

EXHIBIT K

LAND USE/STATEWIDE PLANNING GOALS

Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Notwithstanding OAR 345-021-0090(2), once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:

(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area.

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local government(s) from which land use approvals will be sought.

(ii) Describe the land use approvals required in order to satisfy the Council's land use standard.

(iii) Describe the status of the applicant's application for each land use approval.

(iv) Provide an estimate of time for issuance of local land use approvals.

(C) If the applicant elects to obtain a Council determination on land use:

(i) Identify the affected local government(s).

(ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria.

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes.

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals.

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2).

(D) If the proposed facility will be located on federal land:

- (i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land.*
- (ii) Explain any differences between state or local land use requirements and federal land management requirements.*
- (iii) Describe how the proposed facility complies with applicable federal land management plan.*
- (iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval.*
- (v) Provide an estimate of time for issuance of federal land use approvals.*
- (vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.*

In its First Amended Project Order dated July 12, 2011, the Department expanded upon the requirements of Exhibit K as follows:

Paragraphs A and C apply. Paragraphs B and D do not apply. The application should include a discussion of whether the proposed facility would be compatible with farm use. The application should demonstrate that the proposed SBWP would not seriously interfere with accepted farm practices and would not significantly increase the cost of accepted farm practices. See further discussion under Part III above.

If OAR 660-033-0130(37) applies, the application should include a table showing the acres of high-value and non-high-value farmland soils occupied by facility components and a discussion of whether there are reasonable alternatives to locating the facility on high-value farmland soils.

Applicant elects to have the Council make the land use determination under OAR 345-022-0030(2)(b). The analysis area for the Land Use Standard is the area within the site boundary and one-half mile from the site boundary (please see Figure K-1). Applicant assumes the appointment of a Special Advisory Group made up of the Gilliam County Court and the Morrow County Court.

The proposed facility would lie on land within the land use jurisdictions of Gilliam County and Morrow County. The energy facility and its related or supporting facilities, as well as staging areas needed during construction, would be built entirely on privately-owned land. All of the land within the analysis area is zoned Exclusive Farm Use (EFU) (please see Figure K-2).

The Council must apply the Land Use Standard in conformance with the requirements of ORS 469.504. The Oregon Supreme Court held “under ORS 469.504(1)(b) and (5), the council may choose to determine compliance with statewide planning goals by evaluating a facility under

paragraph (A) or (B) or (C), but ... it may not combine elements or methods from more than one paragraph, except to the extent that the chosen paragraph itself permits.”

Under ORS 469.504(5), “If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group.”

The proposed SBWF is an energy facility as defined in ORS 469.300(11)(a)(J). The proposed facility site overlaps two local government jurisdictions (and the facility, therefore, may be said to “pass through” more than one local government jurisdiction). ORS 469.504(5) addresses certain facilities that “pass through” more than one local jurisdiction: “If the special advisory group recommends applicable substantive criteria *for an energy facility as defined in ORS 469.300(11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction* or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals” (emphasis added).

This provision applies to energy facilities defined in ORS 469.300(11)(a)(C) to (E) but does not apply to an energy facility as defined in ORS 469.300(11)(a)(J) (a wind energy facility).

The Council may find compliance with statewide planning goals under ORS 469.504(1)(b)(A) if the Council finds that the proposed facility “complies with applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted.”

In this case, both Gilliam County and Morrow County are “affected local governments” because parts of the proposed SBWP would lie within each county. As to those parts of the proposed facility that would lie within each county, the Council must consider whether the proposed facility complies with the applicable substantive criteria of the affected county. If the Council finds that the proposed facility does not comply with one or more of the applicable substantive criteria, then the Council must proceed under ORS 469.504(1)(b)(B) and must determine whether the proposed facility “otherwise [complies] with the applicable statewide planning goals.” In *Save Our Rural Oregon*, the Court held that “paragraph (B) necessarily requires an evaluation of the same applicable substantive criteria as paragraph (A) and, to the extent those criteria are not met, directs the council to consider statewide planning goals.”

ORS 469.504(1)(b)(C) may not be available to the Council, because subsection (5) of the statute does not allow the Council to elect to apply the statewide planning goals directly when, as Applicant expects in this case, the special advisory group will recommended applicable substantive criteria for a proposed energy facility as defined in ORS 469.300(11)(a)(J).

The land use analysis begins with identification of the “applicable substantive criteria” recommended by the Special Advisory Group (SAG). While Applicant cannot predict the SAGs’ identification of the applicable substantive criteria on the date of this Application, Applicant assumes the identity of those criteria for the balance of this analysis.

For the reasons discussed below, the proposed facility does not comply with all of the applicable substantive criteria in Morrow County. Goal 3 (Agricultural Lands) is the applicable statewide planning goal. Applicant concludes that an exception to Goal 3 is justified, for the reasons discussed below at page 29.

A. Gilliam County’s Applicable Substantive Criteria

Applicant has identified Gilliam County Comprehensive Plan (GCCP) and Land Development Ordinance (GCZO), amended October 2011, Article 4 (Use Zones), Article 7 (Conditional Uses), and Goal 3 (Agricultural Lands) as the applicable substantive criteria for the proposed facility.

GCZO Section 4.020(A): EFU Exclusive Farm Use

In an EFU Zone, the following regulations shall apply:

A. High Value Farmland. Due to the limited amount of High Value Farmland in Gilliam County, the uses for High Value Farmland are not listed in this section. If a use permitted in Subsections B – G of this section is located on High Value Farmland, the requirements of this section and the requirements of OAR 660, Division 33, shall be used for the review.

ORS 215.710(1) and OAR 660-033-0020(8) define “High Value Farmland” as land “in a tract composed predominantly of soils that are...[either irrigated or not irrigated and] classified prime, unique, Class I or II” by the Natural Resources Conservation Service (NRCS). “Tract” means one or more contiguous lots or parcels in the same ownership. There are pockets of “Kimberly fine sandy loam” (rated Class I when irrigated) and “Ritzville silt loam” (on 2 to 7 percent slopes rated subclass IIe when irrigated), but there are no “tracts” that are composed predominantly of these soil types within the SBWF site boundary in Gilliam County (please see Exhibit I). The proposed SBWP is not located on high-value farmland in Gilliam County.

GCZO Section 4.020(D)(20): Conditional Uses Permitted

In an EFU Zone, the following regulations shall apply:

* * *

D. Conditional Uses Permitted. In the EFU Zone, the following uses and their accessory uses may be permitted, either by a Type I or a Type II Conditional Use Permit to satisfy the applicable criteria and procedures set forth in Section 7.010. The appropriate review criteria are identified for each use.

* * *

20. Wind Power Generation Facilities as commercial utility facilities for the purpose of generating power for public use by sale.

The proposed SBWP, in addition to being a wind power generation facility, is a commercial utility facility for the purpose of generating power for public use by sale.

GCZO Section 4.020(J): Property Development Standards

In the EFU Zone, the following standards apply to residential and nonresidential development:

- 1. Building Height. No limitations.*
- 2. Setbacks*
 - a. The front and rear yard setbacks from the property line shall be 25 feet.*
 - b. The side yard setbacks from the property line shall be 25 feet.*

Applicant has proposed Site Certificate Setbacks in Exhibit DD. The setbacks proposed exceed those required by Gilliam County.

GCZO Section 7.020(T)(5)(d), requires that “[t]he Wind Power Generation Facility shall be on property zoned EFU, and no portion of the facility shall be within 3,520 feet of properties zoned for residential use...Towers shall be set back at a minimum, 110% of maximum total turbine height from blade tip height, measured from the centerline of the turbine tower from:

- (1) Any State, County or Federal right-of-way or the nearest edge of a State, County, or Federal roadway, whichever is closer;
- (2) Any right of ingress or egress on the owner’s property;
- (3) Any overhead utility lines;
- (4) All property lines; if adjacent landowner agrees in writing to a lesser distance, this requirement may be waived.
- (5) Any existing guy wire, anchor, or small wind energy tower on the property.
- (6) Any residence including those outside the project boundary. If a landowner agrees in writing to a lesser distance, this requirement may be waived.
- (7) A minimum of 150% of the maximum total turbine height from blade tip height, measured from the centerline of the turbine tower, from federal transmission line. If affected parties agree in writing to a lesser distance, this requirement may be waived.”

Applicant proposes setback distances as Conditions in Exhibit DD, which comply with the Gilliam County requirements.

GCZO Section 7.010(A)(1): General Approval Criteria and Conditions (1)

A conditional use listed in this ordinance shall be permitted, altered or denied in accordance with the standards and procedures of this ordinance and this article by action of the Planning Commission or Planning Director. In the case of a use existing prior to the effective date of this ordinance, and classified in this ordinance as a Conditional Use, a change in use or in lot area or an alteration of a Conditional Use, a change in use or in lot area or an alteration of structure shall conform with the requirements for a Conditional Use.

A. General Approval Criteria and Conditions

1. In addition to criteria, standards and conditions that may be set forth in a specific Zone, this Article, or other regulations applicable to a specific Conditional Use shall not be approved or permitted unless the following criteria are met. A Conditional Use may be approved on the Condition or Conditions that the applicant obtain and maintain compliance with other permits and approvals required.

a. The proposed use shall be in compliance with the applicable Comprehensive Plan designation and policies.

GCZO Section 7.010(A)(1) contains a list of criteria that must be met “in addition to criteria, standards and conditions that may be set forth in a specific Zone, this Article, or other regulations applicable to a specific Conditional Use.”

The proposed SBWP would comply with Section 7.010(A)(1). Subsection (a) requires compliance with “the applicable Comprehensive Plan designation and policies.” The applicable Comprehensive Plan designation and policy for purposes of analyzing compliance with GCZO Section 7.010(A)(1)(a) is GCCP Goal 3: Agricultural Lands. This policy states: “Traditionally, Gilliam County has relied on agriculture as the basic element in the economic structure of the County and there is no reason to believe that the importance of agriculture will diminish appreciably in the future. Considering the economic climate for agriculture and the continuing employment reduction through mechanization and more efficient farming practices, the County must continue to seek to diversify the economy through uses that are not inconsistent with the County’s agricultural base.” The uses associated with the proposed SBWP include the generating facility (authorized under ORS 215.283(2)(g)), the substations and interconnection line (authorized under ORS 215.283(1)(d)) and the access roads (authorized under ORS 215.283(3)). These land uses are authorized by statute on agricultural land and are otherwise consistent with the GCCP for the reasons discussed herein.

b. As applicable, sewage and/or solid waste disposal methods shall be provided in compliance with applicable local, State and Federal regulations.

Subsection (b) of the ordinance requires compliance with applicable government regulations for sewage and solid waste disposal. Applicant describes the disposal of sewage and solid waste during construction and operation of the facility in Exhibit V. Applicant would dispose of solid waste at a licensed landfill facility. Applicant would dispose of sewage from the O&M buildings in exempt on-site septic systems. Due to the small volume of sewage, a Water Pollution Control Facility permit would not be required for the on-site septic systems. Mandatory condition OAR 345-027-0020(3) requires any certificate holder to construct and operate the facility in compliance with all applicable state and local laws and regulations.

c. Proposal shall be found to be in compliance or conditioned upon compliance with applicable air and noise pollution standards.

Subsection (c) requires compliance with air and noise pollution standards. The proposed SBWP would not generate air pollution emissions. The proposed facility would comply with state noise control regulations. Please see Exhibit X.

d. Required access shall be legally established, available, and adequate to serve the proposed use or provisions to provide such evident.

Subsection (d) requires adequate, legally established access to the proposed use. The facility would be built on private land. Access to the facility would be from existing County roads. The proposed facility does not include construction of any new public roads. Applicant has negotiated long-term leases with the landowners giving a legal right of access.

e. Public services deemed necessary shall be available or provisions for such provided and no use shall be approved which is found to exceed the carrying capacities of affected public services unless there are provisions to bring such capacities up to the need.

Subsection (e) requires public services to be available and bars approval of a use that exceeds the carrying capacity of affected public services. Electricity needed during operation of the facility for typical office loads at the field workshops would be supplied and distributed internally by the facility itself. Public services necessary for the proposed facility include sewage disposal, water supply, storm water drainage, solid waste disposal, housing, transportation, police and fire protection, health care and schools. The public services necessary for the proposed SBWP are available and the proposed SBWP would not exceed the carrying capacities of the affected services. Please see Exhibit U.

f. Proposal shall be in compliance with the applicable standards and limitations of the primary and combining zone as may be applicable.

Subsection (f) requires compliance with applicable standards of the primary and combining zone. The standards applicable to the primary zone (EFU) are described and discussed herein. The proposed facility would lie entirely within land zoned EFU.

g. No use shall be approved which is found to have a significant adverse impact on resource-carrying capacities unless there are provisions for mitigating such impact.

Subsection (g) addresses resource carrying capacity. The proposed SBWP complies with this requirement, because its impacts on air quality, soils, water supplies and water bodies would not exceed resource carrying capacities of those resources. The proposed facility would have no air pollution emissions that would result in an adverse impact to air quality. We discuss impacts to soils in Exhibit I. The facility would use a significant amount of water during construction, but water use would not exceed the resource carrying capacity of the proposed water source. Water use during operation would be insignificant. We discuss the availability of sufficient water for construction and operation of the facility in Exhibit O. Water would not be discharged to wetlands, lakes, rivers or streams, and there would be no adverse impact on water quality. Water used during operation at the O&M buildings would be disposed of in approved on-site septic

systems and would not result in an adverse impact on water quality or affect any public sewer facilities.

The Council's standards address other natural resource consequences of the proposed SBWP facility. We discuss the potential impacts to protected areas in Exhibit L; to scenic resources in Exhibit S; to threatened and endangered species in Exhibit Q; to wildlife habitat in Exhibit P; to ambient noise levels in Exhibit X; and to waters of the State in Exhibit J. The Council's Retirement and Financial Assurance Standard, discussed in Exhibit W, addresses retirement of the proposed facility and restoration of the site to a useful, non-hazardous condition.

The proposed SBWP would not have a significant adverse impact on resource carrying capacities.

h. No use shall be approved which is found to exceed the carrying capacities of affected public services and facilities.

Subsection (h) addresses carrying capacities of affected public services. This requirement is addressed in Exhibit U.

i. All required State and Federal permits or approvals have been obtained or will be as a condition of approval.

Subsection (i) requires the Applicant to obtain all required State and Federal permits and approvals. Any site certificate would require compliance with all applicable permit requirements of other state agencies. The Council has no jurisdiction to enforce federal permit requirements; however, any certificate holder would be subject to any permits required under federal law.

GCZO Section 7.010(A)(2): General Approval Criteria and Conditions (2)

A. General Approval Criteria and Conditions

* * *

2. In addition to specific standards and/or conditions set forth by the applicable zone, this article or some other applicable regulations, other conditions may be imposed that are determined necessary to avoid a detrimental impact, and to otherwise protect the best interests of the surrounding area and the County as a whole. Such conditions may include, but are not limited to, the following:

a. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

b. Establishing a special setback or other open space or lot area or dimension.

c. Limiting the height, size or location of a building or other structure.

d. Designating the size, number, improvements, location and nature of vehicle access points and parking or loading areas.

e. Limiting or otherwise designating the number, size, location, height, and lighting of signs and outdoor lighting.

f. Requiring diking, screening, fencing, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance.

g. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

h. Limiting the term of the Conditional Use Permit to a specific time.

i. Requiring necessary on-site or off-site improvements and maintenance.

j. Requiring the holder of a Conditional Use Permit to obtain review, renewal, or reapplication approval of the permit in the event that there is an increase in impact from the use on public facilities beyond that which was projected at the time of initial approval.

GCZO Section 7.010(A)(2) describes conditions that “may be imposed...[if] determined necessary to avoid a detrimental impact, and to otherwise protect the best interests of the surrounding area and the County as a whole.” The ordinance lists discretionary conditions and does not contain substantive standards.

GCZO Section 7.020(Q): Conditional Uses in Exclusive Farm Use Zones

In addition to the standards of the zone in which the conditional use is located and the general standards of this ordinance, conditional uses shall meet the following standards:

* * *

Q. Conditional Uses in Exclusive Farm Use Zones

1. A Type I or Type II Conditional Use in an Exclusive Farm Use Zone may be approved only when the Planning Director or Hearings body finds that the use will not:

a. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

b. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

2. An applicant for a conditional use in the Exclusive Farm Use Zone may demonstrate that the standards for approval set forth in Subsection A of this section will be satisfied through the imposition of conditions. Any condition so imposed shall be clear and objective.

Lands “devoted to farm use” within the analysis area are used for cultivation of wheat. Within the analysis area (the area within the site boundary and one-half mile from the site boundary), approximately 12,718 acres in Gilliam County are “devoted to farm use.” There is no forest use within the analysis area. The proposed SBWP would occupy approximately 42 acres of this farm-use land, or less than one-half of one percent. Please see Figure K-2.

The impact of the proposed SBWP would not force a significant change in accepted farm practices or significantly increase the cost of farm practices, for the reasons discussed below:

- Applicant will locate facility components and temporary construction laydown and staging areas to minimize disturbance to farming operations.
- In accordance with GCZO Section 7.020(T)(5)(a)(5), the Applicant will record a covenant not to sue with regard to generally accepted farming practices on adjacent farmland.

Construction and operation of the SBWP could cause changes in routes of access to fields and changes in the pattern of cultivation, seeding, fertilizing and harvesting near the SBWP turbines and access roads. Applicant, in consultation with the landowners, will lay out the facility components to minimize obstacles to farming in cultivated fields (facility components around which the farmer would have to plow, plant and harvest).

Applicant will consult with area landowners during construction and operation of the facility to determine further measures to reduce or avoid any adverse impacts to farm practices on surrounding lands and to avoid any increase in farming costs.

Ground disturbance during construction and the creation of margin areas around access roads and turbine pads could allow weeds to spread into cultivated areas. Applicant proposes to implement a weed control plan consistent with the Gilliam County Weed Control Program, which would reduce the risk of weed infestation in cultivated land and the associated cost to the farmer for weed control.

Construction of the facility could adversely affect soil quality by erosion or compaction. Some farmland would be temporarily disturbed and unavailable for farming during construction. To avoid or reduce adverse impacts to soil quality, Applicant proposes to implement dust control and erosion-control measures during construction and operation of the facility (please see Exhibit I). To the extent practicable, Applicant proposes to reduce impact to soils by using areas that are already disturbed and reducing the area of new disturbance.

Construction vehicles would use previously disturbed areas including existing roadways and tracks. The when practical, primary construction storage and laydown areas would be located within the footprint of the permanent O&M buildings. The width of new permanent roadways would be the minimum consistent with safe use. Underground communication and electrical lines would be buried within the area disturbed by temporary road widening, and turbine foundations would abut roadways as closely as possible. Upon completion of construction, Applicant would restore temporarily disturbed areas to their pre-construction condition.

GCZO Section 7.020(T): Wind Power Generation Facility Siting Requirements

T. Wind Power Generation Facility Siting Requirements

1. Purpose. The Gilliam County Facility Siting Requirements are intended to establish a local conditional use permitting process that is clear, timely, and predictable as well as encompasses important local issues such as the health, safety and welfare of citizens in Gilliam County.

2. Definitions

a. "Commercial Wind Power Generation." An activity carried out for monetary gain using one or more wind turbine generators that has a combined generating capacity greater than 1 MW.

b. "Decommissioning Fund." An adequate financial vehicle dedicated and maintained with appropriate yearly adjustments to assure the money to dismantle the Wind Power Generation Facility and to restore the site to a useful, nonhazardous condition.

c. *“Wind Power Generation Facility.” An energy facility that consists of one or more wind turbines or other such devices and their related or supporting facilities that produce electric power from wind and are:*

(1) Connected to a common switching station; or

(2) Constructed, maintained, or operated as a group of devices.

d. *Energy Facility Siting Council (EFSC) a board of citizens that determines rather a wind facility of 105 MW or more may be built in Oregon.*

3. *Procedure. The procedure for taking action on the siting of a facility is a request for a conditional use. A public hearing pursuant to Article 7 shall be held to determine if the applicant meets the siting requirements for a Wind Power Generation Facility. The requirement for a hearing will not apply to proposed facilities for which EFSC is making the land use decision.*

4. *Requirements under the Energy Facility Siting Council.*

If a holder of a Site Certificate issued by the Oregon Energy Facility Siting Council requests a conditional use permit for an energy facility as outlined under ORS 469.401(3) and pays the requisite fee, the Planning Director shall issue such conditional use permit. The conditional use permit shall incorporate only the standards and conditions in Gilliam County’s land use and other ordinances as contained in the site certificate. Issuance of the Conditional Use Permit shall be done promptly, not taking more than four weeks once it has been determined that a valid Site Certificate has been issued, the applicant has submitted a complete application and the fee has been received.

5. *Wind Power Generation Facility Siting Requirements. The requirements set out in this section shall apply for the application and review of the siting of a Wind Power Generation Facility and the issuance of a Gilliam County Facility Conditional Use Permit.*

a. *The following information shall be provided as part of the application:*

(1) A general description of the proposed Wind Power Generation Facility, a tentative construction schedule, the legal description of the property on which the facility will be located, and identification of the general area for all components of the proposed Wind Power Generation Facility, including a map showing the location of components.

(2) Identification of potential conflicts, if any, with:

(a) Accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm uses;

(b) Other resource operations and practices on adjacent lands except for wind power generation facilities on such adjacent lands; and

(c) The nature and extent of the proposed facility on the cost of accepted farm or forest practices on surrounding EFU land.

(3) A Transportation Plan, with proposed recommendations, if any, reflecting the guidelines provided in the Gilliam County’s Transportation System Plan (TSP) and the transportation impacts of the proposed Wind Power Generation Facility upon the local and regional road system during and after construction, after consultation with the

Gilliam County Roadmaster. The plan will designate the size, number, location and nature of vehicle access points.

(4) An avian impact monitoring plan. The avian monitoring plan shall be designed and administered by the applicant's wildlife professionals. For projects being sited by EFSC, compliance with EFSC's avian monitoring requirements will be deemed to meet this requirement. The plan shall include the formation of a technical oversight committee to review the plan, and consist of the following persons:

(a) The landowners/farm tenants.

(b) Facility owner/operator representative. (Chair)

(c) Oregon Department of Fish and Wildlife representative, if the agency chooses to participate.

(d) Two Gilliam County residents with no direct economic interest in the project and recommended by the applicants for appointment by the Gilliam County Board of Commissioners.

(e) U.S. Fish and Wildlife representative, if the agency chooses to participate.

(f) Gilliam County Planning Commission member.

If there are no interested residents that are willing to serve on the TAC, this portion of the requirement may be waived. At the request of applicant, this committee requirement may be waived or discontinued by the County.

(5) A Covenant Not to Sue with regard to generally accepted farming practice shall be recorded with the County. Generally accepted farming practices shall be consistent with the definition of Farming Practices under ORS 30.930. The applicant shall covenant not to sue owners, operators, contractors, employees, or invitees of property zoned for farm use for generally accepted farming practices.

(6) A fire prevention and emergency response plan for all phases of the life of the facility. The plan shall address the major concern associated with the terrain, dry conditions, and limited access.

(7) An erosion control plan, developed in consultation with the Gilliam County Road Department. The plan should include the seeding of all road cuts or related bare road areas as a result of all construction, demolition and rehabilitation with an appropriate mix of native vegetation or vegetation suited to the area. This requirement will be satisfied if the applicant has an NPDES (National Pollution Discharge Elimination System) permit.

(8) A weed control plan addressing prevention and control of all Gilliam County identified noxious weeds directly resulting from the Wind Power Generation Facility during preparation, construction, operation and demolition/rehabilitation.

(9) *A socioeconomic impact assessment of the Wind Power Generation Facility, evaluating such factors as, but not limited to, the project's effects upon the social, economic, public service, cultural, visual, and recreational aspects of affected communities. These effects can be viewed as either positive or negative. In order to maximize potential benefits and to mitigate outcomes that are viewed problematic, decision makers need information about the socioeconomic impacts that are likely to occur.*

(10) *The requirements of OAR 660-033-0130(37) will be satisfied.*

(11) *Information pertaining to the impacts of the Wind Power Generation Facility on:*

(a) *Wetlands;*

(b) *Wildlife (all potential species of reasonable concern);*

(c) *Wildlife habitat;*

(d) *Criminal activity (vandalism, theft, trespass, etc.) and proposed actions, if any, to avoid, minimize or mitigate negative impacts.*

(12) *A dismantling and decommissioning plan of all components of the Wind Power Generation Facility, as provided in 6. of this section.*

Subsections 1, 2, 3, 4, and 5(a) of Section 7.020(T) are definitional and procedural ordinances that do not contain substantive land use standards applicable to the proposed use.

b. Gilliam County may impose clear and objective conditions in accordance with the County Comprehensive Plan, County Development Code and State law, which Gilliam County considers necessary to protect the best interests of the surrounding area, or Gilliam County as a whole.

Section 7.020(T)(5)(b) gives the County discretion to impose “clear and objective conditions...necessary to protect the best interests of the surrounding area, or Gilliam County as a whole.” No specific substantive land use standards are listed.

c. Prior to commencement of any construction, all other necessary permits shall be obtained, e.g., Gilliam County Zoning Permit, road access and other permits from the Gilliam County Road Department, and from the Oregon Department of Transportation.

Applicant will be required to obtain all necessary federal, state and local permits or approvals required for construction.

d. The following setback requirements and restrictions apply to the siting of a facility:

The Wind Power Generation Facility shall be on property zoned EFU, and no portion of the facility shall be within 3,520 feet of properties zoned residential use or designated on the Comprehensive Plan as residential. (For clarification purposes of this section, EFU Zones are not considered zoned for residential use.) Towers shall be set back at a minimum, 110% of maximum total turbine height from blade tip height, measured from the centerline of the turbine tower from:

(1) *Any State, County or Federal right-of-way or the nearest edge of a State, County, or Federal roadway, whichever is closer;*

(2) *Any right of ingress or egress on the owner's property;*

- (3) Any overhead utility lines;*
- (4) All property lines; if adjacent landowner agrees in writing to a lesser distance, this requirement may be waived.*
- (5) Any existing guy wire, anchor, or small wind energy tower on the property.*
- (6) Any residence including those outside the project boundary. If a landowner agrees in writing to a lesser distance, this requirement may be waived.*

The proposed SBWP would be located entirely on land zoned EFU. No portion of the proposed facility is within 3,520 feet of properties zoned residential use or designated in the Comprehensive Plan as residential. Applicant has proposed setback conditions incorporating the setbacks required by Section 7.020(T)(5)(d).

(e) Reasonable efforts shall be made to blend the wind facility's towers with the natural surroundings in order to minimize impacts upon open space and the natural landscape.

“[R]easonable efforts” to “blend the wind facility’s towers with the natural surroundings” are measures that reduce the visual impact of the towers on the landscape while providing sufficient visibility of the facility for aviation safety and making effective use of the wind resource for power generation. Applicant proposes painting the towers “white/off white so as to minimize visual impacts. In addition, Applicant proposes to install only the external lighting required by the Federal Aviation Administration or Oregon Department of Transportation.

For the reasons discussed above and in Exhibit R, the SBWP would comply with Section 7.020(T)(5)(e).

(f) Reasonable efforts shall be taken to protect and to preserve existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

(g) The turbine towers shall be designed and constructed to discourage bird nesting and wildlife attraction.

The proposed facility’s effects on wildlife and wildlife habitat are addressed in Exhibits P and Q. The potential impact on water resources is addressed in Exhibit O. The effect of the facility on wetland and other waters of the state is addressed in Exhibit J. For the reasons discussed in those Exhibits, the SBWP would comply with Sections 7.020(T)(5)(f) and (g).

(h) The turbine towers shall be of a size and design to help reduce noise or other detrimental effects.

The proposed facility would comply with the state’s Noise Control Regulations, which are discussed in Exhibit X. Other potential “detrimental effects” include public safety concerns, which are addressed in Exhibits U and DD. Transmission line and electrical safety are addressed in Exhibit DD. For the reasons discussed in those Exhibits, the SBWP would comply with GCZO Section 7.020(T)(5)(h).

(i) Private access roads shall be gated to protect the facility and property owners from illegal or unwarranted trespass, and illegal dumping and hunting.

Applicant proposes to install lockable gates at the substations, O&M buildings and across all Gilliam County access roads, thus complying with Section 7.020(T)(5)(i).

(j) Where practicable the electrical cable collector system shall be installed underground, at a minimum depth of 3 feet; elsewhere the cable collector system shall be installed to prevent adverse impacts on agriculture operations.

Applicant proposes that the collector lines would be installed a minimum of three feet below grade except where site-specific considerations require that segments of the collector system be installed aboveground. Applicant proposes to locate aboveground segments of the collector system with ground clearances that would not interfere with movement of farm equipment and vehicles. Therefore, the SBWP would comply with Section 7.020(T)(5)(j).

(k) Required permanent maintenance/operations buildings shall be located off-site in one of Gilliam County's appropriately zoned areas, except that such a building may be constructed on-site if:

(1) The building is designed and constructed generally consistent with the character of similar buildings used by commercial farmers or ranchers; and

(2) The building will be removed or converted to farm use upon decommissioning of the Wind Power Generation Facility consistent with the provisions of this section.

(a) To the extent feasible, the County will accept information presented by an application for an EFSC proceeding in the form and on the schedule required by EFSC.

Applicant proposes to construct two on-site O&M buildings that would be designed and constructed to be generally consistent with the character of similar buildings used in the vicinity of the proposed facility. Upon "decommissioning," site restoration would include removal of the field workshops or conversion of the workshops to farm use with the consent of the affected landowners (see Exhibit W). The SBWP would comply with Section 7.020(T)(5)(k).

6. Decommissioning/Dismantling Process. The applicant's dismantling of incomplete construction and/or decommissioning plan for the Wind Power Generation Facility shall include the following information:

** * **

g. For projects sited by EFSC, compliance with EFSC's financial assurance and decommissioning standards shall be deemed to be in compliance with the dismantling and decommissioning requirements of this Section.

The SBWP would comply with the Council's Financial Assurance Standard for the reasons discussed in Exhibit W. Compliance with the Council's standard satisfies the Gilliam County ordinance.

7. Wind Power Generation Facility Siting Subsequent Requirements

a. A bond or letter of credit shall be established for the dismantling of uncompleted construction and/or decommissioning of the facility. For projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will be deemed to meet this requirement.

As required under OAR 345-027-0020(8), Applicant would provide financial assurance satisfactory to the Council for site restoration. The financial assurance required by the Council satisfies the Gilliam County ordinance.

b. The actual latitude and longitude location or Stateplane NAD 83(91) coordinates of each turbine tower, connecting lines, and transmission lines shall be provided to Gilliam County once commercial electrical production begins.

Applicant proposes a condition requiring it to provide the actual location of turbine towers, connecting lines and transmission lines in compliance with this ordinance

c. A summary of as-built changes in the facility from the original plan, if any, shall be provided by the owner/operator.

Applicant proposes a condition requiring it to provide a summary of as-built changes, in compliance with this portion of the ordinance. The remainder of the ordinance describes the County's procedure for amendment of a Conditional Use Permit, and does not describe applicable substantive land use criteria.

d. Within 120 days after the end of each calendar year, the facility owner/operator shall provide Gilliam County an annual report including the following information:

* * *

(9) For facilities under EFSC jurisdiction and for which an annual report is required, the annual report to EFSC satisfies this requirement.

This provides that the "annual report to EFSC" satisfies the County reporting requirement. As required under OAR 345-026-0080, Applicant would report to the Council every six months during construction and annually after beginning operation.

B. Morrow County's Applicable Substantive Criteria

Applicant has identified the Morrow County Comprehensive Plan (MCCP) Agricultural Policies 1 and 4 and Energy Conservation Policies 3, 9 and 10; and Morrow County Zoning Ordinance (MCZO) Article 1 (Section 1.050), Article 3 (Sections 3.010(D)(16), 3.010(D) and 3.010(I)), and Article 6 (Sections 6.020, 6.030, 6.040 and 6.050(O)) as applicable substantive criteria.

MCZO Section 1.050: Zoning Permit

Prior to the construction, reconstruction, alternation, or change of use of any structure larger than 100 square feet or lot for which a zoning permit is required, a zoning permit for such construction, reconstruction, alternation, or change of use shall be obtained from the Planning Director or authorized agent therefore. A zoning permit shall become void after 1 year unless the development action has commenced. A 12-month extension may be granted when submitted to the Planning Department prior to the expiration of the approval period.

Under MCZO Section 4.165(C), a “Site Plan Review” is required for all land use actions requiring a Zoning Permit. MCZO Section 4.165(D) sets out 13 review criteria which Applicant meets for the reasons discussed below:

1. The lot area shall be adequate to meet the needs of the establishment.

The proposed SBWP would be located on leased land and would not require new lots or parcels. Applicant has leased adequate area to meet the needs of the proposed facility.

2. The proposed land use is permitted by the underlying land use district.

The proposed SBWP is located entirely within an EFU zone. Under MCZO Section 3.010(D)(16), discussed below, a commercial utility facility is permitted conditional use in an EFU Zone.

3. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district and any sub-district(s) are met.

Applicant has identified the zoning ordinances that contain the applicable county standards. Compliance with the applicable standards is discussed herein.

4. Development in flood plains shall comply with Section 3.100 Flood Hazard Overlay Zone of the Ordinance.

No part of the area within the site boundary of the proposed SBWP lies within the County’s Flood Hazard Overlay Zone. In particular, the site does not encroach upon any designated flood hazard areas along the Willow Creek drainage.

5. Development in hazard areas identified in the Morrow County Comprehensive Plan shall safely accommodate and not exacerbate the hazard and shall not create new hazards.

The MCCP does not identify hazard areas in the county except for flood hazard areas, discussed above.

6. Off-street parking and loading-unloading facilities shall be provided as required in Section 4.040 and 4.050 of the Morrow County Zoning Ordinance. Safe and convenient pedestrian access to off-street parking areas also shall be provided as applicable.

MCZO Section 4.040 lists minimum vehicle parking requirements for various types of land uses. MCZO Section 4.050 addresses off-street parking and loading areas for uses that receive and distribute materials and merchandise by trucks. A wind energy facility is not a use listed or described in these County ordinances. The proposed O&M building that would be located within the leased area in Morrow County would occupy approximately 2 acres and would include an adjacent fenced area measuring approximately 75 feet by 200 feet. This area would provide adequate parking and loading space for the anticipated needs of the use.

7. County transportation facilities shall be located, designed and constructed in accordance with the design and access standards in the Morrow County Transportation System Plan.

The applicant does not propose to construct or modify any public roads in Morrow County. Accordingly, the County road design and access standards do not apply.

8. Site planning, including the siting of structures, roadways and utility easements, shall provide, wherever practicable, for the protection of trees eight inch caliper or greater measured four feet from ground level, with the exception of noxious or invasive species, such as Russian olive trees.

Applicant would not remove any trees that are more than three feet in height.

9. Development shall comply with Section 3.200 Significant Resources Overlay Zone or 3.300 Historic Buildings and Sites protecting inventoried significant natural and historic resources.

MCZO Section 3.200 applies to sites designated as Significant Resource sites on the Morrow County Comprehensive Plan Goal 5 resource map. No Significant Resource sites lie within the proposed SBWP site boundary. MCZO Section 3.300 applies to alteration or demolition of any structure listed in the Comprehensive Plan inventory of significant historic resources. The proposed SBWP would not require the alteration or demolition of any historic structures.

10. The applicant shall determine if compliance is required with Oregon Water Resources Department water quantity and/or Oregon Department of Environmental Quality water quality designations.

Both the Oregon Water Resources Department and the Oregon Department of Environmental Quality are reviewing agencies and will receive review copies of the complete Site Certificate application.

11. The applicant shall determine if previous Code Enforcement violations have been cleared as applicable.

This criterion does not relate to the site of the proposed facility.

12. The applicant shall determine the method of disposal for solid waste, with staff providing information to the applicant about recycling opportunities.

Applicant's plans for recycling and disposal of solid waste are addressed in Exhibit V.

13. The applicant shall obtain the necessary access permit through the Public Works Department as required by Morrow County Resolution R-29-2000.

Applicant would be required to obtain all local permits necessary for construction, including access permits.

MCZO Section 3.010(D)(16): Conditional Uses Permitted

D. CONDITIONAL USES PERMITTED. In an EFU Zone, the following uses and their accessory uses are permitted subject to demonstration of compliance with the requirements of Article 6 of this ordinance and Section (G) below:

** * **

16. Commercial utility facilities for the purposes of generating power for public use by sale. A power generation facility shall not preclude more than 12 acres of high value farmland or 20 acres of other land from commercial use unless an exception is approved pursuant to OAR 660 Division 4.

The components of the proposed SBWP that would be located in Morrow County include wind turbines, substations and O&M buildings, collector and communication lines and access roads. The proposed SBWP is a “commercial utility facility for the purpose of generating power for public use by sale” that includes a “power generation facility” not located on high-value farmland. MCZO Section 3.010(B)(3) refers to ORS 215.710 for the definition of “high value farmland” (see discussion above). The proposed SBWP is not located on high-value farmland in Morrow County.

The area occupied by the “power generation facility” in Morrow County is shown in Figure K-2. The proposed SBWP would preclude more than 20 acres of “other land” from use as a commercial agricultural enterprise in Morrow County. The proposed facility, therefore, does not comply with MCZO Section 3.010(D)(16).

MCZO Section 3.010(D): Limitations on Conditional Uses

D. LIMITATIONS ON CONDITIONAL USES In addition to the general standards and conditions that may be attached to the approval of a conditional use as provided by Article 6 of this ordinance, the following limitations shall apply to a Conditional Use in the EFU Zone:

- 1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
- 2. Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.*

This ordinance is substantially identical to GCZO Section 7.020(Q), discussed above. Within the analysis area (the area within the site boundary and one-half mile from the site boundary), approximately 11,952 acres in Morrow County are “devoted to farm use.” There is no forest use within the analysis area. The proposed SBWP would occupy approximately 17 acres of this farm-use land, or less than one-half of one percent. For the same reasons as discussed with regard to the Gilliam County ordinance, construction and operation of the SBWP in Morrow County would not force a significant change in accepted farm practices on surrounding lands devoted to farm use and would not significantly increase the cost of accepted farm practices on lands devoted to farm use.

MCZO Section 3.010(G): Dimensional Standards

G. Dimensional Standards. In an EFU Zone, the following dimensional standards shall apply:

- 1. A lot or parcel of 160 acres or more shall be considered a farm unit.*

2. A lot or parcel of less than 160 acres may be approved as a farm unit pursuant to the Conditional Use Permit process and when found to comply with the Agricultural Lands policies of the Comprehensive Plan and the provisions of Section 5.120 of the Morrow County Subdivision Ordinance.

3. The minimum average lot width shall be 150 feet with a minimum street frontage of 150 feet, excepting lots within an approved subdivision.

4. The minimum average lot depth shall be 150 feet.

5. *Big Game Range Restrictions:* In the case of Farm Use areas identified as Big Game Habitat no dwelling will be authorized where the overall density within a square mile exceeds one dwelling per 160 acres. Section 3.200 also applies to the siting of a dwelling on Big Game Habitat.

6. New parcels for nonfarm uses only as authorized by ORS 215.263 may be created. Such new parcels shall be the minimum size needed to accommodate the use in a manner consistent with other provisions of law except as required for the nonfarm dwellings authorized by Section F. The creation of new lots or parcels for dwellings not in conjunction with farm use may be created pursuant to Section F and ORS 215.263(4). The county shall not approve a subdivision or series partition for a dwelling not provided in conjunction with farm use. The provisions of this subsection regarding a series partition apply only to applications for a land division submitted after July 1, 1997. For purposes of this subsection, “series partition” shall have the meaning given that term in ORS 92.305.

MCZO Section 3.010(D)(“Conditional Uses Permitted”) permits the conditional uses that are listed in the ordinance, subject to demonstration of compliance with “Section G.” Section 3.010(G), quoted above, addresses dimensional standards for: new lots or parcels within the EFU Zone; restrictions on new dwellings within “Farm Use areas identified as Big Game Habitat”; and new parcels (subdivisions or partitions) for nonfarm uses. The proposed SBWP would be located on leased land and would not require new lots or parcels, and it would not include new dwellings. None of the subsections of the ordinance apply to the SBWP. A related ordinance provision, MCZO Section 3.010(H), addresses the minimum yard setback requirements in an EFU Zone. Applicant proposes setbacks (please see Exhibit DD) that exceed the setbacks contained in the ordinance for front yard, side yard and rear yard, which range from 20 to 100 feet (a 100-foot distance applies where the property line is adjacent to an “intensive agricultural use”).

MCZO Section 3.010(I): Transportation Impacts

I. Transportation Impacts

1. *Traffic Impact Analysis (TIA).* In addition to the other standards and conditions set forth in this section, a TIA will be required for all projects generating more than 400 passenger car equivalent trips per day. Heavy vehicles – trucks, recreational vehicles and buses – will be defined as 2.2 passenger car equivalents. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and, mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.

Applicant estimates that traffic to and from the proposed facility site would amount to approximately 25 to 50 round trips daily during construction (please see Exhibit U) This estimate includes “heavy vehicles” and passenger cars. We estimate that the traffic impact during facility operation would be insignificant and would generally consist of passenger cars or pickup trucks with infrequent heavy vehicle trips. These estimates are for the SBWP as a whole, and the volume of daily traffic affecting Morrow County may reasonably be assumed to be substantially lower. The anticipated traffic generated by the proposed SBWP is below the threshold of “400 passenger car equivalent trips per day” that would trigger the Traffic Impact Analysis (TIA) described in the ordinance. A TIA would not be required for the proposed SBWP.

MCZO Section 6.020: General Criteria

GENERAL CRITERIA. In judging whether or not a conditional use proposal shall be approved or denied, the Commission shall weigh the proposal’s appropriateness and desirability, or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met or can be met by observance of conditions.

A. The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies and regulations of the County.

Under Section 6.020(A), the Council must decide whether the proposed SBWP is consistent with the MCCP and the objectives of the MCZO and “other applicable policies and regulations of the County.” For the reasons discussed below, Applicant submits that the proposed SBWP is consistent with the identified policies: Agricultural Policies 1 and 4 and Energy Conservation Policies 3, 9 and 10.

Agricultural Policy 1

It shall be the policy of Morrow County, Oregon, to preserve agricultural lands, to protect agriculture as its main economic enterprise, to balance economic and environmental considerations, to limit non-compatible nonagricultural development and to maintain a high level of livability in the County.

The proposed use is an allowable use on agricultural lands, as provided under MCZO Section 3.010(D)(16), discussed above. Section 3.010(D) prohibits conditional uses that would “force a significant change” to accepted farm practices or “significantly increase the cost” of those practices. These ordinances address the balance between “agricultural” and “nonagricultural” development that is implied in Agricultural Policy 1, and the ordinances implement the County’s policy to “protect agriculture.” For the reasons discussed above regarding the impact of the proposed SBWP on accepted farm practices, the SBWP is compatible with agriculture and would protect agriculture as the main economic enterprise in Morrow County. The proposed SBWP would not exceed carrying capacities of natural resources or public facilities within the County and, therefore, would not have a significant adverse effect on “livability” in the County for the reasons discussed below with regard to MCZO Section 6.020(C).

Agricultural Policy 4

It shall be the policy of the County to develop and implement comprehensive and definitive criteria for the evaluation of all non-farm developments to ensure that all objectives and policies set forth herein are complied with to the maximum level possible.

Applicable criteria for evaluation of the SBWP are discussed herein. The proposed SBWP would comply with these criteria “to the maximum level possible.”

Energy Conservation Policy 3

Encourage development of solar and wind resources.

The proposed SBWP would be an energy facility using wind resources in Morrow County.

Energy Conservation Policy 9

The County will encourage the development of alternative energy sources in County industries and businesses.

The proposed SBWP would develop wind energy for the generation of electric power for public use. Wind energy is considered an “alternative energy source” because it is renewable and non-fossil based.

Energy Conservation Policy 10

The County should encourage firms and agencies seeking to study these potential power sources to locate trial projects here, through a publicity campaign directed at interested institutions, business concerns and public agencies.

This policy addresses the desirability of trial projects that use alternative power sources. Although the proposed SBWP is not a “trial project,” it represents a significant wind energy development that is consistent with the County’s policy.

B. If located within the Urban Growth Boundary of a city, that said city has had an opportunity to review and comment on the subject proposal.

The proposed SBWP would not be located within the Urban Growth Boundary of a city.

C. The proposal will not exceed carrying capacities of natural resources or public facilities.

The impacts of the proposed SBWP on air quality, soils, water supplies and water bodies would not exceed carrying capacities of those resources for the reasons discussed below:

The proposed facility would have no air pollution emissions that would result in an adverse impact to air quality. Applicant has proposed practices to control any dust that is generated by construction activities. We discuss impacts to soils in Exhibit I. The facility would use a significant amount of water during construction, but water use would not exceed the resource carrying capacity of the proposed water sources. Water use during operation would be

insignificant. We discuss the availability of sufficient water for construction and operation of the facility in Exhibit O. Water would not be discharged to wetlands, lakes, rivers or streams, and there would be no adverse impact on water quality. Water used during operation at the field workshops would be disposed of in approved on-site septic systems and would not result in an adverse impact on water quality or affect any public sewer facilities.

The Council's standards address other natural resource consequences of the proposed SBWP facility. In each Exhibit to this Preliminary Application, we identify the potential adverse impacts of the proposed facility and explain how those impacts would be mitigated. We discuss the potential impacts to protected areas in Exhibit L; to scenic resources in Exhibit R; to threatened and endangered species in Exhibit Q; to wildlife habitat in Exhibit P; to ambient noise levels in Exhibit X; and to waters of the State in Exhibit J. The Council's Retirement and Financial Assurance Standard addresses retirement of the proposed facility and restoration of the site to a useful, non-hazardous condition, and is discussed in Exhibit W.

In addition, the ordinance requires a finding that the proposed use would not exceed the carrying capacity of affected public facilities. Public services that the SBWP could potentially affect include sewage disposal, water supply, storm water drainage, solid waste disposal, housing, transportation, police and fire protection, health care and schools. Exhibit U addresses these public services and the impact of the SBWP on the capacity of local public facilities. For the reasons discussed therein, the public services necessary for the proposed SBWP would not exceed the carrying capacities of public facilities in Morrow County.

MCZO Section 6.030: General Conditions

GENERAL CONDITIONS. In addition to the standards and conditions set forth in a specific zone, this article, and other applicable regulations; in permitting a new conditional use or the alteration of an existing conditional use, the Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the County as a whole. These conditions may include the following:

A. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

B. Establishing a special yard or other open space or lot area or dimension.

C. Limiting the height, size or location of a building or other structure.

D. Designating the size, number, location and nature of vehicle access points.

1. Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required.

2. In addition to the other standards and conditions set forth in this section, a TIA will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.

E. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.

1. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development.

F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or loading area.

G. Limiting or otherwise designating the number, size, location, height, and lighting of signs.

H. Limiting the location and intensity of outdoor lighting and requiring its shielding.

I. Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance.

J. Designating the size, height, location and materials for a fence.

K. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

L. Other conditions necessary to permit the development of the County in conformity with the intent and purpose of this Ordinance and the policies of the Comprehensive Plan.

MCZO Section 6.030 describes conditions that may be imposed “to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the County as a whole.” The section is a list of discretionary conditions and does not contain substantive standards.

MCZO Section 6.040: Permit and Improvements Assurance

PERMIT AND IMPROVEMENTS ASSURANCE. The Commission may require an applicant to furnish the County with a performance bond or such other form of assurance that the Commission deems necessary to guarantee development in accordance with the standards established and the conditions attached in granting a conditional use permit.

This ordinance describes a performance bond or other assurance that the Planning Commission may require as a condition of approval of a CUP. The ordinance does not contain substantive standards for land use approval or for imposing the bond or other assurance by condition.

MCZO Section 6.050(O): Standards Governing Conditional Uses: Radio, Television Tower, Utility Station or Substation

STANDARDS GOVERNING CONDITIONAL USES. A conditional use shall comply with the standards of the zone in which it is located and with the standards set forth in this subsection.

* * *

O. Radio, television tower, utility station or substation:

1. In a residential zone, all equipment storage on the site may be required to be within an enclosed building.

2. The use may be required to be fenced and provided with landscaping.

3. The minimum lot size for a public utility facility may be waived on finding that the waiver will not result in noise or other detrimental effects to adjacent property.

4. Transmission towers, hoses, overhead wires, plumbing stations, and similar gear shall be so located, designed and installed as to minimize their conflict with scenic values.

Subsection (O)(1) does not apply because the proposed SBWP would not be located in a residential zone.

Subsection (O)(2) provides for a discretionary condition. The ordinance does not contain a substantive standard for imposing the fencing or landscaping requirement.

Subsection (O)(3) addresses the discretion to waive the minimum lot size for a public utility facility. The proposed SBWP would be built on leased land and would not require the creation of a new lot, and therefore this subsection does not apply.

Subsection (O)(4) requires that “transmission towers...overhead wires...and similar gear” be designed and installed “to minimize their conflict with scenic values.” We discuss impacts to scenic resources in Exhibit R. For the reasons discussed there, the proposed SBWP would not have a significant adverse impact on identified scenic resources.

C. Applicable Statewide Planning Goals

For the reasons discussed above, the proposed facility complies with the applicable substantive criteria identified by the Applicant, except MCZO Section 3.010(D)(16), which limits the area that a “commercial utility facility” may occupy in an EFU zone.

Because the facility does not comply with all applicable local land use criteria, we must analyze, under ORS 469.504(1)(b)(B), whether the proposed facility “otherwise [complies] with the applicable statewide planning goals.” For a use located within an EFU zone, the “applicable statewide planning goal” is Goal 3, which is the State’s Agricultural Lands goal. As expressed in *Oregon’s Statewide Planning Goals and Guidelines*, Goal 3 is:

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

Consistent with Goal 3, Gilliam County and Morrow County have designated EFU zones to preserve agricultural lands. Under Goal 3, non-farm uses are permitted within a farm use zone as provided under ORS 215.283. To find compliance with ORS 215.283, we must determine whether the proposed energy facility and its related or supporting facilities are uses that fit within the scope of the uses permitted on EFU land described in ORS 215.283(1), (2) or (3).

The principal use is a “commercial utility facility for the purpose of generating power for public use by sale” that is allowable under ORS 215.283(2)(g). The principal use includes the wind turbines, power collection system, meteorological towers, control system and O&M buildings. The other components of the SBWP (access roads, substations and 230-kV transmission lines) are allowable on EFU land under other sections of ORS 215.283. The substations function to step up the power generated by the SBWP turbines to accommodate interconnection with the

BPA system and the regional power grid. The substations and transmission interconnection lines are “utility facilities necessary for public service” that are allowable under ORS 215.283(1)(d). The access roads are allowable “transportation improvements” under ORS 215.283(3).

The Principal Use

ORS 215.283(2)(g) authorizes “commercial utility facilities for the purpose of generating power for public use by sale” on agricultural land, subject to ORS 215.296. OAR Chapter 660, Division 33, contains the Land Conservation and Development Commission (LCDC) administrative rules for implementing the requirements for agricultural land as defined by Goal 3. OAR 660-033-0120 (Table 1) lists the “commercial utility facility” use as a type “R” use (“use may be approved, after required review”) and references the standards found in OAR 660-033-0130(5) and (22) for such a facility if it is proposed to be located on non-high-value farmland.

For the reasons discussed below (in the section titled “The Access Roads”), the SBWP access roads are also subject to OAR 660-033-0130(5) and (22). Accordingly, the following discussion addresses both the principal use and the access roads.

OAR 660-033-0130(5)

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

OAR 660-033-0130(5) cross-references ORS 215.296, which contains standards for approval for a use allowed under ORS 215.283(2) that are substantively identical to OAR 660-033-0130(5)(a) and (b). These same approval standards are incorporated in the Gilliam County and Morrow County zoning ordinances, GCZO Section 7.020(Q) and MCZO Section 3.010(D), discussed above. As concluded for the county ordinances above, the SBWP would not force a significant change in accepted farm practices on surrounding farmland and would not significantly increase the cost of accepted farm practices.

Because the same approval standards are contained in the land use statute and LCDC rule, the principal use and access roads would comply with ORS 215.296 and OAR 660-033-0130(5).

OAR 660-033-0130(22)

*(22) * * * Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.*

The requirement that a “power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise” is substantively identical to the requirements in the Morrow County zoning ordinance, MCZO Section 3.010(D)(16). As shown in Figure K-2, the

SBWP principal use and access roads might occupy more than 20 acres of non-high-value farmland in Morrow County. The principal use and access roads would not comply with OAR 660-033-0130(22) because they would preclude more than 20 acres of non high-value farmland from use “as a commercial agricultural enterprise.” Based on this, the SBWP does not comply with the rules implementing Goal 3. We discuss an exception to Goal 3 below.

The Access Roads

The proposed SBWP access roads are allowable on EFU land under ORS 215.283(3). ORS 215.283(3) allows “roads, highways and other transportation facilities and improvements” that are not otherwise allowed under paragraphs (1) and (2) of ORS 215.283 to be established in an EFU zone, subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

The subparagraphs are conjoined by “or” and so either (a) or (b) applies. In this case, subparagraph (b) applies because the SBWP access roads are a use identified by the LCDC. OAR 660-033-0120 identifies uses authorized on agricultural lands. OAR 660-033-0120 (Table 1) lists “transportation improvements on rural lands allowed by OAR 660-012-0065” as a type “R” use (“use may be approved, after required review”). OAR 660-012-0065(2)(d) defines “accessory transportation improvements” as “transportation improvements that are incidental to a land use to provide safe and efficient access to the use.” The proposed SBWP access roads are “incidental” to the principal use and would provide safe and efficient access to the facility.

Under OAR 660-012-0065(3)(a), transportation improvements for a use that is conditionally allowed by ORS 215.283 are consistent with Goal 3, subject to the requirements of OAR 660-012-0065. The principal use (a commercial utility facility for the purpose of generating power for public use by sale) is conditionally allowed by ORS 215.283(2)(g).

Accordingly, the access roads serving that use are consistent with Goal 3 subject to the requirements of OAR 660-012-0065. The requirements of OAR 660-012-0065(4) are applicable:

(4) Accessory transportation improvements required as a condition of development listed in subsection (3)(a) of this rule shall be subject to the same procedures, standards and requirements applicable to the use to which they are accessory.

The rule language applies specifically to accessory transportation improvements “required as a condition of development.” Because the SBWP access roads are necessary for the operation and maintenance of the wind energy facility, they are a necessary condition of the development of the commercial utility facility. Accordingly, the access roads are subject to the standards and requirements applicable to the principal use. The standards and requirements applicable to the principal use are contained in OAR 660-033-0130(5) and (22). We have discussed the compliance of the access roads with these provisions in the preceding section (“The Principal Use”).

Substations and Interconnection Lines

The proposed SBWP substations are necessary to convert the voltage from the 34.5-kV collector system to 230 kV so that electricity generated by the energy facility can be transmitted efficiently over the interconnection line to the BPA Slatt Switching Station and ultimately to public customers. The substations and the 230-kV interconnection lines are within the scope of ORS 215.283(1)(d), which allows “utility facilities necessary for public service” on EFU land subject to the provisions of ORS 215.275.

215.275 Utility facilities necessary for public service; criteria; mitigating impact of facility.

(1) A utility facility established under ORS 215.213 (1)(c) or 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c) or 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 (1)(c) or 215.283 (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c) or 215.283 (1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

ORS 215.275(2) lists factors for deciding whether a utility facility is “necessary for public service.” The proposed SBWP substations must be located in an EFU zone because there is no non-EFU land near either the BPA Slatt Substation or the proposed BPA Diamond Butte Substation, where the SBWP power would be connected to the regional power grid. There are no reasonable alternatives to this location. At least three of the factors listed in ORS 215.275(2) apply. “Technical and engineering feasibility” requires that there be a substation and interconnecting transmission line to accommodate interconnection of the lower-voltage power generated by individual SBWP wind turbines with the BPA system. It is not feasible or technically possible to interconnect with the regional transmission grid without the substations and 230-kV transmission lines. Second, the proposed substations and interconnection lines are “locationally dependent.” They must be located in proximity to the proposed wind turbines, because that is where the power would be generated.

They must also be located near the BPA system so that the power can be transmitted to customers. Third, there are no “available urban and nonresource lands” on which to locate the substations and interconnection lines where they could serve their purpose. The facility site and the BPA substations are located entirely on EFU land. Location of the substations and interconnection lines on EFU land is “necessary for public service,” and are allowed under ORS 215.283(1)(d) subject to the other provisions of ORS 215.275.

ORS 215.275(4) requires that the owner of a utility facility approved under ORS 215.283(1)(d) be responsible for restoring agricultural land and associated improvements to their former condition if they are damaged or disturbed by the siting, maintenance, repair or reconstruction of the facility. Applicant would be responsible for restoring all areas temporarily disturbed during construction, maintenance or repair of the substations and 230-kV transmission lines.

ORS 215.275(5) requires the imposition of “clear and objective conditions” on siting a utility facility under 215.283(1)(d) “to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.” These objectives are substantially identical to the approval standards incorporated in the Morrow County zoning ordinance MCZO Section 3.010(D). Site Certificate Conditions to “mitigate and minimize” the impacts of the proposed facility (including the substations and 230-kV transmission lines) on farm practices have been proposed.

D. Goal 3 Exception

As shown Figure K-2 (and allowing for a shift in components between the counties, the proposed principal use and access roads might “preclude more than 20 acres from use as a commercial agricultural enterprise.” The proposed SBWP, therefore, would not comply with OAR 660-033-0130(22), which implements Goal 3.

Therefore, to find compliance under ORS 469.504(1)(b)(B), an exception to Goal 3 must be justified under ORS 469.504(2).

ORS 469.504(2)(c) sets out the requirements that must be met for an exception to a statewide planning goal, as follows:

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

* * *

(c) The following standards are met:

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

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

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

Applicant concludes that the standards for an exception to Goal 3 under ORS 469.504(2)(c) are met.

Reasons Supporting an Exception

The state policy embodied in Goal 3 is the preservation and maintenance of agricultural land for farm use. The following reasons support an exception to Goal 3.

First, although the proposed principal use and access roads would occupy approximately 77 acres of EFU land, they would occupy less than one-half of one percent of the farmland adjacent to the facility in both counties. Approximately 24,670 acres of land within the analysis area is devoted to farm use. It is significant to note that the wind facility structures would not occupy a single, contiguous area within which no farming activities could occur. Rather, the spacing of turbines and turbine strings would allow farm use to continue efficiently on most of the land currently used for grazing and cultivation of crops.

Second, facility access roads would be available to landowners for use in farm operations. Of the total land occupied by the facility, turbine towers, field workshops, meteorological towers and aboveground collector lines would occupy approximately 15 acres. Facility access roads would occupy approximately 61 acres but would be available to the landowners for farming or ranching uses. Facility access roads would be the minimum size necessary for safe operation (approximately 18 feet wide) and would be located to minimize conflict with farm uses on surrounding land.

Third, approval of the proposed SBWP furthers the state policy embodied in Goal 13 (Energy Conservation). The Guidelines for implementing Goal 13 direct that land use planning utilize renewable energy sources, including wind, “whenever possible.” EFU land is particularly well suited to the utilization of wind energy, which requires open land with unobstructed access to consistently strong winds. The areas within Gilliam County and Morrow County that have sufficient open space and strong winds are within EFU zones.

Fourth, the use of farmland for the proposed location of the facility provides efficient access to BPA’s regional transmission system. The facility is located adjacent to the BPA’s Slatt Switching Station. The switching station provides direct access to BPA’s existing transmission infrastructure.

Environmental, Economic, Social and Energy Consequences

The Council’s standards address the environmental consequences of the proposed facility. In our discussion of each of the standards, we identify the potential adverse impacts of the proposed facility and explain how those impacts would be mitigated. We discuss impacts to soils at Exhibit I; to protected areas at Exhibit L; to scenic resources at Exhibit R; to threatened and endangered species at Exhibit Q; to wildlife habitat at Exhibit P; to ambient noise levels at Exhibit X; to waters of the state at Exhibit J; and to groundwater at Exhibit O. The facility would have no emissions that would adversely affect air or water quality. Upon retirement of the facility, the site would be restored to a useful, non-hazardous condition (see Exhibit W).

The proposed facility would have beneficial economic consequences and no significant adverse economic consequences. The facility would offer local employment opportunities by providing up to 250 jobs during construction and up to 14 jobs during operation. Annual lease payments in the wind facility lease area would supplement landowner income from other farm operations without significantly reducing the land base available for farming practices. In addition, the proposed facility would provide significant property tax revenue to Morrow County.

The SBWP would not have significant adverse social consequences. The proposed facility would not cause any significant adverse impact on the ability of communities in the local area to provide services such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation and traffic safety (see discussion above). Site Certificate Conditions to avoid adverse impact to historic, cultural and archaeological resources are proposed in Exhibit S. The proposed facility would have no adverse impact on important recreational opportunities in the local area (see Exhibit T). We address public safety issues related to the proposed facility at Exhibit DD (Public Health and Safety Standards for Wind Energy Facilities), Exhibit AA (Siting Standards for Transmission Lines), Exhibit H (Structural Standard), and Exhibit U (Public Health and Safety).

During construction and operation of the facility, Applicant would minimize the generation of solid waste and wastewater and would properly dispose or recycle waste materials (see Exhibit V).

The energy consequences of the proposed facility would be the generation of up to approximately 133 MW of electricity (average electric generating capacity) that would become

available to meet local and regional energy needs. The facility would satisfy its own on-site electrical loads by use of power generated by the facility. The proposed SBWP would generate electricity from a renewable source (wind), which furthers the State's energy policy "to develop permanently sustainable energy resources" (ORS 469.010).

Compatibility with Other Adjacent Uses

Adjacent uses are primarily farming and grazing. The facility is compatible with these farm uses for the reasons discussed above in reference to Gilliam County and Morrow County zoning ordinances, GCZO Section 7.020(Q) and MCZO Section 3.010(D). The facility would not force a significant change in accepted farm practices on surrounding lands and would not significantly increase the costs of farm practices. The directly affected landowners are willing to enter into land leases to allow the facility to be built. In return, the landowners would receive annual lease payments. Lease payments would provide a stable, supplemental income source that would help maintain the land in farm use by increasing the economic viability of the landowners' farm operations.

Applicant's Conclusions

Based on the foregoing reasoning, proposed conditions and conclusions, the proposed facility complies with all applicable substantive criteria from Gilliam County and Morrow County except MCZO Section 3.010(D)(16). Accordingly, the Council must proceed with the land use analysis under ORS 469.504(1)(b)(B). The proposed facility does not comply with OAR 660-033-0130(22) and therefore does not comply with the applicable statewide planning goal (Goal3).

However, an exception to Goal 3 is justified under ORS 469.504(2)(c). The proposed facility complies with the Land Use Standard.

Figure K-1

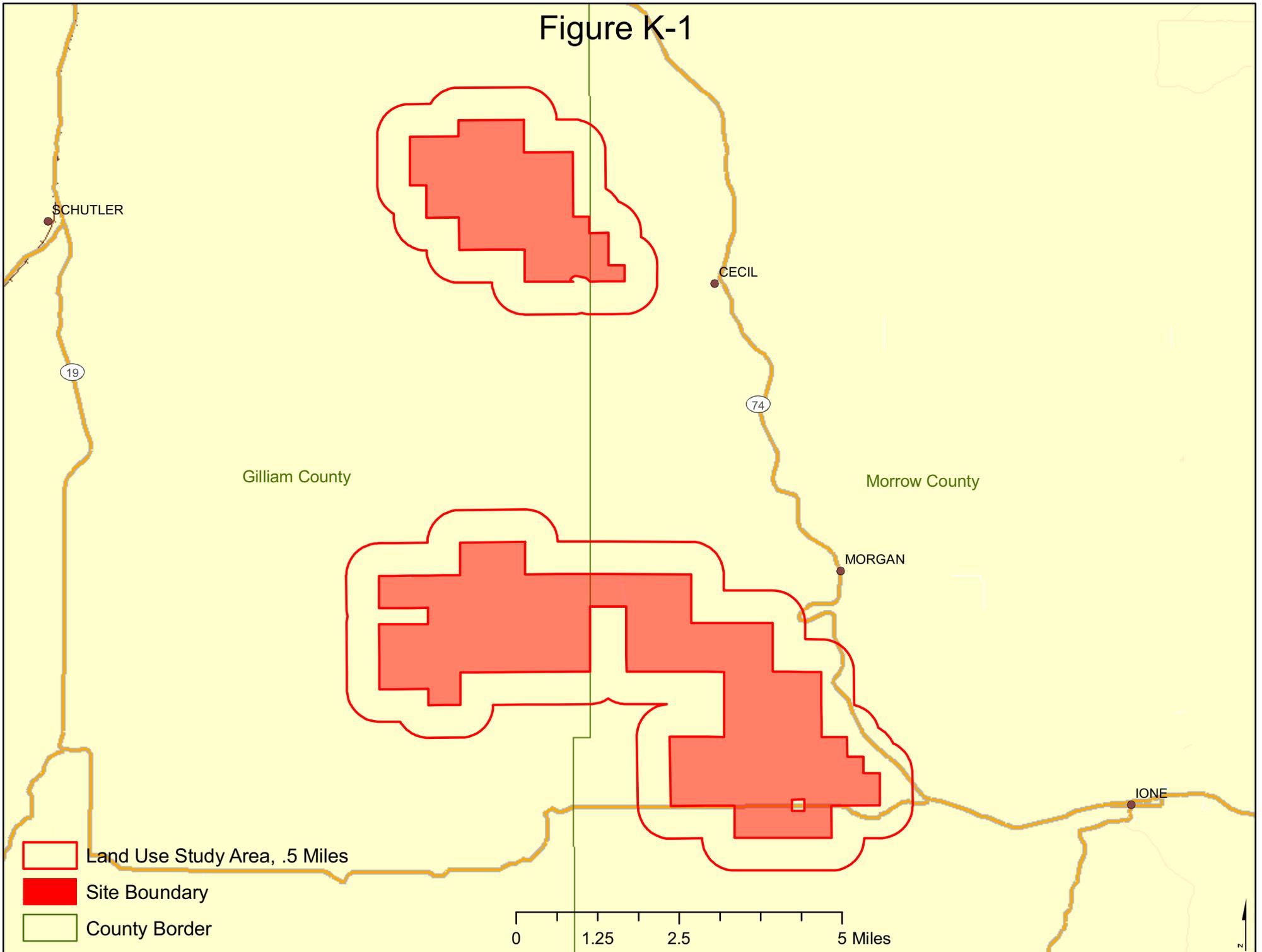


Figure K-2

Facility Footprint (worst case)

Structure	Gilliam County (acres)	Morrow County (acres)	Total Facility (acres)
Principal use			
Turbine towers, including pad areas and road turnouts	4.1	2.5	6.6
Substations	2.3	2.3	4.6
Meteorological towers	< 0.1	< 0.1	< 0.1
Aboveground 230 kV transmission line	0.1	< 0.1	0.1
O & M buildings	2.0	2.0	4.0
Subtotal	8.5	6.8	15.3
Access roads	39.1	22.2	61.3
Total	47.6	29.0	76.6

Agricultural Use by County

County	Use	Site (acres)	Buffer (acres)	Analysis Area (acres)	Footprint (acres)
Gilliam	Agricultural	6,403.0	6,315.1	12,718.1	41.6
	Non-agricultural	52.0	69.7	121.7	6.0
	Total	6,455.0	6,384.8	12,839.8	47.6
Morrow	Agricultural	5,263.9	6,687.8	11,951.7	16.7
	Non-agricultural	73.7	97.6	171.3	12.3
	Total	5,337.6	6,785.4	12,123.0	29.0
Combined	Agricultural	11,666.9	13,002.9	24,669.8	58.2
	Non-agricultural	125.7	167.3	293.0	18.3
	Total	11,792.6	13,170.2	24,962.8	76.6