

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

IN THE MATTER OF THE REQUEST FOR AMENDMENT #1
OF THE SITE CERTIFICATE FOR THE
GOLDEN HILLS WIND PROJECT

FINAL ORDER
APPROVING AMENDMENT #1

Issued by

OREGON ENERGY FACILITY SITING COUNCIL

May 11, 2012

TABLE OF CONTENTS

1
2
3
4 I. INTRODUCTION..... 2
5 II. DESCRIPTION OF THE PROPOSED AMENDMENT..... 2
6 A. The Site Certificate and Proposed Amendment..... 2
7 B. Amendment Procedure..... 3
8 C. Amendments to the Site Certificate as Proposed by the Certificate Holder 4
9 III. REVIEW PROCESS..... 5
10 B. Amendment Process..... 5
11 C. Comments on the Request for Amendment 6
12 IV. COUNCIL SITING STANDARDS: DISCUSSION AND CONCLUSIONS..... 11
13 A. General Standard of Review. OAR 345-022-0000 11
14 B. Organizational Expertise, OAR 345-022-0010..... 12
15 C. Retirement and Financial Assurance, OAR 345-022-0050..... 13
16 D. Land Use, OAR 345-022-0030 14
17 F. Protected Areas, OAR 345-022-0040 17
18 G. Scenic Resources, OAR 345-022-0080..... 19
19 H. Recreation, OAR 345-022-0100..... 20
20 I. Public Health and Safety Standards for Wind Energy Facilities, OAR 345-024-0010 20
21 L. Threatened and Endangered Species, OAR 345-022-0070..... 22
22 M. Fish and Wildlife Habitat, OAR 345-022-0060 23
23 V. STANDARDS NOT APPLICABLE TO SITE CERTIFICATE ELIGIBILITY 24
24 A. Structural Standard, OAR 345-022-0020 24
25 B. Historic, Cultural and Archaeological Resources, OAR 345-022-0090 25
26 C. Public Services, OAR 345-022-0110 25
27 D. Waste Minimization, OAR 345-022-0120 26
28 VI. OTHER APPLICABLE REGULATORY REQUIREMENTS: DISCUSSION AND CONCLUSIONS
29 27
30 A. Requirements under Council Jurisdiction..... 27
31 1. Noise Control Regulations for Industry and Commerce, OAR 340-035-0035 27
32 2. Removal-Fill Law..... 28
33 3. Ground Water Act 28
34 4. Public Health and Safety 29
35 B. Requirements That Are Not Under Council Jurisdiction..... 29
36 1. Federally-Delegated Programs 29
37 2. Requirements That Do Not Relate to Siting..... 30
38 VII. CONDITIONS REQUIRED BY COUNCIL RULES..... 30
39 VIII. GENERAL CONCLUSION 31
40 A. ODOE’s Recommended Revisions..... 31
41 IX. ORDERS..... 32
42
43

1
2
3 **GOLDEN HILLS WIND PROJECT**
4 **FINAL ORDER DENYING A CONTESTED CASE PROCEEDING**
5 **AND APPROVING AMENDMENT #1**
6

7 **I. INTRODUCTION**
8

9 The Oregon Energy Facility Siting Council (“Council” or “EFSC”) issues this order in
10 accordance with ORS 469.405 and OAR 345-027-0070. This order addresses a request by
11 Golden Hills Wind Farm LLC (“Certificate Holder” or “GHWF”) for Amendment #1 to the Site
12 Certificate for the Golden Hills Wind Project (“Site Certificate”). The Golden Hills Wind Project
13 (“Facility” or “Golden Hills”) is a proposed wind-energy generation facility in Sherman County,
14 Oregon.
15

16 In its Request for Amendment (“RFA”), GHWF requests to extend by 24 months the
17 deadline to begin construction and to extend by 24 months the deadline to end construction.¹ No
18 other changes to the Facility are proposed as a part of the RFA.
19

20 The Council approves Amendment #1 and issues an amended site certificate for Golden
21 Hills, subject to the terms and conditions set forth in this order.
22

23 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this
24 order.
25

26
27 **II. DESCRIPTION OF THE PROPOSED AMENDMENT**
28

29 **A. The Site Certificate and Proposed Amendment**
30

31 The Golden Hills Wind Project is a proposed wind-energy generation facility with
32 electrical capacity of up to 400 megawatts. The Facility would consist of up to 267 wind turbines
33 as well as various related and supporting facilities located within permitted survey corridors on
34 approximately 30,000 acres of privately owned, Exclusive Farm Use land both east and west of
35 Highway 97, between the cities of Wasco and Moro in Sherman County, Oregon.
36

37 GHWF requests an amendment to the Site Certificate to extend the construction deadlines
38 contained in Conditions III.D.1 and III.D.2 of the Site Certificate. If approved, the amendment
39 would extend the deadline for beginning construction from June 18, 2012 to June 18, 2014, and
40 the deadline for completing construction from June 18, 2015 to June 18, 2017.
41

¹ Certificate Holder’s Request for Amendment No. 1 to Golden Hills Wind Project Site Certificate.

1 |
2 **B. Amendment Procedure**
3

4 OAR 345-027-0030 establishes the requirements for a certificate holder to request an
5 extension of the deadlines for beginning and completing construction.
6

7 **OAR 345-027-0030**
8 **Amendment to Extend Construction Beginning and Completion Deadlines**
9

10 *(1) The certificate holder may request an amendment to extend the deadlines for*
11 *beginning or completing construction of the facility that the Council has specified in a*
12 *site certificate or an amended site certificate. The certificate holder shall submit a*
13 *request that conforms to the requirements of 345-027-0060 no later than six months*
14 *before the date of the applicable deadline, or, if the certificate holder demonstrates good*
15 *cause for the delay in submitting the request, no later than the applicable deadline.*
16

17 *(2) A request within the time allowed in section (1) to extend the deadlines for beginning*
18 *or completing construction suspends those deadlines until the Council acts on the*
19 *request.*
20

21 *(3) The Council shall review the request for amendment as described in OAR 345-027-*
22 *0070.*
23

24 *(4) If the Council grants an amendment under this rule, the Council shall specify new*
25 *deadlines for beginning or completing construction that are not more than two years*
26 *from the deadlines in effect before the Council grants the amendment.*
27

28 *(5) To grant an amendment extending the deadline for beginning or completing*
29 *construction of an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-*
30 *024-0620, the Council must find that the facility complies with the carbon dioxide*
31 *standard in effect at the time of the Council's order on the amendment.*
32

33 Pursuant to these rules, the Council may grant an extension of no more than two years
34 from the current deadlines for beginning or completing construction. OAR 345-027-0030(1)
35 requires a certificate holder to submit the request “no later than six months before the date of the
36 applicable deadline, or, if a certificate holder demonstrates good cause for the delay in
37 submitting the request, no later than the applicable deadline.” Under the Site Certificate, the
38 deadline to begin construction of Golden Hills is June 18, 2012 (Condition III.D.1).²
39

40 As discussed under the procedural history above in Section II.A, GHWF submitted the
41 RFA on December 8, 2011, and ODOE deemed the request officially filed on December 15,

² Condition III.D.1 states: “The certificate holder shall begin construction of the facility within three years after the effective date of the site certificate. Under OAR 345-015-0085 (8), a site certificate is effective upon execution by the Council Chair and the applicant.” The effective date of the site certificate is June 18, 2009.

1 2011, more than six months before the deadline for beginning construction found in Condition
2 III.D.1, thus meeting the timeliness requirement of OAR 345-027-0030(1). The Council finds
3 that the RFA to extend the respective deadlines for beginning and completing construction was
4 filed in a timely manner.

5
6 OAR 345-027-0070(10) provides:

7
8 *In making a decision to grant or deny issuance of an amended site certificate, the Council*
9 *shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in*
10 *effect on the date the certificate holder submitted the request for amendment and all other*
11 *state statutes, administrative rules, and local government ordinances in effect on the date*
12 *the Council makes its decision.*

13
14 Under OAR 345-027-0070(10)(b), for an amendment that extends the deadlines for
15 beginning or completing construction, the Council must consider:

16
17 *“(A) Whether the Council has previously granted an extension of the deadline.”*

18
19 The Council has not previously granted an extension of either deadline. The currently
20 effective deadlines that the Certificate Holder proposes to amend (to begin construction by June
21 18, 2012 and to complete construction by June 18, 2015) are as found in the original site
22 certificate for Golden Hills.

23
24 *“(B) Whether there has been any change of circumstances that affects a previous Council*
25 *finding that was required for issuance of a site certificate or amended site certificate.”*

26
27 Based on the findings discussed under Sections IV and V below, the Council finds that
28 there has not been any change of circumstances that affects a previous Council finding that was
29 required for issuance of the Site Certificate or amended site certificate.

30
31 *“(C) Whether the facility complies with all Council standards...”*

32
33 In Sections IV and V below, we discuss compliance of the facility with all Council
34 standards, as required under OAR 345-027-0070(10).

35
36 **C. Amendments to the Site Certificate as Proposed by the Certificate Holder**

37
38 GHWF proposes the following amendments to conditions included in the Site Certificate.
39 Proposed additions are shown in double-underlined bold typeface and proposed deletions have a
40 strikethrough.

41
42 ***D. CONSTRUCTION DEADLINES***

43
44 *The certificate holder shall satisfy the following administrative conditions:*

1 (III.D.1) *The certificate holder shall begin construction of the facility by **June 18,***
2 ***2014** within three years after the effective date of the site certificate.*
3 *Under OAR 345-015-0085(8)(9) an **amended** site certificate is effective*
4 *upon execution by the Council Chair and the applicant. The Council may*
5 *grant an extension of the deadline to begin construction in accordance*
6 *with OAR 345-027-0030 or any successor rule in effect at the time the*
7 *request for extension is submitted. **[Amendment 1]***

8
9 (III.D.2) *The certificate holder shall complete construction of the facility by **June***
10 ***18, 2017** within six years after the effective date of the site certificate.*
11 *Construction is complete when (1) the facility is substantially complete as*
12 *defined by the certificate holder's construction contract documents; (2)*
13 *acceptance testing has been satisfactorily completed; and (3) the energy*
14 *facility is ready to begin continuous operation consistent with the site*
15 *certificate. The certificate holder shall promptly notify the Department of*
16 *the date of completion of construction. The Council may grant an*
17 *extension of the deadline for completing construction in accordance with*
18 *OAR 345-027-0030 or any successor rule in effect at the time the request*
19 *for extension is submitted. **[Amendment 1]***

21
22 **III. REVIEW PROCESS**

23
24 **A. The Site Certificate**

25
26 The Council issued the *Final Order on the Application for Site Certificate for Golden*
27 *Hills* on May 15, 2009. The Site Certificate became effective upon execution by the signatures
28 of EFSC Chair Robert Shiprack and Reid M. Buckley of Golden Hills Wind Farm LLC on June
29 18, 2009.³

30
31 This order is for GHWF's first and current request for amendment of its Site Certificate,
32 Amendment #1.

33
34 **B. Amendment Process**

35
36 On December 8, 2011, GHWF submitted a request to ODOE to amend the Site
37 Certificate to extend the construction deadlines. ODOE and GHWF consulted on the preliminary
38 RFA, and on December 15, 2012, ODOE deemed the RFA officially filed consistent with
39 discussions with GHWF.⁴

40
³ ORS 469.300(26) defines a site certificate as "the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the Council on the applicant."

⁴ Letter re: "Golden Hills Site Certificate Amendment Request" from Elaine Albrich to Chris Green, December 23, 2011.

1 On December 30, 2011, the Certificate Holder sent copies of the RFA to reviewing
2 agencies, with an attached memorandum from ODOE requesting agency comments by January
3 31, 2012. ODOE received three responses from reviewing agencies during the comment period
4 on the RFA.

5
6 On December 30, 2011, ODOE sent notice of the RFA to all persons on the Council's
7 general mailing list, to persons on the mailing list established for the facility, and to an updated
8 list of property owners supplied by the Certificate Holder. ODOE requested public comments by
9 January 30, 2012. ODOE received six responses to this notice during the comment period on the
10 RFA.

11
12 ODOE analyzed the RFA for compliance with all applicable Council standards and
13 issued a Proposed Order containing recommended findings and conclusions on February 24,
14 2012. In the Proposed Order ODOE recommended that the Council approve the amendment
15 request, subject to recommended revisions of the site certificate. On the same day, ODOE issued
16 a notice of the proposed order in accordance with OAR 345-027-0070, specifying a March 26,
17 2012 deadline for public comments and requests for a contested case proceeding.

18
19 ODOE received two responses to this notice during the comment period on the Proposed
20 Order, including one request for a contested case. The request for contested case was
21 subsequently withdrawn on April 18, 2012.

22
23 On May 11, 2012, the Council took action on the request for contested case and request
24 for amendment during its regular meeting in Hermiston, Oregon.

25 26 **C. Comments on the Request for Amendment**

27
28 The following nine reviewing agencies, members of the public, and representatives of the
29 Certificate Holder responded to ODOE's notice of the RFA:

30 31 Reviewing Agencies

32 Susie Anderson, Gilliam County Planning Director⁵
33 Georgia Macnab, Sherman County Planning Director⁶
34 Krista Ratliff, Oregon Department of Environmental Quality, Eastern Region⁷
35 Charles Redon, Oregon Department of State Lands⁸

36 37 Public Comments

38 Joe Basargin, AFC Windows and Roofing, Inc.⁹
39 J. Thomas Coats, Dunn, Toole, Carter & Coats, LLP, on behalf of Reatha S. Coats¹⁰

⁵ Email from Susie Anderson, January 19, 2012.

⁶ Phone conversations between Georgia Macnab and Chris Green on January 24, 2012 and February 1, 2012.

⁷ Email from Krista Ratliff, January 25, 2012.

⁸ Email from Charles Redon, January 20, 2012.

⁹ Email from Joe Basargin, January 2, 2012.

¹⁰ Letter from J. Thomas Coats, January 23, 2012.

1 Irene Gilbert¹¹
2 Donald Hilderbrand¹²
3 Dennis Wilkinson, Friends of the Grande Ronde Valley¹³
4

5 Certificate Holder

6 Elaine Albrich, Stoel Rives LLP¹⁴
7
8

9 **1. Permits Required for Construction**
10

11 In her comments, Krista Ratliff identified the National Pollutant Discharge
12 Elimination System (NPDES) 1200-C permit requirement for construction activities. This
13 permit includes requirements for erosion and sediment control. All phases of construction
14 at Golden Hills are subject to Condition IV.E.1 of the Site Certificate, which requires the
15 Certificate Holder to conduct all construction work in compliance with an Erosion and
16 Sediment Control Plan (ECSP) satisfactory to the Oregon Department of Environmental
17 Quality (DEQ) and as required under the NPDES 1200-C permit. Ms. Ratliff's comments
18 raised no other concerns regarding the proposed amendment.
19

20 In his comments, Charles Redon of Oregon Department of State Lands (DSL)
21 noted that DSL had no record of a removal-fill permit for Golden Hills. Section VI(A)(2)
22 of the *Golden Hills Wind Project Final Order*, dated May 15, 2009 ("Final Order")
23 discusses the Certificate Holder's compliance with Oregon Removal-Fill Law¹⁵ and
24 regulations.¹⁶ After initially applying for a removal-fill permit, a wetland delineation
25 report was prepared and GHWF confirmed that it would avoid all permanent and
26 temporary impacts to wetlands. Specifically, GHWF concluded it would avoid impacts
27 to identified wetlands by boring wetland/waterway crossings and would no longer require
28 a removal-fill permit in connection with construction of the proposed facility. DSL
29 concurred with that conclusion in a comment in the record of the Final Order.¹⁷
30

31 **2. Process for Reviewing Proposed Extensions to Construction Beginning and Ending**
32 **Dates**
33

34 Dennis Wilkinson, Chairman of Friends of the Grande Ronde Valley submitted a
35 letter advocating for "serious constraints and requirements" based on hypothetical
36 changes to regulations, financing issues, and other considerations during the two year
37 period covered by the proposed extension. Mr. Wilkinson states that the Friends of the

¹¹ Email from Irene Gilbert, January 3, 2012.

¹² Emails from Donald Hilderbrand, December 29, 2011 and January 26, 2012.

¹³ Letter from Dennis Wilkinson, January 2, 2012.

¹⁴ Letter from Elaine Albrich, January 30, 2012.

¹⁵ ORS 196.800 through 990.

¹⁶ OAR 141-085-0500 through -0785.

¹⁷ Email from Jess Jordan, DSL, January 15, 2008.

1 Grande Ronde Valley’s position is that “the project must be withdrawn and resubmitted
2 in its entirety,” and that amendment requirements favor the developer.
3

4 Irene Gilbert of La Grande, Oregon submitted a similar comment by email,
5 objecting to the proposed extension based on unspecified future changes to “legislation
6 regarding wind farms,” future results of “extensive current research being done on
7 impacts of wind farms on health, wildlife, and multiple other issues,” and the
8 uncertainties that may be caused if these changes occur.
9

10 The Council addressed similar comments in the *Helix Wind Power Facility Final*
11 *Order Denying a Contested Case Proceeding and Approving Amendment #1* (Final Order
12 on Helix Amendment #1) in 2011. Under OAR 345-027-0070(10), the Council must
13 consider whether the RFA complies with all Council standards in place at the time of the
14 RFA, rather than speculative changes to legal or market conditions. As stated in response
15 to similar comments in the Final Order on Helix Amendment #1, commenters may be
16 arguing for a change in policy on how amendments are reviewed by the Council. Such a
17 change to Council policy would be undertaken by rulemaking.
18

19 **3. Property Ownership and Transmission Line Construction**

20

21 Donald Hilderbrand of Wasco, Oregon, expressed concern that his property was
22 included in the Golden Hills project without being subject to the Certificate Holder’s
23 lease. A review of the record indicates that Mr. Hilderbrand is listed as the owner of a
24 parcel within the site boundary but not currently under lease by the Certificate Holder.
25 However, GHWF may not begin construction on the subject parcel until it has
26 construction rights on that part of the site. This requirement is a mandatory condition
27 under Council rules and is codified in the Site Certificate under Condition VII.5.¹⁸ This
28 RFA does not propose to revise Condition VII.5.
29

30 **4. Golden Hills Wind Farm LLC**

31

32 Elaine Albrich, attorney for the Certificate Holder, submitted a comment letter on
33 January 30, 2012 in response to some of the issues raised by earlier commenters. Ms.
34 Albrich asserted that the issue raised by Ms. Gilbert’s comment did not justify a
35 contested case proceeding under Council rules.¹⁹ Ms. Albrich’s letter also raises
36 questions concerning the applicability of Sherman County Ordinance #39-2007 to the
37 Facility. This subject is discussed further under the Land Use Standard in Section IV.D
38 of this order.
39
40
41
42

¹⁸ OAR 345-027-0020(5) . OAR 345-001-0010 defines “construction.”

¹⁹ Ms. Albrich’s letter references OAR 345-027-0070(7) and OAR 345-027-0080(9) on this point.

1 **5. Sherman County Setback Ordinance**
2

3 On November 21, 2007, Sherman County adopted Ordinance #39-2007, requiring
4 that wind energy facilities meet specific setback requirements or otherwise obtain
5 agreements for mutually negotiated setbacks or variances to allow for lesser setbacks
6 (“Setback Ordinance”).²⁰

7 In addition to Ms. Albrich’s comments described above, J. Thomas Coats, an
8 attorney representing Mrs. Reatha S. Coats, also raised the issue of the Setback
9 Ordinance. Mr. Coats submitted a comment letter in response to the RFA stating Mrs.
10 Coats’ support of the Facility, as well as her belief that “it is important that the Golden
11 Hills project be subject to the Sherman County set-back requirements for turbine
12 placement.” Georgia Macnab, Planning Director for Sherman County, contacted ODOE
13 staff and discussed the applicability of the Sherman County Setback Ordinance to the
14 proposed Amendment #1 and the process by which the Setback Ordinance was adopted.

15 As mentioned above, the issue of the applicability of the Setback Ordinance, and
16 the Certificate Holder’s ability to demonstrate compliance with the Setback Ordinance is
17 discussed further in relation to the Land Use standard in Section IV.D of this order.
18

19 **6. Responses Not Offering Commentary on the Request for Amendment**
20

21 In her comments, Susie Anderson stated that the Gilliam County Planning
22 Department had reviewed the RFA and had no objections or comments.
23

24 Joe Basargin of AFC Windows and Roofing, Inc. submitted an email request for
25 further information on additional information and documentation on the project. In a
26 subsequent phone conversation Mr. Basargin advocated for incorporation of solar energy
27 development on the project site. ODOE staff clarified that the Council has no role in
28 proposing new energy projects and directed him to general information on the Council
29 review process.²¹
30
31
32
33
34
35
36
37
38
39
40
41

²⁰ In the Final Order, Council found that the Setback Ordinance did not apply to GHWF’s ASC, which had been prior to Sherman County’s adoption of the Setback Ordinance.

²¹ Email from Chris Green to Joe Basargin, January 4, 2012.

1 **E. Comments on the Proposed Order**

2
3 The following members of the public and representatives of the Certificate Holder
4 responded to ODOE’s notice of the Proposed Order:

5
6 Public Comment

7 Donald Hilderbrand²²

8
9 Certificate Holder

10 Elaine Albrich, Stoel Rives LLP²³

11
12 **1. Donald Hilderbrand, Request for Contested Case (withdrawn)**

13 During the comment period on the draft Proposed Order, Donald Hilderbrand submitted a
14 request for contested case. Mr. Hilderbrand’s request focused primarily on concerns
15 related to the inclusion of his property within the site certificate boundary for the Facility
16 without a lease or other agreement in place between himself and the Certificate Holder.

17
18 Prior to presenting the Proposed Order for Council action, ODOE received a letter from
19 Mr. Hilderbrand stating that he had reached an agreement with the Certificate Holder and
20 withdrawing his request for contested case.²⁴

21
22 **2. Elaine Albrich, Comment in Response to Request for Contested Case**

23 Ms. Albrich submitted a comment letter on behalf of the Certificate Holder responding to
24 the request for contested case and requesting that the Council deny the contested case
25 proceeding and approve Amendment #1. In the letter, Ms. Albrich argues that the request
26 for contested case does not identify significant issues specific to the proposed amendment
27 and that Mr. Hilderbrand’s property rights concerns are already addressed by existing
28 Site Certificate conditions.

29
30 Although Ms. Albrich’s comment letter remains in the record, it does not address any
31 issues other than those presented by Mr. Hilderbrand in his since-withdrawn request for
32 contested case.

33
34
35
36

²² Letter received as an email attachment from Donald Hilderbrand, March 22, 2012. In the body of the email Mr. Hilderbrand states that this email should supersede “all previous.” As such, ODOE reviewed the letter attached to this email in place of almost identical content contained in a hardcopy comment letter received February 28, 2012 and an email received March 21, 2012. These earlier comments are maintained in the record for the purpose of documenting the sequence of correspondence.

²³ Letter from Elaine Albrich, March 26, 2012.

²⁴ Letter from Donald Hilderbrand to Chris Green withdrawing contested case request, received April 23, 2012.

1
2 **IV. COUNCIL SITING STANDARDS: DISCUSSION AND CONCLUSIONS**
3

4 The Council must decide whether the amendment complies with the facility siting
5 standards adopted by the Council. In addition, the Council must impose conditions for the
6 protection of the public health and safety, for the time of commencement and completion of
7 construction, and for ensuring compliance with applicable standards, statutes and rules.²⁵
8

9 The Council is not authorized to determine compliance with regulatory programs that
10 have been delegated to another state agency by the federal government.²⁶ Nevertheless, the
11 Council may consider these programs in the context of its own standards to ensure public health
12 and safety, resource efficiency, and protection of the environment.
13

14 The Council has no jurisdiction over design or operational issues that do not relate to
15 siting, such as matters relating to employee health and safety, building code compliance, wage
16 and hour or other labor regulations, or local government fees and charges.²⁷
17

18 In making its decision on an amendment of a site certificate, the Council applies the
19 applicable state statutes, administrative rules and local government ordinances that are in effect
20 on the date the Council makes its decision, except when applying the Land Use standard. In
21 making findings on the Land Use standard, the Council applies the applicable substantive criteria
22 in effect on the date the Certificate Holder submitted the RFA.²⁸
23

24 **A. General Standard of Review. OAR 345-022-0000**
25

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

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

34 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except*
35 *for those statutes and rules for which the decision on compliance has been delegated by*
36 *the federal government to a state agency other than the Council, the facility complies*
37 *with all other Oregon statutes and administrative rules identified in the project order, as*
38 *amended, as applicable to the issuance of a site certificate for the proposed facility. If the*
39 *Council finds that applicable Oregon statutes and rules, other than those involving*
40 *federally delegated programs, would impose conflicting requirements, the Council shall*

²⁵ ORS 469.401(2)

²⁶ ORS 469.503(3)

²⁷ ORS 469.401(4)

²⁸ OAR 345-027-0070(9)

1 *resolve the conflict consistent with the public interest. In resolving the conflict, the*
2 *Council cannot waive any applicable state statute.*

3
4 The requirements of OAR 345-022-0000 are discussed in the sections that follow.
5 Applicable statutes and rules of agencies other than EFSC are discussed below, in Section V.A
6 of this order. The proposed amendment does not affect any permits issued by agencies other than
7 EFSC.

8
9 **B. Organizational Expertise, OAR 345-022-0010**

10
11 *(1) To issue a site certificate, the Council must find that the applicant has the*
12 *organizational expertise to construct, operate and retire the proposed facility in*
13 *compliance with Council standards and conditions of the site certificate. To conclude*
14 *that the applicant has this expertise, the Council must find that the applicant has*
15 *demonstrated the ability to design, construct and operate the proposed facility in*
16 *compliance with site certificate conditions and in a manner that protects public health*
17 *and safety and has demonstrated the ability to restore the site to a useful, non-hazardous*
18 *condition. The Council may consider the applicant’s experience, the applicant’s access to*
19 *technical expertise and the applicant’s past performance in constructing, operating and*
20 *retiring other facilities, including, but not limited to, the number and severity of*
21 *regulatory citations issued to the applicant.*

22
23 *(2) The Council may base its findings under section (1) on a rebuttable presumption that*
24 *an applicant has organizational, managerial and technical expertise, if the applicant has*
25 *an ISO 9000 or ISO 14000 certified program and proposes to design, construct and*
26 *operate the facility according to that program.*

27
28 *(3) If the applicant does not itself obtain a state or local government permit or approval*
29 *for which the Council would ordinarily determine compliance but instead relies on a*
30 *permit or approval issued to a third party, the Council, to issue a site certificate, must*
31 *find that the third party has, or has a reasonable likelihood of obtaining, the necessary*
32 *permit or approval, and that the applicant has, or has a reasonable likelihood of entering*
33 *into, a contractual or other arrangement with the third party for access to the resource or*
34 *service secured by that permit or approval.*

35
36 *(4) If the applicant relies on a permit or approval issued to a third party and the third*
37 *party does not have the necessary permit or approval at the time the Council issues the*
38 *site certificate, the Council may issue the site certificate subject to the condition that the*
39 *certificate holder shall not commence construction or operation as appropriate until the*
40 *third party has obtained the necessary permit or approval and the applicant has a*
41 *contract or other arrangement for access to the resource or service secured by that*
42 *permit or approval.*
43

1 **Discussion**

2 The first two sections of the Organizational Standard require that the Certificate Holder
3 demonstrate its ability to construct, operate and retire the Facility in accordance with Council
4 standards and the terms of the site certificate. GHWF has proposed no change to the site, the
5 Facility, or its construction or operation. We address retirement below, in the discussion of the
6 Council’s Retirement and Financial Assurance standard.

7
8 Sections 3 and 4 of the standard address permits for which the applicant will rely on a
9 permit or approval issued to a third party. GHWF has proposed no change to the site, the
10 Facility, or its construction or operation that would rely on a permit or approval issued to a third
11 party.

12
13 Because GHWF has proposed no change to the site, the Facility, or its construction or
14 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
15 to demonstrate compliance with the Organizational Expertise standard.

16
17 **Conclusion**

18 The Council finds that the Certificate Holder would meet the Council’s Organizational
19 Expertise standard if Amendment #1 were approved.

20
21 **C. Retirement and Financial Assurance, OAR 345-022-0050**

22
23 *To issue a site certificate, the Council must find that:*

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

27
28 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
29 *form and amount satisfactory to the Council to restore the site to a useful, non-hazardous*
30 *condition.*

31
32 **Discussion**

33 In Section IV.C of the *Final Order on the Application*, the Council found that the
34 Certificate Holder demonstrated that it could adequately restore the site to a useful, non-
35 hazardous condition following facility retirement. The Council imposed 10 Site Certificate
36 conditions in Section IV.C of the Site Certificate to ensure compliance with the Retirement and
37 Financial Assurance standard. The extension of the deadline to complete construction does not
38 affect the Council’s findings that the construction and operation of the Facility will comply with
39 the Retirement and Financial Assurance standard.

40
41 Because GHWF has proposed no change to the site, the Facility, or its construction or
42 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
43 to demonstrate compliance with the Retirement and Financial Assurance standard.

1
2 **Conclusion**

3 The Council finds that the Certificate Holder would meet the Council’s Retirement and
4 Financial Assurance standard if Amendment #1 were approved.

5
6 **D. Land Use, OAR 345-022-0030**

7
8 *(1) To issue a site certificate, the Council must find that the proposed facility complies*
9 *with the statewide planning goals adopted by the Land Conservation and Development*
10 *Commission.*

11
12 *(2) The Council shall find that a proposed facility complies with section (1) if:*

13 *(a) The applicant elects to obtain local land use approvals under ORS*
14 *469.504(1)(a) and the Council finds that the facility has received local land use*
15 *approval under the acknowledged comprehensive plan and land use regulations*
16 *of the affected local government; or*

17 *(b) The applicant elects to obtain a Council determination under ORS*
18 *469.504(1)(b) and the Council determines that:*

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

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

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

32
33 *(3) As used in this rule, the “applicable substantive criteria” are criteria from the*
34 *affected local government’s acknowledged comprehensive plan and land use ordinances*
35 *that are required by the statewide planning goals and that are in effect on the date the*
36 *applicant submits the application. If the special advisory group recommends applicable*
37 *substantive criteria, as described under OAR 345-021-0050, the Council shall apply*
38 *them. If the special advisory group does not recommend applicable substantive criteria,*
39 *the Council shall decide either to make its own determination of the applicable*
40 *substantive criteria and apply them or to evaluate the proposed facility against the*
41 *statewide planning goals.*

42
43 *(4) The Council may find goal compliance for a proposed facility that does not otherwise*
44 *comply with one or more statewide planning goals by taking an exception to the*
45 *applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide*

1 *planning goal pertaining to the exception process or any rules of the Land Conservation*
2 *and Development Commission pertaining to the exception process, the Council may take*
3 *an exception to a goal if the Council finds:*

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

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

10 (c) *The following standards are met:*

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

13 (B) *The significant environmental, economic, social and energy*
14 *consequences anticipated as a result of the proposed facility have been*
15 *identified and adverse impacts will be mitigated in accordance with rules*
16 *of the Council applicable to the siting of the proposed facility; and*

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

20 **Discussion**

21 In section IV.D of the *Final Order on the Application*, the Council found that the
22 Certificate Holder demonstrated compliance with the Land Use standard. The Council imposed
23 21 Site Certificate conditions in section IV.D of the Site Certificate to ensure compliance with
24 the Land Use standard.

25
26 GHWF proposes no change to the site, the Facility, or its construction and operation.
27 Accordingly, no circumstance has changed that effect the Council's prior findings of compliance
28 with the Land Use standard, with the exception of the applicability of the Setback Ordinance.

29
30 Section II.C.3 of the *Final Order on the Application* responds to several comments on the
31 Draft Proposed Order that raised concerns about the applicability of the Sherman County
32 Ordinance #39-2007 ("Setback Ordinance") to the original Application for Site Certificate
33 ("ASC"). In the *Final Order on the Application* the Council found that the Setback Ordinance
34 was adopted after GHWF submitted its ASC and was therefore not applicable.²⁹ Council rules
35 provide that when making a decision on an amendment request, the Council shall apply the
36 applicable substantive criteria in effect on the date of the RFA is submitted.³⁰ "Applicable
37 substantive criteria" are defined in Council rules as:

38
39 *"criteria from the affected local government's acknowledged comprehensive plan and*
40 *land use ordinances that are required by the statewide planning goals and that are in*
41 *effect on the date the applicant submits the application."*³¹

²⁹ ORS 469.504(1)(b)(A).

³⁰ OAR 345-022-0030(2) and (3).

³¹ OAR 345-022-030(3).

1
2 To the extent the Setback Ordinance falls within the scope of “applicable substantive criteria,” it
3 applies to GHWF’s RFA as it was adopted prior to GHWF submitting the RFA. In response to
4 comments raising the issue of the applicability of the Setback Ordinance, the Certificate Holder
5 provided a summary of evidence in the record providing reasonable assurance that the Facility as
6 proposed would comply with the Setback Ordinance.³²
7

8 The Certificate Holder’s representations of compliance with the ordinance and the
9 Council’s adoption of a site certificate condition implementing the Setback Ordinance render the
10 question of the status of the Setback Ordinance as applicable substantive criteria moot.³³
11 Therefore, the Council finds these documents to be binding commitments made by the
12 Certificate Holder to comply with the Ordinance.³⁴ The Council further adopts Condition
13 IV.D.22, which implements the Certificate Holder’s representations of compliance with the
14 Setback Ordinance as binding commitments.³⁵
15

16 The Council adds a Condition IV.D.22 as follows:
17

18 **Prior to construction, Certificate Holder shall demonstrate that the final location of**
19 **turbines within the micrositing corridors approved by the Council will satisfy**
20 **setback requirements prescribed by Section 4 of the Sherman County Wind Setback**
21 **Ordinance (Ordinance No. 39-2007) unless the Council or Oregon Department of**
22 **Energy has approved a variance to such setback for the turbine or the Certificate**
23 **Holder has negotiated a setback agreement with the affected adjacent property**
24 **owner or wind project developer. [Amendment #1]**
25

³² Elaine Albrich’s letter of February 23, 2012 specifically cites (1) a 2008 letter from Sherman County Court to ODOE concerning the applicability of the Setback Ordinance as well as the likelihood of compliance if the Setback Ordinance applied to the Facility; (2) a Cooperation and Waiver Agreement with the adjacent wind development; and (3) project maps showing the location of approved micrositing corridors in relation to project boundaries and cities.

³³ Letters from Elaine Albrich of January 30, 2012 and February 23, 2012 raised questions concerning the applicability of the Setback Ordinance as an applicable substantive criterion, as it was not adopted as a land use decision amending the Sherman County Comprehensive Land Use Plan or Sherman County Zoning Ordinance. The Certificate Holder also questioned whether it is proper to interpret OAR 345-027-0070(10)(b)(C) as triggering a complete “reopener” on an amendment request that only involves an extension of a deadline and no substantive changes to the approved Facility. As a means to resolve concerns raised in public comments, the Certificate Holder is agreeable to the proposed Condition IV.D.22 while retaining its right to raise legal or factual challenges to the applicability of the Setback Ordinance.

³⁴ OAR 345-027-0020(10) requires the Council to “include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.

³⁵ The Council has previously addressed Ordinance #39-2007 in its final order granting Amendment #3 for Biglow Canyon Wind Farm. In that order the Council applied Ordinance #39-2007 as an applicable substantive criterion and included an implementing condition. That practice is continued here except that this order does not offer a finding on the Ordinance’s status as an applicable substantive criterion. The recommended language in the proposed Condition IV.D.22 similar to Condition 128 for Biglow Canyon Wind Farm, as added by the Council in *Biglow Canyon Wind Farm: Final Order on Amendment #3* of October 31, 2008.

1 Because GHWF has proposed no change to the site, the Facility, or its construction or
2 operation, the Council concludes that the findings in the *Final Order on the Application* are
3 sufficient to demonstrate compliance with the Land Use standard, subject to the addition of
4 Condition IV.D.22 as proposed by ODOE in the Proposed Order.
5

6 **Conclusion**

7 The Council finds that Golden Hills would comply with the Council's Land Use standard
8 at OAR 345-022-0030 if Amendment #1 were approved, subject to the addition of Condition
9 IV.D.22 as proposed by ODOE in the Proposed Order.
10

11 **E. Soil Protection, OAR 345-022-0022**

12
13
14 *To issue a site certificate, the Council must find that the design, construction and*
15 *operation of the facility, taking into account mitigation, are not likely to result in a*
16 *significant adverse impact to soils including, but not limited to, erosion and chemical*
17 *factors such as salt deposition from cooling towers, land application of liquid effluent,*
18 *and chemical spills.*
19

20 **Discussion**

21 The Council addressed the Soil Protection standard in section IV.E of the *Final Order on*
22 *the Application*. The Council imposed six conditions in section IV.E of the Site Certificate to
23 ensure compliance with the Soil Protection standard. The extension of the respective deadlines to
24 begin and to complete construction does not affect the Council's findings that the construction
25 and operation of the facility will be consistent with the Soil Protection standard.
26

27 Because GHWF has proposed no change to the site, the Facility, or its construction or
28 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
29 to demonstrate compliance with the Soil Protection standard.
30

31 **Conclusion**

32 The Council finds that Golden Hills would comply with the Council's Soil Protection
33 standard at OAR 345-022-0022 if Amendment #1 were approved.
34

35 **F. Protected Areas, OAR 345-022-0040**

36
37 *(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate*
38 *for a proposed facility located in the areas listed below. To issue a site certificate for a*
39 *proposed facility located outside the areas listed below, the Council must find that, taking*
40 *into account mitigation, the design, construction and operation of the facility are not*
41 *likely to result in significant adverse impact to the areas listed below. References in this*
42 *rule to protected areas designated under federal or state statutes or regulations are to the*
43 *designations in effect as of May 11, 2007:*

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

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

4 (c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131
5 et seq. and areas recommended for designation as wilderness areas pursuant to
6 43 U.S.C. 1782;

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

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

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

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

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

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

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

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

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

32 (m) Agricultural experimental stations established by the College of Agriculture,
33 Oregon State University, including but not limited to: Coastal Oregon Marine
34 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
35 Center, Hood River

36 Agriculture Research and Extension Center, Hermiston Columbia Basin
37 Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
38 Center, Moro North Willamette Research and Extension Center, Aurora East
39 Oregon Agriculture Research Center, Union Malheur Experiment Station,
40 Ontario Eastern Oregon Agriculture Research Center, Burns Eastern Oregon
41 Agriculture Research Center, Squaw Butte Central Oregon Experiment Station,
42 Madras Central Oregon Experiment Station, Powell Butte Central Oregon
43 Experiment Station, Redmond Central Station, Corvallis
44 Coastal Oregon Marine Experiment Station, Newport Southern Oregon
45 Experiment Station, Medford Klamath Experiment Station, Klamath Falls;

1 (n) *Research forests established by the College of Forestry, Oregon State*
2 *University, including but not limited to McDonald Forest, Paul M. Dunn Forest,*
3 *the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak*
4 *area and the Marchel Tract;*
5 (o) *Bureau of Land Management areas of critical environmental concern,*
6 *outstanding natural areas and research natural areas;*
7 (p) *State wildlife areas and management areas identified in OAR chapter 635,*
8 *Division 8.*
9

10 **Discussion**

11 The Council addressed the Protected Areas standard in section IV.F of the *Final Order*
12 *on the Application*. The Council did not impose any conditions to ensure compliance with the
13 Protected Areas standard. The extension of the respective deadlines to begin and to complete
14 construction does not affect the Council's findings that the construction and operation of the
15 facility will be consistent with the Protected Areas standard.
16

17 Because GHWF has proposed no change to the site, the Facility, or its construction or
18 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
19 to demonstrate compliance with the Protected Areas standard.
20

21 **Conclusion**

22 The Council finds that Golden Hills would comply with the Council's Protected Areas
23 standard at OAR 345-022-0040 if Amendment #1 were approved.
24

25 **G. Scenic Resources, OAR 345-022-0080**

26
27 (1) *Except for facilities described in section (2), to issue a site certificate, the Council*
28 *must find that the design, construction and operation of the facility, taking into account*
29 *mitigation, are not likely to result in significant adverse impact to scenic resources and*
30 *values identified as significant or important in local land use plans, tribal land*
31 *management plans and federal land management plans for any lands located within the*
32 *analysis area described in the project order.*
33

34 **Discussion**

35 The Council addressed the Scenic Resources standard in section IV.G of the *Final Order*
36 *on the Application*. The Council imposed three conditions in section IV.G of the Site Certificate
37 to ensure compliance with the Scenic Resources standard. The extension of the respective
38 deadlines to begin and to complete construction does not affect the Council's findings that the
39 construction and operation of the facility will be consistent with the Scenic Resources standard.
40

41 Because GHWF has proposed no change to the site, the Facility, or its construction or
42 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
43 to demonstrate compliance with the Scenic Resources standard.
44

1 **Conclusion**

2 The Council finds that Golden Hills would comply with the Council’s Scenic Resources
3 standard at OAR 345-022-040 if Amendment #1 were approved.
4

5 **H. Recreation, OAR 345-022-0100**

6
7 *(1) Except for facilities described in section (2), to issue a site certificate, the Council*
8 *must find that the design, construction and operation of a facility, taking into account*
9 *mitigation, are not likely to result in a significant adverse impact to important*
10 *recreational opportunities in the analysis area as described in the project order. The*
11 *Council shall consider the following factors in judging the importance of a recreational*
12 *opportunity:*

- 13 *(a) Any special designation or management of the location;*
- 14 *(b) The degree of demand;*
- 15 *(c) Outstanding or unusual qualities;*
- 16 *(d) Availability or rareness;*
- 17 *(e) Irreplaceability or irretrievability of the opportunity.*

18
19 **Discussion**

20 The Council addressed the Recreation standard in section IV.H of the *Final Order on the*
21 *Application*. The Council did not impose any conditions to ensure compliance with the
22 Recreation standard. The extension of the respective deadlines to begin and to complete
23 construction does not affect the Council’s findings that the construction and operation of the
24 Facility will be consistent with the Recreation standard.
25

26 Because GHWF has proposed no change to the site, the Facility, or its construction or
27 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
28 to demonstrate compliance with the Recreation standard.
29

30 **Conclusion**

31 The Council finds that Golden Hills would comply with OAR 345-022-0100, the
32 Council’s Recreation standard, if Amendment #1 were approved.
33

34 **I. Public Health and Safety Standards for Wind Energy Facilities, OAR 345-024-0010**

35
36 *To issue a site certificate for a proposed wind energy facility, the Council must find that*
37 *the applicant:*

- 38 *(1) Can design, construct and operate the facility to exclude members of the*
39 *public from close proximity to the turbine blades and electrical equipment.*
- 40 *(2) Can design, construct and operate the facility to preclude structural failure of*
41 *the tower or blades that could endanger the public safety and to have*
42 *adequate safety devices and testing procedures designed to warn of impending*
43 *failure and to minimize the consequences of such failure.*

1 **Discussion**

2 The Council addressed Public Health and Safety Standards for Wind Energy Facilities in
3 section IV.I of the *Final Order on the Application*. The Council imposed eight conditions in
4 section IV.I of the Site Certificate to ensure compliance with the Public Health and Safety
5 Standards for Wind Energy Facilities. The extension of the respective deadlines to begin and to
6 complete construction does not affect the Council’s findings that the construction and operation
7 of the facility will be consistent with the Public Health and Safety Standards for Wind Energy
8 Facilities.

9
10 Because GHWF has proposed no change to the site, the Facility, or its construction or
11 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
12 to demonstrate compliance with the Public Health and Safety Standards for Wind Energy
13 Facilities.

14
15 **Conclusion**

16 The Council finds that Golden Hills would comply with the OAR 345-024-0010, Public
17 Health and Safety Standards for Wind Energy Facilities, if Amendment #1 were approved.

18
19 **J. Siting Standards for Wind Energy Facilities, OAR 345-024-0015**

20
21 *To issue a site certificate for a proposed wind energy facility, the Council must find that*
22 *the applicant can design and construct the facility to reduce cumulative adverse*
23 *environmental effects in the vicinity by practicable measures including, but not limited to,*
24 *the following:*

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

37
38 **Discussion**

39 The Council addressed Siting Standards for Wind Energy Facilities in section IV.J of the
40 *Final Order on the Application*. The Council did not impose any conditions to ensure
41 compliance with the Siting Standards for Wind Energy Facilities. The extension of the respective
42 deadlines to begin and to complete construction does not affect the Council’s findings that the
43 construction and operation of the Facility will be consistent with the Siting Standards for Wind
44 Energy Facilities.

1 Because GHWF has proposed no change to the site, the Facility, or its construction or
2 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
3 to demonstrate compliance with the Siting Standards for Wind Energy Facilities.
4

5 **Conclusion**

6 The Council finds that Golden Hills would comply with OAR 345-024-0015, Siting
7 Standards for Wind Energy Facilities, if Amendment #1 were approved.
8

9 **K. Siting Standards for Transmission Lines, OAR 345-024-0090**

10
11 *To issue a site certificate for a facility that includes any transmission line under Council*
12 *jurisdiction, the Council must find that the applicant:*

- 13 (1) *Can design, construct and operate the proposed transmission line so that alternating*
14 *current electric fields do not exceed 9 kV per meter at one meter above the ground*
15 *surface in areas accessible to the public;*
16 (2) *Can design, construct and operate the proposed transmission line so that induced*
17 *currents resulting from the transmission line and related or supporting facilities will*
18 *be as low as reasonably achievable.*
19

20 **Discussion**

21 The Council addressed Siting Standards for Transmission Lines in Section IV.K of the
22 *Final Order on the Application*. The Council imposed one condition under section IV.K of the
23 Site Certificate to ensure compliance with the Siting Standards for Transmission Lines. The
24 extension of the respective deadlines to begin and to complete construction does not affect the
25 Council’s findings that the construction and operation of the Facility will be consistent with the
26 Siting Standards for Transmission Lines.
27

28 Because GHWF has proposed no change to the site, the Facility, or its construction or
29 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
30 to demonstrate compliance with the Siting Standards for Transmission Lines.
31

32 **Conclusion**

33 The Council finds that Golden Hills would comply with OAR 345-024-0090, Siting
34 Standards for Transmission Lines, if Amendment #1 were approved.
35

36 **L. Threatened and Endangered Species, OAR 345-022-0070**

37
38 *To issue a site certificate, the Council, after consultation with appropriate state agencies,*
39 *must find that:*

- 40 (1) *For plant species that the Oregon Department of Agriculture has listed as*
41 *threatened or endangered under ORS 564.105(2), the design, construction and*
42 *operation of the proposed facility, taking into account mitigation:*
43 (a) *Are consistent with the protection and conservation program, if any,*
44 *that the Oregon Department of Agriculture has adopted under ORS*
45 *564.105(3); or*

1 (b) If the Oregon Department of Agriculture has not adopted a protection
2 and conservation program, are not likely to cause a significant reduction
3 in the likelihood of survival or recovery of the species; and
4

5 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed
6 as threatened or endangered under ORS 496.172(2), the design, construction and
7 operation of the proposed facility, taking into account mitigation, are not likely to
8 cause a significant reduction in the likelihood of survival or recovery of the
9 species.
10

11 **Discussion**

12 The Council addressed the Threatened and Endangered Species standard in Section IV.L
13 of the *Final Order on the Application*. The Council imposed ten conditions in section IV.L of
14 the Site Certificate to ensure compliance with the Threatened and Endangered Species standard.
15 The extension of the respective deadlines to begin and to complete construction does not affect
16 the Council's findings that the construction and operation of the Facility will be consistent with
17 the Threatened and Endangered Species standard.
18

19 Because GHWF has proposed no change to the site, the Facility, or its construction or
20 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
21 to demonstrate compliance with the Threatened and Endangered Species standard.
22

23 **Conclusion**

24 The Council finds that Golden Hills would comply with OAR 345-022-070, the
25 Council's Threatened and Endangered Species standard, if Amendment #1 were approved.
26

27 **M. Fish and Wildlife Habitat, OAR 345-022-0060**

28
29 *To issue a site certificate, the Council must find that the design, construction, and*
30 *operation of the facility, taking into account mitigation, are consistent with the fish and*
31 *wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of*
32 *September 1, 2000.*
33

34 **Discussion**

35 The Council addressed the Fish and Wildlife Habitat standard in Section IV.M of the
36 *Final Order on the Application*. The Council imposed 10 conditions in section IV.M of the Site
37 Certificate to ensure compliance with the Fish and Wildlife Habitat standard. The extension of
38 the respective deadlines to begin and to complete construction does not affect the Council's
39 findings that the construction and operation of the facility will be consistent with the Fish and
40 Wildlife Habitat standard.
41

42 Because GHWF has proposed no change to the site, the Facility, or its construction or
43 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
44 to demonstrate compliance with the Fish and Wildlife Habitat standard.

1
2 **Conclusion**

3 The Council finds that Golden Hills would comply with OAR 345-022-0060, the
4 Council’s Fish and Wildlife Habitat standard if Amendment #1 were approved.
5

6 **V. STANDARDS NOT APPLICABLE TO SITE CERTIFICATE ELIGIBILITY**
7

8 Under ORS 469.501(4), the Council may issue a site certificate without making the
9 findings required by the standards discussed in this section (Structural Standard; Historic,
10 Cultural, and Archaeological Resources Standard; Public Services Standard; and Waste
11 Minimization Standard). Nevertheless, the Council may impose site certificate conditions based
12 on the requirements of these standards.
13

14 **A. Structural Standard, OAR 345-022-0020**
15

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

18 *(a) The applicant, through appropriate site-specific study, has adequately*
19 *characterized the site as to Maximum Considered Earthquake Ground Motion*
20 *identified at International Building Code (2003 edition) Section 1615 and*
21 *maximum probable ground motion, taking into account ground failure and*
22 *amplification for the site specific soil profile under the maximum credible and*
23 *maximum probable seismic events; and*

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

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

34 *(d) The applicant can design, engineer and construct the facility to avoid dangers*
35 *to human safety presented by the hazards identified in subsection (c).*
36

37 **Discussion**

38 The Council addressed the Structural standard Section V.A of the *Final Order on the*
39 *Application*. The Council imposed five conditions in section V.A of the Site Certificate to
40 ensure compliance with the Structural standard. The extension of the respective deadlines to
41 begin and to complete construction does not affect the Council’s findings that the construction
42 and operation of the facility will be consistent with the Structural Standard
43

1 Because GHWF has proposed no change to the site, the Facility, or its construction or
2 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
3 to demonstrate compliance with the Structural standard.
4

5 **Conclusion**

6 The Council finds that Golden Hills would comply with the OAR 345-022-0020, the
7 Structural standard, if Amendment #1 were approved.
8

9 **B. Historic, Cultural and Archaeological Resources, OAR 345-022-0090**

10
11 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
12 *Council must find that the construction and operation of the facility, taking into account*
13 *mitigation, are not likely to result in significant adverse impacts to:*

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

16 *(b) For a facility on private land, archaeological objects, as defined in ORS*
17 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

18 *(c) For a facility on public land, archaeological sites, as defined in ORS*
19 *358.905(1)(c).*
20

21 **Discussion**

22 The Council addressed the Historic, Cultural and Archaeological Resources standard in
23 Section V.B of the *Final Order on the Application*. The Council imposed ten conditions in
24 section V.B of the Site Certificate to ensure compliance with the Historic, Cultural and
25 Archaeological Resources standard. The extension of the respective deadlines to begin and to
26 complete construction does not affect the Council’s findings that the construction and operation
27 of the Facility will be consistent with the Historic, Cultural and Archaeological Resources
28 standard.
29

30 Because GHWF has proposed no change to the site, the Facility, or its construction or
31 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
32 to demonstrate compliance with the Historic, Cultural and Archaeological Resources standard.
33

34 **Conclusion**

35 The Council finds that Golden Hills would comply with OAR 345-022-0090, the
36 Council’s Historic, Cultural and Archaeological Resources standard, if Amendment #1 were
37 approved.
38

39 **C. Public Services, OAR 345-022-0110**

40
41 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
42 *Council must find that the construction and operation of the facility, taking into account*
43 *mitigation, are not likely to result in significant adverse impact to the ability of public*
44 *and private providers within the analysis area described in the project order to provide:*

1 *sewers and sewage treatment, water, storm water drainage, solid waste management,*
2 *housing, traffic safety, police and fire protection, health care and schools.*

3
4 **Discussion**

5 The Council addressed the Public Services standard in section V.C of the *Final Order on*
6 *the Application*. The Council imposed 14 conditions in Section V.C of the Site Certificate to
7 ensure compliance with the Public Services standard. The extension of the respective deadlines
8 to begin and to complete construction does not affect the Council’s findings that the construction
9 and operation of the Facility will be consistent with the Public Services standard.

10
11 Because GHWF has proposed no change to the site, the Facility, or its construction or
12 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
13 to demonstrate compliance with the Public Services standard.

14
15 **Conclusion**

16 The Council finds that Golden Hills would comply with OAR 345-022-0110, the
17 Council’s Public Services standard if Amendment #1 were approved.

18
19 **D. Waste Minimization, OAR 345-022-0120**

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

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

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

30
31 **Discussion**

32 The Council addressed the Waste Minimization standard in Section V.D of the *Final*
33 *Order on the Application*. The Council imposed four conditions in section V.D of the Site
34 Certificate to ensure compliance with the Waste Minimization standard. The extension of the
35 respective deadlines to begin and to complete construction does not affect the Council’s findings
36 that the construction and operation of the Facility will be consistent with the Waste Minimization
37 Standard

38
39 Because GHWF has proposed no change to the site, the facility, or its construction or
40 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
41 to demonstrate compliance with the Waste Minimization standard.

42
43 **Conclusion**

44 The Council finds that Golden Hills would comply with OAR 345-022-0120, the Waste
45 Minimization standard, if Amendment #1 were approved.

1
2 **VI. OTHER APPLICABLE REGULATORY REQUIREMENTS: DISCUSSION AND CONCLUSIONS**

3
4 **A. Requirements under Council Jurisdiction**

5
6 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-
7 022-0000), the Council must determine that a facility complies with “all other Oregon statutes
8 and administrative rules identified in the project order, as amended, as applicable to the issuance
9 of a site certificate for the proposed facility.” In the *Final Order on the Application*, the Council
10 found that the other applicable Oregon statutes and administrative rules were the Department of
11 Environmental Quality noise control regulations, the regulations adopted by the Department of
12 State Lands for removal or fill of material affecting waters of the state, and the Council’s
13 statutory authority to consider protection of public health and safety.

14
15 **1. Noise Control Regulations for Industry and Commerce, OAR 340-035-0035**

16
17 *(1) Standards and Regulations:*

18
19 *(b) New Noise Sources:*

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

30
31 **Discussion**

32 DEQ noise regulations for new industrial and commercial noise sources³⁶ apply to
33 Golden Hills. The DEQ noise regulations were addressed in Section VI.A.1 of the *Final Order*
34 *on the Application*. The Council imposed four conditions in section VI.A.1 of the Site
35 Certificate to ensure compliance with the DEQ noise regulations. The extension of the respective
36 deadlines to begin and to complete construction does not affect the Council’s findings that the
37 construction and operation of the Facility will comply with the DEQ noise regulations.

38
39 Because GHWF has proposed no change to the site, the Facility, or its construction or
40 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
41 to demonstrate compliance with the DEQ noise standards applicable to the facility.
42

³⁶ OAR 340-035-0035(1)(b)(B)

1 **Conclusion**

2 The Council finds that Golden Hills would comply with the applicable noise control
3 regulations in OAR 340-035-0035(1)(b)(B) if Amendment #1 were approved.

4
5 **2. Removal-Fill Law**

6
7 The Oregon Removal-Fill Law³⁷ and Department of State Lands (DSL) regulations³⁸
8 require a Removal/Fill Permit if 50 cubic yards or more of material is removed, filled or altered
9 within any “waters of the state” at the proposed site.

10
11 **Discussion**

12 DSL removal-fill regulations were addressed in Section VI.A.2 of the *Final Order on the*
13 *Application*. The Council found that the proposed Facility would not need a removal-fill permit.
14 The extension of the respective deadlines to begin and to complete construction does not affect
15 the Council’s findings that the construction and operation of the Facility will comply with the
16 DSL removal/fill regulations.

17
18 Because GHWF has proposed no change to the site, the Facility, or its construction or
19 operation, Council finds that the findings in the *Final Order on the Application* are sufficient to
20 demonstrate compliance with the DSL removal-fill permit requirements.

21
22 **Conclusion**

23 The Council finds that Golden Hills would comply with the applicable DSL removal-fill
24 permit requirements if Amendment #1 were approved.

25
26 **3. Ground Water Act**

27
28 Through the provisions of the Ground Water Act of 1955³⁹ and the rules of the Oregon
29 Water Resources Department⁴⁰, the Oregon Water Resources Commission administers the rights
30 of appropriation and use of the ground water resources of the state. The Council must determine
31 whether the Facility complies with these statutes and administrative rules.⁴¹

32
33 **Discussion**

34 The Council addressed the provisions of the Ground Water Act in Section VI.A.3 of the
35 *Final Order on the Application*. The Council found that the proposed use of ground water for the
36 construction and operation of Golden Hills complies with the Ground Water Act of 1955 and the
37 rules of the Oregon Water Resources Department. The extension of the respective deadlines to
38 begin and to complete construction does not affect the Council’s findings that the construction
39 and operation of the Facility will comply with the Ground Water Act of 1955 and rules of the
40 Oregon Water Resources Department.

³⁷ ORS 196.800 through ORS 196.990

³⁸ OAR 141-085-005 through OAR 141-085-0090

³⁹ ORS 537.505 to ORS 537.796

⁴⁰ OAR chapter 690

⁴¹ OAR 345-022-0000(1).

1
2 Because GHWF has proposed no change to the site, the Facility, or its construction or
3 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
4 to demonstrate compliance with the statutes and administrative rules applicable to the Ground
5 Water Act.

6
7 **Conclusion**

8 The Council finds that Golden Hills would comply with the Oregon Ground Water Act of
9 1955 and the rules of the Oregon Water Resources Department if Amendment #1 were approved.

10
11 **4. Public Health and Safety**

12
13 The Council is charged with ensuring that the “siting, construction, and operation of
14 energy facilities shall be accomplished in a manner consistent with the protection of public
15 health and safety ...”⁴² State law further provides that “the site certificate ... shall contain
16 conditions for the protection of public health and safety.”⁴³

17
18 **Discussion**

19 The Council addressed standards for the protection of public health and safety in Section
20 VI.A.4 of the *Final Order on the Application*. In the *Final Order on the Application*, the Council
21 specifically considered electric and magnetic fields, coordination with the Oregon Public Utility
22 Commission Safety and Reliability Section (“PUC”), and coordination with local electric utilities
23 and transmission service providers. The Council imposed three conditions in section VI.A.4 of
24 the Site Certificate to ensure protection of public health and safety. The extension of the
25 respective deadlines to begin and to complete construction of the Facility does not affect the
26 Council’s findings that the construction and operation of the Facility are consistent with the
27 protection of public health and safety.

28
29 Because GHWF has proposed no change to the site, the Facility, or its construction or
30 operation, the Council finds that the findings in the *Final Order on the Application* are sufficient
31 to demonstrate consistency with the protection of public health and safety.

32
33 **Conclusion**

34 The Council finds that Golden Hills would comply with the requirements found in ORS
35 469.310 for protection of public health and safety if Amendment #1 were approved.

36
37 **B. Requirements That Are Not Under Council Jurisdiction**

38
39 **1. Federally-Delegated Programs**

40
41 The Council does not have jurisdiction for determining compliance with statutes and
42 rules for which the federal government has delegated the decision on compliance to a state

⁴² ORS 469.310.

⁴³ ORS 469.401(2).

1 agency other than the Council.⁴⁴ Nevertheless, the Council may rely on the determinations of
2 compliance and the conditions in the federally-delegated permits issued by these state agencies
3 in deciding whether the proposed facility meets other standards and requirements under its
4 jurisdiction.

5
6 **2. Requirements That Do Not Relate to Siting**

7
8 The Council does not have authority to preempt the jurisdiction of any state agency or
9 local government over matters that are not included in and governed by the site certificate or
10 amended site certificate.⁴⁵ Such matters include design-specific construction or operating
11 standards and practices that do not relate to siting. Nevertheless, the Council may rely on the
12 determinations of compliance and the conditions in the permits issued by these state agencies and
13 local governments in deciding whether the facility meets other standards and requirements under
14 its jurisdiction.

15
16
17 **VII. CONDITIONS REQUIRED BY COUNCIL RULES**

18
19 The Council addressed conditions to be included in the site certificate as specifically
20 required by Council rules⁴⁶ in section VII of the *Final Order on the Application*. The conditions
21 described in this order include conditions based on representations in the RFA and the supporting
22 record. The Council deems these representations to be binding commitments made by the
23 Certificate Holder. Also included are conditions Council finds necessary to ensure compliance
24 with the siting standards of OAR Chapter 345, Divisions 22 and 24, or to protect public health
25 and safety.

26
27 In addition to all other conditions described or included in this order, the site certificate
28 holder is subject to all conditions and requirements contained in the rules of the Council and in
29 local ordinances and state law in effect on the date the amended site certificate is executed. Upon
30 a clear showing of a significant threat to the public health, safety or the environment that requires
31 application of later-adopted laws or rules, the Council may require compliance with such later-
32 adopted laws or rules.⁴⁷

33
34 The Council recognizes that many specific tasks related to the design, construction,
35 operation and retirement of the facility will be undertaken by the certificate holder's agents or
36 contractors. Nevertheless, the certificate holder is responsible for ensuring that all agents and
37 contractors comply with all provisions of the site certificate.

38
⁴⁴ ORS 469.503(3).

⁴⁵ ORS 469.401(4).

⁴⁶ OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific Conditions),
OAR 345-027-0028 (Monitoring Conditions), and OAR chapter 345, division 26 (Construction and Operation Rules
for Facilities).

⁴⁷ ORS 469.401(2).

1
2 **VIII. GENERAL CONCLUSION**
3

4 The amendment proposed by GHWF would extend the deadline for beginning
5 construction of Golden Hills Wind Project from June 18, 2012, to June 18, 2014. The
6 amendment would also extend the deadline for completing construction of the Facility from June
7 18, 2015 to June 18, 2017. The Council adopts the revisions proposed by GHWF and the new
8 Condition IV.D.22 as proposed by ODOE in Section VIII.A below.
9

10 Based on the findings and conclusions included in this order, the Council makes the
11 following findings:
12

- 13 1. The proposed Amendment #1 complies with the requirements of the Oregon
14 Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to
15 469.619.
16
- 17 2. The proposed Amendment #1 complies with the applicable standards adopted by
18 EFSC pursuant to ORS 469.501.
19
- 20 3. The proposed Amendment #1 complies with all other Oregon statutes and
21 administrative rules applicable to the amendment of the Site Certificate that are
22 within EFSC's jurisdiction.
23

24 Accordingly, the Council finds that the Facility, as amended, complies with the General
25 Standard of Review.⁴⁸ The Council concludes, based on a preponderance of the evidence on the
26 record, that the site certificate may be amended as requested by the Certificate Holder, subject to
27 the recommendations of ODOE and set forth below.
28

29 **A. ODOE's Recommended Revisions**
30

31 New text recommended by ODOE is shown below in double-underlined bold typeface
32 and recommended deletions have a strikethrough. All changes to Condition III.D.1 and
33 Condition III.D.2 recommended by ODOE are identical to the changes requested by the
34 Certificate Holder.
35

36 **III.D CONSTRUCTION DEADLINES**
37

38 *The certificate holder shall satisfy the following administrative conditions:*
39

- 40 (III.D.1) *The certificate holder shall begin construction of the facility by **June 18,***
41 ***2014** within three years after the effective date of the site certificate.*
42 *Under OAR 345-015-0085(8)(9), **an amended** site certificate is effective*
43 *upon execution by the Council Chair and the applicant. The Council may*

⁴⁸ OAR 345-022-0000.

1 grant an extension of the deadline to begin construction in accordance
2 with OAR 345-027-0030 or any successor rule in effect at the time the
3 request for extension is submitted. [Amendment 1]
4

5 (III.D.2) The certificate holder shall complete construction of the facility by **June**
6 **18, 2017** ~~within six years after the effective date of the site certificate.~~
7 Construction is complete when (1) the facility is substantially complete as
8 defined by the certificate holder's construction contract documents; (2)
9 acceptance testing has been satisfactorily completed; and (3) the energy
10 facility is ready to begin continuous operation consistent with the site
11 certificate. The certificate holder shall promptly notify the Department of
12 the date of completion of construction. The Council may grant an
13 extension of the deadline for completing construction in accordance with
14 OAR 345-027-0030 or any successor rule in effect at the time the request
15 for extension is submitted. [Amendment 1]
16

17 IV.D LAND USE

18
19 (IV.D.22) **Prior to construction, Certificate Holder shall demonstrate that the**
20 **final location of turbines within the micrositing corridors approved by**
21 **the Council will satisfy setback requirements prescribed by Section 4**
22 **of the Sherman County Wind Setback Ordinance (Ordinance No. 39-**
23 **2007) unless the Council or Oregon Department of Energy has**
24 **approved a variance to such setback for the turbine or the Certificate**
25 **Holder has negotiated a setback agreement with the affected adjacent**
26 **property owner or wind project developer. [Amendment #1]**
27
28

30 IX. ORDERS

31
32 EFSC approves Amendment #1 and issues an amended site certificate for Golden Hills,
33 subject to the terms and conditions set forth above.
34

35 Issued this 11th day of May, 2012.
36

37 OREGON ENERGY FACILITY SITING COUNCIL
38

39
40
41 By:


42 W. Bryan Wolfe, Chair
43 Oregon Energy Facility Siting Council
44
45

1 **Notice of the Right to Appeal**

2

3 *You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.403.*

4 *To appeal you must file a petition for judicial review with the Supreme Court within 60 days*

5 *from the day this order was served on you. If this order was personally delivered to you, the date*

6 *of service is the date you received this order. If this order was mailed to you, the date of service*

7 *is the date it was mailed, not the day you received it. If you do not file a petition for judicial*

8 *review within the 60-day time period, you lose your right to appeal.*

9