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## **Attachments**

Attachment A Amended Site Certificate

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Attachment C Comments on Request for Amendment #2 and Site Certificate Holder Responses

1 **I. INTRODUCTION**

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The Oregon Energy Facility Siting Council (Council) issues this final order in accordance with ORS 469.405 and OAR 345-027-0070. This final order addresses a request by Montague Wind Power Facility, LLC (Montague or certificate holder) for amendment of the site certificate for the Montague Wind Power Facility (facility).

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

Montague Wind Power Facility, LLC  
c/o Iberdrola Renewables, LLC  
1125 NW Couch Street, Suite 700  
Portland, OR 97209

Person responsible for submitting this request:

Sara Parsons  
Montague Wind Power Facility, LLC  
c/o Iberdrola Renewables, LLC  
1125 NW Couch Street, Suite 700  
Portland, OR 97209

**I.B. Description of the Facility**

The Council issued the site certificate for the facility on September 14, 2010, authorizing the construction and operation of a wind-energy generation facility with an electrical capacity of up to 404 megawatts. The facility site is located on private land south of the City of Arlington, in Gilliam County, Oregon. The facility, once constructed, will connect to the regional transmission system through Bonneville Power Administration’s Slatt Substation and an existing 500-kilovolt Slatt-Buckley transmission line via an overhead 230-kilovolt transmission line. The related and supporting facilities include a power collection system, two collector substations, a supervisory control and data acquisition system, a 230-kV transmission line, up to two operation and maintenance facilities, up to eight meteorological towers, access roads, temporary roadway modifications and additional temporary construction areas (including laydown areas).

1 **II. THE AMENDMENT PROCESS**  
2

3 **II.A. Requested Amendment**  
4

5 Montague requests an amendment to the site certificate to: (1) extend the deadline to begin  
6 construction from September 14, 2015 to September 14, 2017; and (2) extend the deadline to  
7 complete construction from September 14, 2018 to September 14, 2020 (requested  
8 amendment). Montague satisfied the requirement in OAR 345-027-0030 to submit the  
9 construction extension request at least six months before the construction commencement  
10 deadline by submitting the request for amendment on March 11, 2015. Montague did not delay in  
11 submitting the request, and therefore is not required to demonstrate “good cause” pursuant to  
12 OAR 345-027-0030(1).

13 **II.B. Procedural History**  
14

15 The Council issued the *Final Order on the Application for Site Certificate* for the facility on  
16 September 10, 2010. The site certificate became effective upon execution on September 14,  
17 2010. On December 28, 2012 the department received *Request for Amendment #1* to the site  
18 certificate. The request was to extend the construction deadlines by two years, reduce the  
19 minimum blade tip clearance and transfer the site certificate.<sup>1</sup> The Council issued the *Final*  
20 *Order on Amendment #1 and Request for Transfer of Site Certificate* (Final Order on  
21 Amendment #1) on June 21, 2013. That amendment extended the deadline to begin  
22 construction to September 14, 2015, extended the deadline to complete construction to  
23 September 14, 2018 and approved other requested amendments as described above.  
24

25 On March 11, 2015 Montague submitted to the Oregon Department of Energy (department) its  
26 Request for Amendment (RFA) #2 to the site certificate for the facility. On March 25, 2015 the  
27 department sent notice of RFA #2 to all persons on the Council’s mailing list, to the special list  
28 established for the facility and to an updated list of property owners supplied by the certificate  
29 holder. On March 25, 2015 the department sent the certificate holder instructions to send an  
30 attached memorandum to a department-provided list of reviewing agencies by April 1, 2015.  
31 The memorandum requested comments from reviewing agencies on RFA #2 by April 22, 2015.  
32

33 In response to the public notice on RFA #2, the department received six agency comments and  
34 four public comments. Morrow and Gilliam County Planning Departments both indicated that  
35 no changes to land use codes or ordinances have occurred that would apply to the requested  
36 amendment. Two comments received from the Oregon Department of Fish and Wildlife  
37 (ODFW) confirmed that habitat conditions within the analysis area have not changed since  
38 previously completed habitat surveys in 2010 and requested coordination with adjacent

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<sup>1</sup> Although the transfer was approved by the Council, the certificate holder did not execute the transfer of the facility and, therefore, the site certificate was never transferred. To reflect this, Conditions 113-115 have been removed from the site certificate because they relate only to the potential transfer of the site certificate.

1 operational wind facilities on raptor nest survey timing. Comments received from the Oregon  
2 Department of Aviation and Oregon Department of State Lands confirmed that the requested  
3 amendment would not necessitate additional comments.<sup>2</sup>  
4

5 On March 25, 2015, the department notified the certificate holder that the proposed order  
6 would be issued no later than September 21, 2015. The department issued a Request for  
7 Additional Information (RAI) to the site certificate holder on May 5, 2015 and received a  
8 response from the site certificate holder on June 4, 2015. The department issued a second RAI  
9 to the certificate holder on July 16, 2015 and received a response on August 11, 2015.  
10

11 The department issued the proposed order on September 21, 2015 recommending approval of  
12 the requested amendment. On the same day, the department issued notice of the proposed  
13 order in accordance with OAR 345-027-0070, specifying October 21, 2015 as the deadline for  
14 comments and requests for a contested case on the proposed order. The department also  
15 posted notice on the agency website, along with the proposed order. In response to the public  
16 notice on the proposed order, the department received one public comment and request for a  
17 contested case.<sup>3</sup> The contested case request also included substantive comments on the  
18 proposed order. Therefore, the department construed the request as both comments on the  
19 proposed order under OAR 345-027-0070(5) and a request, pursuant to OAR 345-027-0070(6),  
20 that the Council hold a contested case proceeding on the issues identified in the respective  
21 letter.

## 22 **II.C. Comments on Request for Amendment #2**

### 23 **II.C.1. Reviewing Agency Comments on Request for Amendment #2**

#### 24 **Gilliam County Planning Department**

25 The Gilliam County Planning Department commented that there has been no change to the  
26 Gilliam County Ordinances or Zoning since the first amendment request was submitted.  
27 Additionally, the Gilliam County Planning Department commented that there has been only one  
28 instance of new construction in the area of the facility since the first amendment, and that the  
29 new construction has no impact on the facility's compliance with the local land use laws.<sup>4</sup>  
30  
31

#### 32 **Morrow County Planning Department**

33 The Morrow County Planning Department commented that it does not have any additional  
34 comment at this time.<sup>5</sup> The department received an email from the Morrow County Planning

---

<sup>2</sup> Comments received on RFA #2 and certificate holder responses are provided as Attachment C to this order.

<sup>3</sup> The department originally received a second comment and request for contested case, which was withdrawn prior to the Council's consideration of this final order.

<sup>4</sup> MWPAMD2Doc13 Agency Comment Gilliam County Planning, April 20, 2015

<sup>5</sup> MWPAMD2Doc5 Agency Comment Morrow County Planning, March 25, 2015

1 Department prior to the beginning of the comment period that stated that there have been no  
2 changes to Morrow County’s land use laws that would affect the facility.<sup>6</sup>

3  
4 Oregon Department of Aviation (Aviation)

5 Aviation commented that the need for Condition 64 remains unchanged.<sup>7</sup>

6  
7 Oregon Department of Fish and Wildlife

8 ODFW confirmed that habitat conditions within the analysis area have not changed since  
9 previously completed habitat surveys in 2010 and recommended that the certificate holder  
10 coordinate with adjacent operational wind facilities to conduct raptor nest surveys in the same  
11 years to create a better data set.<sup>8</sup>

12  
13 Oregon Department of State Lands

14 Oregon Department of State Lands (DSL) commented that it has no comments.<sup>9</sup>

15 II.C.2. Public Comments on Request for Amendment #2

16  
17 Andre and Kathleen Meyer

18 Andre and Kathleen Meyer commented urging the Council to grant the construction deadline  
19 extension.<sup>10</sup>

20  
21 Joe and Donna Rietmann

22 Joe and Donna Rietmann commented urging the Council to grant the construction deadline  
23 extension because of the many benefits wind power brings.<sup>11</sup>

24  
25 Nancy Watson

26 Nancy Watson did not comment on the facility but commented on her community’s negative  
27 experiences with Iberdrola regarding the Groton Wind Project in Groton New Hampshire.<sup>12</sup>

28  
29 U.S. Department of the Navy

30 The U.S. Department of the Navy (Navy) commented that the facility “poses a direct threat to  
31 public health and safety, because the proposed locations for several of the turbine towers and  
32 meteorological towers overlap with Military Training Routes (MTRs) leading into Restricted  
33 Airspace R-5701 and Naval Weapon Systems Training Facility (NWSTF) Boardman.”<sup>13</sup>

---

<sup>6</sup> MWPAMD2Doc2 Agency Comment Morrow County Planning, March 17, 2015

<sup>7</sup> MWPAMD2Doc14 Agency Comment Aviation, April 9, 2015

<sup>8</sup> MWPAMD2Doc10 Agency Comment ODFW, April 13, 2015; MWPAMD2Doc21 Agency Comment ODFW 2015-06-21

<sup>9</sup> MWPAMD2Doc18 Agency Comment DSL, March 31, 2015

<sup>10</sup> MWPAMD2Doc8 Public Comment Meyer, April 2, 2015

<sup>11</sup> MWPAMD2Doc9 Public Comment Rietmann, April 3, 2015

<sup>12</sup> MWPAMD2Doc15 Public Comment Watson, April 22, 2015

<sup>13</sup> MWPAMD2Doc16 Public Comment Navy, April 20, 2015

1 **II.D. Comments and Requests for Contested Case on the Proposed Order**

2 **II.D.1. Comments on the Proposed Order**

3  
4 **Nancy Watson**

5 Nancy Watson submitted comments on the proposed order addressing statements made by  
6 Iberdrola Renewables, LLC related to Iberdrola’s Groton Wind Energy facility located in Groton,  
7 New Hampshire and requested that the department correct the record to clarify the  
8 compliance history at the Groton Wind Energy Facility.<sup>14</sup> These comments are addressed in  
9 Section III.B.1.b. *Organizational Expertise* of this final order.

10  
11 **Irene Gilbert**

12 Irene Gilbert’s comment and request for contested case identified seven issues and included  
13 language of selected statutes and rules related to contested case issues. To the extent they  
14 raise issues of compliance with a Council standard, Ms. Gilbert’s issues are evaluated in the  
15 findings related to those Council Standards.<sup>15</sup>

16 **II.D.2. Analysis of the Request for Contested Case**

17  
18 In her request for contested case, Ms. Irene Gilbert identified seven issues and included  
19 language of selected statutes and rules related to contested case issues. The Council’s  
20 evaluation and decision on each issue is presented below.

21  
22 In Issue One, Ms. Gilbert contends that the department and EFSC have failed to follow the  
23 statutes and law regarding the provision of contested cases and identification of relief available  
24 to those requesting contested cases. Because the Council had not yet considered Ms. Gilbert’s  
25 request nor reached a decision on the contested case request at the time this comment was  
26 received, the comment appears to be related to past Council decisions. A request for contested  
27 case is not an appropriate venue for challenging past Council decisions. Moreover, the  
28 arguments raised by Ms. Gilbert in Issue One are procedural arguments that do not provide a  
29 justification for a contested case under OAR 345-027-0070(7). For these reasons, Ms. Gilbert’s  
30 request for contested case under Issue One is denied.

31  
32 In Issue Two, Ms. Gilbert contends that allowing documentation to show compliance with the  
33 statutes and EFSC rules after the site certificate is issued is not consistent with the  
34 requirements of ORS 469.503 and OAR 345-022-0000(1). Ms. Gilbert does not explain how or

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<sup>14</sup> MWPAMD2Doc29 Public Comment N. Watson 2015-10-21

<sup>15</sup> In one of her comments on the proposed order, Irene Gilbert states in Issue One that the department and EFSC failed to follow statutes and law regarding the provision of contested cases and identification of relief available to those requested contested case. While it is addressed in the analysis of her request for contested case, because the Council had not yet considered Ms. Gilbert’s request nor reached a decision on the contested case request at the time this comment was received, the comment appears to be related to past Council decisions and therefore is not substantively further addressed in this order.

1 why the information provided in RFA #2 and analysis included in the proposed order is  
2 inadequate to demonstrate compliance with an affected standard, nor does she identify the  
3 documentation she believes is necessary to show compliance with the statutes and Council  
4 rules but that would not be provided until after the amended site certificate is issued. Because  
5 RFA #2 and the proposed order address compliance with all applicable rules and Council  
6 standards currently in effect, the Council finds that Ms. Gilbert's Issue Two does not raise a  
7 significant issue of fact or law that may affect the Council's determination that the facility, with  
8 the requested amendment, meets an applicable standard. For these reasons, Ms. Gilbert's  
9 request for contested case under Issue Two is denied.

10  
11 In Issue Three, Ms. Gilbert contends that a map of existing and planned wind developments in  
12 the area of the Montague Wind Development has not been provided and is required and  
13 necessary to evaluate cumulative impacts of this development, specifically cumulative impacts  
14 to public services. The certificate holder provided a map of existing and planned wind  
15 developments in the area of the Montague Wind Development. Through RFA #2, the certificate  
16 holder contacted each of the affected public service providers, and received confirmation of  
17 their continuing ability to provide services to the facility. Ms. Gilbert has not raised any issue of  
18 fact or law that may affect the Council's determination that the facility, with the requested  
19 amendment, satisfies the Public Services standard or any other applicable standard adopted by  
20 the Council pursuant to ORS 469.501. For these reasons, Ms. Gilbert's request for contested  
21 case under Issue Three is denied.

22  
23 In Issue Four, Ms. Gilbert contends that the department and the Council failed to do a current  
24 review the cumulative and ongoing impacts to the water table that will result from this  
25 development based upon existing and projected industrial developments effective the date the  
26 site certificate is issued. However, the facility, with the requested amendment, would not  
27 require any new water rights, water right transfers or temporary water rights. Ms. Gilbert's  
28 arguments in support of Issue Four are specifically related to OWRD's review and issuance of  
29 permits, which is not relevant to the facility or requested amendment since the certificate  
30 holder has not requested any water-related permits for the facility. The Council finds that Ms.  
31 Gilbert's comment does not provide a basis to change or modify the proposed order, and does  
32 not raise a significant issue of fact or law that may affect the Council's determination that the  
33 facility, with the requested amendment, meets an applicable standard. For these reasons, Ms.  
34 Gilbert's request for contested case under Issue Four is denied.

35  
36 In Issue Five, Ms. Gilbert contends that current wildlife surveys need to be provided before  
37 issuance of a site certificate and those surveys must extend to the outer limits of the setbacks  
38 recommended by ODFW and USFWS for animals potentially utilizing this site and as described  
39 in the definition of "study area" contained in the council administrative rules. The Council  
40 addressed Ms. Gilbert's concerns over outdated survey information through adoption of  
41 changes to conditions 31, 95(b) and 95(e), which establish requirements for the certificate  
42 holder to prepare an updated habitat assessment and conduct new sensitive wildlife habitat

1 surveys within two years of construction commencement. As amended, condition 95(b) and  
2 95(e) would also require additional mitigation measures if threatened and endangered species  
3 are identified during the pre-construction surveys. In addition, Ms. Gilbert does not provide  
4 citation to the “outer limits of the setbacks recommended by ODFW and USFW for animals  
5 potentially utilizing this site” and does not explain why the “study area” definition provided in  
6 OAR 345-001-0010(59) should be applied as a wildlife survey area boundary requirement or  
7 why it is required pursuant to a Council standard. Therefore, the Council finds that Ms. Gilbert’s  
8 Issue Five does not provide a basis to change or modify the proposed order; and does not raise  
9 a significant issue of fact or law that may affect the Council’s determination that the facility,  
10 with the requested amendment, meets an applicable standard. For these reasons, Ms. Gilbert’s  
11 request for contested case under Issue Five is denied.

12  
13 In Issue Six, Ms. Gilbert contends that setbacks from construction activities or construction  
14 from nest sites need to be extended to include bald and golden eagles as well as all threatened  
15 or endangered species, and need to be required year round at the distances recommended by  
16 the US Fish and Wildlife Service and the Oregon Department of Fish and Wildlife. Ms. Gilbert  
17 does not specifically raise an issue of compliance with any EFSC standard, rule or statute. She  
18 also does not provide any information explaining why the survey buffer area needs to be  
19 extended to include bald and golden eagles and does not explain why existing site certificate  
20 condition 96 is not adequate to ensure continued compliance with any applicable Council  
21 standard. She also provided no information explaining why the buffer areas should apply to  
22 construction areas year-round in order for the certificate holder to demonstrate continued  
23 compliance with any Council standard. Therefore, the Council finds that Ms. Gilbert’s Issue Six  
24 does not provide a basis to change or modify the proposed order; and does not raise a  
25 significant issue of fact or law that may affect the Council’s determination that the facility, with  
26 the requested amendment, meets an applicable standard. For these reasons, Ms. Gilbert’s  
27 request for contested case under Issue Six is denied.

28  
29 In Issue Seven, Ms. Gilbert references testimony and evidence submitted by the Navy that some  
30 of the turbines would interfere with low-altitude military training routes.<sup>16</sup> Ms. Gilbert contends  
31 that the “site certificate needs to include a condition that requires the developer to coordinate  
32 with the Department of Navy and Department of Defense to assure that the final siting of wind  
33 turbines does not pose a public safety risk.” Ms. Gilbert does not provide recommended  
34 condition language, and it appears that the type of condition she suggests would not be  
35 enforceable. Furthermore, on November 20, 2015 the Navy submitted a letter to the  
36 department indicating that the Navy and certificate holder, Montague Wind Power Facility, LLC,  
37 reached a mutually beneficial resolution of the Navy’s concerns. While the resolution was  
38 reached independent of the energy facility site certificate process, it seemingly satisfies the  
39 purpose of the requested condition. Even if the Navy had not reached an agreement with the

---

<sup>16</sup> Ms. Gilbert does not cite the Navy submittal, but seems to be referring to the April 20, 2015 letter submitted by the Navy to the department commenting on Montague’s Request for Amendment #2 to the Montague Wind Power Facility Site Certificate.

1 certificate holder, Ms. Gilbert does not specifically raise an issue of compliance with any EFSC  
2 standard, rule or statute in her identification of the issue<sup>17</sup> and does not independently identify  
3 issues of fact that could affect the Council’s determination that the facility meets an applicable  
4 standard. Therefore, the Council finds that Ms. Gilbert’s Issue Seven does not provide a basis to  
5 add a new condition; and does not raise a significant issue of fact or law that may affect the  
6 Council’s determination that the facility, with the requested amendment, meets an applicable  
7 standard. For these reasons, Ms. Gilbert’s request for contested case under Issue Seven is  
8 denied.

9 II.D.3. Council Decision on Requests for Contested Case Proceeding  
10

11 Based on the above analysis, and in reliance on the reasoning in the department’s November  
12 18, 2015 report to the Council regarding “Montague Wind Power Facility Request for  
13 Amendment #2 Proposed Order, Comments and Requests for Contested Case,” which is  
14 incorporated in relevant part by reference, the Council denies the request for a contested case  
15 proceeding as to all of the issues raised in the request.<sup>18</sup>

16 II.E. Applicable Standards  
17

18 Under ORS 469.405, “a site certificate may be amended with the approval of the Energy Facility  
19 Siting Council.” The Council has adopted rules for determining when a site certificate  
20 amendment is necessary (OAR 345-027-0030 and -0050) and rules setting out the procedure for  
21 amending a site certificate (OAR 345-027-0060, -0070, and -0100).  
22

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<sup>17</sup> Ms. Gilbert included the language of OAR 345-024-0010(2) in the final portion of her letter. OAR 345-024-0010(2) is one of the Public Health and Safety Standards for Wind Energy Facilities, and it provides that the Council must find that the applicant “[c]an design, construct and operate the facility to *preclude structural failure of the tower or blades* that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.” (Emphasis added). While the rule is not cross-referenced in Ms. Gilbert’s discussion of “Issue Seven” it appears she intended for there to be a connection because following the rule language she states “[i]t is difficult to imagine how a wind turbine placed in the middle of a navy new pilot training area can be constructed [sic] to meet this standard.” However, the cited rule requires the applicant to design, construct and operate the facility to preclude a structural failure of the tower. If either a military or civilian aircraft were to collide with a wind turbine it would not be a result of a structural failure of the tower or blades. In this case, the Council found that the certificate holder could design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger public safety. Final Order on the Application for Site Certificate, Section V.1.e. Ms. Gilbert has not challenged those findings and has not explained how the location of a turbine affects the site certificate holder’s ability to design, construct and operate the facility to avoid structural failure of the tower or blades.

<sup>18</sup> The November 18, 2015 report from the department includes an evaluation of the comments on the Proposed Order and request for contested case submitted by the U.S. Department of the Navy on October 21, 2015. The U.S. Department of the Navy submitted a letter to the department on November 20, 2015 withdrawing its comments on the Proposed Order and its request for contested case submitted to the department on October 21, 2015. Therefore, the department’s evaluation of the U.S. Department of the Navy’s comments and request for contested case included in the report (specifically, Section 4.a, at pages 6 through 10, of the November 18, 2015 report) is not included by reference or addressed in this order.

1           II.E.1. Amendment to Extend Construction Deadline

2  
3 OAR 345-027-0030 addresses “Amendments to Extend Construction Beginning and Completion  
4 Deadlines.” Under OAR 345-027-0030, a certificate holder may request an amendment to  
5 extend the deadlines for beginning or completing the construction of a facility. The certificate  
6 holder must submit the request “no later than six months before the date of the applicable  
7 deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the  
8 request, no later than the applicable deadline.” If the Council grants such a request, the Council  
9 must specify new deadlines for beginning or completing construction that are not more than  
10 two years from the current deadlines.

11  
12 In this instance, the certificate holder submitted the request to extend the construction  
13 deadline six months before the September 14, 2015 deadline for starting construction.  
14 Therefore, under OAR 345-027-0030, the good cause provision is not applicable.

15  
16 Compliance with the applicable Council standards is discussed in Section III below.

17 **III. REVIEW OF THE PROPOSED AMENDMENT**

18  
19 The requested amendment is to extend the construction deadlines by two years. OAR 345-027-  
20 0070(10)(b) establishes the Council’s scope of review for requests to amend construction  
21 deadlines. The Council must consider (1) whether the Council has previously granted an  
22 extension of the deadline; (2) whether there has been any change of circumstances that affects  
23 a previous Council finding that was required for issuance of a site certificate or amended site  
24 certificate; (3) whether the facility complies with all Council standards; and (4) whether the  
25 amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

26 **III.A. OAR 345-027-0070(10)(b)(A)**

27  
28 For the extension request, OAR 345-027-0070(10)(b)(A) requires the Council to consider  
29 “whether the Council has previously granted an extension of the deadline.”

30  
31 This is the second request to extend the construction deadlines for the facility.

32 **III.B. OAR 345-027-0070(10)(b)(B)**

33  
34 OAR 345-027-0070(1)(b)(B) requires that for a request to extend the construction deadlines,  
35 the Council consider “whether there has been any change of circumstances that affects a  
36 previous Council finding that was required for issuance of a site certificate or amended site  
37 certificate.” In the request for amendment, Montague states that there has been no such  
38 change of circumstances.<sup>19</sup> Except as it relates to findings regarding compliance with the Fish

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<sup>19</sup> MWPAMD2Doc1, 2015-03-15, p. 7  
Montague Wind Power Facility  
FINAL ORDER ON REQUEST FOR CONTESTED CASE AND AMENDMENT #2  
December 4, 2015

1 and Wildlife and Threatened and Endangered Species standards, the Council concurs with the  
2 certificate holder's assessment.

3  
4 Continued compliance with each Council standard is addressed below. As discussed in Sections  
5 III.B.1.h (Fish and Wildlife Habitat) and III.B.1.i (Threatened and Endangered Species), this order  
6 includes amended conditions that require the certificate holder to perform updated surveys to  
7 confirm whether there have been any changes in the presence of threatened and endangered  
8 species or to the raptor habitat in the area. The results of the surveys may reveal changes in  
9 factual circumstances that require changes in the layout of the facility or adjustments to the  
10 required mitigation.

11 III.B.1. Evaluation of Council Standards (OAR 345-027-0070(10)(b)(C))

12  
13 OAR 345-027-0070(10)(b)(C) requires that the Council consider whether the facility, as  
14 amended, complies with all Council standards.

15  
16 III.B.1.a. General Standard of Review: OAR 345-022-0000

17  
18 *(1) To issue a site certificate for a proposed facility or to amend a site certificate, the*  
19 *Council shall determine that the preponderance of evidence on the record supports*  
20 *the following conclusions:*

21  
22 *(a) The facility complies with the requirements of the Oregon Energy Facility*  
23 *Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the*  
24 *standards adopted by the Council pursuant to ORS 469.501 or the overall*  
25 *public benefits of the facility outweigh the damage to the resources protected*  
26 *by the standards the facility does not meet as described in section (2);*

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

38 \* \* \*

39  
40 The requirements of OAR 345-022-0000 are discussed in the sections that follow. Applicable  
41 statutes and rules of agencies are discussed below, in Section III.B.1.p, *Division 24 Standards of*

1 this order. The department consulted with other state agencies, and Gilliam and Morrow  
2 counties during the RFA #2 review processes to aid in the evaluation of the facility’s compliance  
3 with statutes, rules and ordinances otherwise administered by other agencies. Additionally, in  
4 many circumstances the department relies upon these reviewing agencies’ special expertise in  
5 evaluating compliance with the requirements of Council standards. The department  
6 recommends conditions for inclusion in the amended site certificate which, based on staff’s  
7 evaluation of the requested amendment, would ensure compliance with all statutes,  
8 administrative rules and ordinances applicable to the Project under Council’s jurisdiction.<sup>20</sup>  
9

10 Under OAR 345-015-0085(9), the site certificate is effective upon execution by the Council Chair  
11 and the site certificate holder. ORS 469.370(12) requires the Council to “specify in the  
12 certificate the date by which construction of the facility must begin.” ORS 469.401(2) requires  
13 that the site certificate contain a condition “for the time for completion of construction.” Under  
14 OAR 345-027-0000, the certificate holder must begin construction no later than the  
15 construction beginning date specified by Council in the site certificate, unless an amendment is  
16 requested and granted. “Construction” is defined in ORS 469.300(6) to mean “work performed  
17 on a site, excluding surveying, exploration or other activities to define or characterize the site,  
18 the cost of which exceeds \$250,000.” OAR 345-001-0010(12) adopts the statutory definition.  
19

20 In RFA #2, the certificate holder requested to extend the deadline to begin construction from  
21 September 14, 2015 to September 14, 2017; and, extend the deadline to complete construction  
22 from September 14, 2018 to September 14, 2020. Accordingly, and in compliance with OAR  
23 345-027-0000 and OAR 345-027-0020(4), the Council adopts the following changes to  
24 conditions 24 and 25 of the site certificate:  
25

26 **Condition 24:** The certificate holder shall begin construction of the facility by September 14,  
27 ~~2015~~2017. Under OAR 345-015-0085(9), a site certificate is effective upon execution by the  
28 Council Chair and the applicant. The Council may grant an extension of the deadline to  
29 begin construction in accordance with OAR 345-027-0030 or any successor rule in effect at  
30 the time the request for extension is submitted. [Amendment #2]  
31

32 **Condition 25:** The certificate holder shall complete construction of the facility by September  
33 14, ~~2018~~2020. Construction is complete when: (1) the facility is substantially complete as  
34 defined by the certificate holder’s construction contract documents, (2) acceptance testing  
35 has been satisfactorily completed and (3) the energy facility is ready to begin continuous  
36 operation consistent with the site certificate. The certificate holder shall promptly notify the  
37 Department of the date of completion of construction. The Council may grant an extension

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<sup>20</sup> MWPAMD2Doc31 Public CC Request I. Gilbert, October 21, 2015. In a comment on the proposed order, Irene Gilbert states that allowing documentation to show compliance with the statutes and EFSC rules after the site certificate is issued is not consistent with the requirements of ORS 469.503 and OAR 345-022-0000(1). The Council finds that the facility, as amended, complies with all applicable EFSC standards, and all other applicable rules and statutes as further described in this order and that Ms. Gilbert’s comments provide no basis to revise this finding.  
Montague Wind Power Facility

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

4 **Conclusions of Law**  
5

6 For the reasons discussed above, and subject to the existing and amended conditions in the site  
7 certificate, the Council finds that the facility, as amended, complies with the Council's General  
8 Standard of Review.  
9

10 **III.B.1.b. Organizational Expertise: OAR 345-022-0010**  
11

12 *(1) To issue a site certificate, the Council must find that the applicant has the*  
13 *organizational expertise to construct, operate and retire the proposed facility in*  
14 *compliance with Council standards and conditions of the site certificate. To conclude that*  
15 *the applicant has this expertise, the Council must find that the applicant has*  
16 *demonstrated the ability to design, construct and operate the proposed facility in*  
17 *compliance with site certificate conditions and in a manner that protects public health*  
18 *and safety and has demonstrated the ability to restore the site to a useful, non-*  
19 *hazardous condition. The Council may consider the applicant's experience, the*  
20 *applicant's access to technical expertise and the applicant's past performance in*  
21 *constructing, operating and retiring other facilities, including, but not limited to, the*  
22 *number and severity of regulatory citations issued to the applicant.*  
23

24 *(2) The Council may base its findings under section (1) on a rebuttable presumption*  
25 *that an applicant has organizational, managerial and technical expertise, if the*  
26 *applicant has an ISO 9000 or ISO 14000 certified program and proposes to design,*  
27 *construct and operate the facility according to that program.*  
28

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

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*  
38 *the site certificate, the Council may issue the site certificate subject to the condition*  
39 *that the certificate holder shall not commence construction or operation as*  
40 *appropriate until the third party has obtained the necessary permit or approval and*  
41 *the applicant has a contract or other arrangement for access to the resource or*  
42 *service secured by that permit or approval.*

1 **Findings of Fact**

2  
3 As applicable to this amendment request, subsections (1) and (2) of the Council’s  
4 Organizational Expertise standard require that the certificate holder demonstrate the ability to  
5 design, construct, and operate a facility in compliance with Council standards and all site  
6 certificate conditions, as well as to restore the site to a useful, non-hazardous condition. The  
7 Council may consider the certificate holder’s experience and past performance in constructing,  
8 operating and retiring other facilities. Subsections (3) and (4) address third party permits.  
9

10 The Council addressed the Organizational Expertise standard in section IV.2.a of the *Final Order*  
11 *on the Application for Site Certificate*. The Council found that, with Condition 29<sup>21</sup>, the  
12 certificate holder has the expertise to construct, operate and retire the facility in compliance  
13 with Council standards and that it has a reasonable likelihood of obtaining all third party  
14 permits necessary.<sup>22</sup>  
15

16 In reviewing the first request to amend the site certificate to extend the construction deadlines  
17 and reduce the minimum blade tip clearance, the Council found that the proposed changes did  
18 not impact the certificate holder’s ability to comply with the Organizational Expertise standard.  
19 As a result, the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the*  
20 *Application for Site Certificate*.<sup>23</sup>  
21

22 The department received a comment on RFA #2 from Nancy Watson regarding Groton Wind,  
23 LLC, a subsidiary of Iberdrola, and its construction and operation of the Groton Wind Farm in  
24 New Hampshire. Ms. Watson commented that Groton Wind, LLC had violated New Hampshire’s  
25 equivalent of a site certificate in several instances including constructing components in  
26 different locations than permitted, constructing road grades at different levels than approved  
27 and not installing fire suppression equipment inside the turbines until they were forced to do  
28 so.<sup>24</sup> Ms. Watson’s comments on the proposed order include a list of alleged violations filed by  
29 the New Hampshire State Fire Marshall to the New Hampshire Site Evaluation Committee and  
30 references a Settlement Agreement between Groton Wind and Counsel for the Public,  
31 approved July 9, 2014. Ms. Watson indicates that the referenced issues and/or enforcement  
32 claims were resolved as a result of implementation of negotiated settlements.  
33

34 Iberdrola has two operating wind power facilities in Oregon and all are in compliance with their  
35 site certificates. Given its ongoing compliance with its Oregon facilities and the lack of  
36 unresolved compliance issues at the referenced New Hampshire facility, the Council finds that  
37 through Iberdrola, Montague has demonstrated that it has the organizational expertise to

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<sup>21</sup> Condition 29 requires that the certificate holder provide confirmation to the department that third party contractors have obtained all necessary permits.

<sup>22</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 17

<sup>23</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 11

<sup>24</sup> MWPAMD2Doc15 Public Comment Watson, 2015-04-22

1 construct, operate and retire the facility in compliance with Council standards and conditions of  
2 the site certificate.

3  
4 The requested amendment will not cause a change to the certificate holder's ability to  
5 construct, operate and retire the facility in compliance with Council standards and conditions of  
6 the site certificate. As a result, the requested amendment will not have an impact on the  
7 certificate holder's compliance with the Organizational Expertise standard. The certificate  
8 holder will remain subject to the conditions in the site certificate.

9  
10 **Conclusions of Law**

11  
12 For the reasons discussed above, and subject to continued compliance with the existing  
13 conditions in the site certificate, the Council finds that the facility, as amended, complies with  
14 the Council's Organizational Expertise standard.

15  
16 **III.B.1.c. Structural Standard: OAR 345-022-0020**

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

20  
21 *(a) The applicant, through appropriate site-specific study, has adequately*  
22 *characterized the site as to the Maximum Considered Earthquake Ground Motion*  
23 *as shown for the site in the 2009 International Building Code and maximum*  
24 *probable ground motion, taking into account ground failure and amplification for*  
25 *the site specific soil profile under the maximum credible and maximum probable*  
26 *seismic events; and*

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

34  
35 *(c) The applicant, through appropriate site-specific study, has adequately*  
36 *characterized the potential geological and soils hazards of the site and its vicinity*  
37 *that could, in the absence of a seismic event, adversely affect, or be aggravated*  
38 *by, the construction and operation of the proposed facility; and*

39  
40 *(d) The applicant can design, engineer and construct the facility to avoid dangers*  
41 *to human safety presented by the hazards identified in subsection (c).*  
42

1 (2) The Council may issue a site certificate for a facility that would produce power  
2 from wind, solar or geothermal energy without making the findings described in  
3 section (1). However, the Council may apply the requirements of section (1) to  
4 impose conditions on a site certificate issued for such a facility.  
5

6 (3) The Council may issue a site certificate for a special criteria facility under OAR  
7 345-015-0310 without making findings described in section (1). However, the Council  
8 may apply the requirements of section (1) to impose conditions on a site certificate  
9 issued for such a facility.  
10

### 11 **Findings of Fact**

12  
13 Section (1) of the Structural standard generally requires the Council to evaluate whether the  
14 certificate holder has adequately characterized the potential seismic, geological and soil  
15 hazards of the site, and can design, engineer and construct the facility to avoid dangers to  
16 human safety from these hazards.<sup>25</sup> Pursuant to OAR 345-022-0020(2), the Council may issue a  
17 site certificate for a wind energy facility without making findings regarding the Structural  
18 standard; however, the Council may apply the requirements of the standard to impose site  
19 certificate conditions. OAR 345-022-0020(3) does not apply to this facility because the facility is  
20 not a special criteria facility under OAR 345-015-0310.  
21

22 The Council addressed the Structural Standard in Section IV.5.a of the *Final Order on the*  
23 *Application for Site Certificate*. The Council imposed conditions 12, 13, 14, 52, 53 and 54 but did  
24 not make findings.<sup>26</sup>  
25

26 In reviewing the first request to amend the site certificate to extend the construction deadlines  
27 and reduce the minimum blade tip clearance, the Council relied on the same conditions related  
28 to the Structural standard.  
29

30 The requested amendment does not affect the certificate holder's characterization of the site  
31 or seismic hazards, or its ability to design, engineer, and construct the facility to avoid dangers  
32 to human safety presented by seismic, geologic or soils hazards. Therefore, no changes or  
33 additions to the conditions imposed in the original site certificate are required.

---

<sup>25</sup> The Council's jurisdictional authority does not preempt the jurisdiction of any state or local government over matters related to building code compliance.

<sup>26</sup> Conditions 12, 13 and 14 in the site certificate are mandatory conditions regarding geotechnical investigation and protection of the public from seismic hazards. Condition 52 requires the certificate holder to perform appropriate site-specific geotechnical investigations before beginning construction to evaluate the subsurface and foundation support characteristics at the locations of the turbine towers and other significant facility structures. Condition 53 requires the certificate holder to design all components of the facility to meet or exceed minimum standards required by the Oregon Structural Specialty Code and the 2006 International Building Code. Condition 54 requires the certificate holder to design and build the facility to avoid dangers to human safety presented by non-seismic hazards.

1 **Conclusions of Law**

2  
3 Based on the foregoing analysis, and in accordance with OAR 345-022-0020(2), the Council  
4 relies on the conditions currently imposed in the existing site certificate to address facility  
5 compliance with the Structural standard.

6  
7 **III.B.1.d. Soil Protection: OAR 345-022-0022**

8  
9 *To issue a site certificate, the Council must find that the design, construction and*  
10 *operation of the facility, taking into account mitigation, are not likely to result in a*  
11 *significant adverse impact to soils including, but not limited to, erosion and chemical*  
12 *factors such as salt deposition from cooling towers, land application of liquid effluent,*  
13 *and chemical spills.*

14  
15 **Findings of Fact**

16  
17 The Soil Protection standard requires the Council to find that the design, construction and  
18 operation of the facility are not likely to result in significant adverse impacts to soil.

19  
20 The Council addressed the Soil Protection standard in Section IV.3.b. of the *Final Order on the*  
21 *Application for Site Certificate*. The Council found that the design, construction, and operation  
22 of the facility, when taking into account mitigation, would not result in a significant adverse  
23 impact to soils. In the original site certificate the Council adopted nine conditions (conditions  
24 38, 44, 55, 56, 80, 81, 82, 85 and 92) to control and mitigate potential adverse impact to soils  
25 and to mitigate the risk of soil contamination during construction and operation.<sup>27</sup>

26  
27 In reviewing the first request to amend the site certificate to extend the construction deadlines  
28 and reduce the minimum blade tip, the Council found that the proposed changes did not  
29 impact compliance with the Soil Protection standard. As a result, the *Final Order on*  
30 *Amendment #1* relied on the analysis in the *Final Order on the Application for Site Certificate*.<sup>28</sup>

31  
32 The requested amendment will not result in any soil impacts that have not been addressed by  
33 the Council or otherwise affect the certificate holder's ability to design, construct and operate  
34 the facility without significant adverse impact to soils. The certificate holder will remain subject  
35 to the conditions currently imposed in the existing site certificate.

36  
37  
38  
39  

---

<sup>27</sup> MWPAPPD147 MWP Final Order 2010-09-10, p. 60

<sup>28</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 13

1 **Conclusions of Law**

2  
3 Based on the reasoning discussed above, and subject to continued compliance with conditions  
4 currently imposed in the existing site certificate, the Council finds that the facility, as amended,  
5 complies with the Council’s Soil Protection standard.  
6

7 **III.B.1.e. Land Use: OAR 345-022-0030**

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

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

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

19  
20 *(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b)*  
21 *and the Council determines that:*

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

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

32  
33 *(C) For a proposed facility that the Council decides, under sections (3) or (6),*  
34 *to evaluate against the statewide planning goals, the proposed facility*  
35 *complies with the applicable statewide planning goals or that an exception to*  
36 *any applicable statewide planning goal is justified under section (4).*

37 \*\*\*

38 For the amendment request, the Council will continue to make its land use determination  
39 under ORS 469.504(1)(b), which requires:

40  
41 *(A) The facility complies with applicable substantive criteria from the affected*  
42 *local government’s acknowledged comprehensive plan and land use*

1 regulations that are required by the statewide planning goals and in in  
2 effect on the date the application is submitted, and with any Land  
3 Conservation and Development Commission administrative rules and  
4 goals and any land use statutes that apply directly to the facility under  
5 ORS 197.646.

6 (B) For an energy facility or a related or supporting facility that must be  
7 evaluated against the applicable substantive criteria pursuant to  
8 subsection (5) of this section, that the proposed facility does not comply  
9 with one or more of the applicable substantive criteria but does otherwise  
10 comply with the applicable statewide planning goals, or that an exception  
11 to any applicable statewide planning goal is justified under subsection (2)  
12 of this section.

13 (C) For a facility that the council elects to evaluate against the statewide  
14 planning goals pursuant to subsection (5) of this section, that the  
15 proposed facility complies with the applicable statewide planning goals or  
16 that than exception to any applicable statewide planning goal is justified  
17 under subsection (2) of this section.<sup>29</sup>  
18

19 ORS 469.504(5) provides, in relevant part:  
20

21 *Upon request by the State Department of Energy, the special advisory group established*  
22 *under ORS 469.480 shall recommend to the council, within the time stated in the*  
23 *request, the applicable substantive criteria under subsection (1)(B)(A) of this section. If*  
24 *the special advisory group does not recommend applicable substantive criteria within*  
25 *the time established in the department's request, the council may either determine and*  
26 *apply the applicable substantive criteria under subsection (1)(b) of this section or*  
27 *determine compliance with the statewide planning goals under subsection (1)(b)(B) or*  
28 *(C) of this section.*  
29

### 30 **Findings of Fact**

31  
32 The Land Use standard requires the Council to find that the facility complies with the statewide  
33 planning goals adopted by the Land Conservation and Development Commission (LCDC). As  
34 described above, the Council may find compliance with the statewide planning goals by  
35 applying the applicable substantive criteria from the local governing body under ORS  
36 469.504(1)(b)(A) or ORS 469.504(1)(b)(B). In the original final order, the Council made a  
37 determination of compliance under ORS 469.504(1)(b)(B).<sup>30</sup> The Council appointed the Gilliam  
38 County Board of Commissioners as a special advisory group (SAG). The SAG identified the

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<sup>29</sup> ORS 469.504(b)(2) provides the exceptions process for a facility that does not otherwise comply with one or more of the statewide planning goals. No party has identified the need for any exception in this amendment request.

<sup>30</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 24.

1 following as applicable substantive criteria: Gilliam County Zoning and Land Development  
2 Ordinance (GCZO) Sections 4.020(A), 4.020(D)(14), 4.020(D)(29), 4.020(D)(34), 4.020(H),  
3 4.020(J), 7.010 and 7.020(T).<sup>31</sup> The Council applied the applicable substantive criteria identified  
4 and found that the facility complied with each of the applicable substantive criteria identified  
5 by Gilliam County, except for GCZO Section 4.020(D)(14), which limited the area that a power  
6 generation facility could occupy in an Exclusive Farm Use Zone. With regard to that criterion,  
7 the Council found that the facility otherwise complied with the applicable statewide planning  
8 goals in accordance with ORS 469.504(1)(b)(B).<sup>32</sup>  
9

10 The first amendment to the site certificate extended the construction deadlines and reduced  
11 the minimum blade tip clearance. Pursuant to OAR 345-027-0070(10), the Council was required  
12 to apply the applicable substantive criteria in effect at the time the amendment request was  
13 submitted. After the *Application for Site Certificate* (ASC) was submitted and before *Request for*  
14 *Amendment #1* was submitted, the applicable substantive criteria had changed.<sup>33</sup> The Council  
15 found that the facility was in compliance with the new applicable substantive criteria.<sup>34</sup>  
16

17 In response to RFA #2, the SAG did not provide the substantive criteria in effect on the date the  
18 amendment request was submitted. However, comments from the Gilliam County Planning  
19 Department indicate that the applicable criteria from the GCZO have not been revised since the  
20 last amendment request was submitted and approved. Accordingly, and consistent with OAR  
21 345-027-0070(10), the Council applies the same applicable substantive criteria that were in  
22 place for the *Request for Amendment #1*.  
23

24 The requested amendment does not result in any changes that affect the Council's previous  
25 analysis of compliance with the Land Use standard. Additionally, the Gilliam County Planning  
26 Director submitted a comment stating that the circumstances in the surrounding area have not  
27 changed in a way to affect the facility's compliance with the applicable substantive criteria  
28 evaluated in the *Request for Amendment #1*.<sup>35</sup> The certificate holder will remain subject to the  
29 conditions included in the amended site certificate.  
30

### 31 **Conclusions of Law**

32

33 Based on reasons identified and discussed above, and subject to compliance with existing site  
34 certificate conditions, the Council adopts the findings of compliance with the applicable  
35 substantive criteria from the Gilliam County Land Use Comprehensive Plan and GCZO in *Request*  
36 *for Amendment #1*, and finds that the facility, as amended, satisfies the Council's Land Use  
37 standard.

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<sup>31</sup> *Id.* p. 26

<sup>32</sup> *Id.* p. 57

<sup>33</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 16

<sup>34</sup> *Id.* p. 34

<sup>35</sup> MWPAMD2Doc13 Agency Comment Gilliam County Planning, 2015-04-20

Montague Wind Power Facility

FINAL ORDER ON REQUEST FOR CONTESTED CASE AND AMENDMENT #2

December 4, 2015

1 III.B.1.f. Protected Areas: OAR 345-022-0040

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

10  
11 *(a) National parks, including but not limited to Crater Lake National Park and Fort*  
12 *Clatsop National Memorial;*

13  
14 *(b) National monuments, including but not limited to John Day Fossil Bed National*  
15 *Monument, Newberry National Volcanic Monument and Oregon Caves National*  
16 *Monument;*

17  
18 *(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et*  
19 *seq. and areas recommended for designation as wilderness areas pursuant to 43*  
20 *U.S.C. 1782;*

21  
22 *(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon*  
23 *Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart*  
24 *Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath,*  
25 *Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper*  
26 *Klamath, and William L. Finley*

27  
28 *(e) National coordination areas, including but not limited to Government Island,*  
29 *Ochoco and Summer Lake;*

30 *(f) National and state fish hatcheries, including but not limited to Eagle Creek and*  
31 *Warm Springs;*

32  
33 *(g) National recreation and scenic areas, including but not limited to Oregon Dunes*  
34 *National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon*  
35 *Cascades Recreation Area, and Columbia River Gorge National Scenic Area;*

36  
37 *(h) State parks and waysides as listed by the Oregon Department of Parks and*  
38 *Recreation and the Willamette River Greenway;*

39  
40 *(i) State natural heritage areas listed in the Oregon Register of Natural Heritage*  
41 *Areas pursuant to ORS 273.581;*

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

3  
4           (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers  
5           designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed  
6           as potentials for designation;

7  
8           (l) Experimental areas established by the Rangeland Resources Program, College of  
9           Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site,  
10          the Starkey site and the Union site;

11  
12          (m) Agricultural experimental stations established by the College of Agriculture,  
13          Oregon State University, including but not limited to: Coastal Oregon Marine  
14          Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension  
15          Center, Hood River Agriculture Research and Extension Center, Hermiston Columbia  
16          Basin Agriculture Research Center, Pendleton Columbia Basin Agriculture Research  
17          Center, Moro North Willamette Research and Extension Center, Aurora East Oregon  
18          Agriculture Research Center, Union Malheur Experiment Station, Ontario Eastern  
19          Oregon Agriculture Research Center, Burns Eastern Oregon Agriculture Research  
20          Center, Squaw Butte Central Oregon Experiment Station, Madras Central Oregon  
21          Experiment Station, Powell Butte Central Oregon Experiment Station, Redmond  
22          Central Station, Corvallis Coastal Oregon Marine Experiment Station, Newport  
23          Southern Oregon Experiment Station, Medford Klamath Experiment Station, Klamath  
24          Falls;

25  
26          (n) Research forests established by the College of Forestry, Oregon State University,  
27          including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett  
28          Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the  
29          Marchel Tract;

30          (o) Bureau of Land Management areas of critical environmental concern,  
31          outstanding natural areas and research natural areas;

32  
33          (p) State wildlife areas and management areas identified in OAR chapter 635,  
34          Division 8.

35          \*\*\*

36  
37          **Findings of Fact**

38  
39          The Protected Areas standard requires the Council to find that, taking into account mitigation,  
40          the design, construction and operation of the facility is not likely to result in significant adverse  
41          impacts to any protected area as defined by OAR 345-022-0040. The Council addressed the  
42          Protected Area standard in Section IV.3.c of the *Final Order on the Application for Site*

1 *Certificate* and found that the facility, within implementation of Condition 97, complied with  
2 that standard.<sup>36,37</sup>

3  
4 In reviewing the first request to amend the site certificate to extend the construction deadlines  
5 and reduce the minimum blade tip clearance, the Council found that the proposed changes did  
6 not impact compliance with the Protected Area standard. As a result, the *Final Order on*  
7 *Amendment #1* relied on the analysis in the *Final Order on the Application for Site Certificate*.<sup>38</sup>

8  
9 The requested amendment will not result in any impacts to protected areas that have not been  
10 addressed by the Council or otherwise affect the certificate holder's ability to design, construct  
11 and operate the facility without significant adverse impact to protected areas. The certificate  
12 holder will remain subject to the condition (Condition 97) included in the amended site  
13 certificate.

14  
15 **Conclusions of Law**

16  
17 For the reasons discussed above, and subject to continued compliance with the existing  
18 conditions in the site certificate, the Council finds that the facility, as amended, complies with  
19 the Protected Areas standard.

20  
21 **III.B.1.g. Retirement and Financial Assurance: OAR 345-022-0050**

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

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

31  
32 The Retirement and Financial Assurance standard requires the Council to find that the  
33 certificate holder has the ability to restore the facility site to a useful, non-hazardous condition  
34 at the end of the facility's useful life, or should either the certificate holder stop construction  
35 prior to completion or the facility cease to operate. The Council addressed the Retirement and  
36 Financial Assurance standard in Section IV.2.b. of the *Final Order on the Application for Site*  
37 *Certificate*. The Council imposed four conditions to ensure that the actions necessary to restore  
38 the site were feasible and that the restoration of the site to a useful, non-hazardous condition

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<sup>36</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p.63

<sup>37</sup> Condition 97 requires a 1,300 foot buffer zone from the Horn Butte Wildlife Area during long-billed curlew nesting season.

<sup>38</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 36

1 could be achieved and that the certificate holder had demonstrated a reasonable likelihood of  
2 obtaining a bond or letter of credit of at least \$21.511 million (3<sup>rd</sup> Quarter 2010 dollars).<sup>39</sup>  
3

4 In reviewing the first request to amend the site certificate to extend the construction deadlines  
5 and reduce the minimum blade tip clearance, the Council found that the proposed changes did  
6 not impact compliance with the Retirement and Financial Assurance standard. As a result, the  
7 *Final Order on Amendment #1* relied on the analysis in the *Final Order on the Application for*  
8 *Site Certificate*.<sup>40</sup>  
9

10 The requested amendment does not affect the ability of the certificate holder to restore the  
11 site to a useful, non-hazardous condition. However, given the passage of time since the last  
12 amendment was approved, the certificate holder provided a new comfort letter from  
13 Santander Bank, N.A. as proof that the certificate holder has a reasonable likelihood of  
14 obtaining a bond or letter of credit of at least \$21.511 million (3<sup>rd</sup> Quarter 2010 Dollars).  
15 Therefore, no changes or additions to conditions of the site certificate are required.  
16

### 17 **Conclusions of Law**

18

19 For the reasons discussed above, and subject to continued compliance with the existing  
20 conditions in the site certificate, the Council finds that the facility, as amended, complies with  
21 the Council’s Retirement and Financial Assurance standard.  
22

#### 23 **III.B.1.h. Fish and Wildlife Habitat: OAR 345-022-0060**

24

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

### 30 **Findings of Fact**

31

32 The Fish and Wildlife Habitat standard requires the Council to find that the design,  
33 construction, and operation of the facility are consistent with fish and wildlife habitat  
34 mitigation goals as set forth in OAR 635-415-0025.  
35

36 The Council addressed the Fish and Wildlife Habitat standard in Section IV.4.b of the *Final Order*  
37 *on the Application for Site Certificate*. The Council made findings regarding the characteristics of  
38 the habitat types within the site boundary and the State sensitive species observed within or  
39 near the site boundary during avian point-counts and other wildlife surveys. Based on those

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<sup>39</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p 17

<sup>40</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 37

1 findings, the Council found that, subject to specified conditions, the design, construction and  
2 operation of the facility, taking mitigation into consideration, would be consistent with ODFW's  
3 habitat mitigation goals and standards.<sup>41</sup> To ensure compliance with the Fish and Wildlife  
4 standard, the Council adopted a series of site certificate conditions, all related to ensuring  
5 appropriate construction and operation design, monitoring and mitigation to avoid adverse  
6 effects on affected habitats.<sup>42</sup>

7  
8 During review of the first request to amend to the site certificate to extend the construction  
9 deadlines and reduce the minimum blade tip clearance, a number of commenters expressed  
10 concern over outdated survey information. The Council found that because Conditions 94, 95,  
11 and 96 required updated wildlife surveys prior to construction, the expressed concerns were  
12 properly addressed by the site certificate. As a result, the *Final Order on the Request for*  
13 *Amendment #1* did not require any additional conditions and found that the facility complied  
14 with the Fish and Wildlife Habitat standard.

15  
16 Given the passage of time since the first amendment was approved, the issue of outdated  
17 surveys remains a concern. For the reasons discussed in the *Final Order on the Request for*  
18 *Amendment #1* and as summarized above, the impacts of outdated data is primarily addressed  
19 by requiring the certificate holder to provide updated surveys prior to the beginning of  
20 construction. However, as updated surveys are performed, it is critical that the new information  
21 and potential impacts are thoroughly addressed to ensure continued compliance with the Fish  
22 and Wildlife Habitat standard. As a result the Council adopts the following change to Condition  
23 95(e):

24  
25 **Condition 95(e):** Before beginning construction, certificate holder's qualified biologist shall  
26 complete raptor nest surveys within the raptor nest survey area as described in the Final  
27 Order on the Application. The purposes of the survey are to identify any sensitive raptor  
28 nests near construction areas and to provide baseline information on raptor nest use for  
29 analysis as described in the Wildlife Monitoring and Mitigation Plan referenced in Condition  
30 91. The certificate holder shall provide a written report on the raptor nest surveys and the

---

<sup>41</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 113

<sup>42</sup> Generally, condition 95 ensures that prior to construction the certificate holder will complete additional plant surveys, wildlife surveys, avian use surveys, and raptor nest surveys. Condition 31 requires the certificate holder to provide the department a description of the final design configuration and an assessment of the affected habitats before beginning construction, and to consult with ODFW at the time of the pre-construction habitat assessments. Condition 94 ensures Washington ground squirrel survey coordination and protection. Condition 99 addresses facility design measures to reduce potential adverse effects to avian species. Condition 91 incorporates the Wildlife Monitoring and Mitigation Plan and requires the certificate holder to conduct wildlife monitoring as described in that Plan. Condition 93 requires the certificate holder to protect and enhance a mitigation area as described in the Habitat Mitigation Plan. Condition 96 requires avoidance of construction impacts to raptors during the nesting season. Condition 98 restricts the location of construction activities. Condition 100 requires the certificate holder to instruct personnel about sensitive species, exclusion areas, permit requirements and other environmental issues.

1 surveys to the Department and ODFW. If the surveys identify the presence of raptor nests  
2 within the survey area, the certificate holder shall implement appropriate measures to  
3 assure that the design, construction and operation of the facility are consistent with the fish  
4 and wildlife habitat mitigation goals and standards of OAR 635-415-0025, as approved by  
5 the Department, in consultation with ODFW.  
6

7 In addition, the Council adopts a site certification requirement in the Amended Site Certificate  
8 requiring the department to present the results of the surveys to the Council following the  
9 completion and review of those updated surveys.<sup>43</sup>

10  
11 The approved Wildlife Monitoring and Mitigation Plan required that the certificate holder  
12 conduct long term raptor nesting monitoring surveys beginning in the ninth year of operation.  
13 ODFW submitted comments on RFA #2 recommending that the timing of the surveys be revised  
14 and that instead of beginning the long term surveys in the ninth year, Montague begin the long  
15 term raptor nesting monitoring surveys in the first raptor nesting season that is divisible by 5  
16 (i.e. 2020, 2025, 2030) after the facility has been in operation for at least five years.<sup>44</sup> The  
17 purpose of this recommended change is to facilitate better coordination with surrounding wind  
18 facilities to provide raptor nest surveys in the same years in order to produce better data.  
19 Montague responded that it agrees to ODFW's recommendation.  
20

21 In order to implement ODFW's recommended survey protocol, the Council adopts the revised  
22 draft Wildlife Monitoring and Mitigation Plan, provided as Attachment B to this order, which  
23 replaces the existing survey requirements with a requirement that the certificate holder  
24 conduct the first year of long-term raptor nest surveys in the first year after year four of  
25 operation that is divisible by five (i.e., 2020, 2025, 2030, etc.) and that thereafter the surveys be  
26 completed every five years.  
27

28 The most recent habitat assessment was provided to the department in 2010. At the  
29 department's request, ODFW district biologist Steve Cherry reviewed the current habitat data  
30 and confirmed there have been no changes since that 2010 habitat assessment was  
31 completed.<sup>45</sup> Additionally, in response to the department's request, the certificate holder

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<sup>43</sup> MWPAMD2Doc31 Public CC Request I. Gilbert, October 21, 2015. In a public comment on the proposed order, Irene Gilbert argues that current wildlife surveys need to be provided prior to issuance of a site certificate (pursuant to ORS 469.401(2), ORS 469.503 and OAR 345-022-0000) and those surveys must extend to the outer limits of the setbacks recommended by ODFW and USFWS for animals potentially utilizing this site and as described in the definition of "study area" contained in the council administrative rules. Ms. Gilbert's concerns over outdated survey information are addressed in the changes to conditions 31, 95(b) and 95(e). Ms. Gilbert does not provide citation to the "outer limits of the setbacks recommended by ODFW and USFW for animals potentially utilizing this site" and does not explain why the "study area" definition provided in OAR 345-001-0010(59) should be applied as a wildlife survey area boundary requirement or why it is required pursuant to a Council standard, and therefore these comments are not further evaluated in this order.

<sup>44</sup> MWPAMD2Doc10 Agency Comment ODFW, April 13, 2015

<sup>45</sup> MWPAMD2Doc21 Agency Comment ODFW, June 22, 2015

1 confirmed that the analysis area continues to be used for “agricultural crop cultivation and  
2 animal grazing. Habitat consists of cropland, Conservation Reserve Program, grassland, shrub-  
3 steppe, and juniper woodland. There have been no substantive changes in land management  
4 practices or land uses.”<sup>46</sup> Based on the certificate holder’s statement and ODFW’s assessment,  
5 the Council finds that a new habitat assessment is not necessary until prior to beginning  
6 construction.

7  
8 Specifically condition 31 requires that the department approve a habitat assessment prior to  
9 beginning construction. The previous habitat assessment was submitted in 2010, when  
10 Montague was completing pre-construction conditions in anticipation of beginning  
11 construction. Even though the evidence doesn’t indicate any change in the habitat to date, it is  
12 possible changes to habitat characteristics and classifications could occur prior to construction.  
13 To ensure that the mitigation plan is based on recent and accurate information the Council  
14 amends Condition 31 requiring Montague to submit an updated habitat assessment in the two  
15 years prior to beginning construction:

16  
17 **Condition 31:** Before beginning construction but no more than two years before beginning  
18 construction and after considering all micrositing factors, the certificate holder shall provide  
19 to the Department, to the Oregon Department of Fish and Wildlife (ODFW) and to the  
20 Planning Director of Gilliam County detailed maps of the facility site, showing the final  
21 locations where the certificate holder proposes to build facility components, and a table  
22 showing the acres of temporary and permanent habitat impact by habitat category and  
23 subtype, similar to Table 6 in the Final Order on the Application. The detailed maps of the  
24 facility site shall indicate the habitat categories of all areas that would be affected during  
25 construction (similar to Figures P8-a through P-8d in the site certificate application). In  
26 classifying the affected habitat into habitat categories, the certificate holder shall consult  
27 with the ODFW. The certificate holder shall not begin ground disturbance in an affected  
28 area until the habitat assessment has been approved by the Department. The Department  
29 may employ a qualified contractor to confirm the habitat assessment by on-site inspection.  
30

31 With the adopted condition revisions, the requested amendment will not result in impacts to  
32 fish and wildlife habitat that have not been addressed by the Council or otherwise affect the  
33 certificate holder’s ability to design, construct, and operate the facility in a manner consistent  
34 with fish and wildlife habitat mitigation goals as set forth in OAR 635-415-0025. The certificate  
35 holder will remain subject to the existing conditions included in the site certificate.

36  
37  
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39  
40  

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<sup>46</sup> MWPAMD2Doc23 RAI 2 Response, July 16, 2015  
Montague Wind Power Facility  
FINAL ORDER ON REQUEST FOR CONTESTED CASE AND AMENDMENT #2  
December 4, 2015

1 **Conclusions of Law**

2  
3 For the reasons discussed above, and subject to the existing and amended conditions in the site  
4 certificate, the Council finds that the facility, as amended, complies with the Council’s Fish and  
5 Wildlife standard.  
6

7 **III.B.1.i. Threatened and Endangered Species: OAR 345-022-0070**

8  
9 *To issue a site certificate, the Council, after consultation with appropriate state agencies,*  
10 *must find that:*

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

14  
15 *(a) Are consistent with the protection and conservation program, if any, that the*  
16 *Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

17  
18 *(b) If the Oregon Department of Agriculture has not adopted a protection and*  
19 *conservation program, are not likely to cause a significant reduction in the likelihood*  
20 *of survival or recovery of the species; and*

21  
22 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*  
23 *threatened or endangered under ORS 496.172(2), the design, construction and operation*  
24 *of the proposed facility, taking into account mitigation, are not likely to cause a*  
25 *significant reduction in the likelihood of survival or recovery of the species.*  
26

27 **Findings of Fact**

28  
29 The Threatened and Endangered Species standard requires the Council, in consultation with  
30 appropriate state agencies, to find that the construction and operation of the facility is  
31 consistent with applicable protection plans for threatened or endangered plant and animal  
32 species. The Council must also determine that the facility’s construction and operation are not  
33 likely to cause a significant reduction in the likelihood of a species’ survival or recovery.  
34

35 The Council addressed the Threatened and Endangered Species standard in Section IV.4.a of the  
36 *Final Order on the Application for Site Certificate* and determined that, subject to specified  
37 conditions, the facility complied with the Council’s standard.<sup>47,48</sup>

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<sup>47</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 92

<sup>48</sup> MWPAMD2Doc31 Public CC Request I. Gilbert, October 21, 2015. In a public comment on the proposed order, Irene Gilbert argues that setbacks from construction activities or construction from nest sites need to be extended to include bald and golden eagles as well as all threatened or endangered species, and need to be required year round at the distances recommended by the US Fish and Wildlife Service and the Oregon Department of Fish and Montague Wind Power Facility

1 In reviewing the first request to amend the site certificate to extend the construction deadlines  
2 and reduce the minimum blade tip clearance, the Council found that there had not been a  
3 change of circumstance that required any additional conditions and that the facility met the  
4 Threatened and Endangered Species standard. As a result, the *Final Order on Amendment #1*  
5 did not require any additional conditions and found that the facility met the Fish and Wildlife  
6 Habitat standard.<sup>49</sup>

7  
8 There has been no evidence presented that circumstances have changed since the first  
9 amendment that would require additional mitigation to ensure continued compliance with this  
10 standard. However, given the passage of time since the first amendment was approved, the  
11 potential for changes in habitat must be considered. While the Washington Ground Squirrel  
12 (WGS) surveys are required to be updated by existing site certificate condition 94 and 95 prior  
13 to the beginning of construction, the current conditions do not require the certificate holder to  
14 provide updated surveys for all threatened and endangered species on all areas that are to be  
15 disturbed during construction.

16  
17 Montague submitted the completed surveys required by condition 95 to the department in  
18 September, 2010. Without an amendment to this condition, all data on threatened and  
19 endangered species (with the exception of WGS) would be from 2010 or earlier, which would  
20 not ensure evaluation of potential changes in habitat conditions. As a result, to ensure  
21 compliance with the Threatened and Endangered Species standard the Council amends  
22 condition 95(b) as follows:

23  
24 **Condition 95(b):** Before beginning construction but no more than two years prior to the  
25 beginning of construction, the certificate holder shall provide the department a map  
26 showing the final design locations of all components of the facility and the areas that would  
27 be disturbed during construction and identifying the survey areas for all plant and wildlife  
28 surveys conducted in 2010 or earlier as described in the Final Order on the Application. The  
29 certificate holder shall hire a qualified biologist to conduct a pre-construction plant and  
30 wildlife investigation survey of all areas to be disturbed by construction for threatened and  
31 endangered species. of all areas that would be disturbed during construction that lie  
32 outside of the previously surveyed areas. The certificate holder shall provide a written  
33 report evaluating the investigation survey and a copy of the survey to the Department, and  
34 the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Department of  
35 Agriculture (ODA). ~~Based on consultation with the Department and ODFW, the certificate~~  
36 ~~holder shall implement appropriate measures to avoid impacts to any Category 1 habitat, to~~

---

Wildlife. The comment does not explain why the survey buffer area needs to be extended to include bald and golden eagles, why Condition 96 is not adequate to ensure continued compliance with any applicable Council standard, or why the buffer areas should apply to construction areas year-round in order for the certificate holder to demonstrate continued compliance with any Council standard. Therefore, these comments are not further evaluated in this order.

<sup>49</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 42

1 ~~any state-listed or threatened or endangered plant or wildlife species, and to any State~~  
2 ~~Candidate Species.~~ If the surveys identifies the presence of threatened or endangered  
3 species within the survey area, the certificate holder shall implement appropriate measures  
4 to avoid a significant reduction in the likelihood of survival or recovery of the species, as  
5 approved by the Department, in consultation with ODA and ODFW.  
6

7 With the imposed condition revisions, the requested amendment will not result in impacts to  
8 threatened or endangered plant or animal species that have not been addressed by the Council  
9 or otherwise affect the certificate holder's ability to construct and operate the facility  
10 consistent with applicable protection plans for threatened or endangered plant and animal  
11 species and in a manner which will not likely to cause a significant reduction in the likelihood of  
12 a species' survival or recovery.

### 14 **Conclusions of Law**

15  
16 For the reasons discussed above, and subject to the existing and amended conditions in the site  
17 certificate, the Council finds that the facility, as amended, complies with the Council's  
18 Threatened and Endangered Species standard.

#### 20 **III.B.1.j. Scenic Resources: OAR 345-022-0080**

21  
22 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*  
23 *find that the design, construction and operation of the facility, taking into account*  
24 *mitigation, are not likely to result in significant adverse impact to scenic resources and*  
25 *values identified as significant or important in local land use plans, tribal land*  
26 *management plans and federal land management plans for any lands located within the*  
27 *analysis area described in the project order.*

### 29 **Findings of Fact**

30  
31 The Scenic Resources standard requires the Council to find that the design, construction, and  
32 operation of the facility are not likely to result in adverse impacts to scenic resources and  
33 values identified as important in the identified management plans.

34  
35 The Council addressed the Scenic Resource standard in Section IV.3.d of the *Final Order on the*  
36 *Application for Site Certificate*. The Council found that, subject to conditions to ensure  
37 adequate mitigation, the design, construction and operation of the facility were not likely to  
38 result in significant adverse impacts to scenic resources and values identified as significant or  
39 important in local land use plans, tribal land management plans and federal land management  
40 plans for any lands located within the analysis area.<sup>50</sup>

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<sup>50</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 74  
Montague Wind Power Facility  
FINAL ORDER ON REQUEST FOR CONTESTED CASE AND AMENDMENT #2  
December 4, 2015

1 In reviewing the first request to amend the site certificate to extend the construction deadlines  
2 and reduce the minimum blade tip clearance, the Council found that the request did not impact  
3 compliance with the Scenic Resources standard. As a result, the *Final Order on Amendment #1*  
4 relied on the analysis in the *Final Order on the Application for Site Certificate*.<sup>51</sup>  
5

6 The requested amendment will not result in any impacts to important scenic resources that  
7 have not been addressed by the Council or otherwise affect the certificate holder's ability to  
8 design, construct and operate the facility without significant adverse impact to important scenic  
9 resources. The certificate holder will remain subject to the existing conditions in the site  
10 certificate.  
11

### 12 **Conclusions of Law**

13  
14 For the reasons discussed above, and subject to compliance with the existing conditions in the  
15 site certificate, the Council finds that the facility, as amended, complies with the Council's  
16 Scenic Resources standard.  
17

#### 18 **III.B.1.k. Historic, Cultural and Archaeological Resources: OAR 345-022-0090**

19  
20 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*  
21 *Council must find that the construction and operation of the facility, taking into*  
22 *account mitigation, are not likely to result in significant adverse impacts to:(a)*  
23 *Historic, cultural or archaeological resources that have been listed on, or would likely*  
24 *be listed on the National Register of Historic Places;*  
25

26 *(b) For a facility on private land, archaeological objects, as defined in ORS*  
27 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*  
28

29 *(c) For a facility on public land, archaeological sites, as defined in ORS*  
30 *358.905(1)(c).*  
31

32 *(2) The Council may issue a site certificate for a facility that would produce power*  
33 *from wind, solar or geothermal energy without making the findings described in*  
34 *section (1). However, the Council may apply the requirements of section (1) to*  
35 *impose conditions on a site certificate issued for such a facility.*  
36

37  
38  
39  
40  
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<sup>51</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 43  
Montague Wind Power Facility  
FINAL ORDER ON REQUEST FOR CONTESTED CASE AND AMENDMENT #2  
December 4, 2015

1 **Findings of Fact**

2  
3 Section (1) of the Historic, Cultural and Archaeological Resources standard generally requires  
4 the Council to find that the facility is not likely to result in significant adverse impacts to  
5 identified historic, cultural or archaeological resources. Under Section (2), the Council may issue  
6 a site certificate for a wind power facility without making findings of compliance with this  
7 section. However, the Council may impose site certificate conditions based on the requirements  
8 of this standard.  
9

10 The Council addressed the Historic, Cultural and Archaeological Standard in Section IV.5.b of  
11 the *Final Order on the Application for Site Certificate*. In accordance with OAR 345-022-0090(2)  
12 the Council adopted conditions 47 through 51, but did not make findings.<sup>52</sup>

13 In reviewing the first request to amend the site certificate to extend the construction deadlines  
14 and reduce the minimum blade tip clearance, the Council relied on the same conditions related  
15 to the Historic, Cultural and Archaeological standard.<sup>53</sup>  
16

17 The requested amendment would not increase ground disturbance or otherwise alter the  
18 Council's previous analysis regarding the Council's Historic, Cultural and Archaeological  
19 Resources standard. The certificate holder will remain subject to the conditions included in the  
20 original site certificate.  
21

22 **Conclusions of Law**

23  
24 Based on the foregoing analysis, and in accordance with OAR 345-022-0090(2), the Council  
25 relies on the conditions currently imposed in the existing site certificate to address facility  
26 compliance with the Council's Historic, Cultural and Archaeological Resources standard.  
27

28 **III.B.1.I. Recreation: OAR 345-022-0100**

29  
30 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*  
31 *find that the design, construction and operation of a facility, taking into account*  
32 *mitigation, are not likely to result in a significant adverse impact to important*  
33 *recreational opportunities in the analysis area as described in the project order. The*  
34 *Council shall consider the following factors in judging the importance of a recreational*  
35 *opportunity:*  
36

- 37 (a) Any special designation or management of the location;  
38 (b) The degree of demand;  
39 (c) Outstanding or unusual qualities;

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<sup>52</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 118

<sup>53</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21,p. 43

- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

**Findings of Fact**

The Recreation standard requires the Council to find that the design, construction, and operation of the facility are not likely to result in adverse impacts to important recreational opportunities.

The Council addressed the Recreation standard in Section IV.3.e of the *Final Order on the Application for Site Certificate*. The Council identified important recreational resources including: Roosevelt City Park, Port of Arlington, China Creek Golf Course, Lewis and Clark National Historic Trail, and the Oregon National Historic Trail. The Council found that the design, construction and operation of the facility were not likely to result in a significant adverse impact to any important recreational opportunities in the analysis area.<sup>54</sup> The Council imposed condition 105<sup>55</sup> to ensure that the facility achieved compliance with this standard.

In reviewing the first request to amend the site certificate to extend the construction deadlines and reduce the minimum blade tip clearance, the Council found that the request did not impact compliance with the Recreational standard. As a result, the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the Application for Site Certificate*.<sup>56</sup>

The requested amendment would not change the site boundary or alter the Council’s previous findings regarding the Council’s Recreational standard. The certificate holder will remain subject to the conditions included in the original site certificate.

**Conclusions of Law**

For the reasons discussed above, and subject to compliance with the existing conditions in the site certificate, the Council finds that the facility, as amended, complies with the Council’s Recreation standard.

**III.B.1.m. Public Services: OAR 345-022-0110**

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

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<sup>54</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 78

<sup>55</sup> Condition 105 requires that turbine and meteorological towers be at least 1,000 feet from the vantage point of the Fourmile Canyon interpretive site looking toward the visible Oregon Trail ruts.

<sup>56</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 45

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

8  
9           (3) The Council may issue a site certificate for a special criteria facility under OAR 345-  
10          015-0310 without making the findings described in section (1). However, the Council may  
11          apply the requirements of section (1) to impose conditions on a site certificate issued for  
12          such a facility.

13          \* \* \*

14          **Findings of Fact**

15  
16          Section (1) of the Public Services standard generally requires the Council to evaluate the  
17          facility's impacts on the ability of public and private service providers to supply sewer and  
18          sewage treatment, water, stormwater drainage, solid waste management, housing, traffic  
19          safety, police and fire protection, health care and schools. Pursuant to OAR 345-022-0110(2),  
20          the Council may issue a site certificate for a wind energy facility without making findings  
21          regarding the Public Services standard; however, the Council may apply the requirements of the  
22          standard to impose site certificate conditions. OAR 345-022-0110(3) does not apply to this  
23          facility because the facility is a not a special criteria facility under OAR 345-015-0310.

24  
25          The Council addressed the Public Services standard in Section IV.5.c of the *Final Order on the*  
26          *Application for Site Certificate*, and in accordance with OAR 345-022-0110(2) imposed  
27          conditions to address the requirements of this standard.<sup>57</sup>

28  
29          In reviewing the first request to amend the site certificate to extend the construction deadlines  
30          and reduce the minimum blade tip clearance, the Council determined that the proposed  
31          changes did not require any additional conditions related to the Public Services standard. As a  
32          result, the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the*  
33          *Application for Site Certificate*.<sup>58</sup>

34  
35          The analysis in the *Final Order on the Application for Site Certificate* and the *Final Order on*  
36          *Amendment #1* was based on the public service providers' representations of their ability to  
37          provide their respective services. However, because the affected service providers' ability to  
38          provide their services could have changed, the certificate holder contacted each of the public  
39          service providers listed in Exhibit U of the ASC and received confirmation of their continuing

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<sup>57</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p.123

<sup>58</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 46

1 ability to provide the services listed in the *Final Order on the Application for Site Certificate*.<sup>59,60</sup>  
2 Consequently, the requested amendment does not alter the Council’s previous analysis  
3 regarding the Public Services standard. The certificate holder will remain subject to the  
4 conditions included in the original site certificate.

5  
6 **Conclusions of Law**

7  
8 Based on the foregoing analysis, and in accordance with OAR 345-022-0110(2), the Council  
9 relies on the conditions currently imposed in the existing site certificate to address facility  
10 compliance with the Council’s Public Services standard.

11  
12 **III.B.1.n. Waste Minimization: OAR 345-022-0120**

13  
14 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*  
15 *Council must find that, to the extent reasonably practicable:(a) The applicant’s solid*  
16 *waste and wastewater plans are likely to minimize generation of solid waste and*  
17 *wastewater in the construction and operation of the facility, and when solid waste or*  
18 *wastewater is generated, to result in recycling and reuse of such wastes;(b) The*  
19 *applicant’s plans to manage the accumulation, storage, disposal and transportation*  
20 *of waste generated by the construction and operation of the facility are likely to*  
21 *result in minimal adverse impact on surrounding and adjacent areas.*

22  
23 *(2) The Council may issue a site certificate for a facility that would produce power from*  
24 *wind, solar or geothermal energy without making the findings described in section (1).*  
25 *However, the Council may apply the requirements of section (1) to impose conditions on*  
26 *a site certificate issued for such a facility.(3) The Council may issue a site certificate for a*  
27 *special criteria facility under OAR 345-015-0310 without making the findings described in*  
28 *section (1). However, the Council may apply the requirements of section (1) to impose*  
29 *conditions on a site certificate issued for such a facility.*

30  
31 **Findings of Fact**

32  
33 Section (1) of the Waste Minimization standard generally requires the Council to evaluate  
34 whether the certificate holder will minimize generation of solid waste and wastewater and

---

<sup>59</sup> MWPAMD2Doc20 RAI 1 Response, 2015-06-04

<sup>60</sup> MWPAMD2Doc31 Public CC Request I. Gilbert, October 21, 2015. In a public comment on the proposed order, Irene Gilbert argues that a map of existing and planned wind developments in the area of the Montague Wind Development has not been provided and is required and necessary to evaluate cumulative impacts of this development, specifically cumulative impacts to public services. However, the certificate holder provided a map of existing and planned wind developments in the area of the Montague Wind Development (see Figure P-1 *Wind Energy Facility Studies in Surrounding Areas*, Exhibit P of the ASC). As described in the final order, the certificate holder contacted each of the affected public service providers, and received confirmation of their continuing ability to provide services to the facility. Ms. Gilbert’s comment provides no basis to revise this finding.

1 manage waste generated to result in minimal adverse impacts on the surrounding adjacent  
2 areas. Pursuant to OAR 345-022-0120(2), the Council may issue a site certificate for a wind  
3 energy facility without making findings regarding the Waste Minimization standard; however,  
4 the Council may apply the requirements of the standard to impose site certificate conditions.  
5 OAR 345-022-0120(3) does not apply to this facility because the facility is a not a special criteria  
6 facility under OAR 345-015-0310.

7  
8 The Council addressed the Waste Minimization standard in Section IV.5.C of the *Final Order on*  
9 *the Application for Site Certificate* and in accordance with OAR 345-022-0120(2) imposed  
10 conditions but did not make findings.<sup>61</sup>

11  
12 In reviewing the first request to amend the site certificate to extend the construction deadlines  
13 and reduce the minimum blade tip clearance, the Council determined that the proposed  
14 changes did not require any additional conditions related to the Waste Minimization standard.  
15 As a result, the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the*  
16 *Application for Site Certificate*.<sup>62</sup>

17  
18 The requested amendment would not increase the amount of solid waste and wastewater  
19 generated by the facility or otherwise alter the Council’s previous analysis regarding the Waste  
20 Minimization standard. The site certificate holder will remain subject to the existing conditions  
21 included in the site certificate.

### 22 23 **Conclusions of Law**

24  
25 Based on the foregoing analysis, and in accordance with OAR 345-022-0120(2), the Council  
26 relies on the conditions currently imposed in the existing site certificate to address facility  
27 compliance with the Council’s Waste Minimization standard.

#### 28 29 **III.B.1.o. Division 23 Standards**

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

#### 35 36 **III.B.1.p. Division 24 Standards**

37  
38 The Council’s Division 24 standards include specific standards for siting facilities including wind,  
39 underground gas storage reservoirs, transmission lines and facilities that emit carbon dioxide.

---

<sup>61</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 126

<sup>62</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p.46

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

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

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

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

12  
13 **Findings of Fact**

14  
15 OAR 345-024-0010 requires the Council to consider specific public health and safety standards  
16 related to wind energy facilities. In particular, the Council must evaluate the certificate holder’s  
17 measures to exclude members of the public from close proximity to the turbine blades and  
18 electrical equipment, and the certificate holder’s ability to design, construct and operate the  
19 facility to prevent structural failure of the tower or blades and to provide sufficient safety  
20 devices to warn of failure.

21  
22 The Council addressed the Public Health and Safety Standards for Wind Energy Facilities in  
23 Section V.1.e of the *Final Order on the Application for Site Certificate* and found that the  
24 certificate holder could design, construct and operate the facility to exclude members of the  
25 public from close proximity to the turbine blades and electrical equipment.<sup>63</sup> The Council  
26 further found that the certificate holder could design, construct and operate the facility to  
27 preclude structural failure of the tower or blades that could endanger public safety, and to have  
28 adequate safety devices and testing procedures designed to warn of impending failure and to  
29 minimize the consequences of such failure. Accordingly, the Council found that the facility, with  
30 conditions, complied with this standard.

31  
32 In reviewing the first request to amend the site certificate to extend the construction deadlines  
33 and reduce the minimum blade tip clearance, the Council determined that the request did not  
34 impact compliance with the Public Health and Safety Standards for Wind Energy Facilities. As a  
35 result, the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the*  
36 *Application for Site Certificate*.<sup>64</sup>

37  
38 In response to the present request to extend the construction deadlines, the Navy submitted a  
39 comment stating that the facility posed a direct threat to public health and safety because the

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<sup>63</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 141

<sup>64</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p.54

1 proposed locations for several of the wind turbines and meteorological towers overlap with  
2 Military Training Routes (MTRs) that are already severely restricted due to the construction of  
3 other wind farms and that the current Federal Aviation Administration (FAA) and existing site  
4 certificate condition 64 is insufficient to prevent construction of proposed turbines that pose a  
5 threat to public health and safety.<sup>65, 66</sup> In its response to the department’s request for  
6 additional information, Montague noted that the Navy did not raise any concern about the  
7 MTRs during the original application review process for the facility or during the first  
8 amendment process; and explained that there have been no changes in fact or circumstance  
9 during this amendment that would justify the Council reconsidering its past findings as they  
10 relate to the MTRs. Additionally, Montague responded that MTRs are not restricted airspace in  
11 that other non-military aircraft may fly through MTRs even if the MTR is in use by the Navy; and  
12 that as long as the Navy complies with the applicable FAA regulations, there is no risk to public  
13 health or safety.<sup>67</sup>

14  
15 The department disagrees with Montague’s suggestion that because the Navy did not raise  
16 concerns regarding the threat to public health and safety during the earlier proceedings, the  
17 Council’s review is limited. As discussed above, under OAR 345-027-0070(1)(b) for a request to  
18 extend the construction deadlines, the Council must consider whether the facility complies with  
19 all Council standards. The Navy was not required to raise the issue during either the initial site  
20 certificate application process or the first site certificate amendment process to preserve the  
21 right to challenge compliance of the facility with the wind energy health and safety standard  
22 through public comments on the request for a second amendment to extend construction  
23 deadlines. However, the department generally agrees with Montague that the only evidence in  
24 the record for this amendment request supports a conclusion that if military pilots comply with  
25 the applicable FAA regulations, the military aircraft will maintain a safe distance from the  
26 turbine towers and blades. Those regulations, at 14 CFR §91.119, prohibit all aircraft flying over  
27 areas other than congested areas, including military planes, from operating closer than 500 feet  
28 to any structure, including wind turbines. It is entirely reasonable, and even necessary, for the  
29 Council to rely on pilot compliance with the FAA process and safety regulations to ensure that  
30 military pilots and members of the public in private planes maintain a safe distance from  
31 turbine blades and towers.

32

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<sup>65</sup> Condition 64 requires that prior to construction the certificate holder submit a Notice of Proposed Construction or Alteration to the FAA and the Oregon Department of Aviation identifying the proposed final locations of turbine towers and meteorological towers and to notify the department of the responses.

<sup>66</sup> MWPAMD2Doc31 Public CC Request I. Gilbert, October 21, 2015. In a public comment on the proposed order, Irene Gilbert argues that the site certificate needs to include a condition that requires the developer to coordinate with the Department of Navy and Department of Defense to assure that the final siting of wind turbines does not pose a public safety risk. Ms. Gilbert does not include a basis for adding a new condition and therefore this comment is not further evaluated in this order.

<sup>67</sup> Montague incorporated the arguments made by Saddle Butte Wind, LLC *In the Matter of the Application for a Site Certificate for the Saddle Butte Wind Park*, DOJ File No. 3300-50-GN0411-13 related to Navy’s concern about “public health and safety” related to MTRs.

1 The Navy’s comment characterizes the issue as a health and safety issue but it appears that the  
2 Navy is instead looking to the Council to protect the Navy’s ability to fly low altitude training  
3 missions, below the 500 foot FAA required altitude, through the MTRs in the area. While the  
4 department does not doubt or question the general importance of high speed, low altitude  
5 training for Navy and other military pilots, there is no evidence in the record of this amendment  
6 request to indicate that the Navy has a protected legal interest in the use of the airspace  
7 between the ground and 500 feet above ground level that must be considered and protected  
8 under a Council standard.<sup>68</sup>  
9

10 **Conclusions of Law**  
11

12 Based on the reasoning above, and subject to compliance with the site certificate conditions,  
13 the department recommends that the Council conclude that the facility, as amended, continues  
14 to comply with the Council’s Public Health and Safety Standards for Wind Energy Facilities.  
15

16 **Siting Standards for Wind Energy Facilities: OAR 345-024-0015**  
17

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

22 *(1) Using existing roads to provide access to the facility site, or if new roads are needed,*  
23 *minimizing the amount of land used for new roads and locating them to reduce adverse*  
24 *environmental impacts.*  
25

26 *(2) Using underground transmission lines and combining transmission routes.*  
27

28 *(3) Connecting the facility to existing substations, or if new substations are needed,*  
29 *minimizing the number of new substations.*  
30

31 *(4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife*  
32 *in areas near turbines or electrical equipment.*  
33

34 *(5) Designing the components of the facility to minimize adverse visual features.*  
35

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<sup>68</sup> The Navy submitted comments on identical findings in the Proposed Order and requested a contested case proceeding on the Proposed Order based upon a disagreement with the findings. However, citing a “mutually beneficial resolution of the Navy’s concerns” with the certificate holder in this case, the Navy withdrew its comments on the Proposed Order and withdrew its request for a contested case proceeding in a letter addressed to the department dated November 20, 2015.

1           (6) Using the minimum lighting necessary for safety and security purposes and using  
2           techniques to prevent casting glare from the site, except as otherwise required by the  
3           Federal Aviation Administration or the Oregon Department of Aviation  
4

5           **Findings of Fact**  
6

7           The Cumulative Effects Standard for Wind Energy Facilities requires the Council to find that the  
8           certificate holder is able to use “practicable measures” in the design and construction of the  
9           facility to reduce the cumulative effects.. The standard does not require the Council to find that  
10          the facility would have no cumulative environmental impacts.  
11

12          The Council addressed the Cumulative Effects Standard for Wind Facilities in Section IV.3.g of  
13          the *Final Order on the Application for Site Certificate* and found that the proposed design,  
14          construction and operation of the facility would minimize cumulative adverse environmental  
15          effects in the vicinity by in compliance with the requirements of the Council’s Siting Standards  
16          for Wind Energy Facilities.<sup>69</sup> Specifically, in approving the original application, the Council  
17          considered and made findings regarding cumulative impacts of the subject facility related to (1)  
18          roads; (2) transmission lines and substations; (3) wildlife protection; (4) visual features; and (5)  
19          lighting.  
20

21          In reviewing the first request to amend the site certificate to extend the construction deadlines  
22          and reduce the minimum blade tip clearance, the Council found that the proposed changes did  
23          not impact compliance with the Siting Standards for Wind Energy Facilities. As a result, the *Final*  
24          *Order on Amendment #1* relied on the analysis in the *Final Order on the Application for Site*  
25          *Certificate*.<sup>70</sup>  
26

27          The requested amendment does not impact the cumulative environmental effects of the  
28          components authorized for construction or otherwise change the facts upon which the Council  
29          relied in making findings for this standard regarding the cumulative environmental effects from  
30          this wind facility.  
31

32          **Conclusions of Law**  
33

34          The Council finds that, subject to the existing site certificate conditions, the facility, as  
35          amended, complies with the Council’s Cumulative Effects Standard for Wind Facilities.  
36  
37  
38  
39

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<sup>69</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 86

<sup>70</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p.49

1 **Siting Standards for Transmission Lines: OAR 345-024-0090**

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

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

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

13  
14 **Findings of Fact**

15  
16 These standards address safety hazards associated with electric fields around transmission  
17 lines. Section (1) of OAR 345-024-0090 sets a limit for electric fields from transmission lines of  
18 not more than 9 kV per meter at one meter above the ground surface in areas that are  
19 accessible to the public. Section (2) requires measures to reduce the risk of induced current.  
20 The Council addressed the Siting Standards for Transmission Lines in Section IV.3.h of the *Final*  
21 *Order on the Application for Site Certificate*. In the *Final Order on the Application for Site*  
22 *Certificate*, the Council found that the certificate holder could construct and operate the  
23 proposed transmission lines so that alternating current electric fields do not exceed 9 kV per  
24 meter at one meter above the ground surface in areas accessible to the public.<sup>71</sup> The Council  
25 further found that the certificate holder could design, construct and operate the proposed  
26 transmission lines so that induced currents resulting from the transmission lines will be as low  
27 as reasonably achievable.<sup>72</sup> Therefore, the Council concluded that the facility complied with the  
28 Siting Standards for Transmission Lines.<sup>73</sup>

29  
30 In reviewing the first request to amend the site certificate to extend the construction deadlines  
31 and reduce the minimum blade tip clearance, the Council found that the proposed changes did  
32 not impact compliance with the Siting Standards for Transmission Lines. As a result, the *Final*  
33 *Order on Amendment #1* relied on the analysis in the *Final Order on the Application for Site*  
34 *Certificate*.<sup>74</sup>

35  
36 The requested amendment does not impact the components authorized for construction or  
37 otherwise change the facts upon which the Council relied in making findings for the Siting  
38 Standard for Transmission Lines.

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<sup>71</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 88

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 50

1 **Conclusions of Law**

2  
3 For the reasons discussed above, and subject to compliance with the existing conditions in the  
4 site certificate, the department recommends that the Council find that the facility, as amended,  
5 complies with the Council’s Siting Standards for Transmission Lines.

6 **III.B.2. Other Applicable Regulatory Requirements Under Council Jurisdiction**

7  
8 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-  
9 0000), the Council must determine whether the facility complies with “all other Oregon statutes  
10 and administrative rules..., as applicable to the issuance of a site certificate for the proposed  
11 facility.” This section addresses the applicable Oregon statutes and administrative rules that are  
12 not otherwise addressed in Council standards, including noise control regulations, regulations  
13 for removal or fill of material affecting waters of the state, and regulations for appropriating  
14 ground water.

15  
16 **III.B.2.a. Noise Control Regulations: OAR 340-035-0035**

17  
18 *(1) Standards and Regulations:*

19 \*\*\*

20 *(b) New Noise Sources:*

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

31 \*\*\*

32 **Findings of Fact**

33  
34 The Noise Control Regulations in OAR 340-035-0035 apply to noise associated with operation of  
35 the facility as a new industrial or commercial noise source. The Council addressed the Noise  
36 Control Regulations in Section V.1.a of the *Final Order on the Application for Site Certificate*. As  
37 the final design configuration was not yet known, the Council’s analysis was preliminary. To  
38 represent the range of turbines that could be used at the facility, the certificate holder provided  
39 total and octave band sound power level data for two turbine types: GE Energy 1.5-MW turbine  
40 and the Vestas V100 3.0-MW turbine. To ensure that the facility as-built would comply with the  
41 Noise Control Regulation, the Council adopted condition 107 which requires the certificate

1 holder to demonstrate that the final design layout of the facility complies with the applicable  
2 Noise Control Regulation requirements and obtain, if necessary, noise easements, as specified  
3 in the applicable noise regulations. Additionally, condition 108 requires the certificate holder to  
4 notify the department of any noise complaints received from the facility as well as the actions  
5 taken to address them.<sup>75</sup>

6  
7 In reviewing the first request to amend the site certificate, the Council determined the  
8 reduction in the minimum blade tip clearance could alter results of the noise modeling, but that  
9 the existing site certificate condition 107, which requires final noise analysis based on the final  
10 selected turbine layout and model, would account for any changes based on the change in  
11 blade tip height.

12  
13 The requested amendment to extend the construction deadlines does not impact the  
14 components authorized for construction or otherwise change the facts upon which the Council  
15 relied in making findings for the Noise Control Regulations.

16  
17 **Conclusions of Law**

18  
19 For the reasons discussed above, and subject to the conditions in the existing site certificate,  
20 the department recommends that the Council conclude that the facility, as amended, complies  
21 with the applicable noise control regulations in OAR 340-035-0035.

22  
23 **III.B.2.b. Removal-Fill**

24  
25 The Oregon Removal-Fill Law (ORS 196.800 through .990) and DSL regulations (OAR 141-085-  
26 0005 through 141-085-0090) require a Removal/Fill Permit if 50 cubic yards or more of material  
27 is removed, filled or altered within any “waters of the state” at the proposed site.<sup>76</sup>

28  
29 **Findings of Fact**

30  
31 The Council addressed the Removal Fill Law in Section V.1.b of the *Final Order on the*  
32 *Application for Site Certificate*. The Council found that the facility would not require a Removal  
33 Fill Permit.<sup>77</sup>

34  
35 In reviewing the first request to amend the site certificate to extend the construction deadlines  
36 and reduce the minimum blade tip clearance, the Council again found that no removal fill  
37 permit was needed because the changes did not affect any areas that were not previously  
38 addressed by the delineation report on the wetlands and waters within the analysis area. As a

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<sup>75</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 126

<sup>76</sup> OAR 141-085-0010(225) defines “Waters of this State.” The term includes wetlands and certain other water bodies.

<sup>77</sup> MWPAPPDoc147 MWP Final Order 2010-09-10, p. 136

1 result, the *Final Order on Amendment #1* relied on the analysis in the *Final Order on the*  
2 *Application for Site Certificate*.<sup>78</sup>

3 The requested amendment, likewise, would not affect any areas that were not previously  
4 addressed by the delineation report on the wetlands and waters within the analysis area.

5  
6 **Conclusions of Law**

7  
8 The Council concludes that the facility, as amended, will not require a state Removal Fill Permit.  
9

10 **III.B.2.c. Water Rights**

11  
12 Under ORS Chapters 537 and 540 and OAR Chapter 690, Oregon Water Resources Department  
13 (OWRD) administers water rights for appropriation and use of the water resources of the state.  
14 Under OAR 345-022-0000(1), the Council must determine whether the facility would comply  
15 with these statutes and administrative rules.

16  
17 **Findings of Fact**

18  
19 The Council addressed the Ground Water Act in Section V.1.c of the *Final Order on the*  
20 *Application for Site Certificate*. The Council found that the facility would comply with the  
21 Ground Water Act of 1955 and the rules of OWRD.<sup>79</sup>

22  
23 In reviewing the first amendment to the site certificate to extend the construction deadlines  
24 and reduce the minimum blade tip clearance, the Council found that the request did not impact  
25 the facility's ability to comply with the ground water statutes and regulations. As a result, the  
26 *Final Order on Amendment #1* relied on the analysis in the *Final Order on the Application for*  
27 *Site Certificate*.<sup>80</sup>

28  
29 The requested amendments would not impact the facility's water use or otherwise impact  
30 compliance with the Ground Water Act of 1955 or any OWRD rules.<sup>81</sup>

31  
32  

---

<sup>78</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 52

<sup>79</sup> MWPAPPD1Doc147 MWP Final Order 2010-09-10, p. 137

<sup>80</sup> MWPAMD1Doc37 MWP AMD1 Final Order 2013-06-21, p. 50

<sup>81</sup> MWPAMD2Doc31 Public CC Request I. Gilbert, October 21, 2015. In a public comment on the proposed order, Irene Gilbert argues that the department and EFSC failed to do a current review of the cumulative and ongoing impacts to the water table which will result from this development based upon existing and projected industrial developments effective the date the site certificate is issued. However, the facility, with the requested amendment, would not require any new water rights, water right transfers or temporary water rights. The discussion points provided by Ms. Gilbert specifically related to OWRD's review and issuance of permits, which is not relevant to the facility or requested amendment since the certificate holder has not requested any water-related permits for the facility.

Montague Wind Power Facility

FINAL ORDER ON REQUEST FOR CONTESTED CASE AND AMENDMENT #2

December 4, 2015

1 **Conclusions of Law**

2  
3 For the reasons discussed above, the Council concludes that the facility, as amended, complies  
4 with the applicable water rights statutes and regulations.

5 **IV. GENERAL APPLICATION OF CONDITIONS**

6  
7 The conditions referenced in this final order include conditions that are specifically required by  
8 OAR 345-027-0020 (Mandatory Conditions in Site Certificates), OAR 345-027-0023 (Site Specific  
9 Conditions), OAR 345-027-0028 (Monitoring Conditions) or OAR Chapter 345, Division 26  
10 (Construction and Operation Rules for Facilities). The conditions referenced in this final order  
11 include conditions based on representations in the request for amendment and the supporting  
12 record. The Council deems these representations to be binding commitments made by the  
13 certificate holder. This final order also includes conditions that the Council finds necessary to  
14 ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24.  
15 The Council recognizes that many specific tasks related to the design, construction, operation  
16 and retirement of the facility will be undertaken by the certificate holder' agents or contractors.  
17 Nevertheless, the certificate holder is responsible for ensuring that all agents and contractors  
18 comply with all provisions of the Site Certificate.

19 **V. GENERAL CONCLUSION AND FINAL ORDER**

20  
21 The proposed amendment would (1) extend the deadline to begin construction from  
22 September 14, 2015 to September 14, 2017; and (2) extend the deadline to complete  
23 construction from September 14, 2018 to September 14, 2020. The final order authorizes  
24 Montague to construct and operate the facility subject to terms and conditions set forth herein.

25  
26 Based on the findings and conclusions included in this order, the Council finds:

27  
28 (1) The Request for Contested Case does not raise a significant issue of fact or law that may  
29 affect the Council's determination that the facility, with the changes proposed by the  
30 amendment, meets an applicable standard.

31  
32 (2) The Request for Amendment #2 to the Montague Wind Power Facility Site Certificate  
33 complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300  
34 to ORS 469.570 and ORS 469.590 to ORS 469.619.

35  
36 (3) The Request for Amendment #2 to the Montague Wind Power Facility Site Certificate  
37 complies with the applicable standards adopted by the Council pursuant to ORS 469.501.  
38

1 (4) The Request for Amendment #2 to the Montague Wind Power Facility Site Certificate  
2 complies with all other Oregon statutes and administrative rules that were included in and  
3 governed by the site certificate, as amended June 21, 2013, and that are applicable to the  
4 requested amendment of the site certificate for the Montague Wind Power Facility.  
5

6 Accordingly, the Council finds that the requested amendment complies with the General  
7 Standard of Review (OAR 345-022-0000). The Council finds, based on a preponderance of the  
8 evidence on the record, that the site certificate may be amended as requested.  
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**Final Order**

The Council approves Request for Amendment #2 and issues an amended site certificate for the Montague Wind Power Facility, subject to the terms and conditions set forth above.

Issued this 4th day of December, 2015.

The Oregon Energy Facility Siting Council

By: 

Barry Beyeler, Chair  
Energy Facility Siting Council

Attachments:

- Attachment A: Amended Site Certificate
- Attachment B: Amended Draft Habitat Monitoring and Mitigation Plan
- Attachment C: Comments on Request for Amendment #2 and Site Certificate Holder Response

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**Notice of the Right to Appeal**

The right to appeal this order approving an amendment to a site certificate is provided in ORS 469.403. Pursuant to ORS 469.403, any party to a contested case proceeding on an amended site certificate application may appeal the Council’s approval or rejection of the amended site certificate application to the Oregon Supreme Court. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the date you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.

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**Attachment A Amended Site Certificate**

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

**Site Certificate  
for the  
Montague Wind Power Facility**

December 4, 2015

**The Oregon Energy Facility Siting Council**

**SITE CERTIFICATE**

**FOR THE MONTAGUE WIND POWER FACILITY**

**I. INTRODUCTION**

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

6 The findings of fact, reasoning and conclusions of law underlying the terms and conditions of  
7 this site certificate are set forth in the following documents, incorporated herein by this  
8 reference: (a) the *Final Order on the Application for Site Certificate for the Montague Wind*  
9 *Power Facility* issued on September 10, 2010 (hereafter, *Final Order on the Application*), (b) the  
10 *Final Order on Amendment #1* issued on June 21, 2013; and, (c) the *Final Order on Amendment*  
11 *#2* issued on December 4, 2015. In interpreting this site certificate, any ambiguity will be  
12 clarified by reference to the following, in order of priority: (1) this *Second Amended Site*  
13 *Certificate*, (2) the *Final Order on Amendment #2*, (3) the *Final Order on Amendment #1*, (4) the  
14 *Final Order on the Application*, and (5) the record of the proceedings that led to the *Final Order*  
15 *on the Application*, the *Final Order on Amendment #1*, and the *Final Order on Amendment #2*.  
16 [Amendment #2]

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

**II. SITE CERTIFICATION**

- 19 1. To the extent authorized by state law and subject to the conditions set forth herein, the  
20 State authorizes the certificate holder to construct, operate and retire a wind energy  
21 facility, together with certain related or supporting facilities, at the site in Gilliam County,  
22 Oregon, as described in Section III of this site certificate. ORS 469.401(1).
- 23 2. This site certificate is effective until it is terminated under OAR 345-027-0110 or the rules in  
24 effect on the date that termination is sought or until the site certificate is revoked under  
25 ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that  
26 revocation is ordered. ORS 469.401(1).
- 27 3. This site certificate does not address, and is not binding with respect to, matters that were  
28 not addressed in the *Final Order on the Application*, *Final Order on Amendment #1* and *Final*  
29 *Order on Amendment #2*. Such matters include, but are not limited to: building code  
30 compliance, wage, hour and other labor regulations, local government fees and charges and  
31 other design or operational issues that do not relate to siting the facility (ORS 469.401(4))  
32 and permits issued under statutes and rules for which the decision on compliance has been

- 1 delegated by the federal government to a state agency other than the Council. 469.503(3).  
2 [Amendment #2]
- 3 4. Both the State and the certificate holder shall abide by local ordinances, state law and the  
4 rules of the Council in effect on the date this site certificate is executed. ORS 469.401(2). In  
5 addition, upon a clear showing of a significant threat to public health, safety or the  
6 environment that requires application of later-adopted laws or rules, the Council may  
7 require compliance with such later-adopted laws or rules. ORS 469.401(2).
- 8 5. For a permit, license or other approval addressed in and governed by this site certificate,  
9 the certificate holder shall comply with applicable state and federal laws adopted in the  
10 future to the extent that such compliance is required under the respective state agency  
11 statutes and rules. ORS 469.401(2).
- 12 6. Subject to the conditions herein, this site certificate binds the State and all counties, cities  
13 and political subdivisions in Oregon as to the approval of the site and the construction,  
14 operation and retirement of the facility as to matters that are addressed in and governed by  
15 this site certificate. ORS 469.401(3).
- 16 7. Each affected state agency, county, city and political subdivision in Oregon with authority to  
17 issue a permit, license or other approval addressed in or governed by this site certificate  
18 shall, upon submission of the proper application and payment of the proper fees, but  
19 without hearings or other proceedings, issue such permit, license or other approval subject  
20 only to conditions set forth in this site certificate. ORS 469.401(3).
- 21 8. After issuance of this site certificate, each state agency or local government agency that  
22 issues a permit, license or other approval for the facility shall continue to exercise  
23 enforcement authority over such permit, license or other approval. ORS 469.401(3).
- 24 9. After issuance of this site certificate, the Council shall have continuing authority over the  
25 site and may inspect, or direct the Oregon Department of Energy (Department) to inspect,  
26 or request another state agency or local government to inspect, the site at any time in order  
27 to ensure that the facility is being operated consistently with the terms and conditions of  
28 this site certificate. ORS 469.430.
- 29 10. Following the completion of surveys required by this site certificate, the Department will  
30 present the results of those surveys and required consultations at the next regularly  
31 scheduled Council meeting.

### **III. DESCRIPTION**

#### **1. The Facility**

##### **(a) The Energy Facility**

32 The energy facility is an electric power generating plant with an average electric generating  
33 capacity of up to 134.7 megawatts and a peak generating capacity of not more than 404  
34 megawatts that produces power from wind energy. The facility consists of not more than 269  
35 wind turbines. The maximum peak generating capacity of each turbine is not more than 3.0

1 megawatts. The energy facility is described further in the *Final Order on the Application, Final*  
2 *Order on Amendment #1, and Final Order on Amendment #2.*

**(b) Related or Supporting Facilities**

3 The facility includes the following related or supporting facilities described below and in greater  
4 detail in the *Final Order on the Application, Final Order on Amendment #1, and Final Order on*  
5 *Amendment #2:*

6

- 7 • Power collection system
- 8 • Control system
- 9 • Substations and 230-kV transmission lines
- 10 • Meteorological towers
- 11 • Operations and maintenance facilities
- 12 • Access roads
- 13 • Public roadway modifications
- 14 • Temporary construction areas

15

16 **Power Collection System**

17 A power collection system operating at 34.5 kilovolts (kV) transports power from each turbine  
18 to a collector substation. To the extent practicable, the collection system is installed  
19 underground at a depth of at least three feet. Not more than 27 miles of the collector system is  
20 installed aboveground.

21 **Control System**

22 A fiber optic communications network links the wind turbines to a central computer at the  
23 O&M buildings. A Supervisory, Control and Data Acquisition (SCADA) system collects operating  
24 and performance data from each wind turbine and from the project as a whole and allows  
25 remote operation of the wind turbines.

26 **Substations and 230-kV Transmission Lines**

27 The facility includes two collector substations. An aboveground, single-circuit 230-kV  
28 transmission line connects the western substation to the central substation. An aboveground,  
29 single-circuit 230-kV transmission line connects the central substation to the 500-kV Slatt-  
30 Buckley transmission line owned by the Bonneville Power Administration (BPA) at the Slatt  
31 substation.

32 **Meteorological Towers**

33 The facility includes up to eight permanent meteorological towers.

34 **Operations and Maintenance Facilities**

35 The facility includes one or two operations and maintenance (O&M) facilities. An on-site well at  
36 each O&M facility supplies water for use during facility operation. Sewage is discharged to an  
37 on-site septic system.

38

1        **Access Roads**

2        The facility includes access roads to provide access to the turbine strings.

3        **Public Roadway Modifications**

4        The certificate holder may construct improvements to existing state and county public roads  
5        that are necessary for construction of the facility. These modifications would be confined to the  
6        existing road rights-of-way and would be undertaken with the approval of the Gilliam County  
7        Road Department or the Oregon Department of Transportation, depending on the location of  
8        the improvement.

9        **Temporary Construction Areas**

10       During construction, the facility includes temporary laydown areas used to stage construction  
11       and store supplies and equipment. Construction crane paths are used to move construction  
12       cranes between turbine strings.

**2. Location of the Proposed Facility**

13       The facility is located south of Arlington, in Gilliam County, Oregon. The facility is located on  
14       private land subject to easements or lease agreements with landowners.

**IV. CONDITIONS REQUIRED BY COUNCIL RULES**

15       This section lists conditions required by OAR 345-027-0020 (Mandatory Conditions in Site  
16       Certificates), OAR 345-027-0023 (Site Specific Conditions), OAR 345-027-0028 (Monitoring  
17       Conditions) and OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities).  
18       These conditions should be read together with the specific facility conditions listed in Section V  
19       to ensure compliance with the siting standards of OAR Chapter 345, Divisions 22 and 24, and to  
20       protect the public health and safety. In these conditions the definitions in OAR 345-001-0010  
21       apply.

22       The obligation of the certificate holder to report information to the Department or the Council  
23       under the conditions listed in this section and in Section V is subject to the provisions of  
24       ORS 192.502 *et seq.* and ORS 469.560. To the extent permitted by law, the Department and the  
25       Council will not publicly disclose information that may be exempt from public disclosure if the  
26       certificate holder has clearly labeled such information and stated the basis for the exemption at  
27       the time of submitting the information to the Department or the Council. If the Council or the  
28       Department receives a request for the disclosure of the information, the Council or the  
29       Department, as appropriate, will make a reasonable attempt to notify the certificate holder and  
30       will refer the matter to the Attorney General for a determination of whether the exemption is  
31       applicable, pursuant to ORS 192.450.

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

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

- 1 1 OAR 345-027-0020(1): The Council shall not change the conditions of the site certificate  
2 except as provided for in OAR Chapter 345, Division 27.
- 3 2 OAR 345-027-0020(2): The certificate holder shall submit a legal description of the site to  
4 the Department of Energy within 90 days after beginning operation of the facility. The  
5 legal description required by this rule means a description of metes and bounds or a  
6 description of the site by reference to a map and geographic data that clearly and  
7 specifically identifies the outer boundaries that contain all parts of the facility.
- 8 3 OAR 345-027-0020(3): The certificate holder shall design, construct, operate and retire the  
9 facility:  
10 (a) Substantially as described in the site certificate;  
11 (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules,  
12 and applicable state and local laws, rules and ordinances in effect at the time the  
13 site certificate is issued; and  
14 (c) In compliance with all applicable permit requirements of other state agencies.
- 15 4 OAR 345-027-0020(4): The certificate holder shall begin and complete construction of the  
16 facility by the dates specified in the site certificate. (*See Conditions 24 and 25.*)
- 17 5 OAR 345-027-0020(5): Except as necessary for the initial survey or as otherwise allowed  
18 for wind energy facilities, transmission lines or pipelines under this section, the certificate  
19 holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing  
20 on any part of the site until the certificate holder has construction rights on all parts of the  
21 site. For the purpose of this rule, “construction rights” means the legal right to engage in  
22 construction activities. For wind energy facilities, transmission lines or pipelines, if the  
23 certificate holder does not have construction rights on all parts of the site, the certificate  
24 holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a  
25 clearing on a part of the site if the certificate holder has construction rights on that part of  
26 the site and:  
27 (a) The certificate holder would construct and operate part of the facility on that part  
28 of the site even if a change in the planned route of the transmission line or pipeline  
29 occurs during the certificate holder’s negotiations to acquire construction rights on  
30 another part of the site; or  
31 (b) The certificate holder would construct and operate part of a wind energy facility on  
32 that part of the site even if other parts of the facility were modified by amendment  
33 of the site certificate or were not built.
- 34 6 OAR 345-027-0020(6): If the Council requires mitigation based on an affirmative finding  
35 under any standards of Division 22 or Division 24 of this chapter, the certificate holder  
36 shall consult with affected state agencies and local governments designated by the Council  
37 and shall develop specific mitigation plans consistent with Council findings under the  
38 relevant standards. The certificate holder must submit the mitigation plans to the  
39 Department and receive Department approval before beginning construction or, as  
40 appropriate, operation of the facility.

- 1 7 OAR 345-027-0020(7): The certificate holder shall prevent the development of any  
2 conditions on the site that would preclude restoration of the site to a useful, non-  
3 hazardous condition to the extent that prevention of such site conditions is within the  
4 control of the certificate holder.
- 5 8 OAR 345-027-0020(8): Before beginning construction of the facility, the certificate holder  
6 shall submit to the State of Oregon, through the Council, a bond or letter of credit, in a  
7 form and amount satisfactory to the Council to restore the site to a useful, non-hazardous  
8 condition. The certificate holder shall maintain a bond or letter of credit in effect at all  
9 times until the facility has been retired. The Council may specify different amounts for the  
10 bond or letter of credit during construction and during operation of the facility. (See  
11 *Condition 32*.)
- 12 9 OAR 345-027-0020(9): The certificate holder shall retire the facility if the certificate holder  
13 permanently ceases construction or operation of the facility. The certificate holder shall  
14 retire the facility according to a final retirement plan approved by the Council, as  
15 described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore  
16 the site to a useful, non-hazardous condition at the time of retirement, notwithstanding  
17 the Council’s approval in the site certificate of an estimated amount required to restore  
18 the site.
- 19 10 OAR 345-027-0020(10): The Council shall include as conditions in the site certificate all  
20 representations in the site certificate application and supporting record the Council deems  
21 to be binding commitments made by the applicant.
- 22 11 OAR 345-027-0020(11): Upon completion of construction, the certificate holder shall  
23 restore vegetation to the extent practicable and shall landscape all areas disturbed by  
24 construction in a manner compatible with the surroundings and proposed use. Upon  
25 completion of construction, the certificate holder shall remove all temporary structures  
26 not required for facility operation and dispose of all timber, brush, refuse and flammable  
27 or combustible material resulting from clearing of land and construction of the facility.
- 28 12 OAR 345-027-0020(12): The certificate holder shall design, engineer and construct the  
29 facility to avoid dangers to human safety presented by seismic hazards affecting the site  
30 that are expected to result from all maximum probable seismic events. As used in this rule  
31 “seismic hazard” includes ground shaking, landslide, liquefaction, lateral spreading,  
32 tsunami inundation, fault displacement and subsidence.
- 33 13 OAR 345-027-0020(13): The certificate holder shall notify the Department, the State  
34 Building Codes Division and the Department of Geology and Mineral Industries promptly if  
35 site investigations or trenching reveal that conditions in the foundation rocks differ  
36 significantly from those described in the application for a site certificate. After the  
37 Department receives the notice, the Council may require the certificate holder to consult  
38 with the Department of Geology and Mineral Industries and the Building Codes Division  
39 and to propose mitigation actions.
- 40 14 OAR 345-027-0020(14): The certificate holder shall notify the Department, the State  
41 Building Codes Division and the Department of Geology and Mineral Industries promptly if

1 shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity  
2 of the site.

3 15 OAR 345-027-0020(15): Before any transfer of ownership of the facility or ownership of  
4 the site certificate holder, the certificate holder shall inform the Department of the  
5 proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of  
6 ownership that requires a transfer of the site certificate.

7 16 OAR 345-027-0020(16): If the Council finds that the certificate holder *has* permanently  
8 ceased construction or operation of the facility without retiring the facility according to a  
9 final retirement plan approved by the Council, *as* described in OAR 345-027-0110, the  
10 Council shall notify the certificate holder and request that the certificate holder submit a  
11 proposed final retirement plan to the Department within a reasonable time not to exceed  
12 90 days. If the certificate holder does not submit a proposed final retirement plan by the  
13 specified date, the Council may direct the Department to prepare a proposed final  
14 retirement plan for the Council's approval. Upon the Council's approval of the final  
15 retirement plan, the Council may draw on the bond or letter of credit described in OAR  
16 345-027-0020(8) to restore the site to a useful, non-hazardous condition according to the  
17 final retirement plan, in addition to any penalties the Council may impose under OAR  
18 Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay  
19 the actual cost of retirement, the certificate holder shall pay any additional cost necessary  
20 to restore the site to a useful, non-hazardous condition. After completion of site  
21 restoration, the Council shall issue an order to terminate the site certificate if the Council  
22 finds that the facility *has* been retired according to the approved final retirement plan.

23 17 OAR 345-027-0023(4): If the facility includes any transmission line under Council  
24 jurisdiction:

25 (a) The certificate holder shall design, construct and operate the transmission line in  
26 accordance with the requirements of the National Electrical Safety Code (American  
27 National Standards Institute, Section C2, 1997 Edition); and

28 (b) The certificate holder shall develop and implement a program that provides  
29 reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or  
30 structures of a permanent nature that could become inadvertently charged with electricity  
31 are grounded or bonded throughout the life of the line.

32 18 OAR 345-027-0023(5): If the proposed energy facility is a pipeline or a transmission line or  
33 has, as a related or supporting facility, a pipeline or transmission line, the Council shall  
34 specify an approved corridor in the site certificate and shall allow the certificate holder to  
35 construct the pipeline or transmission line anywhere within the corridor, subject to the  
36 conditions of the site certificate. If the applicant has analyzed more than one corridor in its  
37 application for a site certificate, the Council may, subject to the Council's standards,  
38 approve more than one corridor.

39 19 OAR 345-027-0028: The following general monitoring conditions apply:

40 (a) The certificate holder shall consult with affected state agencies, local governments  
41 and tribes and shall develop specific monitoring programs for impacts to resources  
42 protected by the standards of divisions 22 and 24 of OAR Chapter 345 and resources

1 addressed by applicable statutes, administrative rules and local ordinances. The certificate  
2 holder must submit the monitoring programs to the Department of Energy and receive  
3 Department approval before beginning construction or, as appropriate, operation of the  
4 facility.

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

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

11 (d) If the certificate holder becomes aware of a significant environmental change or  
12 impact attributable to the facility, the certificate holder shall, as soon as possible, submit a  
13 written report to the Department describing the impact on the facility and any affected  
14 site certificate conditions

15 20 OAR 345-026-0048: Following receipt of the site certificate or an amended site certificate,  
16 the certificate holder shall implement a plan that verifies compliance with all site  
17 certificate terms and conditions and applicable statutes and rules. As a part of the  
18 compliance plan, to verify compliance with the requirement to begin construction by the  
19 date specified in the site certificate, the certificate holder shall report promptly to the  
20 Department of Energy when construction begins. Construction is defined in OAR  
21 345-001-0010. In reporting the beginning of construction, the certificate holder shall  
22 describe all work on the site performed before beginning construction, including work  
23 performed before the Council issued the site certificate, and shall state the cost of that  
24 work. For the purpose of this exhibit, “work on the site” means any work within a site or  
25 corridor, other than surveying, exploration or other activities to define or characterize the  
26 site or corridor. The certificate holder shall document the compliance plan and maintain it  
27 for inspection by the Department or the Council.

28 21 OAR 345-026-0080: The certificate holder shall report according to the following  
29 requirements:

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

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

39 (ii) By April 30 of each year after beginning construction, the certificate holder  
40 shall submit an annual report to the Department addressing the subjects listed in OAR  
41 345-026-0080. The Council Secretary and the certificate holder may, by mutual  
42 agreement, change the reporting date.

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

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

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

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

17 (iii) Fuel Use: For thermal power plants:

18 (A) The efficiency with which the power plant converts fuel into electric  
19 energy. If the fuel chargeable to power heat rate was evaluated when the facility was  
20 sited, the certificate holder shall calculate efficiency using the same formula and  
21 assumptions, but using actual data; and

22 (B) The facility's annual hours of operation by fuel type and, every five years  
23 after beginning operation, a summary of the annual hours of operation by fuel type as  
24 described in OAR 345-024-0590(5).

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

28 (v) Monitoring Report: A list and description of all significant monitoring and  
29 mitigation activities performed during the previous year in accordance with site certificate  
30 terms and conditions, a summary of the results of those activities and a discussion of any  
31 significant changes to any monitoring or mitigation program, including the reason for any  
32 such changes.

33 (vi) Compliance Report: A description of all instances of noncompliance with a  
34 site certificate condition. For ease of review, the certificate holder shall, in this section of  
35 the report, use numbered subparagraphs corresponding to the applicable sections of the  
36 site certificate.

37 (vii) Facility Modification Report: A summary of changes to the facility that the  
38 certificate holder has determined do not require a site certificate amendment in  
39 accordance with OAR 345-027-0050.

40 (viii) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating  
41 facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual  
42 hours of operation of the carbon dioxide emitting equipment as described in OAR  
43 345-024-0630(4).

1 **22** OAR 345-026-0105: The certificate holder and the Department of Energy shall exchange  
2 copies of all correspondence or summaries of correspondence related to compliance with  
3 statutes, rules and local ordinances on which the Council determined compliance, except  
4 for material withheld from public disclosure under state or federal law or under Council  
5 rules. The certificate holder may submit abstracts of reports in place of full reports;  
6 however, the certificate holder shall provide full copies of abstracted reports and any  
7 summarized correspondence at the request of the Department.

8 **23** OAR 345-026-0170: The certificate holder shall notify the Department of Energy within 72  
9 hours of any occurrence involving the facility if:

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

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

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

## V. SPECIFIC FACILITY CONDITIONS

15 The conditions listed in this section include conditions based on representations in the site  
16 certificate application and supporting record. The Council deems these representations to be  
17 binding commitments made by the applicant. These conditions are required under OAR  
18 345-027-0020(10). The certificate holder must comply with these conditions in addition to the  
19 conditions listed in Section IV. This section includes other specific facility conditions the Council  
20 finds necessary to ensure compliance with the siting standards of OAR Chapter 345, Divisions  
21 22 and 24, and to protect public health and safety. For conditions that require subsequent  
22 review and approval of a future action, ORS 469.402 authorizes the Council to delegate the  
23 future review and approval to the Department if, in the Council's discretion, the delegation is  
24 warranted under the circumstances of the case.

### 1. Certificate Administration Conditions

25 **24** The certificate holder shall begin construction of the facility by September 14, 2017. Under  
26 OAR 345-015-0085(9), a site certificate is effective upon execution by the Council Chair  
27 and the applicant. The Council may grant an extension of the deadline to begin  
28 construction in accordance with OAR 345-027-0030 or any successor rule in effect at the  
29 time the request for extension is submitted. [Amendment #2]

30 **25** The certificate holder shall complete construction of the facility by September 14, 2020.  
31 Construction is complete when: (1) the facility is substantially complete as defined by the  
32 certificate holder's construction contract documents, (2) acceptance testing has been  
33 satisfactorily completed and (3) the energy facility is ready to begin continuous operation  
34 consistent with the site certificate. The certificate holder shall promptly notify the  
35 Department of the date of completion of construction. The Council may grant an  
36 extension of the deadline for completing construction in accordance with OAR 345-027-  
37 0030 or any successor rule in effect at the time the request for extension is submitted.  
38 [Amendment #2]

- 1 **26** Before beginning construction of the facility, the certificate holder shall notify the  
2 Department whether the turbines identified as H1, H2, H3, H4, L8, L9, L10, L11 and L12 on  
3 Figure C-3a of the site certificate application will be built as part of the Montague Wind  
4 Power Facility or whether the turbines will be built as part of the Leaning Juniper II Wind  
5 Power Facility.
- 6 **27** The certificate holder shall construct a facility substantially as described in the site  
7 certificate and may select turbines of any type, subject to the following restrictions and  
8 compliance with all other site certificate conditions. Before beginning construction, the  
9 certificate holder shall provide to the Department a description of the turbine types  
10 selected for the facility demonstrating compliance with this condition.
- 11 (a) The total number of turbines at the facility must not exceed 269 turbines.  
12 (b) The combined peak generating capacity of the facility must not exceed 404  
13 megawatts and the peak generating capacity of any individual turbine must not  
14 exceed 3.0 megawatts.  
15 (c) The turbine hub height must not exceed 100 meters and the maximum blade tip  
16 height must not exceed 150 meters.  
17 (d) The minimum blade tip clearance must be 20 meters above ground. [Amendment  
18 #1]  
19 (e) The certificate holder shall request an amendment of the site certificate to increase  
20 the combined peak generating capacity of the facility beyond 404 megawatts, to  
21 increase the number of wind turbines to more than 269 wind turbines or to install  
22 wind turbines with a hub height greater than 100 meters, a blade tip height greater  
23 than 150 meters or a blade tip clearance less than 20 meters above ground.  
24 [Amendment #1]
- 25 **28** The certificate holder shall obtain all necessary federal, state and local permits or  
26 approvals required for construction, operation and retirement of the facility or ensure that  
27 its contractors obtain the necessary federal, state and local permits or approvals.
- 28 **29** Before beginning construction, the certificate holder shall provide confirmation to the  
29 Department that the construction contractor or other third party has obtained all  
30 necessary permits or approvals and shall provide to the Department proof of agreements  
31 between the certificate holder and the third party regarding access to the resources or  
32 services secured by the permits or approvals.
- 33 **30** Before beginning construction, the certificate holder shall notify the Department in  
34 advance of any work on the site that does not meet the definition of “construction” in ORS  
35 469.300, excluding surveying, exploration or other activities to define or characterize the  
36 site, and shall provide to the Department a description of the work and evidence that its  
37 value is less than \$250,000.
- 38 **31** Before beginning construction but no more than two years before beginning construction  
39 and after considering all micro-siting factors, the certificate holder shall provide to the  
40 Department, to the Oregon Department of Fish and Wildlife (ODFW) and to the Planning  
41 Director of Gilliam County detailed maps of the facility site, showing the final locations  
42 where the certificate holder proposes to build facility components, and a table showing

1 the acres of temporary and permanent habitat impact by habitat category and subtype,  
2 similar to Table 6 in the *Final Order on the Application*. The detailed maps of the facility  
3 site shall indicate the habitat categories of all areas that would be affected during  
4 construction (similar to Figures P-8a through P-8d in the site certificate application). In  
5 classifying the affected habitat into habitat categories, the certificate holder shall consult  
6 with the ODFW. The certificate holder shall not begin ground disturbance in an affected  
7 area until the habitat assessment has been approved by the Department. The Department  
8 may employ a qualified contractor to confirm the habitat assessment by on-site  
9 inspection.

10 32 Before beginning construction, the certificate holder shall submit to the State of Oregon  
11 through the Council a bond or letter of credit in the amount described herein naming the  
12 State of Oregon, acting by and through the Council, as beneficiary or payee. The initial  
13 bond or letter of credit amount is either \$21.511 million (3<sup>rd</sup> Quarter 2010 dollars), to be  
14 adjusted to the date of issuance as described in (b), or the amount determined as  
15 described in (a). The certificate holder shall adjust the amount of the bond or letter of  
16 credit on an annual basis thereafter as described in (b).

17 (a) The certificate holder may adjust the amount of the bond or letter of credit based  
18 on the final design configuration of the facility and turbine types selected by  
19 applying the unit costs and general costs illustrated in Table 2 in the *Final Order on*  
20 *the Application* and calculating the financial assurance amount as described in that  
21 order, adjusted to the date of issuance as described in (b) and subject to approval  
22 by the Department.

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

25 (i) Adjust the Subtotal component of the bond or letter of credit amount  
26 (expressed in mid-2004 dollars) to present value, using the U.S. Gross Domestic  
27 Product Implicit Price Deflator, Chain-Weight, as published in the Oregon  
28 Department of Administrative Services' "Oregon Economic and Revenue  
29 Forecast" or by any successor agency (the "Index") and using the average of  
30 the 2<sup>nd</sup> Quarter and 3<sup>rd</sup> Quarter 2004 index values (to represent mid-2004  
31 dollars) and the quarterly index value for the date of issuance of the new bond  
32 or letter of credit. If at any time the Index is no longer published, the Council  
33 shall select a comparable calculation to adjust mid-2004 dollars to present  
34 value.

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

37 (iii) Add 10 percent of the adjusted Gross Cost (ii) for the adjusted administration  
38 and project management costs and 10 percent of the adjusted Gross Cost  
39 (ii) for the adjusted future developments contingency.

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

- 1 (c) The certificate holder shall use a form of bond or letter of credit approved by the  
2 Council.
- 3 (d) The certificate holder shall use an issuer of the bond or letter of credit approved by  
4 the Council.
- 5 (e) The certificate holder shall describe the status of the bond or letter of credit in the  
6 annual report submitted to the Council under Condition 21.
- 7 (f) The bond or letter of credit shall not be subject to revocation or reduction before  
8 retirement of the facility site.

9 **33** If the certificate holder elects to use a bond to meet the requirements of Condition 32, the  
10 certificate holder shall ensure that the surety is obligated to comply with the requirements  
11 of applicable statutes, Council rules and this site certificate when the surety exercises any  
12 legal or contractual right it may have to assume construction, operation or retirement of  
13 the energy facility. The certificate holder shall also ensure that the surety is obligated to  
14 notify the Council that it is exercising such rights and to obtain any Council approvals  
15 required by applicable statutes, Council rules and this site certificate before the surety  
16 commences any activity to complete construction, operate or retire the energy facility.

17 **34** Before beginning construction, the certificate holder shall notify the Department of the  
18 identity and qualifications of the major design, engineering and construction contractor(s)  
19 for the facility. The certificate holder shall select contractors that have substantial  
20 experience in the design, engineering and construction of similar facilities. The certificate  
21 holder shall report to the Department any change of major contractors.

22 **35** The certificate holder shall contractually require all construction contractors and  
23 subcontractors involved in the construction of the facility to comply with all applicable  
24 laws and regulations and with the terms and conditions of the site certificate. Such  
25 contractual provisions shall not operate to relieve the certificate holder of responsibility  
26 under the site certificate.

27 **36** To ensure compliance with all site certificate conditions during construction, the  
28 certificate holder shall have a full-time, on-site assistant construction manager who is  
29 qualified in environmental compliance. The certificate holder shall notify the Department  
30 of the name, telephone number and e-mail address of this person.

31 **37** Within 72 hours after discovery of conditions or circumstances that may violate the terms  
32 or conditions of the site certificate, the certificate holder shall report the conditions or  
33 circumstances to the Department.

## **2. Land Use Conditions**

34 **38** The certificate holder shall consult with area landowners and lessees during construction  
35 and operation of the facility and shall implement measures to reduce or avoid any adverse  
36 impacts to farm practices on surrounding lands and to avoid any increase in farming costs.

37 **39** The certificate holder shall design and construct the facility using the minimum land area  
38 necessary for safe construction and operation. The certificate holder shall locate access  
39 roads and temporary construction laydown and staging areas to minimize disturbance of

1 farming practices and, wherever feasible, shall place turbines and transmission  
2 interconnection lines along the margins of cultivated areas to reduce the potential for  
3 conflict with farm operations.

4 40 The certificate holder shall install gates on private access roads in accordance with Gilliam  
5 County Zoning Ordinance Section 7.020(T)(4)(d)(6) unless the County has granted a  
6 variance to this requirement.

7 41 Before beginning construction of the facility, the certificate holder shall record in the real  
8 property records of Gilliam County a Covenant Not to Sue with regard to generally  
9 accepted farming practices on adjacent farmland consistent with GCZO Section  
10 7.020(T)(4)(a)(5).

11 42 The certificate holder shall construct all facility components in compliance with the  
12 following setback requirements:

- 13 (a) All facility components must be at least 3,520 feet from the property line of  
14 properties zoned residential use or designated in the Gilliam County  
15 Comprehensive Plan as residential.
- 16 (b) Where (a) does not apply, the certificate holder shall maintain a minimum distance  
17 of 110-percent of maximum blade tip height, measured from the centerline of the  
18 turbine tower to the nearest edge of any public road right-of-way. The certificate  
19 holder shall assume a minimum right-of-way width of 60 feet.
- 20 (c) Where (a) does not apply, the certificate holder shall maintain a minimum distance  
21 of 1,320 feet, measured from the centerline of the turbine tower to the center of  
22 the nearest residence existing at the time of tower construction.
- 23 (d) Where (a) does not apply, the certificate holder shall maintain a minimum distance  
24 of 110-percent of maximum blade tip height, measured from the centerline of the  
25 turbine tower to the nearest boundary of the certificate holder's lease area.
- 26 (e) The certificate holder shall maintain a minimum distance of 250 feet measured  
27 from the center line of each turbine tower to the nearest edge of any railroad right-  
28 of-way or electrical substation.
- 29 (f) The certificate holder shall maintain a minimum distance of 250 feet measured from  
30 the center line of each meteorological tower to the nearest edge of any public road  
31 right-of-way or railroad right-of-way, the nearest boundary of the certificate  
32 holder's lease area or the nearest electrical substation.
- 33 (g) The certificate holder shall maintain a minimum distance of 50 feet measured from  
34 any facility O&M building to the nearest edge of any public road right-of-way or  
35 railroad right-of-way or the nearest boundary of the certificate holder's lease area.
- 36 (h) The certificate holder shall maintain a minimum distance of 50 feet measured from  
37 any substation to the nearest edge of any public road right-of-way or railroad right-  
38 of-way or the nearest boundary of the certificate holder's electrical substation  
39 easement or, if there is no easement, the nearest boundary of the certificate  
40 holder's lease area.

- 1 (i) Where (a) does not apply, the certificate holder shall maintain a minimum of 110-  
2 percent of maximum blade tip height, measured from the centerline of the turbine  
3 tower from any overhead utility line. [Amendment #1]  
4 (j) Where (a) does not apply, the certificate holder shall maintain a minimum of 150-  
5 percent of maximum turbine height from blade tip height, measured from the  
6 centerline of the turbine tower from federal transmission lines, unless the affected  
7 parties agree otherwise. [Amendment #1]

8 **43** During construction and operation of the facility, the certificate holder shall implement a  
9 weed control plan approved by the Gilliam County Weed Control Officer or other  
10 appropriate County officials to control the introduction and spread of noxious weeds.

11 **44** During operation of the facility, the certificate holder shall restore areas that are  
12 temporarily disturbed during facility maintenance or repair activities using the same  
13 methods and monitoring procedures described in the *Revegetation Plan* referenced in  
14 Condition 92.

15 **45** Within 90 days after beginning operation, the certificate holder shall provide to the  
16 Department and to the Gilliam County Planning Department the actual latitude and  
17 longitude location or Stateplane NAD 83(91) coordinates of each turbine tower,  
18 connecting lines and transmission lines and a summary of as-built changes in the facility  
19 compared to the original plan.

20 **46** The certificate holder shall deliver a copy of the annual report required under Condition  
21 21 to the Gilliam County Planning Commission on an annual basis unless specifically  
22 discontinued by the County.

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

23 **47** Before beginning construction, the certificate holder shall label all identified historic,  
24 cultural or archaeological resource sites on construction maps and drawings as “no entry”  
25 areas. If construction activities will occur within 200 feet of an identified site, the  
26 certificate holder shall flag a 30-meter no-entry buffer around the site. The certificate  
27 holder may use existing private roads within the buffer areas but may not widen or  
28 improve private roads within the buffer areas. The no-entry restriction does not apply to  
29 public road rights-of-way within the buffer areas or to operational farmsteads.

30 **48** In reference to the alignment of the Oregon Trail described in the *Final Order on the*  
31 *Application*, the certificate holder shall comply with the following requirements:  
32 (a) The certificate holder shall not locate facility components on visible remnants of the  
33 Oregon Trail and shall avoid any construction disturbance to those remnants.  
34 (b) The certificate holder shall not locate facility components on undeveloped land  
35 where the trail alignment is marked by existing Oregon-California Trail Association  
36 markers.  
37 (c) Before beginning construction, the certificate holder shall provide to the State  
38 Historic Preservation Office (SHPO) and the Department documentation of the  
39 presumed Oregon Trail alignments within the site boundary.

1 (d) The certificate holder shall ensure that construction personnel proceed carefully in  
2 the vicinity of the presumed alignments of the Oregon Trail. If any physical evidence  
3 of the trail is discovered, the certificate holder shall avoid any disturbance to the  
4 intact segments by redesign, re-engineering or restricting the area of construction  
5 activity and shall flag a 30-meter no-entry buffer around the intact Trail segments.  
6 The certificate holder shall promptly notify the SHPO and the Department of the  
7 discovery. The certificate holder shall consult with the SHPO and the Department to  
8 determine appropriate mitigation measures.

9 49 Before beginning construction, the certificate holder shall provide to the Department a  
10 map showing the final design locations of all components of the facility, the areas that  
11 would be temporarily disturbed during construction and the areas that were surveyed in  
12 2009 as described in the *Final Order on the Application*. The certificate holder shall hire  
13 qualified personnel to conduct field investigations of all areas to be disturbed during  
14 construction that lie outside the previously-surveyed areas. The certificate holder shall  
15 provide a written report of the field investigations to the Department and to the Oregon  
16 State Historic Preservation Office (SHPO) for review and approval. If any potentially  
17 significant historic, cultural or archaeological resources are found during the field  
18 investigation, the certificate holder shall instruct all construction personnel to avoid the  
19 identified sites and shall implement appropriate measures to protect the sites, including  
20 the measures described in Condition 47.

21 50 The certificate holder shall ensure that a qualified archaeologist, as defined in OAR  
22 736-051-0070, instructs construction personnel in the identification of cultural materials  
23 and avoidance of accidental damage to identified resource sites.

24 51 The certificate holder shall ensure that construction personnel cease all ground-disturbing  
25 activities in the immediate area if any archaeological or cultural resources are found  
26 during construction of the facility until a qualified archaeologist can evaluate the  
27 significance of the find. The certificate holder shall notify the Department and the Oregon  
28 State Historic Preservation Office (SHPO) of the find. If the SHPO determines that the  
29 resource is significant, the certificate holder shall make recommendations to the Council  
30 for mitigation, including avoidance, field documentation and data recovery, in  
31 consultation with the Department, SHPO, interested Tribes and other appropriate parties.  
32 The certificate holder shall not restart work in the affected area until the certificate holder  
33 has demonstrated to the Department and the SHPO that it has complied with  
34 archaeological resource protection regulations

#### **4. Geotechnical Conditions**

35 52 Before beginning construction, the certificate holder shall conduct a site-specific  
36 geotechnical investigation and shall report its findings to the Oregon Department of  
37 Geology & Mineral Industries (DOGAMI) and the Department. The certificate holder shall  
38 conduct the geotechnical investigation after consultation with DOGAMI and in general  
39 accordance with DOGAMI open file report 00-04 "Guidelines for Engineering Geologic  
40 Reports and Site-Specific Seismic Hazard Reports."

1 53 The certificate holder shall design and construct the facility in accordance with  
2 requirements of the Oregon Structural Specialty Code (OSSC 2007) and the 2006  
3 International Building Code.

4 54 The certificate holder shall design, engineer and construct the facility to avoid dangers to  
5 human safety presented by non-seismic hazards. As used in this condition, “non-seismic  
6 hazards” include settlement, landslides, flooding and erosion.

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

7 55 The certificate holder shall handle hazardous materials used on the site in a manner that  
8 protects public health, safety and the environment and shall comply with all applicable  
9 local, state and federal environmental laws and regulations. The certificate holder shall  
10 not store diesel fuel or gasoline on the facility site.

11 56 If a spill or release of hazardous material occurs during construction or operation of the  
12 facility, the certificate holder shall notify the Department within 72 hours and shall clean  
13 up the spill or release and dispose of any contaminated soil or other materials according to  
14 applicable regulations. The certificate holder shall make sure that spill kits containing  
15 items such as absorbent pads are located on equipment and at the O&M buildings. The  
16 certificate holder shall instruct employees about proper handling, storage and cleanup of  
17 hazardous materials

18 57 The certificate holder shall construct turbines and pad-mounted transformers on concrete  
19 foundations and shall cover the ground within a 10-foot radius with non-flammable  
20 material. The certificate holder shall maintain the non-flammable pad area covering during  
21 operation of the facility.

22 58 The certificate holder shall install and maintain self-monitoring devices on each turbine,  
23 linked to sensors at the operations and maintenance building, to alert operators to  
24 potentially dangerous conditions, and the certificate holder shall immediately remedy any  
25 dangerous conditions. The certificate holder shall maintain automatic equipment  
26 protection features in each turbine that would shut down the turbine and reduce the  
27 chance of a mechanical problem causing a fire.

28 59 During construction and operation of the facility, the certificate holder shall ensure that  
29 the O&M buildings and all service vehicles are equipped with shovels and portable fire  
30 extinguishers of a 4A50BC or equivalent rating.

31 60 During construction and operation of the facility, the certificate holder shall develop and  
32 implement fire safety plans in consultation with the North Gilliam County Rural Fire  
33 Protection District to minimize the risk of fire and to respond appropriately to any fires  
34 that occur on the facility site. In developing the fire safety plans, the certificate holder  
35 shall take into account the dry nature of the region and shall address risks on a seasonal  
36 basis. The certificate holder shall meet annually with local fire protection agency  
37 personnel to discuss emergency planning and shall invite local fire protection agency  
38 personnel to observe any emergency drill or tower rescue training conducted at the  
39 facility.

- 1 61 Upon the beginning of operation of the facility, the certificate holder shall provide a site  
2 plan to the North Gilliam County Rural Fire Protection District. The certificate holder shall  
3 indicate on the site plan the identification number assigned to each turbine and the actual  
4 location of all facility structures. The certificate holder shall provide an updated site plan if  
5 additional turbines or other structures are later added to the facility. During operation, the  
6 certificate holder shall ensure that appropriate fire protection agency personnel have an  
7 up-to-date list of the names and telephone numbers of facility personnel available to  
8 respond on a 24-hour basis in case of an emergency on the facility site.
- 9 62 During construction, the certificate holder shall ensure that construction personnel are  
10 trained in fire prevention and response, that construction vehicles and equipment are  
11 operated on graveled areas to the extent possible and that open flames, such as cutting  
12 torches, are kept away from dry grass areas.
- 13 63 During operation of the facility, the certificate holder shall ensure that all on-site  
14 employees receive annual fire prevention and response training by qualified instructors or  
15 members of the local fire districts. The certificate holder shall ensure that all employees  
16 are instructed to keep vehicles on roads and off dry grassland, except when off-road  
17 operation is required for emergency purposes.
- 18 64 Before beginning construction, the certificate holder shall submit a Notice of Proposed  
19 Construction or Alteration to the Federal Aviation Administration (FAA) and the Oregon  
20 Department of Aviation identifying the proposed final locations of turbine towers and  
21 meteorological towers. The certificate holder shall promptly notify the Department of the  
22 responses from the FAA and the Oregon Department of Aviation.
- 23 65 The certificate holder shall follow manufacturers' recommended handling instructions and  
24 procedures to prevent damage to turbine or turbine tower components that could lead to  
25 failure.
- 26 66 The certificate holder shall construct turbine towers with no exterior ladders or access to  
27 the turbine blades and shall install locked tower access doors. The certificate holder shall  
28 keep tower access doors locked at all times, except when authorized personnel are  
29 present.
- 30 67 During operation of the facility, the certificate holder shall have a safety-monitoring  
31 program and shall inspect all turbine and turbine tower components on a regular basis.  
32 The certificate holder shall maintain or repair turbine and turbine tower components as  
33 necessary to protect public safety.
- 34 68 For turbine types having pad-mounted step-up transformers, the certificate holder shall  
35 install the transformers at the base of each tower in locked cabinets designed to protect  
36 the public from electrical hazards and to avoid creation of artificial habitat for raptor prey.
- 37 69 To protect the public from electrical hazards, the certificate holder shall enclose the  
38 facility substations with appropriate fencing and locked gates.
- 39 70 Before beginning construction of any new State Highway approaches or utility crossings,  
40 the certificate holder shall obtain all required permits from the Oregon Department of

1 Transportation (ODOT) subject to the applicable conditions required by OAR Chapter 734,  
2 Divisions 51 and 55. The certificate holder shall submit the necessary application in a form  
3 satisfactory to ODOT and the Department for the location, construction and maintenance  
4 of a new approach to State Highway 19 for access to the site south of Tree Lane. The  
5 certificate holder shall submit the necessary application in a form satisfactory to ODOT  
6 and the Department for the location, construction and maintenance of transmission lines  
7 crossing Highway 19.

8 71 The certificate holder shall design and construct new access roads and private road  
9 improvements to standards approved by the Gilliam County Road Department or, where  
10 applicable, the Morrow County Public Works Department. Where modifications of County  
11 roads are necessary, the certificate holder shall construct the modifications entirely within  
12 the County road rights-of-way and in conformance with County road design standards  
13 subject to the approval of the Gilliam County Road Department or, where applicable, the  
14 Morrow County Public Works Department. Where modifications of State roads or  
15 highways are necessary, the certificate holder shall construct the modifications entirely  
16 within the public road rights-of-way and in conformance with Oregon Department of  
17 Transportation (ODOT) standards subject to the approval of ODOT.

18 72 The certificate holder shall construct access roads with a finished width of up to 20 feet,  
19 designed under the direction of a licensed engineer and compacted to meet equipment  
20 load requirements.

21 73 During construction of the facility, the certificate holder shall implement measures to  
22 reduce traffic impacts, including:

- 23 (a) Providing notice to adjacent landowners when heavy construction traffic is  
24 anticipated.
- 25 (b) Providing appropriate traffic safety signage and warnings.
- 26 (c) Requiring flaggers to be at appropriate locations at appropriate times during  
27 construction to direct traffic.
- 28 (d) Using traffic diversion equipment (such as advance signage and pilot cars) when  
29 slow or oversize construction loads are anticipated.
- 30 (e) Maintaining at least one travel lane at all times to the extent reasonably possible so  
31 that roads will not be closed to traffic because of construction vehicles.
- 32 (f) Encouraging carpooling for the construction workforce.
- 33 (g) Including traffic control procedures in contract specifications for construction of the  
34 facility.
- 35 (h) Keeping Highway 19 free of gravel that tracks out onto the highway at facility access  
36 points.

37 74 The certificate holder shall ensure that no equipment or machinery is parked or stored on  
38 any County road whether inside or outside the site boundary. The certificate holder may  
39 temporarily park equipment off the road but within County rights-of-way with the  
40 approval of the Gilliam County Road Department or, where applicable, the Morrow  
41 County Public Works Department.

1 75 The certificate holder shall cooperate with the Gilliam County Road Department and with  
2 the Morrow County Public Works Department to ensure that any unusual damage or wear  
3 to county roads that is caused by construction of the facility is repaired by the certificate  
4 holder. Upon completion of construction, the certificate holder shall restore public roads  
5 to pre-construction condition or better to the satisfaction of the applicable county  
6 departments. If required by Morrow County or Gilliam County, the certificate holder shall  
7 post bonds to ensure funds are available to repair and maintain roads affected by the  
8 proposed facility.

9 76 During construction, the certificate holder shall require that all on-site construction  
10 contractors develop and implement a site health and safety plan that informs workers and  
11 others on-site about first aid techniques and what to do in case of an emergency and that  
12 includes important telephone numbers and the locations of on-site fire extinguishers and  
13 nearby hospitals. The certificate holder shall ensure that construction contractors have  
14 personnel on-site who are trained and equipped for tower rescue and who are first aid  
15 and CPR certified.

16 77 During operation of the facility, the certificate holder shall develop and implement a site  
17 health and safety plan that informs employees and others on-site about first aid  
18 techniques and what to do in case of an emergency and that includes important telephone  
19 numbers and the locations of on-site fire extinguishers and nearby hospitals. The  
20 certificate holder shall ensure that operations personnel are trained and equipped for  
21 tower rescue.

22 78 During construction and operation of the facility, the certificate holder shall provide for  
23 on-site security and shall establish good communications between on-site security  
24 personnel and the Gilliam County Sheriff's Office. During operation, the certificate holder  
25 shall ensure that appropriate law enforcement agency personnel have an up-to-date list of  
26 the names and telephone numbers of facility personnel available to respond on a 24-hour  
27 basis in case of an emergency on the facility site.

28 79 The certificate holder shall notify the Department of Energy and the Gilliam County  
29 Planning Department within 72 hours of any accidents including mechanical failures on the  
30 site associated with construction or operation of the facility that may result in public  
31 health and safety concerns

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

32 80 The certificate holder shall conduct all construction work in compliance with an Erosion  
33 and Sediment Control Plan (ESCP) satisfactory to the Oregon Department of  
34 Environmental Quality and as required under the National Pollutant Discharge Elimination  
35 System (NPDES) Storm Water Discharge General Permit #1200-C. The certificate holder  
36 shall include in the ESCP any procedures necessary to meet local erosion and sediment  
37 control requirements or storm water management requirements.

38 81 During construction, the certificate holder shall limit truck traffic to improved road  
39 surfaces to avoid soil compaction, to the extent practicable.

- 1 **82** During construction, the certificate holder shall implement best management practices to  
2 control any dust generated by construction activities, such as applying water to roads and  
3 disturbed soil areas.
- 4 **83** Before beginning construction, the certificate holder shall provide to the Department a  
5 map showing the final design locations of all components of the facility and the areas that  
6 would be disturbed during construction and showing the wetlands and stream channels  
7 previously surveyed by CH2M HILL as described in the *Final Order on the Application*. For  
8 areas to be disturbed during construction that lie outside of the previously-surveyed  
9 areas, the certificate holder shall hire qualified personnel to conduct a pre-construction  
10 investigation to determine whether any jurisdictional waters of the State exist in those  
11 locations. The certificate holder shall provide a written report on the pre-construction  
12 investigation to the Department and the Department of State Lands for approval before  
13 beginning construction. The certificate holder shall ensure that construction and operation  
14 of the facility will have no impact on any jurisdictional water identified in the pre-  
15 construction investigation.
- 16 **84** The certificate holder shall avoid impacts to waters of the state in the following manner:  
17 (a) The certificate holder shall avoid any disturbance to delineated wetlands.  
18 (b) The certificate holder shall construct stream crossings for roads and underground  
19 collector lines substantially as described in the *Final Order on the Application*. In  
20 particular, the certificate holder shall not remove material from waters of the State  
21 or add new fill material to waters of the State such that the total volume of removal  
22 and fill exceeds 50 cubic yards for the project as a whole.  
23 (c) The certificate holder shall construct support poles for aboveground lines outside of  
24 delineated stream channels and shall avoid in-channel impacts.
- 25 **85** During facility operation, the certificate holder shall routinely inspect and maintain all  
26 roads, pads and trenched areas and, as necessary, maintain or repair erosion and  
27 sediment control measures.
- 28 **86** During facility operation, the certificate holder shall obtain water for on-site uses from on-  
29 site wells located near the O&M buildings. The certificate holder shall construct on-site  
30 wells subject to compliance with the provisions of ORS 537.765 relating to keeping a well  
31 log. The certificate holder shall not use more than 5,000 gallons of water per day from the  
32 on-site wells. The certificate holder may use other sources of water for on-site uses  
33 subject to prior approval by the Department.
- 34 **87** During facility operation, if blade-washing becomes necessary, the certificate holder shall  
35 ensure that there is no runoff of wash water from the site or discharges to surface waters,  
36 storm sewers or dry wells. The certificate holder shall not use acids, bases or metal  
37 brighteners with the wash water. The certificate holder may use biodegradable,  
38 phosphate-free cleaners sparingly.

## **7. Transmission Line & EMF Conditions**

- 39 **88** The certificate holder shall install the 34.5-kV collector system underground to the extent  
40 practical. The certificate holder shall install underground lines at a minimum depth of

1 three feet. Based on geotechnical conditions or other engineering considerations, the  
2 certificate holder may install segments of the collector system aboveground, but the total  
3 length of aboveground segments must not exceed 27 miles.

4 89 The certificate holder shall take reasonable steps to reduce or manage human exposure to  
5 electromagnetic fields, including but not limited to:

6 (a) Constructing all aboveground transmission lines at least 200 feet from any  
7 residence or other occupied structure, measured from the centerline of the  
8 transmission line.

9 (b) Providing to landowners a map of underground and overhead transmission lines on  
10 their property and advising landowners of possible health risks from electric and  
11 magnetic fields

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

15 (d) Designing and maintaining all transmission lines so that induced voltages during  
16 operation are as low as reasonably achievable.

17 90 In advance of, and during, preparation of detailed design drawings and specifications for  
18 230-kV and 34.5-kV transmission lines, the certificate holder shall consult with the Utility  
19 Safety and Reliability Section of the Oregon Public Utility Commission to ensure that the  
20 designs and specifications are consistent with applicable codes and standards.

## 8. Plants, Wildlife & Habitat Protection Conditions

21 91 The certificate holder shall conduct wildlife monitoring as described in the Wildlife  
22 Monitoring and Mitigation Plan that is incorporated in the *Final Order on the Application*  
23 as Attachment A and as amended from time to time.

24 92 The certificate holder shall restore areas disturbed by facility construction but not  
25 occupied by permanent facility structures according to the methods and monitoring  
26 procedures described in the Revegetation Plan that is incorporated in the *Final Order on*  
27 *the Application* as Attachment B and as amended from time to time.

28 93 The certificate holder shall acquire the legal right to create, enhance, maintain and protect  
29 a habitat mitigation area as long as the site certificate is in effect by means of an outright  
30 purchase, conservation easement or similar conveyance and shall provide a copy of the  
31 documentation to the Department. Within the habitat mitigation area, the certificate  
32 holder shall improve the habitat quality as described in the Habitat Mitigation Plan that is  
33 incorporated in the *Final Order on Application* as Attachment C and as amended from time  
34 to time.

35 94 The certificate holder shall determine the boundaries of Category 1 Washington ground  
36 squirrel (WGS) habitat based on the locations where the squirrels were found to be active  
37 in the most recent WGS survey prior to the beginning of construction in habitat suitable  
38 for WGS foraging or burrow establishment (“suitable habitat”). The certificate holder shall  
39 hire a qualified professional biologist who has experience in detection of WGS to conduct  
40 surveys using a survey protocol approved by the Oregon Department of Fish and Wildlife

1 (ODFW). The biologist shall survey all areas of suitable habitat where permanent facility  
2 components would be located or where construction disturbance could occur. Except as  
3 provided in (a), the biologist shall conduct the protocol surveys in the active squirrel  
4 season (March 1 to May 31) in 2010 and in the active squirrel seasons in subsequent years  
5 until the beginning of construction in suitable habitat. The certificate holder shall provide  
6 written reports of the surveys to the Department and to ODFW and shall identify the  
7 boundaries of Category 1 WGS habitat. The certificate holder shall not begin construction  
8 within suitable habitat until the identified boundaries of Category 1 WGS habitat have  
9 been approved by the Department. Category 1 WGS habitat includes the areas described  
10 in (b) and (c).

- 11 (a) The certificate holder may omit the WGS survey in any year if the certificate holder  
12 avoids all permanent and temporary disturbance within suitable habitat until a  
13 WGS survey has been completed in the following year and the boundaries of  
14 Category 1 habitat have been determined and approved based on that survey.
- 15 (b) Category 1 WGS habitat includes the area within the perimeter of multiple active  
16 WGS burrows plus a 785-foot buffer, excluding areas of habitat types not suitable  
17 for WGS foraging or burrow establishment. If the multiple-burrow area was active  
18 in a prior survey year, then Category 1 habitat includes the largest extent of the  
19 active burrow area ever recorded (in the current or any prior-year survey), plus a  
20 785-foot buffer.
- 21 (c) Category 1 WGS habitat includes the area containing single active burrow  
22 detections plus a 785-foot buffer, excluding areas of habitat types not suitable for  
23 WGS foraging or burrow establishment. Category 1 habitat does not include single-  
24 burrow areas that were found active in a prior survey year but that are not active in  
25 the current survey year.

26 95 The certificate holder shall implement measures to mitigate impacts to sensitive wildlife  
27 habitat during construction including, but not limited to, the following:

- 28 (a) The certificate holder shall not construct any facility components within areas of  
29 Category 1 habitat and shall avoid temporary disturbance of Category 1 habitat.
- 30 (b) Before beginning construction, but no more than two years prior to the beginning  
31 of construction, the certificate holder shall hire a qualified professional biologist to  
32 conduct a survey of all areas to be disturbed by construction for threatened and  
33 endangered species. The certificate holder shall provide a written report of the  
34 survey and a copy of the survey to the Department, the Oregon Department of Fish  
35 and Wildlife (ODFW), and the Oregon Department of Agriculture (ODA). If the  
36 surveys identify the presence of threatened or endangered species within the  
37 survey area, the certificate holder shall implement appropriate measures to avoid a  
38 significant reduction in the likelihood of survival or recovery of the species, as  
39 approved by the Department, in consultation with ODA and ODFW.
- 40 (c) Before beginning construction, the certificate holder's qualified professional  
41 biologist shall survey the Category 1 Washington ground squirrel habitat to ensure  
42 that the sensitive use area is correctly marked with exclusion flagging and avoided

1 during construction. The certificate holder shall maintain the exclusion markings  
2 until construction has been completed.

- 3 (d) Before beginning construction, certificate holder’s qualified professional biologist  
4 shall complete the avian use studies that began in September 2009 at six plots  
5 within or near the facility site as described in the *Final Order on the Application*. The  
6 certificate holder shall provide a written report on the avian use studies to the  
7 Department and to ODFW.
- 8 (e) Before beginning construction, certificate holder’s qualified professional biologist  
9 shall complete raptor nest surveys within the raptor nest survey area as described  
10 in the *Final Order on the Application*. The purposes of the survey are to identify any  
11 sensitive raptor nests near construction areas and to provide baseline information  
12 on raptor nest use for analysis as described in the Wildlife Monitoring and  
13 Mitigation Plan referenced in Condition 91. The certificate holder shall provide a  
14 written report on the raptor nest surveys and the surveys to the Department and to  
15 ODFW. If the surveys identify the presence of raptor nests within the survey area,  
16 the certificate holder shall implement appropriate measures to assure that the  
17 design, construction and operation of the facility are consistent with the fish and  
18 wildlife habitat mitigation goals and standards of OAR 635-415-0025, as approved  
19 by the Department, in consultation with ODFW.
- 20 (f) In the final design layout of the facility, the certificate holder shall locate facility  
21 components, access roads and construction areas to avoid or minimize temporary  
22 and permanent impacts to high quality native habitat and to retain habitat cover in  
23 the general landscape where practicable.

24 96 During construction, the certificate holder shall avoid all construction activities within a  
25 1,300-foot buffer around potentially-active nest sites of the following species during the  
26 sensitive period, as provided in this condition:

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

31 During the year in which construction occurs, the certificate holder shall use a protocol  
32 approved by the Oregon Department of Fish and Wildlife (ODFW) to determine whether  
33 there are any active nests of these species within a half-mile of any areas that would be  
34 disturbed during construction. The certificate holder shall begin monitoring potential nest  
35 sites by March 15 and shall continue monitoring until at least May 31 to determine  
36 whether any potentially-active nest sites become active during the sensitive period.

37 If any nest site is determined to be unoccupied by the early release date (May 31), then  
38 unrestricted construction activities may occur within 1,300 feet of the nest site after that  
39 date. If a nest is occupied by any of these species after the beginning of the sensitive  
40 period, the certificate holder will flag the boundaries of a 1,300-foot buffer area around

1 the nest site and shall instruct construction personnel to avoid disturbance of the buffer  
2 area. During the sensitive period, the certificate holder shall not engage in high-impact  
3 construction activities (activities that involve blasting, grading or other major ground  
4 disturbance) within the buffer area. The certificate holder shall restrict construction traffic  
5 within the buffer, except on public roads, to vehicles essential to the limited construction  
6 activities allowed within the buffer.

7 If burrowing owl nests are occupied during the sensitive period, the certificate holder may  
8 adjust the 1,300-foot buffer around these nests after consultation with ODFW and subject  
9 to the approval of the Department.

10 The certificate holder shall hire a qualified independent professional biologist to observe  
11 the active nest sites during the sensitive period for signs of disturbance and to notify the  
12 Department of any non-compliance with this condition. If the biologist observes nest site  
13 abandonment or other adverse impact to nesting activity, the certificate holder shall  
14 implement appropriate mitigation, in consultation with ODFW and subject to the approval  
15 of the Department, unless the adverse impact is clearly shown to have a cause other than  
16 construction activity.

17 The certificate holder may begin or resume construction activities within the buffer area  
18 before the ending day of the sensitive period with the approval of ODFW, after the young  
19 are fledged. The certificate holder shall use a protocol approved by ODFW to determine  
20 when the young are fledged (the young are independent of the core nest site).

21 97 The certificate holder shall protect the area within 1,300 feet of the BLM Horn Butte  
22 Wildlife Area during the long-billed curlew nesting season (March 8 through June 15), as  
23 described in this condition. Before beginning construction, the certificate holder shall  
24 provide to the Department a map showing the areas of potential construction disturbance  
25 in the vicinity of the BLM lands that are part of the Horn Butte Wildlife Area and showing a  
26 1,300-foot buffer from those areas. During the nesting season, the certificate holder shall  
27 not engage in high-impact construction activities (activities that involve blasting, grading  
28 or other major ground disturbance) or allow high levels of construction traffic within the  
29 buffer area. The certificate holder shall flag the boundaries of the 1,300-foot buffer area  
30 and shall instruct construction personnel to avoid any unnecessary activity within the  
31 buffer area. The certificate holder shall restrict construction traffic within the buffer,  
32 except on public roads, to vehicles essential to the limited construction activities allowed  
33 within the buffer. The certificate holder may engage in construction activities within the  
34 buffer area at times other than the nesting season.

35 98 The certificate holder shall implement measures to avoid or mitigate impacts to sensitive  
36 wildlife habitat during construction including, but not limited to, the following:

- 37 (a) Preparing maps to show occlusion areas that are off-limits to construction  
38 personnel, such as nesting or denning areas for sensitive wildlife species.
- 39 (b) Avoiding unnecessary road construction, temporary disturbance and vehicle use.
- 40 (c) Limiting construction work to approved and surveyed areas shown on facility  
41 constraints maps.

1 (d) Ensuring that all construction personnel are instructed to avoid driving cross-  
2 country or taking short-cuts within the site boundary or otherwise disturbing areas  
3 outside of the approved and surveyed construction areas.

4 99 The certificate holder shall reduce the risk of injuries to avian species by:

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

7 (b) Locating turbine towers to avoid areas of increased risk to avian species, such as  
8 cliff edges, narrow ridge saddles and gaps between hilltops.

9 (c) Installing meteorological towers that are non-guyed structures to eliminate the risk  
10 of avian collision with guy-wires.

11 (d) Designing and installing all aboveground transmission line support structures  
12 following the most current suggested practices for avian protection on power lines  
13 published by the Avian Power Line Interaction Committee.

14 100 The certificate holder shall hire a qualified environmental professional to provide  
15 environmental training during construction and operation. Environmental training includes  
16 information on the sensitive species present onsite, precautions to avoid injuring or  
17 destroying wildlife or sensitive wildlife habitat, exclusion areas, permit requirements and  
18 other environmental issues. The certificate holder shall instruct construction and  
19 operations personnel to report any injured or dead wildlife detected while on the site to  
20 the appropriate onsite environmental manager.

21 101 The certificate holder shall impose and enforce a construction and operation speed limit of  
22 20 miles per hour throughout the facility site and, during the active squirrel season (March  
23 1 to May 31), a speed limit of 10 miles per hour from one hour before sunset to one hour  
24 after sunrise on private roads near known Washington ground squirrel (WGS) colonies.  
25 The certificate holder shall ensure that all construction and operations personnel are  
26 instructed to watch out for and avoid WGS and other wildlife while driving through the  
27 facility site.

## 9. Visual Effects Conditions

28 102 To reduce the visual impact of the facility, the certificate holder shall:

29 (a) Mount nacelles on smooth, steel structures, painted uniformly in a low-reflectivity,  
30 neutral white color.

31 (b) Paint the substation structures in a low-reflectivity neutral color to blend with the  
32 surrounding landscape.

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

34 (d) Use only those signs required for facility safety, required by law or otherwise  
35 required by this site certificate, except that the certificate holder may erect a sign  
36 near the O&M buildings to identify the facility, may paint turbine numbers on each  
37 tower and may allow unobtrusive manufacturers' logos on turbine nacelles.

38 (e) Maintain any signs allowed under this condition in good repair.

39 103 The certificate holder shall design and construct the O&M buildings to be generally  
40 consistent with the character of similar buildings used by commercial farmers or ranchers

1 in the area and shall paint the building in a low-reflectivity, neutral color to blend with the  
2 surrounding landscape.

3 **104** The certificate holder shall not use exterior nighttime lighting except:

- 4 (a) The minimum turbine tower lighting required or recommended by the Federal  
5 Aviation Administration.
- 6 (b) Security lighting at the O&M buildings and at the substations, provided that such  
7 lighting is shielded or downward-directed to reduce glare.
- 8 (c) Minimum lighting necessary for repairs or emergencies.
- 9 (d) Minimum lighting necessary for construction directed to illuminate the work area  
10 and shielded or downward-directed to reduce glare.

11 **105** The certificate holder shall maintain a minimum distance of 1,000 feet measured from the  
12 centerline of each turbine tower or meteorological tower to the centerline of the line-of-  
13 sight from the vantage point of the Fourmile Canyon interpretive site looking toward the  
14 visible Oregon Trail ruts (bearing S 89-42-34 W from latitude, longitude:  
15 45.622047, -120.044112) as described in the *Final Order on the Application*.

#### **10. Noise Control Conditions**

16 **106** To reduce construction noise impacts at nearby residences, the certificate holder shall:

- 17 (a) Confine the noisiest operation of heavy construction equipment to the daylight  
18 hours.
- 19 (b) Require contractors to install and maintain exhaust mufflers on all combustion  
20 engine-powered equipment; and
- 21 (c) Establish a complaint response system at the construction manager's office to  
22 address noise complaints.

23 **107** Before beginning construction, the certificate holder shall provide to the Department:

- 24 (a) Information that identifies the final design locations of all turbines to be built at the  
25 facility.
- 26 (b) The maximum sound power level for the substation transformers and the maximum  
27 sound power level and octave band data for the turbines selected for the facility  
28 based on manufacturers' warranties or confirmed by other means acceptable to  
29 the Department.
- 30 (c) The results of noise analysis of the facility to be built according to the final design  
31 performed in a manner consistent with the requirements of OAR  
32 340-035-0035(1)(b)(B)(iii) (IV) and (VI) demonstrating to the satisfaction of the  
33 Department that the total noise generated by the facility (including the noise from  
34 turbines and substation transformers) would meet the ambient degradation test  
35 and maximum allowable test at the appropriate measurement point for all  
36 potentially-affected noise sensitive properties.
- 37 (d) For each noise-sensitive property where the certificate holder relies on a noise  
38 waiver to demonstrate compliance in accordance with OAR 340-035-  
39 0035(1)(b)(B)(iii)(III), a copy of the a legally effective easement or real covenant  
40 pursuant to which the owner of the property authorizes the certificate holder's  
41 operation of the facility to increase ambient statistical noise levels L<sub>10</sub> and L<sub>50</sub> by

1 more than 10 dBA at the appropriate measurement point. The legally-effective  
2 easement or real covenant must: include a legal description of the burdened  
3 property (the noise sensitive property); be recorded in the real property records of  
4 the county; expressly benefit the certificate holder; expressly run with the land and  
5 bind all future owners, lessees or holders of any interest in the burdened property;  
6 and not be subject to revocation without the certificate holder's written approval.

7 108 During operation of the facility, the certificate holder shall maintain a complaint response  
8 system to address noise complaints. The certificate holder shall promptly notify the  
9 Department of any complaints received regarding facility noise and of any actions taken by  
10 the certificate holder to address those complaints. In response to a complaint from the  
11 owner of a noise sensitive property regarding noise levels during operation of the facility,  
12 the Council may require the certificate holder to monitor and record the statistical noise  
13 levels to verify that the certificate holder is operating the facility in compliance with the  
14 noise control regulations

### **11. Waste Management Conditions**

15 109 The certificate holder shall provide portable toilets for on-site sewage handling during  
16 construction and shall ensure that they are pumped and cleaned regularly by a licensed  
17 contractor who is qualified to pump and clean portable toilet facilities.

18 110 During operation of the facility, the certificate holder shall discharge sanitary wastewater  
19 generated at the O&M buildings to licensed on-site septic systems in compliance with  
20 State permit requirements. The certificate holder shall design the septic systems for a  
21 discharge capacity of less than 2,500 gallons per day.

22 111 The certificate holder shall implement a waste management plan during construction that  
23 includes but is not limited to the following measures:

- 24 (a) Recycling steel and other metal scrap.
- 25 (b) Recycling wood waste.
- 26 (c) Recycling packaging wastes such as paper and cardboard.
- 27 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste  
28 hauler.
- 29 (e) Segregating all hazardous wastes such as used oil, oily rags and oil-absorbent  
30 materials, mercury-containing lights and lead-acid and nickel-cadmium batteries for  
31 disposal by a licensed firm specializing in the proper recycling or disposal of  
32 hazardous wastes.
- 33 (f) Confining concrete delivery truck rinse-out within the foundation excavation,  
34 discharging rinse water into foundation holes and burying other concrete waste as  
35 part of backfilling the turbine foundation.

36 112 The certificate holder shall implement a waste management plan during facility operation  
37 that includes but is not limited to the following measures:

- 38 (a) Training employees to minimize and recycle solid waste.
- 39 (b) Recycling paper products, metals, glass and plastics.
- 40 (c) Recycling used oil and hydraulic fluid

- 1 (d) Collecting non-recyclable waste for transport to a local landfill by a licensed waste  
2 hauler.
- 3 (e) Segregating all hazardous, non-recyclable wastes such as used oil, oily rags and oil-  
4 absorbent materials, mercury-containing lights and lead-acid and nickel-cadmium  
5 batteries for disposal by a licensed firm specializing in the proper recycling or  
6 disposal of hazardous wastes.

7 **VI. CONDITIONS ADDED BY AMENDMENT # 1 OF MONTAGUE**

8 ~~113~~ The transfer of the First Amended Site Certificate from the certificate holder to Portland  
9 General Electric (PGE), the transferee, shall not be effective until PGE executes in closing the  
10 form of site certificate naming PGE the certificate holder, which is attached as Attachment B to  
11 the Final Order on Amendment #1. Upon closing, the First Amended Site Certificate naming  
12 PGE as the certificate holder shall be in full force and effect and the First Amended Site  
13 Certificate naming Montague Wind Power LLC as the certificate holder shall be considered  
14 rescinded and void in its entirety. Removed by Amendment #2.

15 ~~114~~ Should the closing contemplated in Condition 113 not occur within 18 months of the  
16 effective date of the First Amended Site Certificate to Montague Wind Power LLC, the Council's  
17 transfer approval within the Final Order on Amendment #1 shall be void. Removed by  
18 Amendment #2.

19 ~~115~~ PGE must provide the Department a copy of the executed First Amended Site Certificate  
20 and documentation of the asset purchase agreement within 7 days of closing. Removed by  
21 Amendment #2.

**VII. SUCCESSORS AND ASSIGNS**

22 To transfer this site certificate or any portion thereof or to assign or dispose of it in any other  
23 manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0100.

**VIII. SEVERABILITY AND CONSTRUCTION**

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

**IX. GOVERNING LAW AND FORUM**

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

**X. EXECUTION**

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

1 **IN WITNESS WHEREOF**, this site certificate has been executed by the State of Oregon, acting by  
2 and through its Energy Facility Siting Council, and by Montague Wind Power Facility, LLC.

ENERGY FACILITY SITING COUNCIL

MONTAGUE WIND POWER FACILITY, LLC

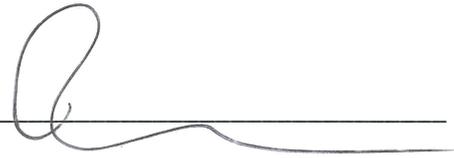
By: \_\_\_\_\_



Barry Beyeler, Chair

Oregon Energy Facility Siting Council

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



Print: \_\_\_\_\_

Randy Ravise  
Authorized Rep

Date: December 4, 2015

Date: \_\_\_\_\_

12-7-2015

and

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



Print: \_\_\_\_\_

Scott Jacobson  
Authorized Representative

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Date: \_\_\_\_\_

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**Attachment B Draft Wildlife Habitat Mitigation Monitoring Plan**

# Montague Wind Power Facility: Draft Wildlife Monitoring and Mitigation Plan

[DECEMBER 4, 2015]

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1 This plan describes wildlife monitoring that the certificate holder shall conduct during  
2 operation of the Montague Wind Power Facility (MWPF).<sup>1</sup> The monitoring objectives are to  
3 determine whether the facility causes significant fatalities of birds and bats and to determine  
4 whether the facility results in a loss of habitat quality.

5 The certificate holder shall use experienced and properly trained personnel (the  
6 “investigators”) to conduct the monitoring required under this plan. The professional  
7 qualifications of the investigators are subject to approval by the Oregon Department of Energy  
8 (Department). For all components of this plan except the Wildlife Reporting and Handling  
9 System, the certificate holder shall hire independent third party investigators (not employees of  
10 the certificate holder) to perform monitoring tasks.

11 The *Wildlife Monitoring and Mitigation Plan* for the MWPF has the following  
12 components:

- 13 1) Fatality monitoring program including:
  - 14 a) Removal trials
  - 15 b) Searcher efficiency trials
  - 16 c) Fatality search protocol
  - 17 d) Statistical analysis
- 18 2) Raptor nesting surveys
- 19 3) Washington ground squirrel surveys
- 20 4) Wildlife Reporting and Handling System

21 Based on the results of the monitoring programs, mitigation of significant impacts may be  
22 required. The selection of the mitigation actions should allow for flexibility in creating  
23 appropriate responses to monitoring results that cannot be known in advance. If the Department  
24 determines that mitigation is needed, the certificate holder shall propose appropriate mitigation  
25 actions to the Department and shall carry out mitigation actions approved by the Department,  
26 subject to review by the Oregon Energy Facility Council (Council).

## 27 1. Fatality Monitoring

### 28 (a) Definitions and Methods

#### 29 Seasons

30 This plan uses the following dates for defining seasons:

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<sup>1</sup> This plan is incorporated by reference in the site certificate for the MWPF and must be understood in that context. It is not a “stand-alone” document. This plan does not contain all mitigation required of the certificate holder.

**Montague Wind Power Facility: Draft Wildlife Monitoring and Mitigation Plan**  
[DECEMBER 4, 2015]

<b>Season</b>	<b>Dates</b>
Spring Migration	March 16 to May 15
Summer/Breeding	May 16 to August 15
Fall Migration	August 16 to October 31
Winter	November 1 to March 15

1           Search Plots

2           The investigators shall conduct fatality monitoring within search plots. The certificate  
3 holder, in consultation with the Oregon Department of Fish and Wildlife (ODFW), shall select  
4 search plots based on a systematic sampling design that ensures that the selected search plots are  
5 representative of the habitat conditions in different parts of the site. Each search plot will contain  
6 one turbine. Search plots will be square or circular. Circular search plots will be centered on the  
7 turbine location and will have a radius equal to the maximum blade tip height of the turbine  
8 contained within the plot. “Maximum blade tip height” is the turbine hub-height plus one-half  
9 the rotor diameter. Square search plots will be of sufficient size to contain a circular search plot  
10 as described above. The certificate holder shall provide maps of the search plots to the  
11 Department before beginning fatality monitoring at the facility. The certificate holder shall use  
12 the same search plots for each search conducted during a monitoring year.

13           Scheduling

14           Fatality monitoring will begin one month after commencement of commercial operation  
15 of the facility. Subsequent monitoring years will follow the same schedule (beginning in the  
16 same calendar month in the subsequent monitoring year).

17           In each monitoring year, the investigators shall conduct fatality monitoring searches at  
18 the rates of frequency shown below. Over the course of one monitoring year, the investigators  
19 will conduct 16 searches, as follows:

<b>Season</b>	<b>Frequency</b>
Spring Migration	2 searches per month (4 searches)
Summer/Breeding	1 search per month (3 searches)
Fall Migration	2 searches per month (5 searches)
Winter	1 search per month (4 searches)

20           Sample Size

21           The sample size for fatality monitoring is the number of turbines searched per monitoring  
22 year. The investigators shall conduct fatality monitoring during each monitoring year in search  
23 plots at one-third of the turbines that are built or 50 turbines, whichever is greater. If fewer than  
24 50 turbines are built, the certificate holder shall search all turbines.

25           As described in the site certificate, the certificate holder may choose to build the MWPF  
26 using turbine types in two size classes:

- 27           • Small: turbines having a rotor diameter of 82 meters or less
- 28           • Large: turbines having a rotor diameter greater than 82 meters

29           If the final design of the MWPF includes both small and large turbines, the certificate  
30 holder shall consult with an independent expert with experience in statistical analysis of avian

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1 fatality data to determine whether it would be possible to design a turbine sample with a  
2 sufficient number of turbines in each size class to allow a statistical comparison of fatality rates  
3 for all birds as a group. The certificate holder shall submit the expert's written analysis to the  
4 Department. If the expert's analysis shows that a comparison study is possible and if the  
5 Department approves, the certificate holder shall sample the appropriate number of turbines in  
6 each class and conduct the comparison study. The certificate holder may choose to sample more  
7 than 50 turbines in each monitoring year, if a larger sample size would allow the comparison  
8 study to be done.

9 *Duration of Fatality Monitoring*

10 The investigators shall perform one complete monitoring cycle during the first full year  
11 of facility operation (Year 1). At the end of the first year of monitoring, the certificate holder will  
12 report the results for joint evaluation by the Department, the certificate holder and ODFW. In the  
13 evaluation, the certificate holder shall compare the results for the MWPF with the thresholds of  
14 concern described in Section 1(g) of this plan and with comparable data from other wind power  
15 facilities in the Columbia Basin, as available. If the fatality rates for the first year of monitoring  
16 at the MWPF do not exceed any of the thresholds of concern and are within the range of the  
17 fatality rates found at other wind power facilities in the region, then the investigators will  
18 perform a second year of monitoring in Year 5 of operations.

19 If fatality rates for the first year of monitoring at the MWPF exceed any of the thresholds  
20 of concern or exceed the range of fatality rates found at other wind power facilities in the region,  
21 the certificate holder shall propose additional mitigation for Department and ODFW review  
22 within 6 months after reporting the fatality rates to the Department. Alternatively, the certificate  
23 holder may opt to conduct a second year of fatality monitoring immediately if the certificate  
24 holder believes that the results of Year 1 monitoring were anomalous. If the certificate holder  
25 takes this option, the investigators still must perform the monitoring in Year 5 of operations as  
26 described above.

27 (b) Removal Trials

28 The objective of the removal trials is to estimate the length of time avian and bat  
29 carcasses remain in the search area. Estimates of carcass removal rates will be used to adjust  
30 carcass counts for removal bias. "Carcass removal" is the disappearance of a carcass from the  
31 search area due to predation, scavenging or other means such as farming activity.

32 The investigators shall conduct carcass removal trials within each of the seasons defined  
33 above during the first year of fatality monitoring. For each trial, the investigators shall use 10 to  
34 15 carcasses of small- and large-bodied species. Trial carcasses shall be placed at least 1,000 feet  
35 from any search plots and distributed proportionately within habitat categories and subtypes  
36 similar to the search plots.

37 After the first year of fatality monitoring, the investigators may reduce the number of  
38 removal trials and the number of removal trial carcasses during any subsequent year of fatality  
39 monitoring, subject to the approval of the Department. The investigators must show that the  
40 reduction is justified based on a comparison of the first year removal data with published  
41 removal data from nearby wind energy facilities.

42 The investigators shall use game birds or other legal sources of avian species as test  
43 carcasses for the removal trials, and the investigators may use carcasses found in fatality

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1 monitoring searches. The investigators shall select species with the same coloration and size  
2 attributes as species found within the site boundary. If suitable trial carcasses are available, trials  
3 during the fall season will include several small brown birds to simulate bat carcasses. Legally  
4 obtained bat carcasses will be used if available.

5 Trial carcasses will be marked discreetly for recognition by searchers and other  
6 personnel. Carcasses will be placed in a variety of postures to simulate a range of conditions. For  
7 example, birds will be: (1) placed in an exposed posture (e.g., thrown over the shoulder), (2)  
8 hidden to simulate a crippled bird (e.g., placed beneath a shrub or tuft of grass) or (3) partially  
9 hidden. The trial carcasses will be placed randomly within the carcass removal trial plots. Trial  
10 carcasses will be left in place until the end of the carcass removal trial.

11 An approximate schedule for assessing removal status is once daily for the first 4 days,  
12 and on days 7, 10, 14, 21, 28 and 35. This schedule may be adjusted depending on actual carcass  
13 removal rates, weather conditions and coordination with the other survey work. The condition of  
14 scavenged carcasses will be documented during each assessment, and at the end of the trial all  
15 traces of the carcasses will be removed from the site. Scavenger or other activity could result in  
16 complete removal of all traces of a carcass in a location or distribution of feathers and carcass  
17 parts to several locations. This distribution will not constitute removal if evidence of the carcass  
18 remains within an area similar in size to a search plot and if the evidence would be discernable to  
19 a searcher during a normal survey.

20 Before beginning removal trials for any subsequent year of fatality monitoring, the  
21 certificate holder shall report the results of the first year removal trials to the Department and  
22 ODFW. In the report, the certificate holder shall analyze whether four removal trials per year, as  
23 described above, provide sufficient data to accurately estimate adjustment factors for carcass  
24 removal. The number of removal trials may be adjusted up or down, subject to the approval of  
25 the Department.

26 (c) Searcher Efficiency Trials

27 The objective of searcher efficiency trials is to estimate the percentage of bird and bat  
28 fatalities that searchers are able to find. The investigators shall conduct searcher efficiency trials  
29 on the fatality monitoring search plots in both grassland/shrub-steppe and cultivated agriculture  
30 habitat types. A pooled estimate of searcher efficiency will be used to adjust carcass counts for  
31 detection bias.

32 The investigators shall conduct searcher efficiency trials within each of the seasons  
33 defined above during the years in which the fatality monitoring occurs. Each trial will involve  
34 approximately 4 to 15 carcasses. The searchers will not be notified of carcass placement or test  
35 dates. The investigators shall vary the number of trials per season and the number of carcasses  
36 per trial so that the searchers will not know the total number of trial carcasses being used in any  
37 trial. In total, approximately 80 carcasses will be used per year, or approximately 15 to 25 per  
38 season.

39 For each trial, the investigators shall use small- and large-bodied species. The  
40 investigators shall use game birds or other legal sources of avian species as test carcasses for the  
41 efficiency trials, and the investigators may use carcasses found in fatality monitoring searches.  
42 The investigators shall select species with the same coloration and size attributes as species  
43 found within the site boundary. If suitable test carcasses are available, trials during the fall

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1 season will include several small brown birds to simulate bat carcasses. Legally obtained bat  
2 carcasses will be used if available. The investigators shall mark the test carcasses to differentiate  
3 them from other carcasses that might be found within the search plot and shall use methods  
4 similar to those used to mark removal test carcasses as long as the procedure is sufficiently  
5 discreet and does not increase carcass visibility.

6 The certificate holder shall distribute trial carcasses in varied habitat in rough proportion  
7 to the habitat types within the facility site. On the day of a standardized fatality monitoring  
8 search (described below) but before the beginning of the search, investigators will place  
9 efficiency trial carcasses randomly within search plots (one to three trial carcasses per search  
10 plot) within areas to be searched. If scavengers appear attracted by placement of carcasses, the  
11 carcasses will be distributed before dawn.

12 Efficiency trials will be spread over the entire season to incorporate effects of varying  
13 weather and vegetation growth. Carcasses will be placed in a variety of postures to simulate a  
14 range of conditions. For example, birds will be: (1) placed in an exposed posture (thrown over  
15 the shoulder), (2) hidden to simulate a crippled bird or (3) partially hidden.

16 The number and location of the efficiency trial carcasses found during the carcass search  
17 will be recorded. The number of efficiency trial carcasses available for detection during each  
18 trial will be determined immediately after the trial by the person responsible for distributing the  
19 carcasses. Following plot searches, all traces of test carcasses will be removed from the site.

20 If new searchers are brought into the search team, additional searcher efficiency trials  
21 will be conducted to ensure that detection rates incorporate searcher differences. The certificate  
22 holder shall include a discussion of any changes in search personnel and any additional detection  
23 trials in the reporting required under Section 5 of this plan.

24 Before beginning searcher efficiency trials for any subsequent year of fatality monitoring,  
25 the certificate holder shall report the results of the first year efficiency trials to the Department  
26 and ODFW. In the report, the certificate holder shall analyze whether the efficiency trials as  
27 described above provide sufficient data to accurately estimate adjustment factors for searcher  
28 efficiency. The number of searcher efficiency trials for any subsequent year of fatality  
29 monitoring may be adjusted up or down, subject to the approval of the Department.

30 (d) Fatality Monitoring Search Protocol

31 The objective fatality monitoring is to estimate the number of bird and bat fatalities that  
32 are attributable to facility operation as an indicator of the impact of the facility on habitat quality.  
33 The goal of bird and bat fatality monitoring is to estimate fatality rates and associated variances.  
34 The investigators shall perform fatality monitoring using standardized carcass searches according  
35 to the schedule described above.

36 Personnel trained in proper search techniques (“the searchers”) will conduct the carcass  
37 searches by walking parallel transects approximately 6 meters apart within the search plots. A  
38 searcher will walk at a rate of approximately 45 to 60 meters per minute along each transect,  
39 searching both sides out to 3 meters for casualties. Search area and speed may be adjusted by  
40 habitat type after evaluation of the first searcher efficiency trial.

41 Searchers shall flag all avian or bat carcasses discovered. Carcasses are defined as a  
42 complete carcass or body part, 10 or more feathers or three or more primary feathers in one  
43 location. When parts of carcasses and feathers from the same species are found within a search

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1 plot, searchers shall make note of the relative positions and assess whether or not these are from  
2 the same fatality.

3 All carcasses (avian and bat) found during the standardized carcass searches will be  
4 photographed, recorded and labeled with a unique number. Searchers shall make note of the  
5 nearest two or three structures (turbine, power pole, fence, building or overhead line) and the  
6 approximate distance from the carcass to these structures. The species and age of the carcass will  
7 be determined when possible. Searchers shall note the extent to which the carcass is intact and  
8 estimate time since death. Searchers shall describe all evidence that might assist in determination  
9 of cause of death, such as evidence of electrocution, vehicular strike, wire strike, predation or  
10 disease. When assessment of the carcass is complete, all traces of it will be removed from the  
11 site.

12 Each carcass will be bagged and frozen for future reference and possible necropsy or (if  
13 the carcass is fresh and whole) for use in trials. A copy of the data sheet for each carcass will be  
14 kept with the carcass at all times. For each carcass found, searchers will record species, sex and  
15 age when possible, date and time collected, location, condition (e.g., intact, scavenged, feather  
16 spot) and any comments that may indicate cause of death. Searchers will photograph each  
17 carcass as found and will map the find on a detailed map of the search area showing the location  
18 of the wind turbines and associated facilities. The certificate holder shall coordinate collection of  
19 state endangered, threatened, sensitive or other state protected species with ODFW. The  
20 certificate holder shall coordinate collection of federally listed endangered or threatened species  
21 and Migratory Bird Treaty Act protected avian species with the U.S. Fish and Wildlife Service  
22 (USFWS). The certificate holder shall obtain appropriate collection permits from ODFW and  
23 USFWS.

24 The investigators shall calculate fatality rates using the statistical methods described in  
25 Section (f), except that the investigators may use different notation or methods that are  
26 mathematically equivalent with prior approval of the Department. In making these calculations,  
27 the investigators may exclude carcass data from the first search of each turbine plot (to eliminate  
28 possible counting of carcasses that were present before the turbine was operating).

29 The investigators shall estimate the number of avian and bat fatalities attributable to  
30 operation of the facility based on the number of avian and bat fatalities found at the facility site.  
31 All carcasses located within areas surveyed, regardless of species, will be recorded and, if  
32 possible, a cause of death determined based on blind necropsy results. If a different cause of  
33 death is not apparent, the fatality will be attributed to facility operation. The total number of  
34 avian and bat fatalities will be estimated by adjusting for removal and searcher efficiency bias.

35 On an annual basis, the certificate holder shall report an estimate of fatalities in eight  
36 categories: (1) all birds, (2) small birds, (3) large birds, (4) raptors, (5) grassland birds, (6)  
37 nocturnal migrants, (7) state and federally listed threatened and endangered species and State  
38 Sensitive Species listed under OAR 635-100-0040 and (8) bats. The certificate holder shall  
39 report annual fatality rates on both a per-MW and per-turbine basis.

40 (e) Incidental Finds and Injured Birds

41 The searchers might discover carcasses incidental to formal carcass searches (e.g., while  
42 driving within the project area). For each incidentally discovered carcass, the searcher shall  
43 identify, photograph, record data and collect the carcass as would be done for carcasses within

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1 the formal search sample during scheduled searches. If the incidentally discovered carcass is  
2 found within a formal search plot, the fatality data will be included in the calculation of fatality  
3 rates. If the incidentally discovered carcass is found outside a formal search plot, the data will be  
4 reported separately. The certificate holder shall coordinate collection of incidentally discovered  
5 state endangered, threatened, sensitive or other state protected species with ODFW. The  
6 certificate holder shall coordinate collection of incidentally discovered federally-listed  
7 endangered or threatened species and Migratory Bird Treaty Act protected avian species with the  
8 USFWS.

9 The certificate holder shall develop and follow a protocol for handling injured birds. Any  
10 injured native birds found on the facility site will be carefully captured by a trained project  
11 biologist or technician and transported to a qualified rehabilitation specialist approved by the  
12 Department.<sup>2</sup> The certificate holder shall pay costs, if any, charged for time and expenses related  
13 to care and rehabilitation of injured native birds found on the site, unless the cause of injury is  
14 clearly demonstrated to be unrelated to the facility operations.

15 (f) Statistical Methods for Fatality Estimates

16 The estimate of the total number of wind facility-related fatalities is based on:

- 17 (1) The observed number of carcasses found during standardized searches during the  
18 two monitoring years for which the cause of death is attributed to the facility.<sup>3</sup>
- 19 (2) Searcher efficiency expressed as the proportion of planted carcasses found by  
20 searchers.
- 21 (3) Removal rates expressed as the estimated average probability a carcass is expected  
22 to remain in the study area and be available for detection by the searchers during  
23 the entire survey period.

24 Definition of Variables

25 The following variables are used in the equations below:

26	$c_i$	the number of carcasses detected at plot $i$ for the study period of interest (e.g., one
27		year) for which the cause of death is either unknown or is attributed to the facility
28	$n$	the number of search plots
29	$k$	the number of turbines searched (includes the turbines centered within each
30		search plot and a proportion of the number of turbines adjacent to search plots to
31		account for the effect of adjacent turbines on the search plot buffer area)
32	$\bar{c}$	the average number of carcasses observed per turbine per year
33	$s$	the number of carcasses used in removal trials
34	$s_c$	the number of carcasses in removal trials that remain in the study area after 35
35		days
36	$se$	standard error (square of the sample variance of the mean)

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<sup>2</sup> Approved specialists include Lynn Tompkins (wildlife rehabilitator) of Blue Mountain Wildlife, a wildlife rehabilitation center in Pendleton, and the Audubon Bird Care Center in Portland. The certificate holder must obtain Department approval before using other specialists.

<sup>3</sup> If a different cause of death is not apparent, the fatality will be attributed to facility operation.



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1 where  $\hat{\pi}$  includes adjustments for both carcass removal (from scavenging and other means) and  
2 observer detection bias assuming that the carcass removal times  $t_i$  follow an exponential  
3 distribution. Under these assumptions, this detection probability is estimated by:

$$4 \quad \hat{\pi} = \frac{\bar{t} \cdot p}{I} \cdot \left[ \frac{\exp\left(\frac{I}{\bar{t}}\right) - 1}{\exp\left(\frac{I}{\bar{t}}\right) - 1 + p} \right]. \quad (4)$$

5 The estimated per MW annual fatality rate ( $m$ ) is calculated by:

$$6 \quad m = \frac{m_t}{C}. \quad (5)$$

7 The final reported estimates of  $m$ , associated standard errors and 90% confidence  
8 intervals will be calculated using bootstrapping (Manly 1997). Bootstrapping is a computer  
9 simulation technique that is useful for calculating point estimates, variances and confidence  
10 intervals for complicated test statistics. For each iteration of the bootstrap, the plots will be  
11 sampled with replacement, trial carcasses will be sampled with replacement, and  $\bar{c}$ ,  $\bar{t}$ ,  $p$ ,  $\hat{\pi}$  and  
12  $m$  will be calculated. A total of 5,000 bootstrap iterations will be used. The reported estimates  
13 will be the means of the 5,000 bootstrap estimates. The standard deviation of the bootstrap  
14 estimates is the estimated standard error. The lower 5<sup>th</sup> and upper 95<sup>th</sup> percentiles of the 5000  
15 bootstrap estimates are estimates of the lower limit and upper limit of 90% confidence intervals.

#### 16 Nocturnal Migrant and Bat Fatalities

17 Differences in observed nocturnal migrant and bat fatality rates for lit turbines, unlit  
18 turbines that are adjacent to lit turbines and unlit turbines that are not adjacent to lit turbines will  
19 be compared graphically and statistically.

#### 20 (g) Mitigation

21 The certificate holder shall use a worst-case analysis to resolve any uncertainty in the  
22 results and to determine whether the data indicate that additional mitigation should be  
23 considered. The Department may require additional, targeted monitoring if the data indicate the  
24 potential for significant impacts that cannot be addressed by worst-case analysis and appropriate  
25 mitigation.

26 Mitigation may be appropriate if fatality rates exceed a “threshold of concern.”<sup>4</sup> For the  
27 purpose of determining whether a threshold has been exceeded, the certificate holder shall  
28 calculate the average annual fatality rates for species groups after each year of monitoring. Based

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<sup>4</sup> The Council adopted “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). As explained in the Klondike III order: “Although the threshold numbers provide a rough measure for deciding whether the Council should be concerned about observed fatality rates, the thresholds have a very limited scientific basis. The exceeding of a threshold, by itself, would not be a scientific indicator that operation of the facility would result in range-wide population level declines of any of the species affected. The thresholds are provided in the Wildlife Monitoring and Mitigation Plan to guide consideration of additional mitigation based on two years of monitoring data.”

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- 1 on current knowledge of the species that are likely to use the habitat in the area of the facility, the  
2 following thresholds apply to the MWPF:

Species Group	Threshold of Concern (fatalities per MW)
Raptors (All eagles, hawks, falcons and owls, including burrowing owls.)	0.09
Raptor species of special concern (Swainson's hawk, ferruginous hawk, peregrine falcon, golden eagle, bald eagle, burrowing owl and any federal threatened or endangered raptor species.)	0.06
Grassland species (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.)	0.59
State sensitive avian species listed under OAR 635-100-0040 (Excluding raptors listed above.)	0.2
Bat species as a group	2.5

3 If the data show that a threshold of concern for a species group has been exceeded, the  
4 certificate holder shall implement additional mitigation if the Department determines that  
5 mitigation is appropriate based on analysis of the data, consultation with ODFW and  
6 consideration of any other significant information available at the time. In addition, the  
7 Department may determine that mitigation is appropriate if fatality rates for individual avian or  
8 bat species (especially State Sensitive Species) are higher than expected and at a level of  
9 biological concern. If the Department determines that mitigation is appropriate, the certificate  
10 holder, in consultation with the Department and ODFW, shall propose mitigation measures  
11 designed to benefit the affected species. This may take into consideration whether the mitigation  
12 required or provided in conjunction with raptor nest monitoring, habitat mitigation, or other  
13 components of the *Wildlife Monitoring and Mitigation Plan* or *Habitat Mitigation Plan*, would  
14 also benefit the affected species.

15 The certificate holder shall implement mitigation as approved by the Department, subject  
16 to review by the Council. The Department may recommend additional, targeted data collection if  
17 the need for mitigation is unclear based on the information available at the time. The certificate  
18 holder shall implement such data collection as approved by the Council.

19 The certificate holder shall design mitigation to benefit the affected species group.  
20 Mitigation may include, but is not limited to, protection of nesting habitat for the affected group  
21 of native species through a conservation easement or similar agreement. Tracts of land that are  
22 intact and functional for wildlife are preferable to degraded habitat areas. Preference should be  
23 given to protection of land that would otherwise be subject to development or use that would  
24 diminish the wildlife value of the land. In addition, mitigation measures might include:  
25 enhancement of the protected tract by weed removal and control; increasing the diversity of  
26 native grasses and forbs; planting sagebrush or other shrubs; constructing and maintaining  
27 artificial nest structures for raptors; improving wildfire response; and conducting or making a  
28 contribution to research that will aid in understanding more about the affected species and its  
29 conservation needs in the region.

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1 If the data show that the threshold of concern for bat species as a group has been  
2 exceeded, the certificate holder shall implement additional mitigation if the Department  
3 determines that mitigation is appropriate based on analysis of the data, consultation with ODFW  
4 and consideration of any other significant information available at the time. For example, if the  
5 threshold for bat species as a group is exceeded, the certificate holder may contribute to Bat  
6 Conservation International or to a Pacific Northwest bat conservation group to fund new or  
7 ongoing research in the Pacific Northwest to better understand wind facility impacts to bat  
8 species and to develop possible ways to reduce impacts to the affected species.

9 **2. Raptor Nest Surveys**

10 The objectives of raptor nest surveys are: (1) to estimate the size of the local breeding  
11 populations of raptor species that nest on the ground or aboveground in trees or other  
12 aboveground nest locations in the vicinity of the facility; and (2) to determine whether operation  
13 of the facility results in a reduction of nesting activity or nesting success in the local populations  
14 of the following raptor species: Swainson’s hawk, golden eagle, ferruginous hawk and burrowing  
15 owl.

16 The certificate holder shall conduct short-term and long-term monitoring. The  
17 investigators will use aerial and ground surveys to evaluate nest success by gathering data on  
18 active nests, on nests with young and on young fledged. The investigators will analyze the data  
19 as described in Section 3(c) and will share the data with state and federal biologists.

20 (a) Short-Term Monitoring

21 Short-term monitoring will be done in two monitoring seasons. The first monitoring  
22 season will be in the first raptor nesting season after completion of construction of the facility.  
23 The second monitoring season will be in the fourth year after construction is completed. The  
24 certificate holder shall provide a summary of the first-year results in the monitoring report  
25 described in Section 5. After the second monitoring season, the investigators will analyze two  
26 years of data compared to the baseline data.

27 *For Raptor Species that Nest Aboveground*

28 During each monitoring season, the investigators will conduct a minimum of one aerial  
29 and one ground survey for raptor nests in late May or early June and additional surveys as  
30 described in this section. The survey area is the area within the facility site and a 2-mile buffer  
31 zone around the site. For the ground surveys while checking for nesting *success* (conducted  
32 within the facility site and up to a maximum of ½ mile from the facility site), nests outside the  
33 leased project boundary will be checked from an appropriate distance where feasible, depending  
34 on permission from the landowner for access.

35 All nests discovered during pre-construction surveys and any nests discovered during  
36 post-construction surveys, whether active or inactive, will be given identification numbers. Nest  
37 locations will be recorded on U.S. Geological Survey 7.5-minute quadrangle maps. Global  
38 positioning system (GPS) coordinates will be recorded for each nest. Locations of inactive nests  
39 will be recorded because they could become occupied during future years.

40 Determining nest *occupancy* may require one or two visits to each nest. Aerial surveys  
41 for nest occupancy will be conducted within the facility site and a 2-mile buffer. For occupied  
42 nests, the certificate holder will determine nesting *success* by a minimum of one ground visit to  
43 determine the species, number of young and young fledged within the facility site and up to ½

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1 mile from the facility site. “Nesting success” means that the young have successfully fledged  
2 (the young are independent of the core nest site).

### 3 For Burrowing Owls

4 If burrowing owl nest sites are discovered, the investigators will monitor them according  
5 to the following protocol. This species is not easily detected during aerial raptor nest surveys.  
6 The investigators shall record active burrowing owl nest sites in the vicinity of the facility as  
7 they are discovered during other wildlife monitoring tasks. Any nests discovered during post-  
8 construction surveys, whether active or showing signs of intermittent use by the species, will be  
9 given identification numbers. Nest locations will be recorded on U.S. Geological Survey  
10 7.5-minute quadrangle maps. Global positioning system coordinates will be recorded for each  
11 nest site. Coordinates for ancillary burrows used by one nesting pair or a group of nesting pairs  
12 will also be recorded. Locations of inactive nests will be recorded because they could become  
13 occupied during future years.

14 The investigators shall conduct burrowing owl monitoring in the same years as the raptor  
15 nest surveys described above. For occupied nests, the investigators shall determine nesting  
16 *success* by a minimum of one ground visit to determine species, number of young and young  
17 fledged. “Nesting success” means that the young have successfully fledged (the young may or  
18 may not be independent of the core nest site). Three visits to the nest sites may be necessary to  
19 determine outcome. Nests that cannot be monitored due to the landowner denying access will be  
20 checked from a distance where feasible.

21 If burrowing owl nests are discovered during the first year of post-construction raptor  
22 nest surveys (the first raptor nesting season after construction is completed), the investigators  
23 shall monitor those nest locations during the second year of surveys in the fourth year after  
24 construction is completed. Thereafter, the investigators shall monitor all known burrowing owl  
25 nest locations as a part of the long-term raptor nest monitoring program described in Section 2(b)  
26 below.

### 27 (b) Long-Term Monitoring

28 In addition to the two years of post-construction raptor nest surveys described in Section  
29 2(a), the investigators shall conduct long-term raptor nest surveys at 5-year intervals for the life  
30 of the facility.<sup>5</sup> Investigators will conduct the first long-term raptor nest survey in the first raptor  
31 nesting season that is at least 5 years after the completion of construction and is in a year that is  
32 divisible by five (i.e. 2020, 2025, 2030); and will repeat the survey at 5-year intervals thereafter.  
33 In conducting long-term surveys, the investigators will follow the same survey protocols as  
34 described above in Section 2(a) unless the investigators propose alternative protocols that are  
35 approved by the Department. In developing an alternative protocol, the investigators will consult  
36 with ODFW and will take into consideration other monitoring conducted in adjacent areas. The  
37 investigators will analyze the data and report after each year of long-term raptor nest surveys.

### 38 (c) Analysis

39 The investigators will analyze the raptor nesting data to determine whether a reduction in  
40 either nesting success or nest use has occurred in the survey area. If the analysis indicates a

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<sup>5</sup> As used in this plan, “life of the facility” means continuously until the facility site is restored and the site certificate is terminated in accordance with OAR 345-027-0110.

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1 reduction in nesting success or nest use by Swainson's hawks, ferruginous hawks or burrowing  
2 owls, then the certificate holder will propose appropriate mitigation for the affected species as  
3 described in Section 2(d) and will implement mitigation as approved by the Department, subject  
4 to review by the Council.

5 Reductions in nesting success or nest use could be due to operation of the MWPF,  
6 operation of another wind facility in the vicinity or some other cause. The investigators shall  
7 attribute the reduction to operation of the MWPF if the wind turbine closest to the affected nest  
8 site is an MWPF turbine, unless the certificate holder demonstrates, and the Department agrees,  
9 that the reduction was due to a different cause. At a minimum, if the analysis shows that a  
10 Swainson's hawk, ferruginous hawk or burrowing owl has abandoned a nest territory within the  
11 facility site or within ½ mile of the facility site or has not fledged any young over two successive  
12 surveys within that same area, the investigators will assume the abandonment or unsuccessful  
13 fledging is due to operation of the facility unless another cause can be demonstrated  
14 convincingly.

15 Given the low raptor nesting densities in the area and the presence of other wind energy  
16 facilities nearby, statistical power to detect a relationship between distance from an MWPF wind  
17 turbine and nesting parameters (e.g., number of fledglings per reproductive pair) will be very  
18 low. Therefore, impacts may have to be judged based on trends in the data, results from other  
19 wind energy facility monitoring studies and literature on what is known regarding the  
20 populations in the region.

### 21 (d) Mitigation

22 If the analysis shows a reduction in nesting success or nest use, the certificate holder shall  
23 implement mitigation if the Department determines that mitigation is appropriate. The certificate  
24 holder shall propose mitigation for the affected species in consultation with the Department and  
25 ODFW and shall implement mitigation as approved by the Council. In proposing appropriate  
26 mitigation, the certificate holder shall advise the Department if any other wind project in the area  
27 is obligated to provide mitigation for a reduction in raptor nesting success at the same nest site.  
28 Mitigation should be designed to benefit the affected species or contribute to overall scientific  
29 knowledge and understanding of what causes nest abandonment or nest failure. Mitigation may  
30 be designed to proceed in phases over several years. It may include, but is not limited to,  
31 additional raptor nest monitoring, protection of natural nest sites from human disturbance or  
32 cattle activity (preferably within the general area of the facility) or participation in research  
33 projects designed to improve scientific understanding of the needs of the affected species.  
34 Mitigation may take into consideration whether the mitigation required or provided in  
35 conjunction with other components of the *Wildlife Monitoring and Mitigation Plan* or *Habitat*  
36 *Mitigation Plan* would also benefit the raptor species whose nesting success was adversely  
37 affected.

### 38 3. Washington ground squirrel surveys

39 The certificate holder shall conduct long-term post-construction surveys to collect data on  
40 Washington ground squirrel (WGS) activity within the site boundary. Qualified professional  
41 biologists will monitor the locations within the facility site where WGS were detected in pre-  
42 construction surveys (beginning in 2008). The survey area includes the identified burrow areas  
43 and the buffer areas within 785 feet in suitable habitat. The investigators will walk standard  
44 protocol-level transects twice between late March and late May and record level of use, notes on

**Montague Wind Power Facility: Draft Wildlife Monitoring and Mitigation Plan**  
[DECEMBER 4, 2015]

1 natal sites, physical extent of the sites and any noticeable land use or habitat changes that may  
2 have occurred since the preconstruction survey in 2010. The investigators shall report any new  
3 WGS detections.

4 The certificate holder shall conduct surveys during the year following construction and  
5 every three years thereafter for the life of the facility. After each survey, the certificate holder  
6 shall report the results to ODFW and to the Department and shall include maps of the areas  
7 surveyed and detection locations.

8 **4. Wildlife Reporting and Handling System**

9 The Wildlife Reporting and Handling System (WRHS) is a monitoring program to search  
10 for and handle avian and bat casualties found by maintenance personnel during operation of the  
11 facility. Maintenance personnel will be trained in the methods needed to carry out this program.  
12 This monitoring program includes the initial response, handling and reporting of bird and bat  
13 carcasses discovered incidental to maintenance operations (“incidental finds”).

14 All avian and bat carcasses discovered by maintenance personnel will be photographed  
15 and data will be recorded as would be done for carcasses within the formal search sample during  
16 scheduled searches. If maintenance personnel discover incidental finds, the maintenance  
17 personnel will notify a project biologist. The project biologist (or the project biologist’s  
18 experienced wildlife technician) will collect the carcass or will instruct maintenance personnel to  
19 have an on-site carcass handling permittee collect the carcass. The certificate holder’s on-site  
20 carcass handling permittee must be a person who is listed on state and federal scientific or  
21 salvage collection permits and who is available to process (collect) the find on the day it is  
22 discovered. The find must be processed on the same day as it is discovered.

23 During the years in which fatality monitoring occurs, if maintenance personnel discover  
24 incidental finds outside the search plots for the fatality monitoring searches, the data will be  
25 reported separately from fatality monitoring data. If maintenance personnel discover carcasses  
26 within search plots, the data will be included in the calculation of fatality rates. The maintenance  
27 personnel will notify a project biologist. The project biologist will collect the carcass or will  
28 instruct maintenance personnel to have an on-site carcass handling permittee collect the carcass.  
29 As stated above, the on-site permittee must be available to process the find on the day it is  
30 discovered. The certificate holder shall coordinate collection of state endangered, threatened,  
31 sensitive or other state protected species with ODFW. The certificate holder shall coordinate  
32 collection of federally-listed endangered or threatened species and Migratory Bird Treaty Act  
33 protected avian species with the USFWS.

34 **5. Data Reporting**

35 The certificate holder will report wildlife monitoring data and analysis to the Department  
36 for each calendar year in which wildlife monitoring occurs. Monitoring data include fatality  
37 monitoring program data, raptor nest survey data, WGS survey data, WGS incidental observation  
38 and assessment reports, and WRHS data. The certificate holder may include the reporting of  
39 wildlife monitoring data and analysis in the annual report required under OAR 345-026-0080 or  
40 submit this information as a separate document at the same time the annual report is submitted.  
41 In addition, the certificate holder shall provide to the Department any data or record generated in  
42 carrying out this monitoring plan upon request by the Department.

**Montague Wind Power Facility: Draft Wildlife Monitoring and Mitigation Plan**  
[DECEMBER 4, 2015]

1           The certificate holder shall notify USFWS and ODFW immediately if any federal or state  
2 endangered or threatened species are killed or injured on the facility site.

3           Within 30 days after receiving the final versions of reports that are required under this  
4 plan, the Department will make the reports available to the public on its website and will specify  
5 a time in which the public may submit comments to the Department.<sup>6</sup>

6   **6. Amendment of the Plan**

7           This *Wildlife Monitoring and Mitigation Plan* may be amended from time to time by  
8 agreement of the certificate holder and the Council. Such amendments may be made without  
9 amendment of the site certificate. The Council authorizes the Department to agree to  
10 amendments to this plan and to mitigation actions that may be required under this plan. The  
11 Department shall notify the Council of all amendments and mitigation actions, and the Council  
12 retains the authority to approve, reject or modify any amendment of this plan or mitigation action  
13 agreed to by the Department.

DRAFT

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<sup>6</sup> The certificate holder may establish a Technical Advisor Committee (TAC) but is not required to do so. If the certificate holder establishes a TAC, the TAC may offer comments to the Council about the results of the monitoring required under this plan.

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6 **Attachment C Comments on Request for Amendment #2 and Site Certificate Holder Response**

7

**Attachment C: Comments on Request for Amendment #2 Index**

<b>Montague Wind Power Facility RFA Comment Summary Table</b>						
<b>Date Comment Received</b>	<b>Unique Record ID</b>	<b>Commenter Identification</b>			<b>Comment Format</b>	<b>Final Order Section No.</b>
		<b>LAST Name</b>	<b>FIRST Name</b>	<b>Organization</b>		
<b><i>PUBLIC COMMENTS</i></b>						
04/02/15	MWPAMD2Doc8	Meyer	Andre and Kathleen	Public	Written	II.C.2 Public Comments on Request for Amendment #2
04/03/15	MWPAMD2Doc9	Rietmann	Joe and Donna	Public	Written	II.C.2 Public Comments on Request for Amendment #2
04/20/15	MWPAMD2Doc16	Nortier	M.K.	U.S. Department of the Navy	Written	III.B.1.p. Division 24 Standards
04/22/15	MWPAMD2Doc15	Watson	Nancy	Public	Written	III.B.1.b Organizational Expertise
<b><i>REVIEWING AGENCY COMMENTS</i></b>						
03/25/15	MWPAMD2Doc5	McLane	Carla	Morrow County Planning Department	Written	III.B.1.e. Land Use
03/31/15	MWPAMD2Doc18	Hartman	Heidi	Oregon Department of State Lands	Written	II.C.1. Reviewing Agency Comments on Request for Amendment #2
04/09/15	MWPAMD2Doc14	Caines	Jeff	Oregon Department of Aviation	Written	II.C.1. Reviewing Agency Comments on Request for Amendment #2
04/13/15	MWPAMD2Doc10	Cherry	Steve	Oregon Department of Fish & Wildlife	Written	III.B.1.h. Fish and Wildlife Habitat
04/20/15	MWPAMD2Doc13	Colby	Michelle	Gilliam County Planning Department	Written	III.B.1.e. Land Use
06/22/15	MWPAMD2Doc21	Cherry	Steve	Oregon Department of Fish & Wildlife	Written	III.B.1.h. Fish and Wildlife Habitat; III.B.1.i. Threatened and Endangered Species

**Desmarais, Eric**

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**From:** Kathy Meyer <akmeyer123@gmail.com>  
**Sent:** Thursday, April 2, 2015 1:07 AM  
**To:** Eric.desmarais@state.or.us  
**Subject:** Oregon Department of Energy in support of construction deadline extension for Montague Wind Project

Dear ODOE:

As landowners in the proposed Montague Wind Power Facility, we urge the Energy Facility Siting Council (EFSC) to grant the construction deadline extension.

Thank you.

Andre and Kathleen Meyer  
[akmeyer123@gmail.com](mailto:akmeyer123@gmail.com)

Dear Eric,

As landowners in the proposed Montague Wind Power Facility, we urge the Energy Facility Siting Council to grant the construction deadline extension.

Wind power has benefited our small, rural community by providing jobs, enhancing the education of children in our schools, and adding income to our county property tax base.

The State of Oregon has also benefited from wind power, which has made the State a national leader in renewable energy and in the transition to a cleaner grid.

We urge you to grant the construction deadline extension because of the positive economic and environmental impacts of the project. If you have any questions or request further comment, please do not hesitate to contact us.

Keep Oregon green!

Sincerely,

Joe and Donna Rietmann  
P O Box 304  
Ione, OR 97843  
(541) 422-7435



DEPARTMENT OF THE NAVY  
NAVAL AIR STATION WHIDBEY ISLAND  
3730 NORTH CHARLES PORTER AVENUE  
OAK HARBOR, WASHINGTON 98278-5000

3700  
Ser N00RM/0482  
April 20, 2015

Mr. Eric Desmarais, Siting Analyst  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301

Dear Mr. Desmarais:

The Navy has reviewed the Montague Wind Power Facility, LLC Request for Amendment #2 to the Montague Wind Power Facility Site Certificate and submits the following comments for consideration by the Energy Facility Siting Council (EFSC).

The Montague Wind Power Facility poses a direct threat to public health and safety, because the proposed locations for several of the turbine towers and meteorological towers overlap with Military Training Routes (MTRs) leading into Restricted Airspace R-5701 and Naval Weapon Systems Training Facility (NWSTF) Boardman, for which Naval Air Station Whidbey Island is the primary scheduler. See attached graphic.

As background, MTRs are high-speed, low-altitude airspace corridors established by the Federal Aviation Administration (FAA) extending laterally 4 nautical miles either side of centerline and, generally, from 200 feet above ground level (AGL) to 1500 feet AGL. For more than 50 years, these corridors have been flown routinely by Navy aircraft to fulfill unique and demanding low-altitude training requirements. In the Montague Wind Power Facility area, MTR VR-1353, IR-342, 344 & 346 are utilized for both instrument (IR) and visual (VR) flight rules at an elevation down to 200 feet above ground level (AGL). Given the height of the proposed Montague turbines (over 400 feet tall), meteorological towers (over 200 feet tall), and their location in the designated MTRs, they pose a direct threat to the safety of military aircrews in flight and other members of the public on the ground in the vicinity.

The MTRs in this area are already severely impacted by existing wind turbines, particularly from the Shepherds Flat South project. Placing additional turbines within the MTR corridors would introduce new vertical obstructions that would inhibit safe low-altitude tactical training and aircraft maneuvering during a critical phase of flight in the final legs of the designated MTRs leading into R-5701 and NWSTF Boardman. Therefore, the cumulative effect of the additional Montague turbines within the MTR corridors would create new safety of flight risks, thereby jeopardizing the lives of military aircrews and people who live, work, and travel on the ground.

3700  
Ser N00RM/0482  
April 20, 2015

Condition 64 in Site Certificate (Amendment #1) is wholly inadequate to address the Navy's concerns for the protection of public health and safety, because the Oregon Department of Aviation and FAA lack the necessary authority to prevent construction of proposed turbines that pose a threat to public health and safety. To address this concern, the Navy requests that EFSC deny the request for an amended site certificate for Montague turbines proposed to be sited within the MTR corridors or issue an amended site certificate that includes an express condition that the certificate holder shall only site turbines and meteorological towers outside of MTRs VR-1353, IR-342, 344 & 346.

The Navy, in email, has expressed its concerns to the applicant regarding the proposed facility's impacts to safety of flight and public health and safety, including requests to mitigate those impacts by removing or relocating turbines proposed under the MTRs.

While the Navy is supportive of renewable energy development, the safety of military aircrews, other members of the public, and the maintenance of military preparedness are our paramount considerations. We therefore urge EFSC to deny the request for an amended site certificate for Montague turbines proposed to be sited within the MTR corridors in order to ensure adequate protection of public health and safety. Navy does not assert "ownership" of property or the airspace above it, only a legitimate right to continue historic use of low-altitude military airspace designated by the FAA. We recognize there are multiple concerns and interests; however, we have the obligation to protect against any activity that inhibits the safety and efficacy of this vital military training capability. In the EFSC's role of reviewing and conditioning energy projects, it is appropriate to give full consideration to these interests. To do otherwise would be detrimental to the public health, safety, welfare, and, ultimately, to our national defense.

Thank you for your consideration of these comments. My point of contact on this matter is Mr. Kent Mathes, available via email at kent.mathes@navy.mil or via telephone at (360)257-3315.

Sincerely,



M. K. NORTIER  
Captain, U.S. Navy  
Commanding Officer

Enclosure: 1. Map - Montague Wind Power Facility in relation to MTRs

3700  
Ser N00RM/0482  
April 20, 2015

Copy to:

PDASN (EI&E)

OPNAV N45

Navy Regional Airspace Coordinator

FAA Western Service Area Naval Representative (NAVREP)

NORAD HQ J36R (Attn: Mark Bishop, DAFC), 250 Vandenberg St., Ste B016,  
Peterson AFB, CO 80914-3818

DoD Western Regional Environmental Office (Attn: Gary Munsterman,  
AICP), 50

Fremont St., Suite 2450, San Francisco, CA 94105

DoD Siting Clearinghouse, ODUSD(I&E) (Attn: Mike Aimone)

Oregon Department of Aviation (Attn: Mitch Swecker) 3040 25th St. SE,  
Salem,

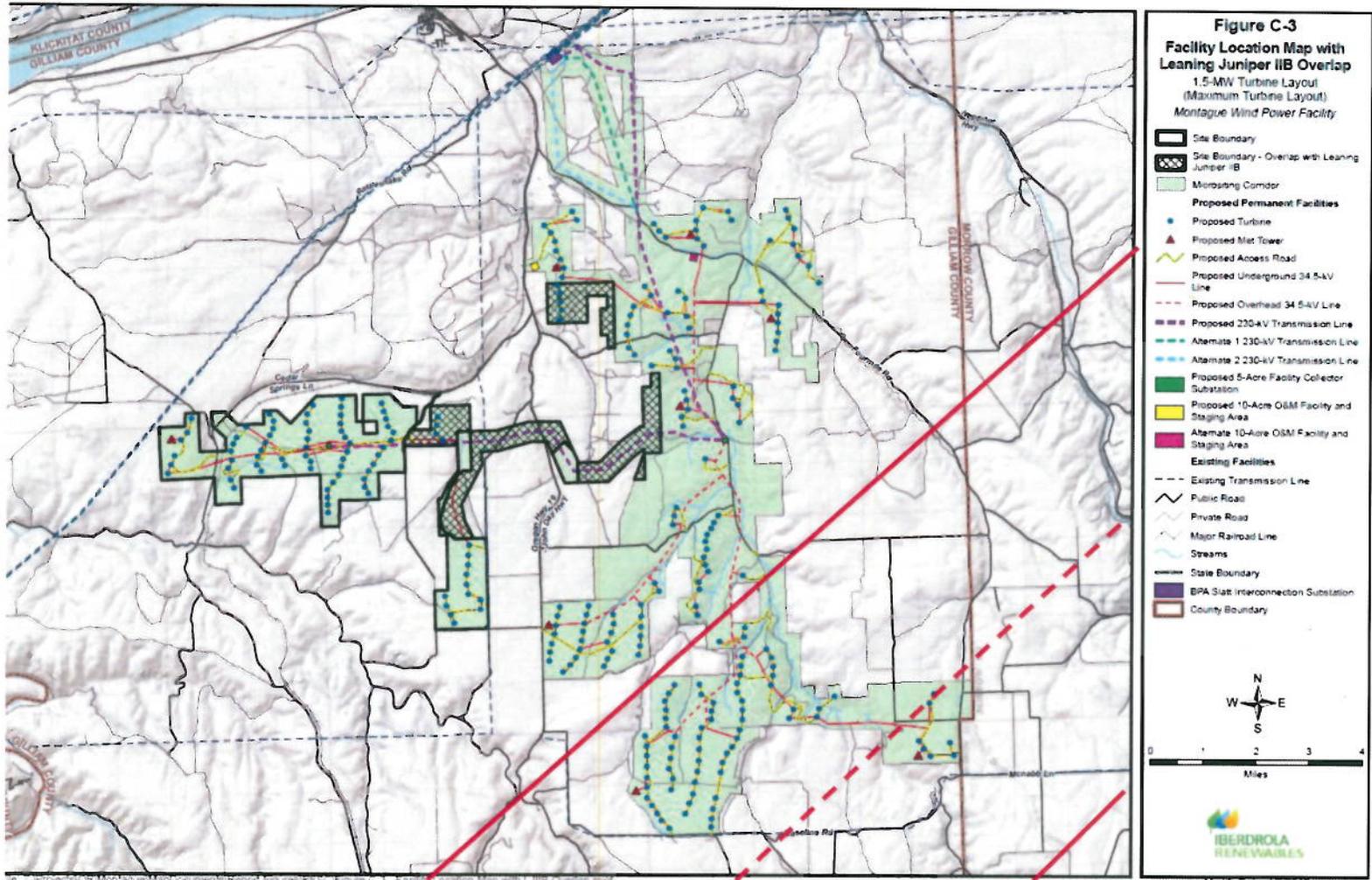
OR 97302-1125

Gilliam County Planning Department (Attn: Susie Anderson, Planning  
Director),

221 S. Oregon Street, PO Box 427, Condon, OR 97823

Sara Parsons, Montague Wind Power Facility, LLC, c/o Iberdrola  
Renewables,

LLC, 1125 NW Couch Street, Suite 700, Portland, OR 97209



Approx MTR lateral limits

April 22, 2015

Eric Desmarais  
Oregon Department of Energy  
625 Marion St.  
Salem, OR 97301

Dear Mr. Desmarais,

As you consider inviting Iberdrola Renewables, LLC to your community for what may be a long term business relationship, I wish to share my region's experience with the company.

Iberdrola's 24 turbine 48 megawatt Groton Wind project, located in Groton, NH went on line the close of 2012. The NH Site Evaluation Committee (SEC) certificated the facility and is responsible for compliance of it's construction and operation.

Shortly after start up, members of the public discovered and reported to the SEC Groton Wind's Operations and Maintenance building was constructed in a location 500 feet from the certificated location. The location of at least two turbines were moved from the original certificated site. Some of the road grades to the turbine sites were built at 15%, although the application for which the facility was certificated stated the road grades would not exceed 12%. The approved certificate called for year-round access to the turbine sites, with winter plowing and sanding, providing for emergency access and turn around. Iberdrola determined this was not cost effective and took it upon themselves to purchase two snow cats instead. No notification was provided of this change to the SEC.

Fire suppression installation was omitted from the turbines. It was only after the NH state Fire Marshal threatened to shut down the facility that turbines were retrofitted with this feature.

All these actions were in violation of Iberdrola's approved certificate. As our Counsel for the Public is quoted "build now and ask for forgiveness later". Litigation over this matter has dragged on for over two years. Iberdrola claims NH's Department of Environmental Services granted approval for the moving of the Operations and Maintenance building. Our state law dictates that only the SEC can approve such changes.

Please see NHSEC Docket 2010-01 for a history of Groton Wind, LLC at <http://www.nhsec.nh.gov/projects/2010-01/index.htm>.

The SEC is in the process of washing their hands of the matter, but it is really the public, the neighbors that suffer the consequences of such sloppy, blatant misuse of corporate power. A retention pond for the Operations and Maintenance building area was constructed close to an abutting neighbor's property. During a heavy rain storm, the pond overflowed. The neighbor's well was fouled and his constitutional rights to health and happiness were destroyed forever. He looked out from his window at a tiered hillside

upon which Groton Wind's maintenance facility was constructed, subjected to night time lighting, along with noise and rumble of daily service trucks. Only after he retained the services of legal council, was he able to reach a financial settlement and his property was purchased by the company. Other impacted neighbors settled as well and have waived their rights to complain about the facility.

See <http://www.nhsec.nh.gov/projects/2010-01/documents/140106rampino.pdf>

Iberdrola is under the impression that financial gratitude solves the problems they create and justifies their wrong doing. What they fail to acknowledge is that neighbor's lives have been impacted and changed forever, despite a monetary payment.

If you choose to enter into a business relationship with Iberdrola, proceed cautiously and protect your region's quality of life, as it will be changed forever. Video tape and record EVERY meeting, presentation and contact with Iberdrola representatives. You will find out soon enough, the truth changes.

Thank you for providing me the opportunity to share my region's experiences with Iberdrola Renewables, LLC.

Nancy Watson  
Groton, NH

**Desmarais, Eric**

---

**From:** Carla McLane <CMclane@co.morrow.or.us>  
**Sent:** Wednesday, March 25, 2015 4:39 PM  
**To:** eric.desmarais@state.or.us; Parsons, Sara  
**Subject:** Montague Wind Power Facility: Amendment #2

Eric,  
After reviewing the Public Notice and the Request to Extend Construction Start and Completion Deadline, Morrow County does not have any comment at this time. As shared previously no Morrow County land use or other ordinances that would be applicable have changed. We would support the extension of both the construction and operation deadlines as requested by the Site Certificate holder.

Please let me know if you have any questions or I can provide further information.

Cordially,  
Carla McLane  
Planning Director  
Morrow County

**Desmarais, Eric**

---

**From:** HARTMAN Heidi <heidi.m.hartman@state.or.us>  
**Sent:** Tuesday, March 31, 2015 11:49 AM  
**To:** DESMARAIS Eric  
**Subject:** Public Notice Available on Request for Amendment #2 for Montague Wind Power Facility

Hi Eric,

Since the requested amendment seeks to only extend the construction deadlines and there are no proposed changes to the facility or site boundary, DSL has no comments on the requested amendment.

Thank you.

*Heidi Hartman*

NE Region Aquatic Resource Coordinator

[Oregon Department of State Lands](#)

1645 NE Forbes Road, Suite 112

Bend, OR 97701

Office: 541-388-6060 | Fax: 541-388-6480 | Cell: 541-419-7650

1367  
**Desmarais, Eric**

---

**From:** CAINES Jeff <Jeff.CAINES@aviation.state.or.us>  
**Sent:** Thursday, April 9, 2015 4:04 PM  
**To:** DESMARAIS Eric  
**Subject:** FW: Montague Wind Power Facility - ODA Comments  
**Attachments:** Montague Wind Power Facility - ODA Comment.pdf

Eric:

My mistake, I put "Summit Ridge" on the Subject line. It should say "Montague Wind Power"

Jeff

---

**From:** CAINES Jeff  
**Sent:** Wednesday, April 01, 2015 10:43 AM  
**To:** DESMARAIS Eric  
**Subject:** RE: Montague Wind Power Facility - ODA Comments

Eric:

Here is ODA's comment letter. Please keep Condition of Approval #64.

Thanks again.

Jeff

---

**From:** Desmarais, Eric [<mailto:eric.desmarais@state.or.us>]  
**Sent:** Tuesday, March 31, 2015 3:06 PM  
**To:** CAINES Jeff  
**Subject:** RE: Montague Wind Power Facility - ODA Comments

Is that different from condition 64?

64: Before beginning construction, the certificate holder shall submit a Notice of Proposed Construction or Alteration to the Federal Aviation Administration (FAA) and the Oregon Department of Aviation identifying the proposed final locations of turbine towers and meteorological towers. The certificate holder shall promptly notify the Department of the responses from the FAA and the Oregon Department of Aviation.

**From:** CAINES Jeff [<mailto:Jeff.CAINES@aviation.state.or.us>]  
**Sent:** Tuesday, March 31, 2015 2:35 PM  
**To:** Desmarais, Eric  
**Subject:** Montague Wind Power Facility - ODA Comments

Eric:

I was looking through this project and it looks like aviation may be overlooked in 2010 when the original site certificate was issued. My question is if Federal and State Law required the wind turbines to file a FAA form 7460-1 can that be added as a condition?

The FAA requires that any structures over 200-feet file to get a determination.

**Jeff Gaines, AICP**

**Oregon Department of Aviation**

Aviation Planner / SCIP Coordinator

3040 25th St. SE | Salem, OR 97302

Office: 503.378.2529

Cell / Text: 503.507.6965

Email: [Jeff.Gaines@aviation.state.or.us](mailto:Jeff.Gaines@aviation.state.or.us)

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# MEMORANDUM

Department of Fish and Wildlife  
Wildlife Division  
Intra Departmental

**Date:** April 13, 2015  
**To:** Eric Desmarais- Oregon Department of Energy  
**From:** Steve Cherry –District Biologist, Art Martin –ODFW Energy Coordinator  
**Subject:** ODFW Comments on the Request for Amendment to the Site Certificate for Montague Wind Power Facility

Oregon Department of Energy (ODOE) has requested comments from the Oregon Department of Fish and Wildlife (ODFW) on the Completeness of the Request for Amendment to the Site Certificate for Montague Wind Power Facility. This Letter contains: (1) ODFW contact information for the project; and (2) ODFW's comments on the Amendment.

## Contacts

I will be the main contact person for ODFW for the Energy Facility Siting Council (EFSC) permitting process and my contact information is: Steve Cherry, PO Box 363, Heppner, OR 97836. My phone number is (541) 676-5230. I will also be coordinating with Art Martin, 3406 Cherry Ave. NE Salem, OR 97303.

## General Comments

Please find below a listing of the most applicable statutes, administrative rules and policies administered by ODFW that would pertain to the siting of this proposed facility. ODFW will review and make recommendations for the proposed project based on the following applicable statutes and rules.

### **ODFW Management Authorities**

Some of the Oregon Department of Fish and Wildlife's (ODFW) goals, objectives, and management authorities for the fish and wildlife populations affected by the Project are found in the following Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR) and associated plans, and are summarized below.

- Energy Facility Siting Council Siting Standards – Fish and Wildlife Habitat (OAR 345-022-0060)  
This standard requires that the design, construction, and operation of a proposed facility (including mitigation) be consistent with the habitat mitigation goals and standards in OAR chapter 635, division 415. Oregon’s Energy Facility Siting Council (EFSC) must determine whether the applicant has done appropriate site-specific studies to characterize the fish and wildlife habitat at the site and nearby. If impacts cannot be avoided, the applicant must provide a habitat mitigation plan. The plan must provide for appropriate mitigation measures, depending on the habitat categories affected by the proposed facility. The plan may require setting aside and improving other land for fish and wildlife habitat to make up for the habitat removed by the facility.
- Energy Facility Siting Council Siting Standards – Threatened and Endangered Species (OAR 345-022-0070)  
To issue a site certificate, EFSC must (after consultation with ODFW) determine that the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of a species listed under the Oregon Endangered Species Act. This standard seeks to avoid harmful impacts to plant and animal species identified as threatened or endangered under state law. In practice, this means that the applicant must provide appropriate studies of the site to identify threatened or endangered species that the proposed facility could affect. ODFW determines the state-listed threatened or endangered wildlife species. If a potential risk to the survival or recovery of a threatened or endangered species exists, the applicant must redesign or relocate the facility to avoid that risk or propose appropriate mitigation measures.
- Wildlife Policy (ORS 496.012)  
Establishes wildlife management policy to prevent serious depletion of any indigenous species and maintain all species of fish and wildlife at optimum levels for future generations.
- State Endangered Species Act (ORS 496.171-182)  
Requires conservation and recovery of wildlife species that are classified as endangered or threatened. Authorizes ODFW to develop conservation and recovery plans for listed wildlife species. At ORS 498.026(1), prohibits “taking” of any listed species. Illegal take is a violation of the wildlife laws, subject to criminal prosecution as a Class A misdemeanor or violation pursuant to ORS 496.992.
- Prohibition of harassment, etc. of wildlife (ORS 498.006)  
Prohibits chasing, harassment, molestation, worrying or disturbing any wildlife, except as the Fish and Wildlife Commission may allow by rule.
- Criminal penalties for wildlife violations (ORS 496.992)  
Makes violation of any wildlife statute or Fish and Wildlife Commission rule subject to prosecution as a Class A misdemeanor or violation.
- Fish and Wildlife Habitat Mitigation Rule (OAR 635-415-0000-0025)

Governs ODFW's provision of biological advice and recommendations concerning mitigation for losses of fish and wildlife habitat caused by development actions. Based on standards in the rule, ODFW determines the appropriate category to apply to land where a development action is proposed. If ODFW determines that such land is Category 1, ODFW must recommend that impacts to the habitat be avoided. If impacts cannot be avoided, ODFW must recommend against the development action. If ODFW determines that such land is Category 2, ODFW must recommend that impacts to the habitat be avoided. If impacts cannot be avoided, ODFW must recommend a high level of mitigation (as specified in more detail in the rule). If such mitigation is not required, ODFW must recommend against the development action.

- Wildlife Diversity Plan (OAR 635-100-0001 through 0030)  
Establishes a plan to maintain Oregon's wildlife diversity by protecting and enhancing populations and habitats of native wildlife at self-sustaining levels throughout natural geographic ranges.
- Oregon Conservation Strategy Plan (Adopted by Commission)  
A blueprint for conservation of the state's native fish and wildlife and their habitats, the Strategy provides information on at-risk species and habitats, identifies key issues affecting them, and recommends actions. The Conservation Strategy emphasizes proactively conserving declining species and habitats to reduce the possibility of future federal or state listings.
- Oregon Plan for Salmon and Watersheds (ORS 541.405)  
Establishes plan to restore native fish populations and the aquatic systems that support them to productive and sustainable levels that will provide environmental, cultural, and economic benefits.
- ODFW's Fish Passage Law (ORS 509.580 - 509.645)  
Requires upstream and downstream passage at all artificial obstructions in those Oregon waters in which migratory native fish are currently or have historically been present.
- General Fish Management Goals (OAR 635-007-0510)  
Establishes the goals that fish be managed to take full advantage of the productive capacity of natural habitats, and that ODFW address losses in fish productivity due to habitat degradation through habitat restoration.
- Native Fish Conservation Policy (OAR 635-007-0502-0535)  
Protects and promotes natural production of indigenous fishes.
- Trout Management (OAR 635-500-0100-0120)  
Requires maintenance of genetic diversity and integrity of wild trout stocks, and the protection, restoration, and enhancement of trout habitat.
- Oregon's Mule Deer Management Plan (OAR 635-190-0000-0030)

Establishes a plan to protect and enhance mule deer populations in Oregon to provide optimum balance among recreational uses, habitat availability, primary land uses, and other wildlife species.

- Oregon's Elk Management Plan (OAR 635-160-0000-0030)  
Establishes a plan to protect and enhance elk populations in Oregon, to provide optimum recreational benefits to the public, and be compatible with habitat capability and primary land uses.
- Oregon's Wolf Conservation and Management Plan (OAR 635-110-0000-0040)  
Establishes measures ODFW will take to conserve and manage the species. This includes actions that could be taken to protect livestock from wolf depredation and address human safety concerns.
- Recommendations for Greater Sage-Grouse Habitat Classification Under Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy (OAR 635-140-0000)  
This document provides policy direction, consistent recommendations, and supporting rationale to guide ODFW habitat mitigation recommendations associated with impacts to greater sage-grouse habitat from energy development, its associated infrastructure, or other industrial/commercial development.

### **Specific Comments**

#### Comment 1

ODFW recommends that the Applicant amend the long term raptor nest monitoring portion of the Wildlife Monitoring and Mitigation Plan to conduct the five year monitoring on years divisible by five (i.e. 2025, 2030, 2035, etc.). The short term monitoring should still be completed in years one and four after construction but instead of conducting the first year of long term monitoring on year nine, the survey would start on the first year after year four that was divisible by five (i.e. short term monitoring occurs in 2018 and 2022 then the first year of long term monitoring would be 2025). There should still only be five years of long term monitoring as with the current plan but the monitoring would be done during the same time frame as other surrounding wind power facilities. ODFW in collaboration with wind industry personnel are working to develop a consistent survey period across the entire Columbia Plateau Ecoregion (CPE) so that the long term monitoring can be compared with other projects in the CPE and create a more usable and complete understanding of the raptor use around the wind facilities in the CPE.

I appreciate the opportunity to comment on this Amendment and look forward to working with the Applicant on this issue. Please feel free to call me if you have any questions.

Respectfully,



Steve Cherry  
District Wildlife Biologist

**Desmarais, Eric**

---

**From:** Michelle Colby <michelle.colby@co.gilliam.or.us>  
**Sent:** Monday, April 20, 2015 1:32 PM  
**To:** Desmarais, Eric (eric.desmarais@state.or.us)  
**Subject:** Montague Wind Power Facility Request for Amendment No. 2 -- comment

Eric –

Good afternoon, not sure if the following is what you are needing or not from Gilliam County let me know.

RE: Montague Wind Power Facility Request for Amendment No. 2

I had a discussion with my predecessor Susan Anderson regarding Montague Wind Power Facility Request for Amendment No. 2

First let me address the matter of Gilliam County code/zone change; no changes to the Gilliam County Ordinances or Zoning have occurred since the first Amendment.

Secondly, in reviewing new construction the County approved Conditional Use Permit 2014-01; application to install a manufactured home as a dwelling provided in conjunction with farm use in the exclusive farm use zone submitted by Crum Ranches LLC.

This dwelling is to be placed approximately two (2) miles from one point of the Montague boundary. The dwelling placement joins other existing dwellings therefore it is our determination that there is no impact .

If there is anything else, please do not hesitate to contact me.

Thanks.

**Michelle Colby**

Gilliam County  
Planning Dept.  
221 S. Oregon St., Rm 104  
PO Box 427  
Condon, OR 97823  
Ph. 541.384.2381  
Fax 541.384.3304



## Esterson, Sarah

---

**From:** Steve Cherry <steve.p.cherry@state.or.us>  
**Sent:** Monday, June 22, 2015 8:13 AM  
**To:** DESMARAIS Eric; CHERRY Steve P  
**Cc:** MARTIN Art C  
**Subject:** RE: Habitat Assessment for Montague Wind Power Facility

Eric,  
I do not believe that much of the habitat has changed in the project area. There might be some acres that have been pulled out of CRP and are now agricultural lands but other than that I am not aware of any habitat changes out there. As you mentioned in your email there is a requirement that the certificate holder completes a new habitat assessment prior to construction so I did not feel the need to comment on that when we commented on the extension. Also the biggest and probably most important potential change in habitat classification would be any change in use of WGS on the project area. The certificate holder is also required to complete a new survey for WGS prior to construction so any of that change would be captured in those surveys and mitigated for properly. As I said before based on my knowledge of the habitats in the project area from working in the area is that there has not been a whole lot of change. I hope this answers your question but please let me know if you need more clarification or information.

---

**From:** DESMARAIS Eric  
**Sent:** Friday, June 19, 2015 4:11 PM  
**To:** CHERRY Steve P  
**Cc:** MARTIN Art C  
**Subject:** Habitat Assessment for Montague Wind Power Facility

Steve,  
I had a question regarding the habitat categorizations for the Montague Wind Power Facility in Gilliam County. A habitat assessment does not appear to have been done since roughly 2008. While there is a condition in the site certificate that requires the certificate holder to redo the habitat assessment prior to beginning construction I wanted to know if you thought the habitat has changed and what is the basis for your opinion?

**Eric Desmarais**  
Energy Facility Siting Analyst  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301  
P:(503) 373-0214

**Requests for Additional Information on the Request for Amendment #2  
and Certificate Holder Responses**

<b>Index</b>			
<b>Document</b>	<b>Issued By</b>	<b>Date Issued</b>	<b>Document ID</b>
Request for Additional Information (RAI) #1	ODOE	05/05/15	MWPAMD2Doc19
RAI #1 Response	Certificate Holder	06/04/15	MWPAMD2Doc20
RAI #2	ODOE	07/16/15	MWPAMD2Doc22
RAI #2 Response	Certificate Holder	08/11/15	MWPAMD2Doc23



# Oregon

Kate Brown, Governor



OREGON  
DEPARTMENT OF  
ENERGY

625 Marion St. NE  
Salem, OR 97301-3737  
Phone: (503) 378-4040  
Toll Free: 1-800-221-8035  
FAX: (503) 373-7806  
www.Oregon.gov/ENERGY

May 5, 2015

Sara Parsons  
Montague Wind Power Facility, LLC  
1125 NW Couch Street, Suite 700  
Portland, OR 97209

RE: Montague Wind Power Facility Request for Site Certificate Amendment

Dear Ms. Parsons:

The Oregon Department of Energy (department) has completed its initial review of the Montague Wind Power Facility Second Request for Amendment (request) and the comments received from the public and reviewing agencies. The department has determined that it will need additional information in order to evaluate the request and prepare the proposed order. To aid in your review, I have enclosed all of the comments the department received during the comment period.

As a general issue, the request relies largely on information that was previously provided during either the original Application for Site Certificate or the first Request for Amendment. Since It has been five years since the site certificate was issued, much of the information that the applicant relied upon to meet the Energy Facility Siting Council (Council) standards at that time is now outdated. As described below, where the request relies on outdated information, that information must be updated in order for the department to evaluate the request and to prepare the proposed order.

Please review the requests below and provide the requested information by June 5, 2015. If you need more time to provide this information, please contact me.

1. OAR 345-022-0060 (Fish and Wildlife Habitat) requires that the Council find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025. The Council and the certificate holder previously agreed to a Habitat Mitigation Plan for the facility to meet this standard; and Condition 93 of the site certificate requires that the certificate holder implement that plan. In order to evaluate the requested amendment, please verify whether the mitigation site identified in the mitigation plan remains available and viable. If it is not, the plan must be updated.
2. The information relied on to meet OAR 345-022-0070 (Threatened and Endangered Species) is outdated, since it is based on surveys completed for the original Site Certificate Application. In order to evaluate the request for compliance with OAR 345-022-0070, please provide updated surveys or a plan to complete the surveys prior to the beginning of construction and a discussion of how this will establish compliance with the Threatened and Endangered Species standard.
3. The information relied on to meet OAR 345-022-0110 (Public Services) is outdated, since it is based on evidence submitted for the original Site Certificate Application. Please contact all of the

proposed public service providers and provide documentation establishing that the public service providers can continue to provide the required services.

4. The Department of the Navy submitted a comment expressing concern that the facility overlaps with Military Training Routes leading into Restricted Airspace R-5701 and Naval Weapons Systems Training Facility Boardman. Please respond to that comment.

In addition to these specific requests, please review all of the public and agency comments and provide responses as necessary.

Once we receive the necessary information, we will evaluate your request and prepare the proposed order. Again, if you need additional time beyond June 5, 2014 to provide the information, please let me know.

If you have any questions do not hesitate to contact me at [eric.desmarais@state.or.us](mailto:eric.desmarais@state.or.us) or (503) 373-0214.

Sincerely,



Eric Desmarais  
Energy Facility Siting Analyst

Enclosure:    Reviewing Agency Comments Morrow County  
                  Reviewing Agency Comments Gilliam County  
                  Reviewing Agency Comments Oregon Department of Aviation  
                  Reviewing Agency Comments Oregon Department of State Lands  
                  Reviewing Agency Comments Oregon Department of Fish and Wildlife  
                  Reviewing Agency Comments Department of the Navy  
                  Public Comments Meyer  
                  Public Comments Rietmann  
                  Public Comments Watson

Cf (via email):

Todd Cornett, Oregon Department of Energy  
Virginia Gustafson, Oregon Department of Energy  
Renee France, Oregon Department of Justice

## Desmarais, Eric

---

**From:** Parsons, Sara <Sara.Parsons@iberdrolaren.com>  
**Sent:** Thursday, June 4, 2015 1:29 PM  
**To:** 'Desmarais, Eric'  
**Cc:** Albrich, Elaine (elaine.albrich@stoel.com); Durocher, Jeffrey  
**Subject:** RE: RAI Responses  
**Attachments:** Attachment\_U-1\_Gilliam\_County\_Sheriff\_2015.pdf; Attachment\_O-1\_City of Arlington Letter\_2015.pdf; KBC LLP - Amendment #1 (recorded).pdf; Attachment\_O-2\_City of Arlington water right certificates (G-13305).pdf; Attachment\_U-2\_Gilliam\_County\_Fire\_2015.pdf; Montague RAI response\_060415.pdf

Eric,

Please see attached. We will mail you a hard copy as well.

Sara

**Sara McMahon Parsons**, (503) 796-7732

---

**From:** Desmarais, Eric [<mailto:eric.desmarais@state.or.us>]  
**Sent:** Tuesday, June 02, 2015 8:55 AM  
**To:** Parsons, Sara  
**Subject:** RE: RAI Responses

Great thanks!

Eric

---

**From:** Parsons, Sara [<mailto:Sara.Parsons@iberdrolaren.com>]  
**Sent:** Tuesday, June 2, 2015 8:53 AM  
**To:** Desmarais, Eric  
**Subject:** RE: RAI Responses

I am planning to submit them by Friday.

**Sara McMahon Parsons**, (503) 796-7732

---

**From:** Desmarais, Eric [<mailto:eric.desmarais@state.or.us>]  
**Sent:** Tuesday, June 02, 2015 7:52 AM  
**To:** Parsons, Sara  
**Subject:** RAI Responses

Sara,

I just wanted to check in on the status of the RAIs. Are you planning on submitting them by Friday or will you be needing an extension?

**Eric Desmarais**  
Energy Facility Siting Analyst  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301  
P:(503) 373-0214

=====

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June 4, 2015

**VIA EMAIL AND U.S. MAIL**

Eric Desmarais  
Energy Facility Siting Analyst  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301

**Re: Montague Wind Power Facility, Response to Request for Additional Information**

Dear Eric:

This letter responds to your letter dated May 5, 2015, requesting additional information (“RAI”) to process the Montague Wind Power Facility Second Request for Amendment.

RAI #1

*Please verify whether the mitigation site previously identified remains available and viable.*

Yes, the mitigation site remains available and viable. Montague Wind Power Facility, LLC (“Certificate Holder”) has already executed a conservation easement for 80 acres within the 440-acre parcel described in the *Habitat Mitigation Plan*. A copy is enclosed for the record. The actual habitat impacts and the size of the mitigation area required under the *Habitat Mitigation Plan* (that is incorporated in Condition 93 are determined according to the final configuration of facility components. Condition 93 and the *Habitat Mitigation Plan* require the Certificate Holder to acquire the needed mitigation acreage prior to starting construction. If additional acres are required based on the final facility configuration, Certificate Holder will acquire additional land within the 440-acre parcel or select other suitable land as allowed under the *Habitat Mitigation Plan*. Certificate Holder has confirmed with the property owner that additional acres are available.

RAI #2

*Please provide updated surveys or a plan to complete the surveys prior to beginning construction and a discussion of how this will establish compliance with the Threatened and Endangered Species standard.*

Certificate Holder will complete the pre-construction surveys in the appropriate seasons, consistent with the current site certificate conditions. The existing conditions are adequate to ensure that the surveys are completed prior to construction and any new information will be accounted for in construction plans necessary to comply with the Threatened and Endangered Species standard.

Eric Desmarais  
June 4, 2015  
Page 2

RAI #3

*Please provide an updated public service provider list and provide documentation establishing that the public service providers can continue to provide the required services.*

Certificate Holder has contacted the City of Arlington, Gilliam County Sheriff's Office and the North Gilliam County Rural Fire Protection District and confirmed that the public service provider list remains unchanged. Letters from the City of Arlington, Gilliam County Sheriff's Office and North Gilliam County Rural Fire Protection District confirming the providers can continue to provide the required services are enclosed with this response letter.

RAI #4

*Please respond to the U.S. Department of the Navy's comments expressing concern that the facility overlaps with Military Training Routes.*

The U.S. Department of the Navy ("Navy") did not raise any concern about the Military Training Routes ("MTRs") during the original permitting process for the project (Site Certificate, dated September 14, 2010) or in the first amendment process (First Amended Site Certificate, dated June 10, 2013). This second amendment only seeks to extend the construction deadlines; it does not seek to alter or modify the previously-approved project design. Consequently, given its failure to raise its concerns over MTRs in earlier proceedings, Certificate Holder maintains that the Navy has waived its right to raise this issue now during the second amendment process. Further, no facts or circumstances have changed that warrant the Energy Facility Siting Council ("EFSC") to reconsider its prior findings concerning land use or public health and safety.

Even if EFSC was to address the Navy's concern on the merits, no action is required. First, the Navy's concern about "public health and safety" related to MTRs is really a request for EFSC to impose a proscriptive easement over land that Certificate Holder has leased from local landowners. Certificate Holder incorporates by reference the arguments Applicant Saddle Butte Wind, LLC ("Saddle Butte") made *In the Matter of the Application for a Site Certificate for the Saddle Butte Wind Park*, DOJ File No. 330050-GN0411-13. There is no basis upon which EFSC may impose a condition requiring the removal of previously-permitted turbines because no land use or property laws have changed since June 2013 when Certificate Holder received the First Amended Site Certificate.

MTRs are flight paths created by the Navy for training purposes, where military aircraft fly at low altitudes and may exceed airspeeds identified in 14 C.F.R. Part 91 for aircraft operating below 10,000 feet. MTRs, however, are not restricted airspace in that other non-military aircraft may fly through the MTRs, even if the MTR is in use. Further, Federal Aviation Administration ("FAA") regulations apply to military aircraft within an MTR, with the sole exception of aircraft speed. In short, the FAA regulations require that pilots, including military pilots, not fly in a careless or reckless manner, and take those steps necessary to maintain the mandated safety buffer between the aircraft and a structure, which is 500 feet. *See* 14 CFR Part 91.13(a), 14 CFR Part 91.119. EFSC previously found that the Certificate Holder can construct and operate the project safely, subject to certain conditions. Certificate Holder is not proposing to change the project design or amend any conditions. Therefore, as long as the Navy complies

Eric Desmarais  
June 4, 2015  
Page 3

with the applicable FAA regulations, there is no risk to public health and safety. To further support this conclusion, Certificate Holder incorporates by reference the arguments Saddle Butte made *In the Matter of the Application for a Site Certificate for the Saddle Butte Wind Park*, DOJ File No. 330050-GN0411-13.

Response to Agency and Public Comments

Certificate Holder has reviewed the comments and provides the following response to comments from the Oregon Department of Fish and Wildlife (“ODFW”) and from Nancy Watson below. No other comments warrant a response.

With respect to ODFW, Certificate Holder is already obligated to conduct five years of raptor nest monitoring. Certificate Holder will conduct the monitoring on years divisible by five, as ODFW recommends.

Ms. Watson’s comments relate to Groton Wind, LLC (“Groton”) in New Hampshire and are not relevant to this EFSC proceeding. The New Hampshire Site Evaluation Committee has found no violations of the Certificate, and Groton Wind, LLC expects to address allegations at a hearing before the Site Evaluation Committee. Certificate Holder and its parent company Iberdrola Renewables, LLC affirm that both entities are in compliance with all EFSC permits for their permitted and operating wind facilities. EFSC may rely on its previous findings to conclude that Certificate Holder satisfies the Organizational Expertise Standard.

Please let us know if you require additional information to process this amendment request. We look forward to appearing before EFSC, and thank you for your time.

Very truly yours,



Sara Parsons  
Senior Business Developer

After recording return to:

Winthrop & Weinstine, P.A. (MRP)  
Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402

MORROW COUNTY, OREGON 2011-28654  
E-EAS 08/22/2011 11:19:29 AM  
Cnt=2 Str=1 TC  
\$35.00 \$5.00 \$11.00 \$15.00 \$10.00 \$76.00



I, Bobbi Childers, County Clerk for Morrow County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Bobbi Childers - County Clerk



(Space Above This Line for Recorder's Use Only)

**AMENDMENT NO. 1 TO DECLARATION OF CONSERVATION EASEMENT AND ASSIGNMENT OF DECLARATION OF CONSERVATION EASEMENT**

**THIS AMENDMENT NO.1 TO DECLARATION OF CONSERVATION EASEMENT AND ASSIGNMENT OF DECLARATION OF CONSERVATION EASEMENT** (this "**Amendment and Assignment**") is made as of July 27, 2011 (the "**Effective Date**") by and among **Pacific Wind Development LLC**, an Oregon limited liability company ("**Beneficiary**"), **Montague Wind Power Facility, LLC**, an Oregon limited liability company ("**Assignee**"), and **KBC LLP**, a Nevada limited liability partnership ("**Owner**"). Each of **Beneficiary**, **Assignee**, and **Owner** is sometimes referred to as a "**Party**" and collectively as the "**Parties**." Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in the Declaration of Conservation Easement (as defined below).

**RECITALS**

A. In connection with certain real property more particularly described on the attached Exhibit A and incorporated herein by this reference, **Beneficiary** and **Owner** are parties to that certain Declaration of Conservation Easement dated as of September 28, 2010 and recorded in the real property records of Morrow County, Oregon on October 22, 2010 as Document No. 2010-26990 (the "**Conservation Easement**").

B. The Parties hereto desire to amend the Conservation Easement as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Amendment to Article 5 (Term)**. Section 5.1 of the Conservation Easement, which currently reads:

"5.1 Term. This Conservation Easement shall last for a term of thirty (30) years from the Effective Date."

is hereby deleted in its entirety and replaced with the following:

“5.1 Term. This Conservation Easement shall last for a term of thirty-four (34) years from the Effective Date. Upon consent of Owner the term of this Conservation Easement may be extended for two additional, consecutive periods of ten (10) years each.”

2. **Amendment to Article 5 (Indemnification)**. The following Section 5.8 is hereby added to Article 5 of the Conservation Easement:

“5.8 No Ownership Rights in Beneficiary; Indemnification. The Parties recognize and acknowledge that Owner will remain in control and possession of the Conservation Easement Property (Property). Owners shall pay, when and as due, any and all taxes, duties and other similar federal, state, or local tax related charges assessed in connection with the Conservation Easement Property hereunder. Owners will fully indemnify Beneficiary, its affiliates, officers, employees, agents, directors, equity holders, legal and official contractors or other related parties (“Related Parties”) against any and all claims, losses, costs, fees, liabilities, damages or injuries (“Claims”) related to the Conservation Easement Property or this Agreement due to or arising out of actions or omissions of Owner, unless such Claims arise directly as a result of actions taken at the explicit direction of Beneficiary or one of its officers. Beneficiary will fully indemnify Owners, their Related Parties against any and all Claims related to the Conservation Easement Property or this Agreement due to or arising out of actions or omissions of Beneficiary and its contractors. Beneficiary will provide proof of appropriate insurance before accessing and using the Property and Owner shall be an additional insured on general liability and other related policies. Before conducting any on-site work, Beneficiary, its agents and contractors shall consult with Owner regarding pertinent site conditions and access routes, as certain environmental conditions could fluctuate periodically (such as muddy roads, high fire danger and other field travel conditions).

3. **Assignment and Assumption of Conservation Easement**.

3.1 **Assignment and Delegation**. Beneficiary hereby assigns, transfers, conveys, and delegates to Assignee all of Beneficiary’s right, title, interest, and obligations in, to, and under the Conservation Easement.

3.2 **Assumption of Rights and Obligations**. Assignee hereby assumes, and agrees to pay and perform or discharge when due, all of Beneficiaries right, title, interest, and obligations in, to, and under the Conservation Easement that arise or accrue on or after the Effective Date.

4. **Full Force and Effect**. Except as expressly amended hereby, the Option shall continue to full force and effect as originally constituted (including any subsequent amendments thereto) and is ratified by the parties hereto.

5. **Counterparts.** This Amendment and Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. **Severability.** If one or more provisions of this Amendment and Assignment are held to be unenforceable under applicable law, such provision shall be excluded from this Amendment and Assignment and the balance of this Amendment and Assignment shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

7. **Governing Law.** This Amendment and Assignment shall be governed by and construed under the laws of the State of Oregon without applying its conflict of law principles.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute and deliver this Amendment and Assignment on the Effective Date.

**“Owner”**

**KBC LLLP,**  
A Nevada limited liability limited  
partnership

By: Karen Kronner  
Name: KAREN KRONNER  
Title: General Partner

**“Beneficiary”**

**PACIFIC WIND DEVELOPMENT LLC,**  
an Oregon limited liability company

By: [Signature]  
Name: Rany Raviv  
Title: Authorized Representative

By: [Signature]  
Name: Scott Jacobson  
Title: Authorized Representative

LEGAL  
22

**“Assignee”**

**MONTAGUE WIND POWER FACILITY,  
LLC,**  
an Oregon limited liability company

By: [Signature]  
Name: Rany Raviv  
Title: Authorized Representative

By: [Signature]  
Name: Scott Jacobson  
Title: Authorized Representative

LEGAL  
22

STATE OF Oregon )  
 ) ss.  
COUNTY OF Umatilla )

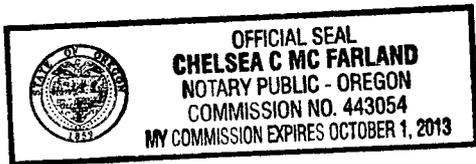
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of July, 2011 by Karen Kronner, as General Partner of KCB LLLP, a Nevada limited liability limited partnership, on its behalf.



Paula M. Hancock  
Notary Public for Oregon  
My commission expires: May 19, 2012  
Commission No.: 429152

STATE OF OREGON )  
 ) ss.  
COUNTY OF Multnomah )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of July, 2011 by Rany Raviv, as Authorized Rep and Scott Jacobson, as Authorized Rep of Pacific Wind Development LLC, an Oregon limited liability company, on its behalf.



Chelsea C Farland  
Notary Public for Oregon  
My commission expires: 10/1/2013  
Commission No.: 443054

STATE OF OREGON        )  
  ) ss.  
COUNTY OF Multnomah    )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2011 by Rany Raviv, as Authorized Rep and Scott Jacobson, as Authorized Rep of Montague Wind Power Facility, LLC, an Oregon limited liability company, on its behalf.



Chelsea C McFarland  
Notary Public for Oregon  
My commission expires: 10/1/2013  
Commission No.: 443054

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

All that real property located in Morrow County, Oregon, more particularly described as follows:

In Township 2 South, Range 23 East of the Willamette Meridian:

Section 8: The Eastern 396 feet of the North Half of the Southeast Quarter (N 1/2 SE 1/4) (12 acres total)

Section 9: The Western 68 acres of the Southwest Quarter (SW 1/4)

# CITY OF ARLINGTON

---

P.O. BOX 68  
ARLINGTON, OR 97812  
PHONE: 541-454-2743  
FAX: 541-454-2753  
TTY: 800-572-0638

June 1, 2015

Sara Parsons

1125 NW Couch St. Suite 700

Portland, OR 97209

Dear Sara,

This letter is to confirm our discussion that the City of Arlington can supply Iberdrola Renewables with approximately forty million gallons of water for construction of the Montague Wind Facility. This letter also confirms the City of Arlington's water rights are still current. We look forward to working with Iberdrola to complete the construction of this project. Should you have any questions please call me at 541-454-2740. Thank you.

Sincerely,

Tim Wetherell,

Public Works Superintendent

STATE OF OREGON  
COUNTY OF GILLIAM

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

EMPRISE INC.  
C/O NANCY PROCTOR  
P.O. BOX 158  
ARLINGTON, OREGON 97812

PHONE: (541) 545-2833

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-14507

SOURCE OF WATER: A WELL, IN THE JOHN DAY RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 0.668 CUBIC FOOT PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: APRIL 17, 1997

POINT OF DIVERSION LOCATION: SE 1/4 SE 1/4, SECTION 28, T3N, R21E, W.M.;  
NORTH 25 DEGREES 11 MINUTES 22 SECONDS WEST 1140.2 FEET

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW 1/4 SW 1/4  
SE 1/4 SW 1/4  
NE 1/4 SE 1/4  
SW 1/4 SE 1/4  
SE 1/4 SE 1/4  
SECTION 28

TOWNSHIP 3 NORTH, RANGE 21 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require

Application G-14507 Water Resources Department

PERMIT G-13305

the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The water user shall develop a plan to monitor and report the impact of water use under this permit on water levels within the aquifer that provides water to the permitted well(s). The plan shall be submitted to the Department within one year of the date the permit is issued and shall be subject to the approval of the Department. At a minimum, the plan shall include a program to periodically measure static water levels within the permitted well(s) or an adequate substitute such as water levels in nearby wells. The plan shall also stipulate a reference water level against which any water-level declines will be compared. If a well listed on this permit (or replacement well) displays a total static water-level decline of 25 or more feet over any period of years, as compared to the reference level, then the water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s). Such action shall be taken until the water level recovers to above the 25-foot decline level or until the Department determines, based on the water user's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit.

#### STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

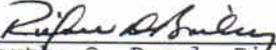
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin within one year from permit issuance. Complete application of water to the use shall be made on or before October 1, 2002.

Issued January 28, 1998

  
Martha O. Pagel, Director  
Water Resources Department

Application G-14507 Water Resources Department  
Basin 06 Volume 1 JOHN DAY R BL KIMBERLY  
LKS MGMT.CODES 7AG 7AR 7BG 7BR

PERMIT G-13305  
District 4



# Gilliam County Fire Services

PO Box 599

Arlington, OR 97812

(541) 454-2900 or (541) 384-5555

June 4, 2015

Sara Parsons  
Montague Wind Power Facility, LLC  
1125 NW Couch St. STE 700  
Portland, OR 97209

Dear Sara:

North Gilliam County Rural Fire Protection District (RFPD) is the primary fire response provider for the area in Gilliam County in which the Montague Wind Facility is located.

North Gilliam County RFPD does not provide confined space or high angle rescue services. Beyond those two areas of expertise, it has been determined that the wind farm will not have a significant impact on the operations of North Gilliam County RFPD.

Sincerely,

Shannon K. Coppock  
Gilliam County Fire Services Coordinator



# Gilliam County Sheriff's Office

*Gary Bettencourt, Sheriff*

PO Box 685, 221 S. Oregon Street, Condon, OR 97823

541-384-2851- Fax: 541-384-2878

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June 1, 2015

Sara McMahon Parsons  
Montague Wind Power Facility, LLC  
1125 NW Couch St., Ste 700  
Portland, OR 97209

The Gilliam County Sheriff's Office is the primary response police agency for the area in which the Montague Wind Facility is located. This project is in a relatively low crime area in our county.

The Sheriff's Office will respond appropriately and as necessary to all complaints that come from the Montague Wind Facility Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary Bettencourt". The signature is stylized and includes a long horizontal flourish at the end.

Gary Bettencourt, Sheriff



# Oregon

Kate Brown, Governor



625 Marion St. NE  
Salem, OR 97301-3737  
Phone: (503) 378-4040  
Toll Free: 1-800-221-8035  
FAX: (503) 373-7806  
[www.Oregon.gov/ENERGY](http://www.Oregon.gov/ENERGY)

July 16, 2015

Sara Parsons  
Montague Wind Power Facility, LLC  
1125 NW Couch Street, Suite 700  
Portland, OR 97209

RE: Montague Wind Power Facility Request for Site Certificate Amendment

Dear Ms. Parsons:

After our review of your responses to the first Request for Additional Information (RAI), the department needs additional information in order to make findings of compliance with all Council Standards on the Request for Amendment #2 to the Montague Wind Power Facility Site Certificate.

Please review the requests below and provide the requested information by August 7, 2015. If you need more time to provide this information, please contact me.

1. The first RAI requested that Iberdrola “provide updated surveys or a plan to complete the surveys prior to beginning construction and a discussion of how this will establish compliance with the Threatened and Endangered Species standard.” The response provided by Iberdrola did not provide sufficient information for the department to analyze whether the requested amendment complies with the standard. Condition 95(b) to the existing Site Certificate states that “The certificate holder shall hire a qualified professional biologist to conduct a pre-construction plant and wildlife investigation of all areas that would be disturbed during construction that lie outside of previously surveyed areas.” Please provide the department with information sufficient to establish that the current site certificate conditions are sufficient to ensure compliance with the Threatened and Endangered Species Standard or a description of which surveys must be updated in order to ensure compliance with the standard.
2. In order to determine compliance with the Fish and Wildlife Habitat Standard, please provide a narrative description of why the previous completed habitat assessment remains an accurate representation of the habitat.
3. The information relied on to satisfy OAR 345-022-0050 (Retirement and Financial Assurances) is outdated, since it is based on evidence submitted for the original Site Certificate Application in 2010. Please provide the department with a new ‘comfort letter’ to provide assurance that the certificate holder has a reasonable likelihood to obtain a bond or letter of credit in the same amount stated the Site Certificate.

Once we receive the necessary information, we will complete our evaluation and prepare the proposed order. Again, if you need additional time beyond August 7, 2015 to provide the information, please let me know.

If you have any questions do not hesitate to contact me at [eric.desmarais@state.or.us](mailto:eric.desmarais@state.or.us) or (503) 373-0214.

Sincerely,

Eric Desmarais  
Energy Facility Siting Analyst

Cf (via email):

Todd Cornett, Oregon Department of Energy  
Virginia Gustafson, Oregon Department of Energy  
Renee France, Oregon Department of Justice

August 11, 2015

**VIA EMAIL AND U.S. MAIL**

Eric Desmarais  
Energy Facility Siting Analyst  
Oregon Department of Energy  
625 Marion Street NE  
Salem, OR 97301

**Re: Montague Wind Power Facility, Response to Second Request for Additional Information**

Dear Eric:

This letter responds to your letter dated July 16, 2015, requesting additional information (“Second RAI”) to process the Montague Wind Power Facility Second Request for Amendment.

Second RAI #1

*The first RAI requested that Iberdrola “provide updated surveys or a plan to complete the surveys prior to beginning construction and a discussion of how this will establish compliance with the Threatened and Endangered Species standard.” The response provided by Iberdrola did not provide sufficient information for the department to analyze whether the requested amendment complies with the standard. Condition 95(b) to the existing Site Certificate states that “The certificate holder shall hire a qualified professional biologist to conduct a pre-construction plant and wildlife investigation of all areas that would be disturbed during construction that lie outside of previously surveyed areas.” Please provide the department with information sufficient to establish that the current site certificate conditions are sufficient to ensure compliance with the Threatened and Endangered Species Standard or a description of which surveys must be updated in order to ensure compliance with the standard.*

Special status wildlife and habitat surveys were conducted by Northwest Wildlife Consultants in 2009 and 2010; methods and results are described in the original site certificate application and the supplemental wildlife and habitat studies submitted to ODOE in September 2010. Special status plant surveys were conducted in 2009 and 2010 by CH2M Hill, and described in the original application and a supplemental report provided to ODOE in September 2010. The only state listed wildlife species detected within the site boundary was the Washington ground squirrel. Condition 94 requires preconstruction surveys for Washington ground squirrels in suitable habitat and Condition 95 ensures that facilities are microsituated outside of Category 1 habitat. The only state listed plant species identified onsite were the Laurent’s milk-vetch and the state candidate sessile mousetail. These were observed within the site boundary in 2009. During the 2010 rare plant surveys, no additional populations were identified. Since those surveys were conducted, there has been no significant change in the land use practices.

Eric Desmarais  
July 2015  
Page 2

The certificate holder proposes to perform additional field surveys prior to construction in suitable habitat for any threatened or endangered plant species following a protocol approved by the Oregon Department of Fish and Wildlife (ODFW). The only threatened or endangered wildlife species observed onsite was the Washington ground squirrel, and surveys will be conducted for this species per Conditions 94 and 95. If the additional plant surveys identify the presence of threatened or endangered plant species within the site boundary, the certificate holder would implement Condition 95 to avoid a significant reduction in the likelihood of survival or recovery of the species.

Second RAI #2

*In order to determine compliance with the Fish and Wildlife Habitat Standard, please provide a narrative description of why the previous completed habitat assessment remains an accurate representation of the habitat.*

The project area continues to be used for agricultural crop cultivation and animal grazing. Habitat consists of cropland, Conservation Reserve Program (CRP), grassland, shrub-steppe, and juniper woodland. There have been no substantive changes in land management practices or land uses. Conditions 94 and 95 require preconstruction surveys to identify any changes in Washington ground squirrel colonies and Category 1 habitat and ensure the facility will be microsituated to avoid all impacts to Category 1 habitat.

Second RAI #3

*The information relied on to satisfy OAR 345-022-0050 (Retirement and Financial Assurances) is outdated, since it is based on evidence submitted for the original Site Certificate Application in 2010. Please provide the department with a new "comfort letter" to provide assurance that the certificate holder has a reasonable likelihood to obtain a bond or letter of credit in the same amount stated in the Site Certificate.*

Enclosed please find an updated comfort letter from Santander Bank, N.A. dated July 17, 2015.

Please let us know if you require additional information to process this amendment request. I look forward to appearing before EFSC.

Very truly yours,



Sara Parsons  
Senior Business Developer



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Global Transaction Banking  
Santander Bank, N.A.  
45 East 53<sup>rd</sup> Street, New York, NY 10022

July 17, 2015

Iberdrola USA, Inc.  
1125 NW Couch St.  
Suite 600  
Portland, OR 97209

Ladies and Gentlemen:

Iberdrola USA, Inc., the 100% owner of Iberdrola Renewables, LLC, is an affiliate of Iberdrola SA. Iberdrola SA and its affiliates/subsidiaries are valued clients of Santander Bank, N.A. ("Santander").

It is our understanding that Santander may be asked to provide a letter of credit on behalf of Iberdrola Renewables, LLC in favor of Oregon Energy Facility Siting Council, for the project known as the Montague Wind Power Facility. It is also our understanding this potential letter of credit could be required in the amount of twenty-one million, five hundred eleven thousand dollars (\$21,511,000), stated in 2010 dollars.

Iberdrola USA, Inc. has sufficient available letter of credit capacity to support this request under your existing uncommitted financing arrangements with Santander. This letter does not constitute a commitment and is subject to our review and acceptance of the terms and conditions of the final contract and required letter of credit form or forms.

You understand, of course, that any arrangement for the final letter of credit or letters of credit is a matter between Iberdrola USA, Inc. and Santander, and we assume no liability to third parties or to you, if for any reason we do not execute said letter or letters of credit.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Asoli", with a long horizontal flourish extending to the right.

**Abraham Asoli**  
Vice President  
Santander Bank, N.A.