



# Oregon

Kate Brown, Governor



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December 16, 2020

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RE: Department Determination on Type B Review Amendment Determination Request for Request for Amendment 6 of the Golden Hills Wind Project Site Certificate

Dear Mr. Hutchinson,

The Oregon Department of Energy (Department) received a Type B Review Amendment Determination Request (Type B Review ADR), with preliminary Request for Amendment 6 of the Golden Hills Wind Project Site Certificate (RFA6 or amendment request), on October 1, 2020 from Golden Hills Wind Farm, LLC (certificate holder). The Department received a complete RFA6 on December 16, 2020. Due to changes and additional information provided in the complete RFA6, the evaluation and determination on whether Type B review is justified is based on review and information provided in the complete RFA6. The amendment request seeks Energy Facility Siting Council (Council) approval to:

- 1) extend the construction completion deadline by 18-months (June 18, 2021 to December 31, 2022);
- 2) amend the 6,820 acre micro-siting corridor by adding approximately 534 acres, and removing 87 acres, totaling 7,267 acres, to allow for more direct and/or consolidated routes and reduce overall disturbance and impacts to existing agricultural practices;
- 3) and amend preconstruction conditions to specify applicability based on phased construction; amend 9 conditions imposed under the Council's Historic, Cultural and Archeological standard (amend Conditions GEN-HC-01, PRE-HC-01, PRE-HC-02, PRE-HC-03, CON-HC-01, CON-HC-03, and CON-HC-04; and remove Conditions GEN-HC-02 and CON-HC-02); and amend 1 condition imposed under the Fish and Wildlife Habitat standard (GEN-FW-04).

Based upon review of RFA6, the Department concurs that Type B review is justified, as further evaluated below.

### *Considerations for Determining Whether to Process an Amendment Request as Type B Review*

OAR 345-027-0357(8) provides a non-exhaustive list of factors the Department may consider in determining whether to process an amendment request under Type B review. When evaluating whether Type B review is justified, the Department may consider these factors individually or in combination

along with information provided in the amendment request, if submitted in tandem, as was the case for this review.

The listed factors are evaluated as follows:

*(a) The complexity of the proposed change;*

The Type B Review ADR requests that the Department consider RFA6 to be non-complex because the proposed changes are typical of late-stage development of a wind facility. Specifically, the request to extend the construction completion deadline would help facilitate commercial arrangements for the facility; the request to modify the micro-siting corridor would reduce the overall permanent and temporary disturbance impacts by allowing for shorter and more direct road and collector routes; and, the request to amend site certificate conditions is intended to reduce redundancy and provide clarification.

The Department provides the relevant dictionary definition of “complex” as: not easy to understand or explain: not simple. Even where a proposed change is not technologically complex, there may be complexity in conducting the regulatory applicability review if, for example, it involves a new technology or a type of change that has not previously been subject to significant analysis by the Department or Council. Based on review of RFA6, the Department agrees with the certificate holder and considers the proposed changes not to be complex from a regulatory, technology or explanatory position.

*(b) The anticipated level of public interest in the proposed change;*

The Type B Review ADR suggests that the level of public interest in RFA6 would be minor and in support of the facility, and refers to the fact that during review of RFA5, two public comments were received which were focused on setbacks, protection of viewpoints, and survey areas. The certificate holder asserts that the changes proposed in RFA6 would not result in changes to impacts previously evaluated by Council.

When assessing the public interest factor, the Department considers whether Council proceedings within the last 5 to 7 years for the subject facility included comments raising issues related to the changes proposed. Based on the record of Site Certificate Amendments 2 through 5 (from 2014 to 2018), comments were received from, or on behalf of, 1 or 2 individuals during each proceeding.<sup>1</sup> The scope of the comments ranged from general concerns of wind facility development and noise impacts to specific issues related to reliance of data obtained during the ASC phase of the facility to demonstrate compliance with a Council standard, as was the case in Amendments 2, 3 and 4 in the evaluation of a request for extension of construction deadlines. Based on the extent of previous comments, and the scope of the changes proposed, the Department anticipates a similarly minimal level (1 to 2 comments) of public interest in RFA6.

*(c) The anticipated level of interest by reviewing agencies;*

The Type B Review ADR identifies that there may be reviewing agency interest in the amendment, but that, based on the certificate holder’s preconstruction coordination with reviewing agencies, and the

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<sup>1</sup> GH1AMD2Doc48 Final Order. P. 5-6. GH1AMD3 Final Order. 2017-02-28. P.12. GH1AMD4Doc24 Final Order. P.9. GHAMD5 Final Order on Request for Amendment 5. 2018-10-25. P.12.

fact RFA6 would not result in new types of impacts not previously evaluated by Council, RFA6 would result in a low level of reviewing agency interest.

Based on review of RFA6, in consultation with Oregon Department of Fish and Wildlife, Oregon Department of Geology and Mineral Industries and Sherman County Planning Department, substantive interest from reviewing agencies is not anticipated for this amendment given the existing site certificate and record for the facility, and evaluation of impacts as presented in RFA6. Therefore, the Department agrees with the certificate holder and concludes a low level of reviewing agency interest in RFA6.

*(d) The likelihood of significant adverse impact;*

The Type B Review ADR requests that the Department consider that there are no significant adverse impacts from the proposed changes in RFA6. Of the changes proposed in RFA6, the change in micrositing area would be most likely to result in new resources or impacts that may not have been evaluated in a previous Council order. In RFA6, the certificate holder proposes to modify the micrositing corridor to include 534 new acres, adjacent to areas throughout the micrositing corridor within the approved site boundary, to allow additional flexibility in siting of access roads, underground collector lines, and temporary disturbance and laydown areas.<sup>2</sup> The existing micrositing corridor includes 900-foot corridors around wind turbines and wind turbine strings and does not include related or supporting facilities.

Based on review of RFA6, including desktop and field survey results within the proposed new micrositing corridor for habitat and wildlife (June 6-10, 2020); cultural, historic and archeological resources (June 1-5, and July 27-28, 2020); and wetlands and other waters (June 15-18, 2020 and July 6 and 13, 2020), additional wetlands, other waters of the state and historic/archeological resources were identified. However, based on previous identification of similar resources, the site certificate contains numerous conditions that would apply to these resources, including Condition PRE-FW-01 which requires habitat mitigation and Condition PRE-CJ-02 which prohibits more than 2 acres of impacts to wetlands or other waters without obtaining a removal-fill permit from Oregon Department of State Lands.

As noted above, RFA6 proposes to amend and remove several conditions imposed under the Council's Historic, Cultural and Archeological Resources standard, including modifying the setback or buffer distance from 5 of 22 new and previously identified resources, from 200 to 15 feet. The proposed change is based on additional subsurface investigation completed to inform a more appropriate buffer distance for the resource while maintaining impact avoidance. The other proposed condition modifications provide clarifying language or remove reference to specificity, replaced with details referred to in the Cultural Resource Mitigation Plan. In addition, RFA6 proposes to amend Condition GEN-FW-04 to modify a requirement that the 230 kV transmission line be designed with anti-perching devices, to be replaced with a requirement to instead use spiral markers where the transmission line spans Grass Valley Canyon and current design practices recommended by the Avian Power Line Interaction Committee. To evaluate whether the certificate holder's proposed site certificate condition changes would result in significant adverse impacts, an evaluation of the language changes is presented in Table 1 below.

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<sup>2</sup> OAR 345-001-0010(32) defines "micrositing corridor" as "a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.

**Table 1: Department’s Evaluation of Certificate Holder’s Proposed Condition Changes**

Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
GEN-HC-01	<p>Prior to and during construction, the certificate holder shall ensure that construction personnel receive training from a cultural resources specialist on how to identify sensitive historic, cultural, and archeological resources present onsite and on measures to avoid accidental damage to identified resource sites. Records of such training must be maintained onsite during construction, and made available to the Department upon request.</p>	<p>Prior to and during construction, the certificate holder shall ensure that construction personnel receive training from a cultural resources specialist on how to identify sensitive historic, cultural, and archeological resources <u>that could be inadvertently uncovered during construction, and on measures to avoid accidental damage to such resources present onsite and on measures to avoid accidental damage to identified resource sites.</u> Records of such training must be maintained onsite during construction, and made available to the Department upon request.</p>	<p>Certificate holder requests that the condition be amended for clarification. The Department considers the modified language to maintain intent of existing condition and that it would not result in a significant adverse impact.</p>
GEN-HC-02	<p>Prior to and during construction, “no access” buffers shall be identified on construction plans and temporarily demarcated in the field if work is planned within 200 feet of known cultural resources that require buffers. The facility Environmental Inspector shall monitor flagged “no access” buffers around archeological sites during construction to prevent accidental damage to cultural resources. These flags or markers shall not be moved or removed during construction activities, and construction personnel shall be advised of these restrictions.</p>	<p><del>Prior to and during construction, “no access” buffers shall be identified on construction plans and temporarily demarcated in the field if work is planned within 200 feet of known cultural resources that require buffers. The facility Environmental Inspector shall monitor flagged “no access” buffers around archeological sites during construction to prevent accidental damage to cultural resources. These flags or markers shall not be moved or removed during construction activities, and construction personnel shall be advised of these restrictions.</del></p>	<p>Certificate holder requests removal of the condition because it was intended to apply to unevaluated or partially evaluated resources, which has been completed; the certificate holder proposes to modify the buffer distance from 200 to 15 feet for 5 of 22 resources where disturbance may occur in proximity and is reflected in the CRMP rather than in a condition in order to be specific to the resource (buffer would continue to apply to the other resources). Department considers that removal of the condition and incorporation of appropriate buffers in</p>

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Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
			the CRMP would not result in significant adverse impacts.
PRE-HC-01	The certificate holder shall design the facility to avoid impacts to sites 35SH217, 35SH220, GH site 6 (above-ground resources) and 35SH219 and GH Isolate 6.	The certificate holder shall design the facility to avoid impacts to sites <u>that have been identified by surveys and recommended to be eligible, unevaluated for listing on the National Register of Historic Places (NRHP), or archeological sites and objects under ORS 358.905(1)(a) and (c), as presented in the CRMP, unless certificate holder obtains the required archeological permit(s) from SHPO. Certificate holder shall identify the sites on the map provided to the Department under PRE-HC-03. 35SH217, 35SH220, GH site 6 (above-ground resources) and 35SH219 and GH Isolate 6.</u>	Certificate holder requests the condition language be amended to remove specificity to resource name, establish applicability of avoidance, and incorporate a potential archeological permit. The Department considers that, with the proposed changes (shown in red), the condition would continue to provide the same level of protection to resources and would not result in significant adverse impacts.
PRE-HC-02	At least 45 days prior to construction, the certificate holder shall prepare a Cultural Resource Management Plan (the “CRMP”) and shall submit the CRMP to the Department and State Historic Preservation Office (the “SHPO”) for review. The Department must approve the CRMP, in consultation with SHPO, prior to construction. The CRMP shall at a minimum include: (a) Specific protocols and procedures for protecting known cultural resources including imposing a 30-meter buffer and designating as a “no-work zones,” around sites 35SH215, 35SH216, 35SH221, and to the sites identified in Condition V.B.1:	At least 45 days prior to construction, the certificate holder shall prepare a Cultural Resource Management Plan (the “CRMP”) and shall submit the CRMP to the Department and State Historic Preservation Office (the “SHPO”) for review. The Department must approve the CRMP, in consultation with SHPO, prior to construction. The CRMP shall at a minimum include: (a) <u>Identification of each resource</u> and specific protocols and procedures for protecting known <u>NRHP-eligible and unevaluated</u> cultural resources including imposing a 30-meter buffer and designating as a “no-work zones,” around sites <u>mapped under PRE-HC-</u>	Certificate holder requests condition language be modified to be consistent with applicable buffer distance and list of resources fully evaluated. The Department considers that the condition changes would maintain the same level of resource protection, with the Department’s recommended changes (shown in red) because the CRMP has been amended with additional management measures for each of the 22 previous and newly identified resources.

**Table 1: Department’s Evaluation of Certificate Holder’s Proposed Condition Changes**

Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
	<p>35SH217, 35SH220, GH site 6 (above ground resource), 35SH219 and GH Isolate 6. Both the buffer and no work zones apply to cultural resources, including any additional archeological sites and possible human remains accidentally discovered during construction. The CRMP shall identify how protocols will follow State laws and rules at ORS 358.905-961, ORS 390.235, OAR 736-051-0090 and ORS 97.740-760 as in effect on the date of this site certificate,, The certificate holder shall submit the CRMP to the State Historic Preservation Office (the “SHPO”) for concurrence and shall provide to the Department documentation confirming SHPO concurrence prior to start of construction.</p> <p>(b) Protocols and procedures for responding to accidental discovery of cultural resources during operations and ongoing maintenance activities.</p>	<p><u>01, and archeological sites and objects under ORS 358.905(1)(a) and (c).</u> <del>35SH215, 35SH216, 35SH221, and to the sites identified in Condition V.B.1: 35SH217, 35SH220, GH site 6 (above ground resource), 35SH219 and GH Isolate 6. Both the buffer and no work zones apply to cultural resources, including any additional archeological sites and possible human remains accidentally discovered during construction. The CRMP shall identify how protocols will follow State laws and rules at ORS 358.905-961, ORS 390.235, OAR 736-051-0090 and ORS 97.740-760 as in effect on the date of this site certificate,, The certificate holder shall submit the CRMP to the State Historic Preservation Office (the “SHPO”) for concurrence and shall provide to the Department documentation confirming SHPO concurrence prior to start of construction.</del></p> <p>(b) Protocols and procedures for responding to <u>inadvertent</u> accidental discovery of cultural resources during operations and ongoing maintenance activities.</p>	
PRE-HC-03	<p>Before beginning construction of any phase of the facility, the certificate holder shall provide to the Department a map showing the final design locations of all components of that phase of the facility and areas that would be</p>	<p>Before beginning construction of any phase of the facility, the certificate holder shall provide to the Department a <u>confidential</u> map showing the final design locations of all components of that phase of the facility, <del>and</del> areas that would be</p>	<p>Certificate holder requests that the condition be amended for clarification because there have been multiple surveys and reports submitted, not limited to the Archeological Inventory</p>

**Table 1: Department’s Evaluation of Certificate Holder’s Proposed Condition Changes**

Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
	temporarily disturbed during construction, and also showing the areas surveyed by Tetra Tech in preparing the Archeological Inventory for Golden Hills Wind Energy Development included in the Application for a Site Certificate as Attachment S-1. If there are any additional areas where ground-disturbing activities will occur that were not part of the original facility area, the certificate holder shall notify the Department and SHPO to determine whether additional surveys or avoidance measures are necessary.	temporarily disturbed during construction, <del>and</del> areas that were not included in <del>pedestrian-level ground</del> cultural resource surveys, and known cultural resources within the siting corridors; <del>and also showing the areas surveyed by Tetra Tech in preparing the Archeological Inventory for Golden Hills Wind Energy Development included in the Application for a Site Certificate as Attachment S-1.</del> If there are any additional areas where ground-disturbing activities will occur that were not part of the <u>prior pedestrian level ground</u> original facility area surveyed by Project-related cultural resources surveys, the certificate holder shall notify the Department and SHPO to determine whether additional surveys or avoidance measures are necessary.	referenced. The Department considers the revised language to be clarifying in its intent, without removal of any previous protection, and would not result in significant adverse impacts.
CON-HC-01	During construction, if any cultural resources are discovered, all work at that location shall cease immediately and the certificate holder shall notify the Department and SHPO to determine whether it is necessary to have an archeologist travel to the worksite and assess the discovery or monitor construction activities.	<u>During construction, the certificate holder shall implement the Cultural Resource Management Plan (“CRMP”) developed under PRE-HC-02, including all inadvertent discovery protocols and procedures specified in the CRMP if any cultural resources are discovered, all work at that location shall cease immediately and the certificate holder shall notify the Department and SHPO to determine whether it is necessary to have an archeologist travel to the worksite and assess the discovery or monitor construction activities.</u>	Certificate holder requests to amend the condition for clarification. Based on review of the language, it is redundant and/or reflected in the CRMP, and would not result in significant adverse impacts.
CON-HC-02	During construction, the certificate holder shall ensure that construction personnel cease all	<del>During construction, the certificate holder shall ensure that construction personnel cease all</del>	Certificate holder requests that the condition be deleted due to redundancy

**Table 1: Department’s Evaluation of Certificate Holder’s Proposed Condition Changes**

Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
	<p>ground disturbing activities in the immediate area if any archaeological or cultural resources are found during construction of the facility until a qualified archaeologist can evaluate the significance of the find. No construction personnel will be allowed in the discovery area except for facility management in consultation with the SHPO. The certificate holder shall notify the Department and the SHPO of the find. If the SHPO determines that the resource is significant, the certificate holder shall make recommendations to the Council for mitigation, including avoidance or data recovery, in consultation with the Department, the SHPO, the appropriate Oregon tribes and other appropriate parties. The certificate holder shall not restart work in the affected area until the certificate holder has demonstrated to the Department that it has complied with State archaeological protection and archaeological permit laws in coordination with the SHPO.</p>	<p><del>ground disturbing activities in the immediate area if any archaeological or cultural resources are found during construction of the facility until a qualified archaeologist can evaluate the significance of the find. No construction personnel will be allowed in the discovery area except for facility management in consultation with the SHPO. The certificate holder shall notify the Department and the SHPO of the find. If the SHPO determines that the resource is significant, the certificate holder shall make recommendations to the Council for mitigation, including avoidance or data recovery, in consultation with the Department, the SHPO, the appropriate Oregon tribes and other appropriate parties. The certificate holder shall not restart work in the affected area until the certificate holder has demonstrated to the Department that it has complied with State archaeological protection and archaeological permit laws in coordination with the SHPO.</del></p>	<p>with the requirements of the CRMP, imposed under Condition CON-HC-02. Based on review of the CRMP, the Department agrees and recommends that, because there would be no change in protection to resources from condition removal and would not result in significant adverse impacts.</p>
CON-HC-03	<p>If any intact physical evidence of the trail is discovered that was not previously identified, the certificate holder shall avoid any disturbance to the intact segments by redesign, reengineering or restricting the area of construction activity. The certificate holder shall promptly notify the Department and the SHPO of the discovery. The certificate holder</p>	<p><u>During construction, the certificate holder shall ensure that construction personnel are instructed on the location of the mapped alignment of the Oregon Trail, per Condition GEN-HC-01.</u> If any intact physical evidence of the <del>trail</del> Oregon Trail is discovered that was not previously identified, the certificate holder shall avoid any disturbance to the intact segments by</p>	<p>Certificate holder requests to amend the condition for clarification. Based on review of the language, intended to protect the Oregon Trail, the Department considers the language to be clarifying in its intent, without removal of any previous protection, and</p>



**Table 1: Department’s Evaluation of Certificate Holder’s Proposed Condition Changes**

Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
	shall consult with the Department and with the SHPO to determine appropriate mitigation measures.	redesign, reengineering or restricting the area of construction activity. The certificate holder shall promptly notify the Department and the SHPO of the discovery <u>and follow procedures for inadvertent discoveries outlined in the CRMP.</u> The certificate holder shall consult with the Department and with the SHPO to determine appropriate mitigation measures.	would not result in significant adverse impacts.
CON-HC-04	Upon completion of construction, the certificate holder shall consult with the Oregon-California Historic Trails Advisory Council regarding the appropriate content of an interpretive sign. After such consultation, the certificate holder shall place in a publicly accessible location a sign giving notice of the historic background of the facility site and surrounding areas.	<del>Upon completion of</del> Within three years of construction <del>completion</del> , the certificate holder shall <del>consult with the Oregon-California Trails Association Historic Trails Advisory Council regarding the appropriate content of an interpretive sign. After such consultation, the certificate holder shall</del> <u>place an interpretive sign on the historic background of the facility site and surrounding areas</u> in a publicly accessible location. <u>The certificate holder shall consult with the Department and Sherman County regarding the content of the interpretative sign. a sign giving notice of the historic background of the facility site and surrounding areas.</u>	Certificate holder requests that the condition be revised to remove reference to consultation with the Oregon-California Historic Trails Advisory Council because the Council no longer exists, and replace with consultation with the Department and Sherman County. Based on review of the Oregon-California Historic Trails website, the Department affirms the representation and agrees that consultation with the Department and County, because the Oregon Trail is a Goal 5 resource, is an adequate alternative, and would not result in significant adverse impacts.
GEN-FW-04	The certificate holder shall design and construct all aboveground transmission line support structures following the practices suggested by the Avian Powerline Interaction Committee (APLIC 2006; APLIC 2012) and shall install anti-perching devices on transmission pole tops and	The certificate holder shall design and construct all aboveground transmission line support structures following the practices suggested by the Avian Powerline Interaction Committee (APLIC 2006; APLIC 2012) and <u>install spiral markers over Grass Valley Canyon shall install</u>	Certificate holder request that the condition be revised to remove a requirement to install perch diverters on 230 kV transmission line structures because it is inconsistent with APLIC design recommendations. Based on

**Table 1: Department’s Evaluation of Certificate Holder’s Proposed Condition Changes**

Condition No.	Existing Condition	Requested Amended Condition	Department Evaluation of Requested Change
	cross arms where the poles are within the site or are located within one-quarter mile of any wind turbine.	<del>anti-perching devices on transmission pole tops and cross arms where the poles are within the site or are located within one-quarter mile of any wind turbine.</del>	consultation with ODFW, the Department agrees that the replacement with perch diverter with spiral markers provides the same, if not better, level of protection, and would not result in significant adverse impacts.

Based on the Department’s review of RFA6, the proposed changes would minimize impacts to agricultural lands and provide clarification and consistent level of protection to new and previously identified cultural, historic and archeological resources and avian species. Therefore, the Department agrees with the certificate holder’s assertion that there is little or no likelihood of significant adverse impacts from changes proposed in RFA6.

(e) *The type and amount of mitigation, if any.*

The Type B Review ADR requests that the Department consider the changes proposed in RFA6 not to result in new impacts or require new or different mitigation. For the same reasons identified under OAR 345-027-0357(8)(d), the Department agrees with the certificate holder’s assertion that the proposed changes in RFA6 would not necessitate new or different mitigation under any applicable Council standard.

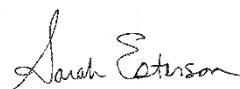
*Amendment Type Determination*

As presented in *Table 1: Type A Review – Factor Assessment*, the Department considers **Type B review appropriate** for RFA6 because it is not considered complex; there is a low level of anticipated reviewing agency and public interest; there is little likelihood of a significant adverse impact; and, there are no substantive changes to required mitigation expected.

<b>Table 1: Type A Review – Factor Assessment</b>		
<b>OAR 345-027-0357(8) Factors</b>	<b>Type A</b>	<b>Type B</b>
(a) The complexity of the proposed change		X
(b) The anticipated level of public interest in the proposed change		X
(c) The anticipated level of interest by reviewing agencies		X
(d) The likelihood of significant adverse impact		X
(e) The type and amount of mitigation, if any		X

If there are any questions or comments, please feel free to contact me per the information below.

Sincerely,



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**cc via e-mail distribution:**

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