the following subsections.

#### 10 **IV.A Division 22 Standards**

##### 11 **IV.A.1 General Standard of Review: OAR 345-022-0000**

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

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

20 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except for*  
21 *those statutes and rules for which the decision on compliance has been delegated by*  
22 *the federal government to a state agency other than the Council, the facility*  
23 *complies with all other Oregon statutes and administrative rules identified in the*  
24 *project order, as amended, as applicable to the issuance of a site certificate for the*  
25 *proposed facility. If the Council finds that applicable Oregon statutes and rules, other*  
26 *than those involving federally delegated programs, would impose conflicting*  
27 *requirements, the Council shall resolve the conflict consistent with the public interest.*  
28 *In resolving the conflict, the Council cannot waive any applicable state statute.*

29 \*\*\*

#### 30 **Findings of Fact**

31 The requirements of OAR 345-022-0000 are discussed in the sections that follow. The  
32 Department consulted with other state agencies and Sherman County during review of RFA  
33 No. 3 to aid in the evaluation of whether the facility, as amended, would maintain compliance  
34 with statutes, rules and ordinances otherwise administered by other agencies.<sup>11</sup> Additionally, in  
35 many circumstances the Department relies upon these reviewing agencies' special expertise in  
36 evaluating compliance with the requirements of Council standards. The Department  
37 recommends the Council find that with existing, amended, and new site certificate conditions,

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<sup>11</sup> Sherman County comment letter was submitted by Georgia Macnab, Sherman County Planning Director, on behalf of the Sherman County Commissioners, the Special Advisory Group for the Golden Hills facility.



1 the facility, as amended, would maintain compliance with all applicable statutes, administrative  
2 rules and ordinances under Council jurisdiction.

3 Certificate Expiration (OAR 345-027-0000)

4 Under OAR 345-015-0085(9), the site certificate is effective upon execution by the Council Chair  
5 and the certificate holder. ORS 469.370(12) requires the Council to “specify in the certificate  
6 the date by which construction of the facility must begin.” ORS 469.401(2) requires that the site  
7 certificate contain a condition “for the time for completion of construction.” Under OAR 345-  
8 027-0000, the certificate holder must begin construction on the facility no later than the  
9 construction beginning date specified by Council in the site certificate, unless an amendment is  
10 requested and granted. “Construction” is defined in ORS 469.300(6) to mean “work performed  
11 on a site, excluding surveying, exploration or other activities to define or characterize the site,  
12 the cost of which exceeds \$250,000.” OAR 345-001-0010(12) adopts the statutory definition.

13 As discussed above and as provided in the RFA, the certificate holder requests to extend the  
14 construction start date to June 18, 2018, and the construction completion date to June 18,  
15 2021. Golden Hills requests this extension in order to update and finalize facility design and  
16 engineering and to complete the review process with the Federal Aviation Administration. In  
17 particular, Golden Hill states that due to recent advances in wind turbine technology, new  
18 turbines are available that would allow the facility to produce the same amount of power (peak  
19 maximum capacity of up to 400 MW) using only 125 turbines, as opposed to the previously  
20 approved 267 turbines, a reduced site boundary, and eliminating the need for the previously  
21 approved 11-mile, 500 kV transmission line, as well as reducing the number of on-site  
22 substations from two to one.<sup>12</sup>

23 Again, as discussed above, OAR 345-027-0070(10)(b)(A) requires the Council to consider  
24 whether the Council has previously granted an extension of the deadline. The Council has  
25 previously considered and approved two construction deadline extensions in RFA No. 1 and RFA  
26 No. 2. For the first amendment, a construction deadline extension was requested due to a site  
27 certificate transfer resulting from a change in the certificate holder and parent company. The  
28 certificate holder explained that the first deadline extension was requested to allow the  
29 transferee suitable time to comply with preconstruction conditions. For the second  
30 amendment, the certificate holder explained that a deadline extension was warranted because  
31 the facility was under new ownership. The certificate holder further justified the deadline  
32 extension request by explaining that the site is an excellent and well-documented wind  
33 resource and holds a Large Generator Interconnection Agreement with BPA.

34 RFA No. 3 constitutes the third construction deadline extension request. The site certificate  
35 holder explains in its RFA why additional time is necessary.<sup>13</sup> As stated by the certificate holder,  
36 there have been unforeseen delays in construction, including federal aviation issues. Golden  
37 Hills states that it believes these issues will be resolved in the near to medium term.<sup>14</sup>

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<sup>12</sup> RFA, Section 1.3.

<sup>13</sup> RFA, Section 4.2.

<sup>14</sup> Federal aviation issues are outside EFSC jurisdiction. Issues related to air traffic safety and comments from Oregon Department of Aviation are addressed in Section IV.C.1 of this proposed order.



1 Additionally, Golden Hills states that since the site certificate was issued in 2009, considerable  
2 advances in wind turbine technology have occurred and new turbines are more efficient and  
3 economical, and an extension is necessary to allow the certificate holder time to request  
4 approval for use of these new turbines at the facility.

5 OAR 345-027-0070(1)(b)(B) requires that the Council consider “whether there has been any  
6 change of circumstances that affects a previous Council finding that was required for issuance  
7 of a site certificate or amended site certificate.” The certificate holder addresses this point in  
8 RFA No. 3, as already noted above, that new wind turbine technology has become available  
9 since the site certificate was granted in 2009, and an amendment is necessary to allow Golden  
10 Hills to utilize this technology. Additionally, the requested changes to related and supporting  
11 facilities and other site design features (e.g., site boundary additions to accommodate new 230  
12 kV transmission segments) warrant consideration in a site certificate amendment request. By  
13 using newer and more efficient turbine technology, the certificate holder would be able to  
14 construct the facility using considerably fewer turbines (maximum of 125, compared to the  
15 previously approved 267), and reduce the overall site boundary, and thus minimize the facility’s  
16 footprint on the landscape.

17 Accordingly, and in compliance with OAR 345-027-0000 and OAR 345-027-0020(4), the  
18 Department recommends that the Council grant the construction deadline extensions and  
19 modify the following previously approved site certificate conditions accordingly:

20 **III.D.1:** The certificate holder shall begin construction of the facility ~~within~~ by June 18, ~~2016~~  
21 ~~2018~~. Under OAR 345-015-0085(9), an amended site certificate is effective upon execution  
22 by the Council Chair and the ~~applicant~~ certificate holder. The Council may grant an  
23 extension of the deadline to begin construction in accordance with OAR 345-027-0030 or  
24 any successor rule in effect at the time the request for extension is submitted.

25 **III.D.2:** The certificate holder shall complete construction of the facility by June 18, ~~2019~~  
26 ~~2021~~. Construction is complete when (1) the facility is substantially complete as defined by  
27 the certificate holder’s construction contract documents; (2) acceptance testing has been  
28 satisfactorily completed; and (3) the energy facility is ready to begin continuous operation  
29 consistent with the site certificate. The certificate holder shall promptly notify the  
30 Department of the date of completion of construction. The Council may grant an extension  
31 of the deadline for completing construction in accordance with OAR 345-027-0030 or any  
32 successor rule in effect at the time the request for extension is submitted.

### 33 **Conclusion of Law**

34 Based on the following analysis of applicable Council standards, and subject to compliance with  
35 the existing, amended, and recommended conditions identified in this proposed order, the  
36 Department recommends the Council find that the Golden Hills Wind Project, as amended,  
37 satisfies the requirements of OAR 345-022-0000.

### 38 **IV.A.2 Organizational Expertise: OAR 345-022-0010**

39 *(1) To issue a site certificate, the Council must find that the applicant has the organizational*  
40 *expertise to construct, operate and retire the proposed facility in compliance with*

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

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

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

21 (4) If the applicant relies on a permit or approval issued to a third party and the third party  
22 does not have the necessary permit or approval at the time the Council issues the site  
23 certificate, the Council may issue the site certificate subject to the condition that the  
24 certificate holder shall not commence construction or operation as appropriate until the  
25 third party has obtained the necessary permit or approval and the applicant has a  
26 contract or other arrangement for access to the resource or service secured by that  
27 permit or approval.

## 28 **Findings of Fact**

29 As applicable to this amendment request, subsection (1) of the Council's Organizational  
30 Expertise standard requires that the certificate holder demonstrate the ability to design,  
31 construct, and operate a facility in a manner that protects public health and safety in  
32 compliance with Council standards and all site certificate conditions, as well as to restore the  
33 site to a useful, nonhazardous condition. Subsections (2) through (4) address certified programs  
34 and third party permits.

35 The Council addressed the Organizational Expertise standard in Section III.A.1 of the *Final Order*  
36 *on Amendment No. 2*, and concluded at that time that the facility complied with the  
37 Organizational Expertise standard. No circumstances have changed with the current  
38 amendment request that would alter the Department's findings or the recommendations to  
39 Council. The certificate holder's parent company, Orion Renewable Energy Group, LLC (Orion  
40 Renewable), remains the same entity that was considered in RFA No. 2. At that time, it was  
41 noted that Orion Renewable had considerable experience developing renewable energy

1 projects, with nearly 3,000 MW of energy facilities in operation in the United States, including  
2 EFSC-issued site certificates in Sherman County for Biglow Canyon Wind Farm Phase I and II.<sup>15</sup>

3 Regarding financial assurances, as described in Section IV.A.7, *Retirement and Financial*  
4 *Assurance* of this proposed order, the certificate holder provided a letter issued by Beecher and  
5 Carlson, a firm that handles Orion Renewable's surety bonds and commercial insurance, stating  
6 that the company has the ability to provide a performance bond to cover the estimated cost of  
7 restoration upon facility retirement of \$14,424,936. The Department's assessment and  
8 recommendation to Council is that the certificate holder maintains the ability to comply with  
9 the Retirement and Financial Assurances standard.

10 In the *Final Order on Amendment No. 2*, Section III.A.1, the Council reaffirmed its finding from  
11 the *Final Order on the Application*, in determining that a single third party permit was required  
12 and has been acquired.<sup>16</sup> As explained, the certificate holder entered into an agreement under  
13 which the facility would transmit power to the BPA system by means of an existing third party  
14 transmission line serving the Hay Canyon Wind Farm. The certificate holder previously provided  
15 the Conditional Use Permit for the Hay Canyon Wind Farm as evidence that the third party  
16 permit has been issued and a copy of the Memorandum of Shared Use Agreement as evidence  
17 that it has entered into an agreement with the owner of the Hay Canyon Wind Farm for the use  
18 of the transmission line.<sup>17</sup> The site certificate holder does not report any changes in these  
19 circumstances related to the third-party permit.<sup>18</sup>

20 The existing site certificate includes a number of conditions related to the Organizational  
21 Expertise standard. These conditions are IV.B.1 to IV.B.8.<sup>19</sup> The Department does not  
22 recommend any changes to these existing conditions.

23 Based on the evidence provided, the Department recommends that the Council determine that  
24 the certificate holder continues to have the ability to construct, operate, and retire the facility  
25 in compliance with Council standards and all site certificate conditions, as required by the  
26 Organizational Expertise standard.

### 27 **Conclusion of Law**

28 Based on the evidence in the record, the Department recommends that the Council find that,  
29 subject to compliance with the site certificate conditions, the certificate holder continues to  
30 satisfy the Council's Organizational Expertise standard.

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<sup>15</sup> Request for Amendment No. 2, Attachment D.

<sup>16</sup> Final Order on Amendment No. 2, Section III.A.1.

<sup>17</sup> At the time the Final Order on Amendment No. 2 was issued, the Memorandum of Shared Use Agreement identified Iberdrola Renewables as the developer of the Hay Canyon Wind Farm and transmission line. However, as a result of a corporate merger in December 2015, Iberdrola Renewables was renamed Avangrid Renewables.

<sup>18</sup> RFA No. 3, Section 5.1.2.

<sup>19</sup> The recommended amended site certificate is included as Attachment A to this Proposed Order.

1 **IV.A.3 Structural Standard: OAR 345-022-0020**

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

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

9 (b) *The applicant can design, engineer, and construct the facility to avoid dangers to*  
10 *human safety presented by seismic hazards affecting the site that are expected to*  
11 *result from maximum probable ground motion events. As used in this rule “seismic*  
12 *hazard” includes ground shaking, ground failure, landslide, liquefaction, lateral*  
13 *spreading, tsunami inundation, fault displacement, and subsidence;*

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

18 (d) *The applicant can design, engineer and construct the facility to avoid dangers to*  
19 *human safety presented by the hazards identified in subsection (c).*

20 (2) *The Council may issue a site certificate for a facility that would produce power from*  
21 *wind, solar or geothermal energy without making the findings described in section (1).*  
22 *However, the Council may apply the requirements of section (1) to impose conditions on*  
23 *a site certificate issued for such a facility.*

24 ...

25 **Findings of Fact**

26 Section (1) of the Structural standard generally requires the Council to evaluate whether the  
27 certificate holder has adequately characterized the potential seismic, geological and soil  
28 hazards of the site, and can design, engineer and construct the facility to avoid dangers to  
29 human safety from these hazards.<sup>20</sup> Under Section (2), the Council may issue a site certificate  
30 for a wind energy facility without making findings regarding the Structural standard; however,  
31 the Council may apply the requirements of the standard to impose site certificate conditions.

32 The Council addressed the Structural standard in section V.A. of the *Final Order on the*  
33 *Application*. The Council imposed five conditions to the site certificate to address issues related  
34 to the Structural standard. Neither the first nor second amendments to the site certificate  
35 affected the findings regarding the Structural standard. As a result, the *Final Order on*  
36 *Amendment No. 1* and *Final Order on Amendment No. 2* relied on the analysis in the *Final Order*  
37 *on the Application*.

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<sup>20</sup> The Council does not preempt the jurisdiction of any state or local government over matters related to building code compliance.

1 RFA No. 3 would also extend construction deadlines, and would not change the micrositing  
2 turbine corridors. Wind turbines would be located in the same micrositing corridor locations as  
3 previously considered and approved by Council. The two new areas to be added to the site  
4 boundary would accommodate short segments of the 230 kV transmission line. The certificate  
5 holder states in RFA No. 3 that these new areas of the site boundary would not cross active  
6 earthquake faults or liquefiable soils, and that the analysis conducted for the original site  
7 certificate application included a regional seismic hazard analysis and included the areas  
8 requested to be added to the site boundary. The certificate holder further states that the soil  
9 site class, underlying bedrock structure, and maximum earthquake potential of the two new  
10 site boundary areas are consistent with the analysis and characterization conducted for the  
11 original site certificate application.<sup>21</sup>

12 Additionally, the site certificate contains a number of conditions related to the Structural  
13 standard (conditions V.A.1 to V.A.5), including a requirement that the certificate holder conduct  
14 a geotechnical investigation prior to construction in compliance with Oregon Department of  
15 Geology and Mineral Industries standards. These conditions would reduce the risk of seismic  
16 and nonseismic hazards from the facility.

17 Based on the findings above, and the previous consideration and approval of the site certificate  
18 application by Council, the Department does not recommend any changes or additions to the  
19 conditions imposed in the existing site certificate related to the Structural standard.

#### 20 **Conclusion of Law**

21 The Department recommends that the Council find that the conditions currently imposed in the  
22 site certificate to address the Structural standard ensure issues related to that standard are  
23 fully addressed.

#### 24 **IV.A.4 Soil Protection: OAR 345-022-0022**

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

#### 29 **Findings of Fact**

30 The Soil Protection standard requires the Council to find that the design, construction and  
31 operation of the facility are not likely to result in significant adverse impacts to soil. The Council  
32 addressed the Soil Protection standard in section IV.E. of the *Final Order on the Application*. The  
33 Council found that the design, construction, and operation of the facility, when taking into  
34 account mitigation, would not result in a significant adverse impact to soils. The site certificate  
35 includes specific conditions to control and mitigate potential adverse impact to soils and to  
36 mitigate the risk of soil contamination during construction and operation (Conditions IV.E.1 to  
37 IV.E.6).

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<sup>21</sup> RFA No. 3, Section 5.1.3.

1 Both the first and second amendments to the site certificate extended the construction  
2 deadlines and did not result in a change to the Council’s original findings that the facility would  
3 not result in significant adverse impacts to soils. As a result, the *Final Order on Amendment*  
4 *No. 1* and *Final Order on Amendment No. 2* relied on the analysis in the *Final Order on the*  
5 *Application*.

6 RFA No. 3 would also extend construction deadlines, and would not change the micro-siting  
7 turbine corridors. Wind turbines would be located in the same locations as previously  
8 considered and approved by Council. The certificate holder estimates that the temporary  
9 impacts of the facility would increase from the previously evaluated 1,055 acres to 1,069 acres  
10 from the temporary access road width increase; the certificate holder estimates that  
11 permanent impacts of the facility would decrease from the previously evaluated 141 acres to  
12 132 acres, based on the site design changes associated with RFA No. 3.<sup>22</sup>

13 The two new areas to be added to the site boundary would accommodate short segments of  
14 the 230 kV transmission line. The certificate holder states in RFA No. 3 that these new portions  
15 of the site boundary would be located on land with soil types, slopes, and crop cover that are  
16 consistent with the land in the previously approved site boundary. Soil type is stated to be  
17 primarily Walla Walla silt loam, slopes less than 15 percent, and used for dryland wheat, alfalfa,  
18 and pasture land.<sup>23</sup> As described previously, one of the new site boundary expansion areas is  
19 adjacent to the existing site boundary, and the other is approximately 3 miles from the site  
20 boundary.

21 There are no changes to the proposed turbine string micro-siting corridor locations. As explained  
22 by the certificate holder, the temporary access road width would be expanded to 40 feet from  
23 the previously considered 36 feet, in order to accommodate transport and installation of the  
24 larger wind turbines. However, existing conditions in the site certificate (Conditions IV.E.1 to  
25 IV.E.6) would require Golden Hills to construct the facility in compliance with an erosion and  
26 sediment control plan satisfactory to Oregon Department of Environmental Quality (DEQ) as  
27 per the requirements of a National Pollutant Discharge Elimination System (NPDES) 1200-C  
28 permit; salvage topsoil from areas of temporary impacts and stockpile for redistribution;  
29 implement a weed control plan to reduce the spread of noxious weeds; and, eliminate concrete  
30 wash water runoff, among other requirements. The existing site certificate conditions would  
31 apply to the entire facility, including the expanded temporary roads and the new site boundary  
32 areas. These conditions would help protect soils, in compliance with the Soil Protection  
33 standard.

34 Existing site certificate Condition IV.E.4 requires that the certificate holder develop in  
35 consultation with the Sherman County Weed Control manager a plan to control the  
36 introduction and spread of noxious weeds, and then implement that plan during facility  
37 construction and operation. However, both the Department and ODFW have important roles,  
38 responsibilities, and interests in also ensuring that noxious weeds are not introduced or spread  
39 during facility construction and operation. In order to improve coordination between agencies,

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<sup>22</sup> Golden Hills Supplemental Information Report, page 3.

<sup>23</sup> RFA No. 3, Section 5.1.4.

1 and ensure that the Department is clearly involved in managing site certificate compliance, the  
2 Department recommends the following change to condition IV.E.4.

3 Soil Protection IV.E.4. Prior to construction, the certificate holder shall develop a plan to  
4 control the introduction and spread of noxious weeds during facility construction and  
5 operation. The plan shall be developed in consultation with the Department, the Sherman  
6 County Weed Control manager, and ODFW. The plan shall be approved by the Department  
7 prior to construction. The plan shall focus on weed species listed on the Sherman County  
8 noxious weed list, but shall also include preventative measures to combat noxious weeds of  
9 concern in the area.

10 ~~During construction and operation of the facility, the certificate holder shall implement a~~  
11 ~~plan, developed in consultation with the Sherman County Weed Control manager, to~~  
12 ~~control the introduction and spread of noxious weeds.~~

13 For the reasons described above, the current amendment request is not expected to result in  
14 soil impacts that have not been previously addressed by the Council, or affect the facility's  
15 compliance with the Soil Protection standard. The certificate holder would remain subject to  
16 the conditions included in the site certificate. The Department does not recommend any  
17 changes to the Soil Protection conditions already included in the site certificate.

#### 18 **Conclusion of Law**

19 Based on the reasoning discussed above, and subject to continued compliance with the  
20 conditions in the site certificate, the Department recommends that the Council find that the  
21 facility, as amended, complies with the Council's Soil Protection standard.

#### 22 **IV.A.5 Land Use: OAR 345-022-0030**

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

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

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

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

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

37 *B. For a proposed facility that does not comply with one or more of the applicable*  
38 *substantive criteria as described in section (3), the facility otherwise complies*

1 with the statewide planning goals or an exception to any applicable statewide  
2 planning goal is justified under section (4); or

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

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

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

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

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

28 (c) The following standards are met:

29 A. Reasons justify why the state policy embodied in the applicable goal should not  
30 apply;

31 B. The significant environmental, economic, social and energy consequences  
32 anticipated as a result of the proposed facility have been identified and adverse  
33 impacts will be mitigated in accordance with rules of the Council applicable to  
34 the siting of the proposed facility; and

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

37 \*\*\*



1 **Findings of Fact**

2 The Land Use standard requires the Council to find that a proposed facility complies with the  
3 statewide planning goals adopted by the Land Conservation and Development Commission  
4 (LCDC).<sup>24</sup> In considering this amendment request, OAR 345-027-0070(10) requires the Council  
5 to apply the applicable substantive criteria in effect on the date the certificate holder submits a  
6 request for amendment.

7 The applicable substantive criteria from the Sherman County Code have not changed since the  
8 Council reviewed the previous RFA. In response to RFA No. 3, Sherman County provided two  
9 comments letters. The first letter stated no objection to the RFA but requested that if any wind  
10 turbines were to be sited in a new area not previously considered in the application or  
11 subsequent amendments, that Sherman County Setback Ordinance #39-2007 needs to apply to  
12 those new turbine locations. The second letter, received after the supplemental material was  
13 provided by Golden Hills, clarified the position of Sherman County, noting that no turbines are  
14 proposed to be located outside of the previously approved site boundary or in any new area  
15 not previously considered in the application, and as such the setback ordinance would not  
16 apply. The new site boundary area currently under consideration would accommodate two  
17 short segments of the 230 kV transmission line but no wind turbines.<sup>25</sup>

18 The Council previously concluded that the facility complies with the Land Use standard. The  
19 certificate holder has stated that the changes requested in RFA No. 3 would not affect the  
20 Council's previous findings, as all turbines would still be located within the previously approved  
21 micrositing corridors. The temporary impacts of access roads would be slightly wider if larger  
22 turbines are used (up to 40 feet width, from 36 feet), and while one of the two previously  
23 approved substations will be eliminated, the one remaining substation would be expanded  
24 from 2 to 5 acres. RFA No. 3 also requests the ability to use turbines that are taller and have a  
25 larger rotor diameter than previously considered. However, all turbines, roads, and the  
26 substation would be within the previously approved site boundary, on land zoned EFU. This is  
27 consistent with EFSC's finding of compliance with the land use standard in the previous two  
28 amendments and the original final order, and would be subject to the existing conditions  
29 included in the site certificate (Conditions IV.D.1 to IV.D.22). As noted, Sherman County has  
30 expressed no objection of the amendment and provided no additional comment on the  
31 amendment request aside from noting that should any turbines be located outside of  
32 previously approved corridors, that County Setback Ordinance #39-2007 would apply. As  
33 stated, no turbines would be located outside of the previously approved micrositing corridors,  
34 and all turbines must comply with the setback ordinance per site certificate Condition IV.D.22.

35 The only facility components to be added within the expanded site boundary area in RFA No. 3  
36 would allow for two short segments of 230 kV transmission line to connect the facility to the  
37 BPA transmission grid. In the original site certificate application (and previous two  
38 amendments), Golden Hills requested and received Council approval to build and construct two  
39 transmission lines to connect the facility to the BPA grid, plus two substations associated with  
40 each transmission line. One of these transmission lines was to be a 500 kV transmission line and

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<sup>24</sup> The Council must apply the Land Use standard in conformance with the requirements of ORS 469.504.

<sup>25</sup> Sherman County Comment Letters, March 1, 2016 and May 18, 2016.

1 a substation to connect the facility to an existing BPA substation north of the site boundary. As  
2 noted throughout this proposed order, the current amendment request eliminates the need for  
3 the 500 kV transmission line and the associated substation. The previously approved 230 kV  
4 transmission line would then be extended to a more central location in the site boundary, and  
5 connect with a single substation serving the entire facility. The Council previously approved  
6 over 11 miles of new transmission line and two substations; the current RFA No. 3 would  
7 instead require 5 miles of new transmission to be constructed at 230 kV, and one substation.

8 As noted, there have been no changes to the applicable substantive criteria for the Golden Hills  
9 facility, and as such, the following criteria continue to apply to the facility:

10 **SCZO Article 3. Use Zones**

11 ***SCZO Section 3.1 – Exclusive Farm Use Zone, F-1 Zone***

12 ***SCZO Section 3.1(1). General Purpose - To protect agricultural uses from encroachment by***  
13 ***other incompatible uses and to provide tax incentives to assure that a maximum amount of***  
14 ***agricultural land is retained in agricultural uses.***

15 The Council has previously found the facility to be compatible with siting in the F-1 EFU zone.  
16 The changes as part of RFA No. 3 would not affect the previous findings. As described below,  
17 the facility is a “commercial utility facility” and as such is a conditionally permitted use in the F-  
18 1 zone. The associated transmission line is a “utility facility necessary for public service,” and  
19 under ORS 215.283(1)(c), utility facilities necessary for public service are allowed in EFU zones  
20 subject to the provisions of ORS 215.275. This assessment is included below in this section. As  
21 shown on Table 1 in Section IV.A.9, *Fish and Wildlife Habitat standard* section, the certificate  
22 holder estimates that approximately 126.5 acres of agriculture land (Category 6 habitat) would  
23 be permanently impacted by the amended facility.

24 ***SCZO Section 3.1(2). Uses Permitted - In the F-1 Zone, the following uses and their accessory***  
25 ***uses are permitted:***

26 \* \* \* \* \*

27 *(g) Reconstruction or modification of public roads and highways, not including the addition*  
28 *of travel lanes, where no removal or displacement of buildings will occur, or new land*  
29 *parcels result.*

30 \* \* \* \* \*

31 *(x) Transportation improvements.*

32 *1) Normal operation, maintenance, repair, and preservation activities of existing*  
33 *transportation facilities*

34 \* \* \* \* \*

35 The Council considered this section of the SCZO in the *Final Order on the Application* and found  
36 the facility to be in compliance. The RFA No. 3 amendments would not affect this finding as no  
37 changes are proposed that would affect the certificate holder’s plans for improvements to  
38 public roads and highways.

1 **SCZO Section 3.1(3).** *Conditional Uses Permitted - In an F-1 Zone, the following uses and their*  
2 *accessory uses are permitted when authorized in accordance with the requirements of*  
3 *Article 5 of this Ordinance and this Section:*

4 \* \* \* \* \*

5 *(q) Commercial utility facilities.*

6 \* \* \* \* \*

7 *(gg) Transportation Improvements. (Ord No. 22-05-2003)*

8 \* \* \* \* \*

9 The Council considered this section of the SCZO in the *Final Order on the Application* and found  
10 the facility to be in compliance. The RFA No. 3 amendments would not affect this finding. The  
11 Golden Hills facility remains a “commercial utility facility.” The requirements of Article 5 are  
12 further discussed below.

13 **SCZO Section 3.1(4)(c)—Dimensional Standards/Setback Requirements**

14 *(c) In an F-1 (EFU) Zone, the minimum setback requirements shall be as follows:*

- 15 1) *The front and rear setbacks from the property line shall be 30 feet, except that*  
16 *the front yard setback from the right-of-way of an arterial or major collector or*  
17 *road shall be 50 feet, unless approved otherwise by the Planning Commission.*
- 18 2) *Each side yard setback from a property line shall be a minimum of 25 feet, and*  
19 *for parcels or lots involving a non-farm residential use with side yard(s) adjacent*  
20 *to farm lands, said adjacent side yards shall be a minimum of 50 feet, unless*  
21 *approved otherwise by the Planning Commission.*

22 The Council considered this section of the SCZO in the *Final Order on the Application*. In order  
23 to maintain compliance with the code provision and minimize the facility’s impact to  
24 neighboring properties, the Council included site certificate Condition IV.D.4, requiring above  
25 ground facility structures (including wind turbines, O&M building, substations, and met towers,  
26 but not including aboveground power collection and transmission lines and poles and junction  
27 boxes) not be located within 50 feet from any property line or within 50 feet from the right-of-  
28 way of any arterial or major collector road. However, Council found in the *Final Order on the*  
29 *Application* that the exclusion of the aboveground power collection and transmission lines,  
30 poles, and junction boxes conflict with the SCZO. Therefore, in the *Final Order on the*  
31 *Application*, the Council conducted an analysis of whether the facility complies with statewide  
32 planning Goal 3, Agriculture Lands, even though the identified facilities would not satisfy the 50  
33 foot setback requirement. As described below, Council found the facility to be in compliance  
34 with the provisions of this rule and therefore in compliance with Goal 3 pursuant to ORS  
35 469.504(1)(b). The Department recommends the Council confirm its previous findings from the  
36 *Final Order on the Application* and find that the facility, as amended for RFA No. 3, complies  
37 with the EFU dimensional standards and Goal 3.

1 **SCZO Section 3.7 – Natural Hazards Combining Zone (NH)**

2 *In any zone that is combined with the (NH) Combining Zone, the requirements and standards*  
3 *of this Section shall apply in addition to those set forth in the primary zone, provided that if a*  
4 *conflict occurs, the more restrictive provisions shall govern.*

5 **SCZO Section 3.7(1). Purpose** - *The purpose of the (NH) Combining Zone is to promote and*  
6 *protect the public health, safety and general welfare and to minimize potential losses by*  
7 *providing guidelines for development in hazard areas. Development limitations are*  
8 *applicable to developments in areas of surface water accumulations and high groundwater,*  
9 *unstable or fragile soils, geological hazards, and steep slopes, generally those of 30 percent*  
10 *or greater.*

11 **SCZO Section 3.7(3). Conditional Uses** - *In any Zone with which the (NH) Zone is combined,*  
12 *all uses permitted by the primary Zone, except those set forth in Subsection (2) above, shall*  
13 *be permitted only as Conditional Uses and subject to the provisions of this Zone and the*  
14 *primary Zone. Said permits shall be processed in accordance with the provisions set forth for*  
15 *a Conditional Use, or as set for by this Ordinance.*

16 **SCZO Section 3.7(4). Permit for Use or Development in a (NH) Zone** – *No person shall*  
17 *construct, reconstruct, or install a use or development unless a permit therefore has been*  
18 *received, except for those uses permitted as Outright by Subsection (2) of this Section.*  
19 *Except for the improvement of an existing structure which is less than substantial as*  
20 *determined by a Certified Building Official or the County upon appeal, no permit shall be*  
21 *issued unless the use or development will be determined to be reasonably safe from the*  
22 *applicable hazard, and otherwise in compliance with the provisions of this Section, the NH*  
23 *Zone, this Ordinance, and other applicable regulations.*

24 **SCZO Section 3.7(5). Application Requirements for a Use in a (NH) Zone** – *An application for*  
25 *a use or development in a Zone with which the (NH) Zone is combined shall be accompanied*  
26 *by the following:*

27 (a) *Site Investigation Report: An application for a use or development in a (NH) Zone*  
28 *requires a site investigation report for the subject-affected area. The site investigation*  
29 *report shall provide information on the site of the proposed use or development and*  
30 *surrounding and adjacent lands that are most likely to be affected thereby. Unless the*  
31 *County determines that specific items are not required, the report shall include the*  
32 *information described in this Subsection, together with appropriate identification of*  
33 *information sources and the date of the information. The approved site investigation*  
34 *report may be require to be reference in the deed and other documents of sale, and may*  
35 *be required to be recorded with the deed of record.*

36 (b) *Background Data in Report. At a minimum, the Site Investigation Report shall contain*  
37 *the following background information:*

- 38 1) *A general analysis of the affected site and general area's topography and geology,*  
39 *including faults, folds, geologic and engineering geologic units, and any soils, rock*

- 1                    *and structural details important to the engineering or geological interpretations and*  
2                    *the their relative activity.*
- 3                    2) *Location and approximate depths of seasonal surface water accumulations and*  
4                    *groundwater tables, and location and direction of all watercourses, including*  
5                    *intermittent flows.*
- 6                    3) *A history of soil and water related problems on the site and adjacent lands, which*  
7                    *may be derived from discussions with local residents and officials and the study of*  
8                    *old photographs, reports and newspaper files.*
- 9                    4) *The extent of the surface soil formation and its relationship to the vegetation of the*  
10                    *site, the activity of the landform, and the locations on the site and surrounding areas.*
- 11                    5) *The following ground photographs of the site and surrounding areas with*  
12                    *information showing the scale and date of photographs and their relationship to the*  
13                    *topographic map and profiles:*
- 14                    A. *A view of the general area.*
- 15                    B. *The site of the proposed development.*
- 16                    C. *Any features which are important to the interpretation of the hazard potential of*  
17                    *the site, including all sites of erosion, surface or groundwater accumulations, or*  
18                    *accretion.*
- 19                    (c) *Topography Map. A topography base map at a scale of not more than 1:100 with a*  
20                    *contour interval of 2 feet shall be prepared identifying the following features and*  
21                    *accompanied by references to the source(s) and date(s) of information used.*
- 22                    1) *Position of lot lines.*
- 23                    2) *Boundaries of the property.*
- 24                    3) *Each geological feature classification type.*
- 25                    4) *Areas of open ground and the boundaries and species identification of major plant*  
26                    *communities.*
- 27                    5) *Any springs, streams, marshy areas, standing bodies of water, intermittent*  
28                    *waterways, drainage ways, and high groundwater areas with highest annual levels.*
- 29                    6) *Cut terraces, erosion scarps, and areas exhibiting significant surface erosion due to*  
30                    *improper drainage and runoff concentration.*
- 31                    7) *Geological information, including lithologic and structural details important to*  
32                    *engineering and geologic interpretations.*
- 33                    (d) *Subsurface Analysis. If upon initial investigation it appears there are critical areas where*  
34                    *the establishment of geologic conditions at specific depths is required, a subsurface*  
35                    *analysis obtained by drilling holes, well logs, and other geophysical techniques shall be*  
36                    *conducted, or caused to be conducted by a qualified expert, by the person responsible for*  
37                    *the site, and investigation report to include the following data as appropriate.*

- 1) *The lithology and compaction of all subsurface horizons to bedrock.*
- 2) *The depth, width, slope and bearing of all horizons containing significant amounts of silt and clay and any other subsurface layers which could reduce the infiltration of surface waters.*

(e) *Development Proposal. The site investigation report shall include the following information on the proposed development as applicable:*

- 1) *Plans and profiles showing the position and height of each structure, paved areas, and areas where cut and fill is required for construction.*
- 2) *The percent and location of the surface of the site, which will be covered by impermeable surfaces.*
- 3) *A stabilization program for the development describing:*
  - A. *How much of the site will be exposed during construction and what measures will be taken to reduce erosion and soil movement during construction.*
  - B. *A revegetation plan designed to return open soil areas, both preexisting and newly created, to a stable condition as soon as possible following construction and the period of time during which revegetated areas will receive revegetation maintenance.*
  - C. *Areas to be protected from vegetation loss or ground water pollution shall be identified and means for protection described.*

(f) *Conclusions in the Site Investigation:*

- 1) *The site investigation report shall contain conclusions stating the following:*
  - A. *How the intended use of the land is compatible with the natural conditions; and*
  - B. *Any existing or potential hazards noted during the investigation.*
- 2) *Mitigating recommendations for specific areas of concern shall be included.*
- 3) *Conclusions shall be based on data included in the report, and the sources of information and facts relied upon shall be specifically referenced.*

**SCZO Section 3.7(6).** *Standards for Building Construction in NH Zone*

(a) *Building construction shall only be approved under conditions that do not adversely affect geological stability, surface or ground waters, or vegetation.*

(b) *The grading of land and the orientation and design of buildings shall avoid creating conditions that will cause erosion or accretion of soil, or surface and ground water contamination. Where there is some risk of these conditions occurring, a Qualified Geological or Hydrological Expert, whichever is applicable, shall certify that the design and control measures will comply with this standard.*

(c) *Construction work shall be scheduled and conducted to avoid erosion, and temporary stabilization measures may be needed until permanent installations are accomplished.*

1 **SCZO Section 3.7(7).** *Standards for an Access Route in NH Zone – An access route within a*  
2 *(NH) Zone shall comply with the following provisions:*

3 *(a) A road or street shall be stabilized by planking, gravel or pavement as deemed*  
4 *necessary; and*

5 *(b) Roadways shall be built without installation of excessive fill, diversion of water, or*  
6 *excessive cuts unless the site investigation determines that such conditions will not be*  
7 *detrimental to the area or create unwarranted maintenance problems or additional*  
8 *hazards.*

9 The Council addressed the requirements of the Natural Hazards (NH) Combining Zone in the  
10 *Final Order on the Application*. While no wind turbines would be located in the NH zone,  
11 portions of the transmission line and collector lines may be located in the NH zone. With  
12 conditions, the Council found the facility to be in compliance with the requirements of the NH  
13 zone (conditions IV.D.5 to IV.D.9).<sup>26</sup>

14 As part of RFA No. 3, the short segment of transmission contiguous to the existing approved  
15 site boundary that would connect to the Hay Canyon transmission line would be located in the  
16 NH Combining Zone. In the original *Final Order on Application*, the Council reviewed and  
17 approved transmission line in the same Natural Hazards Combining Zone.<sup>27</sup> The certificate  
18 holder is relying upon the Council’s same finding of approval for the transmission line within  
19 this zone. As noted, in the *Final Order on Application*, the Council assessed 230 kV transmission  
20 lines within the NH Combining Zone and determined that with a number of conditions, the  
21 transmission line would be compatible and in compliance with the NH Combining Zone  
22 ordinances and criteria. The site certificate conditions related to compliance with siting a  
23 transmission line in the Natural Hazards Combining Zone are conditions IV.D.5 to IV.D.9, and  
24 these conditions would continue to apply to the amended facility.

25 **SCZO Article 4. Supplementary Provisions**

26 ***SCZO Section 4.9—Compliance with and Consideration of State and Federal Agency Rules***  
27 ***and Regulations***

28 *Approval of any use or development proposal pursuant to the provisions of this Ordinance*  
29 *shall require compliance with and consideration of all applicable State and Federal agency*  
30 *rules and regulations.*

31 All applicable state rules and regulations related to the facility siting, as identified in the project  
32 order, are included in and governed by the site certificate. The Council has previously found the  
33 facility in compliance with all applicable state rules and regulations, and as such, has issued a  
34 site certificate. In this proposed order related to RFA No. 3, the Department is recommending  
35 that the Council again find the facility, as amended, in compliance with all applicable Council  
36 standards and state rules and regulations, and issue an amended site certificate. Any other

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<sup>26</sup> The Department recommends minor clerical edits to site certificate conditions IV.D.8 and IV.D.9 to expand the acronym “NH” to the full name of the zone, “Natural Hazards Combining Zone,” for ease of readability and compliance.

<sup>27</sup> Final Order on Application, starting on page 43.

1 state rules and regulations, outside of the site certificate, as well as federal rules and any  
2 federal rules delegated to state agencies, are outside of EFSC jurisdiction. The certificate holder  
3 must comply with any such rules and regulations independent of the site certificate review  
4 process.

5 ***SCZO Section 4.13 Additional Conditions to Development Proposals***

6 *The County may require additional conditions for development proposals.*

- 7 1. *The proposed use shall not reduce the level of service (LOS) below a D rating for the*  
8 *public transportation system. For developments that are likely to generate more than a*  
9 *V/C ratio of 75 or greater, the applicant shall provide adequate information, such as a*  
10 *traffic impact study or traffic counts, to demonstrate the level of impact to the*  
11 *surrounding road system. The developer shall be required to mitigate impacts*  
12 *attributable to the project.*
- 13 2. *The determination of the scope, area, and content of the traffic impact study shall be*  
14 *coordinated with the provider of the affected transportation facility, i.e., city, county,*  
15 *state.*
- 16 3. *Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or access ways*  
17 *shall be required where necessary to mitigate the impacts to the existing transportation*  
18 *system caused by the proposed use.*
- 19 4. *Construction of improvements such as paving, curbing, installation or contribution to*  
20 *traffic signals, construction of sidewalks, bikeways, access ways, paths, or roads that*  
21 *serve the proposed use where necessary to mitigate the impacts to the existing*  
22 *transportation system caused by the proposed use.*

23 The Council considered these provisions in the *Final Order on the Application*, and the proposed  
24 amendments of RFA No. 3 would not change the Council's previous findings. The facility, as  
25 amended, is not expected change any previous findings related to these provisions, and as such  
26 is not expected to reduce the LOS of a public road to less than a D rating. The Department  
27 addresses the amended facility's potential impact to public services including traffic services in  
28 Section IV.A.13, Public Services of the proposed order. The Council has previously included a  
29 number of conditions related to mitigating and minimizing the facility's impact to traffic and  
30 local roads. These conditions would continue to apply to the amended facility. These conditions  
31 include V.C.10 to V.C.13.

32 **SCZO Article 5. Conditional Uses**

33 ***SCZO Section 5.2 General Criteria***

34 *In determining whether or not a Conditional Use proposal shall be approved or denied, it*  
35 *shall be determined that the following criteria are either met or can be met through*  
36 *compliance with specific conditions of approval.*

- 37 1. *The proposal is compatible with the applicable provisions of the County Comprehensive*  
38 *Plan and applicable Policies.*



- 1        2. *The proposal is in compliance with the requirements set forth by the applicable primary*
- 2        *Zone, by any other applicable combining zone, and other provisions of this Ordinance*
- 3        *that are determined applicable to the subject use.*
- 4        3. *That, for a proposal requiring approval or permits from other local, state, and/or federal*
- 5        *agencies, evidence of such approval or permit compliance is established or can be*
- 6        *assured prior to final approval.*
- 7        4. *The proposal is in compliance with specific standards, conditions, and limitations set*
- 8        *forth for the subject use in this Article and other specific relative standards required by*
- 9        *this or other County Ordinance.*
- 10       5. *That no approval be granted for any use which is or is expected to be found to exceed*
- 11       *resource or public facility carrying capacities, or for any use which is found to not be in*
- 12       *compliance with air, water, land, and solid waste or noise pollution standards.*
- 13       6. *That no approval be granted for any use violation of this Ordinance.*
- 14       7. *SCZO Section 5.8 Standards Governing Specific Conditional Uses*

15       The Council addressed the General Criteria in the *Final Order on the Application*, and found the  
 16       facility to be in compliance with the criteria. As described elsewhere in this section and  
 17       elsewhere in the proposed order, the facility, as amended, would maintain compliance with all  
 18       applicable substantive criteria, as well as other applicable Council standards and other  
 19       applicable Oregon rules and statutes.

20       ***SCZO Section 5.8 Standards Governing Specific Conditional Uses***

21       *A Conditional Use set forth by this Ordinance shall be subject to review by the Planning*  
 22       *Commission in accordance with the public hearing requirements set forth in this Ordinance.*

23       ***SCZO Section 5.8 Standards Governing Specific Conditional Uses***

24       \* \* \* \* \*

25       ***(14) - Public Facilities and Services***

26       *(a) Public facilities including, but not limited to, utility substations, sewage treatment*  
 27       *plants, storm water and water lines, water storage tanks, radio and television*  
 28       *transmitters, electrical generation and transmission devices, fire stations and other*  
 29       *public facilities shall be located so as to best serve the County or area with a*  
 30       *minimum impact on neighborhoods, and with consideration for natural or aesthetic*  
 31       *values.*

32       *(b) Structures shall be designed to be as unobtrusive as possible. Wherever feasible, all*  
 33       *utility components shall be placed underground.*

34       *(c) Public facilities and services proposed within a wetland or riparian area shall provide*  
 35       *findings that: Such a location is required and a public need exists; and Dredge, fill*  
 36       *and adverse impacts are avoided or minimized.*

37       The Council addressed these criteria in the *Final Order on the Application*, and the certificate  
 38       holder is relying upon those findings to show compliance of the amended facility. As the Council

1 found in the *Final Order on the Application*, the Golden Hills facility as well as related and  
2 supporting facilities including transmission lines and collector lines, will be located as best to  
3 serve the county as they will be located around the available wind resource in a way that  
4 minimizes the impact to agricultural operations and surrounding land uses. The facility, as  
5 amended, would not change this finding. The facility has been sited to consider natural values,  
6 demonstrated by the minimal impact to agriculture and the minimal impact to natural habitat.  
7 As shown in the Fish and Wildlife Habitat standard section of this proposed order, the majority  
8 of the habitat impacted by the amended facility would be Category 6 habitat. The facility, as  
9 amended, would continue to not need a removal-fill permit as impacts to wetlands are avoided  
10 and minimized below the permit requirement threshold. Section IV.D.2, *Removal-Fill* of this  
11 propose order further addresses the amended facility's compliance with the DSL removal-fill  
12 permit requirements and impacts to wetlands, and includes a new recommended condition  
13 related to maintaining compliance with the removal-fill regulations.

14 ***SCZO Section 5.8 Standards Governing Specific Conditional Uses***

15 ***20 - Non-farm Uses in an F-1 Zone - Non-farm uses, excluding farm related, farm accessory***  
16 ***uses, or uses conducted in conjunction with a farm use as a secondary use thereof, may be***  
17 ***approved upon a finding that each such use:***

- 18 1. *Is compatible with farm uses described in ORS 215.203(2);*
- 19 2. *Does not interfere seriously with accepted farming practices on adjacent lands devoted*  
20 *to farm use;*
- 21 3. *Does not materially alter the overall land use pattern of the area;*
- 22 4. *Is situated upon generally unsuitable land for the production of farm crops and livestock,*  
23 *considering the terrain, adverse soil or land conditions, drainage and flooding,*  
24 *vegetation, location and size of the tract, and the availability of necessary support*  
25 *resources for agriculture;*

26 Council considered this provision of the SCZO in the *Final Order on the Application* and found  
27 that the facility, with conditions, is compatible with criteria 1-3. These conditions are IV.D.10 to  
28 IV.D.12. The amended facility as part of RFA No. 3 would not change any of the findings, and all  
29 existing conditions will continue to apply to the facility. Council found in the *Final Order on the*  
30 *Application* that the facility did not comply with the fourth criteria as it would be located on  
31 land generally suitable for crop production. Therefore, in the *Final Order on the Application*,  
32 Council conducted an analysis of the directly-applicable statewide planning goal, Goal 3  
33 Agriculture Lands. The LCDC rule implementing this goal for wind power generation facilities is  
34 OAR 660-033-0130(37). As described below, Council found the facility to be in compliance with  
35 the provisions of this rule and therefore in compliance with Goal 3. The certificate holder has  
36 not noted any change to the facility design that would affect the Council's previous finding of  
37 compliance with the directly-applicable statewide planning goal as implemented through the  
38 LCDC rule at OAR 660-033-0130(37).

1 OAR 660-033-0130(37) defines a “wind power generation facility” and provides criteria for the  
2 approval of a wind power generating facility sited on farmland.<sup>28</sup> In the *Final Order on the*  
3 *Application*, the Council found that the proposed facility met the approval criteria in OAR 660-  
4 033-0130(37). In RFA No. 3, the certificate holder states that Council can continue to rely upon  
5 its previous findings of compliance with the Land Use standard because all turbines will be sited  
6 in the same micro-siting corridors. The Department recommends the Council confirm its  
7 previous findings from the *Final Order on the Application* and find that the facility, as amended  
8 for RFA No. 3, complies with the provisions of OAR 660-033-0130(37).

9 **SCZO Article 11. Design & Improvement Standards & Requirements**

10 In the Final Order on the Application, Council found that Article 11 does not apply to the facility.  
11 Article 11, as the Council concluded, only applies to developments that require “any subdivision  
12 or partition of land,” and the facility does not require subdivision or partition of land. RFA No. 3  
13 would not change this conclusion.

14 ***Sherman County Comprehensive Plan***

15 ***SCCP Section VIII. Planning Process and Citizen Involvement***

16 ***SCCP Section VIII, Goal I. To provide the opportunity for all citizens and effected agencies***  
17 ***to participate in the planning process.***

18 ***Goal I, Policy I.***

19 *All land use planning public hearings, requiring public notice, shall be advertised in a*  
20 *general circulation newspaper and be open to the public.*

21 The site certificate amendment process provides opportunities for all citizens and affected  
22 agencies to participate in the review and planning process. Notification of this proposed order  
23 has been sent to neighboring landowners, as well as members of the public who have opted to  
24 receive notifications related to the Golden Hills facility proceedings or opted onto the Council’s  
25 general notification list to receive information related to all EFSC facility proceedings. The  
26 Department has also worked with reviewing agencies and Sherman County on the review of  
27 RFA No. 3.

28 Policy 1 is not an applicable substantive criteria as it is administrative and related specifically to  
29 land use planning public hearings. Furthermore, even if it were applicable, the EFSC  
30 amendment review process does not require a land use planning public hearing.

31 ***Goal I, Policy II.***

32 *All effected [sic] agencies and effected [sic] landowners shall be notified by written*  
33 *notice of any proposed site-specific land use change.*

34 All adjacent landowners and any affected agencies, including Sherman County, have been  
35 notified of RFA No. 3 and this proposed order as per OAR 345-027-0070(5). Additionally,

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<sup>28</sup> Sherman County has not adopted in its county code the provisions of OAR 660-033-130(37), *Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses for Wind Power Generating Facilities*. As such, the rule directly applies to the facility.

1 notification has been sent to members of the public who have opted to receive notifications  
2 related to the Golden Hills facility proceedings or opted onto the Council’s general notification  
3 list to receive information related to all EFSC facility proceedings.

4 **SCCP Section XI. Physical Characteristics**

5 **SCCP Section XI, Goal I. Improve or maintain the existing quality of the physical**  
6 **environment within the County.**

7 **Goal I, Policy I.**

8 *Erosion control provisions shall be incorporated into the subdivision requirements of the*  
9 *Development Code. These shall require that the best practical methods be used to*  
10 *control erosion from road and building construction sites as well as other changes in land*  
11 *use, which may degrade the quality of the land, air and water.*

12 The Council addressed this goal and policy in Section IV.D of the *Final Order on the Application*,  
13 noting that the policy directs Sherman County to include erosion control provisions into the  
14 subdivision requirement of its development code, and as such is not directly applicable to the  
15 facility. However, Council also stated that the facility would comply with the goal by  
16 maintaining the existing quality of the physical environment within the county, and that the  
17 facility would control erosion as discussed in the Soil Protection standard section. The  
18 Department recommends the Council make the same conclusion for RFA No. 3. The amended  
19 facility, including the new site boundary areas, would still be subject to existing site certificate  
20 conditions related to erosion control including condition IV.E.1, requiring the facility be  
21 developed in compliance with an Erosion and Sediment Control Plan satisfactory to DEQ,  
22 condition IV.E.2, requiring management of topsoil during construction, and condition IV.E.3,  
23 requiring inspection and maintenance of the facility during operation to control erosion.

24 **SCCP Section XI, Goal II. To protect life and property from natural disasters and hazards.**

25 The Council addressed this goal in Section IV.D of the *Final Order on the Application*, finding  
26 that the facility would comply with the goal. For RFA No. 3, while the facility would use taller  
27 turbines, it would still be subject to the existing site certificate conditions related to protection  
28 of public health and safety (conditions IV.I.1 to IV.I.8 and conditions VI.A.4.1 to VI.A.4.3), the  
29 Structural standard (conditions V.A.1 to V.A.5), and other conditions that would provide for the  
30 protection of life and property from natural disasters and hazards that may affect the facility.

31 The short segment of proposed new 230 kV transmission line, contiguous to the existing  
32 approved site boundary that would connect to the Hay Canyon transmission line, would be  
33 located in EFU zoned land (as is the entire facility), and would also be located in the Natural  
34 Hazards Combining Zone. In the original *Final Order on Application*, the Council reviewed and  
35 approved a transmission line in the same Natural Hazards Combining Zone.<sup>29</sup> The certificate  
36 holder is relying upon the Council’s same finding of approval for the transmission line within  
37 this zone. In the *Final Order on Application*, the Council included a number of conditions

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<sup>29</sup> Final Order on Application, starting on page 43.

1 specifically related to compliance with siting in the Natural Hazards Combining Zone (conditions  
2 IV.D.5 to IV.D.9), and these conditions would continue to apply to the amended facility.

3 ***SCCP Section XI, Goal III. Provide for the rational development and conservation of the***  
4 ***aggregate resources within the County.***

5 The Council addressed this goal in Section IV.D of the *Final Order on the Application*,  
6 concluding that the goal does not apply to the facility because Golden Hills would not develop  
7 aggregate resources, but rather would purchase aggregate from local operations that already  
8 have applicable permits in accordance with Sherman County standards. RFA No. 3 would not  
9 change this finding.

10 ***SCCP Section XI, Goal IV. To provide a detailed investigation of the County's groundwater***  
11 ***resources.***

12 This Council addressed this goal in Section IV.D of the *Final Order on the Application*, finding  
13 that the facility would only use a small amount of groundwater, no more than 5,000 gallons per  
14 day, specifically to serve the operations and maintenance facility. Groundwater wells that use  
15 under 5,000 gallons per day do not require a new water right from Oregon Water Resources  
16 Department. The Department further discusses the amended facility's compliance with Oregon  
17 water rights statutes in Section IV.D.3 *Water Rights* of this proposed order.

18 ***SCCP Section XI, Goal V. To maintain the multiple use management concept on Bureau of***  
19 ***Land Management Lands within Sherman County.***

20 This goal does not apply as the facility would not be located on Bureau of Land Management  
21 land.

22 ***SCCP Section XI, Goal VI. Encourage preservation of the rural nature [of] the Sherman***  
23 ***County landscape.***

24 ***Goal VI, Policy VII.***

25 *Trees should be considered an important feature of the landscape and therefore the*  
26 *County Court shall encourage the retention of this resource when practical*

27 The Council addressed this goal in Section IV.D of the *Final Order on the Application*, finding  
28 that the facility would comply with the policy statement because it is located in a largely tree-  
29 less plain currently consisting mostly of agricultural operations, and that development of the  
30 facility would not require removal of any trees. The amended facility would maintain the same  
31 micro-siting turbine corridors. The two new areas of expanded site boundary to accommodate  
32 short sections of 230 kV transmission line would be located on EFU land currently in farming  
33 production and would not be expected to impact any trees.

1 **SCCP Section XI, Goal VII. Encourage preservation of fish and wildlife habitat in the**  
2 **County.**

3 **SCCP Section XI, Goal VIII. Encourage the diversity of plant and animal species within the**  
4 **County.**

5 The Council addressed these goals in Section IV.D of the *Final Order on the Application*, finding  
6 that the facility is compatible with this goal and associated policies. The Department addresses  
7 RFA No. 3's compliance with the Council's Fish and Wildlife Habitat standard and the Council's  
8 Threatened and Endangered Species standard elsewhere in this proposed order; as discussed in  
9 those sections, the Department recommends that the facility, as amended, would maintain  
10 compliance with both standards. Existing site certificate conditions would provide for the  
11 protection of fish and wildlife habitat and threatened and endangered species, and would  
12 continue to apply to the amended facility.

13 **SCCP Section XII. Social Characteristics**

14 **SCCP Section XII, Goal I. To improve or maintain the current level of social services**  
15 **available with the County and to assure the provision of public facilities consistent with**  
16 **the intensity of land use.**

17 **Goal I, Policy I.**

18 *The County Court shall encourage the location of industries, businesses and commercial*  
19 *services to diversify activities within the County consistent with the desired population*  
20 *growth and other goals and policies.*

21 **Goal I, Policy IX.**

22 *The continuing loss of economic opportunities for residents of the County is of great*  
23 *concern to the residents. The reduction of need for agricultural based jobs due to*  
24 *improved farming technology and practices, the inability to keep families employed or*  
25 *offer employment opportunities to attract new citizens or the children of existing*  
26 *residents results in a stagnant or declining population. It is a matter of great urgency*  
27 *that the Court gives increased consideration to land use applications, which will increase*  
28 *economic diversity and employment opportunities. This increased consideration shall not*  
29 *be made to the detriment of existing residential structures. This consideration should*  
30 *focus on long-term job creation and should not be used as a means to allow residential*  
31 *and commercial uses to locate outside urban growth and rural service center*  
32 *(communities) boundaries.*

33 The Council addressed this goal in Section IV.D of the *Final Order on the Application*, finding the  
34 facility to be consistent with Goal I, as well as Policy I and Policy IX. The facility, as amended,  
35 would not change these findings. The Department has addressed the Council's Public Services  
36 standard in Section IV.A.13 of this proposed order, and with one additional condition,  
37 recommends the Council find the facility, as amended, adequately addresses issues related to  
38 public services. The amended facility would also provide additional economic opportunity for  
39 landowners by providing a revenue stream diversification from farming. The certificate holder  
40 states that the amendments as part of RFA No. 3 would not change the previously-estimated

1 workforce needs during construction and operation, approximately 10 to 15 employees during  
2 operation, and up to 175 workers during the peak construction periods.

3 **Goal I, Policy X. Transportation Planning Policies**

4 A. *The Transportation System Plan and Land Use Review Policies*

- 5 1. *All development proposals, plan amendments, or zone changes shall conform to*  
6 *the adopted Transportation System Plan.*
- 7 2. *Operation, maintenance, repair, and preservation of existing transportation*  
8 *facilities shall be allowed without land use review, except where specifically*  
9 *regulated.*

10 B. *Local-State Coordination Policies*

- 11 1. *The County shall provide notice to ODOT of land use applications and*  
12 *development permits for properties that have direct frontage or direct access*  
13 *onto a State highway. Information that should be conveyed to reviewers includes*  
14 *project location, proposed land use action, and location of project access points.*

15 C. *Protection of Transportation Facilities Policies*

- 16 1. *The County shall protect the function of existing and planned roadways as*  
17 *identified in the Transportation System Plan.*
- 18 2. *The County shall include a consideration of a proposal's impact on existing or*  
19 *planned transportation facilities in all land use decisions.*

20 The Council addressed this goal in Section IV.D of the *Final Order on the Application*, and found  
21 the facility to be in compliance with the policy. RFA No. 3 would not change the facility's  
22 compliance with the transportation planning policies. All existing site certificate conditions  
23 would continue to apply to the facility, as amended, including conditions related to reducing  
24 impacts to transportation systems and local roadways (conditions V.C.10 to V.C.13, and  
25 conditions IV.D.17 to IV.D.20).

26 **SCCP Section XII, Goal II. To protect historical, cultural and archeological resources from**  
27 **encroachment by incompatible land uses and vandalism.**

28 **Goal II, Policy XI.**

29 *The following areas and structures shall be considered historically, archaeologically, or*  
30 *culturally significant: all archeological sites; the Sherman County Courthouse; portions of*  
31 *the Old Oregon Trail which are visible and pass over rangeland; and the old Union Pacific*  
32 *Railroad bed through DeMoss Park.*

33 **Goal II, Policy XII.**

34 *The County Court shall encourage the preservation of these archaeologically or culturally*  
35 *significant areas. Landowners will be encouraged to provide long-term protection to*  
36 *these areas.*

1 The Council addressed this goal in Section IV.D of the *Final Order on the Application*, and found  
2 the facility to be in compliance with the goal and relevant policies. In Section IV.A.11 of this  
3 proposed order, the Department has assessed the proposed amended facility's compliance with  
4 the Council's Historic, Cultural, and Archaeological Resources standard and recommends the  
5 Council continue to find the existing conditions currently imposed in the site certificate are  
6 adequate to address issues related to the standard. As described in that section, the certificate  
7 holder conducted field surveys for the new area to be added to the site boundary as part of RFA  
8 No. 3. The surveys did not discover any new archaeological, historical, or cultural resources.  
9 Existing site certificate conditions related to the protection of historic, cultural, and  
10 archaeological resources would continue to apply to the facility, as amended. These are  
11 conditions V.B.1 to V.B.10, and amongst other measures, including for the protection of Oregon  
12 Trail segments, as well as unanticipated discoveries of resources.

13 ***SCCP Section XIV. Economics***

14 ***SCCP Section XIV, Goal I. Diversify the economic base of the County and maintain the***  
15 ***viability of the agricultural sector.***

16 The Council addressed this goal in Section IV.D of the *Final Order on the Application*, and found  
17 that the facility would be in compliance with the goal as it would diversify the economic base of  
18 the county by providing nonagriculture employment and investment, while also being  
19 compatible with surrounding properties devoted to farm use. The amended facility would not  
20 change this finding.

21 ***SCCP Section XV. Energy***

22 ***SCCP Section XV, Goal I. Conserve energy resources.***

23 ***Goal I, Policy I.***

24 *Cooperate with public agencies and private individuals in the use and development of*  
25 *renewable resources.*

26 The Council addressed these goals in Section IV.D of the *Final Order on the Application*, finding  
27 the facility in compliance with the goal and policy, as the facility is a renewable energy  
28 development project. The amended facility would maintain compliance with this goal and  
29 policy.

30 ***SCCP Section XVI. Land Use***

31 ***SCCP Section XVI, Goal I. To provide an orderly and efficient use of the lands within***  
32 ***Sherman County.***

33 ***Goal I, Policy IV.***

34 *Commercial businesses, except those related to agricultural uses, should be located*  
35 *within the incorporated cities or within areas served by the Biggs or Kent special service*  
36 *districts.*

37 The Council addressed these goals in Section IV.D of the *Final Order on the Application*. The  
38 Council found the facility to be in compliance with the goal, and found that the facility is in



1 compliance with the policy as commercial utility facilities such as Golden Hills are conditionally  
2 allowable in the EFU zone. The amended facility would not change this finding and would  
3 maintain compliance with the goal and policy.

4 **Ordinance No. 39-2007 – Setback Ordinance for Wind Power Generation Siting**

5 Sherman County Ordinance 39-2007 establishes setback requirements for wind power turbines  
6 in Sherman County. The ordinance also encourages wind power facility developers to negotiate  
7 setback distances with neighboring non-project property owners to find mutually-agreeable  
8 solutions. If the solution cannot be reached, the setback requirements of the ordinance would  
9 apply. The ordinance establishes setback requirements for wind turbines from non-project  
10 property lines, from pre-existing wind turbines, and from incorporated cities in Sherman  
11 County.

12 The Council addressed the Sherman County setback ordinance in the *Final Order on*  
13 *Amendment No. 1*, and in order to ensure compliance with the ordinance, imposed site  
14 certificate Condition IV.D.22, requiring the certificate holder to demonstrate that the final  
15 location of all turbines within the micrositing corridors will satisfy the setback requirements of  
16 the ordinance, unless the Council or ODOE approve a variance to the setback or the certificate  
17 holder has negotiated a setback agreement with an affected adjacent property owner. As  
18 described above, in a comment letter on RFA No. 3, Sherman County requested that the  
19 setback ordinance apply to any changes in turbine locations and micrositing corridor locations  
20 to the amended facility. RFA No. 3 would not change the location of the micrositing corridors,  
21 and condition IV.D.22 would continue to apply to the facility, as amended.

22 **ORS 215.283(1)(c) and ORS 215.275**

23 In the original *Final Order on Application*, the Council concluded that the transmission lines and  
24 substations are “utility facilities necessary for public service,” and therefore are allowed on EFU  
25 land under ORS 215.283(1)(c), subject to the provisions of ORS 215.275.<sup>30</sup> The extended 230 kV  
26 transmission line is within the previously approved site boundary. The certificate holder states  
27 that the Council’s ORS 215.275 analysis and approval of the transmission lines and substations  
28 in the *Final Order on the Application* is applicable and sufficient to address the modified 230 kV  
29 transmission line requested in RFA No. 3. The Council has also included clear and objective  
30 conditions to reduce the impact of the facility to surrounding farmland.<sup>31</sup> These conditions  
31 would continue to apply to the amended facility.

32 As noted, there are two segments of 230 kV transmission line that would be located in new site  
33 boundary not previously considered by the Council. Both segments are very short; one segment  
34 would be contiguous to the existing site boundary and would extend to the existing Hay Canyon  
35 230 kV transmission line southeast of the Golden Hills facility. From there, Golden Hills would

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<sup>30</sup> Sherman County has not adopted local code provisions to implement ORS 215.283(1)(c) and ORS 215.275. Therefore, the statutes are applied directly.

<sup>31</sup> Specifically, existing Land Use Conditions IV.D.3, IV.D.10, IV.D.11, IV.D.12, IV.D.13, and IV.D.16 would mitigate or minimize the impacts of the facility on surrounding farming uses. Other existing site certificate conditions would also mitigate or minimize impacts to surrounding farming uses, including conditions related to the Soil Protection standard.

1 use the existing Hay Canyon transmission line and would not construct any new transmission  
2 structures to move power. At the northern end of the existing Hay Canyon transmission line,  
3 Golden Hills would need to construct approximately 700 feet of new 230 kV transmission line to  
4 connect to the BPA grid.<sup>32</sup>

5 As noted, in the original *Final Order on Application*, the Council concluded that the transmission  
6 lines and substations are “utility facilities necessary for public service,” and therefore are  
7 allowed on EFU land under ORS 215.283(1)(c), subject to the provisions of ORS 215.275. In  
8 response to an information request, the certificate holder provided a site-specific analysis of  
9 the additional transmission line segment to be added to the site boundary north of the Hay  
10 Canyon transmission line to connect to the BPA grid. This analysis is considered below. As noted  
11 above, Sherman County has expressed no objection of the amendment and provided no  
12 additional comment on the amendment request aside from noting that should any turbines be  
13 located outside of previously approved corridors, that County Setback Ordinance #39-2007  
14 would apply, including no comment on the transmission line compliance with ORS 215.283 and  
15 ORS 215.275.

16 *ORS 215.275 - Utility facilities necessary for public service.*

17 *(1) A utility facility established under ORS 215.213 (Uses permitted in exclusive farm use*  
18 *zones in counties that adopted marginal lands system prior to 1993) (1)(c)(A) or 215.283*  
19 *(Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(c)(A) is*  
20 *necessary for public service if the facility must be sited in an exclusive farm use zone in*  
21 *order to provide the service.*

22 *(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS*  
23 *215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal*  
24 *lands system prior to 1993) (1)(c)(A) or 215.283 (Uses permitted in exclusive farm use*  
25 *zones in nonmarginal lands counties) (1)(c)(A) must show that reasonable alternatives*  
26 *have been considered and that the facility must be sited in an exclusive farm use zone*  
27 *due to one or more of the following factors:*

28 *(a) Technical and engineering feasibility;*

29 *(b) The proposed facility is locationally dependent. A utility facility is locationally*  
30 *dependent if it must cross land in one or more areas zoned for exclusive farm use in*  
31 *order to achieve a reasonably direct route or to meet unique geographical needs that*  
32 *cannot be satisfied on other lands;*

33 *(c) Lack of available urban and nonresource lands;*

34 *(d) Availability of existing rights of way;*

35 *(e) Public health and safety; and*

36 *(f) other requirements of state or federal agencies.*

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37  
<sup>32</sup> RFA No. 3, Section 1.3.

1 The certificate holder states that the transmission line segments are a utility facility necessary  
2 for public service and therefore is allowed in EFU zoned land to provide the service. To  
3 demonstrate that the utility facility is necessary, the certificate holder responded to each  
4 provision of subsection (2).<sup>33</sup>

5 *(a) Technical and engineering feasibility;*

6 The certificate holder states that it is not feasible or technically possible to connect to and  
7 distribute power via the BPA public grid without a transmission line that crosses EFU land, and  
8 therefore, this factor applies to the analysis. The entire facility would be located within EFU  
9 land, including the short segments of transmission proposed to be constructed within the new  
10 site boundary areas.

11 *(b) The proposed facility is locationally dependent. A utility facility is locationally*  
12 *dependent if it must cross land in one or more areas zoned for exclusive farm use in*  
13 *order to achieve a reasonably direct route or to meet unique geographical needs that*  
14 *cannot be satisfied on other lands;*

15 The certificate holder states that the transmission segment must cross EFU land to connect to  
16 the BPA grid system in order to distribute power to customers, and there are no other non-EFU  
17 zoned lands available to meet this need.

18 *(c) Lack of available urban and nonresource lands;*

19 The transmission segment, as described by the certificate holder, must be located in EFU land  
20 to connect to the BPA grid as there is no non-EFU land outside of existing urban growth  
21 boundaries in northern Sherman County, where the facility is to be located. There are no urban  
22 or nonresource lands between the wind turbines and a connection point to the BPA grid that  
23 could be used to distribute power. The certificate holder notes that the transmission segment  
24 would be placed near an area already used for public utilities and on the margins of cultivated  
25 farms to reduce conflicts with farm operations.

26 *(d) Availability of existing rights of way;*

27 The Golden Hills facility would use an existing transmission line, Hay Canyon transmission line,  
28 for part of its connection to the BPA grid. The two new segments of transmission are necessary  
29 to connect the facility to the Hay Canyon line, and then to connect to the BPA grid. As such, by  
30 using the existing Hay Canyon transmission line right of way, Golden Hills is reducing new  
31 disturbance on EFU land.

32 *(e) Public health and safety; and*

33 The certificate holder argues that the transmission line segment is adjacent to existing electrical  
34 infrastructure, specifically the BPA transmission grid and the existing Klondike substation. In  
35 this way, Golden Hills states that it is reducing health and safety risks by consolidating the area  
36 necessary for electrical transmission.

37 *(f) other requirements of state or federal agencies.*

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<sup>33</sup> ORS 215.275 analysis provided in Golden Hills Information Request Response, June 3, 2016, Attachment 1.

1 The certificate holder notes that it is and would be in compliance with requirements of other  
2 state and federal agencies.

3 The Department agrees with the certificate holder's evaluation of factors and recommends that  
4 the Council find that the certificate has shown that the facility must be sited in an EFU zone due  
5 to one or more of the relevant factors.

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

12 Golden Hills describes that land costs were not a significant factor in consideration of the  
13 location of the transmission line segment. Rather, location was determined based on providing  
14 a direct connection to the BPA grid and using existing rights of way to minimize impacts to  
15 resource lands.

16 *(4) The owner of a utility facility approved under ORS 215.213 (Uses permitted in exclusive*  
17 *farm use zones in counties that adopted marginal lands system prior to 1993) (1)(c)(A) or*  
18 *215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties)*  
19 *(1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition*  
20 *any agricultural land and associated improvements that are damaged or otherwise*  
21 *disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in*  
22 *this section shall prevent the owner of the utility facility from requiring a bond or other*  
23 *security from a contractor or otherwise imposing on a contractor the responsibility for*  
24 *restoration.*

25 The certificate holder is responsible for returning lands temporarily impacted by construction to  
26 original condition. This is required by site certificate Condition VII.11, which will continue to  
27 apply to the amended facility.

28 *(5) The governing body of the county or its designee shall impose clear and objective*  
29 *conditions on an application for utility facility siting under ORS 215.213 (Uses permitted*  
30 *in exclusive farm use zones in counties that adopted marginal lands system prior to*  
31 *1993) (1)(c)(A) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal*  
32 *lands counties) (1)(c)(A) to mitigate and minimize the impacts of the proposed facility, if*  
33 *any, on surrounding lands devoted to farm use in order to prevent a significant change in*  
34 *accepted farm practices or a significant increase in the cost of farm practices on the*  
35 *surrounding farmlands.*

36 The transmission line segment, as stated by the certificate holder, would permanently impact ½  
37 acre, the area is located directly adjacent to existing electrical infrastructure, and local  
38 landowners would be compensated for the loss of land for agricultural production. The  
39 transmission line segment would be located along the margins of cultivated farm areas.  
40 Additionally, the Council has included conditions in the existing site certificate to mitigate and

1 minimize the impacts of the facility on surrounding lands.<sup>34</sup>All existing conditions would apply  
2 to the facility, as amended, including the new transmission segments.

3 Based on the discussion above, the Department recommends that the Council find that the new  
4 transmission line segments is a utility facility necessary for public service under ORS  
5 215.283(1)(c), and is allowed in EFU zoned land per the analysis provided.

6 As described in the findings presented here, and the Council's previous determination of  
7 compliance with the Land Use standard, the Department recommends that the Council  
8 continue to find that the facility, as amended, complies with Sherman County's applicable  
9 substantive criteria and directly applicable state statutes and regulations.

#### 10 **Conclusion of Law**

11 Based on reasons addressed above, and subject to compliance with the existing site certificate  
12 conditions, the Department recommends that the Council find that the facility, as amended,  
13 satisfies the Council's Land Use standard.

#### 14 **IV.A.6 Protected Areas: OAR 345-022-0040**

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

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

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

27 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq.*  
28 *and areas recommended for designation as wilderness areas pursuant to 43 U.S.C.*  
29 *1782;*

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

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<sup>34</sup> As noted, existing Land Use conditions IV.D.3, IV.D.10, IV.D.11, IV.D.12, IV.D.13, and IV.D.16 would mitigate or minimize the impacts of the facility on surrounding farming uses. Other existing site certificate conditions would also mitigate or minimize impacts to surrounding farming uses, including conditions related to the Soil Protection standard.

- 1 (e) National coordination areas, including but not limited to Government Island, Ochoco  
2 and Summer Lake;
- 3 (f) National and state fish hatcheries, including but not limited to Eagle Creek and  
4 Warm Springs;
- 5 (g) National recreation and scenic areas, including but not limited to Oregon Dunes  
6 National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon  
7 Cascades Recreation Area, and Columbia River Gorge National Scenic Area;
- 8 (h) State parks and waysides as listed by the Oregon Department of Parks and  
9 Recreation and the Willamette River Greenway;
- 10 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas  
11 pursuant to ORS 273.581;
- 12 (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine  
13 Sanctuary, OAR Chapter 142;
- 14 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers  
15 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed  
16 as potentials for designation;
- 17 (l) Experimental areas established by the Rangeland Resources Program, College of  
18 Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site,  
19 the Starkey site and the Union site;
- 20 (m) Agricultural experimental stations established by the College of Agriculture, Oregon  
21 State University, including but not limited to: Coastal Oregon Marine Experiment  
22 Station, Astoria Mid-Columbia Agriculture Research and Extension Center, Hood  
23 River Agriculture Research and Extension Center, Hermiston Columbia Basin  
24 Agriculture Research Center, Pendleton Columbia Basin Agriculture Research Center,  
25 Moro North Willamette Research and Extension Center, Aurora East Oregon  
26 Agriculture Research Center, Union Malheur Experiment Station, Ontario Eastern  
27 Oregon Agriculture Research Center, Burns Eastern Oregon Agriculture Research  
28 Center, Squaw Butte Central Oregon Experiment Station, Madras Central Oregon  
29 Experiment Station, Powell Butte Central Oregon Experiment Station, Redmond  
30 Central Station, Corvallis Coastal Oregon Marine Experiment Station, Newport  
31 Southern Oregon Experiment Station, Medford Klamath Experiment Station, Klamath  
32 Falls;
- 33 (n) Research forests established by the College of Forestry, Oregon State University,  
34 including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett  
35 Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the  
36 Marchel Tract;
- 37 (o) Bureau of Land Management areas of critical environmental concern, outstanding  
38 natural areas and research natural areas;
- 39 (p) State wildlife areas and management areas identified in OAR chapter 635, Division 8.

1           \*\*\*

2    **Findings of Fact**

3    The Protected Areas standard requires the Council to find that, taking into account mitigation,  
4    the design, construction and operation of a facility are not likely to result in significant adverse  
5    impacts to any protected area as defined by OAR 345-022-0040.

6    The Council addressed the Protected Area standard in Section IV.F of the *Final Order on the*  
7    *Application* and found that the proposed facility complied with the Protected Areas standard,  
8    without any required conditions. During its review of the first and second amendment requests  
9    to the site certificate to extend the construction deadlines, the Council determined that both  
10   requests did not impact compliance with the Protected Areas standard and, therefore relied on  
11   the analysis in the *Final Order on the Application*.

12   RFA No. 3 proposes changes to the facility design. The facility, as amended, would include 142  
13   fewer wind turbines than the previously approved facility, reducing the number of turbines  
14   from 267 to 125. The 125 proposed turbines may be taller than the previously approved  
15   turbines, up to 518 feet in total height, from 420 feet. In addition, the amended facility would  
16   remove approximately 2,800 acres from the site boundary and add approximately 122.5 acres  
17   to account for the change in facility design (two short segments of 230 kV transmission line),  
18   while reducing the total amount of overhead transmission line by approximately 48 percent,  
19   mostly by removing the 500 kV transmission line that was previously approved as part of the  
20   facility.

21   In RFA No. 3 the certificate holder evaluated the amended facility's continued compliance with  
22   the Protected Areas standard, including potential impacts during facility construction and  
23   operation regarding noise, increased traffic, water use, wastewater disposal, visual impacts of  
24   facility structures or plumes, and visual impacts from air emissions. The analysis area is the area  
25   within and extending 20 miles from the site boundary.

26   *Noise*

27   The nearest protected area within the analysis area is the Columbia Basin Agricultural Research  
28   Center (Center), located 0.4-mile southwest of the site boundary. In the 2008 Addendum to the  
29   ASC Exhibit L, the certificate holder estimated the maximum noise level from turbine operation  
30   at the Center to be 33 dBA, which would be audible at low levels. Based on this evaluation, the  
31   Council previously determined that noise associated with facility operation would not result in  
32   significant adverse impacts at the Center, and would also not result in significant adverse noise  
33   impacts at protected areas located farther from the site boundary (ranging in distance from 1  
34   mile to 19.9 miles). The requested change in turbine design, increasing the blade-tip turbine  
35   height from 420 to 518 feet, could result in differing noise levels at the nearest protected area  
36   compared to the previously estimated 33 dBA maximum noise level. In RFA No. 3, the  
37   certificate holder explains that a complete new noise analysis would be provided to the  
38   Department prior to construction, in compliance with existing Condition VI.A.1.2 of the site  
39   certificate, and would demonstrate that the maximum noise level at noise-sensitive properties  
40   would not exceed DEQ's 50 dBA noise limit for new industrial sources. The Department notes

1 that noise-sensitive properties, as defined in OAR 345-035-0015(38), specifically excludes  
2 properties used in agricultural activities.<sup>35</sup>

3 The significance of potential noise impacts at identified protected areas is based on the  
4 magnitude and likelihood of the impact on the affected human population or natural  
5 resource.<sup>36</sup> The nearest protected area, the Center, is an agricultural experimental station  
6 owned and operated by Oregon State University's College of Agricultural Sciences. Based upon  
7 the Department's analysis, the Center is used for field research related to the production of  
8 wheat and rotational crops. Any potential increase in operational noise from the facility, as  
9 amended, would not be expected to result in a significant adverse impact to the agricultural  
10 field research conducted at the Center, as the Center's purpose and function does not  
11 represent a human population or natural resource that could be affected by facility-related  
12 noise levels.

13 The next closest protected area is the Lower Deschutes Wildlife Area (LDWA), located  
14 approximately 1.8 miles southwest of the site boundary.<sup>37</sup> The LDWA is managed by ODFW to  
15 improve and/or maintain habitats for native and desired fish and wildlife species and to provide  
16 wildlife oriented recreational opportunities to the public. Based on this function and purpose,  
17 the LDWA could be affected if there were adverse noise levels from the facility that were  
18 audible at LDWA.

19 As part of the original site certificate application, Golden Hills conducted a noise analysis using a  
20 "generic" 1.5 MW turbine options to assess the proposed facility's potential impact on the  
21 surrounding environment.<sup>38</sup> Based on that analysis, Council concluded in the *Final Order on the*  
22 *Application* that the facility would not be audible at any protected area in the analysis area,  
23 including the LDWA (except for the Center, as described above).

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<sup>35</sup> Additionally, the DEQ noise regulations are not directly applicable to the Council's Protected Area standard.

<sup>36</sup> The Protected Areas standard requires the Council to find that, taking into account mitigation, the design, construction and operation of a facility are not likely to result in significant adverse impacts to any protected area as defined by OAR 345-022-0040. OAR 345-001-0010(53) defines "significant" as: "having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resources affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact."

<sup>37</sup> The *Final Order on the Application*, the Council considered potential facility impacts to Maryhill State Park in Washington. As shown in Table IV.F.1 in that order, Maryhill State Park is approximately 1 mile from the facility, as previously designed, across the Columbia River. Based upon the Department's review of RFA No. 3, the Department has concluded that non-Oregon state parks are not identified as protected areas subject to the Council's Protected Areas standard. Under OAR 345-022-0040(h), protected areas include "State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway." Being in Washington, Maryhill State Park is not listed by the Oregon Department of Parks and Recreation and therefore would not qualify as a protected area under the Council's standard. However, even if Maryhill State Park was considered a protected area, the Council previously found that the Golden Hills facility would not cause a significant adverse impact to the park from noise or other impacts. The park is across the Columbia River and there are a number of other intervening development features including I-84, SR-14, railroad lines, existing transmission lines, and other features.

<sup>38</sup> ASC Exhibit X.



1 The Department notes that the certificate holder did not identify in RFA No. 3 the expected  
2 noise volume of the turbines proposed to be included as part of the amended facility. The  
3 proposed turbines would be larger and it is uncertain if the turbines would generate a higher  
4 dBA noise level (per turbine) than the previously considered and approved facility design.  
5 However, the overall noise levels generated by the amended facility may be less due to the  
6 decrease in total number of turbines from 267 to 125.

7 The Department also notes that while the Council's Protected Areas standard does not  
8 establish an applicable noise threshold, the noise level at the closest noise-sensitive property  
9 located approximately 1,000-feet from the nearest turbine could not exceed 50 dBA, consistent  
10 with DEQ's noise regulations. At a distance of 1.8-miles, noise levels from the amended facility  
11 are expected to be less than 50 dBA due to noise attenuation associated with distance and  
12 topographical screening between the facility and the LDWA. While LDWA is a protected area  
13 under the Council's Protected Area standard, it is also an important recreational area that  
14 offers opportunities such as boating, rafting, fishing and bird hunting. Operational noise levels  
15 from the facility, as amended, are not expected to interfere with those activities. Moreover, in  
16 its comment letter on RFA No. 3, ODFW did not raise any potential concerns related to facility  
17 noise impacts at LDWA. Therefore, the Department recommends the Council find that the  
18 facility, as amended, is unlikely to cause a significant adverse noise impact to the LDWA.

19 According to the *Final Order on the Application*, the next closest protected area to the facility  
20 would be the Deschutes Federal Wild and Scenic River, which is approximately 2.3 miles away,  
21 and Deschutes State Scenic Waterway (Pelton Dam to Columbia River), approximately 2.4 miles  
22 away. Considering that the facility is not expected to cause a significant adverse noise impact at  
23 the LDWA (approximately 1.8 miles from the facility site boundary), it is also not expected that  
24 the facility would cause a significant adverse noise impact to these protected areas located  
25 farther from the facility.

26 While facility construction noise could be audible at some protected areas, construction would  
27 be temporary and short-duration, and therefore noise generated during construction activities  
28 would be unlikely to cause a significant adverse impact to any protected area. In addition,  
29 existing site certificate Condition VI.A.1.1 would reduce noise impacts during construction by  
30 requiring the use of exhaust mufflers on combustion engine-powered equipment and limiting  
31 the noisiest operation of heavy construction equipment to daylight hours.

32 Based on the findings presented here, the Department recommends the Council find that  
33 construction and operation of the facility, as amended, would not result in significant adverse  
34 noise impacts to protected areas within the analysis area

### 35 *Traffic*

36 The Council found in the *Final Order on the Application*, facility-related road use during  
37 construction and operation would not result in a significant adverse impact to protected areas.  
38 Although the individual turbines proposed under RFA No. 3 would be larger and require more  
39 concrete to erect, the certificate holder states that the fewer number of turbines would result  
40 in a net decrease in truck traffic during construction of approximately 30 percent below the

1 previous estimate.<sup>39</sup> The requested change in facility design would result in lesser temporary  
2 traffic related impacts during construction. The requested amendments would not change or  
3 increase facility-related traffic impacts. As explained in the *Final Order on the Application*,  
4 facility operation would result in daily vehicle trips from 10 to 15 employees and would have  
5 minimal impacts on protected areas. Therefore, the Department recommends the Council find  
6 that construction and operation of the facility, as amended, would not result in significant  
7 adverse traffic impacts to protected areas within the analysis area.

#### 8 *Water Use and Wastewater Disposal*

9 In the *Final Order on the Application*, the Council found that the facility would not have a  
10 significant adverse impact to protected areas from water use and wastewater disposal. The  
11 certificate holder states that the smaller number of turbines would result in a net decrease in  
12 truck traffic and use of roads during construction, and, as a result, water use for dust  
13 suppression would be similar to or less than what would have been required for the previously  
14 approved facility. Additionally, the certificate holder states that although concrete  
15 requirements for individual turbine foundations would be greater, owing to the smaller number  
16 turbines, the total amount of concrete for foundations would be less. The certificate holder  
17 states that overall water use and wastewater disposal requirements for the facility, as  
18 amended, would be similar to or less than the amount (25 million gallons) previously estimated  
19 for the approved facility.<sup>40</sup> Therefore, the Department recommends the Council find that  
20 construction and operation of the facility, as amended, would not result in significant adverse  
21 water use and wastewater disposal impacts to protected areas within the analysis area.

#### 22 *Visual Impacts*

23 In the *Final Order on the Application*, the Council found that the facility would not have a  
24 significant adverse visual impact to protected areas. In the *Final Order on the Application*, the  
25 Council found that turbines would be potentially seen from the following protected areas  
26 located within the 20-mile analysis area:

- 27 • John Day Federal Wild and Scenic River
- 28 • John Day State Scenic Waterway
- 29 • John Day Wildlife Refuge
- 30 • Deschutes Federal Wild and Scenic River
- 31 • Deschutes State Scenic Waterway
- 32 • Lower Deschutes Wildlife Area
- 33 • Columbia Hills Natural Area Preserve
- 34 • Columbia Basin Agriculture Research Center
- 35 • Columbia River Gorge National Scenic Area (CRGNSA) (including Columbia Hills State  
36 Park and much of the Columbia Hills Natural Area Preserve)

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<sup>39</sup> RFA No. 3, Section 5.1.6.

<sup>40</sup> *Id.*

- 1 • Columbia Hills State Park (the *Final Order on the Application* stated that turbines would  
2 not be seen in the Horsethief Lake portion of the park; turbines would have been seen  
3 in the upland portions of the park near State Route 14 [SR-14])

4 RFA No. 3 contains an updated visibility analysis of the facility, as amended, to reflect the fewer  
5 number of turbines and increased turbine height. The RFA No. 3 visibility analysis found that  
6 the taller turbines would be visible from the protected areas identified in the *Final Order on the*  
7 *Application*. The facility, as amended, would also be visible from one protected area not  
8 previously identified or analyzed for visual effects, the Goldendale Fish Hatchery in  
9 Washington.<sup>41</sup> As included in the *Final Order on the Application*, the Goldendale Fish Hatchery is  
10 approximately 11.8 miles from the facility, a considerable distance. There are a number of  
11 intervening development features between the facility and the fish hatchery, including roads,  
12 railroads, transmission lines, and other development features. Additionally, the certificate  
13 holder states that the Goldendale Fish Hatchery does not have a management document or  
14 master plan that contains a visual resource section and is not managed for scenic quality. In  
15 addition to the Goldendale Fish Hatchery, the certificate holder states that the Columbia Hills  
16 Natural Area Preserve, Columbia Basin Agriculture Research Center, and Columbia Hills State  
17 Park are not managed for scenic quality.<sup>42</sup>

18 The certificate holder in RFA No. 3 states that the facility, as amended, would not be seen from  
19 the John Day or Deschutes Rivers or their adjacent shorelines. The updated visual analysis  
20 shows that the taller blade-tip height of the turbines would be seen from slightly higher areas  
21 on the river's canyon rims and low areas on some canyon walls than the approved smaller  
22 turbines; however, the turbines still would not be visible from the water or the interior canyon  
23 areas of either river.<sup>43</sup>

24 The Council found in the *Final Order on the Application* that public views of the approved  
25 facility from within the CRGNSA would be generally limited to locations along SR-14 in the  
26 CRGNSA in the State of Washington. The facility, as amended, would be seen from hillsides  
27 above and below SR-14, but these steep areas are not easily accessible to the general public. In  
28 the *Final Order on the Application*, Council found that intervening features between the facility  
29 and SR-14 (located both within and outside of the CRGNSA) that would be seen from the  
30 highway included multiple transmission lines (composed of steel lattice towers and distribution  
31 lines), radio towers, rail lines, I-84, Highway 30, and rural development, all of which would have  
32 decreased the visual impact of the facility from views originating from the portion of SR-14 in  
33 the CRGNSA. The facility, as amended, would have fewer, but taller, turbines potentially seen  
34 from within the CRGNSA. As with the approved turbines, the updated visual analysis in RFA  
35 No.3 depicts that the new turbines would be seen from most of the sections of SR-14 located  
36 within the portion of the CRGNSA contained within the analysis area. The facility would also be  
37 seen somewhat higher on the hillsides above SR-14 and on steep hillsides located below SR-14

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<sup>41</sup> Even though the Goldendale Fish Hatchery is located in Washington, it is considered a protected area subject to the Council's Protected Area standard, which specifically includes as protected areas "national and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs." OAR 345-022-0040(f).

<sup>42</sup> Id.

<sup>43</sup> Id.

1 and above the Columbia River than the approved turbines. As was found during the review of  
2 the original facility application, intervening features between SR-14 and the facility, such as  
3 transmission lines, radio towers, rail lines, I-84, Highway 30, and rural development, would  
4 decrease the visual impact of the facility on views from SR-14.<sup>44</sup>

5 In a comment letter, Irene Gilbert/FGRV commented that the RFA does not include visual  
6 representations of the amended facility on protected areas including the John Day Canyon, the  
7 Deschutes Canyon, rock outcroppings and the Columbia River.<sup>45</sup> Ms. Gilbert also commented  
8 that RFA No. 3 relied upon personal communication with representatives of the agencies that  
9 manage these protected areas in order to prove that the facility would not cause a significant  
10 visual impact, and that these communications are not provided or logged in the record. Ms.  
11 Gilbert stated that these communications must be in writing and in the record, and that the  
12 applicant has the burden of proof to demonstrate compliance with the standard.

13 Pursuant to OAR 345-022-0000 the Council must determine that a preponderance of evidence  
14 on the record supports a conclusion that applicable Council standards, including the Protected  
15 Area standard, have been satisfied. It is also the case that the certificate holder has the burden  
16 of proving that the facility, as amended, complies with all Council standards and other  
17 applicable rules. However, EFSC rules do not require that an application for a site certificate or  
18 RFA include visual representations or visual simulations of a proposed facility or amended  
19 facility. In this case, the certificate holder conducted a visibility analysis, as presented in RFA  
20 No. 3, Attachment 1, Figures 3 and 4. The certificate holder relied upon this visibility analysis,  
21 plus the Council's previous conclusions and findings regarding the facility, in order to make its  
22 assertion that the amended facility continues to comply with all Council standards, including  
23 the Protected Areas standard as well as Recreation and Scenic Resources (both of which include  
24 an assessment of the facility's visual impact and which the certificate holder relied upon for the  
25 updated visibility analysis to make its conclusions). After review of the evidence in the record<sup>46</sup>,  
26 the Department believes that the preponderance of evidence on the record related to visual  
27 impacts on protected areas supports a conclusion that the facility, as amended, satisfies  
28 Council's Protected Area standard. Additionally, in RFA No. 3, the certificate holder does not  
29 reference or rely upon personal communication with agencies in conducting its assessment of  
30 compliance with the Council standards.

31 As described above, the Department finds that the amended facility impacts to protected areas  
32 would be broadly similar to what was found in the original *Final Order on the Application*. Based  
33 on the findings presented here, the Department recommends the Council continue to find that  
34 the facility, as amended, complies with the Protected Area standard.

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<sup>44</sup> Id.

<sup>45</sup> Irene Gilbert/FGRV, public comment on RFA No. 3, March 4, 2016.

<sup>46</sup> Pursuant to OAR 345-027-0060(2), the record in an amendment includes information in the Department's administrative record on the facility referenced by the certificate holder.

1 **Conclusion of Law**

2 The Department recommends that the Council find that the facility, as amended, is not likely to  
3 result in significant adverse impacts to any protected area, and complies with the Protected  
4 Areas Standard.

5 **IV.A.7 Retirement and Financial Assurance: OAR 345-022-0050**

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

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

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

13 **Findings of Fact**

14 The Retirement and Financial Assurance standard is intended to protect the State of Oregon  
15 and its citizens if the certificate holder fails to perform its obligation to restore the site in the  
16 event the certificate holder ceases construction or operation of the facility. To satisfy this  
17 standard, the Council must find that the site can be restored to a useful, non-hazardous  
18 condition following permanent cessation, and that the certificate holder has a reasonable  
19 likelihood of obtaining a bond or comparable security in an amount satisfactory to the Council  
20 to restore the site to a useful, non-hazardous condition.

21 The Council addressed the Retirement and Financial Assurance standard in section IV.C of the  
22 *Final Order on the Application*. The Council concluded that, subject to conditions stated in the  
23 *Final Order on the Application*, the certificate holder had the ability to adequately restore the  
24 site to a useful, nonhazardous condition following permanent cessation of construction or  
25 operation of the facility, and that the certificate holder had a reasonable likelihood of obtaining  
26 a bond or letter of credit in a form and amount satisfactory to the Council. The first amendment  
27 to the site certificate extended the construction deadlines and did not impact findings  
28 regarding the Organizational Expertise standard. As a result, the *Final Order on Amendment*  
29 *No. 1* referred to the analysis in the *Final Order on the Application*. In the *Final Order on*  
30 *Amendment No. 2*, the Council found that the new certificate holder, Orion Golden Hills Wind  
31 Farm, LLC, continued to have the ability to adequately restore the site to a useful,  
32 nonhazardous condition and continued to have a reasonable likelihood of obtaining a bond or  
33 letter of credit in a form and amount satisfactory to the Council. Orion Renewables remains the  
34 parent company of the site certificate holder, Golden Hills Wind Farm LLC, for RFA No. 3.

35 Due to the requested changes of the facility components, Golden Hills has revised its  
36 retirement cost estimate from \$16,491,000 to \$14,424,936 in 2008 dollars, the year of the

1 original site certificate application.<sup>47</sup> According to Golden Hills, the cost estimate for RFA No. 3  
2 has been reduced based on three factors:

- 3 • Elimination of the 500 kV transmission line
- 4 • Elimination of one substation
- 5 • Reduction in number of turbines from 267 to 125

6 The revised estimate for site restoration, based upon amendments requested in RFA No. 3, is  
7 presented in Attachment 6 of RFA No. 3, Supplemental Information Report.

8 The Department has reviewed and agrees with the cost estimate, and recommends that the  
9 Council find the certificate holder's estimated cost is a reasonable estimate of an amount  
10 satisfactory to restore the site to a useful, non-hazardous condition.

11 OAR 345-022-0050(2) requires the Council to determine that the certificate holder has a  
12 reasonable likelihood of obtaining a bond or letter of credit, in a form and amount satisfactory  
13 to the Council, to restore the site to a useful, non-hazardous condition. In the RFA No. 3  
14 supplemental information report, Golden Hills provided a letter from the firm Beecher and  
15 Carlson, which reports to handle the surety bonds and commercial insurance for Orion  
16 Renewable Energy Group. In this letter, Beecher and Carlson state that it is confident that Orion  
17 Renewable Energy Group will be able to secure the required surety bond for the Golden Hills  
18 facility, for \$14,424,936. The letter does not constitute a firm commitment from Beecher and  
19 Carlson to issue a bond, but it is evidence that Orion Renewables could obtain the necessary  
20 bond for the Golden Hills facility.<sup>48</sup>

21 To ensure the certificate holder meets its obligations, the Council adopted Conditions IV.C.1-10  
22 in the site certificate. These conditions, among other obligations, require the certificate holder  
23 to submit to the Council, prior to construction, a bond or letter of credit sufficient to the  
24 Council to restore the site to useful, non-hazardous condition. Condition IV.C.4 requires the  
25 bond or letter of credit to be updated to present value based on inflation. All conditions would  
26 continue to apply to the certificate holder.

27 In accordance with this finding, the Department recommends that the Council modify the  
28 existing site certificate Condition IV.C.4:

29 **IV.C.4:** Before beginning construction, the certificate holder shall submit to the State  
30 through the Council a bond or letter of credit in the amount described herein naming the  
31 State, acting by and through the Council, as beneficiary or payee. If the certificate holder  
32 elects to build the facility in a single phase, the initial bond or letter of credit amount is  
33 ~~\$16,491,000~~ \$14,425,000 (in 2008 dollars), adjusted to the date of issuance as described in  
34 (b), or the amount determined as described in (a). If the certificate holder elects to build the  
35 facility in more than one phase, the amount of the initial bond or letter of credit for each  
36 phase of construction shall be the amount determined as described in (a). The certificate

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<sup>47</sup> RFA No. 3, Section 5.1.7, and Supplemental Information Report, page 4 and Attachment 6. As is required by existing site certificate Condition IV.C.4(b)(vi), the bond amount should be rounded to the nearest \$1,000, or in this instance, the bond would be \$14,425,000.

<sup>48</sup> Supplemental Information Report, Attachment 6.

1 holder shall adjust the amount of each bond or letter of credit on an annual basis thereafter  
2 as described in (b).

3 ...

4 Based on the foregoing findings and the evidence in the record, the Department  
5 recommends that the Council find that certificate holder has the capacity to restore the  
6 facility site to a useful, non-hazardous condition following permanent cessation of  
7 construction, and that the certificate holder has demonstrated a reasonable likelihood of  
8 obtaining a bond or letter of credit, satisfactory to the Council, in an amount adequate to  
9 restore the site to a useful, nonhazardous condition.

#### 10 **Conclusion of Law**

11 Based on the findings presented above, the Department recommends that the Council find that  
12 the certificate holder continues to satisfy the Council's Retirement and Financial Assurance  
13 standard.

#### 14 **IV.A.8 Fish and Wildlife Habitat: OAR 345-022-0060**

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

#### 18 **Findings of Fact**

19 The Fish and Wildlife Habitat standard requires the Council to find that the design,  
20 construction, and operation of the facility are consistent with the ODFW fish and wildlife  
21 habitat mitigation goals and standards in OAR 635-415-0025. ODFW's rule also establishes a  
22 habitat classification system based on the function and value of the habitat it would provide to  
23 a specie or group of species likely to use it. There are six habitat categories, with category 1  
24 being the most valuable, and category 6 the least valuable. ODFW provided a comment letter  
25 on RFA No. 3, dated May 25, 2016.

26 The Council addressed the Fish and Wildlife Habitat standard in section IV.M of the *Final Order*  
27 *on the Application*. The Council made findings regarding the characteristics of the habitat types  
28 within the site boundary and the State-sensitive species observed within or near the site  
29 boundary during avian point-counts and other wildlife surveys. Based on those findings, the  
30 Council found that, subject to specified conditions, the design, construction, and operation of  
31 the proposed facility, taking mitigation into consideration, would be consistent with the  
32 ODFW's habitat mitigation goals and standards and the EFSC Fish and Wildlife Habitat standard.  
33 The conditions imposed in the original site certificate related to the Fish and Wildlife Habitat  
34 standard are Conditions IV.M.1 to IV.M.10.

35 The first amendment to the site certificate extended the construction deadlines and Council  
36 found that it did not impact compliance with the Fish and Wildlife Habitat standard. As a result,  
37 the *Final Order on Amendment No. 1* relied on the analysis in the *Final Order on the Application*.  
38 The second amendment to the site certificate also extended the construction deadlines. At that  
39 time, the Council found that, because the raptor nest surveys were outdated, the certificate

1 holder must complete two years of raptor nest surveys before beginning construction in order  
2 to ensure that compliance with the Fish and Wildlife Habitat standard is maintained. Site  
3 certificate Condition IV.M.11 imposed this requirement. This condition also requires that the  
4 surveys are completed according to a Raptor Nest Survey Protocol, which was included as an  
5 attachment to the *Final Order on Amendment No. 2*. The protocol is included as Attachment C  
6 to this proposed order; the protocol has not been changed since it was reviewed and approved  
7 by Council in the *Final Order on Amendment No. 2*.

#### 8 *Habitat Categories and Classifications*

9 As described throughout this proposed order, RFA No. 3 would amend the site boundary by  
10 removing 2,800 acres and adding 122.5 acres to account for the change in facility design,  
11 specifically to account for two short segments of 230 kV transmission line. RFA No. 3 would also  
12 increase temporary impacts by 14 acres, from a previously estimated 1,055 to 1,069 acres. As  
13 discussed below, the 14-acre increase in temporary impacts would be within category 6 habitat.

14 RFA No. 3 states that the habitat categories described in the original ASC are still valid, and  
15 references an email dated November 18, 2015 from Jeremy Thompson, District Wildlife  
16 Biologist for ODFW, who confirmed that the Golden Hills Wind Farm habitat classifications  
17 submitted in the original ASC are still valid.<sup>49</sup> In its May 25, 2016 comment letter on RFA No. 3,  
18 ODFW stated that it “acknowledges the appropriateness of location for the Golden Hills Wind  
19 Project. By siting this project within agricultural wheat fields, as opposed to intact wildlife  
20 habitats, the Golden Hills Wind Project addresses the macro-siting recommendations of the  
21 Oregon Columbia Plateau Ecoregion Wind Energy Siting and Permitting Guidelines.”

22 The certificate holder performed desktop surveys between December 1, 2015, and March 3,  
23 2016, and field surveys on March 4, 2016 for the areas of the site boundary that were not  
24 included in the original application and had not been previously surveyed. Survey results  
25 determined that habitats in these areas consist entirely of actively farmed dryland wheat fields  
26 and existing development including other energy infrastructure including roads, transmission  
27 line, and a substation.<sup>50</sup>

28 The certificate holder provided an updated habitat impact assessment to account for the facility  
29 changes and site boundary adjustments considered as part of RFA No. 3.<sup>51</sup> An updated habitat  
30 impact table was provided by the certificate holder as part of RFA No. 3, and is reproduced as  
31 Table 1 below.<sup>52</sup> No Category 1 habitat impacts would occur. Compared to the original facility  
32 design as approved by Council, Category 2 habitat impacts are expected to be reduced from  
33 25.1 acres to 2.9 acres of temporary impact, and from 0.91 acre to 0.0017 permanent impact.

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<sup>49</sup> RFA No. 3, Section 5.1.8.

<sup>50</sup> Supplemental Information Report, Page 4, and Attachment 8.

<sup>51</sup> Supplemental Information Report, Page 4, Attachment 5, and Attachment 7.

<sup>52</sup> Information Request Response, June 3, 2016, Attachment 2. Table 1 replaces Table IV.M.1 from the *Final Order on the Application*.



**Table 1. Habitat Categories and Classifications within Proposed Site Boundary with Acreages of Impact**

Habitat Category	Habitat Classification	Impacts	
		Temporary Facilities (acres disturbed)	Permanent Facilities (acres disturbed)
1	Conservation Reserve Enhancement Program (CREP)	0.0	0.0
1	Grassland (GR)	0.0	0.0
1	Shrub-steppe (SS)	0.0	0.0
1	Upland Trees (UT)	0.0	0.0
1	Upland Trees Exotic Shrubs (UT/ES)	0.0	0.0
<b>Category 1 Total</b>		<b>0.0</b>	<b>0.0</b>
2	CREP	2.0	0.0007
2	Perennial Stream (PS)	0.0	0.0
2	Riparian Trees (RT)	0.0	0.0
2	Shrub-steppe (SS)	0.9	0.0010
2	UT	0.0	0.0
2	Pond (WP)	0.0	0.0
<b>Category 2 Total</b>		<b>2.9</b>	<b>0.0017</b>
3	Conservation Reserve Program (CRP)	17.2	1.3
3	GR	39.8	4.2
3	Grassland Cliff (GR/CL)	0.0	0.0
3	(Intermittent Stream) IS	0.0	0.0
3	RT	0.0	0.0
3	SS	0.0183	0.0
3	UT	0.0	0.0
3	UT/ES	0.0	0.0
<b>Category 3 Total</b>		<b>57.0</b>	<b>5.5</b>
4	GR	6.5	0.1
<b>Category 4 Total</b>		<b>6.5</b>	<b>0.1</b>
<b>Category 5 Total</b>		<b>(None Identified)</b>	
6	Agricultural (AG)	942.7	126.5
6	Developed (DE)	2.2	0.0002
6	Road	57.3	0.2
<b>Category 6 Total</b>		<b>1,002.2</b>	<b>126.7</b>
<b>TOTAL</b>		<b>1,069</b>	<b>132</b>

1

2 As a result of the amended facility layout and updated habitat impact table, the Department  
 3 recommends that the Council amend Condition IV.M.9 to reference the updated maps and  
 4 habitat impact table as included in this order. Additionally, the Department recommends that  
 5 subsection (b) be deleted as it does not relate to the Fish and Wildlife Habitat standard, and  
 6 would be difficult to interpret or enforce.

7

(IV.M.9) The certificate holder may construct turbines and other facility components within  
 8 the 900-foot corridors shown on Figures P-1 through P-10 of the Application for a Site  
 9 Certificate and August 2008 supplement., ~~subject to the following requirements addressing~~  
 10 ~~potential habitat impact:~~

11

~~(a)~~ The certificate holder shall not construct any facility components within areas of  
 12 Category 1 or Category 2 habitat and shall avoid temporary disturbance of Category 1 or

1 Category 2 habitat, except for the Category 2 disturbance acreage allowed in Table 1  
2 Table IV.M.1 in the Final Order for RFA No. 3.

3 ~~(b) The certificate holder shall design and construct facility components that are the~~  
4 ~~minimum size needed for safe operation of the energy facility.~~

5 To ensure that impacts are addressed accurately and that the Habitat Mitigation and  
6 Revegetation Plan (HMRP) is based on accurate information, the Council imposed site  
7 certificate Condition III.C.1 requiring that the certificate holder provide detailed maps showing  
8 the final locations of facility components, and a table showing the acres of temporary and  
9 permanent habitat impact by habitat category and subtype. This condition as currently phrased  
10 only requires that this condition be satisfied “before beginning construction and after  
11 considering all micrositing factors.” To clarify that this condition is intended to be satisfied close  
12 to the beginning of construction, the Department recommends an amendment to existing site  
13 certificate Condition III.C.1 to require the condition be satisfied no more than two years prior to  
14 beginning construction.

15 (III.C.1) Before beginning construction, but no more than two years before beginning  
16 construction, and after considering all micrositing factors, the certificate holder shall  
17 provide to the Department, the Oregon Department of Fish and Wildlife (“ODFW”), and the  
18 Planning Director of Sherman County detailed maps of the facility site, showing the final  
19 locations where the certificate holder proposes to build facility components and a table  
20 showing the acres of temporary and permanent habitat impact by habitat category and  
21 subtype. The maps shall include the locations of temporary laydown areas and areas of  
22 temporary ground disturbance associated with the construction of all transmission lines.  
23 The detailed maps of the facility site shall indicate the habitat categories of all areas that  
24 would be affected during construction. In classifying the affected habitat into habitat  
25 categories, the certificate holder shall consult with ODFW. The certificate holder shall not  
26 begin ground disturbance in an affected area until the habitat assessment has been  
27 approved by the Department. The Department may employ a qualified contractor to  
28 confirm the habitat assessment by on-site inspection.

29 Habitat impacts are to be mitigated in accordance with the HMRP. The HMRP, as originally  
30 approved by Council and included as an attachment to the *Final Order on the Application*, is  
31 included as Attachment E to this proposed order (the same HMRP was originally included as  
32 Attachment B to the *Final Order on the Application*). To account for the requested facility and  
33 site boundary changes as part of RFA No. 3, as well as ownership change of the facility as part  
34 of RFA No. 2, the HMRP must be updated. In its May 26, 2016 comment letter, ODFW also  
35 recommends that the HMRP be updated to reflect changes in the habitat impact acreage, and  
36 recommends that temporary impacts be addressed in addition to permanent impacts.<sup>53</sup> In a

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<sup>53</sup> ODFW Comment Letter, May 26, 2016. In the same comment letter, ODFW requested the following mitigation options be included in Section (g) of the previously approved WMMP (which is included as Attachment D to this proposed order, and which was included as Attachment A to the *Final Order on the Application*) to address turbine-related avian fatalities: 1) shutdown of high-risk turbines either on demand or through use of temporary, seasonal/diurnal restrictions, and 2) raising the cut-in speed of turbine blades. In the WMMP previously approved

1 response to the ODFW comment letter, the certificate holder agreed with this  
2 recommendation. Existing site certificate Condition IV.M.1 implements the HMRP; however, as  
3 currently phrased it is unclear that the HMRP will be updated prior to construction to include  
4 the revised habitat categorization and anticipated impacts based on final facility design, as well  
5 as changes to account for the facility changes as part of RFA No. 3 and the ownership change as  
6 part of RFA No. 2. Therefore, the Department recommends that existing site certificate  
7 Condition IV.M.1 be updated as follows:

8 (IV.M.1) **Prior to construction, the certificate holder shall finalize and implement the Habitat**  
9 **Mitigation and Revegetation Plan (HMRP), included as Attachment E to the *Final Order on***  
10 ***Amendment No. 3*, as approved by the Department in consultation with ODFW ~~The~~**  
11 **~~certificate holder shall implement the Habitat Mitigation and Revegetation Plan submitted~~**  
12 **~~by the certificate holder in its August 2008 application supplement and attached to the Final~~**  
13 **~~Order as Attachment B~~ and as amended from time to time. Such amendments may be made**  
14 **without amendment of the site certificate. The Council authorizes the Department to agree**  
15 **to amendments to the HMRP. The Department shall notify the Council of all amendments,**  
16 **and the Council retains the authority to approve, reject or modify any amendment of the**  
17 **HMRP agreed to by the Department.**

18 The finalized HMRP shall incorporate the maps, habitat classifications, and anticipated  
19 temporary and permanent habitat impact assessment completed as per site certificate  
20 Condition III.C.1. Prior to start of construction, the certificate holder shall acquire the legal  
21 right to create, enhance, maintain and protect a habitat mitigation area so long as the site  
22 certificate is in effect by means of outright purchase, conservation easement, or similar  
23 conveyance and shall provide a copy of the documentation to the Department. The nominal  
24 lease term shall be at least 30 years, with an option to extend if the facility continues  
25 operations past year 30. The mitigation area shall be as shown in Figures 1, 2, and 3 of  
26 Attachment E to the *Final Order on Amendment No. 3* ~~B to the Final Order~~. Any different  
27 mitigation area shall require prior approval of the Department in consultation with ODFW.

28 ODFW also recommended in its May 26, 2016 comment letter that the certificate holder should  
29 use a pre-emergent herbicide to target annual grasses, especially cheatgrass, within areas  
30 disturbed during construction. In accordance with existing site certificate Condition IV.D.16, the  
31 certificate holder will work with the Sherman County Weed Control Manager to take the  
32 appropriate measures to prevent the invasion, during and after construction, of any weeds on  
33 the Sherman County noxious weed list, which could include the use of a pre-emergent  
34 herbicide to target grasses (especially cheatgrass) within areas disturbed during construction as  
35 part of the final HMRP.

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by Council, the plan explains that in response to a threshold of concern exceedance, the certificate holder may be required to implement mitigation as approved by the department that is designed to benefit the affected species group. Mitigation may include, but is not limited to, measures such as protection of nesting habitat and enhancement of a protected tract by weed removal and control. While each facility is evaluated based on its own facts, the department has not previously recommended seasonal/diurnal operating restrictions or raising the cut-in speed as appropriate measures to mitigate for a threshold of concern exceedance and would not consider these measures necessary to satisfy the Council's standard.

1 In the *Final Order on Amendment No. 2*, the Council adopted Condition IV.M.11, on  
2 recommendation from ODFW, to provide assurance that habitat is properly categorized.  
3 However, the condition, as adopted, did not specify the steps or actions the certificate holder  
4 needed to take following the completion of the surveys. As such, to clarify the intention of  
5 Condition IV.M.11, the Department recommends the Council adopt the following amendment  
6 to Condition IV.M.11:

7 (IV.M.11) The certificate holder shall conduct two (2) years of raptor nest surveys with at  
8 least one (1) year of the surveys occurring prior to the beginning of construction. The raptor  
9 nest surveys shall be conducted following the instructions set forth in the Raptor Nest  
10 Survey Protocol for Golden Hills Wind Project included as Attachment C to the *Final Order*  
11 *on Amendment No. 3*~~*Second Amended Site Certificate*~~. The certificate holder shall provide a  
12 written report on the raptor nest surveys to the Department and ODFW. If the surveys  
13 identify the presence of raptor nests within the survey area, the certificate holder shall  
14 implement appropriate measures, consistent with the Habitat Mitigation and Revegetation  
15 Plan, and as approved by the Department in consultation with ODFW, to assure that design,  
16 construction, and operation of the facility are consistent with the Fish and Wildlife Habitat  
17 standard.

18 Also in the *Final Order on the Application* the Council imposed Condition IV.M.4, requiring the  
19 certificate holder to survey the status of known raptor nests near the facility prior to ground-  
20 disturbing activities. However, the condition as currently phrased does not clearly state that the  
21 survey boundary is intended to include 0.5 mile from ground-disturbing activities.<sup>54</sup>  
22 Additionally, the condition as currently phrased allows for ODFW to approve an alternative plan  
23 for protection of nests, but does not specifically include the Department as part of compliance  
24 management. Therefore, the Department recommends that the Council include the following  
25 edits to Condition IV.M.4:

26 Fish and Wildlife Habitat Condition IV.M.4. The certificate holder shall survey the status of  
27 known raptor nests within 0.5 miles of ground-disturbing construction activity before  
28 ground-disturbing activities begin. If an active nest is found, and ground-disturbing activities  
29 are scheduled to begin before the end of the sensitive nesting and breeding season (mid-  
30 April to mid-August), the certificate holder will not engage in ground-disturbing activities  
31 within a 0.25-mile buffer around the nest until the nest fledges young or the nest fails,  
32 unless the Department, in consultation with ODFW, approves an alternative plan. If ground-  
33 disturbing construction activities continue into the sensitive nesting and breeding season  
34 for the following year, the certificate holder will not engage in ground-disturbing activities  
35 within the 0.25-mile buffer if the nest site is found to be active until the nest fledges young  
36 or the nest fails, unless the Department, in consultation with ODFW, approves an alternate  
37 plan.

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<sup>54</sup> In the *Final Order on the Application*, the Council imposed condition IV.M.4 based on the fact that Golden Hills, in its application for site certificate, made representation that it would conduct the raptor nest survey and protect the species, as described in the condition. Golden Hills proposed the condition language in its application for site certificate, Exhibit P, page P-68. In that section, it was stated that the survey would be within 0.5 mile from ground-disturbing construction activities.

1 *Public Comment*

2 In a comment letter dated March 4, 2016, Irene Gilbert/FGRV provided a number of comments  
3 on RFA No. 3. These comments are addressed below.

4 The first comment states that “mitigation needs to be provided for the deaths of federally  
5 protected wildlife as is required by OAR 635-415-0020(3).” However, the EFSC Fish and Wildlife  
6 Habitat standard only expressly references OAR 635-415-0025. More importantly, based upon  
7 the plain language of the rule, OAR 635-414-0020(3) does not require mitigation for deaths of  
8 federally protected wildlife as Ms. Gilbert asserts. Instead, OAR 635-415-0020(3) relates to the  
9 implementation of the ODFW mitigation requirements by ODFW and requires ODFW to make  
10 recommendations consistent with the goals and standards of OAR 635-415-0025 for  
11 development actions which impact fish and wildlife habitat when identified circumstances are  
12 present. Pursuant to subsection (3)(a) one of the circumstances that requires ODFW to make  
13 recommendations consistent with its fish and wildlife habitat policy is when a federal law  
14 authorizes or requires mitigation for impacts to fish and wildlife. To the extent a federal law  
15 authorizes or requires mitigation related to impacts of a wind facility to fish and wildlife, that is  
16 an issue outside of Council jurisdiction. Any issue related to federally listed species would need  
17 to be addressed by the certificate holder with the appropriate federal wildlife management  
18 agency. Furthermore, in the case of an EFSC facility, ODFW makes recommendations consistent  
19 with the goals and standards of OAR 635-415-0025 for energy facility development actions  
20 because of the Council’s Fish and Wildlife Habitat Standard. OAR 635-415-0020(3) does not  
21 require anything more. In this case, ODFW has recommended mitigation consistent with OAR  
22 635-415-0025 in its comment letter dated May 25, 2016, as well as in previous comments on  
23 the record of the Golden Hills Wind Facility application and previous amendment requests.

24 The second comment from Ms. Gilbert/FGRV states that the requirements of OAR 635-415-  
25 0025 do not allow for impacts to Category 1 habitat quality or quantity, and that “it appears  
26 there is nothing addressing the fact that there can also be no negative quality impacts.” The  
27 comment requests that conditions be updated to “show no impacts area allowed, permanent  
28 or temporary,” to Category 1 habitat, and that setbacks be included from Category 1 habitat.  
29 This comment is accurate in that the Fish and Wildlife Habitat Mitigation Policy at OAR 635-415-  
30 0025 states that the mitigation goal for Category 1 habitat is no loss of either quality or  
31 quantity. The Council previously found that the Golden Hills facility is in compliance with the  
32 EFSC Fish and Wildlife Habitat standard and the ODFW Fish and Wildlife Habitat Mitigation  
33 Policy, including that the facility, as approved, would not impact Category 1 habitat. For RFA  
34 No. 3, as described in this proposed order, the Department recommends the Council continue  
35 to find that the facility, as amended, satisfies the Council’s Fish and Wildlife Habitat standard  
36 and that the facility, as amended, would not impact Category 1 habitat and therefore there  
37 would be no loss of either the quantity or quality of Category 1 habitat. Additionally, as noted  
38 above, the May 25, 2016 comment letter from ODFW states that “[ODFW] acknowledges the  
39 appropriateness of location for the Golden Hills Wind Project,” and goes on to commend the  
40 facility for complying with the Oregon Columbia Plateau Wind Energy Siting and Permitting  
41 Guidelines by siting the facility in agricultural wheat fields and not intact wildlife habitat. Finally,  
42 Condition IV.M.9 states that the facility shall not construct any components within areas of  
43 Category 1...habitat and shall avoid temporary disturbance of Category 1 habitat.”

1 Comment 3 in the letter from Ms. Gilbert/FGRV states that the analysis of wind facility impacts  
2 to elk and deer do not include the most recent studies. However, the Golden Hills facility is not  
3 located in big game winter range and the facility is not expected to significantly impact elk,  
4 deer, or their habitat. ODFW did not comment on any potential impact related to elk or deer  
5 from facility amendments as part of RFA No. 3.

6 Comment 4 relates to mitigation for reduction in habitat quality of Categories 1 through 4  
7 habitat, and states that the “developer needs to be required to provide setbacks from these  
8 categories for habitat to avoid indirect impacts results in a reduction in habitat quality, or  
9 mitigation needs to be provided for those impacts.” As is described in this proposed order, and  
10 in the record on the original site certificate application and previous two amendments,  
11 mitigation is to be provided for impacts in accordance with the Council Fish and Wildlife Habitat  
12 standard and the ODFW Fish and Wildlife Habitat Mitigation Policy. Recommended amended  
13 Condition IV.M.1 would require the certificate holder to finalize and implement the HMRP as  
14 approved by the Department in consultation with ODFW, in accordance with all standards and  
15 requirements. As is shown in Table 1 above, of the estimated 1,069 acres of temporary impacts,  
16 1,002 of these acres are Category 6 agriculture lands or other developed lands, and of the  
17 estimated 132 permanent acres of impact, 126.7 acres are to Category 6 agriculture lands or  
18 other developed lands. As demonstrated by these acreage numbers, the vast majority of the  
19 impacted site boundary is Category 6.

20 Comment 5 states that the “habitat categories need to be reviewed,” and questions whether a  
21 pond should be considered Category 3 habitat given the limited water resources in the area.  
22 Site certificate Condition III.C.1 addresses this question, and specifically requires that prior to  
23 construction, the certificate holder provide the Department and ODFW with detailed maps of  
24 the facility site indicating all habitat categories that would be affected during construction, and  
25 that as part of the habitat categorization, the certificate holder shall consult with ODFW.  
26 Furthermore, the condition requires that construction not begin in an affected area until the  
27 habitat assessment has been approved by the Department. Additionally, as shown on Table 1, a  
28 pond is considered Category 2 habitat, and as noted in the table, no impacts to pond habitats  
29 are expected.

30 Comment 6 states that all wildlife surveys need to be current, and that the commenter found  
31 no wildlife surveys completed after 2007. As described above in this proposed order, ODFW has  
32 agreed that habitat classifications completed as part of the original site certificate application  
33 are still valid. Additionally, the certificate holder conducted habitat surveys of the new site  
34 boundary area not previously considered in the application. Finally, ensuring and maintaining  
35 continued compliance with the Fish and Wildlife Habitat standard would be covered in  
36 Condition IV.M.11, which requires additional raptor nest surveys; Condition III.C.1, which  
37 requires validation of the habitat categories prior to construction, as well as existing Condition  
38 IV.L.3, which requires that prior to construction the certificate holder conduct new field surveys  
39 for threatened and endangered species (the Department’s assessment of the amended facility’s  
40 compliance with the Council’s Threatened and Endangered Species standard is included in  
41 Section IV.A.9 of this proposed order).

1 Comment 7 suggests that the use of helicopters is an ineffective method for identifying raptor  
2 nest. The comment letter does not explain why Ms. Gilbert believes surveys conducted by  
3 helicopters are an ineffective method for identifying raptor nests. The raptor survey protocol,  
4 which calls for the use of helicopters, was recommended by ODFW and approved by Council as  
5 part of the second amendment request. ODFW has not recommended any change in this  
6 protocol. The protocol is included as Attachment C to this proposed order.

7 Comment 8 questions the risk to bat species utilizing the proposed facility site, and states that  
8 the risk to bat species is significant. The comment also states that species being killed at  
9 surrounding sites are species being considered for listing as endangered species.<sup>55</sup> The original  
10 application for site certificate study of bats indicated that two bat species are probably  
11 migrants through the facility area, the hoary bat and the silver-haired bat. Neither of these  
12 species are listed by ODFW as threatened, endangered, or special status. One special status bat  
13 species, the pallid bat, was noted as occurring in Sherman County. In the ASC, the applicant  
14 concluded that the facility is unlikely to significantly impact bats for multiple reasons, including  
15 that the facility site has limited riparian areas or other water sources. The Council agreed with  
16 this conclusion in the *Final Order on the Application*. Additionally, site certificate Condition  
17 IV.M.7 implements the Wildlife Monitoring and Mitigation Plan (WMMP) included as  
18 Attachment D to this proposed order (the same WMMP was originally included as Attachment  
19 A to the *Final Order on the Application*), which includes a two-year post construction  
20 monitoring program for bat fatalities. Should the threshold of concern, as specified in the  
21 WMMP, be exceeded for bat species (or avian species listed in the WMMP), additional  
22 mitigation may be necessary as outlined in the WMMP.

23 Comments 9 and 10 are related to setbacks, specifically setbacks from nests and water  
24 resources, and setbacks from specific species active nests as included in existing Condition  
25 IV.M.10. The comments request inclusion of setbacks from nests and water resources, and also  
26 state that the setbacks included in Condition IV.M.10 are not consistent with current ODFW  
27 recommended setbacks and that the setbacks need to be identified for the entire year, not just  
28 during construction. Regarding Condition IV.M.10, it currently requires setbacks of  
29 approximately ¼ mile (1,300 feet) from active nests for Swainson's hawk, golden eagle,  
30 ferruginous hawk, and burrowing owl. The restriction is only during construction and only  
31 during the sensitive period, which is defined for each species in the condition. The setback  
32 distance and timing period is consistent with other wind facilities EFSC has and is currently  
33 reviewing.<sup>56</sup> Additionally, ODFW did not comment on the setback distances or timing  
34 restrictions for any of these four species, or setbacks from water sources. Finally, condition  
35 IV.M.11 requires additional raptor nest surveys prior to construction. Finally, as noted

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<sup>55</sup> The comment letter also questioned impacts to bat species under OAR 345-024-0015(4), Cumulative Effects Standard for Wind Facilities, which requires the Council find that the wind facility can be designed and construed to reduce cumulative adverse environmental effects including (4), "designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment." In addition to being addressed in the Fish and Wildlife Habitat standard section, this comment is addressed in the Cumulative Effects standard section of this proposed order.

<sup>56</sup> For example, the setback distance and seasonal restriction is the same in the Wheatridge Wind Facility proposed order.

1 elsewhere in the proposed order, anticipated impacted habitat is mostly Category 6 agriculture  
2 land and developed land, which does not provide high quality habitat.

3 Comment 11 states that the proposed habitat mitigation would only account for the footprint  
4 of the facility, and that “there would be additional quality impacts which would exist for the  
5 time this development is in operation.” The Council previously found the facility to be in  
6 compliance with the Fish and Wildlife Habitat standard, including the HMRP. As described  
7 above, Condition IV.M.1, as amended, would require the certificate holder to finalize the HMRP  
8 to incorporate the information produced in accordance with Condition III.C.1, specifically  
9 habitat categorization and associated impacts based on final facility design and micro-siting  
10 factors. As per this condition, the final HMRP must receive approval from ODOE in consultation  
11 with ODFW prior to construction. This condition would ensure that the facility maintains  
12 compliance with the Council’s Fish and Wildlife Habitat standard.

### 13 **Conclusion of Law**

14 Based on the findings presented above, and subject to the existing and amended conditions,  
15 the Department recommends that the Council find that the facility, as amended, continues to  
16 comply with the Council’s Fish and Wildlife Habitat standard.

### 17 **IV.A.9 Threatened and Endangered Species: OAR 345-022-0070**

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

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

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

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

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

### 32 **Findings of Fact**

33 The Threatened and Endangered Species standard requires the Council to find that the design,  
34 construction, and operation of the facility is not likely to cause a significant reduction in the  
35 likelihood of survival or recovery of a fish, wildlife, or plant species listed as threatened or  
36 endangered by the Oregon Fish and Wildlife Commission or Oregon Department of Agriculture  
37 (ODA). For threatened and endangered plant species, the Council must also find that the facility  
38 is consistent with an adopted protection and conservation program from ODA. Threatened and



1 endangered species are those listed under ORS 564.105(2) for plant species, or ORS 496.172(2)  
2 for fish and wildlife species.

3 The Council addressed the Threatened and Endangered Species Standard in Section IV.L of the  
4 *Final Order on the Application* and determined that, subject to specified conditions, the  
5 proposed facility complied with the Council's Threatened and Endangered Species Standard.<sup>57</sup>  
6 The first site certificate amendment extended the construction deadlines and did not impact  
7 compliance with the Threatened and Endangered Species Standard and consequently, the  
8 Council relied on the analysis in the *Final Order on the Application* to conclude that the facility  
9 continued to meet the standard.

10 The second amendment also extended the construction start and completion deadlines.  
11 However, due to the passage of time, the Department requested that the certificate holder  
12 conduct an updated desktop survey of threatened and endangered species in the analysis area.  
13 This study demonstrated that there had been no changes to the facility's compliance with the  
14 Threatened and Endangered Species standard. However, owing to the limitations of desktop  
15 surveys, Council adopted Condition IV.L.3 requiring preconstruction field surveys to ensure the  
16 facility maintains compliance with the Threatened and Endangered Species standard.

17 RFA No. 3 would amend the site boundary by removing 2,800 acres and adding 122.5 acres to  
18 account for a change in facility design, specifically to allow for the construction of two short  
19 segments of 230 kV transmission line. The amended facility would also reduce the number of  
20 turbines from 267 to 125, and all turbines would be sited within the previously approved  
21 turbine micro-siting corridors. ODFW provided a comment letter on the RFA but did not  
22 specifically mention issues related to the Threatened and Endangered Species standard. ODFW  
23 acknowledged that the Golden Hills facility is located in an appropriate location within  
24 agricultural wheat fields, as opposed to intact wildlife habitat, and as such the facility has  
25 addressed the macro-siting recommendations of the Oregon Columbia Plateau Ecoregion Wind  
26 Energy Siting and Permitting Guidelines.<sup>58</sup>

27 As part of RFA No. 3, the certificate holder performed a desktop survey of publicly and privately  
28 available resources for federal- and state-listed endangered, threatened, proposed, or  
29 candidate plant and wildlife species that have potential for occurrence in the analysis area,  
30 including the two areas proposed to be added to the site boundary. In addition, the certificate  
31 holder points to work done in support of RFA No. 2, which included desktop review of available  
32 data sources in 2013 and 2014. Desktop survey results identified no additional listed species  
33 that have a potential to occur within the survey area beyond those identified during previous  
34 surveys. None of the identified species had status changes from the second amendment  
35 desktop surveys.<sup>59</sup>

36 The certificate holder also performed field surveys on March 4, 2016, in the two areas being  
37 added to the site boundary. Field survey results indicate that the risk of impacting state listed  
38 endangered, threatened, proposed, or candidate plant and wildlife species is very low because

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<sup>57</sup> Final Order on the Application, Section IV.L.

<sup>58</sup> ODFW Comment Letter, May 25, 2016.

<sup>59</sup> RFA No. 3, Section 5.1.9, and Supplemental Information Report, Page 5, and Attachment 8.

1 no suitable habitat exists that could support these species. The survey results showed that the  
2 new site boundary areas are dominated by recently tilled and planted wheat fields, and no  
3 trees or shrubs were identified in the survey area or immediate vicinity. The survey did not  
4 identify any wetlands or other waters.

5 As discussed above under the Fish and Wildlife Habitat standard, in a comment letter on RFA  
6 No. 3, Ms. Gilbert/FGRV stated that wildlife surveys need to be current.<sup>60</sup> The certificate holder  
7 conducted updated desktop surveys of the analysis area, and desktop and field surveys for the  
8 proposed new site boundary areas. As described above, these efforts did not identify any  
9 changes from the previously approved amendment. In addition, site certificate Condition IV.L.3  
10 would require field surveys for threatened and endangered species prior to construction to  
11 confirm the facility's continued compliance with the standard. Ms. Gilbert/FGRV also  
12 commented that there is a risk to the survival of several bat species utilizing the site, including  
13 risk to species being considered for listing as endangered species. ODFW has not currently  
14 listed any bat species as threatened or endangered, and ODFW did not comment or raise any  
15 issue regarding risk to bat species or that any specific bat species is at risk of being listed as  
16 threatened or endangered by ODFW.<sup>61</sup>

17 The Department recommends that the Council adopt a modification of existing site certificate  
18 Condition IV.L.3, which was adopted as part of the second amended site certificate. The  
19 modification would clarify the timing for when the preconstruction field survey must be  
20 performed and would help further ensure the facility's continued compliance with the  
21 Threatened and Endangered Species standard.

22 (IV.L.3) Prior to the beginning of construction but no more than two years prior to the  
23 beginning of construction of the facility the certificate holder shall perform new field  
24 surveys for threatened and endangered species following the survey protocol set forth in  
25 the Application for Site Certificate. The certificate holder shall report the results of the field  
26 surveys to the Department, ODFW, and the Oregon Department of Agriculture. If the  
27 surveys identify the presence of threatened or endangered species within the site  
28 boundary, the certificate holder shall implement appropriate measures to avoid a significant  
29 reduction in the likelihood of survival or recovery of the species, as approved by the  
30 Department, ODFW, and the Oregon Department of Agriculture.

31 With the proposed condition revision, the Department recommends that the Council find the  
32 requested amendment would not result in impacts to threatened and endangered plant or  
33 animal species that have not been addressed by the Council, nor otherwise affect the certificate  
34 holder's ability to construct and operate the facility consistent with applicable protection plans  
35 for threatened or endangered plant and animal species and in a manner which will not likely  
36 cause a significant reduction in the likelihood of a species' survival or recovery.

### 37 **Conclusion of Law**

38 Based on the reasoning discussed above, and subject to the existing and amended site  
39 certificate conditions, the Department recommends that the Council find that the facility, as

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<sup>60</sup> Irene Gilbert-Friends of the Grande Ronde Valley, March 4, 2016, comment 6.

<sup>61</sup> Irene Gilbert-Friends of the Grande Ronde Valley, March 4, 2016, comment 8.

1 amended, continues to comply with the Council’s Threatened and Endangered Species  
2 standard.

3 **IV.A.10 Scenic Resources: OAR 345-022-0080**

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

10 **Findings of Fact**

11 The Scenic Resources standard requires the Council to find that the facility would not cause a  
12 significant adverse impact to identified scenic resources and values. To be considered under the  
13 standard, scenic resources and values must be identified as significant or important in local land  
14 use plans, tribal land management plans, and/or federal land management plans.

15 The Council addressed the Scenic Resources standard in section IV.G of the *Final Order on the*  
16 *Application*. The Council found that the design, construction, and operation of the facility,  
17 taking into account mitigation, were not likely to result in significant adverse impacts to scenic  
18 resources and values identified as significant or important in local land use plans, tribal land  
19 management plans, and federal land management plans for any significant or important scenic  
20 resources identified within the 10-mile analysis area.<sup>62</sup> In the *Final Order on the Application*,  
21 Council adopted three site certificate conditions related to the Scenic Resources standard,  
22 conditions IV.G.1 to IV.G.3. These conditions would continue to apply to the facility, as  
23 amended.

24 The Council determined that the first and second amendments to the site certificate to extend  
25 the construction deadlines did not impact compliance with the Scenic Resources standard. As a  
26 result, the *Final Order on Amendment No. 1* and the *Final Order on Amendment No. 2* relied on  
27 the analysis and findings in the *Final Order on the Application* to conclude that the facility  
28 continued to meet that standard.

29 RFA No. 3 proposes changes to the facility design. The facility, as amended, would include  
30 142 fewer wind turbines than the previously approved facility, reducing the number of turbines  
31 from 267 to 125. The 125 proposed turbines would potentially be taller than the previously  
32 approved turbines, up to 518 feet in total height, from 420 feet. In addition, the facility, as  
33 amended, will remove approximately 2,800 acres from the site boundary and add  
34 approximately 122.5 acres to account for the change in facility design (two short segments of  
35 230 kV transmission line), while reducing the total amount of overhead transmission line by  
36 approximately 48 percent, mostly by removing the 500 kV transmission line that was previously  
37 approved as part of the facility.

38 As part of RFA No. 3, the certificate holder evaluated the facility’s compliance with the Scenic  
39 Resources standard by conducting a visual analysis that determined where the proposed new

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<sup>62</sup> Final Order on the Application, Section IV.G.

1 turbine model would be potentially seen from significant or important scenic resources within  
2 the analysis area.<sup>63</sup> The visual analysis included a review of local land use, tribal land  
3 management, and federal land plans for updates since the *Final Order on the Application* was  
4 issued. Based on this review, and similar to significant or important scenic resources evaluated  
5 in the *Final Order on the Application*, the certificate holder evaluated the impact of the facility,  
6 as amended, for the following scenic resources:

- 7 • Columbia River Gorge National Scenic Area (CRGNSA)
- 8 • Oregon National Historic Trail
- 9 • Lower Deschutes River Canyon
- 10 • John Day River Canyon (i.e. area rim-to-rim)
- 11 • Journey Through Time Scenic Byway
- 12 • Sherman County<sup>64</sup>

13 In addition, the certificate holder identified two updated resource plans: the *Sherman County*  
14 *Comprehensive Land Use Plan* (June 2007), which contains items related to scenic resources  
15 that were not previously considered in the *Final Order on the Application*, and the *Bureau of*  
16 *Land Management – John Day Basin Record of Decisions and Resource Management Plan* (April  
17 2015).<sup>65</sup> The changes associated with these identified resource plans are described below.

18 In order to evaluate potential visual impacts of the facility, as amended, at the scenic resources  
19 described above, the certificate holder conducted a “Zone of Visual Influence” (ZVI) analysis for  
20 the 10-mile analysis area of the tallest turbines proposed in RFA No. 3. The Department’s  
21 analysis of the results of the ZVI analysis for each identified scenic resource is presented below.

#### 22 *Columbia River Gorge National Scenic Area*

23 The certificate holder’s ZVI analysis determined that the taller turbines would continue to be  
24 visible from portions of the CRGNSA. The closest turbines would be approximately 5 miles away  
25 from the CRGNSA and the most distant would be approximately 17 miles. The certificate holder  
26 concludes that the increased height of the proposed turbines would not make them  
27 substantially more noticeable from within the CRGNSA than the approved turbines, nor would  
28 they be seen over a much greater area. In addition, the certificate holder states that the  
29 reduction in the number of turbines (from 267 to 125) means that fewer turbines would be  
30 seen from within the CRGNSA compared to the number that the Council previously evaluated  
31 and determined not to result in a significant adverse visual impact at this scenic resource.<sup>66</sup>

32 Within the CRGNSA, as with the approved facility design, the certificate holder’s ZVI analysis  
33 concludes that the proposed taller turbines would be visible from most of the portion of SR-14  
34 which serves as a primary public viewpoint of the CRGNSA, as well as from some of the fairly  
35 remote, steep, undeveloped hillsides above and below SR-14. The proposed taller turbines  
36 would also be visible from areas farther above and below portions of the hillsides adjacent to  
37 SR-14. Unlike the approved turbines, the certificate holder’s ZVI analysis found that the taller  
38 turbines would be seen from the northern side of the Columbia River and nearby shoreline and

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<sup>63</sup> RFA No. 3, Section 5.1.10, and Attachment 1, Figure 4.

<sup>64</sup> Final Order on the Application, Section IV.G.

<sup>65</sup> RFA No. 3, Section 5.1.10.

<sup>66</sup> Id.

1 from uplands starting in the area adjacent to the community of Wishram and continuing upriver  
2 to an area north of Miller Island. In the *Final Order on the Application*, EFSC concluded that  
3 existing development features such as transmission lines, wind turbines, railroad tracks, and  
4 highways are clearly visible from SR-14 when looking toward the facility site. The *Final Order on*  
5 *the Application* concluded that because the existing visual character includes these  
6 development features, the presence of the facility would represent a modest change to a  
7 viewers' perspective, and have less than significant impacts to significant or important scenic  
8 resources associated with the CRGNSA.<sup>67</sup> Because the visual character, including existing  
9 development features, of the area has not changed, and due to the distance of the facility to  
10 the CRGNSA, the Department recommends that the Council find that the facility, as amended, is  
11 not likely to result in a significant adverse impact at the scenic resources and values identified  
12 as significant or important in the CRGNSA management plans.

### 13 *Oregon National Historic Trail*

14 The ZVI analysis conducted for RFA No. 3 concluded that as a result of topographic screening,  
15 the taller turbines would not be seen from Oregon National Historic Trail "high potential sites"  
16 within the analysis area including McDonald Ferry John Day River Crossing, Biggs Junction, and  
17 the Deschutes River Crossing. Of the three "high potential sites," Biggs Junction and the  
18 Deschutes River Crossing sites are located approximately 5-miles from the nearest turbine,  
19 while the McDonald Ferry John Day River Crossing site is located approximately 10-miles from  
20 the nearest turbine. In the *Final Order on the Application*, the Council found that based on the  
21 certificate holder's computer modeling results and field investigations, the facility would not be  
22 visible from the "high potential sites" identified within the analysis area.

23 Due to the distance of the facility from the resources, and the certificate holder's assertion that  
24 topographical screening blocks the visibility of the amended facility at these "high potential  
25 sites," the Department recommends the Council find that the facility, as amended, is not likely  
26 to result in a significant adverse impact to these scenic resources.

### 27 *Deschutes River Canyon*

28 The certificate holder's ZVI analysis concluded that as with the previously approved turbines,  
29 some of the proposed taller turbines would be seen from isolated rims of the Deschutes River  
30 Canyon. At the closest portion of the canyon rim from which turbines would be visible, the  
31 nearest turbines would be approximately 5.5 miles away. The ZVI analysis concluded that the  
32 proposed taller turbines would likely be seen from additional remote upper canyon walls from  
33 which the previously approved turbines would not be seen. The certificate holder concludes  
34 that the taller turbines, however, would not be visible from the Deschutes River, its shoreline,  
35 or interior canyon areas. The Council concluded in the *Final Order on the Application* that  
36 because the facility would be visible from limited, isolated rims with limited public access, that  
37 the facility would be compatible with the objectives of protecting the river from visual impacts,  
38 as established in BLM's management and visual resource plan.<sup>68</sup> For the same reasons,  
39 specifically that the amended facility would have limited visibility in the river canyon, is only  
40 expected to be visible at isolated areas with limited public access, and would not be visible from

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<sup>67</sup> Final Order on the Application, Section IV.G.

<sup>68</sup> Final Order on the Application, Section IV.G.

1 the Deschutes River, shoreline, or interior canyon walls, the Department recommends that the  
2 Council find the facility, as amended, is not likely to result in a significant adverse impact to the  
3 scenic resources and values identified as significant and important in the management plans for  
4 the Deschutes River Canyon.

5 *Journey Through Time Scenic Byway*

6 The certificate holder's ZVI analysis for RFA No. 3 concluded that, as with the previously  
7 approved facility design, the proposed taller turbines would be visible in the foreground and  
8 middleground of the Journey Through Time Scenic Byway (US 97) (byway) for approximately  
9 12 miles south of the city of Moro and north of the community of Biggs. As discussed in the  
10 *Final Order on the Application*, the management plan for the Journey Through Time Scenic  
11 Byway as well as the cities of Moro and Wasco do not identify any significant or important  
12 scenic values for the byway, and there were no scenic overlooks or waysides along the byway in  
13 the analysis area.<sup>69</sup> Furthermore, in the *Final Order on the Application*, the Council found that  
14 the byway management plan emphasizes management goals and values including creating jobs,  
15 maintaining rural lifestyles, protecting important values such as historical attractions and  
16 artifacts, and building identity for the region. The certificate holder did not describe any  
17 changes to the byway management plan that would affect the previous Council findings. As  
18 with the original facility design, the amended facility would include turbines visible from the  
19 byway. However, the main activity of the byway is auto-touring, which typically would present a  
20 short-term view of any particular location on the byway. Additionally, there are other  
21 development features visible along the route. Finally, the Department did not receive comment  
22 letters from the cities of Wasco or Moro, and the comment letter received from Sherman  
23 County did not mention issues or concerns with scenic resources.<sup>70</sup> Based on these findings, the  
24 Department recommends that the Council find that the facility, as amended, is not likely to  
25 result in a significant adverse impact to this resource.

26 *John Day River Canyon*

27 The facility, as amended, would be located approximately 9 miles from the closest section of  
28 the John Day River, and would be separated from the river by a number of existing wind  
29 projects and transmission lines. The certificate holder's ZVI analysis determined that the  
30 proposed taller turbines would be potentially visible in very remote portions of upper rims of  
31 the John Day River Canyon, but that no turbines would be seen from the river, its shoreline, or  
32 lower canyon areas.

33 As described above, the *Bureau of Land Management – John Day Basin Record of Decisions and*  
34 *Resource Management Plan* was updated in April 2015. The updates included visual resource  
35 management objectives for the BLM to manage the land to “preserve the existing character of  
36 VRM Class I landscape (for Wildernesses and Wilderness Study Areas)” and not to permit  
37 activities that would result in significant, long-term, adverse effects on the visual resources of  
38 the John Day River Canyon in areas normally seen from the river.<sup>71</sup> The Council previously found  
39 in the *Final Order on the Application* that the facility would be compatible with the BLM visual  
40 resource management objectives for the John Day River Canyon, and as noted, the certificate

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<sup>69</sup> Final Order on the Application, Section IV.G.

<sup>70</sup> Sherman County Comment Letter, March 1, 2016 and May 18, 2016.

<sup>71</sup> RFA No. 3, Section 5.1.10.

1 holder demonstrated through the ZVI analysis that the facility, as amended, would not be  
2 visible from the river, shoreline, or lower canyon area. Accordingly, the Department  
3 recommends that the Council find that the facility, as amended, is not likely to result in a  
4 significant adverse impact to the scenic resources and values identified as significant or  
5 important in the John Day River Canyon management plans.

#### 6 *Sherman County*

7 The certificate holder notes that the 2007 update of the *Sherman County Comprehensive Plan*  
8 identified trees, rock outcroppings, the John Day and Deschutes River canyons, and the rural  
9 nature of the Sherman County landscape, as important scenic resources within Sherman  
10 County, which were not previously considered in the *Final Order on the Application*. The  
11 certificate holder states that, as with the approved facility, the facility, as amended, would not  
12 impact tree or rock outcroppings. As described above, the facility, as amended, would also not  
13 significantly impact the visual resources within Sherman County including the John Day and  
14 Deschutes River canyons. The certificate holder states that the facility, as amended, would not  
15 remove substantial amounts of wheat fields, farms, or other elements that contribute to the  
16 rural character of Sherman County's landscape. Finally, the certificate holder notes that the  
17 taller turbines would be similar in appearance and character to turbines featured in Sherman  
18 County tourism brochures such as *Windmills & Wheatfields: Scenic Cycling Tour Through*  
19 *Sherman County* and *Windmills and Wheatfields: Oregon Wind Farm Driving Tour* that celebrate  
20 the rural character of Sherman County along with the County's unique position as "Oregon's #1  
21 wind farm region."<sup>72</sup> As noted above, the Sherman County comment letters did not mention  
22 any issues or concerns with scenic resources.<sup>73</sup> Finally, the Council previously found in the *Final*  
23 *Order on the Application* that the facility satisfied the Council's Land Use standard which  
24 includes the applicable substantive criteria from the Sherman County Comprehensive Plan and  
25 Sherman County Zoning Ordinance, and in Section IV.A.5 above, the Department recommends  
26 the Council find that the facility, as amended, continues to meet the Land Use standard. Based  
27 on these findings, the Department recommends that the Council find that the facility, as  
28 amended, is not likely to result in a significant adverse impact to the scenic resources and  
29 values identified as significant or important in the *Sherman County Comprehensive Plan*.

30 Based on the analysis presented here, the Department recommends the Council continue to  
31 find that the design, construction and operation of the facility, as amended, is not likely to  
32 result in significant adverse impacts to scenic resource identified within the analysis area and  
33 identified as significant or important in applicable land use plans or federal land management  
34 plans.

#### 35 **Conclusion of Law**

36 Based on the foregoing findings, the Department recommends that the Council find that the  
37 design, construction and operation of the facility, as amended, would comply with the Council's  
38 Scenic Resources standard.

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<sup>72</sup> Id.

<sup>73</sup> Sherman County Comment Letters, March 1, 2016 and May 18, 2016.

1 **IV.A.11 Historic, Cultural and Archaeological Resources: OAR 345-022-0090**

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

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

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

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

10 (2) *The Council may issue a site certificate for a facility that would produce power from*  
11 *wind, solar or geothermal energy without making the findings described in section (1).*  
12 *However, the Council may apply the requirements of section (1) to impose conditions on*  
13 *a site certificate issued for such a facility.*

14 \*\*\*

15 **Findings of Fact**

16 Section (1) of the Historic, Cultural and Archaeological Resources standard generally requires  
17 the Council to find that the facility is not likely to result in significant adverse impacts to  
18 historic, cultural or archaeological resources. Under Section (2), the Council may issue a site  
19 certificate for a wind power facility without making findings of compliance with this standard.  
20 However, the Council may impose site certificate conditions based on the requirements of this  
21 standard.

22 The Council addressed the Historic, Cultural and Archaeological standard in section V.B of the  
23 *Final Order on the Application* and imposed Conditions V.B.1 through V.B.10. The first and  
24 second amendments to the site certificate extended the construction deadlines and did not  
25 impact the Council's previous findings associated with the Historic, Cultural and Archaeological  
26 standard. As a result, the *Final Order on Amendment No. 1* and *Final Order on Amendment No.*  
27 *2* relied on the analysis in the *Final Order on the Application*.

28 As RFA No. 3 would expand the site boundary into areas not previously surveyed for historic,  
29 cultural, and archaeological resources, Golden Hills conducted a desktop and field survey for  
30 such resources within the proposed new site boundary areas. The surveys were conducted at  
31 the expanded substation area and at the 230 kV transmission line segment that would  
32 interconnect the facility to the BPA grid. The surveys did not identify any historic, cultural, or  
33 archaeological resources. The certificate holder submitted a confidential survey report  
34 documenting the methods and results of the surveys to both ODOE and SHPO.<sup>74</sup> Based on the  
35 survey results, the Department does not recommend any changes to the existing site certificate  
36 conditions. Existing Conditions V.B.1 to V.B.10 in the site certificate provide for the protection  
37 of previously identified resources elsewhere in the site boundary, as well as provisions for

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<sup>74</sup> Supplemental information report, page 5, and Attachment 9 (confidential).



1 protection of unidentified resources that may be uncovered during construction, amongst other  
2 protective measures. All conditions in the site certificate would continue to apply to the facility,  
3 as amended.<sup>75</sup>

4 Based on the findings presented here, the Department recommends that the Council find that  
5 the existing site certificate conditions ensure adequate protection of historic, cultural and  
6 archeological resources.

#### 7 **Conclusion of Law**

8 The Department recommends that the Council find that the conditions currently imposed in the  
9 site certificate to address the Historic, Cultural and Archaeological Resources standard are  
10 adequate to ensure issues related to that standard are fully addressed.

#### 11 **IV.A.12 Recreation: OAR 345-022-0100**

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

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

19 *(b) The degree of demand;*

20 *(c) Outstanding or unusual qualities;*

21 *(d) Availability or rareness;*

22 *(e) Irreplaceability or irretrievability of the opportunity.*

#### 23 **Findings of Fact**

24 The Recreation standard requires the Council to find that the design, construction, and  
25 operation of the facility are not likely to result in significant adverse impacts to important  
26 recreational opportunities. The Council addressed the Recreation standard in section IV.H of  
27 the *Final Order on the Application*, and found that the design, construction and operation of the  
28 facility were not likely to result in a significant adverse impact to any important recreational  
29 opportunities identified within the 5-mile analysis area. The Council did not impose any  
30 conditions related to this standard.

31 The first amendment to the site certificate to extend the construction deadlines did not impact  
32 the Council's previous findings associated with the Recreation standard. As a result, the *Final*  
33 *Order on Amendment No. 1* relied on the analysis in the *Final Order on the Application* to  
34 determine that the facility continued to comply with the Recreation standard. Between the

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<sup>75</sup> SHPO (Dennis Griffin) provided a comment email on December 30, 2015, upon receiving the original RFA No. 3. In that email, Mr. Griffin requested that the certificate holder provide a cultural resources survey results report for the expanded site boundary areas. In response to this email, the certificate holder conducted a cultural resources survey of the new site boundary areas, and submitted the survey results to ODOE and SHPO, as noted in the findings. SHPO, however, did not comment on the survey report. The survey did not identify any cultural resources in the new site boundary areas.

1 time when the Council reviewed the first amendment and the second amendment, a new state  
2 park, Cottonwood Canyon State Park, was established near the facility. In the *Final Order on*  
3 *Amendment No. 2*, the Council considered the facility's impact to this park under the Recreation  
4 standard, and determined that Cottonwood Canyon State Park is likely to be unaffected by the  
5 facility, as the facility is over 6.65 miles from the park, noise generated during facility operation  
6 would be inaudible in the park, and visibility of the facility is only within isolated canyon rims  
7 away from important recreational opportunities identified within the analysis area. As such,  
8 Council found that facility would not cause significant adverse impacts to the recreational  
9 opportunity at Cottonwood Canyon State Park.<sup>76</sup>

10 RFA No. 3 proposes changes to the facility design including fewer, but taller, turbines, as well as  
11 amendments to the site boundary, removing approximately 2,800 acres and adding  
12 approximately 122.5 acres to account for the change in facility design, specifically to add short  
13 segments of 230 kV transmission line, and changes to related and supporting facilities including  
14 removing the 500 kV transmission line and one of two substations. The certificate holder  
15 assessed the amended facility's compliance with the Recreation standard in RFA No. 3,  
16 Section 5.1.12.

17 *Noise*

18 The Council previously found in the *Final Order on the Application* that noise associated with  
19 the facility may be audible at some recreational resources (Journey Through Time Scenic  
20 Byway, Oregon National Historic Trail, and Demoss Springs County Memorial Park), but would  
21 not interfere with recreational opportunities or otherwise significantly impact the recreational  
22 resource. The certificate holder states in RFA No. 3 that noise from the facility, as amended,  
23 would still be audible at these three recreational opportunities.<sup>77</sup>

24 The Journey Through Time Scenic Byway (byway) is primarily an auto-touring recreational  
25 opportunity, and as such, operational noise generated by the facility, as amended, would likely  
26 be masked by other cars travelling along the byway or otherwise minimally perceived by drivers  
27 travelling along the road. Consistent with the Council's previous findings, the Department  
28 recommends the Council find that operational noise from the facility, as amended, would not  
29 be likely to result in significant adverse impacts to the byway.

30 The Council found in the *Final Order on the Application* that operational noise generated by the  
31 facility as originally designed may be audible along the Oregon National Historic Trail, however,  
32 as the Council concluded in the *Final Order on the Application*, there are no intact trail  
33 segments or developed facilities associated with the trail within the analysis area, so noise from  
34 the facility would not interfere with the recreational opportunity. While operational noise from  
35 the amended facility may change from what was previously considered in the *Final Order on the*  
36 *Application*, there remain no intact trail segments or developed facilities associated with the  
37 trail in the analysis area, and as such, the Department recommends the Council find that  
38 operational noise from the facility, as amended, would not be likely to result in significant  
39 adverse impacts to recreational opportunities at the Oregon National Historic Trail.

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<sup>76</sup> Final Order on Amendment No. 2, Section III.B.3.I

<sup>77</sup> RFA No. 3, Section 5.1.12.

1 Operational noise generated by the facility, as amended, may be audible at Demoss Springs  
2 County Memorial Park. The Council previously concluded in the *Final Order on the Application*  
3 that because noise levels would be below the DEQ noise limit of 50 dBA, it would not interfere  
4 with the recreational opportunities of the park. The certificate holder asserts that prior to  
5 construction, an updated noise analysis would be submitted to the Department and would  
6 demonstrate that noise levels at this recreational opportunity would not exceed DEQ’s noise  
7 limit of 50 dBA.

8 DEQ’s noise limit of 50 dBA represents the most restrictive statistical noise limit that applies to  
9 industrial sources at noise-sensitive property locations at nighttime. This noise level, based on  
10 Table X-2 of the ASC, represents noise levels of a typical office. As described in ASC Exhibit T,  
11 Demoss Springs County Memorial Park includes shelters, picnic areas, and interpretive signs.  
12 Because Demoss Springs County Memorial Park is not a “noise-sensitive property” as defined in  
13 the DEQ regulation, the 50 dBA noise limit would not be applicable under the DEQ noise  
14 regulations.<sup>78</sup> However, because the certificate holder asserts that noise levels would not  
15 exceed 50 dBA, and because these noise levels would be not interfere with the recreational  
16 opportunities at the park, and consistent with the Council’s previous findings, the Department  
17 recommends that the Council find that operational noise from the facility, as amended, would  
18 not be likely to result in significant adverse impacts to recreational opportunities at Demoss  
19 Springs County Memorial Park.

20 While facility construction noise could be audible at some important recreational areas,  
21 construction would be temporary and short-duration, and therefore noise generating during  
22 construction activities would be unlikely to cause a significant adverse impact to any important  
23 recreational opportunity. In addition, existing site certificate Condition VI.A.1.1 would reduce  
24 noise impacts during construction by requiring the use of exhaust mufflers on combustion  
25 engine-powered equipment and limiting the noisiest operation of heavy construction  
26 equipment to daylight hours.

27 *Traffic*

28 The *Final Order on the Application* concluded that temporary traffic impacts would occur to the  
29 Journey Through Time Scenic Byway during construction. These impacts could include short-  
30 term traffic delays on US-97 and local roads. However, Council found that the existence of  
31 several passing lanes on US-97 would alleviate potential impacts along the travel corridor, and  
32 Council concluded in the *Final Order on the Application* that traffic generated during facility  
33 construction would not cause a significant adverse impact to the recreational opportunity. The  
34 certificate holder describes that due to the fewer number of turbines proposed as part of RFA  
35 No. 3, there would be a net decrease in truck traffic during construction by approximately 30  
36 percent below the estimate previously considered by Council as part of the original application.  
37 As such, the facility, as amended, would be expected to result in lower temporary construction  
38 impacts to the recreational opportunity along the Journey Through Time Scenic Byway, as well  
39 as other recreational opportunities in the analysis area.<sup>79</sup>

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<sup>78</sup> OAR 340-035-0015 defines “noise-sensitive property” as “real property normally used for sleeping, or normally used as schools, churches, hospitals, or public libraries.”

<sup>79</sup> *Id.*

1 *Visual*

2 As described in the *Final Order on the Application*, the originally-approved facility would be  
3 visible from six of the identified recreational opportunities in the analysis area (CRGNSA,  
4 Journey Through Time Scenic Byway, Lewis and Clark National Historic Trail interpretive site at  
5 the Maryhill Museum of Art, Maryhill Museum of Art, Maryhill's Stonehenge, and DeMoss  
6 Springs Memorial Park). Council found at that time that the facility would not cause a significant  
7 adverse impact to these recreational opportunities. Based on the certificate holder's ZVI  
8 analysis conducted for RFA No. 3, the proposed taller turbines would be visible from the same  
9 six recreational areas, although fewer turbines would be visible because fewer turbines would  
10 be built.<sup>80</sup> The original Council decision regarding the facility's visual impact to recreational  
11 opportunities was generally not based on the visibility of the turbines per se, but rather a  
12 number of other factors including that the area already includes a number of other highly  
13 visible development features including existing roads and transmission lines, and that most of  
14 the recreational opportunities are a number of miles from the facility. While the visibility of the  
15 amended facility may change slightly at the recreational opportunity sites, the Council's original  
16 rationale as included in the *Final Order on the Application* is still relevant and accurate, and  
17 therefore the Department recommends the Council continue to conclude that the visibility of  
18 the facility, as amended, would not be likely to result in significant adverse impacts at the  
19 above referenced important recreational opportunities.

20 The certificate holder's visibility analysis conducted for RFA No. 3 determined that the facility,  
21 as amended, would also be visible from additional portions of two important recreational  
22 opportunity areas not previously evaluated, specifically additional areas within the CRGNSA and  
23 the Deschutes River Corridor. The certificate holder's impact assessment is included in  
24 Section 5.1.12 of RFA No. 3. The additional areas where the amended facility could be visible  
25 from the CRGNSA are on the northern side of the Columbia River, including shoreline and  
26 upland areas, as well as areas on the hillside above and below SR-14 in Washington. However,  
27 as the certificate holder describes, these areas are not easily accessible to the general public,  
28 and the existing view from these areas to the amended facility includes a number of  
29 development features such as the interstate highway, other roads, transmission lines, rail lines,  
30 and other features.<sup>81</sup> As such, and considering the distance of the facility from the resource, the  
31 Department recommends that the Council find the facility, as amended, is not likely to have a  
32 significant adverse impact to recreational opportunities in the CRGNSA.

33 The certificate holder's visibility analysis determined that the facility, as amended, would be  
34 visible from upper portions of canyon rims and lower portions of canyon walls in the Deschutes  
35 River Corridor. However, as with the previously approved facility, the facility, as amended,  
36 would not be visible from the Deschutes River itself or the Deschutes River State Recreation  
37 Area. The main recreationally opportunities in this area are generally considered to be on or  
38 related to the river itself. Therefore, the Department recommends that Council find that the

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<sup>80</sup> Id.

<sup>81</sup> Id.

1 facility, as amended, is not likely to have a significant adverse impact to recreational  
2 opportunities in the Deschutes River Corridor.<sup>82</sup>

3 Based on the findings presented here, the Department recommends the Council find that the  
4 facility, as amended, is not likely to result in significant adverse impacts to important  
5 recreational opportunities within the analysis area.

6 **Conclusion of Law**

7 Based on the findings presented here, the department recommends that the Council find that  
8 the design, construction and operation of the facility, as amended, is not likely to result in a  
9 significant adverse impact to important recreational opportunities in the analysis area and  
10 therefore the facility, as amended, complies with the Council's Recreation standard.

11 **IV.A.13 Public Services: OAR 345-022-0110**

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

18 *(2) The Council may issue a site certificate for a facility that would produce power from*  
19 *wind, solar or geothermal energy without making the findings described in section (1).*  
20 *However, the Council may apply the requirements of section (1) to impose conditions on*  
21 *a site certificate issued for such a facility.*

22 \*\*\*

23 **Findings of Fact**

24 The Council's Public Services standard requires the Council to evaluate a facility's impacts on  
25 the ability of public and private service providers to supply sewer and sewage treatment, water,  
26 stormwater drainage, solid waste management, housing, traffic safety, police and fire  
27 protection, health care, and schools. Under OAR 345-022-0110(2), the Council may issue a site  
28 certificate for a facility that would produce power from wind without making findings with  
29 respect to the Public Services standard. However, the Council may impose site certificate  
30 conditions based upon the requirements of the standard.

31 The Council addressed the Public Services standard in section V.C of the *Final Order on the*  
32 *Application*, and imposed site certificate conditions V.C.1 to V.C.14 to address the requirements  
33 of the standard. The first amendment to the site certificate extended the construction  
34 deadlines and did not impact the Council's analysis or conditions regarding the Public Services  
35 standard. As a result, the *Final Order on Amendment No. 1* relied on the analysis in the *Final*  
36 *Order on the Application*.

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<sup>82</sup> Id.

1 The second amendment to the site certificate, approved by Council in January 2015, also  
2 extended the construction deadlines. However, since the affected service providers' ability to  
3 provide their services could have changed over time, the certificate holder contacted each  
4 public service provider listed in ASC Exhibit U and received confirmation of their continued  
5 ability to provide the services listed while meeting the demands of the facility during  
6 construction and operation. North Sherman County Rural Fire Protection District, Moro Rural  
7 Fire Protection District, and Sherman County Emergency Services expressed renewed and  
8 continuing concern over the lack of volunteer fire fighters, especially during the daytime hours,  
9 to accommodate the facility's potential service needs. To address this concern, in the *Final*  
10 *Order on Amendment No. 2*, Condition V.C.3 of the site certificate was amended to require the  
11 certificate holder to develop and coordinate a fire safety and response plan with the impacted  
12 fire districts before both construction and operation phases of the facility and established a  
13 requirement that the certificate holder submit the plan to the Department.

14 The certificate holder maintains responsibility for responding to emergency events that cannot  
15 be handled by local emergency response providers, such as high-angle rescue. The Council  
16 considered and addressed this issue in the *Final Order on the Application*, and imposed site  
17 certificate condition V.C.8 requiring that onsite personnel receive appropriate training,  
18 including tower rescue training, on an annual basis.

19 The certificate holder states that the components included in RFA No. 3 would result in the  
20 same or fewer employees required for construction and operation of the facility, and as such  
21 would not increase the number of people requiring housing or public services. Accordingly, the  
22 certificate holder states that RFA No. 3 would not change the impact previously evaluated in  
23 the *Final Order on the Application*, *Final Order on Amendment No. 1*, and *Final Order on*  
24 *Amendment No. 2* to police and fire protection services, housing services, health care services,  
25 and schools. The certificate holder also states that there would be no changes to findings  
26 related to sewers and sewer treatment providers. RFA No. 3 states that water use is anticipated  
27 to be similar or less than previously reviewed by EFSC during both construction and operation,  
28 due to the reduced volume of water needed during concrete mixing for turbine foundation  
29 installation.<sup>83</sup>

30 The facility, as amended, would not affect the Council's previous findings that construction and  
31 operational activities would not impact any stormwater service providers as the facility is not  
32 within the jurisdiction of nor would it be served by any such providers. In ASC Exhibit V, the  
33 certificate holder explains that construction-related stormwater would drain to surrounding  
34 lands and would infiltrate the ground. As described in Section IV.A.4 *Soil Protection* of this  
35 proposed order, in order to minimize stormwater impacts during construction, the certificate  
36 holder would be required to maintain compliance with an Erosion and Sediment Control Plan  
37 (ESCP), to be approved by DEQ as part of the 1200-C National Pollutant Discharge Elimination  
38 System (NPDES) permit.<sup>84</sup> Because the facility, as amended, would not be served by any  
39 providers of stormwater management, the Department recommends the Council find that

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<sup>83</sup> RFA No. 3, Section 5.1.13.

<sup>84</sup> *Id.*

1 operation and construction of the facility would not impact providers of stormwater  
2 management services.

3 Additionally, the certificate holder states that the facility, as amended, would reduce the  
4 amount of solid waste and reduce the amount of materials used overall, owing to the reduced  
5 number of turbines. Should the facility, as amended, be retired, the certificate holder states  
6 that the reduced quantity of materials would result in less waste than the previously approved  
7 facility; in particular, the amended facility would use 42,000 tons of steel compared to 86,508  
8 tons, and 4,713 cubic yards of concrete compared to 8,811 cubic yards estimated in the  
9 previously approved facility design. The overall effect to solid waste management service  
10 providers would be less for the amended facility than the previously approved facility.<sup>85</sup>

11 Based on the findings presented here, the Department recommends the Council find that,  
12 taking into consideration the existing site certificate conditions, construction and operation of  
13 the facility, as amended, is not likely to result in significant adverse impacts to the ability of  
14 public and private providers within the analysis area to provide the identified services.

#### 15 **Conclusion of Law**

16 Based on the foregoing analysis, and subject to the existing conditions in the site certificate, the  
17 Department recommends that the Council find that the facility, as amended, complies with the  
18 Council's Public Services standard.

#### 19 **IV.A.14 Waste Minimization: OAR 345-022-0120**

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

22 (a) *The applicant's solid waste and wastewater plans are likely to minimize generation*  
23 *of solid waste and wastewater in the construction and operation of the facility, and*  
24 *when solid waste or wastewater is generated, to result in recycling and reuse of such*  
25 *wastes;*

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

29 (2) *The Council may issue a site certificate for a facility that would produce power from*  
30 *wind, solar or geothermal energy without making the findings described in section (1).*  
31 *However, the Council may apply the requirements of section (1) to impose conditions on*  
32 *a site certificate issued for such a facility.*

33 \*\*\*

#### 34 **Findings of Fact**

35 The Waste Minimization standard requires the Council to find that the certificate holder will  
36 minimize generation of solid waste and wastewater, and manage waste generated to result in  
37 minimal adverse impacts on the surrounding and adjacent areas. Under Section (2) of the

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<sup>85</sup> RFA No. 3, Section 5.1.13, and Golden Hills Supplemental Information Report, pages 5-6.

1 standard, the Council may issue a site certificate for a wind power facility without making  
2 findings of compliance with this section. However, the Council may impose site certificate  
3 conditions based on the requirements of this standard.

4 The Council evaluated the Waste Minimization standard in section V.D. of the *Final Order on*  
5 *the Application* and found that the facility, with conditions, addressed the Waste Minimization  
6 standard. The first and second amendments to the site certificate extended the construction  
7 deadlines and did not impact the Council’s previous evaluation of the Waste Minimization  
8 standard. As a result, the *Final Order on Amendment No. 1* and the *Final Order on Amendment*  
9 *No. 2* relied on the analysis in the *Final Order on the Application*.

10 The certificate holder states in RFA No. 3 that during facility operation, the new facility design  
11 would result in similar or less waste than was previously considered due to the reduction in the  
12 total number of turbines, and hence there will be fewer turbines requiring maintenance. During  
13 construction, the new facility design would also result in less waste overall due to the reduction  
14 in the total number of turbines. The certificate holder states that the total vehicle washdown  
15 would be similar or less than previously estimated due to a net reduction in total concrete  
16 needs, and waste from portable toilets would be similar or less than previously estimated.<sup>86</sup>

17 The Council imposed four conditions in the original site certificate related to the Waste  
18 Minimization standard (conditions V.D.1 to V.D.4). Those four conditions would continue to  
19 apply to the facility, as amended, and includes requirements for the certificate holder to  
20 develop and implement waste management plans during both construction and operations. As  
21 noted in the conditions, those plans include recycling plans to reduce waste going to landfills.

22 In accordance with the findings presented here, the Department recommends that the Council  
23 continue to find that the certificate holder’s plans and the existing site certificate conditions will  
24 result in minimization of waste and appropriate management of any generated waste.

25 **Conclusion of Law**

26 Based on the foregoing analysis, and subject to the existing conditions in the site certificate, the  
27 Department recommends the Council find that the facility, as amended, complies with the  
28 Council’s Waste Minimization standard.

29 **IV.B Division 23 Standards**

30 The Division 23 standards apply only to “nongenerating facilities” as defined in ORS  
31 469.503(2)(e)(K), except nongenerating facilities that are related or supporting facilities. The  
32 facility is not a nongenerating facility as defined in statute and therefore Division 23 is not  
33 applicable to the requested amendment.

34 **IV.C Division 24 Standards**

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

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<sup>86</sup> RFA No. 3, Section 5.1.14, and Supplemental Information Report, page 6.



1 **IV.C.1 Public Health and Safety Standards for Wind Energy Facilities: OAR 345-024-0010**

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

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

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

10 **Findings of Fact**

11 OAR 345-024-0010 requires the Council to consider specific public health and safety standards  
12 related to wind energy facilities. In particular, the Council must evaluate an applicant's  
13 proposed measures to exclude members of the public from close proximity to the turbine  
14 blades and electrical equipment, and the applicant's ability to design, construct and operate the  
15 facility to prevent structural failure of the tower or blades and to provide sufficient safety  
16 devices to warn of failure.

17 The Council addressed the Public Health and Safety Standard for Wind Facilities in section IV.I  
18 of the *Final Order on the Application* and found that the certificate holder could design,  
19 construct, and operate the facility to exclude members of the public from close proximity to the  
20 turbine blades and electrical equipment. The Council further found that the certificate holder  
21 could design, construct, and operate the facility to preclude structural failure of the tower or  
22 blades that could endanger public safety, and to have adequate safety devices and testing  
23 procedures designed to warn of impending failure and to minimize the consequences of such  
24 failure. Accordingly, the Council found that the facility, with conditions, complied with this  
25 standard.<sup>87</sup>

26 The first and second amendments to the site certificate extended the construction deadlines  
27 and did not impact compliance with the Public Health and Safety for Wind Energy Facilities  
28 standard. As a result, the *Final Order on Amendment No. 1* and *Final Order on Amendment No.*  
29 *2* relied on the analysis in the *Final Order on the Application*.

30 Subsection (1) of the standard requires the certificate holder to demonstrate that it can exclude  
31 the public from close proximity to the turbine blades and electrical equipment. As noted, the  
32 Council found that the certificate holder satisfied this standard in the *Final Order on the*  
33 *Application*, and in order to maintain compliance, Council implemented a number of conditions  
34 in the site certificate (Conditions IV.I.1 to IV.I.8). Amongst other requirements, these conditions  
35 require the certificate holder to lock turbine doors and to not install exterior ladders or access  
36 to the turbine blades, as well as to fence and lock substations, in order to exclude members of  
37 the public from the equipment. All conditions would continue to apply to the facility, as  
38 amended.

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<sup>87</sup> Final Order on the Application, Section IV.I.

1 In response to RFA No. 3, Oregon Department of Aviation submitted two comment letters, the  
2 first upon receiving the December RFA No. 3 and the second in June after reviewing the  
3 supplemental information report.<sup>88</sup> The first letter requested that existing site certificate  
4 Condition IV.I.7 remain with no changes. Existing site certificate Condition IV.I.7 requires that  
5 before beginning construction, the certificate holder shall submit to the Federal Aviation  
6 Administration (FAA) and the Oregon Department of Aviation a Notice of Proposed  
7 Construction or Alteration identifying the proposed final locations of the turbines and related  
8 or supporting facilities and shall provide a copy of this notice to the Department. The second  
9 letter also requests that Condition IV.I.7 remain. In addition, the second comment letter from  
10 Department of Aviation notes that RFA No. 3 requests the ability to use wind turbines up to  
11 518 feet in total height. Department of Aviation's comment letter stated that by rule, any  
12 object over 500 feet in height from the ground is considered an obstruction. The Department of  
13 Aviation requested that if the facility selects to use turbines over 500 feet in height, that the  
14 Council require an airspace study and analysis to determine if the turbines constitute a hazard  
15 to air navigation. Department of Aviation noted that this study would take into consideration  
16 any potential impacts in and around the Wasco State Airport as well as aircraft flying in  
17 proximity to the study area.<sup>89</sup>

18 The certificate holder responded to the Aviation letter in a comment-response memo sent to  
19 the Department. In it, Golden Hills acknowledges that the FAA has issued Determinations of No  
20 Hazard for the facility using turbines up to 450 feet in height, and states that in order to make  
21 that determination, an airspace study and analysis was conducted. The certificate holder  
22 acknowledges that it will need to resubmit materials to the FAA for another airspace study and  
23 analysis if it chooses to use turbines greater than 450 feet high.<sup>90</sup>

24 Because the existing site certificate Condition IV.I.7 requires that before beginning  
25 construction, the certificate holder shall submit to the FAA and the Oregon Department of  
26 Aviation a Notice of Proposed Construction or Alteration identifying the proposed final  
27 locations of the turbines and related or supporting facilities and shall provide a copy of this  
28 notice to the Department, and because the certificate holder has acknowledged that it will  
29 need to conduct an airspace study and analysis if it chooses turbines taller than 450 feet, the  
30 Department recommends no changes to the existing site certificate conditions.

31 Based on the findings presented here, the Department recommends the Council continue to  
32 find that the certificate holder can design, construct, and operate the facility, as amended, to  
33 exclude members of the public from close proximity to the turbine blades and electrical  
34 equipment.

35 Subsection (2) of the standard requires the certificate holder to demonstrate that it can design,  
36 construct, and operate the facility to preclude structural failure of the tower or blades that  
37 could endanger the public safety, and to have adequate safety devices and testing procedures  
38 to warn of impending failure and to minimize the consequences of such failure. The Council  
39 found the facility to be in compliance with subsection (2) in the original *Final Order on the*

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<sup>88</sup> Oregon Department of Aviation, comments received by ODOE January 7, 2016 and June 2, 2016.

<sup>89</sup> Oregon Department of Aviation, June 2, 2016.

<sup>90</sup> Golden Hills, Applicant Response, June 10, 2016.

1 *Application.* To maintain compliance, Council implemented a number of conditions in the site  
2 certificate, including requirements for safety devices and testing procedures. In RFA No. 3, the  
3 certificate holder states that the wind turbines would be from a major manufacturer, and  
4 would be installed per manufacturer’s requirements, in compliance with existing Condition  
5 IV.I.1. The certificate holder further states that all turbines would have automated cutoff  
6 devices to shut down when wind is very strong, and that all turbines would be inspected per  
7 manufacturer’s specifications. Furthermore, all turbines would have vibration sensing  
8 equipment that will shut down the turbines if abnormal vibrations are detected, in accordance  
9 with Condition IV.I.2. These features, in compliance with the site certificate condition,  
10 demonstrate that the facility as amended can be designed, constructed, and operated in  
11 compliance with this standard.

12 All existing conditions in the site certificate would continue to apply to the facility as amended.  
13 Based on the analysis presented here, the Department recommends the Council continue to  
14 find the facility in compliance with Public Health and Safety Standards for Wind Energy  
15 Facilities.

16 **Conclusion of Law**

17 Based on the assessment above, and subject to compliance with the site certificate conditions,  
18 the Department recommends that the Council find that the facility, as amended, continues to  
19 comply with the Council’s Public Health and Safety Standards for Wind Energy Facilities.

20 **IV.C.2 Cumulative Effects Standards for Wind Energy Facilities: OAR 345-024-0015**

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

- 24 (1) *Using existing roads to provide access to the facility site, or if new roads are needed,*  
25 *minimizing the amount of land used for new roads and locating them to reduce adverse*  
26 *environmental impacts.*
- 27 (2) *Using underground transmission lines and combining transmission routes.*
- 28 (3) *Connecting the facility to existing substations, or if new substations are needed,*  
29 *minimizing the number of new substations.*
- 30 (4) *Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in*  
31 *areas near turbines or electrical equipment.*
- 32 (5) *Designing the components of the facility to minimize adverse visual features.*
- 33 (6) *Using the minimum lighting necessary for safety and security purposes and using*  
34 *techniques to prevent casting glare from the site, except as otherwise required by the*  
35 *Federal Aviation Administration or the Oregon Department of Aviation*

36 **Findings of Fact**

37 The Cumulative Effects Standard for Wind Energy Facilities requires the certificate holder to use  
38 practicable measures in designing and constructing the facility to reduce the cumulative

1 adverse environmental effects in the vicinity of the facility. The standard does not require the  
2 Council to find that the facility would have no cumulative environmental impacts; however, the  
3 Council must find that the applicant is able to use “practicable measures” in the design and  
4 construction of the facility to reduce the cumulative effects.

5 The Council addressed the Cumulative Effects Standard for Wind Facilities in section IV.J of the  
6 *Final Order on the Application* and found that the proposed design and construction of the  
7 facility would be in compliance with the standard.

8 The first and second amendments to the site certificate extended the construction deadlines  
9 and did not impact compliance with the Cumulative Effects Standard for Wind Facilities. As a  
10 result, the *Final Order on Amendment No. 1* and *Final Order on Amendment No. 2* relied on the  
11 analysis in the *Final Order on the Application*.

12 The certificate holder provided an assessment of compliance with the Cumulative Effects for  
13 Wind Facilities standard in RFA No. 3.<sup>91</sup>

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

17 The Council previously found the facility to be in compliance with this provision of the standard  
18 as the certificate holder would use existing roads to access the facility site, and would only  
19 construct access roads as necessary to reach the turbine locations, substation, and other  
20 related and supporting facilities. Roads would only be as long and wide as necessary. RFA No. 3  
21 would reduce the total amount of turbines at the facility from what was previously approved by  
22 Council, and would thus reduce the number of turbine access roads accordingly, and as such,  
23 the certificate holder states that the total amount of permanent disturbance associated with  
24 the facility is expected to reduce from the previously approved 141 acres to approximately 132  
25 acres. However, to accommodate delivery of potentially larger turbine blades and components,  
26 the certificate holder states the temporary disturbance associated with access roads is  
27 expected to increase by 4 feet, from the previously considered 36 feet width to 40 feet width,  
28 and the total estimated temporary disturbance would increase from the previously approved  
29 1,055 acres to 1,069 acres.<sup>92</sup> These disturbances would be temporary, and existing mandatory  
30 site certificate condition VIII.11 requires that all areas disturbed by construction be restored  
31 and landscaped in a manner compatible with the surroundings and the proposed use, thus  
32 mitigating the increased temporary impact of the amended facility.

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

34 The Council previously found the facility to be in compliance with this provision of the standard,  
35 and the amendments taken under RFA No. 3 would further reduce the facility’s cumulative  
36 impact on this provision by reducing the total length of new transmission line to be constructed  
37 for the facility, and by using the existing Hay Canyon transmission line for part of the facility’s

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<sup>91</sup> RFA No. 3, Section 5.2.2.

<sup>92</sup> RFA No. 3, Section 5.2.2, Supplemental Information Report, page 3, and Supplemental Information Report, Attachment 3.

1 transmission route to connect to the BPA grid. The certificate holder states that the changes in  
2 RFA No. 3 do not affect the finding that the facility would use underground transmission lines  
3 where possible.<sup>93</sup>

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

6 The Council previously found the facility to be in compliance with this provision of the standard  
7 when, at the time of the original application, the facility proposed to develop two substations.  
8 As part of the proposed changes with RFA No. 3, the facility would reduce the number of new  
9 substations from two to one, thus further reducing any cumulative effects in compliance with  
10 this standard.<sup>94</sup>

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

13 The Council previously found the facility to be in compliance with this provision of the standard.  
14 The proposed amendments as part of RFA No. 3 would reduce the total number of turbines  
15 used at the facility, but would use larger turbines with a wider rotor diameter. The net effects  
16 of this turbine design change, as stated by the certificate holder, is a reduction in the total rotor  
17 sweep area by approximately 19 percent, from 1.93 million square meters to 1.56 million  
18 square meters.<sup>95</sup>

19 As was described elsewhere in this proposed order, the Department recommends the Council  
20 find that the facility would maintain compliance with the Council's Fish and Wildlife Habitat  
21 standard and the Threatened and Endangered Species standard. Existing site certificate  
22 conditions, with changes as described in the respective sections of this proposed order, would  
23 continue to apply to the facility, including Conditions IV.L.1 to IV.L.3, related to compliance with  
24 the Threatened and Endangered Species standard, and Conditions IV.M.1 to IV.M.11, related to  
25 compliance with the Fish and Wildlife Habitat standard. The facility has been sited to reduce  
26 impacts to productive fish and wildlife habitat. As described in the Fish and Wildlife Habitat  
27 standard, and shown in Attachment 5 of the supplemental information report, of the 132 acres  
28 of anticipated permanent facility impacts, 126.7 acres would be to Category 6 habitat. Of the  
29 1,069 acres of temporary facility impacts, 1,002 acres would be to Category 6 habitat.<sup>96</sup>

30 As described in the Fish and Wildlife Habitat standard section of this proposed order, Irene  
31 Gilbert/FGRV commented that the Council needs to consider the facility's potential impact to  
32 bats under the Cumulative Effects for Wind Facilities standard.<sup>97</sup> As noted, the Council has  
33 previously found the facility to be in compliance with this standard, and RFA No. 3 would  
34 reduce the number of turbines and total rotor sweep area, thus reducing the potential impact  
35 to bats and other wildlife species. The facility is sited in an area that is mostly cultivated  
36 agricultural wheat fields, and as stated in ODFW's May 26, 2016 comment letter, the facility is

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<sup>93</sup> RFA No 3, Section 5.2.2.

<sup>94</sup> Id.

<sup>95</sup> RFA No. 3, Section 1.3.2 and Section 5.2.2.

<sup>96</sup> Supplemental Information Report, Attachment 5.

<sup>97</sup> Irene Gilbert/FOGRV Comment Letter, Comment Number 8.

1 thus appropriately sited and designed to avoid impacting intact wildlife habitats as is  
2 recommended by the macro-siting recommendations of the Oregon Columbia Plateau  
3 Ecoregion Wind Energy Siting and Permitting Guidelines. Finally, as described in the Fish and  
4 Wildlife Habitat standard section, the facility would have to implement a WMMP, which  
5 includes provisions for monitoring bat deaths and if established thresholds are exceeded, may  
6 require additional mitigation.

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

8 In the *Final Order on the Application*, Council found the facility to be in compliance with this  
9 standard, and that the facility would minimize adverse visual features. The existing conditions  
10 of the site certificate would continue to apply to the amended facility, including conditions  
11 IV.G.1 to IV.G.3, which were imposed by Council to reduce facility impacts related to the Scenic  
12 Resources standard, and, amongst other components, require the certificate holder to coat and  
13 design the facility turbines and O&M building to blend with the surrounding landscape, and to  
14 use minimal lighting as required by FAA guidelines. The amended facility would use fewer  
15 turbines, up to a maximum of 125, compared to 267, and would reduce the total amount of  
16 overhead transmission line including removing the entirety of the 500 kV line, compared to the  
17 previously approved facility. Finally, as is shown in Section IV.A.10 of this proposed order, the  
18 Department recommends the Council continue to find the facility, as amended, complies with  
19 the Scenic Resources standard. Based on these conclusions and conditions, the facility would be  
20 required to design the facility to minimize adverse visual features.

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

24 As noted above, in the *Final Order on Application*, the Council found the facility to be in  
25 compliance with this subsection of the cumulative effects standard for wind energy facilities.<sup>98</sup>  
26 Existing site certificate Condition IV.G.3 requires the facility turbines to have only the minimum  
27 lighting required by the FAA, and the substation and O&M facilities to have lighting that is  
28 shielded or directed downward. These conditions would continue to apply to the amended  
29 facility.

30 As demonstrated in these findings, the Department recommends the Council continue to find  
31 that that facility, as amended, complies with the Cumulative Effects Standard for Wind Energy  
32 Facilities. The Department recommends that all conditions of the existing site certificate related  
33 to this standard continue to apply.

34 **Conclusion of Law**

35 The Department recommends that the Council conclude that, subject to the existing site  
36 certificate conditions, the facility, as amended, complies with the Council's siting Standards for  
37 Wind Energy Facilities.

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<sup>98</sup> Final Order on Application, Section IV.J.

1 **IV.C.3 Siting Standards for Transmission Lines: OAR 345-0240-0090**

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

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

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

10 **Findings of Fact**

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

16 The Council addressed the Siting Standards for Transmission Lines in section IV.K of the *Final*  
17 *Order on the Application*, and found the facility to be in compliance with the standard. In the  
18 *Final Order on the Application*, the Council found that the certificate holder could construct and  
19 operate the proposed transmission lines so that alternating current electric fields do not exceed  
20 9 kV per meter at one meter above the ground surface in areas accessible to the public. The  
21 Council further found that the certificate holder could design, construct and operate the  
22 proposed transmission lines so that induced currents resulting from the transmission lines  
23 would be as low as reasonably achievable.<sup>99</sup>

24 The first and second amendments to the site certificate to extend the construction deadlines  
25 did not impact the safety hazards associated with electric fields around transmission lines. As a  
26 result, the *Final Order on Amendment No. 1* and *Final Order on Amendment No. 2* relied on the  
27 analysis in the *Final Order on the Application*.

28 The changes as part of RFA No. 3 would remove the 500 kV transmission line, and extend the  
29 230 kV transmission line for a total new construction length of approximately 5 miles. The  
30 certificate holder states in RFA No. 3, Section 5.2.3, that the changes to the facility as part of  
31 the requested amendment would not affect the Council's previous findings of compliance with  
32 subsection (1) of this standard, and that the certificate holder would continue to be able to  
33 design, construct, and operate the transmission line so that alternative current electric fields do  
34 not exceed 9 kV per meter at one meter above ground surface in areas accessible to the public.  
35 In the original site certificate application, Exhibit AA, and reported in the original *Final Order on*  
36 *Application*, it is stated that the 230 kV transmission line would not exceed 2.4 kV per meter at  
37 one meter above ground at the center of the 150-foot right of way, and would decrease to 0.4  
38 kV per meter at one meter above ground at a distance of 75 feet from the center line of the

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<sup>99</sup> Final Order on Application, Section IV.K.

1 right of way.<sup>100</sup> These values are well below the 9 kV per meter at one meter above the ground  
2 standard. The amended facility would eliminate the previously approved 500 kV transmission  
3 line. The 230 kV transmission line would maintain compliance with the standard, as reviewed  
4 and approved previously by Council.

5 Subsection (2) of the standard requires the Council to find that an applicant or certificate holder  
6 can design, construct, and operate proposed transmission lines so that induced currents will be  
7 as low as reasonably achievable. The Council previously found that the facility would comply  
8 with this standard, as the certificate holder would provide appropriate grounding of fences and  
9 metal-roofed buildings in order to reduce the risk of induced current.<sup>101</sup> The certificate holder  
10 states in RFA No. 3 that there are no changes that would affect the facility's ability to comply  
11 with subsection (2) of the standard and maintain induced current as low as reasonable  
12 achievable.<sup>102</sup> The Council found in the *Final Order on Application* that the facility would be  
13 built to National Electric Safety Code standards, reducing risk of induced current. Because the  
14 National Electric Safety Code standards have been updated since the *Final Order on the*  
15 *Application*, and are reflected in OAR 345-027-0023(4)(a), the Department recommends the  
16 Council impose the following condition, as amended, in the site certificate:

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

19 (a) The certificate holder shall design, construct and operate the transmission line in  
20 accordance with the requirements of the 2012 Edition of the National Electrical Safety  
21 Code ~~2007 edition~~ approved on June 3, 2011, by the American National Standards  
22 Institute, and

23 The Council also imposed site certificate Condition IV.K.1, requiring the underground 34.5 kV  
24 collector lines to be buried at a minimum depth of 3 feet. This condition would continue to  
25 apply to the facility as amended by RFA No. 3.

26 Based on the findings presented here, the Department recommends the Council continue to  
27 find that the facility, as amended, complies with the Siting Standards for Transmission Lines.  
28 The Department recommends that all conditions of the existing site certificate and conditions,  
29 as amended, continue to apply.

### 30 **Conclusion of Law**

31 For the reasons discussed above, and subject to compliance with the existing and amended  
32 conditions in the site certificate, the Department recommends that the Council find that the  
33 facility, as amended, complies with the Council's Siting Standards for Transmission Lines.

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<sup>100</sup> Application for Site Certificate, Exhibit AA, page AA-5, as referenced in the *Final Order on Application*, Section IV.K.

<sup>101</sup> Final Order on Application, Section IV.K.

<sup>102</sup> RFA No. 3, Section 5.2.3.



1 **IV.D Other Applicable Regulatory Requirements Under Council Jurisdiction**

2 Under ORS 469.503(3) and the Council’s General Standard of Review (OAR 345-022-0000), the  
3 Council must determine whether the facility complies with “all other Oregon statutes and  
4 administrative rules..., as applicable to the issuance of a site certificate for the proposed  
5 facility.” In evaluating this amendment, the Council must determine whether the proposed  
6 amendment affects any finding made by the Council in earlier orders.<sup>103</sup> This section addresses  
7 the applicable Oregon statutes and administrative rules that are not otherwise addressed,  
8 including noise control regulations, regulations for removal or fill of material affecting waters of  
9 the state, and regulations for water rights and usage.

10 **IV.D.1 Noise Control Regulations: OAR 340-035-0035**

11 *(1) Standards and Regulations:*

12 \*\*\*

13 *(b) New Noise Sources:*

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

22 \*\*\*

23 **Findings of Fact**

24 The noise control regulations in OAR 340-035-0035 apply to noise associated with operation of  
25 the facility. The Council addressed the Noise Control Regulations in section VI.A.1 of the *Final*  
26 *Order on the Application*. In the original application, to represent the range of turbines that  
27 could be used at the proposed facility, the applicant provided total and octave band sound  
28 power level data for the worst case (loudest) scenario. To ensure that the facility as-built would  
29 comply with the noise regulations, the Council adopted four conditions that required the  
30 certificate holder to provide information to the Department about the turbines selected and  
31 the final design layout before beginning construction. Condition VI.A.1.2 specifically requires  
32 that the certificate holder submit a new noise analysis to the Department prior to construction  
33 that demonstrates that the facility will be in compliance with all relevant noise related  
34 requirements.<sup>104</sup> The Council found that the facility, with conditions, complied with the Noise  
35 Control Regulations.<sup>105</sup>

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<sup>103</sup> OAR 345-027-0070(10)(c)

<sup>104</sup> The Department is recommending a clerical edit to site certificate condition VI.A.1.2 to clarify that the new noise analysis must be conducted based on the final design layout of the facility.

<sup>105</sup> Final Order on Application, Section VI.A.1.

1 The first and second amendments to the site certificate to extend the construction deadlines  
2 did not impact compliance with the Noise Control Regulations. As a result, the *Final Order on*  
3 *Amendment No. 1* and *Final Order on Amendment No. 2* relied on the analysis in the *Final Order*  
4 *on the Application*.

5 The certificate holder provided an analysis of compliance with the noise control regulations in  
6 RFA No. 3, Section 6.1. The certificate holder relies upon the Council’s original findings in the  
7 *Final Order on Application*, including the Council’s site certificate conditions related to noise  
8 compliance, in order to demonstrate that the noise control regulation standard will be satisfied.  
9 As noted above, in the original *Application for Site Certificate*, Golden Hills included a “worst  
10 case” noise modeling assessment to demonstrate compliance, and noted that the final facility  
11 layout and turbine selection was not known at that time. In the *Final Order on Application*, the  
12 Council agreed with this approach, and in order to maintain compliance with the noise control  
13 regulations after the final turbine selection and facility layout is complete, Council imposed site  
14 certificate conditions (specifically condition VI.A.1.2) requiring the certificate holder to  
15 demonstrate that the final facility design and turbine selection will maintain compliance with  
16 the DEQ noise control regulations.<sup>106</sup> The current amendment request would not change the  
17 wind turbine micro-siting corridors, and though the amendment request, if approved, would  
18 allow a different model of turbine to be selected, the certificate holder will still be required to  
19 demonstrate that it maintains compliance with the DEQ noise control regulations as per site  
20 certificate condition VI.A.1.2. The certificate holder notes in RFA No. 3 that there are a number  
21 of compliance paths available to it, including moving turbines within the micro-siting corridor,  
22 selecting different turbine models, or eliminating nonconforming turbines.<sup>107</sup> Existing site  
23 certificate conditions VI.A.1.3 to VI.A.1.4 would also require the certificate holder to implement  
24 a complaint-based monitoring program during facility operations. All existing site certificate  
25 conditions would continue to apply to the facility, as amended.

26 Based on the findings presented here, the Department recommends that the facility as  
27 amended, subject to the existing site certificate conditions, will not exceed the allowable noise  
28 levels under the DEQ noise control regulations.

29 **Conclusion of Law**

30 For the reasons discussed above, and subject to the existing site certificate conditions, the  
31 Department recommends that the Council conclude that the facility, as amended, complies  
32 with the applicable DEQ noise control regulations in OAR 340-035-0035.

33 **IV.D.2 Removal-Fill Law**

34 The Oregon Removal-Fill Law (ORS 196.800 through .990) and Oregon Department of State  
35 Lands (DSL) regulations (OAR 141-085-0005 through 141-085-0090) require a removal-fill  
36 permit if 50 cubic yards or more of material is removed, filled or altered within any “waters of  
37 the state” at the proposed site.<sup>108</sup>

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<sup>106</sup> Id.

<sup>107</sup> RFA No. 3, Section 6.1.

<sup>108</sup> OAR 141-085-0010(225) defines “Waters of this State.” The term includes wetlands and certain other water bodies

1 **Findings of Fact**

2 The Council addressed the removal-fill law in Section VI.A.2 of the *Final Order on the*  
3 *Application*, and found that the facility would not require a removal-fill permit. The first and  
4 second amendments to the site certificate to extend the construction deadlines did not impact  
5 the removal-fill law findings and as a result, the *Final Order on Amendment No. 1* and *Final*  
6 *Order on Amendment No. 2* relied on the analysis in the *Final Order on the Application*.

7 The certificate holder addressed removal-fill requirements in Section 6.2 of RFA No. 3. The  
8 certificate holder states that the amended facility would not affect compliance with the  
9 removal-fill law nor would the facility as amended require a removal-fill permit. The certificate  
10 holder states that prior to construction, it would conduct an updated wetland delineation to  
11 confirm that the final facility design will not have any impacts to jurisdictional waters.<sup>109</sup> As this  
12 is a binding representation by the certificate holder, the Department recommends that the  
13 Council impose a new condition to ensure that an updated wetland delineation is conducted  
14 and that the final design of the facility does not impact jurisdictional waters and does not  
15 require a removal-fill permit.

16 In response to RFA No. 3, DSL asked if the certificate holder had or would provide update  
17 delineation reports for DSL concurrence for the new site boundary areas of the facility.<sup>110</sup> The  
18 Department confirmed with the certificate holder that wetland and waters surveys have not  
19 been conducted for the site boundary additions.<sup>111</sup> Removal-fill permits are included in and  
20 governed by site certificates, and as such, if one is required, it is necessary that it be obtained  
21 through the site certificate process. As such, the Department recommends that the Council  
22 include a new site certificate condition requiring an updated wetland delineation report prior to  
23 construction, including coverage of all areas of temporary and permanent impact. The  
24 recommended condition specifies that if the reports determine that a removal-fill permit is in  
25 fact required to construct and operate the facility, another site certificate amendment would  
26 be necessary.

27 **Removal-Fill Condition 1:** Prior to construction, the certificate holder shall:

- 28 1) Conduct an updated wetlands and waters delineation survey of all areas to be  
29 temporarily or permanently impacted by the facility based on final layout and design.
- 30 2) Submit the delineation survey report to the Department and Oregon Department of  
31 State Lands and receive concurrence of the report from DSL.
- 32 3) Confirm from the results of the delineation survey and DSL concurrence that the facility  
33 will not need a removal-fill permit.
- 34 4) If a removal-fill permit is necessary, file a site certificate amendment request to review  
35 and process the permit request.

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<sup>109</sup> RFA No. 3, Section 6.2.

<sup>110</sup> DSL Comment Email, Heidi Hartman, December 29, 2015.

<sup>111</sup> Golden Hills Information Request response, June 2, 2016.

1 Based on the findings presented here, the Department recommends that the Council find that  
2 the facility will continue to be in compliance with the removal-fill law.

3 **Conclusion of Law**

4 The Department recommends that the Council conclude that the proposed facility, as  
5 amended, will continue to be in compliance with the removal-fill law.

6 **IV.D.3 Water Rights**

7 Under ORS Chapters 537 and 540 and OAR Chapter 690, OWRD administers water rights for  
8 appropriation and use of the water resources of the state. Under OAR 345-022-0000(1), the  
9 Council must determine whether the proposed facility would comply with these statutes and  
10 administrative rules.

11 **Findings of Fact**

12 The Council addressed the Ground Water Act in section VI.A.3 of the *Final Order on the*  
13 *Application*. The Council found that the facility would comply with the Ground Water Act of  
14 1955 and the rules of the Water Resources Department. The first and second amendment to  
15 the site certificates to extend the construction deadlines did not impact compliance with the  
16 requirements of the Ground Water Act of 1955 and Water Resources Department rules. As a  
17 result, the *Final Order on Amendment No. 1* and *Final Order on Amendment No. 2* relied on the  
18 analysis in the *Final Order on the Application*.

19 The certificate holder addressed compliance with the Ground Water Act in Section 6.3 of RFA  
20 No. 3. The certificate holder states that the amendments as part of RFA No. 3 would not change  
21 the estimated quantity of water necessary to construct and operate the facility, nor would it  
22 changes the source of the construction water from municipal sources at the cities of Wasco and  
23 Moro. The certificate holder also states in RFA No. 3 that there would be no change to the  
24 source of water during facility operation, which would come from a new well at the O&M  
25 building.<sup>112</sup>

26 Based on the findings presented here, the Department recommends the Council continue to  
27 find that the facility complies with the Ground Water Act of 1955 and Water Resources  
28 Department rules.

29 **Conclusion of Law**

30 For the reasons discussed above, the Department recommends that the Council conclude that  
31 the facility, as amended, complies with the applicable water rights statutes and regulations.

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<sup>112</sup> Under ORS 537.545(1)(f), a new water right is not required for industrial or commercial use of up to 5,000 gallons per day. The Council found in the Final Order on Application that the Golden Hills facility would not use more than 5,000 gallons per day from the onsite well at the O&M building, and therefore a new water right was not necessary. RFA No. 3 does not request any change to this finding. The provisions of ORS 537.545 require that the owner of the land on which an exempt well is drilled provide to the OWRD a map showing the exact location of the well, as well as pay a recording fee to OWRD. Additionally, ORS 537.765 requires that when a new exempt well is drilled, or an existing well is altered, converted, or abandoned, a well log containing specific information as described in ORS 537.765 must be filed with the Water Resources Commission. The applicant must independently comply with the provisions of ORS 537.454 and ORS 537.765 outside of the site certificate process.

1 **V. GENERAL APPLICATION OF CONDITIONS**

2 The conditions referenced in this proposed order include conditions that are specifically  
3 required by OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023  
4 (Site Specific Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345,  
5 Division 26 (Construction and Operation Rules for Facilities). The conditions referenced in this  
6 proposed order include conditions based on representations in the request for amendment and  
7 the supporting record. The Department recommends that the Council deem these  
8 representations to be binding commitments made by the certificate holder. This proposed  
9 order also includes conditions that the Department recommends that the Council find  
10 necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and  
11 24, or to protect public health and safety.

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

18 The Department recognizes that many specific tasks related to the design, construction,  
19 operation and retirement of the facility would be undertaken by the certificate holder' agents  
20 or contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents  
21 and contractors comply with all provisions of the site certificate.

22 **VI. GENERAL CONCLUSION AND PROPOSED ORDER**

23 The requested amendment No. 3 to the Golden Hills Wind Project site certificate would:

- 24 1. Extend the construction start and completion deadlines by two years;
- 25 2. Change the allowed wind turbine type to be taller and with a larger rotor diameter, and  
26 reduce the maximum number of turbines from 267 to 125;
- 27 3. Modify the related and supporting facilities to eliminate one of two previously approved  
28 substations and the 11-mile, 500 kV transmission interconnection line; relocate the single  
29 remaining substation to a central location within the site boundary and expand the  
30 substation area from 2 to 5 acres; modify the alignment of the previously approved 230 kV  
31 transmission line to run from the single substation to a BPA transmission grid connection  
32 point; increase the height of six meteorological towers from 279 to 312 feet; and expand  
33 the width of temporary access roads from 36 to 40 feet;
- 34 4. Amend the site boundary to remove approximately 2,800 acres of land no longer needed  
35 for the facility; and,
- 36 5. Expand the site boundary by approximately 122.5 acres to allow for construction of two  
37 short segments of 230 kV transmission line.

GOLDEN HILLS WIND PROJECT

1 Based on the findings and conclusions included in this order, the Department recommends that  
2 the Council make the following findings:

- 3 1. The requested amendment No. 3 to the Golden Hills Wind Project site certificate complies  
4 with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS  
5 469.570 and ORS 469.590 to ORS 469.619.
- 6 2. The requested amendment No. 3 to the Golden Hills Wind Project site certificate complies  
7 with the applicable standards adopted by the Council pursuant to ORS 469.501.
- 8 3. The requested amendment No. 3 to the Golden Hills Wind Project site certificate complies  
9 with all other Oregon statutes and administrative rules that were included in and governed  
10 by the original site certificate and are applicable to the amendment of the Golden Hills  
11 Wind Project site certificate.

12 Accordingly, the Department recommends that the Council find that the proposed amendment  
13 complies with the General Standard of Review (OAR 345-022-0000). The Department  
14 recommends that the Council find, based on a preponderance of the evidence on the record,  
15 that the site certificate may be amended as requested.

16 **Proposed Order**

17 The Department recommends that the Council approve Amendment No. 3 and issue an  
18 amended site certificate for the Golden Hills Wind Project, subject to the terms and conditions  
19 set forth above.

20 Issued September 6<sup>th</sup>, 2016

21 The Oregon Department of Energy

22

23

24 By: \_\_\_\_\_

25 Todd R. Cornett, Assistant Director

26 Oregon Department of Energy

27

28 **Attachments**

29 Attachment A: Proposed Amended Golden Hills Wind Project Site Certificate (red-line)

30 Attachment B: Comment Index

31 Attachment C: Raptor Nest Survey Protocol (As Approved in January 2015)

32 Attachment D: Wildlife Monitoring and Mitigation Plan (As Approved in May 2009)

33 Attachment E: Draft Habitat Mitigation and Revegetation Plan (As Approved in May 2009)

34 **Notice of the Right to Appeal**

35 [Text to be added to Final Order]