Attachments

Attachment A: Recommended Draft Site Certificate Conditions (to be replaced in final order with Site Certificate)
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Attachment A: Recommended Draft Site Certificate Conditions
(to be replaced in final order with Site Certificate)

List of Draft Site Certificate Conditions by Standard

Changes to recommended conditions between the Draft Proposed Order to the Proposed Order are presented in "track-changes"

As recited in the context of the applicable Council Standard to which they refer, the Department recommends that the Site Certificate be subject to the following conditions.

General Standard of Review (OAR 345-022-0000)

Recommended General Standard Condition 1 (CON): The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.

a. Construction of the facility shall commence within three years after the date of Council action [DATE TO BE SPECIFIED]. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification of the construction commencement date and that it has met the construction commencement deadline.
b. Construction of all facility components shall be completed within three years after construction commencement identified in (a) of this condition. Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline.

[GEN-GS-01; Mandatory Condition OAR 345-025-0006(4)]

General Standard Condition 2 (OPR): The certificate holder shall submit a legal description of the site to the Oregon Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility.
[OPR-GS-01; Mandatory Condition OAR 345-025-0006(2)]

General Standard Condition 3 (GEN): The certificate holder shall design, construct, operate, and retire the facility:

a. Substantially as described in the site certificate;
b. In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and
c. In compliance with all applicable permit requirements of other state agencies.

[GEN-GS-02; Mandatory Condition OAR 345-025-0006(3)]

General Standard Condition 4 (CON): Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of

the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For the transmission line associated with the energy facility, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and the certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line occurs during the certificate holder's negotiations to acquire construction rights on another part of the site.
[PRE-GS-01; Mandatory Condition OAR 345-025-0006(5)]

General Standard Condition 5 (GEN): If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.
[GEN-GS-03; Mandatory Condition OAR 345-025-0006(6)]

General Standard Condition 6 (OPR): Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.
[OPR-GS-01; Mandatory Condition OAR 345-025-0006(11)]

General Standard Condition 7 (GEN): Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate.
[GEN-GS-04; Mandatory Condition OAR 345-025-0006(15)]

Recommended General Standard Condition 8 (CON): The certificate holder is authorized to construct 230-kV transmission lines anywhere within the approved ~~200-foot wide~~ transmission line micrositing corridors, subject to the conditions of the site certificate. The ~~200-foot wide~~approved transmission line micrositing corridors include:

a. Substation Connector Line: Approximately 6.8 mile, single circuit 230-kV transmission line extending between the two facility substations~~. A~~as further described in ASC Exhibits B and C and as presented in Figure 1 of the site certificate.
b. UEC Cottonwood Route: Approximately 25.3 mile transmission line extending from the northern substation to the existing UEC Cottonwood Substation. Approximately 8.4 miles ~~would be a~~of new single-circuit 230-kV transmission line, approximately 9.6 miles ~~would replace~~of replacement of an existing 12.47-kV distribution line with a 230-kV transmission line and distribution underbuild, and approximately 7.3 miles ~~would~~ of upgraded ~~an~~ existing 115-kV UEC transmission line to a double-circuit 230/115-kV line with 12.47-kV underbuilt

distribution, ~~. As~~ as further described in ASC Exhibits B and C and as presented in Figure 1 of the site certificate.

c. BPA Stanfield Route: Approximately 5-mile 230 kV transmission line extending from the northern facility substation to the BPA Stanfield Substation, of which approximately 3 miles ~~would~~ parallel an existing BPA 500-kV transmission line, outside of the existing transmission line's right-of-way~~. As~~, as further described in ASC Exhibits B and C and as presented in Figure 1 of the site certificate.
[GEN-GS-06; Site Specific Condition OAR 345-025-0010(5)]

Recommended General Standard Condition 9 (PRE): At least 90 days prior to beginning construction of the facility (unless otherwise agreed to by the Department), the certificate holder shall submit to the Department a compliance plan documenting and demonstrating actions completed or to be completed to satisfy the requirements of all site certificate terms and conditions and applicable statutes and rules. The plan shall be provided to the Department for review and compliance determination for each requirement. The Department may request additional information or evaluation deemed necessary to demonstrate compliance.
[PRE-GS-02; OAR 345-026-0048]

Recommended General Standard Condition 10 (GEN): Any matter of non-compliance under the site certificate is the responsibility of the certificate holder. Any notice of violation issued under the site certificate will be issued to the certificate holder. Any civil penalties under the site certificate will be levied on the certificate holder.

Recommended General Standard Condition 11 (GEN): In addition to the requirements of OAR 345-026-0170, within 72 hours after discovery of incidents or circumstances that violate the terms or conditions of the site certificate, the certificate holder must report the conditions or circumstances to the Department.

Organizational Expertise (OAR 345-022-0010)

Recommended Organizational Expertise Condition 1 (PRE): Prior to construction, the certificate holder shall submit to the Department a guarantee signed by its parent company guaranteeing payment and performance of the certificate holder's obligations under the site certificate using the form:

a. Provided in Final Order on ASC Attachment F; or
b. Substantially similar to Final Order on ASC Attachment F, if approved by the Department in consultation with the Department's legal ~~c~~counsel at the Oregon Department of Justice.

Recommended Organizational Expertise Condition 2~~1~~ (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall notify the Department of the identity, telephone number, email address and qualifications of the full-time, on-site construction manager. Qualifications shall demonstrate that the construction manager has experience in managing permit and regulatory compliance requirements and is qualified to manage a utility-scale energy facility construction project. The notification shall

include the construction manager's onsite schedule and shall demonstrate presence onsite during primary (major ground disturbance or activities) construction phases.

Recommended Organizational Expertise Condition 3~~2~~ (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall provide to the Department the identity and qualifications of the major design, engineering and construction contractor(s). The certificate holder shall select contractors that have substantial experience in the design, engineering and construction of similar facilities and a demonstrated low rate of job incidence and injury rates. The certificate holder shall report to the Department any changes of major contractors.

Recommended Organizational Expertise Condition 4~~3~~ (CON): During construction, the on-site construction manager must be onsite or have identified an equivalent representative to be onsite during primary (major ground disturbance or activities) construction phases. The certificate holder shall notify the Department within 72-hours upon any change in personnel or contact information for onsite managers.

Recommended Organizational Expertise Condition 5~~4~~ (PRO): Before operation, the certificate holder shall notify the Department of the identity, telephone number, e-mail address and qualifications of the facility manager(s). Qualifications shall demonstrate that the ~~operations~~ facility manager has experience in managing permit and regulatory compliance requirements and is qualified to manage operation of a utility-scale energy facility.

Recommended Organizational Expertise Condition 6~~5~~ (OPR): During operation, the facility manager(s) must be onsite or have identified an equivalent representative to be onsite, as is necessary to safely operate the facility.

Recommended Organizational Expertise Condition 7~~6~~ (PRE): Prior to construction of the facility, facility component or phase as applicable, the certificate holder shall:

a. Obtain and provide copies of all third-party permits needed.
b. Provide proof of agreements between the certificate holder and the third-party regarding access to the resources or services secured by the permits or approvals identified per sub(a) above.

Recommended Organizational Expertise Condition 8~~7~~ (PRE): Before beginning construction of the 230 kV UEC Cottonwood Transmission Line, if selected at final design, the certificate holder must provide evidence to the Department that an executed contract with UEC has been obtained, which binds the certificate holder and UEC to the terms and conditions of the site certificate, as applicable to the transmission line, for the life of the transmission line.

Structural Standard (OAR 345-022-0020)

Recommended Structural Standard Condition 1 (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall:

a. Submit a protocol for the site-specific geotechnical investigation of the analysis area to the Department, for review in consultation with a third-party consultant or DOGAMI. The protocol shall, at a minimum, be consistent with Attachment E of the Final Order on the ASC.
b. Employ a certified Professional Engineer or Geologist to conduct a site-specific geotechnical investigation and prepare a report consistent with the Oregon State Board of Geologist Examiners Guideline for Preparing Engineering Geologic Reports, or newer guidelines if available to be submitted to the Department, for review in consultation with a third-party consultant or DOGAMI.
c. Submit a copy of a final site-specific Geotechnical Investigation Report addressing (a)-(c) to the Department, for review and approval, consultation with a third-party consultant or DOGAMI.

Structural Standard Condition 2 (GEN): The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction triggering and consequences (including flow failure, settlement buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure interaction.
[Mandatory Condition OAR 345-025-0006(12)]

Structural Standard Condition 3 (GEN): The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.
[Mandatory Condition OAR 345-025-0006(13)]

Structural Standard Condition 4 (GEN): The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the Department receives notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.
[Mandatory Condition OAR 345-025-0006(14)]

Soil Protection (OAR 345-022-0022)

Recommended Soil Protection Condition 1 (PRE): The certificate holder shall:

a. Prior to construction of roads within the wind facility micrositing area, consult with the Umatilla County Soil and Water Conservation District, Umatilla County Planning Department and Department on layout and design methods that would minimize impacts to agricultural lands.
b. Prior to construction, consult with the Department and Oregon Department of Environmental Quality on the Erosion and Sediment Control Plans (ESCP) to be included in the application for the National Pollutant Discharge Elimination System Construction Stormwater Discharge (NPDES) General Permit 1200-C. Consultation shall address erosion control measures and identify Best Management Practices (BMPs) such as mulch, soil tackier, erosion control blankets, gravel, and swales and check dam installation based on site-specific information obtained during the preconstruction, geotechnical investigation, final facility design limits of disturbance, grading plan (see requirements in the Revegetation Plan) and seasonal conditions at the time of disturbance.

Recommended Soil Protection Condition 2 (CON): The certificate holder shall:

a. During construction, conduct all work in compliance with the NPDES General Permit 1200-C, including the monitoring and maintenance of all BMPs.
b. Following completion of construction, provide evidence to the Department that the NPDES General Permit 1200-C permit was terminated by DEQ.

Recommended Soil Protection Condition 3 (PRO): Prior to operation, the certificate holder shall develop a Soil Monitoring Plan to evaluate impacts of topsoil loss and erosion during construction activities. The Soil Monitoring Plan shall identify the testing method, evaluative criteria and best management practices/corrective actions to be implemented if the results identify a significant impact to soil productivity.

Recommended Soil Protection Condition 4 (PRE): Prior to construction, the certificate holder shall submit to the Department a final copy of a Construction Spill Prevention Control and Countermeasures Plan (SPCC Plan), based on the draft SPCC Plan included in Attachment G-1 of the Final Order on the ASC.

Recommended Soil Protection Condition 5 (CON): During construction, the certificate holder shall conduct all work in compliance with the final SPCC Plan.

Recommended Soil Protection Condition 6 (OPR): During operational activities that include ground disturbance, the certificate holder shall ensure that the activities are planned with BMPs and erosion control materials in place, as necessary, and inspected and mitigated until site stabilization is achieved.

Recommended Soil Protection Condition 7 (PRO): Prior to operation, the certificate holder shall submit to the Department a final copy of an Operational Spill Prevention Control and Countermeasures Plan (SPCC Plan).

Recommended Soil Protection Condition 8 (OPR): During operations, the certificate holder shall conduct all work in compliance with the final SPCC Plan.

Land Use (OAR 345-022-0030)

Recommended Land Use Condition 1 (PRE): Subject to the Council's jurisdiction and authority pursuant to ORS 469.504(1), prior to construction of facility structures, as applicable, the certificate holder shall obtain conditional use permits and zoning permits issued by the Planning Director, per affected tax lot, from Umatilla County Planning Department; copies of permits shall be provided to the Department.

Recommended Land Use Condition 2 (PRE): Prior to construction, the certificate holder shall finalize the Agricultural Mitigation Plan, based upon the preconstruction landowner consultation requirements provided in Attachment K-1 of the Final Order on the ASC. A copy of the final Agricultural Mitigation Plan shall be provided to the Department.

Recommended Land Use Condition 3 (CON): During construction, the certificate holder shall implement the design and construction methods, as established in the Agricultural Mitigation Plan, as finalized in Land Use Condition 2.

Recommended Land Use Condition 4 (PRE): Prior to construction of the UEC Cottonwood Transmission Line, if selected as the transmission line route during final facility design, the certificate holder shall demonstrate to the Department that steel structures would be used within the portions of the route with the RTC, AB, and LI zones.

Recommended Land Use Condition 5 (PRE): Prior to construction of wind facility components, the certificate holder shall provide final site maps with turbine locations and boundary right-of-way of County roads, state and interstate highways. The maps shall be accompanied by a table with distance (in feet) from turbines to road boundary rights-of-way and shall demonstrate that turbines have been sited based on a minimum setback of 110% of the overall tower-to-blade tip height.

Recommended Land Use Condition 6 (PRE): Prior to construction of wind facility components, the certificate holder shall:

a. Identify all electrical transmission lines to be included in the final design.
b. Demonstrate via maps presenting wind facility components and dwelling locations, obtained from Umatilla County, that all electrical transmission lines meet a minimum 500-foot setback from dwellings, unless located within a public right-of-way or landowner approval and deed recordation has been obtained and completed.

Recommended Land Use Condition 7 (PRE): Prior to construction of wind facility components, certificate holder shall demonstrate to the Department that its contractor(s) have developed a grading and cut-and-fill plan that utilizes existing site contours and demonstrates engineering measures to minimize grading and cut-and-fill to the maximum extent feasible.

Recommended Land Use Condition 8 (PRE): Prior to construction of wind facility components, the certificate holder shall provide to the Department final facility design maps, presenting all existing, new or substantially modified private roads for which it will have control during construction and operation. The maps shall identify the location of gates and facility signage that both prohibits illegal access and allows for emergency access.

Recommended Land Use Condition 9 (CON): During construction and operation, the certificate holder shall ensure gates and no trespassing signs are in place and maintained to prohibit illegal access and allow for emergency response.

Recommended Land Use Condition 10 (PRE): Prior to construction of underground collection lines associated with wind facility components, the certificate holder shall provide to the Department evidence that underground trenches for the underground electric collection system have been designed to extend a minimum depth of 3-feet below ground surface, unless technological or engineering feasibility are clearly identified.

Recommended Land Use Condition 11 (PRE): Prior to construction of the O&M building, the certificate holder shall provide to the Department evidence that the O&M design and construction materials are consistent with the characters of similar agricultural buildings used by commercial farmers or ranchers in Umatilla County.

Recommended Land Use Condition 12 (PRE): Prior to construction of wind facility components, the certificate holder, and underlying landowners on whose property the wind facility components are located, shall record in the real property records of Umatilla County a Covenant Not to Sue with regard to generally accepted farming practices on adjacent farmland.

Recommended Land Use Condition 13 (PRO): Prior to operation of wind facility components, the certificate hold shall provide the final location of each wind turbine, electrical collection system, O&M building, substation, access roads and transmission lines, as applicable to final design, to the Umatilla County Planning Department and Department in a format suitable for GPS mapping.

Recommended Land Use Condition 14 (OPR): Within each 3-year annual report to the Department, the certificate holder shall revise the decommissioning estimate for wind facility components based on evaluation of the assumptions of the costs of tasks and actions. Certificate holder shall confirm whether the bond or letter of credit maintained with the Department under Retirement and Financial Assurance Condition 4 needs to be updated to reflect revisions; or shall confirm that there are no revisions necessary.

Recommended Land Use Condition 15 (PRE): Prior to construction of the solar facility, the certificate holder shall provide evidence to the Department that it has executed a Strategic Investment Program (SIP) agreement with Umatilla County. In the SIP agreement or other documentation, the certificate holder shall demonstrate that negotiations with the county evaluated an investment fee amount and program, if available, that would benefit or preserve agriculture. If a SIP agreement is not executed with the county, certificate holder shall provide evidence to the Department of the alternative property tax payment option selected and shall identify any programs implemented by the county that would receive tax revenue with an agricultural benefit.

Recommended Land Use Condition 16 (PRE): Prior to construction of solar photovoltaic energy generation components, the certificate holder shall document that turbine strings with a minimum of 50 MW generation capacity be constructed in close proximity to the proposed solar site and that the wind and solar facility components will share the northern project substation and any existing roads during construction and operation. Documentation of the combination of wind and solar energy generation components, at final design, shall be submitted to the Department or Council for review and approval, per (a) or (b) as applicable:

a. If construction of wind energy generation components will commence within the same 12-month period as solar energy generation components, certificate holder shall submit to the Department final facility design documents and executed contracts (e.g., construction contract, Power Purchase Agreement) or other evidence that shows a minimum of 50 MW within turbine strings in close proximity to the solar site will be constructed and that the wind and solar facility components will share the northern project substation and any existing roads during construction and operation; or
b. If commencement of wind energy generation components will occur more than 12-months after solar energy generation components, certificate holder shall submit to Council, for review at a regularly scheduled Council meeting, facility design documents and executed contracts (e.g., construction contract, Power Purchase Agreement) or other evidence that demonstrates to Council's satisfaction that turbine string with a minimum of 50 MW generation capacity will be constructed in close proximity to the solar site and that the wind and solar facility components will share the northern project substation and any existing roads during construction and operation prior to the construction completion deadline.

Recommended Land Use Condition 17~~6~~ (PRE): Prior to construction of solar facility components, the certificate holder shall submit to the Department final solar facility component layout maps. The layout shall demonstrate that the perimeter fenceline is placed at the edge of existing agricultural fields or along property lines and is designed to minimize impacts, based on landowner consultation, to any remaining agricultural activities adjacent to the perimeter fenceline. The layout maps shall also demonstrate that any other solar facility components outside of the perimeter fenceline have been designed in a manner that minimize unnecessary agricultural impacts (e.g. isolation of property or access impacts).

Recommended Land Use Condition 18~~7~~ (PRE): Prior to construction of solar facility components, the certificate holder, and underlying landowners on whose property the solar

facility components are located, shall record in the real property records of Umatilla County a Covenant Not to Sue with regard to generally accepted farming practices on adjacent farmland.

Protected Areas (OAR 345-022-0040)

Recommended Protected Areas Condition 1 (PRE): Prior to construction of the 230 kV UEC Cottonwood transmission line, if selected as the final design transmission line option, the certificate holder shall provide notice to the Department and BLM land manager for the Echo Meadows site of the 230 kV UEC Cottonwood transmission line construction schedule, potential construction-related noise impacts, and contact information to report noise complaints.

Recommended Protected Areas Condition 2 (CON): During construction of the 230 kV UEC Cottonwood transmission line, if selected as the final design transmission line option, the certificate holder shall, require contractors to have noise complaint and response signage on or near their equipment in a manner accessible to users of the Echo Meadows site. If noise complaints are received, contractors must attempt to reduce equipment-related noise levels, to the extent practicable.

Retirement and Financial Assurance (OAR 345-022-0050)

Retirement and Financial Assurance Condition 1 (GEN): The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.
[Mandatory Condition OAR 345-025-0006(7)]

Retirement and Financial Assurance Condition 2 (RET): The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, nonhazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.
[Mandatory Condition OAR 345-025-0006(9)]

Retirement and Financial Assurance Condition 3 (RET): If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval.

Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in OAR 345-025-0006(8) to restore the site to a useful, nonhazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, nonhazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.
[Mandatory Condition OAR 345-025-0006(16)]

Recommended Retirement and Financial Assurance Condition 4 (PRE): Before beginning construction of the facility or a facility component, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The total bond or letter of credit amount for the facility is $39.643 million dollars (Q1 2022 dollars), to be adjusted to the effective date, and adjusted on an annual basis thereafter, as described in sub-paragraph (b) of this condition:

a. The certificate holder may adjust the amount of the bond or letter of credit based on the design configuration of the facility, or any phase of the facility, by applying the unit costs presented in Table 7~~X~~ of the Final Order on the ASC, and the contingencies illustrated in Table 7~~X~~ of the Final Order on the ASC and may further make adjustments based on unit costs for task and actions presented in ASC Exhibit W Attachment W-1 and W-2. Any revision to the restoration costs should be adjusted to the effective date as described in (b). Any modification to the unit costs presented in Table 7~~X~~ of the Final Order on the ASC are subject to review and approval by the Council.
b. The certificate holder shall adjust the amount of the bond or letter of credit using the following calculation:
    i. Adjust the amount of the bond or letter of credit (expressed in Q1 2022 dollars) to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain Weight, as published in the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast" or by any successor agency and using the first quarter 2022 index value and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the index is no longer published, the Council shall select a comparable calculation to adjust first quarter 2022 dollars to present value.
    ii. Round the result total to the nearest $1,000 to determine the financial assurance amount.
c. The certificate holder shall use an issuer of the bond or letter of credit and a bond or letter of credit form approved by the Council, based on the Council's pre-approved financial institution list and form.

[Mandatory Condition OAR 345-025-0006(8)]

Fish and Wildlife Habitat (OAR 345-022-0060)

Recommended Fish and Wildlife Condition 1 (PRE): Prior to construction, the certificate holder shall finalize and submit to the Department, for review and approval, the Revegetation and Noxious Weed Plan, as provided in Attachment P-2 of the Final Order on the ASC.

Recommended Fish and Wildlife Condition 2 (CON): During construction, the certificate holder shall implement and adhere to the requirements of the final Revegetation and Noxious Weed Plan.

Recommended Fish and Wildlife Condition 3 (OPR): During operation, the certificate holder shall implement and adhere to the applicable requirements of the final Revegetation and Noxious Weed Plan.

Recommended Fish and Wildlife Condition 4 (PRE): Prior to construction, the certificate holder shall:

a. Calculate the size of the habitat mitigation area (HMA) for permanent and temporal habitat impacts, based on final facility design. The calculation must be based on the ratios and methods presented in the Final Order on the ASC and provided to the Department for review and approval.
b. Provide evidence to the Department demonstrating that an agreement of outright purchase, conservation easement or similar conveyance has been executed for the enhancement and protection of the HMA under the requirements of the Habitat Mitigation Plan, to extend for the life of the facility.
c. Submit a final Habitat Mitigation Plan to the Department for review and approval, substantially similar to the draft plan provided in Attachment P-1 of the Final Order on the ASC.

Recommended Fish and Wildlife Condition 5 (OPR): During operation, the certificate holder shall implement and adhere to the requirements of the Habitat Mitigation Plan, as approved per Fish and Wildlife Condition 4.

Recommended Fish and Wildlife Condition 6 (PRE): Prior to construction, the certificate holder shall provide evidence to the Department that the design measures included in the Wildlife Monitoring and Adaptive Management Plan have been included in the final facility design and construction contractor contracts, as applicable.

Recommended Fish and Wildlife Condition 7 (CON): During construction, the certificate holder shall adhere to the requirements of the Wildlife Monitoring and Adaptive Management Plan. Monitoring records shall be maintained throughout construction and included in the semi-annual report submitted to the Department pursuant to OAR 345-026-0080.

Recommended Fish and Wildlife Condition 8 (OPR): During operation, the certificate holder shall implement and adhere to the Wildlife Monitoring Plan, as provided in Attachment P-3 of this order.

Threatened and Endangered Species (OAR 345-022-0070)

Recommended Threatened and Endangered Species Condition 1 (PRE): Prior to construction of facility components, the certificate holder shall:

a. Submit a protocol-level survey plan for surveys to be conducted within suitable habitat for Washington ground squirrel (WGS), for review and approval by the Department in consultation with ODFW. At a minimum, the survey plan shall specify the survey area (all areas of suitable habitat within 1,000 feet of ground disturbing activities except where there is a habitat barrier (e.g., a paved road)); survey timing (February 15 to May 31, unless otherwise approved by ODFW); and, land access restrictions and any justification for modified survey methods.
b. Complete protocol-level WGS surveys based on the protocol approved per (a).
c. Submit survey reports to the Department and ODFW. The certificate holder shall not begin construction within 1,000 feet of Category 1 or Category 2 WGS habitat until the identified boundaries of Category 1 WGS habitat have been approved by the Department, in consultation with ODFW. Category 1 habitat includes a 785-foot buffer from an identified active burrow, and also the area within the perimeter of multiple active burrows. Category 2 WGS habitat consists of a 4,136 foot buffer from the exterior boundary of all Category 1 WGS habitat. The survey results are valid for 3-years.
d. Develop maps and worker training materials to inform of sensitive Category 1 and Category 2 habitat. Submit to the Department final facility design maps demonstrating that Category 1 habitat, including 785-buffer from any colonies identified per (b), is avoided.
e. Install flagging or other demarcation, as appropriate, to inform workers of sensitive WGS habitat and of avoidance requirement.

Recommended Threatened and Endangered Species Condition 2 (CON): In years 1, 2 or 3 following the preconstruction protocol-level WGS surveys, in areas of ground disturbance within 1,000-feet of previously identified WGS colonies, the certificate holder shall:

a. Install and monitor flagging/temporary fencing to ensure avoidance of sensitive WGS habitat.
b. Perform WGS surveys (non-protocol, spot check) and update maps and flagging. Provide updated maps to the Department and ODFW and identify any significant change in previously identified WGS habitat.

Recommended Threatened and Endangered Species Condition 3 (OPR): During operation and maintenance, results of the most recent survey year of the long-term WGS monitoring conducted under the Wildlife Monitoring Plan (Attachment P-3 of the this order), must be used to inform work area restrictions (785-foot avoidance buffer) within 1,000-feet of suitable WGS habitat.

Recommended Threatened or Endangered Species Condition 4 (PRE): Prior to construction of the facility, the certificate holder shall:

a. Submit a botanical survey protocol to the Department for review in consultation with the Oregon Department of Agriculture. The protocol shall apply to areas of suitable habitat for

Laurence's milkvetch using current habitat classification data and areas of ground disturbance. Previous survey results may be relied upon if determined appropriate during review and approval of the protocol.

b. Conduct botanical surveys to confirm the presence or absence of Laurence's milkvetch, within suitable habitat in areas of permanent or temporary disturbance.
c. Survey results must be submitted to the Department and Oregon Department of Agriculture's Native Plant Conservation Division. If the pre-construction surveys identify these or any other state threatened or endangered plant species, the certificate holder shall complete an impact assessment to determine whether temporary or permanent impacts would significantly reduce the likelihood of survivability or recovery of the impacted species, and shall propose mitigation, as determined appropriate by the Department, in consultation with the Oregon Department of Agriculture or its third-party consultant, as necessary. These measures may include avoidance, or if avoidance is not possible, other measures such as seed collection may be considered. If rare plants are identified within a public right-of-way and cannot be avoided by construction, then in accordance with ORS 564, written permission from the landowner or lease holder must be obtained. If seed collection is determined to be feasible and warranted, a permit from the Oregon Department of Agriculture must be obtained in accordance with OAR 603-073-0100 (3).

Recommended Threatened or Endangered Species Condition 5 (GEN): Certificate holder shall maintain a map of previously identified Laurence's milkvetch populations within the micrositing area. The map shall be used to inform flagging or other avoidance mechanism to ensure avoidance of ground disturbance within 20-feet of the populations. The avoidance flagging areas may be updated at any time based on more current survey results, if completed.

Scenic Resources (OAR 345-022-0080)

[No Recommended Conditions]

Historic, Cultural and Archeological Resources (OAR 345-022-0090)

Recommended Historic, Cultural and Archeological Resources Condition 1 (PRE): Prior to construction, the certificate holder shall:

a. Submit to the Department and SHPO a research design consistent with SHPO's archeological guidelines and recommendations for unsurveyed areas, and the Subsurface Probing Plan included as Attachment S-3 of the Final Order on the ASC,
b. Complete archeological field investigations and subsurface probing in accordance with the research design and Subsurface Probing Plan under (a). Submit survey reports to the Department and SHPO. Any new resources and management recommendations identified must be evaluated under OAR 345-027-0357 to determine whether a site certificate amendment is required. Resources and management recommendations, shall be reviewed by the Department in consultation with SHPO or a third-party consultant within 60-days. Once approved, the management recommendations shall be incorporated into the Monitoring and Inadvertent Discovery Plan, per Historic, Cultural and Archeological Resources Condition 2.

Recommended Historic, Cultural, and Archeological Resources Condition 2 (PRE): Prior to construction, the certificate holder shall finalize the Draft Monitoring and Inadvertent Discovery Plan (MIDP), based on Attachment S-1 of the Final Order on the ASC, based on review and approval by the Department. The final plan shall include:

a. Tables 132, 14, 3 and 154 of the Final Order on the ASC and maps of the final facility layout, resource location and established 50-meter avoidance buffer. Any additional resources identified in the preconstruction surveys per Historic, Cultural and Archeological Resources Condition 1 must also be included.
b. Avoidance method (e.g. worker training, flagging) and monitoring protocol for ground-disturbing activities within 50-meters of previously identified precontact sites.
c. Flagging and monitoring protocol for any ground-disturbing activities within 200-feet of NH-BB-03, 35UM 00536, 35UM 00543 35UM 00550, 35UM 00560 and 35UM 00571.

Recommended Historic, Cultural, and Archeological Resources Condition 3 (GEN): During any ground-disturbing activities, the certificate holder shall adhere to the requirements of the MIDP. Any failures to adhere to the MIDP must be reported to the Department and SHPO; impacts must be addressed and mitigation measures must be proposed and implemented for any listed or likely-NRHP eligible resources; worker training may be used to address impacts to resources identified as not-likely NRHP eligible.

Recommended Historic, Cultural, and Archeological Resources Condition 4 (GEN): Results of monitoring and any efforts conducted as a result of the inadvertent discovery protocols under the MIDP shall be documented in a Monitoring Report submitted to the Department in the semi-annual or annual report, or as soon as practical in circumstances of a discovery or monitoring issue.

Recommended Historic, Cultural and Archeological Condition 5 (PRE): Prior to construction of wind turbine components, the certificate holder shall:

a. Evaluate whether if, based on final facility design, the setting of any of the 3 likely NRHP eligible aboveground, historic properties referenced in Table 165 of the Final Order on the ASC would no longer be impacted by wind turbine visibility. If any of these property settings would not be impacted, the mitigation requirements for un impacted resources would not apply.
b. Based on (a), submit a protocol or design of the Intensive Level Survey, consistent with SHPO's 2011 Guidelines for Historic Resources Surveys in Oregon, for review and approval by the Department, in consultation with SHPO;
c. Complete photo documentation of the setting of the properties at T2N/R30E and T2N/R29E; and the Pendleton Ranches Sheep Camp/Bunk House, unless any of these property settings would not be impacted per (a);
d. Initiate work detailed in the Historic Resources Mitigation Plan (HRMP), provided in Attachment S-6 of the Final Order on the ASC, included as Attachment S-2 of this order.

Recommended Historic, Cultural and Archeological Condition 6 (CON): Within three years of construction of wind turbine components, the certificate holder shall submit draft reports documenting the results of the Intensive Level Surveys, of the HRMP under Historic, Cultural and Archeological Condition 5, concurrently to the Department and SHPO. Report cover pages to SHPO shall include a Department contact name and specify that the report is submitted as mitigation for an EFSC facility. Any comments received from the Department and SHPO within 30-days of the draft reports must be addressed within final reports.

Recreation (OAR 345-022-0010)

Recommended Recreation Condition 1 (PRE): Prior to construction of the 230 kV BPA Stanfield transmission line, if selected as the final design transmission line option, the certificate holder shall provide notice to the Department and landowner for the Corral Springs ONHT site of the 230 kV BPA Stanfield transmission line construction schedule, potential construction-related noise impacts, and contact information to report noise complaints.

Recommended Recreation Condition 2 (CON): During construction of the 230 kV BPA Stanfield transmission line, if selected as the final design transmission line option, the certificate holder shall, require contractors to have noise complaint and response signage on or near their equipment in a manner accessible to users of the Corral Springs ONHT site. If noise complaints are received, contractors must attempt to reduce equipment-related noise levels, to the extent practicable.

Public Services (OAR 345-022-0100)

Recommended Public Services Condition 1 (PRE): Prior to construction of the facility, or facility component, the certificate holder shall:

a. Based on final design, finalize, identify, and provide maps of all public roads used for construction, road names, locations, segments used, and road conditions and include in Final Traffic Management Plan identified in (b) and (c).
b. Submit executed road use agreements between Umatilla County and the certificate holder or its contractor. Any Final Traffic Management Plan that is part of the road use agreements shall include, at a minimum, the provisions designated in Section II of Attachment U-1 of the Final Order on ASC.
    a. If final transportation/haul routes selected are within the City of Echo or the unincorporated community of Nolin and are not managed by the County, the certificate holder shall contact and coordinate with the local governments, execute a similar road use agreement that includes, at a minimum, the provisions designated in Section II of Attachment U-1 of the Final Order on ASC, and submit any final agreements to the Department.
c. If a Final Traffic Management Plan designated in sub (a) is not included in road use agreements executed with Umatilla County, then submit a Final Traffic Management Plan. A copy of the Final Traffic Management Plan shall be provided to the Department and Umatilla County Public Works Department. The Construction Traffic Management Plan shall,

at a minimum, include the provisions in Section II of Attachment U-1 of the Final Order on ASC.

d. Submit to the Department, any ODOT permits obtained by the certificate holder, its third-party contractors or subcontractors including but not limited to Oversize Load Movement Permit/Load Registration, Permit to Occupy or Perform Operations Upon a State Highway, and/or an Access Management Permit.

Recommended Public Services Condition 2 (CON): During construction of the facility, or facility component, the certificate holder shall ensure that construction contractors adhere to the requirements of the Final Traffic Management Plan.

Recommended Public Services Condition 3 (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall submit 7460-1 Notice of Proposed Construction or Alteration Forms for all new or replaced supporting facilities or structures that meet the height and imaginary surface criteria for notice to FAA and ODA. Provide copies of FAA determinations and ODA comments to the Department.

Recommended Public Services Condition 4 (CON): Within five-days after construction of facility components evaluated in the FAA Form 7460-1 reach their greatest height as specified in the FAA determinations listed in Public Services Condition 3(b), the certificate holder shall submit 7460-2 forms to FAA and Aviation and shall report both timing of submission and any results to the Department.

Recommended Public Services Condition 5 (OPR): During facility operation, the certificate holder shall operate the facility in compliance with FAA required lighting for facility wind turbines, met towers, and transmission line(s).

Recommended Public Services Condition 6 (PRO): Prior to operation the certificate holder shall contact the Echo Rural Fire Protection District (Echo RFPD) and Umatilla County Fire District #1 (UDFD #1) to schedule an on-site orientation to review facility layout and safety procedures.

Recommended Public Services Condition 7 (PRE): Prior to construction of the facility, or facility component the certificate holder shall:

a. Finalize and submit to the Department a Fire Prevention, Suppression and Emergency Management Plan which shall include at a minimum the provisions included in Attachment U-2 of the Final Order on ASC.
b. Submit copies of the Final Fire Prevention, Suppression and Emergency Management Plan to the Echo Rural Fire Protection District (Echo RFPD) and Umatilla County Fire District #1 (UDFD #1).

Recommended Public Services Condition 8 (OPR): During operation the certificate holder shall operate the facility consistent with the provisions in the Final Fire Prevention, Suppression and Emergency Management Plan, as approved in Public Services Condition 7**.** If substantive

updates or changes are made to the Plan, submit copies of the updated Plan to the Department and to the Echo Rural Fire Protection District (Echo RFPD) and Umatilla County Fire District #1 (UDFD #1).

Waste Minimization (OAR 345-022-0120)

Recommended Waste Minimization Condition 1 (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall require contractors to develop and submit to the Department for review and approval, Construction Waste Management Plan(s) that, at a minimum, include the following:

a. All sources and quantities of construction waste and wastewater, including damaged or dysfunctional energy facility components, and where feasible, estimated quantities that can be recycled.
b. Process for disposal and recycling, including use of licensed haulers and disposal/recycling facilities; names and locations of licensed recycling and disposal facilities; collection, hauling and tracking requirements.
c. Requirements for securing landowner disposal agreement and evidence of evaluation and avoidance of sensitive resources if offsite spoil disposal is necessary.
d. Process for requesting a permit exemption from DEQ pursuant to OAR 340-093-0080 to ensure that concrete washout materials reused in foundation backfill are substantially the same as clean fill.
e. Process for training workers and tracking compliance with the requirements of the plan.

Recommended Waste Minimization Condition 2 (CON): During construction of the facility, facility component or phase, as applicable, the certificate holder shall require that contractors adhere to the requirements of the Construction Waste Management Plan(s) and maintain records of employee training and tracking compliance onsite and available upon Department request.

Recommended Waste Minimization Condition 3 (CON): During construction, on-site concrete washwater disposal is prohibited unless DEQ approval of a permit exemption for materials substantially similar to clean fill is obtained. If DEQ approval of a permit exemption is obtained, concrete washwater must be disposed of onsite via infiltration and evaporation in accordance with a DEQ-issued NPDES 1200-C permit.

Recommended Waste Minimization Condition 4 (PRO): Prior to operation of solar facility components, the certificate holder shall develop a Solar Panel Recycling Plan or protocol requiring that damaged or nonfunctional panels be recycled through the Solar Energy Industries Association National PV Recycling Program (or similar program), to the extent practicable. The certificate holder shall report in its annual report to the Department the quantities of panels recycled, reused or disposed of in a landfill.

Recommended Waste Minimization Condition 5 (OPR): During operation of solar facility components, the certificate holder shall adhere to the requirements of the Solar Panel Recycling Plan or protocol developed under Waste Minimization Condition 4.

Recommended Waste Minimization Condition 6 (OPR): During operation of wind facility components, the certificate holder shall ensure its third-party contractors reuse or recycle wind turbine blades, hubs and other removed wind turbine components, to the extent practicable. The certificate holder shall demonstrate that the recycling or disposal facility selected to receive turbine parts is licensed. The certificate holder shall report in its annual report to the Department the quantities of removed wind turbine components recycled, reused, sold for scrap, or disposed of in a landfill.

Recommended Waste Minimization Condition 7 (OPR): During operation of the solar facility components, the certificate holder shall:

a. Prohibit use of chemicals, soaps, detergents and heated water unless Chemical Safety Data Sheets for low volatile organic compound/biodegradable cleaning chemicals and solvents are submitted to the Department for review and approval prior to use;
b. Ensure that pressure washing is conducted in a manner that does not remove paint or other finishes.
c. Discharge wash water through evaporation and infiltration only.

Public Health and Safety Standards for Wind Facilities (OAR 345-024-0010)

Recommended Public Health and Safety Standards for Wind Facilities Condition 1 (OPS): During operation, the certificate holder shall develop and implement an operational safety-monitoring program that includes regular inspections, maintenance, and reporting program to prevent structural or electrical failure of wind turbine foundations, towers, blades, or electrical equipment. Required elements of the operational safety-monitoring program include:

a. Identify and conduct inspections and testing of wind facility components, including but not limited to foundations, towers, blades, nacelle, pad-mounted transformers, and SCADA system, consistent with manufacturers' recommendations and recognized and generally accepted good engineering practices (RAGAGEP) for frequency and process.
b. Maintain records of each inspection and test performed. Records shall:
    i. Identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.
    ii. Identify testing or inspection results that show deficiencies in equipment or operation issues that are outside acceptable limits or recommendations identified by the manufacturer. These issues must be corrected before further use, or in a safe and timely manner if precautions are taken to assure safe operation.
    iii. Be made available for inspection by the Department's Compliance Officer during site visits, or upon request from the Department. A summary report of the annual inspections, testing and maintenance activities performed shall be submitted to the

Department pursuant to OAR 345-026-0080 in the facility's annual compliance report. The summary report shall include the details of the replacement of any system components which could impact the structural integrity of foundations, towers and blades.

c. In the event of blade or tower failure, a structural or electrical issue that causes a fire or other safety hazard the certificate holder shall report the incident to the Department within 72 hours, in accordance with OAR 345-026-0170(1), and shall, within 30 days of the event, submit a report which contains:
   i. A discussion of the cause of the reported incident including results of on-site or remote inspections or investigations;
   ii. A description of immediate actions taken to correct the reported conditions or circumstances; and
   iii. A description of actions taken or planned to minimize the possibility of recurrence and a description of manufacturers' recommendations and recognized and generally accepted good engineering practices to avoid instances in the future.

Recommended Public Health and Safety Standards for Wind Facilities Condition 2 (PRE): Prior to operation, the certificate holder shall submit to the Department the operational safety-monitoring program elements described in Public Health and Safety Standards for Wind Facilities Condition 1(a).

Cumulative Effects Standard for Wind Energy Facilities (OAR 345-024-0015)

Recommended Cumulative Effects Standard for Wind Energy Facilities Condition 1 (GEN): The certificate holder shall design, construct, and operate the facility to reduce cumulative adverse environmental effects in the vicinity by using existing roads to provide access to the facility. And new roads must minimize the amount of land used and be located to reduce adverse environmental impacts.

Recommended Cumulative Effects Standard for Wind Energy Facilities Condition 2 (PRE): Prior to construction, the certificate holder shall:

a. Evaluate existing roads on private property and use existing roads to the maximum extent practicable for construction and operation; and
b. Provide to the Department a map set illustrating the location of new roads used for construction and operation of the facility. Maps shall illustrate the locations of:
   i. New roads
   ii. Wetlands or waters of the state;
   iii. Category 1 through Category 5 habitats;
   iv. Active agricultural lands and property boundaries.

Siting Standards for Transmission Lines (OAR 345-024-0090)

Recommended Siting Standards for Transmission Lines Condition 1 (GEN):

a. The certificate holder must design, construct and operate the transmission lines in accordance with the requirements of the National Electrical Safety Code as approved by the American National Standards Institute; and
b. The certificate holder must develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.

[Site Specific Condition OAR 345-025-0010(4)]

Noise Control Regulations (OAR 340-035-0035)

Recommended Noise Control Condition 1: Prior to construction, the certificate holder shall provide to the Department:

a. Information that identifies the final design locations of all facility components to be built at the facility;
b. The maximum sound power level for all noise generating facility components based on manufacturers' warranties or confirmed by other means acceptable to the Department;
c. The results of the noise analysis of the final facility design performed in a manner consistent with the requirements of OAR 340-035-0035(1)(b)(B)(iii)(IV) and (VI). The analysis must demonstrate to the satisfaction of the Department that the total noise generated by the facility would meet the ambient noise degradation test and maximum allowable test at the appropriate measurement point for all potentially-affected noise sensitive properties within 1-mile of the site boundary, unless otherwise agreed upon by the Department based on the acoustic noise environment, or that the certificate holder has obtained the legally effective easement or real covenant for expected exceedances of the ambient noise degradation test described (d) below; and,
d. For each noise-sensitive property where the certificate holder relies on a noise waiver to demonstrate compliance in accordance with OAR 340-035-0035(1)(b)(B)(iii)(III), a copy of the legally effective easement or real covenant pursuant to which the owner of the property authorizes the certificate holder's operation of the facility to increase ambient statistical noise levels L_{10} and L_{50} by more than 10 dBA at the appropriate measurement point. The legally effective easement or real covenant must: include a legal description of the burdened property (the noise sensitive property); be recorded in the real property records of the county; expressly benefit the property on which the wind energy facility is located; expressly run with the land and bind all future owners, lessees or holders of any interest in the burdened property; and not be subject to revocation without the certificate holder's written approval.

Recommended Noise Control Condition 2: During operation, the certificate holder shall maintain a complaint response system to address noise complaints. The certificate holder shall notify the Department within two working days of receiving a noise complaint related to the facility. The notification should include, but is not limited to, the date the certificate holder received the complaint, the nature of the complaint, the complainant's contact information,

the location of the affected property, and any actions taken, or planned to be taken, by the certificate holder to address the complaint.

Removal Fill (ORS 196.795 through 196.990)

Recommended Removal Fill Condition 1 (PRE): Prior to construction of the 230 kV transmission line, the certificate holder shall:

a. Conduct field delineation surveys within unsurveyed transmission line corridor areas to identify any potentially jurisdictional wetlands or waters of the state.
b. If, based on the field delineation surveys conducted per (a), construction activities would result in 50 cy or more of removal-fill, submit the field delineation report to DSL and the Department, requesting DSL concurrence and confirmation of removal-fill permit applicability. If DSL concurrence is received on the identified wetlands/waters of the state, seek approval from EFSC to include removal fill permit requirements in a request for site certificate amendment; or
c. If a removal-fill permit is not required for disturbance impacts within the transmission line corridors, comply with Removal-Fill Condition 2(a) and (b).

Recommended Removal Fill Condition 2 (PRE): Prior to construction of facility components within the wind micrositing area, the certificate holder shall:

a. Provide the Department maps and GIS data showing the final design/layout and location of jurisdictional wetlands and waters of the state (WOS) as presented in Table X of the Final Order on the ASC and as a result of Removal-Fill Condition 1, if applicable; and, in tabular format, the distance from each facility component to the nearest jurisdictional wetland or WOS, demonstrating that facility components are at least 50 feet or more from any of the jurisdictional wetlands and waters of the state referred to in (a).
b. If final design of facility components cannot adhere to the 50-foot buffer under (a)(i), provide evidence to the Department that a removal-fill permit has been obtained by a third-party or through a site certificate amendment; or that a removal fill permit is not required.
c. Provide the Department a copy of the Worker Environmental Awareness Training, developed for construction workers, to inform and educate on the location of jurisdictional wetlands and WOS and of the purpose and specific location of exclusion flagging and signage.

Recommended Removal Fill Condition 3 (CON): During construction of facility components within the wind micrositing area the certificate holder shall:

a. Require contractors to complete the Worker Environmental Awareness training described in (a)(i). Maintain training records onsite for Department review upon request.
b. Maintain maps onsite and ensure contractors have awareness of the location of jurisdictional wetlands and WOS during construction activities.
c. Install flagging or signage around jurisdictional wetlands and WOS around the delineated boundary including a 50-foot buffer, when any construction activities are planned to occur within 150 feet.

d. Monitor flagging and signage and repair or replace flagging and signage, as needed, following weather events or construction impacts.
e. If construction impacts encroach upon the 50-foot buffer under (b)(iii), provide evidence to the Department that a removal-fill permit has been obtained by a third-party or through a site certificate amendment; or that a removal fill permit is not required.

Recommended Removal Fill Condition 4 (OPR): During operation and maintenance (O&M) of facility components within the wind micrositing area the certificate holder shall:
a. Require employees and contractors to complete the Worker Environmental Awareness training described in (a)(i). Maintain training records onsite for Department review upon request.
b. Maintain maps onsite and ensure employees and contractors have awareness of the location of jurisdictional wetlands and WOS during construction activities.
c. Install flagging or signage around jurisdictional wetlands and WOS around the delineated boundary including a 50-foot buffer, when any O&M activities are planned to occur within 150 feet.
d. Monitor flagging and signage and repair or replace flagging and signage, as needed, following weather events or O&M impacts.
e. If O&M impacts encroach upon the 50-foot buffer under (c)(iii), provide evidence to the Department that a removal-fill permit has been obtained by a third-party or through a site certificate amendment; or that a removal fill permit is not required.

Recommended Removal Fill Condition 5 (PRE): Prior to construction of the 230 kV BPA Stanfield transmission line, if selected, the certificate holder shall identify the construction method to be used to cross the Umatilla River.

Recommended Removal Fill Condition 6 (CON): During construction of the 230 kV BPA Stanfield transmission line, if selected, the certificate holder shall verify that removal-fill impacts do not occur below the OHWL unless a removal-fill permit is obtained from DSL through a third-party or a site certificate amendment.

Water Rights (ORS 537, 540 and 690)

Recommended Water Rights Condition 1 (PRE): Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall identify all water-related needs and estimate daily and annual water demand for each construction phase. Provide excerpts of agreements or other similar conveyance to the Department demonstrating that construction activities will be adequately and legally served by service providers or third-party permits.

Recommended Water Rights Condition 2 (CON): During construction of the facility, facility component or phase, as applicable, if a water right, limited water use license or water rights transfer is needed and would not be obtained by a third-party, submit and obtain approval of the applicable water permit through the site certificate amendment process.

Recommended Water Rights Condition 3 (PRO): Prior to operation, the certificate holder shall:

a. Identify all water-related needs and estimate daily and annual water demand. If a water right, limited water use license or water rights transfer is needed and would not be obtained by a third-party, submit and obtain approval of the applicable water permit through the site certificate amendment process.
b. Install the groundwater well in accordance with the recording requirements under OAR 690-190-0100. If the certificate holder is not the landowner, the certificate holder shall facilitate the landowner submission of required materials to Oregon Water Resources Department. The certificate holder shall submit to the Department a copy of the file submitted to Oregon Water Resources Department. This could also occur within 30 days after exempt well completion under ORS 537.545, whichever occurs first.

Recommended Water Rights Condition 4 (OPR): During operation, the onsite well must not exceed 5,000 gallons of water use per day for the facility unless a water right or limited water use license is obtained via third-party or site certificate amendment.

Attachment B: Reviewing Agency Comments on preliminary/complete ASC

Index of Reviewing Agency Comments on preliminary/Complete ASC

Commenter Name	Reviewing Agency	Date Received	DPO Section	DocID
John Shafer	Umatilla County Planning Department	April 15, 2020	IV.E.1 *Applicable Substantive Criteria*	NHWAPPDoc3-9 pASC Umatilla County comment 2020-04-15.
George Murdock	Umatilla County Board of County Commissioners	January 20, 2021		NHWAPPDoc3-9 pASC Umatilla County comment 2021-01-20.
Sean Tarter	City of Pendleton	February 2, 2022	IV.F.3. *Potential Water Use Impacts at Protected Areas*	NHWAPPDoc5 ASC Reviewing Agency Comment_City of Pendleton_Water_Tarter 2022-02-02
Greg Rimbach	Oregon Department of Fish and Wildlife	February 18, 2022	IV.I.2. *Impacts and Mitigation to State-listed T&E Species*	NHWAPPDoc5-2 ASC Reviewing Agency Comment ODFW_Rimbach_2022-02-18
Jordan Brown	Oregon Department of Agriculture	April 2, 2022		NHWAPPDoc5-7 ASC ODOE and Dept of Agriculture Consultation 2022-04-02
Brian Woolf	Bureau of Land Management	April 30, 2021	IV.J. *Scenic Resources*	NHWAPPDoc3-12 pASC BLM comment Protected Areas impacts Echo Meadows Woolf 2021-04-30
Jason Allen, M.A.	State Historic Preservation Office	December 22, 2020	IV.K.2. *Evaluation, Avoidance, and Mitigation for Impacts to Historic, Cultural, and Archeological Resources*	NHWAPPDoc3-6 pASC SHPO comment_Allen 2020-12-22
B. Lee Black	Oregon-California Trails Association	November 4, 2020		NHWAPPDoc3-13 pASC OCTA Oregon Trails comment 2020-11-04.
John Pouley, M.A., RPA	State Historic Preservation Office	April 14, 2022		NHWAPPDoc5-5 Reviewing Agency Comment_SHPO_2022-04-14
Teara Farrow Ferman	Confederated Tribes of the Umatilla Indian Reservation	November 10, 2020		NHWAPPDoc3-4 pASC CTUIR comment received 2020-11-10
Brian Woolf	Bureau of Land Management	April 30, 2021	IV.L.2. *Impact Assessment*	NHWAPPDoc3-12 pASC BLM comment Protected Areas impacts Echo Meadows Woolf 2021-04-30
David Slaght	City of Echo	March 21, 2022	IV.M.2. *Water Services*	NHWAPPDoc5-3 ASC Reviewing Agency Comment_City of Echo_Water_Slaght 2022-03-21
Sean Tarter	City of Pendleton	February 2, 2022		NHWAPPDoc5 ASC Reviewing Agency Comment_City of Pendleton_Water_Tarter 2022-02-02
Matt Lawyer		March 12, 2020	IV.M.6. *Air Traffic*	NHWAPPDoc3-7 NHWAPPDoc3-7 pASC Aviation comment 2020-03-12

Commenter Name	Reviewing Agency	Date Received	DPO Section	DocID
Seth Thompson	Oregon Department of Aviation	February 17, 2022		NHWAPPDoc5-1 ASC Reviewing Agency Comment_ODA_Aviation_Thompson 2022-02-17
		August 3, 2021		NHWAPPDoc3-7 pASC Aviation comment 2021-08-03
David Slaght	City of Echo	March 21, 2022	IV.Q.3. *Water Rights*	NHWAPPDoc5-3 ASC Reviewing Agency Comment_City of Echo_Water_Slaght 2022-03-21
Sean Tarter	City of Pendleton	February 2, 2022		NHWAPPDoc5 ASC Reviewing Agency Comment_City of Pendleton_Water_Tarter 2022-02-02

Umatilla County

Board of County Commissioners

George L. Murdock
541-278-6202

William J. Elfering
541-278-6201

John M. Shafer
541-278-6203

April 15, 2020

Katie Clifford
Oregon Department of Energy
550 Capitol Street NE, 1st Floor
Salem, OR 97301

RE: Umatilla County Comments on the Preliminary Application for Site Certificate for the Nolin Hills Wind Power Project

Dear Ms. Clifford,

Umatilla County has completed a review of the preliminary Application for Site Certificate (pASC) and compared it against the "applicable substantive criteria" of the acknowledged Umatilla County Comprehensive Plan and Umatilla County Development Code (UCDC). The county's "applicable substantive criteria" for wind generation facilities are primarily located in UCDC Section 152.616 (HHH). Based on the review conducted by the Umatilla County Planning Department, the pASC does not appear to comply with all of the county's "applicable substantive criteria." Specific comments related to the county's review are enclosed.

Thank you for the opportunity to provide comments on the pASC for this project. Any additional questions may be directed to Robert Waldher, Planning Director, Umatilla County Planning Department, 216 SE 4th Street, Pendleton, OR 97801; phone (541) 278-6251 or email at robert.waldher@umatillacounty.net.

Sincerely,

John M. Shafer
Chair, Board of Commissioners

JMS:bt
Enc.

BOARD OF COMMISSIONERS UMATILLA COUNTY STATE OF OREGON

Nolin Hills Wind Power Project Comments on the preliminary Application for Site Certificate (pASC) From Umatilla County Planning Department			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Comment or Information Request**
E	OAR 345-021-0010(1)(e)(E)	Page 10	Please identify source(s) for aggregate associated with construction of the project and coordinate with Umatilla County Planning to determine if the aggregate site is on the county's inventory of Goal 5 protected sites.
K	UCDC 152.616 (HHH)(6)(a)(3)	Page 12	The project does not comply with Umatilla County's standard for two-mile setback from rural residences outside the project area. Umatilla County requests that the applicant adjust the location of the turbines in order to meet the required standard.
K	UCDC 152.616 (HHH)(6)(a)(3)	Page 12	The application notes that the second closest rural residence has executed a "Good Neighbor Agreement Waiver" with the applicant. Umatilla County does not recognize this type of waiver as a substitute to meeting the required standard. If this was a locally permitted project, the applicant would be required to meet ALL standards of approval. Umatilla County requests that the applicant adjust the location of the turbines in order to meet the required standard.
K	UCDC 152.616 (HHH)(6)(a)(3)	Page 14	The applicant requests that the 2-mile rural residence setback from a turbine tower be replaced with at 0.5-mile setback for turbines from rural residences outside the site boundary. Umatilla County does not recognize a decrease in the setback requirements as a substitute to meeting the required standard. If this was a locally permitted project, the applicant would be required to meet ALL standards of approval. Umatilla County requests that the applicant adjust the location of the turbines in order to meet the required standard.
K	UCDC 152.616 (HHH)(6)(a)(3)	Page 15 / 4th Paragraph	The applicant states that the project complies with all "applicable substantive criteria." Please clarify how this project complies with ALL "applicable

Nolin Hills Wind Power Project Comments on the preliminary Application for Site Certificate (pASC) From Umatilla County Planning Department			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Comment or Information Request**
			substantive criteria" when the standards found in UCDC 152.616 (HHH)(6)(a)(3) are not met.
K	UCDC 152.616 (HHH)(7)	Page 28	The applicant proposes to submit a final decommissioning plan to Umatilla County prior to beginning decommissioning activities. This does not meet the standard which requires a plan for dismantling and/or decommissioning. A decommissioning plan should be included as a condition of approval of the site certificate.
K	Comprehensive Plan Chapter 6	Page 42	Per the Comprehensive Plan "The county shall require appropriate procedures/standards/policies be met in the Comprehensive Plan and Development Ordinance when reviewing non-farm uses for compatibility with agriculture. The project does not comply with the applicable substantive criteria found in UCDC Section 152.616(HHH). Therefore, the project is not in compliance with Chapter 6 of the acknowledged Umatilla County Comprehensive Plan.
O	OAR 345-021-0010(1)(o)(B), (C)	Page 2	The applicant notes that the City of Hermiston has indicated a willingness and ability to supply 68 million gallons of water for the project. However, the applicant also notes that if another source of water can be located, such as a purchase/transfer of an existing Umatilla River surface water right...another path may be chosen. Umatilla County requests that the applicant work with a municipality for the project, rather than utilizing other water sources that could otherwise be dedicated to agriculture or natural resources.

Nolin Hills Wind Power Project Comments on the preliminary Application for Site Certificate (pASC) From Umatilla County Planning Department			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Comment or Information Request**

Umatilla County

Board of County Commissioners

Commissioners

George L. Murdock
541-278-6202

John M. Shafer
541-278-6203

Daniel N. Dorran
541-278-6201

Executive Secretary
Melinda Slatt
541-278-6204

County Counsel
Douglas Olsen
541-278-6208

Chief Financial Officer
Robert Pahl
541-278-6209

January 20, 2021

Katie Clifford, Senior Siting Analyst
Oregon Department of Energy
550 Capitol St N.E., 1st Floor
Salem, OR 97301

RE: Umatilla County Comments on revised Preliminary Application for Site Certificate for the Nolin Hills Project

Umatilla County has reviewed the revised preliminary Application for Site Certificate (pASC) for the proposed Nolin Hills project. Please include the following comments in the project record for consideration by the Energy Facilities Siting Council (EFSC).

Exhibit K, Page 3 – The applicant appears to have provided a comprehensive list of the county's applicable substantive criteria.

Exhibit K, Page 14 – The project does not comply with Umatilla County's standard for two-mile setback from rural residences outside the project area. The county's two-mile setback for rural residences was adopted by Umatilla County through Ordinance 2012-13. The original intent of the standard was to mitigate noise and visual impacts to rural residences caused by wind towers. Umatilla County requests that the applicant adjust the location of the turbines in order to meet the required standard.

Exhibit K, Page 20 – Umatilla County encourages continued consultation with Confederated Tribes of the Umatilla Indian Reservation and Oregon-California Trails Association for cultural resource locations that do not appear to meet the county setback requirements.

Exhibit K, Page 31 – The applicant proposes to submit a decommissioning plan when the project is to be decommissioned. Umatilla County Development Code Section 152.616 (HHH)(7) requires the decommissioning plan to be submitted at the time of application. This criterion is not met.

Thank you for the opportunity to comment on the DPO. Please direct any follow-up questions or comments to Robert Waldher, County Planning Director. He can be reached by phone at 541-278-6251 or by email at robert.waldher@umatillacounty.net.

Respectfully,

George Murdock
Board Chairman

TARDAEWETHER Kellen * ODOE

From: Sean Tarter <Sean.Tarter@ci.pendleton.or.us>
Sent: Wednesday, February 2, 2022 1:30 PM
To: TARDAEWETHER Kellen * ODOE
Cc: Bob Patterson; Tim Smith
Subject: RE: Water Supply Questions from ODOE_Nolin Hills Power Project
Attachments: WATERRIGHTS.xls

Kellen,

Please see the attachment regarding our water rights.

To answer your questions-

Yes, the City of Pendleton can provide this this water. Please contact myself (541-969-3161) to make the necessary arrangements.

A summary of our water rights is attached. We have more than enough water rights.

Restrictions are to transport water from existing fill stations (we have one on Rieth Rd) and have an account with our Finance Dept. for billing and tracking purposes. Current water rates can be found on our City website. With a search for "utility rates". We bill by the unit, which breaks down to 1 cubic foot, or 748 gallons.

I hope this answers your questions.

Thanks,

Sean Tarter
Water Superintendent
City of Pendleton | Public Works
1501 Byers Avenue Pendleton, OR 97801
Shop: 541-276-3078 Cell: 541-969-3161
www.pendleton.or.us
"Working every day to be the premier city in Eastern Oregon"

From: TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>
Sent: Monday, January 31, 2022 10:58 AM
To: Sean Tarter <Sean.Tarter@ci.pendleton.or.us>; Tim Smith <Tim.Smith@ci.pendleton.or.us>
Subject: Water Supply Questions from ODOE_Nolin Hills Power Project

STOP and VERIFY - This message came from **outside** of the City of Pendleton.

Hi Sean and Tim,

I work at the Oregon Department of Energy (Department) in the Siting Division, we are staff to the Energy Facility Siting Council (EFSC) and assist with technical review of large energy facilities. I'm helping on the Nolin Hills Wind Power Project and had a couple of questions for you guys. The City of Pendleton is a reviewing agency for the project that help us understand any concerns about potential impacts to public and private service providers. The applicant, Capital Power, provided the attached letter in Exhibit O of the application for site certificate. Also in Exhibit O, the applicant explains that it's overall water use for construction, under average conditions, would be 71 million gallons of water (Mgal) and under worst case/very dry conditions could be up to 100 Mgal of water. Could you indicate:

- Would the City be able to provide water for construction of this project under worst case conditions without impacting its ability to continue providing water service for its other customers?
    - If the City could only provide a portion of the water, please indicate what amount?
- Under what existing water right permit would the City be able to provide water for the project?
    - Permit number(s), flows, other permit details
- Are there any other seasonal or other water restrictions t hat the EFSC should take into consideration of the City providing water for the project?

I appreciate you taking the time to get back to me. Also let me know if you have other questions and I can help answer them. Thanks!

Kellen

OREGON DEPARTMENT OF ENERGY

Kellen Tardaewether
Senior Siting Analyst
550 Capitol St. NE Salem, OR 97301
C: 503-586-6551
P (In Oregon): 800-221-8035

Stay connected!

CITY OF PENDLETOI

Water Right Permits not currently certificated

Source	Cert. No.	Permit No.	Rate (cfs)	Priority Date	Description/ Source
SURFACE WATER	S 1069	458	7.2	1910	N. Fork Umatilla R.
G R O U N D W A T E R	G 2463	G 2410	6.7 6.7 6.7 6.7 (Total not to exceed 20 cfs)	1962	Well # 6 Well # 9 Well # 10 Well # 12
	40893	G 3044*	1.7 total	1965	Well # 14
	28602	G 465*		1957	
	G 3443	G 3225	6.7	1966	Well # 7
			6.7	1966	Well # 11
	T-5605	G6773	1.52	1976	Well # 8
	G 11326	G 10508	5.18	1984	

N WATER RIGHTS

Location	Comments	Max. Annual Quantity	Max. Pump Rate to Dist. System
Uma. R. Intake	change of POD granted; T 8704	1699 MG	NA
Sherwood Well South Hill Well Crispin Well McCormack Well	undeveloped undeveloped undeveloped undeveloped	4719 MG	undeveloped undeveloped undeveloped undeveloped
5400 Rieth Rd.	# G 3044 & G 465 have been transferred; T 8434; COBU pending	401 MG	540 gpm (1.20 cfs)
Mission Well @ 73740 Reservoir Ln	60 hp	1581 MG	345 gpm (0.77 cfs)
McKay Creek Well at 4255 SW 28th Dr	Currently domestic use only	1581 MG	33 gpm (0.07 cfs)
Prison Well @ 2580 NW Westgate Dr	200 hp 3.01 cfs of G 11326 has been perfected	1581 MG	1000 gpm (2.23 cfs)

CITY OF PENDLETON WATE

Certificated Water Rights

Source	Cert. No.	Permit No.	Rate (cfs)	Priority Date	Description/ Source
SURFACE WATER	85849	D 2604 by decree	2.0	1885	Uma. R.
	85846	D 2582 by decree	0.5	1890	Uma. R.
	86028	458	7.2	1910	N. Fork Umatilla R.
	85850	S 472	3.8 total	April 22, 1929	Wenix Sp; trib. of Uma. R.
	85851	S 1197			Shaplish Sp; trib. of Uma. R.
	85853	S 9007			Simon Sp; trib. of Uma. R.
	85852	S 9006			Longhair Sp; trib. of Uma. R.
		ORS 538.450	All Waters	1941	N. Fork Uma. R.
	MAXIMUM	**SURFACE**	**23.3 cfs**		
GROUNDWATER	20838	U 152	3.1	1944	Well # 1
	46096	G 2204	0.9	1962	
	20840	U 579	2.51	1953	Well # 2
	46094	G 2203	3.1	1962	
	20839	U 418	1.11	1951	Well # 3
	46095	G 2202	0.2	1962	
	86482	U 670	1.47	1954	Well # 4
	29147	G 1160	5.3	1958	Well # 5
	82840	G-10508	3.01	1984	Well # 8
	86483	G 6773	1.52	1976	
	85847	G-465	1.7 cfs total	1957	Well # 14
	85848	G-3044		1965	

R RIGHTS

Location	Comments	lax. Pump Rat to System	Max. Annual Quantity Allowed
Uma. R. Intake	change of POD granted; formerly T 8640	898 gpm (1.29 MGD)	472 MG
Uma. R. Intake	change of POD granted; formerly T 8721	224.4 gpm (0.32 MGD)	118 MG
Uma. R. Intake	change of POD granted; formerly T 8704	3231 gpm (4.65 MGD)	1699 MG
Umatilla River Intake	change of POD granted; formerly T 8761	1805 cfs (2.46 MGD)	897 MG
Uma. R. Intake	POD will be allowed at surface water intake site as per SB 869	NA	Max. TBD by OWRD & MOA w/ CTUIR
Byers Well @ 112 SE 18th	250 hp	1250 gpm (2.78 cfs; 1.80 MGD)	944 MG
Round-Up Well @ 1105 SW Court Ave.	450 hp	2225 gpm (4.96 cfs; 3.21 MGD)	1324 MG
SW 21st St. Well @ 708 SW 21st St.	100 hp	475 gpm (1.06 cfs; 0.69 MGD)	309 MG
Hospital Well @ 2420 Westgate	125 hp	660 gpm (1.47 cfs; 0.95 MGD)	472 MG
Stillman Well @ 27 SE 5th	400 hp	1965 gpm (4.38 cfs; 2.83 MGD)	1250 MG
Prison Well @ 2580 NW Westgate Dr.	200 hp	1000 gpm (2.23 cfs; 1.49 MGI	710 MG 358 MG
5400 Rieth Rd	125 hp formerly T 8434	550 gpm .22 cfs; 0.79 MGD)	401 MG

MEMORANDUM

TO: Kathleen Sloan
Oregon Department of Energy
550 Capitol St N.E., 1st Floor
Salem, OR 97301

FROM: Greg Rimbach, Umatilla Dist. Wildlife Biologist
Oregon Department of Fish & Wildlife
73471 Mytinger Lane
Pendleton, Oregon 97801
541-276-2344
Gregory.p.rimbach@odfw.oregon.gov

DATE: February 18, 2022

RE: Oregon Department of Fish & Wildlife's Report on the Application for Site Certificate for the Nolin Hills Wind Energy Facility

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General Comments: The Oregon Department of Energy (ODOE) has requested comments from the Oregon Department of Fish & Wildlife (ODFW) on Nolin Hills Wind Power Project, specifically regarding Exhibits P and Q. There are several items in these exhibits that ODFW would like to address and provide comments and recommendations, which are provided in the Specific Comments section below. In addition to the specific comments, it is notable to mention that ODFW appreciates the Applicant implementing several ODFW recommendations and voluntary measures to avoid and reduce impacts to habitat and wildlife, which includes but is not limited to, a 200-meter turbine setback from the rim of Alkali Canyon, minimizing impacts to Category 3 Shrub-steppe where feasible by reducing the transmission line temporary impact corridor from 200 feet to 50 feet where it crossed this type of habitat, avoided siting turbine strings within 0.25 miles of active ferruginous and Swainson's hawk nests, siting turbines away from areas of relatively high raptor use with a 459-foot setback from contour lines containing topographical high points and distinct canyon edges associated with higher raptor use, and minimizing impacts to Category 3, 4, and 5 habitats by placing ground disturbing activities in Category 6 habitat.

Specific Comments: Please see the table below.

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
P	ORS 496.171-192; OAR 635-100-0136; OAR 635-415-0025	Pg. 44-52 / Sect 6.1.1	The Applicant objects to ODFW's continued recommendation and policy guidance that the State of Oregon's endangered species Washington Ground Squirrel (WGS) Habitat Category 1 and 2 buffers should apply and extend into Conservation Reserve Program (CRP) fields. ODFW has consistently recommended two buffers on the exterior boundary of all WGS colonies: an exterior 785-foot Category 1 buffer with an additional 4,136-foot Category 2 buffer (1500-meter buffer from the exterior boundary of all WGS colonies). ODFW stated on several occasions to the Applicant, as well as to all previous energy applicants and developers in the Columbia Basin Ecoregion, that the only situation that exists in which these buffers are reduced in size would be due to a "habitat break". Typical habitat breaks include, but are not limited to, agricultural operations, linear rock rims or outcrops, and two lane paved roads. Habitat quality should not be a determining factor for reducing WGS Category 1 and 2 buffers because even less than ideal vegetation characteristics play an irreplaceable and essential role for WGS life history requirements. CRP fields provide essential fat, protein, water and nesting materials (Delavan, 2008) and, by inference, habitat connectivity for dispersing WGS. While CRP fields across the Columbia Plateau are not necessarily irreplaceable (i.e. they can be created elsewhere), when they are in close proximity to a known and occupied WGS colony, their importance is greatly elevated.

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			Due to the current reality that available habitat for the Washington ground squirrel has declined by an estimated 69% since historic times (Wisdom et al. 2000), most remaining colonies are isolated to patches of shrub-steppe habitat (Betts, 1999). Since the WGS metapopulation are a state-listed endangered species in Oregon that has a limited geographic range and small population numbers (Oregon Department of Fish and Wildlife, 1999), all usable habitat within the Category 1 and 2 WGS buffers should be considered irreplaceable, essential and limited. These CRP fields in question were initially identified by the applicant in a desk top analysis as fallow fields likely under biennial agricultural rotation. It was later identified by ODFW on March 14, 2019 that in fact these fallow agricultural fields within both Category 1 and 2 WGS buffers were CRP fields producing annual grasses, bunch grasses and legumes/forbs capable of providing a diverse diet for protein essential for reproduction and fat storage for survival during WGS dormancy, all of which have been shown to support WGS colonies (Tarifa and Yensen 2004; Sherman and Shellman Sherman, 2005), and nutrients to gain necessary pre-hibematory body mass (Rickart, 1982). In addition, ODFW identified fossorial mammal burrowing activity of an unknown species within one of the CRP fields in question. Even though WGS were not detected in this CRP field by the Applicant, previous researchers have found that the lack of detection in a protocol level WGS survey is not a guarantee that WGS are not present (Morgan and Nugent, 1999). It was documented during this research project near Boardman, Oregon (Morgan and Nugent, 1999), that

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			a suspected site with convincing WGS holes was revisited three times before WGS were heard and their scat were found. In addition, WGS have been observed in CRP fields, even though the observer did not know if the WGS in the CRP fields were dispersers, individuals from established colonies, or individuals with home ranges that overlapped both CRP lands and non-agricultural lands (Delavan, 2008). Although no WGS were observed in the CRP fields in question during the surveys, these fields would provide irreplaceable, essential, and limited habitat for foraging and potential burrowing for WGS's. An argument has been made by the Applicant that these CRP fields are anticipated to be returned to agricultural production by the landowner in 2023, therefore these CRP fields should not be considered irreplaceable, essential and limited as Category 1 habitat for WGS's. The Fish and Wildlife Habitat Mitigation Policy does not include any exemptions for anticipated habitat change and only implies that current habitat conditions are considered in categorizing habitats. These CRP fields are providing irreplaceable, essential, and limited habitat for WGS in the form of foraging, dispersal habitat, and potential burrowing due to their site-specific proximity to occupied and active WGS colonies. These CRP fields within the 785-foot Category 1 buffer of known and occupied WGS colonies, serves an important function as foraging and dispersal habitat, and is therefore deserving of the same level of protection as the native shrub-steppe and grassland habitats also found within the Category 1 buffer around other active colonies.

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			ODFW has previously determined, and the Energy Facility Siting Council has previously concurred, that a decline or change in habitat quality does not constitute a habitat break for the purposes of delineating the Category 1 and 2 habitat buffers surrounding WGS colonies. It is ODFW's determination that the CRP lands within the Nolin Hills Wind Project site boundary can function as habitat for WGS, and as such, are subject to the ODFW Fish and Wildlife Habitat Mitigation Policy regarding Category 1 and 2 habitats based on the buffer distances identified above. For these reasons, and to remain consistent with ODFW recommendations on other energy development projects in the Columbia Basin Ecoregion, ODFW recommends CRP fields be included in the 785-foot Category 1 buffer and the additional 4,136-foot Category 2 buffer surrounding active WGS colonies where there exists no habitat break. **Literature Cited** Betts, B. J. 1999. Current status of Washington ground squirrels in Oregon and Washington. Northwestern Naturalist 20:24-29. Delavan, J. L. 2008. The Washington Ground Squirrel (*Spermophilus washingtoni*): Home Range and Movement by Habitat Type and Population Size in Morrow County, Oregon. M.S. Thesis, Portland State University. Morgan, R.L. and M. Nugent. 1999. Status and habitat use of the Washington ground squirrel (*Spermophilus washingtoni*) on State of Oregon lands, South Boeing, Oregon in 1999. Oregon Department of Fish and Wildlife, Portland, OR. 27 pp.

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			Oregon Department of Fish and Wildlife. 1999. Washington ground squirrel biological status assessment. Oregon Department of Fish and Wildlife, Portland, Oregon, USA. Rickart, E. 1982. Annual cycles of activity and body compostion in Spermophilus townsendii mollis. Canadian Journal of Zoology 60:3298-3306. Sherman, P.W and Shellman Sherman, J. 2005. Distribution, demography, and behavioral ecology of Washington ground squirrels (*Spermophilus washingtoni*) in central Washington. Unpublished report, Cornell University, Ithaca, NY. September. 26pp. Tarifa, T. and E. Yensen. 2004. Washington ground squirrel diets in relation to habitat condition and population status: Annual Report 2003. Unpublished report, Albertson College, Caldwell, ID. October. 68 pp. Wisdom, M. J., R. S. Holthausen, B. C. Wales, C. D. Hargis, V. A. Saab, D. C. Lee, W. J. Hann, T. D. Rich, M. M. Rowland, W. J. Murphy, and M. R. Eames. 2000. Source habitats for terrestrial vertebrates of focus in the interior Columbia Basin: broad-scale trends and management implications. General Technical Report PNW-GTR-485 Volume 3. U.S. Forest Service. U. S. Forest Service, Pacific Northwest Research Station, Portland, Oregon, USA.
P	OAR 345-021-0010 (1)(p)(G)	Pg 77 (Sect.7.1.1) / 4th bullet	Applicant states that they have avoided and minimized impacts to bird and bat collision with Project infrastructure by implementing downshield lighting (e.g.,

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			for permanent lighting at the substation and O&M Building) that will be sited, limited in intensity, and hooded in a manner that prevents the lighting from projecting onto any adjacent properties, roadways, and waterways; lighting will be motion activated where practical (i.e., excluding security lighting). It is unclear if this strategy is for use solely at substations (s) and the O&M Building. ODFW recommends this appropriate strategy, as well as motion activated lighting, be employed at any PV solar energy site, if in fact lighting is to be used, to reduce its potential attraction to foraging bats and avian species and the potential for subsequent collision to solar components and/or arrays.
P/AttP-3/ Draft HMP	OAR 635-415-0025	Pg 6 / Sect 3.0 / Table 2	For Category 3 and 4 habitat impacts, the applicant proposes a mitigation ratio that will be 1:1. While technically a mitigation ratio as low as 1:1 could theoretically achieve the Category 3 and 4 mitigation goal of "no net loss in habitat quantity and quality", ODFW cautions that this ratio of 1:1 does not leave any margin to accommodate for the risk of mitigation failure. Depending on the habitat type and mitigation area chosen, success rates for habitat improvement efforts rarely, if ever, achieve complete success. That is, the performance of habitat improvements on the mitigation project area will have to be 100% to avoid dipping below any net-loss or net benefit ratios. To be able to detect mitigation failure on a 1:1 ratio mitigation project, ODFW would then recommend a large number of monitoring plots. ODFW recommends that having a higher ratio (for example, 1.3:1) for Category 3 and 4 mitigation affords the mitigation project manager more room for mixed performance in habitat improvements and less of a monitoring cost and burden.

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
P/AttP-3/ Draft HMP	OAR 635-415-0005(30); OAR 635-415-0025; OAR 345-021-0010(1)(p)(G)	Pg 12 / Sect 4.2.1 / 1. Shrub Planting and pg 16, first bullet	The Applicant currently states that shrub plantings will generally be considered successful if a 30 percent survival rate is achieved after 4 years. It is ODFW's recommendation that a 20 percent benchmark should be used here due to the unpredictability of rain events and soil moisture in promoting late winter and early spring growth in an area that receives only about 8-9" of annual rainfall. This recommended 20 percent benchmark could change if a different Habitat Mitigation Areas are chosen.
C, P & Q	OAR 345-021-0010 (1)(p)(F); OAR 345-021-0010 (1)(p)(G)	Multiple Sections	Due to the solar array and BESS being added to the Project after the comment period for the pASC in April 2020, ODFW was not able to make comments at that time. However, ODFW is encouraged to see that a majority of the solar array is currently proposed to be installed in Category 6 habitat and it is understood that the Applicant will manage for low-height native vegetation inside the fenced area containing the solar array, BESS, and associated infrastructure, as described in Exhibit B and C. It is also understood that weed control measures will follow the Applicant's Noxious Weed Control Plan (Attachment P-4). ODFW recommends several additional items to be incorporated in regards to the solar array footprint within the Project area: 1) Cap or otherwise modify vertical pipes and piles to prevent cavity dwelling and nesting birds from entering these structures. This will also prevent any perching bird, especially recently fledged young, from inadvertently falling into pipes. 2) Since no fenced area is fool proof in preventing deer, elk, and antelope from entering, gates at strategic locations in each of the 4 enclosures would be recommended, preferably at or near fence corners. These gates would be in addition to the main access gates for maintenance activities. 3) ODFW recommends that all wildlife mortalities found during routine maintenance

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			activities within and near the fenced solar array enclosure be documented and included in mortality reports. 4) ODFW recommends the Applicant clear vegetation, if this activity is required, prior to the critical period for ground-nesting birds (April 15 – September 1) to avoid disturbing active nests. If vegetation removal is necessary between April 15 and September 1, a biologist should conduct a clearance survey for nesting birds prior to vegetation removal. Active nests should be flagged for avoidance.
P	OAR 345-021-0010(1)(p)(H)	Attachment P-5 / Sec 3.0 / Draft Wildlife Monitoring Plan	The Applicant proposes to conduct post-construction short-term and long-term raptor nest surveys with the objective to count raptor nests (i.e., gathering data on active nests, on nests with young, and on young fledged) in the vicinity of the Project and to determine whether there are noticeable changes in nesting activity or nesting success in the local populations of the following raptor species: Swainson's hawk, golden eagle, and ferruginous hawks. The Applicant also proposes the short-term survey area shall include a 2-mile buffer around the final Project impact area within the portion of the Site Boundary associated with wind turbines. The survey area along the transmission corridor shall include the final Project impact area along this corridor, and a 0.5-mile buffer around this area. In conducting long-term surveys, the investigators will follow the same survey protocols as the short term-term surveys but plans to exclude surveys associated with the transmission lines. ODFW is concerned that it will be difficult to evaluate long-term trends from surveys prior to construction when compared to surveys conducted after

Nolin Hills Wind Power Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish & Wildlife			
Exhibit	**Rule/ Ordinance/Law Reference**	**Pg. / Para. / Sentence Reference (as needed)**	**Compliance Comment or Condition Language**
			construction if the survey areas are not the same geographical area (except for the long-term monitoring of the transmission line corridor). Therefore, ODFW recommends that these post construction short-term and long-term raptor nest surveys be conducted within a 2-mile buffer around the Site Boundary, the same area surveyed during the raptor nest surveys conducted in 2011, 2017, and 2018 prior to construction (pre-construction) as identified in Table P-1 (section 2.2, page 5).

Consultation with Oregon Department of Agriculture (ODA)

The Department engaged in consultation with Oregon Department of Agriculture's (ODA) Native Plant Conservation Lead Biologist Jordan Brown throughout review of the Application for Site Certificate (ASC) for the Nolin Hills Wind Power Project: on April 14, 2020, March 30, 2022 and April 1, 2022 to discuss and review the evaluation and potential impacts to state listed threatened and endangered plant species. OAR 345-022-0070.[1]

ODA email correspondence with ODOE: 4/14/2020

Laurent's milkvetch plants are perennial and often live several to many years; however, the establishment of new plants in populations is generally thought to be sporadic and limited. Pre-construction survey needs to be conducted to determine the final count of plants within the proposed impact areas, and would be needed for any plant flagging efforts.

Noxious weed control and monitoring in and around the areas of disturbance may establish a native plant community following construction that will help prevent weeds from getting a foothold and will establish a resilient native plant community that can compete with weed introductions in the future.

ODA indicates that the goal is to not lose the redundancy on the landscape and describes the best practice for mitigation, if there are direct impact, is to replace the plants that will be lost, especially if they're the sole representatives in a given area, or make up the majority of a small population segment.

ODA reiterates that it's still best practice to leave things better than we found it, so replacing the plants (if needed) in a safe location would be ideal.

- **If impacts are unavoidable, seed collection from the plants (during the year before they're destroyed) and soil salvaging that can be used to re-establish new plants in adjacent suitable habitat. The soil seed salvaging from around the plants, and possibly the surrounding are in general, might allow new seedling to establish from dormant seeds in the soil.**
- **Relocation of the identified plants into nearby suitable habitat may work also, however, there isn't information on this approach's effectiveness**

ODA email correspondence with ODOE: 4/1/2022

Despite the facility being sited on private land, ODA suggests that the protection of state listed plants during ODOE permitting and authorization (ensuring that the actions authorized do not impact listed plants) is actionable per OAR 603-073-0090(5)(d).

ODA suggested edits to the Departments Threatened and Endangered Species Condition 1, that included;

1) **establishing a 20-foot buffer around areas where state listed threatened plant species are confirmed to be present,**

[1] OAR 345-022-0070 requires a demonstration of consultation with appropriate state agencies as part of Council's findings of compliance.

2) **additional mitigation measures to be implemented (population augmentation and written permission from the landowner or lease holder) during the pre-construction impact assessment.**

Additional suggestions made on March 30, 2022 regarding pre-construction survey protocol included the instruction for the applicant/certificate holder to focus on areas where previously documented occurrences are in close proximity to the impact areas.

ODA indicates that if listed plants are found on a public right-of-way with a recorded easement then they would need more than just permission from the land owner. They would need to consult with us.

ODA clarified that regardless of whether or not listed plant populations in question are on public land, protected by state law, or on private land, they would provide ODOE with conservation-based recommendations.

ODA clarified the requirements of OAR 603-073-0009(5)(d).

ODA email correspondence with ODOE: 3/30/2022

[As of March 30, 2022] ODA does not expect the distribution of the identified T&E plant species to have changed much since the surveys were conducted (in 2017).

Without additional consultation, ODA recommends that listed T&E plant species should be 100% avoided when/if found in areas where they were not previously identified.

ODA did not support the applicant's proposal to use mats to protect the plants that couldn't be avoided, citing that driving over the root crown (with or without mats) would likely cause them to die.

Where portions of the project area intersect the plant populations and/or their habitat, ODA recommended that weed minimization efforts would be employed.

Additionally, ODA suggests that dust minimization should be considered when milkvetch plants are actively growing (~April-July) within 20 to 50 feet of impacted areas.

Oregon
Kate Brown, Governor

Parks and Recreation Department
State Historic Preservation Office
725 Summer St NE Ste C
Salem, OR 97301-1266
Phone (503) 986-0690
Fax (503) 986-0793
www.oregonheritage.org

December 22, 2020

Ms. Katie Clifford
Oregon Dept of Energy
550 Cappitol St NE
Salem, OR 97301

RE: SHPO Case No. 20-0402
ODOE Project 194-6029, Nolin Hills Wind Project
Wind farm and two transmission line alternatives on private land
None provided on Submittal Form, Umatilla County

Dear Ms. Clifford:

We have completed our review of the submitted materials related to Exhibit S for the historic, built environment, and offer the following comments and requests for additional information:

Regarding the Pendleton Ranches Sheep Camp, comprising an abandoned house and cistern, we are concerned that the construction date may be misattributed. While we do not dispute that the building may appear in this location on USGS maps beginning in the 1960s, the building form, materials, and design elements strongly suggest an earlier construction date, likely the 1910s-20s, illustrated by the overall form, use of kneebraces under wide-overhanging eaves with exposed rafter tails, wood slider windows (instead of aluminum), and diagonally-laid subsiding. Our suspicion is that the building may have been built elsewhere and subsequently moved to its current location in the late 1950s or early 1960s. Buildings used for the shelter of those tending to sheep in remote sheep-grazing are known to have sometimes been moved as the preferred grazing locations changed over time. This building may be one of those, a possibility supported by the lack of a complete stem-wall foundation beneath it. Such cases rarely involve the movement of larger buildings such as this, however. Most known examples tend to be smaller, suitable to be moved under horse-power alone. However, if the move were done in the late 1950s or early 1960s, such a move would not be out the reach of heavy equipment and sizeable trucks. We request that this possibility be explored, and the true date of the building investigated. If the building does in fact prove to date to the early 20th century, and is a moved building associated with sheep herding, it may be eligible under Criterion A, placing it within one or more of "the relevant themes or patterns of early history of sheep ranching or family owned sheep ranches in the late nineteenth and early twentieth centuries." Also noteworthy, if the house was in fact moved, and was done so in keeping with a historical context in which such movement was typical, Criterion Consideration B (Moved Properties) may not need to be met for the property to be eligible. By contrast, the cistern may or may not predate the house at this location, or could have been built in the 1950s when the house was either built or moved to its present location. It is noteworthy that the roof of the cistern features eaves tight to the rake, which is a typical post-World War 2 architectural feature on more typical building types. This should be explored as well.

We have the following concerns related to the identification of other historic buildings within the Site Boundary that do not appear to have been documented:

1. Based on the site boundary illustrated in Attachments S-4.1 and S-4.1c, the site boundary appears to include most, if not all of the Cunningham Sheep Ranch headquarters and the unincorporated community of Nolin, including a large number of buildings and structures. None of these buildings and structures appear have been identified as potentially historic, documented, or evaluated. We request that these buildings and structures be documented and evaluated for eligibility for listing in the National Register, followed by an evaluation of the

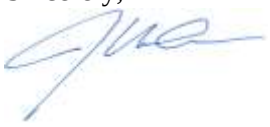
effect on the property.

2. Review of aerial imagery of the Site Boundary indicates an unidentified structure approximately 100 feet long in Township 2N, Range 30E, within a draw in the northwest quarter of the southwest quarter of Section 35. This structure does not appear to have been documented or evaluated. We request that this is done, to be accompanied by an evaluation of effect.

3. Based again on aerial imagery, we note the presence of what appears to be the remains of a late 19th or early 20th century ranch house and associated outbuildings in unknown condition, located in Township 2N, Range 29E, in the northeast quarter of the northeast quarter of Section 26. Although this resource appears to be outside of the site boundary (again, refer to the inconsistently reported site boundary), it is within 1000 feet of it, and the visual effect of the proposed wind facility could reasonably be understood to extend to this location. We request that this property be documented and evaluated for both eligibility and effect, with care to distinguish between condition (which is likely diminished at least to some degree) and integrity (which may or may not be present).

We look forward the receiving more information about the house and cistern, as well as about the integrity and significance of the as-yet undocumented buildings noted above. If you have any questions, please feel free to contact me directly.

Sincerely,



Jason Allen, M.A.
Historic Preservation Specialist
(503) 986-0579
jason.allen@oregon.gov

cc: Erin King, Tetra Tech Inc

OREGON-CALIFORNIA TRAILS ASSOCIATION

524 South Osage St. • P.O. Box 1019 • Independence, MO 64051-0519
Phone: (816) 252-2276 • Fax: (816) 836-0989
E-Mail: octa@indepmo.org • www.octa-trails.org

November 4, 2020

Oregon-California Trails Association
P.O. Box 1019
Independence, MO 64051

Oregon Department of Energy
Energy Facilities Siting Council
550 Capitol Street NE, 1st Floor
Salem, OR 97301

Attention: Todd Cornett, Assistant Director, Siting Division

The Oregon-California Trails Association (OCTA) is pleased to work cooperative with Capital Power on the Nolin Hills Energy Project.

OCTA has entered into an agreement with Capital Power for mitigation as well as construction procedures that will protect the Oregon Trail. In response, OCTA confirms the terms comprise the full extent of our requests for mitigation of Project-related impacts.

OCTA agrees we have been suitably consulted and our concerns satisfied by Capital Power and as such will not participate in the EFSC process regarding the Project.

Sincerely,

B Lee Black

B. Lee Black, President

Cc: Gail Carbiener
Sallie Riehl

Oregon
Kate Brown, Governor

Parks and Recreation Department
State Historic Preservation Office
725 Summer St NE Ste C
Salem, OR 97301-1266
Phone (503) 986-0690
Fax (503) 986-0793
www.oregonheritage.org

April 14, 2022

Ms. Kathleen Sloan
Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97391

RE: SHPO Case No. 20-0402
ODOE Project 194-6029, Nolin Hills Wind Project
Wind farm and two transmission line alternatives on private land
None provided on Submittal Form, Umatilla County

Dear Ms. Sloan:

Thank you for the opportunity to comment on the Nolin Hills Wind Project. Our comments below include recommendations for conditions to ensure that the EFSC standard that the construction and operation of the Project, taking into account mitigation, are unlikely to result in significant adverse impacts to properties listed or eligible for listing on the National Register of Historic Places (NRHP).

After review, it is clear that not all areas of the proposed project have been surveyed for a number of reasons (e.g., lack of access or unknown facility designs). Some of these areas still need subsurface exploratory excavations to address the potential for buried archaeological sites. In addition, monitoring during construction is proposed for areas that have not been surveyed, or have yet to have exploratory excavations conducted to identify buried archaeological objects or sites. For the EFSC standard to be met, efforts to identify National Register eligible or listed properties, and assessment of project effects needs to address the following proposed conditions to proceed.

- Prior to construction, complete the inventory of the project area (surface and subsurface), adhering to SHPO Guidelines and permitting requirements.
- Develop an Inadvertent Discovery Plan (IDP) for any encountered archaeological objects or sites resulting from any post-inventory phase of the project.
- Any proposed monitoring during construction must occur in areas that have already been surface and subsurface inventoried. Monitoring during construction is not an effective way to identify buried archaeological objects or sites, unless a good faith effort has occurred prior to construction. Identification of archaeological objects and sites during construction will result in delays until the archaeological work is finished, and may include time to secure an excavation or recovery permit. A good faith effort ahead of time can avoid such delays, by providing some level of data on probability.
- For evaluating archaeological properties, all four criteria should be addressed, including individual eligibility, or as a district. The cultural landscape suggests archaeological sites may be eligible by relating to such a place, or places, which will inform potential effects from the project. Archaeological sites alone may not meet any of the NRHP criteria at times, but

collectively, if they (e.g.,) represent patterns of events, they could include a district. Cultural landscapes themselves are districts, and can include associated archaeological objects and sites.

- Please review, at a minimum, National Register Bulletins 15, 16A, and 38 for examples of National Register eligible archaeological sites and districts to assist with applying the EFSC standard.

For the conditions above, please compile a report of the additional investigations and include a research design specific to each condition. Be sure to explain and support in the report how the National Register criteria were applied to individual sites or isolates, or as districts. Send copies of reports to SHPO, including any newly recorded or updated archaeological site or isolate forms. Any post inventory monitoring should also involve submission of a report to SHPO, whether the results are positive or negative.

Sincerely,

John Pouley, M.A., RPA
State Archaeologist
(503) 480-9164
john.pouley@oregon.gov

cc:

From: Teara Farrow Ferman
Sent: Tuesday, November 10, 2020 3:16 PM
To: CLIFFORD Katie * ODOE
Cc: POULEY John * OPRD; Jay Shukin; Shawn Steinmetz
Subject: CTUIR letter to ODOE regarding Nolin Hills Project
Attachments: 2020 10 29 CTUIR letter to ODOE regarding Nolin Hills Project.pdf

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Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon Katie,
The Confederated Tribes of the Umatilla Indian Reservation's Chair Brigham signed the attached letter on October 29, 2020 however it got buried in my inbox. My apologies. If you have any questions, please contact me.

Respectfully,

TEARA FARROW FERMAN
Manager | Cultural Resources Protection Program
Confederated Tribes of the Umatilla Indian Reservation
46411 Timíne Way | Pendleton | Oregon 97801
541.276.3447 Office | 541.429.7230 Fax
TearaFarrowFerman@ctuir.org

Assistant General Manager | Átaw Consulting, LLC
A Small Business Enterprise of the CTUIR
46411 Timíne Way | Pendleton | Oregon 97801
541.429.7230 Office|Fax
TearaFarrowFerman@ctuir.org

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Confederated Tribes *of the*
Umatilla Indian Reservation

Board of Trustees & General Council

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info@ctuir.org • www.umatilla.nsn.us

October 28, 2020

Katie Clifford
Senior Siting Analyst
Energy Facility Siting Division
Oregon Department of Energy
550 Capitol Street NE
Salem, Oregon 97301

Submitted electronically to: Katie.Clifford@oregon.gov

Dear Ms. Clifford,

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) thanks the Oregon Department of Energy (ODOE) for notifying us regarding the proposed Nolin Hills Wind Power Project. Capital Power Corporation, doing business as Nolin Hills Wind, LLC, began consulting with the CTUIR in 2017 and have contracted with the CTUIR to assist their contractor in conducting cultural resources inventory surveys of the proposed project areas including their newly proposed solar component, and also contracted with us to conduct a traditional use study and an ethnobotanical survey to identify First Foods resources and culturally significant plant resources important to the CTUIR.

Nolin Hills Wind, LLC began consulting with the CTUIR early in their project planning and they understand the CTUIR's strong cultural ties to the area and are committed to protecting the cultural resources identified in the proposed project area. Additionally, Nolin Hills Wind, LLC has committed to coordinating on the development of an Inadvertent Discovery Plan and has successfully negotiated an Access Agreement with the private landowners for CTUIR tribal members to harvest First Foods plant resources.

The CTUIR and Nolin Hills Wind, LLC have come to a mutual agreement on the effects the Nolin Hill Wind Power Project may have on historic, cultural, and archaeological resources, NHPA listed, eligible, or likely to be listed historic properties, and historic properties of religious and cultural significance to the CTUIR. The CTUIR is pleased to inform the ODOE, the Oregon State Historic Preservation Office and other agencies that the CTUIR's concerns have been addressed and will be mitigated by Nolin Hills Wind, LLC pursuant to a confidential mitigation agreement between the CTUIR and Nolin Hills Wind, LLC. Therefore, the construction and operation of the proposed Nolin Hills Wind Power Project, taking into account mitigation, are not likely to result in significant adverse impacts to eligible or likely eligible historic properties of religious and cultural significance or resources identified by the CTUIR.

The CTUIR has no further concerns with the proposed Nolin Hills Wind, LLC unless the route of the Project changes, in which case consultation with the CTUIR will be required. Should you have questions or concerns, please contact Mrs. Teara Farrow Ferman, Manager, Cultural Resources Protection Program, at (541) 276-3447 or tearafarrowferman@ctuir.org.

Respectfully,

N. Kathryn Brigham, Chair
Board of Trustees

Cc: John Pouley, Assistant State Historic Preservation Officer, OR SHPO
Jay Shukin, Manager, Indigenous and Stakeholder Engagement, Capital Power

TARDAEWETHER Kellen * ODOE

From: Dave Slaght <dave@echo-oregon.com>
Sent: Monday, March 21, 2022 3:21 PM
To: TARDAEWETHER Kellen * ODOE
Cc: smorris@cityofstanfield.com
Subject: City of Echo - Nolin Solar/Wind Energy Project
Attachments: City of Echo - Nolin Hills Use Request 03-21-2022 (1).pdf

Good Afternoon Kellen – I apologize for taking so long to get back to you with the final review of our engineers. In short, we can supply the water for the project. Please also note that Justin Northern is no longer working for the city of Echo and your new point of contact will be myself and Scott Morris who is now our Public Works Director for Echo and Stanfield.

Thank you,
Dave

David Slaght
Echo City Administrator
541-376-6038

anderson perry & associates, inc.

1901 N. Fir Street, P.O. Box 1107
La Grande, OR 97850
(541) 963-8309, Fax (541) 963-5456
www.andersonperry.com

engineering ▪ surveying ▪ natural resources

MEMO

To: Dave Slaght, City Administrator, City of Echo

From: Brad D. Baird, P.E., President

Subject: **Nolin Hills Wind Power Project Water Use Request**

Date: March 21, 2022

Job/File No. 1391-31-02

The purpose of this memo is to provide a response to the Nolin Hills Wind Power Project water use request to the City of Echo. Specifically, questions raised by the Oregon Department of Energy concerning the use request are answered herein.

Background Information

The Nolin Hills Wind Power Project has requested the following total water use volume to support anticipated project construction:

- 71 million gallons (MG), average conditions
- 100 MG, worst-case conditions
- 134,000 gallons per day (gpd), worst-case conditions

Assumed Project Schedule

The project schedule was not provided. We researched the project information available on the Oregon Department of Energy website and have surmised project construction would occur over a two-year period. We have assumed the water use request would be spread out uniformly over a two-year period. As a result, the water use per year would be half of the total request, meaning the following annual use would occur for a two-year period:

- 35.5 MG per year, average conditions
- 50 MG per year, worst-case conditions

Current Annual Water Use by the City of Echo

The City of Echo currently uses a total of approximately 70 to 80 MG each year. The largest use is the golf course, with City residents, businesses, and the school using the balance of the annual use. The request by Nolin Hills represents a range of 35.5 to 50 MG per year. A comparison of this use to the total annual use is as follows:

- 35.5 MG of average annual use - approximately 44 percent of current annual use of 80 MG
- 50 MG of worst-case annual demand - approximately 63 percent of current annual use of 80 MG

The average and worst-case water use requests would represent a significant increase in the annual water output of Echo's municipal water supply system.

Maximum Month Use by the City of Echo

It is critical to review the highest use month for the City to see what impact the water use request would have during this highest use month. The peak monthly water use in Echo, and the use request from Nolin Hills for comparison, is as follows:

- The highest use month for the City results in approximately 15 MG of water demands.
- The Nolan Hills request, assuming a peak use of 134,000 gpd, would result in a peak monthly use of 4,020,000 gallons.
- 4 MG represents an increase in demands placed on the City's municipal water supply system of approximately 27 percent during the peak month.

Ability of the City of Echo to Meet Requested Use

The City has two active municipal water supply sources. Since there is one chlorination system, each of these wells operates at the same time, meaning when the system calls for water, both wells operate simultaneously. These sources and their capacity are as follows:

- Well No. 4, 175 to 275 gallons per minute (gpm) capacity, depending on time of year (assume 175 gpm in the summer)
  - Well No. 4 meets approximately 35 percent of the City's annual water demands.
  - During peak months, Well No. 4 meets approximately 19 percent of the water demands.
  - A peak month of 15 MG represents approximately 500,000 gpd.
  - The Nolin Hills requested maximum is approximately 134,000 gpd.
  - The total of both of these demands is 634,000 gpd.
  - Well No. 4 currently operates approximately 9 hours per day during a peak summer day.
  - Well No. 4 would operate a maximum of approximately 11.5 hours per day to meet its portion (19 percent) of the current peak demand (500,000 gallons) plus the Nolin Hills worst-case daily demand (134,000 gallons), for a total of 634,000 gpd.

- Well No. 5, 750 gpm capacity year-round
  - Well No. 5 meets approximately 65 percent of the City's annual water demands.
  - During peak months, Well No. 5 meets approximately 81 percent of the water demands.
  - A peak month of 15 MG represents approximately 500,000 gpd.
  - The Nolin Hills requested maximum is approximately 134,000 gpd.
  - The total of both of these demands is 634,000 gpd.
  - Well No. 5 currently operates approximately 9 hours per day during a peak summer day.
  - Well No. 5 would operate a maximum of approximately 11.4 hours per day to meet its portion (81 percent) of the current peak demand (500,000 gallons) plus the Nolin Hills worst-case daily demand (134,000 gallons), for a total of 634,000 gallons.

If Well No. 5 had to meet all demands alone, it would have to operate approximately 14 hours per day to meet the peak demand of 634,000 gpd. There are likely higher daily peak demands that could occur during a peak month period.

It appears that Echo's current water supply wells could meet the average and worst-case water use scenarios proposed by the Nolin Hills project during a typical peak summer month period.

Wear and Tear on Equipment and No Backup Supply Available

It should be noted that the City of Echo must operate both Wells No. 4 and 5 to meet current peak summer demands. The City has no backup water supply source available at this time. While serving the Nolin Hills project appears feasible, and the well pumps would not be overtaxed beyond approximately 11.4 hours of use per day, additional stress and strain would be placed on the water system. The City is in the process of developing an additional supply source from Stanfield, but this project will not be available until late summer 2023 at the earliest.

Available Water Right (Permit) Capacity

Each of the City's two municipal water supply wells is permitted to operate at its current water pumping rate. It is assumed this will not change. Thus, each of the wells is permitted to handle current and anticipated annual demands.

Well No. 3 as a Possible Supply Source

Well No. 3 is currently not in use by the City. This well has taste and odor issues, specifically hydrogen sulfide present in the supply water, rendering the water undesirable for municipal consumption. However, this water would work very well for construction uses for the Nolin Hills project. Well No. 3 has not been used since 2001 but did have a capacity of approximately 250 gpm when in operation. It may be possible to reactivate Well No. 3 and use it to directly pump into water trucks for the Nolin Hills project. This option will require installation of new pumping equipment in the well and a reconfiguration of piping to allow for discharge to an overhead fill station or a direct connection fill station. The static and pumping water levels in the well should be checked as well prior to any intended use of Well No. 3 to ensure the well still has the reported capacity. Well No. 3 has shared water rights with other municipal wells, so a careful evaluation of the available water rights would also need to be completed.

No Other Water Use Restrictions

The City of Echo is within the Stage Gulch Critical Groundwater Area. This designation means there are no additional water use permits available to the City. However, the City does have its current well permit use rates available that are not fully utilized over a 24-hour period. No other water use restrictions have been placed on the municipal water system at this time.

Conclusions

The analysis herein has shown that the City's municipal water system can handle the proposed water use demands from the Nolin Hills project. It is important to note that the City's well pumps will need to operate for a longer period each day than they do now, and no backup supply sources are available. In addition, peak daily demands could occur on any given summer day that would put higher daily demands on the wells than outlined herein. If the City proceeds with supplying water to the Nolin Hills project, the hourly use per day of each well should be carefully monitored to ensure the wells are not used beyond 18 hours per day.

The City is currently in the design phase of a water system improvements project that will result in additional water supply being available, as well as updated equipment for Wells No. 4 and 5, but the additional supply source will not be online until the summer of 2023, at the soonest.

BDB/cd
G:\Clients\Echo\Water\1391-31 WSI\Correspondence\Slaght-Nolin Hills Use Request.docx

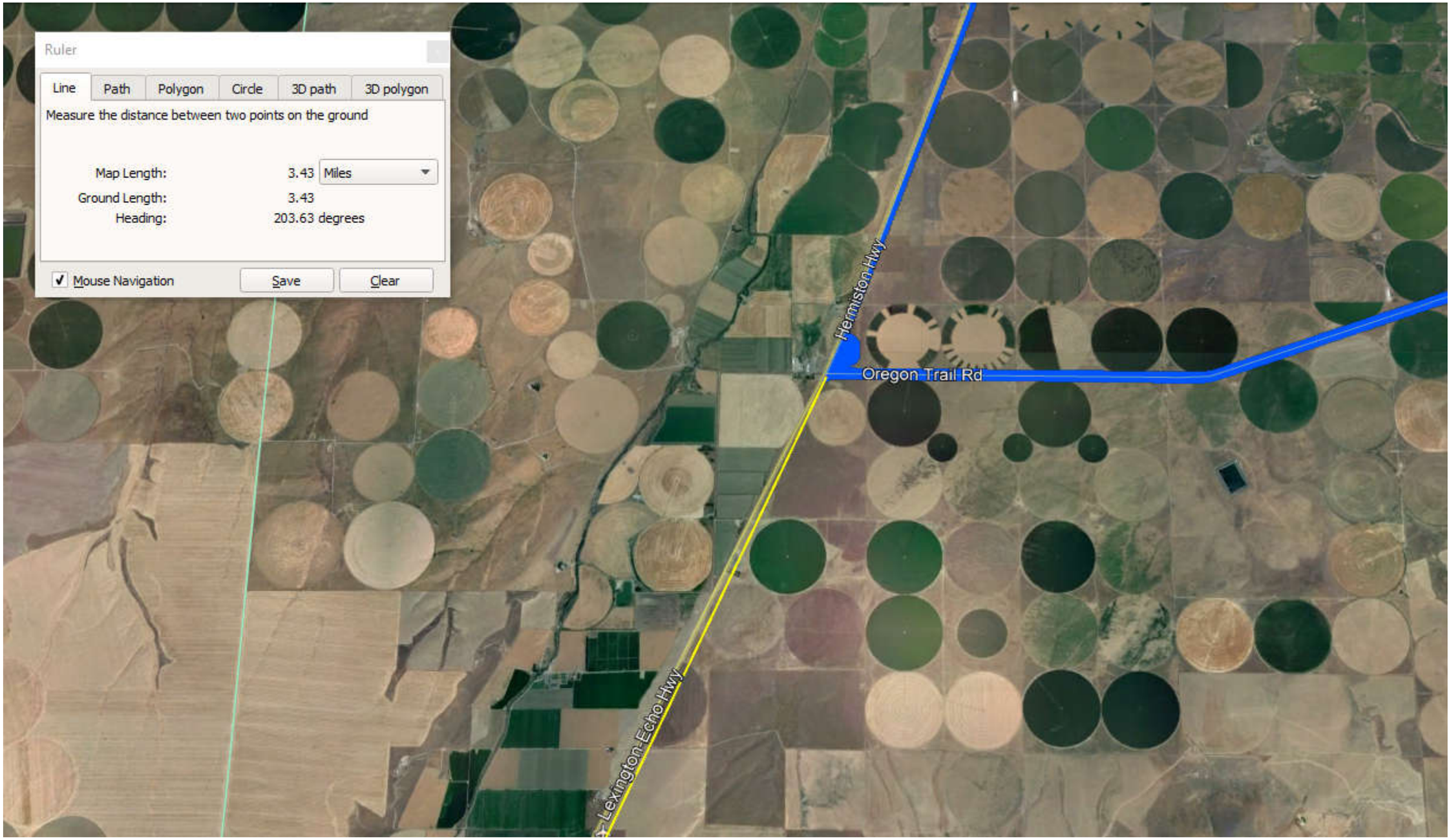
CLIFFORD Katie * ODOE

From: LAWYER Matthew A <Matthew.A.LAWYER@aviation.state.or.us>
Sent: Thursday, March 12, 2020 1:37 PM
To: CLIFFORD Katie * ODOE; THOMPSON Seth
Subject: RE: Nolin Hills Wind Power Project - preliminary application review

Thank you for allowing us to clarify. When I ran the analysis based off of a location in what appeared to be the middle of the project boundary, the airports identified in the report were the ones you describe below. Impacted may have been the wrong term to use, I should have said airports with the regional area.

Now that we have the shape file, I want to add an additional airport to the regional area, it is a private airport on HW 207 called West Buttercreek. It is approximately 3.4 miles SW of the elbow on the proposed transmission line.

We may want to consider airspace analysis through the 7460-1 on this section of the transmission line.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3.43
Miles
Ground Length:
3.43
Heading:
203.63 degrees
Mouse Navigation
Save
Clear
Hermiston Hwy
Oregon Trail Rd
Lexington-Echo Hwy

Matt Lawyer
OREGON DEPARTMENT OF AVIATION
PROGRAM COORDINATOR

OFFICE 503-378-4888 **CELL** 503-983-0275
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From: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>
Sent: Thursday, March 12, 2020 10:28 AM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>; LAWYER Matthew A <Matthew.A.LAWYER@aviation.state.or.us>
Subject: RE: Nolin Hills Wind Power Project - preliminary application review

Thank you very much. Your comment is helpful and I can see how the spreadsheet is important. In the letter you state that "ODA can confirm that the following airports are impacted by the proposed project, based on a location dropped generally in the middle of the proposed project boundary: Eastern Oregon Regional, Pendleton; Hermiston Municipal; Lexington; and Boardman." Would you provide a layman's explanation of what this means, so that we can describe in the draft proposed order *how* those airports are impacted by the proposed facility?

Katie Clifford
Senior Siting Analyst
Desk: 503-373-0076
Mobile: 503-302-0267

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Wednesday, March 11, 2020 3:43 PM
To: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>; LAWYER Matthew A <Matthew.A.LAWYER@aviation.state.or.us>
Subject: RE: Nolin Hills Wind Power Project - preliminary application review

Hi Katie,

Please see the attached document, FAA and ODA Review Process.

This document provides a detailed description of the information needed for the ODA to make a determination, specifically for the Nolan Hills Wind Power Project.

I have also included an excel sheet titled, 7460 Data Template.

I included this template for you to record coordinate and height information for all structures that need a determination.

Please let me know if you need assistance or have any questions.

Thank you,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>
Sent: Monday, March 9, 2020 5:15 PM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>; LAWYER Matthew A <Matthew.A.LAWYER@aviation.state.or.us>
Subject: RE: Nolin Hills Wind Power Project - preliminary application review

Hi Seth and Matt,

Great meeting with you earlier. It was a good conversation and I look forward to coordinating with you on this and other projects.

We have the shapefiles for the site boundary and the micrositing corridor. Would you know if your email server accepts .zip files? Ours blocks them, so we often need to find another way to receive the files, and I'm wondering if this is also the case for you.

For ease of reference, here is some basic information about some of the proposed facility components from preliminary Exhibit B:

- *A single circuit 230-kV transmission line supported by H-frame or monopole structures (or other form as needed for specialized locations) will run approximately 6.8 miles between the two Project substations (Figures C-4 and C-5)…In addition to the Project substation connector, the Project will require construction of a transmission line that ties into the regional electric grid and follows one of the two routes described in Section 1.3 (see Figures C-4 and C-5 in Exhibit C)… The Project 230-kV overhead transmission lines will be supported by wooden H-frame or steel monopole structures approximately 100 to 140 feet tall and spaced approximately 600 feet apart on average, depending on the terrain.*
- *It is possible that some of the [34.5 kV] collector lines will need to be installed on above-ground overhead structures in situations where a buried cable would be infeasible, such as for long "home run" stretches, and at stream or canyon crossings. In such instances, overhead collector lines will be supported by a wooden structure. Each support pole will be buried up to approximately 12 feet in the ground and will extend to a height of up to approximately 100 feet above ground, depending on the terrain. The structures will be spaced approximately 150 to 300 feet apart, depending on specific site conditions.*
- *The Project includes up to three permanent met towers spaced throughout the Project. The met towers [will have] a maximum height of up to approximately 541 feet to match the hub height of the selected turbine…FAA lighting may be installed on the met towers, depending on the overall lighting scheme for the Project, to be determined prior to operation and in consultation with FAA.*

By the way, I've asked our fiscal analyst to see if we have a current intergovernmental agreement in place with ODA for cost reimbursement, so that we can set one up if we don't already.

Katie

Katie Clifford
Senior Siting Analyst
Desk: 503-373-0076
Mobile: 503-302-0267

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Wednesday, March 4, 2020 2:32 PM
To: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>
Cc: LAWYER Matthew A <Matthew.A.LAWYER@aviation.state.or.us>; PECK Heather <heather.peck@aviation.state.or.us>
Subject: RE: Nolin Hills Wind Power Project - preliminary application review

Hi Katie,

Thank you for reaching out.

Matt Lawyer and I would appreciate the opportunity to meet with you and discuss this project when convenient.

In particular, we would like to discuss how to effectively comment on this project.

Please let me know when you are available and I will send you a meeting invite.

We are available to meet in your downtown office if that is best.

Thanks again,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>
Sent: Wednesday, March 4, 2020 1:07 PM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: PECK Heather <heather.peck@aviation.state.or.us>
Subject: FW: Nolin Hills Wind Power Project - preliminary application review

Hi Seth,

Todd Cornett recommended that I forward the Nolin Hills Wind Power Project notice we sent to Heather Peck to you so that you both are in the loop. I look forward to coordinating with ODA on review of this facility.

Katie

Katie Clifford
Senior Siting Analyst
Desk: 503-373-0076
Mobile: 503-302-0267

From: CLIFFORD Katie * ODOE
Sent: Monday, March 2, 2020 5:18 PM
To: 'scase@co.morrow.or.us' <scase@co.morrow.or.us>; 'swrecsics@co.morrow.or.us' <swrecsics@co.morrow.or.us>; 'ecpl@centurytel.net' <ecpl@centurytel.net>; 'jturner@ci.pendleton.or.us' <jturner@ci.pendleton.or.us>; 'vcarnes@centurytel.net' <vcarnes@centurytel.net>; 'citymanager@cityofstanfield.com' <citymanager@cityofstanfield.com>; BLEAKNEY Leann <lbleakney@nwcouncil.org>; CANE Jason <jason.cane@state.or.us>; MILLS David <david.mills@state.or.us>; JOHNSON Jim * ODA <jjohnson@oda.state.or.us>; 'Brownj@science.oregonstate.edu' <Brownj@science.oregonstate.edu>; 'heather.peck@aviation.state.or.us' <heather.peck@aviation.state.or.us>; TOKARCZYK John A * ODF <John.A.TOKARCZYK@oregon.gov>; 'hrudolf@odf.state.or.us' <hrudolf@odf.state.or.us>; WANG Yumei * DGMI <Yumei.WANG@oregon.gov>; 'Thomas.Lapp@odot.state.or.us' <Thomas.Lapp@odot.state.or.us>; 'alice.beals@oregon.gov' <alice.beals@oregon.gov>; MULDOON Matt <matt.muldoon@state.or.us>; 'LGKOHO@puc.state.or.us' <LGKOHO@puc.state.or.us>; BJORK Mary F * WRD <Mary.F.Bjork@oregon.gov>
Subject: Nolin Hills Wind Power Project - preliminary application review

Good afternoon,

On Friday (February 28th) we received the preliminary application for site certificate (pASC) for the Nolin Hills Wind Power Project. The proposed wind energy generation facility would have a nominal generating capacity of approximately 350 megawatts and would be located in Umatilla County, south of I-84, and approximately 4 miles south of Echo and 10 miles west of Pendleton. As a reviewing agency, ODOE will be relying upon you and your agency's/jurisdiction's expertise in reviewing the application against the statutes, administrative rules, or ordinances administered by your agency/jurisdiction. The attached memo describes the roles and responsibilities of reviewing agencies during review of an ODOE-Energy Facility Siting Council application for site certificate. This document contains information about the pASC, the review process, deadline for comments, and other information.

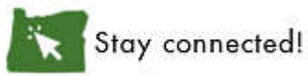
Please note: If you represent a city or county and the proposed facility is not located within your jurisdiction, you are a reviewing agency because your jurisdiction is within 10 miles of the facility and construction or operation of the facility may impact your jurisdiction.

The pASC is available on our website here. Receipt of the pASC kicks off a comment period for certain local jurisdictions, state agencies, and tribes. Please find attached a memo requesting your review and comment on the pASC by **April 1st**.

Please let me know if you need more time or have any questions.

Katie

Katie Clifford
Senior Siting Analyst
550 Capitol St. NE | Salem, OR 97301
Desk: 503-373-0076
Mobile: 503-302-0267



TARDAEWETHER Kellen * ODOE

From: THOMPSON Seth <Seth.THOMPSON@odav.oregon.gov>
Sent: Thursday, February 17, 2022 1:11 PM
To: SLOAN Kathleen * ODOE
Cc: PECK Heather
Subject: RE: Request for Comments (State and Local Reviewing Agencies) - Complete Application for Site Certificate for the Nolin Hills Wind Energy Facility
Attachments: NHWAPP - ODA Reviewing Agency Response.pdf

Good afternoon, Kathleen.

Please see the attached Oregon Department of Aviation (ODA) Agency Report on Compliance and Recommended Site Certificate Conditions on the Complete Application for Site Certificate for the Proposed Nolin Hills Wind Power Project.

Thank you and please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@odav.oregon.gov
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: SLOAN Kathleen * ODOE <Kathleen.SLOAN@energy.oregon.gov>
Sent: Friday, February 4, 2022 1:05 PM
To: BLEAKNEY Leann <lbleakney@nwcouncil.org>; jason.cane@state.or.us; Andresen, Craig <Craig.Andresen@osp.oregon.gov>; JOHNSON James * ODA <James.JOHNSON@oda.oregon.gov>; Brownj@science.oregonstate.edu; PECK Heather <heather.peck@odav.oregon.gov>; THOMPSON Seth <Seth.THOMPSON@odav.oregon.gov>; RIMBACH Gregory P * ODFW <Gregory.P.RIMBACH@odfw.oregon.gov>; ROSENBERG Andrew J * ODFW <Andrew.J.ROSENBERG@odfw.oregon.gov>; TOKARCZYK John A * ODF <John.A.TOKARCZYK@odf.oregon.gov>; MCCLAUGHRY Jason * DGMI <Jason.MCCLAUGHRY@dogami.oregon.gov>; JININGS Jon * DLCD <Jon.JININGS@dlcd.oregon.gov>; HARTMAN Heidi M * DSL <Heidi.M.HARTMAN@dsl.oregon.gov>; matthew.unitis@state.or.us; MULDOON Matt * PUC <Matt.MULDOON@puc.oregon.gov>; RASHID Yassir * PUC <Yassir.RASHID@puc.oregon.gov>; SVELUND Greg * DEQ <Greg.SVELUND@deq.oregon.gov>; CLEARANCE ORSHPO * OPRD <ORSHPO.Clearance@oprd.oregon.gov>; BJORK Mary F * WRD <Mary.F.BJORK@water.oregon.gov>; Tamra Mabbott <tmabbott@co.morrow.or.us>; jnorthern@centurytel.net; david@umatilla-city.org; planning@hermiston.or.us; bob.patterson@ci.pendleton.or.us; citymanager@cityofstanfield.com
Subject: Request for Comments (State and Local Reviewing Agencies) - Complete Application for Site Certificate for the Nolin Hills Wind Energy Facility

Please use this attached agency comment template

Good afternoon,

On January 28, 2022, the Oregon Department of Energy (ODOE), as staff to the Energy Facility Siting Council (EFSC), determined that Nolin Hills Wind LLC (applicant) preliminary application for a site certificate for the Nolin Hills Wind Energy Facility is complete. The applicant submitted a complete ASC on January 31, 2022. The application for site

certificate (ASC) is available for viewing and downloading on the ODOE project webpage for the State of Oregon: Facilities - Nolin Hills Wind Power Project

Here us the full link to the project webpage that has the ASC and additional info: https://www.oregon.gov/energy/facilities-safety/facilities/Pages/NHW.aspx

Attached is a memo notifying reviewing agencies for the Nolin Hills Wind Energy Facility that the application is complete and provides a detailed request for comments in an agency report. I've also attached word templates for comments if that helps you to provide feedback. The request for an agency report on the ASC is associated with compliance with applicable rules, ordinances, and statutes, and recommended site certificate conditions for the proposed facility.

The deadline for comments on the ASC associated with compliance is **Friday, February 18, 2022**. Please see the Public Notice for details about the upcoming public informational meeting. The summary details for the WebEx meeting are below:

WebEx/Teleconference Information Meeting
Date and time: Wednesday, Feb 16, 2022 5:30 pm Pacific Time
Location: WebEx or Teleconference
WebEx link: https://odoe.webex.com/odoe/j.php?MTID=m7e042182d38613b9be51b61d5d4bee6b
WebEx Event Number: 2335 284 5937
WebEx Event Password:
Logging in from Computer: EFSC
Logging in from Phone: 3372
Teleconference: +1-408-418-9388 United States Toll
Teleconference Access code: 233 528 45937

You are encouraged to attend if you would like to learn more about the project, but it is not required.

If you have questions, I am more than happy to have a call to go over the process, review request or the application. Thank you!

Kathleen Sloan
Senior Siting Analyst
550 Capitol St. NE | Salem, OR 97301
P: 971-701-4913

OREGON DEPARTMENT OF ENERGY

Stay connected!

State of Oregon: Facilities - Energy Facility Siting

Oregon
Kate Brown, Governor

Oregon Department of Aviation
3040 25th Street SE
Salem, OR 97302-1125
Office: 503-378-4880
Fax: 503-373-1688

TO: Kathleen Sloan, Senior Siting Analyst, ODOE

CC: Heather Peck, Planning & Projects Manager, ODA

FROM: Seth Thompson, Aviation Planner, ODA

DATE: February 17, 2022

SUBJECT: Oregon Department of Aviation (ODA) Agency Report on Compliance and Recommended Site Certificate Conditions on the Complete Application for Site Certificate for the Proposed Nolin Hills Wind Power Project

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The Nolin Hills Wind Power Project is a proposed wind and solar energy generation facility with a nominal generating capacity of approximately 600 megawatts, located within a site boundary of approximately 48,196 acres of private land primarily zoned exclusive farm use.

The applicant proposes to construct and operate a wind and solar energy project with a nominal generating capacity of approximately 600 MW (preliminarily 340 MW of wind generation and 260 MW of solar generation) located in Umatilla County, Oregon. The Project comprises up to 112 wind turbine generators, depending on the final layout determined during the micrositing process. The solar array will include up to approximately 816,812 solar modules, depending on the final technology and layout selected. The Project will interconnect to the regional grid via either a transmission line leading from the northern Project substation northwest to the Umatilla Electric Cooperative Cottonwood Substation in Hermiston, or a new 230-kilovolt transmission line to the proposed Bonneville Power Administration Stanfield Substation, north of the town of Nolin. Other Project components include electrical collection lines, substations, a battery energy storage system (BESS), site access roads, one operations and maintenance building, meteorological data collection towers, and temporary construction yards. The Project is located southwest of the Eastern Oregon Regional Airport and southeast of the Hermiston Municipal Airport.

For these reasons, the proposal may require airspace review by the FAA and ODA subject to the standards in Code of Federal Regulations: Title 14. Aeronautics and Space: PART 77—Safe, Efficient Use, and Preservation of the Navigable Space.

All project elements are subject to compliance with FAA Part 77.9 Construction or alteration requiring notice (a-d), FAA Part 77.17 Obstruction standards (a-b) and Obstruction Standards of OAR 738-70-0100 if they exceed 200 feet in height or are:

- within 20,000 ft of a public use or military airport and exceed a 100:1 surface from any point on the runway of each airport with at least one runway more than 3,200 ft.
- within 10,000 ft of a public use or military airport and exceed a 50:1 surface from any point on the runway of each airport with its longest runway no more than 3,200 ft.
- within 5,000 ft of a public use heliport which exceeds a 25:1 surface

To make this determination, any new or replaced supporting facilities or structures more than 200 feet in height or within the distances provided above must undergo airspace review by the FAA and ODA through submittal of a completed FAA Form 7460-1, attached for reference.

The ODA provides the following recommendations for this proposal:

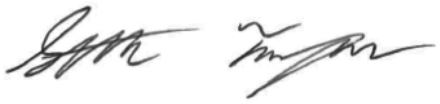
1. If applicable, the applicant must file and receive a determination from the Oregon Department of Aviation as required by OAR 738-070-0060 on FAA Form 7460-1 Notice of Proposed Construction or Alteration to determine if any new or replaced supporting facilities or structures will pose an obstruction to aviation navigation. The actions below shall be completed in the following order:

    i. First, submit to and receive responses from the Oregon Department of Aviation (Aviation) of 7460-1 Notice of Proposed Construction or Alteration Forms for all new or replaced supporting facilities or structures that meet the above criteria. The applicant shall provide copies of Aviation responses to the Oregon Department of Energy (ODOE) and shall respond to Aviation marking and lighting recommendations, if applicable.
    ii. Second, once Aviation responses are received, submit to and receive determinations from the FAA for all new or replaced supporting facilities or structures that meet the above criteria. The applicant shall also provide copies of FAA determinations to ODOE.

2. The height of any new or replaced supporting facilities or structures should not penetrate FAA Part 77 Imaginary Surfaces, as determined by the FAA and ODA.

Thank you for allowing the ODA to comment on this development proposal. Please feel free to contact me if you have any questions or need information.

Sincerely,



Seth Thompson, Aviation Planner
503-507-6965 | seth.thompson@odav.oregon.gov

ESTERSON Sarah * ODOE

Subject: Aviation Comments on Nolin Hills pASC

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Tuesday, August 3, 2021 1:52 PM
To: CLIFFORD Katie * ODOE <Katie.CLIFFORD@energy.oregon.gov>
Cc: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; CLARK Christopher * ODOE <Christopher.CLARK@energy.oregon.gov>; PECK Heather <heather.peck@aviation.state.or.us>
Subject: RE: Nolin Hills GIS Data

Hi Katie,

Thank you for your patience. Please see my response below:

ODA Preliminary Assessment:

Based on my review of the materials you provided, I do not believe the proposed structures within the proposed micrositing corridor will result in any hazards to navigable airspace. I want to thank you and your team for providing such detailed preliminary documentation and data.

At 496', the turbines will be just below the 499' threshold per Part 77 standards, which is less cause for concern as well. In addition, the "worst case" turbines appear to also be well outside the 3-nautical mile perimeter of nearby airports.

As the distribution line appears to be following an existing route, the higher support poles are also unlikely to cause concern.

Expected ODA Recommendations:

Though all proposed structures appear to be outside of Part 77 thresholds, existing Victor airways do appear to possibly transect the micrositing corridor. Victor airways are low altitude flight paths. Please see below for reference.

Though this is not necessary cause for concern, the ODA will be recommending marking and lighting for the turbines and possibly some of the transmission line support structures to increase visibility.

ODA Requests:

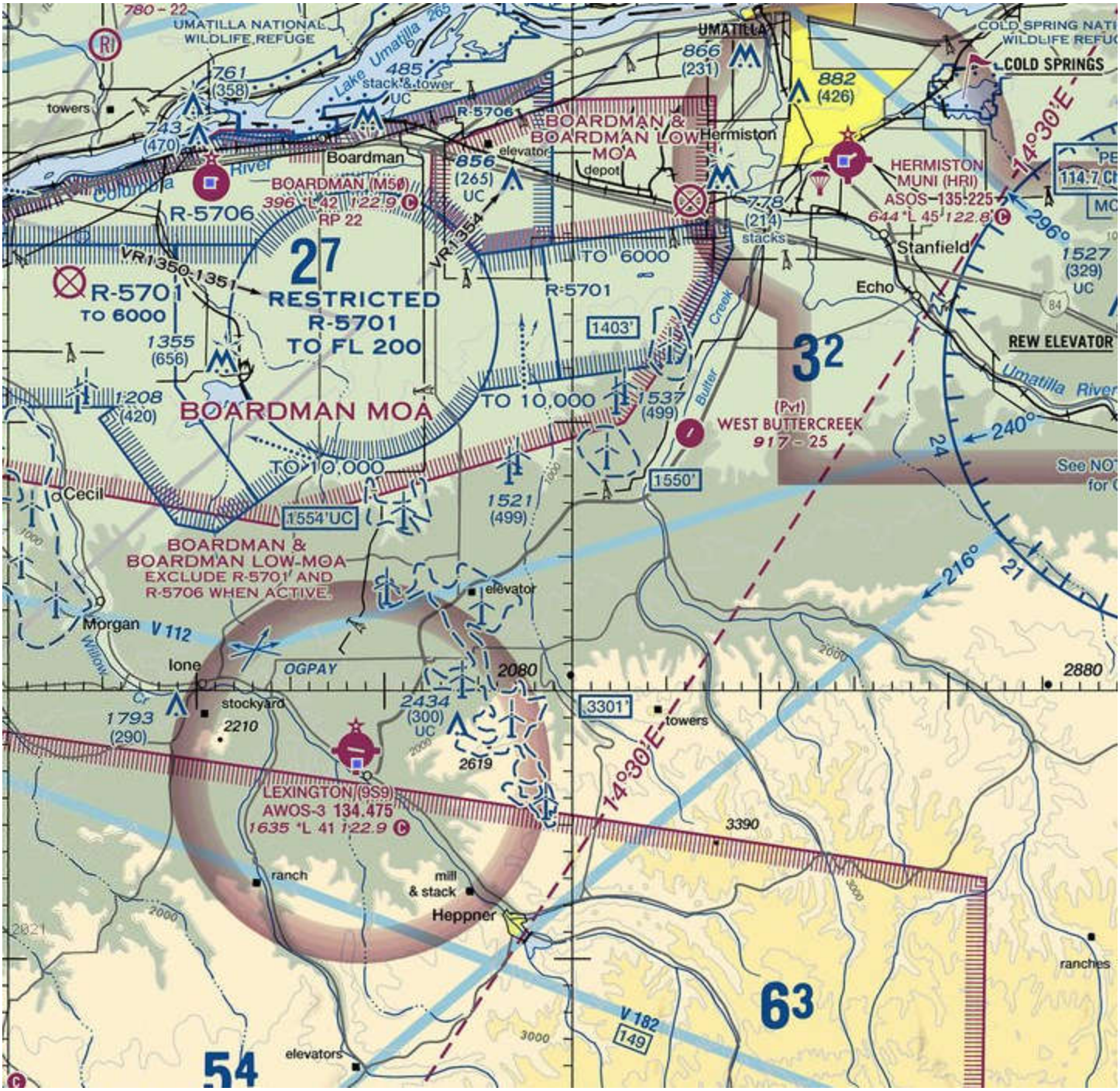
Thank you as well for providing me with coordinate data for the structures. Unfortunately, the FAA and ODA only accept coordinate data provided in Degrees, Minutes and Seconds (DMS). The coordinates in the excel you provided appear to be Decimal Degrees (DD).

Though I can convert DD to DMS, I ask that all future submittals please be provided in DMS. The FAA does not accept DD coordinates for notifications.

*Please note that the final proposed placement of turbines and transmission line support structures must still undergo final airspace analysis by the FAA and ODA prior to construction.

Thank you again for reaching out and I again appreciate your hard work to provide ODA with this preliminary data!

Please feel free to reach out with any further questions.


UMATILLA NATIONAL WILDLIFE REFUGE
Umatilla River
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stack & tower UC
towers
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RP 22
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Columbia River
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EXCLUDE R-5701 AND R-5706 WHEN ACTIVE.
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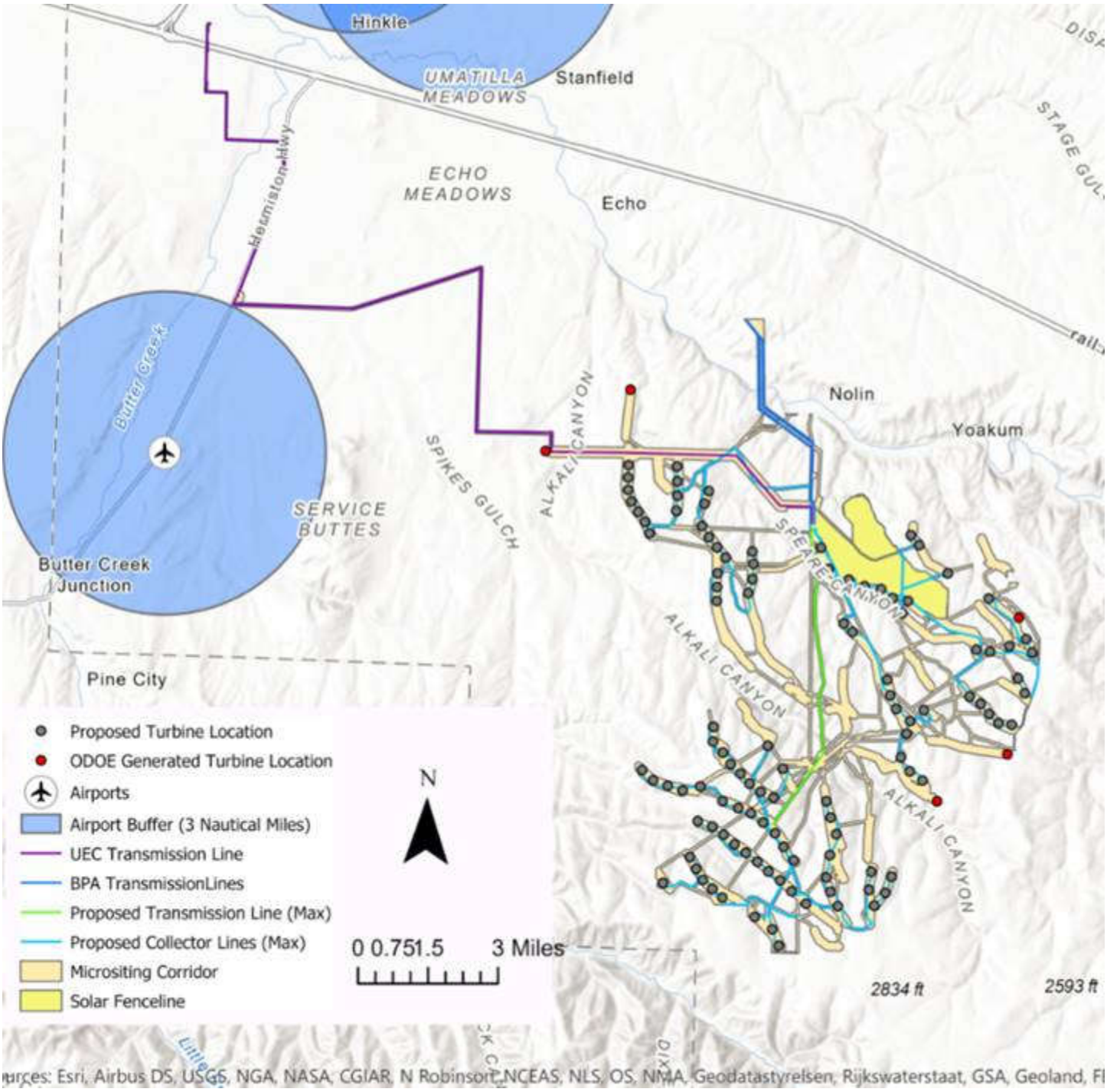

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: CLIFFORD Katie * ODOE <Katie.CLIFFORD@energy.oregon.gov>
Sent: Tuesday, July 6, 2021 3:15 PM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: LAWYER Matthew A <Matthew.A.LAWYER@aviation.state.or.us>; ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; CLARK Christopher * ODOE <Christopher.CLARK@energy.oregon.gov>
Subject: FW: Nolin Hills GIS Data

Hi Seth,

You and Matt previously provided comments on the proposed Nolin Hills Wind Power Project. The project has since added solar and battery storage. We also now have the lat/long data you requested. Here are some updates we think you may be interested in:

Transmission line

The closest part of the proposed facility to an airport appears to be the UEC Cottonwood transmission line route that is close to the three nautical mile buffer from the West Buttercreek Airport. The nearest transmission structures would be approximately 3.4 miles northeast of the airport. Please see the attached figure that Chris prepared. Where the UEC Cottonwood transmission line heads towards the Butter Creek Substation from the east, it would replace an existing 12.47-kV distribution line with the proposed 230-kV transmission line with 12.47-kV underbuilt distribution. After connecting with Butter Creek Substation, the route will follow an existing 115-kV UEC transmission line, to be upgraded to incorporate a 230-kV line and carry power generated by the facility approximately another 7.3 miles north to the UEC Cottonwood Substation. The line replacement will consist of replacing the existing support poles with new structures that can support restringing the existing 115-kV transmission line and adding a 230-kV transmission line (double-circuit), with 12.47-kV underbuilt distribution.

In other words, the portion of the facility closest to the West Buttercreek Airport is the UEC Cottonwood transmission line that would replace existing transmission line infrastructure that presumably pilots already need to account for. There would be a height difference, though, between existing and proposed transmission. The new transmission line structures would have a pole height typically between 100 and 140 feet, and structures would be spaced approximately 600 feet apart. In comparison, the existing 115 kV structures running north from the Butter Creek Substation are 55 to 85 feet tall. I don't believe we have the exact height of the existing 12.47-kV distribution line, but it's likely no more than 70 feet tall.

Wind turbines

Since the last time we met the developer revised downward the maximum height of the proposed turbines, so that the maximum blade tip height (total height, from ground to the tip of the blade) is 496 feet. They provided the lat/long data ODA requested. These data are preliminary because they are requesting approval of a micrositing corridor where at final design they might adjust the final turbine locations. Because of this, Chris created five points (shown as red dots in the figure and as the last 5 lat/long shown in the Excel sheet) to demonstrate the "worst case" placement of turbines in the micrositing corridor relative to the airports. While the developer is unlikely to actually place turbines at these worst case locations due to other siting factors, hopefully looking at these 5 lat/long points will allow ODA to determine if there are any concerns placing turbines anywhere within the micrositing corridor.

Solar

The developer performed the attached glare analysis using the Sandia Laboratories Solar Glare Hazard Analysis Tool. They report that no glare impacts are predicted from the Nolin Hills solar arrays at nearby airports, including the West Buttercreek Airport and Eastern Oregon Regional Airport at Pendleton.

Based upon this information, we would like to know if ODA has any concerns about air navigation hazards. Any chance we can get in your queue to get your thoughts sometime this month? Hope your summer is going well!

Katie

Katie Clifford
Senior Siting Analyst

Oregon Department of Energy
Phone: 503-302-0267

From: CLARK Christopher * ODOE <Christopher.CLARK@energy.oregon.gov>
Sent: Friday, July 2, 2021 12:53 PM
To: CLIFFORD Katie * ODOE <Katie.CLIFFORD@energy.oregon.gov>
Cc: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>
Subject: Nolin Hills GIS Data

Hi Katie,

Here is a draft layout and spreadsheet showing the proposed turbine locations for Nolin Hills as well as the 5 hypothetical "high impact" turbine locations I generated based on the proximity of the proposed micrositing corridor to the airports identified in the FAA data layer/input from ODA. I tried to make sure everything was labeled clearly, but let me know if you think there are any changes or refinement needed.

The original shapefile didn't include elevation data, so I didn't take the time to pull that in but I think that is possible if you think we need it. I also cleaned up the shapefile the applicant provided so that the new hypothetical turbines won't show up there anymore but you can load them into ArcGIS using the spreadsheet if needed.

Thanks,

OREGON DEPARTMENT OF ENERGY

Christopher M. Clark
Siting Policy Analyst & Rules Coordinator
550 Capitol St. NE | Salem, OR 97301
P: 503-373-1033
P (In Oregon): 800-221-8035

From: Woolf, Brian T
Sent: Friday, April 30, 2021 1:38 PM
To: CLIFFORD Katie * ODOE
Cc: Coddington, Katherine E
Subject: [Fortimail Spam Detected] Re: [EXTERNAL] Energy project near Echo Meadows

---

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Katie,

I looked at the potential impacts and, in my analysis, I found the impacts to be minimum regarding visitors experience to Echo Meadows.

I further looked for any additional visual resources that may be impacted by the proposal for the larger transmission line and found it in conformance with the BLM's visual resource zoning for that viewshed.

I have no comments for the Nolan Hills Wind Project as proposed.

Stay Healthy,

Brian

Brian T Woolf
Outdoor Recreation Planner

BLM - Baker Field Office
Dept. of Interior Region 9 Project
To: Woolf, Brian T <bwoolf@blm.gov>
Subject: RE: [EXTERNAL] Energy project near Echo Meadows

Hi Brian,

Happy Spring! Since we last communicated a couple of months ago I wanted to touch base and see if BLM has had the opportunity to determine if the agency has any comments on the Nolin Hills project, specifically with regards to the Echo Meadows site.

Katie

Katie Clifford
Senior Siting Analyst
Oregon Department of Energy
Phone: 503-302-0267

From: CLIFFORD Katie * ODOE
Sent: Wednesday, February 10, 2021 12:40 PM

To: Woolf, Brian T <bwoolf@blm.gov>
Subject: RE: [EXTERNAL] Energy project near Echo Meadows

Thank you so much, Brian – appreciate it! I'm available to answer any questions in the meantime.

Katie Clifford
Senior Siting Analyst
Phone: 503-302-0267

From: Woolf, Brian T <bwoolf@blm.gov>
Sent: Wednesday, February 10, 2021 10:22 AM
To: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>
Subject: Re: [EXTERNAL] Energy project near Echo Meadows

Hi Katie,

Yes. I am the appropriate person to review these types of projects. I have sent an invitation to my team to gather our thoughts and possible provide a comment.

Thanks for reaching out and providing the documents. I will do a final review and provide a comment once our team members and managers have a chance to weigh in.

Stay Safe,

Brian

Brian T Woolf
Outdoor Recreation Planner

BLM - Baker Field Office
Dept. of Interior Region 9
541-523-1495

From: CLIFFORD Katie * ODOE <Katie.Clifford@oregon.gov>
Sent: Monday, February 8, 2021 3:55 PM
To: Woolf, Brian T <bwoolf@blm.gov>
Subject: [EXTERNAL] Energy project near Echo Meadows

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Brian,

Oregon Department of Energy is reviewing an application for a proposed energy facility with potential impacts on the Echo Meadows site of the Oregon Trail ACEC. Capital Power's application referenced communication with you about the site so I thought you might be the right person at BLM to contact to see if BLM has any concerns.

Their proposed Nolin Hills Wind Power Project consists of wind turbines, transmission lines, solar panels, and battery storage, along with other components such as an operations and maintenance building and construction laydown areas. The components that appear to have the most potential to impact Echo Meadows are one of their proposed transmission line options and the wind turbines. One of their proposed 230-kilovolt transmission line options (which they call the UEC Cottonwood Route) would be located along Oregon Trail Road just south of Echo Meadows and would replace an existing, smaller distribution line that runs parallel to Oregon Trail Road. The wind turbines would be at least 6.4 miles away (potential visual impacts).

Exhibits L and R of their application (accessible here) describe the potential for noise, traffic, and visual impacts to Echo Meadows. The applicant (Capital Power) discussed potential impacts to Oregon Trail resources, including Echo Meadows, with the Oregon-California Trails Association (OCTA). OCTA sent us the attached letter indicating that they have reached an agreement with Capital Power for mitigation and construction procedures that will protect the Oregon Trail, and that therefore their concerns have been satisfied.

I wanted to make sure BLM is aware of the project, particularly the potential for short-term impacts to access to Echo Meadows during construction of the UEC Cottonwood Route transmission line:

> From Exhibit L: "*South of I-84, the Echo Meadows ACEC site is accessed via a gravel road extending north from Oregon Trail Road (OR-320) that connects the town of Echo and OR-207. If the UEC Cottonwood route alternative is chosen, it is not expected that the gravel road going north from OR-320 to Echo Meadows would be closed by construction; however, if the need arises, the temporary closure would be less than 15 minutes. The transmission line would be located on the northern or southern side of OR-320 and closure of OR-320 is unlikely. However, for the purposes of analysis, it is possible portions of OR-320 would be closed for one or two days. As visitors can approach the turnoff to Echo Meadows from either east- or west-bound OR-320, and therefore could drive around via OR-207, I-84, and Thielsen Road, access would not be blocked. There is a residence adjacent to OR-320 whose access also depends on the gravel road going north toward Echo Meadows, so local and visitor access would be maintained at the intersection. Given the short-term, temporary nature of potential traffic disruption described above, the Project will not have a significant impact on access to Echo Meadows. Furthermore, as noted earlier, use of the Echo Meadows site is relatively low and few users are likely to be affected by potential construction delays.*"

Would you know if there's a time of year when most people visit the site? Would you let me know if BLM has any questions, concerns, or recommends any mitigation measures?

Katie

OREGON DEPARTMENT OF ENERGY

Katie Clifford
Senior Siting Analyst
550 Capitol St. NE |
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Attachment C: Draft Proposed Order Comments/Index

Attachment C: Index/Summary of Comments Received on the Record of the DPO

Date Received	Commenter Name	Organization	Comment Scope/Topic
4/27/22	Samuel J. Ramos	Public; Property owner	Does not support the project, because as represented in the site boundary map, would cross two tax lots, his and the Margaret West/West Family Trust. Indicates comments provide sufficient specificity for the Contested Case proceeding.
5/24/22; 5/26/22; 6/15/22; 6/24/22	Matt Martin, Tim McMahan, Steve Corey	Applicant, Capital Power Corporation	Requests for consideration of all proposed facts and analysis related to the Department's evaluation of the Goal 3 exception request; expresses disagreement with Department applied contingencies to decommissioning estimate. Provides information from Exhibit K (re: goal exception). Provides letter from VP affirming Capital Power is financially responsible and supports development of the project.
5/26/22	Robert Waldher	Director, Umatilla County Department of Land Use Planning (SAG)	Expresses disagreement with Department's interpretation of applicability of 2-mile setback for EFSC jurisdictional facility; and, requests that EFSC include in a condition a requirement that developer obtain conditional use permit.
5/26/22	Council members (K. Howe; H; Jenkins; C. Condon)	EFSC; Vice Chair	Expresses dissatisfaction over site specific reasons analysis for Goal 3 exception request. Requests additional facts/evidence to support conclusion of law for Organizational Expertise standard.
5/26/22	Dixie Echeverria	Public; ELH LLC	Describes that UEC transmission line location/route would negatively impact her farming operation. Asks that the transmission line avoid any property owned by ELH, LLC; requests for utilization of single pole for minimum space requirements of a 230 kV transmission line, anywhere near ELH, LLC property or adjacent properties.

Attachment C: Index/Summary of Comments Received on the Record of the DPO

Date Received	Commenter Name	Organization	Comment Scope/Topic
5/26/22	Scott West	Public; Elron/Ramos Ranches	References letter from Ramos and states that they are in discussions with applicant – not resolved.
5/26/22	Art Pryor	Public	Supports for the project is contingent upon not modifying/deviating from the proposed transmission line route.
5/26/22	Jeff Grant	Public; LIUNA	Supports the project, and the work opportunities (including careers and health & retirement benefits) it would provide.
5/26/22	Chuck Little	Public	Supports project
5/26/22	James Peters	Public; LIUNA	
5/26/22	Jodi Parker	Public; LIUNA	
5/26/22	Jontae Clardy	Public; LIUNA	
5/25/22	Zack Culver	Laborer's International Union of North America (LIUNA) Local 737	
5/26/22	Eric Ansen	Public	

April 22, 2022

Kathleen Sloan, Senior Siting Analyst
Oregon Department of Energy
550 Capital Street NE
Salem, Oregon 97301

RE: Nolin Hills Wind Energy Facility
Exhibit C – Property Location and Maps

Dear Ms. Sloan:

This is to inform you of an objection to the proposed location of a portion of the Nolin Hills Wind Energy facility as it is shown on the facility and site boundary map. The hard copy and online version shows some of the facility sited on property owned by Samuel J Ramos, tax lot 11100 and Margaret West/West Family Trust tax lot 8500, Umatilla County, Oregon.

The owners of these properties denied easement when they were approached about the project over two years ago. There have been no easement discussions since that time and there is currently no interest in allowing that access.

If this is merely a mapping error your apology is accepted and we will expect to be contacted immediately regarding this issue. If this is your intended location and it has become part of your proposal without landowner knowledge or agreement then please consider this as our written issue notice for the Contested Case proceeding as required during the period of April 19, 2022 and May 26, 2022. This comment, along with the fact there has been no contractual access easement effected supports this objection with sufficient specificity.

Please note this is not an objection to the project, just an objection to where you have indicated location/siting of a portion of the project. Thank you for recognizing this issue has been raised and submitting this letter for comment. Your response would be appreciated.

Sincerely,

Samuel J. Ramos

Samuel J. Ramos
13429 Hereford Loop, Hereford, Oregon 97837
541-446-3302 email ramos@ortelco.net

Capital Power
155 Federal Street, Suite 1200
Boston, MA 02110

May 24, 2022

Kathleen Sloan
Oregon Department of Energy
550 Capital Street NE
Salem Oregon, 97310

Re: Comments on the Draft Proposed Order, Nolin Hills Wind Power Project

Dear Ms. Sloan,

Regarding your on-going consideration of the Application for a Site Certificate for the Nolin Hills Wind Power Project (Nolin Hills), we wish to provide you comments on the Draft Proposed Order (DPO) Nolin Hills as issued on April 19, 2022.

Clarification on certain facts (ex. RAI submission dates, certain distances, etc.) will be provided separately in a Word version of the DPO. In addition to these corrections, we urge the Department to consider the following items:

Balancing determination
We note that the Department recommends not granting our requested balancing determination. While we are disappointed in this recommendation by the Oregon Department of Energy (ODOE), in order to allow the Council to focus on issues that have a greater anticipated impact on facility constructability, **we have decided not to press the issue further at this time**.

We continue to stand by our reasoning that a balancing determination is warranted for the reasons described in the ASC. We may follow-up with additional arguments at a later date depending on the final design layout and pre-construction habitat assessment, but we understand that a Site Certificate Amendment likely would be necessary if that were to occur.

Statewide Land Use Planning Goal 3
Attached to this submittal is a letter from our regulatory attorney, Tim McMahan of Stoel Rives LLP, dated May 20, 2022, which provides detailed comments on our rationale for a Goal 3 exception for the solar portion of the project. We describe our position in Exhibit K, page 77-98. The following points summarize and reiterate points from Mr. McMahan's letter:

- Nolin Hills will address a vital policy objective of the state in terms of mitigating climate change.

- We have worked closely with the project landowners to address their agricultural interests. In a recent letter to the Department the landowners state that the project "will enable us to support and improve our farming and ranching operations in the surrounding area by providing valuable lease payments we can invest in ongoing activities on more active land elsewhere on our property. Specifically, we intend to devote lease revenues in part to improve housing for our sheep herders as well as farm employees in the cattle and farming departments." Landowners Bob Levy and Steven Corey will provide testimony at the upcoming public hearing.
- We are concerned that the DPO recommends a more rigorous and subjective standard for EFSC's approval of Goal 3 "Reasons" exceptions. With the recent Obsidian Order, the Hearings Officer's order was consistent with other orders and Council decisions in an analysis that collectively evaluated all supporting factors as a whole, finding support for the exception.
- The Department has indicated in the Nolin Hills DPO that "reasons" "are evaluated in combination, but are first evaluated individually." (DPO, p. 111).
- Our reading of the DPO suggests that the reasons are evaluated individually and generally not in combination, with the Department rejecting evidence that was accepted in the Obsidian case. This includes minimal direct impacts to agriculture, minimal impacts on surrounding lands, the fact that this facility does not impact irrigation water availability, locational suitability and dependency of the solar facility, and our efforts to design the Project to minimize and avoid environmental impacts.

Decommissioning Contingencies (DPO Table 6; pgs. 168-169)

We are concerned with the manner in which additional management costs and contingencies have been applied to the retirement cost estimate by the Department, as well as with the exclusion of scrap metal value from the estimate. We understand that Council has indicated that rulemaking should be undertaken to address certain components of the retirement cost estimate process, potentially including scrap value, and will avoid repeating our extensive arguments on the scrap metal issue at this time in favor of later discussion.

However, we do not believe that the application of project management costs and future development contingencies here is consistent or logical, particularly since our decommissioning estimate already includes these items. The Department's arbitrary application of additional management fees and contingencies adds $6.7 million to the total estimated retirement cost without justification, which substantially and unnecessarily results in hundreds of thousands of dollars of additional cost to the project over time with no added value to the public. Specific examples of these costs are as follows:

- We included an estimate of two full-time equivalents (FTEs) for a period of 16 months, for ODOE to handle contracting and oversee the work of a construction contractor in decommissioning the facility, in the event that the Project owner is unable to do so. The Department has replaced this estimate ($533,000) with a flat 10% of the total estimated cost, or $3,298,133. No justification for this significant change has been made. We request that the Department provide a rationale based on standard and accepted cost estimating practices for this significant increase in the estimated cost of retirement. If the Department is unable to arrive at an FTE based estimate of costs, a reasonable management percentage founded on industry accepted cost estimating principles should

be applied to the estimated *construction* cost ($25.3M), not to the estimated total cost including project management, fees, and contingencies.

- The Department has also added a "Future Development Contingency" of 10 percent for the wind and solar components of the project, and 20 percent for the BESS. This contingency is added on top of all other costs, including project management, fees, and the contingency estimated by our professional cost estimator. No rationale or justification is provided for this 10 (or 20) percent contingency, and no rationale for applying it to the sum of our estimate is provided. We believe that the following factors should be considered in order to arrive at a more reasonable estimate:
    - If the Department does not agree with the contingency estimate of 3 percent, it should justify an alternate amount to replace this estimate but should not add its new contingency on top of our estimate. Any future cost contingency estimate should be based on standard cost estimating practices and should be applied to the total decommissioning construction cost estimate of $25,387,983.
    - The additional contingency estimate of 20 percent for BESS components does not have a rationale provided. We request that the Department justify this higher contingency using standard cost estimating best practices.
    - We also note that the Council has standard mechanisms in place to account for annual adjustments to the decommissioning cost estimate based on factors such as inflation and changes in the labor market or cost of equipment. Therefore, the contingency added to the construction cost estimate does not need to attempt to capture these factors.

I want to thank you for your attention and consideration of the Nolin Hills Wind Energy Project, which we look forward to discussing with you at the public hearing on May 26, 2022 in Pendleton.

Sincerely,

Matt Martin
Director, Business Development
Capital Power
Nolin Hills Wind LLC

CC: Sarah Esterson, ODOE
Tim McMahan, Stoel Rives LLP
Linnea Fossum, Tetra Tech
Jon Sohn, Capital Power

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May 20, 2022

Ms. Marci Grail, Council Chair
Council Members, EFSC

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

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

Dear Chair Grail and Council Members:

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

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

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

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

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

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

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

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

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

---

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

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

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

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

Very truly yours,

Timothy L. McMahan
Stoel Rives LLP

Issue 4. Whether the ASC failed to demonstrate grounds justifying an exception to LCCP Goal 3, identifying a preference for the preservation of agricultural land, as required by the LCCP and ORS 469.504(2).

Council Standard: Land Use Standard; OAR 345-022-0030.

Next, the limited parties assert the Department erred in finding Applicant presented sufficient reasons in the ASC to justify Council to take an exception to Statewide Planning Goal 3. For the reasons below, I disagree.

OAR 660-033-0010 identifies the purpose of division 033 as the preservation and maintenance "of lands as defined by [Statewide Planning] Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799." OAR 660-033-0020(1)(a)(A) defines "agricultural land" for the purposes of Goal 3 as, "Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon."

As discussed above, OAR 660-033-0130(38) provides minimum standards applicable to the schedule of permitted and conditional uses approvals for solar facilities on agricultural land and provides for exceptions as follows:

> (j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:
>
> (A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);
>
> (B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:
>
> (i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or
>
> (ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;
>
> (C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);
>
> (D) No more than 20 acres of the project will be sited on arable soils;
>
> (E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;

(F) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

Because the proposed facility would occupy more than 320 acres of non-arable lands, it does not comply OAR 660-033-0130 unless the ASC provides justification for an exception to this Goal 3 requirement. As set forth above, OAR 345-022-0030(4) permits Council to take an exception to a statewide planning goal if it finds reasons justify why the state policy embodied in the applicable goal should not apply; the significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and the proposed facility is compatible with other adjacent uses or will be

made compatible through measures designed to reduce adverse impacts. OAR 345-022-0030(4)(c)(A) – (C).

ORS 197.732 provides criteria and rules for granting exceptions to applicable planning goals and provides, in part:

> (1) As used in this section:
>
> (a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.
>
> (b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:
>
> (A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
>
> (B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and
>
> (C) Complies with standards under subsection (2) of this section.
>
> (2) A local government may adopt an exception to a goal if:
>
> * * * * *
>
> (c) The following standards are met:
>
> (A) *Reasons justify why the state policy embodied in the applicable goals should not apply;*
>
> (B) Areas that do not require a new exception cannot reasonably accommodate the use;
>
> (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
>
> (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Emphasis added.

The ASC proffers several of the reasons justifying removal of approximately 4,000 acres

within the proposed facility site to promote other policies of importance within the county and across the state including: (1) the proposed facility will not have significant adverse impacts on accepted farm uses within the surrounding area; (2) Applicant does not seek to permanently remove land from agricultural use; (3) large-scale solar generation promotes rural economic development by creating jobs and adding to the tax base of Lake County; (4) the availability of reliable renewable energy produced by the proposed facility will help attract, recruit, and retain energy-dependent businesses to Oregon; (5) the proposed facility will promote the renewable energy policies of Lake County and support the Lake County Resources Initiative; and (6) the land within the proposed facility site is of low value for agricultural production given the quality of the underlying soils and the lack of available water rights for irrigation, making its removal from agriculture insignificant.

According to a preponderant weight of the evidence, as addressed more fully above, the ASC, as conditioned in the Department's Proposed Order, demonstrates the proposed facility is not likely to have significant adverse environmental consequences because each can be mitigated or eliminated. The evidence also shows Applicant, more likely than not, will fulfill its mitigation obligations. Moreover, the record demonstrates that, according to agreements reached between Applicant and Lake County, Applicant will pay significant taxes during the 15-year operational life of the facility, subject to annual increases of three percent. Further, Applicant will pay an annual community service fee, based on its per megawatt/per acre production, totaling approximately $12 million over the operational life of the proposed facility. In total, those combined revenues are likely to produce nearly $30 million in additional revenue for Lake County. Additionally, Applicant has committed to a one-time contribution, based on production capacity, of up to $4 million.

Additionally, the record shows that the proposed facility, as conditioned, will manage impacts to protected areas, as well as scenic and cultural resources, through existing mitigation plans. Further, the record demonstrates the significant amount of energy to be produced by the proposed facility will generate reliable, renewable energy for sale to the public and promote the state of Oregon's commitment to rural economic development. Likewise, as addressed in this order, the evidence supports a conclusion that the proposed facility is or will be compatible with other adjacent uses through implementation of the DAMP, ESCP, RNWCP, and CTMP.

Accordingly, the ALJ finds the ASC provides a preponderance of evidence to justify an exception to Goal 3, as required by LCCP and ORS 469.504(2), because Applicant has proposed reasons sufficient for Council to take such an exception. Under ORS 469.504(2) and OAR 345-022-0030(4), Council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal if it finds reasons justify why the state policy embodied in the applicable goal should not apply. For the reasons stated above, I find the Department's Proposed Order determined information contained in the ASC provided a sufficient basis for Council to take and exception to Goal 3. Because Applicant has stated reasons justifying and exception to Goal 3, OAR 660-033-0130(38)(h) is inapplicable.

Nolin Hills Wind Power Project

May 26, 2022

Capital Power

Capital Power – Background

Quality Wind

Halkirk Wind

Port Dover & Nanticoke Wind

Macho Springs Wind

K2 Wind

Beaufort Solar

Bloom Wind

- Owns approximately 6,600 megawatts of power generation.
- Operates 27 facilities in U.S. and Canada.
- Invests in renewables and natural gas, generation efficiency and innovative, low-carbon technology.

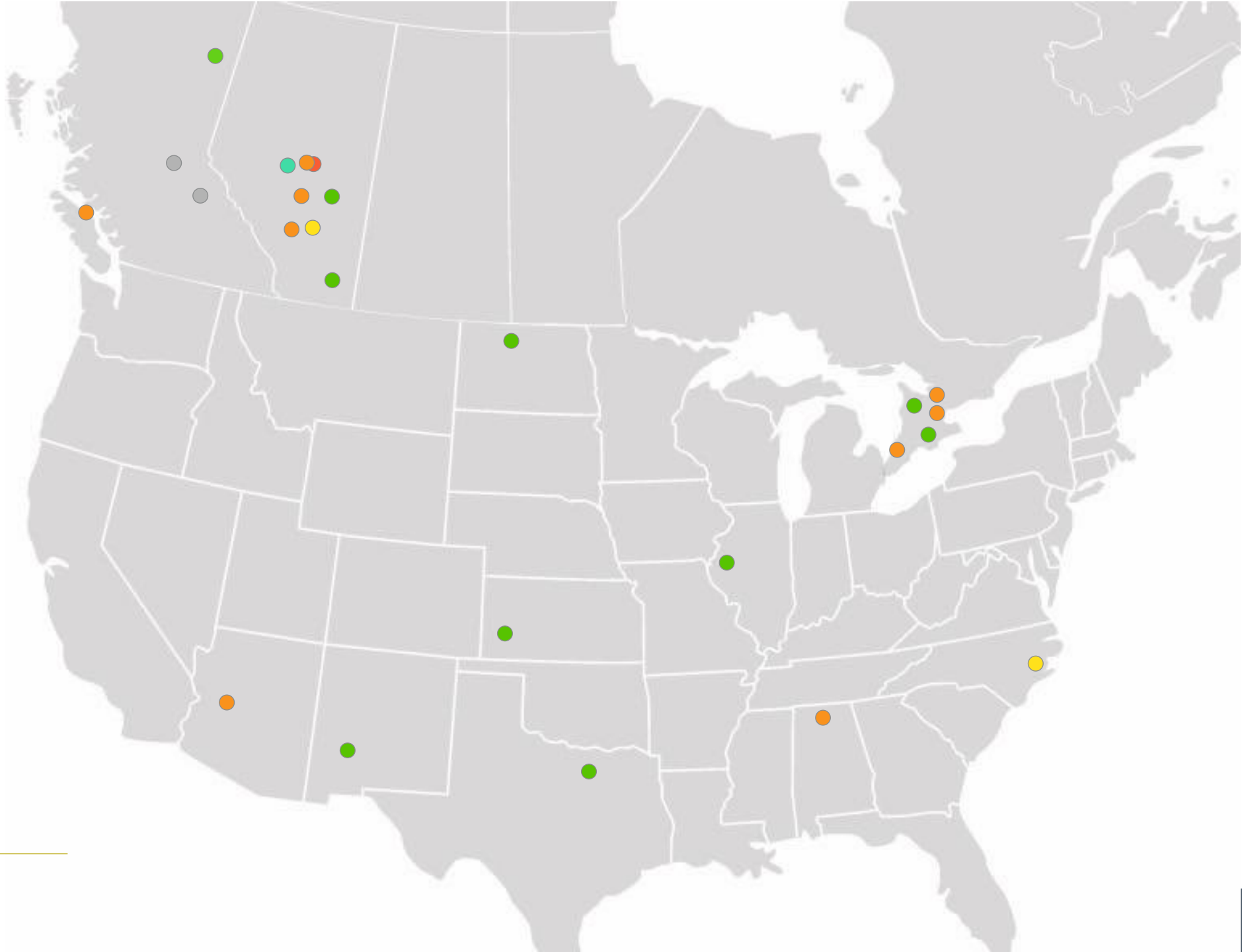
- 870 employees in Canada and the U.S.
- Named one of the World's Most Ethical Companies® by the Ethisphere Institute for the third straight year (2019-2021).
- Investment grade rated (S&P: BBB-)
- Publicly Traded (TSE: CPX)

Powering a Sustainable Future for People and Planet

Operational facilities

~6,600
megawatts

27*
facilities



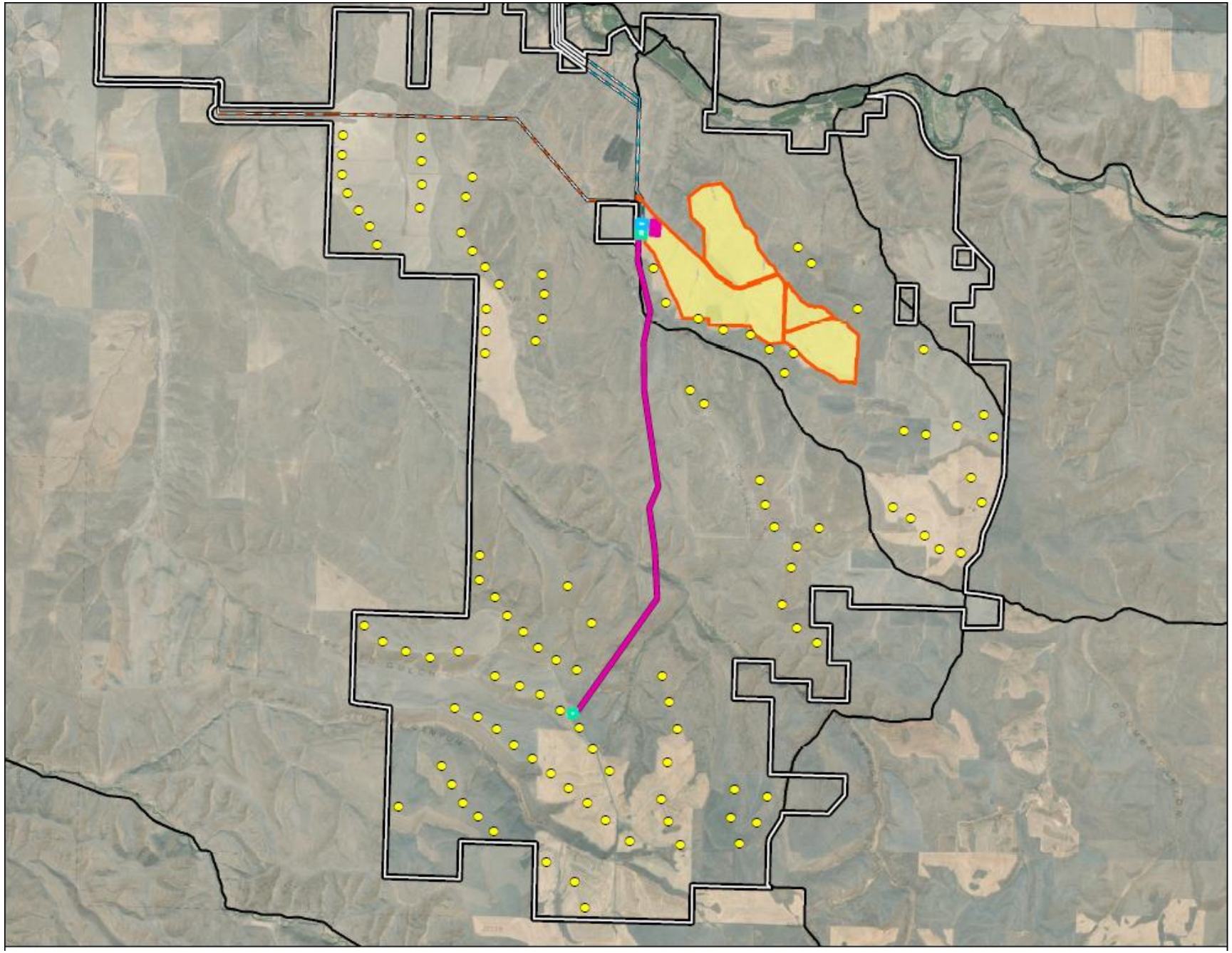
In Operation

- Wind
- Solar
- Gas
- Dual Fuel *(*Genesee 1, 2, 3 shown as one facility)*
- Waste Heat
- Landfill Gas

Nolin Hills Project

- 600 megawatts (MW) total generating capacity
  - 340 MW wind energy
  - 260 MW solar photovoltaic
  - 120 MW battery energy storage
  - 66 miles of access roads; 98 miles of collector lines
- Located in Umatilla County, approx. 4 miles south of Echo and 10 miles west of Pendleton.
- Main project area is 48,000 acres on the Cunningham Sheep Ranch and associated properties.
- Site studies and wind resource analysis since 2010.

A section of the Nolin Hills site area



Nolin Hills Energy Project

Approximate locations of wind turbines and solar area shown.

Wind Energy Component

- 340 MW of energy from up to 112 wind turbines.
- Maximum height of 496 ft.
- Current layout based on 3.0 MW turbines with a maximum height of 496 ft (151 meters).
- The actual turbine model will be selected based on several factors: optimal technical fit with the site and wind regime, generation capacity, cost-factors, availability.

Solar Energy Component

- Solar photovoltaic anticipated to generate 260 MWs.
- Composed of up to ~816,812 solar modules.
- Anticipate site coverage: 1,896 acres.
- Connected directly to the battery energy storage system.

Capital Power's Beaufort Solar Facility, North Carolina

Battery Energy Storage System

- A 120 MW battery energy storage system (BESS) will be located adjacent to the solar PV component.
- Will be used to deploy power generated from the solar PV system and wind energy facility.
- The specific BESS will be selected based on the technical fit with the overall project.

Typical Battery Storage Unit

The BESS will allow for the deployment of electricity generated from non-emitting sources during low-wind and low-solar periods.

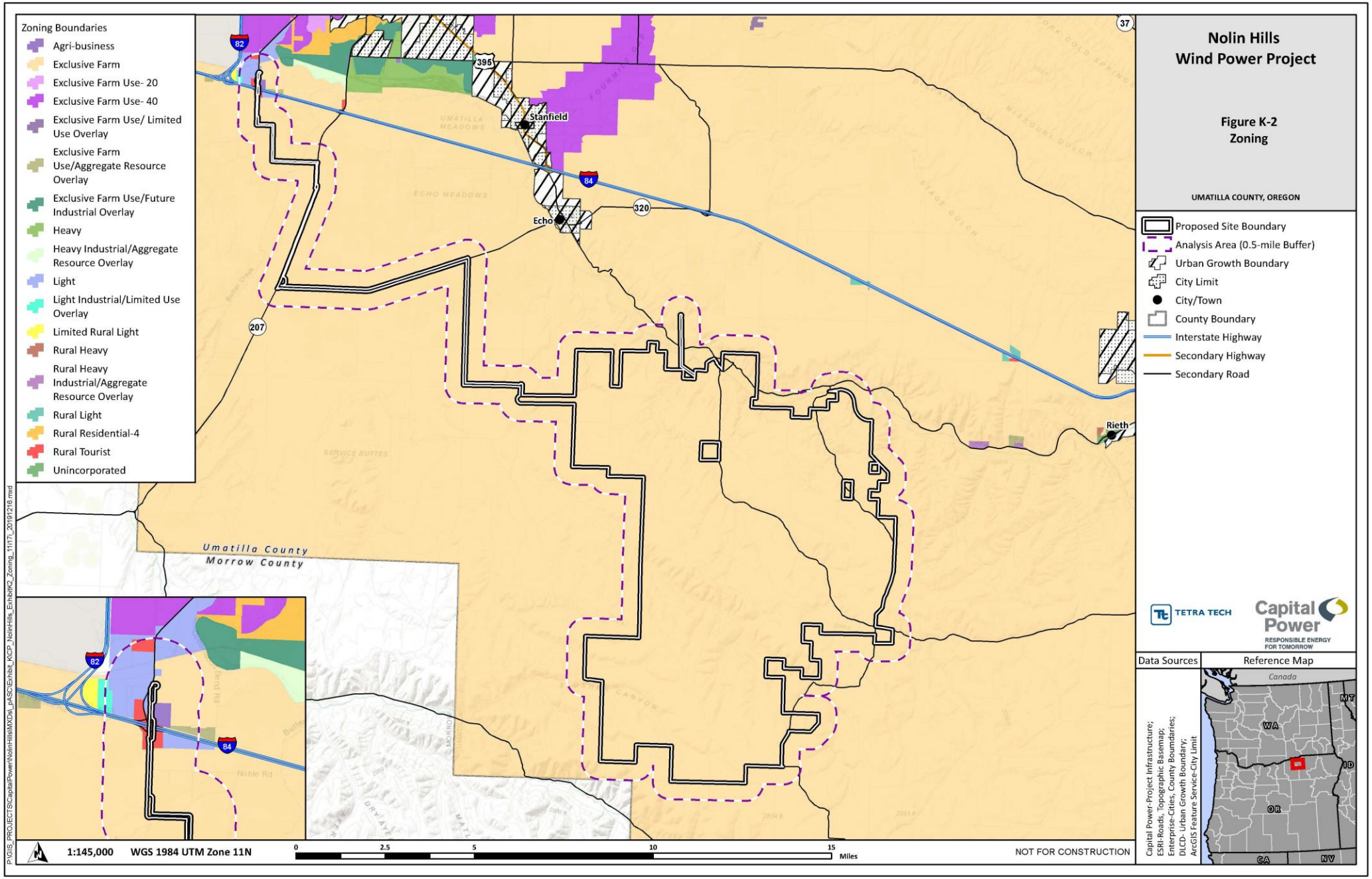
Other project elements

- Two project substations (16.4 acres)
- A maintenance building and yard (7.6 acres)
- Underground collector cables (89 miles)
- Overhead collector lines (9.1 miles)
- New site access roads (43 miles)
- Temporary access roads (19 miles)
- 3 meteorological towers (266 ft tall)
- Temporary construction yard (27 acres)

The operation and maintenance building at Capital Power's Cardinal Point Wind Energy Facility, Illinois.

Nolin Hills Project – Transmission

- The Project will interconnect to the regional grid via either:
  - publicly owned and operated transmission lines to be constructed locally by the Umatilla Electric Cooperative (UEC), or
  - a new 230-kV transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration (BPA) Stanfield Substation.
- The lines would include a 230 kilovolt (kV) transmission line.


Zoning Boundaries
Agri-business
Exclusive Farm
Exclusive Farm Use- 20
Exclusive Farm Use- 40
Exclusive Farm Use/ Limited Use Overlay
Exclusive Farm Use/Aggregate Resource Overlay
Exclusive Farm Use/Future Industrial Overlay
Heavy
Heavy Industrial/Aggregate Resource Overlay
Light
Light Industrial/Limited Use Overlay
Limited Rural Light
Rural Heavy
Rural Heavy Industrial/Aggregate Resource Overlay
Rural Light
Rural Residential-4
Rural Tourist
Unincorporated
Stanfield
Echo
Rieth
Umatilla County
Morrow County
Nolin Hills
Wind Power Project
Figure K-2
Zoning
UMATILLA COUNTY, OREGON
Proposed Site Boundary
Analysis Area (0.5-mile Buffer)
Urban Growth Boundary
City Limit
City/Town
County Boundary
Interstate Highway
Secondary Highway
Secondary Road
TETRA TECH
Capital Power
RESPONSIBLE ENERGY FOR TOMORROW
Data Sources
Reference Map
Capital Power-Project Infrastructure; ESRI-Roads, Topographic Basemap; Enterprise-Cities, County Boundaries; DLCD- Urban Growth Boundary; ArcGIS Feature Service-City Limit
Canada
MT
WA
ID
OR
CA
NV
1:145,000
WGS 1984 UTM Zone 11N
0 2.5 5 10 15
Miles
NOT FOR CONSTRUCTION
P:\GIS_PROJECTS\CapitalPower\NolinHills\MXDs_pASC\Exhibit_KCP_NolinHills_Exhibit#2_Zoning_11x17_20191216.mxd

Local Economic Impacts

- Over $100M of local property tax and related funds expected to be paid to Umatilla County; SIP Agreement anticipated.
- ~450,000 person hours required for project construction, with a peak of ~400 workers on site.
- Eight to 10 permanent full-time positions associated with the facility, generating approx. $480,000 of employment income each year.
- Local market services regularly required by the facility during operations.
- General economic stimulation via anticipated total project cost of $800M.
- We have long invested in programs to improve the quality of life in local communities. In 2021, we contributed more than $1.89 million to organizations in the U.S. and Canada.

We proudly supported the volunteer fire department in Huckabay, Texas. The community is located near our Buckthorn Wind Energy Facility.

Stakeholder Engagement

- Oregon Department of Fish and Wildlife (2017-2021)
- Oregon-California Trails Association (2019-2020)
- Native American / Confederated Tribes of the Umatilla Indian Reservation (CTUIR) (2017-2022)
- State Historic Preservation Office Coordination (2019-2021)
- Federal Aviation Administration & Dept of Defense (2019-2021)
- Oregon Dept of Geology and Mineral Industries (2018-2020)
- Local Fire Districts (2019-2021)
- Local Water Districts (Hermiston, Echo, Pendleton) (2019-2021)

Resource Surveys

Activity	Timing
Pedestrian Habitat and Wildlife Surveys	2017-2020
Botanical Surveys	2017-2020
Cultural Resource Surveys	2017-2021
Washington Ground Squirrel Surveys	2017-2020
Wetlands and Waters Surveys	2017-2020
Visual Impact Analysis	2019-2021
Noise Modeling	2019-2021
Avian Surveys	2010, 2017-2018
Eagle Use and Raptor Nest Surveys	2011, 2017-2019
Bat Acoustic Survey	2017

Capital Power

For more information please contact:

publicconsultation@capitalpower.com

1-855-703-5005

capitalpower.com

Applicant

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
05/26/2022
Public Written or Oral Testimony

Name Steve Corey (Steven H. Corey)
Address PO Box 1186
Pendleton, OR 97801

Written Testimony. Please write clearly.

Previously submitted letter
and will provide oral testimony

Do you wish to make oral public testimony at this Hearing: Yes X No_____

Will your oral testimony on the project be: In Favor X Opposed ____ General/Neither In Favor or Opposed _____

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

CUNNINGHAM SHEEP COMPANY

303 S.E. 3RD STREET • P.O. BOX 1186
PENDLETON, OREGON 97801
541-276-6391 • CSHEEPCO@GMAIL.COM

January 27, 2022

Sarah Esterson
Senior Siting Analyst, Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, OR 97301
(503) 378-4040
sarah.esterson@energy.oregon.gov

Dear Ms. Esterson:

My family operates Cunningham Sheep Company, Pendleton Ranches, Inc., and Mud Springs Ranches, and owns, farms and ranches over 75,000 acres of agricultural lands in Umatilla County. We use this land for the raising of livestock, timber production, and dryland wheat agriculture. Much of our farm land is enrolled in the conservation reserve program (CRP) and about 2,500 acres are dedicated to dryland wheat production.

We are the primary landowner participating in the Nolin Hills wind and solar project being developed by Nolin Hills Wind, LLC. The solar generation facility of the Nolin Hills project is proposed to be located on approximately 1800 acres of our property.

We are confident the project's location in this area will not negatively impact our existing use of our land surrounding the solar project boundary or the overall success of our ranching and farming operations. We intend to continue and likely intensify our agricultural practices on the land surrounding the project boundary, which would total over 73,000 acres. Construction and operation of the project will not hinder our ranching and farming practices on the surrounding land.

Nor would the project negatively impact our access to irrigation or water rights. This land is not located within an irrigation district, and we are unaware of any certificated water rights associated with land inside the project boundary or land designated for solar facilities. There are no wells or ponds on the land designated for solar facilities, and we have no intention or need to apply for any water rights in this area at this time or in the foreseeable future.

In fact, the project will enable us to support and improve our farming and ranching operations in the surrounding areas by providing valuable lease payments we can invest in ongoing activities on more active land elsewhere on our property. Specifically, we intend to devote lease revenues in part to improve housing for our sheep herders as well as farm employees in the cattle and farming departments. With board approval we may also acquire, clean up and refurbish a contiguous agriculture-related business to strengthen the diversity base of our legacy farm. Like most farmers, we generally need to repair many farm buildings and add new ones. The lease payments projected exceed the potential revenues from the current dryland wheat production on the project boundary today.

The project will not result in any loss of employees for our operations. To the contrary, we expect to add agricultural jobs to our payroll based on the lease payments. Specifically, we may add to our team up to 6 new employees with anticipated wages of $225,000 per year. . We also expect to maintain or, more likely, increase our operational spending with local agricultural suppliers and service providers, given our projected increased investment in operations on the land remaining in agricultural and ranching use and in the new agriculture-related business

We appreciate the opportunity to participate in this project, which we believe will ultimately help us improve the overall health and productivity of our agricultural land. Please feel free to contact me should Oregon Department of Energy require additional information.

Sincerely,

Steven H. Corey

Nolin Hills Wind
c/o Capital Power
155 Federal St, Suite 1200
Boston, MA 02110
www.capitalpower.com

June 15, 2022

Via U.S. First-Class Mail and Email
Chair Marci Grail, Council Chair
Councilmembers, EFSC

Todd Cornett, Siting Division Administrator

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

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

Dear Chair Grail and Councilmembers:

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

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

Attachment 1. Sworn testimonial declarations of Bob Levy and Steven Corey, explaining why the Cunningham Sheep Company and Pendleton Ranches, Inc. landowners, in tandem with Nolin Hills, chose the proposed location for siting the solar PV generation facility;

Attachment 2. Legal Memorandum from Stoel Rives LLP, responding to Council members' apparent request for an analysis of alternatives to the proposed solar PV generation site;

Attachment 3. The Statewide Goal 3 exception analysis, extracted from ASC Exhibit K; and

Attachment 4. Letter from Stoel Rives LLP dated May 20, 2022, expressing concern with ODOE's individual vs. holistic analysis of Nolin Hill's reasons for a Goal 3 exception and advising Council regarding unexpected consequences.

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

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

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

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

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

The Applicant and the solar siting area's landowners[1] offer the following clarification in response to this comment.

Exhibit K provided the following language in Section 7.1:

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

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

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

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

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

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

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

I. The arable land within the solar siting area has lower agricultural value than other arable lands within the landowners' holdings and within the region. This is due to several factors:

    a. **Lack of irrigation water. The solar siting area is not located within an irrigation district and has no place of use water rights**. Because irrigation is not available for the solar siting area, the land has historically been cultivated as winter wheat. However, due to low production averages, the solar siting area has not been cultivated for several years and this land has been taken out of agricultural production. As noted in the Levy and Corey declarations, this location is the least productive in all land holdings and no further plans exist to farm this site.

    b. **Soil types.** As stated in Exhibit K (see **Attachment 3** for a consolidated excerpt of the sections of Exhibit K pertinent to the solar siting area and the Goal 3 exception), the solar siting area contains 1,840 acres of arable land that is composed of NRCS Class 3 soils. **There are no high-value soils in the solar siting area. Due to low production averages from the wheat crops in the solar siting area, the landowners decided to "idle" the land and enroll it in the conservation reserve program (CRP)**. There are a number of requirements that qualify land for CRP and one of those is the weighted average erosion index. The soils in the solar siting area meet the erosion index of eight or higher and meet other CRP eligibility requirements.

c. **Uneconomical for farming or grazing. The landowners decided to place the solar siting area in CRP as it is some of the least productive area in their cropland holdings and is uneconomical to farm**. See the declaration by Bob Levy in **Attachment 1** for more detailed explanation of the solar siting area's cultivation history and the decision to place the area in CRP. It should be noted that an area of land immediately east of the solar siting area has soils with similar characteristics and was removed from farm production years ago because it was uneconomical to farm. Furthermore, the solar siting area is not suitable for grazing as the land is arid and dry most of the year, with grasses having little nutrient value for cattle grazing. Generally speaking, for 9 to 10 months of the year, no cattle or sheep are on this land, as the site simply does not provide sufficient nutrients for grazing due to its arid condition. Therefore, the landowners determined that the only monetary value they could receive for this area in the near term is to place the land in CRP. Per the declaration by Bob Levy (see Attachment 1), the current and future situation places the agricultural value of the solar siting area among the least valuable in the county.

II. The location of the solar siting area is located near existing and proposed transmission and interconnection infrastructure and existing agricultural access roads making it an ideal site to develop solar on marginal agricultural land without the need to build additional transmission lines or roads that could impact other agricultural lands. The following information explains this point in more detail:

a. **Proximity to Wind Farm Infrastructure: The solar siting area takes advantage of the transmission infrastructure that was already planned as part of the wind facility**. The solar siting area encompasses approximately 1,896 acres co-located with the northern Project substation, thus eliminating the need for additional collection and transmission lines that would be required if the solar siting area were located elsewhere in the Project Site Boundary. No Statewide Planning Goal exception is required for the wind facility; therefore, the wind facility's substation and transmission line would theoretically be constructed regardless of the Goal 3 exception approval or denial. The proposed wind energy site was selected for wind power based on a favorable interpretation of the wind patterns by Capital Power and its predecessor. The Project's generation profile matches well with the energy requirements of the Pacific Northwest. The site's winds and generation peak in March and April, a time when hydro generation in the Pacific Northwest declines due to snowpack. In addition, the sites' winds are strongest in the evening and lower during the day, thus the inclusion of solar at this particular location creates a more balanced generation profile, or "shape", increasing reliability of the grid. As economics changed in the industry and the need for a more balanced energy generation scenario occurred, solar photovoltaic generation was added to the Project to increase the project viability. The solar part of the Project is important for the Project's overall success. Therefore, **the solar siting area is different from other cropland in Umatilla County and the region because it will be located in close proximity to a**

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

b. Proximity to Existing Transmission: The solar siting area is located within 1-mile of an existing BPA line that runs through the landowners' property and very close to a proposed substation to be built by BPA. Therefore, **even if the wind facility were not constructed, the solar siting area location is still unique in its ability to reach the grid with an economical connection.**

c. **Proximity to Other Infrastructure**: Of all the acres under management by the landowners the solar siting area best integrates wind and solar electrical generation with no impact on the landowners' agricultural productivity. The location is close to the transmission infrastructure, is close to existing agricultural roads, is relatively flat, has an excellent solar resource, requires no additional generation-tie line, and is close to the landowners' ranch headquarters where there is existing telecom infrastructure that will be required for the project.

3. The Applicant did not provide an alternatives analysis.

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

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

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

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

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

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

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

Conclusion

We hope the additional information set forth above and attached provides the information Councilmembers Jenkins and Howe were seeking to justify why the solar siting area is different from other cropland in the Site Boundary, the county, and the region. We encourage the councilmembers to review the Goal 3 exception analysis from the Applicant's Exhibit K (see **Attachment 3**) and consider each of the reasons[2] justifying why a Goal 3 exception is appropriate. As stated in the May 20, 2022 letter from Stoel Rives LLP (**Attachment 4**), we are concerned that ODOE's evaluation of the reasons justifying the Goal 3 exception in the DPO were conducted individually and not holistically, while past practices for review of Goal 3 exceptions has accounted for the accumulation of factors and not separately weighing them individually. We believe that only considering reasons individually and not holistically sets a precedent that will limit the Council's ability to evaluate and approve Goal 3 exceptions in the future. Although we have concerns with this new precedent for analysis, we are in agreement with ODOE's conclusion in the DPO that the Nolin Hills Project provides compelling and

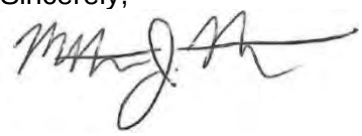
[2] The term "reasons" refers to its use under ORS 469.504(2)(c)(A) and OAR 345-022-0030(4)(c)(A).

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

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

Matthew Martin
Capital Power
155 Federal Street, Suite 1200
Boston, MA 02110
(617) 274-7700
Email: mmartin@capitalpower.com

Sincerely,



Matthew Martin
Director, Business Development

Enclosures:

Attachment 1. Sworn testimonial declarations of Bob Levy and Steven Corey, explaining why the Cunningham Sheep Company and Pendleton Ranches, Inc. landowners, in tandem with Nolin Hills, chose the proposed location for siting the solar PV generation facility;

Attachment 2. Legal Memorandum from Stoel Rives LLP, responding to Councilmembers' apparent request for an analysis of alternatives to the proposed solar PV generation site;

Attachment 3. The Statewide Goal 3 exception analysis, excepted extracted from ASC Exhibit K; and

Attachment 4. Letter from Stoel Rives LLP dated May 20, 2022, expressing concern with ODOE's individual vs. holistic analysis of Nolin Hill's reasons for a Goal 3 exception and advising Council regarding unexpected consequences.

cc: Bob Levy, Cunningham Sheep Company
Steve Corey, Cunningham Sheep Company
Timothy L. McMahan, Stoel Rives LLP
Linnea Fossum, Tetra Tech

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Attachment 1.

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

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BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

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

DECLARATION OF BOB LEVY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Signed: _____

Printed name: Robert L Levy

BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

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

DECLARATION OF STEVEN COREY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Footnote:

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

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

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

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

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

Signed: Steven H. Corey

Printed name: Steven H. Corey

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

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

By SIERRA DAWN McCLAIN Capital Press, Apr 28, 2022

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

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

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

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

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

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

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

Five generations

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

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

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

Joan married a Corey and Helen married a Levy.

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

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

The fifth generation is comprised of around 30 children.

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

Everyone has a voice

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

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

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

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

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

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

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

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

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

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

'Wool was king'

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

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

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

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

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

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

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

Fine-wooled Rambouillets

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

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

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

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

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

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

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

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

He chuckled.

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

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

To the mill

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

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

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

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

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

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

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

Registered, commercial flocks

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

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

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

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

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

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

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

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

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

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

"I'm really optimistic," said Krebs.

He was interrupted by an uproar of dogs barking.

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

Some of the dogs protect sheep from predators.

Main challenges

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

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

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

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

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

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

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

He laughed.

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

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

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

Lambing barn

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

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

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

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

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

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

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

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

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

The future

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

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

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

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

Correction

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

Attachment 2.

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

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BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON

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

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

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

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

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

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

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

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

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

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

"* * * * *

"(c) The following standards are met:

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

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

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

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

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

* * *

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

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

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

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

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

Id at 373.

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

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

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

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

3 Conclusion.

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

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

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

Respectfully submitted this 14th day of June 2022.

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

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

Deliberation Excerpts with Highlights

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

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

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

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

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

Kent Howe Discussion of Statewide Goal 3 exception:

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

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

Attachment 3.

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

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Nolin Hill Wind Project

Goal 3 Exception Analysis

Extracted from the Final ASC Exhibit K

Nolin Hills Wind Power Project
June 2022

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

d/b/a Nolin Hills Wind, LLC

Prepared by

TETRA TECH

Tetra Tech, Inc.

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1.0 Introduction

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

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

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

2.0 Existing Land Use and Agricultural Value and Characteristics

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

2.1 High-Value Farmland

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

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

- ORS 195.300(10)(a) relies on criteria related to soil types as classified by Natural Resources Conservation Service (NRCS). It includes land in a tract[2] composed predominantly of soils that are irrigated or not irrigated, and classified as prime, unique, Class I, or Class II.
- ORS 195.300(10)(c) relies on the land in the EFU zone being located within a place of use water right, an irrigation district, or a diking district.
- ORS 195.300(10)(f) relies on the land in the EFU zone being located within the boundaries of the Columbia Valley viticultural area (see 27 Code of Federal Regulations Part 9, Subpart C - Approved American Viticultural Areas, Section § 9.74 Columbia Valley)—and meeting certain elevation (below 3,000 feet), slope (between zero and 15 percent), and aspect (between 67.5 and 292.5 degrees) criteria.

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

2.2 Arable Land

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

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

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

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

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

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

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

…..

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

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

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

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

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

Land Type	Acres/Percent in Analysis Area	Acres/Percent in Site Boundary	Acres/Percent in Micrositing Corridors	Acres/Percent in Solar Siting Area
High-value farmland[1]	28,420/36%	11,634/24%	4,553/29%	242/13%
Arable [2]	64,155/81%	37,761/78%	13,939/88%	1,840/97%
Nonarable	14,893/19%	10,412/22%	1,786/11%	56/3%

1. High-value farmland designations per ORS 195.300(10)(a), (c), and (f). The Project would impact a total of 283.7 acres of high-value farmland, based on the footprint presented in Exhibit C.
2. Arable includes Class I-IV soils, cultivated land regardless of soil class, and high-value lands and soils.

3.0 Goal 3 Exception Criteria and Justification

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

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

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

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

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

3.1 Demonstration that a "Reasons" Exception is Appropriate

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

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

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

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

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

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

3.1.1 Minimal Impact to Agriculture

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

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

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

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

Minimal Impacts on Surrounding Agricultural Lands. The solar siting area is surrounded on nearly all sides, for approximately 95.5 percent of its perimeter, by landowners participating in the Project (Figure K-10). The participating landowners have no concern regarding their ability to continue agricultural activities outside of the solar siting area. The closest non-participating farmland property is adjacent to the solar siting area along approximately 0.5-mile of its western edge, approximately 123 feet apart on the opposite side of the paved Speare Canyon Road (County Road 1350) to the west. This is one of two property "cut-outs" in the Site Boundary that are otherwise surrounded by land within the site boundary (see Figure K-10). The land is cultivated, dryland, with no associated water rights according to data available from the Oregon Water Resources Department (2021). While this landowner[4] is not participating in the Project, the Applicant has been in communication with the landowner as part of early Project development. Attachment K-1 includes a letter for the record from this landowner indicating that they have no concerns regarding the construction and operation of the solar facility across from their land and do not anticipate any impact to their farm practices, including any indirect increases in costs of their farm operations or a change in existing or anticipated farm practices.

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

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

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

additional participating landowner adjacent to the east end of the solar siting area, Buttke Ranch, LLC. The land of these participating landowners around the solar siting area is non-cultivated and open for grazing to the north and east, with a small extent of dryland wheat along the south side (Figure K-10). The next-closest non-participating landowner[5] is located approximately 0.5 mile to the east of the solar siting area, the second Site Boundary "cut-out." This property is not currently cultivated, though could be used for grazing. The remaining non-participating farmland properties are all located outside of the external edge of the Site Boundary and range from 0.7 mile to over 7 miles from the solar siting area. All existing farming practices would continue without any significant changes or additional costs of farming as a result of the construction and operation of the solar facility. Attachment K-1 provides a letter from the primary participating landowner confirming that the Project would not hinder, and in fact would enable enhancements to, existing farming and ranching operations.

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

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

1) Dust will be effectively controlled during construction to comply with the NPDES 1200-C permit, resulting in no or negligible dust on off-site land. Measures include but are not limited to:

    a. Water trucks patrolling the site, as often as one pass per hour, wetting down disturbed and exposed soils, resulting in no or negligible dust on off-site land[6];

    b. Maintaining a tightly sequenced construction schedule, limiting the extent of exposed soils at any given time;

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

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

c. Applying hydromulch or other agriculture-safe tackifier on road shoulders, soil stockpiles, and other locations as appropriate;

d. Applying soil stabilization measures immediately on all disturbed areas as grading progresses and for all roadways, including graveling roadways;

e. Avoiding grading work during high-wind conditions, e.g., 20-25 miles per hour wind speeds; and

f. Requiring reduced speeds on construction access roads.

2) With the exception of one parcel, the solar siting area is surrounded by non-cultivated land with no farm practices to impact, owned by landowners participating in the Project; and

3) For the one non-participating parcel on the opposite side of County Road 1350, west of the solar siting area, the potential negligible level of dust from Project construction would be limited to a short-term, temporary period, the timing of which would be coordinated between the Applicant and landowner to further minimize any potential impact.

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

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

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

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

3.1.2 Local Economic Benefits

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

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

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

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

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

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

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

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

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

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

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

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

Source: BLS 2021b.

SOC = standard occupational classification

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

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

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

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

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

3.1.2.1 Background on Renewable Energy Incentives

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

Strategic Investment Program

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

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

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

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

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

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

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

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

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

Fee in Lieu of Property Taxes for Solar Projects

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

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

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

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

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

3.1.2.2 Nolin Hills Property Tax Comparison

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

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

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

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

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

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

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

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

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

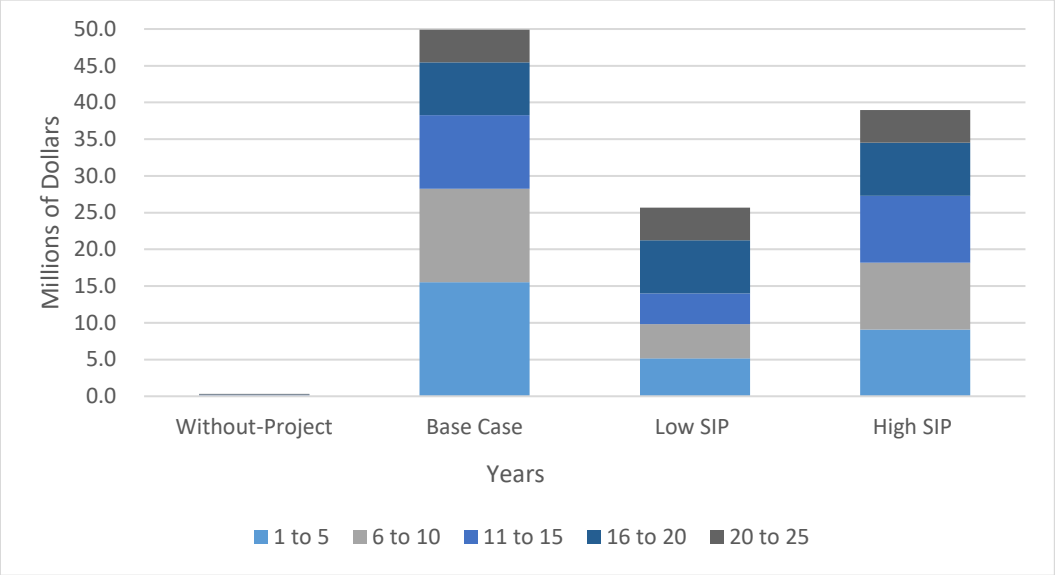

Figure K-11. Estimated Tax Benefits by Scenario (in millions of dollars)

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

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

3.1.2.3 Distribution of Estimated Tax Revenues

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

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

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

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

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

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

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

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

3.1.2.4 Conclusion

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

3.1.3 Locational Dependency

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

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

Therefore, the Applicant selected the area best suited to allow continuation of existing commercial farm use through the most efficient use of land and least number of acres impacted within the Site Boundary. This is achieved by co-locating the solar siting area with the northern Project substation, thus eliminating the need for additional collection and transmission lines for a site farther away, resulting in fewer impacts to farmland and potential division of farm fields. In contrast, the alternative solar siting area at the southern end of the Site Boundary would require more transmission infrastructure while not providing any beneficial avoidance of Goal 3 lands. The southern site would also result in potentially greater high-quality habitat (Category 1; see Figure P-5) impacts within the Site Boundary in order to connect to the northern Project substation. The other alternative location, located in the western portion of the Site Boundary, includes lands that are classified as high-value farmland based on ORS 195.300(10)(C) due to place of use water rights. While the relevant water right was canceled in November 2018[16], the ORS definition is based on water rights in place as of June 28, 2007 ("*Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is: (A)Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department*;"). Therefore, the Applicant identified this location as having a greater extent of high-value farmland than the proposed solar siting area, where no existing or canceled water rights are present. As a result, this location does not provide a comparative Goal 3 benefit to the proposed solar siting area.

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

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

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

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

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

3.1.4 Minimal Impacts to Other Environmental Resources

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Compatibility with Adjacent Land Uses

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

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

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

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

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

4.0 Conclusion

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

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Figures (Maps)

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Nolin Hills Wind Power Project

Figure C-5
Solar Siting Area Detail

UMATILLA COUNTY, OREGON

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

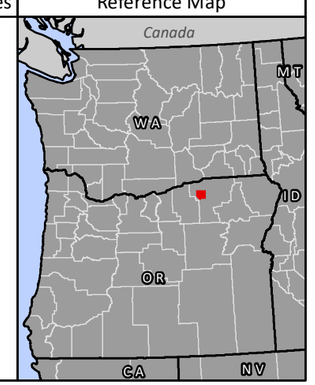
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



Co 1350 Rd

Co 1363 Rd

Alkali Canyon Rd

1:20,000 WGS 1984 UTM Zone 11N

0 0.25 0.5 1 1.5 2 Miles

NOT FOR CONSTRUCTION

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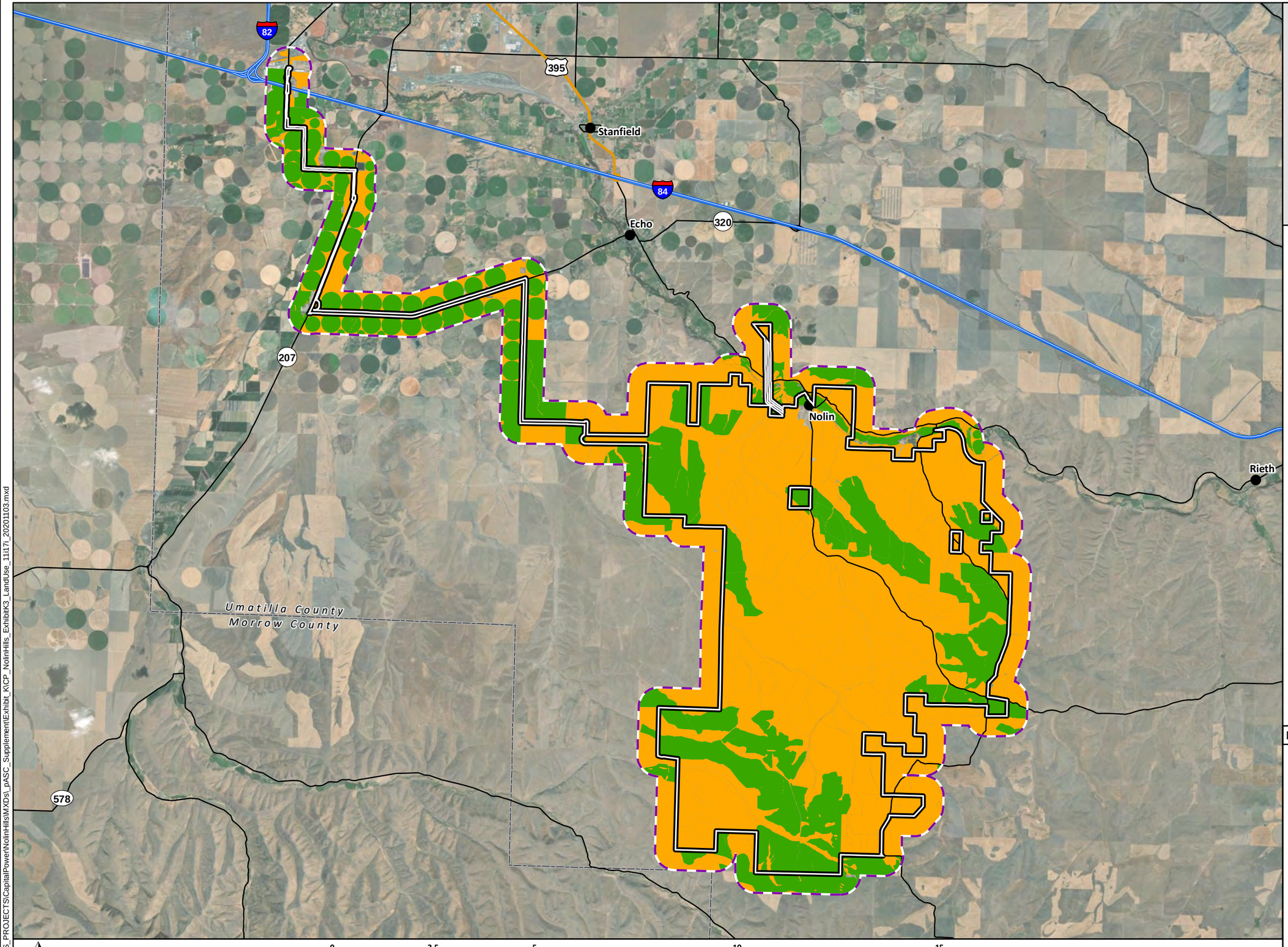
Nolin Hills Wind Power Project

Figure K-3 Land Use

UMATILLA COUNTY, OREGON



- Proposed Site Boundary
- Analysis Area (0.5-mile Buffer)
- City/Town
- Interstate Highway
- Secondary Highway
- Secondary Road
- County Boundary

Existing Land Use

- Cultivated Land
- Non-Cultivated Land

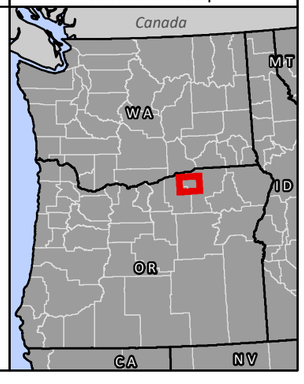
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



1:145,000 WGS 1984 UTM Zone 11N

0 2.5 5 10 15 Miles

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Nolin Hills Wind Power Project

Figure K-4
NRCS Soil Classifications

UMATILLA COUNTY, OREGON

Proposed Site Boundary
Analysis Area (0.5-mile Buffer)
Tract Boundary*
City/Town
Interstate Highway
Secondary Highway
Secondary Road
County Boundary

NRCS Soil Classifications
- No Value
- 1
- 2
- 3
- 4
- 6
- 7
- 8

*Each Tract Numbered is Labeled 1 through 25

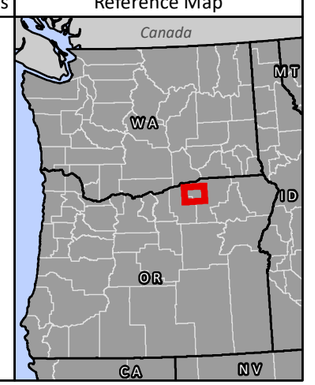
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



1:145,000 WGS 1984 UTM Zone 11N

0 2.5 5 10 15 Miles

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Nolin Hills Wind Power Project

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

UMATILLA COUNTY, OREGON

- Proposed Site Boundary
- Analysis Area (0.5-mile Buffer)
- Micrositing Corridor
- Tract Boundary[1]
- Solar Siting Area
- Umatilla County Road ROW and UEC ROW[2]
- City/Town
- Interstate Highway
- Secondary Road
- Local Road
- County Boundary

Transmission Line Status, kV Class

- In Service, 230-345

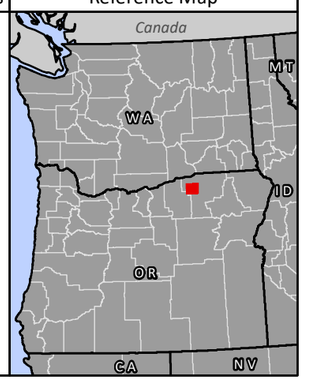
High Value Farmland (HVF)

- HVF per Classes I and II Soils
- HVF per Place of Use Water Rights and Irrigation Districts
- HVF per Columbia Valley Viticulture Area

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

TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources	Reference Map
Capital Power-Project Infrastructure; ESRI-Roads, Topographic Basemap; Enterprise-Cities, County Boumdaries;	

SNOW RD
RIETH RD
NOLIN GRADE RD
YOAKUM RD
84
Nolin
CUNNINGHAM RD
MUD SPRINGS RD
CR 1350 RD
Co 1362 Rd
SPEARE CANYON RD
25
24
23
22
21
20
19
18
26
27
9
3
8
13
14
17
16
15
12
11

1:56,250 WGS 1984 UTM Zone 11N

0 0.5 1 2 3 Miles

NOT FOR CONSTRUCTION

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Nolin Hills Wind Power Project

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

UMATILLA COUNTY, OREGON

NOLIN GRADE RD
YOAKUM RD
RIETH RD
CUNNINGHAM RD
MUD SPRINGS RD
CR 1350 RD
Co 1362 Rd
SPEARE CANYON RD
84
25
24
23
22
21
20
19
18
26
9
3
27
8
13
14
17
11
16
15
12

- Proposed Site Boundary
- Analysis Area (0.5-mile Buffer)
- Micrositing Corridor
- Solar Siting Area
- Tract Boundary[1]
- Umatilla County Road ROW and UEC ROW[2]
- Non-Arable Land
- Arable Land
- Interstate Highway
- Secondary Road
- Local Road
- County Boundary

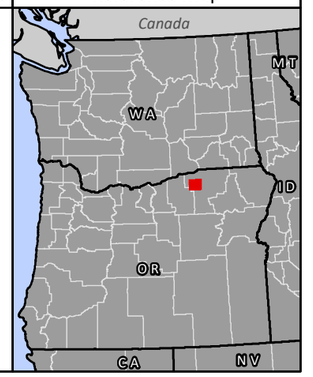
Transmission Line Status, kV Class

- In Service, 230-345

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

TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

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

1:45,000 WGS 1984 UTM Zone 11N

0 0.5 1 2 3 Miles

NOT FOR CONSTRUCTION

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Nolin Hills Wind Power Project

Figure K-10
Solar Siting Area
Surrounding Lands

UMATILLA COUNTY, OREGON

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

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

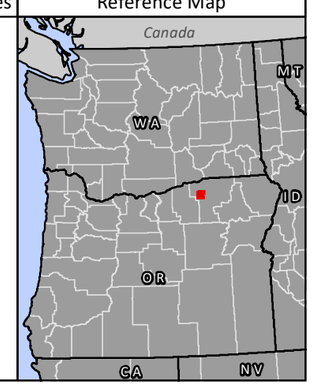
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



1:24,000 WGS 1984 UTM Zone 11N

0 0.25 0.5 1 1.5 2 Miles

NOT FOR CONSTRUCTION

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Nolin Hills Wind Power Project

Figure P-5
Habitat Subtypes within the Analysis Area

UMATILLA COUNTY, OREGON

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

Stanfield
Echo
Nolin
Rieth
82
84
395
320
207

Habitat Subtypes

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

1:140,000 WGS 1984 UTM Zone 11N

0 0.5 1 2 3 4 Miles

NOT FOR CONSTRUCTION

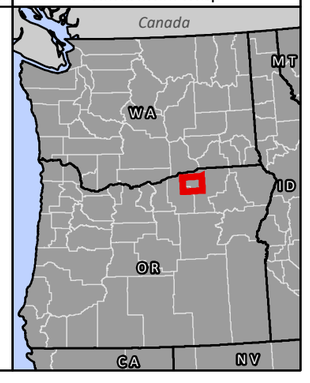
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



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

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

CUNNINGHAM SHEEP COMPANY

303 S.E. 3RD STREET P.O. BOX 1186
541-276-6391
PENDLETON, OREGON 97801

March 15, 2021

Re: Nollin Hills EFSC Application
ODOE

To Whom it May Concern:

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

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

Thank you.

Sincerely yours,

Steven H. Corey

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Attachment 4.

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

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

May 20, 2022

Ms. Marci Grail, Council Chair
Council Members, EFSC

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

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

Dear Chair Grail and Council Members:

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

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

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

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

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

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

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

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

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

---

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

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

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

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

Very truly yours,

Timothy L. McMahan
Stoel Rives LLP

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Nolin Hills Wind
c/o Capital Power
155 Federal St, Suite 1200
Boston, MA 02110
www.capitalpower.com

June 24, 2022

Via Email
Chair Marci Grail, Chair
Energy Facility Siting Councilmembers
Todd Cornett, Siting Division Administrator
Oregon Department of Energy
550 Capitol Street NE, First Floor
Salem, OR 97310

Re: Capital Power Corporation commitment to Nolin Hills Wind Power Project

Dear Chair Grail and Councilmembers:

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

At the hearing, a question was raised about the corporate structure of Nolin Hills Wind, LLC and its connection to Capital Power Corporation (Capital Power). More specifically, a Councilmember requested a 'firm statement' that Capital Power 'stands behind' the Project. **This letter is intended to provide that 'firm statement' and authenticate the testimony provided by Capital Power's authorized representative, Matt Martin, at the May 26, 2022 hearing in general, and specifically the portion attached hereto.**

As outlined in Exhibits A, D and M of the Application, Nolin Hills Wind, LLC is a wholly owned subsidiary of Capital Power, a Canadian Corporation that is publicly traded on the Toronto Stock Exchange (TSE: CPX) and has an investment grade credit rating of BBB+ (issued by Standard & Poor's). Capital Power is an independent power producer that owns and operates 26 power projects totaling more than 6,000 megawatts (MWs) across North America. Through its ownership and operation of a fleet of complex power generation projects, Capital Power is constantly proving that it can meet contractual commitments and regulatory requirements to the full satisfaction of partners, lenders, and investors. The Application provides verifiable evidence that Capital Power has the financial wherewithal and expertise to develop, construct, own and operate the Project.

Please allow this letter to serve as further evidence that Capital Power 'stands behind' the Nolin Hills Wind Power Project. Capital Power has committed to providing the financial assurance outlined in Exhibit M of the Application and the human capital and expertise outlined

in Exhibit D of the Application to ensure that the Project is built to the appropriate standards and within the regulatory framework approved by the Council.

Sincerely,

Capital Power Corporation

Christopher Kopecky,
Senior Vice President and Chief Legal, Development and Commercial Officer

Enclosures:

Excerpt of May 26, 2022 EFSC Hearing Testimony
Exhibits A, D and M of the Application

cc: Timothy L. McMahan, Stoel Rives LLP
Matthew Martin, Director, Capital Power

Excerpt from Transcript of May 26, 2022 Public Hearing

Cindy Condon: Cindy Condon, and I have a question. So, um, in the, just with respect to that, especially the de, decommissioning and the cost, **could you explain a little bit about the hierarchy Capital Power versus Nolan Hills**?

Matt Martin: Yep.

Cindy Condon: Um, Nolan Hills is the applicant, I understand and Capital, but **everything refers to Capital Power and we're depending on your balance sheet and your financials, um, but Nolan Hills remains the applicant of record, right**?

Matt Martin: Correct.

Cindy Condon: So, **could you explain** how to, um, to be comfortable with the balance sheet, having that balance sheet and –

Matt Martin: Yes.

Cindy Condon: – **your standing behind Nolan Hills.**

Matt Martin: Yeah. So, um, we, we acquired a company called Element Power which is based, was based in Portland, Oregon. We, we acquired that LLC which Nolan Hills was a part of, and we kept that structure in place, but at the end of the day, um, Capital Power, uh, we actually have a, um, a parent company in Canada, Capital Power Corporation, and we also have a holding company in the US that's called Capital Power US Holdings. And so **Capital Power Corporation is the rated entity. Everything flows back up the chain to Capital Power which is the publicly traded company that has, ya know, lots of shareholders. It's, it's the project that's on the Toronto Stock Exchange. It's what S&P rates in terms of financial capability, and so Nolan Hills Wind, LLC is a subsidiary of Capital Power and so, anytime we put a bond in place or a letter of credit in place, whether, if it's in Canada, it's from Capital Power Corporation**. If it's in the US, it's from our US holding company. That's what the letter of credit is going – like when we put a $32 million or $39 million letter of credit in place, it's gonna be Capital Power Holdings as our, as the entity that is standing behind that and that's because that's the company that has the wherewithal to, to pay $32 million when it comes time. And so it is a, it's a fully-owned subsidiary, um, and we believe that that's ultimately who will stand behind the project. I don't know, does that answer your question?

Cindy Condon: Um, yes. Um, but in the, in the, um, materials –

Matt Martin: Mm hmm.

Cindy Condon: – **there's certainly no guarantee that, or there's nothing that says, that I have read, that, um, says Capital Power stands behind, stands behind Nolan Hills, and I just**

wanna get comfortable with that, that that's a firm statement on your part that Capital Power is really the entity.

Matt Martin: Correct, Capital –

Cindy Condon: If we were to –

Matt Martin: – Power is the entity.

Cindy Condon: Okay.

Matt Martin: That's who I work for. That's who will ultimately fund this project and, uh, ya know, when this project is obtaining revenues and, and paying the bills, it'll run through Capital Power. And so, Capital Power itself has been around for a long, long time. We were the municipally owned utility in Edmonton. It's been around since 1896 and so we, we are very confident we will be around when it comes time to decommission this facility.

Cindy Condon: Thank you.

Exhibit A

Information About Applicant

Nolin Hills Wind Power Project
January 2022

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

d/b/a Nolin Hills Wind, LLC

Prepared by

TETRA TECH

Tetra Tech, Inc.

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Acronyms and Abbreviations

Applicant	Nolin Hills Wind, LLC
MW	megawatt
OAR	Oregon Administrative Rule
Project	Nolin Hills Wind Power Project

1.0 Introduction

Nolin Hills Wind, LLC (the Applicant) proposes to construct the Nolin Hills Wind Power Project (Project), a wind and solar energy project with a nominal generating capacity of approximately 600 megawatts (MW) (preliminarily 340 MW from wind and 260 MW from solar), in Umatilla County, Oregon. The Project's wind energy component comprises up to 112 wind turbine generators, depending on the turbine model selected and the final layout determined during the micrositing process. The solar array will include up to approximately 1,117,591 solar modules, depending on the final technology and layout selected. The Project will interconnect to the regional grid via either publicly owned and operated transmission lines to be constructed locally by the Umatilla Electric Cooperative , or a new 230-kilovolt transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration Stanfield Substation. Other Project components include an up to 120-MW battery energy storage system, electrical collection lines, substations, site access roads, one operations and maintenance building, meteorological data collection towers, and temporary construction yards. These facilities are all described in greater detail in Exhibit B.

Exhibit A provides contact information for the Project proponent and other entities assisting the Applicant in the permitting process, as required by Oregon Administrative Rule (OAR) 345-021-0010(1)(a) paragraphs (A) through (H). This exhibit provides evidence to support a demonstration of compliance with the Organizational Expertise standard of OAR 345-022-0010, which is addressed in detail in Exhibit D of this application.

2.0 Applicant Contact Information – OAR 345-021-0010(1)(a)(A)

OAR 345-021-0010(1)(a) Information about the applicant and participating persons, including:

OAR 345-021-0010(1)(a)(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

The Applicant is Nolin Hills Wind, LLC, a wholly-owned subsidiary of Element Power US, LLC. The controlling parent company of Nolin Hills Wind, LLC and Element Power US, LLC is Capital Power Corporation.

Name and mailing address of Applicant:

Nolin Hills Wind, LLC
c/o Capital Power Corporation

155 Federal Street, Suite 1200
Boston, MA 02110

Nolin Hills Wind, LLC is a wholly owned subsidiary of Element Power US, LLC:

Element Power US, LLC
c/o Capital Power Corporation
155 Federal Street, Suite 1200
Boston, MA 02110

Applicant contact persons with mailing address, email address, and telephone number:

Matthew Martin
Director, Business Development
Nolin Hills Wind, LLC c/o Capital Power Corporation
155 Federal Street, Suite 1200
Boston, MA 02110
(617) 274-7700
mmartin@capitalpower.com

Contact Persons other than Applicant:

Linnea Fossum
Tetra Tech, Inc.
19803 North Creek Parkway
Bothell, WA 98011
(425) 482-7823
linnea.fossum@tetratech.com

Timothy L. McMahan
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
(503) 294-9517
Tim.McMahan@stoel.com

3.0 Other Participants – OAR 345-021-0010(1)(a)(B)

OAR 345-021-0010(1)(a)(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;.

The Applicant, Nolin Hills Wind, LLC, is a wholly-owned subsidiary of Element Power US, LLC. The controlling parent company of Nolin Hills Wind, LLC and Element Power US, LLC is Capital Power (US Holdings) Inc., which is a subsidiary of Capital Power Corporation.

Element Power US, LLC, is a wholly-owned subsidiary of Capital Power Investments LLC.

Capital Power Investments LLC
155 Federal Street, Suite 1200
Boston, MA 02110

Capital Power Investments LLC is a wholly-owned subsidiary of Capital Power (US Holdings) Inc., which is wholly owned by Capital Power Corporation.

Capital Power Corporation
155 Federal Street, Suite 1200
Boston, MA 02110

No other participants are anticipated, with the exception of the construction firm selected to build the Project, who may obtain third-party permits. The Applicant anticipates that these third-party permits may include permits for construction materials, transportation of materials to the site, and other building-related permits that are typically obtained immediately prior to construction activities. The Applicant anticipates that these permits will meet the facility standards adopted by the Oregon Energy Facility Siting Council.

4.0 Corporation Information – OAR 345-021-0010(1)(a)(C)

OAR 345-021-0010(1)(a)(C) If the applicant is a corporation:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;

The Applicant is not a corporation. Therefore, this rule is not applicable.

5.0 Ownership – OAR 345-021-0010(1)(a)(D)

OAR 345-021-0010(1)(a)(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;

The Applicant, Nolin Hills Wind, LLC, is a wholly-owned subsidiary of Element Power US, LLC. The controlling parent company of Nolin Hills Wind, LLC and Element Power US, LLC is Capital Power Corporation. See Section 3.0 for parent company names and business addresses.

6.0 Association/Joint-Venture Information – OAR 345-021-0010(1)(a)(E)

OAR 345-021-0010(1)(a)(E) If the applicant is an association of citizens, a joint venture or a partnership:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;

The Applicant is not an association of citizens, a joint venture, or partnership. Therefore, this rule is not applicable.

7.0 Public/Government Entity Information – OAR 345-021-0010(1)(a)(F)

OAR 345-021-0010(1)(a)(F) If the applicant is a public or governmental entity:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application;

The Applicant is not a public or governmental entity. Therefore, this rule is not applicable.

8.0 Individual Applicant Information – OAR 345-021-0010(1)(a)(G)

OAR 345-021-0010(1)(a)(G) If the applicant is an individual, the individual's mailing address, email address and telephone number;

The Applicant is not an individual. Therefore, this rule is not applicable.

9.0 Limited Liability Company Information – OAR 345-021-0010(1)(a)(H)

OAR 345-021-0010(1)(a)(H) If the applicant is a limited liability company:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the application; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

The Applicant is a limited liability company. The resident attorney-in-fact in Oregon responsible for submitting the Application for Site Certificate is as follows:

Timothy L. McMahan

Stoel Rives LLP

760 SW Ninth Avenue, Suite 3000

Portland, OR 97205

(503) 294-9517

Tim.McMahan@stoel.com

The Applicant was formed in the State of Delaware on October 8, 2014 as provided in Attachment A-1. The Applicant's articles of organization and authorization for submitting this Application for Site Certificate are contained in Attachment A-2. The Applicant's proof of registration to do business in Oregon is included in Attachment A-3.

Attachment A-1. Delaware Certificate of Formation

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development and operation, including negotiating power purchase agreements, energy marketing and structured products, and commercial asset management. Lorne has been principally responsible for a wide array of thermal and renewable assets, including commercial responsibility over time for nearly 3 gigawatts (GW) of thermal capacity and nearly 1.2 GW of wind capacity. Lorne has a Bachelor of Science from the University of Lethbridge and a Master of Business Administration from the University of Calgary.

3.9 Finance

Sandra Haskins is Senior Vice President Finance and Chief Financial Officer of Capital Power. Serving in the role since July 2020, Sandra leads all Capital Power's financial functions including Treasury, Financial Reporting, Financial Planning and Analysis, Tax and Investor Relations. She is also responsible for our Enterprise Risk Management processes. Prior to her current role, Sandra served for over 2 years as the Vice President, Finance and Treasury during which time she raised $1.2 billion in debt and equity financing. In her previous role, Sandra was Vice President, Forecasting and Analytics responsible for Capital Power's Budget & Forecasts, Corporate Financial Projections, Valuations, and Market Assessment and Forecasting functions. Sandra has been with Capital Power since the IPO in 2009 at which time she served as the Controller.

Brenda Lessard is the Senior Manager of U.S. Tax for Capital Power. Brenda is responsible for all U.S. tax matters relating to all entities under the Capital Power umbrella. She has over 30 years of tax and accounting experience in a variety of industries, both public and private. Brenda received her Bachelor of Science in Business Administration from Merrimack College in North Andover, Massachusetts and is a Certified Public Accountant licensed in Virginia.

Scott Manson is the Director of Treasury for Capital Power and is responsible for Treasury operations, Corporate Finance, and Credit activities. Scott has 9 years' experience in the power sector. Scott is a Canadian Chartered Professional Accountant and holds a designation as a Canadian Chartered Business Valuator and Canadian Chartered Accountant. Scott holds a Bachelor of Commerce degree from the University of Alberta.

3.10 Community and Native American Relations

Jay Shukin is a Manager of Indigenous and Stakeholder Engagement at Capital Power. Jay is responsible for developing public engagement programs to support new projects, license renewals, and other regulatory processes. Jay also provides guidance to Capital Power's business teams on working effectively with Indigenous (Native American) communities in both Canada and the United States. He has worked extensively with native communities in British Columbia, Ontario, and Alberta, developing long-term partnerships that support both cultural interests and economic goals. Jay has a Bachelor of Arts from the University of Calgary.

4.0 Qualifications of Known Contractors – OAR 345-021-0010(1)(d)(C)

OAR 345-021-0010(1)(d)(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted.

The Applicant has previously worked with contractors experienced with the construction, operation, and maintenance of wind energy facilities. Selection criteria will center on qualified engineers, manufacturers, and contractors who are experienced in these industries.

5.0 Applicant's Past Performance – OAR 345-021-0010(1)(d)(D)

OAR 345-021-0010(1)(d)(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility.

Capital Power works to comply with all legal and regulatory requirements applicable to the electricity sector in our various Canadian and U.S. jurisdictions. Prior to work starting on construction projects, we perform pre-job Risk Assessments to identify Health, Safety and Environmental jurisdictional requirements. We maintain an active compliance monitoring program to identify potential non-compliance and develop training and awareness on various risk areas and changes to applicable laws and regulations. Should non-compliance events occur, we take immediate action to identify and address the root cause to prevent future incidents.

5.1 Construction and Operation

All employees, contracted employees, and contractors must comply with all health and safety policies and procedures. Contractors must manage their health, safety, and environment (HSE) risks in a manner consistent with our HSE Policy.

In 2018, the company (employees only) had zero fatalities, zero high-consequence work-related injuries, six recordable work-related injuries with a Total Recordable Injury Frequency (TRIF) of 0.78, five medical treatments, one lost-time injury, and 1,544,010 exposure hours. In 2018, workers who are not employees but whose work and/or workplace is controlled by the organization had zero fatalities, three recordable work-related injuries with a TRIF of 0.68, two medical treatments, one modified work injury, and 886,554 exposure hours.

Since 2017, Capital Power has developed four wind farms in North America. There have been no jurisdictional citations issued to any of our contractors during these construction projects.

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "NOLIN HILLS WIND, LLC", FILED IN THIS OFFICE ON THE EIGHTH DAY OF OCTOBER, A.D. 2014, AT 1:49 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 1766134

DATE: 10-09-14

5617703 8100

141270978

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:53 PM 10/08/2014
FILED 01:49 PM 10/08/2014
SRV 141270978 - 5617703 FILE

CERTIFICATE OF FORMATION

OF

Nolin Hills Wind, LLC

1. The name of the limited liability company is Nolin Hills Wind, LLC.

2. The address of its registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation of Nolin Hills Wind, LLC this 7th day of October, 2014.

Michael Arndt
Chief Operating Officer

DE083 - 2/20/07 CT System Online

Attachment A-2. Articles of Organization and Authorization to Submit Application for Site Certificate

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SECRETARY'S CERTIFICATE

The undersigned, Michael Hall, being the Assistant Corporate Secretary of each of Nolin Hills Wind, LLC ("Applicant") and its sole member Element Power US, LLC ("Element"), each a Delaware limited liability company (collectively referred to herein as the "CP Entities") does hereby certify as of the date hereof on behalf of the CP Entities that:

(a) Attached hereto as Attachment A-2.1 are true, correct and complete copies of the Operating Agreements of each CP Entity. Each such Operating Agreement has not been amended since the respective date thereof and is in full force and effect as of the date hereof.

(b) Attached hereto as Attachment A-2.2 are true, correct and complete copies of:

(1) resolutions of APPLICANT confirming Christopher Kopecky as Vice President, duly adopted by written consent of the sole member thereof on August 1, 2018; and

(2) resolutions of ELEMENT confirming Christopher Kopecky as Vice President, duly adopted by written consent of the sole member thereof on May 15, 2019.

In each case, such resolutions constitute the only actions taken by or with respect to such CP Entity confirming Christopher Kopecky as Vice President and have not been modified, rescinded or amended and are in full force and effect as of the date hereof.

(c) Christopher Kopecky is duly authorized and directed to execute, deliver and cause the Applicant to submit the Application for Site Certificate to the State of Oregon Energy Facilities Siting Council (the "Application") and perform thereunder.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned has executed these certifications of the sole member(s) as of the date first above written.

ELEMENT POWER US, LLC

By: _____
Name: Michael Hall
Title: Assistant Corporate Secretary

NOLIN HILLS WIND, LLC

By: ELEMENT POWER US, LLC
its sole member

By: _____
Name: Michael Hall
Title: Assistant Corporate Secretary

Attachment A-2.1

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

of

NOLIN HILLS WIND, LLC

Dated as of April 1, 2015

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This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of Nolin Hills Wind, LLC, a Delaware limited liability company (the "Company"), is effective as of April 1, 2015. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in Section 1.08.

WHEREAS, on October 8, 2014, the Company was formed as a limited liability company under the Limited Liability Company Act of the State of Delaware (the "Act"); and

WHEREAS, the Member wishes to amend and restate, as set forth herein, the Limited Liability Company Agreement dated as of October 9, 2014; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Member hereby adopts the following as the Agreement of the Company within the meaning of the Act.

ARTICLE I

Introduction

SECTION 1.01. Name and Form. The Company is a Delaware limited liability company and its name is Nolin Hills Wind, LLC.

SECTION 1.02. Registered Agent and Office. The registered agent for service of process is The Corporation Trust Company, and the mailing address for the registered office of the Company in the State of Delaware is in care of The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. Such agent and such office may be changed from time to time by the Member.

SECTION 1.03. Purpose. The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act.

SECTION 1.04. Liability of the Member.

(a) Except to the extent expressly provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company.

(b) No Covered Person shall be liable to the Company or any other Covered Person for any loss, liability, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company, except for any act that is taken by a Covered Person purporting to bind the Company and that has not been authorized pursuant to this Agreement. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person (as hereinafter defined) as to matters which such Covered Person reasonably believes are within such Person's professional or expert competence.

NOLIN HILLS WIND, LLC
CONSENT OF SOLE MEMBER
IN LIEU OF SPECIAL MEETING

Pursuant to Section 18-302(d) of the Delaware Limited Liability Company Act, the undersigned, being the sole member (the "Member") of Nolin Hills Wind, LLC, a Delaware limited liability company (the "Company"), DOES HEREBY ADOPT the following resolutions and DOES HEREBY CONSENT to the taking of the actions therein set forth, and hereby waives any notices required by law with respect thereto.

1. Election of Additional Officers

RESOLVED, effective as of August 1, 2018, the following persons are hereby elected to the offices appearing opposite their names to serve at the pleasure of the Member or until their respective successors are elected and qualified:

Sameer Bhojani	Vice President, Taxation and Valuations
Colleen Legge	Corporate Secretary

2. Confirmation of Officers

RESOLVED, that the Member confirms that the officers of the Company effective as of the date of this Consent, are as follows:

Brian Vaasjo	President and Chief Executive Officer
Bryan DeNeve	Senior Vice President and Chief Financial Officer
Kate Chisholm	Senior Vice President and General Counsel
Darcy Trufyn	Senior Vice President
Mark Zimmerman	Senior Vice President
Sandra Haskins	Treasurer
Chris Kopecky	Vice President
Sameer Bhojani	Vice President, Taxation and Valuations
Colleen Legge	Corporate Secretary
Michael Hall	Assistant Corporate Secretary

3. General

RESOLVED, that any officer of the Company is hereby authorized and empowered in the name and on behalf of the Company to do or cause to be done any and all additional acts and things as in the judgment of the officer taking the action, may be necessary, appropriate or advisable to carry out the purposes and intent of the foregoing resolutions; and

FINALLY RESOLVED, that any actions taken by the Member or any of the officers of the Company prior to the adoption of these resolutions that are within the authority conferred in the foregoing resolutions be, and the same hereby are, ratified, confirmed, and approved in all respects.

SIGNATURE PAGE
CONSENT OF SOLE MEMBER
NOLIN HILLS WIND, LLC

This Consent shall be effective as of August 1, 2018, and may be delivered by facsimile or electronic mail.

MEMBER:

ELEMENT POWER US, LLC

By: _____
Name: **Sandra Haskins**
Title: **Treasurer**

(c) To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, such Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person when so acting in good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person, to the maximum extent permitted by applicable law.

(d) To the maximum extent permitted by applicable law, each Covered Person shall be entitled to indemnification from the Company for any loss, liability, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company; provided, however, that any indemnity under this Section 1.04(d) shall be provided out of and to the extent of the Company's assets only, and no other Covered Person shall have any personal liability on account thereof. To the maximum extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding; provided, however, that such Covered Person shall promptly repay to the Company the amount of any such advanced expenses if it shall be finally judicially determined that such Covered Person was not entitled to indemnification hereunder in connection with the claim, demand, action, suit or proceeding.

SECTION 1.05. Management. The Company shall be managed by the Member. The Member shall have full, exclusive and complete discretion in the management and control of the business of the Company for the purposes herein stated and, subject to the terms hereof, shall make all decisions affecting the business of the Company and may take such actions as the Member deems necessary or appropriate to accomplish the purposes of the Company as set forth herein, including all powers, statutory or otherwise, possessed by the members of a limited liability company under the Act. In connection with such management and control, the Member shall have the power and authority to do or cause to be done any and all acts deemed by the Member to be necessary or appropriate to carry out the purposes of the Company.

SECTION 1.06. Minutes of Meetings. Minutes of each meeting of the Member, including the location and date of the meeting, shall be prepared and shall be kept as records of the Company. A meeting of the Member may be held upon one day's written notice, provided, however, that the Member may waive notice of any meeting, which waiver may be entered into and reflected in the minutes of such meeting and which waiver shall bind the Member once entered into and reflected in the minutes of such meeting.

SECTION 1.07. Reliance. Any Person dealing with the Company may rely on the authority of the Member (or any officer authorized by the Member) in taking any action in the name of the Company, without inquiry into the provisions of this Agreement or compliance herewith and regardless of whether that action actually is taken in accordance with the provisions of this Agreement.

SECTION 1.08. Certain Definitions. As used in this Agreement:

"Affiliate" of any Person shall mean any other Person that, directly or indirectly, Controls, is under common Control with or is Controlled by such Person. In addition, a Person that holds a direct or indirect, contingent or otherwise, equity interest in a specified Person shall be deemed to be an Affiliate of such Person.

"Control" shall mean, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The terms "Controlled" and "Controlling" shall have correlative meanings.

"Covered Person" shall mean (a) the Member, (b) any Affiliate of the Member, (c) any officer, director, manager, shareholder, partner, employee, representative, trustee or agent of the Member or any Affiliate of the Member, or any spouse thereof, or (d) any officer, director, manager, shareholder, partner, employee, representative, trustee or agent of the Member or any Affiliate of the Member, or any spouse thereof.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

ARTICLE II

Common Shares

SECTION 2.01. Authorized Shares; Classification of Interests. There shall be one class of membership interests in the Company, which class shall be denominated as common shares of the Company (the "Common Shares"). The Company shall have authority to issue such number of Common Shares as the Member determines from time to time. As of the date hereof, the Company has issued 100 Common Shares, all of which have been issued to the Member.

SECTION 2.02. Distributions. Distributions shall be made at the times and in the aggregate amounts determined by the Member.

SECTION 2.03. Voting Matters. Any action permitted or required to be taken by the Member may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Member.

ARTICLE III

Certain Other Matters

SECTION 3.01. Books and Records. At all times during the existence of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company. Such books of account, together with a copy of this Agreement and the certificate of formation of the Company, as amended or restated from time to time, shall at all times be maintained at the principal place of business of the Company in the United States.

SECTION 3.02. Dissolution. The Company shall dissolve upon the first to occur of the following: (a) the decision of the Member to dissolve the Company, (b) the occurrence of any event described in Section 18-304 of the Act, subject to the grace periods specified in Section 18-304(2) of the Act, and (c) the entry of a decree of dissolution under Section 18-802 of the Act. The Company shall terminate when all of its assets, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in Section 3.03 of this Agreement, and the certificate of formation of the Company, as amended or restated from time to time, shall have been canceled in the manner required by the Act.

SECTION 3.03. Liquidation. (a) Following dissolution pursuant to Section 3.02 of this Agreement, all the business and affairs of the Company will be liquidated and wound up. The Member shall approve one or more liquidators to act as the liquidator in carrying out such liquidation.

(b) The proceeds of the liquidation of the Company will be distributed (i) first, to creditors of the Company (including the Member, if it is then a creditor of the Company), to the extent otherwise permitted by law in satisfaction of all the Company's debts and liabilities (whether by payment or by making reasonable provision for payment thereof), and (ii) second, to the Member.

SECTION 3.04. Resignation. The Member may not resign from the Company other than by transferring all its Common Shares.

ARTICLE IV

Miscellaneous Provisions

SECTION 4.01. Name and Address of Member. The name and address of the Member is as follows:

Element Power US, LLC
Suite 1000, 99 Summer Street
Boston, MA 02110-1221

SECTION 4.02. Governing Law and Rules of Construction. This Agreement shall be construed by, subject to and governed in accordance with the internal laws of the State of Delaware without giving effect to conflict of laws or other principles that would result in the application of laws other than the internal laws of the State of Delaware. This Agreement shall be construed in accordance with Section 18-1101 of the Act. Any reference to the Act, except those references which may appear in the recitals of this Agreement, shall include any amendment to the Act or any successor thereto and any rules and regulations promulgated thereunder.

SECTION 4.03. Successors and Assigns. This Agreement shall be binding upon the Company, the Member and their respective successors and assigns.

SECTION 4.04. Amendments; Waivers. This Agreement may be amended or waived from time to time by an instrument in writing signed by the Member.

SECTION 4.05. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remaining provisions.

SECTION 4.06. Headings. The titles of Sections of this Agreement are for convenience only and shall not be interpreted to limit or amplify the provisions of this Agreement.

SECTION 4.07. Third Party Beneficiaries. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member; provided, however, that Section 1.04 shall benefit Covered Persons.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first written above.

NOLIN HILLS WIND, LLC

By: Element Power US, LLC,
its sole member

By: _____
Name: Tony Scozzafava
Title: Vice President and Treasurer

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

of

ELEMENT POWER US, LLC

Dated as of April 1, 2015

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This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of Element Power US, LLC, a Delaware limited liability company (the "Company"), is effective as of April 1, 2015. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in Section 1.08.

WHEREAS, on October 14, 2008, the Company was formed as a limited liability company under the Limited Liability Company Act of the State of Delaware (the "Act"); and

WHEREAS, the Member wishes to amend and restate, as set forth herein, the Limited Liability Company Agreement dated as of October 14, 2008; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Member hereby adopts the following as the Agreement of the Company within the meaning of the Act.

ARTICLE I

Introduction

SECTION 1.01. Name and Form. The Company is a Delaware limited liability company and its name is Element Power US, LLC.

SECTION 1.02. Registered Agent and Office. The registered agent for service of process is The Corporation Trust Company, and the mailing address for the registered office of the Company in the State of Delaware is in care of The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. Such agent and such office may be changed from time to time by the Member.

SECTION 1.03. Purpose. The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act.

SECTION 1.04. Liability of the Member.

(a) Except to the extent expressly provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company.

(b) No Covered Person shall be liable to the Company or any other Covered Person for any loss, liability, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company, except for any act that is taken by a Covered Person purporting to bind the Company and that has not been authorized pursuant to this Agreement. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person (as hereinafter defined) as to matters which such Covered Person reasonably believes are within such Person's professional or expert competence.

(c) To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, such Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person when so acting in good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person, to the maximum extent permitted by applicable law.

(d) To the maximum extent permitted by applicable law, each Covered Person shall be entitled to indemnification from the Company for any loss, liability, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company; provided, however, that any indemnity under this Section 1.04(d) shall be provided out of and to the extent of the Company's assets only, and no other Covered Person shall have any personal liability on account thereof. To the maximum extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding; provided, however, that such Covered Person shall promptly repay to the Company the amount of any such advanced expenses if it shall be finally judicially determined that such Covered Person was not entitled to indemnification hereunder in connection with the claim, demand, action, suit or proceeding.

SECTION 1.05. Management. The Company shall be managed by the Member. The Member shall have full, exclusive and complete discretion in the management and control of the business of the Company for the purposes herein stated and, subject to the terms hereof, shall make all decisions affecting the business of the Company and may take such actions as the Member deems necessary or appropriate to accomplish the purposes of the Company as set forth herein, including all powers, statutory or otherwise, possessed by the members of a limited liability company under the Act. In connection with such management and control, the Member shall have the power and authority to do or cause to be done any and all acts deemed by the Member to be necessary or appropriate to carry out the purposes of the Company.

SECTION 1.06. Minutes of Meetings. Minutes of each meeting of the Member, including the location and date of the meeting, shall be prepared and shall be kept as records of the Company. A meeting of the Member may be held upon one day's written notice, provided, however, that the Member may waive notice of any meeting, which waiver may be entered into and reflected in the minutes of such meeting and which waiver shall bind the Member once entered into and reflected in the minutes of such meeting.

SECTION 1.07. Reliance. Any Person dealing with the Company may rely on the authority of the Member (or any officer authorized by the Member) in taking any action in the name of the Company, without inquiry into the provisions of this Agreement or compliance herewith and regardless of whether that action actually is taken in accordance with the provisions of this Agreement.

SECTION 1.08. Certain Definitions. As used in this Agreement:

"Affiliate" of any Person shall mean any other Person that, directly or indirectly, Controls, is under common Control with or is Controlled by such Person. In addition, a Person that holds a direct or indirect, contingent or otherwise, equity interest in a specified Person shall be deemed to be an Affiliate of such Person.

"Control" shall mean, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The terms "Controlled" and "Controlling" shall have correlative meanings.

"Covered Person" shall mean (a) the Member, (b) any Affiliate of the Member, (c) any officer, director, manager, shareholder, partner, employee, representative, trustee or agent of the Member or any Affiliate of the Member, or any spouse thereof, or (d) any officer, director, manager, shareholder, partner, employee, representative, trustee or agent of the Member or any Affiliate of the Member, or any spouse thereof.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

ARTICLE II

Common Shares

SECTION 2.01. Authorized Shares; Classification of Interests. There shall be one class of membership interests in the Company, which class shall be denominated as common shares of the Company (the "Common Shares"). The Company shall have authority to issue such number of Common Shares as the Member determines from time to time. As of the date hereof, the Company has issued 100 Common Shares, all of which have been issued to the Member.

SECTION 2.02. Distributions. Distributions shall be made at the times and in the aggregate amounts determined by the Member.

SECTION 2.03. Voting Matters. Any action permitted or required to be taken by the Member may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Member.

ARTICLE III

Certain Other Matters

SECTION 3.01. Books and Records. At all times during the existence of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company. Such books of account, together with a copy of this Agreement and the certificate of formation of the Company, as amended or restated from time to time, shall at all times be maintained at the principal place of business of the Company in the United States.

SECTION 3.02. Dissolution. The Company shall dissolve upon the first to occur of the following: (a) the decision of the Member to dissolve the Company, (b) the occurrence of any event described in Section 18-304 of the Act, subject to the grace periods specified in Section 18-304(2) of the Act, and (c) the entry of a decree of dissolution under Section 18-802 of the Act. The Company shall terminate when all of its assets, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in Section 3.03 of this Agreement, and the certificate of formation of the Company, as amended or restated from time to time, shall have been canceled in the manner required by the Act.

SECTION 3.03. Liquidation. (a) Following dissolution pursuant to Section 3.02 of this Agreement, all the business and affairs of the Company will be liquidated and wound up. The Member shall approve one or more liquidators to act as the liquidator in carrying out such liquidation.

(b) The proceeds of the liquidation of the Company will be distributed (i) first, to creditors of the Company (including the Member, if it is then a creditor of the Company), to the extent otherwise permitted by law in satisfaction of all the Company's debts and liabilities (whether by payment or by making reasonable provision for payment thereof), and (ii) second, to the Member.

SECTION 3.04. Resignation. The Member may not resign from the Company other than by transferring all its Common Shares.

ARTICLE IV

Miscellaneous Provisions

SECTION 4.01. Name and Address of Member. The name and address of the Member is as follows:

Capital Power Investments LLC
Suite 1000, 99 Summer Street
Boston, MA 02110-1221

SECTION 4.02. Governing Law and Rules of Construction. This Agreement shall be construed by, subject to and governed in accordance with the internal laws of the State of Delaware without giving effect to conflict of laws or other principles that would result in the application of laws other than the internal laws of the State of Delaware. This Agreement shall be construed in accordance with Section 18-1101 of the Act. Any reference to the Act, except those references which may appear in the recitals of this Agreement, shall include any amendment to the Act or any successor thereto and any rules and regulations promulgated thereunder.

SECTION 4.03. Successors and Assigns. This Agreement shall be binding upon the Company, the Member and their respective successors and assigns.

SECTION 4.04. Amendments; Waivers. This Agreement may be amended or waived from time to time by an instrument in writing signed by the Member.

SECTION 4.05. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remaining provisions.

SECTION 4.06. Headings. The titles of Sections of this Agreement are for convenience only and shall not be interpreted to limit or amplify the provisions of this Agreement.

SECTION 4.07. Third Party Beneficiaries. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member; provided, however, that Section 1.04 shall benefit Covered Persons.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first written above.

ELEMENT POWER US, LLC

By: Capital Power Investments LLC,
its sole member

By: _____
Name: Tony Scozzafava
Title: Vice President and Treasurer

Attachment A-2.2

ELEMENT POWER US, LLC
CONSENT OF SOLE MEMBER
IN LIEU OF SPECIAL MEETING

Pursuant to Section 18-302(d) of the Delaware Limited Liability Company Act, the undersigned, being the sole member (the "Member") of Element Power US, LLC, a Delaware limited liability company (the "Company"), DOES HEREBY ADOPT the following resolutions and DOES HEREBY CONSENT to the taking of the actions therein set forth, and hereby waives any notices required by law with respect thereto.

1. Election of Additional Officers

RESOLVED, effective as of May 15, 2019, the following person is hereby elected to the offices appearing opposite her name to serve at the pleasure of the Member or until her respective successor is elected and qualified:

Daylyn Dixon	Vice President, Taxation

RESOLVED, effective as of May 15, 2019, Sameer Bhojani's Officer title is changed from Vice President, Taxation and Valuations to Vice President, Budget, Forecast and Valuations.

2. Confirmation of Officers

RESOLVED, that the Member confirms that the officers of the Company effective as of the date of this Consent, are as follows:

Brian Vaasjo	President and Chief Executive Officer
Bryan DeNeve	Senior Vice President and Chief Financial Officer
Kate Chisholm	Senior Vice President and General Counsel
Darcy Trufyn	Senior Vice President
Mark Zimmerman	Senior Vice President
Chris Kopecky	Vice President
Daylyn Dixon	Vice President, Taxation
Sameer Bhojani	Vice President, Budget, Forecast and Valuations
Sandra Haskins	Treasurer
Colleen Legge	Corporate Secretary
Michael Hall	Assistant Corporate Secretary

3. General

RESOLVED, that any officer of the Company is hereby authorized and empowered in the name and on behalf of the Company to do or cause to be done any and all additional acts and things as in the judgment of the officer taking the action, may be necessary, appropriate or advisable to carry out the purposes and intent of the foregoing resolutions; and

FINALLY RESOLVED, that any actions taken by the Member or any of the officers of the Company prior to the adoption of these resolutions that are within the authority conferred in the foregoing resolutions be, and the same hereby are, ratified, confirmed, and approved in all respects.

SIGNATURE PAGE
CONSENT OF SOLE MEMBER
ELEMENT POWER US, LLC

This Consent shall be effective as of May 15, 2019, and may be delivered by facsimile or electronic mail.

MEMBER:

CAPITAL POWER INVESTMENTS LLC

By: _____
Name: **Sandra Haskins**
Title: **Treasurer**

Attachment A-3. Qualification to Conduct Business in Oregon

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Application for Authority to Transact Business - Foreign Limited Liability Company

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 151 - Salem, OR 97310-1327 - http://www.FilingInOregon.com - Phone: (503) 986-2200

FILED

OCT 27 2014

OREGON
SECRETARY OF STATE

REGISTRY NUMBER: 1057201-97
For office use only

For office use only

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record. We must release this information to all parties upon request and it will be posted on our website.

Please Type or Print Legibly in Black Ink. Attach Additional Sheet If Necessary.

1) **NAME:** NOLIN HILLS WIND, LLC
NOTE: (Must contain the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.") Must be identical to the name of record in home jurisdiction.

2) **REGISTRY NUMBER IN HOME JURISDICTION**

OR: **CERTIFICATE OF EXISTENCE** ☒ **(ATTACHED)**
(Please provide a web-verifiable registry number from the entity's home jurisdiction. Certain states, such as Delaware and New Jersey, do not provide status information online. Entities from such places must instead attach an official certificate of existence, current within 60 days of delivery to this office.)

3) **DATE OF ORGANIZATION:** OCTOBER 9, 2014
DURATION, IF NOT PERPETUAL:

4) **STATE OR COUNTRY OF ORGANIZATION:** DE

5) **THIS FOREIGN LIMITED LIABILITY COMPANY SATISFIES THE REQUIREMENTS OF ORS 63.714(3).**

6) **NAME OF OREGON REGISTERED AGENT:** C T Corporation System

7) **REGISTERED AGENT'S PUBLICLY AVAILABLE ADDRESS:**
(Must be an Oregon Street Address, which is identical to the registered agent's business office.)
388 State Street, Ste. 420
Salem, OR 97301

8) **ADDRESS OF PRINCIPAL OFFICE OF THE BUSINESS:**
421 SW SIXTH AVENUE, SUITE 1000
PORTLAND, OR 97204

9) **ADDRESS WHERE THE DIVISION MAY MAIL NOTICES:**
421 SW SIXTH AVENUE, SUITE 1000
PORTLAND, OR 97204

10) **HOW WILL THIS LIMITED LIABILITY COMPANY BE MANAGED?**
☐ This LLC will be member-managed by one or more members.
☒ This LLC will be manager-managed by one or more managers.

11) **EXECUTION:** (At least one member or manager must sign.)
By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature	Printed Name:	Title:
	MICHAEL ARNDT	COO OF ELEMENT POWER US, LLC ITS MANAGER

CONTACT NAME: (To resolve questions with this filing.)
PAM MAHON

PHONE NUMBER: (Include area code.)
503.416.0822

FEES
Required Processing Fee $275
Processing Fees are nonrefundable. Please make check payable to "Corporation Division."
Free copies are available at FilingInOregon.com, using the Business Name Search program.

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NOLIN HILLS WIND, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-SEVENTH DAY OF OCTOBER, A.D. 2014.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

5617703 8300

141336582

You may verify this certificate online at corp.delaware.gov/authver.shtml

Jeffrey W. Bullock, Secretary of State

AUTHENTICATION: 1812086

DATE: 10-27-14

Exhibit D

Applicant's Organizational Expertise

Nolin Hills Wind Power Project
January 2022

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

d/b/a Nolin Hills Wind, LLC

Prepared by

TETRA TECH

Tetra Tech, Inc.

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Table D-1. Capital Power's Renewable Energy Facilities in Operation or Planned for Construction... 2

Acronyms and Abbreviations

Applicant	Nolin Hills Wind, LLC
Capital Power	Capital Power Corporation
CTUIR	Confederated Tribes of the Umatilla Indian Reservation
GW	gigawatt
HSE	health, safety, and environment
ISO	International Organization for Standardization
MW	megawatt
NWC	Northwest Wildlife Consultants
OAR	Oregon Administrative Rule
Project	Nolin Hills Wind Power Project
TRIF	Total Recordable Injury Frequency
U.S.	United States

1.0 Introduction

Exhibit D describes the sources and organizational, managerial, and technical expertise extent of Nolin Hills Wind, LLC (the Applicant), as required to meet the submittal requirements of Oregon Administrative Rule (OAR) 345-021-0010 (1)(d), paragraphs (A) through (G). This exhibit also provides the qualifications of known contractors assisting in design and construction of the Nolin Hills Wind Power Project (Project). This exhibit shows that the Project complies with OAR 345-022-0010:

345-022-0010 Organizational Expertise

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

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

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

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

2.0 Applicant's Previous Experience – OAR 345-021-0010(1)(d)(A)

OAR 345-021-0010(1)(d) Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

OAR 345-021-0010(1)(d)(A) The applicant's previous experience, if any, in constructing and operating similar facilities.

The Applicant and its parent company, Capital Power Corporation (Capital Power), can demonstrate previous experience in constructing and operating renewable generation facilities. Capital Power is a growth-oriented North American power producer headquartered in Edmonton, Alberta, with its United States (U.S.) office based in Boston. The company develops, acquires, owns, and operates power generation facilities using a variety of energy sources. Capital Power owns over 6,100 megawatts (MW) of power generation capacity at 25 facilities across North America.

Capital Power's current portfolio of renewable energy facilities, operating or planned for construction, is includes those shown in Table D-1.

Table D-1. Capital Power's Renewable Energy Facilities in Operation or Planned for Construction

Name / Location	Size (MW)	Ownership Structure	Operation Date
Hornet Solar / North Carolina	75	Own	2022
Hunter's Cove Solar / North Carolina	50	Own	2022
Bear Branch Solar / North Carolina	35	Own	2022
Whitla Wind 3 / Alberta	54	Own	December 2021
Whitla Wind 2 / Alberta	97	Own	December 2021
Cardinal Point Wind / Illinois	150	Own	March 2020
Whitla Wind 1 / Alberta	201.6	Own	December 2019
New Frontier Wind / North Dakota	99	Own	December 2018
Bloom Wind / Kansas	178	Own	June 2017
Macho Springs Wind / New Mexico	50	Own	Acquired in Dec. 2014
Beaufort Solar / North Carolina	15	Own	December 2015
Port Dover and Nanticoke Wind / Ontario	105	Own	November 2013
Halkirk Wind / Alberta	150	Own	December 2012
Quality Wind / British Columbia	142	Own	November 2012
Kingsbridge 1 Wind / Ontario	40	Own	2001

Capital Power's ability to develop, construct, and operate the Project is aided by its commitment to a workplace culture dedicated to health, safety, environmental management, and meaningful engagement of facility neighbors and the surrounding community.

Capital Power maintains the highest workplace standards for its employees and contractors. Our safety campaign, "Zero Means Everything," is a core value of our culture and operations. Contractors whose work and/or workplace activities are not under the direction of Capital Power are covered through our "Contractor Management Standard" that includes robust pre-qualification and selection criteria for qualified contractors. We use ISNetworld to assist with assessing contractor health and safety management systems, worker qualifications, injury statistics, insurance requirements, and compliance with jurisdictional regulations.

Capital Power's employees actively work to reduce the company's impact to the environment, improve our performance, and cultivate a future for low-carbon power generation. We engage respected subject matter experts to methodically prepare environmental assessments on our projects. Our employees are continually building a culture that strives for zero environmental incidents. Capital Power's strong health and safety culture means that employees are continually monitoring risks and seeking ways to further reduce the potential for impacts to health and safety.

Engaging with local communities is a vital component of Capital Power's work to develop, construct, and run power generation facilities that are successful in their operational, environmental, and financial performance. Capital Power's stakeholder engagement practice encompasses a broad range of contact with external stakeholders, including direct public consultation and community relations activities. Engagement activities typically begin when a project is in its development phase; however, this process generally continues through regulatory permitting and construction, and into operations. Overall, the process takes into account regulatory requirements related to stakeholder engagement, specifically public consultation and notification requirements for the project; stakeholder values and perspectives; and potential project impacts in relation to stakeholders. In the case of the present Project, Capital Power's project team is committed to Native American consultation, which has involved considerable engagement with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR).

Capital Power works with community members to preserve and strengthen community character, ecology, and heritage. Through the company's established community investment program, we strive to contribute to programs and initiatives that promote and strengthen the quality of life for community members. In 2019, we contributed over $1 million to organizations in the communities in which we operate. By supporting meaningful, grassroots initiatives and programs, we help create healthy and sustainable communities.

3.0 Qualifications of Applicant's Personnel – OAR 345-021-0010(1)(d)(B)

OAR 345-021-0010(1)(d)(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted.

3.1 Management

Brian Vaasjo is Capital Power's President and Chief Executive Officer. Brian has guided the company in its growth and expansion across Canada and the United States. Assuming leadership of Capital Power at its inception in 2009 following a spin-off from parent company EPCOR Utilities Inc., Brian has led the company during a period of tremendous growth, nearly doubling the generation capacity to over 6,000 MW. Capital Power has been named one of the "Best 50 Corporate Citizens in Canada" for nine consecutive years (2011–2019) and has received numerous recognitions for its commitment to workplace health and safety and operational reliability.

Bryan DeNeve is Senior Vice President, Business Development and Commercial Services for Capital Power. Serving in this role since May 2015, Bryan is responsible for Capital Power's financing and capital market initiatives. He has raised over $2 billion in the combined debt and equity capital markets to support Capital Power's growth initiatives. Prior to his current role, Bryan served as Senior Vice President, Corporate Development and Commercial Services, and Vice President, Business Development, at Capital Power. During this time, Bryan oversaw asset growth within the company both through greenfield development and acquisition. Bryan has a Master of Business Administration from the University of Alberta and is a graduate of the Harvard Business School Advanced Management Program.

Kelly S. Lail is Vice President, Business Development for Capital Power Corporation. He is responsible for business development and growth through greenfield developments and acquisitions and divestitures across North America. Kelly's experience spans directing system operations, resource and energy planning, power (hydroelectric and natural gas) and natural gas pipeline projects development, asset acquisitions and divestitures, mergers and acquisitions, and financing and negotiation of Joint Ventures. Kelly led deal structuring and negotiations of Capital Power's interest in a variety projects and mergers and acquisitions (gas-fired, wind, and solar assets and portfolios). This includes the $1.6 billion, 800 MW Shepard project, the $500 million acquisition of the Veresen thermal portfolio, and the $1.97 billion acquisition of the 875-MW Gorway facility and the divesture of Capital Power Income LP and Capital Power's two hydroelectric assets. He regularly presents to the Board of Directors; made formal appearances before regulatory agencies; held meetings with municipal councils and officials, industry and aboriginal groups; and participated in meetings with the Provincial Treasury Board, Cabinet and the B.C. Legislature and the Canadian Senate. Prior to joining Capital Power/EPCOR in 2006, Kelly was with BC Hydro for 14 years and with TransAlta for 6 years. While at BC Hydro, Kelly served as

the head of Resource Management, Business Development and Energy Plans, and Investments divisions.

3.2 Wind and Solar Energy and Business Development

Paul Wendelgass is the Managing Director of Business Development for Capital Power. Paul is responsible for leading Capital Power's U.S. development team in pursuing renewable energy opportunities across the United States. With more than 30 years of experience in the power generation sector, Paul has managed development of over 2,000 operating MW of both conventional and renewable energy in North America. He personally led the team that completed the intensive regulatory process for the 270-MW K2 Wind facility in Ontario, one of Canada's largest wind energy facilities. Paul has a Bachelor of Arts from the University of Chicago and a Master of Science from the University of Massachusetts Amherst.

Matt Martin is a Senior Manager of Business Development for Capital Power, responsible for renewable energy projects across the United States. With 13 years of experience in the power generation sector, Matt has managed development of more than 1,400 MW of operating conventional and renewable assets in the U.S. Matt led the development of three of Capital Power's renewables assets including the 150 MW Cardinal Point Wind project in Illinois, the 178 MW Bloom Wind project in Kansas, and the 15 MW Beaufort Solar facility in North Carolina. Matt has a Bachelor of Science from the University of Pennsylvania's Wharton School of Business.

Kimberly Cupicha is a Manager of Business Development (U.S.) for Capital Power. Kimberly is responsible for all aspects of renewable energy project development, including acquisition and financing, across the United States. Her priorities include ensuring such projects are developed in an environmentally sound and economically sustainable manner. Kimberly is the lead developer for the Nolin Hills Solar and Storage and directly manages the Project team, which includes specialists in engineering, environment, wind resource assessment, regulatory matters, cultural resources, and Native American engagement. Kimberly has over 10 years' experience in project management and development of projects in the United States and Europe. She has developed over 75 solar energy projects. Kimberly holds a Bachelor of Science from Syracuse University and a Master of Business Administration (MBA) from Rensselaer Polytechnic Institute.

Bob Evans is currently a Business Development Specialist for Capital Power. Bob is a part of the business development team responsible for the development of wind energy projects within the United States, including the New Frontier Wind Project (North Dakota) and Cardinal Point Wind Project (Illinois). Bob is currently the lead developer of the Garrison Butte Wind Project in North Dakota. With more than 15 years of experience in the environmental permitting and the power generation sectors, Bob has assisted with the development of over 400 planned and operating MW of renewable energy in North America. He is currently leading the solar development green-fielding efforts for Capital Power in in the United States. Bob has a Bachelor of Science in Environmental Design from Auburn University, and a Master of Landscape Architecture and a Master of Community Planning, both from Auburn University.

3.3 Construction and Engineering

Darcy Trufyn is the Senior Vice President of Operations, Engineering, and Construction. Joining Capital Power in 2009, Darcy is now responsible for Operations, Construction, Engineering, Health, Safety and Environment, and Supply Chain. Darcy oversees the safe operation of power generation (natural gas, solar, coal, biomass, and wind) across North America and is responsible for Capital Power's Reliability program, which is helping to provide industry-leading plant availability. Darcy is also responsible for ensuring that Capital Power maintains its competitive advantage constructing our new developments safely, on time, and on budget. Darcy has extensive experience in the engineering and construction fields, including senior roles in a number of large projects in Alberta and the Maritimes. Prior to joining Capital Power, Darcy was the Senior Vice President Construction with WorleyParsons in Calgary, where he was responsible for all Canadian construction activities and was the Director responsible for global construction. Previously, Darcy was the President of the construction firm Lockerbie & Hole, based in Edmonton. Darcy serves as the Board Chair for the Art Gallery of Alberta. Darcy, a professional engineer, is a graduate of the University of Alberta, Faculty of Engineering.

Steve Owens is the Vice President of Construction for Capital Power and is responsible for leading a multi-disciplinary team that executes all of Capital Power's construction projects throughout North America. Steve has over 30 years of construction experience, 15 of which were in the field and all in the power generation sector. Steve has overseen the construction of more than 1,000 MW of wind development over the past 9 years. He has a Bachelor of Engineering from Carleton University. He currently sits on the Board of Directors of the Construction Owner's Association of Alberta and the Executive Board of the University of Alberta's Construction Innovation Centre.

Sandy Fleming is Senior Project Manager for Capital Power. Sandy is responsible for leading all aspects of the construction process for major power projects at Capital Power. With 20 years of experience in the construction field, Sandy has directly managed engineering and/or construction of over 500 MW of wind power projects in North America. He is most recently the construction manager of the 150 MW Cardinal Wind Project in Illinois, anticipated for commissioning in spring 2020. Sandy has a Bachelor of Science in Civil Engineering from the University of Alberta.

Matthew Crane is a Site Construction Manager for Capital Power. Matt is responsible for on-site management of the Capital Power's engineering, procurement, and construction contractors and wind turbine vendors for the company's renewable energy construction projects. With more than 15 years of experience (10 of which are on site), Matt has worked as the Construction Manager/Site Engineer, from greenfield to commercial operation, for over 1,200 operating MW of renewable energy (wind and solar) in North America. Matt has a Bachelor of Science in Mechanical Engineering and Master of Science in Thermodynamics and Fluid Dynamics from the University of Saskatchewan.

Sandeep Sharma is the Senior Manager of Renewables, United States for Capital Power. Sandeep is accountable for the safe, commercial, and technical operations of Capital Power's renewables fleet across the U.S., including Capital Power's existing operations in Kansas, North Dakota, New Mexico,

and North Carolina. His work includes monitoring and developing methods to improve asset performance; implementing planning and control processes for operational integrity; and ensuring compliance with company policy and all applicable regulations. Sandeep previously held significant roles in supporting the engineering and construction of several power generating assets including a supercritical 516 MW coal-fired facility, a 243 MW natural gas-fired facility, and a 150 MW wind energy facility. Sandeep has a Bachelor of Science in Mechanical Engineering from the University of Alberta.

3.4 Permitting

Kent Brandt is the Senior Manager, Environment for Capital Power. Kent is responsible for leading a team of environmental professionals supporting compliance during development, construction, and operational phases of approximately 25 power generation facilities across North America. Kent has over 20 years of environmental experience in the power generation sector, holds a Bachelor of Science, and has an Environmental Professional designation.

Jennifer Schroeder is a Senior Specialist in the Health, Safety and Environment group within Capital Power. Jennifer supports the company's renewable and gas infrastructure efforts and is responsible for assisting in environmental due diligence for acquisitions while also assisting in the siting and permitting activities for energy projects across the United States and Canada. Her related duties include supporting the company's environmental compliance at operating facilities; interpreting regulatory requirements; interfacing with federal, state, and regional agencies; and directing environmental and wildlife monitoring programs. Jennifer has supported the permitting and development of both conventional and renewable energy projects for over 20 years. She is currently supporting Capital Power's 150 MW Cardinal Point Wind project in Illinois, and the Whitla Wind 1 project in Alberta, Canada. Jennifer has an undergraduate degree in political science from the University of Manitoba and a Master of Environmental Science from the University of Calgary.

3.5 Regulatory and Government Relations

Jon Sohn is the U.S. Director of Government Relations for Capital Power. Previously, Jon has worked on investment in clean energy, climate change mitigation, and environmental and social risk management with Dentons Law Firm, Climate Change Capital LLC, the World Resources Institute, and the United States Overseas Private Investment Corporation. Jon has a Bachelor's degree from the University of Michigan and J.D. from Lewis & Clark, Northwestern School of Law, where he also received a Certificate of Specialization in Environmental & Natural Resources Law from the #1 ranked program in the United States for this area of study.

Jason Muller is the Manager of Government Affairs and Policy for Capital Power where he engages in various state and federal policy forums on behalf of the company. Prior to joining Capital Power, Jason spent over a decade working in government affairs and compliance for regulated utilities NiSource and CMS Energy. Jason has a Bachelor of Science in Political Science from Grand Valley

State University and a Master of Science in Environmental Science & Policy from Johns Hopkins University.

3.6 Energy Trading

Josh Campbell is the Vice President of Commodity Portfolio Management and Corporate Strategy at Capital Power. Josh and his team are responsible for management of all commodity exposures at Capital Power, including leadership of Trading, Marketing, and Environmental portfolios with coverage across the United States and Canada and including commodities products. In addition, his team leads the development and rollout of the Corporate Strategy, which articulates corporate direction, focus, and rationale, as well as long- and intermediate-term direction. Josh has 16 years of commodity management experience and a track record in leadership, portfolio development, commercial arrangements, Energy, Trade and Risk Management systems, and risk management. Josh has a Bachelor of Arts in Economics from the University of Calgary.

Laurence Smith is the Director of Strategic Portfolio Management and Corporate Strategy at Capital Power. Laurence and his team are responsible for analytics related to managing the company's commodity exposures across North America. Additionally, the Corporate Strategy team leads the development and rollout of the Capital Power's strategy, which conveys the focus and direction of the company. Laurence has 8 years of commodity management and business development experience, and he holds a Ph.D. and Master in Electrical and Computer Engineering from Carleton University as well as a Bachelor in Applied Science from the University of British Columbia.

Matt Palardy is a Marketing Specialist with Capital Power's Commodity Portfolio Management group. He is responsible for market analytics and portfolio optimization across Capital Power's existing assets. Matt also supports the Business Development teams in assessing market risks, opportunities, and origination initiatives on new renewable projects. He has experience in both operations and trading, as well as in management of assets in the AESO, IESO, and Mid-Columbia and Desert Southwest markets. Matt holds a Bachelor of Engineering from McGill University.

3.7 Origination

James Renouf is the Director of U.S. Environmental Products and Origination for Capital Power. James works with customers to sell the power, capacity, and environment attributes our assets generate. He has more than 15 years' experience in various commercial roles including power and gas trading, portfolio management, and corporate strategy. James holds an MBA from Queens University, is a CFA charter holder, and holds the Energy Risk Professional designation.

3.8 Commercial Management

Lorne Whittles is the Director of Commercial Management for Capital Power's fleet of renewable assets. Lorne is responsible for leading Capital Power's Commercial Renewables team in managing existing wind and utility-scale solar assets in both Canada and the United States. With 18 years of power sector experience, Lorne has held leadership roles in many aspects of generation

5.2 Regulatory Compliance

To date, Capital Power has not received any citations at its U.S.-based wind energy facilities related to regulatory compliance during operations.

In 2016, Capital Power received a violation ticket for $230.00 from the British Columbia Department of Forests, Lands and Natural Resources related to a stream diversion that was constructed near an abandoned wind turbine pad. Capital Power paid the ticket and corrected the matter that prompted the fine.

6.0 Warranty to Secure Necessary Expertise – OAR 345-021-0010(1)(d)(E)

OAR 345-021-0010(1)(d)(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise.

Not applicable because, as demonstrated above, the Applicant has experience constructing and operating similar facilities.

7.0 ISO Certified Program – OAR 345-021-0010(1)(d)(F)

OAR 345-021-0010(1)(d)(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program.

The Applicant does not propose to design, construct, or operate the Project facilities according to an International Organization for Standardization (ISO) 9000 or ISO 14000 certified program.

8.0 Mitigation – OAR 345-021-0010(1)(d)(G)

OAR 345-021-0010(1)(d)(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

Mitigation for the Project may be required for potential impacts to wildlife habitat, cultural resources, and other resources. The mitigation measures proposed by the Applicant for compliance with OAR Divisions 22 or 24 are described in the specific exhibit in which impacts are described.

The parent company of Nolin Hills Wind LLC, Capital Power, has extensive experience over multiple jurisdictions in implementing mitigation and monitoring programs. In North Dakota, the company implements a curtailment protocol related to whooping cranes, pausing turbines' operation if these birds are spotted flying within 2 miles of our operating wind facility. In addition, both of Capital Power's recently constructed facilities in the United States follow the guidelines established by the Avian Power Line Interaction Committee. The company has also conducted multi-year bird and bat monitoring programs at its facilities in Kansas, Alberta, Ontario, and British Columbia. The company has also participated in ongoing research efforts related to bat impacts from wind turbines through the Canadian Wind Energy Association. It has applied some of the early findings of this research by implementing a curtailment program for several Canadian sites during peak migration season for bats.

In terms of resourcing, Capital Power has staff and resources that actively manage environmental commitments and compliance that flow from regulatory approvals. The company's environmental management team members are based in the United States and Canada and draw on contracted expertise as necessary. Capital Power has extensive experience as detailed in Exhibit D with constructing large energy facilities. This experience includes hiring and overseeing specialty contractors with area-specific expertise in required local areas, and in complying with all required permit conditions both during and after construction of the facilities. As described in Exhibit D Section 5.0, Capital Power has not received any jurisdictional citations during construction of four wind farms in North America since 2017, and has received only one minor citation for operations at a North American energy facility. This demonstrates Capital Power's ability to manage compliance with conditions of permit approval during construction and operation of large projects, including conditions related to implementation of mitigation projects.

Capital Power will retain and rely on the expertise of experienced contractors such as Tetra Tech and Northwest Wildlife Consultants (NWC) to implement mitigation projects such as habitat mitigation plans and revegetation plans. Tetra Tech has experience conducting post-construction monitoring measures, including monitoring of revegetation success and weed control, on numerous facilities in Oregon. Three relevant examples in Oregon are:

- Restoration and enhancement of the Fox Creek Floodplain near Fox, Oregon. This project includes design and implementation of stream and floodplain restoration totaling more than 4 miles of Fox Creek and associated floodplains and uplands.
- Ochoco Preserve Restoration for the Deschutes Land Trust near Prineville, Oregon, addressing restoration of stream, riparian, wetland, and uplands habitat for 184 acres.
- Construction and revegetation monitoring for the Wheatridge Renewable Energy Facility in Morrow County, Oregon.

NWC is a specialty firm with extensive experience focused on Columbia Basin and Great Basin wildlife and botanical surveys, monitoring, and habitat mitigation for numerous facilities across Oregon.

Capital Power has been actively discussing the Project with the CTUIR. The company has extensive experience in working with Indigenous communities in Canada, including developing consultation programs that involve these communities in the regulatory process for wind projects and which provide the means for meaningful engagement in the process. Capital Power has developed agreements with a number of Canadian Indigenous communities that address the cultural and economic interests of these groups relative to projects that developed in the traditional territory of these communities.

9.0 Conclusion

Based on the evidence provided in this exhibit, the Energy Facility Siting Council can conclude that Nolin Hills Wind, LLC, through its parent corporation, Capital Power Corporation, complies with the organizational expertise standard under OAR 345-022-0010.

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Exhibit M

Applicant's Financial Capability

Nolin Hills Wind Power Project
January 2022

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

d/b/a Nolin Hills Wind, LLC

Prepared by

TETRA TECH

Tetra Tech, Inc.

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List of Attachments

Attachment M-1. Opinion of Legal Counsel

Attachment M-2. Letter from Bank

Acronyms and Abbreviations

Applicant	Nolin Hills Wind, LLC
EFSC	Energy Facility Siting Council
OAR	Oregon Administrative Rules
Project	Nolin Hills Wind Power Project

1.0 Introduction

Exhibit M provides information on Nolin Hills Wind, LLC's (the Applicant) financial capability, as required to meet the submittal requirements of Oregon Administrative Rule (OAR) 345-021-0010(1)(m) paragraphs (A) through (C). This includes the Retirement and Financial Assurance exhibit for the Energy Facility Siting Council (EFSC) to make the appropriate findings under OAR 345-022-0050(2):

345-022-0050 Retirement and Financial Assurance

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

1. *The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.*
2. *The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.*

As discussed in Exhibit W, in the unlikely event that a permanent cessation of construction or operation of the Nolin Hills Wind Power Project (Project) occurs, the site can be restored to a useful, non-hazardous condition. However, in this exhibit the Applicant will establish that it has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to EFSC to restore the site to a useful, non-hazardous condition, as discussed below.

The requirements of OAR 345-021-0010(1)(m) paragraphs (A) through (C) are provided in Sections 2.0 through 4.0 of this exhibit.

2.0 Opinion of Legal Counsel – OAR 345-021-0010(1)(m)(A)

OAR 345-021-0010(1)(m) Exhibit M. Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant must include:

OAR 345-021-0010(1)(m)(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

Attachment M-1 is an opinion from the Applicant's legal counsel indicating that the Applicant has the legal authority to construct and operate the Project without violating its articles of incorporation or similar agreements.

3.0 Proposed Type and Amount of Financial Instrument – OAR 345-021-0010(1)(m)(B)

OAR 345-021-0010(1)(m)(B) The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050;

Prior to beginning construction on the Project, the Applicant will submit a bond, bonds, or letter(s) of credit to the State of Oregon in an amount equal to the net costs of Project retirement as detailed in Exhibit W. The bond(s) or letter(s) of credit will be provided in a form approved by EFSC and will ensure that adequate funds exist for the retirement of the Project and for restoration of the Project site to a useful, non-hazardous condition. The bond(s) or letter(s) of credit will be adjusted annually for inflation according to the Gross Domestic Product Implicit Price Deflator Index.

4.0 Evidence of Reasonable Likelihood of Obtaining Security – OAR 345-021-0010(1)(m)(C)

OAR 345-021-0010(1)(m)(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.

The Applicant has obtained a letter from Royal Bank of Canada (Attachment M-2) demonstrating that it has a reasonable likelihood to obtain one or more bonds in an amount equal to or greater than the cost of Project retirement and restoration, as detailed in Exhibit W.

5.0 Conclusion

The evidence provided in this exhibit demonstrates that the Applicant has a reasonable likelihood of obtaining a bond or letter of credit in an amount sufficient to restore the site to a useful, non-hazardous condition as detailed in OAR 345-022-0050(2).

Attachment M-1. Opinion of Legal Counsel

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Capital Power Corporation
1200 – 10423 101 Street NW
Edmonton, AB T5H 0E9
T 780.392.5330
www.capitalpower.com

October 13, 2020

Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem, Oregon 97301

Subject: In the Matter of the Application for a Site Certificate for the Nolin Hills Wind Project

Dear Sir or Madam:

I am an attorney for Capital Power Corporation, a Canadian corporation, and its wholly owned subsidiary and affiliate, Nolin Hills Wind, LLC (the "Applicant"). I have examined originals or certified copies of the books and records of Applicant and such other documents, limited liability company records, certificates of public officials, and instruments regarding the Applicant as I have deemed necessary and appropriate for the purposes of this opinion letter.

In rendering the opinion expressed below, I have assumed (i) the authenticity of all the documents submitted to me as originals and (ii) the conformity to original documents of all documents submitted to me as copies. As to factual matters, I have relied to the extent deemed proper upon statements and certifications of officers and managers of the Applicant.

Based on the foregoing, to the best of my knowledge, I am of the opinion that, subject to the Applicant's meeting of all applicable federal, state and local laws (including all rules and regulations promulgated thereunder), the Applicant has the legal authority to construct and operate the up to 600 MW nameplate capacity wind and solar generation facility and associated facilities located in Umatilla County, Oregon (the "Project") without violating its articles of organization, covenants, or similar agreements.

The foregoing opinion is limited solely to whether the Applicant has the authority under its operating agreements to construct, own, and operate the Project. I express no opinion as to the applicability of any federal, state, or local laws (including all Oregon laws and any rules and regulations promulgated thereunder) to such construction and operation or as to the effects of the foregoing laws on such construction and operation.

Sincerely,

Michael Hall, Senior Legal Counsel
Capital Power Corporation

BEST 50 CORPORATE CITIZENS

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Attachment M-2. Letter from Bank

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RBC Royal Bank®

Royal Bank of Canada
Corporate Banking
3900 Bankers Hall West
888 – 3rd Street S.W.
Calgary, Alberta T2P 5C5
Tel: 403-299-8428

Bryn Davies
Authorized Signatory

October 14, 2020

Oregon Department of Energy
625 Marion Street NE
Salem, Oregon 97301-3737

Attention: Todd R. Cornett, Assistant Director, Siting Division

Dear Mr. Cornett:

Capital Power US Holdings Inc. ("CPUSHI") is a valued client of Royal Bank of Canada ("RBC").

It is our understanding that CPUSHI (as parent of the Applicant, Nolin Hills Wind LLC) may be asked to provide a letter of credit and that the potential liability of the letter of credit could total an amount of up to thirty-two million dollars ($32,000,000.00). RBC has an ongoing relationship with CPUSHI which includes providing credit facilities and from time to time, issuing letters of credit. As of today, CPUSHI has sufficient capacity on its credit facility to issue the letter of credit. Provided there is sufficient credit facility availability at the time, there is a reasonable likelihood that RBC would provide the letter of credit should it be required, subject to our regular review and acceptance of the terms and conditions of the final contract and required letter of credit.

Any arrangement for the final letter of credit is a matter between CPUSHI and RBC and we assume no liability to third parties or to you if, for any reason, we do not execute said letter of credit.

If you have any questions, please do not hesitate to call me at (403) 299-8428.

Yours truly,

Bryn Davies
Authorized Signatory

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ESTERSON Sarah * ODOE

Subject: Umatilla County Planning Department Comments - Nolin Hills DPO

From: Robert Waldher <robert.waldher@umatillacounty.gov>
Sent: Thursday, May 26, 2022 4:15 PM
To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; SLOAN Kathleen * ODOE <Kathleen.SLOAN@energy.oregon.gov>
Subject: Umatilla County Planning Department Comments - Nolin Hills DPO

Hi Sarah and Kate -

Thank you for the opportunity to do a quick tour of the site today and for the opportunity to provide comments on the DPO. I look forward to working through these comments with your Department as part of the SAG process. Please let me know if you have any questions.

Umatilla County Planning Department, as a reviewing agency for the Nolin Hills Project, provides the following comments related to the Draft Proposed Order (DPO):

Comment Related to Land Use and 2-Mile Setback Requirement

Umatilla County Development Code (UCDC) Section 152.616 (HHH)(6)(a)(3) establishes a required 2-mile setback from a turbine tower to a rural residence. Based on the Planning Department's review, rather than recommending that the Energy Facility Siting Council (Council) find that the proposed facility is required to comply with the local substantive criteria found in UCDC Section 152.616 (HHH)(6)(a)(3), the DPO recommends that the Council find that the proposed facility would nevertheless comply with the applicable statewide planning goals, as allowed by ORS 469.504(1)(b)(8).

Pursuant to OAR 345-022-0030 (3), *"applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group (SAG) recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the SAG does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.*

Umatilla County Planning Department interprets this provision of the Administrative Rule to imply that the local government is required by the statewide planning goals to have an acknowledged comprehensive plan and land use ordinances. These documents are considered the "applicable substantive criteria" that Umatilla County provided to the Oregon Department of Energy (Department) through the SAG process. Therefore, the Council shall apply the applicable substantive criteria (i.e. 2- mile setback), rather than evaluating the proposed facility against the statewide planning goals.

In addition, Umatilla County does not agree that just because the "applicable substantive criteria" (i.e. 2-mile setback requirement) is not explicitly "required" by the statewide planning goals, that the project is compliant with the applicable statewide planning goals. Counties are required, pursuant to state statute, to operate under an acknowledged comprehensive plan and implementing ordinances. A project that is not compliant with the local applicable substantive criteria of the comprehensive plan and implementing ordinances can't be compliant with the statewide planning goals.

Comments Related to Local Land Use Permits

The DPO suggests since the Council is making the land use decision for the proposed Wind Power Generation Facility and Associated Transmission Line that the applicant is not required to obtain the Conditional Use Permit (generation facility) and Land Use Decision Permit (transmission line). This would be contrary to how previous permits have been processed. Past precedence has been for the applicant to still obtain permits, including conditional use permits and land use decisions, through the County Planning Department after the project site certificate has been issued by the Department. Umatilla County Planning Department requests a condition of approval requiring the applicant to obtain local land use permits prior to commencing project construction.

The DPO does not appear to recommend any conditions related to obtaining local land use permits for concrete batch plants and aggregate sources associated with construction of the proposed project. Umatilla County Planning Department requests a condition of approval requiring the applicant to obtain local land use permits prior to establishment of any aggregate site(s) and concrete batch plant(s) associated with the project.

Respectfully -

--

Robert Waldher, **RLA**
Director
Umatilla County Department of Land Use Planning
Tel: 541-278-6246 | Fax: 541-278-5480
216 SE 4th Street | Pendleton, OR 97801
http://www.umatillacounty.gov/planning

UMATILLA COUNTY
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Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

Nolin Hills wind DPO Public Hearing

Complete Transcript from May 26, 2022 Public Hearing

Vice-Chair Howe: And the next item is the Nolan Hill, Hills wind power project, the public hearing on the draft proposed order on application for the site certificate. Um, the, uh, Nolan Hills is a 600 megawatt wind and solar facility in Umatilla County. It's proposed by Nolan Hills Wind LLC. We have, um, for an overview of the proposed facility, uh, Kathleen Sloan, a senior siting and analyst that will provide the overview of the siting process, the proposed facility compons, components, and location. Um, they'll be a public hearing overview by Kate Triana, the senior administrative law judge at the Oregon Office of Administrative Hearings, that'll explain the legal requirements for providing comments on the record and will facilitate the hearing, then we'll have the public hearing, or interested individuals will have any opportunity to provide oral testimony on the ASC and the draft proposed order. Written comments may also be submitted to the department through the close of the public hearing. So with that, I'll turn it over to, uh, Ms. Sloan.

Kathleen Sloan: Thank you Vice-Chair Howe. For the record, this is Kathleen Sloan. I'm gonna go by Kathleen this evening because our administrative law judge is also, goes by Kate, and I don't want people to get confused, but thank you for being here and being here for the meeting. I'm gonna go over a few slides about our process, um, where we are in our process, and a little overview of the project, and then I am going to turn it over to the ALJ, and she will open and run the hearing, so, so to start, I'm, just gonna go over a few overview slides. So tonight we are presenting, um, on the draft proposed order for the Nolan Hills wind power project. So I'm gonna go over the proposed facility, the public hearing process, and then, like I said, the ALJ will go into the hearing, she will open and run the hearing. So can I have the next slide, please? So EFSC, the, is short for the Energy Facility Siting Council, and this is part of the review process of EFSC. Um, we have a consolidated review process, um, and EFSC, the council, has oversight over most large-scale energy facilities and infrastructure within Oregon. We have seven members of the council. They're governor appointed and confirmed by the state senate, and they are volunteers, and they are from various parts of the state and bring a whole breath of experience to our council for these decisions. And ODOE, which is short for the Oregon Department of Energy siting division is the staff for EFSC, and so we have some staff here. I am one of them. I'm a senior siting analyst. I also have, uh, Sa, Sarah Esterson, who is our policy analyst. Todd Cornett is our council secretary. He's also our program manager and administrator. Behind me is Wally Adams. He is also one of our policy analysts I believe, and, um, Nancy Hatch, who is helping as an administrative assistant in our department, and she is helping facilitate this meeting. Next slide. So very briefly, I just wanted to give you an overview, kind of a schematic of wha, both our process and where we are at in our process, so in the beginning, uh, the applicant files a notice of intent. That notice of intent is open for public comment, and it initiates the agency coordination that we do, and it's basically the initial plan or proposal for the project. The next step is the project order. The department, ODOE, will issue a project order, and the project order will review the notice of intent and the project information and basically set the framework of what the review and the analysis needs to be within the draft proposed order, um, for the project, and after that point, um, it sets the parameters for the analysis within the project boundary and the things that, that the applicant

needs to prepare and submit, um, as part of the preapplication and the application. So the preapplication, the preliminary application for site certificate, gets filed, and there is a entire process that goes between the applicant and our department from the PASC to the ASC, and that is where we're, there's a lot of requests for additional information. We review and analyze the information in the studies that's provided. We take the reviewing agency coordination information, and what comes out of that is a revised preliminary, and then a final application, and the application for site certificate is not the final application until the department deems it complete, so once it's deemed complete, then we do another initiated round of agency coordination and start the drafting of the proposed order, the draft proposed order, and once the draft proposed order is pre, is written, we issue it, and it's open for public comment, and so we have issued the draft proposed order. We issued it on April 19th. It was posted on our website. It went out in publication as a public notice. We have emails that go out and a whole distribution list of how, how people get notified and notified that the draft proposed order is out. It's available for review. It's posted on our web page and our website, so people can go and review it and review any sections or any exhibits, any parts of the application that were used. Um, and then once that is done and we are drafting the proposed order, um, and it's drafted, and we've published it, then we have a comment period, and that comment period is opened at the initiat, when it goes public and it's issues, and then it will run through the public hearing, and typically, it closes at the end of the public hearing, and so tonight is where we're at in the process, so we are at the public hearing on the draft proposed order, and so this is a opportunity for those who are interested who may not have submitted written comments or comments through our comment portal to make public comment. Um, it's also an opportunity for the applicant to be here, and they're here, and I'm gonna introduce them really quickly. So our applicant is Nolan Hills LLC represented and a whole subsidiary of Capital Power. I believe I got that right. So Matt Martin is the lead person for Capital Power, and he is here with two of his team, Linnea Fosum, who is with Tetra Tech who helped do a lead on all of the environmental review and the application parts that they submitted, and then Tim McMahan, who is also here as, I believe, your legal support or legal counsel? Okay. So, yes.

Other Speaker: ****.

Kathleen Sloan: Of me? Turning around? Okay.

Other Speaker: ****.

Kathleen Sloan: Is it going in and out?

Other Speaker: **** little ****.

Kathleen Sloan: Okay. Okay, good 'cause I can't really hear how I sound when I'm talking into a microphone. Um, so anyways, that is where we are tonight. Once the draft proposed order and the public hearing are closed, then the department will move into the proposed

order, and that is basically taking the input, any changes that may come out of tonight or public comment, and finalize the draft proposed order into a proposed order. Um, there is a process that we have called a, an contested case, and that is also going to have an ALJ assigned to them if it, if it happens, but it is, um, part of the public comment importance is that in order to be a member of the, or a participant in a contested case, you have to have your comments on the record. And then the final order and site certificate are the last steps. The final order is issued, and the site certificate is issued, and, and that comes after council is finished. So next slide. So a little project overview. I know Capital Power will give a little bit more information in their section, but for Nolan Hills Wind, um, as I noted, Nolan Hills is an LLC, and they're a subsidiary of Capital Power Corporation. Um, the proposed facility is in Northwestern Umatilla County, and it is a proposed 600 megawatt wind and solar facility. The site boundary, which is what you see with the, the black line surrounding, is approximately 48,196 acres, and the related and po, um, supporting facilities for the facility will be, um, dispersed and centralized. The battery energy storage system, sys, um, which we call a BES, and there are two proposed, uh, transmission lines, the 20, 230kV gen-tie lines, and those are the, the lines extending out of the site boundary. Next slide. So again, this is another kinda overview of where we're at. This is our procedural history, so as I, sa, mentioned before, the applicant filed a notice of intent. They did this back in 2017, then the preliminary came in, and originally, it was only for wind, and that was filed in February of 2020, and through that iterative process that I explained of requests for additional information that they respond to and revise, preliminary application, they also expanded the project design to add, um, solar PV to the winds, so now it's a wind and solar project, and by the time the application for site certificate, they also included, um, the bus and the transmission lines, so the whole project became what we reviewed in the final application for site certificate, which we deemed complete on January 31st of this year, 2022. And as I, um, noted before, the department issued the draft proposed order on April 19th, and we are now in the, the red highlighted area of our public hearing. Um, and the next steps will be, uh, tomorrow, if it moves forward tomorrow, we will review with council as an information, um, item on your agenda for, for more comments and questions, and then the next, uh, phase would be the proposed order, the notice of contested case, and then a final decision. Next slide. So to, to emphasize the public participation phase at the DPO lev, part of the process, um, as I noted before, once we issued the DPO, it, it is started the public comment process, so we've been receiving comments, um, since that date, and it's open, um, to the public to participate in various ways. So some comments can be ma, you know, you can mail your comment, you can email your comment. We have a new public comment portal that is on our ODOE webpage that you can enter your comment online, and then it instantly become part of the official record, um, and it's publicly available for, for other people to see it. You can fax it to us. You can have it FedExed to us. There's a lot of different way, and tonight, the public hearing is just to provide people with the opportunity to be here in person and provide oral testimony or oral comment and also for the ALJ to have, to hold the public hearing. Next slide. So we have people calling in, people that may be online through our Webex, um, as well as in the room, and we will go through, uh, a process for calling on everybody that we will explain in a minute. So I just wanted to give some, um, kind of framework for, for making a comment,

um, and, and what it means to be as part of the contested case, so in order to be a participant in a contested case, you need to get your comments on the record, and you can do that during the public comment period. Once the co, public comment period closes, we don't accept any more input that would relate to being in a contested case. For consideration in a contested case, um, precedent has showed us that issues need to be raised sufficient, with sufficient specificity so that council and the department and the applicant can understand the issue and are afforded the opportunity to respond, and there will be a, a point in the, in the hearing where the applicant will be able to do that tonight. Um, and to raise an issue with sufficient specificity, the ss, the person making the comment needs to present facts to support their position. Next slide. So this slide is basically to kinda give ya guidance if you're interested in making a comment, of how to make an effective comment to the record, and what is probably less effective. Um, so making sure that you're tying your comments specifically to our siting standards, which is what we're following in our process, and to the Oregon Administration, Administrative Rule, the OARs, and, um, our standards, so being specific about whether or not you think a standard has been met and why is basically what, what is an effective comment. You, if, if you can state supporting facts, um, submit al, alternative or informational material that you think supports those facts, and then it's particularly helpful for us if you can reference the specific pages if you are taking issue with something specifically in the draft proposed order or the application itself. Um, less effective is basically stating your position without providing any supporting information as to why you do, you are taking that position. Um, or maybe submitting information without making us aware of what it's referencing or what it's being supporting of. I think those are, and raising issues that are clearing outside of our jurisdiction or our process or making what are basically unsubstantiated comments, which is to fail to provide any backup support or documentation for what you're saying, so that, and that is just a guidance on how to participate and make effective comment. Next slide. So at this point, I am going to turn it over to our administrative law judge, who is Kate Triana, and she is with the, um, Office of Administrative Hearings in Oregon, and she is our council-appointed hearing officer, so at this juncture, I am going to quit talking, and I am gonna turn it over to the ALJ, so Kate, um, I am turning it over to you.

Kate Triana: Okay, great. Uh, thank you, Kathleen. Uh, so as, uh, we've mentioned, this is the public hearing on the, uh, draft proposed order on the application for a site certificate, uh, for the Nolan Hills wind power project, and I am Kate Triana. I'm a senior administrative law judge at the Oregon Office of Administrative hearing, uh, and I've been appointed as the EFSC appointed hearing officer in this matter. Uh, we're sometimes referred to as hearing officers, sometimes ALJs, um, or administrative law judges. Um, and so I'm serving as the presiding officer for this hearing today. Uh, it is May 26th, 2022. The time is currently 5:56 p.m., uh, Pacific Time, and just to get on the record, uh, this public hearing is being held at the Energy Fa, Facility Siting Council, or EFSC meeting. Uh, it's in person at the Red Lion Hotel located in Pendleton, Oregon, uh, but it is a hybrid hearing, so it's also being held via, um, Webex webinar, uh, with a call-in option for those who can't participate in person or via Webex. So the purpose of the public hearing, um, is to provide an opportunity for the public, reviewing agencies, and

the applicant, uh, to present oral and written testimony on the Nolan Hills wind power project application for site, for certificate and draft proposed order. Uh, the 37-day record of the public hearing comment period on this draft proposed order is scheduled to close, um, today at the clos, conclusion of this hearing, uh, unless we discuss otherwise during the hearing. Um, so at the conclusion of, uh, my brief presentation today, uh, we're gonna call on each person interested in providing oral testimony, um, and I say we because Kathleen's gonna help me with, um, calling on the people who are in person. Um, and so we're gonna start though with, um, some oral testimony or a presentation by the applicant. Uh, I understand they also have a, a PowerPoint they're gonna present at that point. Uh, then we'll take public comments from people who are in person, um, at the, um, hearing there in Pendleton. Uh, then we'll take anyone who's on the Webex webinar, and then, finally, we will follow up with phone participants. Um, so just looking over, it looks like Kathleen had told me there are about five people, um, at the meeting who want to testify or provide comments, seven? Okay, and it looks like we have a number of people of the phone. I don't know if everybody on the phone is planning to testify or provide comments, but I think based on the, the number of people, I am going to set a time limit for comments today. Um, I'm gonna set a 5-minute per comment time limit. Um, and so then each individual will be allotted 5 minutes. Uh, department staff are gonna track the time for each commentor, um, and I think you'll be able to view it on the Webex also to see how much time you had, or have, and how much time is remaining. Um, if your time ends, and you're still speaking, I'm gonna kinda jump in and try and, uh, have you wrap it up just so that we can transition to the next speaker. I wanna make sure we get through all the comments, uh, today. So please try and be respectful of the allotted time and any other speakers today. If I have to ask any clarifying questions, or if a council member asks a clarifying question of the commentors, um, the time will be stopped for the question and response period, uh, and then restarted to allow the commentor to have the full time allotment. And I think this has already been mentioned, but just so everyone's aware, this is being recorded. Uh, the presentations, the written comments, and the oral testimony will all become part of the decision record, uh, for the proposed facility. If we could, um, pull up on the hearing, on the PowerPoint, I believe there's a slide that corresponds to this. Um, can we get the PowerPoint pulled back up? If we can't, it's okay. Perfect. Perfect.

Kathleen Sloan: Okay, good.

Kate Triana: So pursuant to OAR3450150220, Subsection 5A and B, um, everyone needs to note the following. A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing. A person who intends to raise any issue that may be the basis for a contested case must raise the issue with suffincint, sufficient specificity to afford the council, the Department of Energy, and the applicant an adequate opportunity to respond, including a statement of facts that support the pos, the person's position on the issue. Um, and so when, when I say in person, that includes anybody, um, participating in Webex or by phone. Um, all right, so if we could move to

the next slide, please? So to raise an issue in a contested case proceeding, the issue must be, um, first within the jurisdiction of the council. Uh, it needs to be raised in writing or in person prior to the close of the record of the public comment period, which, uh, unless discussed otherwise, will be at the close of this hearing today, May 22nd, 2022. And it must be raised with suf, sufficient specificity to afford the council, the Department of Energy, and the applicant an adequate opportunity to respond. Um, and to raise an issue with sufficient specificity, a person must present facts that the sup, to support the person's position on the issue. Um, okay. So if we could go to the next slide. Um, so we'll probably put this back up during, um, the comment period after the applicant does their, um, presentation, but just so everyone's aware, prior to testifying today or making your comment, I, uh, we need everyone to state the following: your full name, uh, with the spelling of your name. If you're with some sort of organization or group that you're representing, uh, please say the name of the organization or group. Uh, if you are also representing an organization or, organization or group, please let us know your title with that group. Uh, and then finally, uh, physical mailing or email address where the department can send, uh, notice information to you. Uh, and as you can see on that slide, if you don't wanna provide, uh, your mailing or email address publicly, uh, you can email it to Kathleen. Her email's up there as well as a phone number. Uh, but you do need to provide that. Uh, if we don't, if, if the department doesn't get that, I can't pro, provide you then with any notice that you're allowed. Um, okay, so I think at this point, the applicant had, um, a short presentation they wanted to do. Um, so Kathleen, is this the point where we wanted to do it?

Kathleen Sloan: Sorry. My mic was not on.

Kate Triana: That's okay.

Kathleen Sloan: All right, so yes, at this point, it is Capital Power.

Matt Martin: Great.

Kate Triana: Great. Thank you.

Matt Martin: Test, test. I think – can you hear me? Great. Great. Thank you council members, um, Hearing Officer Triana, ODOE staff. Thank you for having us here tonight. My name is Matt Martin with Capital Power on behalf of the applicant, Nolan Hills Wind LLC. I'm our director of business development. Been working on this project for, for some time as we went over some of the dates earlier. Um, pleased to present you a little bit more information about the project tonight and give you some background on the applicant, uh, Capital Power in, in particular. We'll go through a few slides. I'll try to keep it quick so we can open it up for public comment. So if we could get to the next slide?

Other Speaker: ****.

Matt Martin: Sure. Thanks.

Kathleen Sloan: And we, we –

Other Speaker: ****.

Kathleen Sloan: – yeah, we're having a, a technical issue we need to, to update, or correct, the slide deck. Okay. Oh, wa, stay tuned. It'll only take a minute.

Matt Martin: Oh, no, no problem. Great, thank you. So as I, I mentioned, um, Matt Martin, director of business development for Capital Power. So Capital Power is a, uh, Canadian-based independent power producer. We are, we own, uh, 27 different facilities across the U.S. and Canada, um, **** the 6,600 megawatts that we, we operate across a variety of different technologies. So we own, um, coal, natural gas, as well as, um, a, a large portfolio of wind and solar projects across the U.S. and Canada. We've got over 800 employees, um, and we are an investment-grade, uh, rated ut, um, company by S&P as well as a publicly traded company up on the Toronto stock exchange, so I think, um, you know, the, the key takeaway that I wanted to provide for you on this slide is that we do have the financial wherewithal to build this project. We lo, we do own and operate our projects long term, and, um, you know, we have a, a fairly large market cap. We're, we're on par in terms of size with Portland General Electric, so while this will be our first project within Oregon, you know, we, we do have a fairly substantial balance sheet, and are able to, to build this project ourselves, so. Next slide, please. So this slide didn't come out all of too well since you can't see the, um, background, but if you can image some of those dots are all of our different facilities across North America, and there's a big cluster north of the border in Canada, but I think the, the takeaway here is that we've got facilities all over the country, both the U.S. and Canada. Um, and the different colors are, are the different technologies, wind and solar, so. Next slide, please. So this is a picture of the Nolan Hills site, which we have been working on, and the project's been in development for a long, long time. I think the first wind, uh, lease for this project was signed in 2010. The first meteorological towers went up in 2011. Um, we've owned the project since 2014 and been working on it for the last 8 years, so while the NOI went in about 5 years ago, the development on this site has been going on for a long, long time. Um, it was originally just a wind project. We've since expanded it to be a wind and solar project, and so it's up to 600 megawatts with a variety of, of, um, it, up to 340 megawatts of wind. Um, the 260 megawatts listed here of solar, as well as a battery energy storage project that would be collocated with the storage, so, um, the project's about 4 miles south of Echo, as the crow flies, 10 miles west of Pendleton. As we found out today, it takes about 45 minutes to get there, but it's, um, it's, it's very isolated south of the river, and, um, I think we mentioned earlier, over 48,000 acres of land as part of the project, so we've been studying in a long, long time. We feel like we, we have a good feel for the site and have, uh, sited everything appropriately. Next slide. Here's a, here's a picture of the site. Um, again, very small, hard to see, but the yellow dots are the 112 proposed wind turbine locations. Uh, the yellow shaded area is the nearly 1,900 acres of, uh, where the solar

facility will be. There's a deep purple line that goes through the middle of the site. That's actually, a, um, an overhead 230 kilovolt line that will connect our southern array of turbines to our northern array of turbines, and so there's two, uh, blue boxes on there, so there's two project substations. Um, it, I believe it's about a 7-mile line that connects the two. And from there, um, most of the turbines will be connected via underground collector cables, and they will all, uh, funnel into that substation, uh, to the south or to the north, depending on upon which array it's at. It's very hard to see in the light here, but there's a pretty large swatch of empty area in the middle of the site around Alkali Canyon, so through a number of our avian studies as well as our Washington ground squirrel studies, we've found, um, you know, a, a very nice wildlife setting down there, so we've set back our turbines and facilities, uh, from, from Alkali Canyon. I believe there's another slide. Later on, we'll talk about the transmission lines. So just real qui, we, we mentioned a lot of this already, up to 112 turbines. The, the tip height of the turbines is, is under 500 feet, and so that's kinda of a rare in wind technology these days. A lot of turbines are going bigger. This project is going to be capped at 500 feet due to some radar concerns, so we've signed commitments to, to stay below 500 feet. Right now, everything is based on a 3 megawatt turbine, and, um, at the end of the day, the, the turbine technology changes over time, and, and we, you know, we will be selecting it based on an optimal fit at a, uh, later date as we approach construction. Next slide. So the solar component I mentioned earlier. It's a lot of number. I think the key is it's up to 1,900 acres. Um, it will be a tracking system, which isn't listed here, so it will be in north/south facing arrays, and it'll track from east to west over the course of the day, and it will be directly connected to the battery energy storage project, such that it is, uh, the battery itself will be charged by the solar facility. This is a picture of one of our operating facilities in North Carolina. Next slide. Here's a picture of the BES. Not a lotta, uh, detail needed. It looks like a big C can or box where the battery modules are, are inside. Uh, everything is self-contained, and, uh, will be constructed in, in a large array on the site at that northern substation. Next slide. It, this is a, uh, a picture of a facility kinda towards the end of operation. Um, wind farm in, in Illinois. Provides a little context in terms of, um, you know, we, we permit or, or we apply for kind of the largest footprint. You'll see about a, that's a 10-acre site where our O&M building and substation are. Substation's on the bottom of the slide. The op, operations building's on the kind of upper left with the turbines in the background, and you can kinda see how, when a project is temporarily disturbed versus when it, it ultimately, you know, everything gets restored, so you can see kind of the, the dark soil that's been kinda tilled back up and ulti, ultimately replanted, but these are just a lotta stats in terms of what else is included in the application. We can go to the next slide. On the transmission side, um, Kathleen mentioned earlier, but there are two different options. Uh, one is a 25-mile line that, uh, for the most part follows an existing Umatilla electric coop, uh, right of way, and so the, the plan there, and, and pi, this is a picture of a, of a large high-voltage line on the screen, but the plan there would be to take the existing Umatilla electric coop lines, which are generally distribution lines, and replace the existing poles, so you' be staying on the same side of the road as the existing poles. You'd put those distribution lines back, kind of halfway up the pole, and then our higher voltages lines would be at the top of the pole, and so you, there's the, some good examples of this throughout, uh, UEC's territory. It's

been done for other projects. The other option is a, uh, 230 kV line connected to the Bonneville Power Administration, uh, Stanfield substation, which is a planned substation, or proposed substation. At the end of the day, uh, there, there is a powerline that goes through the site today that's 230 kV. It's, um, the Le Grande to McNary 230 kV line. Unfortunately, that line is, uh, almost completely full, and so we can't connect to those existing line. A new line is going to be constructed, and so we've been having this project studied by BPA, similar to the NOI. We first went back in, in 2017 as a wind project. We subsequently expanded it to the 600 megawatts and U, and BPA has been studying it for the last 5 years. We expect results in July. The plan would be to build a, uh, a new substation, um, at a to-be-determined location at 230 kV, and then Bonneville would have to separately permit a new line from that substation all the way to McNary at 500 kV. And so that would be a separate permitting process that BPA would run. Next slide. I think it's a ma, next slide is a map of the two different options, so lots of colors and dotted lines here, but the, the upper lefthand corner, or the, no, call it the northwest part of the site, is that 25-mile zigzagging line. The reason it zigzags is that's the way the existing UEC poles go. And then there's a little nub on the top, almost in the exact center of the site, that is kind of, uh, our line to connect to the proposed, uh, BPA Stanfield site, and so we have applied for a line that crosses over the Umatilla River and, um, where BPA will effectively take ownership at a new substation and, and go, continue to go north with their own line which would extend past the purple area. Next slide. So this is just a, you know, some of the, um, local benefits of the project. We do anticipate enter into, into a, uh, a CIP agreement with the county. A lot information in terms of, like, full-time jobs. Um, this will be a very large construction project, and there will be a lot of activity on the site. Um, when it is operating, uh, typically we have a, uh, you know, one, one technician for every ten turbines is kinda the general rule of thumb, so the number of full-time employees will depend upon how many turbines we build. Uh, we do expect kinda the, our, our wind staff to also monitor and, and maintain the, the solar facility, and, and we will rely upon a lot of third-party O&M, um, vendors for, um, services and support over the course of the 30 to hopefully longer life, lifespan. And, um, you know, we like to kind of highlight that Capital Power does work a lot with, with local organizations, and we do have a, um, a reputation for, for, you know, giving back in the communities that we do operate in. Here's a picture of a, a fire station in, in, at, near one of our wind farms in Texas, and, and we do like to give back to those communities that we become a part of. Next slide. This is a, a quick summary of all the engagement we've doing over the course, over the last 5 years. Um, it's all in the application if you wanna go into more detail. And, oops, go to the next slide. And again all, all the surveys that have been taking place. You'll see some of these go back as far as 2010 in terms of the avian surveys as well as the raptor survey, so. I believe that's it. So I will, um, if you wanna skip to the next slide? I will turn things back over to the hearing officer and happy to field any questions.

Kate Triana: Right. Thank you. Um, I don't have any questions. Any question from council?

Todd Cornett: Hey, Kate. This is Todd Cornett for the record. Um, can I add something really quick?

Kate Triana: Ss.

Todd Cornett: I'm gonna take that as a yes, so I just wanna disclose –

Kate Triana: Sorry, yeah.

Todd Cornett: – on the record. I think it got missed in one of the slides, um, between the two slide decks, so just to, to put it on the public record, um, Council Members Condon and Jenkins, uh, were on a site visit with staff at the Nolan Hills site today, so I just wanna make sure that that was, uh, fully disclosed, um, just in case anybody had any concerns or wanted to raise any concerns about that, so with that, I will –

Other Speaker: And with Matt.

Todd Cornett: Excuse me? Yes.

Kate Triana: Okay. Was there someone else who had something they wanted to say? No? Okay. Thank you, Mr. Martin. All right. I think we're ready to move on to the public comment portion. Is that correct?

Todd Cornett: I'm sorry, Kate, I think we still have, uh, part of the Capital Power team wanting to provide some comment.

Tim McMahan: That's correct, um, –

Kate Triana: It –

Tim McMahan: Your Honor, this is Tim McMahan with Stoel Rives Law Firm, and I here, am here on behalf of the applicant. We also have with us, um, a land, one of the land owners as a representative who is testifying on behalf of the applicant, so I'll hand forward, um, his card, but understand that, uh, Mr. Cory, um, will be here speaking next. Thank you.

Kate Triana: Thank you.

Steve Corey: Um, thank you. Uh, um, my name is Steve Corey. Um, my full name is Stephen H., or Holk, Corey. Uh, I live here in Pendleton, uh, and, uh, I am, uh, one of the family owners of the properties that principally are involved in this project, and those, those companies are, uh, **** Sheep Company, Pendleton Ranches, and Mud Springs Ranches, and I serve as, uh, one of the shareholders and as chairman of their boards, uh, and so I speak on their behalf and in favor of this project. Uh, I wanted to tell you, and I appreciate the time, and I'll do it as quickly as I can, but I wanted to tell ya a little bit about our ranching and farming and, uh, how

we operate and how this project will affect us and what we as, uh, landowners foresee with respect to it, uh, and I have submitted as part of the packet a letter, and, uh, I wanna make sure that some points in the letter are at least, uh, addressed and then we'll be available to answer questions if you have questions, so I appreciate that opportunity. Um, we farm, uh, and, uh, and, ranch, uh, uh, uh, uh, a larger ranch than 75,000 acres. I'm not sure that I haven't gone back to look at it. This involves a project, you've seen the size, of about 43,000 acres where it's proposed. Uh, we have a, an integrated farm and ranch. Uh, we raise cattle. We raise sheep. Uh, we raise, uh, timber, uh, and we do dry land wheat farming, and we have participations for stewardship on our lands and conservation reserve programs and other federal programs that are available and, uh, of assistance to all the farmers and ranchers. Uh, and, uh, uh, so, um, I wanted to just speak for a few minutes about different aspects of this project and how it involves us. Um, first, uh, uh, I wanted to address the, uh, uh, solar facilities. Uh, the solar facilities are proposed on 1,800 acres, slightly more than that, of our property. Uh, and, uh, uh, I wanted to tell ya with respect to that, that we view that, uh, uh, that as something complimentary and supportive of our overall agricultural, uh, ranching opportunities and things that we do. Uh, we, um, we think that, uh, in terms of, uh, of how it is situated, that it's situated so that, uh, we can utilize all of the land around it and participate, uh, in our ways with, uh, uh, with, uh, agricultural continuing operations with all the lands around it. Uh, and, uh, we intend, uh, to continue and intensify our agricultural practices as a result of participations. Uh, when we have, uh, lease payments coming in, we've got, uh, uh, many things that we can en, enhance with our ranch that we have not ultimately ,uh, over time been able to do. My grandparents actually came here in, uh, the 19 teens. Um, both of them are Oklahoma State graduates. Both of 'em moved here to Oregon and settled here, and, uh, uh, and, uh, became ranchers, uh, soon after they arrived, and this is a ranch that continues now, and we actually have, uh, uh, uh, I would say, uh, I haven't counted, but, uh, 35 or 40 participants in three different generations that are owners and users and, uh, and, uh, consultants, and so on with this ranch. My brother was here. He just went to a little league game, but he's, uh, a veterinarian and, uh, he, uh, provides, uh, veterinary assistance to our sheep and our cattle and our horses, and, uh, uh, I could really go through a long family list of family members that all have roles and participations, uh, in this particular ranch. Um, we, uh, I, I wanna just go through a little bit of the letter without, uh, being too redundant. Uh, we, we don't think the project negatively will impact our access to irrigation or water rights. This land is not located, uh, within an irrigation district, and we're unaware of any certificated water rights associated with the land inside the project boundary or land designated for solar facilities. There are no wells or ponds on the land designated for solar facilities, and we have no intention or need to apply for any water rights in this area at this time or in the foreseeable future. Uh, that's important to us and I know important to the project. In fact, uh, the project, as I say, will enable us to support and improve our farming and ranching operations in the surrounding area by providing, uh, payments that we can invest in ongoing activities on a more active basis elsewhere on our property. Uh, specifically, we intend to devote part of the lease revenues to improsing, improving housing for our sheep herders, uh, as well as farm employees that are in the cattle and farming departments. Uh, we have, uh, uh, uh, if you looked at a deferred

maintenance and, uh, forced a deferred maintenance, because ranching and farming is not exactly super profitable in the type that we have, uh, this will actually provide, we think, a big help to our cattle and our sheep operations and our farming operations for our employees. Um, we also, uh, will, have been looking at and will look at, uh, different ways that we can, uh, clean up and expand, uh, our contiguous related ag businesses, uh, in order to strengthen sorta the base. One of the things we've look at is different, uh, uh, recreational and, and hunting programs that would be incorporated in that we could continue to utilize in connection with the land. Um, and like most farmers, we've got lots of needs for repairs of, uh, other buildings and, uh, uh, and intend to use payments for that purpose as well. Um, for us, the project will not, as we project, result in any reduction in the amount of, uh, employees that we have. Uh, to the contrary, we actually expect we will add agricultural jobs, uh, in one fashion or another because of the different things we'll now be able to do that will support and continue our agricultural venture. Um, we also expect to maintain and increase, uh, operational spending with local, um, producers, with local business peoples, uh, uh, grain companies with, uh, fertilizer companies, with, uh, others that are not, uh, uh, in our ownership but are around this community. It will actually provide more money for us to do things that, uh, I'm not sure with the price of, uh, fertilizer and diesel today from what's happened in the world in the last 6 weeks, uh, we'll be able to keep with that either, but that will for certain put us in the ballpark to stay going, so we, uh, uh, so we appreciate that. Uh, so, uh, uh, in short, I'm gonna quit with that, but I just wanted to give you an overview of our ranch, and we'll be round if people have questions to ask about it, and, uh, it certainly is a project that we too, uh, like, uh, Capital Power, have worked on for, uh, uh, 10 to 15 years in order to get to this point, and, so it's an important project also for us. Um, thank you.

Kate Triana: Thank you, Mr. Corey. Just for the record, could you spell your last name?

Steve Corey: Yes, uh, I can, C-O-R-E-Y, Corey.

Kate Triana: Thank you. Uh, does anyone with counsel have any questions for Mr. Corey? Okay. I'm not hearing any. Thank you, Mr. Corey.

Steve Corey: Thank you.

Kate Triana: Let's see. Mr. McMahan, were you gonna, was he gonna make a statement as well?

Tim McMahan: Thank you, Your Honor. Uh, Tim McMahan here, um, and, uh, I will try to keep my comments pretty short. I submitted a letter to the council, uh, earlier this week, I think, along with, um, an attachment and so what I don't plan to do is to go through that letter, um, although I'm happy to answer questions now or later about the letter that we've submitted, um, and, uh, but there are some, some, um, key reasons that we wanna just make clear, uh, and understand from the council's standpoint, ya know, sort of how, how the stand,

how the council's view of implementing Goal 3 exceptions may or may not be evolving because we have some concerns about some presidential issues and how applicants can kind of replicate a successful opportunity to make, make our way through the pro, processes. So, that's really what I wanna focus on her here, and again, I'll try to keep this in a 5-minute-ish range, but, um, this is what happened to my notepad when I sat there listening to everybody so I'll try to, I'll try to keep on point. This has been a long project, uh, long duration and I've been involved with this project from its outset and it has been a thrill for me to watch this project evolve and change and become what I think is truly one of the great, um, renewable energy projects for the northwest given the kinda hybridization of technologies that this project can deploy and the ability to essentially deliver baseload power with clean energy. It's a pretty awesome project and one that I'm very proud to stand with. Um, uh, we firmly believe that the evidentiary standards satisfy the Goal 3 exception here. We worked quite a bit with Mr. Corey and Bob Levy, as well, on, um, on having him help to, to, to not only make the case but to prove that this project delivers more than just an income stream to a landowner. So, this project really, I think, is a fairly, quite an exceptional project. Um, we, I have been at several council meetings. I have heard Mr. Jenkins and, um, Mr. Howe talk about the need for applicants to do a better job. With Goal 3 exceptions, we listened to that, um, and we, uh, understand it and we have worked very hard with ODOE, with the landowners, with our consulting team, with Linnea Fosum's team at Tetra Tech to do the very best job we can to articulate how this project does stand down and does meet and succeed, um, for Goal 3 exceptions, but here's the things, here are some things that I, I am just a bit concerned about. Um, uh, the issue of Goal 3 exceptions, there's a history and discussion with sort of some loose use of the term uniqueness, and I'm guilty of loosely using that term myself. In fact, in the letter I accidently used it again, um, but, but I do, I do think it's important to ask ourselves, and for the council to consider what that means. Does uniqueness only happen once if it's unique? Does it only happen once and if so what does that do to the ability to rely on precedent with future projects that are attempting to satisfy the Goal 3 standards through exceptions, or other standards for that matter? So, I think that's something that we just wish, uh, the council to really consider here, uh, what will the next facility be able to rely on for precedent? I'm assuming this project will be successfully permitting, permit, permitted. I believe we'll get our Goal 3 exception because I think we've done an awesome job but I am just concerned and wondering about future applications. So, there is a difference, I think, with how the English language uses this word, uniqueness. I'm sorry to get wonky on you here, and I looked into, uh, the orig, originization of this language and how it has evolved, how it evolved in the 16th Century, and it has evolved since the 16th Century. Um, Todd Cornett is a unique human being. Sarah Esterson has the unique ability to, to, to spot flaws in Todd's arguments. So, there's only one Todd, but Sarah's ability to spot flaws in Todd's arguments is probably shared by others. So, there is a difference in just calling something unique and saying uniqueness happens only once and then talking more broadly about the unique ability of a project to proceed and to, uh, to deliver value, um, to the community and to satisfy climate change goals and objectives. So, here's the deal. In our view, the Nolan Hills project has the unique ability to deploy hybrid, clean energy generation resources on a large site that enables the best locations for a solar facility and a wind facility

and a battery energy storage facility to also enhance agricultural practices and to meet the state's and the region's climate goals. So, that's my elevator pitch on how I think that uniqueness in this setting should be judged and considered. You've heard from Mr. Corey. Um, this is a legacy, multigeneration agricultural oper, operation where site selection for each component can minimize and avoid high-value farmland areas. The project has selected flat locations with no irrigation rights for its solar facility. That was deliberate and we were able to use a large site to do that. We were able to choose the best locations for the wind-energy generation that, uh, minimizes impacts to natural resources. Excuse me. So, what is important about this site is, in fact, its unique ability to develop a significant renewable energy project while enabling substantial investments in longstanding, sustainable and enhanced agricultural practices. This project adds a lot of jobs, new housing and will provide significant tax revenues for this county and the region, and it is based upon, uh, those attributes that the DPO does recommend – um, thank you, very much, John – uh, does recommend granting the Goal 3 exception. And I'll do this. So, um, and we're also, uh, also enabling the project to make, um, some fairly significant investments in climate mitigations. So, we ask the council to just take care in how you're making Goal 3 exception findings so that they aren't so onerous that there potentially, um, could be some compromise in the ability to build additional clean energy projects in the future. That's why I wanted to make sure that we had this opportunity to make this presentation and discuss this issue. I'm happy to answer questions later on. I'm sure Mr. Jenkins will love to take some shots at me on land-use issues. That's, of course, par for the course, um, so I very much appreciate the ability to speak here this evening. Thank you.

Tim McMahan: **** here now. I know you wanna do this, ****. All right, thank you.

Kate Triana: Thank you, Mr. McMahan. Um, is there anyone else from the applicant that was gonna provide any information today? One more?

Matt Martin: Sorry, Matt Martin again with, with Capital Power, and so we did submit a, a comment letter and I just wanted to reiterate for the record. I won't go through Mr. McMahan's arguments about Goal 3. Um, the one thing I did wanna kind of highlight with everyone is our comments on the decommissioning funding that, that's required of the project and we outlined some of the arguments, and, and we've had kind of a back and forth as, over the last couple years. Um, ya know, no objections to taking down the project in 30 to 35 years. It's just the amount that is currently estimated, um, which was done by Tetra Tech in terms of a decommissioning estimate and, ya know, we believe there is a certain amount of contingency that should be added for, uh, ODOE staff to oversee decommissioning, when it comes time, and, and that's included in our estimate. When, um, ya know, as part of the back and forth and part of the review, there was an additional 10 percent added, um, on behalf of, uh, ODOE, which, ya know, Capital Power's contingency is in the, I think, $600,000.00 range. Uh, ODOE's contingency adds an additional over $3 million, um, to, to that and then the **** itself has a 20 percent contingency, and, and again, contingency is designed because we don't know what's gonna happen into the future but we believe that our estimate which is the, the

decommissioning costs themselves has a sufficient, um, contingency on top of it, and effectively what happened as we went back and forth on this was an additional $6, almost $7 million of contingency was added to our decommissioning estimate, um, ya know, that is gonna sit in LC or a letter of credit over the course of 30 years and adds a lot of cost to the project. And we don't necessarily think that it's, it, ya know, the arbitrary 10 percent or 20 percent is, is justified. Um, we believe that, ya know, our experts who are, ya know, well versed in decommissioning, that, that their amounts should stand on their own, and so we just wanted to put that into the record. We believe that the, the amount, as presented by Capital Power, which is still in the $30 million range, um, I think it mighta been $32 million range, is sufficient, but once you add an additional $6 to $7 million and it's almost $39 million, that, it really compounds, compounds itself over time and, and to have a letter of credit, whether it's 32 or 39 sitting in the bank, we do think the state is, like, fairly protected because at the end of the day, Capital Power, a publicly traded company, large balance sheet, we're gonna be able to stand behind and, and take down this facility when it comes time, but the $7 million compounded over time adds, like, many millions of dollars unnecessarily. So, we just wanted to put that in the record. Any questions?

Other Speaker: Don't have my video on, I guess. I need to put my video on.

Other Speaker: ****.

Other Speaker: Yeah. Yeah. Hold on just 1 second.

Cindy Condon: Cindy Condon, and I have a question. So, um, in the, just with respect to that, especially the de, decommissioning and the cost, could you explain a little bit about the hierarchy Capital Power versus Nolan Hills?

Matt Martin: Yep.

Cindy Condon: Um, Nolan Hills is the applicant, I understand and Capital, but everything refers to Capital Power and we're depending on your balance sheet and your financials, um, but Nolan Hills remains the applicant of record, right?

Matt Martin: Correct.

Cindy Condon: So, could you explain how to, um, to be comfortable with the balance sheet, having that balance sheet and –

Matt Martin: Yes.

Cindy Condon: – your standing behind Nolan Hills.

Matt Martin: Yeah. So, um, we, we acquired a company called Element Power which is based, was based in Portland, Oregon. We, we acquired that LLC which Nolan Hills was a part of, and we kept that structure in place, but at the end of the day, um, Capital Power, uh, we actually have a, um, a parent company in Canada, Capital Power Corporation, and we also have a holding company in the US that's called Capital Power US Holdings. And so Capital Power Corporation is the rated entity. Everything flows back up the chain to Capital Power which is the publicly traded company that has, ya know, lots of shareholders. It's, it's the project that's on the Toronto Stock Exchange. It's what S&P rates in terms of financial capability, and so Nolan Hills Wind, LLC is a subsidiary of Capital Power and so, anytime we put a bond in place or a letter of credit in place, whether, if it's in Canada, it's from Capital Power Corporation. If it's in the US, it's from our US holding company. That's what the letter of credit is going – like when we put a $32 million or $39 million letter of credit in place, it's gonna be Capital Power Holdings as our, as the entity that is standing behind that and that's because that's the company that has the wherewithal to, to pay $32 million when it comes time. And so it is a, it's a fully-owned subsidiary, um, and we believe that that's ultimately who will stand behind the project. I don't know, does that answer your question?

Cindy Condon: Um, yes. Um, but in the, in the, um, materials –

Matt Martin: Mm hmm.

Cindy Condon: – there's certainly no guarantee that, or there's nothing that says, that I have read, that, um, says Capital Power stands behind, stands behind Nolan Hills, and I just wanna get comfortable with that, that that's a firm statement on your part that Capital Power is really the entity.

Matt Martin: Correct, Capital –

Cindy Condon: If we were to –

Matt Martin: – Power is the entity.

Cindy Condon: Okay.

Matt Martin: That's who I work for. That's who will ultimately fund this project and, uh, ya know, when this project is obtaining revenues and, and paying the bills, it'll run through Capital Power. And so, Capital Power itself has been around for a long, long time. We were the municipally owned utility in Edmonton. It's been around since 1896 and so we, we are very confident we will be around when it comes time to decommission this facility.

Cindy Condon: Thank you.

Kate Triana: Okay, great. Any other questions from council before we move on? Okay. Um, are we then ready to move onto public comment? All right. So, um, as I indicated earlier, we're gonna start with public comment from, uh, participants who are in person in Pendleton there, and, um, I think we have seven people who are gonna comment. Uh, as I mentioned, you'll have 5 minutes apiece. Don't feel like ya need to use all 5 minutes if ya don't want to, but that's kind of our, the limit. Um, so Kathleen, whenever you're ready, if you wanna have the first person come up and introduce themselves.

Kathleen Sloan: Thank you. For the record, this is Kate Sloan. Um, I just wanna check the room. I know a couple of people came in after we got started, to see if there was anybody who hasn't given me a comment card that wants to comment. No one? Okay. So, I believe we have eight. Eight, okay. So, the first commenter, um, I'm gonna call on is Mr. Chuck Little.

Chuck Little: My name is Chuck Little. The spelling is C-H-U-C-K, L-I-T-T-L-E. I live at 17 Westview Drive, Hermiston, Oregon. I'm here today in support of the Nolan Hills wind project. Uh, the Nolan Hill, Hills wind project is gonna be one of the few renewable, green-energy projects in Oregon that'll have wind, solar, battery storage from the beginning of the permitting process. The 300 megawatt wind-energy component comprised of 112 wind turbine generators make the bulk of the project. The 260 megawatt solar array will include approximately 8, 816,812 solar modules and battery storage system. There'll be approximately 120 megawatts of battery storage. This part, this part could cover up to 1,800 ac, 96 acres or 2.96 square miles, dependin' on the final technology and layout, layout settle, selected for the project. This portion of the project will be enclosed with an 8-foot tall security fence. Projects like this need to be moved forward to meet the supply of renewal energy in Oregon. With the passage of Senate Bill 1547 in 2016 that mandates that 50 percent of Oregon's electrical needs be provided by renewable sources by 2040. I'm urging the Oregon Energy Siting Council to approve this project so that Oregon can move forward in its clean energy mandate. Um, also a few comments that I've heard, um, I know the FSEC council does a very good job of review, reviewing these application projects, and I think they will be sure that any concerns raised in any of these meetings will be hashed out before that **** certificate is issued. So, thank you very much and have a good day.

Kate Triana: Thank you, Mr. Little. Are there any questions, uh, for Mr. Little? Okay. Um, not hearing any, we can go ahead and move onto, uh, the next person.

Kathleen Sloan: Okay. The next person is Mr. James Peters.

James Peters: Good evening, mem, good evening, members of the council. Thank you for letting me speak this evening. My name's James Peters, it's J-A-M-E-S, P-E-T-E-R-S. I'm a member of Laborers Local 737. I'm in support of the Nolan Hills wind projects because I've worked a few renewable projects in Oregon and I believe they are a win-win for Oregon. We

can harness green energy and we also provide money back into our communities by creating good paying jobs for Oregon residents. Thank you.

Kate Triana: Thank you, Mr. Peters. Can you, um, provide your, either your email or your address?

James Peters: Yeah. Uh, jpeters@leunanrock.org.

Kate Triana: All right, thank you.

Kathleen Sloan: He also provided his address on the testimony –

Kate Triana: Oh, okay.

Kathleen Sloan: – slip.

Kate Triana: My, my apologies.

Kathleen Sloan: No, that's fine. I just wanted you to know that.

Kate Triana: Okay. Who's next?

Kathleen Sloan: Mr. Eric, I believe it's Anton. Oh, you said no? Okay. Okay. He submitted written comment. Should I read them or should I – okay. All right. I have another one. Okay. Uh, Jodi Parker, Parker?

Jodi Parker: All right. So you didn't take a swing at that middle name there, did ya? Uh –

Kathleen Sloan: I couldn't read it.

Jodi Parker: Oh, well, that'd be my handwriting then. Uh, well, welcome to Pendleton, uh, Chair Grail, Vice Chair Howe, uh, council members, uh, good afternoon again, welcome. It's been quite a long time since we've been able to sit in council like this, isn't it? How exciting is this! So, thank you for taking the time to be out here and to listen to my testimony. I am Jodi Gessler Parker. I'm a business rep with Laborers International Union of North America, Local 737. We represent roughly 3,000 men and women in the, uh, State of Oregon who work as construction craft laborers. We work as a voice, uh, for our members across the state, ensuring that we have fair and equitable labor agreements, the best education through our training centers, as possible, and apprenticeship opportunities for our diverse communities. One of our state strengths is our commitment to investments in green energy or the renewables. Uh, through wind, solar, multi-mobile transportation options and biofuels to, just to name a few, uh, I feel that our great state leads the pack with innovations, uh, to ensure we

grow to a healthier place as we move forward to our future. The opportunities that a project like this will build in our region both economically and by providing a training source for careers that are successful and fulfilling. As it's known, the Nolan Hills wind power project will be good for Oregon's renewable infrastructure, the economy and put Oregon's, Oregonians back to work. The Nolan Hills wind power project should go through careful review by professional regulators to ensure compliance with their exist, existing laws. However, we should never put up roadblocks to the hundreds of middle-class jobs and financial support that this kind of energy will bring to Oregon. This project will provide, uh, important short and long-term, uh, boost to our regional economy, economy. The proposals will create jobs in construction, transportation and trades in both the blue collar and the white collar workers. Just as important, the projects like this strengthen our tax bases for our local economies and that have been hit so hard by this recent pandemic, and thank everybody for comin' through this. Uh, we are seeing signs of life in our urban areas but our rural areas, the impact clearly still lingers. Uh, projects and jobs create new revenues for our schools and other vital services. There was a time, quite a long time ago, years ago, that we lacked our knowledge, the technology, the tough environmental laws and procedures to achieve both a strong economy and a clean, safe environment. I'd like to think that those days are behind us thanks to technology. The tough environmental laws are best practices from business and workers alike, including the public oversight that we see here today. We can achieve both a clean environment and a growing economy. I know our organization is committed to both these principles. In the end, we do have a choice. We can scrutinize and support this project or we can put up lo, roadblocks and watch the jobs and the community benefits walk away. I urge you to apply due diligence to the oversight and to see that compliance of the principles offer then embrace the opportunities that they create for our fellow Orego, Or, Oregonians, stutter, stop, stutter. Uh, please move the Nolan Hills wind power project forward. I wanna again thank you for your con, for listening to my testimony, your considerations to this project, and of course your service to the State of Oregon. Thank you so much for your time. I would entertain one question, as many as you have actually. Seeing none, I'll just walk away quietly.

Kate Triana: Do we, do we need, um, any spellings or addresses?

Jodi Parker: Oh, I think it's on the form.

Kate Triana: Okay, perfect. Thank you.

Jodi Parker: Thank you.

Kate Triana: All right. Um, so then I think we're ready for our next, um, participant.

Kathleen Sloan: So, our next speaker is Jontae Clardy?

Jontae Clardy: Hello, my name is, uh, Jontae Clardy, spelled J-O-N-T-A-E, uh, C-L-A-R-D-Y. Um, I am an, uh, um, laborer, uh, well, in 737. Um, I worked, um, half my career in the, the union. I'm proud to say that I've, uh, built, uh, many progressive, uh, energy-efficient projects and I'm here today to voice my, uh, support with, for the Nolan Hill, uh, wind project. Um, all the renewable, uh, projects that, uh, can build these, uh, great service to Oregonians through, uh, family wage, jobs, health benefits, pensions and which, uh, also helps the local economy and supports infrastructure, um, educational needs and our training program and other further, uh, humani, humanitarian, uh, work. Uh, so please affirm this project and again, thank you for your time, and, uh, again, my name is Jontae Clardy, Local 737.

Kathleen Sloan: We have it on his comment card.

Jontae Clardy: And again, she has my address and everything on the comment card, thank you.

Kate Triana: Great. Thank you, Mr. Clardy. All right. Who do we have next?

Kathleen Sloan: Mr. Scott West, and we do have his address.

Kate Triana: Thank you.

Scott West: Good evening. Presiding officer and council members, my name is Scott West, S-C-O-T-T, W-E-S-T, and I am here, uh, representing Milron Ramos Ranches and Echo owners, Sam Ramos who is in the room and, uh, my uncle and my mom, Margaret Jane West. And so, wanna make some, uh, comments. Uh, we, um, provided the comments to you already. Uh, this is a follow up to a letter that we, um, submitted on, I think, April 22nd which was a few days after the original letter came out. Um, and generally our response, that would generally, um, would not oppose but we had some questions about communication and we also had some questions that, that we believed as the site map showed of that EPA quarter that comes across our property that, um, there were some siting questions around, uh, just on the easement and also some siting questions per, perhaps around the potential substation. So, we wanted to make sure that those, um, questions were, uh, addressed. I'm happy to report since the period of time and why I'm here this evening is that since that period of time, we had the opportunity to meet with Kimberly from Capital Power and also Matt, and I think that, uh, getting onsite and going across those, um, across the ground and looking at that really, I think, was very, very helpful for us and also I think very helpful for, I will say that on our behalf. Um, Matt can speak for hisself, um, but I just wanted to just wanted to let you know that, that we, uh, we thought the meetings were beneficial. They were very helpful. Um, we've been on that ground since 1906 so longtime, uh, residents in the community and equally interested in not only what happens, ya know, certainly with our property but, but the broader economic and social and all the rest of it with regard to not just on our property but within the whole, within the region but also in the State of Oregon. So, um, with that, I will conclude my comments. Um, my address and, and , uh, and contact information is on this letter and, uh, I know my uncle's, uh,

information is on the letter that was provided before. So, uh, once again, thanks for the opportunity to, uh, to be before this evening and, uh, happy to answer any question if anybody has any.

Kate Triana: Thank you, Mr. West. I don't have any questions. Any questions from council?

Scott West: That is sweet, thank you.

Kate Triana: All right. Thank you.

Kathleen Sloan: The last comment card I have is Mr. Art Prior. I do have your street address, but you didn't mention which town you're from.

Art Prior: Hi, um, my name's Art Prior. I'm from Echo, Oregon, from Eagle Ranch. My last name is spelled P-R-I-O-R. I am here in support of the project, but I do have a, um, a mild concern that the, um, the description of the path to get hooked up to the grid needs to be defined, um, and cemented or monumented that, that we don't deviate from that very much simply because our farm is in that corridor and if a, a simpler or cheaper way to get to the grid would fac, facilitate going through our farm, it would probably cause me some economic harm if the power lines would go through our, through our irrigated farm. And that, that's the only concern that I have. Uh, generally, we're, we're very supportive of, of the project and, um, um, would like to see it go through. And, um, any questions?

Kate Triana: No questions from me. Anything from council? Yeah. I'm not able to hear.

Other Speaker: Okay, Kate. We're tryin', there we go. Now we're cookin'.

Kate Triana: Perfect, thank you.

Other Speaker: Back up a little bit. Okay. Better turn it off. There we go. We won't get a repeat. Mr. Prior?

Art Prior: ****.

Other Speaker: Um, irrigated crop land on your property, is it all irrigated or, just gimme an idea if the transmission line doesn't conform to the existing proposed route.

Art Prior: All the information that I have and that we have indicates that it's gonna go down to the existing right of ways that Umatilla Electric has and I, and I guess that's what I would like to see and not deviate from that plan because it would be very advantageous to cut through irrigated, yes, and to answer your question yes, it would be very advantageous to cut through irrigated real estate to shorten the route, which would cause me economic loss.

Other Speaker: Okay. Thank you. That's what I needed to understand.

Art Prior: Yeah, sorry. Yep.

Other Speaker: Thanks.

Kate Triana: Okay. Any other questions? All right. Thank you, Mr. Prior.

Kathleen Sloan: So, I just wanted to check to make sure there were no additional commenters in the room and then if none, it does not appear that there are, I'm gonna turn it over to you.

Kate Triana: Okay. So, I think we need to figure out who on, oh, ya have something else going on? Okay. We need to figure out who on Webex is going to testify or provide comments. Um, Ms. Kathleen, how do you recommend they do that, that they raise their hand on Webex if they wanna comment?

Kathleen Sloan: Yes, there's a Webex feature that is the raise your hand if you wanna comment. And the way you get to it is to open the participant box and then you'll see how you can raise your hand.

Nancy: We do have one person with their hand up already.

Kathleen Sloan: You do? Okay. I can't see them.

Nancy: I can.

Kathleen Sloan: Okay. So, I'm gonna turn it over to Nancy because Nancy can see who's raising their hand, I can't.

Nancy: Thank you, Kate. I do have Dix, Dixie Echeverria with her hand up, so I'm gonna go ahead and open your mic, if you wanted to go ahead and make a comment or have a question.

Dixie Echeverria: Are you able to hear me?

Nancy: Yes, we can.

Kathleen Sloan: Yes.

Dixie Echeverria: Um, so my name is Dixie Echeverria. I'm with, and the last name is spelled just as it's, uh, stated on the screen, E as in Edward, C as in cat, H as in Henry, E ad in

Edward, V as in Victor, E as in Edward, R-R-I-A. I'm an owner in ELH, LLC, a property that is, um, uh, looks like the transmission is wanting to go across. We are a small, irrigated agricultural farm but we also overlay with the, um, dense agricultural, um, commercially permitted, um, permit through, um, Oregon Department of Ag, and we would just ask that, um, if they could utilize the transmission, or utilize the public right of way for the transmission line, there's already one from another wind farm, uh, that utilizes Highway 207. Um, if they aren't able to use that, then we would just ask, um, due to the other overlying, um, utilizing on our farm that they go to, um, adjoining properties, either to, so one would be to the south of ours, which would be Simplot Farms which I think Cunningham, I'm not sure but one of the shareholders of, um, the owners of, uh, Cunningham Sheep has a relationship with and then I think the farm to the, let's see, to the east of us is, um, they also have a renewable wind energy already permitted on that farm, as well. Um, it would just, uh, uh, transmission line of any, ya know, once one goes through, if there was more needed it would really complicate, um, the current and long-term use that is currently permitted, um, on our farm. Uh, and then also one other thing I was gonna ask was that if, um, it is cited that, I think that they had mentioned that they were gonna use the current poles that were there. There are single poles but we would just ask that they, um, continue to maintain a mono pole structure for a 230 kV line, transmission line, and then I have real reservations about the, the use of the UEC easements. UEC is a, um, very old coop in our area and oftentimes those easements are, um, blanket easements. They're often very wide, um, and broad-sweeping, um, easements and this would be, I would imagine at this point in time, um, it would be a very outdated practice, if not obsolete. Um, and so I have real, um, I would request, uh, hesitation to utilize these types of easements and they, I guess they would need new easements anyways, so.

Kate Triana: Okay, thank you. Stacey, was that everything you wanted to cover?

Dixie Echeverria: Yes.

Kate Triana: And just remind me again, how do you say your last name?

Dixie Echeverria: It's Echeverria and I'm with ELH, LLC and my name is Dixie.

Kate Triana: Dixie, and, um, would you, can you provide a phone num, I'm sorry, an email address or a mailing address for us?

Dixie Echeverria: Um, you guys have a mailing address for us. That's how we were notified of this through ELH, LLC and then I have also emailed comments to, uh, Mrs. Sloan.

Kate Triana: Okay. Um, Kathleen, do you have what you need for that, or do you need it again?

Kathleen Sloan: I am not sure I received her email. I do not recall it. I can check and see.

Dixie Echeverria: It was sent today and it, uh, woulda been from –

Kathleen Sloan: Oh, okay.

Dixie Echeverria: – ColumbiaTheaters@yahoo.

Kathleen Sloan: Okay. I can look in my –

Kate Triana: Can you say that just one more time? Can you just, so we make sure that you get what you need, can you just state your add, your email address?

Dixie Echeverria: It's ColumbiaTheaters@yahoo.

Kathleen Sloan: And, and I, I do have it. It just came through at 6:02 so after the hearing started. So, yes, I have your, I have your email and your comment so it'll get added.

Kate Triana: Okay, great. Thank you, Ms. Echeverria. Um, all right. Is there anyone else on Webex who wants to provide comments? Uh, if so, you can raise your hand. So, I think we were going through here. Um, if you're on Webex, the bottom right side of your screen there's a little, um, looks like the top half of a person with three lines. That's your participant panel. If you click on that, that'll open up the participants, and then at the bottom part of the participant panel, there's a little hand, um, and that's how you raise your hand. So, I don't see any other hands raised. Nancy, are you seeing any?

Nancy: Oh, I see no hands.

Kate Triana: Okay. All right. Is there anybody on the phone who, uh, wants to provide any comments? Um, can they unmute themselves, Nancy, if they're on the phone or how, how do they do that?

Nancy: Um, I would have to unmute them, but I do not see anybody.

Kathleen Sloan: I don't see anybody.

Kate Triana: Can they raise their hand if they're on the phone, or –

Nancy: Um, they actually need to press Star 3 on their telephone keypad to raise their hand, and they can press –

Kate Triana: Okay.

Nancy: – Star 3 again to lower their hand.

Kate Triana: Okay. So, if there's anybody on the phone who wants to make a comment, press Star 3. I'll wait just a couple moments to let anybody do that who needs to. Okay. I'm not seeing any hands. All right. Okay. When I've seen no hands go up, um, for any other comments on Webex or by phone. Um, I just wanna do one final call. If anyone wants to make a comment at this point in person or by phone or Webex, this is your opportunity to do so, uh, so I need ya to make yourself known now. Okay. Um, all right then. So, does the council have, anyone with the council have any questions or comments they wanted to make at this point for, to the applicant or at all, any, anything you wanna put on the record for this hearing?

Hanley Jenkins: This is Hanley Jenkins, council. Did you get that, Kate?

Kate Triana: No, I heard, I heard name, I heard Mr. Jenkins, but I didn't catch anything else.

Hanley Jenkins: Okay. Um, so, um, my organization is the Energy Facility Siting Council and, um, I'm not a council member, and my name is Hanley, H-A-N-L-E-Y, Jenkins, J-E-N-K-I-N-S.

Kate Triana: Okay.

Hanley Jenkins: Do you need anything else on that?

Kate Triana: Do, do you have any comments you wanna put on the record?

Hanley Jenkins: I do have a rather lengthy list, um, and for the benefit of those that have a copy of the draft proposed order, I'm gonna go through, kind of by page, uh, reference to my comments. Um, got somethin', uh, some questions here so let me pause for a second and see if – are we good? Okay. Oh, okay. Okay. So, my first comment is on Page 25 which is under the balancing issue, um, that has been raised in the, um, DPO. Um, I do agree, um, with the staff that the applicant has not, uh, met the criteria for the balancing authority, primarily because, um, the two turbines, um, that would be affected, uh, by the, um, Washington Ground Squirrel Habitat represent only 1 percent of the, uh, generating capacity for the wind farm, um, and so I, in that case I do agree with staff on that particular issue. On Page 35, um, the, um, there's a, uh, I, and this is an issue that I think we can resolve, um, with the staff, but there's a reference to a facility manager or managers versus operation manager. And I think it's the same, same person or persons, umm, but it's two different terms and, um, I didn't see any definition or reference, uh, the, the distinction to those. Um, on Page 37, um, there's a reference to an onsite batch plant, um, and that onsite batch plant would need a DEQ permit, um, but there's no indication that the onsite batch plant would need a county land-use permit. And we kinda, we talked a little bit about that today. Um, I don't know where there's a resolution of that but, um, it's something that probably oughta be addressed in the draft proposed order. Page 44, um, there's a discussion about, um, seismic, um, issues, um, and lemme go to that page. So it's,

uh, the issue is subsidence, um, and, um, there is a discussion about non-sub, um, seismic-related causes to subsidence, um, and there's a geotechnical investigation that's required, um, but the geotechnical investigation only talks about doing the seismic, um, issues associated with subsidence and it doesn't talk about non-subsidence. So, there, oughta look at whether or not you need to include non-subsidence, um, in that, uh, particular condition. On Page 60, there's the discussion, um, about the county's requirement for a 2-mile setback from residence. Um, and the, the staff has had a rather extensive discussion about substantive criteria associated with statewide planning goals and whether or not the county's 2-mile setback meets that requirement, um, and I think the, the telling, uh, focus of that for me, was that, um, the department, therefore, recommends counsel conclude that while Criteria No. 3, which is the 2-mile setback is both allowed by and consistent with Goal 3, it's, it is nevertheless not required by Goal 3, and I agree with that. Um, this is a kind of a unusual situation, where the county has adopted a standard that is greater than what is required by Oregon land use requirements, um, and it may be allowed, but it's not something that's required and it's not a substantive criteria and, therefore, um, is not, I, I agree is not a requirement for the site certificate. So, that gets me to, um, the issue that Tim focused on in his testimony, which is the Goal 3 exceptions process, um, and that begins on Page 114 in the, in the rule and I'm gonna go through some factual things that I agree with, um, and, um, and then I wanna get to kinda the crux of where I'm at on this issue. So, I agree there's 242 acres of high-value farmland associated with a solar site. So, this is in reference to the solar facility construction, um, and there's a hundred, uh, 1,840 acres of arable land, um, which has been cultivated in the past and it represents 37.8, or about 38 percent of the landowner's crop land in their ownership, which I think is fairly significant, uh, and so, I think that's important to recognize that this area proposed for the solar facility does represent a large portion of what is cropland on the applicant's property. I accept that it's not irrigated nor in an irrigation district, um, and this year it isn't even cropped. Um, but, it is arable land by definition, and it has been cropped in the past. I accept that the solar facility would not impact adjacent agricultural operations. We have testimony from adjacent landowners as well as the landowner that owns surrounding property to the proposed solar facility, um, and on our tour today, um, I did observe that most of that land around there is either fallow cropland or it's rangeland. Um, and I accept that there are financial benefits to the landowner that could be used to enhance other on-farm agricultural operations. I think, you know, that's important, um, but, uh, it, I don't think in and, it in and of itself is a basis for the exception. Um, I'm not sure that we want to be in the business of telling the county how to spend their SIT funds, um, to assure local agricultural economic benefits from those funds. The applicant alleges this site would have the least impact on other on-property cultivated agricultural uses, um, um, but, there are no identified alternatives in the analysis area nor is one required by the EFSC rules. Um, the applicant alleges the solar facility allows for integration with the wind facility, but hasn't guaranteed that and the staff's made that clear in the, in the draft proposed order. And the applicant alleges, um, this site would have minimal other environmental impacts that may be less than other portions of the subject property, um, but it still will have environmental impacts for this particular site. So, the point that I've made over the alt several meetings about taking exception to agricultural lands, is that this particular

site is, in fact, cultivated agricultural land, or has been cultivated agricultural land and qualifies as arable land under the state land conversation commission administrative rules and we are taking an exception to statewide planning Goal 3 through this process specifically for this 2,000 acres and I think that's the, the point that I've been trying to make is why is this particular portion of property, um, different than other cultivated property in Umatilla County and central Oregon. Um, and Tim uses the word unique. It don't think it's one of a kind. I think that the exceptions process could be met on other properties, but I do think that the reasons that are necessary for justifying the exceptions have to be specific to this particular property. I don't think the applicant has shown why this particular portion of cropland is any different than any other cropland in the region and I think that's where I'm having difficulty with agreeing with the exceptions that has been presented to us and so, my point is we have, it may not be unique, as Tim has described, but it has to be, there have to be reasons why this parcel versus any other parcel in central and eastern Oregon that is in cultivated cropland, and why is it different? Um, and why should it be exempt from protection of agricultural lands where other property is subject to those, so that's kind of where I stand on this. Thank you.

Kate Triana: Thank you, Mr. Jenkins. Is there any other, um, councilmember who would like to be heard?

Kent Howe: Yes, there is. This is Kent Howe. H-O-W-E.

Kate Triana: Thank you.

Kent Howe: And I'm on the council. Oh. We can't hear you.

Kate Triana: Okay, I can hear you now.

Kent Howe: Yeah.

Kate Triana: Go ahead. Whenever you're ready, go ahead.

Kent Howe: Okay, I want to, uh, follow up on the Goal 3 exception issue as well and, um, I, rather than reiterating what Hanley just said, or Mr. Jenkins, uh, I agree with what Counselor Jenkins has said and I'm gonna try to add a little bit more to it that may help the applicant in getting to, um, additional information that I feel we need in order to, um, make a finding that the Goal 3 exception has been met, and, uh, first of all, taking an exception to Goal 3 has a very high threshold. It, it's the way in Oregon that we allow removing agricultural land from Oregon's agricultural land inventory. The burden's on the applicant to provide us with adequate reasons from which we can make findings that we can use to adopt our own conclusions of law in support of the application and, uh, I don't think unique is the word that we want to use here. It's not that it's the only place that his could occur, but what are the reasons that sets it aside this, this location was 19, roughly 1900 acres, what sets those 1900

acres aside from the other 227,300 acres in Umatilla County that's in dryland winter wheat. Otherwise, it's not an exception to the rest of the dryland winter wheat fields in Umatilla County, if it's, if we're not making something that distinguishes it from those other lands. And so maybe it's not the reasons of why it's unique, but the reasons that distinguishes the loss of that agricultural land for the solar facilities proposed is different from the other 227,000 acres that would allow us to take that exception to Goal 3 and justify removing it from Oregon's agricultural land inventory. Um, you know, I don't know what it is. Maybe it's its proximity to the wind turbine facility and the adjacent ancillary facilities. Maybe it's topography. There needs to be something besides the fact that it's, you know, eight tenths of a percent of the dryland wheat that's harvested in um, Umatilla County, of the acreages of dryland wheat that's harvested and just that statistic doesn't cut it for me. It doesn't really distinguish it from those other 227,000 acres of dryland wheat in Umatilla County. So, that's what I'm gonna need in order to be able to say we've got adequate, um, findings to justify an exception to Goal 3 for the acreage that the solar facility would be placed on. That's my comments.

Kate Triana: Mr. Howe. Um, all right any other comments from council?

Cindy Condon: **** Condon member of the council.

Kate Triana: Ms. Condon go ahead whenever you're ready.

Cindy Condon: Mine are gonna be – sound simple compared to **** exception. Um, I just wanna take the opportunity again to talk about the, um, organizations expertise and the findings of fact and, um, if not a deficiency, an issue with me putting together that Nolan Hills is our applicant and throughout the document actually, um, applicant is used and then Power is used, and to me those aren't consistent. Um, and I, there's nothing in the findings of fact or the DPO that suggest to me other than the comment tonight, thank you very much, um, that Capital Power is the, will stand behind this LLC, that today is in name only. And so to me that's a deficiency in the organization expertise, um, standard. That's a simple way of saying it and then if I can just, um, move on to the decommissioning and the financial, um, standard, the responsibility standard. We take, um, a comfort letter or review a comfort letter that in this application is received from the Royal Bank of Canada and names again Capital Power and I understand that, and it's, um, refers to a specific date that as of March 2, 2022 and I realize that's probably the date of review that there was significant, significant capital financial reserves to, to issue a letter for Capital Power. Um, this project may, may not be due for some time and for me that comfort letter doesn't, doesn't provide much comfort I guess given the very specific way it was written at a point in time for Capital Power, not Nolan Hills and, um, I would like to, to strengthen that I guess even if Capital Power, um, or the parent company, uh, had a statement on the record, uh, uh, document saying that yeah, we are the responsible entity and our credit facility, uh, pertains to this. It is available for this so there we go. Thank you.

Kate Triana: Thank you Ms. Condon.

Cindy Condon: Yes.

Kate Triana: I'm sorry. Did you have anything else?

Cindy Condon: Oh no, sorry I didn't. I just thought you had a question of me. Thank you.

Kate Triana: Oh no, no thank you. Okay, anyone else with counsel? Okay. Well I'm not hearing any. Um, so I just want to check in and make sure that there's no one else that wanted to provide any comments at this point. Um, and then we'll go back to applicant to talk about responses to comments, but anyone in person or on the phone or on Webex that wants to make comments, um, raise your hand or make yourself known. Okay. I'm not hearing any and I don't see any hands raised. Um, okay so let's, um, go back to the applicant. Who is going to speak for the applicant in terms of, uh, responses to any of the comments received or, um, let's see is that Mr. McMahan are you the one who just sat down?

Tim McMahan: Yes thank you Your Honor. Tim McMahan again for the record. We would like some, um, opportunity to respond to the comments that have been made and actually we're going to ask for a 30-day continuance of the hearing leaving the record open for 30 days to give us an opportunity to do that, but before, um, we, uh, move along here, I would ask Mr. Corey to come back up as a witness and representative of the project and the landowner to provide some additional testimony.

Steve Corey: Um, thank you and, and I just had a few comments. Um, one of the difficulties is that, uh, I hadn't actually had an opportunity, probably had the opportunity, I didn't get done the review of the full staff report on where it came up with some of the assumptions, but in listening to what I think is, would be good and natural questions from the staff report, uh, by, by the counsel, um, I can see a few things that are, that will have, will come back and, and present, but, uh, one of the things that's important I think about this site because it's really very intentionally selected from among the acres that are in the 43,000 acres is that, uh, it's the very poorest farmland that we have and I've harvested, uh, uh, grain on this property as a youngster all the way up and, and my brother, Doug, who's here that I mentioned earlier when I testified, uh, both of us can tell you in driving combines through it, if you look at the lands that we have, this is the very poorest field that we've got. It's not a high producing field whatsoever. Um, the, uh, the second thing is it has no water and we actually were selective in making sure that it wasn't something that we would be interrupting any water rights on. I did testify to that. Uh, a third thing is that this seems maybe a little stupid, but, uh, uh, the fact is you drive into Pendleton off Reef, Reeth Ridge and you see a, see a sign that says, uh, watch out for glare, but it doesn't tell ya' how come. Well the reason is you're going around a bend and going right into a, uh, a solar project that's owned by the City of Pendleton that's, uh, that's right below the freeway. And I sorta always, uh, uh, I got to serve on the transportation commission as similar

to you, uh, for a number of years and I don't know how we actually came up with that sign and I hope it wasn't while I was there, but, uh, at any rate, this, I can guarantee this site is removed, so remote that you've got a piece of property that happens to have the right topography, flat, uh, and the right location next to an existing proposed wind project and right next to where the battery storage and the substation is, and also located close to the north end of the property where it's accessible very quickly if you have problems with the solar. It isn't as though you've got to drive the extra 10 or 11, 12 miles to get to where the wind turbines, uh, part of 'em may be. Uh, so it does have a uniqueness and importance to us in terms of, of, uh, how and where we cited it and then in terms of the percentages which I totally agree and I know how you came up with the 36 percent, I didn't say anything about it, but that calculation is, is not applicable here, but you haven't been told why it isn't applicable. Um, the, the lands that we already have NCRP and I think we refer to 'em in my letter, uh, that, uh, but you look at the lands we have in CRP, similar to this land where the solar site's gonna go, they've gotta be in the figure, but what you're comparing it to is simply apples to oranges. The comparison is this 1,890 acres to the land that we presently do not have, uh, NCRP that is cropped. So it's a comparison of that figure with the figure of about 2,600 acres and I think you add 'em together and they'll get 42 or 4,300 acres. Well that is the 36 percent, but the fact is if you take all the other CRP that you would've seen out there today, the figure really is about, it's, it's around 10 percent because the fields that you go through where the turbines are gonna be is also a CRP and we've selected those and put 'em in purposely because of the soil protection and the stewardship that, uh, we think is a responsibility just like the government does, of, of society and where we are. But if you're comparing, uh, the growing crop lands now in CRP with the site, it isn't 36 percent or 37 percent. It's, it's ten, eleven. Uh, the other thing is that, uh, as your vice chair has said, is the standard what we are compared to what we have or is a standard what we are compared to what the county has and the county is, I mean it's .02 or .2 or whatever the figure was in your things, but very, very low percent. Um, so anyway, uh, this was selected as a site as the very least minimal impact that we could believe was applicable for a solar site which as the members of the Hermiston, uh, group have said here behind me in the orange shirts, this is an important project we think to have done and have, I mean it provides everything that we're looking for collectively and it's, and it is a project we worked on and I, I think it is although unique is a term that I guess we can interpret several different ways.

END of Speakwrite Transcript but not end of Applicant repsonse to comments at Public Hearing – see next page for remainder from Webex audio transcript below:

. This is a piece that we think certainly justifies it.
976
02:10:06.599 --> 02:10:15.748
Anyway, thank you, thank you.
977
02:10:15.748 --> 02:10:25.918
Okay, Mr. McMann were you going to make, um, any other statements?

978
02:10:27.988 --> 02:10:36.988
No, your honor no, you wanna Thank you. We would request a continuance. Or at least 30 days we'll stick with 30 days. We may come back and seek more time but I think that should do the trick. Thank you.
979
02:10:36.988 --> 02:10:41.038
Okay, so I was looking at the calendar here. 30 days out puts us in a.
980
02:10:41.038 --> 02:10:51.149
Saturday, let's see, Timmy man here. Let me correct to the next council meeting. Thank you.
981
02:10:51.149 --> 02:10:54.569
Okay, um.
982
02:10:54.569 --> 02:11:05.219
And let's see next council meeting I know that in your opening, you went over that I don't know what that date is. Could someone remind me.
983
02:11:11.548 --> 02:11:15.029
For the record top corner, June, 23rd and 24th.
984
02:11:18.238 --> 02:11:29.488
Okay, um, so I will leave the record open for the applicant to respond to comments and concerns raised today. Um.
985
02:11:29.488 --> 02:11:39.899
And to submit those, then by the next meeting, so it looks like that's starting June 23rd. So I'll set the deadline is, uh, June 23rd.
986
02:11:39.899 --> 02:11:53.219
For applicant to respond. Okay. Um, I know I've done this several times, but I just want to make sure any other comments from anyone questions. Um, before we wrap up this evening.
987
02:11:54.689 --> 02:11:59.309
For honor, it looks like Dixie has her hand up again.
988
02:11:59.309 --> 02:12:02.639
I'm going to go ahead and mute her Mike. If that is good for you.
989
02:12:02.639 --> 02:12:06.809
Okay, great Thank you. Um.

990
02:12:06.809 --> 02:12:11.668
Dixie your hands up did you have something? That's an error.
991
02:12:11.668 --> 02:12:15.118
I have no further comment. All right. Thank you.
992
02:12:15.118 --> 02:12:22.559
Do you do have 1 more comment in the room? Okay. All right. Um, okay.
993
02:12:24.779 --> 02:12:28.708
Uh, for the record, Jodi Parker, uh, with the labors.
994
02:12:28.708 --> 02:12:32.969
737 2 questions with a, uh.
995
02:12:32.969 --> 02:12:36.389
With a continuance.
996
02:12:36.389 --> 02:12:43.769
Can we does that keep the public record com the comment record open again? And I'm seeing the head shaking? No.
997
02:12:43.769 --> 02:12:53.429
In that look, and then my 2nd question goes more towards my own testimony. Uh, can I submit that via email tomorrow?
998
02:12:53.429 --> 02:12:56.998
Uh, when I get tech to find my email program.
999
02:12:56.998 --> 02:13:03.658
Wh, what is it that you want to submit that you haven't told us tonight?
1000
02:13:03.658 --> 02:13:08.368
Well, no, no same. Uh, it's just what I read you got what? I.
1001
02:13:08.368 --> 02:13:12.179
What I spoke to this evening, just the printed version.
1002
02:13:12.179 --> 02:13:21.748
Submit the printed version, but my, I crashed my email system honestly. Um, and so I have to talk to I. T, to repair it. So I can't send it to you today.

1003
02:13:21.748 --> 02:13:28.498
By the close of this meeting, you have a printed copy of it that you could hand over.
1004
02:13:28.498 --> 02:13:35.009
It's flawed I had to line through a couple of things I could give it to you, but if you just excused the flaws.
1005
02:13:35.009 --> 02:13:38.668
Oh, I see. Um, Kathleen, uh.
1006
02:13:38.668 --> 02:13:44.488
If you have a preference getting it by email, or do you just want to have a hard copy? What would your preference be?
1007
02:13:46.649 --> 02:13:55.463
That's what 1 thing I would want to mention is that we are recording this meeting so your testimony, we will have a transcript. Oh, you'll have it on transcript. Yeah.
1008
02:13:55.493 --> 02:14:09.024
So, if there is additional comment that you did not cover, or you could give it to us now, or we can transcribe your comments. Oh, no, that's perfect. Then if you can transcribe my comments. Yeah That'll capture it.
1009
02:14:09.328 --> 02:14:17.429
Without my scribbles on my paper. Okay. And for the record, everybody's comments will be transcribed. So.
1010
02:14:18.719 --> 02:14:24.479
You guys hear me. Okay so it sounds like you were able to tell us everything you wanted to.
1011
02:14:24.743 --> 02:14:34.163
Yes, yes, I addressed everything I wanted to talk about. I appreciate your time. Thank you. Okay perfect. Thank you. Okay. Anything else from anyone. Kathleen or?
1012
02:14:34.224 --> 02:14:45.323
I'm sorry Jodi you did ask whether the, the continuance would leave the public record open mentioned that as no. It's just I'm only leaving the record open to allow the applicant to respond to things that were raised tonight.
1013
02:14:45.599 --> 02:14:55.319

Um, and, um, your honor just terrific man here again, for meeting some additional clarification on this point. Um, there are.
1014
02:14:55.319 --> 02:14:59.998
At least a couple of issues that came up tonight from the council members.
1015
02:15:00.444 --> 02:15:08.063
Including potentially, I need to do a county wide survey, um, for lands that may, or may not need a goal. 3 exception.
1016
02:15:08.094 --> 02:15:17.783
That is not something I've ever considered was a necessity for golf exception, but we may need some time and we may need some expertise. Um.
1017
02:15:18.088 --> 02:15:21.719
As witnesses potentially to deal with that issue.
1018
02:15:21.719 --> 02:15:25.859
And I, because this is truly a new twist that, um.
1019
02:15:25.859 --> 02:15:34.139
We're coping with I want to make sure that the record remains sufficiently open for us to potentially bring in some additional witness testimony on this question.
1020
02:15:35.368 --> 02:15:42.689
And it may be additional testimony from the land or almost for sure. It will be frankly. But, uh, but we may very well need some other consulting resources to assist.
1021
02:15:44.248 --> 02:15:51.899
Okay um, so are you asking.
1022
02:15:51.899 --> 02:15:56.578
I guess I don't quite understand what you're asking me to do. Or do you want.
1023
02:15:56.578 --> 02:16:00.418
Yeah, yeah, let me be clear. We asked that the record be left open.
1024
02:16:00.418 --> 02:16:06.179
For potential additional testimony and evidence at the continued hearing.
1025
02:16:11.038 --> 02:16:14.099
On June 23rd? Yes.

1026
02:16:16.559 --> 02:16:23.189
Okay MS slow. Do you have anything you want to add about that or respond to before I take a stab at it?
1027
02:16:24.779 --> 02:16:36.599
Not the record Todd Conan, I'm gonna go to, um, Patrick Ro counsel and make sure he's okay with that. Um, representation.
1028
02:16:39.209 --> 02:16:48.689
Patrick is the Department of justice council has general authority under statute for 69476.
1029
02:16:48.689 --> 02:16:55.228
Let's take any actions that it deems are proper, desirable, desirable for it to carry out its duties.
1030
02:16:55.228 --> 02:17:01.498
So, if counsel believes that for it to ultimately make a decision on this application, that it would help to have.
1031
02:17:01.498 --> 02:17:06.478
The additional testimony or evidence that Mr. McMann is referencing then that would be appropriate.
1032
02:17:10.049 --> 02:17:18.599
So, Mr Roe can I clarify? Is that something then the counsel would vote on or that you would need me to make a ruling on.
1033
02:17:20.129 --> 02:17:24.838
I think it would be safe as it counsel has delegated its authority to.
1034
02:17:24.838 --> 02:17:32.459
Conduct this meeting to you, but never nevertheless, I think it would be safe as if counsel did vote on it.
1035
02:17:33.629 --> 02:17:44.039
Okay, and so the vote then would be whether to allow the record to remain open until June 23rd. And then at that meeting, take additional testimony from the applicant.
1036
02:17:45.328 --> 02:18:00.179
Correct and you're, you're on if I could say 1 more thing on this point. At this point in time again, we've learned new information this evening and we're we to proceed without an opportunity to provide this information evidence.

1037
02:18:00.179 --> 02:18:03.748
Essentially is a tantamount to a denial of a very important facility.
1038
02:18:03.748 --> 02:18:08.578
So that is not something, um, we're taking lightly and we need the time to respond.
1039
02:18:10.408 --> 02:18:16.888
Okay, and does the 30 days or approximately 30 days to the next council meeting, give you that time.
1040
02:18:19.199 --> 02:18:31.679
My client says, yes. Okay. I, I guess I, I would say if we have to come back for a further continuous, we can discuss that with Mr. Roe but I, I think that we, we should be able to handle this in 30 days.
1041
02:18:34.078 --> 02:18:37.379
Okay, so does counsel want to vote on that?
1042
02:18:39.658 --> 02:18:44.129
I don't know, um, your procedure for, for voting on matters like that.
1043
02:18:44.129 --> 02:18:49.379
So this is handling and I think Patrick suggested it, but I don't know that it's necessary.
1044
02:18:49.379 --> 02:18:58.228
I, you know, it's, um, you're, you're your opportunity to allow the continuance and I think that's all it's necessary.
1045
02:18:59.998 --> 02:19:03.088
Okay, um.
1046
02:19:03.088 --> 02:19:07.439
So, are you in agreement or? Yeah, it's it.
1047
02:19:07.439 --> 02:19:12.689
Given that council has delegated its authority to conduct this here to, you.
1048
02:19:12.689 --> 02:19:24.359
Council member of Jenkins is correct. I believe you, would you, you would have that authority to grant the request. I'm just trying to. I just suggested and an abundance of caution.
1049

02:19:24.359 --> 02:19:30.058
Well, let me ask counsel this is there anyone on counsel who objects to my granting.
1050
02:19:30.058 --> 02:19:37.078
Um, this continuance speak up now. Okay the room.
1051
02:19:37.078 --> 02:19:41.998
In the room, anyone, um, on the phone or Webex want to speak up.
1052
02:19:45.203 --> 02:19:57.504
Okay, so it doesn't sound like there are any objections to that. So, what I'll do is I'll grant the continuous to allow, um, the applicant to respond to comments questions, concerns that were raised tonight.
1053
02:19:57.953 --> 02:20:01.523
Uh, the record will stay open and you can submit those, um.
1054
02:20:01.949 --> 02:20:16.078
Either in writing before that next council meeting, or Mr McMahon sounds like you're also, um, potentially wanting to provide some witness testimony or witness comments at that next meeting. Correct?
1055
02:20:16.078 --> 02:20:19.828
Correct.
1056
02:20:19.828 --> 02:20:25.318
So, in that case, will Mr Rowe coming back to you?
1057
02:20:25.318 --> 02:20:29.099
Well, I need to be present in at that since we won't be closing the record.
1058
02:20:32.459 --> 02:20:36.838
I think it would be best unless council decided that they would.
1059
02:20:36.838 --> 02:20:40.619
Take the responsibility for the hearing back from you.
1060
02:20:41.789 --> 02:20:46.349
Let me just double check my calendar.
1061
02:20:49.679 --> 02:21:04.439

Is it another evening meeting like this? Yeah, you're on. I think we could probably put this on the regular council agenda on Friday.
1062
02:21:04.439 --> 02:21:08.189
Friday, and what time is that meeting on Friday?
1063
02:21:08.189 --> 02:21:12.509
They typically start at 830. um, but we could certainly just the.
1064
02:21:12.509 --> 02:21:16.078
Uh, agenda item, uh, if you had some conflicts.
1065
02:21:17.728 --> 02:21:21.929
So, I have a hearing from 930 to 1130 that morning.
1066
02:21:21.929 --> 02:21:26.728
Um, on Friday, I could.
1067
02:21:26.728 --> 02:21:32.908
Thursday evening I could do or Monday I could do before 930.
1068
02:21:34.588 --> 02:21:49.103
So, we have, uh, uh, the schedule for Thursday, evening and Friday, so it'd probably be better to do it on either of those days. So we could probably set it for the, uh, 1st, agenda item in the afternoon on Friday.
1069
02:21:49.134 --> 02:21:50.064
If that works for, you.
1070
02:21:51.509 --> 02:21:55.078
Okay, and the afternoon when does what time would that be?
1071
02:21:55.078 --> 02:21:59.158
I think we could make that to be, you know, uh.
1072
02:21:59.158 --> 02:22:04.379
Work with your schedule, but, you know, looking at probably 1230 or 1 would probably preferential.
1073
02:22:04.379 --> 02:22:12.029
Okay, okay. And that would be Friday June 24th, correct?
1074

02:22:12.029 --> 02:22:16.769
Correct. Okay that will work. So, um.
1075
02:22:18.359 --> 02:22:28.408
Let's plan for that. We, I will come to the June 24th council meeting. Um, I won't be able to join until.
1076
02:22:28.408 --> 02:22:33.029
The afternoon portion, so.
1077
02:22:33.029 --> 02:22:39.779
Do you want to say, do you want to set a firm time of 1230 or do you want to say 1.
1078
02:22:42.838 --> 02:22:57.328
Say, 1, and then we'll be in touch with you, um, sometimes agenda items go long or short. So, uh, we'll be in touch with you, uh, during the prior agenda items to let, you know, where we're at. Um, but obviously, if you're not available, uh, we will wait for you.
1079
02:22:57.328 --> 02:23:10.228
Okay, I'll be done I'll be able to join by 1. my hearing goes to 1130, and I don't see that going long. Um, okay, so, June 24th, 10 PM um, I will.
1080
02:23:10.228 --> 02:23:23.549
Appear for that meeting as well and at that point, the applicant can provide any additional responses or testimony that they think is necessary. Mr. McMann is that, um.
1081
02:23:23.549 --> 02:23:26.939
Sufficiently clear for your your purposes.
1082
02:23:26.939 --> 02:23:35.158
Yes, your honor Thank you. And thank your council members. Yeah, thank you. All. Mr. row. Anything else you think? Um, we need to address about that.
1083
02:23:36.209 --> 02:23:39.959
No, I don't think so. Okay.
1084
02:23:39.984 --> 02:23:45.293
Okay, so then, um, I think that's everything that I need to go over.
1085
02:23:45.293 --> 02:23:56.453
So it's 747 PM on May 26 2022 um, the public hearing for today on the draft proposed order for the Nolan hills wind power project, uh, is concluding.

1086
02:23:56.453 --> 02:24:05.004
Uh, the public comment, period is concluding, uh, and the record is the remaining open for that limited.
1087
02:24:07.648 --> 02:24:13.468
Item of allowing the applicant to respond.
1088
02:24:13.468 --> 02:24:20.488
Thank you everyone for your time and your your patience tonight. Um, that's everything from me.
1089
02:24:23.279 --> 02:24:27.179
And, um, I will recess the, um.
1090
02:24:28.259 --> 02:24:32.519
Meeting for the energy facility siding council the time is now.
1091
02:24:32.519 --> 02:24:38.009
848, uh, 748, uh.
1092
02:24:38.009 --> 02:24:42.568
And the May 20,062,722 meeting of the.
1093
02:24:42.568 --> 02:24:46.888
Energy facility signing council is now recessed until tomorrow morning at 830.
1094
02:24:48.418 --> 02:24:53.009
Thank you JJ.
1095
02:24:53.009 --> 02:24:56.099
Thank you everyone bye. Bye.

MEETING ENDS - END OF HEARING TRANSCRIPT

ESTERSON Sarah * ODOE

Subject: public comment - nolin hills wind energy facility

From: Columbia Feeders <columbiafeeders@yahoo.com>
Sent: Thursday, May 26, 2022 6:01:49 PM
To: SLOAN Kathleen * ODOE <Kathleen.SLOAN@energy.oregon.gov>
Subject: public comment - nolin hills wind energy facility

Public Comment for Nolin Hills Wind Energy Facility

Would ask for the following regarding siting of Transmission Line:

1. Utilize public right away for transmission line.
2. Ask the transmission line avoid overlying any property owned by ELH, LLC for the following reasons:
   a. ELH, LLC smaller EFU property with high density utilization for large commercial permitted agriculture facility through ODA.
   b. Transmission lines overlying the permit through ODA will complicate the current and long term use of the permitted commercial use of the property.
   c. Adjacent properties are larger with less dense utilization agriculture use, with one of those adjacent properties has wind energy facility located on the property, previously sited through ODE.
3. Request utilization of single pole for least space requirements of a 230kv transmission line, anywhere near ELH, LLC property or adjacent properties, as these are high utilization commercial agriculture properties.

With that please consider alternative properties adjacent to ELH, LLC for placement of transmission lines, with less dense agriculture use for placement of transmission lines.

Thank you for your time. Please feel free to reach out with any further questions.

Dixie Echeverria
ELH LLC

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
05/26/2022

Public Written or Oral Testimony

me SCOTT WEST
dress 16121 SE OATFIELD RD
MILWAUKIE OR 97267

tten Testimony. Please write clearly.

PROVIDING WITH ORAL TESTIMONY AS A 40

ou wish to make oral public testimony at this Hearing: Yes X No_____

our oral testimony on the project be: In Favor ____ Opposed ____ General/Neither In Favor or Opposed X

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
05/26/2022

Public Written or Oral Testimony

Name ART PRICE
Address 32327 ORITON TRAIL ROAD
ECHO OR

Written Testimony. Please write clearly.

Do you wish to make oral public testimony at this Hearing: Yes X No_____

Will your oral testimony on the project be: In Favor X Opposed ____ General/Neither In Favor or Opposed _____

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
05/26/2022
Public Written or Oral Testimony

Name Jeff Grant
Address 17230 NE Sacramento st, Portland OR

Written Testimony. Please write clearly.

Good Evening, I am a member of Laborers Local 737,

The wind & Solar & battery Storage proposed in the Nolin Hills Wind Energy facility will provide work opportunities for our members. These are careers that include family wages, health & retirement benifits. Council please continue to support this pr

Do you wish to make oral public testimony at this Hearing: Yes_____ No X

Will your oral testimony on the project be: In Favor ____ Opposed ____ General/Neither In Favor or Opposed _____

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
05/26/2022
Public Written or Oral Testimony

Name CHUCK LITTLE
Address 17 WESTVIEW DRIVE
HERMISTON, OR 97838

Written Testimony. Please write clearly.

Do you wish to make oral public testimony at this Hearing: Yes X No ____

Will your oral testimony on the project be: In Favor X Opposed ____ General/Neither In Favor or Opposed ____

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
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Public Written or Oral Testimony

Name James Peters
Address 17230 NE Sacramento street
Portland, Oregon 97230

Written Testimony. Please write clearly.

My names is James Peters and I am a member of laborers local 737 and I am In support of this project because it is a Win-won for oregon we harness more green energy and create good paying Jobs for Oregon ressidene.

you wish to make oral public testimony at this Hearing: Yes ✓ No ____

ll your oral testimony on the project be: In Favor ✓ Opposed ____ General/Neither In Favor or Opposed ____

Oregon Department of Energy

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Public Written or Oral Testimony

Name Jodi Gueringer Parker

Address 17230 NE Sacramento Ste. 202
Portland OR 97230

Written Testimony. Please write clearly.

Will submit after testimony.

Do you wish to make oral public testimony at this Hearing: Yes ✓ No_____

Will your oral testimony on the project be: In Favor ✓ Opposed ____ General/Neither In Favor or Opposed ____

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
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Public Written or Oral Testimony

Name Jontae Clardy
Address 17230 NE Sacramento St.
Suite 202 Portland OR.
97230

Written Testimony. Please write clearly.

Thank You For Traveling to Pendleton to have this meeting
My name is Jontae Clardy and I am a member of Laborers Local 737.
I have worked my career as a union Labor and am proud to say I have
helped build many progressive and energy efficient projects. I am here
today to add my voice to the support for the Nolan Hills wind Power Project

Do you wish to make oral public testimony at this Hearing: Yes ✓ No ____

Will your oral testimony on the project be: In Favor ✓ Opposed ____ General/Neither In Favor or Opposed ____

Laborers' International Union of North America

LiUNA! LOCAL 737

Feel the Power

To the Oregon Energy Facility Siting Council (EFSC),

On behalf of the thousands of construction craft Laborers of the Laborers International Union of North America (LIUNA) Local 737, I and our union stand firmly in support of the Nolin Hills Wind Power Project. Our union has had a strong working relationship with the parent company of the applicant, Capital Power Corporation, and we believe Capital Power Corporation will uphold good labor standards on this project. These good labor standards are vital to ensuring Oregon's renewable energy industry is an industry that supports workers in Oregon. LIUNA Local 737 urges EFSC to approve the draft proposed order (DPO), and to ensure that this project proceeds to construction and completion.

With the passage of HB 2021 during the 2021 legislative session, our state enshrined into law many of the high road standards our union has historically pushed for on utility scale energy projects (10 MW and above). These high road standards include requiring contractors on all covered projects to: participate in an apprenticeship program, establish and execute plans for recruitment of women and minority workers with a goal of 15% utilization, have anti-harassment policies in place, be eligible to perform public work in the state of Oregon, demonstrate a seven year history of compliance with federal and state wage and hour laws, to pay area standard wages,[1] offer healthcare and retirement benefits to employees, and provide reporting and documentation and to respond to requests to verify any of the above conditions.[2] In lieu of demonstrating compliance with all these different aspects of the law, contractors may instead enter into a PLA and be "exempted" from these requirements. Because entering into a PLA ensures the highest degree of support for workers on projects, entering into a PLA is consistent with meeting the full intent and purpose of the law, and our state's law reflects this concept.

Capital Power Corporation has worked under PLAs in the past in other states, and thus has demonstrated its commitment to upholding the values behind HB 2021 through these good practices in other states. Our union looks forward to growing our own partnership with Capital Power Corporation, and we believe the firm will help ensure Oregon's renewable energy industry economy continues to lead the nation in good labor standards.

Our union requests that EFSC approve this draft proposed order.

Sincerely,

Zack Culver
Business Manager
Laborers International Union of North America (LIUNA) Local 737

[1] Also commonly referred to as "prevailing wage"
[2] https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled

Phone (541) 801-2209 * 17230 NE Sacramento St., Suite 202 * Portland, Oregon 97230
www.Local737.org

Oregon Department of Energy

Public Hearing on Nolin Hills Draft Proposed Order
05/26/2022
Public Written or Oral Testimony

Name Eric Ansen
Address 17230 NE Sacramento St.
Portland, OR. 97230

Written Testimony. Please write clearly.

For my experience of 17 years doing this type of work I have witnessed this kind of work change lives, communities and family's for the best. This project is a must eastern Oregon.

Do you wish to make oral public testimony at this Hearing: Yes_____ No X

Will your oral testimony on the project be: In Favor ____ Opposed ____ General/Neither In Favor or Opposed _____

Attachment D: References Cited in Proposed Order

Attachment D: References Cited in Proposed Order

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Attachment E: Draft Geotechnical Investigation Protocol (framework)

Attachment E:

Draft Geotechnical Investigation Protocol (framework)

(Amended based on Council comments during DPO review on June 25, 2022)

Prepared by the Oregon Department of Energy –
Based on recommendations presented in the Draft Proposed Order

The preconstruction, site-specific geotechnical investigation shall, at a minimum, include and/or address the following:

- Identify the current code and design standards at the time of construction
- Consider Quaternary faults as active
- Identify suitable subsurface information for determining Site Class in structure locations
- Characterize site-specific groundwater and soil conditions that may indicate a liquefaction hazard
- Identify any liquefaction hazards and how these hazards would be minimized a
- Identify methods to evaluate faults and landslides including high-resolution imagery, LiDAR or best available data, consistent with DOGAMI special papers #42, #45 and #48.
- Identify methods for evaluating flood risk to inform civil design (e.g., grading plans).
- Identify methods to evaluate risks from seismic and non-seismically induced subsidence.
- Identify laboratory testing and analysis to be used to address shrink-swell potential of soils.
- Identify laboratory testing and analysis to be used to address collapsing soils.
- Construction techniques shall include over-excavating and replacing with structural-fill if collapsing soils are identified during the geotechnical investigation.

Attachment F: Performance Guarantee Agreement Form

PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the Oregon Energy Facility Siting Council (EFSC) to issue the Site Certificate for the Nolin Hills Wind Power Project, Issue Date _____ (Site Certificate) to Nolin Hills Wind, LLC, a subsidiary of Capital Power Corporation (Subsidiary), the undersigned, Capital Power Corporation (Guarantor), a corporation incorporated in Canada with its principal place of business in the United States in Boston, Massachusetts hereby unconditionally guarantees to the EFSC the full and prompt payment and performance of all obligations, accrued and executory, which Subsidiary presently or hereafter may have under the Site Certificate. Guarantor further agrees to indemnify the EFSC against any losses the EFSC may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the EFSC of any of its rights and remedies under the Site Certificate, in the event of a default by Subsidiary thereunder, and/or as a result of the enforcement or attempted enforcement by the EFSC of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the Subsidiary's signing of the Site Certificate. Guarantor further agrees that Subsidiary and EFSC shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Site Certificate without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses that might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Subsidiary into or with another entity, corporate or otherwise, or the liquidation or dissolution of Subsidiary, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Subsidiary to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Subsidiary, or adjudication of Subsidiary as a bankrupt, or (iii) the assertion by the EFSC against Subsidiary of any of the EFSC's rights and remedies provided for under the Site Certificate, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Subsidiary, or existing in the EFSC's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the EFSC shall not be required to pursue any right or remedy it may have against Subsidiary or other Guarantors under the Site Certificate, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Subsidiary, or otherwise. Guarantor affirms that the EFSC shall not be required to first commence any action or obtain any judgment against Subsidiary before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the EFSC any amount, the payment of which is guaranteed hereunder and the payment of which by Subsidiary is in default under the Site Certificate or under any other document(s) or instrument(s) executed by Subsidiary as aforesaid, and that Guarantor will, upon demand,

perform all other obligations of Subsidiary, the performance of which by Subsidiary is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the EFSC that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, on _____.

CAPITAL POWER CORPORATION

By: _____
Name:
Title:

Acknowledged and Agreed to:
ENERGY FACILITY SITING COUNCIL

By: _____
Name:
Title: Chair

Attachment G-1: Draft Spill Prevention, Control, and Countermeasures Plan

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Nolin Hills Wind Power Project

Draft Spill Prevention, Control, and Countermeasures Plan

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

d/b/a Nolin Hills Wind, LLC

Prepared by

TETRA TECH

Tetra Tech, Inc.

January 2022

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Appendix C. Contractor's Emergency Response Plan Form

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Appendix E. Project Description and Site Maps [Site maps provided prior to construction]

Acronyms and Abbreviations

Applicant	Nolin Hills Wind, LLC
CI	Chief Inspector
DOT	U.S. Department of Transportation
EI	Environmental Inspector
EPA	Environmental Protection Agency
ER Plan	Emergency Response Plan
MSDS	Material Safety Data Sheet
MW	megawatt
OAR	Oregon Administrative Rules
Project	Nolin Hills Wind Power Project
SPCC Plan	Spill Prevention, Control, and Countermeasures Plan

1.0 Introduction

Nolin Hills Wind, LLC (the Applicant) proposes to construct the Nolin Hills Wind Power Project (Project), a wind and solar energy project with a nominal generating capacity of approximately 600 megawatts (MW) (preliminarily 340 MW from wind and 260 MW from solar), in Umatilla County, Oregon. The Project's wind energy component comprises up to 112 wind turbine generators, depending on the turbine model selected and the final layout determined during the micrositing process. The solar array will include up to approximately 816,812 solar modules, depending on the final technology and layout selected. The Project will interconnect to the regional grid via either publicly owned and operated transmission lines to be constructed locally by the Umatilla Electric Cooperative , or a new 230-kilovolt transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration Stanfield Substation. Other Project components include an up to 120-MW battery energy storage system, electrical collection lines, substations, site access roads, one operations and maintenance building, meteorological data collection towers, and temporary construction yards.

Nolin Hills Wind, LLC prepared this Spill Prevention, Control, and Countermeasures Plan (SPCC Plan) to be implemented during construction of the Project. This SPCC Plan is required by the Environmental Protection Agency (EPA) regulations contained in Title 40 of the Code of Federal Regulations, Part 112 (SPCC Rule). This Plan meets the requirements of the updated rule promulgated by the EPA on November 5, 2009. The State of Oregon does not have specific additional oil handling, operation, or design requirements. Hazardous waste management is regulated under Division 100 of the Oregon Administrative Rules (OAR); oil spill contingency planning under Division 141; and oil and hazardous materials emergency response requirements under Division 142.

This SPCC Plan outlines preventive measures and practices to reduce the likelihood of an accidental release of a hazardous or regulated liquid and, in the event such a release occurs, to expedite the response to and remediation of the release. This SPCC Plan restricts the location of fuel storage, fueling activities, and construction equipment maintenance along the construction right-of-way and provides procedures for these activities. Training and lines of communication to facilitate the prevention, response, containment, and cleanup of spills during construction activities are also described. Additionally, this plan identifies the roles and responsibilities of key Nolin Hills Wind, LLC personnel and contractors (i.e., primary and subcontractors) who will be involved in construction of the Project. This SPCC Plan will be included in construction bid and contract documents as contractual requirements to the contractor.

All contractor and subcontractor personnel working on the right-of-way are responsible for implementation of the measures and procedures defined in this SPCC Plan.

1.1 Nolin Hills Wind, LLC

The Chief Inspector (CI) will evaluate and approve each construction contractor's (Contractor) submittal under this SPCC Plan. The project Environmental Inspector(s) (EI) will oversee implementation of the SPCC Plan and of the Contractor's plans and submittals incorporated by reference. The EI will conduct regular inspections of Contractor activities and identify any issues that may require correction. The EI has the authority to stop construction to correct issues, if necessary. The CI, Contractor, Subcontractor, and EI will be required to maintain a copy of this SPCC Plan on-site available to all personnel. Contact information for Nolin Hills Wind, LLC and subcontractor representatives is provided in Table 1 and Table 2, respectively.

Table 1. Nolin Hills Wind, LLC Representatives

Function	Name	Location	Contact Info (phone and email)
Nolin Hills Wind, LLC Project Manager			
Chief Inspector			
Environmental Inspector			
Emergency Response Coordinator: Primary			
Emergency Response Coordinator: Secondary			
Emergency Response Contractors (Company/Responsibility)			
Spill Response			
Transportation Services			
Site Remediation			
Note: This table will be completed prior to construction.			

1.2 Contractor Responsibilities

The Contractor will prepare plans and submittals under this SPCC Plan that will include activities of the Contractor and its Subcontractors (individuals are noted in Table 2). The Contractor will ensure that such documents are maintained current and complete, and that this SPCC Plan is fully implemented. Responsibilities identified as "Contractor" in subsequent sections of this SPCC Plan apply to each Contractor and Subcontractor.

Table 2. Nolin Hills Project Contractor Representatives

Function	Name	Location	Contact Info (phone and email)
Primary Contractor			
Contractor			
On-Site Foreman			
Emergency Response Coordinator: Primary			
Emergency Response Coordinator: Secondary			
Environmental Contact			
Safety Representative			
Subcontractors			
Contractor			
On-Site Foreman			
Emergency Response Coordinator: Primary			
Emergency Response Coordinator: Secondary			
Environmental Contact			
Safety Representative			
Note: This table will be completed prior to construction.			

2.0 Spill Prevention Practices

2.1 Site Selection

Site selection for Project staging areas where hazardous materials and hazardous wastes may be present has considered and avoided environmentally sensitive areas. These sites are located at least 100 feet from streams (including intermittent and perennial), wetlands (including dry or seasonal wetlands), and other waterbodies (e.g., lakes, ponds, and reservoirs); 200 feet from any private water well; and 400 feet from any municipal or community water supply well. Hazardous materials and wastes may not be sorted, handled, or used in an area that has not been approved for that purpose by the CI.

2.2 Hazardous Materials and Waste Management

Each Contractor is required to develop a detailed, site-specific Hazardous Materials Management Plan prior to construction. The Plan will identify the legal requirements that apply and Contractor requirements, and the best management practices for Project-specific spill prevention procedures,

and other stipulations and methods to address spill prevention, response and cleanup procedures for the Project. A Hazardous Materials Management Plan Framework is included in Appendix A. Each Contractor is required to identify the hazardous materials that the Contractor will use and the wastes that the Contractor may generate during Project activities. This information includes Material Safety Data Sheets (MSDS) or waste designation information, quantities, locations of storage and use, the container or tank used secondary containment, and inspection procedures. The Contractor must keep a copy of this plan on-site for the duration of all construction-related activities.

2.2.1 Hazardous Materials

No new hazardous material may enter the job site without an amendment to the Contractor's Hazardous Materials Management Plan and without the express approval of the EI.

Usable hazardous materials will be removed by the Contractor for future use upon completion of work on-site.

2.2.2 Waste

Each waste generated will be evaluated by the EI for appropriate waste designation and appropriate disposal. In no case will any waste material be disposed of at the job site, right-of-way location, or adjacent property.

2.2.2.1 Rights-of-Way and Sites Owned or Leased by the Project

Wastes generated on the right-of-way and at sites owned or leased by Nolin Hills Wind, LLC that have the potential of being hazardous waste will be returned to the approved staging point, whereupon the EI will be notified. As necessary, the Contractor will sample wastes and request assistance of the EI in waste management.

The Project EI is responsible for designation of hazardous waste, universal waste, special waste, or recyclable hazardous materials in accordance with applicable state and federal regulations, including OAR, Division 100.

Regulated wastes will be placed in approved containers, maintained in good condition, and appropriately labeled. Containers will be in an approved area and the EI will be notified of the waste activity. Nolin Hills Wind, LLC representatives will arrange for appropriate disposal of regulated wastes.

2.2.2.2 Domestic Sewage

Domestic sewage will be handled during construction by means of portable self-contained toilets, which will be stationed at central locations and reasonable distances throughout the work area.

2.3 Spill Prevention

The Contractor will handle and transfer fluids used during construction so as to prevent the release or spill of oil or other hazardous materials. Materials that are likely to be used in construction equipment include gasoline, diesel fuel, hydraulic oil, and lubricating oils.

2.3.1 Tank and Container Specifications

Specifications for tanks and containers must meet generally approved standards, including but not limited to supplier's recommendations and specifications of the U.S. Department of Transportation (DOT). In meeting these standards, tanks and containers must continuously be of integrity and condition to be acceptable for storage and transportation.

2.3.2 Dispensing and Transfer

Dispensing and transfer of hazardous materials and wastes must occur in accordance with nationally recognized standards. This includes bonding or grounding during transfer of flammable liquids. The Contractor will inspect transfers of hazardous materials and waste.

Transfer of liquids and refueling will occur only at approved locations that are at least 100 feet away from any wetlands or surface waters, 200 feet from any private water well, and 400 feet from any municipal or community water well, with certain exceptions noted below (see Section 2.3.4).

Crews must have adequate spill response equipment available at the dispensing or transfer location.

Repair/overhaul of equipment will not occur on the right-of-way or temporary work space except for emergency-type repair of short duration. Any liquids will be collected in suitable containers and appropriately disposed of.

When materials are transferred from a storage tank or container to a vehicle, the Contractor will:

- Operate during daylight hours or where lighting is adequate to illuminate the area;
- Monitor the transfer operations at all times;
- Refuel at least 100 feet from wetlands or surface waters and at least 200 feet from potable water supplies, with certain exceptions noted below;
- Keep sufficient spill control materials on-site; and
- In the event of a spill, implement the spill response procedures.

2.3.3 Materials Storage

No hazardous materials will be stored at the site during construction or operations.

2.3.4 Setback Exceptions

The dispensing and transfer (e.g., refueling) setbacks identified above may not be practical for certain construction activities in certain locations. Exceptions may only be allowed for:

- Areas such as rugged terrain or steep slopes where movement of equipment to refueling stations would cause excessive disturbances to the surface of the right-of-way;
- Construction sites where moving equipment to refueling stations is impractical or where there is a natural barrier from the waterbody or wetland (e.g., road or railroad);
- Locations where the waterbody or wetland is located adjacent to a road crossing from which the equipment can be serviced; and
- Refueling and fuel storage for immobile equipment.

All exceptions to the required setbacks must be approved by the EI.

In these situations, the Contractor shall exercise extreme caution during fueling and lubrication of equipment and all other oil and hazardous materials transfers. Only a fuel truck with a maximum of 300 gallons of fuel may enter restricted areas to refuel construction equipment. Two trained personnel will be present during refueling to reduce the potential for spill or accidents. Adequate spill containment equipment suitable to the refueling activities as described in Section 2.3.2 will be maintained at designated setback locations during refueling.

2.3.5 Other Material-Specific Measures

Paint containers will be tightly sealed; excess paint will be properly disposed of according to manufacturer's instructions and federal, state, and local regulations. All paint tools will be cleaned in a designated area located at least 100 feet from all wetlands and surface waters. No paint would be stored on site.

Concrete trucks will be allowed to wash out or discharge surplus concrete or drum wash water on the site in designated concrete washout containers. The designated area will include sediment controls installed around the perimeter and will be located 100 feet away from wetlands or surface waters. After construction, the concrete washout area will be restored to pre-construction conditions.

2.3.6 Equipment for Safe Tank Operation

Tanks will be equipped with all standard safety equipment required for the specification packaging and its use.

2.3.7 Separation of Incompatible Materials

If any incompatible materials are used, they will be stored in areas separated in accordance with nationally recognized standards. Incompatible materials will not be consecutively placed into a

container or tank. In addition, sources of ignition will be prohibited in hazardous materials areas and waste areas.

2.3.8 Labeling, Marking and Placarding

Each container will be appropriately identified with contents as per Occupational Safety and Health Administration requirements (see samples in Appendix B). Containers and tanks used for transport of hazardous materials and wastes will be marked and labeled in accordance with DOT requirements (e.g., Proper Shipping Name, UN/NA Number, Hazard Class labels or placards). In addition, tanks will be labeled in accordance with National Fire Protection Association guidelines, where required by the local jurisdiction.

Approved areas for hazardous materials and waste will be secured against unauthorized entry and vandalism.

2.4 Secondary Containment

Approved secondary containment will be provided for each container with a capacity of 5 gallons or more.

2.4.1 Minimum Standards for Secondary Containment

Secondary containment for containers with 5 or more gallons of capacity may include a temporary containment area with temporary earthen berms and contiguous 10 mil polyethylene containment; or it may consist of a portable containment system constructed of polyvinyl chloride (PVC) or other suitable material.

Secondary containment volume will be at least 110 percent of the volume of the larger tank of hazardous materials and wastes stored. If earthen berms are utilized, they will be constructed with slopes no steeper than 3:1 (horizontal to vertical) to limit erosion and provide structural stability.

2.4.1.1 Tanks

No tanks will be located within the site boundary during construction or operations.

2.4.1.2 Contractor's Secondary Containment

Secondary containment provided by the Contractor must meet these minimum standards and must be implemented as proposed in the Contractor's Hazardous Materials Management Plan.

2.4.2 Regular Inspections

The Contractor will conduct daily inspections at locations where hazardous materials and wastes are handled and dispensed. Inspections will follow site-specific procedures in the approved Contractor's Hazardous Materials Management Plan. The source of any container leak will be

stopped immediately and residual wastes will be aggregated, designated, and properly disposed of. Any leaking container will be immediately overpacked.

All vehicles (e.g., trucks, side-booms, dozers, etc.) shall be:

- Inspected daily for leaks or signs of deterioration that could result in a leak;
- Repaired when defective tanks, hoses, fittings, etc. are found; and
- Parked at least 100 feet from wetlands or surface waters, with certain exceptions noted above (see Section 2.3.4).

The EI will provide oversight to the Contractor's activities on hazardous materials and waste management.

3.0 Emergency Preparedness

Each Contractor is required to develop a Contractor's Emergency Response Plan (ER Plan) (see Appendix C) for environmental emergency preparedness and response. The ER Plan is appropriate for the hazardous materials and wastes used and generated. The initial ER Plan will be approved by the CI. This ER Plan will be maintained current; subsequent revisions may be approved by the EI.

The Contractor will maintain adequate resources, including:

- Emergency response coordinators;
- Fire-fighting equipment (such as portable fire extinguishers);
- Spill control and cleanup equipment (absorbent materials such as pads, pillows, booms and socks, non-sparking shovels, etc.);
- Appropriate personal protective equipment; and
- The Contractor's ER Plan.

3.1 Emergency Responders

The Contractor will designate personnel responsible for incident or emergency response, in the event of a release to the environment. The Contractor will ensure that emergency responders identified will have appropriate training in environmental emergency or incident preparedness, prevention, and response. The Contractor's emergency contact information will be maintained current.

In addition, Nolin Hills Wind, LLC will designate primary and secondary Emergency Response Coordinators. Emergency Response Coordinators will have the authority to commit necessary resources to respond to environmental releases and to conduct cleanup.

3.2 Emergency Response Equipment

3.2.1 Contractor's Spill Containment and Cleanup Resources

3.2.1.1 On-site Equipment

The Contractor will have available, adequate spill containment and cleanup resources that are appropriate to their activities and to the hazardous materials and wastes handled. Minimum standards are identified on Appendix C. The following additional materials will be available at a central location on each staging area:

- Boom(s);
- Cleanup rags;
- 55-gallon DOT-approved containers;
- Replacement parts and equipment for repair of tanks, hoses, nozzles, etc.;
- Fire extinguisher, type B, C;
- Two bags of chemical sorbent material (e.g., kitty litter);
- Three 17-inch x 17-inch chemical pillows;
- Four 48-inch x 3-inch chemical socks;
- Twenty 18-inch x 18-inch x 3/8-inch sorbent pads;
- Twenty 30-gallon 6-mil polyethylene bags;
- Two 30-gallon polyethylene open-head drums;
- 10 pairs of polypropylene gloves;
- Two, each type, waste labels;
- Two 8-foot x 10-foot polyethylene tarps;
- One cooler;
- One quart jar;
- One trowel; and
- 20 hay bales.

The Contractor will be prepared to clean up, characterize, and dispose of spill debris. Nolin Hills Wind, LLC will have additional contractors available for associated emergency spill response, transportation, remediation, and disposal activities.

3.2.1.2 Vehicle Response Equipment

The Contractor will maintain a supply of spill materials as descried below.

Any vehicle used to transport lubricants and fuel will be equipped with:

- One 20-pound fire extinguisher (Type: B, C);
- 50 pounds of oil absorbent (e.g., Speedy Dry or equivalent);
- Ten 48-inch x 3-inch oil socks;
- Five 17-inch x 17-inch oil pillows;
- Two 10-foot x 4-inch oil booms;
- Twenty 24-inch x 24-inch x 3/8-inch oil absorbent pads;
- Twenty 30-gallon 6-mil polyethylene bags;
- One roll of 10-mil plastic sheeting;
- Two shovels;
- 10 pairs of polypropylene gloves;
- One 55-gallon (or equivalent capacity) DOT-approved container; and
- Two, each type, waste label.

All foremen's vehicles and heavy equipment will be equipped with:

- Absorbent pads;
- Heavy duty plastic bags; and
- One shovel.

3.3 Maintaining Emergency Response Equipment

The Contractor will inspect emergency response equipment weekly to ensure that all equipment identified in the Contractor's ER Plan is available in quantities and locations identified. After response to an incident or emergency release, any equipment used will be replaced or decontaminated and returned to inventory.

4.0 Incident or Emergency Response

4.1 Environmental Release Notification

The Contractor will notify the Emergency Response Coordinator on call in the event that a spill occurs during Project activities. There will be immediate notification in the event of a release of 1 pound or more of any hazardous material or any amount of hazardous waste. The Contractor is required to complete the Spill Report Form (Appendix D) and submit the form to the Project Manager and EI. The Contractor will be considered the Waste Generator for all spills caused by construction.

If agency notification is required, Nolin Hills Wind, LLC representatives will notify the Project Manager and appropriate agencies in accordance with Nolin Hills Wind, LLC policies. Nolin Hills Wind, LLC will provide 48-hour advance notification to surface water intake operators of public drinking water source areas regarding construction through the waterbodies where their intakes are located. Appendix E will contain a description of the Project, including maps, flow diagrams, and topographical maps as necessary, which will be updated prior to construction.

4.2 Incident Response

If an environmental release occurs and is an incident that can be handled with available resources, the Contractor may be requested to perform the following, under direction of the Nolin Hills Wind, LLC Emergency Response Coordinator.

- Stop the source of release. This may mean plugging a container or tank, turning off a valve, etc.
- Remove all sources of ignition from the area.
- Contain the spill. Use an approved container, or create a lined, covered containment area.
- Collect spilled materials. Block off drains. Create/expand containment areas using available means. Use appropriate neutralizers, sorbents, pigs, and pads. Create barriers to protect sensitive areas. Personal protective equipment will be worn as recommended on the MSDS of the specific product.
- Remove all contaminated soil or other material and cover with a plastic sheet.
- Contain contaminated material and temporarily store in a secured area 100 feet away from any wetland or surface water.
- Perform any necessary sampling of waste material.
- Conduct preliminary cleanup of the site.

4.2.1 Wetland or Waterbody Response

Regardless of size, the following conditions apply if a spill occurs near or in a stream, wetland, or other waterbody.

- For spills in standing water, floating booms, skimmer pumps, and holding tanks shall be used as appropriate by the Contractor to recover and contain released materials in the surface of the water.
- For a spill threatening a waterbody, berms and/or trenches will be constructed to contain the spill before it reaches the waterbody. Deployment of booms, sorbent materials, and skimmers may be necessary if the spill reaches the water. The spilled product will be collected and the affected area cleaned up in accordance with appropriate state or federal regulations.

- Contaminated soils in wetlands must be excavated, and placed on and covered by plastic sheeting in approved containment areas a minimum of 100 feet away from the wetland or surface water. Contaminated soil will be disposed of as soon as possible in accordance with appropriate state or federal regulations.

4.2.2 Emergency Response

The Emergency Response Coordinator will act as Incident Commander, overseeing emergency release response actions taken.

If additional resources are needed, the Emergency Response Coordinator will retain emergency response contractors and/or request assistance of local emergency responders (including fire, police, hazardous materials teams, ambulance or hospitals, and highway patrol) and will coordinate all emergency response activities. As necessary, the Emergency Response Coordinator will signal evacuation of site personnel.

Where site cleanup is necessary, the Emergency Response Coordinator will coordinate cleanup actions with appropriate agency representatives who will provide guidance on appropriate waste management and disposal.

The Oregon Office of Emergency Management (1-800-452-0311) serves as the coordinator of spill response in the State of Oregon. The Office of Emergency Management determines the severity of spills and contacts the appropriate agency.

5.0 Training

Nolin Hills Wind, LLC will require that all Contractor employees involved with transporting or handling fueling equipment or maintaining construction equipment be required to complete spill training before they commence work on the Project. Nolin Hills Wind, LLC will audit Contractor compliance with this requirement. Spill training will also be required for Contractor supervisory personnel prior to commencement of work. These training sessions will provide information concerning pollution control laws; inform personnel concerning the proper operation and maintenance of fueling equipment; and inform personnel of spill prevention and response requirements. Measures, responsibilities, and provisions of this SPCC Plan, and identification of response team individuals, will be incorporated into the training.

Training of other workers will be provided through ongoing weekly safety meetings. Topics will include spill handling and personal responsibility for initiating and adhering to appropriate procedures, and the required spill containment supplies to be maintained with each construction crew. These weekly sessions will be held by the Contractor as crew “tailgate” meetings. Nolin Hills Wind, LLC will audit the Contractor compliance with this requirement to ensure the meetings are conducted.

Appendix A. Contractor's Hazardous Waste Management Forms

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CONTRACTOR'S HAZARDOUS MATERIALS MANAGEMENT

Capital Power Project:	Description:	Chief Inspector's Name:	Tel. No./Location:	Capital Power Project Number/Accounting :
Contractor:	Firm Name:	Contact Name/Tel. No.:	Address:	
	Project Dates:	Number of Contractor Personnel On-site:	Work Schedule:	

HAZARDOUS MATERIALS			*STORAGE AND HANDLING PROCEDURES*						
Material Name	**Manufacturer**	**MSDS Reference[1] (Attach)**	**Estimated Quantity Needed for Job (Units)**	**Quantity On-Site (Units)**	**Location(s) at Job Site**	**Marking/Labeling/ Placarding (Discuss or Attach)[4]**	**Tank/ Container Size(s)/ Type(s)**	**Secondary Containment (Discuss or Attach[2])**	**Inspection Procedure (Discuss or Attach[3])**

Comments:

Attachments:

[1] Provide MSDSs.

[2] Describe secondary containment for containers of 5 gallons or more capacity.

[3] Describe inspection procedures.

[4] Describe tank/drum marking, labeling and placarding procedures.

CONTRACTOR'S HAZARDOUS, UNIVERSAL AND SPECIAL WASTE and RECYCLABLE HAZARDOUS MATERIALS MANAGEMENT

WASTE DESCRIPTION[1]		WASTE ACCUMULATION AND HANDLING PROCEDURES				
Waste Type and Description	Estimated Monthly Generation Quantity/Unit(s)	Accumulation Area Location(s)[2] On-Site	Tank/Container Size(s)/Type(s)	Marking/Labeling/ Placarding (Discuss or Attach)[3]	Secondary Containment (Discuss or Attach)[4]	Inspection Procedure (Discuss or Attach)[5]

Process Generating Waste(s):

Contractor's Staging Point Location:

Comments:

Attachments:

1 If Contractor intends to completely use or re-use hazardous materials on-site or off-site and no hazardous waste will be generated, please discuss.

2 Note: Locations may be established on site during mobilization.

3 Describe tank/drum marking, labeling and placarding procedures.

4 Describe secondary containment for containers of 5 gallons or more capacity.

5 Describe inspection procedures, inspection frequency, title of inspector.

Distribution:	Original:	Informational Copies:		Revision Date (by Contractor):	
Chief Inspector/Capital Power File		Capital Power Environmental Inspector: _____			
		Safety-Training: _____			
		Others: _____			

Appendix B. Labels for Waste Containers

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"MATERIALS IDENTIFICATION LABEL" (all containers)

<table>
<tr><th colspan="3">Sams Valley Reinforcement Projects</th></tr>
<tr><th colspan="3">MATERIALS IDENTIFICATION LABEL</th></tr>
<tr><td rowspan="5">Sams Valley Reinforcement Projects:</td><td colspan="2">Description:</td></tr>
<tr><td colspan="2">Facility/Location:</td></tr>
<tr><td colspan="2">Chief Inspector:</td></tr>
<tr><td colspan="2">Environmental Inspector:</td></tr>
<tr><td colspan="2">PacifiCorp Project Number/Account:</td></tr>
<tr><td rowspan="3">Contractor:</td><td colspan="2">Contractor Name:</td></tr>
<tr><td colspan="2">Environmental Contact Name:</td></tr>
<tr><td colspan="2">Telephone No.:</td></tr>
<tr><td colspan="3">Process:</td></tr>
<tr><td>Materials Description:</td><td>Quantity:</td><td>___pounds
___gallons</td></tr>
<tr><td>Container Type (drum, tank, etc.):</td><td colspan="2">Container Location:</td></tr>
<tr><td>Container Number:</td><td colspan="2">Date of Accumulation:</td></tr>
<tr><td rowspan="6">Status of Material:
(if sampling and analysis are required)</td><td colspan="2">Sample Number:</td></tr>
<tr><td colspan="2">Sample Date:</td></tr>
<tr><td colspan="2">Analytical Laboratory:</td></tr>
<tr><td colspan="2">Analysis Date:</td></tr>
<tr><td colspan="2">Report Date:</td></tr>
<tr><td colspan="2">Analytical Results:</td></tr>
</table>

"RECYCLABLE MATERIAL/WASTE" CONTAINER LABEL

Sams Valley Reinforcement Projects

RECYCLABLE MATERIAL/WASTE LABEL

Facility Name: _____

Address: _____

State/Zip: _____

Contact: _____

Type: ☐ **USED OIL**

UNIVERSAL WASTE:

☐ Universal Waste – Batteries

☐ Universal Waste – Lamps

☐ Universal Waste – Mercury Thermostats

☐ **SPECIAL WASTE**

☐ **RECYCLABLE MATERIAL**

Description: _____

Accumulation Date: _____

DOT Proper Shipping Name: _____

_____

_____

UN/NA Number: _____

HAZARDOUS WASTE "WORKPLACE ACCUMULATION CONTAINER" LABEL

WORKPLACE ACCUMULATION CONTAINER

Proper D.O.T Shipping Name: _____

_____

UN/NA# _____

Generator: _____

Facility: _____

Address: _____

Phone: _____ **City:** _____

State: _____ **Zip:** _____

EPA ID No: _____

Workplace Accumulation

Start Date: _____

HAZARDOUS

WASTE

STATE AND FEDERAL LAW

PROHIBITS IMPROPER DISPOSAL.

IF FOUND, CONTACT THE NEAREST

POLICE OR PUBLIC SAFETY

AUTHORITY, THE

U.S. ENVIRONMENTAL PROTECTION

AGENCY, OR THE OREGON

DEPARTMENT OF

ENVIRONMENTAL QUALITY

HANDLE WITH CARE!

Composition: _____

_____

Physical State of Waste:

Solid _____ **Liquid** _____

Hazardous Properties: ☐ **Toxic**

☐ **Flammable** ☐ **Corrosive**

☐ **Reactivity** ☐ **Other** _____

EPA Waste No. _____

CA Waste No. _____

Date Placed in Hazardous

Waste Storage Area: _____

Manifest Document Number:

_____

"USED OIL" CONTAINER LABEL

USED

OIL

Appendix C. Contractor's Emergency Response Plan Form

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CONTRACTOR'S EMERGENCY RESPONSE PLAN

Capital Power SPCC/Emergency Response Plan Reviewed: (Y/N)			
Emergency Response Coordinator			
Name	**Title**	**Telephone** (Office/Job Site)	**Address**
Primary			
Secondary			

Incident/Emergency Response Equipment				
Emergency Response Equipment	**Type**	**Capability**	**Quantity**	**Location**
Fire Fighting	Fire Extinguishers	Type: B, C?		Jobsite Crew Staging Area
Incident Response Kit	Chemical sorbent material (e.g., kitty litter)	Chemical Spill Response	2 bags	Project Staging Area
	17" x 17" chemical pillows	"	3	"
	48" x 3" chemical socks	"	4	"
	Sorbent pads 18" x 18" x 3/8"	"	20	"
	6 mil polyethylene bags	"	20, 30-gal.	"
	Polyethylene open-head drum	"	2, 30-gal.	"
	Polypropylene gloves	"	10 pair	"
	Waste Labels	"	2 Each	"
	8' x 10' Polyethylene Tarp	"	2	"
Release Response Kit	48"x3" oil socks	Fuel/Oil Spill Response	10	Each Fuel/Oil Truck
	17" x 17" oil pillows	"	5	"
	10' x 4" oil boom	"	2	"
	24" x 24" x 3/8" oil mats	"	20	"
	6 mil polyethylene bags	"	20, 30-gal.	"
	Polypropylene Gloves	"	10 pair	"
	Propylene open-head drum	"	1, 55-gallon	"
	Waste Labels	"	2 Each	"
Sample Kit	Cooler, Quart Jars, Trowel	Sampling of solids	1	Project Staging Area
Spill Containment	8' x 10' Polyethylene Tarp	Contain Spill Debris	2	Project Staging Area
	Hay Bales	"	20	"

Evacuation Procedures

Distribution:	Original:	Informational Copies:	Revision Date (by Contractor):	
	Chief Inspector/Capital Power File	Capital Power Environmental Inspector: _____		
		Safety-Training: _____		
		Others: _____		

Appendix D. Spill Report Form

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Nolin Hills Wind Power Project
Spill Report Form

General Information

Date/time of spill: _____

Date/time of spill discovery: _____

Name and title of discoverer: _____

Milepost/Legal Description: _____

Spill Source and Site Conditions

Material spilled/Estimated volume: _____

Unique qualifier, if relevant, such as manufacturer: _____

Media in which the release exists: (circle: sand, silt, clay, upland, wetland, surface water, other): _____

Topography and surface conditions of spill site: _____

Proximity to wetlands and surface waters (including ditches): _____

Proximity to private or public water supply wells: _____

Directions from nearest community: _____

Weather conditions at the time of release: _____

Describe the causes and circumstances resulting in the spill: _____

Describe the extent of observed contamination, both horizontal and vertical (i.e., spill-stained soil in a 5-foot radius to a depth of 1 inch): _____

Nolin Hills Wind Power Project
Spill Report Form

Spill Control and Clean-up

Describe immediate spill control and/or cleanup methods used and implementation schedule:

Location of any excavated/stockpiled contaminated soil:

Describe the extent of spill-related injuries and remaining risk to human health and environment:

Name, company, and telephone number of party causing spill (e.g., contractor):

Current status of cleanup actions:

Contact Information

Name and company for the following:

Construction Superintendent (Contractor):

Spill Coordinator:

Environmental Inspector:

Chief Inspector (Capital Power)

Landowner notified (if appropriate):

Date: _____

Form completed by:

Date: _____

Government agency notified **(to be completed by Capital Power or Capital Power's Representative)**:_____

Date: _____

Spill Coordinator must complete this form for any spill, regardless of size, and submit the form to the Capital Power Representative and Environmental Inspector within 24 hours of the occurrence.

Appendix E. Project Description and Site Maps

[SITE MAPS WILL BE PROVIDED PRIOR TO CONSTRUCTION]

Attachment K-1: Draft Agricultural Mitigation Plan

Attachment K-1: Draft Agricultural Mitigation Plan

April 2022

The following requirements include applicant representations from ASC Exhibit K and Department recommendations to ensure that the proposed wind, solar and transmission lines would be designed, constructed and operated in a manner that would minimize impacts to accepted farm practices on surrounding agricultural lands. The plan shall be finalized, prior to construction, to represent the design and construction methods selected based on landowner consultation.

Design and Landowner Consultation Requirements

- Demonstrate to the Department via records of landowner consultation and final layout maps that temporary construction laydown and staging areas have been sited to minimize disturbance for farming operations and would not unnecessarily divide a field.
- Demonstrate to the Department via records of landowner consultation that facility design/layout and construction methods would minimize potential impacts to the pattern and timing of cultivation, seeding, fertilizing and harvesting
- Demonstrate to the Department via records of landowner consultation that new roads associated with the UEC Cottonwood transmission line located in RTC, AB and LI zoned lands would be designed to minimize vegetation removal.
- For 230 kV transmission lines located on high-value farmland pursuant to ORS 195.300(10), adhere to the following requirements:

  Prior to construction, the applicant shall provide notification to the record owner of any agricultural lands containing high-value farmland, as defined in ORS 195.300(10), of the opportunity to consult with IPC for the purpose of locating and constructing the transmission line in a manner that minimizes impacts to high-value farmland farming operations. The initial notification to the record owner shall allow two weeks to respond to the opportunity to consult with applicant. If the record owner does not respond to applicant within two weeks of the initial notification, applicant shall provide a second notification of the opportunity to consult with applicant via certified mail. If the record owner does not respond within two weeks of the second notification, applicant will have satisfied its obligation to consult pursuant to ORS 215.276(2).

- Provide confirmation to the Department that affected landowners have been properly compensated for any loss of agricultural lands from the final 230 kV transmission lines sited on high-value farmland soils.

Plan Amendments

This Plan may be amended without an amendment of the Site Certificate. The Council authorizes ODOE to agree to amendments to this plan if additional or more appropriate measures are identified by the applicant, based on final design and site specific conditions. ODOE shall notify EFSC of all amendments and mitigation actions, and the Council retains the authority to approve,

reject or modify any amendment of this plan or mitigation action agreed to by ODOE.

Attachment P-1: Draft Habitat Mitigation Plan

Nolin Hills Wind Power Project

Draft Habitat Mitigation Plan

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Nolin Hills Wind, LLC

Prepared by:

TETRA TECH

Tetra Tech, Inc.

May 2021

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Figure 3. Ione Conservation Opportunity Area Habitat

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1.0 Introduction

Nolin Hills Wind, LLC (the Applicant) proposes to construct the Nolin Hills Wind Power Project (Project), a wind and solar energy project with a nominal generating capacity of approximately 600 megawatts (MW) (preliminarily 340 MW from wind and 260 MW from solar), in Umatilla County, Oregon (see Figure C-1 in Exhibit C). The Project's wind energy component comprises up to 112 wind turbine generators, depending on the turbine model selected and the final layout determined during the micrositing process. The solar array will include up to approximately 1,117,591 solar modules, depending on the final technology and layout selected. This Draft Habitat Mitigation Plan (HMP)[1] will be updated as needed to reflect the final layout once the turbine model(s) and solar modules have been selected. The Project will interconnect to the regional grid via either publicly owned and operated transmission lines to be constructed locally by the Umatilla Electric Cooperative, or a new 230-kilovolt (kV) transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration (BPA) Stanfield Substation. These facilities are all described in greater detail in Exhibit B.

This Draft HMP describes how the Applicant will mitigate for the unavoidable wildlife habitat impacts of the Project. Specifically, this HMP outlines how the Applicant will construct and operate the Project consistent with the Oregon Department of Fish and Wildlife (ODFW) Habitat Mitigation Policy. This HMP addresses mitigation for both the permanent impacts of Project components (permanent impacts) and the temporal impacts associated with Project construction (temporary impacts with a longer [5+ years] restoration timeframe). The Applicant proposes two mitigation options including 1) a payment-to-provide option with ODFW, and 2) acquisition of a conservation easement to protect and enhance a compensatory habitat mitigation area (HMA). In addition, the Applicant reserves the right to pursue alternative mitigation pathways if available in the future by pursuing an amendment to this HMP, as provided under Section 7.0 below. As presented in this Draft HMP, Mitigation Option 1 is included to preserve a potential future mitigation option, but the Applicant acknowledges that the appropriate procedures necessary to support a mitigation banking program have not been adopted by ODFW. Mitigation Option 2 is an Applicant-developed mitigation site; this HMP specifies habitat enhancement actions and monitoring procedures to evaluate the success of those actions, as applicable.

2.0 Description of the Impacts Addressed by the HMP

Within the Site Boundary, the Applicant established a 15,726-acre micrositing corridor within which Project facilities will be constructed. This approach allows some flexibility with specific component locations and design in response to site-specific conditions and engineering requirements that will be determined prior to construction. Construction of the Project will result

[1] This HMP will be incorporated by reference in the site certificate for the Nolin Hills Wind Power Project and must be understood in that context. It is not a "stand-alone" document.

in approximately 2,035 acres of permanent impacts (Table 1), although actual impacts may change depending on the final layout, solar technology, and turbine model(s).

Table 1. Maximum Acres of Impact to Habitat Categories and Types

Final Habitat Category[1]	Preliminary Habitat Category	Habitat Type[2]	Habitat Subtype[2]	Impacts (Acres)[3]	
				Temporary Impact[4]	Permanent Impact
2	2	Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	<1[5]	-
			Perennial Streams	1[5]	<1[5]
		Riparian Forest and Natural Shrubland Complexes	Eastside Riparian	1[6]	-
	3	Agriculture, Pasture, and Mixed Environs	Planted Grasslands	21	2
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	172	7
			Shrub-steppe	2[7]	<1
	4	Agriculture, Pasture, and Mixed Environs	Planted Grasslands	<1	-
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	78	5
			Shrub-steppe	<1	-
	5	Agriculture, Pasture, and Mixed Environs	Irrigated Pastures and Hay Meadows	<1	-
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	1	-
Category 2 Total				**277**	**14**
3	3	Agriculture, Pasture, and Mixed Environs	Planted Grasslands	88	8
		Cliffs, Caves, and Talus	Cliffs, Caves, and Talus	1	-
		Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	<1[5]	<1[5]
			Perennial Streams	<1[5]	-
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	144	31
			Shrub-steppe	2[7]	<1
		Wetlands	Emergent Wetlands	<1[5]	-
Category 3 Total				**236**	**39**

Final Habitat Category[1]	Preliminary Habitat Category	Habitat Type[2]	Habitat Subtype[2]	Impacts (Acres)[3]	
				Temporary Impact[4]	Permanent Impact
4	4	Agriculture, Pasture, and Mixed Environs	Planted Grasslands	44	4
		Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	2[5]	<1[5]
		Riparian Forest and Natural Shrubland Complexes	Eastside Riparian	<1	-
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	148	41
			Shrub-steppe	<1	-
Category 4 Total				**196**	**46**
5	5	Agriculture, Pasture, and Mixed Environs	Irrigated Pastures and Hay Meadows	1	<1
			Planted Grasslands	215	63
		Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	1[5]	-
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	247	14
			Shrub-steppe	17	<1
Category 5 Total				**482**	**77**
6	6	Agriculture, Pasture, and Mixed Environs	Orchards, Vineyards, Wheat Fields, Other Row Crops	805	1,852
		Urban and Mixed Environs	Urban and Mixed Environs	78	7
Category 6 Total				**883**	**1,859**
GRAND TOTAL				**2,073**	**2,035**

Note: Totals in this table may not appear to sum correctly due to rounding. "-" means no impact while <1 means greater than zero but less than 0.5 acre impact.

1. Final Category following application of Washington ground squirrel Category 2 overlay.
2. Only impacted Habitat Types and subtypes present within the impact areas are represented.
3. The acres of impact shown here include only the western route for the BPA Stanfield 230-kilovolt (kV) transmission line where it parallels the existing 500-kV transmission line rather than both routes because only one route would be developed, should this transmission line option be selected, and the western route includes the worst-case scenario with respect to habitat impacts that require mitigation. This approach is in contrast to Exhibit P (which conservatively includes both routes in order to capture potential impacts to all habitat types and categories) and Exhibit C (where only the eastern route is included in the impact calculation because it has the larger overall disturbance).
4. All temporary impacts are listed here but only those that will take greater than 5 years to recover (i.e., Category 3 Shrub-steppe and Category 2 Eastside Riparian habitat) are discussed further in this HMP (e.g., see Table 2) because only those temporal impacts require mitigation; all other temporary impacts will be mitigated through successfully revegetation.

Final Habitat Category[1]	Preliminary Habitat Category	Habitat Type[2]	Habitat Subtype[2]	Impacts (Acres)[3]	
				Temporary Impact[4]	Permanent Impact
5. Impacts to wetlands and Waters of the State will be avoided during final design.					
6. Tall vegetation will be maintained for the life of the Project to allow underwire clearance and thus this Category 2 Eastside Riparian habitat is conservatively considered permanently impacted for the purposes of mitigation.					
7. Temporally impacted Shrub-steppe habitat.					

The areas proposed to be impacted are primarily composed of cultivated cropland (i.e., Orchards, Vineyards, Wheat Fields, Other Row Crops), followed by Eastside Grasslands and Planted Grasslands (Table 1; Exhibit P). Notwithstanding the overarching Washington ground squirrel (*Urocitellus washingtoni*) Category 2 habitat overlay, Eastside Grasslands and Planted Grasslands proposed to be impacted ranged from Categories 3 to 5. Less than one percent of impacts are proposed to Shrub-steppe habitat, including Category 3, 4, and 5 habitats. As described in Exhibit P, the Applicant minimized impacts to preliminary Category 3 Shrub-steppe where feasible by reducing the transmission line corridor from 200 feet to 50 feet wide where it crosses this habitat. No areas of Eastside Grassland or Shrub-steppe habitat were field characterized as Category 2 habitat.

Temporary impacts will be mitigated through successful implementation of the Draft Revegetation Plan (Attachment P-4 to Exhibit P). However, some areas of Shrub-steppe that will be temporarily impacted include sagebrush stands that could take longer than 5 years to be restored. Even where restoration of this habitat subtype is successful, there is a loss of habitat function during the restoration period. Therefore, this HMP includes mitigation for both permanently impacted habitat and select areas of temporarily impacted Shrub-steppe habitat that results in a temporal loss of habitat quality (Table 1). The determination of temporal impacts to Shrub-steppe habitat was based on the vegetative characteristics of the habitat; therefore, temporally impacted Category 3 Shrub-steppe includes both Preliminary Category 3 Shrub-steppe habitat (i.e., before application of the Washington ground squirrel Category 2 overlay) as well as Shrub-steppe habitat with both a Preliminary and Final Category 3 designation (see Table 1).

The Category 2 Eastside Riparian habitat shown as temporarily impacted in Table 1 is associated with the potential transmission line crossing of the Umatilla River. Although poles will be placed outside of riparian vegetation (as well as wetlands and Waters of the State; see Exhibit J of the Application for Site Certificate), should that transmission option be selected, riparian vegetation will likely need to be cleared or trimmed for underwire clearance and maintained for the life of the Project. Therefore, this Draft HMP conservatively considers this Category 2 Eastside Riparian habitat as permanently impacted for the purposes of mitigation, as described below in Section 3.0. Table 1 shows the acres of impact including only the western route for the BPA Stanfield 230-kV transmission line where it parallels the existing 500-kV transmission line rather than both routes because only one route would be developed, should this transmission line option be selected, and the western route includes the worst-case scenario with respect to habitat impacts that require mitigation (i.e., Category 2 Eastside Riparian habitat impacts). This approach is in contrast to

Exhibit P (which conservatively includes both routes in order to capture potential impacts to all habitat types and categories) and Exhibit C (where only the eastern route is included in the impact calculation because it has the larger overall disturbance).

The other permanently impacted areas at the Project are primarily wheat fields (1,852 acres; habitat type Agriculture, Pasture, and Mixed Environs; subtype Orchards, Vineyards, Wheat Fields, Other Row Crops), Eastside Grassland (98 acres; habitat types Upland Grassland, Shrub-steppe and Shrubland; subtype Eastside Grassland), Planted Grasslands (78 acres; habitat type Agriculture, Pasture, and Mixed Environs; subtype Planted Grasslands), and Urban and Mixed Environs (7 acres; habitat type Urban and Mixed Environs; subtype Urban and Mixed Environs) and may be used by various species (Exhibit P, Tables P-4 and P-5). All other habitat subtypes contain less than 1 acre of permanent impact area. The Project will not have any impacts on Category 1 habitat. No mitigation is required for impacts to Category 6 areas.

3.0 Methods for Calculating the Size of the Mitigation Area

The mitigation area for the Project will be determined based on the final design and actual habitat impacts. Before beginning construction, the Applicant will provide the Oregon Department of Energy (ODOE) with a map showing the final design configuration of the Project, and a table showing the estimated acres of permanent and temporary impacts by habitat category (Table 1). Mitigation calculations will be based on current habitat conditions that will be mapped and field verified by the Applicant during the spring prior to construction.

A mitigation ratio of 2 acres for every 1 acre of Category 2 habitat permanently impacted will be used to ensure that the mitigation area is large enough to achieve “no net loss” and “net benefit” of habitat quantity. A “no net loss” and “net benefit” in habitat quality for permanent and temporal impacts to habitat in Category 2 will be achieved through habitat enhancement actions. A mitigation ratio of 1 acre for every 1 acre of Category 3 and 4 habitat permanently impacted will be used to ensure that the mitigation area is large enough to achieve “no net loss” of habitat quantity; site specific enhancement actions will be identified to achieve a “no net loss” of habitat quality. A mitigation ratio of between 0.1 and 0.5 acres for every acre of Category 5 habitat impacted will be used to ensure a “net benefit” in habitat quantity; site specific enhancement actions will be identified to achieve a “net benefit” of habitat quality. No mitigation will be implemented for impacts on Category 6 habitat.

For temporary impacts that require mitigation (i.e., temporal impacts), the mitigation area will include up to 1 acre for every 1 acre of vegetative Category 3 Shrub-steppe habitat subtype that is temporarily affected by construction activities (but outside the permanent impact area). The size of this portion of the mitigation area assumes that restoration of other disturbed habitat subtypes (e.g., Eastside Grassland habitat subtype) is successful, as determined under the Draft Revegetation Plan (Attachment P-4 to Exhibit P). Additional mitigation may be needed if restoration efforts of other habitat types are unsuccessful. As described above, temporary impacts to Category 2 Eastside Riparian habitat associated with the transmission line crossing of the Umatilla River are considered permanent here for the purposes of mitigation because any tall vegetation will be maintained for

the life of the Project to ensure underwire clearance. Table 2 identifies the minimum and maximum mitigation requirement based on the maximum habitat permanently and temporarily impacted and the minimum and maximum habitat mitigation ratios presented in this section.

Table 2. Mitigation Calculation

Impact Type and Habitat Category	Habitat Subtype	Estimated Maximum Impact (Acres)[1]	Minimum Mitigation Acres per Acre disturbed[2]	Maximum Mitigation Acres per Acre disturbed[2]	Minimum Estimated Mitigation (Acres)	Maximum Estimated Mitigation (Acres)
Permanent Impacts Requiring Mitigation[3]						
2	All	13.7	2	2	27.4	27.4
3	All	39.1	1	1	39.1	39.1
4	All	46.1	1	1	46.1	46.1
5	All	77.1	0.1	0.5	7.7	38.5
Temporary Impacts Requiring Mitigation (i.e., Temporal Impacts)[4]						
2	Eastside Riparian	0.9	2[5]	2[5]	1.9	1.9
2	Shrub-steppe	1.8	2	2	3.7	3.7
3	Shrub-steppe	2.2	1	1	2.2	2.2
Total					**128.0**	**158.8**

Note: Totals in this table may not appear to sum correctly due to rounding.

1. The acres of impact shown here include only the western route for the BPA Stanfield 230-kV transmission line where it parallels the existing 500-kV transmission line rather than both routes because only one route would be developed, should this transmission line option be selected, and the western route includes the worst-case scenario with respect to habitat impacts that require mitigation. This approach is in contrast to Exhibit P (which conservatively includes both routes in order to capture potential impacts to all habitat types and categories) and Exhibit C (where only the eastern route is included in the impact calculation because it has the larger overall disturbance).

2. A mitigation ratio between >0:1 and <1:1 for permanent impacts to Category 5 habitat would achieve a "net benefit" in habitat quantity or quality.

3. No mitigation required for Category 6 habitat.

4. Temporary impact areas require mitigation where vegetation will take longer than 5 years to recover (i.e., in preliminary Category 3 Shrub-steppe habitat) or will be maintained for the life of the Project to ensure underwire clearance (i.e., in Category 2 Eastside Riparian habitat associated with the crossing of the Umatilla River). Other habitat types will be restored within 5 years following the methods described in the Draft Revegetation Plan and therefore do not require mitigation. Temporary impacts requiring mitigation are considered temporal impacts.

5. Areas with the temporary impact layer that will be maintained for the life of the Project are considered permanently impacted for the purposes of the mitigation and thus are assigned the applicable permanent impact mitigation ratio.

4.0 Mitigation Options

As described above, the Applicant has identified two options for addressing the mitigation obligation where habitat protection and enhancement and/or commensurate funding are feasible and consistent with this HMP. Mitigation Option 1 is not an available mitigation option at the time

of Application for Site Certificate review, but the Applicant reserves the right to use Mitigation Option 1 should it be available in the future. Additionally, if other mitigation options become available or are identified, the Applicant reserves the right to pursue alternative mitigation pathways by pursuing an amendment to this HMP, as provided under Section 7.0 below.

The final mitigation approach will offer enough suitable habitat to achieve the ODFW habitat mitigation goals of no net loss of habitat quantity or quality, and provide a net benefit in habitat quantity for impacts to Category 2 habitat, no net loss of habitat quantity or quality for impacts to Category 3 and 4 habitat, and a net benefit in habitat quality or quantity for impacts to Category 5 habitat. Prior to operation, the Applicant will acquire the legal right to create, maintain, and protect the HMA(s) for the life of the Project by means of an outright purchase, conservation easement, or similar conveyance, and will provide a copy of the documentation to ODOE. The duration of Mitigation Option 1 would be in perpetuity (i.e., permanent conservation of habitat) whereas the duration of Mitigation Option 2 would be limited to the life of the Project (i.e., a limited term).

4.1 Mitigation Option 1: ODFW Payment-to-Provide

The Applicant understands that ODFW is considering a payment-to-provide program that could be used to mitigate habitat impacts related to energy facilities. However, currently, this program is not yet available. Should such a program become available in the future, the Applicant could use a payment-to-provide mitigation option with the approval of ODOE and ODFW.

4.2 Mitigation Option 2: Habitat Mitigation Area

Under this option, the Applicant will establish a conservation easement(s) in the Columbia Plateau ecoregion. The Applicant has preliminarily identified two areas that could be used for mitigation sites, where habitat enhancements could benefit Washington ground squirrels, raptors, and grassland birds (Figure 1). These two potential HMAs together demonstrate that sufficient habitat of the appropriate type and quality is available for protection and enhancement to meet the ODFW Habitat Mitigation Policy goals and habitat mitigation requirements for the Project (Table 3). The available mitigation acreages described here would only be used as needed based on the final impact acreage. The Applicant has not eliminated the possibility for alternative mitigation options (i.e., using another potential HMA) should additional suitable sites be identified. The Applicant will conduct a pre-construction habitat assessment of the selected HMA(s), using methods similar to those used for the Project, to inform the selection of habitat enhancement actions (see Section 4.2.1) and develop appropriate monitoring procedures (see Section 4.2.2) and quantitative success criteria (see Section 5.0) in consultation with ODFW and ODOE.

Table 3. Nolin Hills Wind Project Maximum Habitat Mitigation Need and Available Habitat Mitigation

Habitat Type	Habitat Subtype[1]	Total Maximum Mitigation Need (acres)[2]	Olex COA Mitigation Available (acres)	Ione COA Mitigation Available (acres)
Agriculture, Pasture, and Mixed Environs	Planted Grasslands	48	95	0
Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	103	45	105
	Shrub-steppe	6		
Riparian Forest and Natural Shrubland Complexes	Eastside Riparian	2[3]	0[4]	0
Total		**159**	**139**	**105**

Note: Totals in this table may not appear to sum correctly due to rounding. Available mitigation acreages would only be used as needed based on the final layout.

COA = Conservation Opportunity Area

1. Only potentially impacted Habitat Subtypes and Categories that result in mitigation per the ODFW Habitat Mitigation Policy are represented.

2. The impacted habitat subtypes listed here range from Category 2 through 5, of which only Category 2 and 3 habitat must be mitigated for "in-kind."

3. Mitigation for riparian habitat impacts is anticipated to be needed only if the Bonneville Power Administration transmission line option is selected.

4. Riparian habitat is available for mitigation along approximately 1.25 miles of Rock Creek should this be needed based on final Project impacts.

The Olex Conservation Opportunity Area (COA) includes approximately 1,500 acres available for conservation easement (Figure 2) and the Ione COA includes approximately 105 acres available for conservation easement (Figure 3). Both areas are within the range of the Washington ground squirrel and have enhancement opportunities beneficial to Washington ground squirrels, raptors, and grassland birds. Both sites also contain areas currently under conservation easement as mitigation for other Energy Facility Siting Council (Council)-permitted as well as County-permitted facilities and thus provide an opportunity for integrated enhancement over a larger area. The documented successes of habitat enhancements at the existing conservation easement areas also demonstrate that the potential enhancement actions proposed for the potential Project HMA(s) are feasible and have a high likelihood of success. The Olex COA and Ione COA have the same private landowners.

The Olex COA is located in Gilliam County and the Columbia Plateau, adjacent to Rock Creek. Based on the anticipated mitigation need for the Project as shown in Table 2, the Applicant conducted a review of a potential approximately 139-acre HMA within the Olex COA (Figure 2; Table 3). Based on desktop review and previous surveys conducted by the landowners, habitat within the potential Olex HMA includes planted grassland, native grassland and shrub-steppe mosaic, as well as small areas of cliffs, talus slopes, seeps, and springs. Additionally, approximately 1.25 miles of riparian habitat is available for protection and enhancement along Rock Creek. The quality of the habitat at

the potential Olex HMA ranges from Category 2 to 5 based primarily on its vegetative characteristics, as described further below. However, a Washington ground squirrel colony has been documented immediately adjacent to the potential Olex HMA based on surveys conducted by the landowners annually since 2006 and thus the site is considered Category 1 and 2 habitat. The potential Olex HMA includes both deep soils suitable to ground squirrel burrowing (i.e., Ritzville Silt Loam) as well as more shallow soils (i.e., Lickskillet Very Stony Loam and Bakeoven-Condon Complex; NRCS 2020). The landowners report that these deeper soils generally coincide with the 95 acres of Planted Grassland habitat, which elsewhere in the Olex Conservation Opportunity Area have been treated successfully with shrub plantings and overseeding (Kronner and Gritski 2021). The site is also located entirely within ODFW-designated mule deer winter range (ODFW 2013), which is considered Category 2 habitat.

In addition to Washington ground squirrels, grassland birds and raptors have been documented using the area and thus protection and enhancement of the potential Olex HMA would benefit these species. Several raptor species have been documented nesting or wintering at or nearby the Olex COA, including red-tailed hawks (*Buteo jamaicensis*), golden eagles (*Aquila chrysaetos*), bald eagles (*Haliaeetus leucocephalus*), Swainson's hawks (*Buteo swainsoni*), and ferruginous hawks (*Buteo regalis*). These five species were similarly observed nesting and/or wintering during surveys at the Project. Additionally, fish are present in Rock Creek (e.g., steelhead [*Oncorhynchus mykiss*]), and grassland bird species (e.g., grasshopper sparrow [*Ammodramus savannarum*]) have been documented nesting at the Olex COA. A conservation easement on the potential Olex HMA is available for the life of the Project. The potential Olex HMA is located adjacent to an existing 341-acre conservation easement area (Figure 2), and other portions of the Olex COA are currently under consideration as mitigation for other facilities under Council review (IPC 2018; ODOE 2020). ODFW and ODOE have previously toured the Olex COA, and ODFW has recommended to other developers the Olex COA as potential Washington ground squirrel mitigation (IPC 2018). The potential Olex HMA can be accessed by driving through adjacent land under the same ownership.

Vegetation within the potential Olex HMA includes rabbitbrush (e.g., *Ericameria nauseosum*), buckwheat species (i.e., *Eriogonum* sp.), and sagebrush (*Artemisia tridentata*) shrubs, as well as areas with diverse native forbs (e.g., lupines [*Lupinus* sp.] and yarrow [*Achillea millefolium*]) and non-native grasses (e.g., cheatgrass [*Bromus tectorum*]). In the absence of the Category 2 designation due to the HMA's overlap with ODFW-designated mule deer winter range and Category 1 and 2 designated due to the HMA's proximity to Washington ground squirrels, the Eastside Grassland, Shrub-steppe, and Planted Grassland habitats would range from Category 2 to Category 5, based on the level of disturbance, seral stage, and presence of non-native species. For example, vegetative Category 3 habitat at the Olex HMA includes areas dominated by mature, late seral stage perennial grassland, shrubs, and forbs, and vegetative Category 4 and 5 habitat includes areas previously burned or otherwise disturbed, with residual native perennial grasses and shrubs, but dominated by exotic annual grasses. The landowners report that noxious weeds are currently absent from the potential Olex HMA, and that the area has not been grazed for the past 30 years (Kronner and Gritski 2021). The Applicant has discussed grazing with the landowners and a no-grazing agreement could be agreed-to if it is determined that a longer rest period is needed for

vegetation enhancement (i.e., to limit trampling of forbs, sagebrush seedlings, and other plants) (Kronner and Gritski 2021). The property is perimeter fenced, which the landowners report helps for managing the land and reducing potential for trespass livestock (Kronner and Gritski 2021).

The Ione COA is located in Morrow County in the Columbia Plateau, adjacent to Eightmile Canyon. Based on the anticipated mitigation need for the Project as shown in Table 2, the Applicant conducted a review of a potential approximately 105-acre HMA within the Ione COA (Figure 3; Table 3). Based on desktop review and previous surveys conducted by the landowners, habitat within the potential Ione HMA includes native grassland and shrub-steppe mosaic, as well as small areas of cliffs, talus slopes, seeps, and springs. The quality of the habitat at the potential Ione HMA ranges from Category 2 to 5 based primarily on vegetative characteristics, further described below, with the majority of the habitat ranging from Category 2 to Category 3. Although no Washington ground squirrel colonies are known to occur within the potential Ione HMA, the landowners report personal observations of Washington ground squirrels approximately 0.75 mile south of the Ione COA in 2010 indicating that the habitat within the potential Ione HMA may be considered Category 2 habitat. The landowners also indicated that shapefiles with more recent (i.e., 2013) confidential survey results were provided to ODFW but are not available to the Applicant. The potential Ione HMA includes both deep soils suitable to ground squirrel burrowing (i.e., Ritzville Silt Loam, Mikkalow Silt Loam, and Endersby Fine Sandy Loam) as well as more shallow soils (i.e., Lickskillet Very Stony Loam and Lickskillet -Rock outcrop complex; NRCS 2020). The landowners report that approximately two-thirds of the 105-acre potential Ione HMA consists of deeper soils, which generally provide a higher success rate for shrub planting and overseeding, while approximately one-third of the HMA consists of lithosols, which generally are less suitable for shrub planting and overseeding (Kronner and Gritski 2021). The landowners also report that successful restoration has been achieved on adjacent, similar habitat by excluding grazing and thus protecting naturally recruited shrubs, rather than planting of nursery-stock shrubs (Kronner and Gritski 2021; MB&G 2018). Similar to the Project, the Ione COA is not located within ODFW-designated mule deer winter range (ODFW 2013) Category 2 habitat.

The potential Ione HMA is primarily dominated by a well-developed sparse to locally dense canopy of big sagebrush (*Artemisia tridentata* ssp. *tridentata*) with subordinate snakeweed (*Gutierrezia sarothrae*) and gray rabbitbrush interspersed with a well-developed graminoid layer dominated by bluebunch wheatgrass (*Pseudoroegneria spicata*) with subordinate Sandberg's bluegrass (*Poa secunda*) and cheatgrass. Forb diversity is most strongly represented by members of the genera *Lomatium*, and *Lupinus*, and members of the lily (*Lilaceae*) and borage (*Boraginaceae*) families. In some areas, the perennial forb layer is most strongly characterized by members of the genera *Eriogonum* (i.e., buckwheats) and *Lomatium*. The potential Ione HMA also includes areas dominated by Idaho fescue (*Festuca idahoensis*) and needle-and-thread grass (*Hesperostipa comata*). Vegetative characteristics that determined the range of habitat categories at the potential Ione HMA included level of disturbance, seral stage, and presence of non-native species, which is consistent with the factors used to determine habitat category based on vegetative conditions at the Project. The ecological condition at the potential Ione HMA varies from a largely undisturbed late seral state with a well-represented big sagebrush component and a well-developed cryptogamic layer of soil

mosses and lichens (including prominent late seral lichens in the genus *Trapeliopsis*) (i.e., Category 2 habitat) to a locally/patchy weedy condition with sparse native perennial bunchgrasses (i.e., Category 5 habitat). In some locations, cheatgrass is locally a dominant element of the vegetation where erosion-related disturbance appears to be chronic from mammal activity (e.g., badgers [*Meles meles*], pocket gophers [*Thomomys* sp.], and coyotes [*Canis latrans*]) in the deeper soil deposits; other areas dominated by non-native species may display an early to mid-seral successional status due to previous fire history and/or livestock congregations. The landowners regularly (i.e., at least once a year) traverse the property and report that, as of spring 2021, County-designated noxious weeds have not been documented (Kronner and Gritski 2021). Although grazing is permitted by the property zoning and the area was historically grazed, the landowners have rested the property from grazing and have not permitted grazing in recent years. The Applicant has discussed grazing with the landowners and a no-grazing agreement could be agreed-to if it is determined that a longer rest period is needed for vegetation enhancement (i.e., to limit trampling of forbs, sagebrush seedlings and other plants; Kronner and Gritski 2021). The property is perimeter fenced, which the landowners report helps for managing the land and reducing potential for trespass livestock (Kronner and Gritski 2021).

In addition to Washington ground squirrels, grassland birds and raptors have been documented using the area and thus protection and enhancement of the potential Ione HMA would benefit these species. A conservation easement on the potential Ione HMA is available for the life of the Project. The potential Ione HMA is located adjacent to approximately 328 acres of existing conservation easement areas, including an easement for a Council-permitted facility that in its eighth year of monitoring continues to report successful habitat improvement including ongoing natural sagebrush recruitment and increased cover and diversity of native bunchgrasses (MB&G 2018). ODFW has recommended to other developers the Ione COA as potential Washington ground squirrel mitigation (IPC 2018). The potential Ione HMA is accessible via an approximately 1.5-mile legal easement through agricultural fields that can be driven or hiked, depending on the presence of mud and crops, from the nearest public road.

4.2.1 Habitat Enhancement Actions

If Mitigation Option 2 is selected, as described in Section 6.1 of this HMP, prior to construction, the Applicant will develop a Management Plan for the selected mitigation site(s) that details the habitat enhancement actions (i.e., implementation schedule, protection measures, etc.) to improve the habitat conditions of the mitigation site(s). The objectives of habitat enhancement are to protect habitat within the mitigation area(s) from degradation and to improve the habitat quality of the mitigation area(s). By achieving these objectives, the Applicant can address the permanent and temporal habitat impacts of the Project and meet the ODFW habitat mitigation goals. Based on consultation with ODOE and ODFW, the Applicant shall choose one or more of the following enhancement actions to be included in the conservation easement, based on the needs of the selected habitat mitigation area(s) to improve habitat conditions and demonstrate a “no net loss” and “net benefit” in habitat quality, as applicable:

1. **Shrub Planting.** The Applicant will plant sagebrush or other native shrubs in locations within the habitat mitigation area(s) where existing native shrubs are in poor condition. The Applicant will determine the size of the shrub-planting areas and the shrub species based on the professional judgment of a qualified biologist after a ground survey of actual conditions. However, based on landowner interviews, the Applicant has preliminarily identified approximately 95 acres within the potential Olex HMA and approximately 70 acres within the potential Ione HMA that could benefit from shrub planting; these acreages consider the current habitat mapping and understanding of the soils. Considering the relatively minimal Shrub-steppe mitigation need for the Project (see Table 3) based on the Applicant's avoidance of Shrub-steppe to the extent feasible (see Section 2), this available acreage suitable for shrub planting is greater than the area needed to meet the ODFW Habitat Mitigation Policy goals for "in-kind" mitigation of Shrub-steppe. The final area of shrub planting will be determined prior to construction, taking into consideration the acres of shrub-steppe anticipated to be impacted and the condition of the HMA at the time of construction. The shrub survival rate at 4 years after planting is an indicator of successful enhancement of habitat. The Applicant will complete the initial shrub planting within 1-2 years after the beginning of construction of the Project. Supplementing existing, but disturbed, sagebrush areas with sagebrush seedlings or transplanted mature plants will assist the restoration of this valuable shrub-steppe component. The Applicant will obtain shrubs from a qualified nursery, located in the same ecoregion as the mitigation area if possible, and plant sagebrush of the same species that currently occurs on the HMA if available. The Applicant will identify the optimal time of year to plant (e.g., late winter-early spring) and area to be planted with sagebrush or other native shrubs after consultation with ODFW, subject to final approval by ODOE. If shrubs are planted in the same areas as seeding occurs (see enhancement action #3 below), shrub planting will occur following seeding. As requested by ODFW, cages will be placed around individual plants or plant clusters to reduce herbivory by ungulates (primarily mule deer) as appropriate, and livestock would be excluded from area(s) with shrub plantings. The Applicant will instruct planting crews to use accepted planting techniques, such as proper planting depth, no "J" rooting, the need for soil to root contact, and to avoid planting in dry soil conditions (as described above). The Applicant will mark the planted shrub clusters at the time of planting for later monitoring purposes, and will keep a record of the number of shrubs planted. Plantings will generally be considered successful if a 30 percent survival rate is achieved after 4 years.
2. **Weed Control.** The Applicant will implement a weed control program within the habitat mitigation area(s). Under the weed control program, the Applicant will conduct a pre-management weed assessment to identify the type and percentage of non-native species within the habitat mitigation area(s). The Applicant will then monitor the mitigation area(s) to locate weed infestations. The Applicant will continue weed control monitoring, as needed, for the life of the Project. As needed, the Applicant will use appropriate methods to control weeds. Appropriate weed control methods shall include identification of noxious weeds within the mitigation area(s), timing, herbicides, and application mechanism and be

based on consultation with the applicable County Weed Department. Weed control on the mitigation site(s) will reduce the spread of noxious weeds within the habitat mitigation area(s) and on any nearby Eastside Grassland, Planted Grassland, or cultivated agricultural land. Weed control will promote the growth of desirable native vegetation and planted sagebrush. The Applicant may consider weeds to be successfully controlled when weed clusters have been eradicated or reduced to a non-competing level. Weeds may be controlled with herbicides or hand-pulling. The Applicant will notify the landowners of the specific chemicals to be used on the site and when spraying will occur. To protect locations where young desirable forbs may be growing, spot-spraying may be used instead of total area spraying. The landowners report that both potential HMAs are currently free of noxious weeds; implementation of a weed control program would ensure the quality of the habitat is maintained into the future despite the ongoing threat of noxious weed invasion and spread.

3. **Seeding.** The Applicant will plant an ODFW-approved seed mix within the habitat mitigation area(s) in areas that have been recently disturbed, if applicable (e.g., after weed treatments), or other areas that would benefit from increased forb and grass diversity. The method for seed application will be determined primarily based on the size of the area to be seeded. Based on landowner interviews, the Applicant has identified approximately 95 acres within the potential Olex HMA and approximately 70 acres within the potential Ione HMA that could benefit from overseeding; these acreages consider the current habitat mapping and understanding of the soils. The final size of the seeded area will depend on the amount of recently disturbed area and area that would benefit from seeding within the mitigation area. The Applicant will complete the initial seeding within 1-2 years after the beginning of construction of the Project. The Applicant will record and mark the seeded areas at the time of seeding for later monitoring purposes. The Applicant will develop success criteria for seeding, including the use of paired monitoring and reference sites.
4. **Fire Control.** The Applicant will implement a fire control plan for wildfire minimization when Project staff are working within the mitigation area(s). The Applicant will provide a copy of the fire control plan to ODOE before starting habitat enhancement actions. The Applicant will include in the plan appropriate fire prevention measures, methods to detect fires that may occur and a protocol for fire response if a fire were to occur when Project staff were present. If any part of the mitigation area(s) is damaged by future wildfire, the Applicant will assess the extent of the damage and implement appropriate actions to restore habitat quality in the damaged area.
5. **Restricted Grazing.** The Applicant will restrict and/or eliminate grazing within the habitat mitigation area(s), as appropriate for improvement of vegetation communities and maintaining high-quality habitat for wildlife species. A grazing management plan will be developed that considers the timing, duration, and intensity of grazing and how these factors impact desirable plant development and vegetation structure. Eliminating livestock grazing within the mitigation area(s) during most of the year will enable recovery of native vegetation where past grazing has occurred. If necessary, fences will be installed within or

around the mitigation area(s) to exclude livestock. The increase in native vegetation and habitat complexity that will result from a reduction and/or elimination of livestock will benefit a variety of wildlife and plant species. Reduced livestock grazing in the early spring may be used as a vegetation management tool. If grazing is eliminated, success criteria would include confirmation that livestock have been successfully excluded from the mitigation area(s). If grazing is restricted but not eliminated, success criteria would be developed to ensure grazing is not limiting shrub recruitment and recruitment of other desirable shrub-steppe species. Any grazing performed as a vegetation management tool will be approved by ODFW prior to implementation. At both HMAs, the landowners have rested the property from grazing and have not permitted grazing in recent years. As described above, the Applicant has discussed grazing with the landowners and a no-grazing agreement could be agreed-to if it is determined that a longer rest period is needed for vegetation enhancement (i.e., to limit trampling of forbs, sagebrush seedlings, and other plants).

6. **Habitat Protection.** The Applicant will restrict uses through its legal instrument (i.e., conservation easement or other) of the mitigation area(s) that are inconsistent with the ODFW habitat mitigation goals.

Based on desktop review and coordination with the landowners, all six of the habitat enhancement actions described here may be suitable for the potential Olex HMA (i.e., shrub planting, weed control, seeding, fire control, restricted grazing, and habitat protection). The shrub planting and seeding would likely be performed within the planted grassland habitat to increase cover for wildlife and increase grass and forb diversity. Four of the eight habitat enhancement actions may be suitable for the potential Ione HMA (i.e., weed control, fire control, restricted grazing, and habitat protection). As this potential HMA is dominated by native grassland and shrub-steppe mosaic (i.e., it contains no planted grasslands), passive habitat enhancement actions such as restricted grazing combined with weed control may be more effective at increasing cover and diversity to benefit wildlife than direct planting or seeding. However, if seeding and planting within the potential Ione HMA are determined to be appropriate and preferred by ODFW and ODOE to passive enhancement actions that have been successful on other portions of the Ione Conservation Opportunity Area, seeding and planting may be implemented on the Ione HMAs. The final enhancements must be approved by ODOE in consultation with ODFW prior to construction and based on the site-specific conditions of the selected HMA(s).

4.2.2 Monitoring

For Mitigation Option 2, the Applicant will hire a qualified investigator (botanist, wildlife biologist, or revegetation specialist) to conduct a monitoring program, based on a monitoring plan, for the mitigation area(s). The monitoring plan shall, at a minimum, include sampling design (i.e., paired monitoring and reference sites, with the number of sites based on diversity of habitat subtypes and enhancement action locations) and vegetation maps with monitoring locations identified; description of data collection methods and monitoring procedures; monitoring schedule; agency consultation schedule and methods for data analysis. The purpose of the monitoring program is to

evaluate on an ongoing basis the protection of the habitat quality and the results of enhancement actions, especially during the wildlife breeding seasons.

The investigator will monitor the HMA(s) for the life of the Project beginning in the year following the initial treatment. Monitoring will occur annually during the first 5 years following initial treatment, then will occur every 3 years thereafter, unless increased frequency is recommended by ODOE, in consultation with ODFW. As part of finalizing the HMP, the Applicant will submit a draft monitoring plan for review and comment by ODOE, in consultation with ODFW. ODOE, in consultation with ODFW, may recommend or require one or more of those actions and/or additional monitoring actions for the habitat mitigation area(s) and the habitat enhancement actions. Based upon specific enhancement actions completed, the monitoring plan will include procedures or description of data collection methods for the following monitoring actions:

1. Assess vegetation cover (species, structural stage, etc.) and progress toward meeting the success criteria;
2. Record environmental factors (such as precipitation at the time of surveys and precipitation levels for the year);
3. Record any wildfire that occurs within the mitigation area(s) and any remedial actions taken to restore habitat quality in the damaged area;
4. Assess the success of the weed control program and recommend remedial action, if needed; and
5. Assess the survival rate and growth of planted species.

4.2.3 Reporting

Prior to construction of the Project, the Applicant shall provide a draft report template (e.g., table of contents) for review and comment by ODOE, in consultation with ODFW. Based on the agency-reviewed report template, Applicant will provide ODOE and ODFW a report following each monitoring period (within 60 days) detailing the observations and results, including the details of implemented enhancement actions.

The monitoring reports will document enhancement actions implemented to date and additional remedial actions planned for areas that are not apparently trending toward success, and the anticipated dates of completion of each of these actions. The investigator will report on the timing and extent of any livestock grazing that has occurred within the mitigation area since the previous monitoring visit.

5.0 Success Criteria

For Mitigation Option 1, mitigation shall be considered successful in meeting the Applicant's obligations at the time of payment to ODFW. For Mitigation Option 2, the success will be based on improvement of habitat quality based on evidence of indicators such as survival of planted shrubs, natural recruitment of sagebrush, and/or successful weed control.

Enhancement actions and habitat quality at the habitat mitigation area(s) will be compared against the following success criteria to evaluate compliance with the Council's Fish and Wildlife Habitat standard (i.e., consistency with the habitat mitigation goals for Category 2-Category 5 habitat impacts):

- Shrub plantings will generally be considered successful if a 30 percent survival rate is achieved after 4 years.
- Vegetation density is equal to or greater than that of reference sites.
- Species diversity of desirable vegetation is equal to or greater than that of reference sites.
- Successful weed control (weed monitoring and treatment) within the HMA for the life of the facility. Percentage of noxious weed cover reduced to at or below level found in baseline assessment. Prevention of noxious weed species not present in HMA as of baseline assessment.

In addition to these direct measurements, photo points may be helpful for documenting success.

The Applicant is obligated to demonstrate that the habitat mitigation area(s) meets or that it is demonstrating a trend towards meeting the success criteria for the life of the Project. If the Applicant cannot demonstrate that the habitat mitigation area(s) is trending toward the habitat quality goals described above within 5 years after the initial enhancement actions, the Applicant will propose remedial action. ODOE may require supplemental planting or other corrective measures such as additional acreage or new habitat mitigation area throughout the life of the Project depending on ongoing reported trends.

6.0 Agency Consultation

6.1 Pre-construction Requirements

Prior to construction of the Project, Applicant shall complete the following steps as part of finalizing the draft HMP:

1. **HMA Habitat Assessment and Agency Site Visit:** Applicant shall conduct a desktop or field survey, as determined appropriate by ODOE, in consultation with ODFW, of the HMA. Applicant shall submit a report or memo, including maps and tables, identifying the habitat subtype/vegetation characteristics of all acreage within the HMA. Applicant shall coordinate with ODOE and ODFW to determine whether a site visit is necessary to further evaluate site specific conditions and inform the Management Plan.
2. **Grazing Assessment:** Applicant shall submit a report or memo to ODOE and ODFW describing the current grazing management practices within the HMA, including information such as Animal Unit Months (AUMs) and pasture rotation schedule; and shall describe measures Applicant intends to employ to track and monitor changes in grazing practices within the HMA for the life of the Project.

3. **Management Plan:** Following review of the HMA Habitat Assessment, Applicant shall seek input from ODOE and ODFW on enhancement action opportunities at the HMA. Enhancement actions shall, at a minimum, include those listed in Section 4.2.1 and further defined based on review of the HMA Habitat Assessment or HMA site visit conducted by Applicant and ODOE and/or ODFW (as determined by ODOE in consultation with ODFW). The final Plan shall include a detailed description of final enhancement actions to be implemented and monitored at the HMA.
4. **Success Criteria:** Following identification of final list of enhancement actions, Applicant shall finalize, for ODOE and ODFW review and approval, success criteria appropriate for tracking the success of enhancement actions to be implemented and monitored at the HMA. The success criteria shall be substantially similar as those identified in Section 5 of this HMP, unless other enhancement actions are selected or Applicant seeks approval of an amendment to the HMP.
5. **Monitoring Plan:** Applicant shall identify paired monitoring and reference sites within the HMA(s). Reference sites shall be identified, in consultation with ODFW, near the enhancement areas to represent pre-enhancement conditions. One or more reference sites shall be identified that closely resembles the pre-enhancement characteristics of the identified enhancement areas. The Applicant shall consider land use patterns, soil type, local terrain, and noxious weed densities in selecting reference sites. Once reference sites are selected by the Applicant and approved by ODOE in consultation with ODFW, the reference site shall remain in the same location unless approval for use of a differing reference site is obtained by ODOE in consultation with ODFW. Prior to construction of the Project or any phase of the Project, the Applicant shall provide to ODOE and ODFW a map and table presenting pre-enhancement habitat category/vegetation characteristics and latitude and longitude of the reference sites; enhancement areas; and designated monitoring sites within enhancement areas in proximity to the reference sites.
6. **Legal Instrument:** Prior to construction of the Project, the Applicant shall acquire the legal right to create, maintain, and protect the HMA for the life of the Project by means of an outright purchase, conservation easement, or similar conveyance and will provide a copy of the documentation to ODFW and ODOE. The legal instrument shall, at a minimum, adhere to the requirements outlined in Section 7 of the HMP.

6.2 Operational Requirements

During HMP implementation, the Applicant shall establish a consultation schedule based on enhancements, monitoring, and reporting schedule. At a minimum, the Applicant must consult with the Department and ODFW 30 days prior to the initial enhancements and monitoring; and within 30 days of monitoring report submission, to discuss details of report observations and recommendations.

The consultation frequency may be amended, based upon agreement between the Applicant, Department, and ODFW, but is intended to provide agencies the opportunity and ability to

efficiently assess information; maintain current understanding of the mitigation implementation, effectiveness and issues; and provide relevant recommendations based on timing of any issues identified during HMP implementation.

During HMP implementation, the Applicant shall coordinate with the Department and ODFW to offer an annual site visit to the HMA(s) each of the first 5 years following initial treatment and then every 3 years thereafter, unless increased frequency is recommended by ODOE, in consultation with ODFW. The timing of the site visit shall be based on optimal seasonal conditions for observation of seeding and shrub planting success and/or weed infestations, and is intended to provide agencies an opportunity to review compliance with the terms of the legal instrument and HMP requirements and to provide any onsite recommendations based on site review.

7.0 Legal Instrument

Under Mitigation Option 2, Applicant will enter into an enforceable and recordable legal instrument, such as a conservation easement or other similar conveyance, that demonstrates reliability and durability of the habitat mitigation and Plan for the life of the Project.

Prior to construction, the Applicant shall provide a draft of the legal instrument to ODOE for review and approval, in consultation with ODFW. ODOE and ODFW review will ensure, at a minimum, that the legal instrument demonstrates or includes the following:

- References and is consistent with the HMP;
- A map and description of all existing structures, impervious surfaces, and access road networks within the HMA;
- Identification of and restrictions on conflicting uses within the HMA, including, but not limited to new roads and associated infrastructure, transmission lines and energy development, land division, and establishment of a feedlot;
- Identification of allowable uses that demonstrate consistency with the HMP wildlife habitat goals; and
- Specifies that ODOE has authority to conduct inspections pursuant to OAR 345-026-0050 to ensure that habitat mitigation area(s) are being managed consistent with the HMP, with reasonable written notice to the property owner and Applicant.

8.0 Amendment of the HMP

This HMP may be amended from time to time by agreement of the Applicant and the Council. Such amendments may be made without amendment of the site certificate. The Council authorizes ODOE to agree to amendments to this HMP. ODOE shall notify the Council of all amendments, and the Council retains the authority to approve, reject, or modify any amendment of this HMP agreed to by ODOE.

9.0 References

IPC (Idaho Power Company). 2018. Fish and Wildlife Habitat Mitigation Plan, Boardman to Hemingway Transmission Line Project. September 2018. Available online at: https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2018-09-28-B2H-ASC-Exhibit-P1-Part-1-Main-to-Attach-P1-6.pdf

Kronner, K., and B. Gritski. 2021. Landowners of the Olex and Ione Conservation Opportunity Areas personal communication (phone call) with Amy Bensted of Tetra Tech. May 12, 2021.

MB&G (Mason, Bruce & Girard, Inc.). 2018. Leaning Juniper IIa and IIb: 2018 (Year-8) Habitat Mitigation Area (HMA) Photo-Monitoring and Reporting. Memo to Matthew Hutchinson (Avangrid Renewables) from Daniel Covington and McKay Larrabee. June 28, 2018

NRCS (Natural Resources Conservation Service, United States Department of Agriculture). 2020. Web Soil Survey. Available online at: http://websoilsurvey.sc.egov.usda.gov/. Accessed 7/13/2020.

ODFW (Oregon Department of Fish and Wildlife). 2013. ODFW Winter Range for Eastern Oregon. GIS dataset available online at: https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml

ODOE (Oregon Department of Energy). 2020. Final Order on Request for Amendment 5 to the Wheatridge Wind Energy Site Certificate. May 22, 2020. Available online at: https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2020-05-22-WRW-RFA5-FO.pdf

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FIGURES

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Nolin Hills Wind Power Project

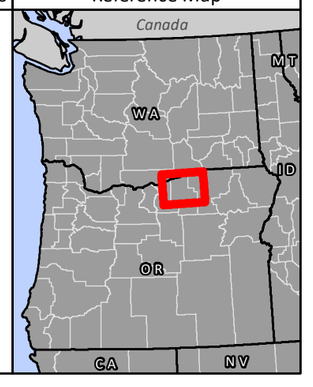
Figure 1
Olex and Ione Conservation Opportunity Areas Overview

UMATILLA COUNTY, OREGON

- Site Boundary
- Olex Conservation Opportunity Area
- Ione Conservation Opportunity Area
- Interstate Highway
- Secondary Highway
- State Boundary
- County Boundary

TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources	Reference Map
Capital Power-Project Infrastructure; USDA-Aerial Imagery; ESRI-Roads	

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NOT FOR CONSTRUCTION

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Nolin Hills Wind Power Project

Figure 2
Olex Conservation Opportunity Area Habitat

GILLIAM COUNTY, OREGON

ROCK CREEK

341 Acres

139 Acres

- Olex Conservation Opportunity Area
- Existing Conservation Easement
- Potential Nolin Hills Habitat Mitigation Area

Habitat Type

- Agriculture
- Developed
- Native Grassland and Shrub-steppe Mosaic
- Old Field
- Planted Grassland

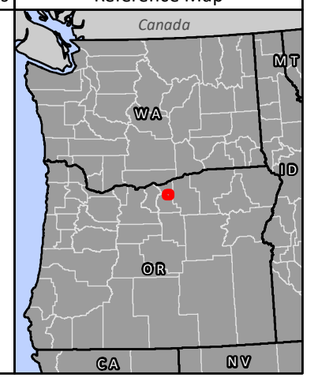
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



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Nolin Hills
Wind Power Project

Figure 3
Ione Conservation Opportunity Area Habitat

MORROW COUNTY, OREGON

105 Acres

328 Acres

EIGHTMILE CANYON

- Ione Conservation Opportunity Area
- Existing Conservation Easement
- Potential Nolin Hills Habitat Mitigation Area

Habitat Type

- Native Grassland and Shrub-steppe Mosaic

1:10,000 WGS 1984 UTM Zone 11N

0 0.25 0.5 0.75 1 Miles

NOT FOR CONSTRUCTION

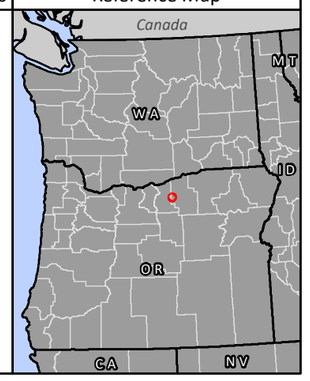
TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Data Sources

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

Reference Map



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Attachment P-2: Draft Revegetation and Noxious Weed Plan

Nolin Hills Wind Power Project

Draft Revegetation Plan

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Nolin Hills Wind, LLC

Prepared by:

TETRA TECH

Tetra Tech, Inc.

May 2021

Revisions, in track-changes, are proposed by the Department based on recommendations in the Draft Proposed Order

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Appendix A. Oregon Department of Agriculture Noxious Weed Policy and Classification System
Appendix B. Umatilla County Noxious Weed List

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1.0 Introduction

Nolin Hills Wind, LLC (the Applicant) proposes to construct the Nolin Hills Wind Power Project (Project), a wind and solar energy project with a nominal generating capacity of approximately 600 megawatts (MW) (preliminarily 340 MW from wind and 260 MW from solar), in Umatilla County, Oregon (see Figure C-1 in Exhibit C). The Project's wind energy component comprises up to 112 wind turbine generators, depending on the turbine model selected and the final layout determined during the micrositing process. The solar array will include up to approximately ~~1,117,591~~816,812 solar modules, depending on the final technology and layout selected. This Revegetation Plan (Plan) will be ~~updated~~ finalized, prior to construction, ~~as needed to reflect~~based on the final layout once the turbine model(s) and solar modules have been selected. The Project will interconnect to the regional grid via either publicly owned and operated transmission lines to be constructed locally by the Umatilla Electric Cooperative, or a new 230-kilovolt (kV) transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration (BPA) Stanfield Substation. Other Project components include an up to 120-MW battery energy storage system, site access roads, one operations and maintenance (O&M) building, meteorological data collection towers, and temporary construction yards. These facilities are all described in greater detail in Exhibit B.

This Plan describes methods, success criteria, and monitoring and reporting requirements for the restoration and revegetation of areas temporarily disturbed during the construction; and provides for noxious weed control to support and maintain revegetation success, and minimize noxious weed impacts for the life of the Project. The objective of revegetation efforts is to restore temporarily disturbed areas to pre-disturbance conditions. The evaluation of pre-disturbance wildlife habitat condition is based upon evaluation of the revegetated area conditions compared to conditions of approved, fixed-point reference sites, which serve as a proxy for pre-disturbance conditions.

Habitat mapping and categorization of the Site Boundary were conducted for the Project between 2017 and 2020. Details on habitat types, subtypes, and categories can be found in Exhibit P of the Project's Application for Site Certificate (ASC), especially Attachment P-2. Details on potential impacts to habitat from construction and operation of the Project, as well as avoidance and minimization measures, can be found in the ASC Exhibits P and Q.

The Project includes a 48,196-acre Site Boundary and 15,726-acre micrositing corridor within which all Project facilities will be located. The Project lies within the Columbia Plateau Ecoregion at elevations from approximately 560 to 2,740 feet. The Project is sited entirely on private land primarily within active agriculture, followed by eastside grassland and planted grassland. Native vegetation within the Site Boundary has been modified not only through agricultural conversion, but also through historical and current livestock grazing, changes in fire regimes, and the introduction of exotic grasses and other non-native vegetation.

2.0 Description of Temporary Impacts

Within the Site Boundary, the Applicant established a 15,726-acre micrositing corridor within which Project facilities will be constructed. This approach allows some flexibility with specific component locations and design in response to site-specific conditions and engineering requirements that will be determined prior to construction. Construction of the Project will result in approximately 2,143 acres of temporary impacts. Although actual impacts may change depending on the final layout, solar modules, and turbine model(s), this value represents the estimated maximum acreage of impact.

Temporary impacts will occur in areas that will be disturbed during construction and operations and maintenance activities, but which will not be occupied by permanent facilities. Temporary disturbance will occur in association with the improvement of existing roads and the construction of aboveground and underground collector and transmission lines, new roads, substations, meteorological data collection towers, crane paths, an O&M building, and staging areas. The intensity of the construction and operational impacts will vary across the Project. In some areas, the impact will be relatively light, but in other areas, heavy construction activity will remove all vegetation, remove topsoil, and compact the remaining subsoil. Some areas of temporary disturbance, such as staging areas, will be graveled during construction, and will be reclaimed by removing the gravel surface, regrading to match adjacent contours, and reseeding.

Table 1 presents the anticipated temporary impacts associated with the Project to the habitat subtypes recorded during 2017-2020 field surveys and desktop analysis for areas with no access. This represents the estimated maximum acreage of impact and conservatively includes both corridors for the BPA Stanfield 230-kV transmission line route where it parallels the existing 500-kV transmission line; however, only one of these two corridors would be developed, should this transmission line option be selected. Table 1 will be updated prior to construction to reflect the final impact acreage by habitat subtype and facility components (wind, solar and transmission lines) for the final layout, once the transmission line option, turbine model(s) and solar modules have been selected. Additional details regarding habitat subtypes that will be temporarily and permanently disturbed during construction and operation are provided in Exhibit P of the ASC.

Table 1. Maximum Temporary Impacts by Habitat Subtype

Habitat Subtype	Temporary Disturbance (Acres) [1]
Eastside Grasslands	837
Orchards, Vineyards, Wheat Fields, Other Row Crops	820
Planted Grasslands	373
Urban and Mixed Environs	82
Shrub-steppe	22
Intermittent or Ephemeral Streams	4*
Perennial Streams	2*
Eastside Riparian	2
Irrigated Pastures and Hay Meadows	1
Cliffs, Caves, and Talus	1
Permanent Ponds/Lakes	<1*
Emergent Wetland	<1*
Total	2,143

1. Total may not sum exactly due to rounding. The acres of impact shown here conservatively include both corridors for the BPA Stanfield 230-kV transmission line route where it parallels the existing 500-kV transmission line; however, only one of these two corridors would be developed, should this transmission line option be selected. This approach is in contrast to Exhibit C (where only the maximum disturbance from selecting a single corridor is included in the impact calculation) in order to capture potential impacts to all habitat types and categories.

* Impacts to wetlands and Waters of the State will be avoided during final design (see Exhibit J of the ASC).

3.0 Agency Consultation

3.1 Pre-construction

The draft Revegetation and Noxious Weed Plan, prepared for the ASC, is substantially complete for purposes of Council review. The components of the plan to be finalized, prior to construction, are intended to be a validation of details based on preconstruction conditions and final facility design without substantive change, as follows:

- Obtain Department/ODFW approval of a protocol for the preconstruction habitat and/or botanical surveys. The protocol must include identification of noxious weeds based on current state and county-listed noxious weeds (update Attachments A and B, if applicable)
- Update Table 1 based on the results of the preconstruction habitat and botanical surveys, presenting temporary impacts based on habitat category, subtype and facility component (wind, solar, transmission line)
- Update Table 2 based on ODFW-approved seed mix
- Describe topsoil management to be implemented and provide evidence that contractor has mulch or plastic sheeting sufficient to protect topsoil based on the level of disturbance (acres) per phase.
- Establish a protocol for evaluating pre-disturbance conditions of agriculturally productive soils to support restoration to pre-disturbance condition
- Obtain Department/ODFW approval of number and location of paired monitoring and reference sites sufficient to evaluate revegetation success per habitat category/subtype
- Obtain Department/ODFW approval of a revegetation monitoring procedure
- Evaluate whether, based on any significant changes or information obtained during preconstruction surveys, any changes to success criteria are necessary to more appropriately evaluate revegetation success
- Propose a reporting format that clearly presents vegetation characteristics of the paired monitoring and reference sites, based on the established success criteria (Section 7.3) for Department/ODFW review

The Applicant will consult, concurrently, with the Oregon Department of Fish and Wildlife (ODFW), the Oregon Department of Energy (ODOE), and the Umatilla County Weed Department prior to construction to discuss preconstruction habitat and botanical surveys, areas to be revegetated, reference site location and conditions, topsoil restoration and revegetation methods, erosion and sediment control measures, and implementation schedule.

The Applicant will consult, concurrently, with ODOE and its third-party consultant, and if responsive, Oregon Department of Agriculture and Umatilla County Soil and Water Conservation District on site-specific conditions within agriculturally productive soil areas of potential impact. The Applicant shall develop a protocol to evaluate pre- and post-disturbance conditions (see Soil Protection Condition 2). Applicant shall ensure its contractors are aware of site-specific conditions, including areas of limited top-soil, areas of highly erodible soils, and land contouring relied upon for water control, and implement construction design and methods that minimize impacts to agriculturally productive soils.

3.2 Construction

Prior to any year of construction, the Applicant shall evaluate state and county-listed noxious weed lists and update the plan (Attachments A and B), if necessary, to ensure worker awareness of changes in noxious weeds within potential ground-disturbance areas.

Six months prior to commercial operation of each Project phase[1], if applicable, the Applicant will meet with ODFW, ODOE, and the Umatilla County Weed Department to review the actual extent and conditions of temporarily impacted areas, to confirm the revegetation methods agreed to during pre-construction review are still appropriate~~, and to identify reference sites~~.

3.3 Operations

On an annual basis, concurrent with the timing of revegetation/noxious weed monitoring, the Applicant shall evaluate state and county-listed noxious weed lists and update the plan (Attachments A and B), if necessary, to ensure worker awareness of changes in noxious weeds within potential ground-disturbance and revegetation areas.

4.0 Revegetation Methods

This Plan addresses revegetation methods for temporary impacts to non-agriculture and non-developed habitat subtypes. Agriculture and developed habitat types will be restored with the landowner's direction and as discussed in Section 4.3. Revegetation will begin as soon as feasible following completion of construction. Seeding and planting will be done in a timely manner and within the appropriate season to facilitate germination. The Applicant will restore temporarily disturbed areas by re-establishing slope, surface stability, and drainage features, as needed, followed by soil preparation and seeding. Soil preparation and seeding techniques are described below.

4.1 Soil Preparation

Prior to seeding and/or planting of revegetation areas, soils will be prepared to facilitate revegetation success. Soil preparation will include standard, commonly used methods and will consider relevant site-specific factors, including slope, size of area, and erosion potential. In areas where soil is removed during construction, the topsoil will be stockpiled separately from subsurface soils, where possible. The stockpiled topsoil will be put back in place prior to revegetation activities. Additional site-specific soil preparation may be determined during the agency consultation period. The Applicant will use mulching, installation of geotextile products, and other appropriate practices to control erosion and sediment during construction to support post-construction revegetation efforts.

4.2 Seeding

Following preparation of the soil, an agency-approved seed mix will be applied. The seed mix will be selected based on the pre-construction conditions and land use and approved by the ODFW, ODOE, Umatilla County, and private landowners, as appropriate. Seeds will be obtained from a

[1] The Applicant proposes to begin construction as soon as spring 2021, with a commercial operation target date of the end of 2022. However, given that construction could conceivably be delayed by weather or other unforeseen circumstances such as market changes, the Applicant has requested flexibility to build the Project in one or more phases, with a deadline for construction completion of 6 years from issuance of the site certificate.

reputable supplier in compliance with the Oregon Department of Agriculture (ODA) Oregon Seed Laws. Table 3 shows an example seed mix for revegetation.

Table 2. Example Seed Mix

Common Name	Scientific Name	Percent of Mix
Bluebunch wheatgrass	*Pseudoroegneria spicata*	45
Bottlebrush squirreltail	*Elymus elymoides*	15
Sandberg's bluegrass	*Poa secunda*	15
Thickspike wheatgrass	*Elymus lanceolatus*	15
Western yarrow	*Achillea millefolium* var. *occidentalis*	2
Shaggy fleabane	*Erigeron pumilis*	2
Desert parsley	*Lomatium dissectum*	2
Silky lupine	*Lupinus sericeus*	2
Lewis flax	*Linum lewisii*	2

The Applicant will choose seeding methods based on site-specific factors such as slope, erosion potential, and the size of the area in need of revegetation. Two common seed application methods that may be used are broadcast and drill seeding.

4.2.1 Broadcast Seeding

Broadcast seeding is the application of seed directly to the ground surface. This method may be chosen for areas with shallow and rocky soils, and the type of broadcast spreader would depend on the size of the area to be seeded and the terrain.

The agency-approved seed mix would be applied at the specified application rates. Where feasible, half of the total mix would be applied in one direction and the second half of the mix would be applied in the perpendicular direction. A tracking dye may be added to facilitate uniform seed application. Immediately following seed application, certified weed-free straw would be applied at a rate of 2 tons per acre. Straw would be crimped into the ground to a depth of 2 inches using a crimping disc or similar device. As an alternative to crimping, a tackifier (a chemical compound to increase the adhesiveness) may be applied using hydroseed equipment. Prior to mixing the tackifier, the tank would be visually inspected for cleanliness and, if remnants from previous applications exist, the tank would be washed.

4.2.2 Drill Seeding

Drill seeding can be used for larger areas with deeper soils and moderate to gentle terrain to accommodate mechanical equipment. This method provides the advantage of planting the seed at a uniform depth and may provide better soil to seed contact.

Using an agricultural or range seed drill, the agency-approved seed mix would be planted according to the application rates recommended by the seed supplier. Where feasible, half of the total mix

would be applied in one direction and the second half of mix in the perpendicular direction. If mulch has been previously applied in heavy construction areas, it is possible for the seed to be drilled through the mulch, resulting in seed-to-soil contact conducive for seed germination.

4.3 Restoration of Cropland

Prior to construction, the Applicant shall consult land owners of croplands on land contours/terraces, topsoil conditions and other site specific conditions necessary for informing construction methods, materials and schedule in order to minimize temporary impacts to soil, soil productivity and harvest. Evidence of consultation and measures to be taken based on consultation shall be provided to the Department, for review in consultation with the Oregon Department of Agriculture or its third-party consultant.

During construction, the Applicant will use mulching, installation of geotextile products, and other appropriate practices to control erosion and sediment during construction to support post-construction cropland restoration. Applicant shall monitor, evaluate and modify, as necessary, erosion materials and topsoil management to ensure that erosion impacts and topsoil loss are minimized during construction. The Applicant shall have a sufficient number of onsite monitors given the extent of disturbance onsite. If, at any time, results of the monitoring indicate that erosion materials and topsoil management are not effective, the Applicant shall notify the Department and identify its corrective actions to be implemented and the implementation schedule. The Applicant will be subject to violation of OAR 660-033-0130(37)(b)(B) in the event construction activities continue within appropriate minimization measures in place.

Croplands will be reseeded with the appropriate crop or maintained as fallow in consultation with the landowner or farm operator. The Applicant will also consult with the landowner or farm operator to determine seed mix and application methods and rates for seed and fertilizer.

Soil compaction is a concern for restoring agricultural soils to their pre-construction productivity. During construction of temporary facilities, the Applicant will excavate, ~~and~~ store and protect soils by soil horizon, to minimize topsoil loss and so that soils could be replaced and restored appropriately, including replacing topsoil~~, where possible~~. During post-construction restoration of temporary impacts to agricultural areas, the Applicant will loosen agricultural soil to an appropriate depth (minimum of 12-18 inches, based on landowner input) to reduce the potential effects of compaction.

5.0 Noxious Weed Prevention and Control

~~Throughout construction and revegetation activities,~~ T~~t~~he Applicant will take appropriate actions to prevent the spread of noxious weeds prior to and during construction and throughout the life of facility operations. ~~Where appropriate, and pursuant to consultation with the Umatilla County Weed Department,~~ M~~m~~onitoring of noxious weeds and the effectiveness of weed control/eradication efforts will be performed concurrently with the revegetation monitoring described in this document.

5.1 Regulatory Framework

5.1.1 State of Oregon

In Oregon, noxious weeds are defined under Oregon Revised Statutes (ORS) 569.175 as "terrestrial, aquatic, or marine plants designated by the State Weed Board (OSWB) under ORS 569.615 as among those representing the greatest public menace and as a top priority for action by weed control programs." Noxious weeds have been declared by ORS 569.350 as a menace to public welfare, and control of these plants is the responsibility of private landowners and operators, as well as county, state, and federal governments.

The OSWB was established under ORS 561.650. It provides direction to control noxious weeds at the state level and develops and maintains the State Noxious Weed List. OSWB and the ODA classify noxious weeds in Oregon in accordance with the ODA Noxious Weed Classification System (ODA 2019a). Currently, there are 138 noxious weeds listed in Oregon (ODA 2019a; Appendix A). There are three designations for noxious weeds under the State's system:

- Class A State Listed Noxious Weed: A weed of known economic importance which occurs in the state in small enough infestations to make eradication or /containment possible; or is not known to occur in Oregon, but its presence in neighboring states makes future occurrence seem imminent.
    - Recommended Action: Infestations are subject to eradication or intensive control when and where found.
- Class B State Listed Noxious Weed: A weed of economic importance that is regionally abundant but may have limited distribution in some counties.
    - Recommended Action: Limited to intensive control at the state, county, or regional level as determined on a site-specific, case-by-case basis. Where implementation of a fully integrated statewide management plan is not feasible, biological control (when available) shall be the primary control method.
- Class T Designated State Noxious Weeds: Priority noxious weed species selected and designated by the OSWB as the focus of prevention and control actions by the Noxious Weed Control Program. T-designated noxious weeds are selected annually from either the A or B list and the ODA is directed to develop and implement a statewide management plan for these species.

5.1.2 Umatilla County

Section 97 of the Umatilla County Code establishes Umatilla County as a weed control district, defines what is considered a noxious weed, identifies the responsibility of private land owners to control weeds, and outlines the authority of the weed control district and Umatilla County Board of Commissioners to enforce the ordinance. Per ORS 569.350 through 569.520, Umatilla County maintains a Umatilla County Noxious Weed Control List. This list, most recently updated in 2017, includes 39 noxious weed species that have been found currently or previously growing in the county (Umatilla County 2019; Appendix B). These 39 species are classified as either "A" or "B" designated weeds according to control requirement categories as follows:

- "A" Designated Weed: A weed of known economic importance which occurs in the state/county in small enough infestations to make eradication/containment possible; or is not known to occur, but its presence in neighboring states/counties makes future

occurrence seem imminent.

- "B" Designated Weed: A weed of known economic importance which is regionally abundant, but which may have limited distribution in some counties. Where implementation of a fully integrated statewide management plan is feasible, biological control shall be the main control approach for species for which biological agents are available.

5.2 Noxious Weeds Identified in the Site Boundary

Fifteen noxious weed species were recorded within the Site Boundary during surveys conducted in 2017-2020 (Tetra Tech 2019, 2020; see Appendix P-2 to Exhibit P of the ASC). These species and their state and county weed status are presented in Table 3 below.

Table 3. Noxious Weeds Located within Site Boundary

Common Name	Scientific Name	State Status/ County Status [1]	Frequency
jointed goatgrass	*Aegilops cylindrica*	B/B	Several small to large patches
kochia	*Bassia (Kochia) scoparia*	B/B	Abundant
diffuse knapweed	*Centaurea diffusa*	B*/B	Occasional large patches
yellow star-thistle	*Centaurea solstitialis*	B*/B	Abundant
spikeweed	*Centromadia (Hemizonia) pungens*	B/A	Few small patches
rush skeletonweed	*Chondrilla juncea*	B*, T/A	Several small to medium-sized patches
Canada thistle	*Cirsium arvense*	B*/B	Few small patches
bull thistle	*Cirsium vulgare*	B*/not listed	Few small patches
poison hemlock	*Conium maculatum*	B*/B	Several medium to large-sized patches along drainages
field bindweed	*Convolvulus arvensis*	B*/not listed	Abundant
hound's tongue	*Cynoglossum officinale*	B/not listed	Few small to medium-sized patches along drainages
common St. John's wort	*Hypericum perforatum*	B*/B	Occasional small patches
Scotch thistle	*Onopordum acanthium*	B/B	Many small to medium-sized patches
cereal rye	*Secale cereale*	Not listed/B	Abundant
medusahead	*Taeniatherum caput-medusae*	B/not listed	Scattered medium-sized patches
puncture vine	*Tribulus terrestris*	B*/B	Few small to large-sized patches
ventenata grass	*Ventenata dubia*	B/not listed	Occasional small to large patches
1. Species marked with a (*) are targeted for biocontrol.			

As presented in Section 3.0, Table 3 will be updated prior to and during construction, and annually for the life of the facility, based on current state and county noxious weed lists and results of annual monitoring.

5.3 Noxious Weed Management

Preconstruction habitat and botanical survey results will be used to identify preexisting noxious weed infestations within, or in proximity to, areas of potential ground disturbance. These areas

will be mapped and either flagged for avoidance or treated to minimize and control the spread of noxious weeds from facility related vehicle and equipment use and disturbance.

5.3.1 Prevention

Implementation of the following best management practices is intended to prevent the spread of noxious weeds during construction, revegetation efforts, and O&M activities.

- Educating workers of the importance of noxious weed prevention and treatment measures;
- Providing information regarding target noxious weed species at the O&M Building;
- Flagging areas of noxious weed infestations, where practical, prior to construction to alert construction personnel to their presence and limit or prevent access to those areas;
- Limiting vehicle access to designated routes, whether existing roads or newly constructed roads, and the outer limits of constructed-related disturbances;
- Limiting vehicle traffic in noxious weed-infested areas;
- Cleaning construction vehicles prior to entering the Project for the first time and upon completion of work at the Project;
- Cleaning vehicles after performing work in noxious weed-infested areas;
- Identifying topsoil and other soils that came from noxious weed–infested areas and placing next to the infested area so they are returned to their previous location during reclamation activities;
- Treating soils from infested areas with a pre-emergent herbicide prior to initiation of revegetation efforts, depending on site-specific conditions;
- Limiting movement of topsoil and other soils from non-infested areas to eliminate the transport of weed seeds, roots, or rhizomes;
- Implementing noxious weed treatments via mechanical or chemical control;
- Preventing conditions favorable for noxious weed germination and spread by revegetating temporarily disturbed areas as soon as possible;
- Monitoring areas of disturbance for noxious weeds after construction, during the normal course of revegetation maintenance of temporary work spaces, and implementing control measures as appropriate;
- Revegetating the site with appropriate, local native seed or native plants; when these are not available, non-invasive and non-persistent non-native species may be used; and
- Purchasing seed and straw mulch (used for site rehabilitation and revegetation) that is certified free of noxious weed seed and propagules, if possible.

5.3.2 Treatment

Noxious weed treatment will focus on pre-existing infestations within areas of potential ground-

disturbance and control of existing populations of noxious weeds within areas disturbed by construction. Additionally, if it is determined that noxious weeds have invaded areas adjacent to disturbance areas as a result of construction, the Applicant will contact the landowner and seek approval to treat those noxious weed populations. New noxious weeds detected during post-construction restoration will also be considered a result of construction activities and shall be controlled and treated accordingly.

Control of noxious weeds will be implemented through manual, mechanical, or chemical control measures. Manual control methods include hand-pulling and using hand tools to remove noxious weeds. Mechanical control includes mowing or disking with machinery. Chemical application is accomplished through use of herbicides targeted to the individual weed species. The Applicant will be responsible for hiring a qualified contractor to implement the treatment of noxious weeds.

The most appropriate control method depends on the noxious weed species being treated, the size of infestation, and the terrain and habitat needing treated. Standard treatment methods for noxious weeds can be found in the Pacific Northwest Weed Management Handbook (Peachey 2019), ODA's Oregon Noxious Weed Profiles (ODA 2019b), and Weed Control in Natural Areas in the Western United States (UC Davis 2013).

6.0 Revegetation Documentation

Records will be kept of revegetation efforts, both for croplands and other habitats; records will include:

- Date construction was completed in the area to be revegetated;
- Description of the affected area;
- Date revegetation work was initiated;
- Description of the revegetation work implemented; and
- Supporting figures representing the location, acres affected, and pre-disturbance condition of the revegetation area.

The Applicant will update these records periodically as revegetation work occurs and will provide ODOE with copies of these records with submission of the monitoring report required by the Site Certificate.

7.0 Monitoring

7.1 Monitoring and Reference Sites

During preconstruction habitat and/or botanical surveys, n~~N~~earby reference sites, approximating pre-construction conditions of the revegetation areas, will be selected as targets toward which revegetation will aim. Reference sites will be chosen to represent each of the habitat types to be revegetated~~, as feasible~~. Land use patterns, soil types, terrain, and presence of noxious weeds will also be considered in selection of reference sites. Once reference sites are selected by the Applicant and approved by the ODOE and ODFW, the reference sites shall remain in the same location unless

approval for use of a different reference site is obtained by the ODOE and ODFW.

Once the reference sites are approved by the ODOE and ODFW, the Applicant will employ a qualified investigator (botanist or revegetation specialist) to monitor those sites to establish baseline conditions as they relate to the success criteria for revegetation efforts. Documentation of baseline conditions at reference sites shall occur prior to commencement of revegetation efforts. The Applicant's qualified investigator shall compare designated monitoring sites within revegetation areas to the selected reference sites.

If land use changes, wildfires, or other disturbances occur between the time of selection and monitoring of baseline conditions such that a chosen reference site is no longer representative of target conditions, new reference sites may be chosen. Following the selection of a new reference site, an updated table and latitude/longitudinal data will be provided to ODOE within a 6-month revegetation record report or the annual compliance report, whichever report is submitted first.

7.2 Monitoring Procedures

Following implementation of revegetation efforts, the Applicant will monitor the revegetation areas as described in this section, unless the landowner has converted the area to a use inconsistent with the success criteria. The Applicant will submit its revegetation monitoring methodology to ODFW and ODOE for approval prior to assessing baseline conditions within reference sites and prior to the first annual monitoring of revegetation areas.

Monitoring of the revegetation areas will be conducted by a qualified investigator annually for 5 years, with the first monitoring period to occur the first growing season following initial seeding. Revegetation areas will be inspected to determine if the area is meeting and/or on track to meeting the success criteria as described in Section 7.3. The investigator will evaluate the following site conditions during annual monitoring:

- Extent of bare soil;
- Degree of erosion;
- Presence and abundance of noxious weeds;
- Vegetation density;
- Relative proportion of desirable vegetation (desirable vegetation includes those species included in the seed mix or native or native-like species, excluding noxious weeds); and
- Species diversity and structural stage of desirable vegetation.

Following annual monitoring, a monitoring report will be prepared and will include:

- The investigator's assessment of whether the revegetated areas are trending toward meeting the success criteria;
- Assessments of factors impacting the ability of the revegetated area to trend towards meeting the success criteria;
- Descriptions of appropriate weed control measures as recommended by ODOE, ODFW and the Umatilla County Weed Department; and

- Recommendations of remedial actions, if any.

The Applicant will report the investigator's findings and recommendations regarding wildlife habitat recovery and revegetation success within 60 days of the inspection to ODOE and ODFW.

7.3 Success Criteria

In each monitoring report, the Applicant will include an assessment of whether the revegetated areas are meeting or trending toward meeting the success criteria. An area will be deemed successfully revegetated when the habitat quality at a monitoring site is equal to or surpasses the habitat quality at the associated reference site, as follows:

- Vegetation density is equal to or greater than that of the reference site;
- Relative proportion of desirable vegetation is equal to or greater than that of the reference site;
- Species diversity of desirable vegetation is equal to or greater than that of the reference site; and
- The presence and density of noxious weeds is equal to or less than that of the reference site.

When ODOE and ODFW find that the condition of a revegetation area satisfies the criteria for revegetation success, ODOE and ODFW will conclude that the Applicant has met its restoration obligations for that area. If ODOE or ODFW finds that the landowner has converted a habitat area to a use that is inconsistent with these success criteria, ODOE and ODFW will conclude that the Applicant has no further obligation to restore the area.

In addition, success of cropland revegetation will have been achieved when production of the revegetated area is comparable to that of adjacent, non-disturbed croplands. Success determination will involve consultation with the landowner or farm operator, and the Applicant will report to ODOE on the success of cropland restoration efforts after the first growing season.

7.4 Remedial Action

After each monitoring visit, the Applicant's qualified investigator will report to the Applicant regarding the revegetation progress of each revegetation area. The investigator, in consultation with ODOE, ODFW, the Umatilla County Weed Department, and the revegetation contractor, will make recommendations to the Applicant for reseeding, weed control, or other remedial measures for areas that are not showing progress toward achieving revegetation success, if applicable. The investigator will provide a description of factors that may be contributing to the lack of revegetation success. ODOE may require reseeding, weed control, or other remedial measures and additional monitoring in those areas that are not trending towards meeting the success criteria by Year 5. If after Year 5, revegetation has not been achieved or is not trending towards success at a reasonable rate, Applicant shall propose compensatory mitigation to address the temporal, and potentially permanent habitat loss for approval by ODOE, in consultation with ODFW, and shall consult with ODOE on additional revegetation actions to ensure site stabilization and minimization of noxious weed infestation.

If a revegetation area is damaged by wildfire during the first 5 years following initial seeding, the

Applicant will work to restore the damaged area. The Applicant will continue to report on revegetation progress during the remainder of the 5-year period. The Applicant will report to ODOE and ODFW the area impacted by the fire (with a map or figure).

8.0 Plan Amendment

This Plan may be amended from time to time by agreement of the Applicant and Energy Facility Siting Council (Council). Such amendments may be made without an amendment of the Site Certificate. The Council authorizes ODOE to agree to amendments to this plan. ODOE shall notify the Council of all amendments, and the Council retains the authority to approve, reject, or modify any amendments of this plan agreed to by ODOE.

9.0 References

ODA (Oregon Department of Agriculture). 2019a. Noxious Weed Policy and Classification System. Noxious Weed Control Program. Salem, OR. Available online at: http://www.oregon.gov/ODA/shared/Documents/Publications/Weeds/NoxiousWeedPolicyClassification.pdf. Accessed July 2019.

ODA. 2019b. Oregon Noxious Weed Profiles. Available online at: https://www.oregon.gov/ODA/programs/Weeds/OregonNoxiousWeeds/Pages/AboutOregonWeeds.aspx

Peachey, E., editor. 2019. Pacific Northwest Weed Management Handbook [online]. Corvallis, OR: Oregon State University. Available online at: http://pnwhandbooks.org/weed

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UC Davis (University of California at Davis Weed Research and Information Center). 2013. Weed Control in Natural Areas in the Western United States. Weed Research and Information Center, University of California. 544 pages.

Umatilla County. 2019. Weed Control Board. Noxious Weed List. Available online at: http://www.co.umatilla.or.us/road/weedlist.html

Appendix A:
Oregon Department of Agriculture Noxious Weed Policy and Classification System

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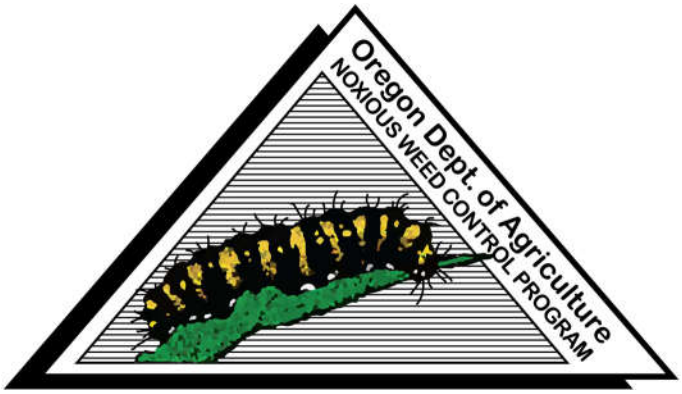
Oregon Department of Agriculture

Noxious Weed Policy and Classification System 2019



Noxious Weed Control Program

Address: 635 Capitol Street NE, Salem, Oregon 97301

Phone: (503) 986-4621 **Fax:** (503) 986-4786

www.oregon.gov/ODA/programs/Weeds/Pages/AboutWeeds.aspx

Mission Statement

To protect Oregon's natural resources and agricultural economy from the invasion and proliferation of invasive noxious weeds.

Program Overview

The Oregon Department of Agriculture (ODA) Noxious Weed Control Program provides statewide leadership for coordination and management of state listed noxious weeds. The state program focuses on noxious weed control efforts by implementing early detection and rapid response projects for new invasive noxious weeds, implementing biological control, implementing statewide inventory and survey, assisting the public and cooperators through technology transfer and noxious weed education, maintaining noxious weed data and maps for priority listed noxious weeds, and assisting land managers and cooperators with integrated weed management projects. The Noxious Weed Control Program also supports the Oregon State Weed Board (OSWB) with administration of the OSWB Grant Program, developing statewide management objectives, developing weed risk assessments, and maintaining the state noxious weed list.

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Noxious Weed Control Policy and Classification System

Definition

"Noxious weed" means a terrestrial, aquatic or marine plant designated by the Oregon State Weed Board under ORS 569.615 as among those representing the greatest public menace and as a top priority for action by weed control programs.

Noxious weeds have become so thoroughly established and are spreading so rapidly on private, state, county, and federally owned lands, that they have been declared by ORS 569.350 to be a menace to public welfare. Steps leading to eradication, where possible, and intensive control are necessary. It is further recognized that the responsibility for eradication and intensive control rests not only on the private landowner and operator, but also on the county, state, and federal governments.

Weed Control Policy

Therefore, it shall be the policy of ODA to:

1. Assess non-native plants through risk assessment processes and make recommendations to the Oregon State Weed Board for potential listing.
2. Rate and classify weeds at the state level.
3. Prevent the establishment and spread of listed noxious weeds.
4. Encourage and implement the control or containment of infestations of listed noxious weed species and, if possible, eradicate them.
5. Develop and manage a biological weed control program.
6. Increase awareness of potential economic losses and other undesirable effects of existing and newly invading noxious weeds, and to act as a resource center for the dissemination of information.
7. Encourage and assist in the organization and operation of noxious weed control programs with government agencies and other weed management entities.
8. Develop partnerships with county weed control districts, universities, and other cooperators in the development of control methods.
9. Conduct statewide noxious weed surveys and weed control efficacy studies.

Weed Classification System

The purpose of this Classification System is to:

1. Act as the ODA's official guideline for prioritizing and implementing noxious weed control projects.
2. Assist the ODA in the distribution of available funds through the Oregon State Weed Board to assist county weed programs, cooperative weed management groups, private landowners, and other weed management entities.
3. Serve as a model for private and public sectors in developing noxious weed classification systems that aid in setting effective noxious weed control strategies.

Criteria for Determining Economic and Environmental Significance

Detrimental Effects

1. A plant species that causes or has the potential to cause severe negative impacts to Oregon's agricultural economy and natural resources.
2. A plant species that has the potential to or does endanger native flora and fauna by its encroachment into forest, range, aquatic and conservation areas.
3. A plant species that has the potential or does hamper the full utilization and enjoyment of recreational areas.
4. A plant species that is poisonous, injurious, or otherwise harmful to humans and/or animals.

Plant Reproduction

1. A plant that reproduces by seed capable of being dispersed over wide areas or that is long-lived, or produced in large numbers.
2. A plant species that reproduces and spreads by tubers, creeping roots, stolons, rhizomes, or other natural vegetative means.

Distribution

1. A weed of known economic importance which occurs in Oregon in small enough infestations to make eradication/containment possible; or not known to occur, but its presence in neighboring states makes future occurrence seem imminent.
2. A weed of economic or ecological importance and of limited distribution in Oregon.
3. A weed that has not infested the full extent of its potential habitat in Oregon.

Difficulty of Control

A plant species that is not easily controlled with current management practices such as chemical, cultural, biological, and physical methods.

Noxious Weed Control Classification Definitions

Noxious weeds, for the purpose of this system, shall be listed as either A or B, and may also be designated as T, which are priority targets for control, as directed by the Oregon State Weed Board.

- A Listed Weed:

  A weed of known economic importance which occurs in the state in small enough infestations to make eradication or containment possible; or is not known to occur, but its presence in neighboring states make future occurrence in Oregon seem imminent (Table I).

  Recommended action: Infestations are subject to eradication or intensive control when and where found.

- B Listed Weed:

  A weed of economic importance which is regionally abundant, but which may have limited distribution in some counties (Table II).

  Recommended action: Limited to intensive control at the state, county or regional level as determined on a site specific, case-by-case basis. Where implementation of a fully integrated statewide management plan is not feasible, biological control (when available) shall be the primary control method.

- T-Designated Weed (T):

  A designated group of weed species that are selected and will be the focus for prevention and control by the Noxious Weed Control Program. Action against these weeds will receive priority. T-designated noxious weeds are determined by the Oregon State Weed Board and directs ODA to develop and implement a statewide management plan. T-designated noxious weeds are species selected from either the A or B list.

Weed Biological Control

Oregon implements biological control, or “biocontrol” as part of its integrated pest management approach to managing noxious weeds. This is the practice of using host-specific natural enemies such as insects or pathogens to control noxious weeds. The Oregon Department of Agriculture Noxious Weed Program has adopted the International Code of Best Practices for biological control of weeds. Only safe, effective, and federally- approved natural enemies will be used for biocontrol.

Table I: A Listed Weeds

Common Name	Scientific Name
African rue (T)	*Peganum harmala*
Camelthorn	*Alhagi pseudalhagi*
Cape-ivy (T)	*Delairea odorata*
Coltsfoot	*Tussilago farfara*
Common frogbit	*Hydrocharis morsus-ranae*
Cordgrass	
Common	*Spartina anglica*
Dense-flowered (T)	*Spartina densiflora*
Saltmeadow (T)	*Spartina patens*
Smooth (T)	*Spartina alterniflora*
Delta arrowhead (T)	*Sagittaria platyphyla*
European water chestnut	*Trapa natans*
Flowering rush (T)	*Butomus umbellatus*
Garden yellow loosestrife (T)	*Lysimachia vulgaris*
Giant hogweed (T)	*Heracleum mantegazzianum*
Goatgrass	
Barbed (T)	*Aegilops triuncialis*
Ovate	*Aegilops ovata*
Goatsrue (T)	*Galega officinalis*
Hawkweed	
King-devil	*Hieracium piloselloides*
Mouse-ear (T)	*Hieracium pilosella*
Orange (T)	*Hieracium aurantiacum*
Yellow (T)	*Hieracium floribundum*
Hoary alyssum (T)	*Berteroa incana*
Hydrilla	*Hydrilla verticillata*
Japanese dodder	*Cuscuta japonica*
Kudzu (T)	*Pueraria lobata*
Matgrass (T)	*Nardus stricta*
Oblong spurge (T)	*Euphorbia oblongata*
Paterson's curse (T)	*Echium plantagineum*
Purple nutsedge	*Cyperus rotundus*
Ravennagrass (T)	*Saccharum ravennae*
Silverleaf nightshade	*Solanum elaeagnifolium*
Squarrose knapweed (T)	*Centaurea virgata*

(T) T-Designated Weed (See page 4)

(Continued) Table I: A Listed Weeds

Common Name	Scientific Name
Starthistle	
Iberian (T)	*Centaurea iberica*
Purple (T)	*Centaurea calcitrapa*
Syrian bean-caper	*Zygophyllum fabago*
Thistle	
Plumeless (T)	*Carduus acanthoides*
Smooth distaff	*Carthamus baeticus*
Taurian (T)	*Onopordum tauricum*
Welted (curly plumeless) (T)	*Carduus crispus*
Woolly distaff (T)	*Carthamus lanatus*
Water soldiers	*Stratiotes aloides*
West Indian spongeplant	*Limnobium laevigatum*
White bryonia	*Bryonia alba*
Yellow floating heart (T)	*Nymphoides peltata*
Yellowtuft (T)	*Alyssum murale, A. corsicum*

(T) T-Designated Weed (See page 4)

Table II: B Listed Weeds

Common Name	Scientific Name
Armenian (Himalayan) blackberry	*Rubus armeniacus (R. procerus, R. discolor)*
Biddy-biddy	*Acaena novae-zelandiae*
Broom	
French*	*Genista monspessulana*
Portuguese (T)	*Cytisus striatus*
Scotch*	*Cytisus scoparius*
Spanish	*Spartium junceum*
Buffalobur	*Solanum rostratum*
Butterfly bush	*Buddleja davidii (B. variabilis)*
Common bugloss (T)	*Anchusa officinalis*
Common crupina	*Crupina vulgaris*
Common reed	*Phragmities australis ssp. australis*
Creeping yellow cress	*Rorippa sylvestris*
Cutleaf teasel	*Dipsacus laciniatus*
Dodder	
Smoothseed alfalfa	*Cuscuta approximata*
Five-angled	*Cuscuta pentagona*
Bigseed	*Cuscuta indecora*
Dyer's woad	*Isatis tinctoria*
Eurasian watermilfoil	*Myriophyllum spicatum*
False brome	*Brachypodium sylvaticum*
Field bindweed*	*Convolvulus arvensis*
Garlic mustard (T)	*Alliaria petiolata*
Geranium	
Herb Robert	*Geranium robertianum*
Shiny leaf	*Geranium lucidum*
Gorse* (T)	*Ulex europaeus*
Halogeton	*Halogeton glomeratus*
Houndstongue	*Cynoglossum officinale*
Indigo bush	*Amorpha fruticosa*
Ivy	
Atlantic	*Hedera hibernica*
English	*Hedera helix*
Johnsongrass	*Sorghum halepense*

*Biocontrol (See page 4) (T) T-Designated Weed (See page 4)

(Continued) Table II: B Listed Weeds

Common Name	Scientific Name
Jointed goatgrass	*Aegilops cylindrica*
Jubata grass	*Cortaderia jubata*
Knapweed	
Diffuse*	*Centaurea diffusa*
Meadow*	*Centaurea pratensis*
Russian*	*Acroptilon repens*
Spotted * (T)	*Centaurea stoebe (C. maculosa)*
Knotweed	
Bohemian	*Fallopia x bohemica*
Giant	*Fallopia sachalinensis (Polygonum)*
Himalayan	*Polygonum polystachyum*
Japanese	*Fallopia japonica (Polygonum)*
Kochia	*Kochia scoparia*
Lesser celandine	*Ranunculus ficaria*
Meadow hawkweed (T)	*Pilosella caespitosum (Hieracium)*
Mediterranean sage*	*Salvia aethiopis*
Medusahead rye	*Taeniatherum caput-medusae*
Old man's beard	*Clematis vitalba*
Parrot feather	*Myriophyllum aquaticum*
Perennial peavine	*Lathyrus latifolius*
Perennial pepperweed (T)	*Lepidium latifolium*
Pheasant's eye	*Adonis aestivalis*
Poison hemlock*	*Conium maculatum*
Policeman's helmet	*Impatiens glandulifera*
Puncturevine*	*Tribulus terrestris*
Purple loosestrife*	*Lythrum salicaria*
Ragweed	*Ambrosia artemisiifolia*
Ribbongrass (T)	*Phalaris arundinacea var. Picta*
Rush skeletonweed* (T)	*Chondrilla juncea*
Saltcedar* (T)	*Tamarix ramosissima*
Small broomrape	*Orabanche minor*
South American waterweed	*Egeria densa (Elodea)*
Spanish heath	*Erica lusitanica*
Spikeweed	*Hemizonia pungens*

*Biocontrol (See page 4) (T) T-Designated Weed (See page 4)

(Continued) Table II: B Listed Weeds

Common Name	Scientific Name
Spiny cocklebur	*Xanthium spinosum*
Spurge laurel	*Daphne laureola*
Spurge	
Leafy* (T)	*Euphorbia esula*
Myrtle	*Euphorbia myrsinites*
St. Johnswort*	*Hypericum perforatum*
Sulfur cinquefoil	*Potentilla recta*
Swainsonpea	*Sphaerophysa salsula*
Tansy ragwort* (T)	*Senecio jacobaea (Jacobaea vulgaris)*
Thistle	
Bull*	*Cirsium vulgare*
Canada*	*Cirsium arvense*
Italian	*Carduus pycnocephalus*
Milk*	*Silybum marianum*
Musk*	*Carduus nutans*
Scotch	*Onopordum acanthium*
Slender-flowered *	*Carduus tenuiflorus*
Toadflax	
Dalmatian *(T)	*Linaria dalmatica*
Yellow *	*Linaria vulgaris*
Tree of heaven	*Ailanthus altissima*
Velvetleaf	*Abutilon theophrasti*
Ventenata grass	*Ventenata dubia*
Primrose Willow	
Large-flower (T)	*Ludwigia grandiflora*
Water primrose (T)	*Ludwigia hexapetala*
Floating (T)	*Ludwigia peploides*
Whitetop	
Hairy	*Lepidium pubescens*
Lens-podded	*Lepidium chalepensis*
Whitetop (hoary cress)	*Lepidium draba*
Yellow archangel	*Lamiastrum galeobdolon*
Yellow flag iris	*Iris pseudacorus*
Yellow nutsedge	*Cyperus esculentus*
Yellow starthistle*	*Centaurea solstitialis*
*Biocontrol (See page 4)	(T) T-Designated Weed (See page 4)

Oregon
Department
of Agriculture

2/2019

Appendix B:
Umatilla County Noxious Weed List

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"A" Designated Weed List

These Class "A" weeds have been found as single plants or in very limited populations in the county. Prevention, early detection, and eradication is high priority. Cost share may be available at the Weed Board discretion.

Camelthorn (*Alhagi pseudalhagi*)
Common Bugloss (*Anchusa officinalis*)
Common Crupina (*Crupina vulgaris*)
Creeping Yellow Cress (*Rorippa sylvestris*)
Flowering Rush (*Butomus umbellatus*)
Garlic Mustard (*Alliaria petiolata*)
Japanese Knotweeds [fleece flower] (*Polygonum cuspidatum* [*Fallopia japonica*])
Leafy Spurge (*Euphorbia esula*)
Marijuana (*Cannabis sativa*)
Meadow Knapweed (*Centaurea jacea* X *C. nigra*)
Myrtle Spurge (*Euphorbia myrsinites*)
Purple Loosestrife (*Lythrum salicaria*)
Purple Starthistle (*Centaurea calcitrapa*)
Rush Skeletonweed (*Chondrilla juncea*)
Spike Weed (Centromadia [*Hemizonia*] *pungens*)
Spotted Knapweed (*Centaurea maculosa*)
Tansy ragwort (*Senecio jacobaea*)
Viper's bugloss (*Echium vulgare*)
Yellow flag iris (*Iris pseudacorus*)

RECOMMENDED ACTION: Infestations are subject to intensive control when and where found.

"B" Designated Weed List

Austrian Peaweed (*Sphaerophysa salsula*)
Canada Thistle (*Cirsium arvense*)
Cereal Rye (*Secale cereale*)
Dalmation Toadflax (*Linaria dalmatica*)
Dodder (*Cuscuta pentagona*)
Diffuse Knapweed (*Centaurea diffusa*)
Hoary Cress (*Cardaria draba*)
Johnsongrass (*Sorghum halepense*)
Jointed Goatgrass (*Aegilops cylindrica*)
Kochia (*Kochia* [*Bassia*] *scoparia*)
Mediterranean Sage (*Salvia aethiopis*)
Musk Thistle (*Carduus nutans*)
Puncturevine (*Tribulus terrestris*)
Poison hemlock (*Conium maculatum*)
Quackgrass (*Elymus* [*Agropyron*] *repens*)
Ragweed (*Ambrosia artemisiifolia*)
Russian Knapweed (*Acroptilon repens*)
Scotch Thistle (*Onopordum acanthium*)
St. Johswort (*Hypericum perforatum*)
Yellow Starthistle (*Centaurea solstitialis*)

RECOMMENDED ACTION: Limited to intensive control at state or county level as determined on a case-by case basis.

Enforcement emphasis groups; these groups of invasive plants have been targeted for additional enforcement throughout the County according to the land types and corresponding agricultural uses associated. Three land uses types have been identified and weed lists developed for each they are:

1) Dry Land Annual Cropping Areas: Emphasis weeds include Canada Thistle, Scotch Thistle, Yellow Starthistle, Goatgrass, and Kochia.

2) Irrigated Crops and Pastures: Emphasis weeds include Canada Thistle, Scotch Thistle, Bull Thistle, Musk Thistle, Yellow Starthistle, Diffuse Knapweed.

3) Dryland Range/Pasture/Timber: Emphasis weeds include Scotch Thistle, Bull Thistle, Canada Thistle, Spotted Knapweed, Diffuse Knapweed, Russian Knapweed.

Attachment P-3: Draft Wildlife Monitoring Plan

Nolin Hills Wind Power Project

Draft
Wildlife Monitoring Plan

Prepared for

Nolin Hills Wind, LLC

Prepared by:

Tetra Tech, Inc.

July 2021

Revisions, in track changes, are proposed by the Department based on recommendations in the Draft Proposed Order

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Acronyms and Abbreviations

Applicant	Nolin Hills Wind, LLC
AWWIC	American Wind Wildlife Information Center
COD	Commercial Operation Date
DWP	density weighted proportion
EFSC	Energy Facility Siting Council
GPS	global positioning system
MW	megawatt
OAR	Oregon Administrative Rule
ODFW	Oregon Department of Fish and Wildlife
ODOE	Oregon Department of Energy
Plan	Wildlife Monitoring Plan
Project	Nolin Hills Wind Power Project
WAGS	Washington ground squirrel
WRHS	Wildlife Reporting and Handling System

1.0 Introduction

Nolin Hills Wind, LLC (the Applicant) proposes to construct the Nolin Hills Wind Power Project (Project), a wind and solar energy project with a nominal generating capacity of approximately 600 megawatts (MW) (preliminarily 340 MW from wind and 260 MW from solar), in Umatilla County, Oregon (see Figure C-1 in Exhibit C). The Project's wind energy component comprises up to 112 wind turbine generators. The solar array will include up to approximately ~~1,117,591~~816,812 solar modules, depending on the final technology and layout selected. The Project will interconnect to theregional grid via either publicly owned and operated transmission lines to be constructed locally bythe Umatilla Electric Cooperative, or a new 230-kilovolt transmission line anticipated to be constructed, owned, and operated by the Applicant to the proposed Bonneville Power Administration Stanfield Substation. Other Project components include an up to 120-MW battery energy storage system, site access roads, one operations and maintenance building, meteorological data collection towers, and temporary construction yards. These facilities are all described in greater detail in Exhibit B.

This Wildlife Monitoring Plan (Plan) describes wildlife monitoring the Applicant shall conduct during operation of the Project. The Applicant shall use experienced and properly trained personnel to conduct the monitoring required under this Plan. For all components of this Plan except the Wildlife Reporting and Handling System (WRHS), the Applicant shall employ qualified and properly trained personnel to perform monitoring tasks.

This Plan has the following components:[1]

1. Fatality monitoring program including:
    a. Standardized carcass searches
    b. Carcass persistence trials
    c. Searcher efficiency trials
    d. Data analysis and fatality estimation
2. Raptor nesting surveys
3. WRHS
4. Washington ground squirrel (WAGS; *Urocitellus washingtoni*) monitoring
5. Data reporting

Based on the results of the monitoring program, mitigation of significant impacts may be required. The selection of the mitigation actions should allow for flexibility in creating appropriate responses to monitoring results that cannot be known in advance. If the Oregon Department of Energy (ODOE) determines that mitigation is needed, the Applicant shall propose appropriate mitigation actions to ODOE and shall carry out mitigation actions approved by ODOE, subject to review by the Energy Facility Siting Council (EFSC).

[1] Components 1 through 5 of this plan are applicable to the Wind facility components, whereas only components 3 and 5 apply to the Solar array components.

2.0 Fatality Monitoring Program

The objective of fatality monitoring is to estimate the number of bird and bat fatalities that are attributable to Project operation. The Applicant shall employ qualified and properly trained personnel ("investigators") to perform fatality monitoring.

The science of fatality monitoring, particularly study design and fatality estimation, is an evolving one; therefore, the following methods may be modified prior to implementation of the program to reflect updated industry standards. Any updates to the study design or data analysis methodology will be detailed in the amended Plan approved by ODOE prior to implementation.

The program shall include: standardized carcass searches to detect fatalities, methods to adjust for sources of bias inherent in fatality detection, and the estimation of annual fatality rates attributable to Project operation based on these data. Sources of bias will be measured through (1) carcass persistence trials to estimate the mean length of time that a carcass persists and is therefore available for detection; (2) searcher efficiency trials to estimate the proportion of carcasses detected by investigators; and (3) estimation of the portion of the carcass fall distribution searched. Methods and results of all components of the fatality monitoring program will be reported to ODOE on an annual basis (Section 6.0).

If an investigator determines that a carcass found at the Project (during searches or incidentally) is a state or federally threatened or endangered species, reporting timelines specified in Section 6.0 shall be followed.

2.1 Standardized Carcass Searches

The objective of standardized carcass searches is to systematically search Project turbines for bird and bat fatalities that occur in proximity to Project infrastructure.

2.1.1 Search Plot Dimensions and Sample Size

Investigators shall conduct fatality monitoring within defined search plots, with each search plot containing one turbine. Search plot dimensions may be squares centered on the turbine ("full-plot"), or search areas may be limited to the turbine pad and a portion of the access road buffered to a specific distance ("road-and-pad"). Search plot dimensions, whether full-plot squares, road-and-pad areas or some other configuration, will be determined with regard to turbine maximum blade tip height, habitat, search method, and species of concern. The Applicant shall provide spatial data of the search plots to ODOE before beginning fatality monitoring at the Project.

The sample size for standardized carcass searches is the number of plots searched per monitoring year. The Applicant shall select search plots based on a statistically robust sampling design that ensures that the selected search plots are representative of the various habitat conditions within the Project. Additionally, if more than one turbine type is selected, search plots will be selected such that they provide a representative sample of each turbine type. The total number of search plots needed to provide a robust sample size will be determined after taking into account the searched

area included within the plot (e.g., full-plot squares have a larger searched area than road-and-pad plots).

Prior to operation, the Applicant shall update the Plan to include the type, dimensions, distribution, and specific locations of search plots at the Project, as determined in consultation with the Oregon Department of Fish and Wildlife (ODFW).

2.1.2 Scheduling

Fatality monitoring will begin just prior to the start of the first season (Table 1) following the Project's Commercial Operation Date (COD). Fatality monitoring will commence with a "clearance search." The clearance search serves to identify fatalities that occurred prior to the initiation of the fatality monitoring program and for which the time period of occurrence cannot be assigned (see Section 2.5). After the initial clearance search, standardized carcass searches will begin the first week of the first full season following COD.~~1~~ 2 Subsequent monitoring years will follow the same schedule (beginning in the same season in the subsequent monitoring year).

Over the course of one monitoring year, the investigators will conduct no fewer than 16 searches. The frequency of searches by season is shown in Table 1.

Table 1. Frequency of Fatality Monitoring Searches by Season

Season	Dates[1]	Frequency
Spring Migration	March 16 to May 15	2 searches per month (4 searches)
Summer/Breeding	May 16 to August 15	1 search per month (3 searches)
Fall Migration	August 16 to October 31	2 searches per month (5 searches)
Winter	November 1 to March 15	1 search per month (4 searches)
1. Seasonal demarcation dates may be shifted slightly to accommodate a full search interval in any given season.		

The Applicant, in consultation with ODFW and ODOE, may adjust the frequency of these searches to reflect considerations for specific species of concern and conditions at the Project (e.g., probability of a carcass persisting from one search to the next).

2.1.3 Duration

The investigators shall perform 2 full years of fatality monitoring during the first and second years of Project operation (Year 1 and Year 2) consecutively.

~~1~~ 2 To produce the most comparable fatality estimates, continuous seasons within the study year should be used; therefore,data collection in each season should occur in the same continuous season within the monitoring year to the extent possible. To allow for data collection within a continuous season, the study may be initiated in the second full season following COD as monitoring program establishment logistics may require.

When Year 1 of monitoring at the Project has been completed, the raw data will be compiled by the investigator and Applicant in a memo-style report, which will include fatality estimates as specified in Section 2.6. The memo shall be provided to ODOE and ODFW following the completion of the Year 1 study period. When Year 2 of monitoring is complete, the data and analyses for Years 1 and 2 (individually and combined) will be compared with other wind energy facilities in the region within a comprehensive report.

If fatality rates for either Year 1 or Year 2 of monitoring at the Project exceed any of the thresholds of concern or the range of fatality rates found at other wind power facilities in the region (as available), the Applicant shall consult with ODOE and ODFW regarding potential mitigation. If mitigation is deemed appropriate, the Applicant shall propose appropriate mitigation for ODOE and ODFW review within 6 months after reporting the fatality rates to ODOE. Furthermore, if the fatality rates from both Year 1 and Year 2 exceed the range of fatality rates found at other wind energy facilities in the region, the Applicant shall perform an additional year of fatality monitoring in Year 5 of operation.

2.2 Carcass Persistence Trials

Carcass persistence is defined as the probability that a carcass will persist in the study area for a given amount of time (e.g., until the next survey), and accounts for carcass removal bias. Carcasses may be removed from the survey plot due to scavenging or other means (e.g., decomposition, farming practices). Carcass persistence is measured by the number of days a carcass remains within the search plot before it is no longer detectable by an investigator within a given search interval. It is assumed that carcass removal occurs at a constant rate and does not depend on the time since death of the organism. The objective of carcass persistence trials is to estimate the length of time bird and bat carcasses remain within the search area and available to be detected by investigators. Estimates of carcass persistence will be used to adjust raw carcass counts for removal bias.

The investigators shall conduct a carcass persistence trial within each season defined in Table 1 during a fatality monitoring year. A minimum of 10 each of large bird, small bird, and bat surrogate trial carcasses shall be placed each season. The investigators will select species with the same coloration and size attributes as species expected to occur at or near the Project, if possible. Trial carcass species may include legally obtained domestic species (e.g., ring-necked pheasants, juvenile Japanese quail), unprotected species (e.g., European starling, house sparrows) and dark mice as a surrogate for bats.

After Year 1 of fatality monitoring, the investigators may adjust the number of persistence trials up or down, during any subsequent year of fatality monitoring, subject to the approval of ODOE. If a reduction in trials is made, the investigators must show that the reduction is justified based on a comparison of the Year 1 removal data with published removal data from nearby wind energy facilities, or the availability of other valid carcass removal data.

Trial carcasses will be marked discreetly for recognition by investigators and other personnel. Carcasses will be placed at randomly generated locations within the search plots. Trial carcasses will be left in place until the end of the carcass persistence trial.

An approximate schedule for assessing removal status is once daily for the first 4 days, and on days 7, 10, 14, 21, 28, and 35. This check schedule may be extended to include the possibility of longer persistence times after initial placement (e.g., 60 or 90 days) to capture potentially longer large bird persistence times. This check schedule may also be adjusted depending on actual carcass persistence rates, weather conditions, and coordination with the other survey work. The condition of scavenged carcasses will be documented during each assessment, and at the end of the trial all traces of the carcasses will be removed from the site. Scavenger or other activity could result in complete removal of all traces of a carcass in a location or distribution of feathers and carcass parts to several locations. This feather distribution will not constitute complete carcass removal if evidence of the carcass remains within an area similar in size to a search plot and if the evidence would be detectable to an investigator during a normal survey.

2.3 Searcher Efficiency Trials

Searcher efficiency is defined as the probability that investigators will find a carcass that is available to be found within the search plot. Several factors influence searcher efficiency, including investigator experience, vegetation conditions within a search plot, and characteristics of individual carcasses (e.g., size, color). The objective of searcher efficiency trials is to estimate the percentage of bird and bat fatalities that investigators are able to find.

A trained Searcher Efficiency Proctor shall conduct searcher efficiency trials within each of the seasons defined in Table 1 during Year 1 of fatality monitoring. Each trial will involve a minimum of 12 carcasses. Investigators will not be notified of carcass placement or test dates. The Searcher Efficiency Proctor shall vary the number of trials per season to capture seasonal variation in site conditions that may affect the ability to detect fatalities, and the number carcasses per trial so that the investigators will not know the total number of trial carcasses being used in any season or trial period. The number of searcher efficiency trials for any subsequent year of fatality monitoring may be adjusted up or down, subject to the approval of ODOE.

Similar to carcass persistence trials, searcher efficiency trial carcass species may include legally obtained domestic species (e.g., ring-necked pheasants, juvenile Japanese quail), unprotected species (e.g., European starling, house sparrows), and dark mice as a surrogate for bats. The Searcher Efficiency Proctor will mark the trial carcasses to differentiate them from other carcasses that might be found within the search plot and in a manner that does not increase carcass visibility.

On the day of a standardized carcass search but before the beginning of the search, the Searcher Efficiency Proctor will place trial carcasses at randomly generated locations within search plots (one to three trial carcasses per search plot).

The number and location of trial carcasses found during the standardized carcass search will be recorded. The number of efficiency trial carcasses available for detection during each trial will be determined immediately after the trial by the Searcher Efficiency Proctor. Following the standardized carcass search, all traces of searcher efficiency trial carcasses will be removed from the site. If new investigators are brought into the search team, additional searcher efficiency trials will be conducted to ensure that detection rates incorporate investigator differences. The Applicant

shall include a discussion of any changes in investigators and any additional detection trials in the reporting required under Section 6.0 of this Plan.

2.4 Fatality Monitoring Search Protocol

The investigators shall perform fatality monitoring using standardized carcass searches according to the schedule described above (Section 2.1.2). The selected search methods will be consistent with ODOE and ODFW recommendations and current industry standards at the time of the monitoring. Possible search methods include: systematic searches of all or a subset of turbines by human investigators with or without the assistance of trained dogs, and/or searches of all or a subset of turbines using drones. Depending on the search method, investigators may conduct the carcass searches by walking or flying drones within concentric or parallel transects (with transect width determined by the species of concern and search method) within search plots. Search area and speed may be adjusted for habitat types and search methods after evaluation of the first searcher efficiency trial. Investigators shall flag all bird and bat carcasses discovered. Carcasses are defined as a complete carcass or body part, three or more primary flight feathers, five or more tail feathers, or 10 or more feathers of any type concentrated together in an area 3 meters square or smaller. When parts of carcasses and feathers from the same species are found within a search plot, investigators shall make note of the relative positions and assess whether these are from the same fatality.

All carcasses (bird and bat) found during the standardized carcass searches will be photographed, recorded, and labeled with a unique number. Investigators will record the location of the carcass using a global positioning system (GPS)-enabled device. Data collected per carcass found shall include the date, the turbine number, the distance from and bearing from the nearest turbine, the species, age and sex of the carcass when possible, the extent to which the carcass is intact, the estimated time since death, the habitat in which the carcass was found, whether the carcass was collected or left in place, and whether the carcass was found during a standardized carcass search or incidentally. Additional measurements may be required to identify the species of bat carcasses. Investigators shall describe all evidence that might assist in determination of cause of death, such as evidence of electrocution, vehicular strike, wire strike, predation, or disease.

If the necessary collection permits are not acquired, all carcasses will be discreetly marked so as to avoid double counting and will be left in place.

The investigators shall calculate fatality rates using an appropriate statistical method as described in Section 2.6.

2.5 Incidental Finds and Injured Birds

Incidental finds are carcasses that are detected outside the parameters of standardized carcass searches. Investigators may discover carcasses in areas outside of search plots, while completing carcass persistence checks, or while moving through the Project. Additionally, carcasses detected during clearance surveys do not have an associated timeframe for fatality occurrence and therefore are considered incidental finds. For each incidental find, the investigator shall identify, photograph, record data, and collect the carcass (if a permit has been obtained) as would be done for carcasses

detected during standardized carcass searches. If the incidental find is located in a search plot within a reasonable timeframe from when that plot was to be searched (e.g., while placing searcher efficiency carcasses on the same day as the search), the fatality data will be included in the calculation of fatality rates. If the incidental find is found outside a search plot or search time, the data will be reported separately and excluded from statistical analysis.

2.6 Fatality Estimation

Estimated annual fatality rates for the Project will be calculated at the end of each monitoring year. Annual fatality rates will be estimated by adjusting raw fatality counts for sources of bias including carcass persistence, searcher efficiency, and the proportion of the fall distribution that was searched for each size class (Huso and Dalthorp 2014).

A correction factor (density weighted proportion; DWP) will be used to adjust for the proportion of the fall distribution that was searched for each size class within each search plot type. Therefore, the DWP will be calculated as the product of the percentage of a 10-meter annulus that is covered by the searched area within the plot and the proportion of the fall distribution of a given size class that overlaps that 10-meter annulus. The product of these values for each 10-meter annulus that overlaps the search plot will be summed to calculate the overall proportion of the fall distribution searched for each size class within the respective search plot type. Calculations will utilize ballistic modeling results presented in Hull and Muir (2010) for small birds and bats, and Hallingstad et al. (2018) for large birds. Other peer-reviewed models that update the state of the science may be utilized if they become available within the duration of the monitoring period.

Annual fatality rates will be estimated for nine categories, provided a sufficient sample size has been reached to allow estimation. The nine categories are:

1. All birds;
2. Small birds;
3. Large birds;
4. All bats;
5. Migratory tree-dwelling bats;
6. Raptors;
7. Raptor species of special concern;
8. Grassland species; and
9. State and federally listed threatened and endangered species and State Sensitive Species listed under Oregon Administrative Rule (OAR) 635-100-0040.

In 2018, the U.S. Geological Survey released a fatality estimator program, GenEst (Dalthorp et al. 2018). GenEst provides the most current state-of-the-science software for fatality estimation by minimizing biases associated with fatality estimation and allowing users to select the most appropriate methods and assumptions for project-specific circumstances. Rigorous testing of the

performance of GenEst compared to other estimators using simulated data has shown GenEst to be the least biased, enabling more precise fatality estimation and reliable comparison of fatality estimates among projects (Simonis et al. 2018). Additionally, GenEst allows for fatality estimates to be split into subcategories, which allows for estimates to be parsed by parameters such as season, year, or turbine type.

The estimation of annual fatality rates will account for:

1. The search interval;
2. The number of carcasses detected during standardized carcass searches within the monitoring period where the cause of death is assumed to be the operation of the Project;
3. Carcass persistence expressed as the probability that a carcass remains in the study area (persists) and is available for detection by the investigators during persistence trials;
4. Searcher efficiency expressed as the probability that a trial carcass is found by investigators during searcher efficiency trials; and
5. The proportion of the fall distribution that was searched at the Project (DWP) for the given size class and search plot type.

2.7 Mitigation

The Applicant shall use best available science to resolve uncertainty in the fatality monitoring results, and to determine whether the results indicate that additional mitigation should be considered. ODOE may require additional, targeted monitoring if the data indicate the potential for significant impacts that cannot be addressed by analysis and appropriate mitigation.

Mitigation may be appropriate if fatality rates exceed a "threshold of concern" (Table 2). For the purpose of determining whether a threshold has been exceeded, the Applicant shall determine the mean estimated annual fatality rate for species groups after each year of monitoring, provided three or more detections within any of the species groups listed in Table 2 are available to accurately determine estimates for these groups. Based on current knowledge of the species that are likely to use the habitat in the area of the Project, the thresholds of concern shown in Table 2 will be used in conjunction with the most current regional fatality rates published by the American Wind and Wildlife Institute to evaluate the fatality rates associated with the Project and guide discussions on appropriate mitigation.

Table 2. Fatality Thresholds of Concern by Species Group

Species Group	Threshold of Concern[1] (Fatalities per MW)
Raptors[2] (All eagles, hawks, falcons, and owls, including burrowing owls)	0.12
Raptor species of special concern (Swainson's hawk, ferruginous hawk, golden eagle, bald eagle, burrowing owl)	0.06
Grassland species	0.59

Species Group	Threshold of Concern[1] (Fatalities per MW)
(All native bird species that rely on grassland habitat and are either resident species occurring year-round or species that nest in the area, excluding horned lark, burrowing owl, and northern harrier)	
State sensitive avian species listed under OAR 635-100-0040 (Excluding raptors listed above)	0.20
Bats[3]	2.50

1. EFSC adopted the concept of "thresholds of concern" for raptors, grassland species, and state sensitive avian species in the Final Order on the Application for the Klondike III Wind Project (June 30, 2006) and for bats in the Final Order on the Application for the Biglow Canyon Wind Farm (June 30, 2006). The exceeding of a threshold, by itself, would not be a scientific indicator that operation of the Project would result in range-wide population-level declines of any of the species affected.
2. Regionally, the median fatality rate for all raptors in the Northern Rockies avifaunal biome (includes eastern Oregon; 22 studies) was 0.10 birds/MW/year (AWWI 2019). 75 percent of studies in the Northern Rockies reporting raptor estimates reported approximately 0.12 birds/MW/year. EFSC's typical "threshold of concern" for raptors is 0.09 birds/MW/year.
3. Regionally, the U.S. Fish and Wildlife Service Pacific Region (includes Oregon; 35 studies) had a range of 0.0 to 4.2 bat/MW/year, with a median of 0.7 bats/MW/year (AWWI 2018).

If the data from a given year of monitoring show that a threshold of concern for a species group or for individual state sensitive bird species has been exceeded, the Applicant shall consult with ODOE and ODFW to determine if mitigation is appropriate based on analysis of the data and consideration of any other significant information available at the time. If mitigation is determined to be necessary, the Applicant shall propose mitigation measures designed to benefit the affected species or species group. ODOE may recommend additional, targeted data collection if the need for mitigation is unclear based on the information available at the time. If, following consultation and any such additional data collection, ODOE determines that mitigation is required, the Applicant shall propose mitigation measures designed to benefit the affected species or species group, commensurate with the level of impact.

Acceptable mitigation may include, but is not limited to, contributions to wildlife rehabilitators, conducting or making a contribution to research that will aid in understanding more about the affected species or species group and its conservation needs in the region, improving wildfire response, constructing and maintaining artificial nest structures for raptors, or habitat mitigation. Habitat mitigation may include, but is not limited to, protection of nesting, foraging, or roosting habitat for the affected species or group of native species through a conservation easement or similar agreement. Tracts of land that are intact and functional for wildlife are preferable to degraded habitat areas. Preference should be given to protection of land that would otherwise be subject to development or use that would diminish the wildlife value of the land. In addition, habitat mitigation measures might include enhancement of the protected tract by weed removal and control; increasing the diversity of native grasses and forbs; and planting sagebrush or other shrubs. This may take into consideration whether the mitigation required or provided in other Project plans (e.g., the Habitat Mitigation Plan, Attachment P-3 of Exhibit P) would also benefit the affected species.

Regardless of the results of the fatality monitoring study, the Applicant will consider voluntarily contributing both years of bird and bat fatality monitoring data to the American Wind Wildlife Information Center (AWWIC). AWWIC is the most complete source of data on wildlife mortality at wind energy facilities in the United States. AWWIC is designed to capture key datasets in a format that can be analyzed and compared to improve and refine the collective knowledge regarding the risks for wildlife involved with wind energy development and operation, and how to reduce those risks, and can help guide decisions regarding the design, development, and operation of wind farms. The Applicant's contribution of fatality monitoring data from the Columbia Plateau Ecoregion to this critical dataset would be a valuable contribution to ongoing regional and national analyses of bird and bat fatalities at wind energy facilities.

3.0 Raptor Nesting Surveys

The objectives of raptor nest surveys are: (1) to count raptor nests on the ground or aboveground in the vicinity of the Project (as defined below); and (2) to determine whether there are noticeable changes in nesting activity or nesting success in the local populations of the following raptor species: Swainson's hawk (*Buteo swainsoni*), golden eagle (*Aquila chrysaetos*), and ferruginous hawk (*Buteo regalis*).

The Applicant shall conduct short-term and long-term monitoring. The investigators will use aerial and ground surveys to evaluate nest success by gathering data on active nests, on nests with young, and on young fledged. The Applicant shall employ qualified personnel to perform raptor nest surveys.

3.1 Short-Term Monitoring

Short-term monitoring will be done in two monitoring seasons. The first monitoring season will be in the first full raptor nesting season after COD. The second monitoring season will be in the third full year after COD. The Applicant shall provide a summary of the first-year results in the monitoring report described in Section 6.0. After the second monitoring season, the investigators will analyze 2 years of data compared to the baseline data.

During each monitoring season, the investigators will conduct one aerial and one ground survey for raptor nests in late May or early June and additional surveys as described in this section. The initial aerial survey area shall include a 2-mile buffer around the final Project impact area within the portion of the Site Boundary associated with wind turbines. The survey area along the transmission corridor shall include the final Project impact area along this corridor, and a 0.5-mile buffer around this area. The ground surveys will be conducted within up to a maximum of 0.5 miles of final Project impact areas to determine nesting success; nests outside the leased Site Boundary will be checked from an appropriate distance where feasible, depending on permission from the landowner for access.

All nests discovered during pre-construction surveys and any nests discovered during post-construction surveys, whether active or inactive, will be given identification numbers. GPS

coordinates will be recorded for each nest. Locations of inactive nests will be recorded because they could become occupied during future years.

Determining nest occupancy may require one or two visits to each nest. For occupied nests, the Applicant shall determine nesting success by a minimum of one ground visit to determine species, number of young and young fledged. "Nesting success" means that the young have successfully fledged (reach advanced stage of development, the young are capable of independent movements). Nests that cannot be monitored due to the landowner denying aerial or ground access will be checked from a distance where feasible.

3.2 Long-Term Monitoring

In addition to the 2 years of post-construction short-term raptor nest surveys described in Section 3.1, the investigators shall conduct long-term raptor nest surveys at 5-year intervals for the life of the Project.[2 3] Investigators will conduct a long-term raptor nest survey in the raptor nesting season every 5 years after the second short-term monitoring season in years divisible by 5. This may result in a greater than 5-year period between the second short-term monitoring season and the first long-term monitoring season (e.g., if the second short-term monitoring season is 2027, the first long-term monitoring season would be 2035 rather than 2032). In conducting long-term surveys, the investigators will follow the same survey protocols as described in Section 3.1, excluding surveys associated with the transmission lines, and limiting surveys to a ground-based effort (i.e., no aerial survey), unless the investigators propose alternative protocols that are approved by ODOE. In developing an alternative protocol, the investigators will consult with ODFW and will take into consideration other raptor nest monitoring conducted in adjacent or overlapping areas. The investigators will analyze the data—as a way of determining trends in the number of raptor breeding attempts the Project supports and the success of those attempts—and will submit a report after each year of long-term raptor nest surveys.

4.0 Wildlife Reporting and Handling System

The WRHS is a program for maintenance personnel to report wildlife (including bird and bat) casualties found during operation of the Project. Maintenance personnel will be trained in the methods needed to carry out this program. This monitoring program includes the initial response, handling, and reporting of bird and bat carcasses discovered incidental to maintenance operations ("incidental finds").

All carcasses discovered by maintenance personnel will be photographed and recorded. If maintenance personnel find a carcass at the Project, they will notify qualified personnel who will identify the carcass. If state and or federal collection permits are acquired, the qualified personnel will adhere to the terms of these permits and either leave the carcass in place after documentation is complete or collect the carcass according to the terms of the appropriate permit. If the qualified

[2 3] As used in this plan, "life of the Project" means continuously until the Project is restored and the site certificate isterminated in accordance with OAR 345-027-0110.

personnel determines that a carcass is a state or federally threatened or endangered or otherwise protected species, agency reporting procedures and timelines specified in Section 6.0 shall be followed.

Prior to construction, the Applicant shall develop and implement a protocol for handling injured birds. Any injured native birds found at the Project may be carefully captured by trained qualified personnel and transported to a qualified rehabilitation specialist ~~approved by ODOE~~,. Alternatively,the Applicant may contact a qualified rehabilitation specialist ~~approved by ODOE~~ to respond to injured wildlife. The Applicant shall pay costs, if any, charged for time and expenses related to careand rehabilitation of injured native birds found on the site, unless the cause of injury is clearly demonstrated to be unrelated to Project operations.

5.0 Washington Ground Squirrel Monitoring

The Applicant shall conduct long-term post-construction surveys to collect data on WAGS activity documented during pre-construction surveys in the WAGS Monitoring Area, defined as suitable habitat within 1,000 feet of final Project permanent impact areas. Qualified personnel will monitor the locations within the WAGS Monitoring Area where WAGS colonies were delineated in pre-construction surveys. The survey area will include the colonies (i.e., groups of active burrows) and a buffer of 785 feet in suitable habitat. The surveyors will walk linear transects spaced 165 to 230 feet (50 to 70 meters) apart two times between February 15 and May 31. Surveys of each location will be spaced at least 2 weeks apart. Surveyors will record locations of activity centers and colony boundaries using a sub-meter accuracy GPS unit; approximate number of burrows, time, and weather conditions under which the colony was discovered; and representative photographs of burrows and scat. Surveyors will describe habitat characteristics at each location and note any noticeable land use or habitat changes that may have occurred since pre-construction surveys. The investigators shall report any new WAGS detections but the boundaries of Category 1 habitat will not be revised from pre-construction boundaries.

The Applicant shall conduct surveys during the year following COD and every 5 years thereafter for the life of the Project. After each survey, the Applicant shall report the results to ODFW and to ODOE and shall include maps of the areas surveyed and detection locations. WAGS surveys will not be conducted if there are barriers to WAGS dispersal (i.e., active agriculture fields, highways, perennial waterbodies).

Any new colonies that are located during other monitoring activities within 1,000 feet of the final Project impact areas, such as raptor nest monitoring surveys, shall be documented and the extent of those colonies shall be delineated as well. These newly discovered colonies shall also be included in any future WAGS monitoring and reporting activities.

6.0 Data Reporting

The Applicant will report wildlife monitoring data and analysis to ODOE for each calendar year in which wildlife monitoring occurs. Monitoring data include fatality monitoring program data and analyses, raptor nest survey data, WAGS monitoring data, WAGS incidental observations, and WRHS data, including information on qualified facility selected for rehabilitation. The Applicant may include the reporting of wildlife monitoring data and analysis in the annualreport required under OAR 345-026-0080 or submit this information as a separate document at thesame time the annual report is submitted.

In addition, the Applicant shall provide to ODOE data or records generated in carrying out this Plan upon request by ODOE.

The Applicant shall notify the U.S. Fish and Wildlife Service and ODFW if any federal or state endangered or threatened species are killed or injured at the Project within 24 hours of species identification.

7.0 Amendment of the Plan

This Plan may be amended from time to time by agreement of the Applicant and EFSC. Such amendments may be made without an amendment of the Site Certificate. The Council authorizes ODOE to agree to amendments to this plan and to mitigation actions that may be required under this plan. ODOE shall notify EFSC of all amendments and mitigation actions, and the Council retains the authority to approve, reject or modify any amendment of this plan or mitigation action agreed to by ODOE.

8.0 Literature Cited

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Attachment P-4: Wildlife Monitoring and Adaptive Management Plan (Construction)

The following design and construction measures were provided by the applicant in ASC Exhibit P. These measures are intended to minimize impacts to wildlife species from facility construction and operation. This plan is intended to be **adaptive** during all phases of design, construction and operation and shall allow for consideration of reasonable alternatives, based on seasonal conditions, project timing and review and consultation with the Department and ODFW.

1.0 Final Facility Design Requirements

The certificate holder will avoid and minimized impacts to wildlife, in general, and state sensitive speciesincluding raptors and other birds through the following measures:

- Minimization of bird powerline collision and electrocution through implementation of APLIC recommendations for construction of overhead collector lines and transmission intraconnection lines, including installation of flight diverters on the BPA transmission line across the Umatilla River as feasible (APLIC 2006, 2012);
- Minimization of bird and bat collision with facility infrastructure by implementing down-shield lighting (e.g., for permanent lighting at the substation and O&M Building) that will be sited, limited in intensity, and hooded in a manner that prevents the lighting from projecting onto any adjacent properties, roadways, and waterways; lighting will be motion activated where practical (i.e., excluding security lighting);
- Minimization of nesting disturbance and collision risk to state sensitive raptors through implementation of a voluntary 0.25-mile setback of turbines from active ferruginous hawk and Swainson's hawk nests;
- Minimization of collision risk and nesting disturbance to state sensitive raptors through implementation of the ODFW-requested 656-foot (200-meter) turbine setback along Alkali Canyon as a voluntary, conservative measure (Exhibit P, Wildlife Management Plan, Section 4.2); this will also minimize impacts to foraging habitat in Alkali Canyon;
- Minimization of collision risk to raptors by siting turbines away from areas of relatively higher raptor use as identified during avian and eagle use surveys at the facility a 459 -foot(140-meter) turbine setback was applied to contour lines containing topographical high points and distinct canyon edges associated with observed higher raptor use based on Murphy et al. (2018) who found significantly higher juvenile golden eagles use within 328 feet (100 meters) of a mesa's rim edge at a wind project in Texas, scaled to account for the larger turbines proposed at the Project; this exercise resulted in the voluntary, conservative elimination or movement of 12 turbines to avoid these potential areas of higher turbine collision risk to raptors;
- Minimization of raptor nesting disturbance through elimination of a transportation route on Mud Springs Road located close to active raptor nests;
- Minimization of raptor nesting disturbance through avoidance of trees with active state sensitive raptor species nests; and
- Minimization of wildlife collision with guy wires by installing unguyed permanent met tower

Additionally, pre-construction surveys will be performed to identify changes to habitat categorization and locations of state sensitive species to most effectively implement avoidance, minimization, and mitigation measures. Pre-construction surveys will address survey needs basedon the final facility

layout, time elapsed since prior survey, and habitat conditions at that time. In the event that WAGS or rare plants are encountered, the applicant will make any final adjustmentsnecessary to continue to avoid Category 1 habitat during final design. Therefore, development within the micrositing corridor would meet the Fish and Wildlife Habitat standard and the Threatened and Endangered Species standard.

To ensure the above are followed, the certificate holder shall provide the following to the Department:

1. Documentation to demonstrate how final facility design will comply with APLIC recommendations, including the installation of flight diverters.
2. Documentation demonstrating the implementation of the minimization steps described above intended to minimize and prevent collision risk to raptors by components of the facility. Documentation shall confirm the installation of down- shield lighting (e.g., for permanent lighting at the substation and O&M Building) to be sited, limited in intensity, and hooded in a manner that prevents the lighting from projecting onto any adjacent properties, roadways, and waterways; lighting will be motion activated where practical (i.e., excluding security lighting); and the installation of un-guyed wires on the permanent met towers.
3. Detailed maps, based on final facility layout and final preconstruction survey results, that show the locations of all identified raptor nests, required avoidance buffers or setbacks, and location of trees with active nesting sites for state sensitive species.
4. Identification of local roads and haul routes to be used by workers, delivery trucks and contractors. If, during preconstruction surveys, active raptor nests are identified along Mud Springs Road, certificate holder shall restrict use of Mud Springs Road during the sensitive nesting seasons via contract or other binding agreement.

2.0 Construction Requirements

Measures for avoiding and minimizing impacts to fish and wildlife habitat and to state sensitive and other wildlife species will be implemented during construction as follows:

- Employ a construction monitor(s) familiar with sensitive biological resources (e.g., active raptor nests, WAGS colonies, rare plants, and wetlands) to ensure appropriate measures are implemented to avoid disturbance to these resources. The construction monitors will be responsible for placing flagging/temporary fencing aroundareas where no construction activities should occur (e.g., Category 1 habitat).
- Limit ground-disturbing activities within the buffer distances ofactive raptor nests as identified in the spring prior to construction, as feasible and as recommended by ODFW in their comments on the Nolin Hills Wind Project Notice of Intent (included in Exhibit P, Attachment P-1) and shown in Table 1.

Table 1. Raptor Nest Disturbance Buffers

Species	Spatial Buffer	Seasonal Restriction
ferruginous hawk	0.25 mile	March 15 – August 15
golden eagle	0.5 mile	February 1 – August 15
red-tailed hawk	300-500 feet	March 1 – August 15
prairie falcon	0.25 mile	March 15 – July 1

Table 1. Raptor Nest Disturbance Buffers

Species	Spatial Buffer	Seasonal Restriction
Swainson's hawk	0.25 mile	April 1 – August 15
burrowing owl	0.25 mile	April 1 – August 15

- The certificate holder will develop and implement a facility-specific worker environmental training program throughout the construction of the facility. All employees and contractors working in the field will be required to attend the environmental training session prior to working on-site. This training will include information regarding the sensitive biological resources including raptor nests and WAGS colonies, restrictions, protection measures, individual responsibilities associated with the facility, and the consequences of non-compliance. Written material will be provided to employees at orientation and participants will sign an attendance sheet documenting their participation.

- The certificate holder will establish driving speed limits on facility access roads during construction to minimize the potential for vehicle collisions with wildlife or livestock, which could attract foraging eagles and other wildlife, and to reduce the potential for wildlife- vehicle collisions.

- The certificate holder will minimize impacts to habitat and wildlife by initiating revegetation efforts in areas of temporary ground disturbance as soon as practicable and within the appropriate season to facilitate germination, as described in the Draft Revegetation Plan (Exhibit P, Attachment P- 4). The Draft Revegetation Plan promotes native plant establishment, or non-invasive and non-persistent non-native species when native plants are not available, and contains measures to avoid and minimize the spread of noxious weeds due to facility disturbance. The Draft Revegetation Plan will be implemented during and following construction and will continue through operation as well.

To ensure the above are followed, the certificate holder shall provide the following to the Department:

- A final work schedule with accompanying maps to demonstrate how work will be performed in a manner consistent with raptor nest avoidance buffers and allowed work-windows.
- Copies of the training materials for the Worker Environmental Awareness Training that includes information regarding the sensitive biological resources including raptor nests and WAGS colonies, restrictions, protection measures, individual responsibilities associated with the facility, and the consequences of non-compliance. Documentation submitted to the Department will include an attendance sheet documenting worker participation in the training.
- Maps showing final layout detailing access roads and speed limits, along with photographic evidence that speed limits are posted along these routes. Speed limit signs to be posted prior to construction activities.

Attachment S-1: Draft Cultural Resources Monitoring and Inadvertent Discovery Plan

Construction Monitoring and Inadvertent Discovery Plan - DRAFT

Draft for Consultation Purposes Only

Nolin Hills Wind Power Project
Umatilla County, Oregon
SHPO Case No. 17-1679

Prepared for
Nolin Hills Wind, LLC

Prepared by

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~~February~~ April 2022~~0~~

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Appendix B. Cultural Resources Monitoring Forms

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Appendix D. Project Design and Construction Plans (To be developed based on final design)

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1.0 Introduction

Nolin Hills Wind, LLC (Nolin Hills) has proposed construction of the Nolin Hills Wind Power Project (Project), which is located entirely on private lands near the town of Echo, in Umatilla County, Oregon (Figure 1). The Project is a 350-megawatt wind energy facility comprised of up to 116 wind turbine generators, depending on the turbine model selected and the final layout selected during the micrositing process (Figure 2). If larger turbines are selected, it is likely that fewer turbines will be installed. Power generated by the Project will be transmitted by 34.5-kilovolt underground and overhead electrical collector lines. Up to two on-site collector substations are planned to increase the voltage from the 34.5-kilovolt collection system to 230 kilovolts for transmission through the proposed overhead transmission line that will connect the Project either to Umatilla Electric Cooperative's Cottonwood substation in Hermiston, or to Bonneville Power Administration's planned Stanfield substation north of the town of Nolin. Other Project components include site access roads, an operations and maintenance building, meteorological data collection towers, and temporary construction yards. ~~The Project is expected to reach commercial operation by December 2022.~~

This document provides a Construction Monitoring and Inadvertent Discovery Plan (Plan) for the Project. The Plan provides protocols for archaeological monitoring during construction and protocols that should be followed in the event of an inadvertent discovery of archaeological resources or human remains and associated artifacts. The Plan is based on background research and cultural resources surveys completed through ~~July 2019~~April 2022 for the Project.

Exact dimensions of disturbance are as yet undetermined. However, the cultural resource surveys conducted for the Project were designed to incorporate corridors larger than necessary for Project construction to allow for avoidance of identified resources by the Project.

1.1 Regulatory Context

There is currently no federal regulatory nexus for the Project. As such, the Project's regulatory compliance is limited to Oregon Department of Energy (ODOE) and Oregon Energy Facility Siting Council (EFSC) oversight. Since the Project is located on private land, Oregon State Historic Preservation Office (SHPO) guidelines for recording archaeological resources apply. While federal regulations dictate that archaeological resources must be 50 years or older, under the SHPO guidelines resources must be at least 75 years old to be considered a cultural resource.

1.1.1 General Standards for Siting Facilities

Subsection (1) of the Historic, Cultural, and Archaeological Resources Standard in Oregon Administrative Rules (OAR) 345-022-0090(1) provides that applicants for site certificates must demonstrate that the construction and operation of an energy facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

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1) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places (NRHP);
2) For a facility on private land, archaeological objects, as defined in Oregon Revised Statutes (ORS) 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and
3) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).[1]

1.1.2 Applicable Oregon Revised Statutes

1.1.2.1 ORS 97.745 Indian Graves and Protected Objects

ORS 97.745 provides protection for Indian graves and protected objects. It describes acts prohibited in relation to the above resources, the applicability of the statute, and the notification procedures for when suspected Indian human remains are discovered. In summary, the statute states:

1) No person shall willfully remove, mutilate, deface, injure or destroy any cairn, burial, human remains, funerary object, sacred object or object of cultural patrimony of any native Indian. Persons disturbing native Indian cairns or burials through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the appropriate Indian tribe.
2) Except as authorized by the appropriate Indian tribe, no person shall: Possess any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial; Publicly display or exhibit any native Indian human remains, funerary object, sacred object or object of cultural patrimony; or Sell any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial or sell any sacred object or object of cultural patrimony.
3) Any discovered human remains suspected to be native Indian shall be reported to the state police, the SHPO, the appropriate Indian tribe, and the Oregon Commission on Indian Services.

1.1.2.2 ORS 358.920: Archaeological Objects and Sites

ORS 358.920 identifies prohibited acts on public and private lands in Oregon, relative to archaeological resources. It states that disturbances to archaeological sites or objects on public or private lands must be completed under a permit issued under ORS 390.235, and provides direction for disposition of those archaeological materials and any human remains and associated funerary objects. The section is not applicable to the disturbance of Native American cairns, which is covered by the provisions of ORS 97.740 to 97.760 (see ORS 97.745 above). In summary, the statute states:

[1] Note, the Project does not involve public lands.

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1) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on public or private lands in Oregon unless that activity is authorized by a permit issued under ORS 390.235.

2) A person may not excavate an archaeological site on privately owned property unless that person has the property owner's written permission.

3) If human remains are encountered during excavations of an archaeological site on privately owned property, the person shall stop all excavations and report the find to the landowner, the state police, the SHPO and the Oregon Commission on Indian Services. All funerary objects relating to the burial shall be delivered as required by ORS 358.940.

4) Violation of the provisions of this section is a Class B misdemeanor.

2.0 Results of Pre-Construction Literature Review and Cultural Resources Surveys for the Project

Nolin Hills commissioned a desktop literature review of the entire Project ~~Project Area~~Site Boundary, including a 1-mile buffer on two transmission line corridors, as well as a Traditional Use Study (TUS; Engum 2018) and pedestrian surveys of the micrositing corridors (King et al. 2020; King and Berger 2019 and 2020~~King et al. 2019; King and Berger 2019~~). Pedestrian surveys to date have covered micrositing corridors for the Project components and most of the transmission line alternatives (Figure 3). The surveyed areas included a 500-foot buffer on the centerline of turbine strings (1,000-foot-wide corridor) and a 150-foot buffer on all other linear components (300-foot-wide corridor) within the main area of the wind facility. Widths of the survey corridors along the transmission line alternatives varied. No buffer was placed on the substations. Except for portions where access was not yet available at the time of survey or where health and safety concerns were present, all portions of the micrositing corridors have been subjected to pedestrian survey~~ed~~. Shovel probing has not occurred in areas of poor ground surface visibility or in areas with high probability for buried archaeological resources; nor has resource boundary probing occurred. If ~~these~~ areas of poor ground surface visibility or areas with high probability for buried archaeological resources, as identified in King, et al. (~~2018~~2020), fall within temporary or permanent impact areas for the final design of the Project, they will be shovel probed prior to construction. Resources within 50 meters of the disturbance footprint of final design will also be shovel probed, consistent with the Subsurface Probing Plan for the Project (King 2021). The Plan will be updated to reflect the results of additional transmission line surveys and any necessary shovel probing.

A total of ~~41~~ 43 sites (~~40~~ 42 archaeological sites, ~~one~~ 1 historic built environment/aboveground site) and ~~18~~ 20 isolated finds (IFs) have been identified in the micrositing corridors (see Appendix A). Of the archaeological sites, ~~15~~ 16 are pre-contact, ~~11~~ 13 are historic-era, and ~~12~~ 13 are undetermined. ~~The remaining two archaeological sites are multicomponent sites that include one pre-contact component and one undetermined component.~~ The 18 IFs include nine pre-contact IFs

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and ~~nine~~ 11 historic-era IFs. Cairns and various types of stacked rock features (pre-contact and undetermined) dominate the inventory. While some of the cairns have been attributed to Native Americans, it is thought that the undetermined cairns may be related to historic Basque sheep herders. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) has noted that Basque cairns were commonly elaborations of existing Native American cairns. The pre-contact era resources reflect the Native American use of the Project Area, which appears primarily related to hunting and possibly sacred uses. This is supported by the findings of the TUS (Engum 2018). The historic-era resources reflect the agricultural and ranching history of the area, as well early transportation networks.

Several significant sites were identified during the TUS, some of which were also identified by the pedestrian survey (Engum 2018, King et al. ~~2019~~2020). Resources of concern, as identified by the TUS, include rock cairns, the ~~m~~Mud ~~s~~Springs locale, a network of trails and travel corridors, and First Foods procurement areas. Informants also described the Project Area as possibly containing unmarked burials. Additionally, the Project is in close proximity to several place names, including Pišxuwiyípa (the native name for Nolin), the Umatilla River, Butter Creek, and the Sand Hollow Battlefield. The battlefield is identified as a Historic Property of Religious and/or Cultural Significance to Indian Tribes. As such, the Project and surrounding area are considered by CTUIR to be a significant cultural landscape. The Project Area is described as "a location where people traveled to for part of their subsistence, cultural endurance, and spiritual renewal" (Engum 2018).

With three exceptions (the route of the Oregon National Historic Trail, 35UM 00560, and 35UM 00571). The Project has been designed to avoid direct impacts on the ~~cultural~~ archaeological resources identified within the micrositing corridors by the Project-specific cultural resource surveys. Avoidance has been achieved either through spanning overhead lines over the resource or through moving Project components. Avoidance of these resources will be ensured through construction monitoring.

3.0 Cultural Resources Monitoring Team

This is a brief description of cultural resource monitoring personnel and their responsibilities. See Section 4.4 for contact information for key Project personnel.

3.1 Project Archaeologist

Qualifications: The Project Archaeologist must meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards for archaeology, history, or architectural history, as published in Title 36 Code of Federal Regulations part 61, and in addition must have:

1. At least 4 years of archaeological resource mitigation and field experience in the Columbia Plateau; and

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2. At least 3 years of experience in a decision-making capacity regarding cultural resources on construction projects, and the appropriate training and experience to knowledgably make recommendations regarding the significance of cultural resources.

Responsibilities: The qualified Project Archaeologist, or as necessary, an alternate Project Archaeologist is the primary point of contact for the Construction Staff regarding cultural resources in the Project Area. The Project Archaeologist will be responsible for cultural resource-related notifications and coordinate directly with the Cultural Resource Monitors (CRMs), Umatilla County, CTUIR Tribal Historic Preservation Officer (THPO), and Nolin Hills' Project Manager and on-site Engineer. The Project Archaeologist is responsible for obtaining a Project excavation permit from SHPO prior to construction, and in compliance with ORS 390.235, for avoiding unnecessary construction delays and also for facilitating efficient testing, probing, or data recovery of inadvertent discoveries, if necessary (see Section 4.3). The Project Archaeologist provides direct supervision of the CRM(s) and is responsible for the planning, execution, completion, and quality of the cultural resources monitoring tasks and reporting undertaken during Project construction. In addition, the Project Archaeologist is responsible for completing testing or data recovery efforts (as necessary), preparing artifacts for curation (as necessary), transferring curated cultural materials to the approved curation facility or appropriate land owner (if requested), and preparing final reports. The Project Archaeologist will also prepare and finalize the final monitoring report at the completion of Project construction, including transferring data from field resource forms to SHPO's online archaeological resource database. All reports will be submitted to Nolin Hills, CTUIR THPO, SHPO, and ODOE. If the Project Archaeologist, in consultation with Nolin Hills and CTUIR THPO, determines that full-time monitoring is not necessary in certain construction locations, and that monitoring will be conducted on an "as needed" intermittent schedule, a detailed letter will be provided to ODOE, SHPO, and CTUIR THPO explaining the decision to reduce the monitoring.

3.2 Cultural Resource Monitor

The number of CRMs necessary will be dependent upon the number of earth-moving machinery active each day in areas where monitoring is required (see Section 4).

Qualifications: A CRM must have a Bachelor's degree in anthropology, archaeology, historic archaeology, or a related field, and at least 1 year of archaeological construction monitoring experience in the Columbia Plateau. Preference will be given to qualified archaeological monitors that are familiar with the types of historic and prehistoric resources in the area.

Responsibilities: The CRM will 1) conduct on-site daily archaeological monitoring of construction ground disturbance, as specified in this plan; 2) provide daily documentation of construction activity and any findings to the Project Archaeologist; 3) prepare a monitoring log (Appendix B) and submit it daily to the Project Archaeologist via email; and 4) be responsible for implementing the requirements outlined in the Project's construction environmental training program (see Section 4.2). If a CRM, or other construction personnel, discover archaeological resources during construction, the CRM will have authority to halt construction in the vicinity of the find and will notify the Project Archaeologist. The CRM is also responsible for preparing the appropriate

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archaeological resource field forms (see Appendix C) for any identified IFs or sites found during construction.

3.3 Tribal Monitor

The number of Tribal Monitors necessary will be dependent upon the number of earth-moving machinery active each day in areas where monitoring is required (see Section 4).

Qualifications: A Tribal Monitor will have traditional Native American cultural and environmental experience within the Project region. The monitor will also have training, knowledge, and understanding of archaeological practices, including the phases of archaeological investigation. Based on the Project's history and the tribal interest shown in the Project, the Tribal Monitor is anticipated to be affiliated with CTUIR.

Responsibilities: A qualified Tribal Monitor will be on-site to conduct monitoring of construction ground disturbing activities, as specified in this plan, or to assist with any data recovery or mitigation, as applicable. The Tribal Monitor will work alongside and coordinate with the CRM and/or Project Archaeologist regarding an inadvertent discovery. Daily responsibilities and authorities of the Tribal Monitor are the same as the CRM (see Section 3.2). Additional responsibilities and duties of the Tribal Monitor may be dictated by CTUIR THPO, if desired.

4.0 Cultural Resource Monitoring Plan

Cultural resource monitoring for the Project will be conducted within 200 feet (61 meters) of known NRHP-eligible, listed, and unevaluated resources, wherein ODOE has determined that direct impacts would be considered significant impacts under the EFSC siting standards. In addition, monitoring will occur ~~as well as~~ within areas of high probability for buried archaeological sites and areas where poor ground surface visibility ~~were~~ was experienced, as identified in the cultural resource reports for the Project (King et al. 2020; King and Berger 2019 and 2020~~King et al. 2019, King and Berger 2019~~). See Appendix A for resource locations and areas of high probability or poor ground surface visibility. See Appendix D for Project design and construction plans. To comply with Umatilla County setback requirements, no ground disturbance will be allowed within 164 feet (50 meters) of archaeological sites that are associated with tribes. Monitoring will occur only while soils above the C horizon are being disturbed. (The C horizon is defined as the stratigraphic layer immediately above the bedrock, consisting chiefly of weathered, partially decomposed rock. Archaeological resources are not considered likely to occur within or below this depth.) Monitors will not be required to be present once excavation activities extend into the C horizon or in areas where exposed bedrock is at the ground surface. As of the date of this publication, resources that will be monitored are listed in Table 1 below. This requirement may be altered based on the results of the additional pre-construction surveys and any future shovel probing of areas of high probability and poor ground surface visibility. For the purposes of the Plan, archaeological construction monitoring is defined as on-the-ground, close-up observation by a CRM or Tribal Monitor at a safe distance from construction equipment.

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Table 1. Known Resources Requiring Construction Buffer and Monitoring

NH-BB-01~~NH-DM-01~~	35UM 00550 (NH-DM-21)~~NH-DM-20~~
NH-BB-03~~NH-DM-02~~	35UM 00560 (NH-MC-12)~~NH-DM-21~~
35UM 00536 (NH-DM-01)~~NH-DM-04~~	35UM 00571 (NH2-MC-01)~~NH-MC-02~~
35UM 00543 (NH-DM-14)~~NH-DM-06~~	~~NH-MC-03~~
~~NH-DM-10~~	~~NH-MC-04~~
~~NH-DM-12~~	~~NH-MC-06~~
~~NH-DM-13~~	~~NH-MC-08~~
~~NH-DM-14~~	~~NH-MC-09~~
~~NH-DM-15~~	~~NH-MC-11~~
~~NH-DM-18~~	~~NH-MC-12~~
~~NH-DM-19~~	

Prior to construction, the Project Archaeologist or a designated representative will place fencing with flagging around a 200-foot (61-meter) buffer around all NRHP-eligible, listed, and unevaluated cultural resources within the siting corridor of the final design, subject to EFSC's siting standards (see Section 1.1.1) and Umatilla County setback restrictions for tribal resources. Such avoidance measures will also be placed around resources subject to the EFSC siting standards that are within 200 feet (61 meters) of the final design siting corridor (i.e. outside the corridor) and NRHP-eligible, listed, or unevaluated. Monitoring of ground disturbance above the C horizon will be required within these areas. No ground disturbance will be allowed to occur within 164 feet (50 meters) of the resource boundary within the flagged area. The areas will be inspected and closely monitored by the CRM or Tribal Monitor on a daily basis when construction activities are occurring in the vicinity of the resource. Exceptions include ~~the route of the Oregon National Historic Trail where no archaeological evidence of the trail has been identified; at~~ NH-MC-12 where an existing road is already within 164 feet (50 meters) and any road modifications will be conducted on the opposite side of the road~~; and at NH-DM-02 where disturbance footprints are within the site boundary, but avoid the standing building and structure that comprise the site~~.

The CRM or Tribal Monitor will be present during mechanical scraping, grading, excavating, and other ground disturbing activities within soils above the C horizon in the above-referenced areas. This statement notwithstanding, Nolin Hills, the Project Archaeologist, and the CTUIR THPO may agree in writing that any given area can be deemed exempt from otherwise established monitoring requirements, if appropriate. Such agreements will be provided to ODOE. Cultural resource monitoring will not be required once all surface and subsurface ground disturbance in a construction area is completed, when disturbance extends beneath the C horizon, or in areas where bedrock is present at the ground surface. Monitoring is not required for routine travel on existing roads or for blasting; however, additional blading or excavating at a depth beyond the previously disturbed area and above the C horizon will be monitored for cultural resources, even within

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previously-graded or bladed areas. The CRM and Tribal Monitor will maintain daily logs of Project-related construction monitoring activities. Blank monitoring log templates are in Appendix B.

The daily monitoring log will reflect the monitoring activities observed by each monitor and will include:

- Date, time of work, and amount of time spent at a construction monitoring location;
- Area of work (defined by Project features; e.g., turbine string) and soils description for that area;
- Type of work, on-site equipment, and name(s) of leader(s) of construction crew being monitored;
- Construction activities being performed (e.g., grading, excavation, trenching, etc.) and activities where cultural resource problems, noncompliance activities, or other concerns occur;
- Identification of an inadvertent discovery (if any), steps taken to protect the discovery, and documentation of necessary notifications (name, agency, time, and notes; see Section 5 for inadvertent discovery procedures); and
- Color digital photographs to document construction and monitoring activities, as well as soil profiles, to be submitted with a photo log as attachments to the daily log.

The CRM and Tribal Monitor will prepare and provide their monitoring logs daily to the Project Archaeologist. The Project Archaeologist will prepare and provide monthly summary reports on the progress or status of cultural resource-related activities during active construction. This monthly reporting is separate from the immediate notifications of inadvertent discoveries (see Section 4.3). The monthly reports will summarize construction progress, monitoring (monitor names, dates worked, finds, issues, etc.), and status of cultural resource-related issues. These reports will also include the appropriate archaeological isolate or site forms for finds identified under the monitoring program. The Project Archaeologist will submit the monthly summary reports to Nolin Hills, and if desired, SHPO, CTUIR THPO, and ODOE. (Resource forms require submittal to SHPO.)

If excavation (e.g., testing, probing, or data recovery) of an inadvertent discovery is necessary, an archaeological excavation permit will be obtained from SHPO. By suggestion of SHPO, and to avoid unnecessary construction delays, the Project Archaeologist shall obtain a Project permit for such activities *prior to construction*.

The Project Archaeologist will direct the preparation and distribution of the final Cultural Resource Monitoring Report or any other outstanding report actions (such as testing and/or data recovery conducted during the construction phase of the Project). The report will be completed no later than 60 days after the completion of Project construction. All reports will be submitted to Nolin Hills, and if desired, SHPO, CTUIR THPO, and ODOE. All geographic information system files and resource forms will also be submitted to SHPO for incorporation into the agency's cultural resources database.

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4.1 Native American Participation

CTUIR has been involved with the Project since the planning phase. As noted above, the tribe has completed a TUS for the Project (Engum 2018), and Tribal Monitors participated in the pedestrian surveys. CTUIR will continue to be involved, if they desire, during the construction phase through archaeological monitoring and the notification process for Native American-related inadvertent discoveries. Tribal Monitors will coordinate and work closely with the CRMs regarding the monitoring of ground disturbance and any inadvertent discoveries (see Section 3). In the event of any Native American-related discoveries or discoveries of undetermined affiliation, the Project Archaeologist will notify CTUIR THPO with information regarding the type of the discoveries, as well as any recommendations, via text message, phone call, or email within 24 hours of the find (see Section 4.4 for key contacts).

4.2 Worker Environmental Awareness Program

Prior to construction, all construction personnel will be given Worker Environmental and Awareness Program (WEAP) training. The cultural resources component of the WEAP will be designed by the Project Archaeologist, and may be delivered by either the Construction Manager, Project Archaeologist, or qualified designate. The WEAP is a guide that summarizes the general environmental and archaeological procedures everyone must follow during Project construction and operations. The cultural resources component will inform all construction staff on the importance of protecting cultural resources, the types of cultural resources that might be inadvertently discovered during Project construction activities, and the protocol in the event of a possible inadvertent discovery. The WEAP training will be presented as part of the pre-construction meeting with informational slides, which will address the following:

1. What a cultural resource is, why they are important, and the types of pre-contact and/or historic cultural materials, objects, and deposits that could be found in the area and that could be exposed as a result of construction activities;
2. The significance of the Project Area to Native Americans, including its historical use (this portion of the training may be presented by a CTUIR representative, if desired);
3. All applicable laws regarding cultural resources, and penalties under those laws pertaining to unlawful excavation, removal, destruction, injury, or defacement of archaeological resources, human remains, and Native American cultural resources;
4. The type of permit that the Project is operating under, and what that permit stipulates about cultural resource protection; and
5. Protocols for the inadvertent discovery of archaeological resources or human remains (as detailed in Section 4.3).

The WEAP will be implemented before construction begins so that all foremen and construction crew members are aware of the possibility that inadvertent discoveries of archaeological resources or human remains could occur, as well as their responsibilities to understand and comply with

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procedures upon discovery of such resources. A copy of the WEAP and the Plan will be kept in the Construction Manager's office, as well as with each individual CRM or Tribal Monitor in the field. **(Confidential Appendix A, with known resource locations, will NOT be distributed beyond these staff members.)**

4.3 Inadvertent Discovery Procedures

This section outlines the procedures to follow in the event of an inadvertent discovery of archaeological resources or human remains, burials, and associated artifacts. An inadvertent discovery is the observation of an undocumented archaeological pre-contact or historic cultural object, feature, or site during Project construction activities. Although cultural resources identified in the Project Area have been directly avoided by the Project, there is still the potential that subsurface undocumented cultural resources may be uncovered during Project construction activities (e.g., ground disturbing excavation, trenching, grading, etc.), or decommissioning after the Project's lifetime. In the event of an inadvertent discovery of cultural resources, all work within the immediate vicinity of the find shall cease and the area shall be protected and secured. Examples of when work should be stopped are described in Section 4.3.1. If the find cannot be avoided by the Project, appropriate mitigation, if any, will be determined by the Project Archaeologist in consultation with SHPO, and as appropriate, CTUIR THPO. Work may not proceed until approval has been received from SHPO, the Project Archaeologist, and as appropriate, CTUIR THPO. Procedures specific to inadvertent finds of archaeological resources and human remains are outlined below in Sections 4.3.2 and 4.3.3, respectively. Key contacts for notifications are listed in Section 4.4.

4.3.1 When to Stop Work

Construction work may uncover previously unidentified Native American or Euro-American artifacts. This may occur for a variety of reasons and may be associated with deeply buried cultural material, access restrictions during Project development, or if the area contains impervious surfaces that would have prevented standard archaeological site discovery methods.

Work must stop when the following types of artifacts or features are encountered:

Native American artifacts may include (but are not limited to):

- Flaked stone tools (projectile points, knives scrapers, etc.);
- Waste flakes that resulted from the construction of flaked stone tools;
- Ground stone tools like mortars and pestles;
- Layers (strata) of discolored earth resulting from fire hearths. May be black, red, or mottled brown, and often contain discolored cracked rocks or dark soil with broken shells;
- Human remains; and
- Structural remains such as wooden beams and post holes.

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Euro-American artifacts may include (but are not limited to):

- Glass (from bottles, vessels, windows, etc.);
- Ceramic (from dinnerware, vessels, etc.);
- Metal (nails, drink/food cans, tobacco tins, industrial parts, etc.);
- Building materials (bricks, shingles, etc.);
- Building remains (foundations, architectural components, etc.);
- Old wooden posts, pilings, or planks (these may be encountered above or below water);
- Old farm equipment that may indicate historic resources in the area; and
- Old garbage (which could very well be an important archaeological resource).

4.3.2 Discoveries of Archaeological Resources

In the event that archaeological resources (sites and isolated artifacts) are inadvertently discovered, all work within the immediate vicinity will cease and the following procedures will be implemented:

1. Place a minimum of a 200-foot (61-meter) buffer around the discovery. The size of the buffer may be increased at the CRM, Tribal Monitor, or Project Archaeologist's discretion based on the character of the find. Construction activities can proceed outside of this buffered area unless additional archaeological sites or objects are discovered.
2. The area within the buffer shall be secured and protected from additional disturbance with flagging or fencing, or by posting a worker to ensure avoidance. Project personnel shall ensure the discovery is not disturbed and remains confidential, on a need to know basis. Project personnel will not speak with the media or discuss the find on social media (e.g., Facebook, Twitter, Instagram, etc.), or take photographs of the find. The location should be secured, and work will not resume in the area of discovery until all parties involved agree upon a course of action.
3. Project personnel (e.g., CRM, Tribal Monitor, construction personnel, individual who identified the remains) must immediately notify the Construction Manager and Project Archaeologist. The Construction Manager and Project Archaeologist will coordinate subsequent procedures. The Project Archaeologist will notify Nolin Hills, SHPO, and CTUIR THPO of the find. If the find consists of human remains, the special procedures listed in Section 4.3.3 for inadvertent discoveries of human remains will be followed.
4. No work may resume until consultation with SHPO has occurred and the Project Archaeologist is able to assess the discovery. The Project Archaeologist, in consultation with SHPO and CTUIR THPO, as appropriate, will determine whether or not the discovery is subject to any of the EFSC siting standards (see Section 1.1.1) and determine an appropriate course of action. Archaeological probing, testing, or other excavation may be required. This

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will be handled on a case-by-case basis by the Project Archaeologist and Nolin Hills, in consultation with SHPO and CTUIR THPO, as appropriate. All treatment efforts will adhere to the guidelines outlined by the permit for archaeological excavation issued by SHPO to the Project Archaeologist prior to construction (see Sections 3.1 and 4).

5. No construction work is permitted within the buffered area until all appropriate approvals are obtained and the area is released. Construction may proceed only after the proper archaeological inspections have occurred and environmental clearances are obtained from the Project Archaeologist, SHPO, ODOE, and CTUIR THPO, as appropriate.
6. After an inadvertent discovery, some areas may be specified for close monitoring or "no work zones." Any such areas will be identified by the Project Archaeologist to Nolin Hills, CTUIR THPO, and the Construction Manager. In coordination with SHPO, Nolin Hills will verify these identified areas and be sure that the areas are clearly demarcated in the field, as needed.

4.3.3 Discoveries of Human Remains

In the event of an inadvertent discovery of human skeletal remains or burial sites, procedures similar to those described above in Section 4.3.2 for inadvertent discoveries of archaeological resources will be followed. The following alterations to the procedures above will apply for inadvertent discoveries of human remains:

- As part of the initial notifications described in Step 3 for discoveries of archaeological resources, if possible human remains are encountered, the Oregon State Police and Commission on Indian Services will also be notified.
- If human remains are encountered, do not disturb them in any way. Do not call 911. Secure the location. Project personnel shall ensure the human remains and any associated artifacts and features are not disturbed, are treated with respect and dignity, and ensure confidentiality of the find on a need to know basis. Project personnel will not speak with the media or discuss the find on social media (e.g., Facebook, Twitter, Instagram, etc.), or take photographs of the remains, burials, or associated artifacts. The location should be secured, and work will not resume in the area of discovery until all parties involved agree upon a course of action.

If it is determined that the human remains cannot be avoided by the Project and will be impacted, Nolin Hills, CTUIR THPO (or other representative of a tribe determined to be affiliated with the remains), SHPO, the Commission on Indian Services, and the landowner will enter into a Memorandum of Agreement to address treatment of the human remains.

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4.4 Key Contacts In Case of an Inadvertent Discovery

Contact information for key contacts in the event of an inadvertent discovery are provided in Table 2.

Table 2. Key Project Contacts

Organization	Name	Position	Contact Information
TBD	TBD	Project Archaeologist	TBD
TBD	TBD	Construction Manager	TBD
Nolin Hills, LLC	TBD	Construction Manager	TBD
Nolin Hills, LLC	TBD	Construction Engineer	TBD
Nolin Hills, LLC	Jay Shukin	Tribal Liaison	Phone: (250) 882-5188 Email: jshukin@capitalpower.com
CTUIR	~~Teara Farrow Ferman~~Carey Miller	THPO	Phone: (541) 429-7234~~(541) 276-3447~~ Email: careymiller@ctuir.org~~TearaFarrowFerman@ctuir.org~~
SHPO	John Pouley	~~Assistant~~ State Archaeologist	Phone: (503) 480-9164~~(503) 503-986-0675~~ Email: John.Pouley@state.or.us
Oregon State Police	Chris Allori	Police Sergeant	Phone: (503) 731-4717 Cell: (503) 708-6461 Dispatch: (503) 731-3030
Oregon Legislative Commission on Indian Services	Patrick Flanagan~~Karen Quigley~~	Executive Director	Phone: (503) 986-1067 Email: LCIS@oregonlegislature.gov~~Karen.Quigley@state.or.us~~
Cunningham Sheep Company	Steve Corey	Landowner	Phone: 541-276-3331 Cell: 503-703-2101 Email: corey@corey-byler.com
~~TBD~~	~~TBD~~	~~Landowner~~	~~TBD~~
~~TBD~~	~~TBD~~	~~Landowner~~	~~TBD~~
~~TBD~~	~~TBD~~	~~Landowner~~	~~TBD~~

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Engum, Jennifer Karson

2018 *Traditional Use Study for the Proposed Nolin Hills Wind Project, Umatilla County, Oregon*. Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources, Cultural Resources Protection Program, Pendleton, Oregon. Submitted to Tetra Tech, Inc., Portland, Oregon. Contract No. 1140031.

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~~2019 *Cultural Resources Pedestrian Survey Report, Addendum 1, Nolin Hills Wind Power Project, Umatilla County, Oregon*. Tetra Tech, Inc., Portland, Oregon. Submitted to Nolin Hills Wind, LLC. SHPO Case No. 17-1679. Tetra Tech Project #194-6029.~~

~~King, Erin, Douglas Mitchell, and Tia Cody~~

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Figures

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Appendix A. Known Cultural Resources and Areas of High Probability or Poor Ground Surface Visibility within the Micrositing Corridors (CONFIDENTIAL)

(To be developed after completion of all surveys)

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Appendix B. Cultural Resources Monitoring Forms

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Appendix C. Archaeological Resource Field Form Templates

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Appendix D. Project Design and Construction Plans

(To be developed based on final design)

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Attachment S-2: Historical Resource Management Plan

Nolin Hills Wind Power Project
Historical Resource Mitigation Plan

Prepared for

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

d/b/a Nolin Hills Wind, LLC

Prepared by:

TETRA TECH

Tetra Tech, Inc.

Jan 2022

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1.0 Introduction

This draft Historical Resource Mitigation Plan describes approaches to mitigating the presumed significant adverse impact to three properties (Figure 1): 1) Pendleton Ranches Sheep Camp/Bunk House in the vicinity of County Road 1363, at latitude 45.527364 and longitude -119.099135; 2) buildings and structures at Township (T) 2N/ Range (R) 29E, NE 1/4 NE 1/4 Section 26; and 3) buildings and structures (including the stone foundation) at T2N/R30E, NW 1/4 SW 1/4 Section 35, resulting from construction and operation of the Nolin Hills Wind Power Project (Project). A full analysis of eligibility of these sites for eligibility for inclusion on the National Register of Historic Places (NRHP) has not been completed but the available information suggests they are likely to be determined eligible and that construction of the Project will have an adverse impact on them.

2.0 Regulatory Context for Mitigation

Pursuant to Oregon Administrative Rule (OAR) 345-022-0090 and State Historic Preservation Office (SHPO) guidance, Nolin Hills Wind, LLC (the Applicant) conducted a historic and cultural resources inventory within the Project's micrositing corridor and at specific locations as directed by SHPO. The Pendleton Ranches Sheep Camp and abandoned barn are located within this analysis area and research determined they are likely to be eligible for listing on the NRHP. The Applicant then identified potential impacts to the resource under OAR 345-021-0010(1)(s)(D) and provides this mitigation plan to prevent destruction of the resource in accordance with OAR 345-021-0010(1)(s)(D)(iii).

3.0 Description of the Aboveground Historic Property

This section provides a description of the identified properties, the determination of probable eligibility for inclusion in the NRHP, ownership associated with the properties, and the setting within the vicinity of the properties.

3.1 Property Descriptions

3.1.1 Pendleton Ranches Sheep Camp/Bunk House

The Pendleton Ranches Sheep Camp structures consist of a historic sheep ranching camp associated with Pendleton Ranches, Inc., including two standing buildings. The site is located at the head of Slusher Canyon. One standing building consists of a largely intact single-story, side gabled six-room bunkhouse that rests on concrete piers (Photograph 1). Some of the siding is deteriorating and in places it has fallen from the walls. The roof is covered in wood shingles in a plain pattern; many of the shingles are missing, leaving the roof rafters exposed.

The second standing structure consists of a single-story, one-room, front-gabled concrete and wooden subterranean cistern. The subterranean portion of the structure is constructed of form-and-poured conglomerate concrete, and the aboveground portion of the structure consists of the wooden low-pitched roof (Photograph 2).

The structures are located on private land owned by the Cunningham Sheep Ranch and accessible only by private two-track farm road.

3.1.2 Property at T2N/R30E, Barn, Foundation, and Associated Structures

Limited information is available on the structures at T2N/R30E, NW 1/4 SW 1/4 Section 35, and a full evaluation has not been conducted. Based on recent photographic evidence provided by the landowner (Photograph 3), the structures appear to include an unused and dilapidated wooden barn, a smaller storage shed, and a stone foundation that included steps down into a basement with no remaining aboveground features. The structures are located on private property owned by the Cunningham Sheep Ranch, 0.5 mile from the nearest proposed wind turbine location.

3.1.3 Property at T2N/R29E, Residence, Barn, and Windmill

Limited information is available on the structures at T2N/R29E, NE 1/4 NE 1/4 Section 26, and a full evaluation has not been conducted. Based on recent photographic evidence (Photograph 4), the structures appear to include a residence, barn, and one windmill. The structures are located on private property owned by the Cunningham Sheep Ranch, 0.4 mile from the nearest proposed wind turbine location.

3.2 Determination of Eligibility and Preliminary Communication with Oregon State Historic Preservation Office

A full determination of eligibility has not been completed for any of these structures at this time. However, available historic information suggests they may be eligible for NRHP listing, and the Applicant concurs with a decision to treat them as if they are eligible with the aspect integrity of setting as a character-defining feature.

3.3 History

This section provides a history of the Pendleton Ranches Sheep Camp and Bunkhouse property. Research regarding the specific history of the other two properties has not yet been conducted as they are located outside of the site boundary on property not under lease for the Project. Additional background research on these properties will be conducted as part of the future mitigation effort.

The Pendleton Ranch bunkhouse and cistern were used as a bunkhouse for agricultural field crews in the 1950s and 1960s, in conjunction with operations of Pendleton Ranches, Inc., located just south of the main ranch in Nolin. Fencing and corrals are still present nearby, outside of the site, although the fencing has been replaced and the bunkhouse, no longer in use, is deteriorating. The home ranch, Cunningham Sheep Ranch, established in Nolin in the 1880s, is approximately 11 miles

north of the sheep camp. While no land modifications are indicated for this area on the 1861 General Land Office (GLO) plat maps, a building is indicated at the sheep camp's vicinity on the 1908 U.S. Geological Survey Umatilla 1:125,000 quadrangle. A 1952 aerial photograph shows a large barn on the land, closer to County Road 1363, which is no longer present, as well as fencing and corrals. The house and cistern are not visible in the photograph. However, a 1965 aerial photograph shows the house and cistern as well as the large barn, indicating the house and cistern were built or moved to the area from another location between 1952 and 1963.

The 1914 Standard Atlas of Umatilla County shows the site and surrounding section as owned by William M. Slusher. Slusher, a Joint Representative from Morrow and Umatilla counties in the 1907 legislature who was indicted for land fraud in 1908 (*Morning Oregonian* 1908), was also active in the State Woolgrowers' Association (*Oregon Daily Journal* 1907). By 1932, the land on which this sheep camp is located was owned by Pendleton Ranches, Inc., as indicated by the Umatilla County Metsker map for the site location. Pendleton Ranches, Inc. continues to own the land today.

Research revealed that several other family-owned sheep ranches dating from the late nineteenth and early twentieth centuries are in operation or are listed on the NRHP in east Oregon. However, despite the rich history of sheep ranching in Umatilla County, the results of a search in the Oregon Historic Sites Database resulted in no NRHP-eligible or -listed sheep ranches recorded in Umatilla County. This may be due to the fact that there have not been sheep ranches evaluated for listing on the NRHP in Umatilla County. (Outside of Umatilla County there are sheep ranches such as the Cant Ranch and Roba Ranch that are listed on the NRHP.) The City of Echo includes the Cunningham Sheep Company in Nolin in its Cultural Resources Inventory of 2002, along with other early farms (City of Echo 2015).

Based on information provided by the landowner, while the Pendleton/Cunningham enterprise did raise sheep, most of the sheep ranching occurred near Pilot Rock; the area where the abandoned house and cistern are located was mostly agricultural fields, as of the 1950s. This does not rule out the possibility that that the land surrounding the house and cistern could have been used for sheep ranching in the 1920s, 1930s, or 1940s, nor does it negate the possibility that the house was used for shelter tending to sheep elsewhere on the Cunningham/Pendleton Ranch land and then moved.

Based on the known and potential history of these structures, they are being treated as eligible for listing in the NRHP for their association with the agricultural history of the area.

3.4 Setting

The three properties are all in isolated areas of private property that is not accessible to the public. The setting consists of rolling hills and identified features are located in draws at lower elevation, surrounded by hills. The Pendleton Sheep Ranch Camp/Bunk House is located approximately 0.25 mile from the nearest proposed wind turbine, with all or portions of up to 30 turbines potentially visible from this location. The unidentified structures are approximately 0.4 mile from the nearest proposed wind turbine, with portions of blade tips from 9 turbines visible, while an additional 5 turbines would have portions or all of the blades, hub, and tower visible. At T2N/R30E, blade tips

from up to 34 turbines may be visible from the barn or associated structures; in addition, 12 turbines would have hub or lower (tower) portions visible. At T2N/R29E, blade tips of up to 5 turbines would be visible, while up to 21 turbine towers (hub height or lower) would be visible from the residence, barn, or windmill structures. Table 1 also depicts this information.

Table 1. Wind Turbines Visible from Historic Property Sites Near Project

Resource	Number of Turbines Visible (Blades or Portions of Blades only)	Number of Turbines Visible (Towers and Blades) (Hub Height: 266 feet)
T2N/R30E, Barn and Associated structures	34 turbines visible (blades only)	12 turbine towers visible (hub height or lower)
T2N/R29E, Residence, barn, and windmill	5 turbines visible (blades only)	21 turbine towers visible (hub height or lower)
Pendleton Ranches Sheep Camp/Bunk House	9 turbines visible (blades only)	5 turbine towers visible (hub height or lower)

4.0 Description of the Impacts Addressed by the Plan

Although none of the three properties are accessible to the public, their setting would contribute to presumed eligibility for listing on the NRHP and the presence of wind turbines in the vicinity of these three properties would adversely impact their setting.

Because no feasible turbine realignment exists that avoids these impacts, the Applicant will implement the mitigation action provided in Section 5.

5.0 Mitigation Measure

5.1 Intensive Level Surveys

The Applicant will conduct three Intensive Level Surveys, using the *Guidelines for Historic Resources Surveys in Oregon* (the Guidelines; OPRD 2011) for each of the properties: Pendleton Ranches Sheep Camp/Bunk House; the property at T2N/R30E, barn, foundation, and associated structures; and the property at T2N/R29E, residence, barn, and windmill.

During teleconference communications with Jason Allen (Oregon SHPO), Kathleen Sloan (Oregon Department of Energy [ODOE]), and the Applicant's consultant (Tetra Tech, Inc.), in November 2021, the specific aspects of the Guidelines applicable to this Project were discussed and specified. The scope of work for each property is the result of those discussions and detailed below, and the Oregon SHPO's communication regarding the Project heavily influenced this scope. The work shall be conducted by an historian/architectural historian who meets the Secretary of the Interior's Professional Qualification Standards. No formal NRHP evaluation will be completed for any of the properties.

Using the Guidelines, the following tasks will be done for each of the three properties:

- *Research* – Prior to conducting the fieldwork, an architectural historian will review the Oregon Historic Sites Database and other online, local, and academic repositories to obtain background information about agricultural structures. Ownership information and history of properties will be conducted to the greatest extent feasible, given there is little information readily available. In addition to the review of historical literature, maps, and photos, this research will include communicating with the Umatilla County Historical Society Museum staff to determine if the Society has information about these topics.
- *Fieldwork*—A field investigation will be conducted and consist of:
    - Take photographs of the buildings and structures at the three properties, including photographs of the setting prior to construction of the Project. Overview photographs of the exteriors (and interiors, where accessible) and showing the associated buildings as they relate to the setting and in every direction, prior to construction of wind turbines.
    - Prepare measured drawings (to scale) except at properties the Oregon SHPO deems unnecessary (see specific property list below) and prepare site sketch maps with orientation of buildings and structures, prior to construction of wind turbines.
    - Provide detailed physical descriptions of the exterior and interior (where accessible) of buildings and structures.
- *Reporting*—Historians/Architectural historians will prepare three individual draft and final reports. The draft report will be reviewed by the Oregon SHPO. One (1) round of comments from the Oregon SHPO will be addressed in a final report.

  Using the Guidelines, the following specific items will be included in the intensive survey report for the **Pendleton Ranches Sheep Camp/Bunk House,** a property which the Oregon SHPO staff suspects is a moveable house that is not an architectural type recorded or documented in their records:

    - Prepare a thorough historic context for these types of moveable ranching properties and where they might be found or were used in Oregon. Bunk house should be considered similar to an artifact from which to glean information of these property types to use for future surveys that may include these types of buildings.

  Using the Guidelines, the following specific items will be included in the intensive survey report for the **Property at T2N/R30E**, barn, foundation, and associated structure:

    - Stone foundation: Emphasis will be on the physical nature of the resource, including a measured plan drawing including width of the perimeter, type of stone used, type of mortar (or dry laid technique) and how the foundation can lead to clues about the house.
    - Barns on property will be documented but not to level of detail as foundation (no

measured plans required).

Using the Guidelines, the following specific items will be included in the intensive survey report for the **Property at T2N/R29E**, residence, barn, and windmill**.** Using the Guidelines, the following will be included in the intensive survey:

- Perimeter measurements of barn and residence only. Measured drawings are not required. Historians will look into windows of barn to determine floorplan because building is collapsing and is unsafe to enter.

6.0 Duration

Mitigation will be implemented within three (3) years from the start of construction. Prior to construction, photos of the setting of the three resources will be taken, capturing these properties within their unaltered setting (overview shots showing the in their context). Construction can then begin, as long as it does not impede further access to these properties.

7.0 Amendment of the Plan

This Historical Resource Mitigation Plan may be amended from time to time by agreement of the Applicant and the Energy Facility Siting Council (Council). SHPO will have the opportunity to review and participate in proposed amendments. Such amendments may be made without amendment of the site certificate. The Council authorizes the ODOE to agree to amendments to this plan. The Department shall notify the Council of all amendments, and the Council retains the authority to approve, reject, or modify any amendment of this plan agreed to by the Department.

8.0 References

Allen, Jason. Oregon Heritage and State Office of Historic Preservation. 2021. Personal Communication with Katie Clifford, Oregon Department of Energy. Email communication October 18, 2021.

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City of Echo. 2015. Echo's Cultural Inventory. Electronic document, http://www.echo-oregon.com/pub/inventory-15.pdf, accessed October 17, 2017.

Morning Oregonian. 2008. "Eleven Accused of Land Fraud: Prominent Umatilla Men Indicted." June 9, 2008. Portland, Oregon.

OPRD (Oregon Parks and Recreation Department). 2011. *Guidelines for Historic Resources Surveys in*

Oregon. State Historic Preservation Office. Available online at: https://www.oregon.gov/oprd/OH/Documents/guidelines_for_historic_resource_surveys.pdf

Oregon Daily Journal, The. 1907. "Woolgrowers' Session Ends." 14 Nov 1907, page 6. Portland, Oregon,

Figure

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Nolin Hills Wind Power Project

Figure 1
Locations of Historic Buildings

UMATILLA COUNTY, OREGON

Property at T2N/R30E, barn, foundation, and associated structures

Property at T2N/R29E, residence, barn, and windmill

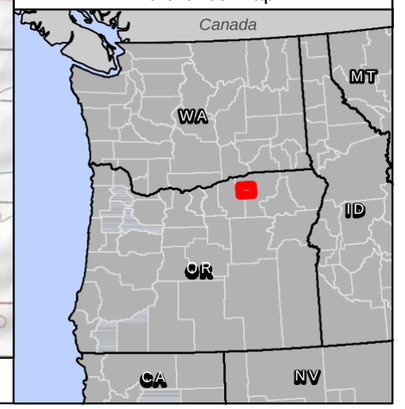
Pendleton Ranches Sheep Camp/Bunk House Property

- Proposed Site Boundary
- Interstate Highway
- Secondary Road
- City/Town
- Historic Buildings

TETRA TECH

Capital Power
RESPONSIBLE ENERGY FOR TOMORROW

Reference Map



1:95,000 WGS 1984 UTM Zone 11N

0 1 2 4 6 8 Miles

NOT FOR CONSTRUCTION

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Attachment S-3: Draft Subsurface Probing Plan

TETRA TECH

MEMO

To:	Katie Clifford, ODOE
Cc:	Linnea Fossum, Tetra Tech Matthew Martin, Capital Power
From:	Erin King, MA, RPA
Date:	Friday, July 30, 2021
Subject:	Subsurface Probing Plan for the Nolin Hills Wind Power Project

Draft
Subsurface Probing Plan for the Nolin Hills Wind Power Project
Umatilla County, Washington

The Nolin Hill Wind Project (Project) is located entirely on private lands near the town of Echo in Umatilla County, Oregon. The Project will apply for a Site Certificate from the Oregon Department of Energy's (ODOE) Energy Facility Siting Council. Multiple cultural resources surveys have been conducted by Tetra Tech, Inc. for the Project in support of the Site Certificate. A total of 42 archaeological sites and 20 isolated finds (IFs) have been identified. (Additional aboveground historic sites have also been identified but are not addressed herein.)

During the surveys, several areas of poor ground surface visibility as well as areas suitable for unidentified archaeological resources ("high-probability areas") were encountered. Areas identified as high-probability areas were determined based on sedimentation rates and observed resource distribution patterns within the surveys. The locations of IFs, poor ground surface visibility areas, and high-probability areas are depicted on the attached map.* Since design of the Project is still underway, some of these areas may be located outside of the final Project design, in which case they would not be impacted.

Shovel probing of the above areas of concern has been proposed to occur following final Project design, but prior to construction, to avoid unnecessary disturbance in the event that the final Project design avoids these areas. Probing, as proposed, would be limited to those areas of poor ground surface visibility and the high-probability areas within the final Project design footprint. In addition, all IFs within 164 feet (50 meters) of the disturbance footprint of the final Project design would be probed. This draft Subsurface Probing Plan provides a general overview of methods to be employed during the subsurface probing program. It is expected that this document will be finalized, in coordination with tribes and the Oregon State Historic Preservation Office (SHPO), prior to implementation of the shovel probing program.

The results of the shovel probing program will be documented in a supplemental survey report to be submitted to ODOE, SHPO, and tribes.

*Confidential map removed from public version of memo.

Tetra Tech, Inc.
1750 Harbor Way, Suite 400, Portland, OR 97201
Tel 503.221.8636 Fax 503.227.1287 www.tetratech.com

Poor Ground Surface Visibility Areas

Agricultural fields where crop coverage created areas of poor ground surface visibility during Project surveys will be subjected to a second pedestrian survey when crops have been recently harvested or planted, allowing for good ground surface visibility. If the construction schedule does not allow for this, subsurface probing will be conducted. Probes will be plotted evenly across the area and based on the expected or most likely distribution and size of archaeological resources for the specific location. If archaeological materials are identified during probing, additional probes around the positive probe will be excavated in following the same guidance as described below for IFs.

High-Probability Areas

A select number of probes will be plotted based on the total final disturbance acreage within the impacted high-probability areas. Probe locations will be distributed based on prior disturbance, sedimentation, topography, and expected or most likely distribution and size of archaeological resources for the specific location. A set of probes will be reserved for placement in the field, based on the Field Director's professional judgment of areas with potential for buried archaeological deposits. If archaeological materials are identified during probing, additional probes around the positive probe will be excavated in following the same guidance as described below for IFs.

Isolated Finds

Resource boundary probes will be excavated around IFs to confirm they are not representative of archaeological deposits. A minimum of two probes in each cardinal direction will be excavated. Two consecutive negative probes will be considered confirmation of the resource boundary. The first probe in each direction will be 5 meters from the IF. The second and any subsequent probes in each direction will be spaced at 20 meters. Once 10 artifacts are identified, boundary probing will be stopped since the IF would meet the definition of an archaeological site at this point, and the goal of shovel probing of IF boundaries has been achieved. Recommendations for additional work at the former IF location may be made in the supplemental survey report.

Excavation of Probes

All shovel probes will consist of 1-foot (30-centimeter) diameter holes excavated in arbitrary 4-inch (10-centimeter) levels. Each level will be described on a shovel probe form, including soils, disturbance, and any artifacts. All excavated materials will be screened through a 1/4-inch mesh. Shovel probes will extend to the C-horizon, or until two sterile levels (i.e., 9 inches [20 centimeters]) are encountered below any culture-bearing levels and after extending a minimum of 20 inches (50 centimeters) in depth (unless bedrock or other obstructions prevent going to this depth). Any artifacts identified in the probes will be preliminarily identified/described and returned to the bottom of the probe in a labeled bag. No artifact collection will occur (unless requested by the landowner, SHPO, or tribes). All probes will be backfilled after being excavated and profiled. Probe locations that require relocation from a pre-planned location will be mapped using a sub-meter GPS unit.

If any human remains are identified during fieldwork, all work within the area will be stopped and the Umatilla County Coroner, ODOE, SHPO, tribes, and Capital Power will immediately be notified.

Attachment U-1: Draft Traffic Management Plan

Draft Traffic Management Plan

I. Introduction

The applicant estimates that at peak construction periods, there would be approximately 500 workers needed onsite. The applicant assumes that most workers would drive alone, and that the average vehicle would only have 1.25 occupants. This makes the estimated daily round-trip vehicle trips 400 and 800 one-way trips for the peak period and 112 round trip and 224 one-way trips for the average workforce. The applicant then breaks down truck deliveries associated with the construction of facility components including the transmission line, solar and BESS, and the wind facility components, estimating that, during construction, there would be up to 117 round trips per day or 234 one-way trips per day delivery truck trips per day. Total maximum one-way trips for all construction-related traffic would be approximately 1,034 trips daily.

The 234 one-way truck trip and deliveries, throughout all construction phases would include the following activities:

- Civil construction and material (aggregate, culverts, etc.) supply for new roads and upgrades to existing roads, turbine erection pads and crane pads, solar inverter/transformer and BESS areas, substations, laydown areas, collector lines, transmission lines, and the O&M Building;
- Turbine and related component delivery, including towers, nacelles, hubs, blades, pad mount transformers, substation equipment and transformers, collector line components, transmission line towers and conductor, and O&M Building materials;
- Solar modules and related equipment delivery, including racking system structure, electrical wiring/cabling and equipment, steel posts, inverters, and transformers;
- BESS delivery, including containers, battery modules, and all related equipment based on the final technology selected;
- Material supply for turbine foundations and solar area foundations such as for posts and BESS containers (sand, aggregate, cement, and steel rebar);
    - The Applicant assumes concrete would be batched on-site in temporary plants; local suppliers may be used instead at the option of the construction contractor;
- Delivery of on-site construction equipment such as cranes, dozers, graders, compactors, forklifts, etc.; and
- Water truck traffic (assumes water comes from Hermiston, Stanfield, Echo, and Pendleton).

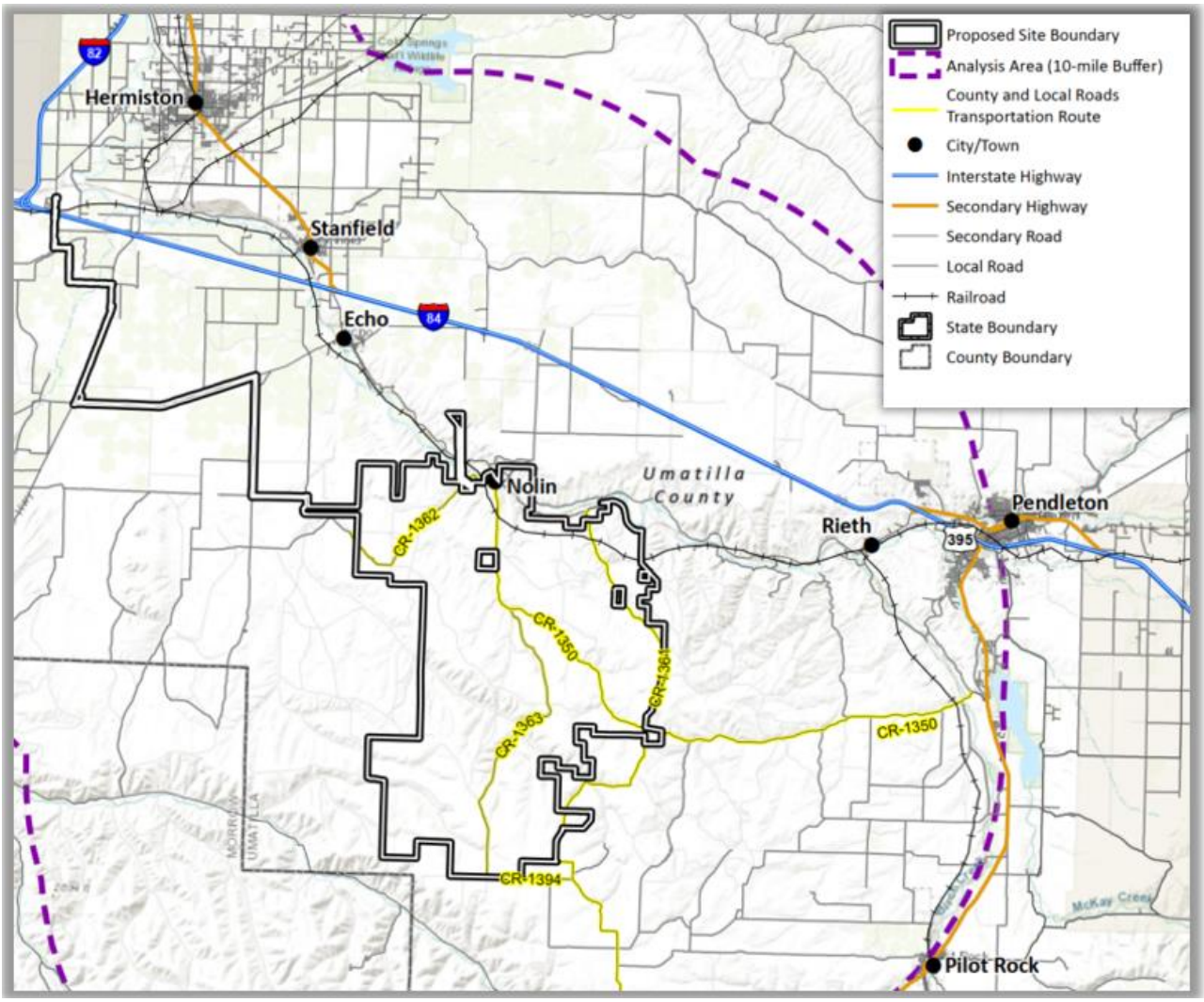
I.a. Construction Access Roads

Primary transportation corridors, major county roads, and local county roads would carry the majority of construction-related truck and workforce traffic. The workforce expected to use the same roads to access the proposed facility site as the equipment transporters. Figure 1: *Preliminary Construction Transportation Routes*, below illustrates the primary and secondary transportation routes proposed to be used for construction activities. The 2002 Umatilla County Transportation System Plan (TSP) county road classification system includes four road classes;

all arterials in Umatilla County are interstate, national, and state highways, part of the state highway system; rural county roads are classified as either rural major collectors, rural minor collectors, or rural local roads and are assigned a County Road Number by the County Public Works Department.

The primary corridors and highways identified by the applicant are I-84, I-82, and US Highway 395 (US- 395). The applicant discusses that the routes that would experience the highest increase in traffic from deliveries would be County Road (CR) 1350 (Coombs Canyon Road) from US-395. Other local county roads, such as CR-1361, CR-1362, CR-1363, and CR-1394 would experience increases in traffic. These CR's are located within the proposed facility site boundary and would be used during construction and operation, and vary from improved gravel two-lane roads to two-track roads with minimal aggregate surfacing, yet are well-maintained gravel roads in good condition. Another category of roads that would be used for proposed facility construction and operation are local county roads that are not paved. The applicant notes that these roads are either one or two lanes wide, have some to minimal aggregate on the surface, frequently have culvert pipes with inadequate covers, and have grades and corners that may require flattening or widening to accommodate the large and long construction trucks, in particular the turbine component and transformer delivery trucks. Finally, the applicant states that private roads would be used for construction and operation of the proposed facility and may require upgrading to accommodate truck traffic associated with the wind farm construction, which could include widening, replacing cattle guards, replacing or adding covers to culverts, or adding road base aggregate to the existing private roads.

Figure 1: Preliminary Construction Transportation Routes



II. Construction Best Management Practices to Minimize Traffic Service Provider Impacts

Traffic Safety Best Management Practices (BMPs):

- To minimize conflicts between proposed facility traffic and background traffic, movements of normal heavy trucks (dump trucks, concrete trucks, standard size tractor-trailers or flatbeds, etc.) would be minimized (essential deliveries only), to the extent practicable, during peak traffic times.
- Movements of oversize trucks would be prohibited during peak times (rush-hour traffic periods), to the extent practicable. If possible, and considering worker safety, such oversize deliveries would occur during other parts of the day, when background traffic

tends to be lower, such as late morning and early afternoon. The applicant would work with local law enforcement to assist with proposed facility deliveries.

- Using chase vehicles as required (or police vehicles, if required by ODOT) to give drivers additional warning.
- Coordinating the timing and locations of road closures or oversize load movements on public roads in advance with emergency services such as fire, paramedics, and essential services such as mail delivery and school buses.
- Coordinate with adjacent landowners to understand seasonal harvesting and times when agricultural traffic equipment use is the highest. Provide notice to adjacent landowners about the timing and locations of road closures, oversize load movements, and high traffic use on roads used for agricultural purposes.
- Maintaining emergency vehicle access to private property, and on public roads.
- Developing plans as required by county or state permit to accommodate traffic where construction would require closures of state- or county-maintained roads for longer periods.
- Posting signs on county- and state-maintained roads, where appropriate, to alert motorists of construction and warn them of slow, merging, or oversize traffic.
- Using traffic control measures such as traffic control flaggers, warning signs, lights, and barriers during construction to ensure safety and to minimize localized traffic congestion. These measures would be required at locations and during times when trucks would be entering or exiting highways frequently.
- Notifying landowners prior to the start of construction near residences, including residences within one mile of the site boundary where helicopters would be used for construction.
- Notify airports within 10 miles of the site boundary of construction-related helicopter use.
- Restoring residential areas as soon as possible, and fencing construction areas near residences at the end of the construction day. Gates would be installed on access roads to reduce unauthorized access when requested by property owners.

II.a. Agency Coordination - ODOT

The applicant would coordinate with ODOT and Umatilla County road officials as needed on road
improvements, road closures, and permits needed for construction or movement of oversized loads of construction equipment or materials. Three permits from ODOT may be required (see also Exhibit E):

- Oversize Load Movement Permit/Load Registration. This permit is required for the movement of oversize or overweight loads on state highways, such as construction cranes, substation transformers, or other large equipment.
- Permit to Occupy or Perform Operations Upon a State Highway. This permit addresses utility installations within the right-of-way of an interstate or state highway, including

the crossings of interstate and state highways by the proposed facility transmission lines.

- Access Management Permit. This permit may be needed if a proposed facility access road intersects directly with a state highway, and improvements are required at that intersection.

II.a.1 Helicopter Use:

If the UEC Cottonwood route is selected for the 230-kV transmission line, it would cross I-84. To construct the line across I-84, structures would be placed on either side of I-84 and a helicopter would be used to fly the lines across. There would be five lines including the grounding wire, each flown over and secured individually. During construction, flaggers would control traffic using a rolling slowdown method when each line is flown across. No lanes would be closed, and the process would occur over a few hours in one day. As such, this would be a short-term, temporary disruption to the normal flow of traffic along I-84. This work would be coordinated with ODOT and conducted in accordance with provisions of the applicable Permit to Occupy or Perform Operations Upon a State Highway, discussed further below as part of the proposed facility's impact minimization measures.

II.b. Agency Coordination – Umatilla County

In addition to these state permits, the applicant would coordinate with Umatilla County road officials as needed to address necessary road turning radius improvements, temporary road closures, oversize load movements, and monitoring of impacts to county roads. Pursuant to ORS 374.305, all affected counties require permitting for any work to be done within a county right-of-way, including making improvements to roads or intersections, or crossing a county road with the collector lines. The specific permit requirements and the names of those permits vary from county to county, as indicated in Exhibit E, Section 5, Third Party State or Local Permits; the applicant would verify and comply with all local permit requirements prior to beginning construction on the proposed facility.

The applicant would cooperate with the Public Works Department in Umatilla County with respect to obtaining permits to improve the roads and also to make repairs to roads that might result from construction traffic. In addition, the applicant expects to enter into road use agreements with Umatilla County, to ensure that public roads impacted by construction would be left in 'as good or better' condition than that which existed prior to the start of construction. A component of road use agreements would be a traffic management plan. The traffic management plan would address such issues as flagging, signage, and traffic flow around work sites on public roads; timing of oversize/overweight truck loads to avoid impacts to school bus schedules or during peak travel hours; and other mitigation measures if deemed necessary. These measures would help to prevent any construction-related traffic safety issues and would facilitate the free movement of traffic through the proposed facility vicinity. While the

movement of heavy or oversized loads of construction materials or equipment may cause some localized traffic delays, these disruptions would be intermittent and temporary.

Attachment U-2: Draft Fire Prevention, Suppression and Emergency Management Plan

Draft Fire Prevention, Suppression and Emergency Management Plan

I. Construction Fire Risk:

Construction and operation of the proposed facility could result in impacts to fire protection providers due to increased fire risk within the analysis area. Construction-related fire risks include accidental fires caused by from metal cutting and welding used to construct the steel reinforcing cages for foundations. Additional construction-related fire hazards could result from workers smoking and vehicle and equipment refueling, and operating equipment off roadways in areas of tall dry grass that could ignite upon contact with hot vehicle parts, particularly in dry seasons.

I.A. Construction: Avoidance, Reduction, and Mitigation Measures to Reduce Fire Hazard:

- Employee Awareness Training on all of the topics below
- Fire Prevention, Suppression and Emergency Preparedness:
    - During periods of high fire danger potential sources of fire ignition (vehicle exhaust systems, cigarettes, matches, propane torches, sparks from various hot work operations, etc.) must be used with extra precaution.
    - Prior to performing hot work (anything that creates a spark or an open flame is considered hot work), fire suppression equipment must be immediately available, hot work must only be done on road or turbine pad surfaces cleared of vegetation, and the on-site Safety Supervisor must be notified.
    - During construction, a water truck would be on-site to keep the ground and vegetation moist during extreme fire conditions.
    - Prior to start of construction work activities, contact the local fire department(s) and advise them of work type, location, and probable duration. Maintain open communication with local fire district personnel to identify and address fire hazards
    - Keep emergency firefighting equipment on-site when potentially hazardous operations are taking place.
    - Conduct welding or metal cutting only in areas cleared of vegetation
- Vehicles:
    - Plan and manage the work and the movement of vehicles. No off-road driving is to be done while working alone.
    - Prohibit construction workers from parking vehicles in areas of tall dry vegetation, to prevent fires caused by contact with hot mufflers or catalytic converters
    - Each vehicle used on-site shall have a fire extinguisher of sufficient type and capacity to suppress small fires around vehicles. Vehicle occupants shall be familiar with the location of these fire extinguishers. All employees who may have a need to use a fire extinguisher shall be current in their training on the general principles of fire extinguisher use and the hazards involved with incipient stage firefighting.

  - The general contractor would be responsible for identifying and marking the path for all off-road vehicle travel.
  - All off-road vehicle travel is to stay on the identified path.
  - In the event a vehicle gets stuck, shut the engine off. Periodically inspect the area adjacent to the exhaust system for evidence of ignition of vegetation. Do not "rock" the vehicle to free it; rather, pull it out. Inspect the area after the vehicle has been moved.
  - In tall grass (i.e., tall or taller than the exhaust system of the vehicle[s]), pre-wet the area with water prior to driving on it with vehicles
- Fueling
  - The general contractor would designate a location for field fueling operations at each construction yard. Any fueling of generators, pumps, etc., shall take place at this location only.
  - Fuel containers, if used, shall remain in a vehicle or equipment trailer, parked at a designated location alongside county rights-of-way. No fuel containers shall be in the vehicles that exit the right-of-way except for one 5-gallon container that is required for the water truck pump
- Smoking
  - Smoking shall only be allowed in the designated smoking areas of the Proposed facility.
- Emergency Notification and Follow Up
  - The following course of action should be taken if an emergency situation develops:
    - Evacuate as necessary. Maintain site security and control if possible. If crews are working at different areas of the site, a designated meeting location would be created for all people to gather.
    - Notify proper emergency services (fire, ambulance, etc.) for assistance.
    - Notify site management of any possible fires.
    - Prepare a summary report of the incident as soon as possible after the incident.

II. Operational Fire Risk:

The risks of fires during operation of the proposed facility would vary depending on the type of equipment operating. There is the potential for electrical fires from electrical equipment associated with the wind turbines, solar modules, transmission lines, and the lithium-ion batteries associated with the Battery Energy Storage System (BESS).

Wind turbines: Potential risks of fire and health and safety risks could arise from improper maintenance, electrical malfunction, blade failure, structural and reliability concerns, ice throw, and risks to public providers of fire service during tower rescue events.

Solar panels and BESS: Specific fire and safety risks associated with the operation of the battery energy storage system (BESS) include short-circuiting of electrical equipment which could

generate sparking, which could cause fires. The chemicals used in lithium-ion batteries are generally nontoxic but do present a flammability hazard. Lithium-ion batteries are susceptible to overheating and typically require cooling systems dedicated to each BESS enclosure, especially at the utility scale. Other risks include the transportation of the lead acid batteries and any associated battery waste, and onsite handling and storage of battery related materials and waste.

Transmission lines and 34.5 kV collector system: The applicant does not specifically discuss the risk of fires to and from operational transmission lines and collector equipment, only to say that fires would be rare and would result from improper maintenance of electrical equipment.

IIA. Operation: Avoidance, Reduction, and Mitigation Measures to Reduce Fire Hazard:

Facility roads would be sufficiently sized for emergency vehicle access in accordance with 2019 Oregon Fire Code requirements, including Section 503 and Appendix D - Fire Apparatus Access Roads. Specifically, roads would be 16 to 20 feet wide with an internal turning radius of 28 feet and less than 10 percent grade to provide access to emergency vehicles. Maintenance vehicles would drive and park on maintained gravel roads and turbine pads, avoiding hazards associated with driving or parking in tall dry grass. The total mileage of the site access roads for the wind layout would be approximately 62 miles, of which about 43 miles would be new permanent access roads and 19 miles would be temporary improvements to existing roads. Exhibit C presents the areas of temporary and permanent disturbance associated with the site access roads. An additional approximately 18 miles of new permanent access roads would be constructed to access the solar array and BESS within the permanent solar siting area fence line as noted earlier.

Within the micrositing area for wind facility components, the site would include approximately 43 miles of new permanent access roads and 19 miles of road improvements. Temporary access road disturbance would extend 82 feet in width and accounts for the road, crane paths, cut and fill slopes, and any necessary drainage or erosion control features. Permanent access roads would extend 16 feet in width.

Within the micrositing area for solar facility components, the site would include 16-20 foot wide access roads, but all are within the perimeter fenceline, assumed as a permanent disturbance for the facility footprint. An additional approximately 18 miles of new permanent access roads would be constructed to access the solar array and BESS within the permanent solar siting area fence line.[1]

All newly constructed and improved site access roads would be graded and graveled to meet load requirements for heavy construction equipment, as necessary. Most site access roads would be initially constructed to be wider than needed for operations, to accommodate the

[1] NHWAPPDoc2-1 ASC Exhibit B. Proposed facility Desc_2022-01-31, Section 7.6.

large equipment needed for construction. Following turbine construction, the site access roads would be narrowed for use during O&M.[2]

The Supervisory Control and Data Acquisition (SCADA) system (described in Exhibit B) acts as the "nerve center" of the Proposed facility by connecting individual turbines, solar strings, BESS, substation(s), and meteorological towers to a central computer housed in the O&M Building. The SCADA system allows each component of the Proposed facility to be monitored for activity in present time. If an issue arises with a turbine or solar string, it alerts the O&M staff so that the component can be shut down to minimize consequences of failure and potential safety risks. In the event an anomaly is observed by the SCADA system or during an inspection, original equipment manufacturer (i.e., OEM) engineering is advised, and further inspection may be carried out by subject matter experts to determine root cause and resulting action required to rectify the issue.

Wind turbines:

- The risk of turbine fires would be minimized through proper maintenance of the turbine and its critical mechanical and electrical components. Turbine towers and blades are regularly inspected during annual turbine maintenance activities. These inspections include all turbine related components for irregular wear and may be supplemented with further repair as needed.
- Electrical concerns are identified by the SCADA system during operation and mechanical factors are identified during inspections. In the event an anomaly is observed by the SCADA system or during an inspection, original equipment manufacturer (i.e., OEM) engineering is advised, and further inspection may be carried out by subject matter experts to determine root cause and resulting action required to rectify the issue.
- Turbine models considered would be equipped with internal fire suppression systems in the nacelles.
- Lightning protection systems are built into the turbine blades and tower to electrically ground the entire structure and to eliminate the potential for lightning-caused fires
- Wind turbines contain a number of safety features designed to provide increased fire protection; for example, fully independent braking systems and emergency shutoff devices.
- Turbines and their foundations are regularly inspected during monthly operating rounds and regular annual turbine maintenance activities. Operating rounds consist of a visual assessment of turbine foundations and the materials connecting the turbine to the foundation, as well as observation of SCADA data that provide insight into how the turbine structural components are withstanding the stresses applied to them. Annual turbine maintenance includes inspections on turbine components, lubrications and replacement of worn parts as necessary.

[2] NHWAPPDoc2-29 ASC Exhibit DD. Specific Standards_2022-01-31, Section 4.1.

Transmission lines, 34.5 kV collector system, and substation:

- Proper maintenance and safety checks.
- Substations, collector lines, and other electrical connections would be built to National Electrical Safety Code standards.
- All transmission lines would be constructed according to National Electrical Safety Code (NESC) standards.

Solar panels and BESS:

- proper installation and maintenance of electrical equipment to prevent short-circuits and consequent sparking, and reduction in fuel to reduce the chance of fire spreading.
- solar array would have shielded electrical cabling, as required by applicable code, to prevent electrical fire
- Vegetation near and under solar panels may be mowed periodically, and weeds would be managed in accordance with the weed management procedures described in the Revegetation Plan
- electrical equipment would meet National Electrical Code and Institute of Electrical and Electronics Engineers standards and would not pose a significant fire risk.
- The areas immediately around the O&M Building, Proposed facility substations, and BESS would be graveled, with no vegetation present.
- The batteries would be contained in completely leak-proof modules, and stored upon a concrete pad.
- Transportation of lithium-ion batteries is subject to 49 CFR 173.185 – Department of Transportation Pipeline and Hazardous Material Administration. This regulation contains requirements for prevention of a dangerous evolution of heat; prevention of short circuits; prevention of damage to the terminals; and prevention of batteries coming into contact with other batteries or conductive materials.
- Adherence to the requirements and regulations, personnel training, safe interim storage, and segregation from other potential waste streams would minimize any public hazard related to transport, use, or disposal of batteries.
- The Applicant would employ the following design practices:
    - Use of lithium iron phosphate battery chemistry that does not release oxygen when it decomposes due to temperature;
    - Employment of an advanced and proven battery management system;
    - Qualification testing of battery systems in accordance with UL 9540A (UL 2018);
    - Installation of fire sensors, alarms, and clean agent-based fire extinguishing systems in every battery container (e.g., FM200, Novec 1230);
    - Installation of deflagration venting and/or sacrificial deflagration panels per National Fire Protection Association standards 68 and 69 (NFPA 2020);
    - Installation of remote power disconnect switches; and
    - Clear and visible signs to identify remote power disconnect switches.

Attachment 1: Solar Emergency Site Plan TOC

Attachment 2: Wind Emergency Site Plan TOC

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