

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

In the Matter of Request for Amendment 1 of the  
Site Certificate for the Boardman to Hemingway  
Transmission Line

---

)  
)  
) FINAL ORDER  
)

September 22, 2023

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## ABBREVIATIONS AND ACRONYMS

ASC	Application for Site Certificate
BCZSO	Baker County Zoning and Subdivision Ordinance
BLM	Bureau of Land Management
CHZO	City of Huntington Zoning Ordinance
CI	Commercial Industrial
CR	Commercial Residential
Council or EFSC	Energy Facility Siting Council
CTUIR	Confederated Tribes of the Umatilla Indian Reservation
dBA	A-weighted decibels
EFU	Exclusive Farm Use
ESH	Essential Salmonid Habitat
HAC	Historical, Archeological or Cultural
HPMP	Historic Properties Management Plan
IPC; certificate holder	Idaho Power Company
JPA	Joint Permit Application
kV	kilovolt
LiDAR	light detection and ranging
MCC	Malheur County Code
MCCP	Morrow County Comprehensive Plan
MCZO	Morrow County Zoning Ordinance
NED	National Elevation Dataset
NEPA	National Environmental Policy Act
NHD	National Hydrography Dataset
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NSR	noise-sensitive receptor
NWI	National Wetlands Inventory
NWSTF Boardman	Naval Weapons Systems Training Facility – Boardman
OAR	Oregon Administrative Rules
ODEQ	Oregon Department of Environmental Quality
ODFW	Oregon Department of Fish and Wildlife
ODOE	Oregon Department of Energy
ODSL	Oregon Department of State Lands
ORS	Oregon Revised Statutes
PA	Programmatic Agreement
Project; B2H	Boardman to Hemingway Transmission Line Project
RFA1	Request for Amendment 1
RSA	Rural Service Area
SHPO	State Historic Preservation Office
STATSGO	State Soil Geographic Database
UCCP	Umatilla County Comprehensive Plan
UCDO	Umatilla County Development Ordinance

## **ABBREVIATIONS AND ACRONYMS**

UCZPSO	Union County Zoning, Partition, and Subdivision Ordinance
USDA	U.S. Department of Agriculture
USFS	U.S. Department of Agriculture, Forest Service
USGS	U.S. Geological Survey
WAGS	Washington ground squirrel

1 **I. INTRODUCTION**  
2

3 On June 8, 2023, Idaho Power Company (certificate holder) filed Request for Amendment 1 of  
4 the Boardman to Hemingway Transmission Line Site Certificate (amendment request or RFA1).  
5 The changes in RFA1 seek approval by the Energy Facility Siting Council (EFSC or Council) to  
6 amend the site certificate to add area (approximately 1,036 acres) to the site boundary to allow  
7 for adjustments of three transmission line route segments (approximately 8.8 miles total) and  
8 road locations (approximately 45.9 miles) (referred to as “RFA1 site boundary additions”). The  
9 amendment request also seeks Council approval to amend language of site certificate  
10 conditions.

11  
12 For amendments to the site certificate that include site boundary expansion and other changes,  
13 such as new or amended conditions, under the Scope of Council Review under OAR 345-027-  
14 0375, Council finds that the preponderance of evidence on the record supports the following  
15 conclusions:

- 16  
17 1. That the portion of the facility within the area added to the site boundary by the  
18 amendment complies with all laws and Council standards applicable to an original site  
19 certificate application;  
20 2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate;  
21 and,  
22 3. The facility, with RFA1 changes, complies with the applicable laws or Council standards that  
23 protect a resource or interest that could be affected by the RFA1 changes.  
24

25 Based upon review of RFA1, the draft proposed order (DPO), comments from reviewing  
26 agencies, comments on the DPO, certificate holder responses to DPO comments, and Council’s  
27 review of the Proposed Order, the Council approves the amendment request and adopts the  
28 Proposed Order as the Final Order on RFA1 granting issuance of the First Amended Site  
29 Certificate subject to the existing, new and amended conditions set forth in this final order.  
30

31 This final order is issued by the Council in accordance with Oregon Revised Statute (ORS)  
32 469.405(1) and Oregon Administrative Rule (OAR) 345-027-0371.  
33

34 **I.A. SITE CERTIFICATE PROCEDURAL HISTORY**  
35

36 The Council issued the Final Order on the Application for Site Certificate (*Final Order on ASC*)  
37 and granted issuance of the Boardman to Hemingway Transmission Line Site Certificate on  
38 September 27, 2022. This is the certificate holder’s first request for an amendment to the Site  
39 Certificate.  
40

41 **I.B. APPROVED FACILITY DESCRIPTION FROM APPLICATION FOR SITE CERTIFICATE (ASC)**  
42

1 The approved not constructed facility includes approximately 300 miles of electric transmission  
2 line, with approximately 272.8 miles located in Oregon and 23.8 miles in Idaho. The approved  
3 facility, its related or supporting facilities, and location are described further below.

4  
5 **I.B.1. Facility Location, Site Boundary and Micrositing Transmission**  
6 **Line Corridors**

7  
8 The facility traverses five counties in Oregon including Morrow, Umatilla, Union, Baker and  
9 Malheur; and two cities including North Powder and Huntington. The location of the  
10 approved site boundary is presented in Figure 1, *Approved Route Site Boundary and Vicinity*  
11 and Figure 2, *Approved Alternative Route Site Boundary and Vicinity* below.

12  
13 The approved site boundary contains approximately 23,041 acres. For the 500-kV  
14 transmission line, the site boundary is a 500-foot-wide area within which the transmission  
15 line, all transmission structures, and communication stations are approved to be located.<sup>1</sup>  
16 The site boundary for the remaining facility features varies, based on the type of feature  
17 and use. The site boundary for the approved Longhorn Station is approximately 190 acres.  
18 The site boundary for access roads is either 100 or 200-feet in width, depending on the  
19 nature of the road.

20  
21 The site boundary is equivalent to a micrositing transmission line corridor. A  
22 micrositing/transmission line corridor is a continuous area of land not to exceed 0.5-mile in  
23 width within which construction of facility components may occur, subject to site certificate  
24 conditions.<sup>2</sup> The Council permits final siting flexibility within the approved micrositing  
25 transmission corridor because the certificate holder has demonstrated that requirements of all  
26 applicable standards have been satisfied by adequately evaluating the entire corridor and  
27 location of facility components anywhere within the corridor/site boundary.

28  
29 **I.B.2. Energy Facility Description**

30  
31 The certificate holder is approved to construct, operate and retire the following major  
32 components:

- 33 • Transmission Lines: The approved route consists of an approximately 270.8-mile-long  
34 single-circuit 500-kV electric transmission line, removal of 12 miles of existing 69-kV  
35 transmission line, rebuilding of 0.9 mile of a 230-kV transmission line, and rebuilding of  
36 1.1 miles of an existing 138-kV transmission line into a new ROW. Four approved  
37 alternative routes represent approximately 33.3 miles of transmission line.
- 38  
39 • Longhorn Station: A 20-acre switching station is approved to be located near the Port of  
40 Morrow, Oregon. The switching station provides a combination of switching, protection,  
41 and control equipment arranged to provide circuit protection and system switching

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<sup>1</sup> B2HAPPDoc3-3 ASC 02a\_Exhibit\_B\_Project Description\_ASC 2018-09-28. Section 3.2.2.3 and 3.5.2.

<sup>2</sup> OAR 345-001-0010(7) and (32)

flexibility for the transfer of electric power; it does not incorporate step-down or step-up voltage equipment. The station connects the transmission line to other 500-kV transmission lines and the Pacific Northwest power market.

- Communication Stations: Ten communication station sites (and two alternative communication stations sites) each consisting of a communication shelter and related facilities. Each communication station site is less than 1/4-acre in size.

**I.B.3. Related or Supported Facilities Description**

ORS 469.300(14) defines “facility” as an “energy facility together with any related or supporting facilities.” The below sections describe the approved related or supporting facilities.

*Access Roads*

The facility includes permanent access roads for the approved route, including 206.3 miles of new roads and 223.2 miles of existing roads requiring substantial modification. The approved alternative routes include 30.2 miles of new roads and 22.7 miles of existing roads requiring substantial modification. Access roads include both new roads and existing roads requiring substantial modification. Existing roads used for construction and operation of the facility, but which would not require substantial modification are not “related or supporting facilities” and, therefore are not included in the site boundary.<sup>3</sup> Table 1, *Summary of Access Road Classifications* provides a summary of the road descriptions previously approved by Council. The Council-approved access road classification and modifications are described further in Attachment B-5, Road Classification Guide and Access Control Plan, attached to this order.

**Table 1: Summary of Access Road Classifications**

Access Road Classification		Site Boundary	Construction Disturbance	Operations Disturbance	Road Prism or Profile Changes	Extent of Work
New Roads	Primitive	200 feet	16 feet	10 feet	Yes	Clearing of vegetation or obstructions. Create roads by direct vehicle travel.

<sup>3</sup> OAR 345-001-0010(50) states that “related or supporting facilities does not include any structure existing prior to construction of the energy facility, unless such structure must be substantially modified solely to serve the energy facility.”

**Table 1: Summary of Access Road Classifications**

Access Road Classification		Site Boundary	Construction Disturbance	Operations Disturbance	Road Prism or Profile Changes	Extent of Work
	Bladed	200 feet	16–35 feet	14 feet	Yes	Clearing of vegetation or obstructions. Create roads by cutting/filling existing terrain.
Existing Roads - Substantial Modification	Substantial Modification, 21-70% Improved	100 feet	16 feet	14 feet	Yes	Reconstruct portions of existing road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement.
	Substantial Modification, 71-100% Improved	100 feet	16–30 feet	14 feet	Yes	Reconstruct portions of existing road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement.
Existing Roads – No Substantial Modification	No Substantial Modification, 0-20% Improved	NA <sup>1</sup>	NA <sup>1</sup>	NA <sup>1</sup>	No	Repair of existing road to maintain original road function. No betterment of existing road function or design.

<sup>1</sup> Existing roads with no substantial modifications are not included in the Site Boundary and do not have an operation or construction disturbance width assigned to them.

Source: Table PF-8: Summary of Access Road Classifications from Final Order (B2HAPPDoc31 *Final Order on ASC* and Attachment 2022-09-27, page 77; B2HAPPDoc3-3 ASC 02a\_ Exhibit\_B\_Project Description\_ASC 2018-09-28, Table B-12.

- 1
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- 7

*New Roads*

For purposes of describing the disturbance width, new roads are classified as either “primitive” or “bladed.” The approved site boundary for all new roads is 200 feet wide (100 feet on either side of the centerline). The typical construction disturbance for primitive roads would be 16 feet and the operational width would be maintained at 10 feet. For bladed roads, the typical

1 construction disturbance would be 16 feet wide, but could be as wide as 35 feet as dictated by  
2 terrain and soil conditions, and the operational width for bladed roads is 14 feet.

3  
4 *Existing Roads with No Substantial Modification*

5  
6 Road maintenance activities will be limited to 20 percent or less of the road surface area and  
7 may include repair of the road prism to (i) produce a stable operating surface, (ii) ensure proper  
8 drainage and erosion control, and (iii) establish horizontal clearance, however will not include  
9 (i) increasing the width of the existing road prism, (ii) change the existing road alignment, (iii)  
10 use materials inconsistent with the existing road surface, and/or (iv) change the existing road  
11 profile.

12  
13 *Existing Roads Requiring Substantial Modification*

14  
15 If improvements to an existing road would involve one or more of the following activities, the  
16 road segment is classified as requiring substantial improvements:

- 17  
18 1. increasing the width of the existing road prism;  
19 2. changing the existing road alignment;  
20 3. using materials inconsistent with the existing road surface;  
21 4. changing the existing road profile; or  
22 5. involving repairs to more than 20 percent of the road surface area defined by road  
23 prism width and longitudinal distance over a defined road segment.

24  
25 Typical construction disturbance for existing roads requiring substantial modification would be  
26 16 feet wide but could be up to 30 feet wide when road modification exceeds 70 percent. The  
27 operational width would be 14 feet. The approved site boundary for a substantially modified  
28 existing road is 100 feet wide (50 feet on either side of the centerline.)

29  
30 Following construction, any new roads developed for access to multi-use areas would be  
31 removed and restored to preconstruction conditions, unless the landowner requests otherwise.  
32 Roads developed for pulling and tensioning sites would be permanent because they would also  
33 provide access to structures for operations and maintenance.

34  
35 *Temporary Multi-Use Areas*

36  
37 Temporary multi-use areas would be necessary approximately every 15 miles along the right of  
38 way (ROW). The approved multi-use areas (MUAs) are temporary construction areas that would  
39 serve as field offices; reporting locations for workers; parking space for vehicles and equipment;  
40 and sites for material delivery and storage, fabrication assembly of towers, cross arms and  
41 other hardware, concrete batch plants, and stations for equipment maintenance. Each MUA  
42 would be approximately 30 acres in size. After construction is complete, MUAs would be  
43 restored in a manner compatible with the land use and zone at the time of restoration, in  
44 accordance with General Standard of Review Condition 9.

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*Temporary Pulling and Tensioning Sites and Light-Duty Fly Yards*

Construction of the transmission line would require 299 approved pulling and tensioning sites. Pulling and tensioning sites would be required approximately every 1.5 to two miles along the ROW and at angle points greater than 30 degrees and would require approximately five acres at each end of the wire section to accommodate required equipment. Equipment at pulling and tensioning sites would include tractors and trailers with spooled reels that hold the conductors and trucks with the tensioning equipment.

Four pulling and tensioning sites are approved to include light-duty fly yards. The counties in which the light-duty fly yards are approved to be located are Umatilla, Baker and Malheur counties. All the equipment and activities that would occur at an MUA could also occur at a light-duty fly yard, except that oil, gas and explosive storage would not occur and no batch plants would be located at the light-duty fly yards within the pulling and tensioning sites. The light-duty fly yards would be approximately five-acre sites spaced approximately 15 miles apart.

Figure 1: Approved ASC Route Site Boundary and Vicinity

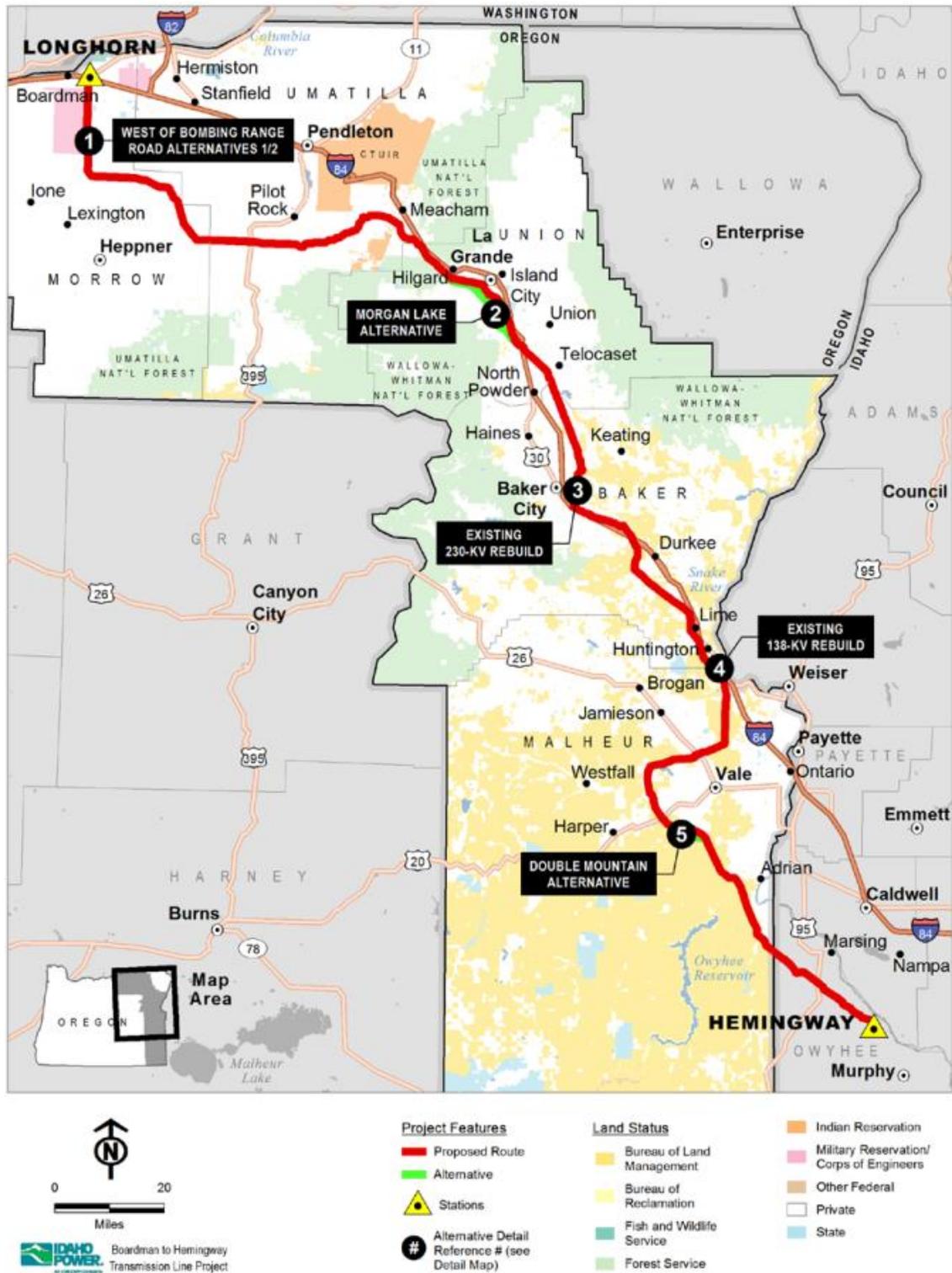
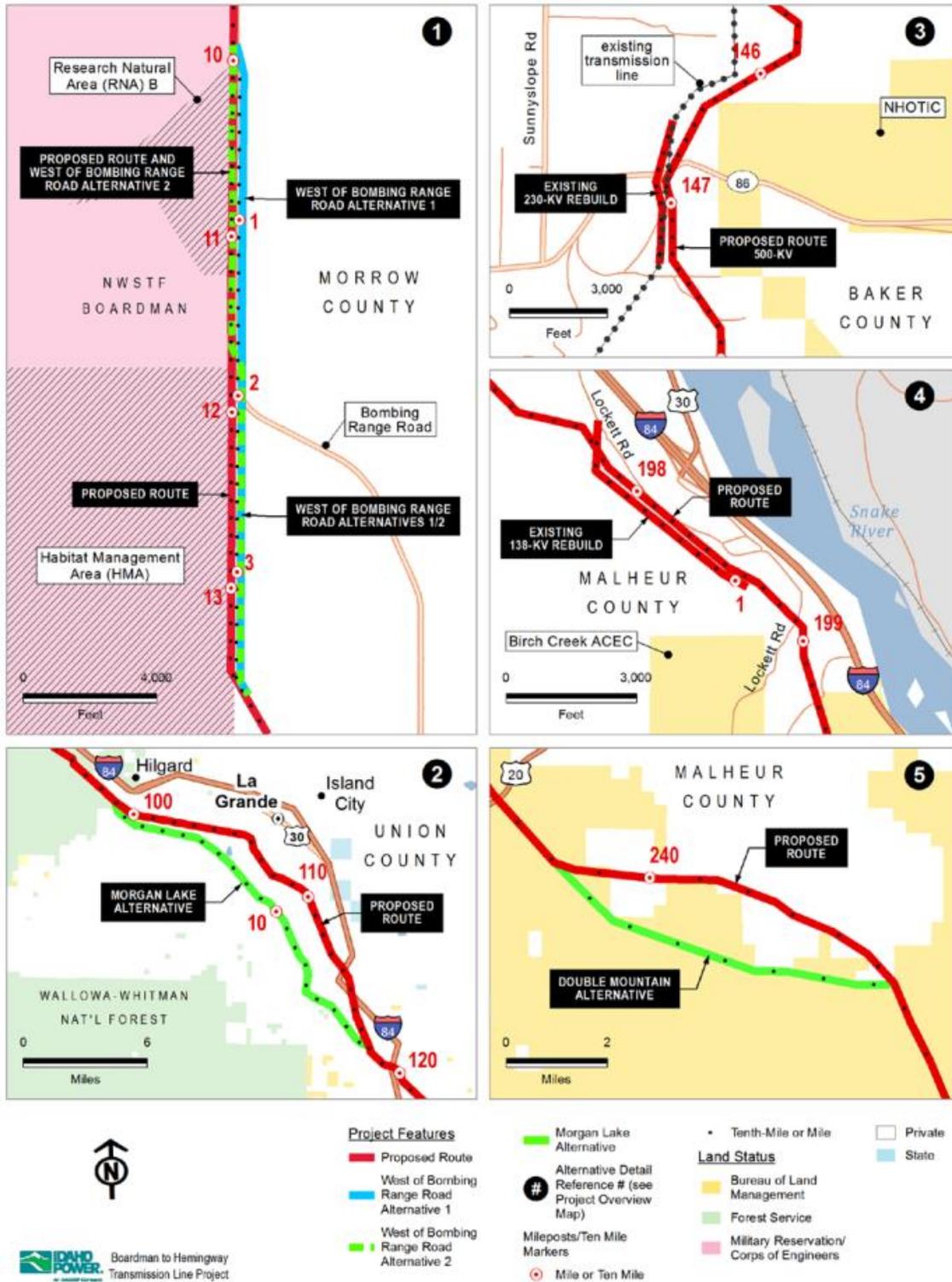


Figure 2: Approved ASC Alternative Route Site Boundary and Vicinity



## **I.B.4. Facility Development: Construction, Operation and Retirement Activities**

### *I.B.4.a Construction*

Construction activities could occur simultaneously, by segment or phase. Construction activities will generally include the following phases:

#### Phase I - Civil construction

- Activities along the transmission line will involve clearing the corridor and constructing access roads and, if applicable, harvestable timber will be cleared then hauled off.

#### Phase II – Foundation Construction

- Foundations will be constructed at each structure site to support the steel towers. Track mounted drills and excavators will be mobilized to each structure site to excavate the site and concrete trucks will then deliver concrete to the sites to construct the foundations.

#### Phase III – Structure Erection

- Steel lattice towers will be assembled at each site and erected on the foundations. Material will be delivered via flatbed trucks to each structure site and unloaded with forklifts and cranes where it will be assembled in pieces in the work area around the foundations.

#### Phase IV – Conductor Pulling/Tensioning

- Conductor will be pulled along the corridor and through the structures via helicopters while large man lift trucks provide work crews access to each structure.<sup>4</sup>

Construction will include approximately 437 workers and crews for the following activities: switching station construction, ROW clearing, roads/pad grading, foundations, tower lacing, tower setting, wire stringing, restoration, blasting, materials management, mechanic & equipment management, refueling, dust control, construction inspection, materials testing, environmental compliance, and surveyors.

Construction traffic will include:

- Up to 486 one-way worker trips per day
- Up to 620 one-way light construction trips per day
- Up to 188 one-way heavy construction trips per day

### *I.B.4.b Operations and Maintenance*

Operations and maintenance (O&M) activities include routine inspection and maintenance of the transmission line, in compliance with the Transmission Maintenance and Inspection Plan (TMIP) (see Organizational Expertise Condition 1; Condition OPR-OE-01).

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<sup>4</sup> B2HAPPDoc13 DPO IPC Responses to Select DPO Comments Rec'd by 2019-11-07; B2HAPP DPO IPC Responses - City of La Grande comments 2019-10-09.

In accordance with the TMIP, three types of line maintenance patrols will be conducted: routine line patrols/inspections, unscheduled emergency line patrols, and aerial vegetation patrols. The routine line patrols include a detailed visual inspection of the entire line conducted at least once per year.

Emergency line patrols will be performed in response to any unexplained system outage or interruption, or whenever requested by a dispatcher, to identify major structural failures or issues.

Aerial vegetation patrols will be conducted by a transmission utility arborist to identify and manage vegetation encroachments that threaten the transmission lines.

Transmission Patrolmen will patrol and inspect the transmission lines at a minimum once a year to identify any transmission defects and any vegetation hazards that may develop between vegetation clearing cycles.

The TMIP requires that the certificate holder complete comprehensive 10-year maintenance inspection at least every 10-years.

O&M activities will also include short- and long-term monitoring and minimization measures for noxious weeds, restoration/reclamation, revegetation and habitat enhancement, as required by site certificate conditions provided in Section 5.0 of the amended site certificate (Attachment 1 of this order).

#### *I.B.4.c Retirement/Decommissioning*

The certificate holder shall retire or decommission the facility based on a retirement plan to be approved by the Council in accordance with the requirement of OAR 345-027-0110, consistent with the *Final Order on ASC*, and applicable conditions provided in Section 5.6 of the amended site certificate.

1 **II. AMENDMENT PROCESS**

2  
3 With some exceptions, an amendment to a site certificate is required under OAR 345-027-  
4 0350(4) for any change in the design, construct, or operate a facility in a manner substantially  
5 different from that described in the site certificate, if the proposed change: (1) could result in a  
6 significant adverse impact that the Council has not addressed in an earlier order and the impact  
7 affects a resource or interest protected by an applicable law or Council standard; (2) could  
8 impair the certificate holder’s ability to comply with a site certificate condition; or (3) could  
9 require a new condition or a change to a condition in the site certificate (“three could”).<sup>5</sup> As  
10 described below, the changes proposed in RFA1 require review through the site certificate  
11 amendment process because the changes trigger the “three could” under OAR 345-027-  
12 0350(4).  
13

14 **II.A. SCOPE OF COUNCIL REVIEW**

15  
16 For amendments to the site certificate that include site boundary expansion and other changes,  
17 such as new or amended conditions, the Scope of Council Review under OAR 345-027-0375  
18 requires that Council determine whether the preponderance of evidence on the record  
19 supports the following conclusions:  
20

- 21 1. That the portion of the facility within the area added to the site boundary by the  
22 amendment complies with all laws and Council standards applicable to an original site  
23 certificate application;
- 24 2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate;  
25 and,
- 26 3. The facility, with proposed RFA1 changes, complies with the applicable laws or Council  
27 standards that protect a resource or interest that could be affected by the proposed RFA1  
28 changes.  
29

30 The certificate holder requests to add additional road and transmission line route options to the  
31 site boundary; and, modify the language of previously imposed conditions. Therefore, the  
32 findings of fact and conclusions of law in this order support the Council’s conclusion that the  
33 portions of the facility within the area added to the site boundary by RFA1 comply with all laws  
34 and Council standards applicable to an original site certificate application ((1) above); and that  
35 the changes to site certificate condition language do not impact the ability of the facility, with  
36 RFA1 changes, to comply with applicable laws and standards ((3) above). The Scope of Council’s  
37 Review for RFA1 does not include findings of fact or conclusions of law that apply to the  
38 approved facility as described in the ASC and *Final Order on ASC*, including previously approved  
39 transmission line routes and related or supporting facilities that are not impacted by RFA1.  
40

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<sup>5</sup> OAR 345-027-0350(4).

1 **II.B. REQUESTED AMENDMENT**

2

3 RFA1 seeks Council approval to (a) add alternative route corridors for the transmission line on  
 4 three properties based to accommodate requests by landowners to re-locate the facility on  
 5 their land to minimize impacts to landowners while being able to meet design criteria; (b) add  
 6 and refine of the location of roads resulting from additional design and engineering review  
 7 associated with the approved ASC and RFA1 route alternatives; (c) amend language of site  
 8 certificate conditions to support implementation. RFA1 site boundary additions include  
 9 approximately 8.8 miles of 500-kV transmission line alternatives, and approximately 45.9 miles  
 10 of access road changes associated with the approved route and routes in RFA1. Table 2: *RFA1*  
 11 *Alternative Route and Access Road Additions*, below details the location, length, acreage  
 12 impacts and reasoning for the alternative in RFA1. In addition, Section II.B.2, below, describes  
 13 the changes by county.

**Table 2: RFA1 Alternative Route and Access Road Additions<sup>6</sup>**

<b>RFA1 Site Boundary Additions</b>	<b>County</b>	<b>Length of Addition – Transmission Line (miles)</b>	<b>Length of Addition – Access Road (miles)</b>	<b>Area of Addition (acres)</b>	<b>Description of Site Boundary Addition</b>
Little Juniper Canyon Transmission Line Alternative <sup>1</sup>	Morrow	1.4	1.4	78.7	Shifted transmission line to the west to minimize impacts to proposed solar facility
Access Road Changes in Morrow County	Morrow	NA	4.2	61.9	Road design changes
Access Road Changes in Umatilla County	Umatilla	NA	3.4	71.3	Road design changes
Access Road Changes in Union County	Union	NA	1.8	36.7	Road design changes
True Blue Gulch Transmission Line Alternative <sup>2</sup>	Baker	4.6	8.6	422.8	Adjusted transmission line to the west and south to minimize noise and visual impacts
Durbin Quarry Transmission Line Alternative <sup>3</sup>	Baker	2.8	2.1	130.0	Shifted transmission line to avoid crossing ODOT quarry

<sup>6</sup> The route and road additions are “additive;” certificate holder therefore would have more options and flexibility to accommodate landowner preferences and final facility design needs, however, the final facility will ultimately select one approved ASC route, approved ASC alternative route, or approved RFA1 routes. Actual acreage/disturbance impacts from the facility will be significantly less than approved in the ASC and evaluated in this order.

**Table 2: RFA1 Alternative Route and Access Road Additions<sup>6</sup>**

RFA1 Site Boundary Additions	County	Length of Addition – Transmission Line (miles)	Length of Addition – Access Road (miles)	Area of Addition (acres)	Description of Site Boundary Addition
Access Road Changes in Baker County	Baker	NA	17.0	95.5	Road design changes
Access Road Changes in Malheur County	Malheur	NA	7.4	139.1	Road design changes
<b>TOTAL</b>	<b>NA</b>	<b>8.8</b>	<b>45.9</b>	<b>1,036.0</b>	<b>NA</b>

Notes:

<sup>1</sup> The Little Juniper Canyon Transmission Line Alternative would be an alternative to 1.3 miles of Previously Approved transmission line; 0.1 miles longer than approved ASC route segment.

<sup>2</sup> The True Blue Gulch Transmission Line Alternative would be an alternative to 2.9 miles of Previously Approved transmission line; 1.7 miles longer than approved ASC route segment.

<sup>3</sup> The Durbin Quarry Transmission Line Alternative would be an alternative to 2.8 miles of Previously Approved transmission line; this alternative is the same length as the approved ASC route segment.

Source: B2HAMD RFA1 2023-06-08, Table 4.1-1. Proposed Site Boundary Additions

1

2

**II.B.1. Amended and New Site Certificate Condition Summary**

3

4 RFA1 Attachment 6-1 presents the certificate holder’s proposed changes to the description of  
 5 the site boundary, approved transmission line corridors and access roads; and amendments to  
 6 site certificate conditions. Based on the evaluation presented in Section III. *Evaluation of*  
 7 *Council Standards*, as applicable based on the certificate holder’s proposed changes, the  
 8 Council approved changes to the site certificate and conditions are presented in the amended  
 9 site certificate (Attachment 1 of this order).

10

11 In many instances, the certificate holder requests to remove a timing constraint (i.e.,  
 12 requirement to submit documentation within a certain number of days prior to construction)  
 13 associated with a preconstruction submittal. The preconstruction timing constraint was  
 14 imposed to provide sufficient time for agencies to review the draft final documentation, prior  
 15 to commencing construction. The Council considers it reasonable for there to be an alternative  
 16 timeframe that the specific timing constraint imposed in the condition that is still prior to  
 17 construction while providing an adequate opportunity to review the applicable information. In  
 18 these instances, the Council amends the condition to allow the Department to review and  
 19 approve an alternate timeframe, if requested by the certificate holder, but not to remove the  
 20 timing constraint wholesale as requested by certificate holder.

21

22 Approved changes to conditions include administrative corrections and substantive changes to  
 23 support certificate holder implementation and Department review and enforcement.

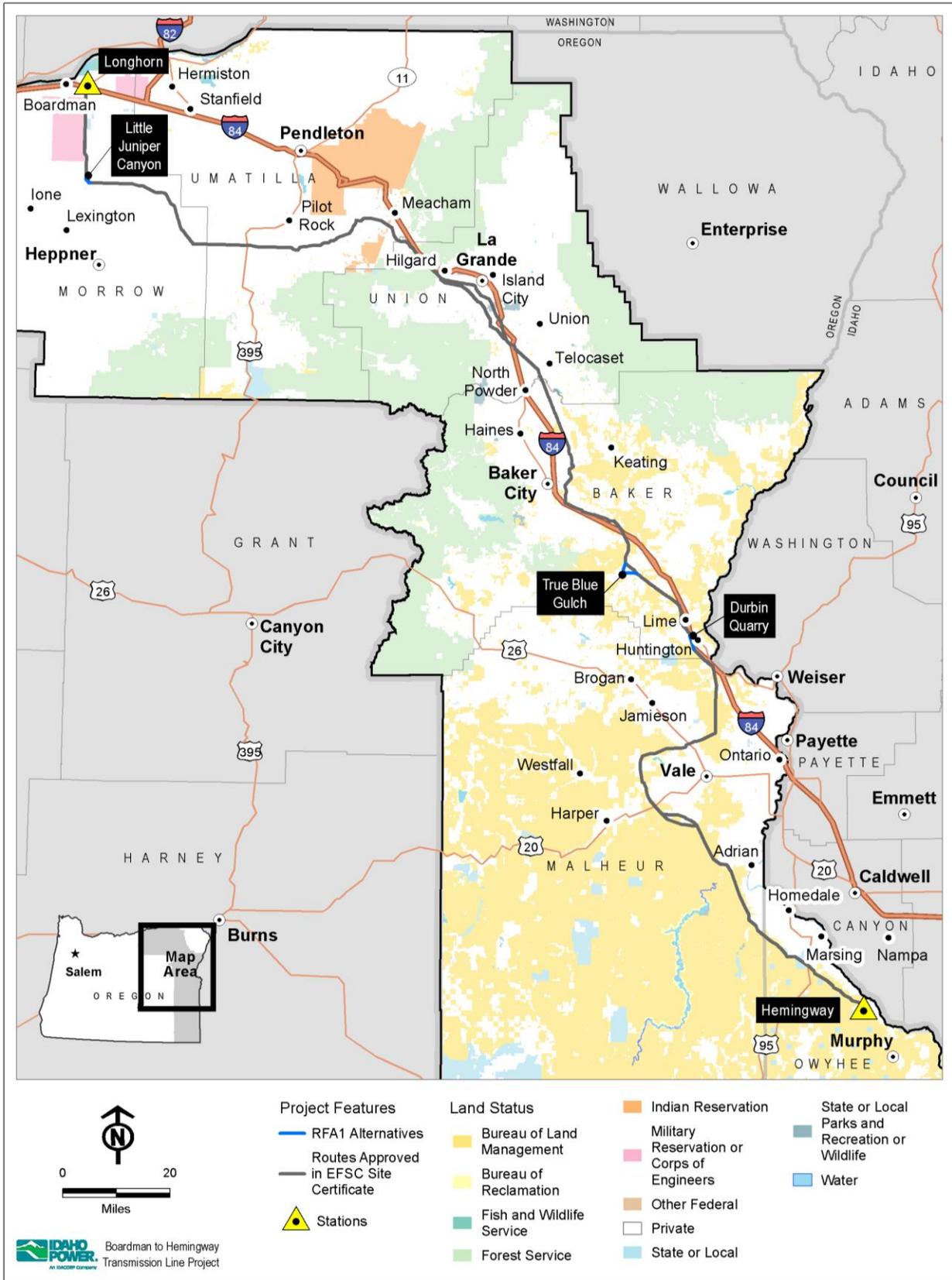
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**II.B.2. Location of Transmission Line Route and Road Additions by County**

RFA1 transmission line route alternatives (referred to as Little Juniper Canyon, True Blue Gulch and Durbin Quarry; see black box callouts on figure) are presented in Figure 3 below. The road and transmission line additions are discussed in more detail by county in the following section.

**Figure 3: Approved RFA1 Route Additions**



1

1 *III.B.2.a Morrow County: Route and Road Additions*

2

3 The Little Juniper Canyon alternative is located between Little Juniper Lane and Bombing Range  
 4 Road approximately 3 miles south of Naval Weapons Systems Training Facility – Boardman  
 5 (NWSTF Boardman). The predominant land use at the Little Juniper Canyon alternative is  
 6 dryland agriculture.<sup>7</sup> Several RFA1 changes in Morrow County are associated with access road  
 7 design updates along the previously approved ASC routes. This includes roads in agricultural  
 8 areas near NWSTF Boardman and roads in rangeland areas near Butter Creek. Table 3 identifies  
 9 the major components and related or supporting facilities associated with each of the site  
 10 boundary changes in Morrow County.

**Table 3: Summary of RFA1 Additions – Morrow County**

<b>Project Features</b>	<b>Little Juniper Canyon Alternative</b>	<b>Access Road Changes</b>	<b>Total Number of Sites</b>
Towers – Single Circuit 500-kV Lattice	4	-	4
Pulling and Tensioning Sites	2	-	2
<b>Access Roads</b>			<b>Total Miles</b>
Existing, 21-70% Improved	1.0	0.9	1.9
Existing, 71-100% Improved	-	-	-
New, Bladed	0.2	1.8	2.0
New, Overland	0.2	0.1	0.3
<b>Crossings</b>			<b>Number of Crossings</b>
High-Voltage Transmission Line Crossings	-	-	0
Existing Road Crossings	1	-	1
Existing Railroad Crossings	-	-	0
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-1			

11

12 *III.B.2.b Umatilla County: Road Additions*

13

14 The RFA1 site boundary additions in Umatilla County are limited to access road design updates  
 15 along the previously approved ASC route in open rangeland and forested areas.<sup>8</sup> Table 4  
 16 identifies the major components and related or supporting facilities associated with each of the  
 17 additions in Umatilla County.

18

<sup>7</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-1, Map 1.

<sup>8</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-2, Maps 5 to 11.

**Table 4: Summary of RFA1 Additions – Umatilla County**

<b>Project Features</b>	<b>Access Road Changes</b>	<b>Total Number of Sites</b>
Towers – Single Circuit 500-kV Lattice	-	-
Pulling and Tensioning Sites	-	-
<b>Access Roads</b>		<b>Total Miles</b>
Existing, 21-70% Improved	1.4	1.4
Existing, 71-100% Improved	-	-
New, Bladed	2.0	2.0
New, Overland	-	-
<b>Crossings</b>		<b>Total Crossings</b>
High-Voltage Transmission Line Crossings	-	-
Existing Road Crossings	-	-
Existing Railroad Crossings	-	-
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-3		

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*III.B.2.c Union County: Road Additions*

The site boundary additions in Union County are limited to access road design updates along the previously approved ASC routes in open rangeland and forested areas.<sup>9</sup> Table 5 identifies the major components and related or supporting facilities associated with each of the changes in Union County.

---

<sup>9</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-2, Maps 12 to 17.

**Table 5: Summary of RFA1 Additions – Union County**

<b>Project Features</b>	<b>Access Road Changes</b>	<b>Total Number of Sites</b>
Towers – Single Circuit 500-kV Lattice	-	-
Pulling and Tensioning Sites	-	-
<b>Access Roads</b>		<b>Total Miles</b>
Existing, 21-70% Improved	0.3	0.3
Existing, 71-100% Improved	0.1	0.1
New, Bladed	1.4	1.4
New, Overland	-	-
<b>Crossings</b>		<b>Total Crossings</b>
High-Voltage Transmission Line Crossings	-	-
Existing Road Crossings	0	0
Existing Railroad Crossings	0	0
Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-5		

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*III.B.2.d Baker County: Route and Road Additions*

The site boundary additions in Baker County include two transmission line alternatives and access road additions. The True Blue Gulch Alternative is approximately 4 miles southwest of Durkee and one mile south of the Burnt River Canyon in mountainous terrain.<sup>10</sup> The True Blue Gulch Alternative includes a portion of site boundary that is larger than typical to allow for flexibility in micrositing the final design.<sup>11</sup> The Durbin Quarry Alternative is located on the west side Interstate 84 at Huntington in open rangeland.<sup>12</sup> The RFA1 access roads are predominantly in open rangeland settings in Baker County (Figure 4-2, Maps 18 to 27). Table 6 identifies the major components and related or supporting facilities associated with each of the additions in Baker County.

**Table 6: Summary of RFA1 Additions – Baker County**

<b>Project Features</b>	<b>True Blue Gulch Alternative</b>	<b>Durbin Quarry Alternative</b>	<b>Access Road Changes</b>	<b>Number of Sites</b>
Towers – Single Circuit 500-kV Lattice	14	10	-	24
Pulling and Tensioning Sites	4	4	-	8
<b>Access Roads</b>				<b>Total Miles</b>
Existing, 21-70% Improved	-	-	3.0	3.0

<sup>10</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-1, Maps 2 to 4.

<sup>11</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-1, Map 2.

<sup>12</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-1, Maps 5 to 6.

**Table 6: Summary of RFA1 Additions – Baker County**

<b>Project Features</b>	<b>True Blue Gulch Alternative</b>	<b>Durbin Quarry Alternative</b>	<b>Access Road Changes</b>	<b>Number of Sites</b>
Existing, 71-100% Improved	4.7	-	1.8	6.5
New, Bladed	3.8	2.1	1.3	7.2
New, Overland	0.1	-	0.2	0.3
<b>Crossings</b>				<b>Total Crossings</b>
High-Voltage Transmission Line Crossings	0	0		0
Existing Road Crossings	0	0		0
Existing Railroad Crossings	0	0		0

Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-7

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*III.B.2.e Malheur County: Road Additions*

The site boundary additions in Malheur County are limited to access road changes in open rangeland (Figure 4-2, Maps 28 to 41). Table 7 identifies the major components and related or supporting facilities associated with each of the additions in Malheur County.

**Table 7: Summary of RFA1 Changes – Additions County**

<b>Project Features</b>	<b>Access Road Changes</b>	<b>Number of Sites</b>
Towers – Single Circuit 500-kV Lattice	-	-
Pulling and Tensioning Sites	-	-
<b>Access Roads</b>		<b>Total Miles</b>
Existing, 21-70% Improved	1.9	1.9
Existing, 71-100% Improved	1.5	1.5
New, Bladed	3.7	3.7
New, Overland	0.3	0.3
<b>Crossings</b>		<b>Total Crossings</b>
High-Voltage Transmission Line Crossings	-	-
Existing Road Crossings	-	-
Existing Railroad Crossings	-	-

Source: B2HAMD1 RFA1 2023-06-08. Table 5.2-9

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**II.C. COUNCIL REVIEW PROCESS FOR AMENDMENTS**

1 RFA1 is being reviewed under the Type A review process pursuant to OAR 345-027-0351(2). The  
2 Type A review process includes a DPO public hearing and opportunity to request a contested  
3 case proceeding.  
4

5 **II.C.1. Request for Amendment**  
6

7 On December 7, 2022, the certificate holder submitted its preliminary Request for Amendment  
8 1 (pRFA1). The Department reviewed pRFA1 to determine whether the request contained  
9 sufficient information for the Council to make findings.  
10

11 On December 15, 2023, the Department issued Public Notice that pRFA1 had been received as  
12 required by OAR 345-027-0360(2).  
13

14 On January 27, 2023, the Department notified the certificate holder that pRFA1 was incomplete  
15 and requested additional information. On June 8, 2023, following receipt and review of the  
16 additional information requested, the Department notified the certificate holder that pRFA1  
17 was complete.  
18

19 On June 14, 2023, the Department posted the complete RFA1 to its project webpage and issued  
20 a Public Notice of a comment period on the complete RFA1 and Draft Proposed Order (DPO).  
21

22 **II.C.2. Draft Proposed Order**  
23

24 The Public Notice of the DPO initiated a public comment period on RFA1 and the DPO, which  
25 extended from June 14 through July 18, 2023. Prior to the close of the DPO public hearing, the  
26 certificate holder requested, and the Council granted, an extension of the record to July 19,  
27 2023, at 10 a.m. to afford the certificate holder an opportunity to review and respond to the  
28 issues raised on the record of the DPO public hearing. To raise an issue on the record of the  
29 DPO, a person must have raised the issue in a written comment submitted between the date of  
30 the Public Notice of the DPO and the written comment deadline established in the Public  
31 Notice. The Council cannot accept or consider public comments on RFA1 or on the DPO  
32 received after the written comment deadline.  
33

34 On the record of the DPO public hearing, testimony and written comments were received from  
35 3 members of the public and two special interest groups (STOP B2H Coalition and Oregon-  
36 California Trails Association). Attachment 2 to this order includes a DPO comment index and  
37 copies of all comments received. Responses to issues raised in DPO comments were provided  
38 by the certificate holder. Attachment 3 to this order includes certificate holder responses to  
39 DPO comments.  
40

41 **II.C.3. Proposed Order**  
42

1 On July 19, 2023, Council reviewed the DPO and considered all comments received on the  
2 record of the DPO public hearing under OAR 345-027-0367. The Department considered Council  
3 comments, oral comments made at the public hearing, and all written comments received  
4 before the close of the record of the public hearing in its drafting of the proposed order.  
5 Pursuant to OAR 345-027-0371(1), on August 7, 2023, the Department issued its proposed  
6 order recommending approval of the request for amendment to the site certificate. Concurrent  
7 with issuing the proposed order, the Department issued notice of the proposed order and  
8 opportunity to request a contested case to the Council’s general mailing list, the special mailing  
9 list for the facility, reviewing agencies, property owners under OAR 345-027-0360(1)(f),  
10 certificate holder, and all persons who commented in person or in writing on the record of the  
11 DPO public hearing.  
12

13 **II.C.4. Council Evaluation of Requests for Contested Case Proceeding**  
14

15 Only those persons, including the certificate holder, who commented in person or in writing on  
16 the record of the DPO public hearing (June 14 through July 18, 2023) may request a contested  
17 case proceeding on the Proposed Order on Request for Site Certificate Amendment 1. On  
18 September 8, 2023, the Department received three contested case requests by eligible  
19 individuals. Irene Gilbert filed contested case requests on behalf of herself and Stop Boardman  
20 to Hemingway (B2H) Coalition (STOP B2H) for two issues: non-compliance with the Forest  
21 Practices Act (FPA), and the adequacy of the retirement bond to restore the site; Ms. Gilbert  
22 also filed a request as an individual for the issue of failure to notify the public of the ability to  
23 comment on proposed site certificate condition revisions. John Williams filed a contested case  
24 request on the issue of the availability of cultural resource mapping. Table A-1: *Summary of*  
25 *DPO Comments, Certificate Holder Responses, Council Review, Proposed Order, and ODOE*  
26 *Evaluation of Requests for Contested Case Requests*, in this subsection is taken from the  
27 September 15, 2023, Department Supplemental Staff Report on Requests for Contested Case  
28 (September 15, 2023 Staff Report) and details the comments on the DPO and issues raised in  
29 contested case requests.  
30

31 To properly raise an issue in a request for a contested case proceeding on the proposed order  
32 for an amendment, the issue must be within the jurisdiction of the Council, and the person  
33 must have raised the issue in person or in writing on the record of the DPO public hearing,  
34 unless the Department did not follow the requirements of OAR 345-027-0367, or unless the  
35 action recommended in the proposed order differs materially from the DPO, including any  
36 recommended conditions of approval, in which case the person may raise only new issues  
37 within the jurisdiction of the Council that are related to such differences. If a person has not  
38 raised an issue at the DPO public hearing with sufficient specificity to afford the decision maker  
39 an opportunity to respond to the issue, the Council may not grant a contested case proceeding

1 for that issue. To have raised an issue with sufficient specificity, the person must have  
2 presented facts at the public hearing that support that person’s position on the issue.<sup>13, 14</sup>

3  
4 Contested case requests must have been submitted in writing and received by the Department  
5 by the September 8, 2023, deadline. Contested case requests must include:<sup>15</sup>

- 6  
7 • The person's name, mailing address and email address and any organization the person  
8 represents;
- 9  
10 • A short and plain statement of the issue or issues the person desires to raise in a  
11 contested case proceeding;
- 12  
13 • A statement that describes why the Council should find that the requester properly  
14 raised each issue, including a specific reference to the person’s prior comments to  
15 demonstrate that the person raised the specific issue or issues on the record of the  
16 public hearing, if applicable;
- 17  
18 • A statement that describes why the Council should determine that each identified issue  
19 justifies a contested case, under the evaluation described in section (9) of this rule;
- 20  
21 • Name and address of the person’s attorney, if any;
- 22  
23 • A statement of whether the person’s request to participate in a contested case is as a  
24 party or a limited party, and if as a limited party, the precise area or areas in which  
25 participation is sought;
- 26

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<sup>13</sup> OAR 345-027-0371(5).

<sup>14</sup> OAR 345-015-0016(3). Council does not consider incorporations by reference to statements made by other persons, (whether they are comments on the DPO, raised by other commenters for this or past proceedings, comments on another agency proceeding, or other external references) to meet the sufficient specificity requirement under ORS 469.370(3) and OAR 345-015-0016(3). Blanket incorporations by reference do not afford the Department, Council or certificate holder an adequate opportunity to respond to each issue as required under ORS 469.370(3) because they typically do not specify which portion(s) of the other person(s) comments are to be incorporated or how those comments relate to any alleged shortcoming in the subject DPO. Attempts to incorporate by reference comments made regarding a matter being considered by another agency do not inform the Council, Department or applicant of any alleged error in the subject DPO sufficient to allow for a response. Further, incorporations by reference of another person’s comments on the subject DPO, no matter how specific, are procedurally inefficient because they could result in multiple persons presenting evidence, examining witnesses, etc. regarding the same issue in a contested case. Council also maintains that this position is consistent with the reasons why it is appropriate to limit the participation of persons seeking to participate in a contested case to the issues each properly raised in their respective DPO comments, which is summarized further in this order. Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO. EFSC review and approval of Meeting Minutes usually occurs 1-2 months after the applicable meeting.

<sup>15</sup> OAR 345-027-0371(6).

- 1 • If the person seeks to protect a personal interest in the outcome of the proceeding, a  
2 detailed statement of the person’s interest, economic or otherwise, and how such  
3 interest may be affected by the results of the proceeding;  
4
- 5 • If the person seeks to represent a public interest in the results of the proceeding, a  
6 detailed statement of such public interest, the manner in which such public interest will  
7 be affected by the results of the proceeding, and the person’s qualifications to  
8 represent such public interest; and  
9
- 10 • A statement of the reasons why others who commented on the record of the public  
11 hearing cannot adequately represent the interest identified in subsections (h) or (i) of  
12 this section.  
13

14 Requests for contested case were evaluated by Council at the September 22, 2023, Council  
15 meeting in Salem, Oregon. Pursuant to OAR 345-027-0371(7), the Council finds that the persons  
16 requesting a contested case commented in person or in writing on the record of the DPO public  
17 hearing and properly raised each issue included in the request, based on the reasoning and  
18 analysis presented in the September 15, 2023, Staff Report.<sup>16</sup>  
19

20 The Council finds that the persons making the contested case request raised the issues on the  
21 record of the DPO public hearing described in OAR 345-027-0367 with sufficient specificity to  
22 afford the Council, the Department, and the certificate holder an adequate opportunity to  
23 respond to the issue.<sup>17</sup> Council did not consider additional issues and arguments provided in  
24 requests for contested case which were not raised on the record of the DPO public hearing.  
25 Under ORS 469.370(3), any issue that may be the basis for a contested case shall not be raised  
26 after the close of the record at or following the final public hearing. Such issues shall be raised  
27 with sufficient specificity to afford the Council, the Department, and the certificate holder an  
28 adequate opportunity to respond to each issue. Raising an issue and providing evidence in  
29 support of an issue after the record closes does not afford the Council, the Department and the  
30 certificate holder an adequate opportunity to respond to the issue.

31 Pursuant to OAR 345-027-0371(8), the Council found that the persons requesting a contested  
32 case commented in person or in writing on the record of the DPO public hearing and properly  
33 raised one or more issues.  
34

35 After identifying the issues properly raised, the Council determined whether any properly  
36 raised issue justifies a contested case proceeding on that issue. To determine that an issue  
37 justifies a contested case proceeding, the Council must find that the request raises a significant  
38 issue of fact or law that is reasonably likely to affect the Council’s determination whether the  
39 facility, with the change proposed by the amendment, meets the applicable laws and Council

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<sup>16</sup> B2HAMD1 EFSC Meeting Item B B2H Supplemental Staff Report Requests for Contested Case on RFA1 2023-09-22.

<sup>17</sup> Requests for contested case did not raise an issue based upon OAR 345-027-0371(7)(b) and (c).

1 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have  
2 jurisdiction over the issue raised in the request, the Council must deny the request.<sup>18</sup>

3  
4 The Council must take one of the following actions when determining if a request identifying  
5 one or more properly raised issues justifies a contested case proceeding:  
6

- 7 1. If the Council finds that the request identifies one or more properly raised issues that  
8 justify a contested case proceeding, the Council must conduct a contested case  
9 proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-  
10 0014 and 345-015-0018 to 345-015-0085. The parties to a contested case proceeding  
11 must be limited to those persons who commented on the record of the public hearing  
12 and who properly raised issues in their contested case request that the Council found  
13 sufficient to justify a contested case, except that the certificate holder is an automatic  
14 party to a contested case.<sup>19</sup> The issues a party to a contested case proceeding may  
15 participate on must be limited to those issues that party properly raised in its contested  
16 case request that the Council found sufficient to justify a contested case, except that the  
17 certificate holder may participate on any issue the Council found sufficient to justify a  
18 contested case proceeding.<sup>20</sup>  
19
- 20 2. If the Council finds that the request identifies one or more properly raised issues that an  
21 amendment to the proposed order, including modification to conditions, would settle in  
22 a manner satisfactory to the Council, the Council may deny the request as to those  
23 issues and direct the Department to amend the proposed order and send a notice of the

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<sup>18</sup> OAR 345-027-0371(9).

<sup>19</sup> During the contested case proceeding on the proposed order for ASC for the facility, the hearing officer permitted the Department, certificate holder, and petitioners to the contested case to provide written briefs regarding their positions on the matter or “full” or limited party status. Hearing officer concluded that petitioners for party status who met the eligibility requirements for standing in the contested case proceeding would participate as limited parties on the issues each properly raised in their respective comments on the DPO and petitions for party status in the contested case Hearing officer further concluded that parties could not participate in the contested case on issues that others, but not they themselves had raised. The hearing officer based this conclusion upon ORS 469.370(5), OAR 345-015-0016(3), OAR 137-003-0005(8) and (9), OAR 137-003-0040, and OAR 345-015-0083. (B2HAPPDoc219 Hearing Officer Order on Party Status and Issues\_OAH\_2020-10-29, pp. 7-10). Council received written appeals of the Hearing Officer’s Order on Party Status and further briefed the issue concluding that, “The Council finds that Hearing Officer’s designation of limited party status for petitioners granted standing in the contested case proceeding is affirmed for the reasons presented in the Order on Party Status.” (B2HAPPDoc288 EFSC’s Order on Appeals of Hearing Officer Order on Party Status, Auth Reps and Issues\_2020-11-25, p. 18). Limited parties again raised the issue of limited party in their petitions to appeal the Final Order on ASC to the Oregon Supreme Court. The Supreme Court agreed with the hearing officer and EFSC’s decisions, concluding that EFSC is expressly authorized to limit the participation of a party that it permitted to participate as a limited party – i.e., to treat a person as a limited party even if they requested full party status and that EFSC had authority to grant limited rather than full party status to petitioners STOP B2H and Irene Gilbert (among others). (B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp. 801-804, 815.

<sup>20</sup> OAR 345-027-0371(10)(a).

1 amended proposed order to the same persons who received notice of the proposed  
2 order and opportunity to request a contested case.<sup>21</sup>

- 3  
4 3. If the Council finds that the request does not identify a properly raised issue that  
5 justifies a contested case proceeding, the Council must deny the request. In a written  
6 order denying the request, the Council must state the basis for the denial. The Council  
7 must then adopt, modify or reject the proposed order based on the considerations  
8 described under the Council’s Scope of Review in OAR-345-027-0375.<sup>22</sup>

9  
10 At its regularly scheduled Council meeting on September 22, 2023, Council evaluated requests  
11 for contested case on properly raised issues. Under OAR 345-027-0371(9), for the reasons  
12 provided in the September 15, 2023 Staff Report and as provided in Table A-1: *Summary of DPO*  
13 *Comments, Certificate Holder Responses, Council Review, Proposed Order, and ODOE Evaluation*  
14 *of Requests for Contested Case Requests*, below, the Council finds that there were no significant  
15 issues of fact or law that would reasonably be likely to affect the determination that the facility,  
16 with the changes proposed by the amendment, meet applicable laws and Council standards  
17 included in chapter 345 divisions 22, 23 and 24. Therefore, under OAR 345-027-0371(10)(c),  
18 Council finds that the requests do not justify a contested case proceeding. Further, the Council  
19 finds that the requests for contested case do not warrant an amendment to the proposed  
20 order.

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<sup>21</sup> OAR 345-027-0371(10)(b).

<sup>22</sup> OAR 345-027-0371(10)(c).

**Table A-1: Summary of DPO Comments, Certificate Holder Responses, Council Review, Proposed Order, and ODOE Evaluation of Requests for Contested Case Requests**

Draft Proposed Order Phase		Proposed Order Phase		Requests for Contested Case		
Commenter	DPO Comment Summary and Facts/Evidence Submitted on Record	Certificate Holder DPO Comment Response Summary	Recommendations, Responses, and Location in Proposed Order	Issue Statement in Request for Contested Case	Issue Properly Raised in Request for Contested Case* (Yes/No)	Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No)
<b>Issue/Requestor: Forest Practices Act (FPA) - STOP B2H and Irene Gilbert</b>						
STOP B2H – 07-18-2023 Written Comments	<p>DPO comments related to the FPA:</p> <ul style="list-style-type: none"> <li>• New OARs for the Oregon Dept. of Forestry (ODF), apply to the facility,</li> <li>• Setbacks from streams and waterways apply to the facility,</li> <li>• Standards for roads in forest areas,</li> <li>• Evaluation of and impacts to avian and wildlife species not consistent with FPA,</li> <li>• Reforestation practices apply to the facility,</li> <li>• Plan for an Alternate Practice,</li> <li>• Conditions in the Site Certificate conflict with and waive requirements of FPA.</li> </ul> <p><u>Facts/Evidence to Support Issue:</u></p> <ol style="list-style-type: none"> <li>1. DPO Comment Attachment 1: Office of Governor Kate Brown memo regarding Private Forest Accord implementation.</li> </ol>	<p>Comments are outside the scope of the Council’s review because the Council has chosen not to assert jurisdiction over the application of the FPA for the facility, as amended. Certificate holder will work directly with ODF regarding compliance with FPA requirements, including its Plan for an Alternate Practice</p>	<p>Department and Council concur with certificate holder responses that, in the Final Order on ASC, Council did not assert jurisdiction of the FPA, and stated certificate holder should work directly with ODF but the certificate holder nonetheless must comply with applicable provisions of FPA, including but not limited to the Plan of Alternate Practice.<sup>23</sup></p> <p>Pursuant to Council direction at the RFA1 DPO hearing, the proposed order includes a statement asserting that Council has not established jurisdiction over the FPA. See Section III.R., <i>Other Applicable Regulatory Requirements Under Council Jurisdiction</i>,</p>	Failure to Comply with FPA	<p>Yes, as raised in DPO comments*</p> <p>*Additional arguments and facts provided in Ms. Gilbert’s request were not properly raised on the record.</p> <p><u>Facts/Evidence to Support Issue that <i>Cannot be Considered</i>:</u></p> <ol style="list-style-type: none"> <li>1. Oregon Forest Resources Institute, Oregon Forest Protection Laws Illustrated Manual; Third Edition;</li> <li>2. Letter from ODF regarding ODF’s review of the ApASC and compliance with edits with the FPA. ODOE - B2HAPPD0c13-5 ASC Reviewing Agency Comment ODF_Tokarczyk 2018-11-15;</li> <li>3. 2022 Private Forest Accord, (presented to the Oregon Legislature, Oregon Governor Kate Brown, and</li> </ol>	<p>No.</p> <p>Compliance with FPA is not an issue within Council jurisdiction and therefore is not relevant to whether the changes proposed in the amendment request comply with an applicable Council standard, statute or rule. The second amended project order for the facility does not identify the FPA ORS/OAR as applicable to this facility.<sup>24, 25</sup> Further, as discussed in the Final Order on ASC and by Council at its July 19, 2023 review of the DPO on RFA1, Council did not assert jurisdiction of the FPA and continues not to assert jurisdiction of the FPA for RFA1. For these reasons, the Department recommends Council deny the request.</p> <p>The Department recommends Council find that the responses to this issue as provided in Proposed Order Table A-1 are sufficient and no amendments to the Proposed Order are necessary.</p>

<sup>23</sup> 2023-07-17,18,19 FINAL Meeting minutes, pages 2-3, 32. AMD1 DPO Hearings and EFSC Review of DPO.

<sup>24</sup> B2HAPPD0c15 ApASC Second Amended Project Order 2018-07-26. Page 11 of 29. The second amended project order continues by stating, “If the removal of trees would be necessary as part of the proposed project development, and such removal is part of a commercial operation, that activity may be subject to the Oregon Forest Practices Act.” As designated in the 2021 ODF FPA rule guidance document, an activity must meet the ODF rule definitions of "operation," "forestland," "forest tree species," and "commercial" go together with ODF policy guidance in determining Forest Practices Act jurisdiction over an activity. Generally, the FPA jurisdiction relates to activities that are intended to profit from the harvesting of trees. <https://www.oregon.gov/odf/Documents/workingforests/fpa-guidance-division-600-definitions.pdf>.

<sup>25</sup> A project order is the document that establishes the state statutes and administrative rules containing standards or criteria that are applicable to the facility. OAR 345-015-0160(1).

**Table A-1: Summary of DPO Comments, Certificate Holder Responses, Council Review, Proposed Order, and ODOE Evaluation of Requests for Contested Case Requests**

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Commenter	DPO Comment Summary and Facts/Evidence Submitted on Record	Certificate Holder DPO Comment Response Summary	Recommendations, Responses, and Location in Proposed Order	Issue Statement in Request for Contested Case	Issue Properly Raised in Request for Contested Case* (Yes/No)	Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No)
	2. DPO Comment Attachment 2: Forest Practices Act Rule Revisions. As an outcome of Senate Bills 1501 and 1502 and House Bill 4055 and the Private Forest Accord Report dated February 2, 2022, the Board of Forestry adopted the following administrative rules on October 26, 2022.		which summarizes Council’s prior position in the Final Order on ASC regarding the FPA.		the Oregon Board of Forestry on February 2, 2022); 4. Forest Practices Rule Guidance, December 17, 2021; 5. Oregon Department of Land Conservation and Development – DLCD, 2018/2019 Oregon Farm and Forest Land Use Report, November 15, 2020; 6. Forest Practices Technical Guidance Waiver of Statutory Written Plan, 7. Letter from ODF regarding ODF’s review of the ASC and compliance and minor edits with the FPA, February 19, 2019	
Irene Gilbert – 07-17-2023 Oral Comments	DPO comments related to the Oregon FPA:	Same as provided above.	Same as provided above.	Same as provided above.	Same as provided above.	No. Same evaluation as provided above.

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	Same as provided above.  <u>Facts/Evidence to Support Issue:</u> None					
<b>Issue/Requestor: Bond Adequacy – Stop B2H and Irene Gilbert</b>						
STOP B2H – 07-18-2023 Written Comments	Re-evaluation of the required bond is necessary. OAR 345-027-0375 requires EFSC to complete a full review of the issue of whether the bond amount complies with the requirement under OAR 345-022-0050 including determining the costs of restoring the site and requiring a bond of an amount, “satisfactory to the Council to restore the site.” Council determined that the cost to restore the site of the transmission line and supporting structures would be \$140 million (First Amended Site Certificate OPR-RT-01, Page 65.) EFSC must require IPC to provide a bond that is “adequate to restore the site.” The bond amount and flexibility currently included in the site	STOP B2H’s arguments were already litigated in the EFSC contested case proceeding for the ASC, and EFSC found that the estimated cost of restoration was reasonable and certificate holder provided sufficient information about its financial capability to demonstrate that it could obtain a bond or letter of security to cover required decommissioning and restoration costs. While STOP B2H focuses on ongoing wildfire litigation related to PacifiCorp and implies that PacifiCorp is at risk of filing for	No revisions to Proposed Order made.  PacifiCorp is not the certificate holder for the facility. Stop B2H’s comments related to concerns about liability in the event of a wildfire are outside the scope of the Retirement and Financial Assurance standard and RFA1, and not supported by facts. Certificate holder response sufficient.	The bond amount and flexibility fail to provide for the protection of landowners, citizens, and public agencies from being required to assume the costs of site restoration in the event the developer abandons the transmission line, refuses to do so, declares bankruptcy or some other reason fails to restore the site.	Yes, as raised in DPO comments*  *Additional arguments and facts provided in Request for Contested Case but not within DPO comments, are not considered properly raised. <u>Facts/Evidence to Support Issue that <i>Cannot be Considered</i>:</u> 1. OPUC Docket No. PCN 5 Exhibit Accompanying Rebuttal Testimony of Rick T. Link, B2H Term Sheet Dated January 18, 2022. March 2023. Contract No. 22TX-17207, 2. FERC News Release. FERC Orders PacifiCorp to Respond to Allegations of	No.  The changes proposed in RFA1 do not warrant a re-evaluation of the approach or mechanics established in the conditions adopted and imposed by Council to address the standard.  OAR 345-027-0375(2)(e), requires that, for all requests for amendment, the Council must find that the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.  As described in the Proposed Order on RFA1, the proposed road and transmission line segment alternatives are similar to the infrastructure (tower foundations, transmission towers, road construction, road width, etc.) approved in the 2022 Final Order on ASC, therefore, restoring the site to a

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	<p>certificate fails to provide for the protection of landowners, residents, ratepayers, and public agencies, from the liability that will occur in the event IPC abandons the transmission line or declares bankruptcy without restoring the site. The current ownership of the transmission line by IPC and PacifiCorp increases the likelihood that the transmission line may be abandoned without restoration because PacificCorp may be at risk of filing for bankruptcy due to ongoing and potential future wildfire-related litigation that may result in millions and potentially billions of dollars owed.</p> <p><u>Facts/Evidence to Support Issue:</u></p> <ol style="list-style-type: none"> <li>1. Reference to PacificCorp and Idaho Power Contract No. 22TX17207, Page 24 and 26. No contract or excerpts provided.</li> <li>2. Reference to an article, “Pacific Power may want customers to pay fire liability,” by: Jashayla Pettigrew. No article provided.</li> </ol>	<p>bankruptcy, IPC—as the certificate holder—is responsible for the bond to cover the decommissioning and restoration costs associated with retirement of the facility per Retirement and Financial Assurance Conditions 2 through 5. Moreover, as stated above, EFSC has already concluded that IPC is financially capable of obtaining a bond in the amount necessary to restore the facility site to a useful non-hazardous condition. Finally, if there are any changes that would require adjustment of the bond amount, Retirement and Financial Assurance Condition 5 requires certificate holder to provide EFSC and ODOE a report every five years on: (a) the physical condition of the facility; (b) any evolving transmission or electrical</p>			<p>Reliability Violations, April 15, 2021, Docket No. IN21-6-000,</p> <ol style="list-style-type: none"> <li>3. News article, Courthouse News Service. Feds Blame PacifiCorp for Oregon Wildfire, Tuesday, April 11, 2023,</li> <li>4. Contested Case Request, PDF page 6-8 of 629 lists “Other Documentation and references cited,” as Exhibits 1 through Exhibit 20. Several of the references are to documents and EFSC meeting recordings, which are already part of the record. The above-listed documents were the only documents filed with the request; the other Exhibits were not provided with request. However, is not an appropriate time to add evidence or arguments to the record, as the record is closed for public comments.</li> </ol>	<p>useful, nonhazardous condition for the transmission line route alternatives and roads proposed in RFA1 would be based on the same assumptions and involve the same activities that was approved in the Final Order on ASC. Approximately one year ago, in September 2022, Council adopted and imposed Condition PRE-RT-01 based on a determination that that \$140 million was a satisfactory amount to restore the site to a useful, nonhazardous condition. In this condition, Council adopted a phased approach where the bond or letter of credit (LOC) would be provided in 1/16<sup>th</sup>s, starting at preconstruction, to continue increasing by 1/16<sup>th</sup> every quarter for four years. Once the transmission line is in operation, the bond or letter of credit would then be reduced from the full \$140 million to \$1 dollar combined with a 5-year review, or more frequently if requested by Council, of IPC’s financial status and risk. The condition allows for Council to require an increased bond or LOC at any time.</p> <p>As explained in the Proposed Order on RFA1, the transmission line alternatives proposed in RFA1 are not additive, meaning that either an approved ASC route or an alternative route would be constructed, operated, and retired. If the certificate holder selected to construct, operate and retire the alternatives proposed in RFA1, there would be approximately 1.8</p>

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		technologies that could impact the continued viability of the facility; (c) the facility’s performance in the context of the larger Northwest power grid; and (d) the certificate holder’s financial condition, including the certificate holder’s credit rating at that time. Importantly, under the condition, EFSC may request the report on an off-cycle year if requested. Moreover, the condition allows EFSC to consider whether the approach towards the financial assurance instrument remains appropriate and would account for unforeseen shifts in the power grid or the Idaho Power’s financial condition.				<p>miles of additional transmission line infrastructure to retire. Since this would be less than 0.1% change in the total length of the facility, the type of facility is the same, and the actions to restore the site would be the same, the previously approved \$140 million, remains sufficient to retire the facility, as amended.</p> <p>For these reasons, the Department recommends Council find that the contested case request on this issue does not raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; (Specifically OAR 345-027-0375(2)(e) and OAR 345-022-0050); and therefore, it does not justify a contested case proceeding.</p> <p>The Department recommends Council find that the responses to this issue provided in Proposed Order Table A-1 are sufficient and no amendments to the Proposed Order are necessary.</p>
Irene Gilbert – 07-18-2023 Oral Comments	Ms. Gilbert argues that the bond amount is not reasonable to address restoration costs, and that the \$140 million should be the total that’s carried for the bond for the life of the facility to protect	Same as provided above.	Same as provided above.	Same as provided above.	Same as provided above.	Same as provided above.

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	<p>the public from unforeseen circumstances. Furthermore, Ms. Gilbert argues that the site certificate conditions regarding the bond are not flexible enough as they do not address unforeseen conditions, such as a tornado or company declaring bankruptcy because of costs associated with wildfire litigation liability. Ms. Gilbert specifically references ongoing litigation of PacifiCorp regarding the Labor Day fires and a negotiated settlement specific to Idaho Power.</p> <p><u>Facts/Evidence to Support Issue:</u> None</p>					
<b>Issue/Requestor: Procedural Notice Issue - Irene Gilbert</b>						
Irene Gilbert – 07-17 and 18-2023 Oral Comments	Unaware that she could comment on recommended amended site certificate conditions. Requested a time extension to review and provide comments on the record of the DPO specific to revised site certificate conditions. Ms. Gilbert explained that the notice was not clear and that she could comment on conditions and possible implications for the revisions for the entire facility, because of the Scope of Council’s Review	Ms. Gilbert’s comment conflates two distinct plans. The Vegetation Management Plan describes the methods in which vegetation along the transmission line will be managed during operation of the Project. The measures certificate holder will undertake to control noxious and invasive-plant species and prevent the	No revisions to Proposed Order made.  Certificate holder response sufficient.  The Noxious Weed Plan addresses weeds and would need to be finalized prior to construction (Fish and Wildlife Condition 3), this condition is not recommended to be amended. During its	ODOE failed to inform the public and Council that they had an opportunity to comment and request Contested Cases on Amendment 1 changes to the site certificate conditions. (This Contested Case Request is Regarding a failure of the Oregon Department	Yes, as raised during the record of the hearing on the DPO.*  *At the July 17 and 18 in-persons hearings on the DPO, Ms. Gilbert raised the concern that she was unaware that she could provide comments on the recommended amended conditions within the DPO and in Attachment 1 to the DPO. At the July 18 hearing on the DPO, Ms. Gilbert raised this issue and requested a time extension	No.  Ms. Gilbert requests a contested case based on Division 27 procedural requirements and does not raise “a significant issue of law or fact that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.”  Ms. Gilbert’s request for contested case is unclear on whether she is raising an issue

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	<p>assessing the areas added to the site boundary.</p> <p>One revised site certificate condition causing me concern is this condition saying that the vegetation management plan is finalized. I have not reviewed the Vegetation Management Plan. I know that during the previous activities related to this, this plan is required to comply with OAR 345-025-0016. The plan does not provide for assuring that noxious weeds do not impact wildlife habitat; it’s limited in the area that they are going to cover; does not provide for monitoring for the life of the development.</p>	<p>introduction of these species within the Project site boundary are discussed in the Noxious Weed Plan. Ms. Gilbert raised these same challenges regarding the adequacy of certificate holder’s Noxious Weed Plan in the contested case and these issues were fully litigated. In the Final Order, the Council adopted the Hearing Officer’s conclusion that the “Noxious Weed Plan is adequate to serve its intended purpose of establishing the measures the applicant will take to control noxious weed species and prevent the introduction of these species during construction and operation of the project.”</p>	<p>review of the DPO for RFA1, the Department reiterated the findings in the DPO related to the recommended revision. While the Vegetation Management Plan may need to be amended in the future, the plan is currently final. In addition, the plan includes requirements that apply during O&amp;M and therefore the condition does not need to require that the plan be finalized, prior to construction, or implemented prior to operations.</p>	<p>of Energy (ODOE) to notify the Energy Facility Siting Council (EFSC) and in turn their responsibility to notify the public of the opportunity to comment on the Amendment I changes to site certificate conditions to participate in Contested Cases on those changes.</p> <p>Failure to comply with OAR 345-027-0375 (4) which requires the Department to explain the amendment process, including the means and opportunities for the public to participate in the process.</p> <p>(note that these OAR references were not provided on the record of the DPO)</p>	<p>from Council to be able to respond to revised site certificate conditions, stating that because the Department provided the Scope of Council’s Review was to focus on the areas added to the site boundary in the Notice, she was not aware that she could comment on recommended amended conditions.</p> <p>*Additional arguments and facts provided in Request for Contested Case but not within DPO comments, are not considered properly raised.</p> <p><u>Facts/Evidence to Support Issue that Cannot be Considered:</u></p> <ol style="list-style-type: none"> <li>1. References and discussion of specific site certificate conditions not included in comments on the DPO beginning on request for contested case page 4-5, and 10-12.</li> <li>2. Exhibit 7—email to Council which to my knowledge, still has not been forwarded to them.</li> <li>3. Information submitted with contested case</li> </ol>	<p>with the notice of the DPO or the presentation at the DPO hearing. In either manner, the Department maintains that it did not make a procedural error with notifying the public of its opportunities to comment on the DPO, including recommended amended site certificate conditions for the reasons provided below. Notwithstanding this response, Department recommends Council find that that this issue does not raise “a significant issue of law or fact that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24,” for the reasons provided herein.</p> <p><u>Notice of DPO:</u> Page 1 of the Notice of the DPO summarizes RFA1, ending with (c) amendment of site certificate language to support implementation and interpretation, and on Page 2 of the Notice states, “RFA1 also seeks approval to modify condition language for several conditions (see RFA1 Attachment 6-1).”</p> <p><u>Draft Proposed Order:</u> The DPO Cover page summarizes RFA1 and states, “Several site certificate conditions are proposed to be amended.” DPO Section II.B.1, II.B.1., <i>Recommended Amended and</i></p>

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Commenter	DPO Comment Summary and Facts/Evidence Submitted on Record	Certificate Holder DPO Comment Response Summary	Recommendations, Responses, and Location in Proposed Order	Issue Statement in Request for Contested Case	Issue Properly Raised in Request for Contested Case* (Yes/No)	Does the request raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case? (Yes/No)
					<p>request that is already part of the record:</p> <ol style="list-style-type: none"> <li>4. Exhibit 2, Memo from Kellen Tardaewether to Energy Facility Siting Council, July 5, 2023 giving staff recommendations and scope of review for Amendment 1.</li> <li>5. Exhibit 3 – Boardman to Hemingway Transmission Line – Draft Proposed Order on Request for Amendment 1 June 14, 2023</li> <li>6. Exhibit 5 – Public Notice Boardman to Hemingway Transmission Line – Proposed Order on Site Certificate Amendment 1 and Opportunity to Request a Contested Case.</li> <li>7. Exhibit 6 –Public Notice Boardman to Hemingway Transmission Line, Request for Comments on the Complete Request for Amendment 1 and Draft Proposed Order.</li> </ol>	<p><i>New Site Certificate Condition Summary</i>, describes where to locate recommended amended site certificate conditions. Several areas in the DPO direct readers to review DPO Attachment 1: draft amended site certificate, which contains all the recommended amended conditions in redline format. Finally, in each DPO section where conditions are recommended to be revised, there is a description of the reason for the revision and the condition itself is provided in red font/strikethrough to track and see the recommended amended revisions. These are easily viewed upon review of the DPO and because the comment period is on the DPO and the RFA1, any contents of both are open for comment.</p> <p><u>Presentation at DPO Hearing:</u> Under OAR 345-027-0371(5)...To properly raise an issue in a request for a contested case proceeding on the proposed order for an amendment, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department did not follow the requirements of OAR 345-027-0367, where OAR 345-027-0367(4), requires that during the public hearing, the Department must explain the amendment process, including the means and opportunities for the general public to participate in the process. During</p>

**Table A-1: Summary of DPO Comments, Certificate Holder Responses, Council Review, Proposed Order, and ODOE Evaluation of Requests for Contested Case Requests**

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						<p>both presentations in advance of DPO hearings, the Department provided an EFSC process overview which identified the opportunities for the public to comment, including 3 slides titled “Public Participation at the DPO phase,” the presiding officer Kent Howe also reiterated the requirements to comment on the record of the DPO. Further, the 5th slide in the presentation provided an overview of the RFA1, which included a statement that RFA1 includes “Amend site certificate language to support implementation and interpretation.”</p> <p><u>EFSC Review of Gilbert Request to Extend Record at DPO Hearing:</u>                      During the July 18, 2023, hearing on the DPO for RFA1, Ms. Gilbert raised this concern and requested that the record remain open for her to be able to comment on condition revisions. Council reviewed this request, including the language in the Notice of DPO, and determined that there was not “good cause” to extend the record and that the Notice provided sufficient information for members of the public to understand they could comment on the DPO, the RFA1 and any recommended amended site certificate conditions.<sup>26</sup></p>

<sup>26</sup> 2023-07-17,18,19 FINAL Meeting minutes, page 12. AMD1 DPO Hearings and EFSC Review of DPO.

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						The Department recommends Council find that it has sufficiently reviewed this issue at the hearing on the DPO and in this review of the contested case request and that no amendments to the Proposed Order are necessary.
<b>Issue/Requestor: Adequacy of Cultural Resource Mapping - John Williams</b>						
John Williams	<p>Mr. Williams raised concerns about impacts to cultural resource 8B2H-DM-52 and 8B2H-DM-47. SHPO guidance strongly recommends a 30-meter buffer between any construction and an archaeological site.</p> <p>Mr. Williams also raised concerns that he has not received all results of surveys conducted by Idaho Power on his property.</p> <p>Mr. Williams contended the amendment and project are not in compliance with OAR 345-021-0010(1)(5).</p>	<p>Mr. Williams’ comments regarding the impacts of the placement of transmission towers on his property are outside the scope of RFA1 as no modifications to tower locations are proposed in RFA1 on Mr. Williams’ property.</p> <p>Certificate holder and its contractors have indeed completed surveys in the 2023 season. These reports are still being finalized and once the data is processed and compiled, a property-specific survey memorandum will be provided to Mr. Williams that will indicate what surveys were performed</p>	<p>No revisions to Proposed Order made.</p> <p>As indicated by certificate holder, these resources are associated with the previously approved site boundary and facility components. These resources are associated with previously inaccessible areas from the ASC and have since been surveyed as part of Phase 2 surveys (surveys conducted once certificate holder gains access) and then resources are processed in the Section 106 review, summarized from Final Order on ASC. As discussed in the Final Order on ASC and in the DPO for RFA1, the Council’s Historic, Cultural,</p>	<p>Certificate holder has not provided Mr. Williams with sufficient maps or written reports from the surveys that have been done on his property to be able to discern which cultural resources will be protected, destroyed, or mitigated for. Maps associated with RFA1 are incomplete.</p>	<p>Yes, as raised in DPO comments*</p> <p>*Comments on the DPO referenced specific cultural resource ID’s however, these specific resources are not listed in the contested case request. Presumably, Mr. Williams contends that he has not received the survey results that may have information on these resources. Mr. Williams also cites an inaccurate Division 21 OAR, presumably the OAR was intended to cite Division 21 application requirements for Exhibit C, requirements for mapping. OAR 345-021-0010(1)(c).</p>	<p>No.</p> <p>Mr. Williams requests a contested case based on Division 21 requirements and does not raise “a significant issue of law or fact that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.”</p> <p>As described in the Proposed Order Table A-1, which included the summary response from the certificate holder and Department (provided in this table for convenient reference), the resources and tower locations raised in his DPO comments area associated with the site boundary evaluated in the ASC, which is outside of the scope for RFA1.</p> <p>Mr. Williams request for contested case indicated that he was unable to find information regarding the site boundary addition 1/160 (not specifically referenced in DPO comments).</p>

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		and the results of those surveys.	and Archaeological Resources standard under OAR 345-022-0090(1)(a) requires the Council to evaluate impacts to and mitigation for resources that are listed or likely to be listed on the National Register of Historic Places (NRHP). SHPO is the agency in Oregon that assists in making determinations of eligibility. If a project has a federal nexus, a project is regulated by the Section 106 process led by the lead federal agency. Section 106 includes detailed consultation with affected Tribes and applicable state SHPO’s. Council previously found that under ORS 469.370(13), for facilities that are subject to review by a federal agency under the National Environmental Policy Act (NEPA), the Council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent			As a courtesy, the Department provides the following response to Mr. Williams’ concerns. This site boundary addition is a small road modification associated with previously approved road UN-236 and can be seen on B2HAMD1 RFA1 Figure 7-18 Site Boundary Changes Access Cultural Survey Status 2023-06-08, Map 15; and B2HAMD1 RFA1 Figure 4-2 Site Boundary Changes Access 2023-06-08, Map 15. Both mapsets meet the minimum requirements of OAR 345-021-0010(1)(c). To the extent that Mr. Williams contends that information on cultural and archaeological resources should be illustrated on maps provided publicly, pursuant to ORS 192.345(11), information concerning the location of archaeological sites or objects is exempt from public disclosure and is kept confidential. Further, as indicated by the certificate holder in their responses to DPO comments, the area associated with road segment addition 1/160 was associated with cultural surveys conducted as part of pre-construction compliance and preparation for RFA1. And that these reports are still being finalized and once the data is processed and compiled, a property-specific survey memorandum will be provided to Mr. Williams that will indicate what surveys were performed and the results of those surveys. Department highlights that the Council’s Historic, Cultural and Archaeological

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			with and does not duplicate the federal agency review. Council previously imposed Historic, Cultural, and Archaeological Resources Condition 2, which requires that prior to construction of the facility, the certificate holder would submit updates to the Historic Properties Management Plan which includes NRHP eligibility determinations derived from the Section 106 review for new survey data from previously unsurveyed areas and based upon the final design of the facility. Based upon NRHP eligibility and agreed upon avoidance and mitigation measures from the Section 106 review, final avoidance and mitigation measures such as buffer distances, will be determined as an outcome of Section 106 and filed with Department prior to construction of the facility in that area.			Resources standard under OAR 345-022-0090 and the previously approved site certificate conditions do not require the certificate holder to provide landowners with survey report data and conclusions, and that this matter would be negotiated between the certificate holder and landowners.  The Department recommends Council find that the responses to this issue as provided in Proposed Order Table A-1 are sufficient and no amendments to the Proposed Order are necessary.

1                                   **II.C.5.     Final Order**  
2

3 Under OAR 345-027-0371(10)(c), on September 22, 2023, the Council adopted the proposed  
4 order as the final order on RFA1, based on the considerations described in OAR 345-027-0375.  
5 The Council issues this final order granting issuance of an amended site certificate.<sup>27</sup>  
6

7 The Council’s final order, including its decision to deny the requests for contested case, is  
8 subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.  
9

10 **III.     EVALUATION OF COUNCIL STANDARDS**  
11

12 **III.A.   GENERAL STANDARD OF REVIEW: OAR 345-022-0000**  
13

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

18                   *(a) The facility complies with the requirements of the Oregon Energy Facility*  
19                   *Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the*  
20                   *standards adopted by the Council pursuant to 469.501 or the overall public*  
21                   *benefits of the facility outweigh any adverse effects on a resource or interest*  
22                   *protected by the applicable standards the facility does not meet as described*  
23                   *in section (2);*  
24

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

36                   *(2) The Council may issue or amend a site certificate for a facility that does not*  
37                   *meet one or more of the applicable standards adopted under ORS 469.501 if*  
38                   *the Council determines that the overall public benefits of the facility outweigh*  
39                   *any adverse effects on a resource or interest protected by the applicable*  
40                   *standards the facility does not meet. The Council shall make this balancing*  
41                   *determination only when the applicant has shown that the proposed facility*  
42                   *cannot meet applicable Council standards or has shown, to the satisfaction of*

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<sup>27</sup> OAR 345-027-0371(11).

1 the Council, that there is no reasonable way to meet the applicable Council  
2 standards through mitigation or avoidance of any adverse effects on a  
3 protected resource or interest. The applicant has the burden to show that the  
4 overall public benefits outweigh any adverse effects on a resource or interest,  
5 and the burden increases proportionately with the degree of adverse effects  
6 on a resource or interest. The Council shall weigh overall public benefits and  
7 any adverse effects on a resource or interest as follows:

8  
9 (a) The Council shall evaluate any adverse effects on a resource or interest by  
10 considering factors including, but not limited to, the following:

11  
12 (A) The uniqueness and significance of the resource or interest that would be  
13 affected;

14  
15 (B) The degree to which current or future development may adversely affect  
16 the resource or interest, if the proposed facility is not built;

17  
18 (C) Proposed measures to reduce any adverse effects on a resource or interest  
19 by avoidance of impacts;

20  
21 (D) The magnitude of any anticipated adverse effects on a resource or interest,  
22 taking into account any proposed mitigation.

23  
24 (b) The Council shall evaluate overall public benefits by considering factors  
25 including, but not limited to, the following:

26  
27 (A) The overall environmental effects of the facility, considering both  
28 beneficial and adverse environmental effects;

29  
30 (B) The degree to which the proposed facility promotes Oregon energy policy  
31 as described in ORS 469.010 by demonstrating or advancing new efficiency or  
32 renewable technology or by expanding electric generating capacity from  
33 renewable energy sources;

34  
35 (C) Recommendations from any special advisory group designated by the  
36 Council under ORS 469.480;

37  
38 (D) Evidence that the benefits are likely to occur only if the proposed facility is  
39 built;

40  
41 (E) For facilities that are subject to a need standard, evidence underlying the  
42 Council's decision on compliance with the rules in OAR 345, Division 23, except  
43 that the Council shall not find that need for a facility is sufficient, by itself, to

1           *outweigh any adverse effects on a resource or interest affected by the*  
2           *proposed facility.*

3  
4           *(3) Notwithstanding section (2) of this rule, the Council shall not apply the*  
5           *balancing determination to the following standards:*

6  
7           *(a) The organizational expertise standard described in OAR 345-022-0010;*

8  
9           *(b) The land use standard described in OAR 345-022-0030;*

10  
11           *(c) The retirement and financial assurance standard described in OAR 345-*  
12           *022-0050;*

13  
14           *(d) The need standards described in OAR 345-023-0005;*

15  
16           *(e) The standards for energy facilities that emit carbon dioxide described in*  
17           *OAR 345-024-0500 through 345-024-0720;*

18  
19           *(f) The protected areas standard described in OAR 345-022-0040, if the*  
20           *statutes or administrative rules governing the management of the protected*  
21           *area prohibit location of the proposed facility in that area; or*

22  
23           *(g) The sage-grouse specific habitat mitigation requirements under the*  
24           *Council's fish and wildlife habitat standard described in OAR 345-022-0060,*  
25           *except that the Council may apply the balancing determination to the*  
26           *requirements of 635-140-0025(2)(a) and (b) for indirect impacts on core and*  
27           *low density sage-grouse habitat, as defined in 635-140-0015, which are*  
28           *caused by transmission lines or pipelines as defined in ORS 469.300(11)(a),*  
29           *and by transmission lines or pipelines that are related or supporting facilities*  
30           *to an energy facility as defined in ORS 469.300(24), proposed to be sited*  
31           *entirely outside of core and low density sage-grouse habitat.*

32  
33           *(4) In making determinations regarding compliance with statutes, rules and*  
34           *ordinances normally administered by other agencies or compliance with*  
35           *requirements of the Council statutes if other agencies have special expertise,*  
36           *the Department of Energy shall consult with such other agencies during the*  
37           *notice of intent, site certificate application and site certificate amendment*  
38           *processes. Nothing in these rules is intended to interfere with the state's*  
39           *implementation of programs delegated to it by the federal government.<sup>28</sup>*

40  
41                           **III.A.1.    Findings of Fact**  
42

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<sup>28</sup> OAR 345-022-0000, effective March 8, 2017.

1 Pursuant to OAR 345-027-0375, consistent with Council’s General Standard of Review, in  
2 making a decision to grant or deny issuance of an amended site certificate, the Council must  
3 determine that the preponderance of evidence on the record supports that the RFA1 site  
4 boundary additions comply with the applicable laws or Council standards that protect a  
5 resource or interest that could be affected by the proposed change. Proof by a preponderance  
6 of the evidence means “that the facts asserted are more probably true than false.”<sup>29</sup> Therefore,  
7 to issue an amended site certificate, the Council must determine that the evidence on the  
8 record, including information submitted to comply with Council-imposed site certificate  
9 conditions, demonstrates it is more probable than not that the certificate holder will comply  
10 with applicable standards.

11  
12 When applying the preponderance of evidence test, Council takes into account the record as a  
13 whole and information obtained or demonstrated through compliance with existing, amended  
14 or new conditions.<sup>30</sup> For this order, the evidentiary record relied upon to make findings of fact  
15 and conclusions of law includes the record of the *Final Order on the ASC* and RFA1. For several  
16 standards, where field surveys are necessary to inform the presence of Council-protected  
17 resources and impacts, the preponderance of evidence test is demonstrated through available  
18 data and future compliance with previously imposed site certificate conditions. Field surveys  
19 are necessary under the Council’s Fish and Wildlife Habitat standard, Threatened and  
20 Endangered Species standard, Historic, Cultural and Archeological Resources, and the Oregon  
21 Department of State Land’s (DSL) Removal-Fill Law. For RFA1, surveys for resources protected  
22 under these standards and law were completed; however, complete survey coverage of the  
23 established survey area was not completed due to limitations on obtaining landowner right-of-  
24 entry concurrent with applicable survey timing constraints.

- 25  
26
- RFA1 Section 7.1.5.2, Table 7.1-11. Biological Resources Surveys indicate the type and scope of survey data complete for Fish and Wildlife habitat including extent of unsurveyed areas.
  - Figures 7-17 and 7-18 indicate areas where pedestrian surveys for cultural resources were where site access was granted.
  - RFA1 Section 5.3.3 indicates that wetland and water delineation surveys were conducted on 96 percent of the RFA1 site boundary additions.
- 33

34 As evaluated in Section III.H *Fish and Wildlife Habitat*, Section III.I *Threatened and Endangered*  
35 *Species*, Section III.K *Historic, Cultural and Archeological Resources*, and Section III.R.2 *Removal-*  
36 *Fill Law*, Council previously imposed conditions requiring that, prior to construction, the  
37 certificate holder conduct surveys within any unsurveyed areas and either avoid or mitigate  
38 resources accordingly.<sup>31</sup>

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<sup>29</sup> *Riley Hill Gen. Contractor, Inc. v. Tandy Corp.*, 303 Or. 390, 402, 737 P.2d 595 (1987).

<sup>30</sup> ORS 469.503(1)

<sup>31</sup> Previously imposed conditions requiring preconstruction surveys include Fish and Wildlife Condition 15 (Condition PRE-FW-01); Fish and Wildlife Condition 16 (Condition PRE-FW-02); Historic, Cultural and Archeological

1  
2 The evaluation of requirements of the General Standard of Review (findings based on a  
3 preponderance of evidence on the record) are addressed in the findings of fact and conclusions  
4 of law in the sections that follow. The facts and evidence in the record for RFA1, as well as the  
5 *Final Order on ASC*, are directly incorporated and or by reference in this order.  
6

7 **III.A.2. Conclusions of Law**  
8

9 Based on the foregoing analysis, and subject to compliance with the existing and amended site  
10 certificate conditions described above, the Council finds that the RFA1 site boundary additions  
11 comply with all laws and comply with the requirements of ORS 469.300 to 469.570 and 469.590  
12 to 469.619, the Council’s standards in OAR chapter 345, and all other Oregon statutes and  
13 administrative rules applicable to the issuance of an amended site certificate.  
14

15 **III.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010**  
16

17 *(1) To issue a site certificate, the Council must find that the applicant has the*  
18 *organizational expertise to construct, operate and retire the proposed facility*  
19 *in compliance with Council standards and conditions of the site certificate. To*  
20 *conclude that the applicant has this expertise, the Council must find that the*  
21 *applicant has demonstrated the ability to design, construct and operate the*  
22 *proposed facility in compliance with site certificate conditions and in a manner*  
23 *that protects public health and safety and has demonstrated the ability to*  
24 *restore the site to a useful, non-hazardous condition. The Council may*  
25 *consider the applicant’s experience, the applicant’s access to technical*  
26 *expertise and the applicant’s past performance in constructing, operating and*  
27 *retiring other facilities, including, but not limited to, the number and severity*  
28 *of regulatory citations issued to the applicant.*  
29

30 *(2) The Council may base its findings under section (1) on a rebuttable*  
31 *presumption that an applicant has organizational, managerial and technical*  
32 *expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and*  
33 *proposes to design, construct and operate the facility according to that*  
34 *program.*  
35

36 *(3) If the applicant does not itself obtain a state or local government permit or*  
37 *approval for which the Council would ordinarily determine compliance but*  
38 *instead relies on a permit or approval issued to a third party, the Council, to*  
39 *issue a site certificate, must find that the third party has, or has a reasonable*

---

Resources Condition 2 (Condition GEN-HC-02); and Removal-Fill Condition 1 (Condition PRE-RF-01). Avoidance and mitigation of any resources identified during these surveys is required under Fish and Wildlife Condition 17 (Condition PRE-FW-03); Historic, Cultural and Archeological Resources Condition 2 and 3 (Condition GEN-HC-02 and OPS-HC-01); and, Removal-Fill Condition 2, 3 and 6 (Conditions GEN-RF-01, GEN-RF-02 and GEN-RF-04)

1           *likelihood of obtaining, the necessary permit or approval, and that the*  
2           *applicant has, or has a reasonable likelihood of entering into, a contractual or*  
3           *other arrangement with the third party for access to the resource or service*  
4           *secured by that permit or approval.*

5  
6           *(4) If the applicant relies on a permit or approval issued to a third party and*  
7           *the third party does not have the necessary permit or approval at the time the*  
8           *Council issues the site certificate, the Council may issue the site certificate*  
9           *subject to the condition that the certificate holder shall not commence*  
10           *construction or operation as appropriate until the third party has obtained the*  
11           *necessary permit or approval and the applicant has a contract or other*  
12           *arrangement for access to the resource or service secured by that permit or*  
13           *approval.*<sup>32</sup>

### 15                           **III.B.1.     Findings of Fact**

16  
17           The RFA1 site boundary additions will be located in the same vicinity as the approved ASC site  
18           boundary and does not propose any new or different types of technology or facility  
19           infrastructure. Based on the findings of fact in this order, there are not substantively new or  
20           different resources or impacts resulting from the RFA1 site boundary additions that would  
21           necessitate a different level of organizational expertise as evaluated in the *Final Order on the*  
22           *ASC*. For these reasons, the Council relies on its findings and conditions in the *Final Order on*  
23           *ASC*, which are incorporated below.

#### 24                           *Organizational Expertise of Certificate Holder*

25  
26  
27           The certificate holder is an investor-owned electric utility that serves over 530,000 customers  
28           within a service territory of approximately 24,000 miles in southern Idaho and eastern Oregon.  
29           Its power supply system currently includes 4,868 miles of transmission lines, including 692 miles  
30           in Oregon. It also operates 305 transmission and other stations, and operates and maintains  
31           27,072 miles of distribution lines, 2,212 miles of which are in Oregon.<sup>33</sup>

32  
33           Certificate holder’s experience in constructing high-voltage transmission lines, since 2000,  
34           includes 5 lines, extending 2 to 70 miles. Certificate holder’s experience in operating high-  
35           voltage transmission lines includes current operation and maintenance of approximately 692  
36           miles of transmission lines in Oregon.

37  
38           Engineering, design, procurement, and construction activities related to the facility will be  
39           completed by third-party contractors. Facility design, construction and operation will be  
40           required to comply with National Electric Safety Code (NESC), Federal Energy Regulatory

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<sup>32</sup> OAR 345-022-0010, effective April 3, 2002.

<sup>33</sup> B2HAPPDoc3-10 ASC 04\_Exhibit D\_Organization\_ASC 2018-09-28, Section 3.1.

1 Commission (FERC), North American Electric Reliability Corporation (NERC), and Western  
2 Electricity Coordinating Council (WECC) standards.

3  
4 Facility operations and maintenance will comply with a Transmission Maintenance and  
5 Inspection Plan (TMIP), which is reviewed annually, and is designed to achieve compliance with  
6 all applicable Oregon Public Utility Commission (OPUC) rules. Under the TMIP, three types of  
7 line maintenance patrols are conducted: routine line patrols/inspections, unscheduled  
8 emergency line patrols, and aerial vegetation patrols.<sup>34</sup> The routine line patrols include a  
9 detailed visual inspection of the entire line and are conducted at least once per year on all lines  
10 included in a WECC transfer path in the bulk electric system. These inspections are conducted  
11 from either the ground or air and are designed to ensure the integrity of the system by  
12 identifying obvious line threatening defects. Emergency line patrols are performed in response  
13 to any unexplained system outage or interruption, or whenever requested by a dispatcher, to  
14 identify major structural failures or issues. These typically would not involve inspection of the  
15 entire line, but only the portion of a line where there is an indication or report of a possible  
16 problem. Finally, a transmission utility arborist conducts aerial vegetation patrols to identify  
17 and manage vegetation encroachments that threaten the transmission lines. The arborist  
18 normally completes the aerial vegetation patrol alongside the line patrolman during routine  
19 line patrols/inspections.

20  
21 In addition to the cyclical inspection cycles described above, Transmission Patrolmen patrol and  
22 inspect transmission lines at a minimum once a year to identify any transmission defects and  
23 any vegetation hazards that may develop between vegetation clearing cycles. A comprehensive  
24 10-year maintenance inspection on all its transmission lines consistent with its TMIP and  
25 includes detailed visual inspections of all transmission line components. The data collected  
26 from these inspections would be compiled and evaluated, and identified issues are addressed  
27 through general maintenance.

28  
29 Council previously imposed conditions to ensure that the above-referenced facts are realized  
30 during construction and operations:

- 31
- 32 • Organizational Expertise Condition 2 (Condition GEN-OE-01) requires that, prior to  
33 construction, the certificate holder provide to the Department and each affected county  
34 the identity and qualifications of its construction contractors. The qualifications must  
35 demonstrate that the contractors have substantial experience in designing, engineering  
36 and constructing similar types of facilities (roads, high-voltage transmission lines,  
37 switching station).
  - 38 • Organizational Expertise Condition 3 (Condition PRE-OE-01) requires that, prior to  
39 construction, the certificate holder provide to the Department the identify and  
40 qualifications of its construction managers, where the qualifications must demonstrate  
41 that the managers have experience in implementing major construction project(s) in  
42 compliance with numerous, complex regulatory and permit requirements.

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<sup>34</sup> B2HAPPDoc3-10 ASC 04\_Exhibit D\_Organization\_ASC 2018-09-28, Section 3.1.3.

- 1 • Organizational Expertise Condition 4 (Condition PRE-OE-02) requires that the certificate  
2 holder contractually require its construction contractors to comply with the terms and  
3 conditions of the site certificate.
- 4 • Organizational Expertise Condition 1 (OPR-OE-01) requires that the certificate holder,  
5 during operations, implement and adhere to the requirements of the TMIP; and report  
6 to the Department on the status and results of inspections and corrective actions  
7 implemented during the reporting year.

### 8 9 *Mitigation Experience*

10  
11 Mitigation is required under numerous site certificate conditions to mitigate direct and indirect  
12 impacts of the facility to resources protected under a Council standard. The certificate holder,  
13 as an electric utility, employs almost 100 full-time staff biologists in its Environmental Affairs  
14 Department as well as two full-time staff who track, manage, and document compliance with  
15 FERC license requirements. The certificate holder’s relevant mitigation experience includes  
16 implementation of a Riparian Habitat Acquisition Plan for a 360-acre property; a Visual  
17 Resource Management Plan which provides visual resources protection, mitigation, and  
18 enhancement measures; and a Historic Properties Management Plan which implements an  
19 agreement among certificate holder, the State of Idaho, federal agencies, and Tribal  
20 governments to identify and protect cultural resources.

### 21 22 *Demonstrated ability to restore the site to a useful, non-hazardous condition*

23  
24 The evaluation of the certificate holder’s ability to restore the site to a useful, non-hazardous  
25 condition is presented in Section III.G *Retirement and Financial Assurance* of this order.

### 26 27 **III.B.2. Conclusions of Law**

28  
29 Based on the above findings of fact, and subject to compliance with the existing conditions  
30 described above and in the site certificate, the Council finds the certificate holder would  
31 continue to have the organizational expertise to construct, operate and retire the portions of  
32 the facility added to the site boundary in RFA1 in compliance with Council standards and  
33 conditions of the site certificate, and in a manner that protects public health and safety and has  
34 demonstrated the ability to restore the site to a useful, non-hazardous condition.

### 35 36 **III.C. STRUCTURAL STANDARD: OAR 345-022-0020**

37  
38 *(1) Except for facilities described in sections (2) and (3), to issue a site*  
39 *certificate, the Council must find that:*

40  
41 *(a) The applicant, through appropriate site-specific study, has adequately*  
42 *characterized the seismic hazard risk of the site; and*  
43

1           (b) The applicant can design, engineer, and construct the facility to avoid  
2 dangers to human safety and the environment presented by seismic hazards  
3 affecting the site, as identified in subsection (1)(a);  
4

5           (c) The applicant, through appropriate site-specific study, has adequately  
6 characterized the potential geological and soils hazards of the site and its  
7 vicinity that could, in the absence of a seismic event, adversely affect, or be  
8 aggravated by, the construction and operation of the proposed facility; and  
9

10          (d) The applicant can design, engineer and construct the facility to avoid  
11 dangers to human safety and the environment presented by the hazards  
12 identified in subsection (c).  
13

14          (2) The Council may not impose the Structural Standard in section (1) to  
15 approve or deny an application for an energy facility that would produce  
16 power from wind, solar or geothermal energy. However, the Council may, to  
17 the extent it determines appropriate, apply the requirements of section (1) to  
18 impose conditions on a site certificate issued for such a facility.  
19

20          (3) The Council may not impose the Structural Standard in section (1) to deny  
21 an application for a special criteria facility under OAR 345-015-0310. However,  
22 the Council may, to the extent it determines appropriate, apply the  
23 requirements of section (1) to impose conditions on a site certificate issued for  
24 such a facility.<sup>35</sup>  
25

### 26                           **III.C.1.     Findings of Fact**

27  
28   The analysis area for the Structural Standard includes the area within the RFA1 site boundary  
29 additions, or approximately 1,036 acres extending across portions of Morrow, Umatilla, Union,  
30 Baker and Malheur counties. The RFA1 site boundary additions will be located in the same  
31 vicinity as the approved ASC site boundary; therefore, the seismic and non-seismic hazards  
32 evaluated in the *Final Order on the ASC* will not significantly differ for the RFA1 site boundary  
33 additions. For this reason, the Council relies on its findings and conditions<sup>36</sup> in the *Final Order*  
34 *on ASC*, which are incorporated and applied to the RFA1 analysis area below.  
35

#### 36   *III.C.1.a Seismic Hazard Risk at Site*

#### 37                           *Earthquake and Seismic Hazards*

38  
39

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<sup>35</sup> OAR 345-022-0020, effective October 18, 2017, as amended by minor correction filed May 28, 2019.

<sup>36</sup> In Section III.D., Soil Protection in this order, Council amends Structural Standard Condition 1 (Condition PRE-SS-01) and Soil Protection Condition 4 (Condition GEN-SP-04) to support effective implementation and enforcement.

1 Earthquake and seismic hazards were evaluated in the *Final Order on the ASC*. The U.S.  
2 Geological Survey (USGS) Earthquake Search Database, the National Geophysical Data Center,  
3 and the Pacific Northwest Seismic Network were evaluated to identify historic earthquakes  
4 within the analysis area. Three potential types of earthquake sources exist within the analysis  
5 area: crustal, intraslab, and interplate events. Of these, the Cascadia Subduction Zone (CSZ)  
6 interplate events have the potential to produce the largest magnitude earthquake, up to 9.0  
7 magnitude. However, this earthquake source is located at a distance of 280 miles or more from  
8 the analysis area.

9  
10 Seismic hazards from earthquake events include seismic shaking or ground motion, ground  
11 failure, landslides, liquefaction, subsidence and lateral spreading, which are described below.

### 12 *Seismic Shaking/Ground Motion*

13  
14  
15 Seismic shaking from a CSZ interplate event would attenuate over the approximately 280-mile  
16 distance to the analysis area and would therefore not represent the most significant  
17 earthquake hazard within the vicinity of the RFA1 site boundary additions. Crustal faults, which  
18 typically produce earthquakes of a maximum magnitude of 7.0, are located in much closer  
19 proximity to the facility site and therefore represent the most significant seismic hazard to the  
20 facility.<sup>37</sup> Given the maximum magnitude of historic earthquakes in the vicinity of the RFA1 site  
21 boundary additions, the facility seismic design will be based on earthquake magnitudes of 6.0  
22 to 6.2.<sup>38</sup> Earthquake risk is greatest in the northern portion of the RFA1 site boundary additions  
23 (in Morrow County).<sup>39</sup>

24  
25 A preliminary evaluation of the estimated probabilistic peak ground acceleration (PGA) for a  
26 500- and 5,000-year return period was included in ASC Exhibit H; these data were used to  
27 assess geo-seismic hazards such as seismic slope stability and liquefaction. These preliminary  
28 evaluations are based on the USGS 2002 and 2014 National Seismic Hazard Maps. The USGS  
29 developed these maps using a probabilistic seismic hazard analysis (PSHA) that considered  
30 multiple specific sources and regional seismicity to predict the probability of an earthquake of a  
31 given ground motion occurring anywhere in a given area within a given return period.<sup>40</sup>

32  
33 The 500-year return period PGA values within the analysis area range from 0.074g near  
34 Boardman, Oregon to 0.045g near Hemingway, Idaho. The PGA values for the 5,000-year return  
35 period within the analysis area range from 0.261g to 0.169g.<sup>41</sup> The 2,500-year return period  
36 PGA values within the analysis area range from 0.185g to 0.117g. For the same return period,

---

<sup>37</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.3 and B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Attachment H-1, Section 4.2.

<sup>38</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.4.

<sup>39</sup> The applicant performed a preliminary seismic risk assessment from a review of earthquake hazard zones included in Federal Emergency Management Agency data, prepared for the U.S. Department of Transportation, Office of Pipeline Safety. B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.6.

<sup>40</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Attachment H-1, Section 4.1.

<sup>41</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Attachment H-1, Section 4.1.

1 the short period (0.2-second) spectral response acceleration values within the analysis area  
2 range from 0.416g to 0.262g, and the long period (1.0-second) spectral response acceleration  
3 values range from 0.137g to 0.082g.<sup>42</sup>

4  
5 The assumed site class with the RFA1 site boundary additions is between site class B and site  
6 class C (site class B/C), which is a soft rock profile, and used ground motion parameters that  
7 correspond to this profile. Site class is used to inform foundation and structure design.

### 8 9 *Ground Failure*

10  
11 Seismic hazards from earthquake events could include ground failure and fault displacement  
12 when an active fault ruptures. The following 8 faults were identified within a five-mile radius of  
13 the analysis area: the Hite Fault System, Thorne Hollow Section; Hite Fault System, Agency  
14 Section; West Grande Ronde Valley Fault Zone; Unnamed East Baker Valley Faults; West Baker  
15 Valley Faults; South Grande Ronde Valley Fault Zone; Cottonwood Mountain Fault; and, Faults  
16 Near Owyhee Dam.

### 17 18 *Landslides*

19  
20 Seismic hazards from earthquake events include landslides. Historic, mapped landslides were  
21 evaluated in the *Final Order on the ASC*, which relied upon:

- 22  
23 • Review of GIS files compiled by Oregon Department of Geology and Mineral Industries  
24 (DOGAMI) in the Statewide Landslide Information Database for Oregon (SLIDO),  
25 version 3.4 (Burns and Watzig, 2017); the review included landslides within a one-mile  
26 wide route corridor; initial work by Shaw utilized SLIDO, version 2 (Burns and others,  
27 2011);
- 28 • Review of existing geologic maps, including Engineering Geology of the La Grande  
29 Area, Union County, Oregon, by Schlicker and Deacon (1971); the maps were compiled  
30 and geo-referenced in GIS along the alignment to confirm the location of each SLIDO  
31 landslide along the route and to check that each mapped landslide was included in the  
32 SLIDO database;
- 33 • Site reconnaissance (by Shaw) along portions of the original alignment, conducted on  
34 October 26-28 and November 15-18, 2011;
- 35 • Site reconnaissance (by Shannon & Wilson) along portions of new alignment alternatives  
36 and select alignment changes, conducted July 30 through August 2, 2012, and October  
37 16-18, 2013;
- 38 • Review of aerial photography (Shaw reviewed 1:24,000 scale aerial photographs  
39 provided by 3Di, LLC, of Eugene, Oregon (3Di), and the ESRI Microsoft Virtual Earth  
40 Exhibit H - Attachment H-1 24-1-03820-006 E-2 layer in GIS; Shannon & Wilson reviewed  
41 aerial photographs from both ESRI and Google Earth);
- 42 • Review of Digital Terrain Models (DTMs) along one-mile-wide route corridors; and

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<sup>42</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Attachment H-1, Section 4.1.

- DOGAMI LiDAR Data Viewer (relevant LiDAR data was only available for portions of the Meacham Lake, Huron, Kamela SE, Hilgard, LaGrande SE, Glass Hill, Craig Mountain, North Powder, Telocaset, Baker, Virtue Flat, and Owyhee Dam quadrangles); No LiDAR data was available in Idaho<sup>43</sup>

Based on a review of the above-described information, the certificate holder’s geotechnical consultant, Shannon & Wilson, mapped landslides within one mile of analysis area. Using this previously mapped landslide data, facility components within the RFA1 site boundary additions would be in or near 13 potential landslide or geologic hazard areas. This includes the Little Juniper Canyon and True Blue Gulch transmission line route alternatives; and RFA1 access road changes in Union, Baker and Malheur counties.<sup>44</sup> The location of the RFA1 site boundary additions and landslide/geologic hazard areas are presented in RFA1 Figure 7-1 Map 1 (SLIDO 43); Figure 7-2 Maps 2-4 (SLIDO 127, 158, 159, 1110, 1112); Figure 7-2 Map 16 (SLIDO 2281); Figure 7-2 Map 26 (SLIDO 1711), 33 (SLIDO 2027, 2030), 34 (SLIDO 2030, 2034), 39 (SLIDO 2069). The preliminary evaluation and results of the potential risks from these mapped geologic hazards to the RFA1 site boundary additions are presented in Table 8 below.

**Table 8: Geologic Hazards within the RFA1 Site Boundary Additions Analysis Area**

<b>RFA1 Component</b>	<b>Mapped Landslide Reference</b>	<b>Evaluation</b>	<b>Certificate Holder’s Pre-geotech Investigation Results</b>
Little Juniper Canyon alternative	SLIDO 43	2011 site visit; 2022 reconnaissance visit	Identified as an alluvial fan and not a landslide; no surficial features indicative of landslide or geologic hazard observed (RFA1 Figure 7-1 Map 1)
True Blue Gulch alternative	SLIDO 127, 158, 159, 1110, 1112	Desktop mapping	Talus-colluvium with alluvial fans; not a landslide (RFA1 Figure 7-2 Maps 2-4)
Union County access roads	SLIDO 2281	Desktop mapping	It is a landslide, but located over 4,000 feet away (RFA1 Figure 7-2 Map 16)
Baker County access roads	SLIDO 1711	Review of aerial imagery and light detection and ranging; 2021 reconnaissance visit	Lack of sharp head scarps and landslide features indicates likely ancient landslide (RFA1 Figure 7-2 Map 26)
Malheur County access roads	SLIDO 2027, 2030	2011 site visit; 2021 reconnaissance visit; review of	Access roads would be in the landslide area; landslide area

<sup>43</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.6 and Attachment H-1 (Section 5.1.1).

<sup>44</sup> B2HAMD1 Request for Amendment 1 2023-06-08. Section 7.1.1, p. 51; B2HAMD1 Request for Amendment 1 2023-06-08. Figure 7-1 Map 1; Figure 7-2 Maps 2-4; Figure 7-2 Map 16; Figure 7-2 Map 26, 33, 34, 39.

**Table 8: Geologic Hazards within the RFA1 Site Boundary Additions Analysis Area**

<b>RFA1 Component</b>	<b>Mapped Landslide Reference</b>	<b>Evaluation</b>	<b>Certificate Holder’s Pre-geotech Investigation Results</b>
		aerial imagery and light detection and ranging	considered stable (RFA1 Figure 7-2 Map 33)
	SLIDO 2030, 2034	2021 reconnaissance visit	Lack of surficial features (RFA1 Figure 7-2 Map 34)
	SLIDO 2069	Desktop mapping	Access roads are in a gentle sloping area but 0.4-mile away from mapped landslide (RFA1 Figure 7-2 Map 39)

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29

*Liquefaction and Lateral Spreading*

Seismic hazards from earthquake events include liquefaction and lateral spreading. Liquefaction refers to the saturation and cohesion of soils causing these soils to temporarily lose their strength, resulting from intense and prolonged ground shaking and seismic activity. Areas with a shallow water table (within 50 feet of the surface) and thick, unconsolidated sediments are the most susceptible to liquefaction in the event of ground shaking. The majority of the analysis area has a low susceptibility to liquefaction because it mostly consists of relatively stable terrain with shallow bedrock and deep groundwater. Seismic activity also has the potential to cause lateral spreading, which is the permanent horizontal movement of liquefiable soil. Lateral spreading during seismic events is most likely to occur on gradual slopes or on flat sites with liquefiable soils.

*Subsidence*

Subsidence is the sinking or the gradual downward settlement of the land surface, and is often related to groundwater drawdown, compaction, tectonic movements, mining, or explosive activity. Seismic activity in the analysis area could lead to the settling of sediment and could also exacerbate potential subsidence associated with groundwater withdrawal in more populous regions. No historical cases of subsidence in the analysis area have been identified, and the majority of the analysis area has a low susceptibility to subsidence.

*III.C.1.b Non-seismic Geologic and Soils Hazards*

Non-seismic hazards include mass-wasting and landslides, flooding, and erosion. Landslides are a subset of mass wasting events, which describe processes that include the downslope movement of masses of soil and rock. As previously discussed, seismic events have the potential to result in landslides, but non-seismic factors may also trigger landslides (e.g.,

1 from heavy precipitation events at unstable areas). Mapped landslides within one mile of the  
2 analysis area are presented in ASC Exhibit H, Attachment H-1, Appendix E.<sup>45</sup>

3  
4 *Mass-wasting and Landslides*

5  
6 Mass wasting is a generic term for landslides, rockslides, rockfall, debris flows, soil creep, and  
7 other processes that include the downslope movement of masses of soil and rock. Mass  
8 wasting can be initiated by precipitation events, sometimes in conjunction with land use. Slope  
9 stability is a function of moisture content, slope gradient, rock and soil type, slope aspect,  
10 vegetation, seismic conditions and ground-disturbing activities.

11  
12 *Flooding*

13  
14 Using data from the 2017 Federal Emergency Management Agency (FEMA) National Flood  
15 Hazard Layer and the 2015 DOGAMI Statewide Flood Hazard Database for Oregon – FEMA  
16 Flood Insurance Study inundation zones, the 100-year flood zone was overlain with the facility  
17 temporary and permanent disturbance areas. Portions of the RFA1 site boundary additions  
18 would be located in the 100-year flood zone, including areas along Little Juniper Creek in  
19 Morrow County and access road improvements along the Malheur River in Malheur County.<sup>46</sup>

20  
21 *Erosion*

22  
23 Soils most susceptible to erosion by wind and water are typically non-cohesive soils with low  
24 infiltration rates, residing on moderate to steep slopes, and soils that are sparsely vegetated.<sup>47</sup>  
25 Erosion potential within the analysis area is based on three factors: soil-erodibility (K) factor,  
26 wind erodibility, and slope. The potential for soil erosion by wind was evaluated using NRCS  
27 wind erodibility group data, which are based on the texture of the surface layer, the size and  
28 durability of surface clods, rock fragments, organic matter, and a calcareous reaction. Soil  
29 moisture and frozen soil layers also influence wind erosion. Construction activities that could  
30 expose soils to wind erosion include any surface disturbance (e.g., road construction and  
31 improvements, vegetation clearing). In general, steep slopes possess a greater potential for  
32 erosion by water or mass movements than flat areas. Areas containing greater than 25 percent  
33 slope were considered to have greater erosion potential.

34  
35 *Expansive Soils*

36  
37 Expansive soils, which swell when exposed to moisture and shrink when dried, may impact  
38 structure foundations.

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<sup>45</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.6 and Attachment H-1 (Section 5.1.1).

<sup>46</sup> B2HAMD1 RFA1 2023-06-08. Section 7.1.3.1 Table 7.1-5, pg. 58. B2HAMD1 RFA1 2023-06-08. Section 7.1.3.5 Table 7.1-9, p. 76.

<sup>47</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.8.3.

1  
2 *Groundwater Hazards*  
3

4 Groundwater may exacerbate slope instability and may require hydrogeological mitigation  
5 (such as surface drainage, shallow drainage, and deep drainage) to reduce the soil's water  
6 content. Groundwater can also impact construction, particularly where excavations extend  
7 below the water table. If shaft foundations for transmission line towers extend below the water  
8 table in granular soils, casing and/or slurry may be necessary to prevent soil heave and  
9 maintain shaft integrity.

10  
11 *Corrosive Subsurface Conditions*  
12

13 Corrosive soil can damage the metallic and concrete components of subsurface utilities and  
14 structures. Based on NRCS Soil Survey Geographic Database, the susceptibility of concrete to  
15 corrosion when in contact with the on-site surficial soils is expected to be low in most areas,  
16 and susceptibility of uncoated steel to corrosion when in contact with the onsite surficial soils is  
17 expected to be moderate to high. Metal materials may be protected through the addition of  
18 protective coatings or by increasing the metal thickness.

19  
20 The Council finds that the above facts represent an adequate characterization of the seismic  
21 and non-seismic risks within the analysis area.

22  
23 *III.C.1.c Design, Engineer and Construct Facility to Avoid Dangers to Human Safety and the*  
24 *Environment from Potential Seismic Hazards and non-Seismic Hazards*  
25

26 The Structural Standard requires the Council to find that, based on an adequate  
27 characterization of the seismic and non-seismic risks of the site, that the certificate holder  
28 demonstrates an ability to design, engineer and construct the facility to avoid potential seismic  
29 hazards (i.e., ground motion, ground failure, fault displacement, landslides, liquefaction, lateral  
30 spreading, and subsidence) and non-seismic hazards within the surrounding area.

31  
32 *Ground Failure and Fault Displacement*  
33

34 The Quaternary faults within the surrounding area should be considered during final facility  
35 design with regards to their potential to result in ground failure and fault displacement at or  
36 near the alignment. Ground failure including landslide, lateral spreading, liquefaction, and  
37 surface rupture or settlement will be evaluated once ground accelerations and subsurface  
38 conditions are known (following the pre-construction, site-specific geologic and geotechnical  
39 investigations). Council previously imposed Structural Standard Condition 1 (Condition PRE-SS-  
40 01) requiring that the certificate holder conduct a pre-construction site-specific geological and  
41 geotechnical investigation report to, in part, describe potentially active faults that may affect  
42 the facility, their potential risk to the facility, and measures to mitigate the identified hazards.

43  
44 *Landslides*

1  
2 Landslides could potentially affect the stability of the tower foundations or associated work  
3 areas. Facility structures would be located with sufficient setback from slopes to mitigate the  
4 potential for slope instability, and where structures cannot be moved or realigned, mitigation  
5 techniques may include modification of slope geometry (grading or removing soils),  
6 hydrogeological modification (drainage to reduce the soil's water content), and slope  
7 reinforcement methods.<sup>48</sup> Council previously imposed Structural Standard Condition 1  
8 (Condition PRE-SS-01) requiring that the certificate holder conduct a pre-construction site-  
9 specific geological and geotechnical investigation report that, in part, will use agency approved  
10 investigation methods such as LiDAR or field survey investigation of the site boundary to assess  
11 the potential for slope instability and landslide hazards, and to identify measures to mitigate  
12 the identified hazards.

13  
14 *Liquefaction and Lateral Spreading*

15  
16 Prior to the development of final engineering design, liquefaction studies will be conducted for  
17 susceptible areas, including areas that cross or approach rivers and areas where thick  
18 unconsolidated sediments are encountered in the field. Additional evaluation of liquefaction  
19 may also be needed as the final alignment and tower locations are chosen. The geotechnical  
20 engineer will recommend additional exploration and/or analysis as applicable to assess  
21 liquefaction hazards in the geotechnical design report for the transmission line.

22  
23 In particular, the evaluation of liquefaction hazards will include susceptible areas, such as areas  
24 with thick unconsolidated sediments and areas that cross or approach rivers.<sup>49</sup> Council  
25 previously imposed Structural Standard Condition 1 (Condition PRE-SS-01) requiring that the  
26 pre-construction site-specific geological and geotechnical investigation report assess potential  
27 liquefaction hazards and to identify measures to mitigate the identified hazards.

28  
29 The pre-construction, site-specific evaluation of liquefaction hazards will evaluate if lateral  
30 spreading is an additional hazard for areas susceptible to liquefaction.<sup>50</sup> Structural Standard  
31 Condition 1 (Condition PRE-SS-01) requires the pre-construction site-specific geological and  
32 geotechnical investigation report to, in part, assess potential lateral spreading hazards and to  
33 identify measures to mitigate the identified hazards.

34  
35 *Subsidence*

36  
37 Seismic activity has the potential to cause subsidence, which is the sinking or gradual  
38 downward settlement of the land surface. If the geotechnical investigation identifies any

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<sup>48</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.9.2.1.

<sup>49</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.6.

<sup>50</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.6.

1 subsidence-prone areas, the facility design and siting of the transmission line will avoid  
2 subsidence hazards.<sup>51</sup>

3  
4 Structural Standard Condition 1 (Condition PRE-SS-01) requires the pre-construction site-  
5 specific geological and geotechnical investigation report to include a geotechnical field  
6 exploration program, laboratory testing, and detailed site reconnaissance to assess seismic risk.  
7 The Council requires the investigation to be designed and conducted by a professional engineer  
8 or geologist licensed in Oregon, to apply relevant expertise in issues and conditions of the State.  
9 The principal mitigation strategy for surface rupture hazards is modification of structure  
10 locations. All designs and subsequent construction requirements would be modified based on  
11 the site-specific characterization of seismic, geologic, and soil hazards. Some specific mitigation  
12 techniques for earthquake-induced landslide and liquefaction hazards are presented below.

13  
14 Council previously imposed numerous conditions designed to ensure compliance with the  
15 Structural standard.

- 16  
17 • Structural Standard Condition 1 (Condition PRE-SS-01) requires that, prior to  
18 construction, the certificate holder conduct a site-specific, geotechnical investigation  
19 within all areas where facility structures would be located to further evaluate risks and  
20 hazards from geologic conditions, faults, slope instability/landslide hazards, liquefaction,  
21 soil expansion, groundwater, corrosive soils and flood risk.<sup>52</sup>
- 22 • Structural Standard Condition 3 (Condition GEN-SS-02) requires that the facility be  
23 designed to avoid seismic hazards.
- 24 • Structural Standard Condition 4 (Condition GEN-SS-03) requires that, if site  
25 investigations or trenching identify foundation rocks that differ significantly from those  
26 described in the ASC, the certificate holder notify and consult with the Department and  
27 DOGAMI on appropriate corrective or mitigation actions.
- 28 • Structural Standard Condition 5 (Condition GEN-SS-04) requires that, if shear zones,  
29 artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site,  
30 the certificate holder notify and consult with the Department and DOGAMI on  
31 appropriate corrective or mitigation actions.
- 32 • Structural Standard Condition 2 (Condition GEN-SS-01) requires that the certificate  
33 holder design facility structures in accordance with the versions of the Oregon Structural  
34 Specialty Code, International Building Code, and local building codes in effect at the time  
35 of construction.
- 36 • Siting Standards for Transmission Line Condition 3 (Condition GEN-TL-02) requires that  
37 that the certificate holder design facility structures in accordance with the National  
38 Electrical Safety Code in effect at the time of construction.

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<sup>51</sup> B2HAPPDoc3-14 ASC 08a\_Exhibit H\_Geology\_ASC\_Part 1 2018-09-28, Section 3.7.6.

<sup>52</sup> Council previously imposed Land Use Condition 1 (Condition GEN-LU-01) and Land Use Condition 11 (Condition GEN-LU-08) requiring, in part, that flood plain development permits be obtained from Morrow and Malheur counties, prior to any development within a flood plain.

- Soil Protection Condition 1 (Condition GEN-SP-01) requires development and adherence to an Erosion and Sediment Control Plan, governed under the DEQ-issued 1200-C General Construction Permit.

### III.C.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the existing and amended site certificate conditions<sup>53</sup>, the Council finds that the certificate holder has adequately characterized potential seismic and geologic hazards within the RFA1 site boundary additions and that the certificate holder can design, engineer and construct the RFA1 site boundary additions to avoid dangers to human safety and the environment presented by those hazards.

### III.D. **SOIL PROTECTION: OAR 345-022-0022**

*To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.<sup>54</sup>*

#### III.D.1. Findings of Fact

The analysis area for the Soil Protection standard includes the area within the RFA1 site boundary additions, or approximately 1,036 acres extending across portions of Morrow, Umatilla, Union, Baker and Malheur counties. Within the analysis area, approximately 187 acres would be disturbed during construction activities.<sup>55</sup>

Of the 187 acres impacted, 129 acres would be restored, and 58 acres would be permanently impacted by siting of facility infrastructure including 500 kV transmission towers and new and substantially modified access roads.<sup>56</sup> The zones crossed, land cover type and extent of high value farmland soils within the RFA1 site boundary additions, by county, are presented in Table 9 below.

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<sup>53</sup> See amended Soil Protection Condition 1 (GEN-SP-01) and Structural Standard Condition 1 (PRE-SS-01) in Section III.D *Soil Protection* of this order.

<sup>54</sup> OAR 345-022-0022, effective May 15, 2007.

<sup>55</sup> B2HAMD1 Request for Amendment 1 Table 7.1-3. 2023-06-08; B2HAPPDoc3-16 ASC 09a Exhibit I Soil ASC Part 1 2018-09-28, Section 3.5.1.1, page I-13.

<sup>56</sup> B2HAMD1 Request for Amendment 1 Tables 5.2-2, 5.2-4, 5.2-6, 5.2-8 and 5.2-10 2023-06-08, pg. 9-14.

**Table 9: Land Use and Cover Types within RFA1 Site Boundary Additions**

County	Acres Within Analysis Area	High Value Farmland Soils within Analysis Area	Acres Impacted	Zone(s)	Land Cover Types
Morrow	140.6	73.8	23.8	Exclusive Farm Use	Agriculture; shrubland
Umatilla	71.3	59.4	11.1	Exclusive Farm Use; Grazing-Farm	Agriculture; forest/woodland; grassland; shrubland; riparian
Union	36.7	20.7	6.5	Exclusive Farm-Use; Agriculture-Grazing; Timber-Grazing	Forest/woodland; riparian; shrubland
Baker	648.3	479.1	120.6	Exclusive Farm Use	Forest/woodland; grassland; shrubland; riparian
Malheur	139.1	7.9	25.2	Exclusive Farm Use – Exclusive Range Use; Heavy Industrial	Agriculture; grassland; shrubland; open water

1  
2 Soil properties and land cover types within the RFA1 site boundary additions were determined  
3 by reviewing U.S. Department of Agriculture’s 2011 Natural Resources Conservation Service  
4 (NRCS) State Soil Geographic Database. Slope within the RFA1 site boundary additions was  
5 evaluated using the USGS’s National Elevation Dataset. RFA1 Attachment 7-1 presents soil  
6 properties by soil map unit; RFA1 Figures 7-3 and 7-4 present the soil map units. As presented  
7 in RFA1 Table 7-3 and RFA1 Attachment 7-1, some soils within the RFA1 site boundary additions  
8 have high wind and water erodibility; low soil loss tolerance; or have slopes greater than 25  
9 percent.

10  
11 *Construction*

12  
13 Construction activities within the RFA1 site boundary additions will result in approximately 129  
14 acres of temporary disturbance. Construction activities will include clearing, grubbing, grading,  
15 blasting, backfilling, and excavation activities within the site boundary.<sup>57</sup> Impacts will include

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<sup>57</sup> B2HAPPDoc3-16 ASC 09a\_ Exhibit I\_Soil\_ASC\_Part 1 2018-09-28, Section 3.5.1.1.

1 erosion, compaction, loss of soil productivity, damage to land drainage and irrigation systems,  
2 mixing of topsoil and subsoils, and loss of topsoil.<sup>58</sup>

3  
4 To minimize construction-related erosion impacts, Council previously imposed Soil Protection  
5 Condition 1 (Condition GEN-SP-01) requiring that the certificate holder:

- 6 • Submit a final Erosion Sediment Control Plan (ESCP), as included in the DEQ-issued  
7 1200-C permit, to the Department, prior to construction; and,
- 8 • Based on the final ESCP, conduct all work in compliance with the 1200-C permit  
9 requirements and ESCP.

10  
11 The soil characteristics and type/extent of impacts resulting from construction of the RFA1 site  
12 boundary additions would not differ from those previously evaluated by Council in the *Final*  
13 *Order on the ASC*. However, the Council amends Soil Protection Condition 1 (Condition GEN-SP-  
14 01) to support effective implementation and intent of the ESCP under the Site Certificate.

15  
16 Under the 1200-C permit, an ESCP can be revised throughout construction to address  
17 numerous changes.<sup>59</sup> However, the language of existing Soil Protection Condition 1 (Condition  
18 GEN-SP-01) could be interpreted to limit the ESCP to one version – a singular version finalized  
19 prior to construction. The existing condition also does not provide the *Department* the  
20 authority to require that changes be implemented in an ESCP. The Council finds that the  
21 Department must be given authority to require revisions to the ESCP because it is the ESCP that  
22 Council relies upon to ensure that erosion impacts are minimized, in compliance with the Soil  
23 Protection. Council amends the condition as presented below:

24  
25 **Amended Soil Protection Condition 1:** The certificate holder shall:

- 26 a. Prior to construction of the facility, submit to the Department a ODEQ-issued NPDES  
27 1200-C General Construction Permit and Erosion Sediment Control Plan (ESCP).
- 28 b. During construction of the facility, the certificate holder shall conduct all work in  
29 compliance with the NPDES 1200-C General Construction Permit, ESCP or revised ESCP,  
30 if applicable. The ESCP shall be revised if determined necessary by the certificate  
31 holder, certificate holder’s contractor(s) or the Department. Any Department-required  
32 ESCP revisions shall be implemented within 14-days, unless otherwise agreed to by the  
33 Department based on a good faith effort to address erosion issues.

34 [GEN-SP-01; *Final Order on ASC*; AMD1]

35  
36 Construction will result in risk to soils from spills or leakage of chemicals, petroleum products  
37 such as diesel fuel, or other materials.<sup>60</sup> Construction will include use and storage, at

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<sup>58</sup> B2HAPPDoc3-16 ASC 09a\_Exhibit I\_Soil\_ASC\_Part 1 2018-09-28, Table I-4 and Section 3.5.4.

<sup>59</sup> DEQ Construction Stormwater Application and Forms Manual. Accessed June 11, 2023: [wqp1200cinfo.pdf \(oregon.gov\)](http://wqp1200cinfo.pdf(oregon.gov)), pg. 17-18. ESCP revisions under the 1200-C permit can be made for: emergency situations; registrant change of address; change in size of project; change in size or location of disturbed areas; changes to best management practices; changes in erosion and sediment control inspector; and changes in DEQ or agent requests.

<sup>60</sup> B2HAPPDoc3-16 ASC 09a\_Exhibit I\_Soil\_ASC Part 1 2018-09-28, Sections 3.5.1.6 and 3.6.3.

1 designated locations, of gasoline; diesel; motor and gear oil; antifreeze; transmission fluid;  
2 hydraulic fluid; detergents; paint/solvents; herbicides; jet fuel for helicopter use; and blasting  
3 materials (where needed to blast rock).

4  
5 Council previously imposed Soil Protection Condition 2 (Condition GEN-SP-02) requiring that the  
6 certificate holder finalize a Construction Spill Prevention Control and Countermeasure Control  
7 (SPCC) Plan, consistent with the draft SPCC Plan included in *Final Order on ASC* Attachment G-4;  
8 and that the requirements of the final SPCC Plan be adhered to throughout construction. In  
9 RFA1, the certificate holder requests that Council amend Soil Protection Condition 2 (Condition  
10 GEN-SP-02), to replace the SPCC Plan with a Hazardous Waste Management and Spill Response  
11 Plan (HWMSRP). The certificate holder agrees to include all prior representations of *Final Order*  
12 *on ASC* Attachment G-4 in the HWMSRP, and that the HWMSRP would continue to include a  
13 complete inventory of hazardous and non-hazardous materials (Material Safety Data Sheets,  
14 quantity, location) and appropriate spill response plan/materials; and emergency response  
15 contact information. Because the difference between the SPCC Plan and HWMSRP is not  
16 substantive for purposes of compliance under the Soil Protection standard, the Council amends  
17 the condition as requested:

18  
19 **Amended Soil Protection Condition 2:** The certificate holder shall:

- 20 a. Prior to construction of the facility, submit to the Department a final copy of a  
21 Construction Hazardous Waste Management and Spill Response Plan (HWMSRP).  
22 The protective measures described in the draft Construction HWMSRP, as provided  
23 in Attachment G-4 of the Final Order on the RFA1, shall be included in the final  
24 HWMSRP, unless otherwise approved by the Department.  
25 b. During construction of the facility, the certificate holder shall conduct all work in  
26 compliance with the Construction HWMSRP.

27 [Soil Protection Condition 2; *Final Order on ASC*; AMD1]

28  
29 Construction activities may include blasting in areas where shallow bedrock is encountered. To  
30 minimize potential soil-related impacts from blasting, including subsidence, landslides, and  
31 slope instability, Council previously imposed Soil Protection Condition 4 (Condition GEN-SP-04).  
32 Soil Protection Condition 4 (Condition GEN-SP-04) requires that, prior to construction, the  
33 certificate holder finalize a Blasting Plan; and, during construction, as applicable to blasting  
34 activities, implement and adhere to the requirements of the final Blasting Plan. The Blasting  
35 Plan, as provided in *Final Order on ASC* Attachment G-5, includes safety procedures and a  
36 notification process, as summarized below:

- 37 • At least 14-days prior to any blasting necessary during construction of the facility,  
38 certificate holder shall ensure that its Construction Contractor identifies all  
39 landowners of record and occupants within 1,250 feet of blasting actions and  
40 provide notification to those landowners and occupants of the blasting schedule,  
41 certificate holder or construction contractor contact information, potential  
42 risks/hazards and of measures that will be taken to monitor and minimize any  
43 ground shaking impacts.

- 1 • The construction contractor would publish a proposed blasting schedule in the local  
2 newspaper 1 week prior to any blasting activities. The schedule would identify the  
3 location, dates, and times blasting would occur. No blasting would occur outside of the  
4 published schedule, except in emergency situations.
- 5 • The construction contractor would post warning signs at all entry points near blasting  
6 locations. Warning signs would include information on blasting, including the general  
7 hours blasting might take place, and audible signals to be used warning of impending  
8 blasting and to indicate the site is all clear.
- 9 • Access points to areas where blasting would take place would be blocked to prevent  
10 access by the public at least 30 minutes prior to blasting. The site shall be swept 5  
11 minutes prior to blasting to ensure no unauthorized personnel have wandered onto the  
12 site. An audible warning signal, capable of carrying for 0.5 mile, shall be used at least 2  
13 minutes prior to blasting. An “all-clear” signal will be given once it has been determined  
14 the area is safe.
- 15 • Blasting in the vicinity of pipelines would be coordinated with the pipeline operator and  
16 would follow operator-specific procedures, as needed.
- 17 • During right-of-way negotiations, the applicant would consult with underlying  
18 landowners to confirm whether property to be crossed by facility contains a well or  
19 spring, and whether, if blasting is identified as a construction technique within subject  
20 property, landowner requests pre-blast flow measurements to assess any potential  
21 damages from blasting. If damages result solely from the blasting activity, applicant  
22 would provide compensation for adequate repair or replacement.

23  
24 The plan requires implementation of a seismic monitoring plan or application of scaled distance  
25 factors to monitor and ensure ground vibration at the nearest structures do not exceed NFPA  
26 established limits during blasting activities. The plan requires preparation and submittal of a  
27 post monitoring and seismic report; and, that the contractor demonstrate active insurance  
28 coverage for a minimum of \$1,000,000.<sup>61</sup>

29  
30 As described in the *Final Order on the ASC*, there are no specific local permits or local or state  
31 regulatory requirements within Council’s jurisdiction that apply to blasting or use of explosives.  
32 However, the condition requires that the Blasting Plan be finalized based on review and  
33 approval by the Department, in consultation with appropriate state and local agencies. Because  
34 there are no local or state blasting or use of explosive regulations that are within the  
35 jurisdiction of Council or reviewing agencies<sup>62</sup>, the Council amends the condition to remove the  
36 final agency review and approval process. The plan would still be required to be finalized prior  
37 to blasting activities; would be required to maintain all requirements described above; and  
38 would be required to be adhered to during all construction-related blasting activities. The  
39 condition amendment would only remove the process of final review and approval for  
40 elements of the plan for which neither the Department nor reviewing agencies have technical  
41 expertise or jurisdictional authority. The amended condition is presented below:

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<sup>61</sup> B2HAPP Proposed Order Agency Consultation DOGAMI 2019-10-30.

<sup>62</sup> Reviewing agency as defined in OAR 345-001-0010(28).

1  
2 **Amended Soil Protection Condition 4:**

- 3 a. Prior to construction-related blasting, the certificate holder shall finalize, and submit  
4 to the Department, a final Blasting Plan inclusive of all measures included in the  
5 draft Framework Blasting Plan (Final Order on RFA1 Attachment G-5). The final  
6 Blasting Plan shall meet all applicable federal, state and local requirements related  
7 to the transportation, storage and use of explosive.  
8 b. Prior to construction-related blasting the certificate holder will consult with  
9 landowners regarding right-of-way acquisition, and during these consultations, the  
10 certificate holder will discuss with the landowner any blasting that the certificate  
11 holder plans to conduct on the landowner’s property. If the landowner identifies a  
12 natural spring or well on the property, the certificate holder will notify the  
13 landowner that at the landowner’s request, the certificate holder shall conduct pre-  
14 blasting baseline flow and water quality measurements for turbidity. The certificate  
15 holder shall compensate the landowner for adequate repair or replacement if  
16 damages to the flow or quality of the natural spring are caused by blasting.  
17 c. During construction-related blasting, the certificate holder shall conduct all work in  
18 compliance with the final Blasting Plan.  
19 [GEN-SP-04, *Final Order on ASC, AMD1*]  
20

21 The Council also amends Structural Standard Condition 1 to remove the requirement that the  
22 certificate holder notify the Department of blasting locations in the submittal of the pre-  
23 construction geotechnical report. Potential need for blasting will be determined by the  
24 construction contractor, which will be required to demonstrate landowner consultation and  
25 noticing, as described above, in advance of any blasting. Requiring that the geotechnical report  
26 identify potential blasting locations, in tabular format, is redundant and unnecessary given the  
27 requirements of the Blasting Plan.  
28

29 **Amended Structural Standard Condition 1:** At least 90 days prior to construction of a  
30 phase or segment of the facility, unless otherwise approved by the Department:

- 31 a.  
32 b. The certificate holder shall submit to the Department and DOGAMI pre-construction  
33 site-specific geological and geotechnical investigation reports..  
34 i. ...  
35

36 *Operation*  
37

38 Operation of facility components within the RFA1 site boundary additions would have the  
39 potential for soil erosion from O&M related disturbance at tower sites and use of access roads.  
40 Council previously imposed Soil Protection Condition 5 (Condition OPR-SP-01) requiring that the  
41 certificate holder inspect and repair any erosion related impacts resulting from O&M activities.  
42

43 **III.D.2. Conclusions of Law**  
44

1 Based on the foregoing analysis, and subject to compliance with the existing and recommended  
2 amended conditions described above, the Council finds that the RFA1 site boundary additions  
3 are not likely to result in a significant adverse impact to soils.  
4

5 **III.E. LAND USE: OAR 345-022-0030**  
6

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

10  
11 *(2) The Council shall find that a proposed facility complies with section (1) if:*

12  
13 *(a) The applicant elects to obtain local land use approvals under ORS*  
14 *469.504(1)(a) and the Council finds that the facility has received local land use*  
15 *approval under the acknowledged comprehensive plan and land use*  
16 *regulations of the affected local government; or*

17  
18 *(b) The applicant elects to obtain a Council determination under ORS*  
19 *469.504(1)(b) and the Council determines that:*

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

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

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

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

1 *criteria and apply them or to evaluate the proposed facility against the*  
2 *statewide planning goals.*

3  
4 *(4) The Council may find goal compliance for a proposed facility that does not*  
5 *otherwise comply with one or more statewide planning goals by taking an*  
6 *exception to the applicable goal. Notwithstanding the requirements of ORS*  
7 *197.732, the statewide planning goal pertaining to the exception process or*  
8 *any rules of the Land Conservation and Development Commission pertaining*  
9 *to the exception process, the Council may take an exception to a goal if the*  
10 *Council finds:*

11  
12 *(a) The land subject to the exception is physically developed to the extent that*  
13 *the land is no longer available for uses allowed by the applicable goal;*

14  
15 *(b) The land subject to the exception is irrevocably committed as described by*  
16 *the rules of the Land Conservation and Development Commission to uses not*  
17 *allowed by the applicable goal because existing adjacent uses and other*  
18 *relevant factors make uses allowed by the applicable goal impracticable; or*

19  
20 *(c) The following standards are met:*

21  
22 *(A) Reasons justify why the state policy embodied in the applicable goal*  
23 *should not apply;*

24  
25 *(B) The significant environmental, economic, social and energy consequences*  
26 *anticipated as a result of the proposed facility have been identified and*  
27 *adverse impacts will be mitigated in accordance with rules of the Council*  
28 *applicable to the siting of the proposed facility; and*

29  
30 *(C) The proposed facility is compatible with other adjacent uses or will be*  
31 *made compatible through measures designed to reduce adverse impacts.*

32  
33 *(5) If the Council finds that applicable substantive local criteria and applicable*  
34 *statutes and state administrative rules would impose conflicting requirements,*  
35 *the Council shall resolve the conflict consistent with the public interest. In*  
36 *resolving the conflict, the Council cannot waive any applicable state statute.*

37  
38 *(6) If the special advisory group recommends applicable substantive criteria*  
39 *for an energy facility described in ORS 469.300(11)(a)(C) to (E) or for a related*  
40 *or supporting facility that does not pass through more than one local*  
41 *government jurisdiction or more than three zones in any one jurisdiction, the*  
42 *Council shall apply the criteria recommended by the special advisory group. If*  
43 *the special advisory group recommends applicable substantive criteria for an*  
44 *energy facility described in ORS 469.300(11)(a)(C) to (E) or a related or*

1 supporting facility that passes through more than one jurisdiction or more  
2 than three zones in any one jurisdiction, the Council shall review the  
3 recommended criteria and decide whether to evaluate the proposed facility  
4 against the applicable substantive criteria recommended by the special  
5 advisory group, against the statewide planning goals or against a combination  
6 of the applicable substantive criteria and statewide planning goals. In making  
7 the decision, the Council shall consult with the special advisory group, and  
8 shall consider:

9  
10 (a) The number of jurisdictions and zones in question;

11  
12 (b) The degree to which the applicable substantive criteria reflect local  
13 government consideration of energy facilities in the planning process; and

14  
15 (c) The level of consistence of the applicable substantive criteria from the  
16 various zones and jurisdictions.<sup>63</sup>

17  
18 **III.E.1. Findings of Fact**

19  
20 The RFA1 site boundary additions are in Morrow, Umatilla, Union, Baker County and Malheur  
21 counties.<sup>64</sup> The RFA1 site boundary additions would be located in the following zones:

- 22  
23 • Morrow County: Exclusive Farm Use (EFU)  
24 • Umatilla County: EFU; Grazing Farm (GF)  
25 • Union County: EFU; Agricultural Grazing (A-2); Timber-Grazing (A-4)  
26 • Baker County: EFU  
27 • Malheur County: EFU-Exclusive Range Use (C-A1 and C-A2); Heavy Industrial (HI)

28  
29 On October 7<sup>th</sup>, 2011, the Council appointed the Morrow County Board of Commissioners,  
30 Umatilla County Board of Commissioners, Union County Board of Commissioners, Baker County  
31 Board of Commissioners, and Malheur County Court, as Special Advisory Groups (SAG) for the  
32 review of the Application for Site Certificate (ASC).<sup>65</sup>

33  
34 As discussed further below, the SAGs recommended applicable substantive criteria for the  
35 review of the ASC. The certificate holder submitted the preliminary Application for Site

---

<sup>63</sup> OAR 345-022-0030, effective September 3, 2003, as amended by minor correction filed May 28, 2019.

<sup>64</sup> Because none of the RFA1 changes are located within the jurisdiction of the City of North Power or the City of Huntington compliance with applicable local substantive criteria from those jurisdictions from comprehensive plans and land use regulations are not discussed further in this Order.

<sup>65</sup> B2HNOIdoc71 B2H SAG Order Union County 2011-10-07 B2H-0341.pdf; B2HNOIdoc72 B2H SAG Order Morrow County 2011-10-07 B2H-0339.pdf; B2HNOIdoc73 B2H SAG Order Baker County 2011-10-07 B2H-0337.pdf; B2HNOIdoc112 B2H SAG Order Malheur County 2011-10-07 B2H-0338.pdf; B2HNOIdoc111 B2H SAG Order Umatilla County 2011-10-07 B2H-0340.pdf.

1 Certificate on February 27, 2013, and as provided in OAR 345-020-0000(9), this was the date  
2 used to determine local applicable substantive criteria for the Council’s review of the ASC.<sup>66</sup>

3  
4 Under OAR 345-027-0375(3)(a), the RFA1 site boundary additions must comply with the  
5 applicable substantive criteria from the comprehensive plans and land use regulations of these  
6 counties in effect on the date the preliminary request for amendment was submitted,  
7 December 7, 2022.

8  
9 *III.E.1.a Morrow County Applicable Substantive Criteria*

10  
11 In the *Final Order on the ASC*, the Council evaluated the facility’s compliance with applicable  
12 provisions of Morrow County Zoning Ordinance (MCZO) Section 3.010 (EFU Zone), Section  
13 3.070 (General Industrial Zone), Section 3.073 (Port Industrial Zone), Section 3.100 (Flood Plain  
14 Overlay Zone), and Section 3.200 (Significant Resource Sites). The Council also evaluated the  
15 component’s consistency with applicable policies of the Morrow County Comprehensive Plan.

16  
17 The RFA1 site boundary additions in Morrow County include the addition of the Little Juniper  
18 Canyon alternative, located between Little Juniper Lane and Bombing Range Road,  
19 approximately 3 miles south of Naval Weapons Training Facility Boardman (NWTf Boardman).

20  
21 The Little Juniper Canyon alternative would shift a one-mile segment of the approved ASC  
22 transmission line route to the west to minimize impacts to a proposed solar facility.<sup>67</sup> The ASC  
23 alternative route is located on the same tax lots as the RFA1 route, within predominately  
24 cultivated lands in Exclusive Farm Use zoned land but is outside of the previously approved site  
25 boundary.<sup>68</sup>

26  
27 The Little Juniper Canyon alternative would include the construction of 4 single-circuit lattice  
28 towers supporting the 500-kv transmission line, 2 pulling and tensioning sites, and 1.4 miles of  
29 access road changes. The site boundary additions associated with the Little Juniper Canyon  
30 Alternative are expected to result in permanent impacts to approximately 2.5 acres of  
31 predominantly cultivated land zoned for Exclusive Farm Use.<sup>69</sup> These impacts are assumed to be  
32 in lieu of, not in addition to, impacts from the portion of the approved ASC facility sited on the  
33 same tax lots.

34  
35 RFA1 also includes 2.8 miles of access road changes in Morrow County not associated with the  
36 Little Juniper Canyon Alternative, including 0.9 miles of improvements to existing roads and 1.9  
37 miles of new roads. The access road changes are located on lands zoned for Exclusive Farm Use  
38 adjacent to the Naval Weapons Systems Training Facility Boardman (NWSTf Boardman) and  
39 near Butter Creek.

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<sup>66</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 149 of 10586.

<sup>67</sup> B2HAMD1 RFA1 2023-06-08. Table 4.1-1.

<sup>68</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-1 (Map 1); Figure 7-5 and Figure 7-13.

<sup>69</sup> B2HAMD1 RFA1 2023-06-08. Section 5.2.3.

1  
 2 Because the RFA1 site boundary additions are located on EFU-zoned land, consistency with  
 3 MCZO Section 3.010 is evaluated.  
 4  
 5 Portions of the additions associated with the Little Juniper Creek alternative are also located  
 6 within the 100-year flood plain of Little Juniper Creek and are classified as a Special Flood  
 7 Hazard Area in the Flood Plain Overlay Zone. These additions are evaluated for consistency with  
 8 MCZO Section 3.100.  
 9  
 10 No RFA1 additions are located within Morrow County’s General or Port Industrial Zones, and  
 11 there are no Significant Resource Sites identified by Morrow County’s Significant Resource  
 12 Overlay Map (1985), located within the additions, so MCZO Sections 3.070, 3.073, and 3.200 do  
 13 not apply to the evaluation of RFA1.  
 14  
 15 The Council previously evaluated the facility components in Morrow County for consistency  
 16 with Agricultural Lands, Natural Hazards, and Public Facilities and Services Elements of the  
 17 Morrow County Comprehensive Plan. Because the Public Facilities and Services Elements that  
 18 were previously identified as applicable to the facility are concerned with the siting of  
 19 substations, and no changes to the locations of substations associated with the facility are part  
 20 of RFA1, those findings and policies are not evaluated further in this order.  
 21  
 22 The applicable substantive criteria from the MCZO and Comprehensive Plan are listed in Table  
 23 10: *Morrow County Applicable Substantive Criteria* below.

**Table 10: Morrow County Applicable Substantive Criteria**

Section	Description
<b>Morrow County Zoning Ordinance (MCZO)</b>	
Section 3.010	Exclusive Farm Use, EFU Zone
Section D	Conditional Uses Permitted
Section 3.100	Flood Plain Overlay Zone
Section 4.1	Establishment of Development Permit
Section 5.1	General Standards
<b>Morrow County Comprehensive Plan (MCCP)</b>	
Agricultural Lands Element	Agricultural Policy 1
Natural Hazards Element	Natural Hazards Policy 2

24  
 25 MCZO 3.010, Exclusive Farm Use (EFU) Zone

26  
 27 *“B. Uses Permitted Outright. In the EFU zone, the following uses and activities*  
 28 *and their accessory buildings and uses are permitted subject to the general*  
 29 *provisions set forth by this ordinance:*  
 30

1 \* \* \* \* \*

2  
3 *“25. Utility facilities necessary for public service, including associated*  
4 *transmission lines as defined in Article 1 and wetland waste treatment*  
5 *systems, but not including commercial facilities for the purpose of generating*  
6 *electrical power for public use by sale or transmission towers over 200 feet in*  
7 *height as provided in Subsection D.10.*

8  
9 \* \* \* \* \*

10  
11 *“D. Use Standards*

12  
13 \* \* \* \* \*

14  
15 *“10. A utility facility that is necessary for public service.*

16  
17 *a. A utility facility is necessary for public service if the facility must be sited in*  
18 *the exclusive farm use zone in order to provide the service.*

19  
20 *(1) To demonstrate that a utility facility is necessary, an applicant must show*  
21 *that reasonable alternatives have been considered and that the facility must*  
22 *be sited in an exclusive farm use zone due to one or more of the following*  
23 *factors:*

24  
25 *(a) Technical and engineering feasibility;*

26  
27 *(b) The proposed facility is locationally-dependent. A utility facility is*  
28 *locationally dependent if it must cross land in one or more areas zoned for*  
29 *exclusive farm use in order to achieve a reasonably direct route or to meet*  
30 *unique geographical needs that cannot be satisfied on other lands;*

31  
32 *(c) Lack of available urban and nonresource lands;*

33  
34 *(d) Availability of existing rights of way;*

35  
36 *(e) Public health and safety; and*

37  
38 *(f) Other requirements of state and federal agencies.*

39  
40 *(2) Costs associated with any of the factors listed in Subsection (1) may be*  
41 *considered, but cost alone may not be the only consideration in determining*  
42 *that a utility facility is necessary for public service. Land costs shall not be*  
43 *included when considering alternative locations for substantially similar utility*  
44 *facilities and the siting of utility facilities that are not substantially similar.*

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

9  
10           (4) *The county shall impose clear and objective conditions on an application*  
11           *for utility facility siting to mitigate and minimize the impacts of the proposed*  
12           *facility, if any, on surrounding lands devoted to farm use in order to prevent a*  
13           *significant change in accepted farm practices or a significant increase in the*  
14           *cost of farm practices on surrounding farmlands.*

15  
16           (5) *Utility facilities necessary for public service may include on-site and off-site*  
17           *facilities for temporary workforce housing for workers constructing a utility*  
18           *facility. Such facilities must be removed or converted to an allowed use under*  
19           *the EFU Zone or other statute or rule when project construction is complete.*  
20           *Off-site facilities allowed under this Subsection are subject to Article 6.*  
21           *Temporary workforce housing facilities not included in the initial approval may*  
22           *be considered through a minor amendment request. A minor amendment*  
23           *request shall have no effect on the original approval.*

24  
25           (6) *In addition to the provisions of Subsection D.10.a(1) through (4), the*  
26           *establishment or extension of a sewer system as defined by OAR 660-011-*  
27           *0060(1)(f) shall be subject to the provisions of 660-011-0060.*

28  
29           (7) *The provisions of Subsection a do not apply to interstate natural gas*  
30           *pipelines and associated facilities authorized by and subject to regulation by*  
31           *the Federal Energy Regulatory Commission.*

32  
33           \* \* \* \* \*

34  
35 MCZO 3.010 provides that a utility facility necessary for public service, excluding a commercial  
36 power generation facility or a transmission tower over 200 feet in height, is a use permitted by  
37 right in Morrow County’s Exclusive Farm Use Zone. The Little Juniper Creek alternative would  
38 include the construction of four transmission towers to support the 500-kv transmission line.  
39 The towers will be between approximately 108 and 200 feet in height and will not exceed 200  
40 feet.<sup>70</sup>

41  

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<sup>70</sup> B2HAPPDoc3-3 ASC 02a\_Exhibit\_B\_Project Description\_ASC 2018-09-28, page 56 of 96

1 The criteria for whether a utility facility is necessary for public service is provided under MCZO  
2 3.010.D.10.a. These criteria mirror the underlying provisions of ORS 215.275. In the *Final Order*  
3 *on the ASC*, the Council determined that the transmission line qualifies as a utility facility  
4 necessary for public service under ORS 215.275 because there was no reasonably direct route  
5 that would allow the applicant to construct the transmission line while avoiding all impacts to  
6 EFU zoned land, that the applicant had demonstrated a “lack of available nonresource lands”  
7 for which to site the proposed facility; and that the applicant had proposed the route to utilize  
8 some available rights-of-ways.<sup>71</sup> The Council also determined that access roads and other  
9 ancillary facilities located in EFU Zones were to be evaluated as accessory uses to the  
10 transmission line.<sup>72</sup>

11  
12 The RFA1 site boundary additions do not significantly change the nature or extent of the use.  
13 Accordingly, the Council continues to rely on its previous findings that the portion of the facility,  
14 including related or supporting facilities, located in Morrow County’s EFU Zone, continue to  
15 qualify as utility facilities necessary for public service.

16  
17 MCZO 3.010.D.10.a(4) requires the County, or in this case, the Council, to impose clear  
18 and objective conditions to mitigate and minimize the impacts of the proposed facility  
19 on surrounding lands devoted to farm use in order to prevent a significant change in  
20 accepted farm practices or a significant increase in the cost of farm practices on  
21 surrounding farmlands.

22  
23 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11) requiring that  
24 the certificate holder finalize and implement an Agricultural Assessment and Mitigation Plan  
25 prescribing monitoring and mitigation of impacts to soils and activities.

26  
27 Because the Council previously determined that the facility is a permitted use in Morrow  
28 County’s EFU Zone, because the RFA1 site boundary additions do not significantly change the  
29 nature or extent of the use and because the Council previously imposed conditions ensuring  
30 compliance with the applicable use standards that would continue to apply, the Council finds  
31 that the RFA1 site boundary additions would continue to comply with MCZO Section 3.010.

32  
33 MCZO 3.100.4.1, Establishment of Development Permit

34  
35 *4.1-1 Development Permit Required.*

36  
37 *A development permit shall be obtained before construction or development*  
38 *begins within any area of special flood hazard established in Section 3.2. The*  
39 *permit shall be for all structures including manufactured homes, as set forth in*

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<sup>71</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 255-256 of 10586.  
<sup>72</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 156 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

1 the "DEFINITIONS", and for all development including fill and other activities,  
2 also as set forth in the "DEFINITIONS".

3  
4 *4.1-2 Application for Development Permit.*

5  
6 *Application for a development permit shall be made on forms furnished by the*  
7 *Morrow County Planning Director and may include but not be limited to; plans*  
8 *in duplicate drawn to scale showing the nature, location, dimensions, and*  
9 *elevations of the area in question; existing or proposed structures, fill, storage*  
10 *of materials, drainage facilities, and the location of the foregoing. Specifically,*  
11 *the following information is required:*

12  
13 *(1) Elevation in relation to mean sea level, of the lowest floor (including*  
14 *basement) of all structures;*

15  
16 *(2) Elevation in relation to mean sea level to which any structure has been*  
17 *flood proofed;*

18  
19 *(3) Certification by a registered professional engineer or architect that the*  
20 *flood proofing methods for any non-residential structure meet the flood*  
21 *proofing criteria in Section 5.2-2; and*

22  
23 *(4) Description of the extent to which a watercourse will be altered or*  
24 *relocated as a result of proposed development.*

25  
26 Portions of the RFA1 site boundary additions associated with Little Juniper Canyon alternative  
27 fall within the 100-year flood plain of Little Juniper Creek and would be subject to the  
28 provisions of MCZO 3.100.4.1-1.

29  
30 The Council previously imposed Land Use Condition 1 (Condition GEN-LU-01) requiring that, in  
31 relevant part, the certificate holder comply with and provide to the Department an approved  
32 flood plain development permit for any work in the Morrow County Flood Plain Overlay Zone,  
33 consistent with the requirements of MCZO 3.100.4.1. Because existing conditions would ensure  
34 compliance with its provisions, the Council finds that the RFA1 site boundary additions would  
35 comply with MCZO 3.100.4.1.

36  
37 MCZO 3.100.5.1, General Standards

38  
39 *In all areas of special flood hazards, the following standards are required:*

40  
41 *5.1-1 Anchoring*

42  
43 *(1) All new construction and substantial improvements shall be anchored*  
44 *to prevent flotation, collapse, or lateral movement of the structure.*

1  
2 *(2) All manufactured homes must likewise be anchored to prevent*  
3 *flotation, collapse or lateral movement, and shall be installed using*  
4 *methods and practices that minimize flood damage. Anchoring methods*  
5 *may include, but are not limited to, use of over-the-top or frame ties to*  
6 *ground anchors (Reference FEMA's "Manufactured Home Installation in*  
7 *Flood Hazard Areas: guidebook for additional techniques).*

8  
9 *5.1-2 Construction Materials and Methods*

10  
11 *(1) All new construction and substantial improvements shall be*  
12 *constructed with materials and utility equipment resistant to flood*  
13 *damage.*

14  
15 *(2) All new construction and substantial improvements shall be*  
16 *constructed using methods and practices that minimize flood damage.*

17  
18 *(3) Electrical, heating, ventilation, plumbing, and air-conditioning*  
19 *equipment and other service facilities shall be designed and/or otherwise*  
20 *elevated or located so as to prevent water from entering or accumulating*  
21 *within the components during conditions of flooding.*

22  
23 *\* \* \* \* \**

24  
25 *5.4 FLOODWAYS*

26 *Located within areas of special flood hazard established in Section 3.2 are*  
27 *areas designated as floodways. Since the floodway is an extremely hazardous*  
28 *area due to the velocity of floodwaters which carry debris, potential*  
29 *projectiles, and erosion potential, the following provisions apply:*

30  
31 *(1) Prohibit encroachments, including fill, new construction, substantial*  
32 *improvements, and other development unless certification by a registered*  
33 *professional engineer or architect is provided demonstrating that*  
34 *encroachments shall not result in any increase in flood levels during the*  
35 *occurrence of the base flood discharge.*

36  
37 *(2) If Section 5.4(1) is satisfied, all new construction and substantial*  
38 *improvements shall comply with all applicable flood hazard reduction*  
39 *provisions of Section 5.0, PROVISIONS FOR FLOOD HAZARD REDUCTION.*

40  
41 The RFA1 site boundary additions associated with the Little Juniper Canyon alternative fall  
42 within the 100-year flood plain of Little Juniper Creek. The Council previously imposed Land Use  
43 Condition 2 (Condition GEN-LU-02) requiring that, in relevant part, that all buildings and the  
44 fixed bases of the transmission line towers located in Morrow County's EFU Zone be set back at

1 least 100 feet from the high-water mark of all streams and lakes. Based upon compliance with  
2 the condition, the Council finds that no transmission towers associated with the Little Juniper  
3 Canyon alternative would be located within a Special Flood Hazard Area, and that the RFA1 site  
4 boundary additions would comply with MCZO 3.100.5.1.

5  
6 Council previously imposed Land Use Condition 2 (Condition GEN-LU-02) requiring that, in  
7 relevant part, that all buildings and the fixed bases of the transmission line towers located in  
8 Morrow County’s EFU Zone be set back at least 100 feet from the high-water mark of all  
9 streams and lakes. Based upon compliance with the condition, the Council finds that no  
10 transmission towers associated with the Little Juniper Canyon alternative would be located  
11 within a floodway, and that the RFA1 site boundary additions would comply with MCZO  
12 3.100.5.4.

13  
14 MCCP Agricultural Lands Policy 1

15  
16 *It shall be the policy of Morrow County, Oregon, to preserve agricultural lands,*  
17 *to protect agriculture as its main economic enterprise, to balance economic*  
18 *and environmental considerations, to limit non-compatible nonagricultural*  
19 *development, and to maintain a high level of livability in the County.*

20  
21 In its *Final Order on the ASC*, the Council found that, based on the applicant’s proposed  
22 mitigation for temporary agricultural impacts and overall minimal permanent impacts to  
23 agricultural lands from facility components, the facility would be consistent with MCCP  
24 Agricultural Lands Policy 1.<sup>73</sup> The facility, as evaluated in the *Final Order on the ASC*, would  
25 result in approximately 240 acres of temporary and permanent impacts to agricultural lands in  
26 Morrow County.<sup>74</sup> The RFA1 site boundary additions would result in less than 28 acres of  
27 temporary and permanent impacts to agricultural lands, and would not be additive to the  
28 previously evaluated impacts for the facility.

29  
30 As described above, the Council previously imposed Land Use Condition 14 (Condition GEN-LU-  
31 11), requiring that the certificate holder finalize and implement an Agricultural Assessment and  
32 Mitigation Plan prescribing monitoring and mitigation of impacts to soils and activities. This  
33 condition continues to apply.

34  
35 Because the RFA1 site boundary additions would not significantly increase the quantity of  
36 agricultural lands in Morrow County impacted by the construction and operation of the facility,  
37 and because the Council previously imposed conditions ensuring the monitoring and mitigation  
38 of impacts to soils and agricultural activities, the Council finds that the RFA1 site boundary  
39 additions would comply with MCCP Agricultural Lands Policy 1.

40  

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<sup>73</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 169 of 10586.

<sup>74</sup> B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.4.5.4 Table K-10, p. K-114.

1 MCCP Natural Hazards Element  
2

3 In the *Final Order on the ASC*, the Council evaluated the facility’s compliance with the MCCP  
4 Natural Hazards element generally, finding that because the facility was designed to minimize  
5 and avoid locating facility components in hazard-prone areas, the facility would be consistent  
6 with the element’s provisions.<sup>75</sup>  
7

8 The Morrow County Comprehensive Plan’s Natural Hazard Element was updated in 2016. The  
9 updated section establishes several Natural Hazard Policies, including Natural Hazard Policy 2,  
10 which provides:  
11

12 *County land use regulation will assure proposed developments will receive a*  
13 *review of potential natural hazards and that sufficient authority exists to*  
14 *modify or deny applications where such hazards exist. Such provisions shall, at*  
15 *a minimum, require specific information clearly determining the degree of*  
16 *hazard present from applicants who seek approval to develop residential,*  
17 *commercial, or industrial uses within known areas of natural disasters and*  
18 *hazards.*  
19

20 As described above, the Council previously imposed Land Use Condition 2 (Condition GEN-LU-  
21 02) requiring that, in relevant part, all buildings and the fixed bases of the transmission line  
22 towers located in Morrow County’s EFU Zone be set back at least 100 feet from the high-water  
23 mark of all streams and lakes which generally assures that the transmission towers associated  
24 with the Little Juniper Canyon alternative would be located outside of any Special Flood Hazard  
25 Areas. As discussed in more detail in Sections III.C *Structural Standard* and III.N. *Wildfire*  
26 *Prevention and Risk Mitigation*, the Council also previously imposed Structural Standard  
27 Condition 1 (Condition PRE-SS-01) requiring, in relevant part, that the certificate holder provide  
28 a geological and geotechnical investigation report demonstrating that the facility site has been  
29 adequately characterized and the facility has been designed and located to avoid seismic, soil  
30 and geologic hazards; and as discussed in Section III.N., *Wildfire Prevention and Risk Mitigation*,  
31 of this order, Council imposes Wildfire Risk Mitigation Conditions 1 and 2 (GEN-WMP-01 and  
32 OPR-WMP-01) to ensure the certificate holder provide a Wildfire Mitigation Plan which  
33 provides a wildfire risk assessment and establishes action and preventative measures based on  
34 the assessed operational risk from and of wildfire in each county affected by the facility. These  
35 conditions, and by extension, the plans and reports they require, apply to the RFA1 site  
36 boundary additions.  
37

38 Because existing conditions generally assure that the degree of risk from flooding, wildfire, and  
39 geologic hazard at the site will be adequately characterized and addressed prior to construction  
40 of the facility, the Council finds that the RFA1 site boundary additions would comply with  
41 Morrow County Natural Hazards Policy 2, and the MCCP Natural Hazards Element more  
42 generally.

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<sup>75</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 170 of 10586.

1  
2 *III.E.1.b Umatilla County Applicable Substantive Criteria*  
3

4 In the *Final Order on the ASC*, the Council evaluated the facility’s compliance with applicable  
5 provisions of Umatilla County Development Code (UCDC) 152.010 (Access to Buildings); 152.016  
6 (Riparian Vegetation); 152.017 (Conditions for Development Proposals); 152.439 (Historical,  
7 Archeological or Cultural Site/Structure Overlay; Criteria for Review); and 152.456 (Critical  
8 Winter Range Overlay; Applicability); 152.055 to 152.063 (EFU Zones); 152.080 to 152.089  
9 (Grazing/Farm Zone); 152.281 to 152.286 (Rural Tourist Commercial Zone); and 152.301 to  
10 152.306 (Light Industrial Zone). The Council also evaluated the facility’s compliance with  
11 findings and policies of the Umatilla County Comprehensive Plan’s Chapters dedicated to Open  
12 Space, Scenic and Historic Areas, and Natural Resources, Public Facilities and Services, and  
13 Transportation.  
14

15 The RFA1 site boundary additions in Umatilla County are associated with design changes to 3.4  
16 miles of access roads located along the previously approved site boundary. The changes would  
17 include substantial improvements to 1.4 miles of existing road and the construction of 2 miles  
18 of new access roads and would permanently impact approximately 5.6 acres.<sup>76</sup>  
19

20 The RFA1 site boundary additions in Umatilla County are located in the County’s Exclusive Farm  
21 Use (EFU) and Grazing Farm (GF) zones. There are no site boundary additions in Umatilla  
22 County’s Rural Tourist Commercial Zone, Light Industrial Zone, or Historical, Archeological or  
23 Cultural Site/Structure Overlay Zone and compliance with the UCDC sections applicable to  
24 those zones are not discussed further in this order. While there are RFA1 site boundary  
25 additions within Umatilla County’s Critical Winter Range Overlay Zone, no criteria or  
26 requirements associated with that zone that are applicable to the facility have been identified.  
27

28 The Umatilla County Board of Commissioners has adopted ordinances amending the Umatilla  
29 County Comprehensive Plan and UCDC since the submission of the initial preliminary  
30 Application for Site Certificate on February 27, 2013. The provisions of the Umatilla County  
31 Comprehensive Plan in effect as of May 16, 2018, and the UCDC in effect July 19, 2022, are  
32 applicable to the review of the site boundary additions in RFA1.  
33

34 The applicable substantive criteria from the Umatilla County Comprehensive Plan and  
35 Development Code that are evaluated in this order are listed in Table 11 below.

**Table 11: Umatilla County Applicable Substantive Criteria**

Section	Description
Umatilla County Development Code (UCDC), Revision Date July 19, 2022	
Section 152.010	Access to Buildings
Section 152.016	Riparian Vegetation
Section 152.017	Conditions for Development Proposals

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<sup>76</sup> RFA1, Section 5.2.4.

**Table 11: Umatilla County Applicable Substantive Criteria**

Section	Description
Section 152.059	Exclusive Farm Use Zone; Land Use Decisions
Section 152.085	Grazing Farm Zone, Conditional Uses Permitted
Section 152.086	Limitations on Conditional Uses
Section 152.617	Standards for Review: Conditional Uses and Land Use Decisions on EFU and GF Zoned Lands.
Umatilla County Comprehensive Plan (Revision Date May 16, 2018)	
Chapter 8. Open Space, Scenic and Historic Areas, and Natural Resources	Finding and Policy 37
Chapter 14. Public Facilities and Services	Finding and Policy 19
Chapter 15. Transportation	Finding and Policy 18

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25

UCDC 152.010, Access to Buildings

*(A) Every building hereafter erected or moved shall be on a lot that abuts a public street or a recorded easement. All structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking. In commercial and industrial zones, access points shall be minimized. To accomplish this, access shall be limited to one every 200 feet and shall be reviewed during the design review stage or the conditional use hearing. If necessary to accomplish this, driveways may be shared between two lots.*

*(B) Private driveways and easements that enter onto a public or county road or state or federal highway shall be constructed of at least similar if not the same material as the public or county road or state or federal highway to protect the edge of the road from rapid deterioration. The improvements shall extend at least 25 feet back from the edge of the existing travel lane surface.*

In the *Final Order on the ASC*, the Council imposed Land Use Condition 5 (Condition GEN-LU-04) requiring compliance with the requirements of UCDC 152.010. Because this condition would apply to the RFA1 site boundary additions, the Council finds that the RFA1 site boundary additions would comply with UCDC 152.010.

UCDC 152.016, Riparian Vegetation

1 (A) The following standards shall apply for the maintenance, removal and  
2 replacement of riparian vegetation along streams, lakes and wetlands which  
3 are subject to the provisions of this chapter:  
4

5 (1) No more of a parcel's existing vegetation shall be cleared from the setback  
6 and adjacent area than is necessary for uses permitted with a zoning permit,  
7 accessory buildings, and/or necessary access.  
8

9 (2) Construction activities in and adjacent to the setback area shall occur in  
10 such a manner so as to avoid unnecessary excavation and/or removal of  
11 existing vegetation beyond that required for the facilities indicated in  
12 subdivision (A)(1) above. Where vegetation removal beyond that allowed in  
13 subdivision (A)(1) above cannot be avoided, the site shall be replanted during  
14 the next replanting season to avoid water sedimentation. The vegetation shall  
15 be of indigenous species in order to maintain the natural character of the  
16 area.  
17

18 (3) A maximum of 25% of existing natural vegetation may be removed from  
19 the setback area.  
20

21 (4) The following uses and activities are excepted from the above standards:  
22

23 (a) Commercial forest practices regulated by the Oregon Forest Practices Act,  
24 being ORS 527.610 et seq.;

25  
26 (b) Vegetation removal necessary to provide water access for a water  
27 dependent use;

28  
29 (c) Removal of dead or diseased vegetation that poses a safety or health  
30 hazard;

31  
32 (d) Removal of vegetation necessary for the maintenance or replacement of  
33 structural shoreline stabilization.  
34

35 (5) In cases of zoning permits, conditional use permits, variances, and other  
36 land use actions which require site plan review or conditions for approval, and  
37 which are subject to provisions of this division, the review body shall prepare  
38 findings and address the maintenance, removal and replacement of riparian  
39 vegetation.  
40

41 (B) Minor drainage improvements necessary to ensure effective drainage on  
42 surrounding agricultural lands shall be coordinated with the Oregon  
43 Department of Fish and Wildlife and Soil and Water Conservation District.

1            *Existing drainage ditches may be cleared to original specifications without*  
2            *review.*

3  
4            In the *Final Order on the ASC*, the Council imposed Land Use Condition 5 (Condition GEN-LU-04)  
5            requiring, in relevant part, that the certificate holder locate transmission towers and access  
6            roads at least 25 feet from Class I streams and retain at least 75 percent of vegetation within  
7            the riparian areas within Umatilla County, and coordinate with the Oregon Department of Fish  
8            and Wildlife and Soil and Water Conservation District on minor drainage improvements in  
9            Umatilla County necessary to ensure effective drainage on surrounding agricultural lands. This  
10           condition would apply to the RFA1 site boundary additions. Because existing conditions would  
11           ensure compliance with Umatilla County’s riparian vegetation standards, the Council finds that  
12           the RFA1 site boundary additions would comply with UCDC 152.016.

13  
14           UCDC 152.017, Conditions for Development Proposals

15  
16            *(A) The proposed use shall not impose an undue burden on the public*  
17            *transportation system. Any increase meeting the definition of significant*  
18            *change in trip generation constitutes an undue burden.*

19  
20            *(B) For developments likely to generate a significant increase in trip*  
21            *generation, applicant shall be required to provide adequate information, such*  
22            *as a traffic impact study or traffic counts, to demonstrate the level of impact*  
23            *to the surrounding system. The scope of the impact study shall be coordinated*  
24            *with the providers of the transportation facility. Proposals that meet the*  
25            *requirements in §152.019 (B) are subject to §152.019 (C), Traffic Impact*  
26            *Analysis Requirements.*

27  
28            *(C) The applicant or developer may be required to mitigate impacts*  
29            *attributable to the project. Types of mitigation may include such*  
30            *improvements as paving, curbing, bridge improvements, drainage, installation*  
31            *or contribution to traffic signals, construction of sidewalks, bikeways,*  
32            *accessways or paths. The determination of impact or effect should be*  
33            *coordinated with the providers of affected transportation facilities.*

34  
35            *(D) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths,*  
36            *or accessways may be required where the existing transportation system will*  
37            *be impacted by or is inadequate to handle the additional burden caused by the*  
38            *proposed use.*

39  
40            In the *Final Order on the ASC*, the Council found that, while the facility would generate a  
41            significant increase in trip generation during construction, that the increase would be  
42            temporary and would not constitute an undue burden on Umatilla County’s public

1 transportation system.<sup>77</sup> In addition, the Council imposed Public Services Condition 2 (Condition  
2 PRE-PS-02) requiring in relevant part, that the certificate holder prepare and implement a  
3 county-specific Transportation and Traffic Plan that identifies expected traffic related impacts  
4 and mitigation measures. Because traffic related impacts associated with the RFA1 site  
5 boundary additions in Umatilla County are subject to compliance with previously imposed  
6 conditions, the Council finds that, subject to compliance with Public Services Condition 2  
7 (Condition PRE-PS-02), the RFA1 site boundary additions would continue to comply with UCDC  
8 152.017.

9  
10 UCDC 152.059, Land Use Decisions

11  
12 *In an EFU zone the following uses may be permitted through a land use*  
13 *decision via administrative review (§ 152.769) and subject to the applicable*  
14 *criteria found in §152.617. Once approval is obtained a zoning permit (§*  
15 *152.025) is necessary to finalize the decision.*

16  
17 \* \* \* \* \*

18  
19 *(C) Utility facilities necessary for public service, including associated*  
20 *transmission lines as defined in ORS 469.300 and wetland waste treatment*  
21 *systems but not including commercial facilities for the purpose of generating*  
22 *electrical power for public use by sale or transmission or communication*  
23 *towers over 200 feet in height. A utility facility necessary for public service*  
24 *may be established as provided in § 152.617 (II) (7).*

25  
26 UCDC 152.059 provides that a utility facility necessary for public service, excluding a  
27 commercial power generation facility or a transmission tower over 200 feet in height, is a use  
28 permitted by right in Umatilla County’s EFU Zone. The criteria for whether a utility facility is  
29 necessary for public service is provided under UCDC 152.617(II)(7). As described in more detail  
30 below, these criteria mirror the underlying provisions of ORS 215.275, and the Council  
31 previously determined that the transmission line qualifies as a utility facility necessary for  
32 public service under that statute.

33  
34 UCDC 152.059 requires a zoning permit for uses approved through administrative review. The  
35 Council previously imposed Land Use Condition 3 (Condition GEN-LU-03) requiring that the  
36 certificate holder, in relevant part, obtain a Zoning Permit for each tax lot in Umatilla County  
37 crossed by facility components evaluated under UCDC 152.059 including transmission lines,  
38 new roads, and substantially modified roads. This condition applies to RFA1 site boundary  
39 additions.

40  
41 Because the Council previously determined that the facility is a permitted use in Umatilla  
42 County’s EFU Zone, and because the Council previously imposed conditions ensuring

---

<sup>77</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 189 of 10586.

1 compliance with the applicable use standards that would also apply to the RFA1 site boundary  
2 additions, the Council finds that the RFA1 site boundary additions would comply with UCDC  
3 152.059.

4  
5 UCDC 152.085, GF Zone, Conditional Uses Permitted.

6  
7 *In the GF Zone, the following uses may be permitted conditionally via*  
8 *administrative review (§ 152.769), subject to the requirements of § 152.086,*  
9 *applicable supplementary regulations in §§ 152.010 through 152.016 and §§*  
10 *152.545 through 152.562, and applicable §§ 152.610 through 152.615.*  
11 *Specific standards for some of the conditional uses listed below are contained*  
12 *in § 152.616. A zoning permit is required following the approval of a*  
13 *conditional use pursuant to § 152.025. Existing uses classified as conditional*  
14 *use and listed in this section may be expanded subject to administrative*  
15 *review and subject to the requirements listed in this section, except*  
16 *expansions on a parcel or tract meeting the definition of high value farmland*  
17 *will not be permitted.*

18  
19 \* \* \* \* \*

20  
21 *(S) Utilities:*

22  
23 \* \* \* \* \*

24  
25 *(5) New electric transmission lines on land predominately in forest use with*  
26 *right of way widths of up to 100 feet as specified in ORS 772.210. New*  
27 *distribution lines on land predominately in forest use (e.g., gas, oil,*  
28 *geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in*  
29 *width on land predominately in forest use.*

30  
31 \* \* \* \* \*

32  
33 Umatilla County's Grazing/Farm (GF) Zone is a hybrid zone that includes forest land, farmland,  
34 and rangeland. The Council previously evaluated all portions of the facility located in Umatilla  
35 County's GF Zone as being located on lands predominately in forest use.<sup>78</sup>

36  
37 In the *Final Order on the ASC*, the Council found that there were no criteria applicable to the  
38 proposed facility for Umatilla County's GF Zone, and instead, evaluated those components  
39 directly for compliance with OAR 660-006-0025 as a new electric transmission line with a right-

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<sup>78</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 177 of 10586. Facility components sited on lands predominately in farm use in the GF Zone would be evaluated under UCDC Section 152.084, which provides that a utility facility necessary for public service, other than commercial utilities, is an outright permitted use in Umatilla County's GF Zone, subject to the standards provided in UCDC 152.617(II)(7).

1 of-way width up to 100 feet as specified in ORS 772.210, as described under OAR 660-006-  
2 0025(4).<sup>79</sup>

3  
4 In 2022, UCDC 152.085 was amended to clarify that new electric lines with right-of-way widths  
5 of up to 100 feet were a conditionally permitted use on lands predominately in forest use  
6 within the GF Zone as specified in ORS 772.210.<sup>80</sup> The relevant language in the revised  
7 ordinance mirrors the language in OAR 660-006-0025(4)(q), therefore the Council’s previous  
8 findings are relevant to the evaluation of compliance with UCDC 152.085.

9  
10 UCDC 152.085(S)(5) provides that “a new electric transmission line with a right-of-way width of  
11 up to 100 feet *as specified in ORS 772.210* (emphasis added)” is a conditionally authorized use  
12 in forest lands in Umatilla County’s GF Zone.

13  
14 ORS 772.210 authorizes a public utility to condemn lands for the construction of a service  
15 facility that is reasonably necessary for its conduct. The statute provides, in relevant part, as  
16 follows:

17  
18 *(1) Any public utility, electrical cooperative association or transmission*  
19 *company may:*

20  
21 \* \* \*

22  
23 *(b) Condemn such lands not exceeding 100 feet in width for its lines (including*  
24 *poles, towers, wires, supports and necessary equipment therefor) and in*  
25 *addition thereto, other lands necessary and convenient for the purpose of*  
26 *construction of service facilities. If the lands are covered by trees that are*  
27 *liable to fall and constitute a hazard to its wire or line, any public utility or*  
28 *transmission company organized for the purpose of building, maintaining and*  
29 *operating a line of poles and wires for the transmission of electricity for*  
30 *lighting or power purposes may condemn such trees for a width not exceeding*  
31 *300 feet, as may be necessary or convenient for such purpose.*

32  
33 *(2) Notwithstanding subsection (1) of this section, any public utility, electrical*  
34 *cooperative association or transmission company may, when necessary or*  
35 *convenient for transmission lines (including poles, towers, wires, supports and*  
36 *necessary equipment therefor) designed for voltages in excess of 330,000*  
37 *volts, condemn land not to exceed 300 feet in width. In addition, if the lands*  
38 *are covered by trees that are liable to fall and constitute a hazard to its wire*  
39 *or line, such public utility or transmission company may condemn such trees*  
40 *for a width not exceeding 100 feet on either side of the condemned land, as*  
41 *may be necessary or convenient for such purpose.*

---

<sup>79</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 178 of 10586.

<sup>80</sup> Umatilla County Ordinance [2022-09](#).

1  
2 \* \* \* \* \*

3  
4 In the *Final Order on the ASC*, the Council found that while the right-of-way of the transmission  
5 line would exceed 100 feet, that the facility would still qualify as a conditionally allowed use  
6 under OAR 660-006-0025(4)(q) because ORS 772.210(2) specifically authorizes a 300-foot right  
7 of way for high voltage transmission lines rated to carry more than 330-kilovolts.<sup>81</sup> To ensure  
8 that the facility would be designed and constructed in accordance with that subsection, the  
9 Council imposed Site Certificate Condition GEN-LU-12, which limits the right of way to 300 feet  
10 and limits activities other than vegetation management to the central 100 feet of the right-of-  
11 way.

12  
13 The Council also found that permanent related or supporting facilities, new and substantially  
14 modified roads, located outside of the 300-foot right-of-way could not be considered allowed  
15 uses under OAR 660-006-0025(4)(q) and would require an exception to Statewide Planning Goal  
16 4 be taken.

17  
18 Because portions of the RFA1 site boundary additions are located in Umatilla County’s GF Zone  
19 outside of the 300-foot transmission line right-of-way, the Council finds that the RFA1 site  
20 boundary additions are not an allowed use under UCDC 152.085(S)(5), and that an exception to  
21 Statewide Planning Goal 4 is required.

22  
23 UCDC 152.086 Limitations on Conditional Uses.

24  
25 *The following limitations shall apply, if determined appropriate, to all*  
26 *conditional uses in the GF Zone as found in OAR 660-006-0025 (5), except as*  
27 *noted for nonfarm dwellings in § 152.059 (K) (8) and referenced in §152.084*  
28 *(K) (I):*

29  
30 *(A) The proposed use will not force a significant change in, or significantly*  
31 *increase the cost of, accepted farming or forest practices on agriculture or*  
32 *forest lands;*

33  
34 *(B) The proposed use will not significantly increase fire hazard or significantly*  
35 *increase fire suppression costs or significantly increase risks to fire suppression*  
36 *personnel; and*

37  
38 *(C) A written statement (i.e. Covenant Not to Sue Agreement) recorded with*  
39 *the deed or written contract with the County or its equivalent is obtained from*  
40 *the land owner that recognizes the rights of adjacent and nearby land owners*  
41 *to conduct forest operations consistent with the Forest Practices Act and Rules*  
42 *for uses authorized in § 152.085 (C) (1), (AA), (G), (I), and (EE) of this chapter.*

---

<sup>81</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 269 of 10586.

1  
2 In the *Final Order on the ASC*, the Council evaluated the facility for compliance with OAR 660-  
3 006-0025(5), which is implemented by UCDC 152.086 in the revised Umatilla County  
4 Development Code. The Council previously imposed Land Use Condition 16 (Condition GEN-LU-  
5 13) requiring that the certificate holder prepare and implement a Right-of-Way Clearing  
6 Assessment that identifies mitigation measures to minimize potential impacts to, and the cost  
7 of, accepted forest practices. The Council found that, subject to compliance with this condition,  
8 that the facility would not result in significant adverse impacts to accepted forest practices nor  
9 result in a significant increase in the cost of accepted forest practices within the surrounding  
10 area.<sup>82</sup>

11  
12 The Council also imposed Public Services Condition 6 (Conditions GEN-PS-02), requiring that the  
13 certificate holder prepare and implement a Fire Prevention and Suppression Plan; and Fish and  
14 Wildlife Condition 2 (Condition GEN-FW-02), requiring that the certificate holder prepare and  
15 implement a Vegetation Management Plan. The Council found that, subject to compliance with  
16 the Fire Prevention and Suppression Plan, the impact minimization measures included in the  
17 Right of Way Clearing Assessment, and Vegetation Management Plan, that the proposed use  
18 would not significantly increase the wildfire hazards, fire suppression costs, or risk to fire  
19 suppression personnel within the surrounding area.<sup>83</sup>

20  
21 As described above, the facility is a use authorized under UCDC 152.085(S)(5), so UCDC  
22 152.086(C) is not applicable to the review of the facility, or the RFA1 site boundary additions.

23  
24 The RFA1 site boundary additions are not expected to significantly increase the amount of land  
25 taken out of forest use in Umatilla County and impacts to lands in Umatilla County's GF Zone  
26 would be addressed in the plans required under Land Use Condition 16 (Condition GEN-LU-13);  
27 Public Services Condition 6 (Conditions GEN-PS-02); and Fish and Wildlife Condition 2  
28 (Condition GEN-FW-02). Subject to compliance with these conditions, the Council finds that the  
29 RFA1 site boundary additions comply with UCDC 152.086.

30  
31 UCDC 152.617(II)(7), Standards for Review: Utility Facility Necessary for Public Service.

32  
33 *(A) A utility facility established under ORS 215.283 (1)(c) is necessary for public*  
34 *service if the facility must be sited in an exclusive farm use zone in order to*  
35 *provide the service. To demonstrate that a utility facility is necessary, an*  
36 *applicant must:*

37  
38 *(1) Demonstrate that reasonable alternatives have been considered and that*  
39 *the facility must be sited in an exclusive farm use zone due to one or more of*  
40 *the following factors:*

41

---

<sup>82</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 276 of 10586.

<sup>83</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 279 of 10586.

1 (a) Information provided in the technical and engineering feasibility;

2  
3 (b) The proposed facility is locationally dependent. (It must cross land in one or  
4 more areas zoned for exclusive farm use in order to achieve a reasonably  
5 direct route or to meet unique geographical needs that cannot be satisfied on  
6 other lands.)

7  
8 (c) Show a lack of available urban and non-resource lands;

9  
10 (d) Due to availability of existing rights of way.

11  
12 (e) Due to public health and safety concerns; and

13  
14 (f) Show it must meet other requirements of state and federal agencies.

15  
16 (2) Costs associated with any of the factors listed in subsection (A) above may  
17 be considered, but cost alone, including the cost of land, may not be the only  
18 consideration in determining that a utility facility is necessary for public  
19 service. Land costs shall not be included when considering alternative  
20 locations for substantially similar utility facilities and the siting of utility  
21 facilities that are not substantially similar.

22  
23 (3) The owner of a utility facility approved under this section shall be  
24 responsible for restoring, as nearly as possible, to its former condition any  
25 agricultural land and associated improvements that are damaged or  
26 otherwise disturbed by the siting, maintenance, repair or reconstruction of the  
27 facility. Nothing in this paragraph shall prevent the owner of the utility facility  
28 from requiring a bond or other security from a contractor or otherwise  
29 imposing on a contractor the responsibility for restoration.

30  
31 (4) The governing body of the county or its designee shall impose clear and  
32 objective conditions on an application for utility facility siting to mitigate and  
33 Umatilla County Development Code, Revision Date July 19, 2022, Page 396 of  
34 481 minimize the impacts of the proposed facility, if any, on surrounding lands  
35 devoted to farm use in order to prevent a significant change in accepted farm  
36 practices or a significant increase in the cost of farm practices on surrounding  
37 farmlands.

38  
39 (5) Utility facilities necessary for public service may include on-site and offsite  
40 facilities for temporary workforce housing for workers constructing a utility  
41 facility. Such facilities must be removed or converted to an allowed use under  
42 OAR 660-033-0130 (19) or other statute or rule when project construction is  
43 complete. Offsite facilities allowed under this paragraph are subject to OAR  
44 660-033-0130 (5). Temporary workforce housing facilities not included in the

1           *initial approval may be considered through a minor amendment request. A*  
2           *minor amendment request shall have no effect on the original approval.*

3  
4           *(6) In addition to the provisions of paragraphs (1) to (4) of this subsection, the*  
5           *establishment or extension of a sewer system as defined by OAR 660-011-*  
6           *0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of*  
7           *OAR 660-011-0060. (7) The provisions of paragraphs (1) to (4) of this*  
8           *subsection do not apply to interstate natural gas pipelines and associated*  
9           *facilities authorized by and subject to regulation by the Federal Energy*  
10           *Regulatory Commission.*

11  
12 UCDC 152.617(II)(7) provides the criteria to determine whether a utility facility located in  
13 Umatilla County’s EFU zone is necessary for public service. These criteria mirror the underlying  
14 provisions of ORS 215.275. In the *Final Order on the ASC*, the Council determined that the  
15 transmission line qualifies as a utility facility necessary for public service under ORS 215.275  
16 because there was no reasonably direct route that would allow the applicant to construct the  
17 transmission line while avoiding all impacts to EFU zoned land, that the that the applicant had  
18 demonstrated a “lack of available non-resource lands” for which to site the proposed facility;  
19 and that the applicant had proposed the route to utilize some available rights-of-ways.<sup>84</sup> The  
20 Council also determined that access roads and other ancillary facilities located in Umatilla  
21 County’s EFU Zone were to be evaluated as accessory uses to the transmission line.<sup>85</sup>

22  
23 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 15 acres  
24 of temporary and permanent impacts to agricultural lands in Umatilla County.<sup>86</sup> The RFA1 site  
25 boundary additions would result in less than 11 acres of temporary and permanent impacts to  
26 agricultural lands, and would not be additive to the previously evaluated impacts for the facility.  
27 In other words, the RFA1 site boundary additions would not increase impacts to agricultural  
28 lands, but rather a shift in the location of impacts. For these reasons, the RFA1 site boundary  
29 additions do not significantly change the nature or extent of the use. Accordingly, the Council  
30 finds the RFA1 site boundary additions located in Umatilla County’s EFU zone continues to  
31 qualify as utility facilities necessary for public service.

32  
33 UCDC 152.617(II)(7)(4) requires the County, or in this case, the Council, to impose clear  
34 and objective conditions to mitigate and minimize the impacts of the facility on  
35 surrounding lands devoted to farm use in order to prevent a significant change in  
36 accepted farm practices or a significant increase in the cost of farm practices on  
37 surrounding farmlands.

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<sup>84</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 255-256 of 10586.

<sup>85</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 176 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

<sup>86</sup> B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.5.5.4 Table K-14, p. K-193.

1 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11) requiring that  
2 the certificate holder prepare and implement an Agricultural Assessment and Mitigation Plan  
3 prescribing monitoring and mitigation of impacts to soils and activities. This condition applies to  
4 the RFA1 site boundary additions.

5  
6 UCCCP, Chapter 8, Finding and Policy 37

7  
8 *Finding. Areas specifically set aside for natural resource exploitation, future  
9 development of reservoirs, energy generation and transmission facilities and  
10 industry will lower the cost of eventual use, as compared to allowing  
11 incompatible development on the same lands before such eventual use.*

12  
13 *Policy. The County shall ensure compatible interim uses provided through  
14 Development Ordinance standards, and where applicable consider  
15 agriculturally designated land as open space for appropriate and eventual  
16 resource or energy facilities use.*

17  
18 In the *Final Order on the ASC*, the Council found that the facility is consistent with UCCP Chapter  
19 8, Policy 37 because the facility is primarily located on agriculturally designated land within  
20 Umatilla County and the policy designates that land as appropriate for energy facility use.<sup>87</sup>

21  
22 The RFA1 site boundary additions do not significantly change the nature or extent of the use.  
23 Accordingly, the Council continues to rely on its previous findings.

24  
25 Umatilla County Comprehensive Plan, Chapter 14, Finding and Policy 19

26  
27 *Finding. Utility facilities can remove valuable resource lands and create  
28 development problems for new developments and detract from existing  
29 development.*

30  
31 *Policy. Where feasible, all utility lines and facilities shall be located on or  
32 adjacent to existing public or private rights-of-way so as to avoid dividing  
33 existing farm or forest units; and transmission lines should be located within  
34 existing corridors as much as possible.*

35  
36 In the *Final Order on the ASC*, the Council found that while the applicant had designed the route  
37 to avoid dividing existing farm or forest units to the extent feasible, the use of existing rights-of-  
38 way was not feasible due to minimum separation distances for high voltage transmission lines  
39 as established by the North American Electric Reliability Corporation (NERC) and the Western  
40 Electricity Coordinating Council (WECC) reliability requirements. Because the certificate holder  
41 had demonstrated that it evaluated feasibility of using existing ROWs, the Council found that  
42 the facility was consistent with UCCP, Chapter 14, Policy 19.

---

<sup>87</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 191 of 10586.

1  
2 The RFA1 site boundary additions do not move the transmission line route into existing rights-  
3 of-way, but also do not significantly change the nature or extent of the use outside of existing  
4 rights-of-way. Accordingly, the Council continues to rely on its previous findings.

5  
6 Umatilla County Comprehensive Plan, Chapter 15, Finding and Policy 18.

7  
8 *Finding. Major transmission lines (fuel, power and communication) traverse*  
9 *the County. Additional expansion proposed, and additional new lines or*  
10 *pipelines could be proposed through the County.*

11  
12 *Policy. The County will review right-of-way acquisitions and proposals for*  
13 *transmission lines and pipelines so as to minimize adverse impacts on the*  
14 *community.*

15  
16 In the *Final Order on the ASC*, the Council found that, as a SAG, the Umatilla County Board of  
17 Commissioners had the opportunity to review the ASC and Council findings consistent with  
18 Umatilla County Comprehensive Plan Chapter 15, finding and policy 20, which have been  
19 renumbered as Finding and Policy 18.

20  
21 All SAGs, including the Umatilla County Board of Commissioners, had the opportunity to review  
22 and comment on the DPO. Therefore, the Council find that the RFA1 site boundary additions  
23 would continue to be consistent with Umatilla County Comprehensive Plan, Chapter 15, Finding  
24 and Policy 18.

25  
26 *III.E.1.c Union County Applicable Substantive Criteria*

27  
28 The RFA1 site boundary additions in Union County are associated with design changes to 1.8  
29 miles of access roads located in open rangeland and forested areas. The changes would include  
30 substantial improvements to 0.4 miles of existing road and the construction of 1.4 miles of new  
31 access roads and would permanently impact approximately 2.9 acres.

32  
33 In the *Final Order on the ASC*, the Council evaluated the facility's compliance with applicable  
34 provisions of Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO) Article 2.00  
35 (A-1 Exclusive Farm Use Zone), Article 3.00 (A-2 Agriculture-Grazing Zone), Article 5.00 (A-4  
36 Timber-Grazing Zone) and Article 20.00 (Supplemental Provisions), and Article 21.00  
37 (Conditional Uses).

38  
39 The Union County Board of Commissioners did not identify policies, findings, or goals from the  
40 Union County Comprehensive Plan that would apply to the facility during the review of the ASC.  
41 Accordingly, the Council relies solely upon the UCZPSO for the applicable substantive criteria for  
42 the evaluation of facility components in Union County.

1 The Union County Board of Commissioners has adopted ordinances amending the UCZPSO  
 2 since the submission of the initial preliminary ASC on February 27, 2013. Notably, in June 2015,  
 3 Union County Ordinance 2015-01 replaced Union County’s resource zone ordinances. As a  
 4 result, several sections of UCZPSO Articles 2.00, 3.00, and 5.00 have been renumbered.

5  
 6 The RFA1 site boundary additions in Union County are located in Union County’s A-1, A-2, and  
 7 A-4 Zones. The applicable substantive criteria applicable to the review of the additions are  
 8 listed in Table 12: *Union County Applicable Substantive Criteria* below.

**Table 12: Union County Applicable Substantive Criteria**

Section	Description
Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO)	
Article 2.00	A-1 Exclusive Farm Use Zone
Section 2.04	Conditional Uses with General Review Criteria
Section 2.05	Use Standards
Article 3.00	Agriculture-Grazing Zone
Section 3.04	Conditional Uses with General Review Criteria
Section 3.05	Use Standards
Article 5.00	Timber-Grazing Zone
Section 5.04	Conditional Uses with General Review Criteria
Section 5.06	Conditional Use Review Criteria
Section 5.08	Development and Fire Siting Standards
Article 20.00	Supplemental Provisions
Section 20.08	Riparian Zone Setbacks
Section 20.09	Significant Goal 5 Resource Areas
Article 21.00	Conditional Uses
Section 21.06	General Standards Governing Conditional Uses

9  
 10 UCZPSO 2.04, Conditional Uses with General Review Criteria

11  
 12 *In the A-1 Zone, the following uses and their accessory buildings and uses are*  
 13 *permitted subject to county review under Article 24.03 Quasi-Judicial land use*  
 14 *decision and the specific standards for the use set forth in Section 2.05, as well*  
 15 *as the general standards for the zone and the applicable standards in Article*  
 16 *21.00 (Conditional Uses).*

17  
 18 \* \* \* \* \*

19  
 20 *11. Utility facilities necessary for public service, including associated*  
 21 *transmission lines as defined in Section 1.08 and wetland waste treatment*  
 22 *systems, but not including commercial facilities for the purpose of generating*  
 23 *electrical power for public use by sale or transmission towers over 200 feet in*  
 24 *height as provided in Subsection 2.05.15.*

1 In the *Final Order on the ASC*, the Council determined that the portion of the facility, including  
2 related and supporting facilities, located in Union County’s A-1 Zone, was a utility facility  
3 necessary for public service.<sup>88</sup> Because the RFA1 site boundary additions do not significantly  
4 modify the underlying use, the Council continues to rely on that determination.

5  
6 At the time the *Final Order on the ASC* was issued, a utility facility necessary for public service  
7 was considered an “administrative use” under UCZPSO 2.03. In 2015, Union County Ordinance  
8 2015-01 replaced Union County’s resource zone ordinances. The new ordinance classifies a  
9 utility facility necessary for public service as a conditional use subject to the standards set forth  
10 in UCZPSO 2.05.15. Notwithstanding the language in the County’s code, the conditional use  
11 requirements beyond those that are consistent with ORS 215.275 are not applicable to facility  
12 components because, as a utility facility necessary for public service under ORS 215.283(1)(c),  
13 the use is permitted subject only to the requirements of ORS 215.275 and the county cannot  
14 impose additional approval criteria. For these reasons, the Council does not make findings of  
15 compliance for the conditional use requirements under UCZPSO 2.06.

16  
17 UCZPSO 2.05, Use Standards

18  
19 *15. A utility facility that is necessary for public service*

20  
21 *A. A utility facility is necessary for public service if the facility must be sited in*  
22 *the exclusive farm use zone in order to provide the service. To demonstrate*  
23 *that a utility facility is necessary, an applicant must show that reasonable*  
24 *alternatives have been considered and that the facility must be sited in an*  
25 *exclusive farm use zone due to one or more of the following factors:*

26  
27 *(1) Technical and engineering feasibility;*

28  
29 *(2) The proposed facility is locationally-dependent. A utility facility is*  
30 *locationally-dependent if it must cross land in one or more areas zoned for*  
31 *exclusive farm use in order to achieve a reasonably direct route or to meet*  
32 *unique geographical needs that cannot be satisfied on other lands;*

33  
34 *(3) Lack of available urban and non-resource lands;*

35  
36 *(4) Availability of existing rights of way;*

37  
38 *(5) Public health and safety; and*

39  
40 *(6) Other requirements of state and federal agencies.*  
41

---

<sup>88</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 193.

1 *B. Costs associated with any of the factors listed in subparagraph A. of this*  
2 *paragraph may be considered, but cost alone may not be the only*  
3 *consideration in determining that a utility facility is necessary for public*  
4 *service. Land costs shall not be included when considering alternative*  
5 *locations for substantially similar utility facilities and the siting of utility*  
6 *facilities that are not substantially similar.*

7  
8 *C. The owner of a utility facility approved under paragraph A shall be*  
9 *responsible for restoring, as nearly as possible, to its former condition any*  
10 *agricultural land and associated improvements that are damaged or*  
11 *otherwise disturbed by the Article 2.00 Page 15 siting, maintenance, repair or*  
12 *reconstruction of the facility. Nothing in this paragraph shall prevent the*  
13 *owner of the utility facility from requiring a bond or other security from a*  
14 *contractor or otherwise imposing on a contractor the responsibility for*  
15 *restoration.*

16  
17 *D. The county shall impose clear and objective conditions on an application for*  
18 *utility facility siting to mitigate and minimize the impacts of the proposed*  
19 *facility, if any, on surrounding lands devoted to farm use in order to prevent a*  
20 *significant change in accepted farm practices or a significant increase in the*  
21 *cost of farm practices on surrounding farmlands.*

22  
23 *E. Utility facilities necessary for public service may include on-site and off-site*  
24 *facilities for temporary workforce housing for workers constructing a utility*  
25 *facility. Such facilities must be removed or converted to an allowed use under*  
26 *the A-1 Zone or other statute or rule when project construction is complete.*  
27 *Off-site facilities allowed under this paragraph are subject to Section 2.06*  
28 *Conditional Use Review Criteria. Temporary workforce housing facilities not*  
29 *included in the initial approval may be considered through a minor*  
30 *amendment request. A minor amendment request shall have no effect on the*  
31 *original approval.*

32  
33 *F. In addition to the provisions of subparagraphs A to D of this paragraph, the*  
34 *establishment or extension of a sewer system as defined by OAR 660-011-*  
35 *0060(1)(f) shall be subject to the provisions of 660-011-0060.*

36  
37 *G. The provisions of subparagraphs A to D of this paragraph do not apply to*  
38 *interstate natural gas pipelines and associated facilities authorized by and*  
39 *subject to regulation by the Federal Energy Regulatory Commission.*

40  
41 UCZPSO 2.04 provides that a utility facility necessary for public service, excluding a commercial  
42 power generation facility or a transmission tower over 200 feet in height, is a conditionally  
43 permitted use permitted by right in Union County's A-1 Zone. The criteria for whether a utility  
44 facility is necessary for public service is provided under UCZPSO 2.05. These criteria mirror the

1 underlying provisions of ORS 215.275. In the *Final Order on the ASC*, the Council determined  
2 that the transmission line qualifies as a utility facility necessary for public service under ORS  
3 215.275 because there was no reasonably direct route that would allow the applicant to  
4 construct the transmission line while avoiding all impacts to EFU zoned land, that the applicant  
5 had demonstrated a “lack of available nonresource lands” on which to site the proposed  
6 facility; and that the applicant had proposed the route to utilize some available rights-of-  
7 ways.<sup>89</sup> The Council also determined that access roads and other ancillary facilities located in  
8 Union County’s A-1 Zone were to be evaluated as accessory uses to the transmission line.<sup>90</sup>  
9

10 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 116 acres  
11 of temporary and permanent impacts to agricultural lands in Union County.<sup>91</sup> The RFA1 site  
12 boundary additions would result in less than 7 acres of temporary and permanent impacts to  
13 agricultural lands, and would not be additive to the previously evaluated impacts for the facility.  
14 The RFA1 site boundary additions do not significantly change the nature or extent of the use.  
15 Accordingly, the Council continues to rely on its previous findings that the RFA1 site boundary  
16 additions located in Union County’s A-1 Zone continue to qualify as utility facilities necessary  
17 for public service.  
18

19 UCZPSO 2.05.15.D requires the County, or in this case, the Council, to impose clear and  
20 objective conditions to mitigate and minimize the impacts of the proposed facility on  
21 surrounding lands devoted to farm use in order to prevent a significant change in  
22 accepted farm practices or a significant increase in the cost of farm practices on  
23 surrounding farmlands.  
24

25 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11) requiring that  
26 the certificate holder prepare and implement an Agricultural Assessment and Mitigation Plan  
27 prescribing monitoring and mitigation of impacts to soils and activities. This condition would  
28 apply to the RFA1 site boundary additions.  
29

30 Because the Council previously determined that the facility is a permitted use in Union County’s  
31 A-1 Zone, and because the Council previously imposed conditions ensuring compliance with the  
32 applicable use standards that would also apply to the RFA1 site boundary additions, the Council  
33 finds that the RFA1 site boundary additions would comply with UCZPSO 2.05.  
34

35 UCZPSO 3.04, Conditional Uses with General Review Criteria  
36

37 *In the A-2 Zone, the following uses and their accessory buildings and uses are*  
38 *permitted subject to county review under Article 24.03 Quasi-Judicial land use*

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<sup>89</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p.255-256 of 10586.

<sup>90</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 199 of 10586, citing *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

<sup>91</sup> B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.6.5.4 Table K-22, p. K-264.

1 *decision and the specific standards for the use set forth in Section 3.05, as well*  
2 *as the general standards for the zone and the applicable standards in Article*  
3 *21.00 (Conditional Uses).*

4  
5 \* \* \* \* \*

6  
7 *11. Utility facilities necessary for public service, including associated*  
8 *transmission lines as defined in Section 1.08 and wetland waste treatment*  
9 *systems, but not including commercial facilities for the purpose of generating*  
10 *electrical power for public use by sale or transmission towers over 200 feet in*  
11 *height as provided in Subsection 3.05.15.*

12  
13 In the *Final Order on the ASC*, the Council determined that the portion of the facility, including  
14 related and supporting facilities, located in Union County’s A-2 Zone, was a utility facility  
15 necessary for public service.<sup>92</sup> Because the RFA1 site boundary additions do not significantly  
16 modify the underlying use, the Council continues to rely on that determination.

17  
18 At the time the *Final Order on the ASC* was issued, a utility facility necessary for public service  
19 was considered an “administrative use” under UCZPSO 3.03.

20  
21 In 2015, Union County Ordinance 2015-01 replaced Union County’s resource zone ordinances.  
22 The new ordinance classifies a utility facility necessary for public service as a conditional use  
23 subject to the standards set forth in UCZPSO 3.05.15. Notwithstanding the language in the  
24 County’s code, the conditional use requirements beyond those that are consistent with ORS  
25 215.275 are not applicable to facility components because, as a utility facility necessary for  
26 public service under ORS 215.283(1)(c), the use is permitted subject only to the requirements of  
27 ORS 215.275 and the county cannot impose additional approval criteria. For these reasons, the  
28 Council does not make findings of compliance for the conditional use requirements under  
29 UCZPSO 3.17.

30  
31 UCZPSO 3.05, Use Standards

32  
33 \* \* \* \* \*

34  
35 *15. A utility facility that is necessary for public service*

36  
37 *A. A utility facility is necessary for public service if the facility must be sited in*  
38 *the exclusive farm use zone in order to provide the service. To demonstrate*  
39 *that a utility facility is necessary, an applicant must show that reasonable*  
40 *alternatives have been considered and that the facility must be sited in an*  
41 *exclusive farm use zone due to one or more of the following factors:*  
42

---

<sup>92</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 200 of 10586.

1           (1) *Technical and engineering feasibility;*

2  
3           (2) *The proposed facility is locationally-dependent. A utility facility is*  
4 *locationally-dependent if it must cross land in one or more areas zoned for*  
5 *exclusive farm use in order to achieve a reasonably direct route or to meet*  
6 *unique geographical needs that cannot be satisfied on other lands;*

7  
8           (3) *Lack of available urban and non-resource lands;*

9  
10          (4) *Availability of existing rights of way;*

11  
12          (5) *Public health and safety; and*

13  
14          (6) *Other requirements of state and federal agencies.*

15  
16          *B. Costs associated with any of the factors listed in subparagraph A. of this*  
17 *paragraph may be considered, but cost alone may not be the only*  
18 *consideration in determining that a utility facility is necessary for public*  
19 *service. Land costs shall not be included when considering alternative*  
20 *locations for substantially similar utility facilities and the siting of utility*  
21 *facilities that are not substantially similar.*

22  
23          *C. The owner of a utility facility approved under paragraph A shall be*  
24 *responsible for restoring, as nearly as possible, to its former condition any*  
25 *agricultural land and associated improvements that are damaged or*  
26 *otherwise disturbed by the siting, maintenance, repair or reconstruction of the*  
27 *facility. Nothing in this paragraph shall prevent the owner of the utility facility*  
28 *from requiring a bond or other security from a contractor or otherwise*  
29 *imposing on a contractor the responsibility for restoration.*

30  
31          *D. The county shall impose clear and objective conditions on an application for*  
32 *utility facility siting to mitigate and minimize the impacts of the proposed*  
33 *facility, if any, on surrounding lands devoted to farm use in order to prevent a*  
34 *significant change in accepted farm practices or a significant increase in the*  
35 *cost of farm practices on surrounding farmlands.*

36  
37          *E. Utility facilities necessary for public service may include on-site and off-site*  
38 *facilities for temporary workforce housing for workers constructing a utility*  
39 *facility. Such facilities must be removed or converted to an allowed use under*  
40 *the A-1 Zone or other statute or rule when project construction is complete.*  
41 *Off-site facilities allowed under this paragraph are subject to Section 2.06*  
42 *Conditional Use Review Criteria. Temporary workforce housing facilities not*  
43 *included in the initial approval may be considered through a minor*

1            amendment request. A minor amendment request shall have no effect on the  
2            original approval.

3  
4            \* \* \* \* \*

5  
6            UCZPSO 3.04 provides that a utility facility necessary for public service, excluding a commercial  
7            power generation facility or a transmission tower over 200 feet in height, is a use permitted by  
8            right in Union County’s A-2 Zone. The criteria for whether a utility facility is necessary for public  
9            service is provided under UCZPSO 3.05.15. These criteria mirror the underlying provisions of  
10            ORS 215.275. In the *Final Order on the ASC*, the Council determined that the transmission line  
11            qualifies as a utility facility necessary for public service under ORS 215.275 because there was  
12            no reasonably direct route that would allow the applicant to construct the transmission line  
13            while avoiding all impacts to EFU zoned land, that the that the applicant had demonstrated a  
14            “lack of available nonresource lands” for which to site the proposed facility; and that the  
15            applicant had proposed the route to utilize some available rights-of-ways.<sup>93</sup>

16  
17            The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 116 acres  
18            of temporary and permanent impacts to A-2 zoned lands in Union County.<sup>94</sup> The RFA1 site  
19            boundary additions would result in less than 7 acres of temporary and permanent impacts to A-  
20            2 zoned lands, and would not be additive to the previously evaluated impacts for the facility.  
21            The RFA1 site boundary additions do not significantly change the nature or extent of the use.  
22            Accordingly, the Council continues to rely on its previous findings that the RFA1 site boundary  
23            additions located in Union County’s A-2 Zone continue to qualify as utility facilities necessary  
24            for public service.

25  
26            UCZPSO 3.05.15.D requires the County, or in this case, the Council, to impose clear and  
27            objective conditions to mitigate and minimize the impacts of the proposed facility on  
28            surrounding lands devoted to farm use in order to prevent a significant change in  
29            accepted farm practices or a significant increase in the cost of farm practices on  
30            surrounding farmlands.

31  
32            The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires  
33            the certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan  
34            prescribing monitoring and mitigation of impacts to soils and activities. This condition applies to  
35            the RFA1 site boundary additions.

36  
37            Because the Council previously determined that the facility is a permitted use in Union County’s  
38            A-2 Zone, and because the Council previously imposed conditions ensuring compliance with the  
39            applicable use standards also apply to the RFA1 site boundary additions, the Council finds that  
40            the RFA1 site boundary additions comply with UCZPSO 3.05.

41  

---

<sup>93</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 255-256 of 10586.  
<sup>94</sup> B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.6.5.4 Table K-22, p. K-264.

1 UCZPSO 3.17, Development Standards

2  
3 *The following standards shall apply to all development in an A-2 Agriculture-*  
4 *Grazing Zone.*

5  
6 *1. Any proposed division of land included within the A-2 Zone resulting in the*  
7 *creation of one or more parcels of land shall be reviewed and approved or*  
8 *disapproved by the County (ORS 215.263).*

9  
10 *2. Setbacks from property lines or road rights-of-way shall be a minimum of*  
11 *20-feet front and rear yards and 10-feet side yards.*

12  
13 *3. Animal shelters shall not be located closer than 100 feet to an R-1 or R-2*  
14 *Zone.*

15  
16 *4. Signs shall be limited to the following:*

17  
18 *A. All off-premise signs within view of any State Highway shall be regulated by*  
19 *State regulation under ORS Chapter 377 and receive building permit approval.*

20  
21 *B All on premise signs shall meet the Oregon Administrative Rule regulations*  
22 *for on premise signs which have the following standards:*

23  
24 *(1) Maximum total sign area for one business is 8% of building area plus*  
25 *utilized parking area, or 2,000 square feet, whichever is less.*

26  
27 *(2) Display area maximum is 825 square feet for each face of any one sign, or*  
28 *half the total allowable sign area, whichever is less.*

29  
30 *(3) Businesses which have no buildings located on the premises or have*  
31 *buildings and parking area allowing a sign area of less than 250 square feet*  
32 *may erect and maintain on-premises signs with the total allowable area of*  
33 *250 square feet, 125 square feet maximum for any one face of a sign.*

34  
35 *(4) Maximum height of freestanding signs adjacent to interstate highways is*  
36 *65 feet, for all other highways is 35 feet, measured from the highway surface*  
37 *or the premises grade, whichever is higher to the top of the sign.*

38  
39 *C. All on premise signs within view or 660 feet of any State Highway shall*  
40 *obtain permit approval from the Permit Unit, Oregon State Highway Division.*  
41 *No sign shall be moving, revolving or flashing, and all lighting shall be directed*  
42 *away from residential use or zones, and shall not be located so as to detract*  
43 *from a motorist vision except for emergency purposes.*  
44

1 In the *Final Order on the ASC*, the Council imposed Land Use Condition 7 (Condition GEN-LU-06)  
2 requiring that the certificate holder construct the facility consistent with the requirements of  
3 UCZPSO 3.08, which has been renumbered as UCZPSO 3.17. This condition applies to the RFA1  
4 site boundary additions.

5  
6 Because the Council previously imposed conditions that would ensure compliance with its  
7 provisions, the Council finds that the RFA1 site boundary additions would comply with UCZPSO  
8 3.17.

9  
10 UCZPSO 5.04, Conditional Uses with General Review Criteria

11  
12 *In the A-4 Zone predominantly farmland lots and parcels shall comply with*  
13 *Section 5.06 Administrative Uses and predominantly forest land parcels may*  
14 *authorize the following uses and activities and their accessory buildings and*  
15 *uses subject to county review and the specific standards set forth in Article*  
16 *21.00, as well as the general provision set forth by this ordinance.*

17  
18 \* \* \* \* \*

19 *21. New electric transmission lines with right of way widths of up to 100 feet*  
20 *as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal,*  
21 *telephone, fiber optic cable) with rights-of-way of 50 feet or less in width.*

22  
23 \* \* \* \* \*

24  
25 Union County’s A-4 Zone is a hybrid zone that includes forest land, farmland, and rangeland.  
26 The Council previously evaluated portions of the facility located in Union County’s A-4 Zone  
27 based on the predominant use of each parcel the facility was proposed to be sited on.<sup>95</sup> Based  
28 on the certificate holder’s analysis supporting the ASC, the RFA1 site boundary additions  
29 associated with modifications to the road segments designated UN-002b and UN-034, and the  
30 new road segment designated UN-625 would be located on lands predominantly under forest  
31 use, where the remaining access road changes in Union County’s A-4 Zone would be in open  
32 range land areas. As shown above, new electric transmission lines with rights-of-way  
33 widths of up to 100 feet were a conditionally permitted use on lands predominately in forest  
34 use within the A-4 Zone as specified in ORS 772.210.

35  
36 ORS 772.210 authorizes a public utility to condemn lands for the construction of a service  
37 facility that is reasonably necessary for its conduct. The statute provides, in relevant part, as  
38 follows:

39  
40 *(1) Any public utility, electrical cooperative association or transmission*  
41 *company may:*  
42

---

<sup>95</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 203 of 10586.

1           \* \* \*

2  
3           ***(b) Condemn such lands not exceeding 100 feet in width for its lines (including***  
4           ***poles, towers, wires, supports and necessary equipment therefor) and in***  
5           ***addition thereto, other lands necessary and convenient for the purpose of***  
6           ***construction of service facilities. If the lands are covered by trees that are***  
7           ***liable to fall and constitute a hazard to its wire or line, any public utility or***  
8           ***transmission company organized for the purpose of building, maintaining and***  
9           ***operating a line of poles and wires for the transmission of electricity for***  
10           ***lighting or power purposes may condemn such trees for a width not exceeding***  
11           ***300 feet, as may be necessary or convenient for such purpose.***

12  
13           ***(2) Notwithstanding subsection (1) of this section, any public utility, electrical***  
14           ***cooperative association or transmission company may, when necessary or***  
15           ***convenient for transmission lines (including poles, towers, wires, supports and***  
16           ***necessary equipment therefor) designed for voltages in excess of 330,000***  
17           ***volts, condemn land not to exceed 300 feet in width. In addition, if the lands***  
18           ***are covered by trees that are liable to fall and constitute a hazard to its wire***  
19           ***or line, such public utility or transmission company may condemn such trees***  
20           ***for a width not exceeding 100 feet on either side of the condemned land, as***  
21           ***may be necessary or convenient for such purpose.***

22  
23           \* \* \* \* \*”

24  
25           In the *Final Order on the ASC*, the Council found that while the proposed right-of-way of the  
26           transmission line would exceed 100 feet, that the facility would still qualify as a conditionally  
27           allowed use under OAR 660-006-0025(4)(q) because ORS 772.210(2) specifically authorizes a  
28           300-foot right of way for high voltage transmission lines rated to carry more than 330-  
29           kilovolts.<sup>96</sup> To ensure that the facility would be designed and constructed in accordance with  
30           that subsection, the Council imposed Land Use Condition 15 (Condition GEN-LU-12), which  
31           limits the right of way to 300 feet and limits activities other than vegetation management to  
32           the central 100 feet of the right-of-way.

33  
34           The Council also found that permanent related or supporting facilities, new and substantially  
35           modified roads, located outside of the 300-foot right-of-way could not be considered allowed  
36           uses under OAR 660-006-0025(4)(q) and would require an exception to Statewide Planning Goal  
37           4 be taken.

38  
39           Because portions of the RFA1 site boundary additions in Union County’s A-4 Zone are outside of  
40           the 300-foot transmission line right-of-way, the Council finds that that the RFA1 site boundary  
41           additions do not comply with UCPSO 5.04 and that an exception to Statewide Planning Goal 4 is  
42           required.

---

<sup>96</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 269 of 10586.

1  
2 UCZPSO 5.06, Conditional Use Review Criteria  
3

4 *A use authorized by Section 5.04 of this zone may be allowed provided the*  
5 *following requirements or their equivalent are met. These requirements are*  
6 *designed to make the use compatible with forest operations and agriculture*  
7 *and to conserve values found on forest lands.*  
8

9 *1. The proposed use will not force a significant change in, or significantly*  
10 *increase the cost of, accepted farming or forest practices on agriculture or*  
11 *forest lands.*  
12

13 *2. The proposed use will not significantly increase fire hazard or significantly*  
14 *increase fire suppression costs or significantly increase risks to fire suppression*  
15 *personnel.*  
16

17 *3. A written statement recorded with the deed or written contract with the*  
18 *county or its equivalent is obtained from the land owner that recognizes the*  
19 *rights of adjacent and nearby land owners to conduct forest operations*  
20 *consistent with the Forest Practices Act and Rules for uses authorized in OAR*  
21 *660-006-0025 Subsection 5(c).*  
22

23 In the *Final Order on the ASC*, the Council evaluated the facility for compliance with OAR 660-  
24 006-0025(5), which is implemented by UCZPSO 5.06. The Council previously imposed Land Use  
25 Condition 16 (Condition GEN-LU-13) requiring that the certificate holder finalize and implement  
26 a Right-of-Way Clearing Assessment that identifies mitigation measures to minimize potential  
27 impacts to, and the cost of, accepted forest practices. The Council found that, subject to  
28 compliance with this condition, that the facility would not result in significant adverse impacts  
29 to accepted forest practices nor result in a significant increase in the cost of accepted forest  
30 practices within the surrounding area.<sup>97</sup>  
31

32 The Council also imposed Public Services Condition 6 (Conditions GEN-PS-02), requiring that the  
33 certificate holder prepare and implement a Fire Prevention and Suppression Plan; and Fish and  
34 Wildlife Condition 2 (Condition GEN-FW-02), requiring that the certificate holder prepare and  
35 implement a Vegetation Management Plan. The Council found that, subject to compliance with  
36 the Fire Prevention and Suppression Plan, the impact minimization measures included in the  
37 Right of Way Clearing Assessment, and Vegetation Management Plan, that the proposed use  
38 would not significantly increase the wildfire hazards, fire suppression costs, or risk to fire  
39 suppression personnel within the surrounding area.<sup>98</sup>  
40

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<sup>97</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 276 of 10586.

<sup>98</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 279 of 10586.

1 Fish and Wildlife Condition 2 (Condition GEN-FW-02) requires that the Vegetation Management  
2 Plan be finalized in accordance with a formal reviewing agency process, prior to construction,  
3 and be implemented during construction and operations. While the plan may need to be  
4 amended in the future, the plan is currently final. In addition, the plan includes requirements  
5 that apply during O&M and therefore the condition does not need to require that the plan be  
6 finalized, prior to construction, or implemented prior to operations. As presented in  
7 Attachment 1 of this order, the Council amends the condition accordingly.

8  
9 As described above, the facility is not a use authorized under OAR 660-006-0025(5)(c), so  
10 UCZPSO 5.06.3 is not applicable to the review of the facility, or the RFA1 site boundary  
11 additions.

12  
13 The RFA1 site boundary additions are not expected to significantly increase the amount of land  
14 taken out of forest use in Union County, and impacts to lands in Union County's A-4 zone would  
15 be addressed in the plans required under Land Use Condition 16 (Condition GEN-LU-13); Public  
16 Services Condition 6 (Conditions GEN-PS-02); and Fish and Wildlife Condition 2 (Condition GEN-  
17 FW-02). Subject to compliance with these conditions, the Council finds that the RFA1 site  
18 boundary additions comply with UCZPSO 5.06.

19  
20 UCZPSO 5.08, Development and Fire Siting Standards

21  
22 *The following standards shall apply to all development in an A-4 Timber-*  
23 *Grazing Zone. Fire siting standards (items 5-8) shall apply only to new*  
24 *dwellings and related structures in the A-4 Zone where the predominant use is*  
25 *forestry [OAR 660-06-055(3)] and where dwellings are on rangeland within*  
26 *one quarter mile of forest land areas.*

27  
28 *1. Any proposed division of land included within the A-4 Zone resulting in the*  
29 *creation of one or more parcels of land shall be reviewed and approved or*  
30 *disapproved by the County (ORS 215.263).*

31  
32 *2. Setbacks from property lines or road rights-of-way shall be a minimum of*  
33 *20-feet front and rear yards and 10-feet side yards.*

34  
35 *3. Animal shelters shall not be located closer than 100 feet to an R-1 or R-2*  
36 *Zone.*

37  
38 *4. Signs shall be limited to the following:*

39  
40 *A. All off-premise signs within view of any State Highway shall be regulated by*  
41 *State regulation under ORS Chapter 377 and receive building permit approval.*

42  
43 *B. All on premise signs shall meet the Oregon Administrative Rule regulations*  
44 *for on premise signs which have the following standards:*

1  
2 (1) Maximum total sign area for one business is 8% of building area plus  
3 utilized parking area, or 2,000 square feet, whichever is less.

4  
5 (2) Display area maximum is 825 square feet for each face of any one sign, or  
6 half the total allowable sign area, whichever is less.

7  
8 (3) Businesses which have no buildings located on the premises or have  
9 buildings and parking area allowing a sign area of less than 250 square feet  
10 may erect and maintain on-premises signs with the total allowable area of  
11 250 square feet, 125 square feet maximum for any one face of a sign.

12  
13 (4) Maximum height of freestanding signs adjacent to interstate highways is  
14 65 feet, for all other highways is 35 feet, measured from the highway surface  
15 or the premises grade, whichever is higher to the top of the sign

16  
17 C. All on premise signs within view or 660 feet of any State Highway shall  
18 obtain permit approval from the Permit Unit, Oregon State Highway Division.  
19 No sign shall be moving, revolving or flashing, and all lighting shall be directed  
20 away from residential use or zones, and shall not be located so as to detract  
21 from a motorist's vision except for emergency purposes.

22  
23 D. All dwelling addresses shall be uniquely designated in accordance with the  
24 Union County Road Naming and Addressing Ordinance (Court Order 1988-03)  
25 on signs clearly visible and placed at the intersection of the driveway and  
26 named road. Rural address markers provided and installed by the Union  
27 County Public Works Department shall not be removed, modified or  
28 obstructed.

29  
30 E. Signs identifying pertinent information such as "dead end road", "bridge  
31 out", and so forth, shall be appropriately placed as designated by Union  
32 County.

33  
34 F. Signs identifying location of a fire-fighting water source and each assess to  
35 that source shall be permanently identified and shall indicate whether it is a  
36 fire hydrant, a dry hydrant, or another type of water supply.

37  
38 \* \* \* \* \*

39  
40 In the *Final Order on the ASC*, the Council imposed Land Use Condition 7 (Condition GEN-LU-06)  
41 requiring that buildings located in Union County's A-4 Zone comply with setback requirements  
42 that are consistent with UCZPSO 5.08.2 and signs to comply with the requirements of UCZPSO  
43 5.08.4. This condition applies to the RFA1 site boundary additions. Because existing conditions

1 would ensure compliance with its provisions, the Council finds the RFA1 site boundary additions  
2 would continue to comply with UCZPSO 5.08.

3  
4 UCZPSO 20.08, Riparian Zone Setbacks

5  
6 *In order to maintain vegetative cover along Class I streams, rivers and lakes*  
7 *known as riparian habitat a setback for any new development such as*  
8 *structures or roads shall be required on a sliding scale proportional to one-half*  
9 *the stream width, at right angles to the annual high-water line or mark. A*  
10 *minimum of 25-feet either side of streams will be recognized. Woody*  
11 *vegetation presently existing in the riparian zone shall be maintained,*  
12 *however, thinning or harvesting of merchantable tree species may occur*  
13 *within the riparian zone where 75 percent of the existing shade over the*  
14 *stream is maintained.*

15  
16 In the *Final Order on the ASC*, the Council imposed Land Use Condition 6 (Condition GEN-LU-  
17 06), which requires in relevant part, that the certificate holder locate transmission towers and  
18 access road at least 25 feet from Class I streams and retain at least 75 percent of vegetation  
19 within the riparian zone of all Class I streams within Union County. This condition applies to the  
20 RFA1 site boundary additions.

21  
22 Because existing conditions would ensure compliance with its requirement, the Council finds  
23 that the RFA1 site boundary additions would comply with UCDC 152.016.

24  
25 UCZPSO 20.09, Significant Goal 5 Resource Areas

26  
27 *1. Any land use action requiring County zoning or partitioning approval or any*  
28 *activity listed as a conflict in this ordinance which is within 1320 feet of or*  
29 *could have an impact on:*

30  
31 *A. Significant historical sites or structures,*

32  
33 *B. Significant scientific or natural areas,*

34  
35 *C. Significant aggregate resource sites,*

36  
37 *D. Big game critical wildlife habitat area and big game winter range*

38  
39 *E. Significant avian habitat*

40  
41 *F. Significant wetlands, and*  
42

1 *G. Designated Scenic Waterways identified by the Union County Land Use*  
2 *Plan, shall be reviewed by the Planning Director for appropriate public*  
3 *notification measures and conflict resolution.*

4  
5 *2. Affected Land Management Agencies, landowners and interested persons*  
6 *will be notified of the proposed land use action and will be given an*  
7 *opportunity to submit testimony per the applicable application procedure*  
8 *prior to a decision on the land use action.*

9  
10 *3. Review Classifications*

11  
12 *A. When a 3A or 3C (limit conflicting uses) decision has been made as*  
13 *indicated in the comprehensive plan, the applicant must, in coordination with*  
14 *the responsible agency, develop a management plan which would allow for*  
15 *both Article 20.00 Page 6 resource preservation and the proposed use. If the*  
16 *responsible agency and the applicant cannot agree on such a management*  
17 *plan, the proposed activity will be reviewed through the conditional use*  
18 *process. 3A sites will be preserved where potential conflicts may develop.*  
19 *Conflicts will be mitigated in favor of the resource on 3C sites.*

20  
21 *B. When a 3B (allow conflicting uses) decision has been made as indicated on*  
22 *Goal 5 inventory sheets, the request shall not be subject to the standards of*  
23 *this Section.*

24  
25 *4. Under the conditional use process land use decisions will consider the*  
26 *economic, social, environmental, and energy consequences when attempting*  
27 *to mitigate conflicts between development and resource preservation.*

28  
29 *5. The following criteria shall be considered, as applicable, during the*  
30 *appropriate decision making process:*

31  
32 *A. ECONOMIC: The use proposed is a benefit to the community and would*  
33 *meet a substantial public need or provide for a public good which clearly*  
34 *outweighs retention of the resources listed in Section 18.09 (1):*

35  
36 *B. SOCIAL: The proposed development would not result in the loss of or cause*  
37 *significant adverse impact to, a rare, one of a kind or irreplaceable resource as*  
38 *listed in Section 18.09 (1).*

39  
40 *C. ENERGY: The development, as proposed, would support energy efficient*  
41 *land use activities for such things as transportation costs, efficient utilization*  
42 *of urban services, and retention of natural features which create micro*  
43 *climates conducive to energy efficiency.*

1 *D. ENVIRONMENTAL: If alternative sites in Union County for proposed*  
2 *development are available which would create less of an environmental*  
3 *impact of any of the resources listed in Section 18.09 (1), major consideration*  
4 *should be given to these options.*

5  
6 *6. The reviewing body may impose the following conditions, as applicable*  
7 *upon a finding of fact that warrants such restrictions:*

8  
9 *A. SIGNIFICANT AGGREGATE SITES: Residences and uses listed as conditional*  
10 *uses may be required to provide screening, landscaping, and/or setbacks in*  
11 *excess of those required in the zone in which the lot or parcel is located. The*  
12 *required screening, landscaping, and setback shall be determined by the*  
13 *Planning Director after meeting with the applicant and the owner of the*  
14 *aggregate resource land to ensure compatibility between present and future*  
15 *Article 20.00 Page 7 uses on the properties. Such setback shall be no less than*  
16 *50 feet and no greater than 1320 feet.*

17  
18 *B. WETLANDS AND NATURAL AREAS: Limitations may be required on draining,*  
19 *filling, structural development, and/or removal of vegetation in order to*  
20 *protect and preserve existing trees, vegetation, water resources, wildlife*  
21 *habitat or other significant natural resources.*

22  
23 *C. BIG GAME WINTER RANGE AND BIG GAME CRITICAL HABITAT: A proposed*  
24 *new structure requiring a conditional use may be required to:*

25  
26 *1. Be located as close as possible to an ADJACENT compatible structure (a*  
27 *compatible structure shall be any structure which does not adversely affect*  
28 *the intended use of another structure);*

29  
30 *2. Share a common access road or where it is impossible to share a common*  
31 *access road, locate as closely as possible to the nearest existing public road in*  
32 *order to minimize the length of access from the nearest road.*

33  
34 *D. AVIAN HABITAT: Any proposed activity permitted outright or conditionally*  
35 *may be required to establish a setback from critical nesting or roosting areas*  
36 *and to preserve existing trees, vegetation, and water resources.*

37  
38 *E. DESIGNATED SCENIC WATERWAYS: The applicant for a proposed use that is*  
39 *to be located within the Minam River Scenic Waterway and that is regulated*  
40 *under the Oregon Scenic Waterways Rules shall obtain a notice to proceed*  
41 *from the State Highway Commission or the time limit for review by the State*  
42 *Highway Commission shall have expired prior to obtaining a zoning or building*  
43 *permit from the County.*

1 Portions of the RFA1 site boundary additions would be located in Union County’s Big Game  
2 Winter Range Overlay Zone and are subject to the provisions of UCZPSO 20.09.

3  
4 In the *Final Order on the ASC*, the Council found that the facility complies with UCZPSO 20.09, in  
5 part because the certificate holder had attempted to utilize existing roads and to limit the  
6 development of new roads in critical habitat and winter range overlay areas to the extent  
7 possible.<sup>99</sup> Because the RFA1 site boundary additions do not significantly change the nature of  
8 the previously approved facility or significantly increase the amount of roads located in Union  
9 County’s Winter Range areas, the Council continues to rely on its previous findings.

10  
11 UCZPSO 21.06, General Standards Governing Conditional Uses

12  
13 *The following standards and criteria shall govern conditional uses, except as*  
14 *provided in subsection 21.07:*

15  
16 *1. A conditional use shall ordinarily comply with the standards of the zone*  
17 *concerned for uses permitted outright except as specifically modified by the*  
18 *Planning Commission in granting the conditional use.*

19  
20 *2. Other uses similar to those enumerated within specified zones except in the*  
21 *A-1, A-2, A-3 and A-4 Zones which are consistent with the purposes and intent*  
22 *of the applicable zone may be modified by the Planning Commission if the use*  
23 *is found:*

24  
25 *A. To be compatible with outright or conditional uses of the applicable zone.*

26  
27 *B. Not to interfere seriously with established and accepted practices on*  
28 *adjacent lands.*

29  
30 *C. Not to materially alter the stability of the overall land use pattern of the*  
31 *area.*

32  
33 *D. That the proposed use can comply with the standards of the zone, and*

34  
35 *E. To comply with such other conditions as the Planning Commission or its*  
36 *designate considers necessary to carry out the purposes of this ordinance*

37  
38 In the *Final Order on the ASC*, the Council found that, subject to compliance with Land Use  
39 Condition 7 (Condition GEN-LU-06), the facility would comply with UCZPSO 21.06. Because Land  
40 Use Condition 7 (Condition GEN-LU-06) applies to the RFA1 site boundary additions, the Council  
41 continues to rely on its previous findings.

42  

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<sup>99</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 218 of 10586.

1 *III.E.1.d Baker County Applicable Substantive Criteria*

2

3 The RFA1 site boundary additions in Baker County include the addition of the True Blue Gulch  
4 Transmission Line alternative, the Durban Quarry Transmission Line alternative and additions  
5 associated with design changes to 17 miles of access roads.

6

7 The True Blue Gulch alternative would reroute an approximately 4.3-mile segment of the  
8 transmission line to the west and south of the approved site boundary. The alternative would  
9 include the construction of 14 transmission towers and 4 pulling and tensioning sites, as well as  
10 substantial improvements to 4.6 miles of existing road and the construction of 3.9 miles of new  
11 access roads. The changes associated with the True Blue Gulch alternative are expected to  
12 permanently impact 15.1 acres of EFU land. The site boundary additions associated with the  
13 True Blue Gulch alternative are located approximately 4 miles southwest of Durkee and one  
14 mile south of the Burnt River Canyon in mountainous terrain.

15

16 The Durbin Quarry Alternative would reroute an approximately 1.9-mile segment of the  
17 transmission line approximately 800 feet to the northeast of the approved ASC site boundary to  
18 avoid impacts to a quarry operated by the Oregon Department of Transportation (ODOT).<sup>100</sup> The  
19 alternative would include the construction of 10 new transmission towers and 4 pulling and  
20 tensioning sites, as well as the construction of 2.1 miles of new access roads. The changes  
21 associated with the Durbin Quarry alternative are expected to permanently impact 4.1 acres of  
22 EFU land.

23

24 The RFA1 access road changes not associated with the two alternatives include substantial  
25 improvement to 4.8 miles of existing road and construction of 1.5 miles of new road. The access  
26 road changes are located in EFU zoned land.

27

28 In 2014, Baker County Zoning Ordinance 2014-01 repealed and replaced the Baker County  
29 Zoning and Subdivision Ordinance of 1984. As a result, the applicable substantive criteria for  
30 the review of the RFA1 site boundary additions are new, however, many of the provisions of  
31 the new Ordinance are comparable to the previous version. The applicable substantive criteria  
32 within Baker County are presented in Table 13 below.

33

34 Some of the RFA1 site boundary additions are located in Baker County's Big Game Overlay  
35 Zone.

36

37 No RFA1 site boundary additions are within Baker County's Rural Service Area Zone or  
38 Floodplain Development Zone, so compliance with substantive criteria applicable to those  
39 zones are not evaluated in this order.<sup>101</sup>

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<sup>100</sup> B2HAMD1 RFA1 2023-06-08. Table 4.1-1.

<sup>101</sup> In RFA1 Table 7.1-8, the certificate holder identifies Section 305 requirements within Rural Service Area zone as applicable because portions of the RFA1 site boundary additions occur within 0.5 miles, however no site boundary

**Table 13: Baker County Applicable Substantive Criteria**

Section	Description
Baker County Zoning Ordinance (BCZO)	
Chapter 340	Development Standards
Section 340.02	Setbacks and Frontage Requirements
Chapter 410	Exclusive Farm Use Zone
Section 410.03	Uses Permitted Through a Type II Procedure
Chapter 620	Big Game Habitat Overlay Zone
Section 620.03	Permitted Uses
Chapter 710	Historic/Cultural and Natural Area Protection Procedure
Baker County Comprehensive Plan	
Goal V	Open Spaces and Scenic Areas Natural Areas Historic and Cultural Sites, Structures, Districts

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25

BCZO 340.02, Setbacks and Frontage Requirements

*A. Applicability. These requirements shall apply to all structures except for adjustments permitted in Section 340.03 and Livestock Concentration Limitations in Section 510.05.*

*B. Standards.*

*\* \* \**

*2. No part of a structure shall be constructed or maintained closer than 60 feet to the centerline of a road or street, or 30 feet from any right-of-way in excess of 60 feet.*

*3. No part of a building or other structure, except for a sign, shall be constructed or maintained closer than 10 feet to any property line.*

*4. If any part of a structure and/or development is proposed within a jurisdictional wetland, as described in Section 660.03, notification shall be provided by the Baker County Planning Department to the Department of State Lands, as required by ORS 196.795-990. The applicant/property owner shall be responsible for obtaining all necessary permits for the proposed structure and/or development from the Department of State Lands.*

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additions are located within this zone and therefore BCZO Section 305 criteria are not included in the table of applicable substantive criteria.

1 In the 1984 BCZO, the setback and frontage requirements applicable to buildings and structures  
2 in Baker County were located at BCZSO Section 401. In the updated 2014 BCZO, these  
3 provisions have been moved to BCZO 340.02.  
4

5 In the *Final Order on the ASC*, the Council imposed Land Use Condition 10 (Condition CON-LU-  
6 01) requiring that the certificate holder comply with the setback requirements specified in  
7 BCZO 340.02.B.2 and B.3. This condition applies to the RFA1 site boundary additions.  
8

9 As described in Section III.R.2 Water Rights of this order, portions of the RFA1 site boundary  
10 additions in Baker County would cross jurisdictional wetlands. The Council previously imposed  
11 Removal-Fill Condition 2 and Removal-Fill Condition 6 (Conditions GEN-RF-01 to GEN-RF-04)  
12 requiring compliance with ORS chapter 196. These conditions apply to the RFA1 site boundary  
13 additions.  
14

15 BCZO 410.03, Uses Permitted Through a Type II Procedure  
16

17 *In the EFU Zone, the following uses and their accessory uses may be permitted*  
18 *when authorized in accordance with the provisions of Section 115.06.*

19 \* \* \* \* \*

20  
21 *E. Utility Facilities*  
22

23 \* \* \* \* \*

24  
25  
26 *2. Utility facilities necessary for public service, including associated*  
27 *transmission lines as defined in ORS 469.300 and wetland waste treatment*  
28 *systems, but not including commercial facilities for the purpose of generating*  
29 *electrical power for public use by sale or transmission towers over 200 feet*  
30 *high. To demonstrate that a utility facility is necessary, as described in ORS*  
31 *215.283(1)(c), an applicant must:*  
32

33 *a. Show that reasonable alternatives have been considered and that the*  
34 *facility must be sited in an Exclusive Farm Use Zone due to one or more of the*  
35 *following factors:*  
36

37 *i. Technical and engineering feasibility;*  
38

39 *ii. The proposed facility is locationally-dependent. A utility facility is*  
40 *locationally-dependent if it must cross land in one or more areas zoned for*  
41 *exclusive farm use in order to achieve a reasonably direct route or to meet*  
42 *unique geographical needs that cannot be satisfied on other lands;*  
43

44 *iii. Lack of available urban and non-resource lands;*

1  
2 *iv. Availability of existing rights-of-way;*

3  
4 *v. Public health and safety;*

5  
6 *vi. Other requirements of state and federal agencies*

7  
8 *b. Costs associated with any of the factors listed in Section 410.03(D)(1)(a)*  
9 *may be considered; however, cost alone may not be the only consideration in*  
10 *determining that a utility facility is necessary for public service. Land costs*  
11 *shall not be included when considering alternative locations for substantially*  
12 *similar utility facilities. The Land Conservation and Development Commission*  
13 *shall determine by rule how land costs may be considered when evaluating the*  
14 *siting of utility facilities that are not substantially similar.*

15  
16 *c. The owner of a utility facility approved under this Section shall be*  
17 *responsible for restoring, as nearly as possible, to its former condition any*  
18 *agricultural land and associated improvements that are damaged or*  
19 *otherwise disturbed by the siting, maintenance, repair or reconstruction of the*  
20 *facility. Nothing in this Section shall prevent the owner of the utility facility*  
21 *from requiring a bond or other security from a contractor or otherwise*  
22 *imposing on a contractor the responsibility for restoration.*

23  
24 *d. The governing body of the county or its designee shall impose clear and*  
25 *objective conditions to mitigate and minimize the impacts of the proposed*  
26 *facility, if any, on surrounding lands devoted to farm use in order to prevent a*  
27 *significant change in accepted farm practices or a significant increase in the*  
28 *cost of farm practices on the surrounding farmlands.*

29  
30 \* \* \* \* \*

31  
32 In the 1984 BCZO, the uses permitted in Baker County’s EFU zone were set forth in BCZSO  
33 301.02. In the updated 2014 BCZO, these provisions have been replaced with BCZO 401.3.

34  
35 The former BCZO 301.02 provided that “major utility facilities” were permitted in Baker  
36 County’s EFU zone. In the *Final Order on the ASC*, the Council found that the facility  
37 components located in Baker County’s EFU zone were to be evaluated as a major utility facility,  
38 subject to the requirements of ORS 215.275 and 215.283. The Council also found that minimum  
39 parcel size and setback requirements found in the previous Ordinance that went beyond the  
40 requirements of ORS 215.275 were not applicable to the facility.<sup>102</sup>

41  

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<sup>102</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 216.

1 BCZO 401.03 provides that a utility facility necessary for public service, excluding a commercial  
2 power generation facility or a transmission tower over 200 feet in height, is a use permitted by  
3 right in Baker County’s EFU zone and provides the criteria for whether a utility facility is  
4 necessary for public service. These criteria mirror the underlying provisions of ORS 215.275 and  
5 215.283. In the *Final Order on the ASC*, the Council determined that the transmission line  
6 qualifies as a utility facility necessary for public service under ORS 215.275 because there was  
7 no reasonably direct route that would allow the applicant to construct the transmission line  
8 while avoiding all impacts to EFU zoned land, that the applicant had demonstrated a “lack of  
9 available nonresource lands” for which to site the proposed facility; and that the applicant had  
10 proposed the route to utilize some available rights-of-ways.<sup>103</sup> The Council also determined that  
11 access roads and other ancillary facilities located in Baker County’s EFU zone were to be  
12 evaluated as accessory uses to the transmission line.<sup>104</sup>

13  
14 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 52 acres  
15 of temporary and permanent impacts to agricultural lands in Baker County.<sup>105</sup> The RFA1 site  
16 boundary additions would result in 120 acres of temporary and permanent impacts to  
17 agricultural lands, and would not be additive to the previously evaluated impacts for the facility.  
18 The RFA1 site boundary additions would increase but not significantly, the nature or extent of  
19 the use. Accordingly, the Council continues to rely on its previous findings that the RFA1 site  
20 boundary additions located in Baker County’s EFU zone continue to qualify as utility facilities  
21 necessary for public service.

22  
23 BCZO 401.03.E.2.d requires the County, or in this case, the Council, to impose clear and  
24 objective conditions to mitigate and minimize the impacts of the facility on  
25 surrounding lands devoted to farm use in order to prevent a significant change in  
26 accepted farm practices or a significant increase in the cost of farm practices on  
27 surrounding farmlands.

28  
29 The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires  
30 the certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan  
31 prescribing monitoring and mitigation of impacts to soils and activities. This condition would  
32 apply to the RFA1 site boundary additions.

33  
34 Because the Council previously determined that the facility is a permitted use in Baker County’s  
35 EFU zone, and because the Council previously imposed conditions ensuring compliance with the  
36 applicable use standards that would also apply to the RFA1 site boundary additions, the Council  
37 finds that the RFA1 site boundary additions would comply with BCZO Section 401.03.

38

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<sup>103</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pgs. 255-256 of 10586.

<sup>104</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 223 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

<sup>105</sup> B2HAPPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.8.5.4 Table K-29, p. K-309.

1 BCZO 620.03, Big Game Habitat Overlay Zone, Permitted Uses

2  
3 *A. Permitted uses. Uses permitted outright and conditionally in the underlying*  
4 *zoning district shall be permitted in the Big Game Habitat Overlay Zone if they*  
5 *will not result in the degradation of critical big game habitat.*

6  
7 \* \* \* \* \*

8  
9 In the *Final Order on the ASC*, the Council did not identify any ordinance establishing  
10 requirements for uses located in Baker County’s Big Game Habitat Overlay Zone and found that  
11 the Baker County Comprehensive Plan did not include provisions for the protection of Big Game  
12 Habitat applicable to the facility except for setback requirements to minimize impacts on  
13 riparian vegetation. The Council found that, subject to compliance with those requirements, the  
14 facility would be consistent with the county’s Goal 5 planning goals for protecting big game  
15 habitat.<sup>106</sup>

16  
17 In the updated Baker County Zoning Ordinance of 2014, the County adopted BCZO 620.03,  
18 which as shown above, allows uses to be permitted in the Big Game Habitat Overlay Zone if the  
19 use will not result in the degradation of critical big game habitat.

20  
21 Both the True Blue Gulch and Durbin Quarry alternatives, as well as several RFA1 site boundary  
22 additions associated with access road changes, would be located in Baker County’s Big Game  
23 Habitat Overlay Zone.<sup>107</sup> As described in more detail in Section III.H, *the Council’s Fish and*  
24 *Wildlife Habitat standard (OAR 345-022-0060)* requires findings that the design, construction  
25 and operation of the facility, taking into account mitigation, are consistent with the general fish  
26 and wildlife habitat mitigation goals and standards established under OAR 635-415-0025.

27  
28 In the *Final Order on the ASC*, the Council evaluated all ODFW-identified elk and mule deer  
29 winter range as Category 2 Habitat<sup>108</sup>, and required mitigation of impacts to ensure that there is  
30 no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity  
31 or quality. The Council imposed Fish and Wildlife Condition 4 (Condition GEN-FW-04) requiring  
32 that the certificate holder provide adequate mitigation for impacts to habitat quantity and  
33 quality through mitigation banking, an in-lieu fee program, or permittee-developed mitigation  
34 projects. The Council also imposed Fish and Wildlife Condition 11 (Condition CON-FW-01)  
35 prohibiting the certificate holder from conducting ground-disturbing activities within elk or  
36 mule deer winter range between December and March without prior approval. These  
37 conditions apply to the RFA1 site boundary additions.

38  
39 Because existing conditions would ensure that any impacts to habitat within RFA1 site  
40 boundary additions would be mitigated based on a mitigation goal of no net loss of either the

---

<sup>106</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 232 of 10586.

<sup>107</sup> B2HAMD1 RFA1 2023-06-08. Section 7.1.5.3.

<sup>108</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 350 of 10586.

1 quantity or quality of big game winter range, the Council finds that the RFA1 site boundary  
2 additions within big game winter range would comply with BCZO 620.03.

3  
4 BCZO 710, Historic/Cultural and Natural Area Protection Procedure

5  
6 710.03 Permits Required

7  
8 *A. A permit shall be required to destroy or make major alteration to a*  
9 *historic/cultural/natural site or structure inventoried as significant in the*  
10 *County Comprehensive Plan. Upon receipt of an application for said permit,*  
11 *the Planning Department shall institute a 30-day hold. During that time*  
12 *various actions will be initiated by the County depending upon the nature of*  
13 *the threatened resource. All of the inventoried natural sites, historic sites and*  
14 *the cultural sites identified with one, two or three stars will be subject to a*  
15 *public hearing. Notice of the proposed change and public hearing will be*  
16 *provided to the general public, the State Historic Preservation Office, the State*  
17 *Natural Heritage Advisory Council, the State Department of Fish and Wildlife*  
18 *and/or affected local historical, cultural, or governmental entities. The*  
19 *opportunity to educate, persuade, pay for, and/or require the preservation of*  
20 *a significant resource will be provided by the County. At the hearing before the*  
21 *Planning Commission a review will be conducted to determine:*

22  
23 *1. If the change will destroy the integrity of the resource.*

24  
25 *2. If the proposal can be modified to eliminate its destructive aspects.*

26  
27 *3. If any agency or individual is willing to compensate the resource owner for*  
28 *the protection of the resource.*

29  
30 *4. If the resource can be moved to another location.*

31  
32 *B. If, after this review, it is determined by the County that the integrity of a*  
33 *significant historic/cultural structure or townsite or a natural area resource is*  
34 *threatened, the following criteria will be applied to decide whether to allow,*  
35 *allow with conditions, or disallow the proposed change:*

36  
37 *1. For significant historic/cultural structures and townsites.*

38  
39 *a. The historic/cultural structure or townsite constitutes a hazard to the safety*  
40 *of the public occupants and cannot reasonably be repaired; or*

41  
42 *b. The retention of the historic/cultural structure or townsite would cause*  
43 *financial hardship to the owner which is not offset by public interest in the*  
44 *structure's/townsite's preservation; or*

1  
2 *c. The improvement project is of substantial benefit to the County and cannot*  
3 *be reasonably located elsewhere, and overrides the public's interest in the*  
4 *preservation of the historic/cultural structure or townsite; or*

5  
6 *d. Major exterior alteration shall, to the extent possible, be consistent with the*  
7 *historic/cultural character of the structure.*

8  
9 *2. For significant natural areas.*

10  
11 *a. The Existence of a Site Report. The site's relative significance is indicated by*  
12 *the existence of a site report indicating a field survey with one or more*  
13 *elements verified.*

14  
15 *b. Number of Elements. The site is elevated to a higher priority if it contains a*  
16 *diversity of natural elements.*

17  
18 *c. Past Use of Land. The degree to which human activities have already*  
19 *impacted an area is a significant factor in determining the value of protecting*  
20 *the resource.*

21  
22 *d. Abundance and Quality of the Same Resource Elsewhere on the County's*  
23 *Inventory. In reviewing such comparative information, the County will be able*  
24 *to make its decision knowing the relative significance of the resource in*  
25 *question.*

26  
27 *e. Financial Impact. A determination that the retention of the natural area*  
28 *would cause financial hardship to the owner not offset by public interest in the*  
29 *site's preservation would be a determining factor in the County's decision.*

30  
31 *f. Public Benefit from the Proposed Change. A finding that the change is of*  
32 *substantial benefit to the County and cannot be accommodated feasibly*  
33 *elsewhere on the applicant's property would be a significant factor in the*  
34 *County's decision.*

35  
36 *3. For Resources on Federally Managed Lands. The findings and conclusions of*  
37 *Baker County relative to a proposed alteration or demolition of a significant*  
38 *cultural/ historic/natural site/structure shall be forwarded to the appropriate*  
39 *federal agency as a recommendation.*

40  
41 *4. For Resources Not Inventoried or Designated as 1B. For resources of*  
42 *unknown significance or resources not on the inventory, a local review will be*  
43 *conducted by BLM and USFS personnel, Oregon Department of Fish and*  
44 *Wildlife, State and/or college historians, and local museum and historical*

1 *society members to evaluate the resource's comparative worth and make a*  
2 *recommendation as to whether a full public hearing is warranted.*

3  
4 In the 1984 BCZO, the procedures for the protection of historic or cultural structures and sites  
5 and natural areas were located at BCZSO Section 412. In the updated 2014 BCZO, these  
6 provisions have been moved to BCZO 710.02. While there have been a number of  
7 administrative changes, the procedures and requirements are generally comparable to the  
8 previous Ordinance.

9  
10 In the *Final Order on the ASC*, the Council found that the construction and operation of the  
11 approved facility would not result in significant impacts to significant historic or cultural  
12 structures or townsites or significant natural areas included in Baker County's inventory of  
13 Historic and Cultural Sites, Structures, Districts contained within the Baker County  
14 Comprehensive Plan Goal 5 Supplement and was therefore consistent with BCZSO Section 412.

15  
16 The RFA1 site boundary additions in Baker County are located more than 0.5 miles from any of  
17 the inventoried Goal 5 resources, and as such the Council finds that the RFA1 site boundary  
18 additions would not impact the certificate holder's ability to comply with BCZO 710.03.B.1 to  
19 B.3.

20  
21 *III.E.1.e Malheur County Applicable Substantive Criteria*

22  
23 In the *Final Order on the ASC*, the Council evaluated the facility's compliance with applicable  
24 provisions of Malheur County Code (MCC) Title 6, Article A (Resource Zones), Article I (Heavy  
25 Industrial Zone), and Article K (Flood Plain Management Zone).

26  
27 The RFA1 site boundary additions located in Malheur County are associated with design  
28 changes to 7.4 miles of access roads, including substantial improvements to 3.4 miles of existing  
29 road and the construction of 4 miles of new access roads, and would permanently impact  
30 approximately 12.4 acres. The RFA1 site boundary additions are all located within Malheur  
31 County's EFU (C-A1) and Exclusive Range Use (C-A2); and Heavy Industrial (HI) zones. The  
32 applicable substantive criteria within these zones are presented in Table 14 below.

33  
34 Malheur County has amended the Malheur County Code since the application was submitted in  
35 2013. Based on the date that preliminary RFA1 was submitted, the version of the Malheur  
36 County Code that took effect on August 10, 2022, applies to the review of the RFA1 site  
37 boundary additions. The Malheur County Comprehensive Plan has not been updated since  
38 2010.

**Table 14: Malheur County Applicable Substantive Criteria**

Section	Description
Malheur County Code, Title 6: Zoning	
Article A	Resource Lands
Section 6-3A-2	Permitted Uses

**Table 14: Malheur County Applicable Substantive Criteria**

Section	Description
Article I	M-2 Heavy Industrial Zone
Section 6-3I-3	Conditional Uses
Section 6-3I-4	Performance Standards
Article K	Flood Plain Management Overlay
Section 6-3K-3	Standards
<b>Malheur County Comprehensive Plan</b>	
Goal 3 Agricultural Lands	Policy 2 Policy 7 Policy 8 Policy 9

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MCC 6-3A-2, Permitted Uses

*A. The following uses may be permitted outright by ministerial permit in each of the three (3) resource zones except as specifically added or excluded:*

*\* \* \* \* \**

*14. Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over two hundred feet (200') in height. A utility facility necessary for public service may be established as provided in ORS 215.275 and section 6-6-8-8, "Wireless Telecommunication Facilities" of this title.  
(Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004)*

MCC 6-3A-2 provides that a utility facility necessary for public service, excluding a commercial power generation facility or a transmission tower over 200 feet in height, is a use permitted by right in Malheur County’s three resource zones. The criteria for whether a utility facility is necessary for public service is provided under ORS 215.275. In the *Final Order on the ASC*, the Council determined that the transmission line qualifies as a utility facility necessary for public service under ORS 215.275 because there was no reasonably direct route that would allow the applicant to construct the transmission line while avoiding all impacts to EFU-zoned land, that the applicant had demonstrated a “lack of available nonresource lands” for which to site the proposed facility; and that the applicant had proposed the route to utilize some available

1 rights-of-ways.<sup>109</sup> The Council also determined that access roads located on the same lots as the  
2 transmission line were to be evaluated as accessory uses to the transmission line.<sup>110</sup>

3  
4 All RFA1 site boundary additions associated with access road changes in Malheur County are  
5 located on tax lots that contain portions of the approved transmission line route.<sup>111</sup>

6  
7 The Council also imposed Land Use Condition 11 (Condition GEN-LU-08), requiring, in part, that  
8 the certificate holder obtains all necessary permits from Malheur County prior to facility  
9 construction.

10  
11 The facility, as evaluated in the *Final Order on the ASC*, would result in approximately 74 acres  
12 of temporary and permanent impacts to agricultural lands in Malheur County.<sup>112</sup> The RFA1 site  
13 boundary additions would result in approximately 25 acres of temporary and permanent  
14 impacts to agricultural lands, and would not be additive to the previously evaluated impacts for  
15 the facility. The RFA1 site boundary additions do not significantly change the nature or extent of  
16 the use. Accordingly, the Council continues to rely on its previous findings that the portion of  
17 the facility, including related or supporting facilities, located in Malheur County’s resource  
18 zones, continue to qualify as utility facilities necessary for public service.

19  
20 Because the Council previously determined that the facility is a permitted use in Malheur  
21 County’s resource zones, and because the Council previously imposed conditions ensuring  
22 compliance with the applicable use standards that would also apply to the RFA1 site boundary  
23 additions, the Council finds that the RFA1 site boundary additions would comply with MCC 6-  
24 3A-2.

25  
26 MCC 6-3I-3, Conditional Uses

27  
28 *The following uses and their accessory uses may be established when*  
29 *authorized in accordance with Chapter 6 of this Title:*

30  
31 *A. All conditional and permitted uses allowed in an M-1 Zone that are*  
32 *compatible with a heavy industrial zone.*

33  
34 \* \* \* \* \*

35  

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<sup>109</sup> B2HAPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 255-256 of 10586.

<sup>110</sup> B2HAPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 237-238 of 10586, citing, *Save Our Rural Or. v. Energy Facility Siting Council*, 339 Or. 353, 384 (2005) (upholding EFSC’s determination that ancillary facilities are considered “utility facilities necessary for public service”) and *Cox v. Polk County*, 174 Or. App. 332, 343-44 (2001) (“utility facilities necessary for public service” may include ancillary or off-site equipment).

<sup>111</sup> B2HAMD1 RFA1 Figure 8-1 Property Owner Map 2023-06-08. Maps 14-21 demonstrate that all RFA1 site boundary additions would intersect with the alignment of the approved transmission line route.

<sup>112</sup> B2HAPDoc3-19 ASC 11 Exhibit K Land Use ASC 2018-09-28. Section 6.10.5.4 Table K-36, p. K-339.

1 Utility Facilities, including ancillary facilities, are identified as a conditional use allowed in an M-  
2 1 zone under MCC 6-3H-3(I), and are, by operation of MCC 3-3I-3(A), allowed as a conditional  
3 use in Malheur County’s M-2 (Heavy Industrial) Zone. The Council, therefore, finds that the  
4 modification and use of an existing road is compatible with the zone.  
5

6 MCC 6-3I-4, Performance Standards  
7

8 *Each structure or use permitted or conditionally permitted in the M-2 Zone*  
9 *shall meet the following performance standards:*

10  
11 *A. Conduct Of Use: No permitted or permissible use shall be conducted in any*  
12 *manner which would render it noxious or offensive by reason of dust, refuse*  
13 *matter, odor, smoke, gas fumes, noise, vibration or glare.*  
14

15 *B. Enclosure: All manufacturing or processing activities shall be completely*  
16 *enclosed in buildings, except as provided by the conditional use section of this*  
17 *Article.*  
18

19 *C. Outdoor Storage: Junk, salvage, auto wrecking and similar operations shall*  
20 *be fenced, screened or limited in height so as to block substantially any view*  
21 *of such material from any point located on an abutting street or from any*  
22 *point less than eight feet (8') above grade within any abutting residential or*  
23 *commercial zone. However, this subsection C shall not be deemed to require*  
24 *more than an opaque fence or screen not more than ten feet (10') in height*  
25 *and not longer than the full perimeter of the subject zoning lot, and further*  
26 *provided, such screening may be reduced in height so as to avoid shading a*  
27 *solar collector on adjoining property when so requested by the adjoining*  
28 *property owner or a government official. No outdoor storage of materials*  
29 *which could be blown into the air or strewn about by wind shall be permitted.*

30 *D. Loading: Truck loading and unloading operations shall take place entirely*  
31 *within the site and shall not be so located as to interfere with pedestrian*  
32 *routes.*  
33

34 *E. Fire Hazard: No operation shall be established which constitutes a fire*  
35 *hazard.*  
36

37 *F. Noise: Noise shall be muffled as available technology permits so as to not be*  
38 *objectionable due to intermittence, beat frequency or shrillness and shall meet*  
39 *any State standards.*  
40

41 *G. Sewage And Liquid Waste: All operations shall comply with any applicable*  
42 *regulations of the County, State or Federal agencies responsible for pollution*  
43 *control. No wastes of a chemical, organic or radioactive nature shall be*

1            *injected or buried in the ground or stored in the open on the surface except in*  
2            *approved containers.*

3  
4            *H. Odor: The emission odors that are generally agreed to be obnoxious to any*  
5            *considerable number of people shall be abated with the latest feasible*  
6            *technology. As a general guide to classification of odor, it is deemed that*  
7            *odors of putrefaction, hydrogen sulfide, fermentation and rendering processes*  
8            *are objectionable while odors associated with baking, coffee roasting or nut*  
9            *roasting are normally not considered obnoxious. To reduce odors, the open air*  
10           *cooling of products with aromatic emissions shall be avoided. Floors,*  
11           *machinery, storage containers and other surfaces shall be kept clean of*  
12           *material which is potentially odor causing.*

13  
14           *I. Vibration: All machines shall be mounted so as to minimize vibration.*  
15           *Vibration shall not be so excessive as to interfere with heavy industrial*  
16           *operations on nearby premises.*

17  
18           *J. Glare And Heat: Any glare producing operations, such as welding arcs, shall*  
19           *be shielded so that they are not visible from the property line and surfaces*  
20           *near the glare source shall be of a type which will minimize the reflection of*  
21           *such glare beyond the property line. No heat from equipment or furnaces shall*  
22           *raise the temperature of materials or ambient air at the property line more*  
23           *than three degrees Fahrenheit (3°F).*

24  
25           *K. Interpretation: Whenever it cannot be decided by reasonable observation*  
26           *that a performance standard is being met, it shall be the responsibility of the*  
27           *operator of the use to supply evidence or engineering data to support the*  
28           *contention that a standard is being met. The standards are designed, except*  
29           *where referring to other codes, to be judged by ordinary human senses and*  
30           *not by the minute detail of scientific quality instruments. Until such evidence*  
31           *or engineering data is supplied and proves to be convincing, the judgment of*  
32           *the Planning Director shall be the determining factor. (Ord. 86, 12-7-1993)*

33  
34           The RFA1 site boundary additions that would be located in Malheur County's M-2 zone include  
35           substantial modifications to existing roads, to be used for access during construction and  
36           operation. Construction and use of substantially modified roads could generate dust, refuse,  
37           smoke, fumes, noise and vibrations consistent with other allowable uses within the M-2 zone,  
38           such as concrete plants, trucking freight terminals, and service stations. However, the noise,  
39           waste, odor, vibrations, and glare are not expected to be excessive or interfere with nearby  
40           operations.

41  
42           Council previously imposed Land Use Condition 11 (Condition GEN-LU-08) requiring that the  
43           certificate holder obtain zoning permits prior to any development in the M-2 zone. Because the  
44           use that would occur within the M-2 zone is consistent with allowable uses and based on

1 compliance with the previously imposed condition, the Council finds that the RFA1 site  
2 boundary additions in Malheur County’s M-2 zone would comply with MCC 6-3I-4 Performance  
3 Standards.

4  
5 MCC 6-3K-3, Standards  
6

7 *The following standards shall be applicable to any area designated as being*  
8 *within the 100-year flood plain:*

9  
10 *A. Any development shall comply with Title 5, Chapter 2 of this Code and the*  
11 *Federal Insurance Administration requirements for minimizing flood hazards.*

12  
13 *B. Any development shall also comply with the standards of the underlying*  
14 *primary zone.*

15  
16 *C. If a conflict in regulations or procedures occurs, the more restrictive*  
17 *provisions shall govern. (Ord. 86, 12-7-1993)*  
18

19 MCC 6-3K-3 establishes flood hazard minimization standards for development within SFHA’s,  
20 including compliance with primary underlying zone development standards and MCC Title 5,  
21 Chapter 2 and the Federal Insurance Administration. MCC Title 5, Chapter 2, requires among  
22 other things, that a development permit be obtained prior to any construction or development  
23 in a flood zone:

24  
25 *5-2-4-1: ESTABLISHMENT OF DEVELOPMENT PERMIT:*

26 *A development permit shall be obtained before construction or development*  
27 *begins within any area horizontally within the special flood hazard area*  
28 *established in subsection 5-2-3 B of this chapter. The development permit shall*  
29 *be required for all structures, including manufactured dwellings, and for all*  
30 *development as defined in 5-2-2, including fill and other activities. Application*  
31 *for a development permit shall be made on forms furnished by the Malheur*  
32 *County planning director/floodplain administrator and may include, but not be*  
33 *limited to, plans in duplicate drawn to scale showing the nature, location,*  
34 *dimensions and elevations of the area in question; existing or proposed*  
35 *structures, fill, storage of materials, drainage of facilities and the location of*  
36 *the foregoing.*

37  
38 *Specifically, the following information is required:*

39 *A. In riverine flood zones, the proposed elevation (in relation to mean sea*  
40 *level), of the lowest floor (including basement) and all attendant utilities of*  
41 *all new and substantially improved structures.*

42 *B. Proposed elevation in relation to mean sea level to which any non-*  
43 *residential structure will be flood proofed.*

- 1 C. *Certification by a registered professional engineer or architect licensed in*  
2 *the State of Oregon that the floodproofing methods for any non-*  
3 *residential structure meet the floodproofing criteria in subsection 5-2-5-2 C*  
4 *of this chapter.*
- 5 D. *Description of the extent to which any watercourse will be altered or*  
6 *relocated as a result of proposed development.*
- 7 E. *Base flood elevation data for subdivision proposals or other development*  
8 *when required per sections 5-2-4-2 B and 5-2-5-1 F.*
- 9 F. *Substantial improvement calculations for any improvement, addition,*  
10 *reconstruction, renovation, or rehabilitation of an existing structure.*
- 11 G. *The amount and location of any fill or excavation activities proposed.*  
12 *(Ord. 54, 3-24-1987; amd. Ord. 147, 4-14-2004; Ord. 219, 11-13-2019)*  
13

14 The RFA1 site boundary additions include the modification of a segment of existing road (MA-  
15 599) that falls partially within the floodplain of the Malheur River.<sup>113</sup> The Council previously  
16 imposed Land Use Condition 11 (Condition GEN-LU-08), which requires in part that the  
17 certificate holder obtain, from Malheur County, and submit, to the Department, a copy of a  
18 Floodplain Development Permit for construction within Malheur County’s Floodplain Overlay  
19 Zone. This condition would apply to the portions of RFA1 site boundary additions that would  
20 overlap with the Floodplain Overlay Zone.

21  
22 Based on compliance with Land Use Condition 11 (Condition GEN-LU-08), the Council finds the  
23 RFA1 site boundary additions would comply with MCC 6-3K-3.

24  
25 Malheur County Comprehensive Plan, Agricultural Lands Policies  
26

27 *1. Public and private land classified by the Natural Resources Conservation*  
28 *Service (formerly U.S. Department of Agriculture Soil Conservation Service) as*  
29 *being in Capability Classes I through VI, as well as High Value Farmland as*  
30 *defined by applicable Oregon Revised Statutes and Oregon Administrative*  
31 *Rules and any other lands determined to be necessary and required for farm*  
32 *use, are considered to be agricultural lands.*

33  
34 *2. High Value Farmlands (ORS and OAR designated) shall be given the greatest*  
35 *protection. Lands classified by the Natural Resources Conservation Service, as*  
36 *Capability Classes I through VI shall be afforded the next highest protection*  
37 *with Class I having the highest protection and Class VI the least.*

38  
39 *3. In addition to the Natural Resources Conservation Service classification*  
40 *system, county assessor's records may be considered in evaluating individual*  
41 *parcels for the purpose of planning and zoning.*  
42

---

<sup>113</sup> <http://info.malheurco.org/gis/FEMA/Panels/4101490475B.pdf>

1           4. *Urban growth boundaries, exclusive farm use zoning, and farm use tax*  
2           *assessment will be the major tools used to protect agricultural lands.*

3  
4           5. *The county will support viable water resource projects for additional*  
5           *storage, power generation, water quality, conservation and recreation. 6. The*  
6           *county will review and consult with the irrigation and drainage districts on*  
7           *land use decisions to assure they will not negatively impact the integrity or*  
8           *operation of water for irrigation or drainage purposes.*

9  
10          7. *In addition to county code and the State of Oregon’s land use laws and*  
11          *administrative rules for non-farm dwelling, it is the policy of Malheur County*  
12          *that there be no net loss of farmlands listed on High Value Farmlands Soils list*  
13          *or soils classified as types I-III by the Natural Resources Conservation Service.*

14  
15          8. *Current and future accepted farming and ranching practices and activities*  
16          *shall have priority and continue without interference.*

17  
18          9. *Any utility transmission line should avoid adverse impacts on any*  
19          *agricultural operation in the entire agriculture area. This protection should*  
20          *prioritize High Value Farmland and the Natural Resources Conservation*  
21          *Service soil classes I through III. The County Court will appoint a citizens*  
22          *advisory committee on agriculture to review the agricultural lands element of*  
23          *the comprehensive plan on an as needed basis.*

24  
25          11. *The county will not discourage the creation of special land use districts so*  
26          *that landowners can impose more restrictive land use regulations than those*  
27          *imposed by the county.*

28  
29          In the *Final Order on the ASC*, the Council found that the certificate holder had avoided High  
30          Value Farmland soils and NRCS soil classes I through III to the extent possible in the design of  
31          the approved route. The RFA1 site boundary additions in Malheur County’s EFU zone would  
32          accommodate access route changes in proximity to the approved ASC route.

33  
34          The majority of the RFA1 site boundary additions in Malheur County are not located on High-  
35          Value or Class I to III soils, however, one proposed new road, designated as segment MA-639,  
36          would impact approximately 7.9 acres of high value farmland soils.<sup>114</sup> The proposed RFA1 new  
37          route would be located between two fields, following existing disturbance and would avoid  
38          impacts to the agriculture fields to the greatest extent possible by traverse the non-cultivated  
39          portion of land between the two fields.

40  
41          The Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires  
42          the certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan

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<sup>114</sup> B2HAMD1 RFA1 2023-06-08. Table 7.1-2.

1 prescribing monitoring and mitigation of impacts to soils and activities. This condition would  
2 apply to the RFA1 site boundary additions.

3  
4 *III.E.1.f Directly Applicable State Rules and Statutes*

5  
6 ORS 215.275 and 215.283, Utility Facilities Necessary for Public Service

7  
8 *ORS 215.275*

9  
10 *(1) A utility facility established under ORS 215.213 (1)(c)(A) or 215.283*  
11 *(1)(c)(A) is necessary for public service if the facility must be sited in an*  
12 *exclusive farm use zone in order to provide the service.*

13  
14 *(2) To demonstrate that a utility facility is necessary, an applicant for approval*  
15 *under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) must show that reasonable*  
16 *alternatives have been considered and that the facility must be sited in an*  
17 *exclusive farm use zone due to one or more of the following factors:*

18  
19 *(a) Technical and engineering feasibility;*

20  
21 *(b) The proposed facility is locationally dependent. A utility facility is*  
22 *locationally dependent if it must cross land in one or more areas zoned for*  
23 *exclusive farm use in order to achieve a reasonably direct route or to meet*  
24 *unique geographical needs that cannot be satisfied on other lands;*

25  
26 *(c) Lack of available urban and nonresource lands;*

27  
28 *(d) Availability of existing rights of way;*

29  
30 *(e) Public health and safety; and*

31  
32 *(f) Other requirements of state or federal agencies.*

33  
34 *(3) Costs associated with any of the factors listed in subsection (2) of this*  
35 *section may be considered, but cost alone may not be the only consideration*  
36 *in determining that a utility facility is necessary for public service. Land costs*  
37 *shall not be included when considering alternative locations for substantially*  
38 *similar utility facilities. The Land Conservation and Development Commission*  
39 *shall determine by rule how land costs may be considered when evaluating the*  
40 *siting of utility facilities that are not substantially similar.*

41  
42 *(4) The owner of a utility facility approved under ORS 215.213 (1)(c)(A) or*  
43 *215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its*  
44 *former condition any agricultural land and associated improvements that are*

1 *damaged or otherwise disturbed by the siting, maintenance, repair or*  
2 *reconstruction of the facility. Nothing in this section shall prevent the owner of*  
3 *the utility facility from requiring a bond or other security from a contractor or*  
4 *otherwise imposing on a contractor the responsibility for restoration.*

5  
6 *(5) The governing body of the county or its designee shall impose clear and*  
7 *objective conditions on an application for utility facility siting under ORS*  
8 *215.213 (1)(c)(A) or 215.283 (1)(c)(A) to mitigate and minimize the impacts of*  
9 *the proposed facility, if any, on surrounding lands devoted to farm use in order*  
10 *to prevent a significant change in accepted farm practices or a significant*  
11 *increase in the cost of farm practices on the surrounding farmlands.*

12  
13 *(6) The provisions of subsections (2) to (5) of this section do not apply to*  
14 *interstate natural gas pipelines and associated facilities authorized by and*  
15 *subject to regulation by the Federal Energy Regulatory Commission.*

16  
17 *ORS 215.283*

18 *(1) The following uses may be established in any area zoned for exclusive farm*  
19 *use:*

20  
21 *\* \* \* \* \**

22  
23 *(c) Utility facilities necessary for public service, including wetland waste*  
24 *treatment systems but not including commercial facilities for the purpose of*  
25 *generating electrical power for public use by sale or transmission towers over*  
26 *200 feet in height. A utility facility necessary for public service may be*  
27 *established as provided in:*

28  
29 *(A) ORS 215.275; or*

30  
31 *(B) If the utility facility is an associated transmission line, as defined in ORS*  
32 *215.274 and 469.300.*

33  
34 *\* \* \* \* \**

35  
36 In the *Final Order on the ASC*, the Council determined that the transmission line qualifies as a  
37 utility facility necessary for public service under ORS 215.275 because there was no reasonably  
38 direct route that would allow the applicant to construct the transmission line while avoiding all  
39 impacts to EFU zoned land, that the applicant had demonstrated a “lack of available  
40 nonresource lands” for which to site the proposed facility; and that the applicant had proposed  
41 the route to utilize some available rights-of-ways.<sup>115</sup> Consistent with ORS 215.275(5), the  
42 Council previously imposed Land Use Condition 14 (Condition GEN-LU-11), which requires the

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<sup>115</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pgs. 255-256 of 10586.

1 certificate holder to prepare and implement an Agricultural Assessment and Mitigation Plan  
2 prescribing monitoring and mitigation of impacts to soils and activities. This condition would  
3 apply to the RFA1 site boundary additions.  
4

5 The RFA1 site boundary additions do not significantly change the nature or extent of the use.  
6 Accordingly, the Council continues to rely on its previous findings that the portion of the facility,  
7 including related or supporting facilities, located in exclusive farm use zones, continue to qualify  
8 as a utility facility necessary for public service.  
9

10 *III.E.1.g Goal 4 Exception*  
11

12 In order to issue an amended site certificate, the Council must find that the facility, with  
13 proposed changes, complies with all applicable substantive criteria, Land Conservation and  
14 Development Commission administrative rules and goals, and any land use statutes directly  
15 applicable to the facility under ORS 197.646(3). If the proposed changes do not comply with  
16 one or more applicable substantive criteria, the Council must either find that the facility  
17 otherwise complies with the statewide planning goals or that an exception to any relevant goals  
18 is justified. Most commonly, an exception is evaluated against the standards in OAR 345-022-  
19 0030(4)(c):  
20

21 *(4) The Council may find goal compliance for a proposed facility that does not*  
22 *otherwise comply with one or more statewide planning goals by taking an*  
23 *exception to the applicable goal. Notwithstanding the requirements of ORS*  
24 *197.732, the statewide planning goal pertaining to the exception process or*  
25 *any rules of the Land Conservation and Development Commission pertaining*  
26 *to the exception process, the Council may take an exception to a goal if the*  
27 *Council finds:*  
28

29 \* \* \*

30  
31 *(c) The following standards are met:*  
32

33 *(A) Reasons justify why the state policy embodied in the applicable goal*  
34 *should not apply;*  
35

36 *(B) The significant environmental, economic, social and energy consequences*  
37 *anticipated as a result of the proposed facility have been identified and*  
38 *adverse impacts will be mitigated in accordance with rules of the Council*  
39 *applicable to the siting of the proposed facility; and*  
40

41 *(C) The proposed facility is compatible with other adjacent uses or will be*  
42 *made compatible through measures designed to reduce adverse impacts.*  
43

1 In the *Final Order on the ASC*, the Council found that while the proposed right-of-way of the  
2 transmission line would exceed 100 feet, that the facility would still qualify as a conditionally  
3 allowed use under OAR 660-006-0025(4)(q) because ORS 772.210(2) specifically authorizes a  
4 300-foot right of way for high voltage transmission lines rated to carry more than 330-  
5 kilovolts.<sup>116</sup> The Council also found that permanent related or supporting facilities, specifically  
6 new and substantially modified roads, located outside of the 300-foot right-of-way could not be  
7 considered allowed uses under OAR 660-006-0025(4)(q) and would require an exception to  
8 Statewide Planning Goal 4 be taken.

9  
10 The Council found that there were sufficient reasons to justify an exception to Statewide  
11 Planning Goal 4, including that the access roads were necessary for the construction of the  
12 facility, that there were no reasonable alternative routes that would result in fewer impacts to  
13 Forest Lands, and that the approved access road routes would result in relatively minor impacts  
14 on existing forest uses.<sup>117</sup> The Council also found that the facility, when considering mitigation,  
15 would not cause significant adverse environmental consequences or impacts,<sup>118</sup> would  
16 represent a net economic benefit,<sup>119</sup> and would have no significant adverse impacts on public  
17 services or facilities.<sup>120</sup> The Council also found that the approved access roads would be  
18 compatible with adjacent land uses, and that, subject to compliance with conditions of  
19 approval, measures would be taken to reduce any potential adverse impacts.<sup>121</sup>

20  
21 The access road changes, and associated site boundary additions in RFA1 that would be located  
22 in Forested Lands in Umatilla and Union counties are expected to permanently impact fewer  
23 than 10 acres of forest land. Because the proposed changes do not significantly change the  
24 nature or extent of the proposed facility, or its impacts on forest lands, the Council continues to  
25 rely on its previous findings, and find that an exception to Statewide Planning Goal 4 is justified  
26 for the RFA1 site boundary located on Umatilla and Union County forest lands.

27  
28 **III.E.2. Conclusions of Law**

29  
30 Based on the foregoing analysis, and subject to compliance with the existing and amended site  
31 certificate conditions described above, the Council finds that the RFA1 site boundary additions  
32 comply with the identified applicable substantive criteria and the directly applicable state  
33 statutes and rules and, therefore, complies with the Council’s Land Use standard.

34  
35 **III.F. PROTECTED AREAS: OAR 345-022-0040**

36  

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<sup>116</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 269 of 10586.  
<sup>117</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 290 of 10586.  
<sup>118</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 291 of 10586.  
<sup>119</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 292 of 10586.  
<sup>120</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 292 of 10586.  
<sup>121</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, p. 293 of 10586.

1 (1) To issue a site certificate, the Council must find:  
2

3 (a) The proposed facility will not be located within the boundaries of a  
4 protected area designated on or before the date the application for site  
5 certificate or request for amendment was determined to be complete under  
6 OAR 345-015-0190 or 345-027-0363;  
7

8 (b) The design, construction and operation of the facility, taking into account  
9 mitigation, are not likely to result in significant adverse impact to a protected  
10 area designated on or before the date the application for site certificate or  
11 request for amendment was determined to be complete under OAR 345-015-  
12 0190 or 345-027-0363.  
13

14 (2) Notwithstanding section (1)(a), the Council may issue a site certificate for:

15 (a) A facility that includes a transmission line, natural gas pipeline, or water  
16 pipeline located in a protected area, if the Council determines that other  
17 reasonable alternative routes or sites have been studied and that the  
18 proposed route or site is likely to result in fewer adverse impacts to resources  
19 or interests protected by Council standards; or  
20

21 (b) Surface facilities related to an underground gas storage reservoir that have  
22 pipelines and injection, withdrawal or monitoring wells and individual  
23 wellhead equipment and pumps located in a protected area, if the Council  
24 determines that other alternative routes or sites have been studied and are  
25 unsuitable.  
26

27 (3) The provisions of section (1) do not apply to:

28  
29 (a) A transmission line routed within 500 feet of an existing utility right-of-way  
30 containing at least one transmission line with a voltage rating of 115 kilovolts  
31 or higher; or  
32

33 (b) A natural gas pipeline routed within 500 feet of an existing utility right of  
34 way containing at least one natural gas pipeline of 8 inches or greater  
35 diameter that is operated at a pressure of 125 psig.  
36

37 (4) The Council shall apply the version of this rule adopted under  
38 Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the  
39 review of any Application for Site Certificate or Request for Amendment that  
40 was determined to be complete under OAR 345-015-0190 or 345-027-0363  
41 before the effective date of this rule. Nothing in this section waives the  
42 obligations of the certificate holder and Council to abide by local ordinances,  
43 state law, and other rules of the Council for the construction and operation of

1 *energy facilities in effect on the date the site certificate or amended site*  
2 *certificate is executed.*<sup>122</sup>

3  
4 **III.F.1. Findings of Fact**

5  
6 The Protected Areas standard first prohibits Council from granting approval of a site certificate  
7 if a facility would be located within a designated protected area, unless a proposed facility, or  
8 amended facility is a transmission line located within 500 feet of an existing utility right-of-way  
9 containing at least one transmission line with a voltage rating of 115 kV or higher; and, if this  
10 cannot be met, a demonstration that alternative routes have been studied and determined to  
11 result in greater impacts. For facilities, or amended facilities located outside protected areas,  
12 including transmission lines, the Protected Areas standard requires the Council to find that,  
13 taking into account mitigation, the design, construction and operation of a proposed facility are  
14 not likely to result in significant adverse impacts<sup>123</sup> from noise, increased traffic, water use,  
15 wastewater disposal, visual impacts of facility structures or plumes, and visual impacts from air  
16 emissions to any protected area under OAR 345-022-0040 as defined in OAR 345-001-0010(26).  
17 As designated in the second amended project order, the analysis area for protected areas is the  
18 area within and extending 20 miles from the site boundary.

19  
20 *III.F.1.a Protected Areas in Analysis Area*

21  
22 To identify protected areas impacted by the site boundary additions in RFA1, the certificate  
23 holder reviewed geographic information system (GIS) data, maps, and other information on the  
24 updated categories of protected area as listed in OAR 345-001-0010(26).<sup>124</sup>

25  
26 Table 15: *Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary*  
27 *Additions*, below, includes the list of protected areas evaluated in the *Final Order on ASC*, new  
28 potentially impacted protected areas designated from the 2022 protected areas rulemaking, as  
29 well as the proximity of approved and RFA1 site boundary additions to each protected area. The  
30 *Final Order on ASC* identified 80 protected areas. RFA1 identifies 8 additional protected areas,  
31 described below, that are within the 20-mile proposed RFA1 site boundary additions analysis  
32 area.

33  

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<sup>122</sup> OAR 345-022-0040, effective December 19, 2022.

<sup>123</sup> OAR 345-001-0010(29) defines “Significant” as “...having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.”

<sup>124</sup> The Council’s protected area rulemaking, which updated the list of protected areas, the effective dates, and land management agency contact information, became effective on December 19, 2022. Council’s approval of the Boardman to Hemingway Transmission Line Final Order on ASC was September 27, 2022, therefore the previous protected area rule language applied to Council’s approval of the ASC.

Description of Newly Identified Protected Areas in RFA1 Analysis Area<sup>125</sup>

Glass Hill Preserve/ State Natural Area (SNA); Oregon Natural Areas Plan/Glass Hill; Union County, Oregon:

The Glass Hill Preserve/SNHA consists of approximately 1,230 acres located southwest of the City of La Grande in Union County, Oregon.<sup>126</sup> The Preserve/SNHA is located in the Blue Mountains ecoregion and is dominated by a peak that is 5,390 feet in elevation. The Preserve/SNHA was established in 2020 and is part of a privately owned nature reserve/conservation easement managed by the Blue Mountain Land Trust. Conservation easement may allow public hunting and fishing by permission. Open public access to the area is unclear.<sup>127</sup>

The Boardman Research Natural Area (RNA); Oregon Natural Areas Plan; Morrow County, Oregon:

The Boardman RNA is part of the Umatilla Plateau in the central Columbia River Basin, located south of Boardman, Oregon in Morrow County. The RNA consists of approximately 5,654 acres and was established September 1, 1978, to preserve examples of Columbia River basin steppe vegetation communities and associated wildlife. The bunchgrass communities and associated shrubs found in the RNA provide valuable foraging, habitat and nesting sites for many species of animals found in the area, including the Washington ground squirrel habitat (*Urocitellus washingtoni*; Oregon Endangered and Federal Species of Concern). The RNA is within the Boardman Bombing Range, owned and operated by the U.S. Department of Defense; otherwise, the RNA is monitored and maintained by The Nature Conservancy. The public is excluded from the Boardman Research Natural Area.<sup>128</sup>

Boardman/Willow Creek RNA (Boardman Area, COA 154); Morrow County, Oregon:

The Boardman/Willow Creek RNA is immediately west of the Boardman Bombing Range and Boardman RNA in Morrow County, Oregon. Similar to the Boardman RNA, the site is also part of the Columbia River Basin ecoregion and preserved to maintain Columbia River basin

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<sup>125</sup> Protected area descriptions derived from RFA1, Attachment 7-2; Protected Areas Supplement.

<sup>126</sup> B2HAMD1 RFA1 2023-06-08. Attachment 7-15, Table 2, has Glass Hill acreage of 1,728. Note that acreage for Glass Hill in RFA1 Attachment 7-2 is 1,230 which is confirmed from the Oregon State University Natural Areas Program Webpage database.

[https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ffinr.oregonstate.edu%2Fsites%2Ffinr.oregonstate.edu%2Ffiles%2FOregon\\_natural\\_areas\\_2020-final-draft.xlsx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ffinr.oregonstate.edu%2Fsites%2Ffinr.oregonstate.edu%2Ffiles%2FOregon_natural_areas_2020-final-draft.xlsx&wdOrigin=BROWSELINK). Accessed 06-12-2023.

<sup>127</sup> Communication between Kristen Gulick, Tetra Tech, and Lindsey Wise, Oregon State University, Institute for Natural Resources, July 13, 2022, and Meghan Ballard, Blue Mountains Conservancy, July 23, 2022, Attachment 7-2. B2HAMD1 RFA1 2023-06-08. Section 7.1.4. Comments from Ms. Geer indicated that the Glass Hill Preserve may be available for the public to access, however, open public access to the area is unclear. B2HAMD1 DPO Comments Geer 2023-07-18

<sup>128</sup> Communication between Kristen Gulick, Tetra Tech and Kelly Wallis, The Nature Conservancy, July 18, 2022, Attachment 7-2; OPRD 2020. B2HAMD1 RFA1 2023-06-08. Section 7.1.4.

1 steppe and grassland vegetation communities and associated wildlife. The RNA also  
2 represents the largest contiguous Washington ground squirrel habitat (*Urocitellus*  
3 *washingtoni*; Oregon Endangered and Federal Species of Concern) in Oregon and hosts  
4 some of the highest densities of long-billed curlew (*Numenius americanus*; Oregon Sensitive  
5 species) in the world. The RNA is part of a 22,000-acre privately owned nature  
6 reserve/conservation easement managed by The Nature Conservancy and Oregon  
7 Department of Fish and Wildlife. The public is excluded from the Boardman/Willow Creek  
8 Research Natural Area.<sup>129</sup>

9  
10 Birch Creek Cove RNA Oregon Natural Areas Plan/Birch Creek Cove PRNA); Umatilla County,  
11 Oregon:

12  
13 The Birch Creek Cove RNA consists of approximately 411 acres of old growth forest and  
14 wetland habitat located in the Blue Mountains ecoregion of Umatilla County, Oregon. The  
15 RNA is managed by the U.S. Forest Service for it is confined within the Umatilla National  
16 Forest. The RNA hosts a large grand-fir (*Abies grandis*) population as well as several  
17 wetlands obligate and facultative plant species. The National Forest offers numerous  
18 outdoor recreation opportunities such as hiking and camping.

19  
20 Government Draw RNA (Establishment Record); Union County, Oregon:

21  
22 The Government Draw RNA consists of approximately 178 acres of old growth forest,  
23 shrubland, and grassland located in the Blue Mountains ecoregion of Union County, Oregon.  
24 The RNA was established in 2000 and is managed by the U.S. Forest Service for it is confined  
25 within the Umatilla National Forest. The RNA hosts large ponderosa pine (*Pinus ponderosa*),  
26 grand fir (*Abies grandis*), Douglas fir (*Pseudotsuga menziesii*), western larch (*Larix*  
27 *occidentalis*), and lodgepole pine (*Pinus contorta*), stiff sagebrush (*Artemisia rigida*),  
28 Sandberg's bluegrass (*Poa sandbergii*), and bluebunch wheatgrass (*Agropyron spicatum*)  
29 populations. It has historically been used as an area for big game hunting and hiking. It has  
30 never been logged and, with fencing, has been protected from livestock grazing for 60  
31 years.

32  
33 Payette River Wildlife Area; State Wildlife Refuge or Management Areas (Payette River Wildlife  
34 Management Area/Payette River WMA), Malheur County, Oregon:

35  
36 The Payette River WMA consists of approximately 1,066 acres scattered along the Payette  
37 and Snake Rivers, bordering Malheur County, Oregon and Payette County, Idaho. The WMA  
38 was established in 1960 and is conserved primarily for waterfowl and upland bird habitat  
39 and is managed by Idaho Fish and Game. Sections of the WMA are closed February 1 to July  
40 31 to protect nesting waterfowl. The WMA is used for hunting and river-related recreation,  
41 only non-motorized vehicles and foot travel are permitted.

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<sup>129</sup> Communication between Kristen Gulick, Tetra Tech and Kelly Wallis, The Nature Conservancy, July 18, 2022, Attachment 7-2; OPRD 2020. B2HAMD1 RFA1 2023-06-08. Section 7.1.4.

1  
2 Indian Creek RNA, Lands Designated in Federal Management Plan (Oregon Natural Areas  
3 Plan/Indian Creek RNA); Union County, Oregon:  
4

5 The Indian Creek RNA consists of approximately 1,003 acres of subalpine and old growth  
6 forest located in the Blue Mountains ecoregion of Union County, Oregon. The RNA was  
7 established in 1980 and is managed by the U.S. Forest Service because it is located entirely  
8 within the Wallowa Whitman National Forest. The RNA hosts large lodgepole pine (*Pinus*  
9 *contorta*), mountain hemlock (*Tsuga mertensiana*), and subalpine fir (*Abies lasiocarpa*)  
10 populations. The National Forest offers numerous outdoor recreation opportunities such as  
11 hiking and camping.  
12

13 Rebecca Sand Hill RNA/ Area of Critical Environmental Concern (ACEC) (Four Rivers Field Office  
14 Draft Resource Management Plan and Draft Environmental Impact Statement); Washington  
15 County, Idaho:  
16

17 The Rebecca Sandhill RNA/ACEC consists of approximately 240 acres of Bureau of Land  
18 Management-managed land, east of the City of Weiser in Washington County, Idaho.  
19 The RNA/ACEC was designated in 1988 and is managed for special status plants species,  
20 including a large population of Mulford’s milkvetch (*Astragalus mulfordiae*; Oregon and  
21 Idaho Endangered Species and Federal Species of Concern), Aase’s onion (*Allium aseae*;  
22 Idaho Endangered). There are also known occurrences of, and habitat present within  
23 the RNA/ACEC to host the Southern Idaho ground squirrel (*Uroditellus endemicus*; Idaho  
24 Endangered).  
25

26 Table 15: *Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary*  
27 *Additions*, identifies the 80 protected areas evaluated in the *Final Order on ASC* as well as the 8  
28 newly identified protected areas within the RFA1 analysis area.<sup>130</sup>

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<sup>130</sup> The combined inventory for protected areas identified for the ASC and for the site boundary additions in RFA1 are 88 protected areas. Department emphasizes that the certificate holder is adding road and route alternatives to allow flexibility in design and construction of the facility. Depending on which final roads and routes are selected, the potential impacts to protected area would be reflected in Table 15: *Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions*.

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Blue Mountain Forest State Scenic Corridor	State Parks and Waysides	Umatilla, Union	0 mi <sup>1</sup>		3.7 mi	NW	0 mi <sup>1</sup> (Access Road Crosses)	
Ladd Marsh WA/SNHA	State Wildlife Areas and Management Areas	Union	0 mi <sup>1</sup>		208.3 ft	E	4.5 mi (Access Road)	NW
Oregon Trail ACEC - NHOTIC Parcel	BLM ACECs	Baker	123.4 ft	NE	- <sup>2</sup>	- <sup>2</sup>	2.1 mi (Access Road)	SW
Owyhee River Below the Dam ACEC	BLM ACECs	Malheur	249 ft	SW	7.6 mi	SE	1.9 mi (Access Road)	E
Oregon Trail ACEC - Straw Ranch 1 Parcel	BLM ACECs	Baker	0.1 mi	SW	- <sup>2</sup>	- <sup>2</sup>	0.1 mi (Access Road)	E
Oregon Trail ACEC - Birch Creek parcel	BLM ACECs	Malheur	0.2 mi	SW	- <sup>2</sup>	- <sup>2</sup>	0.3 mi (Access Road)	E
Hilgard Junction State Recreation Area	State Parks and Waysides	Union	0.3 mi	E	0.4 mi	N	0.6 mi (Access Road)	SE
Deer Flat National Wildlife Refuge (including Snake River Island Units)	National and State Wildlife Refuge	Malheur	0.4 mi	E	12.2 mi	E	0.6 mi (Access Road)	SW

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Oregon Trail ACEC - Tub Mountain Parcel	BLM ACECs	Malheur	0.5 mi	W	17.2 mi	N	1.5 mi (Access Road)	E
Columbia Basin - Coyote Springs WA	State Wildlife Areas and Management Areas	Morrow	0.5 mi	W	8.9 mi	N	12.2 mi (Access Road)	S
Farewell Bend State Recreation Area	State Parks and Waysides	Baker	0.7 mi	NE	- <sup>2</sup>	- <sup>2</sup>	0.4 mi (Access Road)	W
Oregon Trail ACEC - Blue Mountain Parcel	BLM ACECs	Union	0.9 mi	NE	6.7 mi	NW	0.9 mi (Access Road)	SW
Oregon Trail ACEC - Straw Ranch 2 Parcel	BLM ACECs	Baker	1.1 mi	NE	- <sup>2</sup>	- <sup>2</sup>	1.9 mi (Access Road)	SE
Oregon Trail ACEC - Powell Creek Parcel	BLM ACECs	Baker	1.2 mi	E	- <sup>2</sup>	- <sup>2</sup>	2.2 mi (Access Road)	W
Umatilla National Wildlife Refuge	National and State Wildlife Refuge	Morrow	1.3 mi	N	9.6 mi	N	12.7 mi (Access Road)	S
Powder River WSR (Scenic)	Scenic Waterway	Baker, Union	1.4 mi	E	14.8 mi	SE	9.8 mi (Access Road)	SW

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Powder River Canyon ACEC	BLM ACECs	Baker	1.4 mi	E	16.3 mi	SE	8.8 mi (Access Road)	SW
Lindsay Prairie Preserve/ SNHA	State Natural Heritage Areas	Morrow	1.6 mi	W	3.9 mi	SW	1.3 mi (Little Juniper Canyon Transmission Line Alternative)	E
Glass Hill Preserve/ SNHA <sup>3</sup>	State Natural Area	Union	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	1.6 mi (Access Road)	W
Boardman RNA <sup>3</sup>	Lands Designated in Federal Management Plan	Morrow	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	2.0 mi (Access Road)	S
Five Points Creek (Wild)	Scenic Waterway	Umatilla, Union	2.0 mi	NE	2.1 mi	NE	2.4 mi (Access Road)	S
South Alkali Sand Hills ACEC	BLM ACECs	Malheur	2.1 mi	E	12.6 mi	N	5.8 mi (Access Road)	W
Oregon Trail ACEC - White Swan Parcel	BLM ACECs	Baker	2.9 mi	E	- <sup>2</sup>	- <sup>2</sup>	2.9 mi (Access Road)	S

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Emigrant Springs State Heritage Area	State Parks and Waysides	Umatilla	3.3 mi	N	16.5 mi	NW	2.9 mi (Access Road)	SW
Succor Creek State Natural Area/SNA	State Parks and Waysides	Malheur	3.4 mi	SW	- <sup>2</sup>	- <sup>2</sup>	3.5 mi (Access Road)	NE
Red Bridge State Wayside	State Parks and Waysides	Union	4.8 mi	SW	- <sup>2</sup>	- <sup>2</sup>	5.2 mi (Access Road)	NE
Owyhee Views ACEC	BLM ACECs	Malheur	5.3 mi	SW	14.7 mi	S	7.2 mi (Access Road)	E
Umatilla Hatchery	National and State Fish Hatcheries	Morrow	5.5 mi	N	15.0 mi	NE	18.3 mi (Access Road)	S
Oregon Trail ACEC - Keeney Pass Parcel	BLM ACECs	Malheur	5.7 mi	E	5.7 mi	NE	5.4 mi (Access Road)	W
Lake Owyhee State Park	State Parks and Waysides	Malheur	6.0 mi	W	15.4 mi	S	8.1 mi (Access Road)	E
Boardman/Willow Creek RNA <sup>3</sup>	Lands Designated in Federal Management Plan	Morrow	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	6.1 mi (Access Road)	E

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Eastern Oregon Ag Research Station	Agricultural Experimental Station	Union	6.4 mi	NE	7.0 mi	E	- <sup>2</sup>	- <sup>2</sup>
Irrigon Hatchery	National and State Fish Hatcheries	Morrow	6.6 mi	N	14.7 mi	NE	17.7 mi (Access Road)	SW
Jump Creek Canyon ACEC	BLM ACECs	Idaho	6.8 mi	SE	- <sup>2</sup>	- <sup>2</sup>	6.9 mi (Access Road)	NW
Birch Creek Cove RNA <sup>3</sup>	Lands Designated in Federal Management Plan	Umatilla	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	6.9 mi (Access Road)	N
Rogers WA	State Wildlife Areas and Management Areas	Malheur	7.1 mi	E	12.0 mi	SE	6.7 mi (Access Road)	SW
Columbia Basin - Irrigon WA	State Wildlife Areas and Management Areas	Morrow, Umatilla	7.4 mi	NE	14.9 mi	NE	17.9 mi (Access Road)	SW
Elkhorn - North Powder WA Tract	State Wildlife Areas and Management Areas	Baker, Union	7.5 mi	W	7.8 mi	S	7.5 mi (Access Road)	NE
Catherine Creek State Park	State Parks and Waysides	Union	7.7 mi	NE	- <sup>2</sup>	- <sup>2</sup>	9.0 mi (Access Road)	W

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Elkhorn - Auburn WA Tract	State Wildlife Areas and Management Areas	Baker	7.9 mi	SW	- <sup>2</sup>	- <sup>2</sup>	8.4 mi (Access Road)	NE
Starkey Experimental Forest/Game Management Area	Experiment Area	Umatilla, Union	8.0 mi	S	12.8 mi	W	8.7 mi (Access Road)	NW
Battle Mountain Forest State Scenic Corridor	State Parks and Waysides	Umatilla	8.0 mi	S	- <sup>2</sup>	- <sup>2</sup>	8.4 mi (Access Road)	N
McKay Creek National Wildlife Refuge	National and State Wildlife Refuge	Umatilla	9.7 mi	N	- <sup>2</sup>	- <sup>2</sup>	9.6 mi (Access Road)	S
Unity Forest State Scenic Corridor	State Parks and Waysides	Baker	10 mi	W	- <sup>2</sup>	- <sup>2</sup>	10.6 mi (Access Road)	NE
Government Draw RNA <sup>3</sup>	Lands Designated in Federal Management Plan	Union	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	10.8 mi (Access Road)	NW
Upper Grande Ronde River (Recreational)	Scenic Waterway	Union	10.9 mi	SW	10.6 mi	S	11.0 mi (Access Road)	NE
Oregon Trail ACEC - Echo Meadows Parcel	BLM ACECs	Umatilla	11.1 mi	NE	15.2 mi	E	10.9 mi (Access Road)	NE

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Keating Riparian ACEC/RNA	BLM ACECs	Baker	11.2 mi	E	- <sup>2</sup>	- <sup>2</sup>	15.0 mi (Access Road)	W
North Fork Catherine Creek (Recreational)	Scenic Waterway	Union	11.3 mi	E	17.2 mi	E	13.6 mi (Access Road)	W
Honeycombs RNA	BLM ACECs	Malheur	11.3 mi	SW	- <sup>2</sup>	- <sup>2</sup>	11.5 mi (Access Road)	NE
Squaw Creek RNA	BLM ACECs	Idaho	11.4 mi	SE	- <sup>2</sup>	- <sup>2</sup>	11.5 mi (Access Road)	NW
Elkhorn - Roth WA Tract	State Wildlife Areas and Management Areas	Baker	11.6 mi	W	18.4 mi	S	13.1 mi (Access Road)	SE
Ontario State Recreation Site	State Parks and Waysides	Malheur	11.9 mi	E	- <sup>2</sup>	- <sup>2</sup>	13.9 mi (Access Road)	NW
Elkhorn - Muddy Creek WA Tract	State Wildlife Areas and Management Areas	Baker	12.1 mi	W	16.5 mi	S	14.5 mi (Access Road)	NE
Payette River Wildlife Area <sup>3</sup>	State Wildlife Refuge or Management Areas	Malheur	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	12.7 mi (Access Road)	NW

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Malheur Experiment Station	Agricultural Experimental Station	Malheur	13.1 mi	E	19.8 mi	NE	15.5 mi (Access Road)	NW
Hunt Mountain ACEC	BLM ACECs	Baker	13.1 mi	W	19.7 mi	W	12.9 mi (Access Road)	W
North Fork Catherine Creek (Wild)	Scenic Waterway	Union	13.4 mi	E	18.3 mi	E	15.2 mi (Access Road)	W
Eagle Cap Wilderness	Wilderness area	Baker, Union, Wallowa	13.7 mi	NE	16.6 mi	NE	14.4 mi (Access Road)	W
Long-billed Curlew Habitat Area ACEC	BLM ACECs	Idaho	14.7 mi	E	19.6 mi	E	12.4 mi (Access Road)	E
Dry Creek Gorge ACEC	BLM ACECs	Malheur	15 mi	W	18.7 mi	S	15.9 mi (Access Road)	NE
South Ridge Bully Creek RNA	BLM ACECs	Malheur	15.1 mi	W	- <sup>2</sup>	- <sup>2</sup>	17.4 mi (Access Road)	SE
North Powder River (Scenic)	Scenic Waterway	Baker	15.2 mi	W	17.8 mi	S	16.5 mi (Access Road)	NE

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
McBride Creek RNA	BLM ACECs	Idaho	15.3 mi	S	- <sup>2</sup>	- <sup>2</sup>	15.4 mi (Access Road)	N
Upper Grande Ronde River (Wild)	Scenic Waterway	Grant, Union	15.7 mi	SW	14.9 mi	S	16.4 mi (Access Road)	NE
Columbia Basin - Power City WA	State Wildlife Areas and Management Areas	Umatilla	15.7 mi	NE	- <sup>2</sup>	- <sup>2</sup>	- <sup>2</sup>	- <sup>2</sup>
Hermiston Ag Research and Extension Center	Agricultural Experimental Station	Umatilla	15.8 mi	E	18.6 mi	E	19.3 mi (Access Road)	S
Indian Creek RNA <sup>3</sup>	Lands Designated in Federal Management Plan	Union	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	16.3 mi (Access Road)	SW
Columbia Basin Ag Research Station	Agricultural Experimental Station	Sherman, Umatilla	16.6 mi	N	- <sup>2</sup>	- <sup>2</sup>	17.7 mi (Access Road)	S
Eagle Creek (Recreational)	Scenic Waterway	Baker	16.7 mi	E	- <sup>2</sup>	- <sup>2</sup>	- <sup>2</sup>	- <sup>2</sup>
Rebecca Sand Hill RNA/ACEC <sup>3</sup>	Lands Designated in Federal Management Plan	Idaho/Washington	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	x <sup>4</sup>	16.8 mi (Access Road)	W
Hixon Columbian Sharp-tailed	BLM ACECs	Idaho/Washington	17.7 mi	NE	- <sup>2</sup>	- <sup>2</sup>	17.3 mi (Access Road)	SW

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Grouse Habitat Area ACEC								
North Ridge Bully Creek RNA	BLM ACECs	Malheur	17.7 mi	W	- <sup>2</sup>	- <sup>2</sup>	20.0 mi (Access Road)	SE
Horn Butte ACEC	BLM ACECs	Gilliam, Morrow	18.1 mi	W	18.2 mi	W	18.1 mi (Access Road)	W
Leslie Gulch ACEC	BLM ACECs	Idaho	18.1 mi	SW	- <sup>2</sup>	- <sup>2</sup>	18.2 mi (Access Road)	NE
Columbia Basin - Willow Creek WA/SNHA	State Wildlife Areas and Management Areas	Gilliam	18.3 mi	W	18.8 mi	NW	19.9 mi (Access Road)	SE
North Fork Umatilla Wilderness	Wilderness area	Umatilla, Union	18.7 mi	NE	- <sup>2</sup>	- <sup>2</sup>	18.7 mi (Access Road)	SW
North Fork John Day Wilderness	Wilderness area	Baker, Grant, Umatilla	19.1 mi	SW	19.2 mi	SW	19.1 mi (Access Road)	NE
Hammond Hill Sand Hills RNA	BLM ACECs	Malheur	19.2 mi	W	- <sup>2</sup>	- <sup>2</sup>	19.5 mi (Access Road)	NE
Ukiah-Dale Forest State Scenic Corridor	State Parks and Waysides	Umatilla	19.3 mi	S	- <sup>2</sup>	- <sup>2</sup>	19.5 mi (Access Road)	N

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Minam River (Wild)	Scenic Waterway	Union, Wallowa	19.4 mi	E	_2	_2	_2	_2
The Minam Scenic Waterway	Scenic Waterway	Union, Wallowa	19.6 mi	E	_2	_2	_2	_2
Cold Springs National Wildlife Refuge	National and State Wildlife Refuge	Umatilla	20.9 mi <sup>5</sup>	NE	_2	_2	_2	_2
Sumpter Valley Dredge SNHA	State Natural Heritage Areas	Baker	21.3 mi <sup>5</sup>	W	_2	_2	19.5 mi (Access Road)	E
Hat Rock State Park	State Parks and Waysides	Umatilla	21.3 mi <sup>5</sup>	E	_2	_2	_2	_2
North Fork John Day River (Recreational)	Scenic Waterway	Grant, Umatilla	21.4 mi <sup>5</sup>	W	_2	_2	_2	_2
North Fork John Day River (Wild)	Scenic Waterway	Baker, Grant	21.7 mi <sup>5</sup>	W	_2	_2	19.1 mi (Access Road)	NE
McNary National Wildlife Refuge	National and State Wildlife Refuge	Umatilla	24.5 mi <sup>5</sup>	NE	_2	_2	_2	_2
<ol style="list-style-type: none"> <li>1. Crossing of the protected area is allowed per OAR 345-022-0040(2), (3).</li> <li>2. Outside analysis area for route or related or supporting facility.</li> <li>3. New protected area in analysis area since <i>Final Order on ASC</i> - September 2022.</li> <li>4. Potential impacts from approved routes in <i>Final Order on ASC</i> not evaluated for protected area.</li> <li>5. Location of protected areas associated with transmission line routes is relative to each route segment's centerline, not the site boundary. There may be values greater than 20 miles listed because temporary Project features (multi-use areas, pulling and tensioning sites) are located several miles away from route centerlines.</li> </ol>								

**Table 15: Protected Areas within Analysis Area for Approved Routes and RFA1 Site Boundary Additions**

Protected Areas (Pale green indicates new resource)	Protected Area Category	County	Approved Route		Approved Alternative Route		RFA1 Site Boundary Addition	
			Distance	Direction	Distance	Direction	Distance	Direction
Source: Derived from <i>Final Order on ASC</i> Table PA-1: Protected Areas within Analysis Area and Distance from Approved and Alternative Transmission Line Routes and RFA1 Attachment 7-2, Table 1. Summary of Impact Determinations for Protected Areas.								

1

1 *III.F.1.b Potential Impacts to Protected Areas*

2  
3 III.F.1.b.1 Protected Areas Crossed by RFA1 Site Boundary Additions – Exceptions (OAR 345-022-  
4 0040(2) and (3))

5  
6 RFA1 includes road alternatives that would also cross the Blue Mountain Forest State Scenic  
7 Corridor (see Figure 4-2; Map 12; UN-034 and Map 13; UN-625).<sup>131</sup> Road segment UN-034 is  
8 approximately 589 feet long and is largely within the previously approved site boundary with  
9 only a small segment of new site boundary that overlaps with the Corridor, and UN-625 is  
10 approximately 1,761 feet long and also mostly within the previously approved site boundary  
11 with minor adjustments that extend the site boundary within the Corridor. The *Final Order on*  
12 *ASC* evaluated the facility crossing the Blue Mountain Forest State Scenic Corridor and Council  
13 found that the facility, including related or supporting facilities, would be located entirely  
14 within a utility corridor designated by the Wallowa Whitman National Forest as a “Power and  
15 Transportation Facility Retention Corridor;” and the analysis of alternative routes that would be  
16 more impactful was sufficient to allow the facility to be sited through the Blue Mountain Forest  
17 State Scenic Corridor in accordance with OAR 345-022-0040(2). The Council finds that the minor  
18 changes to road segments which significantly overlap within the already approved site  
19 boundary do not impact Council’s previous findings of compliance with OAR 345-022-0040(2).  
20

21 Protected Areas Condition 1 (Condition GEN-PA-01) requires that the certificate holder  
22 coordinate construction activities in Ladd Marsh Wildlife Area within ODFW’s wildlife area  
23 manager, Protected Areas Condition 2 (Condition GEN-PA-02) requires that the final facility  
24 design avoid Ladd Marsh. These conditions apply to the certificate holder and are not  
25 implicated by the RFA1 site boundary additions.  
26

27 III.F.1.b.2 Potential Noise Impacts

28  
29 As summarized in Section III.R.1., *Noise Control Regulations* of this order, predicted noise levels  
30 associated with the combined operation of five pieces of equipment is 83 dBA at 50 feet, 79  
31 dBA at 100 feet, and attenuates to 46 dBA at 6,400 feet.<sup>132</sup> For reference, classroom chatter has  
32 an approximate dBA of 70 and a soft whisper is a dBA of approximately 40 dBA. Council  
33 previously found that protected areas within approximately one-half mile from facility  
34 construction may experience short term impacts. These impacts would progress along the  
35 corridor of the transmission line route, and no area would be exposed to construction noise for  
36 the entire construction period. Further, noise also attenuates with distance, topography, and  
37 vegetative screening so construction noise at protected areas within one-half mile of the facility  
38 may be lower during actual facility construction.  
39

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<sup>131</sup> See also RFA1 Attachment 4-1. RFA1 Supplement to Final Order Attachment B-5 Appendix A for road lengths and other data.

<sup>132</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 299 and Table PA-2: Predicted Noise Levels from General Construction Activities.

1 The closest protected areas impacted by the RFA1 site boundary additions are associated with  
2 access roads. Noise from road construction would predominately result from operation of  
3 construction vehicles and equipment (i.e., backhoe, dump truck, grader, pickup truck, and  
4 tractor), which generally operate at lower noise levels than other construction-related noise  
5 (i.e., blasting, augers). The Lindsay Prairie Preserve is 1.3 miles from the Little Juniper Canyon  
6 Transmission Line Alternative. At a 1.3-mile distance it would not be anticipated that there  
7 would be construction-related noise experienced at the protected area. The certificate holder  
8 provides an evaluation of noise at protected areas within the analysis area for RFA1 associated  
9 with each road and transmission line alternative in RFA1 Attachment 7-2, Table 1: *Summary of*  
10 *Impact Determinations for Protected Areas*. The Council finds that noise experienced at  
11 protected areas from construction of the roads and routes in RFA1 would be similar or less than  
12 Council evaluated and approved in the ASC, and any noise would be for a short duration.

### 13 14 *Operation*

15  
16 Potential noise impacts during facility operation include inspections, vegetation maintenance  
17 (including chain saws or other power equipment), and corona noise from the transmission line.  
18 Operational noise associated with the roads in RFA1 would include infrequent driving on roads  
19 for inspections and maintenance and would not impact protected areas. At 1.3 miles away,  
20 operational noise from the Little Juniper Canyon Transmission Line Alternative would not be  
21 audible. The finds that the road and transmission line alternatives in RFA1 would not impact  
22 Councils' previous findings and would not impact any protected areas.

### 23 24 III.F.1.b.3 Potential Traffic-Related Impacts

#### 25 26 *Construction*

27  
28 Construction of the roads and transmission line alternatives would cause short-term impacts to  
29 those protected areas that are near the site boundary additions or where construction traffic  
30 routes pass near those protected areas, however, these potential impacts would be similar or  
31 less than Council previously evaluated and approved. Council previously found that traffic  
32 impacts would be short-term and limited in duration. Some protected areas would have no  
33 impacts from construction due to the distance from the site boundary additions as well as  
34 planned haul and commuting routes. Some protected areas would have minor construction-  
35 related traffic impacts due to proximity of the site boundary additions, or haul/commute  
36 routes, near the protected areas. The certificate holder provides an evaluation of traffic impacts  
37 at protected areas in the analysis area for RFA1 associated with each road and transmission line  
38 alternative in RFA1 Attachment 7-2, Table 1: *Summary of Impact Determinations for Protected*  
39 *Areas*. Attachment 7-2, Table 1 provides a description of the facility components associated  
40 with the proximity to each protected area and describes the haul routes that would be used,  
41 and alternative routes used to indicate that there would be a less than significant impact. Public  
42 Services Condition 2 requires the finalization of county-specific Transportation and Traffic  
43 Plan(s), which would include measures that would reduce construction related traffic impacts  
44 such as flagging, posting caution signs and using pilot cars. This condition continues to apply to

1 the facility and certificate holder, and the Council finds that the road and transmission line  
2 routes in RFA1 would not cause significant impacts to protected areas within the analysis area.

3  
4 *Operation*

5  
6 Council previously found that no traffic impacts to protected areas are anticipated during  
7 facility operation. Facility operation would involve very infrequent maintenance and inspections  
8 by the certificate holder, expected at one or two inspections per year. The Council finds that  
9 the road and transmission line alternatives in RFA1 would not be different from the *Final Order*  
10 *on ASC*.

11  
12 III.F.1.b.4 Potential Impacts from Water Use and Wastewater Disposal

13  
14 *Construction and Operation*

15  
16 Council previously found that construction-related water use would include approximately 36.5  
17 million gallons over an approximately 36-month period for transmission line structures. Council  
18 also previously found that construction-related wastewater associated with foundation slurry  
19 and concrete washout would be properly managed and disposed of and would not be likely to  
20 result in significant adverse impacts to any protected areas. If selected for construction, the  
21 proposed additional transmission line routes would only be approximately 1.8 miles longer than  
22 the routes they would replace approved in the ASC. Therefore, the Council finds that this small  
23 increase would not alter its previous findings and that Council finds that water and wastewater  
24 generated from construction and operation of the site boundary additions in RFA1 would not  
25 impact protected areas.<sup>133</sup>

26  
27 III.F.1.b.5 Potential Visual Impacts from Facility Structures

28  
29 III.F.1.b.5.1 Methodology for Visual Impact Assessment

30  
31 As described in Section I.A., *Scope of Council's Review*, in this order, for amendments to the site  
32 certificate that would add area to the site boundary, Council must determine whether the  
33 preponderance of evidence on the record supports the conclusion that the portion of the  
34 facility within the area added to the site boundary by the RFA complies with all laws and  
35 Council standards applicable to an original site certificate application. To evaluate the potential  
36 visual impacts to protected areas associated with the road segments and transmission line  
37 routes in RFA1, the certificate holder applied similar methodologies as what was conducted for  
38 the ASC. As indicated in the beginning of this Section, the certificate holder identified protected  
39 areas identified in OAR 345-001-0010(26) in the 20-mile analysis area.

40  
41 To update the visual impact analyses for the road and route alternatives in RFA1, the certificate  
42 holder followed similar visual impact assessment methodology, described in ASC Exhibit L,

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<sup>133</sup> B2HAMD1 RFA1 2023-06-08. Table 4.1-1.

1 Attachment L-3, approved by Council in the *Final Order on ASC*.<sup>134</sup> For protected areas not  
2 located on BLM or USFS land, one of the two procedures based on whether the resource was  
3 located in forested or non-forested areas; resources located in non-forested areas were  
4 analyzed using the BLM methodology, and those located in forested areas were analyzed using  
5 the USFS methodology. The methodology incorporates elements from the USFS methodology  
6 to assess the baseline scenic conditions in forested areas and elements from the BLM’s VRM to  
7 assess baseline scenic conditions in non-forested areas.<sup>135</sup> The analysis area for protected areas  
8 is 20 miles; however, similar to the ASC, the visual impact assessment extends 5 miles from the  
9 site boundary additions in non-forested settings, and 10 miles in forested settings. Beyond  
10 those distances, Council previously found that visibility of the facility components would be  
11 negligible.<sup>136</sup> Because most site boundary additions in RFA1 are roads, which do not have a  
12 vertical visual component associated with them, the visual impact assessment was further  
13 defined by proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or  
14 background distances (> 5 miles).

15  
16 To determine whether potential visual impacts would be “significant,” Council approved the  
17 methodology which takes into consideration the combined outcome of context of the impact,  
18 impact intensity, and the degree to which the possible impacts are caused by the action. This is  
19 done by applying the Council’s definition of “significant,” meaning having an important  
20 consequence, either alone or in combination with other factors, based upon the magnitude and  
21 likelihood of the impact on the affected human population or natural resources, or on the  
22 importance of the natural resource affected, considering the context of the action or impact, its  
23 intensity and the degree to which possible impacts are caused by the action.<sup>137</sup> Table 16:  
24 *Definition of Significant (per Council’s Rule OAR 345-001- 0010(29)) and Interpretation for Visual*  
25 *Impacts for Protected Areas, Recreation, and Scenic Resources*, below is taken from the *Final*  
26 *Order on ASC* to summarize how the certificate holder quantified the Council’s definition into  
27 measurable and repeatable methodology.<sup>138</sup>

28

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<sup>134</sup> Excerpt from Oregon Supreme Court Decision for the facility regarding methodologies for visual impact assessments, “... nothing in the rule required Idaho Power to utilize a particular methodology or specifically account for subjective perceptions and reactions in assessing whether the transmission line would be likely to result in “significant adverse visual impacts” to scenic resources. Moreover, as explained in the final order, the methodology used to assess the visual impacts of the transmission line did take viewers’ subjective perceptions into account. Idaho Power developed a detailed visual-impact assessment methodology and prepared a comprehensive visual impact study...” B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept. of Energy 2023-03-09, page 811.

<sup>135</sup> Certificate holder notes that no site visits were completed for the RFA 1 visual analysis, which solely relies on desktop data with the support of ASC field assumptions (e.g., existing vegetation screening, site usage, etc.), as applicable, that are not readily available from online sources. B2HAMD1 RFA1 2023-06-08. Attachment 7-2, Table 1.

<sup>136</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 305.

<sup>137</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 305-306.

<sup>138</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 432; Table SR-2: Definition of Significance (per Council’s Rule OAR 345-001- 0005(52)) and Interpretation for Visual Impacts in Exhibit L, R, T). Note that the Table name in this order has updated OAR reference.

- 1 As is noted in Sections IV.J., *Scenic Resources* and IV.L, *Recreation*, the same visual resource
- 2 impact assessment methodology was used by the certificate holder to assess visual impacts
- 3 from the site boundary additions in RFA1 to resources considered in those sections.

**Table 16: Definition of Significant (per Council’s Rule OAR 345-001- 0010(29)) and Interpretation for Visual Impacts for Protected Areas, Recreation, and Scenic Resources)**

<b>Excerpt</b>	<b>Interpretation for Exhibit L, R, T</b>
“having an important consequence,”	An important consequence is considered a significant impact.
“either alone or in combination with other factors,”	Qualifying language suggests that an “important consequence” may be caused by the proposed development either alone or in combination with other past or present actions.
“based upon the magnitude and likelihood of the impact”	Magnitude represents the size and scale of the impact, and is measured in terms of visual contrast and scale dominance. Likelihood represents the probability of occurrence of an impact; for the purposes of Exhibit L, impacts analyzed were assumed to be likely to occur.
“on the affected human population”	The impact on the human population is measured in terms of the viewer’s perception of impacts to valued scenic attributes of the protected area.
“or [on the] natural resources”	The impact to the natural resource is measured in terms of the potential change in scenic quality and/or landscape character of the protected area.
“or on the importance of the natural resource affected”	The disjunction of the magnitude of the impact from the importance of the natural resource suggests that an impact to scenic values may not result in an “important consequence” if the scenic value affected is not considered important to the protected area.
“Considering the context of the action or impact,”	The Council shall also consider the other “mitigating” (or “aggravating”) contextual factors, such as the extent to which impacts to visual values are consistent with the standards and guidelines of relevant land management objectives of the protected area.
“[the impact’s] intensity...”	The intensity of the impact considers how impacts would manifest on the landscape by assessing the combined effect of resource change and viewer perception.
“...and the degree to which the possible impacts are caused by the proposed action.”	Consider the extent to which adverse impacts are caused by the proposed facility, as opposed to other past or present actions. The contribution of this action to potential cumulative (additive) impacts should be disclosed.

4

1 *Final Order on ASC* provided a summary of the reasons why Council concurred with the  
2 certificate holders visual impact assessment methodology.<sup>139</sup>

- 3 • The facility would cross both BLM and USFS land, and on those lands, the certificate  
4 holder is required to utilize those agency’s respective visual resource impact  
5 assessment methods;
- 6 • Both the BLM and USFS approved the facility location in its ROD(s), indicating  
7 compliance with the respective visual impact methodologies and standards;
- 8 • The certificate holder adapted each of the methodologies to use evaluative criteria  
9 based upon the Council’s definition of “significant” under OAR 345-001-0010(29);
- 10 • The BLM and USFS visual impact methodologies provide an objective system to  
11 evaluate visual impacts;
- 12 • Using the BLM and USFS methods to assess visual impacts to EFSC scenic resources  
13 is consistent with the statutory direction at ORS 469.370(13) to conduct a site  
14 certificate review in a “manner that is consistent with and does not duplicate the  
15 federal agency review.”

16  
17 III.F.1.b.5.2 Results of Visual Impact Assessment  
18

19 RFA1 Attachment 7-2, Table 2: *Detailed Visual Analysis of Protected Areas*, provides a summary  
20 of the results of the visual impact assessment following the above-described methodology  
21 including baseline characteristics, visual impact assessment, and significant determinations.  
22 Certificate holder also conducted a zone of visual influence (ZVI) viewshed analysis, provided in  
23 RFA1 Figure 7-12, which illustrates the visibility of facility towers associated with the  
24 transmission line routes in RFA1. The viewshed analysis Figure 7-12 presents the viewshed  
25 analysis from the approved ASC routes as well as the routes in RFA and identifies the protected  
26 areas within the analysis area for RFA1. As highlighted above, because the majority of site  
27 boundary additions in RFA1 are roads, many of which overlap with previously approved ASC  
28 roads, the certificate holder further refined the description of potential visual impacts from  
29 roads by the roads’ proximity to protected areas. Because the RFA1 roads have no vertical or  
30 aerial components, there would be no or minimal visual impact to a protected area more than 5  
31 miles away, therefore, Council finds that roads further than 5 miles away from a protected area  
32 would have no or minimal visual impact. The certificate holder evaluates every road and route  
33 in RFA1, Attachment 7-2 regardless of distance, however, the Department synthesized RFA1  
34 Section 7.1.4, Attachment 7-2; Tables 1 and 2 as well as Figures 7-12 and provides a visual  
35 impact summary below in Table 17: *Visual Impact Summary for Roads and Routes Proposed in*  
36 *RFA1 within Viewshed*. Table 17 presents the visual impact assessment and significance  
37 conclusions for protected areas within 5 miles from roads and within 10 miles from  
38 transmission line routes because Council previously found that facility structures beyond 10  
39 miles of a protected area would not be visible or would have negligible visual impacts.  
40  
41

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<sup>139</sup> <sup>139</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 432; Section IV.J., Scenic Resources.

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

<b>RFA1 Site Boundary Addition within Viewshed of Protected Area Resource<sup>1</sup></b> (Pale green indicates new resource)	<b>State - County</b>	<b>Location of Protected Area Relative to the RFA1 Road/Route</b>	<b>Visual Impacts<sup>2</sup></b>
Blue Mountain Forest State Scenic Corridor	OR - Umatilla, Union	Crosses (Access Road Changes in Union County) <sup>3</sup>	Certificate holder indicates that RFA1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a foreground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA1 modeled bare earth viewshed (thus no towers are visible). Steep viewing angles, tall mature vegetation, and topography will continue to screen views of any RFA1 road additions. Certificate holder analysis indicates viewers will continue to have primarily intermittent and peripheral views. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

<b>RFA1 Site Boundary Addition within Viewshed of Protected Area Resource<sup>1</sup></b> (Pale green indicates new resource)	<b>State - County</b>	<b>Location of Protected Area Relative to the RFA1 Road/Route</b>	<b>Visual Impacts<sup>2</sup></b>
Oregon Trail ACEC - Straw Ranch 1 Parcel	OR - Baker	0.1 mi E (Access Road Changes in Baker County)  Approx. 8 mi NW (True Blue Gulch Transmission Line Alternative)	Certificate holder indicates that RFA1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the True Blue Gulch Transmission Line Alternative) will introduce medium intensity impacts at a foreground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Site Boundary Additions will remain head-on and peripheral, depending on the viewer’s location and will be from a neutral vantage point. However, existing views include I-84, a gravel quarry, scattered residential and ranching development, gravel surface roads, and two transmission lines. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA1 site boundary addition, the True Blue Gulch Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

<b>RFA1 Site Boundary Addition within Viewshed of Protected Area Resource<sup>1</sup></b> (Pale green indicates new resource)	<b>State - County</b>	<b>Location of Protected Area Relative to the RFA1 Road/Route</b>	<b>Visual Impacts<sup>2</sup></b>
Oregon Trail ACEC - Birch Creek parcel	OR - Malheur	0.3 mi E (Access Road Changes in Malheur County)  Approx. 4 mi SE (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the Durbin Quarry Transmission Line Alternative) will introduce medium intensity impacts at a foreground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Landscape character, particularly as viewed to the north toward Big Bend, will remain as a result of RFA1 Site Boundary Additions. Topography will continue to partially screen the Project from view. Views from the trail will continue to be intermittent. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Durbin Quarry Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Farewell Bend State Recreation Area (SRA)	OR - Baker	0.4 mi W (Access Road Changes in Baker County)  Approx 2.5 mi SE (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a foreground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be most visible from shoreline day-use and overnight use areas; mature trees will screen views from the interior of the SRA. The Brownlee Reservoir, which is the primary scenic attribute of the SRA, will persist and views from the SRA to the east will continue to be unaffected. Views will continue to be head-on or peripheral, depending on the location of the viewer, and from a neutral vantage point. Existing views include rural development and I-84. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Hilgard Junction State Park	OR - Union	0.6 mi SE (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be partially screened by topography and not visible from camping areas or areas near the river where recreation use will be highest. Existing views include OR-244 and a transmission line. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

<b>RFA1 Site Boundary Addition within Viewshed of Protected Area Resource<sup>1</sup></b> (Pale green indicates new resource)	<b>State - County</b>	<b>Location of Protected Area Relative to the RFA1 Road/Route</b>	<b>Visual Impacts<sup>2</sup></b>
Deer Flat National Wildlife Refuge (NWR) (including Snake River Island Units)	OR - Malheur; ID - Ada, Canyon, Owyhee, Payette, Washington	0.6 mi SW (Access Road Changes in Malheur County)  Approx. 6.5 mi NW (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the Durbin Quarry Transmission Line Alternative) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). One of 101 islands within the NWR will remain within 2 miles of the RFA 1 Site Boundary Additions (i.e., Huffman Island), otherwise a majority of the NWR will continue to have no visual impacts. Due to access roads not having an aerial component, the visual impacts are anticipated to be negligible as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Durbin Quarry Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Oregon Trail ACEC - Blue Mountain Parcel	OR - Union	0.9 mi SW (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be almost entirely screened from view due to dense/mature vegetation and topography to the west. Any views will remain intermittent and primarily experienced from a neutral or superior vantage point such that viewer perception will continue to be low. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Lindsay Prairie Preserve/ State Natural Heritage Area (SNHA)	OR - Morrow	1.3 mi E (Little Juniper Canyon Transmission Line Alternative)	Certificate holder indicates that RFA1 Site Boundary Additions closest in proximity (i.e., Little Juniper Canyon Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views as a result of the RFA 1 transmission line Site Boundary Additions will continue to be experienced from within the canyon and will be primarily blocked by topography. Any views that aren't screened will remain intermittent. Existing views include roads, a gravel quarry, agricultural fields, a transmission line, and dispersed rural development. Towers that are visible within the protected area as a result of the Little Juniper Canyon Transmission Line Alternative will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Oregon Trail ACEC - Tub Mountain Parcel	OR - Malheur	1.5 mi E (Access Road Changes in Malheur County)  Approx 7.5 mi S (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the Durbin Quarry Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Site Boundary Additions will continue to be primarily peripheral and intermittent and from a neutral vantage point. Topography will continue to partially screen the Project from view. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Durbin Quarry Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to be medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Glass Hill Preserve/ SNHA	OR - Union	1.6 mi W (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will introduce mild visual contrast and appear co-dominant with the landscape and existing infrastructure (e.g., interstate, transmission). Viewer exposure may be negligible, with views of the project being from mostly neutral or elevated vantage points. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Owyhee River Below the Dam ACEC	OR - Malheur	1.9 mi E (Access Road Changes in Malheur County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Views of any RFA 1 road additions will continue to be episodic as visitors travel along the roadway and any views from the Lower Owyhee Watchable Wildlife interpretive site will be located behind the viewer. Topography will continue to partially screen the Project from view. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Oregon Trail ACEC - Straw Ranch 2 Parcel	OR - Baker	1.9 mi SE (Access Road Changes in Baker County) Approx. 10 mi NW (Durbin Quarry Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be partially screened due to topography to the south/southwest and will otherwise appear generally subordinate as compared to existing infrastructure (i.e., transmission lines). Any views will remain intermittent due to visual obstructions and experiences from a neutral vantage point. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Boardman RNA	OR - Morrow	2.0 mi S (Access Road Changes in Morrow County)  Approx. 7 mi NW (Little Juniper Canyon Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the Little Juniper Canyon Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Site Boundary Additions will continue to be primarily peripheral and intermittent and from a neutral or elevated vantage point. Topography will continue to partially screen the Project from view. Existing views include wind turbines, solar facilities, transmission lines, roads, and agricultural irrigation equipment. Public access is not permitted within the resource. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Little Juniper Canyon Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

<b>RFA1 Site Boundary Addition within Viewshed of Protected Area Resource<sup>1</sup></b> (Pale green indicates new resource)	<b>State - County</b>	<b>Location of Protected Area Relative to the RFA1 Road/Route</b>	<b>Visual Impacts<sup>2</sup></b>
Oregon Trail ACEC – National Historic Oregon Trail Interpretive Center (NHOTIC) Parcel	OR - Baker	2.1 mi SW (Access Road Changes in Baker County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will remain predominately peripheral or intermittent and experienced from an elevated vantage point. Existing views include OR-86, transmission line, and agricultural and residential development within the Baker Valley. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Oregon Trail ACEC - Powell Creek Parcel	OR - Baker	2.2 mi W (Access Road Changes in Baker County)  Approx. 10 mi SE (True Blue Gulch Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the True Blue Gulch Transmission Line Alternative) will introduce medium intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Site Boundary Additions will remain head-on and peripheral, depending on the viewer’s location and will be from an inferior vantage point. However, existing views include I-84 and two transmission lines. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the True Blue Gulch Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Five Points Creek (Wild)	OR - Umatilla, Union	2.4 mi S (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will not be visible from within the canyon and are screened by topography. Any views from atop the canyon will be limited due to the scarce visitation outside of the canyon itself. The site is managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Oregon Trail ACEC - White Swan Parcel	OR - Baker	2.9 mi S (Access Road Changes in Baker County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce no visual impacts; this lack of impact is the same as what was previously approved for the ASC. Resource is completely outside of the RFA 1 modeled bare earth viewshed (see Figure 7-12 for a comparison with the previously approved viewshed). Thus, the resource was not analyzed for visual impacts.
Emigrant Springs State Heritage Area	OR - Umatilla	2.9 mi SW (Access Road Changes in Umatilla County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be almost entirely screened from view by dense/mature vegetation. Viewer perception will remain low as any views will be primarily intermittent due to screening. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Succor Creek State Natural Area (SNA)	OR - Malheur	3.5 mi NE (Access Road Changes in Malheur County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will continue to be limited due to the location within a deep, rocky canyon, creating an enclosed landscape, with most views of the Project generally blocked by topography. Any views will remain limited and intermittent due to the deep, rugged canyon setting of the natural area. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to remain low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).
Ladd Marsh Wildlife Area/SNHA	OR - Union	4.5 mi NW (Access Road Changes in Union County)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes) will introduce low intensity impacts at a middleground viewing distance; these impacts will be less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Resource is completely outside of the RFA 1 modeled bare earth viewshed (thus no towers are visible). Any RFA 1 road additions will remain backdropped against the dark-colored hills. Any views will continue to be head-on or peripheral and intermittent or continuous depending on the activity of the viewer (e.g., viewing wildlife at a viewpoint, hiking, driving, hunting, or fishing). Viewer geometry will be primarily neutral or inferior. Existing views include a transmission line, buried pipeline, and major transportation corridors. The site is not currently managed for scenic quality. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity and less than significant as a result of RFA 1 (see Figure 7-12 and RFA1, Attachment 7-2, Table 2).

**Table 17: Visual Impact Summary for Roads and Routes in RFA1 within Viewshed**

RFA1 Site Boundary Addition within Viewshed of Protected Area Resource <sup>1</sup> (Pale green indicates new resource)	State - County	Location of Protected Area Relative to the RFA1 Road/Route	Visual Impacts <sup>2</sup>
Boardman/Willow Creek RNA	OR - Morrow	6.1 mi E (Access Road Changes in Morrow County)  Approx. 8 mi NW (Little Juniper Canyon Transmission Line Alternative)	Certificate holder indicates that RFA 1 Site Boundary Additions closest in proximity (i.e., access road changes followed by the Little Juniper Canyon Transmission Line Alternative) will introduce medium intensity impacts at a background viewing distance; these impacts will be similar to or less than what was previously approved for the ASC (see Figure 7-12 for a comparison with the previously approved viewshed). Views of the RFA 1 Site Boundary Additions will continue to be primarily peripheral and intermittent and from a neutral or elevated vantage point. Topography will continue to partially screen the Project from view, otherwise over half of the resource is outside of the 10-mile visual analysis area. Existing views include views wind turbines, solar facilities, transmission lines, roads, and agricultural irrigation equipment. Under the same management as the Boardman RNA, public access is not permitted within the resource. Due to access roads not having an aerial component, the visual impacts are anticipated to be low intensity as a result. Additionally, towers that are visible within the protected area as a result of the nearby RFA 1 site boundary addition, the Little Juniper Canyon Transmission Line Alternative, will add minimal visual contrast to what was previously approved for the ASC (see Figure 7-12; substantial overlap with the previously approved viewshed). The site is not currently managed for scenic quality. Therefore, the comprehensive visual impacts are anticipated to remain medium intensity and less than significant as a result of RFA 1 (see Figure 7-12).
<p><sup>1</sup> Visual impact assessment extends 5 miles from the RFA1 site boundary additions in non-forested settings, and 10 miles in forested settings. Table summarizes visual impacts within 5 miles for roads and 10 miles for transmission line routes. Council finds that roads beyond 5 miles from a protected area would have minimal or no visual impact because there are no vertical features associated with roads.</p> <p><sup>2</sup> See <i>Final Order on ASC, Section IV.F.5., Potential Visual Impacts from Facility Structures</i>, for a summary of methods for visual impact assessment and Exhibit L, Attachment L-3 of the ASC. For RFA1, roads are further evaluated by proximity, i.e., foreground (&lt;0.5 miles), middleground (0.5 to 5 miles), or background distances (&gt; 5 miles), because they lack vertical features.</p> <p><sup>3</sup> Crossing of the protected area is allowed per OAR 345-022-0040(2).</p> <p>Source: Derived from Department evaluation of RFA1, Attachment 7-2, Table 1 and Table 2.</p>			

1 Because the certificate holder utilized the similar methodology that was done for the ASC for  
2 the RFA1 roads and transmission line routes, and applied an evaluation for roads individually  
3 when not associated with a transmission line route, and for the impact and significant  
4 assessment established in Table 14: Visual Impact Summary for Roads and Routes Proposed in  
5 RFA1 within Viewshed, the Council finds that the proposed site boundary additions would not  
6 create a significant adverse visual impact to protected areas within the analysis area.  
7

8 **III.F.2. Conclusions of Law**  
9

10 Based on the foregoing analysis, and subject to compliance with the existing site certificate  
11 conditions, the Council finds that the areas added to the site boundary by RFA1 that are located  
12 within the boundaries of a protected area remains compliant OAR 345-022-0040(2), and is that  
13 the design, construction and operation of the proposed RFA1 site boundary additions are not  
14 likely to result in significant adverse impact to any protected areas.  
15

16 **III.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050**  
17

18 *To issue a site certificate, the Council must find that:*  
19

20 *(1) The site, taking into account mitigation, can be restored adequately to a*  
21 *useful, non-hazardous condition following permanent cessation of*  
22 *construction or operation of the facility.*  
23

24 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of*  
25 *credit in a form and amount satisfactory to the Council to restore the site to a*  
26 *useful, non-hazardous condition.<sup>140</sup>*  
27

28 **III.G.1. Findings of Fact**  
29

30 OAR 345-027-0375(2)(e) designates the Scope of Council’s Review for all amendments to the  
31 site certificate. It states that for all requests for amendment, the amount of the bond or letter  
32 of credit required under OAR 345-022-0050 is adequate.  
33

34 *III.G.1.a Restoration of the Site Following Cessation of Construction or Operation*  
35

36 OAR 345-022-0050(1) requires that the site, taking into account mitigation, can be restored  
37 adequately to a useful, non-hazardous condition following permanent cessation of construction  
38 or operation of the facility. Restoring the site to a useful, nonhazardous condition for the  
39 transmission line route alternatives and roads in RFA1 would involve the same activities as  
40 Council approved in the *Final Order on ASC*, therefore a summary of decommissioning activities  
41 for transmission lines and roads is provided below.

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<sup>140</sup> OAR 345-022-0050, effective April 3, 2002.

- Transmission line restoration would involve removal of the transmission line, including all support structures, conductors, overhead shield wires, and communication sites. The foundations for each support structure would be removed to a depth of three feet below grade within land zoned EFU and to a depth of one foot below grade (depending on ground slope) in all other areas.<sup>141</sup>
- All structure locations and access roads would be restored to a useful, nonhazardous condition that would be consistent with the site’s zone and suitable for uses comparable to surrounding land uses.<sup>142</sup> Following gravel removal at the locations of tower pads and communication stations, these sites would be re-graded as necessary (for restoration of natural contours) and then re-seeded.<sup>143</sup>
- The majority of facility access roads would be primitive (non-graveled) overland travel roads. Following construction of the primitive roads, vegetation may regrow adjacent to and within the traveled roadway, and new or modified drainages may develop depending on the construction and location of the roads. Re-grading or reshaping primitive roads to match previous land contours would have the potential to create a greater impact compared to leaving in place the contours that developed during the service life of the transmission line. Therefore, restoration of primitive overland travel roads would consist of only minimal re-grading, as well as reseeding and scarifying the roadbed.
- Built-up all-weather roads, including all communication station roads, would be fully restored. Following gravel removal, built-up all-weather roads would be re-graded as necessary (for restoration of natural contours) and then re-seeded.<sup>144</sup>

*III.G.1.b Amount of Bond or Letter of Credit under OAR 345-022-0050 is Adequate*

OAR 345-027-0375(2)(e) requires the Council to find that the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate, and OAR 345-022-0050(2), requires a finding that the applicant (certificate holder) has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

The Council previously reviewed the applicant’s cost estimate and confirmed that the site restoration tasks, unit costs, labor rates, and cost estimate assumptions constitute a reasonable

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<sup>141</sup> Except within EFU zones, removal of concrete footings to a depth of one foot below grade is appropriate because it is more environmentally impactful to remove the concrete footings than it is to leave in place the portion of the footing below a one-foot depth. Increasing the removal depth from one foot to three feet would result in significantly more disturbance to the surrounding ground. Removing concrete footings to three feet below ground in EFU lands is appropriate because it allows sufficient clearance for farming equipment and installation of irrigation systems. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 327.

<sup>142</sup> B2HAPPDoc3-40 ASC 23\_Exhibit W\_Retirement\_ASC 2018-09-28, Section 3.2.

<sup>143</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 331; B2HAPPDoc3-40 ASC 23\_Exhibit W\_Retirement\_ASC 2018-09-28, Attachment W-1.

<sup>144</sup> B2HAPPDoc3-40 ASC 23\_Exhibit W\_Retirement\_ASC 2018-09-28, Section 3.2, Section 3.4, and Attachment W-1.

1 site restoration cost for the facility. This included an estimated number of days or hours to  
2 perform a site restoration activity, and then an applied loaded crew rates from RSMeans  
3 construction cost estimating data to determine the unit costs for the given activity, where  
4 loaded crew rates applied to the applicant’s site restoration cost estimate include contractor  
5 overhead charges, profit, and insurance costs.<sup>145</sup> Council previously found that \$140,779,000  
6 million (rounded to nearest \$1,000 and in Q3 2016 dollars) was adequate to restore the site to  
7 a useful non-hazardous condition.

8  
9 The 8.8 miles of transmission line route alternatives and 45.9 miles of road additions and  
10 alternatives are “additive,” so that certificate holder has more options and flexibility to  
11 accommodate landowner preferences and final facility design needs. However, the final facility  
12 design will ultimately select one approved route, approved alternative route, or routes in RFA1,  
13 therefore, the actual facility components installed (which would then need to be removed upon  
14 facility retirement), would not be additive. If the certificate holder selected the routes proposed  
15 in RFA1 instead of the routes approved in the *Final Order on ASC*, the total increase would be  
16 1.8 miles of transmission line and facility components. Certificate holder indicates that this  
17 would be less than 0.1% change in the total length of the facility.<sup>146</sup>

18  
19 Included in the \$140,779,000 million (Q3 2016 dollars) is \$3,791,302 million in Concrete  
20 Wrecking which includes transmission tower foundations as well as \$10,698,452 million for Site  
21 Grading, which includes restoration of roads and transmission tower pad areas.<sup>147</sup> Included in  
22 this estimate is that, for single circuit lattice towers, they would be placed or spanned  
23 approximately 1,200 to 1,800 feet apart, so for every mile of transmission line there would be  
24 approximately 2 to 4 transmission line towers, depending on topography and angles in the  
25 route.<sup>148</sup> Therefore, if the certificate holder constructed and retired the routes in RFA1, there  
26 would be approximately 2 to 4 additional towers to remove and restore for the 1.8 additional  
27 miles of transmission line. Under Retirement and Financial Assurance Condition 4, imposed  
28 consistent with Mandatory Condition OAR 345-025-0006(8), the certificate holder will update  
29 the facility bonding based upon the construction schedule. And under sub (c)(i), the certificate  
30 holder would adjust the \$140 million to the date of issuance of the bond or letter of credit, and  
31 on a quarterly basis thereafter during the construction phase, which would be based upon the  
32 progress of the construction of the facility (facility components installed) using the unit costs  
33 and assumptions identified in the Final Order on the ASC, Attachment W-1.<sup>149</sup> Further, under  
34 sub (f) of the Retirement and Financial Assurance Condition 4 (applicable to construction), the  
35 certificate holder may request an adjustment of the bond or letter of credit amount based on

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<sup>145</sup> Loaded crew rates include wages and benefits, per diem, equipment rates, contractor overheads, and profit. B2HAPPDoc3-40 ASC 23\_ Exhibit W\_ Retirement\_ ASC 2018-09-28, Section 3.4 and Attachment W-1.

<sup>146</sup> B2HAMD1 RFA1 2023-06-08. Table 7-1. Standards and Laws Relevant to Proposed Amendment.

<sup>147</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Table RFA-1: Applicant’s Decommissioning and Site Restoration Cost Estimate.

<sup>148</sup> B2HAPPDoc3-3 ASC 02a\_ Exhibit B\_ Project Description\_ ASC 2018-09-28, Table B-13. Project Structures and Visible Feature Dimensions.

<sup>149</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 334-336

1 final design configuration of the facility by applying the unit costs and assumptions presented in  
2 the Final Order on the ASC Attachment W-1.

3  
4 Additionally, Retirement and Financial Assurance Condition 5, imposed consistent with  
5 Mandatory Condition OAR 345-025-0006(8), directs a schedule for the bond amount carried  
6 during the operational life of the facility, which indicates that the certificate holder may request  
7 an adjustment of the bond or letter of credit amount based on final design configuration of the  
8 facility by applying the unit costs and assumptions presented in the Final Order on the ASC  
9 Attachment W-1.<sup>150</sup>

10  
11 Retirement and Financial Assurance Condition 5 expressly indicates that the Council retains the  
12 authority to require the certificate holder to submit a bond or letter of credit, in a timeframe  
13 identified by Council, and in an amount equal to the estimated total decommissioning cost for  
14 the facility (\$140,779,000 in 3rd Quarter 2016 dollars adjusted to present day value), or  
15 another amount deemed by the Council to be satisfactory to decommission the facility and  
16 restore the site to a useful, nonhazardous condition. Therefore, because the potential increase  
17 in facility components that may need to be retired, if selected, associated with RFA1 is a  
18 negligible portion for the facility as a whole and it's retirement cost estimate, and because  
19 existing site certificate conditions require the certificate holder to update and adjust the bond or  
20 letter of credit based upon final facility design before and during construction as well as during  
21 facility operation, the Council finds that under OAR 345-027-0375(2)(e), the amount of the  
22 bond or letter of credit required under OAR 345-022-0050 is adequate.

23  
24 Existing site certificate conditions that apply to the facility, with the site boundary additions in  
25 RFA1 include the following conditions which are also imposed under Mandatory Conditions  
26 (OAR 345-025-0006):

- 27  
28
- Retirement and Financial Assurance Condition 1 (GEN-RT-01): The certificate holder must prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition.
  - Retirement and Financial Assurance Condition 2 (RET-RT-01): The certificate holder must retire the facility in accordance with a retirement plan approved by the Council.
  - Retirement and Financial Assurance Condition 3 (RET-RT-02): If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, the Council must notify the certificate holder and request that the certificate holder submit a proposal. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval.
- 39  
40  
41

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<sup>150</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 336-339.

1 **III.G.2. Conclusions of Law**

2  
3 Based on the foregoing analysis, and subject to compliance with the existing conditions  
4 described above, the Council finds that under OAR 345-027-0375(2)(e), the amount of the bond  
5 or letter of credit required under OAR 345-022-0050 is adequate.  
6

7 **III.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060**

8  
9 *To issue a site certificate, the Council must find that the design, construction*  
10 *and operation of the facility, taking into account mitigation, are consistent*  
11 *with:*

12  
13 *(1) The general fish and wildlife habitat mitigation goals and standards of OAR*  
14 *635-415-0025(1) through (6) in effect as of February 24, 2017, and*

15  
16 *(2) For energy facilities that impact sage-grouse habitat, the sage-grouse*  
17 *specific habitat mitigation requirements of the Greater Sage-Grouse*  
18 *Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-*  
19 *0000 through -0025 in effect as of February 24, 2017.<sup>151</sup>*  
20

21 **III.H.1. Findings of Fact (OAR 345-022-0060(1))**

22  
23 The analysis area for the Fish and Wildlife Habitat standard includes all areas within the RFA1  
24 site boundary additions.<sup>152</sup> Based on the acres included in the RFA1 site boundary additions, the  
25 analysis area for this evaluation includes approximately 1,036 acres extending across portions  
26 of Morrow, Umatilla, Union, Baker and Malheur counties.  
27

28 *III.H.1.a Methodology*

29  
30 The methodology used to inform potential habitat impacts from the RFA1 site boundary  
31 additions include 2022 literature review and field surveys. Literature reviewed includes ODFW's  
32 current list of sensitive species; ODFW's mapped elk and mule deer winter range;<sup>153</sup> Oregon  
33 Biodiversity Information Center database information as of February 2022; USGS 2011  
34 landcover data; 2022 GIS data from U.S. Forest Service and BLM; and 2021 fish distribution data  
35 from StreamNet.  
36

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<sup>151</sup> OAR 345-022-0060, effective Mar. 8, 2017.

<sup>152</sup> The Department established the site boundary as the analysis area for the Fish and Wildlife Habitat standard. Consistent with the analysis area established in the Second Amended Project Order, the same previously established analysis area applies to review of future changes. B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26. Table 2, Page 23.

<sup>153</sup> ODFW Winter Range for Eastern Oregon. GIS dataset available online at:  
<https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml>

1 Various species, habitat and vegetation surveys were conducted in 2022. The type of surveys  
2 and survey protocols were established in the ASC phase – the same surveys and protocols were  
3 implemented and followed for RFA1. Surveys included: terrestrial visual encounter (TVES);  
4 pygmy rabbit; Washington ground squirrel (WAGS); avian (for target species: great gray owl,  
5 flammulated owl, northern goshawk and American three-toed woodpecker); and noxious  
6 weeds. Due to limitation in the certificate holder’s ability to obtain landowner permission for  
7 right-of-entry<sup>154</sup> in advance of biological survey seasons, not all biological surveys applicable to  
8 the RFA1 site boundary additions covered the entirety of the survey area. Survey methods and  
9 results are provided in RFA1 Attachments 7-3, 7-4, 7-5 and 7-8. Key facts regarding timing and  
10 survey area are presented below:  
11

- 12 • TVES were conducted by biologists, during daylight hours, in late May through June  
13 2022. The RFA1 site boundary addition survey area for TVES includes 1,036 acres. Of  
14 1,036 acres, 427 acres were surveyed. TVES recorded wildlife, wildlife signs and unique  
15 wildlife habitat.<sup>155</sup>
- 16 • Pygmy rabbit surveys were conducted in March through April 2022, using methods  
17 adapted from the Interagency Pygmy Rabbit Working Group’s “Surveying for Pygmy  
18 Rabbits” and the United States Geological Survey’s “Pygmy Rabbit Surveys on State  
19 Lands in Oregon.”<sup>156</sup> Suitable pygmy rabbit habitat within the RFA1 site boundary  
20 additions include 29 acres. Of the 29 acres of suitable pygmy rabbit habitat, 29 acres  
21 were surveyed.
- 22 • WAGS surveys were conducted in April and May 2022, in accordance with a protocol  
23 previously reviewed and approved during the ASC permitting phase.<sup>157</sup> The survey area  
24 included all suitable habitat area within and extending 1,000-feet from the RFA1 site  
25 boundary additions. Suitable habitat includes native grassland, shrub-steppe, and  
26 planted native species in Conservation Recovery Program (CRP) habitat.<sup>158</sup> Suitable  
27 WAGs habitat within the RFA1 site boundary additions include 69.4 acres. Of the 69.4  
28 acres of suitable WAGS habitat, 67.5 acres were surveyed.
- 29 • Avian surveys were conducted in April, May and June using calling stations.<sup>159</sup> The survey  
30 area for owls includes all areas within and extending ¼-mile of the RFA1 site boundary  
31 additions. Within the owl survey area, calling stations are placed approximately 528 feet  
32 apart. The survey area for diurnal species (American Three-toed Woodpecker and  
33 Northern Goshawk) included all area within and extending ½-mile from the RFA1 site

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<sup>154</sup> Right of entry refers to obtaining landowner permission for survey crews to access private property. The Council previously concurred with the certificate holder’s phased survey approach, where biological surveys were required where right of entry had been obtained. Where right of entry was either denied or not obtained, Council agreed to review desktop analysis combined with the results of preconstruction surveys. B2HAPPDoc32 Final Order on ASC and Attachments. Section III.D.

<sup>155</sup> B2HAMD1 Request for Amendment 1 Attachment 7-4 2023-06-08.

<sup>156</sup> B2HAMD1 Request for Amendment 1 Attachment 7-5 2023-06-08.

<sup>157</sup> B2HAPPDoc3-25 ASC 16A\_Exhibit P1\_Wildlife\_ASC\_Part 1\_Main thru AttachP1-6 rev 2018-09-28. Appendix B-1, pgs. B1-1 – B1-2.

<sup>158</sup> B2HAMD1 Request for Amendment 1 Attachment 7-3 2023-06-08.

<sup>159</sup> B2HAMD1 Request for Amendment 1 Attachment 7-8 2023-06-08.

boundary additions. Within the diurnal species survey area, calling stations were placed approximately 650 apart in areas with moderate to high conifer canopy cover within fairly contiguous stands of forest. For owl surveys, 46 calling stations are needed. Of the 46 calling stations, 18 were established for RFA1. For diurnal species, 52 callings stations are needed. Of the 52 calling stations, 25 were established for RFA1.

- Noxious weed surveys were conducted in 2022. The RFA1 site boundary addition survey area for noxious weeds includes 1,036 acres. Of 1,036 acres, 209 acres were surveyed.

*III.H.1.b Fish and Wildlife Habitat*

The RFA1 site boundary additions cover approximately 1,036 acres of habitat and agricultural lands. Habitat types include: shrubland, bare ground, forest/woodland, grassland, riparian vegetation, open water. Based on the six Habitat Category types established in ODFW’s Fish and Wildlife Habitat Mitigation Policy Habitat, habitat categories within the RFA1 site boundary additions include Category 2, 3 and 6, with Category 6 habitat being agricultural lands<sup>160</sup>, as presented in Table 18, *Habitat Categories and Types with RFA1 Site Boundary Additions*.<sup>161</sup>

Category 2 habitat includes ODFW-identified mule deer winter range, ODFW-identified elk winter range and areas of potential use of a state-listed Threatened and Endangered Species, WAGS.<sup>162</sup>

**Table 18: Habitat Categories and Types within RFA1 Site Boundary Additions**

RFA1 Change	Habitat Category					Total
	1	2	3	5	6	
Little Juniper Canyon Alternative						78.7
Agriculture / Developed	--	--	--	--	35.8	34.6
Shrubland	--	42.8	--	--	--	42.7
True Blue Gulch Alternative						422.8
Bare Ground	--	8.2	--	--	--	8.2
Forest / Woodland	--	116.6	--	--	--	116.6
Grassland	--	18.3	--	--	--	18.3
Riparian Vegetation	--	2.5	--	--	--	2.5

<sup>160</sup> ODFW’s Habitat Mitigation Policy for Category 6 habitat states that this habitat “has low potential to become essential or important habitat for fish and wildlife.” Impacts to Category 6 habitat do not require mitigation under the policy or Council’s standard. Category 6 habitat impacts are not further discussed in this section.

<sup>161</sup> B2HAPPDoc3-25 ASC 16A\_ Exhibit P1\_Wildlife\_ASC\_Part 1\_Main thru Attach P1-6. In ASC Exhibit P, the applicant describes the metrics and habitat components the Applicant used to classify habitats into these six category types, based on the presence of habitat characteristics and species observations.

<sup>162</sup> Results of 2022 WAGS survey, as presented in RFA1 Attachment 7-3, identified a WAGS colony outside of the RFA1 site boundary, but within the 1,000-foot survey area. Areas of potential WAGS use are defined as areas adjacent to and within 4,921 feet (1.5 kilometers [km]) of WAGS Category 1 habitat, but not occupied by any squirrels either for burrowing or foraging, which is of similar habitat type and quality to the adjacent WAGS Category 1 habitat. This habitat is considered Category 2.

**Table 18: Habitat Categories and Types within RFA1 Site Boundary Additions**

RFA1 Change	Habitat Category					Total
	1	2	3	5	6	
Shrubland	--	277.0	--	--	--	277.0
Durbin Quarry Alternative						130.0
Agriculture / Developed	--	--	--	--	1.4	1.4
Grassland	--	9.3	--	--	--	9.3
Shrubland	--	119.3	--	--	--	119.3
Access Road Changes						404.5
Agriculture / Developed	--	--	--	--	58.1	58.1
Bare Ground	--	10.5	0.6	--	--	11.1
Forest / Woodland	--	9.6	37.4	--	--	47.0
Grassland	--	70.6	1.7	--	--	72.3
Open Water	--	3.2	--	--	--	3.2
Riparian Vegetation	--	0.2	0.5	--	--	0.7
Shrubland	--	178.9	33.2	--	--	212.2
RFA1 Site Boundary Additions =						1,036

1  
2 *III.H.1.c Habitat Impacts and Mitigation*  
3  
4 The RFA1 site boundary additions would result in temporary and permanent habitat impacts.  
5 Construction activities would result in approximately 170 acres of temporary impacts to  
6 Category 2, 3 and 5 habitats. Siting of facility infrastructure would result in approximately 51  
7 acres of permanent impacts to Category 2, 3 and 5 habitats. Temporary and permanent habitat  
8 impacts are presented in Table 19, *RFA1 Site Boundary Additions – Temporary and Permanent*  
9 *Habitat Impacts* below.

**Table 19: RFA1 Site Boundary Additions - Temporary and Permanent Habitat Impacts**

Habitat Type	Habitat Category							
	2		3		5		6	
	Temp	Perm	Temp	Perm	Temp	Perm	Temp	Perm
Little Juniper Canyon Alternative								
Shrubland	4.7	1.4	1.9	0.2	--	--	7.4	0.9
<b>Subtotal =</b>	<b>4.7</b>	<b>1.4</b>	<b>1.9</b>	<b>0.2</b>	--	--	<b>7.4</b>	<b>0.9</b>
True Blue Gulch Alternative								
Forest / Woodland	0.6	0.0	--	--	--	--	--	--
Grassland	8.7	1.7	--	--	--	--	--	--
Riparian Vegetation	3.1	0.9	--	--	--	--	--	--
Shrubland	58.4	12.5	--	--	--	--	--	--
<b>Subtotal =</b>	<b>70.8</b>	<b>15.1</b>	--	--	--	--	--	--

**Table 19: RFA1 Site Boundary Additions - Temporary and Permanent Habitat Impacts**

Habitat Type	Habitat Category							
	2		3		5		6	
	Temp	Perm	Temp	Perm	Temp	Perm	Temp	Perm
Durbin Quarry Alternative								
Agriculture / Developed	--	--	--	--	--	--	0.5	--
Grassland	1.8	0.4	--	--	--	--	--	--
Shrubland	28.9	3.7	--	--	--	--	--	--
<b>Subtotal =</b>	30.7	4.1	--	--	--	--	0.5	--
Access Road Changes								
Agriculture / Developed	--	--	--	--	--	--	9.1	5.3
Bare Ground	2.0	0.9	0.1	0.1	--	--	--	--
Forest / Woodland	1.5	1.3	6.6	2.6	--	--	--	--
Grassland	12.6	6.6	0.2	0.2	--	--	--	--
Open Water	1.0	0.5	--	--	--	--	--	--
Riparian Vegetation	0.0	0.0	--	--	--	--	--	--
Shrubland	30.9	15.6	7.3	3.4	--	--	--	--
<b>Subtotal =</b>	47.9	24.9	14.2	6.2	--	--	9.1	5.3
<b>Grand Total =</b>	<b>154.1</b>	<b>45.5</b>	<b>16.1</b>	<b>6.4</b>	--	--	<b>17.0</b>	<b>6.2</b>
<b>Total Permanent, Categories 2-5</b>	<b>51.9 acres</b>							
<b>Total Temporary, Categories 2-5</b>	<b>170.2 acres</b>							

1  
2 As presented above, the RFA1 site boundary additions would result in temporary and  
3 permanent impacts to Category 2, 3 and 5 habitats. Under the Council’s Fish and Wildlife  
4 Habitat standard, the Council must find that the design, construction and operation are  
5 consistent with ODFW’s fish and wildlife habitat mitigation goals, based on category of habitat  
6 impacted. The mitigation goals for Category 2, 3 and 5 habitats are presented below.

7  
8 *"Habitat Category 2" is essential habitat for a fish or wildlife species, population, or*  
9 *unique assemblage of species and is limited either on a physiographic province or site-*  
10 *specific basis depending on the individual species, population or unique assemblage.*

11  
12 If impacts are unavoidable, the mitigation goal for Category 2 habitat is no net loss of either  
13 habitat quantity or quality and provision of a net benefit of habitat quantity or quality. The  
14 Council interprets this to mean that both habitat quantity and quality must be preserved, and  
15 the quantity of habitat preserved must be more than is impacted and the quality of the habitat  
16 of the preserved lands must be suitable for uplift or enhancement. To achieve this goal, impacts  
17 must be avoided, or unavoidable impacts must be mitigated through reliable “in-kind, in-  
18 proximity” habitat mitigation to achieve no net loss of either pre-development habitat quantity  
19 or quality. In addition, a net benefit of habitat quantity and quality must be provided.

1  
2 *“Habitat Category 3” is essential habitat for fish and wildlife, or important habitat for*  
3 *fish and wildlife that is limited either on a physiographic province or site-specific basis,*  
4 *depending on the individual species or population.*  
5

6 The mitigation goal for Category 3 habitat is no net loss of either habitat quantity or quality.  
7 The Council interprets this to mean that both habitat quantity and quality must be preserved.  
8 The goal is achieved by avoidance of impacts or by mitigation of unavoidable impacts through  
9 reliable “in-kind, in-proximity” habitat mitigation to achieve no net loss in either pre-  
10 development habitat quantity or quality.

11  
12 To achieve the habitat mitigation goals for Category 2, 3 and 5 habitats, the certificate holder is  
13 required to mitigate temporary and permanent habitat impacts. Temporary habitat impacts  
14 would be restored based on the requirements of a Revegetation and Reclamation Plan; and  
15 temporal and permanent habitat impacts would be restored through protection, conservation  
16 and enhancement of habitat, based on the requirements of a Habitat Mitigation Plan.<sup>163</sup> The  
17 Revegetation and Reclamation Plan and Habitat Mitigation Plan are in draft form, and require  
18 finalization based on final facility design and updated biological survey data.

19  
20 Council previously imposed Fish and Wildlife Condition 1 (Condition GEN-FW-01) requiring  
21 actions be completed during preconstruction, construction and operation to ensure the  
22 temporary habitat impacts can be restored, consistent with the standard.

23  
24 Temporal and permanent habitat impacts would be restored based on the following:<sup>164</sup>

- 25
- 26 • Category 2 impacts: more than 1 acre preserved for every 1 acre impacted (>1:1 acreage
  - 27 ratio)
  - 28 • Category 3 and 4 impacts: 1 acre preserved for every 1 acre impacted (1:1 acreage ratio)
  - 29 • Category 5 impacts: less than 1 acre preserved for every 1 acre impacted (<1:1 acreage
  - 30 ratio)

31  
32 The habitat mitigation obligation for the RFA1 site boundary additions from approximately 170

---

<sup>163</sup> Temporary impacts to habitat requiring a longer restoration timeframe (+ five years) are considered temporal impacts and typically require additional mitigation beyond revegetation to account for the loss of habitat function and values from the time of impact to the time when the restored habitat provides a pre-impact level of habitat function.

<sup>164</sup> While temporal loss applies to habitat subtypes expected to require a longer restoration timeframe, and therefore would apply to impacted sagebrush steppe but not grasslands, the certificate holder did not delineate between habitat subtypes to be temporarily impacted and provides mitigation for temporal loss for Category 2, 3 and 4 regardless of habitat subtype. Therefore, temporary impacts are being mitigated comparable to permanent impacts.

1 acres<sup>165</sup> of temporal habitat impacts and 52 acres of permanent habitat impacts equals approximately 222 acres.

The draft Fish and Wildlife Habitat Plan (HMP) was approved by Council in the *Final Order on the ASC*; finalization and implementation of the HMP are required under Fish and Wildlife Condition 4 (Condition GEN-FW-04). The amended draft HMP, as included in RFA1, is provided in Attachment P1-6 of this order and addresses the changes in permanent impacts to habitat, by habitat category and zone.

The amended draft HMP maintains the three previously approved options for habitat mitigation: purchasing mitigation credits through an ODFW-approved mitigation bank; purchasing credits through an In-Lieu Fee Program; or permittee responsible mitigation, where certificate holder would secure lands with conservation easements for long-term protection and enhancement. Compliance with Fish and Wildlife Condition 4 (Condition GEN-FW-04) requires that, prior to construction, the certificate holder select the mitigation option and demonstrate the either credits sufficient to mitigate for the habitat impacts associated with the phase, segment, or facility as whole, prior to the impact, have been secured and purchased; or that mitigation sites, approved by ODOE and ODFW, have been selected and secured with a conservation easement or similar legal conveyance, that meet the location and enhancement suitability requirements for the habitat categories impacted.

Council previously evaluated the suitability of 14 potential mitigation sites<sup>166</sup> in meeting the mitigation goals for temporal and permanent habitat impacts. The 14 mitigation sites collectively exceed the quantity of mitigation that would ultimately be needed for the facility, with RFA1 site boundary additions.

### *III.H.1.d Species Impacts and Mitigation*

Results of the 2022 biological surveys did not identify any pygmy rabbits, owl or diurnal species. As described in Section III.H.1.a, surveys did not include all survey area. In addition, raptor nest surveys were not conducted, but are necessary to identify raptor nests in advance of construction to ensure adequate avoidance of species impacts during the sensitive nesting seasons. Council previously imposed the following conditions that will require surveys in unsurveyed areas to be completed prior to construction within suitable habitat.

---

<sup>165</sup> As presented in this order, because the certificate holder proposes to mitigate the temporal loss of habitat for all temporary impacts to Category 2, 3 and 5 by including equivalent acres within the permanent lands secured for long-term habitat mitigation, the Council amends Fish and Wildlife Habitat Condition 1 to allow reduced monitoring if temporary impacts are otherwise mitigated through revegetation and compensatory mitigation. The Council also amended General Standard of Review Condition 9, consistent with amended Fish and Wildlife Habitat Condition 1, because monitoring/reporting under the Revegetation and Reclamation Plan is incorporated into the Noxious Weed Plan due to approved mitigation of temporary impacts treated as a permanent impact. Deleted portions of the condition to not conflict with overall reporting structures under the Revegetation and Reclamation Plan and Noxious Weed Plan.

<sup>166</sup> B2HAPPDoc32 Final Order on ASC 2022-09-27. Section IV.H.1, pg. 355.

- Fish and Wildlife Condition 15 (Condition PRE-FW-01) requires that, prior to construction of the facility, facility phase or segment, as applicable, surveys be conducted on any portion of the site boundary not previously surveyed for the following: Northern Goshawk, American Three-Toed Woodpecker, Great Gray Owl, TVES, wetlands and fish.
- Fish and Wildlife Condition 16 (Condition PRE-FW-02) requires that, prior to construction of the facility, facility phase or segment, as applicable, surveys be conducted on any portion of the site boundary not previously surveyed for the following: WAGS, raptor nests, and pygmy rabbits.

Potential impacts to State Sensitive species during construction and operation include sensory disturbance (i.e., noise, vibration, and visual) from the presence of personnel, vehicles, and equipment; as well as permanent impacts from habitat loss/modification; collision with equipment and facilities; increased predation risk from transmission lines used for perching, and transmission line electrocution and collision. Council previously imposed the following conditions which will rely on the results of the preconstruction survey data from the above-referenced conditions and ensure avoidance to the greatest possible extent.

- Fish and Wildlife Condition 11 (Condition CON-FW-01) limits ground-disturbing activities during the elk and mule deer winter range season.
- Fish and Wildlife Condition 12 (Condition CON-FW-02) requires a minimization and avoidance plan in any locations identified during preconstruction surveys of pygmy rabbits or State-sensitive bat species.
- Fish and Wildlife Condition 13 (Condition CON-FW-03) requires a minimization and avoidance plan for any locations identified during preconstruction surveys of ground-nesting bird species.
- Fish and Wildlife Condition 14 (Condition CON-FW-04) requires a 300-foot to ½-mile avoidance buffer nearing the sensitive nesting season for occupied nests of raptors with suitable habitat within the analysis area.

### **III.H.2. Findings of Fact (OAR 345-022-0060(2))**

The EFSC Fish and Wildlife Habitat standard has two parts. Sub(1), as described in the section above, relates to all fish and wildlife habitat except for sage-grouse habitat. Sub(2) of the standard is specific to sage-grouse habitat, and states:

*To issue a site certificate, the Council must find that the design, construction, and operation of the facility, taking into account mitigation, are consistent with:*

\*\*\*

*(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater sage-grouse conservation strategy for Oregon at*

1 OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effects as of February 24,  
2 2017.

3  
4 As referenced in the Council’s standard above, OAR 635-415-0025(7) states:

5  
6 *For proposed developments subject to this rule with impacts to greater sage-grouse habitat*  
7 *in Oregon, mitigation shall be addressed as described in OAR 635-140-0000 through 635-*  
8 *140-0025, except that any energy facility that has submitted a preliminary application for*  
9 *site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule is*  
10 *exempt from fulfilling the avoidance test contained in 635-140-0025, Policy 2, subsections*  
11 *(a), (b), (c) and (d)(A). Other mitigation provisions contained in 635-140-0025, Policy 2,*  
12 *subsections (d)(B) and (e), and Policies 3 and 4 remain applicable.*

13  
14 OAR 635-415-0025(7) became effective upon its adoption in March 2016. The pASC for the  
15 proposed ASC transmission line was submitted in February 2013. The Council interprets the  
16 exception to OAR 635-415-0025(7) to specifically apply during the permitting phase of the ASC  
17 – and allowed for projects that were in the pASC phase to be exempt from the requirement.  
18 The Council finds that this waiver, however, does not extend to future permitting phases,  
19 where changes to facility location and site boundary areas are proposed. Therefore, the  
20 requirements of OAR 635-140-0025, Policy 2, subsections (a), (b), (c), and (d)(A) are applicable  
21 to the RFA1 site boundary additions that would occur within/impact sage-grouse habitat.<sup>167</sup>

22  
23 The applicable provisions of OAR 635-140-0025(2) and (3) state:

24  
25 *(2) Policy 2. The Department [ODFW] may approve or recommend approval of mitigation*  
26 *for impacts from a large-scale development permitted by a county; or development*  
27 *actions permitted by a state or federal government entity on public land, within sage-*  
28 *grouse habitat only after the following mitigation hierarchy has been addressed by the*  
29 *permitting entity, with the intent of directing the development action away from the*  
30 *most productive habitats and into the least productive areas for sage-grouse (in order of*  
31 *importance: core area, low density, general, and non-habitat).*

32  
33 *(a) Avoidance in Core Area Habitat. If the proposed development can occur in*  
34 *another location that avoids both direct and indirect impacts within core habitat,*  
35 *then the proposal must not be allowed unless it can satisfy the following criteria:*  
36 *(A) It is not technically feasible to locate the proposed development activity or its*  
37 *impacts outside of a core habitat area based on accepted engineering*  
38 *practices, regulatory standards or some combination thereof. Costs*

---

<sup>167</sup> OAR 345-027-0375(2)(a) requires that changes proposed in a Request for Amendment, specifically site boundary additions, to be reviewed under the standards, rules and laws, that would be applied to a new site certificate application submitted to the same date. The Department interprets OAR 635-415-0025(7) only to apply to the proceedings of an ASC because applying the -0025(7) exemption to future EFSC proceedings for an approved facility is not consistent with OAR 345-027-0375 and 345-022-0030.

1 associated with technical feasibility may be considered, but cost alone may  
2 not be the only consideration in determining that the development must be  
3 located such that it will have direct or indirect impacts on sage-grouse core  
4 area habitat; or

5 (B) The proposed development is dependent on a unique geographic or other  
6 physical feature(s) that cannot be found on other lands; and

7 (C) If the proposal is for a large-scale development as defined in Oregon Land  
8 Conservation and Development OAR 660-023-0115 (Greater Sage-  
9 Grouse) and either (2)(a)(A) or (2)(a)(B) is found to be satisfied, the  
10 permitting entity must also find that it will provide important economic  
11 opportunity, needed infrastructure or public safety benefits for local citizens  
12 or the entire region.

13  
14 (b) *Avoidance in Low Density Habitat.* If the proposed development action can occur  
15 in another location that avoids both direct and indirect impacts within low  
16 density sage-grouse habitat, then the proposal must not be allowed unless it can  
17 satisfy the following criteria:

18 (A) It is not technically or financially feasible to locate the proposed use outside  
19 of low density sage-grouse habitat based on accepted engineering practices,  
20 regulatory standards, proximity to necessary infrastructure or some  
21 combination thereof; or

22 (B) The proposed development action is dependent on geographic or other  
23 physical feature(s) found in low density habitat areas that are less common at  
24 other locations.

25  
26 (c) *Avoidance in General Habitat.* If the proposed development activity and its direct  
27 and indirect impacts are in general sage-grouse habitat (within 3.1 miles of a  
28 lek), then the permitting entity may allow the activity based on satisfaction of the  
29 following criteria:

30 (A) Consultation between the development proponent and the Department that  
31 generates recommendations pursuant to the approach identified in  
32 minimization subsection (d), and

33 (B) Incorporation by the project proponent of reasonable changes to the project  
34 proposal based on the above consultation with the Department, and/or  
35 justification as to why a given recommendation is not feasible.

36  
37 (d) *Minimization.* If after exercising the above avoidance tests, the permitting entity  
38 finds the proposed development action cannot be moved to non-habitat or into a  
39 habitat category that avoids adverse direct and indirect impacts to a habitat  
40 category of greater significance (i.e., core or low density), then the next step  
41 applied in the mitigation hierarchy will be minimization of the direct and indirect  
42 impacts of the proposed development action. Minimization consists of how to  
43 best locate, construct, operate and time (both seasonally and diurnally) the

1 development action so as to avoid or minimize direct and indirect impacts on  
2 important sage-grouse habitat and sage-grouse.

3  
4 (A) Minimizing impacts from development actions in general habitat shall include  
5 consultation between the development proponent and the Department that  
6 considers and results in recommendations on how to best locate, construct,  
7 or operate the development action so as to avoid or minimize direct and  
8 indirect impacts on important sage-grouse habitat within the area of general  
9 habitat.

10  
11 (e) Compensatory Mitigation. If avoidance and minimization efforts have been  
12 exhausted, compensatory mitigation to address both direct and indirect impacts  
13 will be required as part of the permitting process for remaining adverse impacts  
14 from the proposed development action to sage-grouse habitat, consistent with  
15 the mitigation standard in (3) Policy 3 below.

16  
17 (3) Policy 3. The standard for compensatory mitigation of direct and indirect habitat  
18 impacts in sage-grouse habitat (core low density, and general areas) is to achieve net  
19 conservation benefit for sage-grouse by replacing the lost functionality of the impacted  
20 habitat to a level capable of supporting greater sage-grouse numbers than that of the  
21 habitat which was impacted. Where mitigation actions occur in existing sage-grouse  
22 habitat, the increased functionality must be in addition to any existing functionality of  
23 the habitat to support sage-grouse. When developing and implementing mitigation  
24 measures for impacts to core, low density, and general sage-grouse habitats, the project  
25 developers shall:

26  
27 (a) Work directly with the Department [ODFW] and permitting entity to obtain  
28 approval to implement a mitigation plan or measures, at the responsibility of  
29 the developer, for mitigating impacts consistent with the standard in OAR  
30 635-140-0025 (3) or,

31 (b) Work with an entity approved by the Department [ODFW] to implement, at  
32 the responsibility of the developer, "in-lieu fee" projects consistent with the  
33 standard in OAR 635-140-0025 (3).

34 (c) Any mitigation undertaken pursuant to (a) or (b) above must have in place  
35 measures to ensure the results of the mitigation activity will persist (barring  
36 unintended natural events such as fire) for the life of the original impact. The  
37 Department will engage in mitigation discussions related to development  
38 actions in a manner consistent with applicable timelines of permitting  
39 entities.

40  
41 (4) Policy 4. The Department shall follow the Fish and Wildlife Habitat Mitigation Policy  
42 (OAR 635-415-0000) when defining habitat categories and providing recommendations  
43 to address potential site-level impacts to species other than greater sage-grouse that  
44 occur within sage-grouse core area habitat or sage-grouse low density habitat, except

1           that if there is a resulting conflict between OAR 635-415-0000 and this rule, then this  
2           rule shall control.  
3

4 OAR 635-140-0002 defines the sage grouse habitat categories as:

- 5       • *Areas of High Population Richness: Mapped areas of breeding and nesting habitat within*  
6       *core habitat that support the 75th percentile of breeding bird densities (i.e., the top*  
7       *25%).*
- 8       • *Core Area: Mapped sagebrush types or other habitats that support greater sage-grouse*  
9       *annual life history requirements that are encompassed by areas: a) of very high, high,*  
10       *and moderate lek density strata; b) where low lek density strata overlap local*  
11       *connectivity corridors; or c) where winter habitat use polygons overlap with either low*  
12       *lek density strata, connectivity corridors, or occupied habitat.” Core area maps are*  
13       *maintained by the Department.*
- 14       • *Low Density: Mapped sagebrush types or other habitats that support greater sage-*  
15       *grouse that are encompassed by areas where: a) low lek density strata overlapped with*  
16       *seasonal connectivity corridors; b) local corridors occur outside of all lek density strata; c)*  
17       *low lek density strata occur outside of connectivity corridors; or d) seasonal connectivity*  
18       *corridors occur outside of all lek density strata. Low density area maps are maintained*  
19       *by the Department.*
- 20       • *General Habitat: Occupied (seasonal or year-round) sage-grouse habitat outside impact*  
21       *core and low density habitats. As explained in Exhibit P2 of the ASC, the analysis area for*  
22       *sage grouse includes the entire Site Boundary, which the ASC defines as “the perimeter*  
23       *of the site of a proposed energy facility, its related or supporting facilities, all temporary*  
24       *laydown and staging areas, and all corridors and micro-siting corridors proposed by the*  
25       *applicant” (OAR 345-001-0010(54)).*

26  
27 ODFW’s Sage-Grouse Conservation Strategy focuses primarily on preserving the species’ habitat  
28 and not on impacts to individual birds. As applicable to the RFA1 site boundary additions, OAR  
29 635-140-0025(2), Policy 2 requires compliance with a mitigation hierarchy, which is intended to  
30 “direct[] the development action away from the most productive habitats and into the least  
31 productive areas for sage-grouse (in order of importance: core area, low density, general, and  
32 non-habitat).” In areas where impacts cannot be avoided, Policy 2(d) requires the impacts to be  
33 minimized. As described in the rule, “[m]inimization consists of how to best locate, construct,  
34 operate and time (both seasonally and diurnally) the development action so as to avoid or  
35 minimize direct and indirect impacts on important sage-grouse habitat and sage-grouse.” Policy  
36 3 requires compensatory mitigation in the event avoidance and minimization efforts have been  
37 exhausted.  
38

39 The Durbin Quarry alternative would be located in Core Area and Low Density habitat. Policy 2  
40 criteria (a) – (d) are evaluated below.<sup>168</sup>  
41

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<sup>168</sup> Policy 2 criteria (c) applies to general habitat; because the RFA1 site boundary additions are in Core and Low Density areas only, (c) is not evaluated in this order.

1 The Council finds that Policy 2 criteria (a)(B) and (b)(B) (*the proposed development is dependent*  
2 *on a unique or other physical feature(s) that cannot be found on other lands*) is met for the  
3 Durbin Quarry alternative, based on the following facts.

4  
5 The Durbin Quarry alternative is dependent on: (1) lands reasonably adjacent to the approved  
6 transmission line route, while also (2) avoiding ODOT’s Durbin Quarry. ODOT’s Durbin Quarry  
7 needs to be avoided due to the risks of drilling, blasting, crushing, and large equipment  
8 operation at the quarry to transmission line safety. These two unique features result in siting in  
9 facility components in a location where Core Area and Low Density habitat exists.

10  
11 The Council finds that Policy 2 criteria (a)(C) (*..find that it will provide important economic*  
12 *opportunity, needed infrastructure or public safety benefits for local citizens or the entire region*)  
13 is met for the Durbin Quarry alternative, based on the following facts.

14  
15 Facility construction would result in job creation and increased tax base; facility operation  
16 would benefit the greater Pacific Northwest economy through increasing transmission capacity  
17 to allow for it to provide services to wholesale customers (potential energy sellers). The facility  
18 would provide transmission services to wholesale customers; increase transmission capacity  
19 and subsequently increased incentives to build and operate additional energy facilities near  
20 transmission substations.

21  
22 The facility is a necessary part of the certificate holder’s resource management strategy and is  
23 designed to support the certificate holder in its continuing efforts to promote energy efficiency  
24 and demand response as an alternative to the construction of additional generation plants.  
25 Additionally, the facility is important for renewable resource development in northeastern  
26 Oregon such as wind and geothermal resources. The facility is expected to relieve congestion  
27 on the existing 230-kV transmission system, which could facilitate transmission of renewable  
28 energy.

29  
30 The Council finds that Policy 2 criteria (d)(A) (*..how to best locate, construct, or operate the*  
31 *development action so as to avoid or minimize direct and indirect impacts on important sage-*  
32 *grouse habitat within the area of general habitat.*) is met for the Durbin Quarry alternative,  
33 based on the following facts.

34  
35 The *Final Order on ASC* approved the siting of facility components in Core and Low Density  
36 habitat areas with greater impacts than would result from the Durbin Quarry alternative, but  
37 that permitting decision did not require an evaluation of Policy 2 criteria (d)(A) because of the  
38 exemption under OAR 635-415-0025(7) for energy facilities that had submitted a preliminary  
39 application prior to March 2016. The Council finds that, in consultation with ODFW, while the  
40 previously approved ASC route did not have to evaluate Policy 2 criteria (d)(A), credit can be  
41 taken for future alternative routes that would have a lessor impact. The Council finds that the  
42 siting of the Durbin Quarry alternative would better avoid and minimize direct and indirect  
43 impacts to Core and Low density habitat, compared to the approved ASC route in this location.

44

1 Council previously imposed Fish and Wildlife Condition 17 (Condition PRE-FW-03), 18  
2 (Condition CON-FW-05) and 19 (Condition OPR-FW-03) requiring that the certificate holder  
3 finalize the calculation of direct and indirect sage-grouse habitat impacts, and based on that  
4 calculation, finalize the Sage-Grouse Habitat Mitigation Plan. Given that the nature and extent  
5 of the impacts within Core and Low-Density habitat from the Durbin Quarry alternative would  
6 be similar or less than the approved facility, the Council incorporates by reference and rely  
7 upon its findings in the *Final Order on the ASC*, and continue to find that based on compliance  
8 with the previously imposed conditions, the certificate holder would comply with OAR 345-022-  
9 0060(2).

10  
11 **III.H.2. Conclusions of Law**

12  
13 Based on the foregoing analysis, and subject to compliance with the existing and amended site  
14 certificate conditions, as presented in Attachment 1 of this order, the Council finds that the  
15 design, construction and operation of the RFA1 site boundary additions are consistent with the  
16 mitigation goals and requirements of the Oregon Department of Fish and Wildlife’s Fish and  
17 Wildlife Habitat Mitigation Policy under OAR 635-415-0025.

18  
19 **III.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070**

20  
21 *To issue a site certificate, the Council, after consultation with appropriate*  
22 *state agencies, must find that:*

23  
24 *(1) For plant species that the Oregon Department of Agriculture has listed as*  
25 *threatened or endangered under ORS 564.105(2), the design, construction and*  
26 *operation of the proposed facility, taking into account mitigation:*

27  
28 *(a) Are consistent with the protection and conservation program, if any, that*  
29 *the Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

30  
31 *(b) If the Oregon Department of Agriculture has not adopted a protection and*  
32 *conservation program, are not likely to cause a significant reduction in the*  
33 *likelihood of survival or recovery of the species; and*

34  
35 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed*  
36 *as threatened or endangered under ORS 496.172(2), the design, construction*  
37 *and operation of the proposed facility, taking into account mitigation, are not*  
38 *likely to cause a significant reduction in the likelihood of survival or recovery of*  
39 *the species.*<sup>169</sup>

40  

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<sup>169</sup> OAR 345-022-0070, effective May 15, 2007.

1 The Council’s T&E standard does not implement federal requirements. There is not a Council  
2 standard authorizing Council to impose or enforce regulations related to federally listed T&E  
3 species listed under 16 USC Section 1533.

4  
5 **III.I.1. Findings of Fact**  
6

7 The analysis area for threatened or endangered plant and wildlife species was established in  
8 the second amended project order as the area within and extending ½-mile from the site  
9 boundary. For RFA1, the analysis area is the area within and extending ½-mile from the site  
10 boundary additions.

11  
12 The methodology used to inform potential impacts to state-listed T&E species from RFA1  
13 changes includes 2022 literature review and field surveys. Literature reviewed includes ODFW’s  
14 current list of sensitive species; Oregon Biodiversity Information Center database information  
15 as of February 2022; ODA’s current list of Threatened, Endangered and Candidate Species list;  
16 2022 GIS data from U.S. Forest Service and BLM; and 2021 fish distribution data from  
17 StreamNet.

18  
19 T&E species with the potential to occur in the analysis area include Washington ground squirrel  
20 (WAGS), Snake River Chinook Salmon (Spring/Summer); Lawrence’s milkvetch; Mulford’s  
21 milkvetch; Smooth mentzelia; Cronquist’s stickseed; Oregon semaphore grass; Snake River  
22 goldenweed; and Howell’s spectacular thelypody.

23  
24 WAGS surveys were conducted April 4-11 and 19-27 and May 5-12 and 20-28, 2022 and  
25 included the area within a 1,000-foot buffer of suitable habitat.<sup>170</sup> Field surveys methods and  
26 data recordation are described in RFA1 Attachment 7-3, Sections 2.3 and 2.4. The RFA1 site  
27 boundary additions include approximately 48 acres of suitable WAGS habitat in the Little  
28 Juniper Canyon alternative (Morrow County). This area was fully surveyed and identified 1  
29 WAGS colony.

30  
31 T&E plant surveys were conducted at the Little Juniper Canyon Alternative and Durbin Quarry  
32 alternative. Several areas of suitable habitat were not surveyed due to the lack of right of entry  
33 concurrent with timing constraints of survey season. Council previously imposed Fish and Wildlife  
34 Condition 16 (Condition PRE-FW-02) requiring that the certificate holder complete surveys within  
35 previously unsurveyed areas, where facility-related temporary and permanent impacts would  
36 occur, for state-listed T&E plant species. This condition applies to any unsurveyed areas with  
37 suitable T&E plant habitat within the RFA1 site boundary additions.

38  
39 *III.I.1.a State listed Species*  
40

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<sup>170</sup> WAGS surveys were conducted for RFA1 and preconstruction compliance. Therefore, the survey report in RFA1 Attachment 7-3, presents results applicable to previously approved area and RFA1 site boundary additions.

1 One WAGS colony was found within the ½-mile analysis area (the Little Juniper Canyon  
2 Alternative in Morrow County). WAGS are a state-listed endangered species.

3  
4 The colony is located more than 785 feet from the RFA1 site boundary additions. No direct or  
5 indirect impact to WAGS or WAGS habitat would occur. Council previously imposed T&E Species  
6 Condition 1 (Condition CON-TE-01) which precludes any ground-disturbing activities during  
7 construction to occur within WAGS-habitat.

8  
9 One population of Snake River goldenweed was found within the RFA1 site boundary additions  
10 (the Durbin Quarry alternative). This population is located within and expands beyond a  
11 planned pulling and tensioning area. Council previously imposed T&E Species Condition 2  
12 (Condition CON-TE-02) which precludes any ground-disturbing activities during construction  
13 from occurring within 33-feet of T&E plant species; or requires that protective matting be  
14 placed over the T&E plants if direct impacts are unavoidable.

15  
16 Council previously established that the circumstances that would warrant placement of matting  
17 over T&E plant populations, versus avoidance, are those that apply to existing roads  
18 necessitating substantial modification to support construction or operation or such similar  
19 circumstances. In other words, Council allowed an exception to strict avoidance if the impact  
20 would occur in an area where the certificate holder is using existing roads, but substantially  
21 modifying the road for use during construction. A pulling and tensioning site does not rely on  
22 existing infrastructure – and there are areas in close proximity to the mapped T&E plant species  
23 where populations were not identified during 2022 surveys. Therefore, the 33-foot buffer and  
24 impact avoidance are required.

25  
26 *III.I.1.b Potential Impacts to Identified Threatened and Endangered Species*

27  
28 Construction could impact WAGS through direct and indirect mortality, and through both  
29 temporary and permanent habitat impacts. Habitat impacts are evaluated in Section III.H.1. *Fish*  
30 *and Wildlife Habitat*. Direct mortality impacts could occur through vehicular incident; indirect  
31 mortality could occur if the transmission line, once operational, is used as perching habitat by  
32 raptors and ravens, which are known to predate on WAGS and other small mammals.

33  
34 *III.I.1.c Mitigation of Potential Impacts*

35  
36 Council previously imposed the following condition to reduce and minimize any potential direct  
37 and indirect impacts to the state-listed T&E species described in this section:

- 38  
39
- 40 • T&E Species Condition 1 (Condition CON-TE-01) requires that the certificate holder  
41 ensure that construction-related ground-disturbing activities avoid all WAGS habitat  
42 identified during pre-construction surveys. The condition also requires that if any WAGS  
43 are identified during the 3-year validity period of the surveys within areas of anticipated  
44 ground-disturbance, but after construction has commenced, that the certificate holder  
develop and avoidance and impact minimization plan.

- 1 • Fish and Wildlife Condition 8 (Condition GEN-FW-07) requires that the certificate holder  
2 employ an onsite speed limit on private facility access roads of 25 miles per hour.  
3 Reduced speed will minimize impacts to WAGS through vehicular collision.
- 4 • Fish and Wildlife Condition 16 (Condition PRE-FW-02) requires that the certificate holder  
5 complete surveys within previously unsurveyed areas, where facility-related temporary  
6 and permanent impacts would occur, for state-listed T&E plant species. This condition  
7 applies to any unsurveyed areas with suitable T&E plant habitat within the RFA1 site  
8 boundary additions.
- 9 • T&E Species Condition 2 (Condition CON-TE-02) precludes any ground-disturbing  
10 activities during construction from occurring within 33-feet of T&E plant species, as  
11 identified during preconstruction surveys; or requires that protective matting be placed  
12 over the T&E plants if direct impacts are unavoidable.

### 14 III.I.2. Conclusions of Law

15  
16 Based on the foregoing analysis, and subject to compliance with the existing site certificate  
17 conditions described above, the Council finds that the design, construction and operation of the  
18 RFA1 site boundary additions are not likely to cause a significant reduction in the likelihood of  
19 survival or recovery of species listed as threatened or endangered by the Oregon Department  
20 of Agriculture or Oregon Fish and Wildlife Commission.

### 22 III.J. **SCENIC RESOURCES: OAR 345-022-0080**

23  
24 *(1) To issue a site certificate, the Council must find that the design,*  
25 *construction and operation of the facility, taking into account mitigation, are*  
26 *not likely to result in significant adverse visual impacts to significant or*  
27 *important scenic resources.*

28  
29 *(2) The Council may issue a site certificate for a special criteria facility under*  
30 *OAR 345-015-0310 without making the findings described in section (1). In*  
31 *issuing such a site certificate, the Council may impose conditions of approval*  
32 *to minimize the potential significant adverse visual impacts from the design,*  
33 *construction, and operation of the facility on significant or important scenic*  
34 *resources.*

35  
36 *(3) A scenic resource is considered to be significant or important if it is*  
37 *identified as significant or important in a current land use management plan*  
38 *adopted by one or more local, tribal, state, regional, or federal government or*  
39 *agency.*

40  
41 *(4) The Council shall apply the version of this rule adopted under*  
42 *Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the*  
43 *review of any Application for Site Certificate or Request for Amendment that*

1           *was determined to be complete under OAR 345-015-0190 or 345-027-0363*  
2           *before the effective date of this rule. Nothing in this section waives the*  
3           *obligations of the certificate holder and Council to abide by local ordinances,*  
4           *state law, and other rules of the Council for the construction and operation of*  
5           *energy facilities in effect on the date the site certificate or amended site*  
6           *certificate is executed.*<sup>171</sup>  
7

8                           **III.J.1.       Findings of Fact**  
9

10       OAR 345-022-0080 requires the Council to determine that the design, construction and  
11       operation of the site boundary additions in RFA1, taking into account mitigation, will not be  
12       likely to have a “significant adverse impact” to any significant or important scenic resources and  
13       values in the analysis area. In applying the standard set forth in OAR 345-022-0080(1), the  
14       Council assesses the visual impacts of facility structures on significant or important scenic  
15       resources described in “local land use plans, tribal land management plans and federal land  
16       management plans for any lands located within the analysis area described in the second  
17       amended project order.” For purposes of this rule, “local land use plans” includes applicable  
18       state management plans. The analysis area is the site boundary and 10 miles from the site  
19       boundary.  
20

21       In preparation of RFA1, certificate holder reviewed the 47 applicable federal and local land use  
22       management plans or development codes within the 10-mile analysis area of the facility  
23       approved in the *Final Order on ASC* to determine if there had been updates to these plans that  
24       may identify new scenic resources. Based on this review of applicable land use plans,<sup>172</sup> 23 of  
25       the 47 plans or codes have been updated or replaced by a new plan since the ASC.<sup>173</sup> The review  
26       of these plan updates did not identify any new significant or important scenic resources and  
27       values.<sup>174</sup> Certificate holder also reviewed the Canyon County, Idaho, 2020 Comprehensive Plan  
28       (2011) which is within the analysis area of the site boundary additions in RFA1, which has the  
29       Canyon County Scenic Byway Overlay, yet no scenic resources identified.  
30

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<sup>171</sup> OAR 345-022-0080, effective December 19, 2022.

<sup>172</sup> Excerpts of plans provided in RFA1 Attachment 7-11.

<sup>173</sup> Baker County 2016, Benton County 2022, City of Hermiston 2014, City of Baker 2020, City of Island City 2022, City of Lone 2009, City of Irrigon 2014, 2017, City of La Grande 2013, City of Pendleton 2022, City of Stanfield 2017, City of Umatilla 2013, City of Vale 2014, CTUIR 2018, Morrow County 2017, 2019, ODFW 2017, 2018, 2022, OPRD 2019, Umatilla County 2022, Union County 2021, Washington County 2020.

<sup>174</sup> B2HAMD1 RFA1 2023-06-08. Section 7.1.7.

1 *III.J.1.a Significant or Important Scenic Resources Identified in Plans*

*Final Order on ASC* provides a description of each of the plans that contain scenic resources or values which included:

- County Plans: Union and Baker Counties;
- City Plans: City of Pendleton;
- State Plans: Oregon State Park System/Oregon Parks and Recreation Department, State Wildlife Areas, State Scenic Byways;
- Federal Plans:
  - Bureau of Land Management (BLM) - Vale District, Baker Resource Area; BLM Baker RMP, Vale District, Malheur Resource Area; BLM SEORMP, Boise District, Owyhee Resource Area (Owyhee Resource Management Plan), Boise District, Cascade Resource Area (Cascade RMP), Spokane District (Spokane RMP);
  - U.S. Forest Service (USFS) - Wallowa-Whitman National Forest Land and Resource Management Plan, Umatilla National Forest Land and Resource Management Plan;
  - Department of Defense/US Navy
  - Bureau of Reclamation (BOR)
  - U.S. Fish and Wildlife Service (USFWS) - Umatilla National Wildlife Refuge (NWR), McKay Creek National Wildlife Refuge (NWR), Deer Flat National Wildlife Refuge (NWR)

Based on the review of these plans and updates to the plans, there are not any new scenic resources of values within the analysis area of RFA1, however, Table 20: *Scenic Resources within Analysis Area for ASC and RFA1*, below, lists the scenic resources in the analysis area for the ASC and RFA1, with the distance to the closest transmission line route associated with the ASC and RFA1.

**Table 20: Scenic Resources within Analysis Area for ASC and RFA1**

Scenic Resource	Distance to Approved ASC/RFA1 Routes	Designating Plan
Blue Mountain Forest Wayside (SR U1)	Crossed (ASC)	Union County Comprehensive Plan and Oregon Parks and Recreation Department
OR Highway 203 (SR B1)	3.3 miles (ASC)	Baker County Comprehensive Plan
OR Highway 86 (SR B2)	Crossed (ASC)	Baker County Comprehensive Plan
OR Highway 245 (SR B3)	7 miles (ASC)	Baker County Comprehensive Plan
Interstate 84, Pleasant Valley Durkee area (SR B4)	Crossed (ASC)	Baker County Comprehensive Plan
Interstate 84, Huntington to Baker/Malheur County line (SR B5)	0.2 miles (ASC)	Baker County Comprehensive Plan

**Table 20: Scenic Resources within Analysis Area for ASC and RFA1**

Scenic Resource	Distance to Approved ASC/RFA1 Routes	Designating Plan
	0.1 miles (RFA1 Durbin Quarry)	
Hells Canyon Scenic Byway	Crossed (ASC)	ODOT Hells Canyon Scenic Byway Management Plan
Grande Tour Route	0.2 miles (ASC)	ODOT Grande Tour Route Management Plan
Powder River Canyon – Keating (VRM B2)	5.7 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Burnt River Canyon (VRM B3)	Crossed (ASC) Crossed (RFA1 True Blue Gulch)	BLM – Vale District, Baker Resource Area Management Plan
Brownlee Reservoir West (VRM B7)	2.1 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Blue Mountain Parcel (SR B6)	0.9 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – NHOTIC Parcel (SR B6)	0.02 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – White Swan Parcel (SR B6)	2.9 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Straw Ranch 2 Parcel (SR B6)	1.1 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Straw Ranch 1 Parcel (SR B6)	0.1 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Powell Creek Parcel (SR B6)	1.2 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Powder River Canyon ACEC and WSR (SR B7)	1.4 miles (ASC)	BLM – Vale District, Baker Resource Area Management Plan
Oregon Trail ACEC – Birch Creek parcel (VRM M1)	0.2 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Oregon Trail ACEC – Tub Mountain Parcel (VRM M2)	0.5 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Sugarloaf Butte (VRM M3)	1.6 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Five Points Creek (WSR1)	2.0 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan

**Table 20: Scenic Resources within Analysis Area for ASC and RFA1**

Scenic Resource	Distance to Approved ASC/RFA1 Routes	Designating Plan
Lower Owyhee River (VRM M5)	Crossed (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Succor Creek (VRM M8)	3.9 miles (ASC)	BLM, Vale District, Malheur Resource Area Management Plan
Jump Creek Canyon and Jump Creek ACEC (VRM O1)	4.9 miles (in State of Oregon) (ASC)	BLM, Owyhee Resource Area Management Plan
Brownlee Reservoir Southeast (VRM C1)	0.6 miles (ASC)	BLM, Boise District, Cascade Resource Area Management Plan
Brownlee Reservoir Northeast (VRM C2)	6.0 miles (ASC)	BLM, Boise District, Cascade Resource Area Management Plan
VQO 1	Adjacent (ASC)	USFW Wallowa Whitman National Forest Management Plan
VQO 2	Crossed (ASC)	USFW Wallowa Whitman National Forest Management Plan
OR 244 Corridor – Red Bridge West (VQO 3)	4.4 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan
OR 244 Corridor – Red Bridge East (VQO 4)	1.4 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan
Mt Emily (VQO 6)	5.2 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan
OR 203 Corridor – Catherine Creek (VQO 8)	8.0 miles (ASC)	USFW Wallowa Whitman National Forest Management Plan

1

2 *III.J.1.b Visual Impact Assessment and Conclusions for RFA1 Site Boundary Additions*

3

4 III.J.1.b.1 Summary Methodology for Evaluation of Scenic Resources

5

6 As discussed, and summarized in Section III.F., *Protected Areas*, of this order, to evaluate the  
7 impact of the site boundary additions on protected areas, scenic, and recreational resources,  
8 the certificate holder used the Council approved visual impact methodology which is based on  
9 the BLM and USFS visual impact assessment methods, and the Council’s definition of significant.  
10 Council’s rules do not require, or provide, a specific methodology for evaluating visual impacts

1 to Scenic Resources (or Protected Areas or Recreation resources).<sup>175</sup> Also, as discussed in  
2 Section III.F., *Protected Areas*, of this order, the visual impact assessment extends 5 miles from  
3 the site boundary additions in non-forested settings, and 10 miles in forested settings. Beyond  
4 those distances, Council previously found that visibility of the facility components would be  
5 negligible.<sup>176</sup> Because the vast majority of site boundary additions in RFA1 are roads, which do  
6 not have a vertical visual component associated with them, the visual impact assessment was  
7 further defined by proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or  
8 background distances (> 5 miles).

9  
10 *Final Order on ASC* described in detail each scenic resource identified as significant or important  
11 in an applicable management plan. Because there are not new scenic resources in the analysis  
12 area for RFA1, the Council relies upon the descriptions and identification of scenic resources  
13 provided in the ASC and *Final Order on ASC*.

#### 14 15 III.J.1.b.1 Potential Impacts to Scenic Resources from Site Boundary Additions in RFA1

16  
17 RFA1 Attachment 7-10, Table 2 provides an updated visual impact assessment of the site  
18 boundary additions in RFA1. Attachment 7-10, Table 2 includes the type of site boundary  
19 additions (transmission line route or road), its proximity to the scenic resource, as well as  
20 baseline characteristics, impact assessment, and significance determinations. RFA1 Figure 7-16  
21 illustrates the location of scenic resources as well as the proximity to access road and  
22 transmission line alternatives in RFA1. Certificate holder indicates that the distance from the  
23 site boundary additions in RFA1 from scenic resources increased or remained the same  
24 compared to the evaluation done for the ASC, thus potential visual impacts would be less than  
25 or equal to what was previously approved.<sup>177</sup> Two scenic resources were identified within the  
26 analysis area from a transmission line route alternative in RFA1; Interstate 84, Huntington to  
27 Baker/Malheur County line and Burnt River Canyon.

28  
29 Interstate 84, Huntington to Baker/Malheur County line (SR B5 - Baker County Comprehensive  
30 Plan) would be 0.1 miles from the Durbin Quarry alternative, compared to 0.2 miles evaluated  
31 in the ASC. The location of the alternative is within the same landscape and similar location as  
32 the previously approved ASC route; therefore, the potential visual impact assessment is similar  
33 to that Council previously approved. Council previously found that the facility would cause an  
34 impact to the scenic quality of the designated scenic portion of the interstate freeway.  
35 Transmission towers would introduce a high level of contrast due to their proximity, size and  
36 color, and would appear dominant in the landscape, and access roads would be located as close

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<sup>175</sup> Excerpt from Oregon Supreme Court Decision for the facility regarding methodologies for visual impact assessments, "... nothing in the rule required Idaho Power to utilize a particular methodology or specifically account for subjective perceptions and reactions in assessing whether the transmission line would be likely to result in "significant adverse visual impacts" to scenic resources. B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept. of Energy 2023-03-09, page 811. Visual impact assessment methodology, described in ASC Exhibit L, Attachment L-3, approved by Council in the final order on ASC.

<sup>176</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 305.

<sup>177</sup> B2HAMD1 RFA1 2023-06-08. Section 7.1.7.

1 as 0.1 mile from I-84. However, this area’s baseline characteristics are consistent with existing  
2 developments, including I-84, transmission line corridors and agricultural settings. In this area,  
3 the approved facility and route additions in RFA1 would pass in and out of a designated BLM  
4 utility corridor and would be located within portions of existing utility right of ways. Finally, the  
5 area around this region is Greater sage grouse habitat and so the facility has been located near  
6 I-84 to minimize impacts to habitat.<sup>178</sup>  
7

8 The True Blue Gulch alternative in RFA1 would cross the Burnt River Canyon (VRM B3 - BLM –  
9 Vale District, Baker Resource Area Management Plan), similar to the approved route in the ASC,  
10 which would also cross the scenic resource. Views will continue to be limited in duration and  
11 episodic, primarily experienced from a moving vehicle. Towers that are visible within the scenic  
12 resource as a result of the True Blue Gulch Transmission Line Alternative would add moderate  
13 visual contrast (within central/western portion of the area) to what was previously approved  
14 for the ASC, therefore, the comprehensive visual impacts are anticipated to remain medium  
15 intensity and less than significant as a result of RFA 1.<sup>179</sup> Views of the alternative would be most  
16 visible where it crosses Burnt River Canyon Road, the primary viewing platform in the area. The  
17 towers would be visible on the ridgeline of the canyon. Temporary work areas and access roads  
18 may be visible from high elevation areas throughout the area. Council previously found that the  
19 BLM authorized the facility to cross BLM-owned land in this area, and specifically changed its  
20 own management plan for visual resources from VRM Class II to VRM Class IV which means that  
21 activities may modify the landscape and changes can be high, the Council also previously found  
22 that the facility would not cause a significant adverse impact to the scenic resources and values  
23 of the specific area within the Burnt River Canyon Class IV managed area.  
24

25 Previously imposed Scenic Resource Condition 1 (GEN-SR-01) would continue to apply to the  
26 site boundary alternative routes in RFA1 and ensures that the certificate holder shall use dull-  
27 galvanized steel for lattice towers and non-specular conductors. All other previously imposed  
28 Scenic Resource conditions specially applied to a certain portion or route of the previously  
29 approved facility and does not apply to the site boundary additions in RFA1.  
30

31 **III.J.2. Conclusions of Law**  
32

33 Based on the foregoing analysis, and subject to compliance with the existing site certificate  
34 conditions described above, the Council finds that the design, construction and operation of  
35 facility components within the RFA1 site boundary additions are not likely to result in significant  
36 adverse visual impacts to significant or important scenic resources.  
37

38 **III.K. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090**  
39

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<sup>178</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 441-442; and B2HAMD1 RFA1 2023-06-08, Attachment 7-10, Table 2, page 8.

<sup>179</sup> B2HAMD1 RFA1 2023-06-08. Attachment 7-15,

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

5  
6 (a) Historic, cultural or archaeological resources that have been listed on, or  
7 would likely be listed on the National Register of Historic Places;

8  
9 (b) For a facility on private land, archaeological objects, as defined in ORS  
10 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c); and

11  
12 (c) For a facility on public land, archaeological sites, as defined in ORS  
13 358.905(1)(c).

14  
15 (2) The Council may issue a site certificate for a facility that would produce  
16 power from wind, solar or geothermal energy without making the findings  
17 described in section (1). However, the Council may apply the requirements of  
18 section (1) to impose conditions on a site certificate issued for such a facility.

19  
20 (3) The Council may issue a site certificate for a special criteria facility under  
21 OAR 345-015-0310 without making the findings described in section (1).  
22 However, the Council may apply the requirements of section (1) to impose  
23 conditions on a site certificate issued for such a facility.<sup>180</sup>

24  
25 **III.K.1. Findings of Fact**

26  
27 Section (1) of the Historic, Cultural and Archaeological Resources standard requires the Council  
28 to find that the facility, taking into account mitigation, is not likely to result in significant  
29 adverse impacts to identified historic, cultural, or archaeological resources. Mitigation means  
30 one or more of the following, in order of priority: avoidance; minimization; partial or complete  
31 restoration of affected resource; preservation and maintenance; partial or complete  
32 compensation for replacement or comparable substitute for the resource; or implementing  
33 other measures as approved by Council.

34  
35 *III.K.1.a Aligning EFSC and Section 106 Review:*<sup>181</sup> ORS 469.370(13)

36  

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<sup>180</sup> OAR 345-022-0090, effective May 15, 2007, amended by minor correction filed on July 31, 2019.

<sup>181</sup> Section applicable to OAR 345-022-0090(1)(a): “(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

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

1 *Final Order on ASC Section IV.K., Historic, Cultural, and Archaeological Resources*, explains how  
2 Council approved its review to align with the Section 106 review process led by the BLM and as  
3 part of the federal NEPA review, summarized as follows. Under ORS 469.370(13), for facilities  
4 that are subject to review by a federal agency under the National Environmental Policy Act  
5 (NEPA), such as the approved facility, the Council shall conduct its site certificate review, to the  
6 maximum extent feasible, in a manner that is consistent with and does not duplicate the  
7 federal agency review. This coordination shall include the elimination of duplicative application  
8 materials, study and reporting requirements; and the Council use of information generated and  
9 documents prepared for the federal agency review. The NEPA review addresses, among other  
10 things, cultural, historic, and archaeological impacts from a facility and compliance with Section  
11 106 of the National Historic Preservation Act (NHPA). Under 36 CFR 800.4(c)(1) and as part of  
12 the Section 106 process, the BLM is responsible for final eligibility determinations for listing on  
13 the National Register of Historic Places (NRHP), to which Council’s standard relies upon. As part  
14 of the Section 106 compliance, the BLM issues determinations of eligibility for eligible resources  
15 or determines that a resource is not eligible for listing on the NRHP. Pending the BLM’s final  
16 determinations, cultural resources may remain with the designation of “unevaluated” if there  
17 are no potential impacts from a facility. A resource designation of unevaluated indicates that  
18 the resource may have been investigated, however, additional investigations or evaluations are  
19 recommended so the resource is assumed to be likely eligible for listing on the NRHP. Council  
20 previously approved designating resources that may need further evaluation from the Section  
21 106 review as “unevaluated” which treats the resource as likely eligible for listing on the NRHP  
22 and the impact analysis and mitigation (if any) is evaluated based on that designation.  
23

24 Part of the Section 106 process requires a Programmatic Agreement (PA), which is the binding  
25 document to the signatory parties that outlines the process for identification and evaluation of  
26 historic and cultural properties, eligibility determinations of specific impacts on historic  
27 properties, and measures to avoid, minimize, or mitigate any adverse impacts from a facility.  
28 The PA allows for the final determinations of the potential impacts from a facility to historic and  
29 cultural properties (including NRHP-listed, -eligible, and unevaluated resources) and for the  
30 mitigation of adverse impacts that are outlined in the Historic Properties Management Plan  
31 (HPMP). A HPMP required by the PA will be submitted to the BLM and will be reviewed by all  
32 PA parties, it is anticipated to be specific to compliance with Section 106 of the National  
33 Historic Preservation Act.<sup>182</sup> Council previously approved Historic, Cultural, and Archaeological  
34 Resources Condition 2, discussed further below, which reflects Council’s commitment to  
35 conduct its review, including its review of the site boundary additions in RFA1, consistent with  
36 ORS 469.370(13) to the maximum extent feasible, in a manner that is consistent with and does  
37 not duplicate the federal agency review.<sup>183</sup> And because OAR 345-022-0090(a) relies upon NRHP  
38 eligibility, Council previously found that it could rely on the determinations resulting from the

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<sup>182</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 467-469.

<sup>183</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 470--472.

1 Section 106 review and that the final determinations and mitigation may be provided prior to  
2 construction of a phase or segment of the facility.<sup>184</sup>

3  
4 *III.K.1.b Survey Methods, Results, and Impact Assessment for RFA1*

5  
6 In preparation of RFA1, certificate holder evaluated and surveyed for cultural, historical, and  
7 archaeological resources with similar methods as was done for the ASC. Record searches were  
8 done to identify previously recorded archaeological and historic sites for all site boundary  
9 additions in RFA1, and that might be encountered during the field surveys.<sup>185</sup>

10  
11 The Archaeological Survey Plan (ASP) and Visual Assessment of Historic Properties Study Plan  
12 (VAHP) were followed to guide the field surveys and documentation of cultural resources. The  
13 two-mile study area focuses on collecting information pertaining to archaeological and  
14 aboveground resources, as well as any traditional cultural properties (TCPs) or Historic  
15 Properties of Religious and Cultural Significance to Indian Tribes (HPRCSIT). The five-mile study  
16 area focused on collecting information pertaining to above ground resources and cultural  
17 resources that had the potential to be TCPs and/or HPRCSITs between the two-mile study area  
18 and up to five miles from the route’s centerline. The Visual Assessment utilized this study area  
19 as well as applicable results from the two-mile study area. The five-mile study area is  
20 documented in the Reconnaissance Level Survey – Visual Assessment of Historic Properties  
21 (RLS) and Intensive Level Survey – Visual Assessment of Historic Properties (ILS).<sup>186</sup>

22  
23 In reparation of RFA1, and consistent with how surveys were conducted as approved in the  
24 *Final Order on ASC*, archaeological surveys are being conducted in two phases. Phase 1 consists  
25 of completed surveys of an intensive pedestrian inventory of the entire direct analysis area to  
26 which the applicant had right of entry to access for surveys. Any additional surveys required to  
27 complete an inventory of 100 percent of the final selected route, as well as any necessary  
28 subsurface inventory or evaluation efforts, would be conducted during Phase 2. Phase 2 is  
29 anticipated to occur after the site certificate has been issued, but prior to construction, when  
30 site access has been secured for all properties as captured in Historic, Cultural, and  
31 Archaeological Resources Condition 2.<sup>187</sup> Continued survey efforts would focus on high  
32 probability areas, confirming archaeological site boundaries, confirming archaeological isolated  
33 finds, NRHP-eligibility testing, and 100 percent inventory of the RFA1 site boundary additions.

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<sup>184</sup> “ORS 469.402 expressly authorizes EFSC to delegate future review and approval to ODOE...” B2HAPPDoc7  
Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, page 811.

<sup>185</sup> Oregon State Historic Preservation Office (SHPO), Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Tribal Historic Preservation Office, U.S. Department of Agriculture, Forest Service (USFS), and BLM offices. Oregon SHPO databases consulted include Oregon Archaeological Records Remote Access and Oregon Historic Sites Database. Other resources include Historic Trails website, USGS Mineral Resource Data System, General Land Office plats, early USGS and state maps, other historic maps and aerial photographs, ethnographic literature, and historical contexts.

<sup>186</sup> B2HAMMD1 RFA1 2023-06-08, Section 7.1.8.2 and B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 538-539.

<sup>187</sup> See Final Order on ASC Section III.D., Survey Data Based on Final Design and Site Access.

1  
2 RFA1 Attachment 7-17 illustrates the locations where surveys were conducted associated with  
3 the transmission line routes and Attachment 7-18 shows the locations of surveys associated  
4 with roads segments.

5  
6 Survey Results and Potential Impacts for RFA1

7  
8 Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1, below  
9 provides the results from the surveys conducted in preparation of RFA1. Table 21 identifies if a  
10 resource is newly identified (not identified in the ASC) or if it was previously identified, in both  
11 cases, certificate holder provides an updated impact assessment based on the proximity of the  
12 road or route segment in RFA1 to each resource and or update mitigation measures.

13  
14

**Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1**

Resource Number	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route	Project Component	Land Ownership	Applicable EFSC Standard	Impact Avoided?	Resource Newly Considered	Mitigation or Management Comments
Oregon National Historic Trail Route	Umatilla, Union, Baker	Historic Trail	Eligible	Access Road Changes in Umatilla, Union, and Baker Counties	New Road, Primitive	PV	a) Potential Historic Property;	No – No significant physical and visual/auditory impact. No intact NHT segments at road change locations	No	If avoidance is not possible, testing/segment eligibility evaluation/consultation needed.
Sand Hollow Battleground	Morrow/ Umatilla	HPRCSIT	Eligible	Access Road Changes in Morrow and Umatilla Counties	New Road, Bladed, Primitive	BLM, DOD, PV	a) Potential Historic Property	No – potential significant physical and visual/auditory impacts	No	If avoidance not possible, testing (metal detecting)/ continued consultation needed.
Sisupa	Morrow	HPRCSIT	Eligible	Access Road Changes in Morrow County	New Road, Bladed, Primitive	DOD, PV	a) Potential Historic Property	No – potential significant physical and visual/auditory impacts	No	If avoidance is not possible, continued consultation needed.
4B2H-EK-07	Baker	Historic: Water Conveyance (Smith Ditch)	Unevaluated	Access Road Changes in Baker County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property;	No – Physical and visual/auditory impacts not significant.	No	Use of existing canal access road will not physically alter ditch. No further management.
7B2H-DM-ISO-22	Baker	Precontact: Isolated Find - Debitage	Unevaluated	Durbin Quarry (ODOT) Alternative	Route Centerline, New Road, Bladed	BLM	a) Potential Historic Property;	Yes	Yes	Flag/Avoid
7B2H-BB-ISO-04	Baker	Precontact: Isolated Find - Debitage	Unevaluated	Durbin Quarry (ODOT) Alternative	Route Centerline, New Road, Bladed	PV	a) Potential Historic Property; b) Archaeological site on private lands	Yes	Yes	Flag/Avoid
35BA01570/ 4B2H-EK-27	Baker	Historic Road	Not Eligible	Durbin Quarry (ODOT) Alternative	New Road, Bladed	BLM, PV	b) Archaeological site on private land.	No	No	No further management
35BA01571/ 4B2H-EK-28	Baker	Historic Water Conveyance	Not Eligible	Durbin Quarry (ODOT) Alternative	New Road, Bladed	BLM, PV	a) Potential Historic Property; b) Archaeological site on private lands	Yes	No	No further management
35BA01564/ 4B2H-EK-30	Baker	Historic Water Conveyance	Not Eligible	Durbin Quarry (ODOT) Alternative	New Road, Bladed	BLM	None - Archaeological site not eligible for NRHP. Federal land.	Yes	No	No further management
8B2H-DM-23	Baker	Multi-component: Precontact: Lithic/Tool Scatter; Historic mine	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements, New Road, Bladed	BLM	a) Potential Historic Property	No – Potential significant physical impact for new road. No significant physical impact for existing road with mitigation.	Yes	If avoidance is not possible, testing/eligibility evaluation needed for new road. Gravel will be placed over existing road through site to protect resources from physical impacts of existing road use.
8B2H-DM-24	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archaeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.

**Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1**

Resource Number	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route	Project Component	Land Ownership	Applicable EFSC Standard	Impact Avoided?	Resource Newly Considered	Mitigation or Management Comments
8B2H-DM-25	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-26	Baker	Precontact: Lithic scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-27	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch Alternative	Existing Road, Substantial Modification 71-100% improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
8B2H-DM-20	Baker	Precontact: Lithic/Tool Scatter	Unevaluated	True Blue Gulch	Existing Road, Substantial Modification, 71-100% Improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
35BA1585 (6B2H-SA-14)	Baker	Precontact: Lithic Scatter	Unevaluated	Access Road Changes in Baker County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property; b) Archeological site on private lands	No – physical impact not significant with mitigation.	Yes	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
4B2H-EK-17	Baker	Historic Water Conveyance	Unevaluated	Access Road Changes in Baker County	Existing Road, No Improvements Permitted	PV	a) Potential Historic Property	Yes	Yes	No features of site in existing road. No improvements of existing road permitted within 30 meters of site.
NRCS2011-T11S-R42E-S23/01	Baker	Precontact: Isolated Find: Debitage	Unevaluated	Access Road Changes in Baker County	New Road, Bladed	PV	a) Potential Historic Property; b) Potential archaeological object on private lands	No – potential physical impact	Yes	Flag/Avoid. Boundary Probe.
02S3600E07002	Union	Historic	Not Eligible	Access Road Changes in Union County	Existing Road, Substantial	USFS, State of Oregon	None - Archeological site not eligible for NRHP. Federal land.	No – physical impact not significant.	Yes	No further management

**Table 21: Potential Impacts to Historic, Cultural, Archeological Resources for RFA1**

Resource Number	County	Generalized Resource Description/ Resource Type	NRHP Recommendation	Project Route	Project Component	Land Ownership	Applicable EFSC Standard	Impact Avoided?	Resource Newly Considered	Mitigation or Management Comments
					Modification, 71-100% Improvements					
8B2H-AB-01.2	Malheur	Historic: South Canal Segment	Unevaluated (No status listed)	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property	Yes	Yes	No further management
8B2H-JS-05	Malheur	Historic: Canal	Unevaluated (No Status listed)	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property	Yes	Yes	No further management
8B2H-DM-51	Malheur	Multicomponent: Lithic Scatter and Refuse Scatter	Unevaluated	Access Road Changes in Malheur County	New Road, Bladed	BLM, PV	a) Potential Historic Property; b) Archaeological site on private lands	No – potential physical impact	Yes	If avoidance is not possible, testing/eligibility evaluation needed.
8B2H-ND-04	Malheur	Precontact: Lithic Scatter	Unevaluated	Access Road Changes in Malheur County	New Road, Bladed	BLM	a) Potential Historic Property	No – potential physical impact	Yes	If avoidance not possible, testing/eligibility evaluation needed.
35ML1674 (B2H-SA-33)	Malheur	Historic: Water Conveyance (Vines Ditch)	Eligible	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 71-100% Improvements	BLM, PV	a) Potential Historic Property; b) Archaeological site on private lands	No – physical impact not significant with mitigation. Visual/auditory impacts not significant	No	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
35ML1675 (B2H-SA-32)	Malheur	Historic: Railroad	Eligible	Access Road Changes in Malheur County	Existing Road, Substantial Modification, 21-70% Improvements	PV	a) Potential Historic Property; b) Archaeological site on private lands	No – physical impact not significant with mitigation. Visual/auditory impacts not significant	No	If avoidance not possible, gravel will be placed over existing road through site to protect resource from physical impacts of existing road use.
35ML1678 (B2H-BS-77)	Malheur	Precontact: Lithic/Tool Scatter	Eligible	Access Road Changes in Malheur County	New Road, Bladed	BLM	a) Potential Historic Property	No – potential physical impact	Yes	If avoidance not possible, testing/eligibility evaluation needed.
35ML2203 (B2H-SA-39)	Malheur	Historic: Water Conveyance	Eligible	Access Road Changes in Malheur County	Existing Road, No Improvements Permitted	PV	a) Potential Historic Property; b) Archaeological site on private lands	Yes	Yes	No improvements of existing road permitted within 30 meters of site.
4B2H-EK-47	Malheur	Historic: Water Conveyance (Vale Oregon Main Canal Segment)	Unevaluated	Access Road Changes in Malheur County	New Road, Primitive	PV	a) Potential Historic Property	Yes	No	No further management.

1 *III.K.1.c Mitigation: Existing Site Certificate Conditions*  
2

3 As discussed in the *Final Order on ASC*, the Historic Properties Management Plan (HPMP – Final  
4 Order Attachment S-9), imposed under Historic, Cultural, and Archaeological Resources  
5 Condition 2, serves as a framework how to address resource surveys, evaluate impacts to  
6 resources, avoid, minimize and mitigate impacts to resources protected under OAR 345-022-  
7 0090. During the review of the ASC, the Department compiled all the inventoried resources,  
8 proposed avoidance and mitigation measures associated with resource type, which include  
9 more specific mitigation requirements for Oregon Trail segments in each county into tables and  
10 added them to the HPMP as Appendix A.1 Inventory Tables with Management under OAR 345-  
11 022-0090. The certificate holder adds the resources identified above to the HPMP Appendix A.1  
12 Inventory Tables in RFA1 Attachment 7-14 in redline for convenient identification. Consistent  
13 with the findings in the *Final Order on ASC* and the site certificate condition, for the areas  
14 added to the site boundary in RFA1, the Council continues to find that the HPMP shall be  
15 finalized and submitted to the Department once the final resource eligibility determinations  
16 derive from the Section 106 process. Based upon the eligibility determinations the HPMP  
17 Appendix A.1 Inventory Tables with Management under OAR 345-022-0090, will be updated to  
18 determine a final impact assessment and then appropriate mitigation measures associated with  
19 direct or indirect impacts to the various historic, cultural, and archaeological resources. The  
20 HPMP Appendix A.1 Inventory Tables with Management also includes the following tables  
21 which identify a specific type of mitigation suite which may be applied for various types of  
22 resources.<sup>188</sup>  
23

- 24 • Table HCA-4b: Department Recommended Mitigation for NRHP-Eligible Oregon  
25 Trail/NHT Segments
- 26
- 27 • Table HCA-8: Potential Minimization and Mitigation of Direct Impacts to Resource Site  
28 Types Identified within the Direct Analysis Area
- 29
- 30 • Table HCA-9 Potential Minimization and Mitigation Methods for Indirect Impacts  
31
- 32 • Table HCA-10 Potential Minimization and Mitigation Methods for Indirect and Direct  
33 Impacts to Aboveground Resources  
34  
35

---

<sup>188</sup> From the Oregon Supreme Court’s Decision regarding the specificity of mitigation for certain types of resources, “EFSC’s final order contains specific information identifying the resources that will be impacted, the extent of those impacts, and how those impacts will be mitigated....final order prescribes in Table HCA-4b the specific types of mitigation that EFSC required for this project: design modification...plus “at least one of the” mitigation methods found in former OAR 345-001-0010(33)(c) - (e), “with a demonstrated direct benefit to affected area (county of resource site),” and with the priority of those additional mitigation methods further specified. The final order also requires Idaho Power to demonstrate that any mitigation efforts required by federal “section 106 review”<sup>26</sup> are sufficient to meet the state law standards articulated in Table HCA-4b...” B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, page 811.

1 The Council finds that the updated HPMP Appendix A.1 Inventory Tables with Management  
2 under OAR 345-022-0090, included in RFA1 as Attachment 7-14 be reflected in Historic,  
3 Cultural, and Archaeological Resources Condition 2 to ensure that resources associated with  
4 RFA1 are included in the Appendix to the HPMP. This minor revision is reflected in Attachment  
5 1: First Amended Site Certificate, to this order.

6  
7 Historic, Cultural, and Archaeological Resources Condition 1 (GEN-HC-01) continues to apply to  
8 the site boundary additions in RFA1 and requires that during final design and construction of  
9 the facility, the certificate holder designs and locate facility components to avoid direct impacts  
10 to Oregon Trail/National Historic Trail resources.

11  
12 Historic, Cultural, and Archaeological Resources Condition 3 (OPS-HC-01) continues to apply to  
13 the site boundary additions in RFA1, and requires the submissions of the HPMP after  
14 construction is completed and any results of unanticipated discoveries addressed in the  
15 inadvertent Discovery Plan.

16  
17 **III.K.2. Conclusions of Law**

18  
19 Based on the foregoing analysis, and subject to compliance with the existing site certificate  
20 conditions described above, the Council finds that the construction and operation of the  
21 portions of the facility added to the site boundary in RFA1 are not likely to result in significant  
22 adverse impacts to historic, cultural or archaeological resources that have been listed on, or  
23 would likely be listed on the National Register of Historic Places or other archaeological objects  
24 or sites identified under OAR 345-022-0090.

25  
26 **III.L. RECREATION: OAR 345-022-0100**

27  
28 *(1) To issue a site certificate, the Council must find that the design,*  
29 *construction and operation of a facility, taking into account mitigation, are*  
30 *not likely to result in a significant adverse impact to important recreational*  
31 *opportunities.*

32  
33 *(2) The Council must consider the following factors in judging the importance*  
34 *of a recreational opportunity:*

35  
36 *(a) Any special designation or management of the location;*

37  
38 *(b) The degree of demand;*

39  
40 *(c) Outstanding or unusual qualities;*

41  
42 *(d) Availability or rareness;*  
43

1 *(e) Irreplaceability or irretrievability of the opportunity.*

2  
3 *(3) The Council may issue a site certificate for a special criteria facility under*  
4 *OAR 345-015-0310 without making the findings described in section (1). In*  
5 *issuing such a site certificate, the Council may impose conditions of approval*  
6 *to minimize the potential significant adverse impacts from the design,*  
7 *construction, and operation of the facility on important recreational*  
8 *opportunities.*

9  
10 *(4) The Council must apply the version of this rule adopted under*  
11 *Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the*  
12 *review of any Application for Site Certificate or Request for Amendment that*  
13 *was determined to be complete under OAR 345-015-0190 or 345-027-0363*  
14 *before the effective date of this rule. Nothing in this section waives the*  
15 *obligations of the certificate holder and Council to abide by local ordinances,*  
16 *state law, and other rules of the Council for the construction and operation of*  
17 *energy facilities in effect on the date the site certificate or amended site*  
18 *certificate is executed.*<sup>189</sup>

19  
20 **III.L.1. Findings of Fact**

21  
22 The Recreation standard requires the Council to find that the design, construction and  
23 operation of a facility are not likely to result in significant adverse impacts to ‘important’  
24 recreational opportunities.<sup>190</sup> Therefore, the Recreation standard applies to only those  
25 recreation areas that the Council finds “important” using the factors listed in the sub-  
26 paragraphs of section (1) of the standard. The analysis area for the Recreation standard is the  
27 area within and extending two miles from the RFA1 site boundary additions. The certificate  
28 holder provides evidence about potential impacts to recreation opportunities determined by  
29 the certificate holder to be important in Attachment 7-15, Figure 7-19, and Figure 7-20 of the  
30 RFA1.

31  
32 To analyze the site boundary additions against this standard, Council must first evaluate  
33 whether the identified recreational opportunity is important. The Council must then evaluate  
34 whether the design, construction and operation of the site boundary additions could adversely  
35 impact the identified important recreational opportunity. If the site boundary additions could  
36 adversely impact the resource, then the Council must consider the significance of the possible  
37 impact using the definition of significance above.

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<sup>189</sup> OAR 345-022-0100, effective December 19, 2022.

<sup>190</sup> OAR 345-001-0010(52) defines “significant” as “having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resources affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.”

1  
2 *III.L.1.a Recreational Opportunities within the Analysis Area*  
3

4 In preparation of RFA1, certificate holder evaluated online data, maps, reports, guidebooks,  
5 websites, and similar sources likely to provide site-specific information about recreational  
6 opportunities in the analysis area for the site boundary additions in RFA1. Based on this  
7 assessment, certificate holder identified one new potential recreational opportunity, the Glass  
8 Hill Preserve/State Natural Heritage Area (SNHA).  
9

10 Generally, the Council would not consider areas where there is no public access, where there  
11 are no recreational facilities, and that are managed for conservation or research purposes a  
12 recreational opportunity. However, certificate holder identifies Glass Hill Preserve/State  
13 Natural Heritage Area as a potential recreational opportunity, therefore RFA1 and the Council  
14 evaluates, using the same methods as Council approved in the *Final Order on ASC*, the newly  
15 identified potential recreational opportunity against the importance criteria listed in OAR 345-  
16 022-0100(1)(a)–(e), which are: a) any special designation or management of the location, b) the  
17 degree of demand, c) outstanding or unusual qualities, d) availability or rareness, e)  
18 irreplaceability or irretrievability of the opportunity. The importance assessment for potential  
19 important recreational opportunity is based on the combined contribution of all five  
20 importance factors, weighed equally.<sup>191</sup> RFA1, Attachment 7-15, Table 2 provides an assessment  
21 of the importance of the Glass Hill Preserve/SNHA, concluding that the Glass Hill Preserve is not  
22 an important recreational opportunity under the Council’s rules, for the certificate holder’s  
23 reasoning and for the reasons provided below, the Council finds that the Glass Hill Preserve is  
24 not an important recreational opportunity. The Glass Hill Preserve/SNHA is a protected area  
25 under OAR 345-022-0040, see Section III.F., *Protected Areas*, of this order and RFA1 Attachment  
26 7-2 for an assessment of potential impacts Glass Hill Preserve including potential traffic, noise,  
27 and visual impacts, which is similar to the assessment done under the Council’s Recreation  
28 standard.  
29

30 *Any special designation or management of the location:*  
31

32 As discussed in Section III.F., *Protected Areas*, the Glass Hill Preserve/SNHA was established in  
33 2020 and is part of a privately owned nature reserve/conservation easement managed by the  
34 Blue Mountain Land Trust. Because the preserve is on privately-owned lands, open public  
35 access is unknown. The Glass Hill Preserve does have a special designation under the Natural  
36 Areas Program. The Oregon Legislature established the Oregon Natural Areas Program in 1979  
37 as a way to protect high quality native ecosystems and rare plant and animal species. According  
38 to the Oregon State University program information, the goals of the Oregon Natural Areas  
39 Program are to create a discrete and limited system of natural areas representing the full range

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<sup>191</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 542.

1 of Oregon's natural heritage resources. These areas are to be used for scientific research,  
2 education and nature interpretation.<sup>192</sup>

3  
4 Because the designation and the management of the preserve is for conservation of habitat and  
5 to protect special species, and there is not public access to the site, the Council finds that the  
6 designation and management of the preserve is not for recreational purposes.

7  
8 *Degree of demand:*

9  
10 In preparation of RFA1, certificate holder contacted staff at Oregon State University, Institute  
11 for Natural Resources who implement the Natural Areas Program, and they indicated that the  
12 public is likely to not have access to the privately owned land that is in a conversation  
13 easement.<sup>193</sup> Certificate holder indicates that data on visits to the site is not available, but  
14 assumes there to be low demand/visits because the remote location, lack of recreational  
15 facilities, and because of the lack of open access. The Council finds that for these reasons, the  
16 degree of demand is low.

17  
18 *Outstanding or unusual qualities:*

19  
20 Certificate holder indicates that the conservation easement may allow for hunting and fishing  
21 within a forested, wildlife managed area (if permitted, on all or specific tax lots), however, the  
22 Department highlights that the ability to do those activities would be contingent upon  
23 permission from landowner and would have to be consistent with the provisions of the  
24 easement. From a conservation standpoint, the preserve may have outstanding or unusual  
25 qualities, however, privately-owned land with lack of public access where the primary  
26 management goal is conservation does not support outstanding or unusual recreational  
27 qualities. The Council finds that the preserve does not have outstanding or unusual qualities  
28 from a recreational perspective.

29  
30 *Availability or rareness:*

31  
32 Certificate holder highlights that in this area in Union County, there are other public lands  
33 available to hunt, fish, and recreate on, and that there are other lands with similar habitat  
34 qualities. For instance, Department identifies the Glass Hill Access Area, which is a cooperative  
35 between landowners and ODFW to maintain public hunting access on private lands and  
36 increase access to public lands.<sup>194</sup> The Council finds that due to the availability of other lands

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<sup>192</sup> Natural Areas Program. <https://inr.oregonstate.edu/orbic/natural-areas-program> Accessed by Department 06-12-2023.

<sup>193</sup> B2HAMD1 RFA1 2023-06-08. Section 7.1.4. Personal communication between Kristen Gulick, Tetra Tech, and Lindsey Wise, Oregon State University, Institute for Natural Resources, July 13, 2022, and Meghan Ballard, Blue Mountains Conservancy, July 23, 2022, Attachment 7-2.

<sup>194</sup> [https://www.dfw.state.or.us/maps/access\\_habitat/glasshill.pdf](https://www.dfw.state.or.us/maps/access_habitat/glasshill.pdf) Accessed by Department 06-12-2023.

Department emphasizes that the names of the Glass Hill Preserve/SNHA and Glass Hill Access Area are similar, and they are the similar location, however, the Glass Hill Access Area is near Ladd Marsh and I-84.

1 that offer recreational opportunities in the area and that there is not open public access to the  
 2 Glass Hill Preserve/SNHA, the Glass Hill Preserve/SNHA is not available or rare recreational  
 3 opportunity.

4

5 *Irreplaceability or irretrievability of the opportunity:*

6

7 Certificate holder states that the preserve would be replaceable due to similar terrain available  
 8 on public lands. The Council disagrees and based upon its understanding of the availability of  
 9 private lands and willingness of landowners to put lands into a conservation easement, it would  
 10 be difficult to replace or find equivalent lands to designate under a conservation easement.

11 Nevertheless, because the lack of public access, the lack of facilities on the site, as well as the  
 12 conservation/research management intent of the Glass Hill Preserve, the Council finds that the  
 13 Glass Hill Preserve does not have recreational opportunities that could then be replaced.

14

15 Table 22: *Proximity of ASC and RFA1 Routes to Important Recreation Opportunities in Analysis*  
 16 *Area*, below presents important recreational opportunities within the analysis area of the ASC  
 17 and RFA1 and their proximity to approved ASC routes and transmission line alternatives in  
 18 RFA1. Below Table 22, the Council provides a discussion of potential impacts to important  
 19 recreational opportunities from the RFA1 site boundary additions including direct loss of  
 20 recreational opportunities, potential visual, noise, and traffic-related impacts.

**Table 22: Proximity of ASC and RFA1 Routes to Important Recreation Opportunities in Analysis Area**

<b>Important Recreational Opportunity</b>	<b>Distance to Route Centerline</b>	<b>County</b>
Blue Mountain Forest State Scenic Corridor	Crossed (approved ASC route)	Union
Ladd Marsh Wildlife Area	Crossed (approved ASC route)	Union
Burnt River Extensive Recreation Management Area	Crossed (approved route) Crossed (True Blue Gulch alternative RFA1)	Baker
Grande Tour Scenic Bikeway	Crossed (approved ASC route)	Union and Baker
Blue Mountain Scenic Bikeway	Crossed (approved ASC route)	Morrow and Umatilla
Oregon Trail Area of Critical Environmental Concern – National Historic Oregon Trail Interpretive Center Parcel	106 feet (approved ASC route)	Baker
Ladd Marsh Wildlife Area	208 feet (approved ASC Morgan Lake alternative)	Union
Owyhee River Below Dam Special Recreation Management Area	250 feet (approved ASC route)	Malheur
Morgan Lake Park	0.2 mile (approved ASC Morgan Lake alternative)	Union

**Table 22: Proximity of ASC and RFA1 Routes to Important Recreation Opportunities in Analysis Area**

<b>Important Recreational Opportunity</b>	<b>Distance to Route Centerline</b>	<b>County</b>
Oregon Trail Birch Creek Special Recreation Management Area	0.2 mile (approved ASC route)	Malheur
Hilgard Junction State Park	0.3 mile (approved route)	Union
Hilgard Junction State Park	0.4 mile (approved ASC Morgan Lake alternative)	Union
Deer Flat National Wildlife Refuge – Snake Island Unit	0.4 mile (approved ASC route)	Malheur
Weiser Dunes Off-highway Vehicle Play Area	0.5 mile (approved ASC route)	Washington County (Idaho)
Oregon Trail Tub Mountain Special Recreation Management Area	0.5 mile (approved ASC route)	Malheur
Morgan Lake Park	0.6 mile (approved ASC route)	Union
Bully Creek Reservoir	0.7 mile (approved ASC route)	Malheur
Farewell Bend State Recreation Area	0.7 miles (approved ASC route)	Baker
Snake River Breaks Extensive Recreation Management Area	0.8 mile (approved ASC route) 1.2 miles (Durbin Quarry alternative RFA1)	Baker
Snake River Islands (Huffman Island) Wildlife Area	0.9 mile (approved ASC route)	Malheur
Oregon Trail Interpretive Park at Blue Mountain Crossing	1.0 mile (approved ASC route)	Union
Umatilla National Wildlife Refuge	1.3 miles (approved ASC route)	Morrow
Powder River WSR, Area of Critical Environmental Concern	1.4 miles (approved ASC route)	Union and Baker
Virtue Flat Off-highway Vehicle Area	1.5 miles (approved ASC route)	Baker

1

1  
2 *III.L.1.b Potential Impacts to Important Recreation Opportunities*

3  
4 *III.L.1.b.1 Direct Loss of Recreational Opportunity*

5  
6 A direct loss of opportunity could occur where the RFA1 site boundary additions could result in  
7 permanent alteration such that the resource no longer exists in its current state. Indirect loss  
8 could result from temporary traffic and noise impacts, and permanent visual impacts of facility  
9 structures, evaluated below.

10  
11 Three access road site boundary additions in RFA1 would cross small portions of the Blue  
12 Mountain Forest State Scenic Corridor (Union County), Blue Mountain Century Scenic Bikeway  
13 (Umatilla County), and the Grand Tour Scenic Bikeway (Baker County). The road additions  
14 largely overlap with the previously approved site boundary. For instance, RFA1 Figure 4-2  
15 illustrates road segment UN-034 as a small road extension that overlaps with the approved site  
16 boundary and only slightly extends into a new portion of site boundary that touches the  
17 boundary of the scenic corridor. The True Blue Gulch Transmission Line Alternative and  
18 associated road additions/modifications cross the Burnt River Extensive Recreation  
19 Management Area, as illustrated on RFA Figure 7-19, Map 3 and Figure 4-1, Map 2. However,  
20 for all these slight site boundary adjustment additions, the extent of any losses from the  
21 crossings would not result in a change to the overall use or importance of the resource, which is  
22 consistent with the findings in the *Final Order on ASC*.

23  
24 *III.L.1.b.2 Potential Noise Impacts*

25  
26 Construction-related noise impacts from the road and transmission line route additions in RFA1  
27 would be similar to those evaluated in the *Final Order on ASC* and would cause some noise  
28 impact at recreation opportunity sites that are close to the site boundary additions, however,  
29 these impacts would be short-term and temporary. Construction activities that would cause  
30 noise impacts at most recreation opportunities include blasting and rock breaking, implosive  
31 devices used during conductor stringing, helicopter operations, and vehicular traffic. The  
32 construction activities would progress along the corridor of the transmission line, and no area  
33 would be exposed to construction noise for the entire construction period. Recreational  
34 opportunities within a half-mile or less, would experience noise impacts during facility  
35 construction. However, noise would attenuate with distance, topography, and vegetative  
36 screening so it is possible that the decibel volume of typical construction equipment may be  
37 lower during actual facility construction.<sup>195</sup>

38  
39 During typical operating conditions, corona noise is estimated at 34 dBA at the edge of the  
40 facility right of way (ROW). Thirty-four dBA is barely audible and would not cause a significant

---

<sup>195</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 547.

1 noise impact at any recreation opportunity.<sup>196</sup> Council also highlights that typical recreational  
2 activities occur during the day when ambient noise levels are higher and, even under conditions  
3 where corona noise may be elevated, it is likely that recreational activities would mask any  
4 operational transmission line noise.

5  
6 *III.L.1.b.3 Potential Traffic-Related Impacts*  
7

8 Construction of the road and transmission line route additions in RFA would cause short-term  
9 impacts to those recreation opportunity sites that are near or crossed by the additions, or  
10 where construction traffic routes pass near those areas, similar to the potential impacts  
11 evaluated in the *Final Order on ASC*. The impacts would be short-term and limited in duration to  
12 construction related traffic. Construction traffic would include multiple vehicle types, but the  
13 majority of traffic trips would be for construction workers daily commuting to work sites.

14  
15 Public Services Condition 2 which requires the finalization of a county-specific traffic  
16 management plan would continue to apply to the site boundary additions in RFA1. Measures  
17 that would address construction-related impacts include the use of traffic control measures  
18 including flaggers, pilot vehicles, and temporary closures if necessary, and that road closures  
19 would be publicized in advance and coordinated with landowners, emergency services, and law  
20 enforcement.<sup>197</sup>

21  
22 *III.L.1.b.4 Potential Visual Impacts*  
23

24 As discussed, and summarized in Section III.F., *Protected Areas*; III.F.1.b.5.1, *Methodology for*  
25 *Visual Impact Assessment*, of this order, to evaluate the impact of the site boundary additions  
26 on protected areas, scenic, and recreation resources, the certificate holder used the Council  
27 approved visual impact methodology which is based on the BLM and USFS visual impact  
28 assessment methods, and the Council's definition of significant. Council's rules do not require,  
29 or provide, a specific methodology for evaluating visual impacts to Recreational Resources (or  
30 Protected Areas or Recreation resources). Also, as discussed in Section III.F., *Protected Areas*, of  
31 this order, the visual impact assessment extends 5 miles from the site boundary additions in  
32 non-forested settings, and 10 miles in forested settings. Beyond those distances, Council  
33 previously found that visibility of the facility components would be negligible. Because the vast  
34 majority of site boundary additions in RFA1 are roads, which do not have a vertical visual  
35 component associated with them, the visual impact assessment was further defined by  
36 proximity, i.e., foreground (<0.5 miles), middleground (0.5 to 5 miles), or background distances  
37 (> 5 miles). RFA1 Attachment 7-15 Table 1 provides the visual impact assessment from the road  
38 and route site boundary additions in RFA1.  
39

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<sup>196</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 547-548. Idaho Power - Rebuttal Testimony - Kling - Exhibit E page 5, 2022-11-12; Idaho Power / Rebuttal Testimony of Mark Bastasch / Issues NC-1, NC-2, NC-3, NC-4, and NC-6/ Exhibit L, Reanalysis of MP11 Area, p. 2-3 of 4, 2022-11-12.

<sup>197</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 547.

1 RFA1 Attachment 7-15 Table 1 provides the visual impact assessment from the road and route  
2 site boundary additions in RFA1. RFA1 Figure 7-19 illustrates the overview of the location of  
3 recreational resources within the analysis area for RFA1. Figure 7-20 is a viewshed zone of  
4 visual influence presentation of the visual impact assessment area for the routes in RFA1.  
5 Certificate holder indicates that the distance from the site boundary additions in RFA1 from  
6 recreational resources increased or remained the same compared to the evaluation done for  
7 the ASC, thus potential visual impacts would be less than or equal to what was previously  
8 approved.<sup>198</sup> Two important recreational resources were identified within the analysis area  
9 from a transmission line route alternative in RFA1; Burnt River Canyon and Snake River Breaks  
10 Extensive Recreation Management Area (ERMA).

11  
12 The True Blue Gulch alternative in RFA1 would cross the Burnt River Canyon (VRM B3 - BLM –  
13 Vale District, Baker Resource Area Management Plan), similar to the approved route in the ASC,  
14 which would also cross the recreational resource. The Burnt River Canyon recreational area is  
15 considered to have low to moderate visitation rates, and there are no developed facilities  
16 within the area. It is managed to provide a primitive recreation experience and to support  
17 dispersed recreation activities.<sup>199</sup> Views will continue to be limited in duration and episodic,  
18 primarily experienced from a moving vehicle. Towers that are visible within the recreational  
19 resource as a result of the True Blue Gulch Transmission Line Alternative will add moderate  
20 visual contrast (within central/western portion of the area) to what was previously approved  
21 for the ASC; therefore, the comprehensive visual impacts are anticipated to remain medium  
22 intensity and less than significant as a result of RFA 1. Temporary work areas and access roads  
23 may be visible from high elevation areas throughout the area. Council previously found that the  
24 BLM authorized the facility to cross BLM-owned land in this area, and specifically changed its  
25 own management plan for visual resources from VRM Class II to VRM Class IV which means that  
26 activities may modify the landscape and changes can be high, the Council also previously found  
27 that the facility would not cause a significant adverse impact to the scenic resources and values  
28 of the specific area within the Burnt River Canyon Class IV managed area. Council also highlights  
29 that views of transmission towers associated with the route in RFA1, would not preclude  
30 recreators from recreational activities.

31  
32 The Durbin Quarry Transmission Line Alternative would be located 1.2 miles northeast of the  
33 Snake River Breaks ERMA. The Snake River Breaks ERMA is managed by the BLM to provide day  
34 or overnight recreation opportunities, camping, upland bird and big game hunting, fishing,  
35 boating, hiking, and driving for pleasure. Recreation facilities for all lands within the Snake River  
36 Breaks ERMA include one developed and seven semi-developed campgrounds.<sup>200</sup> Similar to the  
37 approved route, the alternative would parallel an existing 138-kV transmission line in this area  
38 and would be located closer to the existing transmission line and further away from the  
39 recreational opportunity. Access roads and work areas associated with the change would  
40 continue to be located on the west side of I-84, and therefore would not impact recreation

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<sup>198</sup> B2HAMD RFA1 2023-06-08. Attachment 7-15.

<sup>199</sup> Id.

<sup>200</sup> B2HAPPDoc3-37 ASC 20\_Exhibit T\_Recreation\_ASC 2018-09-28, Section 3.3.16.

1 opportunities within the ERMA. The facility would continue to be visible only from the higher  
2 elevations of the ERMA and would not be visible from the surface of the reservoir or along the  
3 shore, which is the primary recreational area. The alternative in RFA1 would be 0.4 miles  
4 further away from the recreational opportunity than the approved route in ASC. Certificate  
5 holder indicates that comprehensive visual impacts are anticipated to be low intensity and less  
6 than significant as a result of RFA 1 Visual impacts would not preclude the ability of the  
7 resource to provide recreational value for which it is recognized.

8  
9 Previously imposed Recreation Condition 1 related to the approved Morgan Lake Park, is not  
10 impacted by RFA1 and continues to apply to the facility and certificate holder.

### 11 12 **III.L.2. Conclusions of Law**

13  
14 Based on the foregoing analysis, and subject to compliance with the existing site  
15 certificate conditions, the Council finds that the design, construction and operation of  
16 the portions of the facility added to the site boundary in RFA1 are not likely to result in  
17 a significant adverse impact to important recreational opportunities.

### 18 19 **III.M. PUBLIC SERVICES: OAR 345-022-0110**

20  
21 *(1) Except for facilities described in sections (2) and (3), to issue a site*  
22 *certificate, the Council must find that the construction and operation of the*  
23 *facility, taking into account mitigation, are not likely to result in significant*  
24 *adverse impact to the ability of public and private providers within the*  
25 *analysis area described in the project order to provide: sewers and sewage*  
26 *treatment, water, storm water drainage, solid waste management, housing,*  
27 *traffic safety, police and fire protection, health care and schools.*

28  
29 *(2) The Council may issue a site certificate for a facility that would produce*  
30 *power from wind, solar or geothermal energy without making the findings*  
31 *described in section (1). However, the Council may apply the requirements of*  
32 *section (1) to impose conditions on a site certificate issued for such a facility.*

33  
34 *(3) The Council may issue a site certificate for a special criteria facility under*  
35 *OAR 345-015-0310 without making the findings described in section (1).*  
36 *However, the Council may apply the requirements of section (1) to impose*  
37 *conditions on a site certificate issued for such a facility.<sup>201</sup>*

38  

---

<sup>201</sup> OAR 345-022-0110, effective April 3, 2002.

1 **III.M.1. Findings of Fact**  
2

3 The Council’s Public Services standard requires the Council to find that the facility is not likely to  
4 result in significant adverse impacts on the ability of public and private service providers to  
5 supply sewer and sewage treatment, water, stormwater drainage, solid waste management,  
6 housing, traffic safety, police and fire protection, health care, and schools.  
7

8 The analysis area for public services is the area within and extending 10-miles from the RFA1  
9 site boundary additions. The facility would cross through five Oregon counties: Morrow,  
10 Umatilla, Union, Baker, and Malheur. Additionally, two multi-use construction staging areas  
11 would be in the City of North Powder and the City of Huntington, but these areas are not  
12 affected by the RFA1 site boundary additions.  
13

14 RFA1 does not propose any changes that would affect public service providers differently, that  
15 would introduce any new components or related or supporting facilities requiring new types of  
16 public service providers, or that would require changes to previously imposed conditions.  
17

18 *III.M.1.a Sewer and Sewage Treatment*  
19

20 During construction of the facility, the certificate holder will utilize portable toilets located at  
21 multi-use areas and construction sites. The Council previously found that, subject to the  
22 compliance of the certificate holder’s contractor with applicable state laws and rules, the  
23 disposal of sanitary wastes from the portable toilets was not likely to impact public and private  
24 sewer and sewage treatment providers within the analysis area.<sup>202</sup>  
25

26 The RFA1 site boundary additions are not expected to result in significant changes to the  
27 volume of sanitary wastes generated during construction of the facility, and the certificate  
28 holder has not proposed any changes to the method of disposal of those wastes. In addition, no  
29 changes to facility components that would connect to public sewer and sewage treatment  
30 systems during operation of the facility are in RFA1. Accordingly, the Council continues to rely  
31 on its previous findings from the *Final Order on the ASC*.  
32

33 *III.M.1.b Stormwater and Wastewater Drainage*  
34

35 The facility components to be located within the RFA1 site boundary additions are not  
36 proposed to interconnect nor impact any public or private stormwater or wastewater drainage  
37 systems. Therefore, the Council finds that the construction and operation of facility  
38 components within the RFA1 site boundary additions are not likely to result in significant  
39 adverse impacts to the ability of stormwater or wastewater drainage service providers to  
40 provide drainage and processing services.  
41  
42

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<sup>202</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 579 of 10586.

1 *III.M.1.c Water Use*

2  
3 In the *Final Order on the ASC*, the Council found that construction of the facility would require  
4 up to approximately 54.8 million gallons of water.<sup>203</sup> Primary water uses would include dust  
5 control, sanitation, foundation construction, Longhorn Station construction, communication  
6 station construction, access road construction, dust control during right-of-way clearing, station  
7 grading and site work, and re-seeding restoration work upon construction completion. The  
8 scope and extent of construction activities involved with constructing the facility, with the  
9 changes in RFA1, would be similar to those evaluated in the *Final Order on the ASC*. As a result,  
10 no significant changes to the volume of water needed for construction is expected.

11  
12 Potential sources of water for the construction and operation of the facility include the City of  
13 Boardman, City of Pendleton, City of La Grande, Baker City, and the City of Ontario. The Council  
14 previously found that these providers had adequate capacity to provide the water needed for  
15 construction without significant impacts to their ability to meet other water needs.<sup>204</sup>

16  
17 In addition to water used for construction, the approved ASC facility would cross the Kingman  
18 Lateral irrigation canal managed by the Owyhee Irrigation District. While there is a site  
19 boundary addition proposed to accommodate additional improvements to an existing access  
20 road near the canal,<sup>205</sup> the segment of the transmission line that crosses the canal is not  
21 affected by the changes in RFA1. Work on the road segment would be subject to the 1200-C  
22 Construction Stormwater Permit and Erosion and Sedimentation Plan required by Site  
23 Certificate Condition GEN-SP-01. As a result, no significant impacts on the Owyhee Irrigation  
24 District’s infrastructure are expected as a result of the changes in RFA1.

25  
26 *III.M.1.d Solid Waste Management*

27  
28 In the *Final Order on the ASC*, the Council found the construction and operation of the facility,  
29 subject to compliance with waste minimization conditions, was not likely to result in significant  
30 adverse impacts to the ability of these providers to provide solid waste management  
31 services.<sup>206</sup>

32  
33 Construction of the approved ASC facility is expected to generate approximately 3.7 million  
34 cubic yards (yd<sup>3</sup>) of solid waste, including 3.5 million cubic yards of vegetative waste from site  
35 clearing, 197,218 yd<sup>3</sup> of excavation spoils, and 6,235 yd<sup>3</sup> of other solid wastes. Approximately  
36 2.8 million cubic yards (76%) of the waste would be diverted from landfills, either by mulching  
37 vegetative wastes for use at the site, or recycling. The approximately 881,994 yd<sup>3</sup> of undiverted  
38 wastes would be transported by a waste disposal subcontractor to one of four landfills along  
39 the transmission line route: Finley Buttes Landfill in Morrow County, the Baker Sanitary Landfill

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<sup>203</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 580 of 10586.

<sup>204</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 582 of 10586.

<sup>205</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-2, Map 39

<sup>206</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 585 of 10586.

1 in Baker County, the Lytle Boulevard Landfill in Malheur County and the Clay Peak Landfill in  
2 Payette County, Idaho.

3  
4 The scope and extent of construction activities involved with constructing the facility, with the  
5 changes in RFA1, would be similar to those evaluated In the *Final Order on the ASC*. As a result,  
6 no significant changes to the volume of waste generated during construction are expected.

7  
8 *III.M.1.e Housing*

9  
10 In the *Final Order on the ASC*, the Council found that there is sufficient capacity in short-term  
11 housing options for construction workforce within the counties through which the transmission  
12 line route passes, and that the construction and operation of the facility is not likely to result in  
13 significant adverse impacts to the ability of public and private service providers to provide  
14 housing within the analysis area.

15  
16 The scope and extent of construction activities involved with constructing the facility, with the  
17 changes in RFA1, would be similar to those evaluated in the *Final Order on the ASC*. As a result,  
18 no significant changes to the number of workers required during, or duration of, construction  
19 of the facility, or the associated demand on housing, is expected. Accordingly, the Council  
20 continues to rely on its previous findings.

21  
22 *III.M.1.f Health Care*

23  
24 In the *Final Order on the ASC*, the Council imposed Public Services Condition 5 (Condition PRE-  
25 PS-04) requiring that the certificate holder finalize an Environmental and Safety Training Plan  
26 prior to beginning construction. Subject to compliance with that condition, the Council found  
27 that the construction and operation of the facility is not likely to result in significant adverse  
28 impacts to the ability of public and private health care providers to provide health care services  
29 within the analysis area.<sup>207</sup>

30  
31 The scope and extent of construction activities involved with constructing the facility, with the  
32 changes in RFA1, would be similar to those evaluated In the Final Order on the ASC. As a result,  
33 no significant changes to the number of workers required during, or duration of, construction  
34 of the facility, or the associated demand on health care services, is expected. Accordingly, the  
35 Council continues to rely on its previous findings and conditions.

36  
37 *III.M.1.g Schools*

38  
39 In the *Final Order on the ASC*, the Council found that no permanent employees would be  
40 required to relocate to the analysis area during operation of the facility and as a result, that the  
41 construction and operation of the facility was not likely to result in significant adverse impacts  
42 on the ability of public and private education providers to provide education services within the

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<sup>207</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Page 625 of 10586.

1 analysis area. The RFA1 site boundary additions are not expected to require any permanent  
2 workers, and as a result are not expected to increase demand on education providers in the  
3 analysis area. Accordingly, the Council continues to rely on its previous findings.

4  
5 *III.M.1.h Traffic Safety*  
6

7 In the *Final Order on the ASC*, the Council found that, subject to compliance with the county-  
8 specific Transportation and Traffic Plans required by Public Services Condition 2 (Condition PRE-  
9 PS-02), that the construction and operation of the facility is not likely to result in significant  
10 adverse impacts on traffic safety providers within the analysis area, or on traffic volumes and  
11 congestion on proposed commuting and hauling routes proposed to be used by the applicant  
12 during construction.<sup>208</sup> Public Services Condition 2 (Condition PRE-PS-02) requires that the  
13 certificate holder finalize the plans based on:

- 14  
15 • Identification of the final material/equipment transportation, access, and haul routes;  
16 • Evaluation and documentation of existing conditions of the routes/roads;  
17

18 The condition also requires the following measures be included in the final plan, and that any  
19 necessary road use permits, encroachment permits, oversize/overweight permits, or road use  
20 or other legal agreements be obtained by the construction contractor or certificate holder prior  
21 to construction.  
22

23 The draft plan, as approved by Council in the *Final Order on the ASC*, includes the following  
24 requirements that would apply to construction related traffic:

- 25 • Coordinating the timing and locations of road closures in advance with emergency  
26 services such as fire, paramedics, and essential services such as mail delivery and school  
27 buses.  
28 • Maintaining emergency vehicle access to private property.  
29 • Developing plans as required by county or state permits to accommodate traffic where  
30 construction would require closures of state or county-maintained roads for longer  
31 periods.  
32 • Posting caution signs on county and state-maintained roads, where appropriate, to alert  
33 motorists of construction and warn them of slow traffic.  
34 • Using traffic control measures such as traffic control flaggers, warning signs, lights, and  
35 barriers during construction to ensure safety and to minimize localized traffic  
36 congestion. These measures will be required at locations and during times when trucks  
37 will be entering or exiting highways frequently.  
38 • Using chase vehicles as required (or police vehicles, if required by ODOT) to give drivers  
39 additional warning.  
40 • Notifying landowners prior to the start of construction near residences.

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<sup>208</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 603 of 10586.

- 1 • Fencing construction areas near residences at the end of the construction day, and  
2 restoring residential roads damaged by construction activities as soon as possible.
- 3 • Installing access control devices at locations shown in the Road Classification Guide and  
4 Access Control Plan (Attachment B-5 of this order).
- 5 • All construction personnel will be required to obey local speed limits and traffic  
6 restrictions to ensure safe and efficient traffic flow. Construction vehicles on un-posted  
7 project roads will travel at speeds that are reasonable and prudent for the conditions.  
8 The applicant will work with ODOT and affected counties to establish reduced  
9 construction speed limits on impacted roads.<sup>209</sup>

10  
11 The RFA1 site boundary additions would shift and adjust the location of new and substantially  
12 modified roads. However, the location shifts do not change the previously established analysis  
13 area (i.e., the RFA1 site boundary additions would impact the same local and state roads and  
14 traffic service providers as evaluated in the *Final Order on the ASC*) or assumptions used to  
15 evaluate traffic impact. Traffic-related construction and operation impacts from facility  
16 components to be located within the RFA1 site boundary additions would be similar to those  
17 evaluated in the *Final Order on the ASC*. Accordingly, the Council continues to rely on its  
18 previous findings and conditions.

#### 19 20 *Air Traffic Safety*

21  
22 In the *Final Order on the ASC*, the Council found that the construction and operation of the  
23 facility was not likely to result in significant adverse impacts to the ability of public and private  
24 air traffic safety providers within the analysis area.<sup>210</sup> Impacts to public airports, including the  
25 Boardman Airport, the Hermiston Municipal Airport, the Lexington Airport, the La Grande/  
26 Union County Airport, the Baker City Municipal Airport, and the Miller Memorial Airpark near  
27 Vale, were evaluated.

28  
29 The construction of transmission towers could potentially create hazards for air navigation,  
30 particularly if places within flight paths or the approach areas of air traffic facilities. The Council  
31 previously imposed Site Certificate Condition PRE-PS-03, which requires the certificate holder  
32 to submit a Notice of Proposed Construction or Alternation (FAA Form 7460-1) to the FAA and  
33 to the Oregon Department of Aviation prior the construction of any transmission structures  
34 within 5-miles of a public airport or the use of any cranes exceeding 200-ft in height. This  
35 condition would apply to transmission structures and work performed within the site boundary  
36 additions in RFA1, however, we note that the three transmission line route alternatives are all  
37 located more than 5-miles from any public airport. There are access road changes within 5-  
38 miles of the Baker City Municipal Airport, however these changes would occur at ground level  
39 and are not expected to impact air traffic safety.<sup>211</sup>

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<sup>209</sup> See also section IV.H., *Fish and Wildlife Habitat*, Fish and Wildlife Habitat Condition 8, imposing a 25 MPH speed limit during construction.

<sup>210</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 607 of 10586.

<sup>211</sup> B2HAMD1 RFA1 2023-06-08. Figure 4-2, Map 18.

1  
2 The certificate holder may use helicopters to deliver equipment, materials, or personnel to  
3 areas with limited access by road during the construction of the facility. When used, helicopters  
4 are deployed from multi-use areas or light-duty fly yards located within four of the facility's  
5 pulling and tensioning sites.<sup>212</sup> The Council previously adopted Public Services Condition 3  
6 (Condition GEN-PS-01) based upon the certificate holder's representation, which requires, in  
7 part, that the certificate holder conduct all work in compliance with an approved Helicopter  
8 Use Plan for the county in which the helicopter is being used.<sup>213</sup> The condition requires the  
9 plans to coordinate with both state and federal aviation officials to provide notice of helicopter  
10 operations to adjacent property owners and other aviators of the location and timing of facility-  
11 related helicopter construction activities. In its review of the DPO, Council acknowledged the  
12 need for flexibility during construction helicopter use because it would be dependent upon the  
13 availability of materials and weather, and those items would be more difficult to know and  
14 schedule 30 days in advance from any necessary helicopter use, therefore, Council directed and  
15 approves the inclusion of a 3-day landowner notice prior to helicopter operations, specific to  
16 Public Services Condition 3(h) below.<sup>214</sup>

17  
18 **Amended Public Services Condition 3:** At least 90 days prior to use of a helicopter(s) during  
19 construction, unless otherwise agreed to by the Department, the certificate holder shall  
20 submit to the Department and each affected County Planning Department a proposed  
21 Helicopter Use Plan. The plan must be approved by the Department, in consultation with  
22 each county where helicopter use is proposed, prior to use of a helicopter during  
23 construction. The certificate holder shall conduct all work in compliance with the approved  
24 Helicopter Use Plan. The Helicopter Use Plan shall identify or provide:  
25 a. The type of helicopters to be used (all helicopters must be compliant with the noise  
26 certification and noise level limits set forth in 14 CFR § 36.11);  
27 b. The duration of helicopter use;

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<sup>212</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 604 of 10586.

<sup>213</sup> As described in Section II.B.1 of this order, RFA1 includes the certificate holder's request to amend conditions with preconstruction timing constraints. As presented in Attachment 1 and this order, the Council amends the timing constraints associated with landowner notice and consultation with ODA to allow for additional flexibility in timing of preconstruction compliance. Comments on the DPO raised concerns that removing the timing constraint for landowner notice would increase the risk of health and safety impacts resulting from helicopter use. Certificate holder response to comments proposed a 3-day landowner notice would be sufficient to preserve the flexibility of the construction process and would create a more adaptable approach for the construction team to work with adjacent landowners on a schedule that is adaptable to the needs of everyone, including impacted landowners. Council concurred with the 3-day landowner notice. B2HAMD1 DPO Comments Stop B2H 2023-07-18, pp. 13-14; B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19, pp. 21-25; Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

<sup>214</sup> Department notes that in the *Final Order on ASC*, the provisions outlined in the Helicopter Use Plan condition were based on certificate holder representations and under OAR 345-025-0006(10), the Council must include, as conditions in the site certificate, all representations in the site certificate application and supporting record the Council deems to be binding commitments made by an applicant/certificate holder. Therefore, because the Helicopter Use Plan was imposed based upon a representation and not necessary to meet the Public Services standard, it is appropriate for the certificate holder to modify the condition if the substantial representation remains in effect.

- 1 c. Approximate helicopter routes to be used;
- 2 d. Protected areas and recreation areas within two miles of the approximate helicopter
- 3 routes;
- 4 e. Roads or residences over which external loads will be carried;
- 5 f. Multi-use areas and light-duty fly yards containing helipads shall be located: (i) in areas
- 6 free from tall agricultural crops and livestock; (ii) at least 500 feet from organic
- 7 agricultural operations; and (iii) at least 500 feet from existing dwellings on adjacent
- 8 properties;
- 9 g. Flights shall occur only between sunrise and sunset;
- 10 h. At least 3 days prior to initiating helicopter operations at any multi-use area or light-
- 11 duty fly yard, the certificate holder shall contact adjacent property owners within 1,000
- 12 feet of the relevant multi-use area or light-duty fly yard;
- 13 i. Prior to helicopter operations, the certificate holder shall consult with the Oregon
- 14 Department of Aviation regarding the preparation and posting of notices to airmen
- 15 regarding the location and nature of work being performed. The notice will be posted at
- 16 each of the public airports in the vicinity of the facility to alert other aviators of the
- 17 location and timing of facility-related helicopter construction activities; and
- 18 j. The certificate holder shall maintain a customer service telephone line to address,
- 19 among other things, complaints regarding helicopter operations.

20 [GEN-PS-01; Final Order on ASC, AMD1]

21  
22 The changes in RFA1 would not affect the location of approved multi-use areas or light-duty fly  
23 yards and is not expected to significantly impact or alter helicopter use during construction or  
24 operation of the facility.

25  
26 Because the RFA1 site boundary additions are not expected to significantly alter or expand  
27 helicopter use during construction or operation of the facility, and because previously imposed  
28 conditions would ensure that structures constructed and work performed within the site  
29 boundary additions in RFA1 would not create hazards to air navigation, the Council continues to  
30 rely on its previous findings.

31  
32 *III.M.1.i Fire Protection*

33  
34 In the *Final Order on the ASC*, the Council imposed Public Services Condition 6 (Condition GEN-  
35 PS-02), which requires certificate holder to construct the facility in compliance with a Fire  
36 Prevention and Suppression Plan, and as discussed in Section III.N. of this order, previously  
37 imposed Public Services Condition 7 (Condition GEN-PS-03), which required the facility to  
38 operate in compliance with a Wildfire Mitigation Plan, is now recommended as Wildfire  
39 Prevention and Risk Mitigation Conditions 1 and 2. The Council found that, subject to  
40 compliance with applicable conditions, the construction and operation of the facility was not

1 likely to result in significant adverse impacts to the ability of public and private fire protection  
2 providers to provide fire response services within the analysis area.<sup>215, 216</sup>

3  
4 On federal land, fire protection services are provided by the federal agency that administers the  
5 land, for the facility, administering agencies are the Department of the Navy, Bureau of Land  
6 Management (BLM) and United States Forest Service (USFS). The Oregon Department of  
7 Forestry (ODF) provides fire protection services for private and state-owned forest and range  
8 lands within its fire protection districts. Fire protection services on other lands are provided by  
9 Rangeland Fire Protection Associations (RFPA), Rural Fire Protection Districts (RFPD), and local  
10 fire districts and agencies.

11  
12 The Little Juniper alternative is in an area that is served by the Lone Rural Fire Protection  
13 District. Most of True Blue Gulch alternative is in ODF's Northeast Fire Protection District. A  
14 small portion of the True Blue Gulch alternative and the Durbin Quarry alternative are located  
15 within lands served by the Burnt River Rangeland Fire Protection Association.

16  
17 During construction of the facility, fire risks include sparks from construction equipment or  
18 vehicles and improper disposal of cigarettes or matches, and unauthorized fires for cooking or  
19 other activities. Similar risks would be associated with maintenance activities during operation  
20 of the facility. To reduce these risks, and by extension, potential impacts on fire service  
21 providers, the Council previously imposed Public Services Condition 6 (Condition GEN-PS-02)  
22 which requires the certificate holder to conduct all work during construction of the facility in  
23 compliance with a Department-approved Fire Prevention and Suppression Plan. The plan must  
24 describe protective measures including:

- 25
- 26 • Wildfire training for onsite workers and facility personnel conducted by individuals that  
27 are National Wildfire Coordination Group and Federal Emergency Management Agency  
28 certified;
  - 29 • Specific seasonal work restrictions;
  - 30 • Onsite fire-fighting equipment and necessary fire protection resources based on a  
31 documented evaluation of reasonably available sources related to wildfire risk and  
32 sensitive seasonal conditions such as high temperatures, drought and high winds.
- 33

34 The plan must also describe the fire districts and rural fire protection districts that will provide  
35 emergency response services during construction and include copies of any agreements  
36 between the certificate holder and the districts related to that coverage.

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<sup>215</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 624 of 10586.

<sup>216</sup> Since issuance of the *Final Order on the ASC*, Council adopted a new standard, Wildfire Prevention and Risk Mitigation (OAR 345-022-0115). In this order, the Council removes Public Services Condition 7, to be imposed under the Wildfire Prevention and Risk Mitigation standard, and the conditions substantively includes the same requirements as the previously imposed condition.

1 The certificate holder has not yet finalized its Fire Prevention and Suppression Plan (Final Order  
2 on ASC Attachment U-3), but the Council’s approved draft plan states that training would cover  
3 the proper use of extinguishers and equipment and measures to take in the event of a fire.  
4 Training would also cover smoking restrictions and fire rules.<sup>217</sup>  
5

6 According to the Council-approved draft plan (Final Order on ASC Attachment U-3), any  
7 construction equipment operating with an internal combustion engine would be equipped with  
8 federally approved spark arresters. Spark arresters are not required on trucks, buses, and  
9 passenger vehicles (excluding motorcycles) equipped with an unaltered muffler or on diesel  
10 engines equipped with a turbocharger. Motorized equipment and vehicles and would not be  
11 allowed outside of designated work areas.<sup>218</sup>  
12

13 Each construction vehicle would be required to carry at least one long-handled shovel, a  
14 double-bit ax or Pulaski, a chemical fire extinguisher with a rating of at least 5B, and a system  
15 capable of spraying 20-50 gallons of water. Larger water supplies (300-500g) for fire  
16 suppression would be made available as conditions warrant. Persons operating power saws and  
17 grinders would also be required to carry a shovel and extinguisher. One 5-gallon back-up pump  
18 will be required with each welding unit in addition to the standard fire equipment required in  
19 all vehicles.<sup>219</sup> Fuel trucks would be required to carry a large fire extinguisher with a minimum  
20 30 BC rating. Power-saw refueling will be done in an area that has first been cleared of material  
21 that could catch fire.<sup>220</sup> All work areas would be assigned a fire watch during breaks and for  
22 three hours after power driven machinery has ceased operations for the day.<sup>221</sup> All work within  
23 the site boundary additions in RFA1 would be subject to the approved Fire Prevention and  
24 Suppression Plan.  
25

26 During operation of the facility, fire risks from the transmission line include ignition from faults  
27 caused by vegetation or wildlife coming into contact with conductors or other equipment  
28 failure. These risks may be more severe during dry and windy conditions. There are also fire-  
29 risks associated with vandalism and unauthorized access to the right-of-way. Fire protection  
30 providers responding to fires in the vicinity of the transmission line may also need the line to be  
31 deenergized to minimize safety risks. The Council previously imposed Public Services Condition  
32 7 (Condition GEN-PS-03), which requires the facility to operate in compliance with a Wildfire  
33 Mitigation Plan that provides a wildfire risk assessment and establishes actions and  
34 preventative measures based on the assessed operational risk from and of wildfire in each

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<sup>217</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10513 of 10586.

<sup>218</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10513 of 10586.

<sup>219</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10513-10514 of 10586

<sup>220</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10514 of 10586.

<sup>221</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 10514 of 10586.

1 county affected by the facility. As part of RFA1, the certificate holder provided its 2022 Wildfire  
2 Mitigation Plan, which has been evaluated and approved by the PUC.<sup>222, 223</sup>

3  
4 As noted in Section III.N, the Wildfire Mitigation Plan describes field personnel practices,  
5 operational strategies, inspection protocols, vegetation management activities, and wildfire  
6 response activities that will be used to mitigate wildfire risk at all transmission and distribution  
7 lines operated by the certificate holder, including the facility.

### 8 9 *III.M.1.j Police Protection*

10  
11 In the *Final Order on the ASC*, Council imposed Public Services Condition 5 (Condition PRE-PS-  
12 04), which requires the certificate holder to conduct all work in compliance with an approved  
13 Environmental and Safety Training Plan, which in part, specifies measures for securing multi-use  
14 areas and work sites when not in use to address the potential for construction sites to become  
15 targets for theft and vandalism.

16  
17 As described above, the Council also imposed Public Services Condition 2 (Condition PRE-PS-  
18 02), which requires the certificate holder to develop and comply with a Transportation and  
19 Traffic Plan specifying measures to avoid, minimize and mitigate impacts to law enforcement  
20 agencies due to the expected increase in construction- related traffic.

21  
22 Subject to compliance with these conditions, the Council found that the construction and  
23 operation of the facility is not likely to result in significant adverse impacts to the ability of  
24 public and private police and public safety providers to provide services within the analysis  
25 area.<sup>224</sup> Both of the previously imposed conditions would apply to the changes in RFA1.

26  
27 The scope and extent of construction activities involved with constructing the facility, with the  
28 changes in RFA1, would be similar to those evaluated In the *Final Order on the ASC*. As a result,  
29 no significant changes to the number of workers required during, or duration of, construction  
30 of the facility, or the associated demand on police services, are expected. In addition, the  
31 Council previously imposed conditions to ensure that impacts on police protection services are  
32 minimized. Accordingly, the Council continues to rely on its previous findings and conditions.

### 33 34 **III.M.2. Conclusions of Law**

35  
36 Based on the foregoing analysis, and subject to compliance with the existing and amended site  
37 certificate conditions described above, the Council finds that facility components to be located

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<sup>222</sup> Oregon Public Utilities Commission Order 22-312 (August 26, 2022),  
<https://apps.puc.state.or.us/orders/2022ords/22-312.pdf>

<sup>223</sup> Since issuance of the *Final Order on the ASC*, Council adopted a new standard, Wildfire Prevention and Risk Mitigation (OAR 345-022-0115). In this order, the Council removes Public Services Condition 7, to be imposed under the Wildfire Prevention and Risk Mitigation standard, which new conditions substantively include the same requirements as the previously imposed condition.

<sup>224</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 610 of 10586.

1 within the RFA1 site boundary additions are not likely to result in significant adverse impacts to  
2 the ability of public and private providers to provide the services listed in OAR 345-022-0110.

3  
4 **III.N. WILDFIRE PREVENTION AND RISK MITIGATION: OAR 345-022-0115**

5  
6 *(1) To issue a site certificate, the Council must find that:*

7  
8 *(a) The applicant has adequately characterized wildfire risk within the analysis*  
9 *area using current data from reputable sources, by identifying:*

10  
11 *(A) Baseline wildfire risk, based on factors that are expected to remain fixed*  
12 *for multiple years, including but not limited to topography, vegetation,*  
13 *existing infrastructure, and climate;*

14  
15 *(B) Seasonal wildfire risk, based on factors that are expected to remain fixed*  
16 *for multiple months but may be dynamic throughout the year, including but*  
17 *not limited to, cumulative precipitation and fuel moisture content;*

18  
19 *(C) Areas subject to a heightened risk of wildfire, based on the information*  
20 *provided under paragraphs (A) and (B) of this subsection;*

21  
22 *(D) High-fire consequence areas, including but not limited to areas containing*  
23 *residences, critical infrastructure, recreation opportunities, timber and*  
24 *agricultural resources, and fire-sensitive wildlife habitat; and*

25  
26 *(E) All data sources and methods used to model and identify risks and areas*  
27 *under paragraphs (A) through (D) of this subsection.*

28  
29 *(b) That the proposed facility will be designed, constructed, and operated in*  
30 *compliance with a Wildfire Mitigation Plan approved by the Council. The*  
31 *Wildfire Mitigation Plan must, at a minimum:*

32  
33 *(A) Identify areas within the site boundary that are subject to a heightened*  
34 *risk of wildfire, using current data from reputable sources, and discuss data*  
35 *and methods used in the analysis;*

36  
37 *(B) Describe the procedures, standards, and time frames that the applicant*  
38 *will use to inspect facility components and manage vegetation in the areas*  
39 *identified under subsection (a) of this section;*

40  
41 *(C) Identify preventative actions and programs that the applicant will carry*  
42 *out to minimize the risk of facility components causing wildfire, including*  
43 *procedures that will be used to adjust operations during periods of heightened*  
44 *wildfire risk;*

1  
2 (D) Identify procedures to minimize risks to public health and safety, the  
3 health and safety of responders, and damages to resources protected by  
4 Council standards in the event that a wildfire occurs at the facility site,  
5 regardless of ignition source; and  
6

7 (E) Describe methods the applicant will use to ensure that updates of the plan  
8 incorporate best practices and emerging technologies to minimize and  
9 mitigate wildfire risk.  
10

11 (2) The Council may issue a site certificate without making the findings under  
12 section (1) if it finds that the facility is subject to a Wildfire Protection Plan  
13 that has been approved in compliance with OAR chapter 860, division 300.  
14

15 (3) This Standard does not apply to the review of any Application for Site  
16 Certificate or Request for Amendment that was determined to be complete  
17 under OAR 345-015-0190 or 345-027-0363 on or before the effective date of  
18 this rule.  
19

### 20 **III.N.1. Findings of Fact**

21  
22 The Wildfire Prevention and Risk Mitigation standard requires the Council to find the certificate  
23 holder has adequately characterized wildfire risk associated with a facility; and that the facility  
24 would be operated in compliance with a Council-approved wildfire mitigation plan; or the  
25 facility is subject to a Wildfire Protection Plan approved by the Oregon Public Utility  
26 Commission (OPUC). Under OAR 345-022-0115(3), the standard does not apply to the review of  
27 an ASC that was determined to be complete prior to July 29, 2022.<sup>225</sup> For this reason the  
28 standard did not apply to the review of the ASC for this facility; however, it is applicable to the  
29 areas added to the site boundary in RFA1, which was submitted on June 8, 2023. The analysis  
30 area to evaluate potential wildfire risks is the area within and extending ½-mile from the site  
31 boundary.<sup>226</sup>  
32

33 OAR 345-022-0115(1) includes requirements for mapping baseline and seasonal fire risk based  
34 on reputable sources, the identification of areas subject to heightened fire risk, and high fire  
35 consequence areas. Sub (1) of the rule also outlines the contents required to be included in a  
36 Wildfire Mitigation Plan. These rule provisions follow the OPUC rules designated under OAR  
37 chapter 860, division 300. When Council drafted and approved its Wildfire Mitigation standard  
38 under OAR 345-022-0115(2), the Council established that it may allow for the issuance of a site  
39 certificate without making the findings under section (1) of the rule if Council finds that the  
40 facility is subject to a Wildfire Mitigation Plan (WMP) that has been approved by the OPUC. The

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<sup>225</sup> The ASC was deemed complete on September 21, 2018. B2HAPPDoc1 ASC Determination of Complete Application 2018-09-21.

<sup>226</sup> OAR 345-001-0010(35)(c).

1 rules that designate the filing, review, approval requirements for OPUC WMP’s are under OAR  
2 chapter 860, division 300, which were the requirements that Council referred to when drafting  
3 rule language for its Wildfire Mitigation standard.  
4

5 Under OAR 345-022-0115(2), the Council maintains that does not need to make findings under  
6 OAR 345-022-0115(1) because the facility<sup>227</sup> is subject to a Wildfire Protection Plan that has  
7 been approved in compliance with OPUC rules, and the OPUC has approved the certificate  
8 holder’s WMP. To support this finding, the following topics are addressed below:

- 9 • Procedural History for Wildfire Mitigation Plans (WMP) in Oregon and Certificate  
10 Holder WMP;
- 11 • Summary of *Final Order on ASC Findings* for WMP;
- 12 • Summary of Findings for RFA1 to Support OAR 345-022-0115(2);
- 13 • Results of Wildfire Risk Assessment for Facility and OPUC-Approved WMP;
- 14 • Other Applicable Conditions Related to Operational Fire Risk.

15  
16 Also presented below is the Council replaces Public Services Condition 7, which addresses the  
17 WMP for the facility, as Wildfire Prevention and Risk Mitigation Condition 1 and 2 (GEN-WMP-  
18 01 and OPR-WMP-01), with condition language to facilitate implementation. As noted below  
19 and discussed in Section III.M.1.i, *Fire Protection* of this order, the OPUC WMP applies to the  
20 operation of the facility, however, previously imposed Public Services Condition 6 requires the  
21 submission and adherence to a Fire Prevention and Suppression Plan during *construction* of the  
22 facility [emphasis added].  
23

24 *III.N.1.a Procedural History for Wildfire Mitigation Plans (WMP) in Oregon and Certificate*  
25 *Holder WMP:*  
26

- 27 • March 2020 - Executive Order 20-04 (EO 20-04) issued which directs the OPUC to  
28 evaluate electric companies' risk-based wildfire protection plans and planned  
29 activities.
- 30 • July 2021 - Senate Bill (SB) 762 (2021) established standards for electric utility  
31 Wildfire Mitigation Plans.

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<sup>227</sup> Department notes that under OAR 860-300-0001(1), Scope and Applicability of OPUC Rules for Wildfire Mitigation Plans, states “The rules in this division prescribe the filing requirements for risk-based Wildfire Mitigation Plans filed by a Public Utility that provides electric service in Oregon pursuant to ORS 757.005.” The certificate holder is a Public Utility that provides electric service in Oregon, and therefore must comply with the Wildfire Mitigation Plan (WMP) rules. Which under OAR 860-300-0020(1)(a)(B), Wildfire Mitigation Plans and Updates, a WMP must identify areas that are subject to a heightened risk of wildfire within the service territory of the Public Utility, *and outside the service territory of the Public Utility but within the Public Utility's right-of-way for generation and transmission assets.* [Emphasis added] RFA1 Section 7.1.10 and in the 2022 WMP Section 3.2.1 and Section 3.2.2.1, certificate holder states that it included the facility, including the areas added to the site boundary in RFA1, in its wildfire modeling (with a 1.2-mile buffer - 0.62 miles on both sides of ROW) and that the WMP applies to the facility.

- 1 • December 2021 – Effective date for OAR 860-300-0020 which includes the minimum  
2 requirements for Wildfire Mitigation Plan filings, as well as the process for OPUC  
3 approval of the plans.
- 4 • January 5, 2022 – During EFSC contested case proceeding 2022 WMP added to the  
5 record for the facility to address concerns about wildfire.<sup>228</sup>
- 6 • April 28, 2022 – OPUC approved Idaho Power's 2022 Wildfire Mitigation Plan (dated  
7 Dec. 2021) on the condition that by June 28, 2022 the certificate holder files a  
8 Supplement to the 2022 WMP which must include the items identified by the OPUC  
9 in its order. Order No. 22-133.<sup>229</sup>
- 10 • July 29, 2022 – Effective date for EFSC's Wildfire Prevention and Risk Mitigation  
11 standard. Under OAR 345-022-0115(3), the standard did not apply to the facility  
12 ASC.
- 13 • August 26, 2022 – OPUC approved the 2022 WMP Supplement. Order No. 22-312
- 14 • September 27, 2022 – EFSC approved facility ASC and issues site certificate for  
15 facility. *Final Order on ASC* adopted Public Services Condition 7, which addresses the  
16 WMP for the facility, under the Public Services standard because Wildfire standard  
17 was not applicable to ASC.
- 18 • June 26, 2023 – OPUC approved certificate holder's 2023 Wildfire Mitigation Plan.  
19 Order No. 23-222.<sup>230</sup>

20

21 *III.N.1.b Summary of Final Order on ASC Findings for WMP:*

22

23 *Final Order on ASC* and Attachment 6: Contested Case Order (CCO) as Amended and Adopted of  
24 summary of findings of facts for WMP related to operational fire risk and mitigation measures  
25 that apply to the facility and remain applicable to the RFA1 site boundary additions:

26

- 27 • The WMP includes a specific fire potential index (FPI) tool that incorporates fire  
28 weather into the decision-making tool to reduce fire threats and risks. The FPI  
29 reflects key variables, such as the state of native vegetation across the service  
30 territory, fuels, and weather. Each variable is assigned a numeric value, and those  
31 individual numeric values are summed to generate an FPI score which then are used  
32 to characterize fire risk as Green, Yellow, or Red based on the FPI score. A Green FPI  
33 score indicates low potential for a large fire to develop and spread, a Yellow score  
34 indicates an elevated potential, and a Red score indicates a higher potential for fire.
- 35 • 2022 WMP considered the route of the facility and identified two locations along the  
36 route as having an increased wildfire risk (Yellow risk zone – YRZ or Tier 2) and no

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<sup>228</sup> B2HAPPD0c1023 IPC Exhibits to Sur-sur-rebuttal Testimony of Dockter\_Till\_2022-01-05.

<sup>229</sup> All the OPUC proceedings on its annual review of utilities wildfire mitigation plans are available on its docket. The docket for Idaho Power's (certificate holder) wildfire mitigation plans is Docket No: UM 2209.

<sup>230</sup> <https://apps.puc.state.or.us/orders/2023ords/23-222.pdf> Accessed 08-03-2023. Request from Council during its' review of the RFA1 DPO to include reference to the OPUC-approved 2023 WMP. Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference, B2H AMD1 DPO Hearings and EFSC Review of DPO.

1 areas of higher risk (Red risk zone – RRZ or Tier 3).<sup>231</sup> WMP includes a Public Safety  
2 Power Shutoff Plan (PSPS Plan) which allows certificate holder to proactively de-  
3 energize its electrical facilities in identified areas of extreme wildfire risk to reduce  
4 the potential of those electrical facilities becoming a wildfire ignition source or  
5 contributing to the spread of wildfires. Power shutoff would be initiated if it is  
6 determined that a combination of critical conditions indicate the transmission and  
7 distribution system at certain locations are at an extreme risk of being an ignition  
8 source and wildfire conditions are severe enough for the rapid growth and spread of  
9 wildfire.<sup>232</sup>

- 10 • Even though the facility is not constructed, certificate holder indicates the WMP will  
11 apply to the facility.<sup>233</sup>

### 12 *III.N.1.c Summary of Findings for RFA1 to Support OAR 345-022-0115(2)*

14 RFA1 Attachment 7-16 includes the certificate holder’s 2022 WMP approved by OPUC on  
15 August 23, 2022, which includes the WMP Supplement that was provided to and approved by  
16 OPUC. The information in the 2022 WMP Supplement that OPUC approved was:<sup>234</sup>

- 17 1. A narrative discussion of certificate holder cost and risk mitigation balancing  
18 assumptions that went into the 2022 WMP.
- 19 2. A strategy for maturing certificate holder’s analytical approach to cost and risk  
20 mitigation balancing in the 2023 WMP.
- 21 3. Data delineating Oregon risk areas and Oregon projects with associated costs.  
22

#### 23 WMP Wildfire Risk Modeling Methodologies:<sup>235, 236</sup>

24 In preparation of the 2022 WMP, certificate holder used an external consultant that specializes  
25 in assessing and quantifying the threat of wildfire through a risk-based methodology that  
26 leverages weather modeling, wildfire spread modeling, and Monte Carlo simulation. This  
27 methodology is also used by the California Public Utilities Commission (CPUC) and other utilities  
28  
29

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<sup>231</sup> B2HAPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 615-617; Attachment 6: Contested Case Order (CCO) as Amended and Adopted, pages 98-101, 227-242.

<sup>232</sup> B2HAPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 615-617; Attachment 6: Contested Case Order (CCO) as Amended and Adopted, pages 99-101 and 230-231.

<sup>233</sup> Attachment 6: Contested Case Order (CCO) as Amended and Adopted, page 99.

<sup>234</sup> OPUC Order 22-312 IPC 2022 WMP Supplement Approval 08-23-2022.

<https://www.oregon.gov/puc/edockets/pages/default.aspx> Accessed by Department 04-04-2023.

<sup>235</sup> B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 23/259), Section 3.2

<sup>236</sup> The evaluation of this section summarizes information provided in certificate holder’s 2022 WMP as it was submitted on the record for the facility for EFSC, however, at Council’s request, the Department highlights that after the issuance of the DPO, the OPUC approved the certificate holder’s 2023 WMP. An online review of the 2023 WMP indicates that the wildfire risk methodologies, conclusions, and preventative measures in the 2023 WMP are substantially similar to the 2022 WMP. 2023 WMP from OPUC Docket UM 2209 available here: <https://edocs.puc.state.or.us/efdocs/HAQ/um2209haq151044.pdf>. Accessed 08-03-2023. Further, under Wildfire Prevention and Risk Mitigation Conditions 1 and 2, the certificate holder will submit the most recent WMP prior to operation of the facility and submit OPUC-approved WMP’s annually to ODOE/EFSC.

1 in Oregon, Idaho, Nevada, and Utah have utilized similar modeling to identify and quantify  
2 wildfire risk.

3  
4 The simplistic WMP wildfire risk methodology formula is:

5  
6 
$$\text{Wildfire Risk} = \text{Fire Probability} \times \text{Consequence}^{237}$$

7  
8 Where fire probability takes into consideration historical weather, topography, fuel types  
9 present, and fuel moisture content. Consequence is the number of structures (i.e., homes,  
10 businesses, other man-made structures) that may be impacted by a wildfire. Wildfire risk is fire  
11 probability multiplied by the consequence, therefore the highest wildfire risk areas are those  
12 where the landscape, vegetation and weather are conducive for fires and there is more dense  
13 man-made infrastructure.

14  
15 OAR 860-300-0030 designates the required information that must be included in a utilities risk  
16 analysis, and specifies that a public utility must include in its Wildfire Mitigation Plan risk  
17 analysis that describes wildfire risk within the utility’s service territory and outside the service  
18 territory of the utility but within the utility’s right of way for generation and transmission  
19 assets.<sup>238</sup> Some of the required information designated in the rule are defined categories of  
20 overall wildfire risk, baseline wildfire risk, seasonal wildfire risk, risks to residential areas served  
21 by the utility, and a narrative of all data sources it uses to model topographical and  
22 meteorological components of its wildfire risk as well as any wildfire risk related to the utility’s  
23 equipment.

24  
25 Summary of WMP Wildfire Risk Modeling Steps:<sup>239</sup>

- 26  
27 1. Fire weather climatology was developed utilizing the Weather Research and Forecasting  
28 (WRF) model to recreate historical days of fire weather significance across service  
29 territory.

---

<sup>237</sup> Consequence is defined as “Number of structures (i.e., homes, businesses, other man-made structures) that may be impacted by a wildfire.” These impacts to structures are a proxy for potential impacts to the individuals who would be in or use those structures. “[C]onsequence is the negative impacts to different assets at risk. Assets at risk that are typically prioritized when looking at utility caused fires are loss of life and loss of structures, and those were the two assets at risk that were considered consequences in the risk modeling that was conducted by the certificate holder to inform its Wildfire Mitigation Plan. B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19, Attachment A, Dr. Christopher Lautenberger, expert witness in the Evidentiary Hearing for certificate holder’s OPUC Petition for Certificate of Public Convenience and Necessity (CPCN).

<sup>238</sup> In its June 6, 2023 staff report recommending OPUC approve the certificate holder’s 2023 WMP, in reference to OPUC WMP rulemaking efforts, OPUC staff states, “[t]his rule establishes standards Public Utilities must follow to identify areas within their service territories that are High Fire Risk Zones. The rule is not prescriptive in stating which models or sources of information a utility must use, but instead requires the utility identify sources of information and models used in the plan.” OPUC Docket UM 2209 <https://edocs.puc.state.or.us/efdocs/HAU/um2209hau113615.pdf> page 5. Accessed 06-13-2023.

<sup>239</sup> B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 144/259), Section 3.2.1.

- 1 2. Estimates of seasonal variation in live fuel moisture generated by analyzing historical  
2 fuel measurements and/or weather station observations.
- 3 3. Data from the federal LANDFIRE program was utilized to provide high-resolution fuel  
4 rasters for use in fire spread modeling.
- 5 4. The above WRF climatology, live fuel moisture, and LANDFIRE data, are used to drive a  
6 Monte Carlo fire spread modeling analysis. The Monte Carlo simulation is accomplished  
7 by randomly selecting an ignition location and a randomly selected day from the fire  
8 weather climatology developed in step 1 above. Ignition locations were limited in the  
9 model to be within a two-kilometer (1.24 miles) buffer surrounding Idaho Power's  
10 overhead transmission and distribution lines (i.e., 1 kilometer or 0.62 miles on either  
11 side). Transmission lines jointly owned by the certificate holder and PacifiCorp were  
12 included in the analysis. Furthermore, Boardman-to-Hemingway (B2H) 500 kilovolt (kV)  
13 line facility was included in this analysis. For each combination of ignition location and  
14 time of ignition, fire progression was then modeled for 6 hours and fire impacts to  
15 structures were quantified using structure data. This was repeated across the certificate  
16 holders service territory for millions of combinations of ignition location and time of  
17 ignition.
- 18 5. The Monte Carlo results are processed, and GIS based data depicting fine grained  
19 wildfire risk are developed and turned into wildfire risk maps.  
20

21 *III.N.1.d Results of Wildfire Risk Assessment for Facility and OPUC-Approved WMP*  
22

23 OAR 860-300-0020 establishes OPUC's Wildfire Protection Plan Filing Requirements. Under OAR  
24 860-300-0020(1)(a)(A) and (B), a WMP must identify areas that are subject to a heightened risk  
25 of wildfire, including determinations for such conclusions, and are:

- 26 (A) Within the service territory of the utility, and
- 27 (B) Outside the service territory of the utility but within the utility's right-of-way for  
28 generation and transmission assets.<sup>240</sup>  
29  
30

31 As noted above, the 2022 WMP wildfire risk modeling considered the permitted, yet not  
32 constructed facility, and identified two locations along the route as having an increased wildfire  
33 risk (Yellow risk zone – YRZ or Tier 2) and no areas of higher risk (Red risk zone – RRZ or Tier  
34 3).<sup>241</sup> The resulting risk tiers reflect risk *relative* to certificate holder's service territory only and  
35 *not absolute* risk within all the areas outside the certificate holder's service territory.<sup>242</sup>  
36 [Emphasis added]

---

<sup>240</sup> Department reiterates that although OPUC rules only require wildfire risk modeling for a utilities ROW outside its service territory, certificate holder modeled ignition locations within a two-kilometer (1.24 miles) buffer surrounding certificate holder's overhead transmission and distribution lines (i.e., 1 kilometer or 0.62 miles on either side).

<sup>241</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 615-617; Attachment 6: Contested Case Order (CCO) as Amended and Adopted, pages 98-101, 227-242; and B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 150/259), Section 3.2.2.1.

<sup>242</sup> B2HAMD1 RFA1 2023-06-08. Attachment 7-16 (redline WMP PDF page 145/259), Section 3.2.2.

1  
2 Certificate holder represents in the record of the ASC and in the WMP submitted with RFA1,  
3 that the methodologies, programs, and mitigation actions in the WMP will apply to the facility  
4 once it is constructed including the site boundary additions in RFA1.<sup>243</sup> These measures and  
5 programs include the Public Safety Power Shutoff Plan (PSPS Plan) discussed above and in the  
6 *Final Order on ASC*, annual updates by its Load Serving Operations (LSO)  
7 department of the Fire Season Temporary Operating Procedure, and a Red Risk Zone  
8 Transmission Operational Strategy. Other operational wildfire mitigation measures in the WMP  
9 include Transmission Asset Management Programs including an annual Aerial Visual Inspection  
10 Program, Ground Visual Inspection Program, Detailed Visual (High-resolution Photography)  
11 Inspection Program, Wood Pole Inspection and Treatment Program, Cathodic Protection and  
12 Inspection Program for select steel towers, and Thermal Imaging (Infra-red) Camera Inspections  
13 in RRZs. The WMP also includes a construction Wildland Fire Preparedness and Prevention Plan  
14 for certificate holder personnel and its construction contractors.

15  
16 Under OAR 860-300-0020(2) Wildfire Mitigation Plans must be updated annually and filed with  
17 the OPUC no later than December 31 of each year, and public utilities are required to provide a  
18 plan supplement explaining any material deviations from the applicable Wildfire Mitigation Plan  
19 acknowledged by the OPUC. OPUC staff acknowledge that WMPs are intended to be updated,  
20 iterative, and adaptable.<sup>244</sup> OPUC orders approving WMPs, often include and adopt staff  
21 recommendations in an attached staff report, OPUC recommendations “look ahead” to the  
22 next annual submission of the WMP and require additional information in that WPM.<sup>245</sup>

23  
24 On April 28, 2022 OPUC approved the certificate holder’s 2022 Wildfire Mitigation Plan on the  
25 condition that by June 28, 2022 the certificate holder files a Supplement to the 2022 WMP, and  
26 then on August 26, 2022 OPUC approved the 2022 WMP Supplement. On June 26, 2023, the  
27 OPUC approved the certificate holder’s 2023 WMP. Under OAR 345-022-0115(2), the Council  
28 finds that the Wildfire Prevention and Risk Mitigation standard is met, subject to imposed site  
29 certificate conditions, for the site boundary additions in RFA1 and for the facility, and Council

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<sup>243</sup> B2HAMD1 RFA1 2023-06-08. Section 7.1.0 and Attachment 7-16, Section 3.2.2.1.

<sup>244</sup> From April 14, 2022 OPUC staff report: “Staff considers WMPs as ongoing living documents or plans that are more a “journey” and less a “destination.” Future plans will be shaped by new technology, greater understanding of risks, climate change, and energy policy. Minimum requirements will likely change and expectations of providing more details used in risk analysis, cost benefit analysis and new technologies will expand.” OPUC Order 22-133 IPC 2022 WMP Approval 2022-04-28, page 13. <https://apps.puc.state.or.us/orders/2022ords/22-133.pdf> Accessed by Department on 06-12-2023.

<sup>245</sup> Utilities’ annual Wildfire Mitigation Plans under the OPUC’s jurisdiction are intended to be living documents, and changes to them are intended to be iterative. The OPUC approval for the 2023 WMP recommended additional actions that the certificate holder should take when preparing its 2024 Wildfire Mitigation Plan, the OPUC and other stakeholders, including STOP B2H, will continue to have the opportunity to participate in these annual WMP updates and provide comments and suggestions for updated wildfire mitigation strategies in Docket UM 2209. To keep the Council informed of the development of these annual plans, Wildfire Prevention and Risk Mitigation Condition 2 will require the submission of these approved plans and the OPUC approval. B2HAMD1 DPO Comments Stop B2H 2023-07-18, pp 7-8; B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19, p. 14-15.

1 issues the amended site certificate without making the findings under section OAR 345-022-  
2 0115(1) because it finds that the facility is subject to a Wildfire Protection Plan that has been  
3 approved in compliance with OAR chapter 860, division 300.<sup>246</sup>  
4

5 In the *Final Order on ASC*, Council adopted Public Services Condition 7 (GEN-PS-03), presented  
6 below with deleted text. This condition was established in the Proposed Order on ASC and  
7 further modified during the contested case under the Council's Public Services standard  
8 because the Council's Wildfire Prevention and Risk Mitigation standard was not applicable to  
9 the facility at that time, and the OPUC WMP and the WMP Supplement had not yet been  
10 approved by OPUC. The Council removes Public Services Condition 7 by imposing the  
11 requirements under this standard, under two conditions, as presented below.  
12

13 **Wildfire Prevention and Risk Mitigation Condition 1 and 2 (see below): ~~Public Services~~**  
14 **~~Condition 7: The certificate holder shall:~~**

- 15 ~~a. Prior to operation, provide a copy of its Wildfire Mitigation Plan to the Department and~~  
16 ~~each affected county which provides a wildfire risk assessment and establishes action~~  
17 ~~and preventative measures based on the assessed operational risk from and of wildfire~~  
18 ~~in each county affected by the facility.~~  
19 ~~b. During operation, the certificate holder shall update the Wildfire Mitigation Plan on an~~  
20 ~~annual basis, or frequency determined acceptable by the Department in consultation~~  
21 ~~with the Oregon Public Utilities Commission.~~  
22 ~~c. During operation, for the service territories the facility would be located within, the~~  
23 ~~certificate holder shall provide to each of the fire districts and rural fire protection a~~  
24 ~~contact phone number to call in the event a district needs to request an outage as part~~  
25 ~~of a fire response.~~  
26 ~~d. Any Wildfire Mitigation Plan required by the Oregon Public Utilities Commission shall be~~  
27 ~~considered by EFSC as meeting the requirements of this condition.~~

28 ~~{GEN-PS-03} [DELETED]~~  
29

30 Wildfire Prevention and Risk Mitigation Condition 1 substantively requires the same  
31 information as the previously adopted Public Services Condition 7. Wildfire Prevention and Risk  
32 Mitigation Condition 1 requires that the WMP, consistent with OAR 860-300-0020(1)(a)(A) and  
33 (B), evaluate fire-related risks for the entire facility in all five counties in Oregon, regardless of  
34 certificate holder service territory or ownership of the facility. It also ensures that the required  
35 mitigation measures included in the WMP apply to the entire facility in all five counties in  
36 Oregon. Consistent with OAR 860-300-0020(2), Wildfire Prevention and Risk Mitigation  
37 Condition 2, requires that, during operation, in its annual report submitted to the Department  
38 the certificate holder submit the most recently-OPUC-approved WMP with evidence of the  
39 OPUC approval.

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<sup>246</sup> OPUC Order 22-133 IPC 2022 WMP Approval 2022-04-28 <https://apps.puc.state.or.us/orders/2022ords/22-133.pdf> Accessed by Department on 06-12-2023, and OPUC Order 22-312 IPC 2022 WMP Supplement Approval 08-23-2022. <https://www.oregon.gov/puc/edockets/pages/default.aspx> Accessed by Department 04-04-2023. OPUC Order 21-222 2023 WMP <https://apps.puc.state.or.us/orders/2023ords/23-222.pdf> Accessed 08-03-2023.

1  
2 **Wildfire Prevention and Risk Mitigation Condition 1:**

- 3 a. Prior to and during operation, the OPUC-approved Wildfire Mitigation Plan (WMP)  
4 shall:
- 5 i. Evaluate fire-related risks for the entire facility in all five counties in Oregon,  
6 regardless of certificate holder service territory or ownership of the facility.
  - 7 ii. Require procedures and mitigation measures, including the applicable  
8 measures in the Public Safety Power Shutoff (PSPS) Plan, to apply to the  
9 entire facility in all five counties in Oregon, regardless of certificate holder  
10 service territory or ownership of the facility.
- 11 b. Prior to operation, certificate holder shall provide a copy of the most recent OPUC-  
12 approved Wildfire Mitigation Plan that applies to the facility to the Department and  
13 each affected county.

14 [GEN-WMP-01]  
15

16 **Wildfire Prevention and Risk Mitigation Condition 2:** During operation, on an annual  
17 basis consistent with the annual report under General Standard of Review Condition 4,  
18 submit the most recent OPUC approved WMP and a copy of OPUC approval.

19 [OPR-WMP-01]  
20

21 *III.N.1.e Other Applicable Conditions Related to Operational Fire Risk*  
22

23 Previously imposed site certificate conditions that address vegetative maintenance, inspections,  
24 and fire risk mitigation that continue to apply to the facility and site boundary additions in RFA1  
25 are;

- 26  
27 • Fire Prevention and Suppression Plan (Public Services Condition 6): Requires the  
28 certificate holder to finalize and implement fire prevention measures during  
29 construction of the facility. Measures in the Fire Prevention and Suppression Plan(s)  
30 include training for construction workers, seasonal work restrictions, onsite fire-  
31 fighting equipment and necessary fire protection resources, and a description of the  
32 fire districts and rural fire protection districts that will provide emergency response  
33 services during construction and copies of any agreements between the certificate  
34 holder and the districts related to that coverage.
- 35 • Vegetation Management Plan (Fish and Wildlife Condition 2): Provides practices,  
36 protocols and management plans to manage wildfire risk. Vegetation management  
37 would be conducted in compliance with the American National Standards Institute  
38 (ANSI) Pruning Standards Best Management Practices for Utilities, Oregon Forest  
39 Products Act, the U.S. Department of Labor Occupational Safety and Health

Administration (OSHA), and the North American Electric Reliability Council’s (NERC) Standard FAC-003-3 Transmission Vegetation Management Program (TVMP).<sup>247</sup>

- Right-of-Way Clearing Assessment (Land Use Condition 16): Methods for clearing vegetation within forested areas to reduce the risk that combustible materials would come into contact with the conductors and ignite a fire.
- Organizational Expertise Condition 1: Requests that, during operation, certificate holder provide documentation of inspections for transmission line patrols/inspections, unscheduled emergency line patrols, aerial vegetation patrols, and comprehensive 10-year maintenance inspection conducted in accordance with its Transmission Maintenance and Inspection Plan and Transmission Vegetation Management Program (TMIP).

### III.N.2. Conclusions of Law

Based on the foregoing analysis, and subject to compliance with the site certificate conditions described above, the Council finds that the Wildfire Prevention and Risk Mitigation standard is met, subject to site certificate conditions, for the site boundary additions in RFA1 and for the facility, and Council issues the amended site certificate without making the findings under section OAR 345-022-0115(1) because it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300.

### III.O. **WASTE MINIMIZATION: OAR 345-022-0120**

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

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

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

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

*(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1).*

---

<sup>247</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 615.

1            *However, the Council may apply the requirements of section (1) to impose*  
2            *conditions on a site certificate issued for such a facility.*<sup>248</sup>

3  
4            **III.O.1.    Findings of Fact**

5  
6            The RFA1 site boundary additions will not result in substantive changes to the type or amount  
7            of solid waste and wastewater generated during facility construction and operation. Therefore,  
8            the Council relies on its findings and conditions in the *Final Order on ASC*, as referenced below.

9  
10          *Solid Waste*

11  
12          Facility construction would generate approximately 1,870 tons of solid waste including  
13          containers, boxes, bags, sacks, packing materials, broken insulators, scrap conductor, empty  
14          wire spools, and other miscellaneous non-hazardous paper, plastic or similar materials. As  
15          discussed in Section III.M., *Public Services*, waste not recycled would be disposed of in Finley  
16          Buttes Landfill in Boardman and Baker County Landfill in Baker City.

17  
18          Council previously imposed Waste Minimization Condition 1 (Condition GEN-WM-01) requiring  
19          that, prior to construction, the certificate holder develop a Construction Waste Management  
20          Plan that would implement waste reducing measures including training employees to segregate  
21          and recycle recyclable materials. This condition would continue to apply to the facility, with  
22          RFA1 site boundary additions.<sup>249</sup>

23  
24          During operations, the facility would generate an insignificant amount of solid waste, which  
25          would include replaced equipment and components, packing materials, and soil.

26  
27          *Wastewater*

28  
29          Construction-related wastewater would predominately be generated during foundation  
30          construction for transmission line towers, from concrete wash water. Concrete wash water  
31          would include water with residual concrete, concrete associated liquids, and the wash water  
32          from cleaning trucks, hoppers, and chutes. Washout liquids would generally be allowed to  
33          evaporate or would be pumped out and properly disposed of by the construction contractor.  
34          Washout liquids would not be discharged into storm drains, ditches, streams or other water  
35          bodies. Concrete washout areas would be in designated aboveground earthen berms or straw  
36          bale enclosures lined with plastic, a storage tank, or other structure approved by the engineer  
37          or inspector.

38  

---

<sup>248</sup> OAR 345-022-0120, effective May 15, 2007.

<sup>249</sup> As presented in Attachment 1 of this order, the Council amends Waste Minimization Condition 1 (Condition GEN-WM-01) to clarify the difference between requirements to be satisfied prior to construction (finalization of the plan) and during construction (reporting/documenting compliance).

1 Some foundations may require slurry to stabilize foundation shafts during drilling. Slurry fluids  
2 would consist of a mixture of bentonite and water. Excess and degraded slurry fluids would be  
3 contained in designated aboveground washouts similar to those described above for concrete.  
4 The slurry fluids would be allowed to completely evaporate or they would be pumped out and  
5 properly disposed of by the construction contractor. Slurry fluids would not be discharged into  
6 storm drains, ditches, streams, or other water bodies.

7  
8 Sanitary wastewater would also be generated during construction from portable toilets.  
9 Wastewater associated with portable toilets will be disposed by a local contractor in  
10 accordance with state law.<sup>250</sup> The subcontractor would ensure that a sufficient number of  
11 portable toilets are provided.

### 12 13 **III.O.2. Conclusions of Law**

14  
15 Based on the foregoing analysis, and subject to compliance with the amended site certificate  
16 condition as presented in the amended site certificate, the Council finds that the certificate  
17 holder’s waste management plan is likely to minimize generation of solid waste and  
18 wastewater in construction and the plan would result in recycling and reuse of such wastes, and  
19 will manage the accumulation, storage, disposal and transportation of wastes in a manner that  
20 will result in minimal adverse impacts to surrounding and adjacent areas.

21  
22 The Council finds that facility operations would not result in a significant generation of solid  
23 waste and wastewater and will result in minimal adverse impacts to surrounding and adjacent  
24 areas.

### 25 26 **III.P. NEED FOR A FACILITY: OAR 345-023-0005**

27  
28 The Division 23 standards apply only to “nongenerating facilities” as defined in ORS  
29 469.503(2)(e)(K), except nongenerating facilities that are related or supporting facilities.

30  
31  
32 *\*\*\* To issue a site certificate for a facility described in sections (1) through (3), the*  
33 *Council must find that the applicant has demonstrated the need for the facility. The*  
34 *Council may adopt need standards for other nongenerating facilities. This division*  
35 *describes the methods the applicant shall use to demonstrate need. In accordance with*  
36 *ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-*  
37 *effectiveness for generating facilities. The applicant shall demonstrate need:*

38  
39 *(1) For electric transmission lines under the least-cost plan rule, OAR 345-023-0020(1), or*  
40 *the system reliability rule for transmission lines, OAR 345-023-0030, or by demonstrating*  
41 *that the transmission line is proposed to be located within a “National Interest Electric*

---

<sup>250</sup> B2HAPPDoc3-39 ASC 22\_Exhibit V\_Waste\_ ASC 2018-09-28, Section 3.3.2.1

1           *Transmission Corridor” designated by the U.S. Department of Energy under Section 216*  
2           *of the Federal Power Act; \*\*\*\**

3  
4           The Least-Cost Plan Rule, OAR 345-023-0020, states:

5  
6           *(1) The Council shall find that the applicant has demonstrated need for the facility if the*  
7           *capacity of the proposed facility or a facility substantially similar to the proposed facility,*  
8           *as defined by OAR 345-001-0010, is identified for acquisition in the short-term plan of*  
9           *action of an energy resource plan or combination of plans adopted, approved or*  
10           *acknowledged by a municipal utility, people's utility district, electrical cooperative, other*  
11           *governmental body that makes or implements energy policy\*\*\**

12                           \*\*\*\*

13           *(2) The Council shall find that a least-cost plan meets the criteria of an energy resource*  
14           *plan described in section (1) if the Public Utility Commission of Oregon has*  
15           *acknowledged the least cost plan.*

16  
17           The System Reliability Rule for Electric Transmission Lines, OAR 345-023-0030, states:

18  
19           *The Council shall find that the applicant has demonstrated need for an electric*  
20           *transmission line that is an energy facility under the definition in ORS 469.300 if the*  
21           *Council finds that:*

22  
23           *(1) The facility is needed to enable the transmission system of which it is to be a part to*  
24           *meet firm capacity demands for electricity or firm annual electricity sales that are*  
25           *reasonably expected to occur within five years of the facility's proposed in-service date*  
26           *based on weather conditions that have at least a 5 percent chance of occurrence in any*  
27           *year in the area to be served by the facility;*

28  
29           *(2) The facility is consistent with the applicable mandatory and enforceable North*  
30           *American Electric Reliability Corporation (NERC) Reliability Standards in effect as of*  
31           *September 18, 2015 as they apply either internally or externally to a utility system; and*

32  
33           *(3) Construction and operation of the facility is an economically reasonable method of*  
34           *meeting the requirements of sections (1) and (2) compared to the alternatives evaluated*  
35           *in the application for a site certificate.*

36  
37                           **III.P.1.     Findings of Fact**

38  
39           For non-energy generating facilities such as transmission lines, a certificate holder must  
40           demonstrate that the facility is needed under the Need Standard for Nongenerating Facilities.  
41           In the *Final Order on ASC*, the certificate holder and the Council agreed that the certificate  
42           holder demonstrated that the facility was needed under the least-cost plan rule (OAR 345-023-  
43           0020) and the system reliability rule for electric transmission lines (OAR 345-023-0030).  
44           Certificate holder maintains, and the Council concurs that the site boundary additions in RFA1

1 would not alter the findings Council relied upon in the *Final Order on ASC* for the Need  
2 Standard, as summarized below.

3  
4 *III.P.2.a Least Cost Plan*

5  
6 In the *Final Order on ASC*, Council approved the facility, which is an approximately 300-mile,  
7 single-circuit transmission line with a capacity of 500-kilovolts (kV).<sup>251</sup> Section (1) of OAR 345-  
8 023-0020 indicates that the least-cost plan rule requires the certificate holder to demonstrate  
9 that the capacity of the facility is identified for acquisition in an energy resource plan. Section  
10 (2) of the rule states that the Council shall find that a least-cost plan meets the criteria of an  
11 energy resource plan described in Section (1) if the Oregon Public Utility Commission (OPUC)  
12 has acknowledged the least cost plan. An Integrated Resource Plan (IRP), as defined in the  
13 OPUC's rules meets the definition of an energy resource plan or combination or least cost plan  
14 in the Council's rules. OPUC regulates utilities in Oregon, including the review and  
15 acknowledgement IRPs which help ensure that an adequate and reliable supply of energy at the  
16 least cost to the utility and customers in a manner consistent with the long-term public interest;  
17 and the Commission's acknowledgement of the IRP means that the Commission finds that the  
18 utility's preferred portfolio is reasonable at the time of acknowledgement.<sup>252</sup>

19  
20 As described in the *Final Order on ASC*, when the OPUC acknowledged the 2017 and 2019 Idaho  
21 Power IRP, it acknowledged construction of a 500-kV transmission line.<sup>253</sup> As explained in OPUC  
22 Order No. 18-176 (Docket LC 68), the objective of the IRP is to ensure an adequate and reliable  
23 supply of energy at the least cost to the utility and customers in a manner consistent with the  
24 long-run public interest and that the Commission's (OPUC) acknowledgement of the IRP means  
25 that the Commission finds that the utility's preferred portfolio is reasonable at the time of  
26 acknowledgement.<sup>254</sup>

27  
28 Under OAR 345-023-0020(2), "The Council *shall* find that a least-cost plan meets the criteria of  
29 an energy resource plan described in section (1) if the Public Utility Commission of Oregon has  
30 acknowledged the least cost plan," the findings in the *Final Order on ASC* and in the record for  
31 the facility supported Council's finding that the Need Standard was met under the least cost  
32 plan rule. [Emphasis added] Certificate holder states in RFA1 that the changes in RFA1 would  
33 not affect the consideration of the facility under IPC's Integrated Resource Plans reviewed by

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<sup>251</sup> Under ORS 469.300(11)(C), a high voltage transmission line is an energy facility if it is more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Section IV.O.1. Need for a Facility: OAR 345-023-0005.

<sup>252</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 631.

<sup>253</sup> Final Order on ASC provided findings and approval of the Least Cost Plan Rule based upon the OPUC acknowledgments of Idaho Power's 2017 and 2019 IRP. ODOE - B2HAPPDoc903 RFA-1, RFA-2 IPC Rebuttal Testimony Exhibits A to H Ellsworth (Email 1 of 2) \_\_ 2021-11-12. Page 298 of 374; Exhibit G: OPUC Order No. 21-184, Acknowledgement of B2H, "The B2H transmission project involves permitting, constructing, operating and maintaining a new single-circuit 500-kV transmission line approximately 300 miles long.." Page 11.

<sup>254</sup> B2HAPPDoc3-23 ASC14b\_Exhibit N\_Need\_ASC\_Part 2, Attachment N-10, pp. 2-3. 2018-09-28

1 OPUC.<sup>255</sup> The Council affirms and finds that the site boundary additions in RFA1 would not  
2 impact Council’s previously approved findings because Council found that the Need Standard is  
3 met by the least cost plan rule because OPUC acknowledged the 2017 and 2019 IRP, which  
4 acknowledged the permitting, construction, and operation of the facility as a new single-circuit  
5 500-kV transmission line approximately 300 miles long.

6  
7 *III.P.2.b System Reliability*  
8

9 The system reliability rule under OAR 345-023-0030, allows for the certificate holder to  
10 demonstrate need for an electric transmission line that is an energy facility defined under ORS  
11 469.300 if the Council finds that:

- 12 • The facility is needed to enable the transmission system of which it is to be a part to  
13 meet firm capacity demands for electricity or firm annual electricity sales,
- 14 • The facility is consistent with the applicable mandatory and enforceable North  
15 American Electric Reliability Corporation (NERC) Reliability Standards, and
- 16 • Construction and operation of the facility is an economically reasonable method of  
17 meeting the requirements of sections (1) and (2) of the rule compared to the  
18 alternatives evaluated in the application for a site certificate.

19  
20 Certificate holder maintains that the RFA1 site boundary additions would not impact the need  
21 of the facility to enable its transmission system under the system reliability rule.<sup>256</sup> The Council  
22 agrees and finds that the RFA1 site boundary additions would not impact Council’s previous  
23 findings of facts and conclusions of law provided in the *Final Order on ASC* for the following  
24 reasons:

- 25  
26 • The Council evaluated information and data in the certificate holder’s IRP to support  
27 the certificate holder’s position that the facility is needed to support the certificate  
28 holder’s transmission system of which it is to be a part to meet capacity demands.  
29 The technical data evaluated was the same data the OPUC reviews to establish if the  
30 proposed energy facility is needed to meet energy needs of the utility’s customers,  
31 and it is the lowest cost option to meet demands. The Council concluded that the  
32 data supported the conclusion that the facility is needed to support the certificate  
33 holder’s transmission system.<sup>257</sup> The site boundary additions in RFA1 would not alter  
34 the certificate holder’s need to add the facility to its transmission system to meet  
35 customer demands.
- 36 • Council previously found that, as a utility subject to NERC and Western Electricity  
37 Coordinating Council reliability criteria and compliance, the certificate holder must  
38 not only reliably serve customer demand, but must also ensure system stability  
39 during both normal system operations and contingency/emergency events. The  
40 NERC transmission planning (TPL) standards prescribe acceptable system operating

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<sup>255</sup> B2HAMD1 RFA1 2023-06-08. Table 7-1. Standards and Laws Relevant to Proposed Amendment.

<sup>256</sup> B2HAMD1 RFA1 2023-06-08. Table 7-1. Standards and Laws Relevant to Proposed Amendment.

<sup>257</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 635-636.

1 limits for a wide range of system conditions, including loss of generator units and  
2 transmission facilities. The facility is evaluated annually as part of NERC TPL  
3 compliance requirements, and those modeling results demonstrate that, with the  
4 facility in service, it can meet NERC TPL criteria for the planning horizon.<sup>258</sup> The site  
5 boundary additions in RFA1 would not impact these requirements.

- 6 • Council previously evaluated the alternatives discussed in the certificate holder’s IRP  
7 which included an expanded demand response capacity and development of new  
8 electric generating facilities (including natural gas and solar), a range of transmission  
9 line capacities (alternate voltages) for the facility, and various re-build scenarios as  
10 alternatives to construction and operation of the facility, the certificate holder  
11 evaluated a range of transmission line capacities for the facility.<sup>259</sup> The facility would  
12 include, in part, 270 miles of single-circuit 500-kV transmission line. Based upon the  
13 alternatives assessment, and in consideration of the OPUC’s determination that the  
14 facility would be a least cost, least risk resource to meet the needs of the certificate  
15 holder’s customers, the Council found that construction and operation of the facility  
16 is an economically reasonable method of meeting the requirements of sections (1)  
17 and (2) of the system reliability rule compared to the alternatives evaluated in the  
18 application for a site certificate. The site boundary additions in RFA1 would not alter  
19 this alternatives evaluation of the findings of fact and conclusions of law established  
20 in the *Final Order on ASC*.

### 21 22 **III.P.2. Conclusions of Law**

23  
24 Based on the foregoing reasoning and analysis the Council finds that the site boundary  
25 additions in RFA1 would not impact Council’s previous findings of fact and conclusions of law  
26 that the certificate holder and facility, have met the Need Standard for Nongenerating Facilities,  
27 by both the least cost plan rule under OAR 345-023-0020 and the system reliability rule under  
28 OAR 345-023-0030.

### 29 30 **III.Q. SITING STANDARDS FOR TRANSMISSION LINES – OAR 345-024-0090**

31  
32 *To issue a site certificate for a facility that includes any transmission line under*  
33 *Council jurisdiction, the Council must find that the applicant:*

34  
35 *(1) Can design, construct and operate the proposed transmission line so that*  
36 *alternating current electric fields do not exceed 9 kV per meter at one meter*  
37 *above the ground surface in areas accessible to the public;*  
38

---

<sup>258</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 636-638.

<sup>259</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 638-640.

1 (2) Can design, construct and operate the proposed transmission line so that  
2 induced currents resulting from the transmission line and related or  
3 supporting facilities will be as low as reasonably achievable.<sup>260</sup>  
4

5 **III.Q.1. Findings of Fact**  
6

7 The RFA1 site boundary additions do not alter or change anything related to the previously  
8 approved facility components, other than potential final location. The changes in RFA1 would  
9 therefore not impact the Council's findings of fact and conclusions of law as presented in the  
10 *Final Order on the ASC*.<sup>261</sup> The Council continues to find that the facility, with RFA1 site  
11 boundary additions, satisfies the requirements of this standard. For reference, the key findings  
12 of fact are presented below.  
13

14 *III.O.1.a Electro-magnetic fields*  
15

16 The 500-kV single-circuit lattice tower configuration would produce the highest electric fields,  
17 modeled is 8.9 kV per meter at 1 meter above the ground. This value is below the limit for  
18 electric fields from transmission lines (set at OAR 345-024-0090(1)) of not more than 9 kV per  
19 meter at 1 meter above the ground surface in areas that are accessible to the public.  
20

21 Council previously imposed Siting Standards for Transmission Line Condition 1 (Condition GEN-  
22 TL-01) requiring minimum clearance distances for both the 230- and 500-kV transmission lines;  
23 and requiring that the facility design ensure that the alternating current electric fields do not  
24 exceed the 9 kV per meter at 1 meter limit established in the standard.  
25

26 *III.O.1.b Induced-Currents and Grounding*  
27

28 Inducible charge within the ROW of a 500-kV lattice transmission line configuration was  
29 modeled to be less than the 5-mA, which is the threshold established by the NESC. Council  
30 previously imposed Siting Standards for Transmission Lines Condition 2 (Condition OPR-TL-01)  
31 requiring that the certificate holder provide landowners maps of any overheard transmission  
32 lines crossing their property with information about potential risks from induced current; and  
33 that the certificate holder have protocols for adhering to NESC grounding requirements.  
34

35 To further address any potential electrical health and safety risks, Council imposed the  
36 following conditions:  
37

- 38 • Siting Standards for Transmission Lines Condition 4 (Condition PRE-TL-01) requiring that,  
39 prior to construction, the certificate holder brief OPUC on the design, construction, and  
40 O&M of the facility.

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<sup>260</sup> OAR 345-024-0090, effective May 15, 2007.

<sup>261</sup> B2HAPPDoc31 Final Order on ASC. 2022-09-27. Section IV.P.1.

- Siting Standards for Transmission Lines Condition 5 (Condition OPR-TL-02) requiring that the certificate holder provide annual updates to OPUC’s Safety Staff on operations and maintenance; and report bi-annually to OPUC on operations and maintenance activities.

**III.Q.2. Conclusions of Law**

Based on the foregoing analysis, and subject to compliance with the existing site certificate conditions described above and in the site certificate, the Council finds that the certificate holder can design, construct, and operate the portions of the facility added to the site boundary in RFA1 so that alternating current electric fields do not exceed 9-kV per meter at one meter above the ground surface in areas accessible to the public and that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

**III.R. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION**

Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-0000), the Council must determine whether a proposed facility or approved facility, with proposed changes, complies with “all other Oregon statutes and administrative rules..., as applicable to the issuance of a site certificate for the proposed facility.” This section addresses the applicable Oregon statutes and administrative rules that are not otherwise addressed in Council standards, including Oregon Noise Control Regulations, Removal Fill Law and Water Rights.

As stated in the *Final Order on ASC*, and as discussed during Council’s review of the DPO for RFA1, the Council does not assert jurisdiction of the Forest Practices Act (FPA) and referred the certificate holder to submit necessary information directly to the Oregon Department of Forestry (ODF).<sup>262</sup> Certificate holder indicates that Forest Practices Reforestation Rules generally require a landowner to replant (or ensuring natural regeneration of) the forest after a timber harvest and maintain the seedlings to the point that they are "free to grow" at a stocking level that meets the Forest Practices Act’s minimum stocking standards. If forestlands will be converted to a use not compatible with maintaining forest tree cover, the landowner must obtain written approval of a Plan for an Alternate Practice from ODF providing an exemption from the Forest Practices Act’s reforestation requirements. Certificate holder states that it is working directly with ODF on its Plan of Alternate Practice, which applies to reforestation alternatives on private forestland requiring permanent clearance for the transmission line route and for roads, and it will address compliance with the applicable provisions of the FPA through direct coordination with ODF and the finalized plan prior to beginning construction in forestlands.<sup>263</sup>

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<sup>262</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 649-650. Placeholder for July 17-19, 2023 EFSC Meeting Minute citation reference,

<sup>263</sup> B2HAMD1 DPO Certificate Holder Responses to RFA1 DPO Public Comments 2023-07-19.

1 In the *Final Order on ASC*, Council adopted various conditions related to compliance with FPA  
2 requirements based upon certificate holder representations. Compliance with these FPA-  
3 related requirements would minimize potential impacts and hazards in forest lands during  
4 construction and operation of the facility, with changes in RFA1. Council imposing such  
5 conditions is not intended to assume enforcement authority over FPA requirements, but rather  
6 indicates Council found that compliance with the FPA requirements would reduce potential  
7 impacts evaluated under Council standards.<sup>264</sup>

8  
9 **III.R.1. Noise Control Regulations: OAR 340-035-0035**

10  
11 *(1) Standards and Regulations:*

12  
13 \*\*\*

14  
15 *(b) New Noise Sources:*

16  
17 *(A) New Sources Located on Previously Used Sites. No person owning or*  
18 *controlling a new industrial or commercial noise source located on a*  
19 *previously used industrial or commercial site shall cause or permit the*  
20 *operation of that noise source if the statistical noise levels generated by that*  
21 *new source and measured at an appropriate measurement point, specified in*  
22 *subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as*  
23 *otherwise provided in these rules. For noise levels generated by a wind energy*  
24 *facility including wind turbines of any size and any associated equipment or*  
25 *machinery, subparagraph (1)(b)(B)(iii) applies.*

26  
27 *(B) New Sources Located on Previously Unused Site:*

28  
29 *(i) No person owning or controlling a new industrial or commercial noise*  
30 *source located on a previously unused industrial or commercial site shall cause*  
31 *or permit the operation of that noise source if the noise levels generated or*  
32 *indirectly caused by that noise source increase the ambient statistical noise*  
33 *levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels*  
34 *specified in Table 8, as measured at an appropriate measurement point, as*  
35 *specified in subsection (3)(b) of this rule, except as specified in subparagraph*  
36 *(1)(b)(B)(iii).*

37  
38 *(ii) The ambient statistical noise level of a new industrial or commercial noise*  
39 *source on a previously unused industrial or commercial site shall include all*  
40 *noises generated or indirectly caused by or attributable to that source*  
41 *including all of its related activities. Sources exempted from the requirements*

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<sup>264</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 649-650.

1 of section (1) of this rule, which are identified in subsections (5)(b)–(f), (j), and  
2 (k) of this rule, shall not be excluded from this ambient measurement.

3  
4 \*\*\*

5  
6 (3) Measurement:

7  
8 (a) Sound measurements procedures shall conform to those procedures which  
9 are adopted by the Commission and set forth in Sound Measurement  
10 Procedures Manual (NPCS-1), or to such other procedures as are approved in  
11 writing by the Department;

12  
13 (b) Unless otherwise specified, the appropriate measurement point shall be  
14 that point on the noise sensitive property, described below, which is further  
15 from the noise source:

16  
17 (A) 25 feet (7.6 meters) toward the noise source from that point on the noise  
18 sensitive building nearest the noise source;

19  
20 (B) That point on the noise sensitive property line nearest the noise source.

21  
22 (4) Monitoring and Reporting:

23  
24 (a) Upon written notification from the Department, persons owning or  
25 controlling an industrial or commercial noise source shall monitor and record  
26 the statistical noise levels and operating times of equipment, facilities,  
27 operations, and activities, and shall submit such data to the Department in the  
28 form and on the schedule requested by the Department. Procedures for such  
29 measurements shall conform to those procedures which are adopted by the  
30 Commission and set forth in Sound Measurement Procedures Manual (NPCS-  
31 1);

32  
33 \*\*\*

34  
35 (5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of  
36 this rule, the rules in section (1) of this rule shall not apply to:

37 \*\*\*

38 (b) Warning devices not operating continuously for more than 5 minutes;

39  
40 (c) Sounds created by the tires or motor used to propel any road vehicle  
41 complying with the noise standards for road vehicles;

42 \*\*\*

43 (g) Sounds that originate on construction sites.  
44

1 (h) Sounds created in construction or maintenance of capital equipment;  
2 \*\*\*

3 (6) Exceptions: Upon written request from the owner or controller of an  
4 industrial or commercial noise source, the Department may authorize  
5 exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:  
6

7 (a) Unusual and/or infrequent events;  
8

9 (b) Industrial or commercial facilities previously established in areas of new  
10 development of noise sensitive property;  
11

12 (c) Those industrial or commercial noise sources whose statistical noise levels  
13 at the appropriate measurement point are exceeded by any noise source  
14 external to the industrial or commercial noise source in question;  
15

16 (d) Noise sensitive property owned or controlled by the person who controls or  
17 owns the noise source;  
18

19 (e) Noise sensitive property located on land zoned exclusively for industrial or  
20 commercial use.<sup>265</sup>  
21

#### 22 **OAR 340-035-0010: Exceptions**

23  
24 (1) Upon written request from the owner or controller of a noise source, the Department  
25 may authorize exceptions as specifically listed in these rules.  
26

27 (2) In establishing exceptions, the Department shall consider the protection of health,  
28 safety, and welfare of Oregon citizens as well as the feasibility and cost of noise  
29 abatement; the past, present, and future patterns of land use; the relative timing of land  
30 use changes; and other legal constraints. For those exceptions which it authorizes the  
31 Department shall specify the times during which the noise rules can be exceeded and the  
32 quantity and quality of the noise generated, and when appropriate shall specify the  
33 increments of progress of the noise source toward meeting the noise rules.  
34

#### 35 **OAR 340-035-0100: Variances**

36  
37 (1) Conditions for Granting. The Commission may grant specific variances from the  
38 particular requirements of any rule, regulation, or order to such specific persons or class  
39 of persons or such specific noise source upon such conditions as it may deem necessary  
40 to protect the public health and welfare, if it finds that strict compliance with such rule,  
41 regulation, or order is inappropriate because of conditions beyond the control of the

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<sup>265</sup> OAR 345-035-0035, effective November 2, 2017, as amended by minor corrections filed on November 8, 2017 and April 2, 2018.

1 persons granted such variance or because of special circumstances which would render  
2 strict compliance unreasonable, or impractical due to special physical conditions or  
3 cause, or because strict compliance would result in substantial curtailment or closing  
4 down of a business, plant, or operation, or because no other alternative facility or  
5 method of handling is yet available. Such variances may be limited in time.  
6

7 (2) Procedure for Requesting. Any person requesting a variance shall make his request in  
8 writing to the Department for consideration by the Commission and shall state in a  
9 concise manner the facts to show cause why such variance should be granted.

10 \*\*\*

11  
12 DEQ 23-2018, minor correction filed 04/02/2018, effective 04/02/2018

13 DEQ 24-2017, minor correction filed 11/08/2017, effective 11/08/2017

14 DEQ 14-2017, amend filed 10/30/2017, effective 11/02/2017  
15

### 16 III.P.1.a Findings of Fact 17

18 Council has the authority to interpret and implement other state agency and Commission rules  
19 and statutes that are relevant to the siting of an energy facility,<sup>266</sup> including noise rules adopted  
20 by the Environmental Quality Commission and previously administered by the Department of  
21 Environmental Quality (DEQ).<sup>267, 268</sup>  
22

23 Noise control requirements established in OAR 340-035-0035 apply to new industrial and  
24 commercial noise sources, which are defined as “noise generated by a combination of  
25 equipment, facilities, operations or activities employed in the production, storage, handling,  
26 sale, purchase, exchange, or maintenance of a...service.”<sup>269</sup> Council previously found that the  
27 facility is a new industrial noise source and therefore the noise control requirements  
28 established in OAR 340-035-0035 are applicable.  
29

30 As designated in the *Final Order on ASC*, the noise impact analysis area covers approximately  
31 209,000 acres, inclusive of the area within a 500-foot transmission line corridor spanning 300

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<sup>266</sup> See ORS 469.310 (stating that the legislative policy behind EFSC was to establish “a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state”) and ORS 469.401(3) (giving EFSC the authority to bind other state agencies as to the approval of a facility).

<sup>267</sup> The Environmental Quality Commission and the DEQ suspended their own administration of the noise program because in 1991 the state legislature withdrew all funding for implementing and administering the program. A July 2003 DEQ Management Directive provides information on DEQ’s former Noise Control Program and how DEQ staff should respond to noise inquiries and complaints. The Directive states (among other items) that the Energy Facility Siting Council (EFSC), under the Department of Energy, is authorized to approve the siting of large energy facilities in the State and that EFSC staff review applications to ensure that proposed facilities meet the State noise regulations.

<sup>268</sup> “We (the Oregon Supreme Court) conclude that EFSC had the authority to grant (1) an exception to the noise standards under OAR 340-035-0035(6)(a), and (2) a variance under OAR 340-035-0100 and ORS 467.060.” B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, pp 805-807.

1 miles (i.e. the approved site boundary).<sup>270</sup> The analysis area also includes areas extending one-  
2 half mile from the RFA1 site boundary, and areas extending out to one mile where the late-  
3 night baseline sound level was unusually low (i.e., less than 26 dBA).<sup>271</sup>

4  
5 Even though construction noise is exempt from the noise standards pursuant to OAR 340-035-  
6 0035(5)(g) and (h),<sup>272</sup> below the Council provides an evaluation of construction-related noise  
7 because it is utilized to inform the evaluation of construction-related noise impacts under the  
8 Council’s Protected Areas and Recreation standard of this order. This is followed with an  
9 evaluation of the RFA1 transmission line route additions’ compliance with the DEQ noise  
10 regulations.

11  
12 **Construction Noise**

13  
14 Under OAR 340-035-0035(5), noise generated during construction of the areas added to the  
15 site boundary are exempt from the requirement to meet DEQ’s noise standards.

16  
17 Construction noise related to the areas added to the site boundary would occur during general  
18 construction activities, blasting and rock breaking, use of implosive devices during conductor  
19 stringing, helicopter operations, and vehicle traffic.<sup>273</sup> General construction activities including  
20 operation of construction vehicles and equipment (i.e. auger drill rig, backhoe, crane, dump  
21 truck, grader, pickup truck, and tractor) that would occur at a construction site would be  
22 considered the result of construction of capital equipment. The 1-hr average predicted noise  
23 level from the combined operation of five pieces of equipment is 83 dBA at 50 feet, 79 dBA at  
24 100 feet, and attenuates to 46 dBA at 6,400 feet. For reference, classroom chatter has an  
25 approximate dBA of 70 and a soft whisper is a dBA of approximately 40.<sup>274</sup>

26  
27 The certificate holder anticipates that tower foundations would typically be installed using  
28 drilled shafts or piers; however, blasting may be needed if hard rock is encountered. In such  
29 circumstances, impulse noise from blasts could reach up to 140 dBA at the blast location or  
30 over 90 dBA within 500 feet of the blast location.<sup>275</sup> Council previously required that a Blasting  
31 Plan (imposed under Soil protection Condition 4) be finalized and updated after site-specific  
32 geotechnical surveys are completed that would avoid blasting in potential rockslide/landslide  
33 areas to the maximum extent possible. The Blasting Plan would also address landowner  
34 consultations. Soil Protection Condition 4 continues to apply to the areas added to the site  
35 boundary that may require blasting under certain conditions.

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<sup>270</sup> OAR 345-001-0010(2) and OAR 345-015-0160

<sup>271</sup> B2HAMD1 RFA1 2023-06-08. Section 7.2.1.3.

<sup>272</sup> Because construction related noise is exempt from the DEQ noise rules, an evaluation of construction noise generated from auxiliary vehicle use on new or improved roads, and multi-use areas, and helicopter use at NSRs is not required.

<sup>273</sup> B2HAPPD0c3-41 ASC 24\_ Exhibit X\_Noise\_ASC 2018-09-28, Section 3.3.1.

<sup>274</sup> Table NC-1: Predicted Noise Levels from General Construction Activities and Figure 13: Common Noise Sources and Expected Noise Levels, B2HAPPD0c31 Final Order on ASC and Attachment 2022-09-27.

<sup>275</sup> B2HAPPD0c3-41 ASC 24\_ Exhibit X\_Noise\_ASC 2018-09-28, Section 3.3.1.1.

1  
2 Heavy-lift and light duty helicopters may be used during construction of the facility in areas  
3 where access roads and/or rough terrain would not permit the delivery of equipment, materials  
4 or personnel. Helicopters may also be used for structure/tower placement; hardware  
5 installation; and wire-stringing operations and would be deployed from the MUAs or light duty  
6 fly yards. Audible noise from light duty and heavy-lift helicopters ranges between 62 and 84  
7 dBA, respectively, at a 1,000-foot distance and helicopter use would be limited to daylight  
8 hours. Council previously imposed Public Services Condition 3 (GEN-PS-01) which requires the  
9 submission of a Helicopter Use Plan, which has notification and safety measures and  
10 consultation with counties, agencies and landowners. If helicopter use would be necessary for  
11 any of the areas added to the site boundary in RFA1, Public Services Condition 3 (GEN-PS-01)  
12 would continue to apply.

13  
14 As noted above, construction noise is exempt from the noise standards pursuant to OAR 340-  
15 035-0035(5)(g) and (h). Therefore, the ability of construction-related noise to comply with DEQ  
16 noise control regulations is not evaluated further.

17  
18 ***Operational Noise – Maintenance Activities***

19  
20 Operational noise would include noise generated during operations and maintenance (O&M)  
21 activities. The RFA1 site boundary additions will involve the same maintenance activities that  
22 they described in the ASC,<sup>276</sup> which include vegetation management, transmission line  
23 inspections, transmission line repair and maintenance activities, and access road repair. Regular  
24 maintenance activities would also include but are not limited to traffic noise from routine  
25 inspections, the use of helicopters to perform inspections, the inspections themselves, and  
26 repairs or replacement of equipment.<sup>277</sup> Noise generated during maintenance activities is  
27 exempt based on the OAR 340-035-0035(5)(h) exemption for maintenance of capital  
28 equipment, which includes transmission lines as an asset used in the production of electrical  
29 transmission services.<sup>278</sup> Therefore, noise generated from maintenance activities is not  
30 evaluated further in this analysis of the RFA1 site boundary additions' compliance with the DEQ  
31 noise control regulations.

32  
33 ***Operational Noise – Transmission Line Corona Noise***

34  
35 Operational noise includes corona noise generated from the transmission line under certain  
36 operational and climatic conditions. Corona noise is a low hum and/or a hissing or crackling  
37 sound that occurs as a function of transmission line voltage, altitude, conductor diameter,  
38 condition of the conductor and suspension hardware, as well as foul weather conditions that  
39 result in rain, snow or condensation concentrating in the electric fields on the line. The highest  
40 levels of corona noise may occur under foul weather conditions when the conductors are wet.

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<sup>276</sup> B2HAMD1 RFA1 2023-06-08. Section 7.2.1.2.

<sup>277</sup> B2HAPPDoc3-41 ASC 24\_ Exhibit X\_Noise\_ASC 2018-09-28, Section 3.3.2.1 "Regular Maintenance Activities."

<sup>278</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 658.

1 Specifically, Council previously found that foul weather assumed for modeling purposes is  
2 defined as a rain rate ranging from 0.8 to five (5) millimeters (mm)/hour because it is a more  
3 conservative definition of the weather conditions likely to result in maximum corona noise than  
4 the standards used by the US Department of Energy’s (DOE) Corona and Field Effects (CAFE)  
5 program (one mm/hour), and is consistent with Electric Power Research Institute (EPRI)  
6 guidance.<sup>279</sup> This definition also excludes rain events where precipitation is heavy enough that  
7 the noise from the weather (rain/wind) would increase ambient sound levels to the extent that  
8 the corona noise from the transmission line would be masked and not audible.<sup>280</sup>

9  
10 Under OAR 345-035-0035(1)(b)(B)(i), a new industrial or commercial noise source located on a  
11 previously unused industrial or commercial site may not increase ambient statistical noise  
12 levels L10 or L50 by more than 10 dBA, or exceed the levels provided in Table 23 provided  
13 below. The Council assesses the transmission line corridors added to the site boundary in RFA1  
14 and finds that they also be considered previously unused industrial or commercial sites for the  
15 same reasons provided in the *Final Order on ASC*; because of the undeveloped rural nature,  
16 predominant EFU land use, and habitat qualities.

17  
18 Operational noise generated by a new industrial or commercial noise source to be located on a  
19 previously unused site must comply with two standards: the “maximum allowable noise  
20 standard” and the “ambient antidegradation standard.” Under the ambient antidegradation  
21 standard, facility-generated noise must not increase the ambient hourly L10 or L50 noise levels  
22 at an appropriate measurement point by more than 10 dBA. The *Final Order on ASC* evaluated  
23 141 potential locations meeting the definition of a noise sensitive property under OAR 340-035-  
24 0015(38), noise sensitive properties are referred as Noise Sensitive Receptors or NSRs.<sup>281</sup> RFA1  
25 assesses two previously evaluated NSRs, 3 and 5010.

26  
27 For the approved ASC transmission line Council found that the noise *source* is the 500 kV  
28 transmission line and a “previously unused industrial or commercial site” is property which has  
29 not been used by any industrial or commercial noise source during the 20 years immediately  
30 preceding commencement of construction of a new industrial or commercial source on that  
31 property.<sup>282</sup> Based on the applicability of the DEQ noise rules to the noise *source* at a *site*, as  
32 defined in the *Final Order on ASC*, the evaluation of compliance with the rules is based on  
33 operational noise from the facility, in its entirety, as the noise source and, rather than limited to  
34 the property for which the facility would be located.<sup>283</sup>

35  
36 *Noise Analysis Methodology Summary (OAR 340-035-0035(3))*

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<sup>279</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 676.

<sup>280</sup> *Id.*

<sup>281</sup> OAR 340-035-0015(38) defines Noise Sensitive Property as “real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.”

<sup>282</sup> OAR 340-035-0015(47).

<sup>283</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 653-654, 659.

1  
2 Per OAR 340-035-0035(3), noise levels must be evaluated at specific measurement points (*i.e.*,  
3 25 feet from the noise source at the point on a noise sensitive property<sup>284</sup> nearest the noise  
4 source, or point on NSR nearest to the noise source) using the DEQ/EQC approved Sound  
5 Measurement Procedures Manual, NPC5-1 (Sound Manual), unless other measurement points  
6 are specified or other measurement procedures are approved in writing by the Department.  
7 The Sound Manual was developed in 1974 and last modified in 1983 and includes methodology  
8 based on hand tallies, which have largely become outdated. Neither the rule nor the Sound  
9 Manual address or provide methods for establishing ambient noise levels specific to a linear  
10 facility. Therefore, in preparation of the ASC the certificate holder's noise consultant developed  
11 its own methodology to specify other ambient measurement points and other measurement  
12 procedures, described in detail in the ASC and the *Final Order on ASC*, which was reviewed and  
13 approved by Council.

14  
15 For the site boundary transmission line route additions that are the subject of RFA1, the  
16 certificate holder used these same methods, comparing baseline ambient sound levels to the  
17 modeled predicted future sound levels at potentially affected NSRs.<sup>285</sup> The Council continues to  
18 find that the methodology used for the ASC and RFA1 is a reasonable and appropriate approach  
19 to evaluating the facility's compliance with the Noise Control rules. Below is a summary of the  
20 multi-step methodology used for the noise assessment of transmission line noise:

21  
22 **Step 1:**<sup>286</sup> NSRs, including properties normally used for sleeping, schools, churches, hospitals  
23 public libraries, and campsites were identified within the one-half mile analysis area based  
24 on aerial imagery, GIS analysis, property records databases, and visual verification. On a  
25 case-by-case basis, in areas where the late-night baseline sound level was unusually low  
26 (e.g., less than 26 dBA), noise sensitive properties within one mile are identified and  
27 included in the analysis.

28 **Step 2:** Sound source characteristics for noise modeling of the transmission line during foul  
29 weather conditions are determined. The highest audible noise levels occur in conditions of  
30 foul weather; therefore, the noise assessment compares the maximum corona sound level  
31 expected during meteorological conditions conducive to corona generation background and  
32 sound levels are presented as a function of meteorological conditions.<sup>287</sup>

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<sup>284</sup> OAR 340-035-0015(38) defines Noise Sensitive Property as "real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner." IPC refers to Noise Sensitive Properties as Noise Sensitive Receptors or NSRs.

<sup>285</sup> RFA #1, Section 7.2.1.3.

<sup>286</sup> Where it was unclear if a structure was noise sensitive (e.g., residence, school, campground) vs. non-noise sensitive (e.g., barn, garage), the applicant attempted to visually verify from public right-of-way (ROW) the use of each structure. B2HAPPDoc3-41 ASC 24\_Exhibit X\_Noise\_ASC 2018-09-28, Section 3.2.1.

<sup>287</sup> Principal contributors to the existing acoustic environment included motor vehicle traffic, railroad traffic, streams and rivers, mobile farming equipment and activities, farming irrigation equipment, ATVs, periodic aircraft flyovers, residential yard sounds (*i.e.*, people and pets), ranch animals, and natural sounds such as birds, insects, and wind interaction with vegetation and/or terrain.

1 **Step 3:** Initial screening-level modeling results of the transmission line are calculated based  
2 on the foul weather conditions, and an assessment is completed to determine the likely  
3 maximum received sound at NSRs within the monitoring analysis area. As a first-level  
4 screening review for NSRs, an ambient hourly L50 noise level of 20 dBA is assumed.<sup>288</sup>  
5 Because ambient L50 noise levels at any NSR cannot increase by more than 10 dBA in one  
6 hour, the associated “threshold” to establish if there would be an exceedance to the  
7 ambient antidegradation standard is 30 dBA. If potential for increasing baseline ambient  
8 sound levels by 10 dBA or less could be reasonably assumed, compliance with the ambient  
9 antidegradation standard is inferred.

10 **Step 4:** For NSRs that show a potential exceedance based on the assumed 20 dBA ambient  
11 hourly L50 noise level (30 dBA threshold), representative baseline sound measurements  
12 were conducted at or near 21 monitoring positions (MPs) with acoustic environments  
13 representative of the acoustic environments of NSRs identified within the analysis area.  
14 Where there were multiple monitoring positions in proximity to NSRs, the MPs with the  
15 lower ambient sound level, and were generally located further from existing ambient sound  
16 sources than the NSRs are used to provide more conservative representative ambient sound  
17 levels.<sup>289</sup>

18 **Step 5:** From the baseline measurements established in Step 4, the representative existing  
19 L50 sound levels are calculated, and new compliance thresholds are defined to assess  
20 conformance with the ambient antidegradation standard.<sup>290</sup>

21 **Step 6:** The L50 sound level for each NSR is assigned based on measurements performed in  
22 Step 5 for monitoring positions in a similar acoustic environment. An assessment of the  
23 ambient antidegradation standard is conducted for each NSR in the analysis area. The  
24 assigned ambient baseline sound level is compared to the predicted audible corona noise  
25 during foul weather to assess compliance with the ambient degradation standard.

26  
27 Because the certificate holder applied the same methodologies to assess the potential noise at  
28 the NSRs identified in RFA1, the Council continues to find that the multi-step methodology  
29 remains a reasonable and appropriate approach to evaluating the facility’s compliance with the  
30 Noise Control rules. Specific to using representative Monitoring Positions (MP), the  
31 methodology is reasonable because where there were multiple monitoring positions in  
32 proximity to NSRs, the certificate holder selected the MPs with the lower ambient sound level  
33 and that were generally located further from existing ambient sound sources than the NSRs to

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<sup>288</sup> During the review of the ASC, the Council approved the use 20 dBA as an assumed ambient sound level for the applicant to filter NSRs in its initial screening level analysis, because 20 dBA is near silence thus a highly conservative assumption.

<sup>289</sup> To establish the representativeness of the MP to represent baseline noise for NSRs, similar acoustic environments were established which included an evaluation of proximate noise sources, topography and land cover.

<sup>290</sup> The representative existing L50 sound levels are calculated by taking the average of the measured L50 sound levels for the late nighttime period (12:00 a.m. to 5:00 a.m.). This late nighttime period demonstrates the quietest time period and is conservatively assumed to be present at all times of the day. Atypical sources of extraneous sound, such as sound produced by field crews setting up or calibrating the equipment and periods when the wind speed exceeded 10 miles per hour (mph), are removed from the dataset.

1 provide more conservative representative ambient sound levels, and in the case of NSRs  
2 identified in RFA1, the MPs were the same MPs used for the analysis in the *Final Order on*  
3 *ASC*.<sup>291</sup> Therefore, the Council finds that the use of baseline sound data from previously  
4 approved MPs for the NSRs identified as potentially impacted by the route additions in RFA1 is  
5 also reasonable because both NSRs identified, discussed further below, were also identified in  
6 the *Final Order on ASC* and the same MPs as the ASC we used for modeling the noise  
7 assessment for RFA1.

8  
9 *Results of Noise Analysis*

10  
11 The evaluation in RFA1 was done for two NSRs, 3 and 5010, which fell within the analysis area  
12 of the one-half mile analysis area and out to a mile in an area with a low (26 dBA ambient noise  
13 level).

14  
15 A tabulated summary of the noise modeling analysis done for NSRs identified in RFA1 is  
16 provided in RFA1, Attachment 7-17 which identifies the NSR number, distance to the RFA1  
17 transmission line (edge of the site boundary), baseline late night sound pressure levels,  
18 predicted sound levels during foul weather, and the estimated increase in ambient noise during  
19 foul weather conditions at the late-night baseline. RFA1 Figures 7-21 and 7-22 provide aerial  
20 maps showing all the NSRs identified and evaluated if within the analysis area and indicate if  
21 there is an expected exceedance of the ambient antidegradation standard.

22  
23 Table 23, *Summary of Acoustic Modeling Results—Comparison of Predicted Sound Levels to Late*  
24 *Night Baseline L50 (NSR Exceedances) and Maximum Noise Levels for the RFA1 Site Boundary*  
25 *Route Additions*, below specifies the NSR's where the ambient L50 noise level is expected to

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<sup>291</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 662.

- 1 increase by 10 dBA or more in one hour, which would represent an exceedance of the ambient
- 2 antidegradation standard.

**Table 23: Summary of Acoustic Modeling Results—Comparison of Predicted Sound Levels to Late Night Baseline L50 (NSR Exceedances) and Maximum Noise Levels for the RFA1 Site Boundary Route Additions**

NSR Number	Distance from NSR to Transmission Line (feet)	Nearest Milepost	Related Alternative	Associated Monitoring Point (MP)	Late Night Baseline Sound Pressure Level (dBA)	Predicted Future Sound Level (Foul Weather) (dBA)	Increase (dBA)
3	1,845	17.9	Little Juniper Canyon Alternative	MP05	27	35	+8
5010	2,698	174.2	True Blue Gulch Alternative	MP35	24	37	+13

3  
4 *Maximum Allowable Noise Standard*

5  
6 Under the maximum allowable noise standard at OAR 340-035-0035(1)(b)(B)(i), a new industrial  
7 or commercial noise source to be located on a previously unused site may not exceed the noise  
8 levels specified in Table 8 of the noise rules (Table 24 below). Per that table, the maximum  
9 allowable L50 sound level standard is 55 A-weighted decibels (dBA) during the daytime (7:00  
10 am – 10:00 pm) and 55 dBA during the nighttime (10:00 pm – 7:00 am). As designated in Table  
11 22 above, the maximum modeled sound level would be 37 dBA, therefore, the Council finds the  
12 certificate holder has provided sufficient evidence to support a finding that corona noise  
13 resulting from operation of the transmission line would not exceed the maximum allowable  
14 noise standard in OAR 340-035- 0035(1)(b)(B)(i) and Table 8.

**Table 24: Statistical Noise Limits for Industrial and Commercial Noise Sources**

Statistical Descriptor	Maximum Permissible Hourly Statistical Noise Levels (dBA)	
	Daytime (7:00 AM – 10:00 PM)	Nighttime (10:00 PM to 7:00 AM)
L50	55	50
L10	60	55
L1	75	60

Note: The hourly L50, L10, and L1 noise levels are defined as the noise levels equaled or exceeded 50 percent, 10 percent, and 1 percent of the hour, respectively.  
Source: OAR 345-035-0035, Table 8.

15  
16 *Ambient Antidegradation Standard*

17  
18 Under the ambient antidegradation standard, facility-generated noise must not increase the  
19 ambient hourly noise levels at an appropriate measurement point by more than 10 dBA.

1 As noted above, NSRs within one-half mile of the RFA1 site boundary additions were identified  
2 for the Little Juniper Canyon Alternative in Morrow County and NSRs out to one mile for the  
3 True Blue Gulch Alternative in Baker County because the late-night baseline sound level there is  
4 unusually low (*i.e.*, less than 26 dBA).<sup>292</sup> The certificate holder did not identify any NSRs related  
5 to the Durbin Quarry Alternative in Baker County, which Council confirms by the Department  
6 review of mapsets and online aerial imagery.<sup>293</sup>

7  
8 NSR 3 may be potentially affected by the RFA1 site boundary route additions and is located  
9 1,845 feet from the Little Juniper Canyon Alternative route, which is approximately 8 feet  
10 further away from the transmission line than was reviewed for the ASC. NSR 5010 is 2,698 feet  
11 from the True Blue Gulch Alternative route which is 1,528 feet further away from the  
12 transmission line than the route approved in the ASC. The results of the analysis indicate that  
13 during foul weather in low wind, late night/early morning conditions, there may be a potential  
14 increase of approximately 8 dBA above ambient conditions at NSR 3, and 13 dBA above the  
15 ambient conditions at NSR 5010, near the True Blue Gulch Alternative.<sup>294</sup>

16  
17 Because the projected increase at NSR 3 would be less than 10 dBA, that increase would fall  
18 within what is allowed under the ambient antidegradation standard in OAR 340-035-  
19 0035(1)(B)(i), further, the analysis in the *Final Order on ASC* indicated that the predicted  
20 increase in ambient noise during foul weather would also be 8 dBA, and thus there is no change  
21 from what Council previously found.

22  
23 As highlighted above and in RFA1, the location of the True Blue Gulch Alternative route is 1,528  
24 feet further away from NSR 5010 than the previously approved ASC route, which would reduce  
25 the increase in the ambient baseline sound levels under foul weather conditions from 17 dBA to  
26 a 13 dBA increase in the ambient baseline sound levels. The certificate holder indicates that it  
27 worked with the property owner of NSR 5010 to locate the route alternative along the edge of  
28 their property, in part, to minimize any potential noise impacts; and the NSR property owner  
29 and certificate holder have mutually agreed that the alternate route location on the property is  
30 acceptable. While the noise levels during foul weather are estimated to be 4 dBA less than  
31 originally estimated and approved in the *Final Order on ASC*, the 13 dBA is still projected to be  
32 more than 10 dBA above ambient conditions.

33  
34 *Approved Exception and Variance to the Ambient Antidegradation Standard*

35  
36 OAR 340-035-0035(6)(a) allows the Council to consider exceptions to the DEQ Noise Rules and  
37 OAR 340-035-0100 allows specific variances from requirements of any DEQ Noise Rules,  
38 regulation, or order under certain circumstances as described in the DEQ Noise Rules.

39  

---

<sup>292</sup> B2HAMD1 RFA1 2023-06-08. Section 7.2.1.3.

<sup>293</sup> *Id.*

<sup>294</sup> B2HAMD1 RFA1 2023-06-08. Table 7.2-1

1 In the *Final Order on ASC*, Council evaluated and granted the request for exception to the  
2 ambient antidegradation standard for all transmission line routes because Council determined  
3 that the foul weather conditions that may cause corona noise would be unusual or infrequent.  
4 In its review of the exception request for the entire transmission line including alternative  
5 routes, Council evaluated the protection of health, safety, and welfare of Oregon citizens, the  
6 feasibility and cost of noise abatement, the past, present, and future patterns of land use,  
7 relative timing of land use changes; and other legal constraints.<sup>295</sup>

8  
9 Council approved an exception for the entirety of the transmission line alignment based on the  
10 approved methodologies applied for the noise evaluation and its interpretation that the  
11 ambient antidegradation standard under -0035(1)(b)(B)(i) applies to the transmission line as the  
12 noise source, where identified NSRs represent the appropriate measurement points for which  
13 to determine overall compliance of the line.<sup>296</sup> Council also based its approval of the exception  
14 to the DEQ Noise Rules based upon the definition of foul weather and that the occurrences of  
15 foul weather that would be conducive to the worst-case corona noise would be unusual or  
16 infrequent.<sup>297</sup> Council found that exceedances along the transmission line would be an  
17 infrequent event because exceedances are expected to occur less than two percent of the total  
18 hours in a given year (because they are projected to occur during foul weather, and foul  
19 weather events are infrequent in the project area, and other circumstances need to occur  
20 simultaneously to result in an exceedance, i.e., low ambient noise environment and  
21 transmission line operating at full capacity).<sup>298</sup>

22  
23 Because the certificate holder followed and applied the same methodologies that Council  
24 previously approved for the ASC for RFA1, and the basis, assumptions, and interpretations for  
25 the approval of the exception have not changed, the exception for the transmission line  
26 extends to the alternative routes in RFA1. Further, NSR 5010 was already included in Council's  
27 previous approval which included a description of the factors that led the transmission line  
28 route in proximity to the NSR, of note, is that the transmission line alternative route in RFA1  
29 would move further away from the NSR thus reducing potential noise impacts.<sup>299</sup>

30  

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<sup>295</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp. 682-695.

<sup>296</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 680.

<sup>297</sup> Foul weather rain rate of 0.8 to 55 mm/hr used in the acoustic modeling, based on the meteorological data, is assumed to be conservative for a predominately arid region. B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 681.

<sup>298</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 682.

<sup>299</sup> Description in Final Order of ASC for NSR 5010: NSR-5010 (Attachment X-5, Map 34): The approved route runs northwest to southeast near NSR- 5010, through the hills west of Durkee. This portion of the approved route was developed in response to comments received on the BLM's Draft EIS and in coordination with Baker County. The route is intended to reduce impacts on agricultural land uses, high-value soils for agricultural uses, and privately-owned lands in and around Durkee. As shown in ASC Exhibit X, Figure X-8, moving the transmission line to the east may increase the visibility of the transmission line from the Durkee; moving the approved route to the west may increase impacts to Bighorn Sheep Occupied Range, which is Category 2 habitat designated by the Oregon Department of Fish and Wildlife (ODFW). B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 692.

1 NSR 5010 was identified in Noise Control Condition 1, which includes the procedures that the  
2 certificate holder will follow to implement its Noise Exceedance Mitigation Plans with NSRs with  
3 a modeled exceedance. This Condition continues to apply to the certificate holder, would also  
4 apply to the site boundary route additions in RFA1 and will include agreed upon measures that  
5 would be implemented at the NSR location to minimize or mitigate the ambient  
6 antidegradation standard noise exceedance.  
7

8 Noise Control Conditions 2-4 also continue to be applicable the certificate holder and would  
9 apply to the route alternatives added to the site boundary in RFA1, as summarized below:

- 10 • Noise Control Condition 2 (Condition GEN-NC-02) establishes a system for the  
11 certificate holder to receive and respond to complaints associated with potential  
12 operational corona noise from landowners not identified in Attachment X-5 of this  
13 order as well as a dispute mechanism for NSR property owners identified with an  
14 exceedance in Attachments X-4 and X-5. The complaint response plan includes a  
15 process for complaint filing, receipt, review and response for NSR exceedances  
16 evaluated in the ASC and RFA1, and NSRs that are not identified in the ASC or RFA1.
- 17 • Noise Control Condition 3 (Condition CON-NC-01) requires the certificate holder to  
18 construct the transmission line using materials to reduce corona noise such as the  
19 use of a triple bundled conductor configuration for 500 kV transmission lines,  
20 maintain tension on all insulator assemblies to ensure positive contact between  
21 insulators, maintain tension on all insulator assemblies to ensure positive contact  
22 between insulators, and to protect conductor surface to minimize scratching or  
23 nicking.
- 24 • OAR 340-035-0010(2) stipulates that an exception shall have specified times and  
25 quantities associated with it, therefore, Noise Control Condition 4 (Condition OPR-  
26 NC-01) establishes that the ambient antidegradation standard may be exceeded at  
27 any time during foul weather events (defined as a rain rate of 0.8 to 5 millimeters  
28 per hour, as authorized through the OAR 340-035-0035(6)(a) exception. In  
29 accordance with OAR 340-035-0010(2), the Council specified via Condition 4, that  
30 the exceedance, as measured at any NSR location within the analysis area, shall not  
31 be more than 10 dBA above the ambient antidegradation standard (or ambient plus  
32 20 dBA) and consist of corona noise.  
33

34 In the *Final Order on ASC Council's* authorization of a variance under OAR 340-035-0100 from  
35 compliance with the ambient antidegradation standard was also for the entirety of the  
36 approved transmission line route, including alternative routes. Council interprets -  
37 0035(1)(b)(B)(i) for linear facilities, such as transmission lines, as establishing a 10 dBA ambient  
38 statistical noise level at identified NSRs but that NSRs would only establish the measurement  
39 point for use as a proxy in determining compliance of the entire line, as the noise source.<sup>300</sup>

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<sup>300</sup> Under OAR 340-035-0035(1)(b)(B)(i) as applying to the transmission line as the noise source, where identified NSRs represent the appropriate measurement points for which to determine overall compliance of the transmission line, is a much more practical approach than evaluating the request for an exception at each of the

1 Council reviewed and approved the request for variance of the ambient antidegradation  
2 standard for the entirety of the transmission line because of conditions beyond the control of  
3 the noise source owner, and special circumstances and physical conditions associated with the  
4 location of the noise source. As discussed in the *Final Order on ASC*, the approved routes in the  
5 ASC were derived from a lengthy siting process, much of which was directed by the BLM, in  
6 consultation with agencies, landowners, and affected counties. The routes in the ASC that  
7 Council approved were also constrained by factors related to the protection of resources under  
8 the EFSC standards. These constraints included the following:

- 9
- 10 • Federal land management agency requirements, including the federal land management
- 11 plans governing many of the federal lands in the analysis area;
- 12 • Input on route locations from local governments, counties, and landowners;<sup>301</sup>
- 13 • The transmission line route on lands managed by the Bureau of Land Management as
- 14 issued in the BLM’s Record of Decision (ROD);
- 15 • Western Electricity Coordinating Council Common Corridor Criteria and prudent utility
- 16 practice, including minimum separation distances from existing transmission lines to
- 17 ensure reliability of facilities;
- 18 • EFSC’s Fish and Wildlife Habitat Standard, adopts the Oregon Department of Fish and
- 19 Wildlife’s habitat mitigation policy; under the standard, an energy facility is not
- 20 permitted on lands designated Category 1 habitat; the standard also requires avoidance
- 21 and minimization of impacts to Greater Sage Grouse habitat; and
- 22 • EFSC’s Protected Area Standard, which does not permit siting of an energy facility in
- 23 certain protected areas, such as parks, scenic waterways, and wildlife refuges, and
- 24 certain federally designated areas, such as areas of critical environmental concern,
- 25 wilderness areas, wild and scenic rivers, BLM Class I and U.S. Department of Agriculture,
- 26 Forest Service Retention visual management areas, national monuments, and National
- 27 Wildlife Refuges (NWRs).<sup>302</sup>
- 28

29 In the *Final Order on ASC*, Council also found a variance from the DEQ Noise Rules was justified  
30 because strict compliance may result in substantial curtailment of operation of the facility (i.e.  
31 the facility could not be constructed and operated) and there are a lack of opportunities for an  
32 alternative facility that could help meet the certificate holder’s obligations to provide service to  
33 its rate payers as a utility.<sup>303</sup>

34

35 Because the certificate holder followed and applied the same methodologies that Council  
36 previously approved, and the basis, assumptions, and interpretations for the approval of the  
37 variance have not changed, the previously approved variance for the transmission line extends

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more than 41 identified NSR locations where exceedances could potentially occur. B2HAPPDoc31 Final Order on  
ASC and Attachment 2022-09-27, page 696; Final Order Attachment 6: Contested Case Order (CCO) as Amended  
and Adopted by Council, page 207-210.

<sup>301</sup> OAR 340-035-0100 (special circumstances and physical conditions).

<sup>302</sup> B2HAPPDoc3-41 ASC 24\_ Exhibit X\_Noise\_ASC 2018-09-28, Section 3.4.5.1.

<sup>303</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, pp 696-698.

1 to the alternative routes in RFA1, including findings associated with NSR 5010. Thus, Noise  
2 Control Condition 5 (Condition OPR-NC-02), which relates to the granted variance continues to  
3 apply to the certificate holder and would apply to routes in RFA1.  
4

5 In the Department’s drafting of the draft proposed order on RFA1 and review of site certificate  
6 conditions, the Department identified a discrepancy in Noise Control Condition 5 in the *Final*  
7 *Order on ASC* and site certificate and in the Contested Case Order as Amended and Adopted by  
8 Council (CCO – Attachment 6 to the final order). Page 222 of 349 of the CCO indicates revisions  
9 to Noise Control Condition 5 (Condition OPR-NC-02) that derived from the Department’s closing  
10 arguments and the certificate holder’s response to closing arguments on the noise issues in the  
11 contested case.<sup>304</sup> The hearing officer recommended, and the Council adopted the following  
12 changes to Noise Control Condition 5 through its adoption of the CCO, however, the changes  
13 were not highlighted in the CCO and not carried forward into the version of Noise Control  
14 Condition 5 (Condition OPR-NC-02) in the final order and site certificate.<sup>305</sup> The changes are  
15 clarifying and stipulate that a variance to compliance with the ambient antidegradation  
16 standard is granted for the transmission line at any time of day or night during foul weather  
17 events (defined as a rain rate of 0.8 to 5 millimeters per hour).  
18

19 Therefore, Council amends Noise Control Condition 5 (Condition OPR-NC-02) as presented  
20 below:  
21

22 **Amended Noise Control Condition 5:** During operation:

- 23 a. A variance to compliance with the ambient antidegradation standard at OAR 340-  
24 035-0035(1)(b)(B) (which prohibits an increase of more than 10 dBA above ambient  
25 sound pressure levels) is granted pursuant to OAR 340-035-0100(1) for the  
26 transmission line at any time of day or night during foul weather events (defined as a  
27 rain rate of 0.8 to 5 millimeters per hour).  
28 b. The quantity and quality of noise generated in exceedance of the ambient  
29 antidegradation standard shall not be more than 10 dBA (i.e., ambient plus 20  
30 dBA), as measured at any NSR location.  
31 [OPR-NC-02; Final Order on ASC; AMD1]  
32

33 *III.P.1.b Conclusions of Law*  
34

35 Based on the foregoing analysis, the Council finds that, subject to compliance with the existing  
36 and amended conditions, and subject to the previously approved OAR 340-035-0035(6)(a)  
37 exception (unusual or infrequent events) and variance to compliance with the ambient  
38 antidegradation standard (OAR 340-035-0035(1)(b)(B)(i)), the areas added to the site boundary  
39 would otherwise comply with the Noise Control Regulations in OAR 340-035-0035(1)(b)(B).

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<sup>304</sup> B2HAPPDoc1300 ODOE's Closing Brief\_2022-02-28, page 102; B2HAPPDoc1168 NC-1, NC-2, NC-3, NC-4, NC-6  
IPC Response Brief and Motion to Strike \_Till\_2022-03-30, pp 28-29.

<sup>305</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27; Attachment 6 Contested Case Order, As  
Amended by Council 2022-09-27, page 222.

1  
2 **III.R.2. Removal-Fill OAR 141-085-0500 through 141-085-0785**  
3

4 The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands  
5 (DSL) regulations (OAR 141-085-0500 through 141-085-0785) require a removal-fill permit if 50  
6 cubic yards or more of material is removed, filled, or altered within any “waters of the state,”  
7 (WOS).<sup>306</sup> A removal-fill permit is required for the facility because 50 cubic yards or more of  
8 material would be removed, filled or altered within waters of the state. The removal-fill permit  
9 is a state permit within the Council’s jurisdiction as discussed in the introduction to Section III.A.  
10 Pursuant to ORS 469.503(3) and ORS 469.401(3), the Council must determine whether DSL  
11 should issue the removal-fill permit and, if so, the Council must determine the conditions of  
12 that permit.<sup>307</sup> During Council’s prior review of the ASC for this facility, Council approved  
13 issuance of a removal-fill permit.  
14

15 The analysis area for RFA1 and other waters of the state is the area within the site boundary.  
16

17 *III.R.2.a Findings of Fact*  
18

19 Wetlands and waters of the state potentially impacted by the RFA1 changes were evaluated  
20 through literature review and wetland delineation surveys. Desktop studies included an  
21 evaluation of multiple existing data sources including the U.S. Fish and Wildlife Service National  
22 Wetlands Inventory (NWI), the USGS National Hydrography Dataset (NHD), and areas of hydric  
23 soil mapped by the Natural Resources Conservation Service.<sup>308</sup> Prior to conducting the field  
24 surveys, wetland specialists plotted data from the Oregon Spatial Data Library (Oregon  
25 Wetlands database) and the NHD on high-resolution aerial photography to identify locations of  
26 probable wetlands and non-wetland waters within the site boundary additions. These data  
27 sources were used to estimate potential impacts to wetlands and WOS where site access was  
28 not granted, which is summarized in RFA1 Table 5.3-2. Where site access was granted to  
29 evaluate the RFA1 site boundary additions, field staff identified wetland presence using the  
30 methodology provided by the 1987 U.S. Army Corps of Engineers (USACE) *Wetlands Delineation*  
31 *Manual* as well as the USACE *Arid West Regional Supplement* (used in the majority of the  
32 analysis area) and the *Western Mountains, Valleys, and Coast Regional Supplement* (for the  
33 higher elevation areas of the analysis area around the Wallowa-Whitman National Forest). The  
34 results of the field surveys are provided below in Table 25: *Estimated Temporary and*  
35 *Permanent Impacts on Delineated Wetlands and WOS for RFA1.*  
36

37 *Results of Wetland Field Surveys and Desktop Evaluation of Wetlands/WOS for RFA1*  
38

39 RFA1 Figure 5-1 illustrates the locations of wetlands and WOS associated with the RFA1 site  
40 boundary transmission line route additions and Figure 5-2 illustrates the wetlands and WOS

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<sup>306</sup> ORS 196.800(15) defines “Waters of this state.” The term includes wetlands and certain other waterbodies.

<sup>307</sup> See also OAR 345-021-0010(1)(j)(E).

<sup>308</sup> B2HAMD1 RFA1 2023-06-08. Section 5.3.1

1 associated with the RFA1 access road site boundary additions. As summarized in Table 25  
 2 below, the estimated impact to field surveyed/delineated wetland features includes 0.06 acres  
 3 of total permanent impacts and 0.04 acres of total temporary impacts. The estimated impact to  
 4 field surveyed/delineated non-wetland WOS includes 0.105 acres of total permanent impacts  
 5 and 0.386 acres of total temporary impacts. The combined total permanent and temporary  
 6 impacts to wetlands and waters of the state is 0.591 acres.

**Table 25: Estimated Temporary and Permanent Impacts on Delineated Wetlands and WOS for RFA1**

County	Source	Field Delineated Wetland ID	Sum of Area (Acres)	
			Permanent Disturbance	Temporary Disturbance
<b>Wetlands</b>				
Baker	Field Delineated	BA-W-102	0.02	0.03
Baker	Field Delineated	BA-W-1106	0.01	0.01
Malheur	Field Delineated	MA-W-1000	0.03	0.00
<b>Total =</b>			<b>0.06</b>	<b>0.04</b>
<b>Streams</b>				
Baker	Field Delineated	BA-ST-04	-	0.035
Baker	Field Delineated	BA-ST-05	-	0.026
Baker	Field Delineated	BA-ST-07	0.001	0.001
Baker	Field Delineated	BA-ST-1105	-	0.018
Baker	Field Delineated	BA-ST-1108	0.000	0.000
Baker	Field Delineated	BA-ST-1109	0.000	0.006
Baker	Field Delineated	BA-ST-1110	0.000	0.000
Baker	Field Delineated	BA-ST-112	0.001	0.002
Baker	Field Delineated	BA-ST-113	0.001	0.003
Baker	Field Delineated	BA-ST-500	-	0.000
Malheur	Field Delineated	MA-D-1000	0.072	0.182
Malheur	Field Delineated	MA-PR-ST-117	0.027	0.110
Malheur	Field Delineated	MA-PR-ST-126a	0.001	0.001
Malheur	Field Delineated	MA-ST-1103	0.001	0.001
Malheur	Field Delineated	MA-ST-1104	0.001	0.000
Malheur	Field Delineated	MA-ST-800	0.000	0.001
<b>Total =</b>			<b>0.105</b>	<b>0.386</b>

7  
 8 To address site access issues associated with siting a transmission line and to allow for  
 9 necessary survey information needed for the EFSC process, Council approved a phased  
 10 approach to collect and submit the additional survey data to the Department and DSL.<sup>309</sup> To  
 11 ensure that additional wetland delineation reports are submitted to the Department and to DSL

<sup>309</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, Section III.D., Survey Data Based on Final Design and Site Access and IV.Q.2. Removal Fill Law: OAR 141-085-0500 through -0785.

1 prior to any construction activities on any unsurveyed parcels within the site boundary, the  
2 Council adopted Removal-Fill Condition 1 (PRE-RF-01), which includes stipulations to ensure  
3 that, prior to construction, the certificate holder completes wetland/WOS surveys for any  
4 unsurveyed areas where facility-related temporary or permanent impacts would occur; submits  
5 the resulting wetland delineation report(s) to the Department and DSL; and obtains and  
6 provides to the Department DSL's concurrence determination demonstrating that the  
7 wetlands/WOS and associated impacts have been accurately delineated. This condition applies  
8 to any unsurveyed areas associated with the RFA1 site boundary additions. Similarly, Removal  
9 Fill Condition 4 (PRE-RF-02) requires that, prior to construction, the certificate holder submit an  
10 updated Joint Permit Application (JPA) to the Department, which would also continue to apply.  
11

12 The estimated 0.426 acres of temporary impacts to wetlands and WOS associated with the  
13 RFA1 site boundary additions would be mitigated via a Site Rehabilitation Plan, reviewed and  
14 approved by the Department, in consultation with DSL (Removal-Fill Condition 2 [GEN-RF-01]).  
15 According to the draft Site Rehabilitation Plan, impacts to wetlands and non-wetland WOS  
16 would be mitigated within 24 months of disturbance. The draft Site Rehabilitation Plan (*Final*  
17 *Order on ASC*, Attachment J-2) requires re-establishing pre-existing contours of the site, soil  
18 decompaction, re-establishing the pre-existing vegetation community, and rapid site  
19 stabilization to prevent erosion.  
20

21 Permanent impacts from the RFA1 site boundary additions to wetlands and WOS are estimated  
22 at 0.165 acres. Permanent wetland/WOS impacts will be mitigated by the Compensatory  
23 Wetland and Non-Wetland Mitigation Plan (CWNWMP), adopted under Removal-Fill Condition  
24 3 (GEN-RF-02). The CWNWMP designates mitigation actions for permanent impacts to wetland  
25 functions and values through the creation of functioning wetlands and enhancement of existing  
26 wetlands at a mitigation site (referred to as the Hassinger Mitigation Site) adjacent to Catherine  
27 Creek in the Grande Ronde Basin in Union County, Oregon.<sup>310</sup> The CWNWMP uses DSL's  
28 mitigation ratio calculators to designate appropriate mitigation acres at the mitigation site, to  
29 which DSL previously indicated that it meets DSL requirements.<sup>311</sup>  
30

31 The Council amends Removal-Fill Condition 2 (GEN-RF-01). The existing condition requires that,  
32 prior to construction, the CWNWMP be finalized. However, for previously surveyed areas,  
33 concurred by DSL, the CWNWMP is final. The components of the CWNWMP that need to be  
34 finalized are those that apply to unsurveyed areas. The Council amends the Condition for clarity  
35 as follows:  
36

37 **Amended Removal Fill Condition 3:** The certificate holder shall:

- 38 a. Prior to construction of a phase or segment of the facility, as applicable, submit an  
39 updated Compensatory Wetland and Non-Wetland Mitigation Plan (CWNWMP)

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<sup>310</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 706; B2HAPPDoc3-18 ASC 10a\_B2H\_2018 Exhibit J Waters of the State Part 1 2018-09-28, Section 3.4.6.2.

<sup>311</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27, page 707; B2HAPPDoc13-3 ASC Reviewing Agency Comment DSL\_Cary 2018-11-02.

1 Attachment J-1 to the Final Order on the ASC) Updates to the CWNWMP include the  
2 final amount of wetland mitigation credit required which shall be based on the final  
3 design configuration of the phase or segment of the facility, as applicable, and the  
4 estimated acres of wetlands and non-wetland waters of the state that would be  
5 permanently impacted, unless otherwise agreed to by the Department.

- 6 b. Following construction and during operation of a phase or segment of the facility,  
7 the certificate holder shall implement the actions described in the final CWNWMP.
- 8 c. The Department will provide updates to Council on the certificate holder's  
9 implementation of the final CWNWMP and of any Plan revisions at Council meetings,  
10 following submittal of the certificate holder's six-month construction progress  
11 report per General Standard of Review Condition 3 or annual report per General  
12 Standard of Review Condition 4
- 13 d. The final CWNWMP version approved when the facility begins operation may be  
14 revised or updated from time to time by agreement of the certificate holder and the  
15 Oregon Energy Facility Siting Council. Such revisions or updates may be made  
16 without amendment of the site certificate. The Council authorizes the Department  
17 to agree to revisions or updates to this plan, in consultation with DSL. The  
18 Department shall notify the Council of all revisions or updates, and the Council  
19 retains the authority to approve, reject, or modify any revisions or updates of the  
20 plan agreed to by the Department.

21 [GEN-RF-02; Final Order on ASC; AMD1]

22  
23 Council previously adopted Removal-Fill Permit Condition 5, specifying that the conditions set  
24 forth in the removal-fill permit are conditions of approval in the site certificate. Additionally,  
25 Council imposed Removal-Fill Condition 6 to ensure that the removal-fill permit is updated prior  
26 to construction of the facility and any impacts to wetlands or WOS. However, Removal-Fill  
27 Condition 5 and 6 contained redundant requirements to comply with the conditions set out in  
28 the removal fill permit. To reduce redundancy and to clarify that the removal fill permit  
29 conditions apply to pre-construction, construction, and operation of the facility, including the  
30 proposed RFA1 site boundary additions, the Council removes Removal-Fill Condition 5 and  
31 amend Removal-Fill Condition 6 as follows:

32  
33 ~~**Deleted Removal Fill Condition 5:** Prior to construction of a phase or segment of the facility  
34 and during operation, the certificate holder shall maintain compliance with the General and  
35 Special Conditions set forth in the removal fill permit (Attachment J-3 to the Final Order on  
36 the ASC).~~ [DELETED]

37 [GEN-RF-03; Final Order on ASC, AMD1]

38  
39 **Amended Removal Fill Condition 6:** The certificate holder shall:

- 40 a. Prior to construction of a phase or segment of the facility:
  - 41 i. Maintain compliance with the General and Special Conditions set forth in the  
42 removal-fill permit (Attachment J-3 to the Final Order on the ASC);
  - 43 ii. Receive an updated removal-fill permit (Attachment J-3 to the Final Order on the  
44 ASC) reviewed and approved by the Department in consultation with the Oregon

- 1 Department of State Lands.
- 2 iii. Submit a final copy of the updated removal-fill permit issued by the Oregon  
3 Department of State Lands.
- 4 b. Following construction and during operation of a phase or segment of the facility, the  
5 certificate holder shall implement the actions and maintain compliance with the General  
6 and Special Conditions set forth in the removal-fill permit (Final Order on the ASC  
7 Attachment J-3).
- 8 c. The Department will provide updates to Council on the certificate holder’s  
9 implementation of the removal-fill permit and of any permit revisions at Council  
10 meetings, following submittal of the certificate holder’s six-month construction progress  
11 report per General Standard of Review Condition 3 or annual report per General  
12 Standard of Review Condition 4.
- 13 d. The removal-fill permit version approved when the facility begins operation may be  
14 revised or updated from time to time by agreement of the certificate holder and the  
15 Oregon Energy Facility Siting Council (“Council”). Such revisions or updates may be  
16 made without amendment of the site certificate. The Council authorizes the  
17 Department to agree to revisions or updates to this permit. The Department shall notify  
18 the Council of all revisions or updates, and the Council retains the authority to approve,  
19 reject, or modify any revisions or updates of the permit agreed to by the Department.  
20 [GEN-RF-04; Final Order on ASC, AMD1]

21  
22 *III.R.2.b Conclusions of Law*  
23

24 Based on the foregoing analysis, and subject to compliance with the existing and amended site  
25 certificate conditions described above, the Council finds that the RFA1 site boundary additions  
26 would comply with Oregon removal-fill law; that the removal-fill permit with conditions  
27 contained in the *Final Order on the ASC*, Attachment J-3 apply to the RFA1 site boundary  
28 additions; and that DSL shall continue to issue a removal-fill permit for the facility, with RFA1  
29 site boundary additions.  
30

31 **III.R.3. Water Rights**  
32

33 Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources  
34 Department (OWRD) administers water rights for appropriation and use of the water resources  
35 of the state. Under OAR 345-022-0000(1)(b), the Council must determine whether the facility,  
36 with proposed changes, would comply with the statutes and administrative rules identified in  
37 the project order. The project order identifies OAR 690, Divisions 310 and 380 (Water  
38 Resources Department permitting requirements) as the administrative rules governing use of  
39 water resources and water rights as applicable to the facility.  
40

41 *III.R.3.a Findings of Fact*  
42

43 In the *Final Order on the ASC*, the Council found that the certificate holder had established that  
44 it can obtain adequate water for construction and operation of the facility from municipal

1 water service providers in the vicinity of the facility, and would not need a groundwater permit,  
2 surface water permit, or water right transfer.<sup>312</sup>

3  
4 In the proceedings on the ASC, the certificate holder estimated that between approximately  
5 36.5 and 54.8 million gallons of water would be needed to construct the facility, depending on  
6 weather and other conditions during the 36-month construction period.<sup>313</sup> The certificate  
7 holder also estimated that approximately 30-gallons of water per day would be needed during  
8 operations for the facility’s restroom at the Longhorn Substation.<sup>314</sup>

9  
10 The scope and extent of construction activities involved associated with facility components  
11 located within the RFA1 site boundary additions would be similar to those evaluated In the  
12 *Final Order on the ASC*. As a result, no significant changes to the volume of water needed for  
13 construction are expected. In addition, no changes to facilities that would require connection to  
14 a water source during operations are proposed as part of RFA1, and the certificate holder has  
15 not requested approval to obtain water rights or other water use permits.

16  
17 *III.R.3.b Conclusions of Law*

18  
19 Because the RFA1 site boundary additions would not significantly increase demand for water  
20 during construction or operation of the facility, because the certificate holder previously  
21 demonstrated that it could obtain necessary water from municipal water providers under  
22 existing rights, and because the certificate holder has not requested authorization to obtain a  
23 water right or other water permit, the Council concludes that the RFA1 site boundary additions  
24 would not require a groundwater permit, surface water permit, or water right transfer. If such a  
25 permit is required by the certificate holder at a later time, a site certificate amendment would  
26 be required to review and consider such a permit application.

27  
28 **III.R.4. Fish Passage: OAR 635-412-0035**

29  
30 Pursuant to ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-  
31 0000), the Council must determine whether the facility complies with “all other Oregon statutes  
32 and administrative rules..., as applicable to the issuance of a site certificate for the facility.”  
33 Under OAR 635-412-0020, new construction affecting fish-bearing streams in Oregon will  
34 trigger fish passage rules and regulations and require review by the Oregon Department of Fish  
35 and Wildlife (ODFW). This requires upstream and downstream fish passage at all existing or  
36 new artificial obstructions in Oregon waters in which migratory native fish are currently or have  
37 historically been present, except under certain circumstances.

38  
39 *III.R.4.a Findings of Fact*

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<sup>312</sup> B2HAPPDoc31 Final Order on ASC and Attachment 2022-09-27. Page 731 of 10586

<sup>313</sup> B2HAPPDoc3-24 ASC 15\_Exhibit O\_Water\_Use\_ASC 2018-09-28, Table O-1a

<sup>314</sup> B2HAPPDoc3-24 ASC 15\_Exhibit O\_Water\_Use\_ASC 2018-09-28. Page 8 of 32

1 The RFA1 site boundary additions will not result in stream crossings where new artificial  
2 obstructions, or substantial modifications to existing obstructions, on any waters would occur.

3  
4 Council previously imposed Fish Passage Condition 1 (GEN-FP-01) requiring, in part, that the  
5 certificate holder confer with ODFW and seek concurrence on the evaluation of crossings and  
6 fish presence to ensure that if construction is required for a crossing of any fish-bearing stream,  
7 existing or historic, where review and approval has not yet occurred, that the approach review  
8 of and approval of fish passage designs is completed prior to construction.

9  
10 *III.R.4.b Conclusions of Law*

11  
12 Based on the foregoing findings of fact, the Council finds that the RFA1 site boundary additions  
13 will not trigger Fish Passage Requirements of OAR 635, Division 412.

1 **IV. CONCLUSIONS AND ORDER**

2  
3 Based on the findings of fact and conclusions of law included in this order, under OAR 345-027-  
4 0375, the Council finds that the preponderance of evidence on the record, including RFA1 and  
5 the record of the *Final Order on ASC* which includes the record of the contested case on  
6 Proposed Order on ASC, supports the following conclusions:

- 7  
8 1. The RFA1 site boundary additions comply with the applicable substantive criteria  
9 under the Council’s Land Use standard, as described in OAR 345-022-0030, from the  
10 date RFA1 was submitted.  
11  
12 2. The RFA1 site boundary additions comply with the requirements of the Energy  
13 Facility Siting Statutes ORS 469.300 to 469.520.  
14  
15 3. The RFA1 site boundary additions comply with all applicable standards adopted by  
16 Council pursuant to ORS 469.501, in effect on the date Council issues its Final Order.  
17  
18 4. The RFA1 site boundary additions comply with all other Oregon statutes and  
19 administrative rules identified in effect on the date Council issues its Final Order.  
20  
21 5. Taking into account the RFA1 site boundary additions, the amount of the bond or  
22 letter of credit required under OAR 345-022-0050 is adequate.  
23

24 Accordingly, the Council finds that the facility, with the proposed changes, complies with the  
25 General Standard of Review OAR 345-022-0000 and OAR 345-027-0375. The Council approves  
26 Request for Amendment 1 of the Site Certificate for the Boardman to Hemingway Transmission  
27 Line, and issues the 1<sup>st</sup> Amended Site Certificate included as Attachment 1 to this order.  
28

29 Issued September 22, 2023

30  
31 ENERGY FACILITY SITING COUNCIL  
32  
33

Kent Howe  
By: [Kent Howe \(Sep 28, 2023 12:17 PDT\)](#)  
\_\_\_\_\_  
Kent Howe, EFSC Vice Chair

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38

1 **ATTACHMENTS:**

2

3 Attachment 1: First Amended Site Certificate (red line)

4 Attachment 2: DPO Comments

5 Attachment 3: Certificate Holder Responses to DPO Comments

6 Attachment B-5: Road Classification Guide and Access Control Plan Supplement

7 Attachment G-4: Draft Amended Hazardous Waste Management and Spill Response Plan

8 Attachment G-5: Draft Amended Framework Blasting Plan

9 Attachment P1-4: Amended Vegetation Plan

10 Attachment P1-6: Draft Amended Fish and Wildlife Habitat Mitigation Plan

11 Attachment 7-16: Wildfire Mitigation Plan

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**Notice of the Right to Appeal**

The right to judicial review of this final order approving an amendment to the site certificate is governed by ORS 469.403 and OAR 345-027-0372(5). Pursuant to ORS 469.403(3), the Oregon Supreme Court has jurisdiction for review of the Council's approval of an application for an amended site certificate. To appeal you must file a petition for judicial review with the Oregon Supreme Court within 60 days from the day this final order approving the amendment to the site certificate was served. Under ORS 469.403(1), the date of service is the date a copy of this order was delivered or mailed, not the date you received it. The date of service for any persons to whom this final order was not e-mailed or mailed is the date it was posted to the Oregon Department of Energy Siting webpage. If you do not file a petition for judicial review within the applicable time period noted above, you lose your right to appeal.