

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

In the Matter of Request for Amendment 3 to        )  
Transfer Certificate Holder Ownership of the        )  
Shepherds Flat South Site Certificate            )

---

FINAL ORDER ON  
REQUEST FOR AMENDMENT 3

Issued by

Oregon Department of Energy  
550 Capitol Street NE  
Salem, Oregon 97301-3742

February 2021

**Table of Contents**

**I. INTRODUCTION ..... 1**

    I.A. NAME AND ADDRESS OF CERTIFICATE HOLDER ..... 1

    I.B. NAME AND ADDRESS OF NEW OWNER ..... 1

    I.C. DESCRIPTION OF THE APPROVED FACILITY AND LOCATION..... 2

    I.D. SITE CERTIFICATE HISTORY ..... 4

**II. THE TRANSFER PROCESS ..... 4**

    II.A. DESCRIPTION OF THE TRANSFER REQUEST ..... 4

    II.B. PROCEDURAL HISTORY..... 4

    II.C. COMMENTS ON THE TRANSFER REQUEST..... 5

**III. EVALUATION OF TRANSFER REQUEST AND APPLICABLE COUNCIL STANDARDS..... 5**

    III.A. ORGANIZATIONAL EXPERTISE [OAR 345-022-0010]..... 6

    III.B. RETIREMENT AND FINANCIAL ASSURANCE [OAR 345-022-0050]..... 11

**IV. GENERAL CONCLUSIONS ..... 14**

**V. FINAL ORDER..... 15**

**Figures**

Figure 1: Regional Location of Facility Site Boundary..... 3

**ATTACHMENTS**

Attachment A: Third Amended Site Certificate

1 **I. INTRODUCTION**

2  
3 The Energy Facility Siting Council (Council) issues this order in accordance with Oregon Revised  
4 Statute (ORS) 469.405 and Oregon Administrative Rule (OAR) 345-027-0400 for Request for  
5 Amendment 3 to Transfer Ownership of the Shepherds Flat South Certificate Holder (Request  
6 for Amendment to Transfer or RFA3). This order addresses a change in the certificate holder  
7 owner; the existing certificate holder, North Horseshoe Bend Wind, LLC, would be maintained.  
8 Specifically, this order addresses a request to transfer certificate holder ownership from  
9 Caithness Northwestern Wind, LLC and Columbia Gorge Wind Acquisition Co, LLC (collectively  
10 referred to as Caithness as the certificate holder owner and parent company) to BEP SF  
11 Holdings, LLC (new owner).

12  
13 Pursuant to OAR 345-027-0400(1), "A request for amendment to a site certificate to transfer  
14 the site certificate is required for a transaction that results in a change in the ownership,  
15 possession or control of the facility or the certificate holder. A "new owner" refers to the  
16 person or entity that will gain ownership, possession or control of the facility or the certificate  
17 holder."

18  
19 **I.A. Name and Address of Certificate Holder**

20  
21 The certificate holder, certificate holder owner and contact names, as represented in the  
22 existing site certificate, are as follows:

23  
24 *Certificate Holder*

25  
26 North Horseshoe Bend Wind, LLC  
27 565 Fifth Avenue, 29th Floor  
28 New York, NY 10017

29  
30 *Certificate Holder Owner*

31  
32 Vandana Gupta  
33 North Horseshoe Bend Wind, LLC  
34 c/o Caithness Energy, LLC  
35 565 Fifth Avenue, 29th Floor  
36 New York, NY 10017

37  
38 **I.B. Name and Address of New Owner**

39  
40 The new owner and contact name is as follows:

41  
42 Whitney Wilson, Vice President  
43 BEP SF Holdings, LLC

1 c/o Brookfield Renewables U.S.  
2 200 Liberty Street, 14<sup>th</sup> Floor  
3 New York, NY 10281  
4

5 I.C. Description of the Approved Facility and Location  
6

7 Shepherds Flat South is a 290 megawatt (MW) operating wind energy facility with 116 wind  
8 turbines; wind turbine dimensions include a minimum aboveground blade tip clearance of 21.5  
9 meters; rotor diameter and rotor swept area of 127 meters; and, maximum blade tip height of  
10 150 meters. The facility includes a 34.5 kilovolt (kV) electrical collection system, a collector  
11 substation, a 230 kV interconnection transmission line, two meteorological towers, a field  
12 workshop, supervisory control and data acquisition system (SCADA), access roads, and  
13 temporary construction areas.  
14

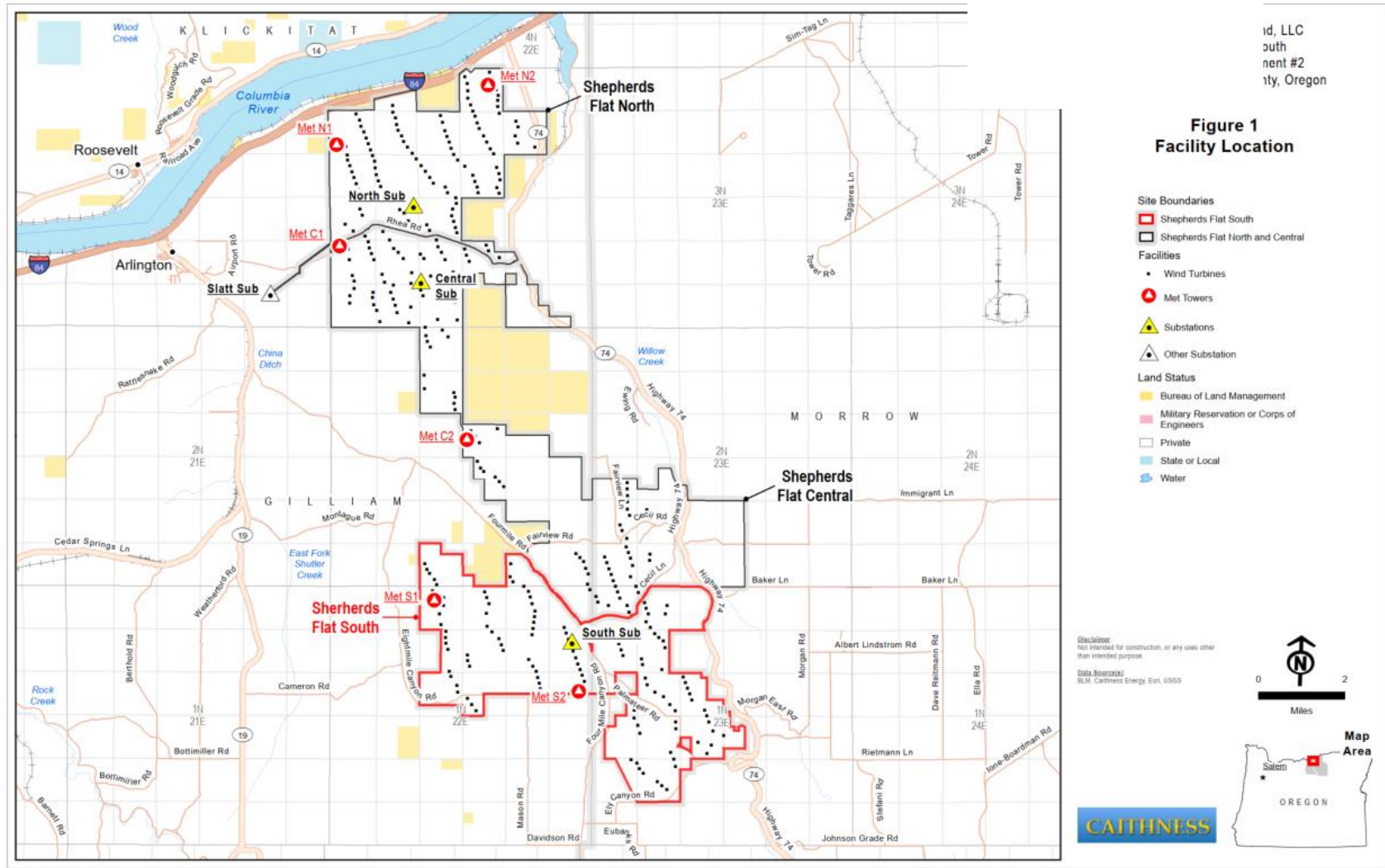
15 The facility is located within a site boundary of approximately 15,928 acres, south of Interstate  
16 Highway 84, and east of Arlington. The facility is located in both Gilliam and Morrow counties,  
17 as presented in Figure 1: *Regional Location of Facility Site Boundary*.<sup>1</sup> As presented in the  
18 figure, the facility is adjacent to Shepherds Flat Central, which is adjacent to Shepherds Flat  
19 North, two other EFSC-jurisdictional facilities owned by the same parent company as Shepherds  
20 Flat South.

---

<sup>1</sup> Site boundary means, “the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.” (OAR 345-001-0010(54))

Figure 1: Regional Location of Facility Site Boundary

1  
2



3

1 I.D. Site Certificate History

2

3 The Council approved a site certificate for the Shepherds Flat Wind Facility on July 25, 2008,  
4 authorizing construction and operation of a 909 MW wind energy generation facility. The  
5 Council issued the First Amended Site Certificate on March 12, 2010, authorizing an expansion  
6 of the site boundary to accommodate an alternative route for the transmission line, and also  
7 divide and transfer the Shepherds Flat Wind Facility into three independent facilities -  
8 Shepherds Flat North, Shepherds Flat Central, and Shepherds Flat South.

9

10 The Council issued its *Final Order on Amendment 2* and granted a Second Amended Site  
11 Certificate on January 24, 2020, which authorized wind turbine repower through installation of  
12 longer turbine blades. Wind turbine repower is planned to occur in 2021-2022.

13

14 **II. THE TRANSFER PROCESS**

15

16 II.A. Description of the Transfer Request

17

18 In Request for Amendment 3 to Transfer Certificate Holder Ownership, the certificate holder  
19 and new owner request a site certificate transfer to reflect the change in certificate holder  
20 ownership from Caithness to BEP SF Holdings, LLC. Request for Amendment 3 represents the  
21 first request to transfer certificate holder ownership requested by the certificate holder.

22

23 II.B. Procedural History

24

25 On January 6, 2021, prior to receipt of Request for Amendment 3 to Transfer, the Department  
26 received notice of a potential sale and purchase of the Shepherds Flat South certificate holder  
27 from Caithness to BEP SF Holdings, LLC.<sup>2</sup> On February 2, 2021, the Department received  
28 complete property owner information obtained from the most recent county tax assessor roll in  
29 Gilliam and Morrow counties from the certificate holder and new owner, along with Request  
30 for Amendment 3 to Transfer, seeking Council approval of a change in certificate holder  
31 ownership for the Shepherds Flat South Site Certificate.

32

33 On February 5, 2021, the Department issued Public Notice of Request for Amendment 3 to  
34 Transfer to all persons on the Council’s general mailing list, the special mailing list established  
35 for the facility, an updated list of property owners supplied by the new owner, and reviewing  
36 agencies as defined in OAR 345-001-0010(52). The notice initiated a comment period on the  
37 transfer request and provided a date and time of the Transfer Hearing, as required for site  
38 certificate transfers pursuant to OAR 345-027-0400(7). The notice provided an “anticipated”  
39 deadline for submission of comments and date of transfer hearing of February 26, 2021, which

---

<sup>2</sup> Site certificate Condition 15 requires that the certificate holder, prior to any transfer of ownership of the facility or ownership of the certificate holder, inform the Department of the proposed new owners.

1 was later confirmed for the same date based on final agenda issued on February 16, 2021 for  
2 the February 26, 2021 Council meeting.

3  
4 The comment period extended from February 5 through February 26, 2021. During the  
5 comment period, two oral comments were received at the February 26, 2021 Transfer Hearing.  
6 Following the Transfer Hearing, Council received a staff presentation on the details of the  
7 transfer request, including the Department's recommendations as presented in a February 12,  
8 2021 staff report (presented in the format of a draft order). At the February 26, 2021 meeting,  
9 following review of the transfer request and comments received, Council approved the Final  
10 Order on the Request for Transfer and granted issuance of a third amended site certificate.

### 11 **II.C. Comments on the Transfer Request**

12  
13  
14 On the record of the transfer request, on behalf of the new owner, legal Counsel Richard Allan  
15 of Marten Law LLP provided oral testimony at the transfer hearing. Specifically, Mr. Allan  
16 sought to clarify the ownership structure of the new owner and provided additional facts for  
17 Council consideration of the new owner's ability to obtain a bond or letter of credit for facility  
18 decommissioning. The substance of these comments are incorporated into the findings of this  
19 order.<sup>3</sup>

### 20 **III. EVALUATION OF TRANSFER REQUEST AND APPLICABLE COUNCIL STANDARDS**

21  
22  
23 Under OAR 345-027-0400(8), the Council may approve a transfer of the site certificate if the  
24 Council finds that:

- 25  
26 (a) *The new owner complies with the Council standards described in OAR 345-022-0010,*  
27 *345-022-0050 and, if applicable, OAR 345-024-0710(1); and*  
28 (b) *The new owner is or will be lawfully entitled to possession or control of the site or the*  
29 *facility described in the site certificate.*

30  
31 The evaluation of OAR 345-027-0400(8)(a) is presented in Section III.A. *Organizational Expertise*  
32 and III.B. *Retirement and Financial Assurance* of this order; OAR 345-024-0710(1), *Monetary*  
33 *Path Payment Requirement* is related to the Carbon Standard and does not apply to wind  
34 energy generation facilities and therefore is not evaluated in this order.

35  
36  
37  
38  

---

<sup>3</sup> On the record of the Transfer Hearing, public comments were received from Ms. Gilbert expressing concerns related to lack of a contested case proceeding in the transfer process. During Council's February 26, 2021 review of the transfer request, staff clarified that Council procedural rules for Requests for Amendment to Transfer (OAR 345-027-0400) do not include a contested case process.

1           *Possession or Control of the Site, Facility or Certificate Holder [OAR 345-027-0400(8)(b)]*  
2

3 To approve a transfer of the site certificate, the Council must find that the new owner is  
4 lawfully entitled to possession or control of the site or the facility described in the site  
5 certificate. To evaluate whether the new owner is lawfully entitled to possession or control of  
6 the site or facility, OAR 345-027-0400(5) states, “The Department may require the new owner  
7 to submit a written statement from the current certificate holder...verifying the new owner’s  
8 right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession  
9 or control of the site or the facility.”

10  
11 Request for Amendment 3, Attachment 1 (“Letter from Certificate Holder, January 6, 2021”)   
12 from Vandana Gupta, authorized representative as Vice President and Business Management of   
13 North Horseshoe Bend Wind, LLC and Caithness confirms that, “Caithness is under contract to   
14 sell the Shepherds Flat South wind facility to BEP SF Holdings, LLC.” Request for Amendment 3,   
15 Attachment M-1 includes a legal opinion letter from King & Spalding which confirms that the   
16 Purchase and Sale Agreement entered into as of December 31, 2020 by Caithness and BEP SF   
17 Holdings, LLC stipulates that BEP SF Holdings, LLC is the buyer guarantor and will become the   
18 100 percent indirect owner of North Horseshoe Bend Wind, LLC, and that based upon review of   
19 BEP SF Holdings, LLC Certificate of Formation (RFA3 Attachment A-1), BEP SF Holdings, LLC has   
20 the “legal authority to construct and operate” the facility without violating its Certificate of   
21 Formation or certificate holder’s Certificate of Formation. Based on review of the letter from   
22 Certificate Holder, Legal Opinion letter and information in RFA3 regarding BEP SF Holdings, LLC   
23 indirect ownership of North Horseshoe Bend Wind, LLC, the Council finds that the new owner is   
24 lawfully entitled to possession or control of the site and Shepherds Flat South facility.

25  
26           *Certification [OAR 345-027-0400(4)]*

27 To request an amendment to transfer a site certificate, the new owner must provide a  
28 certification that it agrees to abide by all the terms and conditions of the site certificate to be  
29 transferred. Request for Amendment 3 Section 2 includes a statement that the new owner,  
30 “certifies that it agrees to abide by all the terms and conditions of the Site Certificate currently  
31 in effect and all terms and conditions, if any, that will result from this Transfer Request.”  
32

33 **III.A. Organizational Expertise [OAR 345-022-0010]**  
34

35           *(1) To issue a site certificate, the Council must find that the applicant has the*  
36 *organizational expertise to construct, operate and retire the proposed facility in*  
37 *compliance with Council standards and conditions of the site certificate. To conclude*  
38 *that the applicant has this expertise, the Council must find that the applicant has*  
39 *demonstrated the ability to design, construct and operate the proposed facility in*  
40 *compliance with site certificate conditions and in a manner that protects public*  
41 *health and safety and has demonstrated the ability to restore the site to a useful,*  
42 *non-hazardous condition. The Council may consider the applicant's experience, the*



1            *applicant's access to technical expertise and the applicant's past performance in*  
2            *constructing, operating and retiring other facilities, including, but not limited to, the*  
3            *number and severity of regulatory citations issued to the applicant.*

4  
5            (2) *The Council may base its findings under section (1) on a rebuttable presumption that*  
6            *an applicant has organizational, managerial and technical expertise, if the applicant*  
7            *has an ISO 9000 or ISO 14000 certified program and proposes to design, construct*  
8            *and operate the facility according to that program.*

9  
10           (3) *If the applicant does not itself obtain a state or local government permit or approval*  
11           *for which the Council would ordinarily determine compliance but instead relies on a*  
12           *permit or approval issued to a third party, the Council, to issue a site certificate, must*  
13           *find that the third party has, or has a reasonable likelihood of obtaining, the*  
14           *necessary permit or approval, and that the applicant has, or has a reasonable*  
15           *likelihood of entering into, a contractual or other arrangement with the third party*  
16           *for access to the resource or service secured by that permit or approval.*

17  
18           (4) *If the applicant relies on a permit or approval issued to a third party and the third*  
19           *party does not have the necessary permit or approval at the time the Council issues*  
20           *the site certificate, the Council may issue the site certificate subject to the condition*  
21           *that the certificate holder shall not commence construction or operation as*  
22           *appropriate until the third party has obtained the necessary permit or approval and*  
23           *the applicant has a contract or other arrangement for access to the resource or*  
24           *service secured by that permit or approval.*

25  
26           **Findings of Fact**

27  
28           Subsections (1) and (2) of the Council's Organizational Expertise standard require that, for a  
29           transfer request, the certificate holder owner demonstrate its ability to design, construct,  
30           operate and retire the facility in compliance with Council standards and all site certificate  
31           conditions, in a manner that protects public health and safety, as well as its ability to restore  
32           the site to a useful, non-hazardous condition. Subsections (3) and (4) address third party  
33           permits. Because the facility is in operation, the need for new third-party permits is not  
34           anticipated.

35  
36           The certificate holder, North Horseshoe Bend Wind, LLC, is a project-specific limited liability  
37           company (LLC), originally incorporated on April 30, 2008 in the State of Delaware, and has  
38           historically relied upon the organizational expertise of its owner or family of owner companies  
39           (parent company) to satisfy the requirements of the standard. The new owner, BEP SF Holdings,  
40           LLC is also a Delaware limited liability company. As explained in RFA3, BEP SF Holdings, LLC is  
41           owned directly or indirectly by SF Aggregator, LLC, which is owned by (i) indirect subsidiaries of  
42           Brookfield Renewable Corporation (BEPC) and (ii) investment vehicles of Brookfield  
43           Infrastructure Fund IV (a private equity fund), each of which is ultimately managed and

1 controlled by affiliates of Brookfield Asset Management Inc. (BAM). BEPC is ultimately managed  
2 and controlled by Brookfield Renewable Partners L.P. (BEP), which is managed and controlled  
3 by BAM. BEP is based in Toronto, Canada, with U.S. headquarters in New York City, and is  
4 represented in RFA3 as one of the world’s largest publicly traded renewable power platforms.  
5 For purposes of this review, the certificate holder and new owner rely upon the experience and  
6 expertise of BEP and its affiliates.<sup>4</sup>

7  
8 *Relevant Experience in Wind Facility Construction and Operation*  
9

10 As described above, the certificate holder and new owner represent and rely on experience of  
11 BEP, BEP’s affiliates, BEP personnel and those of its affiliates, rather than specific experience of  
12 BEP SF Holdings, LLC to satisfy the standard. Council has historically evaluated experience of the  
13 certificate holder or certificate holder owner as an entity or organization, rather than individual  
14 personnel. The Council considers personnel experience relevant to the evaluation of whether  
15 the certificate holder and new owner have the ability to identify and hire qualified individuals  
16 for the construction, operation and retirement of an energy facility. However, due to potential  
17 for staff turnover and subsequent lack of security in personnel retention, the Council relies on  
18 the experience of entity or parent company in combination with individual personnel  
19 experience in its evaluation of compliance with the standard.  
20

21 In RFA3, the experience of BEP and its affiliates is described as including over 120 years of  
22 development, operation and management of approximately 7,300 MWs of hydropower, wind,  
23 solar and storage facilities across 34 states. To demonstrate its specific experience in wind  
24 facility design, construction and operation, RFA3 Table D-1 presents over 20 wind facilities up to  
25 200 MWs where BEP and its affiliates maintain 100 percent or partial ownership. Additionally,  
26 the new owner confirms that the facility is currently operated and maintained under a long-  
27 term, full service agreement with General Electric International, which would be maintained in  
28 effect through the transfer.  
29

30 In RFA3, the experience and qualifications of 5 personnel of BEP or its affiliates are provided,  
31 which is summarized below:  
32

- 33 • Ms. Whitney Wilson is the Vice President of Asset Management in Wind Operations of  
34 Brookfield Renewable U.S. with over 16 years of wind energy facility development  
35 experience, including turbine selection, siting and completing energy assessments on  
36 more than 100 wind facilities. Ms. Wilson holds a Bachelors in Physics from Fort Hays

---

<sup>4</sup> On the record of the Transfer Hearing, legal Counsel for the new owner, Richard Allan of Marten Law LLP requested to correct the record to confirm that the new owner is indirectly owned by Brookfield Renewable Corporation (BEPC) and investment vehicles of Brookfield Infrastructure Fund IV (a private equity investment vehicle), and that the new owner’s organizational expertise would rely upon that of BEP and its affiliates, which represents a universe of companies. 2021-02-26 EFSC Meeting Audio.

1 State University and completed Masters studies in Electrical Engineering with a Power  
2 System Emphasis at Kansas State University.

- 3 • Dr. Neha Marathe is a Senior Director of Wind Optimization and Asset Management  
4 at Brookfield Renewable U.S. with 10 years of wind energy experience. Dr. Marathe  
5 holds a MS in Mechanical Engineering and a PhD in Wind Science and Engineering, both  
6 from Texas Tech University.
- 7 • Mr. Miguel Rosales is the Regional Operations & Asset Manager for the Western Region  
8 contracted wind projects in Brookfield Renewable U.S., with over 20 years of relevant  
9 experience in wind energy development.
- 10 • Ms. Lily Henning is a Senior Manager of Environmental Affairs and Permitting for  
11 Brookfield Renewable U.S., with 10 years of experience in development permitting and  
12 operational  
13 environmental compliance related to energy and manufacturing, including roles with  
14 the U.S. Department of Defense, the Pacific Northwest National Laboratory, General  
15 Electric and E.On. Ms. Henning holds a Bachelors in History from Pennsylvania State  
16 University and a Juris Doctor with an environmental law certificate from the Elizabeth  
17 Haub School of Law at Pace University.
- 18 • Mr. Llorente is Sr. Director of Technical Services for Brookfield Renewable U.S., with  
19 over 20 years of experience in the energy industry, especially focused in renewables.  
20 Mr. Llorente earned a M. Sc. In Electrical Engineering from the Universidad Pontificia  
21 Comillas, Spain.
- 22 • Mr. Berk Gursoy is VP Project Development at Brookfield Renewable U.S., with over  
23 twenty-five years of experience in the energy sector focusing on operation and  
24 development of renewable and transmission facilities. Mr. Gursoy holds an M. Sc. In  
25 Electrical & Electronics Engineering from the Middle East Technical University in Ankara,  
26 Turkey.

27  
28 The Council finds that reliance on the experience and expertise of the new owner's parent  
29 companies is consistent with previous Council decisions for the facility and other facilities  
30 where the certificate holder and owner are project or investment-specific LLCs. The Council  
31 finds that the professional experience of individuals currently employed at BEP or its affiliates in  
32 combination with the experience of BEP and its affiliates demonstrate an ability to design,  
33 construct and operate wind facilities.

34  
35 Council previously found that compliance with Conditions 32 through 35 of the site certificate  
36 would ensure that the facility is designed, constructed, and operated in a manner that protects  
37 public health and safety, as referenced below. Because facility construction is complete, of  
38 relevance in this review is Condition 35. Previously imposed conditions are presented in  
39 Attachment 1 (Amended Site Certificate) of this order.

40  
41 **Condition 32:** Before beginning construction, the certificate holder shall notify the  
42 Department of the identity and qualifications of the major design, engineering and

1 construction contractor(s) for the facility. The certificate holder shall select contractors  
2 that have substantial experience in the design, engineering and construction of similar  
3 facilities. The certificate holder shall report to the Department any change of major  
4 contractors.

5 **Condition 33:** The certificate holder shall contractually require all construction contractors  
6 and subcontractors involved in the construction of the facility to comply with all applicable  
7 laws and regulations and with the terms and conditions of the site certificate. Such  
8 contractual provisions shall not operate to relieve the certificate holder of responsibility  
9 under the site certificate.

10 **Condition 34:** During construction, the certificate holder shall have a full-time, on-site  
11 assistant construction manager who is qualified in environmental compliance to ensure  
12 compliance with all site certificate conditions. The certificate holder shall notify the  
13 Department of the name, telephone number and e-mail address of this person.

14 **Condition 35:** Within 72 hours after discovery of conditions or circumstances that may  
15 violate the terms or conditions of the site certificate, the certificate holder shall report the  
16 conditions or circumstances to the Department.

17

18 To evaluate whether transfer of the site certificate would impact the new owner's ability to  
19 comply with Council standards and site certificate conditions, the Council evaluates whether  
20 the new owner has received any regulatory citations for its facilities and the outcome of such  
21 citations. In Request for Amendment 3, the certificate holder and new owner describe 8  
22 compliance issues from the last 10-years associated with all Brookfield Renewable U.S. assets.  
23 The compliance issues range from regulator site visits to enforcement action/fines for issues  
24 related to eagle mortality, stormwater management, blade failure and sulfur hexafluoride  
25 reporting.

26

27 The purpose of evaluating a new owner's compliance history is to determine whether  
28 corrective actions were appropriately implemented in response to the issue, and whether  
29 compliance issues represent a continuous failure of the ability of a new owner to comply with  
30 applicable requirements. Given that the new owner's compliance history is limited to 8 issues in  
31 ten years for over 7,300 MW of energy facilities, all of which are represented as having been  
32 resolved, the Council finds that the compliance history supports a finding that the new owner  
33 has the ability to comply with and/or to expediently resolve any potential compliance issues  
34 with terms and conditions of the site certificate.

35

36 *ISO 9000 or ISO 14000 Certified Program*

37

38 OAR 345-022-0010(2) is not applicable because the certificate holder and new owner have not  
39 proposed to design, construct or operate the facility according to an ISO 9000 or ISO 14000  
40 certified program.

41

1 *Third-Party Permits*

2

3 OAR 345-022-0010(3) addresses the requirements for potential third-party permits. The  
4 certificate holder has not identified any third-party permits necessary for ongoing facility  
5 operation.

6

7 *Relevant Experience in Habitat Mitigation*

8

9 Under the standard, the Council evaluates the new owner’s experience with mitigation projects  
10 and the qualifications and experience of personnel upon whom new owner would rely on for  
11 implementation, to the extent that the identities of such persons are known at the time of  
12 transfer request, to determine whether the new owner can successfully complete mitigation  
13 necessary to satisfy site certificate requirements.

14

15 In Request for Amendment 3 to Transfer, the new owner provides a summary of its experience  
16 in long-term mitigation for three projects where mitigation requirements included extensive  
17 relocation of an endangered plant species, Bakersfield cactus, at a solar project in California;  
18 planting of over 5,600 tree seedlings for a project in New Hampshire, and bird and bat  
19 mitigation for a project in Hawaii. The Council notes that the existing site certificate includes  
20 requirements to comply with long-term mitigation associated with habitat enhancement and  
21 monitoring, revegetation and weed control, which the existing certificate holder has been  
22 implementing and currently maintains compliance. Based on Brookfield Renewable U.S.’  
23 represented experience in mitigation, the Council finds that the new owner has the experience  
24 and qualifications necessary to continue to satisfy the requirements under the standard for  
25 mitigation.

26

27 *Ability to Restore the Facility Site to a Useful, Non-hazardous Condition*

28

29 The new owners’ ability to retire the facility to a useful, non-hazardous condition is evaluated in  
30 Section III.B., *Retirement and Financial Assurance* of this order, in which the Council finds the  
31 new owner would comply with the Retirement and Financial Assurance standard.

32

33 **Conclusions of Law**

34

35 Based on the foregoing findings of fact, and based upon compliance with existing site certificate  
36 conditions, the Council finds that the transfer of ownership of the certificate owner from  
37 Caithness to BEP SF Holdings, LLC continues to satisfy the requirements of the Council’s  
38 Organizational Expertise standard.

39

40 **III.B. Retirement and Financial Assurance [OAR 345-022-0050]**

41

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

43

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

4  
5           (2) *The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*  
6           *form and amount satisfactory to the Council to restore the site to a useful, non-*  
7           *hazardous condition.*

8  
9           **Findings of Fact**

10          The Retirement and Financial Assurance standard requires a finding that the facility site, taking  
11          into account mitigation, can be restored to a useful, non-hazardous condition at the end of the  
12          facility’s useful life, should either the new owner stop construction or should the facility cease  
13          to operate.<sup>5</sup> In addition, it requires a demonstration that the new owner can obtain a bond or  
14          letter of credit to restore the site to a useful, non-hazardous condition.

15  
16          *Restoration of the Site Following Cessation of Construction or Operation*

17  
18          OAR 345-022-0050(1) requires the Council to find that the facility site can be restored to a  
19          useful non-hazardous condition at the end of the facility’s useful life. The facility is located  
20          entirely on exclusive farm use (EFU) zoned land in Gilliam County, Oregon. Therefore, to satisfy  
21          this standard, the new owner must show that the site can be restored to a non-hazardous  
22          condition suitable for EFU-zoned lands. In the ASC, the facility’s useful life was represented as  
23          50 years.

24  
25          In Request for Amendment 3 to Transfer, there are no changes to the methods, tasks or actions  
26          previously evaluated by Council for facility decommissioning. Therefore, the initial discussion of  
27          facility decommissioning is provided for reference, based upon Council’s review and approval in  
28          the *Final Order on the ASC* (July 2008). Restoring the site to a useful, non-hazardous condition  
29          upon cessation of construction or operations (or upon retirement) would involve removal of all  
30          turbine components, meteorological towers, aboveground electrical components, transformers  
31          and other substation equipment. In the ASC, the certificate holder stated that O&M buildings  
32          would be demolished and disposed of at an appropriate facility, or converted to agricultural  
33          buildings for use by the landowners. As explained in ASC Exhibit W, concrete foundations would  
34          be removed to a minimum depth of three feet below grade. Underground cables that are at  
35          least three feet below grade would be left in place. Gravel surfacing material would be  
36          removed, the impacted area would be decompacted as needed, the area regraded to  
37          appropriate contours and topsoil replaced, and the area would be revegetated unless the  
38          landowner indicates a desire to leave the new or expanded roads in place.

39  

---

<sup>5</sup> OAR 345-022-0050(1).

1 In the *Final Order on the ASC* (July 2008) and subsequent orders, the Council found that,  
2 pursuant to OAR 345-022-0050(1), the current certificate holder could restore the site to a  
3 useful, non-hazardous condition.<sup>6</sup> To ensure the certificate holder met its obligations, the  
4 Council adopted Conditions 7-9, 30 and 31 in the site certificate. These conditions require the  
5 certificate holder to prevent the development of any condition on-site that would preclude  
6 restoration of the site to a useful, non-hazardous condition (Condition 7) and require the  
7 certificate holder to submit a final retirement plan that describes the activities necessary to  
8 restore the site to a useful, non-hazardous condition for Council approval (Condition 9).

9  
10 In the *Final Order on the ASC* (July 2008) and subsequent orders, the Council also found that,  
11 pursuant to OAR 345-022-0050(2), the current certificate holder had a reasonable likelihood of  
12 obtaining a bond or letter of credit, in a form and amount satisfactory to the Council, to restore  
13 the site to a useful, non-hazardous condition. In the *Final Order on Amendment 1*, Council  
14 found that the value of the financial assurance bond or letter of credit for restoring the site was  
15 \$9.108 million (in 1<sup>st</sup> quarter 2010 dollars). To ensure the certificate holder met its obligations,  
16 the Council adopted Conditions 30 and 31 in the site certificate. Condition 30 requires the  
17 certificate holder to maintain a bond or letter of credit in the amount of \$9.108 million, to be  
18 adjusted for inflation to the date of issuance and final design configuration, which ensures  
19 funds are available to the Council to restore the site if the certificate holder does not retire the  
20 facility as required by Conditions 7 through 9.

21  
22 In Request for Amendment 3 to Transfer, the new owner refers to the fact that the existing  
23 certificate holder was issued, as the account holder, an active letter of credit of \$10.25 million  
24 (3<sup>rd</sup> Qtr 2020 dollars), effective August 25, 2020, issued by Landesbank Hessen-Thuringen,  
25 which has been submitted to and is maintained by the Department. Landesbank Hessen-  
26 Thuringen (Helaba) is a financial institution listed on the Council's 2020 pre-approved list. The  
27 new owner describes that the existing letter of credit will remain in place following the transfer  
28 of certificate holder ownership and would not be affected by the transfer, or terms of the  
29 Purchase and Sale Agreement. In addition, as represented by the new owner, the facility is a  
30 United States Department of Energy (US DOE) loan guarantee facility, where the new owner  
31 assumes that the benefits of the loan guarantee would apply until October 2027 and provide a  
32 reasonable level of assurance of its ability to obtain and maintain a bond or letter of credit in  
33 the approved amount.<sup>7</sup> Lastly, the new owner provides a comfort letter dated February 21,  
34 2021 from MUFG Bank, Ltd.'s (MUFG) Managing Director Takaki Sakai affirming that based on  
35 the ongoing relationship between the financial institution and the new owners' parent  
36 company, Brookfield Renewable Partners, L.P., there is a "reasonable likelihood that MUFG  
37 would provide letters of credit" for \$10.25 million to the new owner or its parent company for  
38 the facility's decommissioning obligation under the site certificate.

---

<sup>6</sup> *Final Order on the Application* at 88

<sup>7</sup> 2021-02-26. EFSC Meeting Audio. Richard Allan testimony.

1 Council reviewed the comfort letter, which included an evaluation of the financial institution  
2 and signatory to the letter. Based upon review, Council confirms that MUFG is large-scale bank  
3 with the ability to issue letters of credit and Takaki Sakai is a Managing Director. Based on the  
4 extent of Brookfield Renewable U.S.' financial assets identified in RFA3 Table D-1, the assurance  
5 provided in the MUFG comfort letter and having access to a US DOE loan guarantee facility, and  
6 the fact that the Department's maintains an existing letter of credit for facility  
7 decommissioning, the Council finds that the certificate holder, under new ownership, continues  
8 to demonstrate a reasonable likelihood of obtaining a bond or letter of credit in the amount  
9 specified for restoration costs.

10  
11 **Conclusions of Law**

12  
13 Based on the foregoing findings of fact, and subject to the existing site certificate conditions,  
14 the Council finds that the certificate holder and new owner continue to comply with the  
15 Council's Retirement and Financial Assurance standard.

16  
17 **IV. GENERAL CONCLUSIONS**

18  
19 The Council finds that the request to transfer ownership of the certificate holder owner from  
20 Caithness to BEP SF Holdings, LLC is consistent with current Council rules and the terms and  
21 conditions of the site certificate.



1 **V. FINAL ORDER**

2

3 Based on the above findings of fact, reasoning, and conclusions of law, the Council approves  
4 Request for Amendment 3 to Transfer the Shepherds Flat North Site Certificate, transferring  
5 ownership of the certificate holder from Caithness to BEP SF Holdings, LLC. The Council Chair  
6 executes the Site Certificate amendment in the form of the "Third Amended Site Certificate for  
7 Shepherds Flat North."

Issued this 26<sup>th</sup> day of February 2021

The OREGON ENERGY FACILITY SITING COUNCIL

  
By: [Marcia L. Grail \(Mar 3, 2021 19:31 PST\)](#)

---

Marcia L. Grail, Chair  
Oregon Energy Facility Siting Council

8 **ATTACHMENTS**

9 Attachment A: Third Amended Site Certificate

10

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

---

**Third Amended Site Certificate  
for  
Shepherds Flat South**

ISSUANCE DATES

Site Certificate	July 25, 2008
First Amended Site Certificate	March 12, 2010
Second Amended Site Certificate	January 24, 2020
Third Amended Site Certificate	February 26, 2021

**The Oregon Energy Facility Siting Council**

**THIRD AMENDED SITE CERTIFICATE FOR SHEPHERDS FLAT SOUTH**

**I. INTRODUCTION**

1 The Oregon Energy Facility Siting Council (Council) issues this amended site certificate  
2 for the Shepherds Flat South (the facility) in the manner authorized under ORS Chapter 469.  
3 This amended site certificate is a binding agreement between the State of Oregon (State),  
4 acting through the Council, and Horseshoe Bend Wind, LLC (certificate holder) authorizing the  
5 certificate holder to construct and operate the facility in Gilliam County and Morrow County,  
6 Oregon. [Amendment #1 for the Shepherds Flat Wind Farm (SFWF); Amendment #2]

7 The findings of fact, reasoning and conclusions of law underlying the terms and  
8 conditions of this site certificate are set forth in the following documents, incorporated herein  
9 by this reference: (a) the Council's *Final Order on the Application for the Shepherds Flat Wind*  
10 *Farm* issued on July 25, 2008 (b) the *Final Order on Amendment #1 for the Shepherds Flat Wind*  
11 *Farm* (c) the *Final Order on Amendment #1 for Shepherds Flat South* (d) the *Final Order on*  
12 *Amendment #2 for Shepherds Flat South* and, (e) the *Final Order on Amendment #3 for*  
13 *Shepherds Flat South*.

14 In interpreting this amended site certificate, any ambiguity will be clarified by reference  
15 to the following, in order of priority: (1) this *Third Amended Site Certificate* (2) the *Final Order*  
16 *on Amendment #3 for Shepherds Flat South* (3) the *Final Order on Amendment #2 for the*  
17 *Shepherds Flat South* (4) the *Final Order on Amendment #1 for Shepherds Flat South* (5) the  
18 *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, (6) the *Final Order on the*  
19 *Application for the Shepherds Flat Wind Farm* and (7) the record of the proceedings that led to  
20 the Final Orders on Amendment #3, #2, and #1 for Shepherds Flat South; and the Final Orders  
21 on Amendment #1 and the Application for the Shepherds Flat Wind Farm. [Amendment #1 (SFWF);  
22 Amendment #1; Amendment #2; Amendment #3]

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

**II. SITE CERTIFICATION**

- 25 1. To the extent authorized by state law and subject to the conditions set forth herein, the  
26 State authorizes the certificate holder to construct, operate and retire a wind energy  
27 facility, together with certain related or supporting facilities, at the site in Gilliam County  
28 and Morrow County, Oregon, as described in Section III of this site certificate. ORS  
29 469.401(1).
- 30 2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in  
31 effect on the date that termination is sought or until the site certificate is revoked under  
32 ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that  
33 revocation is ordered. ORS 469.401(1).
- 34 3. This site certificate does not address, and is not binding with respect to, matters that were  
35 not addressed in the Council's Final Orders on the Application and Amendment #1 for the

1 Shepherds Flat Wind Farm; and the Final Orders on Amendment #1, #2 and #3 for  
2 Shepherds Flat South. Such matters include, but are not limited to: building code  
3 compliance, wage, hour and other labor regulations, local government fees and charges and  
4 other design or operational issues that do not relate to siting the facility (ORS 469.401(4))  
5 and permits issued under statutes and rules for which the decision on compliance has been  
6 delegated by the federal government to a state agency other than the Council. 469.503(3).  
7 [Amendment #1 (SFWF); Amendment #1; Amendment #2; Amendment #3]

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

### III. DESCRIPTION

#### 1. The Facility

##### (a) The Energy Facility

34 The energy facility is an electric power generating facility that produces power from  
35 wind energy. The facility consists of not more than 116 wind turbines. The energy facility is  
36 described further in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm*, in the

1 *Final Order on Amendment #1 for Shepherds Flat South and in the Final Order on Amendment*  
2 *#2 for Shepherds Flat South.* [Amendment #1 (SFWF); Amendment #1; Amendment #2]

### 3 **Wind Turbine Repower**

4 Wind turbine repowering includes removal and replacement of wind turbine blades and  
5 associated wind turbine components on existing turbine towers. Wind turbine repowering  
6 requires trucks, small cranes or telehandlers, and a track mounted crane. Trucks deliver new  
7 wind turbine components to wind turbine pad sites, and transport the old components offsite  
8 for proper disposal or recycling at a licensed facility. Once the new wind turbines components  
9 are delivered via truck to each pad site, smaller cranes or telehandlers unload and stage the  
10 components. A track mounted crane then mobilizes to the turbine pad area, setting up on the  
11 access road adjacent the turbine, and lowers the old rotor down to the pad site for  
12 disassembly, followed by the old gearbox. Once disassembled, the old components are staged  
13 for truck removal. The track mounted crane then lifts the new gearbox and rotor into place.  
14 Once, complete, the track mounted crane advances to the next wind turbine, and the process is  
15 repeated.

16  
17 The facility repower activity results in approximately 125.2 acres of temporary disturbance from  
18 temporary access roads, road improvements and laydown areas.

19  
20 [Amendment #2]

### (b) Related or Supporting Facilities

21 The facility includes the following related or supporting facilities described below and in  
22 greater detail in the *Final Order on Amendment #1 for the Shepherds Flat Wind Farm* and in the  
23 *Final Order on Amendment #1*:

- 24 • Power Collection System
- 25 • Collector Substation
- 26 • Meteorological towers
- 27 • Field workshop
- 28 • Control system
- 29 • Access roads
- 30 • Additional construction areas

31 [Amendment #1 (SFWF); Amendment #1]

#### 32 **Power Collection System**

33 A power collection system operating at 34.5 kilovolts (kV) transports power from each  
34 turbine to a collector substation. To the extent practicable, the collection system is installed  
35 underground at a depth of at least three feet. Segments of the collector system are  
36 aboveground. Aboveground segments are installed on single-pole, cross-arm structures.

37 [Amendment #1]

1        **Collector Substations and Interconnection**

2            The facility includes a collector substation. The facility includes a 230-kV transmission  
3 line between the substation and the interconnection site. The interconnection site is located at  
4 the Bonneville Power Administration Slatt Switching Station. [Amendment #1 (SFWF)]

5        **Meteorological Towers**

6            The facility includes two permanent meteorological (met) towers. [Amendment #1 (SFWF)]

7        **Field Workshop**

8            The facility includes a field workshop. Including fenced areas, the field workshop  
9 occupies about 1.4 acres. [Amendment #1 (SFWF)]

10       **Control System**

11           A fiber optic communications network links the control panels within each wind turbine  
12 to a host computer located in the field workshop. Supervisory, Control and Data Acquisition  
13 (SCADA) systems at the field workshop collect operating and performance data from the  
14 turbines and the facility's met towers. [Amendment #1 (SFWF)]

15       **Access Roads**

16           The facility includes up to 27.5 miles of new roads that provide access to the turbine  
17 strings. The access roads connect to graveled turbine turnouts at the base of each turbine.  
18 [Amendment #1 (SFWF); Amendment #1]

19       **Temporary Construction Areas**

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

**2. Location of the Facility**

23           The facility is located in Morrow County and Gilliam County south of Interstate Highway  
24 84 and east of Arlington, Oregon, between State Highways 19 and 74. The facility is located  
25 entirely on private land subject to long-term wind energy leases. [Amendment #1 (SFWF)]

**IV. CONDITIONS REQUIRED BY COUNCIL RULES**

26           This section lists conditions required by OAR 345-025-0006 (Mandatory Conditions in  
27 Site Certificates), OAR 345-025-0010 (Site Specific Conditions), OAR 345-025-0016 (Monitoring  
28 and Mitigation Conditions) and OAR Chapter 345, Division 26 (Construction and Operation  
29 Rules for Facilities). These conditions should be read together with the specific facility  
30 conditions listed in Section V to ensure compliance with the siting standards of OAR Chapter  
31 345, Divisions 22 and 24, and to protect the public health and safety. In these conditions, the  
32 definitions in OAR 345-001-0010 apply.

33           The obligation of the certificate holder to report information to the Department or the  
34 Council under the conditions listed in this section and in Section V is subject to the provisions of  
35 ORS 192.502 *et seq.* and ORS 469.560. To the extent permitted by law, the Department and the  
36 Council will not publicly disclose information that may be exempt from public disclosure if the

1 certificate holder has clearly labeled such information and stated the basis for the exemption at  
2 the time of submitting the information to the Department or the Council. If the Council or the  
3 Department receives a request for the disclosure of the information, the Council or the  
4 Department, as appropriate, will make a reasonable attempt to notify the certificate holder and  
5 will refer the matter to the Attorney General for a determination of whether the exemption is  
6 applicable, pursuant to ORS 192.450.

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

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

17 1 The Council shall not change the conditions of the site certificate except as provided for in  
18 OAR Chapter 345, Division 27.

19 2 The certificate holder shall submit a legal description of the site to the Department of  
20 Energy within 90 days after beginning operation of the facility. The legal description  
21 required by this rule means a description of metes and bounds or a description of the site  
22 by reference to a map and geographic data that clearly and specifically identifies the outer  
23 boundaries that contain all parts of the facility.

24 3 The certificate holder shall design, construct, operate and retire the facility:  
25 (a) Substantially as described in the site certificate;  
26 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,  
27 and applicable state and local laws, rules and ordinances in effect at the time the site  
28 certificate is issued; and  
29 (c) In compliance with all applicable permit requirements of other state agencies.

30 4 The certificate holder shall begin and complete construction of the facility by the dates  
31 specified in the site certificate. *(See Conditions 24 and 25.)*

32 5 Except as necessary for the initial survey or as otherwise allowed for wind energy facilities  
33 or transmission lines under this section, the certificate holder shall not begin construction,  
34 as defined in OAR 345-001-0010, or create a clearing on any part of the site until the  
35 certificate holder has construction rights on all parts of the site. For the purpose of this  
36 rule, "construction rights" means the legal right to engage in construction activities. For  
37 wind energy facilities and transmission lines, if the certificate holder does not have  
38 construction rights on all parts of the site, the certificate holder may nevertheless begin  
39 construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if  
40 the certificate holder has construction rights on that part of the site and:

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

5 (b) The certificate holder would construct and operate part of a wind energy facility on  
6 that part of the site even if other parts of the facility were modified by amendment of the  
7 site certificate or were not built. [Amendment #2]

8 6 If the Council requires mitigation based on an affirmative finding under any standards of  
9 Division 22 or Division 24 of this chapter, the certificate holder shall consult with affected  
10 state agencies and local governments designated by the Council and shall develop specific  
11 mitigation plans consistent with Council findings under the relevant standards. The  
12 certificate holder must submit the mitigation plans to the Office and receive Office  
13 approval before beginning construction or, as appropriate, operation of the facility.

14 7 The certificate holder shall prevent the development of any conditions on the site that  
15 would preclude restoration of the site to a useful, non-hazardous condition to the extent  
16 that prevention of such site conditions is within the control of the certificate holder.

17 8 Before beginning construction of the facility, the certificate holder shall submit to the  
18 State of Oregon, through the Council, a bond or letter of credit, in a form and amount  
19 satisfactory to the Council to restore the site to a useful, non-hazardous condition. The  
20 certificate holder shall maintain a bond or letter of credit in effect at all times until the  
21 facility has been retired. The Council may specify different amounts for the bond or letter  
22 of credit during construction and during operation of the facility. *(See Condition 30.)*

23 9 The certificate holder shall retire the facility if the certificate holder permanently ceases  
24 construction or operation of the facility. The certificate holder shall retire the facility  
25 according to a final retirement plan approved by the Council, as described in OAR 345-027-  
26 0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-  
27 hazardous condition at the time of retirement, notwithstanding the Council’s approval in  
28 the site certificate of an estimated amount required to restore the site.

29 10 The Council shall include as conditions in the site certificate all representations in the site  
30 certificate application and supporting record the Council deems to be binding  
31 commitments made by the applicant.

32 11 Upon completion of construction, the certificate holder shall restore vegetation to the  
33 extent practicable and shall landscape all areas disturbed by construction in a manner  
34 compatible with the surroundings and proposed use. Upon completion of construction,  
35 the certificate holder shall remove all temporary structures not required for facility  
36 operation and dispose of all timber, brush, refuse and flammable or combustible material  
37 resulting from clearing of land and construction of the facility.

38 12 The certificate holder shall design, engineer and construct the facility to avoid dangers to  
39 human safety and the environment presented by seismic hazards affecting the site that  
40 are expected to result from all maximum probable seismic events. As used in this rule  
41 “seismic hazard” includes ground shaking, ground failure, landslide, liquefaction triggering



1 and consequences (including flow failure, settlement buoyancy, and lateral spreading),  
2 cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure  
3 interaction. [Amendment #2]

4 13 The certificate holder shall notify the Department, the State Building Codes Division and  
5 the Department of Geology and Mineral Industries promptly if site investigations or  
6 trenching reveal that conditions in the foundation rocks differ significantly from those  
7 described in the application for a site certificate. After the Department receives the notice,  
8 the Council may require the certificate holder to consult with the Department of Geology  
9 and Mineral Industries and the Building Codes Division to propose and implement  
10 corrective or mitigation actions. [Amendment #2]

11 14 The certificate holder shall notify the Department, the State Building Codes Division and  
12 the Department of Geology and Mineral Industries promptly if shear zones, artesian  
13 aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the  
14 Department receives notice, the Council may require the certificate holder to consult with  
15 the Department of Geology and Mineral Industries and the Building Codes Division to  
16 propose and implement corrective or mitigation actions. [Amendment #2]

17 15 Before any transfer of ownership of the facility or ownership of the site certificate holder,  
18 the certificate holder shall inform the Department of the proposed new owners. The  
19 requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a  
20 transfer of the site certificate.

21 16 If the Council finds that the certificate holder has permanently ceased construction or  
22 operation of the facility without retiring the facility according to a final retirement plan  
23 approved by the Council, as described in OAR 345-027-0110, the Council shall notify the  
24 certificate holder and request that the certificate holder submit a proposed final  
25 retirement plan to the Office within a reasonable time not to exceed 90 days. If the  
26 certificate holder does not submit a proposed final retirement plan by the specified date,  
27 the Council may direct the Department to prepare a proposed final retirement plan for the  
28 Council's approval. Upon the Council's approval of the final retirement plan, the Council  
29 may draw on the bond or letter of credit described in OAR 345-027-0020(8) to restore the  
30 site to a useful, non-hazardous condition according to the final retirement plan, in addition  
31 to any penalties the Council may impose under OAR Chapter 345, Division 29. If the  
32 amount of the bond or letter of credit is insufficient to pay the actual cost of retirement,  
33 the certificate holder shall pay any additional cost necessary to restore the site to a useful,  
34 non-hazardous condition. After completion of site restoration, the Council shall issue an  
35 order to terminate the site certificate if the Council finds that the facility has been retired  
36 according to the approved final retirement plan.

37 17 If the facility includes any transmission line under Council jurisdiction:  
38 (a) The certificate holder shall design, construct and operate the transmission line in  
39 accordance with the requirements of the National Electrical Safety Code (American  
40 National Standards Institute, Section C2, 1997 Edition); and  
41 (b) The certificate holder shall develop and implement a program that provides  
42 reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or

1 structures of a permanent nature that could become inadvertently charged with electricity  
2 are grounded or bonded throughout the life of the line.

3 18 If the proposed energy facility has, as a related or supporting facility, a transmission line,  
4 the Council shall specify an approved corridor in the site certificate and shall allow the  
5 certificate holder to construct the transmission line anywhere within the corridor, subject  
6 to the conditions of the site certificate. If the applicant has analyzed more than one  
7 corridor in its application for a site certificate, the Council may, subject to the Council's  
8 standards, approve more than one corridor.

9 19 The following general monitoring conditions apply:

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

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

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

23 (d) If the certificate holder becomes aware of a significant environmental change or  
24 impact attributable to the facility, the certificate holder shall, as soon as possible, submit a  
25 written report to the Department describing the impact on the facility and any affected  
26 site certificate conditions.

27 20 Following receipt of the site certificate or an amended site certificate, the certificate  
28 holder shall implement a plan that verifies compliance with all site certificate terms and  
29 conditions and applicable statutes and rules. As a part of the compliance plan, to verify  
30 compliance with the requirement to begin construction by the date specified in the site  
31 certificate, the certificate holder shall report promptly to the Department of Energy when  
32 construction begins. Construction is defined in OAR 345-001-0010. In reporting the  
33 beginning of construction, the certificate holder shall describe all work on the site  
34 performed before beginning construction, including work performed before the Council  
35 issued the site certificate, and shall state the cost of that work. For the purpose of this  
36 exhibit, "work on the site" means any work within a site or corridor, other than surveying,  
37 exploration or other activities to define or characterize the site or corridor. The certificate  
38 holder shall document the compliance plan and maintain it for inspection by the  
39 Department or the Council.

40 21 The certificate holder shall report according to the following requirements:

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

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

9 (ii) By April 30 of each year after beginning construction, the certificate holder shall  
10 submit an annual report to the Department addressing the subjects listed in OAR 345-026-  
11 0080. The Council Secretary and the certificate holder may, by mutual agreement, change  
12 the reporting date.

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

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

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

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

29 (A)

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

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

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

42 (vi) Facility Modification Report: A summary of changes to the facility that the  
43 certificate holder has determined do not require a site certificate amendment in  
44 accordance with OAR 345-027-0350.

1 (vii) [Amendment #2]

2 22 The certificate holder and the Department of Energy shall exchange copies of all  
3 correspondence or summaries of correspondence related to compliance with statutes,  
4 rules and local ordinances on which the Council determined compliance, except for  
5 material withheld from public disclosure under state or federal law or under Council rules.  
6 The certificate holder may submit abstracts of reports in place of full reports; however,  
7 the certificate holder shall provide full copies of abstracted reports and any summarized  
8 correspondence at the request of the Department.

9 23 The certificate holder shall notify the Department of Energy within 72 hours of any  
10 occurrence involving the facility if:

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

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

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

## V. SPECIFIC FACILITY CONDITIONS

16 The conditions listed in this section include conditions based on representations in the  
17 site certificate application and supporting record. These conditions are required under OAR  
18 345-025-0006(10). The certificate holder must comply with these conditions in addition to the  
19 conditions listed in Section VI. This section includes other specific facility conditions the Council  
20 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions  
21 22 and 24, and to protect the public health and safety. For conditions that require subsequent  
22 review and approval of a future action, ORS 469.402 authorizes the Council to delegate the  
23 future review and approval to the Department if, in the Council's discretion, the delegation is  
24 warranted under the circumstances of the case.

### 1. Certificate Administration Conditions

25 24 The certificate holder shall begin construction of the facility by July 25, 2011. The Council  
26 may grant an extension of the deadline to begin construction in accordance with OAR 345-  
27 027-0030 or any successor rule in effect at the time the request for extension is  
28 submitted. [Amendment #1 (SFWF)]

29 25 The certificate holder shall complete construction of the facility by July 25, 2014.  
30 Construction is complete when: 1) the facility is substantially complete as defined by the  
31 certificate holder's construction contract documents, 2) acceptance testing has been  
32 satisfactorily completed and 3) the energy facility is ready to begin continuous operation  
33 consistent with the site certificate. The certificate holder shall promptly notify the  
34 Department of the date of completion of construction. The Council may grant an  
35 extension of the deadline for completing construction in accordance with OAR 345-027-  
36 0030 or any successor rule in effect at the time the request for extension is submitted.  
37 [Amendment #1 (SFWF)]

1 26 The certificate holder shall construct a facility substantially as described in the site  
2 certificate and may select turbines of any type, subject to the following restrictions and  
3 compliance with all other site certificate conditions. Before beginning construction, the  
4 certificate holder shall provide to the Department a description of the turbine types  
5 selected for the facility demonstrating compliance with this condition.

6 (a) The total number of turbines at the facility must not exceed 116 turbines.

7  
8 (b) The turbine hub height must not exceed 105 meters and the maximum blade tip  
9 height must not exceed 150 meters.

10 (c) The minimum blade tip clearance must be 25 meters above ground. Repowered  
11 turbines that comply with the setback requirements of Condition 40 must have a  
12 minimum blade tip clearance of 21.5 meters above ground.

13 (d) The maximum volume of concrete above three feet below grade in the turbine  
14 foundations must not exceed 66 cubic yards.

15 (e) The maximum combined weight of metals in the tower (including ladders and  
16 platforms) and nacelle must not exceed 393 U.S. tons per turbine.

17 (f) The certificate holder shall request an amendment of the site certificate to increase  
18 the number of wind turbines to more than 116 wind turbines or to install wind turbines  
19 with a hub height greater than 105 meters, a blade tip height greater than 150 meters or a  
20 blade tip clearance less than 21.5 meters above ground.

21 [Amendment #1 (SFWF); Amendment #1; Amendment #2]

22 27 The certificate holder shall obtain all necessary federal, state and local permits or  
23 approvals required for construction, operation and retirement of the facility or ensure that  
24 its contractors obtain the necessary federal, state and local permits or approvals.

25 28 Before beginning construction, the certificate holder shall notify the Department in  
26 advance of any work on the site that does not meet the definition of “construction” in ORS  
27 469.300, excluding surveying, exploration or other activities to define or characterize the  
28 site, and shall provide to the Department a description of the work and evidence that its  
29 value is less than \$250,000.

30 29 Before beginning construction and after considering all micrositing factors, the certificate  
31 holder shall provide to the Department, to the Oregon Department of Fish and Wildlife  
32 (ODFW) and to the Planning Directors of Morrow County and Gilliam County detailed  
33 maps of the facility site, showing the final locations where the certificate holder proposes  
34 to build facility components, and a table showing the acres of temporary and permanent  
35 habitat impact by habitat category and subtype, similar to Table 11 in the Final Order on  
36 Amendment #1 for the Shepherds Flat Wind Farm. The detailed maps of the facility site  
37 shall indicate the habitat categories of all areas that would be affected during construction  
38 (similar to the maps labeled “ODFW-2” in the site certificate application for the Shepherds  
39 Flat Wind Farm). In classifying the affected habitat into habitat categories, the certificate  
40 holder shall consult with the ODFW. The certificate holder shall not begin ground  
41 disturbance in an affected area until the habitat assessment has been approved by the

1 Department. The Department may employ a qualified contractor to confirm the habitat  
2 assessment by on-site inspection. [Amendment #1 (SFWF)]

3 **30** Before beginning construction, the certificate holder shall submit to the State of Oregon  
4 through the Council a bond or letter of credit in the amount described herein naming the  
5 State of Oregon, acting by and through the Council, as beneficiary or payee. The initial  
6 bond or letter of credit amount is either \$9.108 million (1<sup>st</sup> Quarter 2010 dollars), to be  
7 adjusted to the date of issuance as described in (b), or the amount determined as  
8 described in (a). The certificate holder shall adjust the amount of the bond or letter of  
9 credit on an annual basis thereafter as described in (b).

10 (a) The certificate holder may adjust the amount of the bond or letter of credit based on  
11 the final design configuration of the facility and turbine types selected by applying the unit  
12 costs and general costs illustrated in Table 3 in the Final Order on Amendment #1 for the  
13 Shepherds Flat Wind Farm and calculating the financial assurance amount as described in  
14 that order, adjusted to the date of issuance as described in (b) and subject to approval by  
15 the Department.

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

18 (i) Adjust the Subtotal component of the bond or letter of credit amount (expressed  
19 in 3<sup>rd</sup> Quarter 2009 dollars) to present value, using the U.S. Gross Domestic Product  
20 Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of  
21 Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor  
22 agency (the "Index") and using the index value for 3<sup>rd</sup> Quarter 2009 dollars and the  
23 quarterly index value for the date of issuance of the new bond or letter of credit. If at any  
24 time the Index is no longer published, the Council shall select a comparable calculation to  
25 adjust 3<sup>rd</sup> Quarter 2009 dollars to present value.

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

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

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

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

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

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

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

42 [Amendment #1 (SFWF); Amendment #1]

- 1 31 If the certificate holder elects to use a bond to meet the requirements of Condition 30, the  
2 certificate holder shall ensure that the surety is obligated to comply with the requirements  
3 of applicable statutes, Council rules and this site certificate when the surety exercises any  
4 legal or contractual right it may have to assume construction, operation or retirement of  
5 the energy facility. The certificate holder shall also ensure that the surety is obligated to  
6 notify the Council that it is exercising such rights and to obtain any Council approvals  
7 required by applicable statutes, Council rules and this site certificate before the surety  
8 commences any activity to complete construction, operate or retire the energy facility.
- 9 32 Before beginning construction, the certificate holder shall notify the Department of the  
10 identity and qualifications of the major design, engineering and construction contractor(s)  
11 for the facility. The certificate holder shall select contractors that have substantial  
12 experience in the design, engineering and construction of similar facilities. The certificate  
13 holder shall report to the Department any change of major contractors.
- 14 33 The certificate holder shall contractually require all construction contractors and  
15 subcontractors involved in the construction of the facility to comply with all applicable  
16 laws and regulations and with the terms and conditions of the site certificate. Such  
17 contractual provisions shall not operate to relieve the certificate holder of responsibility  
18 under the site certificate.
- 19 34 During construction, the certificate holder shall have a full-time, on-site assistant  
20 construction manager who is qualified in environmental compliance to ensure compliance  
21 with all site certificate conditions. The certificate holder shall notify the Department of the  
22 name, telephone number and e-mail address of this person.
- 23 35 Within 72 hours after discovery of conditions or circumstances that may violate the terms  
24 or conditions of the site certificate, the certificate holder shall report the conditions or  
25 circumstances to the Department.

## **2. Land Use Conditions**

- 26 36 The certificate holder shall consult with area landowners and lessees during construction  
27 and operation of the facility and shall implement measures to reduce or avoid any adverse  
28 impacts to farm practices on surrounding lands and to avoid any increase in farming costs.
- 29 37 The certificate holder shall design and construct the facility using the minimum land area  
30 necessary for safe construction and operation. The certificate holder shall locate access  
31 roads and temporary construction laydown and staging areas to minimize disturbance  
32 with farming practices and, wherever feasible, shall place turbines and transmission  
33 interconnection lines along the margins of cultivated areas to reduce the potential for  
34 conflict with farm operations.
- 35 38 During construction and operation of the facility, the certificate holder shall implement a  
36 plan to control the introduction and spread of noxious weeds. The certificate shall develop  
37 the weed control plan consistent with the Gilliam County and Morrow County Weed  
38 Control Programs.

- 1 39 Before beginning construction of the facility, the certificate holder shall record in the real  
2 property records of Gilliam County a Covenant Not to Sue with regard to generally  
3 accepted farming practices on adjacent farmland consistent with Gilliam County Zoning  
4 Ordinance 7.020(T)(4)(a)(5).
- 5 40 The certificate holder shall construct all facility components in compliance with the  
6 following setback requirements:  
7 (a) All facility components must be at least 3,520 feet from the property line of  
8 properties zoned residential use or designated in the Gilliam County Comprehensive Plan  
9 as residential.  
10 (b) Where (a) does not apply, the certificate holder shall maintain a minimum distance  
11 of 110-percent of maximum blade tip height, measured from the centerline of the turbine  
12 tower to the nearest edge of any public road right-of-way. The certificate holder shall  
13 assume a minimum right-of-way width of 60 feet.  
14 (c) Where (a) does not apply, the certificate holder shall maintain a minimum distance  
15 of 1,320 feet, measured from the centerline of the turbine tower to the center of the  
16 nearest residence existing at the time of tower construction.  
17 (d) Where (a) does not apply, the certificate holder shall maintain a minimum distance  
18 of 110-percent of maximum blade tip height, measured from the centerline of the turbine  
19 tower to the nearest boundary of the certificate holder's lease area.
- 20 41 Within 90 days after beginning operation, the certificate holder shall provide to the  
21 Department and to the Planning Directors of Gilliam County and Morrow County the  
22 actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each  
23 turbine tower, connecting lines and transmission lines. In addition, the certificate holder  
24 shall provide to the Department and to the Planning Directors of Gilliam County and  
25 Morrow County, a summary of as-built changes in the facility compared to the original  
26 plan, if any.
- 27 42 The certificate holder shall install gates on all private facility access roads in Gilliam  
28 County, in accordance with Gilliam County Zoning Ordinance Section 7.020(T)(4)(d)(6).

### **3. Cultural Resource Conditions**

- 29 43 Before beginning construction, the certificate holder shall provide to the Department a  
30 map showing the final design locations of all components of the facility and areas that  
31 would be temporarily disturbed during construction. In addition, the certificate holder  
32 shall comply with the following requirements:  
33 (a) The certificate holder shall avoid disturbance within a 30-meter buffer around the  
34 historic-period archaeological sites within the facility boundary identified by AINW as  
35 "possibly eligible" for listing in the National Register of Historic Places (NRHP) as described  
36 in the Final Order on the Application for the Shepherds Flat Wind Farm.  
37 (b) The certificate holder shall avoid disturbance of the stacked rock features within the  
38 facility boundary identified by AINW as "possibly eligible" for listing in the NRHP as  
39 described in the Final Order on the Application for the Shepherds Flat Wind Farm and  
40 shall, to the extent practicable, maintain a 30-meter no-construction buffer around these



1 features. If a 30-meter buffer cannot be maintained, the certificate holder shall consult  
2 with the State Historic Preservation Office (SHPO) and the Department to determine  
3 appropriate action to preserve or document the feature.

4 (c) The certificate holder shall label “no entry” areas around all identified historic,  
5 cultural or archaeological resource sites on construction maps and drawings, and if  
6 construction activities will occur within 200 feet of an identified site, the certificate holder  
7 shall flag a 30-meter buffer around the site.

8 (d) The certificate holder shall hire qualified personnel to conduct pre-construction field  
9 investigation for historic, cultural or archaeological resources in any areas of potential  
10 construction disturbance that AINW did not previously survey.

11 (e) The certificate holder shall provide written reports of the field investigation required  
12 under (d) to the Department and to the SHPO. If any historic, cultural or archaeological  
13 resources are found that the SHPO determines to be significant, the certificate holder shall  
14 consult with the Department and the SHPO to develop plan to avoid disturbance of the  
15 resources during construction and operation of the facility. The certificate holder shall  
16 instruct all construction personnel to avoid areas where the resources were found and  
17 shall implement other appropriate measures to protect the resources.

18 [Amendment #1 (SFWF)]

19 44 The certificate holder shall ensure that a qualified archeologist, as defined in OAR 736-  
20 051-0070, instructs construction personnel in the identification of cultural materials and  
21 avoidance of accidental damage to identified resource sites.

22 45 The certificate holder shall ensure that construction personnel cease all ground-disturbing  
23 activities in the immediate area if any archaeological or cultural resources are found  
24 during construction of the facility until a qualified archeologist can evaluate the  
25 significance of the find. The certificate holder shall notify the Department and the State  
26 Historic Preservation Office (SHPO) of the find. If the SHPO determines that the resource is  
27 significant, the certificate holder shall make recommendations to the Council for  
28 mitigation, including avoidance, field documentation and data recovery, in consultation  
29 with the Department, SHPO, interested tribes and other appropriate parties. The  
30 certificate holder shall not restart work in the affected area until the certificate holder has  
31 demonstrated to the Department and the SHPO that it has complied with archaeological  
32 resource protection regulations.

33 46 In reference to the presumed alignments of the Oregon Trail described in the Final Order  
34 on the Application, the certificate holder shall comply with the following requirements:

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

37 (b) The certificate holder shall not locate facility components on undeveloped land  
38 where the trail alignment was marked by existing Oregon-California Trail Association  
39 markers as described in the October 2007 Archaeological Investigations Northwest, Inc.  
40 report (No. 2012) on the Oregon Trail.

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

4 (d) The certificate holder shall ensure that construction personnel proceed carefully in  
5 the vicinity of the presumed alignments of the Oregon Trail. If any intact physical evidence  
6 of the trail is discovered, the certificate holder shall avoid any disturbance to the intact  
7 segments, by redesign, re-engineering or restricting the area of construction activity. The  
8 certificate holder shall promptly notify the SHPO and the Department of the discovery.  
9 The certificate holder shall consult with the SHPO and the Department to determine  
10 appropriate mitigation measures.

#### 4. Geotechnical Conditions

11 47 Before beginning construction, the certificate holder shall conduct a site-specific  
12 geotechnical investigation and shall report its findings to the Oregon Department of  
13 Geology & Mineral Industries (DOGAMI) and the Department. The certificate holder shall  
14 conduct the geotechnical investigation after consultation with DOGAMI and in general  
15 accordance with DOGAMI open file report 00-04 "Guidelines for Engineering Geologic  
16 Reports and Site-Specific Seismic Hazard Reports."

17 48 The certificate holder shall design and construct the facility in accordance with  
18 requirements set forth by the State of Oregon's Building Code Division and any other  
19 applicable codes and design procedures. The certificate holder shall design facility  
20 structures to meet or exceed the minimum standards required by the 2003 International  
21 Building Code.

22 49 The certificate holder shall design, engineer and construct the facility to avoid dangers to  
23 human safety presented by non-seismic hazards. As used in this condition, "non-seismic  
24 hazards" include settlement, landslides, flooding and erosion.

#### 5. Hazardous Materials, Fire Protection & Public Safety Conditions

25 50 The certificate holder shall handle hazardous materials used on the site in a manner that  
26 protects public health, safety and the environment and shall comply with all applicable  
27 local, state and federal environmental laws and regulations. The certificate holder shall  
28 not store diesel fuel or gasoline on the facility site.

29 51 If a spill or release of hazardous material occurs during construction or operation of the  
30 facility, the certificate holder shall notify the Department within 72 hours and shall clean  
31 up the spill or release and dispose of any contaminated soil or other materials according to  
32 applicable regulations. The certificate holder shall make sure that spill kits containing  
33 items such as absorbent pads are located on equipment and at the field workshop. The  
34 certificate holder shall instruct employees about proper handling, storage and cleanup of  
35 hazardous materials. [Amendment #1 (SFWF)]

36 52 During construction, the certificate holder shall ensure that construction personnel are  
37 trained in fire prevention and response, that construction vehicles and equipment are

1 operated on graveled areas to the extent possible and that open flames, such as cutting  
2 torches, are kept away from dry grass areas.

3 53 During operation, the certificate holder shall ensure that all on-site employees receive  
4 annual fire prevention and response training, including tower rescue training, by qualified  
5 instructors or members of the local fire districts. The certificate holder shall ensure that all  
6 employees are instructed to keep vehicles on roads and off dry grassland, except when  
7 off-road operation is required for emergency purposes. The certificate holder shall  
8 encourage employees to become volunteer members of local fire departments and shall  
9 facilitate appropriate training.

10 54 During construction and operation of the facility, the certificate holder shall ensure that  
11 the field workshop and all service vehicles are equipped with shovels and portable fire  
12 extinguishers of a 4A50BC or equivalent rating. [Amendment #1 (SFWF)]

13 55 During construction and operation of the facility, the certificate holder shall develop and  
14 implement fire safety plans in consultation with the local fire protection agencies (the  
15 North Gilliam County Rural Fire Protection District and the Lone Rural Fire Protection  
16 District) to minimize the risk of fire and to respond appropriately to any fires that occur on  
17 the facility site. In developing the fire safety plans, the certificate holder shall take into  
18 account the dry nature of the region and shall address risks on a seasonal basis. The  
19 certificate holder shall meet annually with local fire protection agency personnel to  
20 discuss emergency planning and shall invite local fire protection agency personnel to  
21 observe any emergency drill or tower rescue training conducted at the facility.

22 56 Upon the beginning of operation of the facility, the certificate holder shall provide a site  
23 plan to the local fire protection agencies (the North Gilliam County Rural Fire Protection  
24 District and the Lone Rural Fire Protection District). The certificate holder shall indicate on  
25 the site plan the identification number assigned to each turbine and the location of all  
26 facility structures and shall provide an updated site plan if additional turbines or other  
27 structures are later added to the facility. During operation, the certificate holder shall  
28 ensure that appropriate fire protection agency personnel have an up-to-date list of the  
29 names and telephone numbers of facility personnel available to respond on a 24-hour  
30 basis in case of an emergency on the facility site.

31 57 Before beginning construction, the certificate holder shall submit a Notice of Proposed  
32 Construction or Alteration to the Federal Aviation Administration (FAA) and the Oregon  
33 Department of Aviation identifying the proposed final locations of turbine towers and  
34 meteorological towers. The certificate holder shall promptly notify the Department of the  
35 responses from the FAA and the Oregon Department of Aviation. [Amendment #1 (SFWF)]

36 58 The certificate holder shall construct turbines on concrete foundations and shall surround  
37 the base of each tower with a ten-foot pad area of washed crushed rock on all sides. The  
38 certificate holder shall cover turbine pad areas with non-erosive, non-flammable material  
39 as soon as possible following exposure during construction and shall maintain the pad area  
40 covering during operation of the facility.

- 1 59 The certificate holder shall follow manufacturers' recommended handling instructions and  
2 procedures to prevent damage to turbine or turbine tower components that could lead to  
3 failure.
- 4 60 The certificate holder shall install and maintain self-monitoring devices on each turbine,  
5 connected to a fault annunciation panel or supervisory control and data acquisition  
6 (SCADA) system at the field workshop to alert operators to potentially dangerous  
7 conditions. The certificate holder shall maintain automatic equipment protection features  
8 in each turbine that would shut down the turbine and reduce the chance of a mechanical  
9 problem causing a fire. [Amendment #1 (SFWF)]
- 10 61 The certificate holder shall construct turbine towers with no exterior ladders or access to  
11 the turbine blades and shall install locked tower access doors. The certificate holder shall  
12 keep tower access doors locked at all times except when authorized personnel are  
13 present.
- 14 62 The certificate holder shall have an operational safety-monitoring program and shall  
15 inspect all turbine and turbine tower components on a regular basis. All turbine and  
16 turbine tower components will be inspected within 6 months of being repowered.  
17 Following the inspection, the certificate holder shall submit a written report to the  
18 Department describing the results of the turbine tower component inspection. The  
19 certificate holder shall maintain or repair turbine and turbine tower components as  
20 necessary to protect public safety. [Amendment #2]
- 21 63 For turbine types having pad-mounted step-up transformers, the certificate holder shall  
22 install the transformers at the base of each tower in locked cabinets designed to protect  
23 the public from electrical hazards and to avoid creation of artificial habitat for raptor prey.
- 24 64 To protect the public from electrical hazards, the certificate holder shall enclose the  
25 facility substation with appropriate fencing and locked gates. [Amendment #1 (SFWF)]
- 26 65 The certificate holder shall construct access roads with a finished width of approximately  
27 16 feet, a compacted base of native soil and a gravel surface to a depth of four to ten  
28 inches. [Amendment #1 (SFWF); Amendment #1]
- 29 66 During construction, the certificate holder shall implement measures to reduce traffic  
30 impacts, including:  
31 (a) Providing notice to the City of Arlington Road Department, the Gilliam County Road  
32 Department and the Gilliam County Sheriff's Office in advance of deliveries that could  
33 cause traffic disruption in Arlington.  
34 (b) Providing notice to the residents of Arlington in advance of deliveries that could  
35 cause traffic disruption.  
36 (c) Requiring flaggers to be at appropriate locations at appropriate times during  
37 construction to direct traffic.
- 38 67 The certificate holder shall cooperate with the Gilliam County Road Department and the  
39 Morrow County Public Works Department to ensure that any unusual damage or wear to  
40 county roads that is caused by construction of the facility is repaired by the certificate

1 holder. Submittal to the Department of an executed Road Use Agreement with Gilliam  
2 County and Morrow County shall constitute evidence of compliance with this condition.  
3 Upon completion of construction, the certificate holder shall restore county roads to pre-  
4 construction condition or better, to the satisfaction of the applicable county departments.  
5 If required by Morrow County or Gilliam County, the certificate holder shall post bonds to  
6 ensure funds are available to repair and maintain roads affected by the proposed facility.  
7 [Amendment #2]

8 **68** During construction, the certificate holder shall require that all on-site construction  
9 contractors develop and implement a site health and safety plan that informs workers and  
10 others on-site what to do in case of an emergency and that includes the locations of fire  
11 extinguishers and nearby hospitals, important telephone numbers and first aid techniques.  
12 The certificate holder shall ensure that construction contractors have personnel on-site  
13 who are trained and equipped for tower rescue and who are first aid and CPR certified.

14 **69** During operation, the certificate holder shall develop and implement a site health and  
15 safety plan that informs employees and others on-site what to do in case of an emergency  
16 and that includes the locations of fire extinguishers and nearby hospitals, important  
17 telephone numbers and first aid techniques.

18 **70** During construction and operation of the facility, the certificate holder shall provide for  
19 on-site security and shall establish good communications between on-site security  
20 personnel and local law enforcement agencies (Gilliam County Sheriff and Morrow County  
21 Sheriff). During operation, the certificate holder shall ensure that appropriate law  
22 enforcement agency personnel have an up-to-date list of the names and telephone  
23 numbers of facility personnel available to respond on a 24-hour basis in case of an  
24 emergency on the facility site.

25 **71** The certificate holder shall notify the Department and the Planning Directors of Gilliam  
26 County and Morrow County within 72 hours of any accidents including mechanical failures  
27 on the site associated with construction or operation of the facility that may result in  
28 public health and safety concerns.

## **6. Water, Soils, Streams & Wetlands Conditions**

29 **72** The certificate holder shall not build any roads or construct transmission line support  
30 poles within Eightmile Creek or within a 10-foot buffer from the ordinary high water line  
31 of the creek.

32 **73** The certificate holder shall conduct all construction work, including the repowering  
33 activities associated with Amendment #2, in compliance with an Erosion and Sediment  
34 Control Plan (ESCP) satisfactory to the Oregon Department of Environmental Quality and  
35 as required under the National Pollutant Discharge Elimination System (NPDES) Storm  
36 Water Discharge General Permit #1200-C. The certificate holder shall include in the ESCP  
37 any procedures necessary to meet local erosion and sediment control requirements or  
38 storm water management requirements. [Amendment #2]

- 1 74 During construction, the certificate holder shall limit truck traffic to designated existing  
2 and improved road surfaces to avoid soil compaction, to the extent practicable.
- 3 75 During construction, including the repowering activities associated with RFA2, the  
4 certificate holder shall implement best management practices to control any dust  
5 generated by construction activities, such as applying water to roads and disturbed soil  
6 areas. [Amendment #2]
- 7 76 During construction, the certificate holder shall reduce temporary disturbance impacts by  
8 making use of previously disturbed areas, including roadways and tracks, and by  
9 preserving vegetation rootstalks by crushing, rather than scraping, vegetation in areas of  
10 temporary disturbance.
- 11 77 During facility operation, the certificate holder shall routinely inspect and maintain all  
12 roads, pads and trenched areas and, as necessary, maintain or repair erosion and  
13 sediment control measures. The certificate holder shall restore areas that are temporarily  
14 disturbed during facility maintenance or repair activities to pre-disturbance condition or  
15 better.
- 16 78 During facility operation, the certificate holder shall obtain water for on-site uses from a  
17 well at the field workshop, subject to compliance with applicable permit requirements.  
18 The certificate holder shall not use more than 5,000 gallons of water per day from the  
19 facility's on-site well. [Amendment #1 (SFWF)]

## 7. Transmission Line & EMF Conditions

- 20 79 The certificate holder shall install the 34.5-kV collector system underground to the extent  
21 practicable. The certificate holder shall install underground lines at a minimum depth of  
22 three feet. Based on geotechnical conditions or other engineering considerations, the  
23 certificate holder may install segments of the collector system aboveground on single-  
24 pole, cross-arm structures, but the total length of aboveground double-circuit segments  
25 installed on single-pole structures must not exceed 3.2 miles. [Amendment #1 (SFWF);  
26 Amendment #1]
- 27 80 The certificate holder shall ground appropriate sections of fencing that parallel  
28 transmission lines to reduce the risk of shock from induced voltage. In particular, the  
29 certificate holder shall ground appropriate sections of fencing located in the northern  
30 project area on the west side of Eightmile Canyon if the certificate holder builds a parallel  
31 transmission line in that location that could induce a voltage on the fence.
- 32 81 The certificate holder shall take reasonable steps to reduce or manage human exposure to  
33 electromagnetic fields, including but not limited to:
- 34 (a) Constructing all aboveground transmission lines at least 200 feet from any residence  
35 or other occupied structure, measured from the centerline of the transmission line.
- 36 (b) Constructing all aboveground 34.5-kV transmission lines with a minimum clearance  
37 of 20 feet from the ground.
- 38 (c) Constructing all aboveground 230-kV transmission lines with a minimum clearance of  
39 24 feet from the ground.

1 (d) Fencing the areas near the facility substation to ensure that substation equipment is  
2 not accessible to the public.

3 (e) Providing to landowners a map of underground and overhead transmission lines on  
4 their property and advising landowners of possible health risks.

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

8 [Amendment #1 (SFWF)]

9 **82** In advance of, and during, preparation of detailed design drawings and specifications for  
10 230-kV and 34.5-kV transmission lines, the certificate holder shall consult with the Utility  
11 Safety and Reliability Section of the Oregon Public Utility Commission to ensure that the  
12 designs and specifications are consistent with applicable codes and standards.

## 8. Plants, Wildlife & Habitat Protection Conditions

13 **83** The certificate holder shall conduct wildlife monitoring as described in the *Wildlife*  
14 *Monitoring and Mitigation Plan* that is incorporated in the *Final Order on Amendment #1*  
15 as Attachment A and as amended from time to time. [Amendment #1 (SFWF); Amendment #1]

16 **84** The certificate holder shall restore areas disturbed by facility construction but not  
17 occupied by permanent facility structures according to the methods and monitoring  
18 procedures described in the *Revegetation Plan* that is incorporated in the *Final Order on*  
19 *Amendment #1 for the Shepherds Flat Wind Farm* as Attachment SFS-B and as amended  
20 from time to time. [Amendment #1 (SFWF)]

21 **85** The certificate holder shall acquire the legal right to create, enhance, maintain and protect  
22 a habitat mitigation area as long as the site certificate is in effect by means of an outright  
23 purchase, conservation easement or similar conveyance and shall provide a copy of the  
24 documentation to the Department. Within the habitat mitigation area, the certificate  
25 holder shall improve the habitat quality as described in the *Habitat Mitigation Plan* that is  
26 incorporated in the *Final Order on Amendment #1* as Attachment C and as amended from  
27 time to time. [Amendment #1 (SFWF); Amendment #1]

28 **86** The certificate holder shall avoid permanent and temporary disturbance to the areas  
29 described in (a) through (g) and, during the times indicated, shall avoid construction  
30 disturbance in the areas described in (h) through (k). The certificate holder shall flag these  
31 areas for the duration of construction activities nearby and shall ensure that construction  
32 personnel avoid disturbance of the areas. The avoidance areas are:

33 (a) All Category 1 and those areas of Category 2 habitat shown on the “ODFW-2” Figures  
34 1 through 12 in the Shepherds Flat Wind Farm Application. [Amendment #1 (SFWF)]

35 (b) Eight small areas of Category 3 shrub-steppe habitat as described in the Final Order  
36 on Amendment #1 for the Shepherds Flat Wind Farm, Section IV.4.(b)A. [Amendment #1  
37 (SFWF)]

38 (c) All seeps, riparian areas and vernal pools.

39 (d) All water sources for wildlife, including perennial and intermittent streams, stock  
40 ponds and watering stations.

1 (e) All faces of bluffs or rock outcroppings.

2 (f) All trees or other structures that contain active raptor nests.

3 (g) For the facility substation and field workshop, all Category 3 habitat. [Amendment #1  
4 (SFWF)]

5 (h) [Text was removed by Amendment #1]

6 (i) The area within 0.5 miles of Category 3 curlew nesting habitat and the area within 0.5  
7 miles the BLM Horn Butte Wildlife Area during the nesting season (March 8 through June  
8 15). Before beginning construction, the certificate holder shall provide to the Department  
9 a map showing these avoidance areas relative to areas of potential construction  
10 disturbance. The certificate holder may engage in construction activities in these areas at  
11 times other than the nesting season.

12 (j) The area within 1,000 feet of any essential, limited and irreplaceable Washington  
13 ground squirrel (WGS) habitat within the new areas added to the site by Amendment #1  
14 (excluding the areas within the site boundaries of Shepherds Flat North, Shepherds Flat  
15 Central and Shepherds Flat South as approved on September 11, 2009) during the period  
16 in which the squirrels are active. The certificate holder shall hire a qualified independent  
17 professional biologist to conduct pre-construction surveys for State-listed threatened,  
18 endangered or sensitive wildlife species in these new areas within 1,000 feet of any area  
19 potentially disturbed by facility construction. To determine whether WGS habitat exists  
20 and to determine whether WGS are active, the biologist shall search for WGS in suitable  
21 habitat using a two-survey protocol approved by the Oregon Department of Fish and  
22 Wildlife (ODFW). The certificate holder shall submit the results of the survey to ODFW and  
23 to the Department. If signs of WGS activity are observed, the certificate holder shall flag  
24 the avoidance area and ensure that construction personnel avoid disturbance of the area  
25 until the biologist has determined that the WGS are no longer active.

26 (k) Areas within a suitable buffer around confirmed populations of Laurent's milk-vetch  
27 or any other State-listed threatened or endangered plant species within the new areas  
28 added to the site by Amendment #1 (excluding the area within the site boundaries of  
29 Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South as approved on  
30 September 11, 2009). The certificate holder shall not install facility components or cause  
31 temporary disturbance within these areas. The certificate holder shall hire a qualified  
32 independent professional biologist to conduct pre-construction surveys for State-listed  
33 threatened or endangered plant species in these new areas within 1,000 feet of any area  
34 potentially disturbed by facility construction. The certificate holder shall submit the results  
35 of the survey to the Department.

36 [Amendment #1]

37 87 The certificate holder shall microsite the facility in conformance with the industry's best  
38 practices. The certificate holder shall follow the recommendations of a qualified wildlife  
39 biologist to avoid building turbine towers in the following locations:

40 (a) Areas of increased risk to avian species due to constricted flight paths, such as  
41 narrow ridge saddles and gaps between hilltops.

42 (b) Areas on slopes greater than 20 percent.

43 (c) [text removed by Amendment #1 (SFWF)]



1 (d) [text removed by Amendment #1 (SFWF)]

2 **88** During construction, the certificate holder shall avoid construction activities in areas  
 3 around active nests of the following species during the sensitive period, as provided in this  
 4 condition:

<u>Species</u>	<u>Sensitive Period</u>	<u>Early Release Date</u>
Swainson’s hawk	April 1 to August 15	May 31
Ferruginous hawk	March 15 to August 15	May 31
Burrowing owl	April 1 to August 15	July 15

5 The certificate holder shall conduct pre-construction surveys, using a protocol approved  
 6 by the Oregon Department of Fish and Wildlife (ODFW) to determine whether there are  
 7 any active nests of these species within 0.5 miles of any areas that would be disturbed  
 8 during construction. The certificate holder shall search the scheduled construction areas  
 9 and all areas within 0.5 miles of the construction areas. If a nest is occupied by any of  
 10 these species after the beginning of the sensitive period, the certificate holder will flag the  
 11 boundaries of a 0.5-mile buffer area around the nest and shall instruct construction  
 12 personnel to avoid disturbance of the area. The certificate holder shall hire a qualified  
 13 independent professional biologist to observe the active nest sites during the sensitive  
 14 period for signs of disturbance and to notify the Department of any non-compliance with  
 15 this condition. If the biologist observes nest site abandonment or other adverse impact to  
 16 nesting activity, the certificate holder shall implement appropriate mitigation, in  
 17 consultation with ODFW and subject to the approval of the Department, unless the  
 18 adverse impact is clearly shown to have a cause other than construction activity. The  
 19 certificate holder may begin or resume construction activities within a buffer area before  
 20 the ending day of the sensitive period if any known nest site is not occupied by the early  
 21 release date. If a nest site is occupied, then the certificate holder may begin or resume  
 22 construction before the ending day of the sensitive period with the approval of ODFW,  
 23 after the young are fledged. The certificate holder shall use a protocol approved by ODFW  
 24 to determine when the young are fledged (the young are independent of the core nest  
 25 site).

26 **89** The certificate holder shall not remove any trees that are greater than three feet in height.

27 **90** The certificate holder shall design all aboveground transmission line support structures  
 28 following the most current suggested practices for avian protection on power lines  
 29 published by the Avian Power Line Interaction Committee.

30 **91** The certificate holder shall reduce the risk of injuries to avian species by:

31 (a) Installing turbine towers that are smooth steel structures that lack features that  
 32 would allow avian perching.

33 (b) Installing meteorological towers that are non-guyed structures to eliminate the risk  
 34 of avian collision with guy-wires.

35 (c) Avoiding installation of aboveground transmission lines across narrow saddles,  
 36 ravines and similar features and, where such crossings cannot be avoided, installing line-  
 37 markers to make the lines more visible to avian species.

1 92 The certificate holder shall impose and enforce construction and operation speed limits of  
2 5 miles per hour on roads within 1,000 feet of Category 1 or Category 2 WGS habitat and  
3 20 miles per hour on all other facility roads and shall ensure that all construction and  
4 operations personnel are instructed on the importance of cautious driving practices while  
5 on facility roads. [Amendment #1]

## 9. Visual Effects Conditions

6 93 To reduce the visual impact of the facility, the certificate holder shall:

7 (a) Mount nacelles on smooth, steel structures, painted uniformly in a matte-finish,  
8 neutral white color.

9 (b) Paint substation structures in a neutral color to blend with the surrounding  
10 landscape.

11 (c) Not allow any advertising to be used on any part of the facility.

12 (d) Use only those signs required for facility safety, required by law or otherwise  
13 required by this site certificate, except that the certificate holder may erect a sign to  
14 identify the facility near the field workshop, may paint turbine numbers on each tower  
15 and may allow unobtrusive manufacturers' logos on turbine nacelles.

16 (e) Not locate any facility signs along Highway 74.

17 (f) Design signs in accordance with Gilliam County Zoning Ordinance Section 8.030 and  
18 Morrow County Zoning Ordinance Section 4.070, as applicable.

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

20 [Amendment #1 (SFWF)]

21 94 The certificate holder shall design and construct the field workshop to be generally  
22 consistent with the character of similar buildings used by commercial farmers or ranchers  
23 in the area and shall paint the building in a neutral color to blend with the surrounding  
24 landscape. [Amendment #1 (SFWF)]

25 95 The certificate holder shall not use exterior nighttime lighting except:

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

28 (b) Security lighting at the field workshop and substation, provided that such lighting is  
29 shielded or downward-directed to reduce glare.

30 (c) Minimum lighting necessary for repairs or emergencies.

31 (d) Minimum lighting necessary for nighttime construction. The certificate holder may  
32 use lighting only at the work location and only directed downward to illuminate the work  
33 area at the turbine base or upward from the base to illuminate the turbine tower;  
34 construction lighting shall not be directed outward. The certificate holder shall use  
35 nighttime lighting only with the approval of the owner of the property on which the work  
36 is conducted and shall provide notice of nighttime construction to occupants of all  
37 residences within one-half mile of the construction site.

38 [Amendment #1 (SFWF)]

## 10. Noise Control Conditions

- 1 96 To reduce noise impacts at nearby residences, the certificate holder shall:
- 2 (a) Confine the noisiest operation of heavy construction equipment to the daylight
- 3 hours.
- 4 (b) Require contractors to install and maintain exhaust mufflers on all combustion
- 5 engine-powered equipment; and
- 6 (c) Establish a complaint response system at the construction manager's office to
- 7 address noise complaints.
- 8 97 Before beginning construction, the certificate holder shall provide to the Department:
- 9 (a) Information that identifies the final design locations of all turbines to be built at the
- 10 facility.
- 11 (b) The maximum sound power level for the substation transformers and the maximum
- 12 sound power level and octave band data for the turbines selected for the facility based on
- 13 manufacturers' warranties or confirmed by other means acceptable to the Department.
- 14 (c) The results of noise analysis of the facility to be built according to the final design
- 15 performed in a manner consistent with the requirements of OAR 340-035-0035
- 16 (1)(b)(B)(iii)(IV) and (VI) demonstrating to the satisfaction of the Department that the total
- 17 noise generated by the facility (including the noise from turbines and substation
- 18 transformers) would meet the ambient degradation test and maximum allowable test at
- 19 the appropriate measurement point for all potentially-affected noise sensitive properties.
- 20 (d) For each noise-sensitive property where the certificate holder relies on a noise
- 21 waiver to demonstrate compliance in accordance with OAR 340-035-0035 (1)(b)(B)(iii)(III),
- 22 a copy of the a legally effective easement or real covenant pursuant to which the owner of
- 23 the property authorizes the certificate holder's operation of the facility to increase
- 24 ambient statistical noise levels  $L_{10}$  and  $L_{50}$  by more than 10 dBA at the appropriate
- 25 measurement point. The legally-effective easement or real covenant must: include a legal
- 26 description of the burdened property (the noise sensitive property); be recorded in the
- 27 real property records of the county; expressly benefit the certificate holder; expressly run
- 28 with the land and bind all future owners, lessees or holders of any interest in the
- 29 burdened property; and not be subject to revocation without the certificate holder's
- 30 written approval.
- 31 98 During operation, the certificate holder shall maintain a complaint response system to
- 32 address noise complaints. The certificate holder shall promptly notify the Department of
- 33 any complaints received regarding facility noise and of any actions taken by the certificate
- 34 holder to address those complaints. In response to a complaint from the owner of a noise
- 35 sensitive property regarding noise levels during operation of the facility, the Council may
- 36 require the certificate holder to monitor and record the statistical noise levels to verify
- 37 that the certificate holder is operating the facility in compliance with the noise control
- 38 regulations. [Amendment #1 (SFWF)]

## 11. Waste Management Conditions

- 1 99 The certificate holder shall provide portable toilets for on-site sewage handling during  
2 construction and shall ensure that they are pumped and cleaned regularly by a licensed  
3 contractor who is qualified to pump and clean portable toilet facilities.
- 4 100 During operation, the certificate holder shall discharge sanitary wastewater generated at  
5 the field workshop to a licensed on-site septic system in compliance with county permit  
6 requirements. The certificate holder shall design the septic system for a discharge capacity  
7 of less than 2,500 gallons per day. [Amendment #1 (SFWF)]
- 8 101 The certificate holder shall implement a waste management plan during construction that  
9 includes but is not limited to the following measures:  
10 (a) Recycling steel and other metal scrap.  
11 (b) Recycling wood waste.  
12 (c) Recycling packaging wastes such as paper and cardboard.  
13 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste  
14 hauler or by using facility equipment and personnel to haul the waste.  
15 (e) Segregating all hazardous wastes such as used oil, oily rags and oil-absorbent  
16 materials, mercury-containing lights and lead-acid and nickel-cadmium batteries for  
17 disposal by a licensed firm specializing in the proper recycling or disposal of hazardous  
18 wastes.  
19 (f) Discharging all concrete truck rinse water into foundation holes and completing truck  
20 wash-down off-site.
- 21 102 The certificate holder shall implement a waste management plan during operation that  
22 includes but is not limited to the following measures:  
23 (a) Training employees to minimize and recycle solid waste.  
24 (b) Recycling paper products, metals, glass and plastics.  
25 (c) Recycling used oil and hydraulic fluid.  
26 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste  
27 hauler or by using facility equipment and personnel to haul the waste.  
28 (e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-  
29 absorbent materials, mercury-containing lights and lead-acid and nickel-cadmium  
30 batteries for disposal by a licensed firm specializing in the proper recycling or disposal of  
31 hazardous wastes.
- 32 103 Before beginning construction, the certificate holder shall determine whether any  
33 construction disturbance would occur in locations not previously investigated for potential  
34 jurisdictional waters as described in the *Final Order on Amendment #1*. The certificate  
35 holder shall conduct pre-construction investigations in these new areas within 1,000 feet  
36 of any area potentially disturbed by facility construction to determine whether any State-  
37 jurisdictional waters exist in those locations. The certificate holder shall submit a written  
38 report on the pre-construction investigation to the Department of Energy and to the  
39 Department of State Lands for approval before beginning construction and shall ensure  
40 that construction would have no impact on any jurisdictional water identified in the  
41 report. [Amendment #1]

## 12. New Conditions Applicable to Amendment 2 Facility Repower

1 104 The certificate holder shall begin construction of the Shepherds Flat South facility  
2 modifications, as approved in the Second Amended Site Certificate, within three years  
3 after the effective date of the amended site certificate [January 24, 2023]. The certificate  
4 holder shall notify the Department, the Morrow County Planning Department, and the  
5 Gilliam County Planning Department when construction of the facility modifications, as  
6 approved in Request for Amendment 2, commences. Under OAR 345-015-0085(8), the  
7 amended site certificate is effective upon execution by the Council Chair and the  
8 certificate holder.

9 [Amendment #2]

10 105 The certificate holder shall complete construction of the Shepherds Flat South facility  
11 modifications, as approved in the Second Amended Site Certificate, within three years  
12 following the date of construction commencement. The certificate holder shall promptly  
13 notify the Department, the Morrow County Planning Department, and the Gilliam County  
14 Planning Department of the date of completion of construction of the facility  
15 modifications, as approved in Request for Amendment 2.

16 [Amendment #2]

17 106 Prior to Amendment #2 facility repower activities, the certificate holder shall provide the  
18 Department with the foundation uprate analysis on facility turbines. If the analysis results  
19 identify necessary mitigation and remediation measures, or operational timing  
20 recommendations, the certificate holder shall implement the identified measures and  
21 recommendations prior to beginning the repowering activities unless otherwise approved  
22 by the Department. [Amendment #2]

23 107 Prior to Amendment #2 facility repower activities, the certificate holder shall coordinate  
24 with the Gilliam County Weed Department and the Morrow County Weed Control  
25 Department, and submit to the Department, a Roadway Weed Control Plan. The  
26 Department shall review and approve the plan, in consultation with the Gilliam County  
27 Weed Department and the Morrow County Weed Control Department. The Roadway  
28 Weed Control Plan shall include, as pertinent, but not be limited to, identification of  
29 county-listed weeds of economic concern, methods for evaluating weeds within impact  
30 area, results of weed assessment, control methods specific to roadway weed control and  
31 timing, agency consultation protocol, and process for evaluating success of weed control.

32 [Amendment #2]

33 108 The certificate holder shall:

34 (a) Prior to RFA2 facility repower activities:

35 (i) Provide an updated habitat assessment of areas of disturbance, based on a  
36 protocol approved by the Department in consultation with ODFW.

37 (ii) Identify monitoring and reference sites, including sites within each habitat  
38 category and subtype impacted, and the methodology utilized for selecting the  
39 number of monitoring and reference sites should be included.

1 (iii) Consult with the Department, ODFW and Gilliam County Weed Control  
2 Department and Morrow County Weed Control Department on timing and methods  
3 for revegetation and weed control.

4 (b) Following completion of RFA2 facility repower activities:

5 (i) Restore areas temporarily disturbed by RFA2 facility repower activities according  
6 to the methods and monitoring procedures described in the Revegetation Plan that  
7 is incorporated in the Final Order on Amendment 2 for Shepherds Flat South as  
8 Attachment D and as amended from time to time.

9 (ii) Consult annually with the Department, ODFW, Gilliam and Morrow County Weed  
10 Control Departments on timing and methods for revegetation and weed control. If  
11 mutually agreed upon by the Department, ODFW, Gilliam and Morrow County Weed  
12 Control Departments, the annual consultation may be discontinued after 5 years.  
13 This provision does not relieve the certificate holder from complying with its weed  
14 control obligations as described in Condition 107 and 38, and any other provisions of  
15 applicable state or local requirements for weed control.

16 [Amendment #2]

17 109 The certificate holder shall:

18 (a) Prior to RFA2 facility repower activities, the certificate holder shall conduct a pre-  
19 construction raptor nest survey, using a protocol approved by the Oregon Department  
20 of Fish and Wildlife (ODFW) to determine whether there are any active nests of state  
21 sensitive species within 0.5 miles of any areas that would be disturbed.

22 (b) During RFA2 repower activities, if active raptor nests were identified within 0.5-mile  
23 of RFA2 repower activities per (a) of this condition or become active during the sensitive  
24 season, per (c) below, the certificate holder shall avoid construction activities within  
25 0.25 mile buffer in areas around active nests of the following species during the  
26 sensitive period, as provided in this condition:

<u>Species</u>	<u>Sensitive Period</u>	<u>Early Release Date</u>
<u>Swainson's hawk</u>	<u>April 1 to August 15</u>	<u>May 31</u>
<u>Ferruginous hawk</u>	<u>March 15 to August 15</u>	<u>May 31</u>
<u>Burrowing owl</u>	<u>April 1 to August 15</u>	<u>July 15</u>

27 (c) During RFA2 repower activities, if a nest becomes occupied by any of these species  
28 after the beginning of the sensitive period, the certificate holder will flag the boundaries  
29 of a 0.25-mile buffer area around the nest and shall instruct construction personnel to  
30 avoid disturbance of the area.

31 (d) During RFA2 repower activities, if active nest sites are observed per (b) or (c) of this  
32 condition, the certificate holder shall hire a qualified independent professional biologist  
33 to observe the active nest sites during the sensitive period for signs of disturbance and  
34 to notify the Department of any non-compliance with this condition. If the biologist  
35 observes nest site abandonment or other adverse impact to nesting activity, the

1 certificate holder shall implement appropriate mitigation, in consultation with ODFW  
2 and subject to the approval of the Department, unless the adverse impact is clearly  
3 shown to have a cause other than construction activity. The certificate holder may begin  
4 or resume construction activities within a buffer area before the ending day of the  
5 sensitive period if any known nest site is not occupied by the early release date. If a nest  
6 site is occupied, then the certificate holder may begin or resume construction before  
7 the ending day of the sensitive period with the approval of ODFW, after the young are  
8 fledged. The certificate holder shall use a protocol approved by ODFW to determine  
9 when the young are fledged (the young are independent of the core nest site).

10 [Amendment #2]

11 110 Following completion of Amendment #2 facility repower activities, the certificate holder  
12 shall conduct two years of avian and bat fatality monitoring, as described in the Wildlife  
13 Monitoring and Mitigation Plan, or based on protocol otherwise approved by the  
14 Department in consultation with ODFW, provided as Attachment E of the Final Order on  
15 Amendment 2. [Amendment #2]

16 111 During Amendment #2 facility repower activities, the certificate holder shall, or ensure its  
17 third-party contractors, reuse or recycle wind turbine blades, hubs and other removed  
18 wind turbine components to the extent practicable and in accordance with the Morrow  
19 County Solid Waste Management Plan. The certificate holder shall report in its semi-  
20 annual report to the Department the quantities of removed wind turbine components  
21 recycled, reused, sold for scrap, and disposed of in a landfill, to the extent practicable.  
22 [Amendment #2]

23 112 Prior to Amendment #2 facility repower activities, the certificate holder shall submit a  
24 Notice of Proposed Construction or Alteration to the Federal Aviation Administration  
25 (FAA) and the Oregon Department of Aviation identifying the new maximum blade tip  
26 height of 150 meters. The certificate holder shall promptly notify the Department of the  
27 responses from the FAA and the Oregon Department of Aviation. [Amendment #2]

28 113 Prior to Amendment #2 facility repower activities, the certificate holder shall provide to  
29 the Department:

30 (a) The maximum sound power level and octave band for the modified wind turbines  
31 based on manufacturer's warranties or confirmed by other means acceptable to the  
32 Department.

33 (b) If the information provided to the Department in (a) shows that the modified  
34 (repowered) wind turbines would produce a higher maximum sound power level and  
35 octave band than the currently installed wind turbines, the certificate holder must  
36 conduct a noise analysis of the modified (repowered) turbines. If required, the  
37 certificate holder must provide to the Department results of the noise analysis for the  
38 Amendment #2 facility repower, performed in a manner consistent with the  
39 requirements of OAR 340-035-0035(1)(b)(B)(iii)(IV) and (VI) demonstrating to the  
40 satisfaction of the Department that the total noise generated (including the noise from  
41 repowered wind turbines and existing substation transformers) would meet the

1 ambient degradation test and maximum allowable test at the appropriate measurement  
2 point for all potentially-affected noise sensitive properties.

3 (c) If the information provided to the Department in (a) shows that the modified  
4 (repowered) wind turbines would produce a higher maximum sound power level and  
5 octave band than the currently installed wind turbines, the certificate holder must  
6 provide to the Department, for each noise-sensitive property where the certificate  
7 holder relies on a noise waiver to demonstrate compliance in accordance with OAR 340-  
8 035-0035 (1)(b)(B)(iii)(III) related to site certificate Amendment #2 activities, a copy of  
9 the a legally effective easement or real covenant pursuant to which the owner of the  
10 property authorizes the certificate holder’s operation of the facility to increase ambient  
11 statistical noise levels L10 and L50 by more than 10 dBA at the appropriate  
12 measurement point. The easement must only be provided to the Department if the  
13 modified wind turbines would produce a higher maximum sound power level and  
14 octave band than the currently installed wind turbines and the current noise-easements  
15 do not allow ambient statistical noise levels L10 and L50 by more than the statistical  
16 noise levels anticipated to occur from the repowered turbines at the appropriate  
17 measurement point. The legally-effective easement or real covenant must: include a  
18 legal description of the burdened property (the noise sensitive property); be recorded in  
19 the real property records of the county; expressly benefit the certificate holder;  
20 expressly run with the land and bind all future owners, lessees or holders of any interest  
21 in the burdened property; and not be subject to revocation without the certificate  
22 holder’s written approval. [Amendment #2]

23



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

**VI. SUCCESSORS AND ASSIGNS**

To transfer this site certificate or any portion thereof or to assign or dispose of it in any other manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0400.

**VII. SEVERABILITY AND CONSTRUCTION**

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

**VIII. GOVERNING LAW AND FORUM**

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

**IX. EXECUTION AND EFFECTIVE DATE**

1 This site certificate may be executed in counterparts and will become effective upon signature  
2 by the Chair of the Energy Facility Siting Council and the authorized representative of the  
3 certificate holder.

4 **IN WITNESS WHEREOF**, this site certificate has been executed by the State of Oregon, acting by  
5 and through its Energy Facility Siting Council, and by Horseshoe Bend Wind, LLC.

ENERGY FACILITY SITING COUNCIL

HORSESHOE BEND WIND, LLC

By: Caithness Shepherds Flat, LLC, its Manager

By: BEP SF Holdings, LLC, its Managing Member

By:   
Marcia L. Grail (Mar 3, 2021 19:31 PST)

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

Marcia L. Grail, Chair  
Oregon Energy Facility Siting Council

Print: F. Mitchell Davidson

Date: Mar 3, 2021

Date: March 24, 2021