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

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| IN THE MATTER OF THE SITE CERTIFICATE | ) | |
| FOR THE SUMMIT/WESTWARD PROJECT | ) | FINAL ORDER |
| REQUEST FOR AMENDMENT NO. ONE | ) | |

**Summary**
The Energy Facility Siting Council ("Council") approves this amendment request.

## I. Summary and Background of the Request for Amendment

On July 10, 2003, Westward Energy, LLC, (the "Certificate Holder") submitted to the Council its First Request to Amend the Site Certificate for the Summit/Westward Project (the "Summit Project" or "Project"). The Certificate Holder proposed to amend its Site Certificate to allow it an option to use the Clatskanie People's Utility District ("CPUD") as an alternative transmission service provider through a transmission route to a new Bradbury Substation and subsequent direct transmission on a new line to CPUD's Wauna Substation for interconnection with the Bonneville Power Administration's ("BPA") Driscoll switchyard.

The Council granted the Site Certificate for the facility on October 3, 2002. Construction of the facility has not begun.

### A. Name and Address of the Certificate Holder

Westward Energy, LLC, is the Site Certificate Holder for the Project. Westward Energy, LLC's, address is as follows:

Westward Energy, LLC
Brett E. Wilcox, Manager
3313 W 2nd
The Dalles, Oregon 97058

Eric Gjelde, director of Summit Power NW, LLC, is the individual responsible for submitting the request. His address and phone number are as follows:

Eric Gjelde
Evergreen Center, Suite E
P.O. Box 810
Clatskanie, Oregon 97016
(503) 728-1817

**B. Description of the Facility**

The facility is a 520 megawatt natural-gas-fired, combined-cycle generating facility. The facility will be located in Columbia County, Oregon, about 4.5 miles north of Clatskanie, Oregon.

## II. Description of the Proposed Amendment

As described in Section C.1.b. of the Site Certificate, the Summit Project would deliver electric power to the regional grid at the Bonneville Power Administration's Allston Substation by interconnecting with a 230-kV transmission line to be erected by Portland General Electric ("PGE") Transmission Group pursuant to a Site Certificate for PGE's Port Westward Generating Project. The current Summit/Westward Project Site Certificate authorizes the Certificate Holder to construct and operate only the Summit/Westward on-site electrical transmission line that connects to the PGE line.

The proposed change to the Site Certificate would add an option of a transmission line alternative to allow for connection between the Summit Project site and a new substation, the Bradbury Substation. The Certificate Holder would construct and operate the transmission line to the Bradbury Substation.

CPUD would construct the Bradbury Substation. It would build it in the temporary laydown area for the Summit Project when the Summit Project no longer needed the land for temporary laydown. CPUD would also construct an access road from the energy facility to the Bradbury Substation.

CPUD would construct and use the Bradbury Substation to provide service to new industrial loads that are being located in the Port Westward Industrial Park and to provide reinforcement for the existing CPUD electric distribution system in the Clatskanie and Delena areas. CPUD would also construct a 230 kV line to connect the Bradbury Substation to the CPUD's existing 230 kV Wauna Substation. The Wauna Substation is interconnected to the BPA 230 kV transmission grid through the BPA Driscoll switchyard. The Bradbury Substation and transmission facilities to be constructed by CPUD would be used to integrate power from the Summit Project under the proposed alternative.

This alternative electric transmission line from the Summit Project to the Bradbury Substation would be about 300 feet long and would not require any poles or towers outside of the energy facility site. The alternative electric transmission line would be a related or supporting facility to the Summit Project.

The Council finds that the Bradbury Substation and the transmission line from the Bradbury Substation to CPUD's Wauna Substation as described are not under the Council's jurisdiction, based on two representations by Summit and CPUD. First, CPUD is planning to build the Bradbury Substation to serve other planned uses in the Port Westward Industrial Area. Second, the 230 kV transmission line that CPUD plans to build from the Bradbury Substation to the Wauna Substation would have fewer than 10 miles of corridor outside of an existing BPA 115 kV transmission line right-of-way, pursuant to ORS 469.300(10)(a)(C)(ii).

The proposed change to allow an option for a transmission between the Summit Project and the Bradbury Substation is an alternative to the existing transmission line currently described in the Site Certificate, but the proposed change would not eliminate or otherwise prevent the Certificate Holder from constructing or operating as currently authorized in the Site Certificate.

The Certificate Holder made its amendment request pursuant to OAR 345-027-0050, which requires site certificate holders to seek amendments when they propose to construct the facility in a manner that differs from the description in the site certificate, if the proposed change "could result in a significant adverse impact that the Council did not evaluate and address in the final order * * *." OAR 345-027-0050(1)(a)-(b). While the alternative method of transmission from the Summit Project to the Bradbury Substation could create an adverse impact not addressed by the Council, as discussed further below, the alternative will meet Council standards, as demonstrated below.

## III. Procedural History

### A. Department of Energy Review Steps

#### 1. The Certificate Holder's Request

The Certificate Holder submitted its First Request to Amend the Site Certificate on July 10, 2003. It submitted clarifying information in two letters, both dated July 30, 2003. The first letter stated that the easement for the alternative electrical transmission line would be 60 feet wide and that the alternate transmission line would require one transmission tower no more than 125 feet high to be located on the west side, but within the energy facility site. It provided a map that showed the zoning under and adjacent to the transmission line and a map that corrected page 1 of 2 of Exhibit B of the request. The letter also clarified issues relating to consideration of alternative routes for the alternative transmission line.

A second letter dated July 30, 2003, which the Department of Energy ("Department") received on December 22, 2003, provided another map showing a new location for the Bradbury Substation. That letter, which forms the basis for this Order, shows that the Bradbury Substation will be located within the area identified as the temporary laydown area for the Summit Project. In an e-mail dated January 2, 2004, the Certificate Holder clarified that CPUD would build the Bradbury Substation after the Summit Project no longer needed use of that part of the temporary laydown area.

The new map also indicated a roadway from the energy facility site to the substation. In its e-mail of January 2, 2004, the Certificate Holder clarified that CPUD would build the roadway between the edge of the energy facility site and the substation to serve the substation. Therefore, the roadway is not a related or supporting facility for the Summit Project.

#### 2. Notice to the Site Certificate Holder

On July 23, 2003, the Department mailed notice to the Certificate Holder, pursuant to OAR 345-027-0070(1)(c), that it would issue a proposed order no later than September 5, 2003. However, the Division of State Lands ("DSL") submitted comments on July 31,

2003, that indicated the CPUD would likely need a removal-fill permit for the Bradbury Substation. When the Certificate Holder did not reply to the DSL comments by September 5, 2003, the Department notified the Certificate Holder that the amendment request would require extended review. The Department indicated that the length of the review would be determined by when the Certificate Holder submitted revisions that adequately addressed the issues raised by DSL. The Department also alerted the Certificate Holder that the Council had updated two standards since the Certificate Holder had submitted its original request and that it needed to address the changes.

The Certificate Holder submitted a reply to the Department on December 22, 2003, that addressed the DSL issue, but raised other questions based on the new location of the substation. It also failed to address the new standards. The Certificate Holder submitted complete information on January 2, 2004.

**3. Review by Other Agencies, Local Governments and Tribes**

The Department, pursuant to OAR 345-027-0070(1)(a), identified potentially affected agencies, local governments and tribes and asked them to review the request for amendment. The Department mailed a copy of the amendment request along with a review report form on July 10, 2003, to those agencies, local governments and tribes and asked them to reply by July 31, 2003. The Department sent the request to the following agencies, local governments and tribes:

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| Department of Geology and Mineral Industries | Department of Fish and Wildlife |
| Division of State Lands | Department of Agriculture |
| Water Resources Department | Department of Parks and Recreation |
| State Historic Preservation Department | Department of Environmental Quality |
| Department of State Fire Marshall | Public Utilities Commission |
| Building Codes Division | Department of Forestry |
| Northwest Power and Conservation Council | Department of Transportation |
| Dept. of Land Conservation and Development | Department of Aviation |
| City of Astoria | City of Rainier |
| City of Saint Helens | City of Clatskanie |
| City of Columbia City | Columbia County |
| Confederated Tribes of the Grand Ronde | Clatsop County |
| Confederated Tribes of the Warm Springs | Chinook Indian Tribe |
| Confederated Tribes of the Siletz | |

**4. Replies**

One agency stated objections to the requested amendment as first submitted. In a letter dated July 31, 2003, Dana Field, wetlands planner for DSL, noted the likelihood of wetlands at the site of the proposed Bradbury Substation. Although CPUD's Bradbury Substation is not a related or supporting facility, as described in Section II, above, CPUD must provide evidence, pursuant to OAR 345-022-0010(3), that it is reasonably likely to obtain necessary permits to construct it. The DSL letter raised the issue that CPUD may need a removal/fill permit from DSL for the Bradbury Substation and the access road to it, but CPUD had provided it no information about wetlands at the site. Therefore, the DSL

letter alerted the Council that it could not state that CPUD would be reasonably likely to receive a necessary permit. The letter also raised other issues not related to the amendment request.

The map that the Certificate Holder submitted on December 22, 2003, shows that CPUD would build the Bradbury Substation on land that been delineated in the Final Order for a temporary laydown area. The new location for the substation and its access road avoids delineated wetlands.

On August 1, 2003, Jim Holycross, planner II, Planning Division, Department of Land Development Services, Columbia County, wrote that there is a reasonable likelihood that the County will approve a conditional use permit for the Bradbury Substation and the section of the transmission line from the substation to the Wauna Substation that is in Columbia County. The new location for the substation is in the same zone and adjacent to the site addressed in Mr. Holycross's letter. Therefore, the Council finds that Mr. Holycross's conclusion applies equally to the new location for the substation.

On August 13, 2003, Randy Trevillian, acting director, Department of Community Development, Clatsop County, wrote that the section of the transmission line that is in Clatsop County is an allowed use under applicable Clatsop County Zoning Ordinance requirements and standards.

**5. Initial Public Notice**

On July 10, 2003, the Department mailed a notice of the request for amendment to all persons on the Council's general mailing list and persons on the Council's special mailing list for the Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to the Department by July 31, 2003.

**6. Public Comments on the Request**

The Department received one comment about the amendment request. Mr. Gilbert Hayes of The Dalles, Oregon, wrote in support of the request based on the benefits of cooperation between Westward Energy and CPUD. He also noted the benefit of the jobs that the plant would create.

**7. Proposed Order**

The Department issued its proposed order on January 2, 2004.

**8. Public Notice of Proposed Order**

On January 2, 2004, the Department mailed a notice of its proposed order to all persons on the Council's general mailing list and persons on the Council's special mailing list for the Project, pursuant to OAR 345-027-0070(1)(b). The notice asked for comments to the Department by February 2, 2004.

**9. Public Comments on the Proposed Order**

The Department received no comments on the proposed order by the end of the comment period on February 2, 2004.

## B. Council Review Steps

**1. Council Notice**

The Department mailed the request for amendment and a memo summarizing the request to the Council on July 10, 2003. The Department mailed the proposed order to the Council on January 2, 2004. It also mailed the map showing the final location of the Bradbury Substation.

**2. Council Action**

The Council took action on the amendment request at its regular Council meeting in Klamath Falls, Oregon, on February 13, 2004.

# IV. Proposed Changes to Site Certificate

OAR 345-027-0060(1)(d) requires that a certificate holder must include in a request for an amendment to a Site Certificate: "The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment."

## A. Site Certificate Holder's Proposed Changes

The Certificate Holder proposed changes to specific conditions, but its request did not show both deletions and new text in each case. The following shows both for clarity. The text reflects clarifications that the Certificate Holder provided in its first letter of July 30, 2003, it's second letter dated July 30, 2003, but delivered by facsimile on December 22, 2003, and an e–mail on January 2, 2004.

Additions are double-underlined and deletions are shown by a strikethrough. Note that the Site Certificate defines Westward Energy, LLC, as "Summit Westward" or the "certificate holder." That convention is followed in the proposed conditions.

**1. Insert new paragraph in Section C.1.a at line 36 on page 3 as follows:**

> As an alternative to the interconnection described above, the Summit Project would interconnect with the transmission grid at the proposed Bradbury Substation to be constructed by Clatskanie People's Utility District ("CPUD"), which would be located within the adjacent laydown area for the Summit Project. Under this alternative, CPUD would also construct a 230 kV line to connect the Bradbury Substation to the CPUD's existing 230 kV Wauna Substation. The Wauna Substation is interconnected to the BPA 230 kV transmission grid through the BPA Driscoll switchyard.

**2. Insert new paragraphs in Section C.1.b at line 6 on page 6 as follows:**

As an alternative to the transmission described above, the Summit Project would interconnect with the transmission grid at the proposed Bradbury Substation that CPUD would construct. Under this alternative, CPUD would also construct a 230 kV line to connect the Bradbury Substation to the CPUD's existing 230 kV Wauna Substation. The Bradbury Substation would serve as the Summit Project's first point of interconnection with the grid once CPUD completes construction of the interconnecting transmission line to the Wauna Substation. The Wauna Substation is interconnected to the BPA 230 kV transmission grid through the BPA Driscoll switchyard. CPUD would construct the Bradbury Substation within the adjacent laydown area for the Summit Project when Summit no longer needs use of that portion of the area, and CPUD would construct an access road from the Summit Project to the Bradbury Substation.

This alternative would also involve an alternative electric transmission line that the Certificate Holder would construct from the Summit Project to the Bradbury Substation as a related or supporting facility. The line would be about 300 feet long and would not require any poles or towers outside of the energy facility site. The alternative electric transmission line would originate at the Summit Project energy facility site and connect to the Bradbury Substation on land within the laydown area.

**3. Insert new paragraph in Section C.2.b at line 45 on page 6 as follows:**

Should Summit/Westward elect the transmission alternative described above, the alternative electric transmission line would be about 300 feet long and would not require any poles or towers outside of the energy facility site. The alternative electric transmission line would originate at the Summit Project site and would connect to the Bradbury Substation on land within the laydown area. The transmission line would be located in Section 22, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, and could potentially require an off-site right-of-way. While the laydown area is currently owned by the Port and leased to Summit/Westward on a year-to-year basis, Summit/Westward has the option to extend the lease to coincide with the life of the Summit Project. Should Summit/Westward choose not to exercise its option to extend the lease for the laydown area, the Port has agreed to grant to Summit/Westward a utility line easement to allow transmission lines to cross from the Project to the Bradbury Substation. The transmission line corridor would be no more than 60 feet wide and the line would be no more than 125 feet high.

**4. Delete Condition D.2(7) on page 7 and add a new Condition D.2.(7) as follows:**

(7) ~~Before beginning construction of the energy facility, the certificate holder shall submit to the Department a contract for transmission service requiring PGE/T to comply with any requirements imposed under the PWGP site certificate.~~

(7) Before beginning construction of the energy facility, the certificate holder shall:

(a) submit to the Department a contract for transmission service requiring PGE/T to comply with any requirements imposed under the PWGP site certificate; or

(b) in the event that the certificate holder elects to contract for transmission service with Clatskanie People's Utility District (CPUD) such that electricity will be transmitted from the Summit Project to the Bradbury Substation, submit to the Department a contract for transmission service with CPUD from the Bradbury Substation directly to the CPUD Wauna Substation.

**5. Delete Condition D.2(8) on page 7 and add a new Condition D.2.(8) as follows:**

(8) ~~The certificate holder shall not begin operation of the energy facility until the Port Westward to BPA Allston Substation Transmission Line is constructed in compliance with the PWGP site certificate, which contains severable conditions for the segment of the transmission line between the energy facility and the BPA Allston Substation.~~

(8) The certificate holder shall not begin operation of the energy facility until:

(a) the Port Westward to BPA Allston Substation Transmission Line is constructed in compliance with the PWGP site certificate, which contains severable conditions for the segment of the transmission line between the energy facility and the BPA Allston Substation; or

(b) in the event that the certificate holder elects to contract for transmission service with CPUD such that electricity will be transmitted from the Summit Project to the Bradbury Substation, the transmission line from the Bradbury Substation to the CPUD Wauna Substation is constructed.

**6. Revise Condition D.2(9) on page 8 as follows:**

(9) In the event that the certificate holder elects to contract for transmission service with PGE/T, the ~~The~~ certificate holder shall apply to amend its site certificate to include the Summit Project to BPA Allston Substation Transmission Line if PGE, or any successor-in-interest, abandons its efforts to obtain a site certificate for the PWGP or allows the site certificate to expire.

**7. Revise Condition D.7(2) on page 12 as follows:**

(2) The certificate holder shall site and construct the energy facility and either the Summit/Westward on-site electrical transmission line or the alternate electric transmission line to minimize impacts to vegetation and habitat. The energy facility and related or supporting facilities shall be located within disturbed Habitat Category 6, Habitat Category 4 palustrine emergent wetlands and drainage ditches, and Habitat Category 3 tame pastureland and perennial grassland.

**8. Revise Condition D.7(3) on page 12 as follows:**

(3) The certificate holder shall design and site ~~the Summit/Westward~~any on-site transmission towers to minimize potential impacts to raptors and waterfowl, following the Avian Power Line Interaction Committee Guidelines.

**9. Revise Condition D.8(1) on page 15 as follows:**

(1) Before beginning construction of the Summit/Westward on-site electrical transmission line or the alternate electric transmission line, the certificate holder shall employ measures to protect raptors in the design and construction of any related or supporting transmission line. It shall design all energized transmission conductors with visual line enhancers and adequate spacing to reduce the potential for electrocution of raptors and other birds as per *Suggested Practices for Raptor Protection on Power Lines* (Avian Power Line Interaction Committee, 1996).

**10. Revise Condition F.1.a(1) on page 25 as follows:**

(1) During construction of the energy facility, either the Summit/Westward on-site electrical transmission line or the alternate electric transmission line, or other related or supporting facilities, the certificate holder shall schedule most heavy construction to occur during daylight hours. Construction work at night shall be limited to work inside buildings and other structures when possible.

**11. Revise Condition F.1.a(2) on page 25 as follows:**

(2) During construction of the energy facility, either the Summit/Westward on-site electrical transmission line or the alternate electric transmission line, or other related or supporting facilities, the certificate holder shall require contractors to equip all combustion engine-powered equipment with exhaust mufflers.

**12. Revise Condition F.1.a(3) on page 25 as follows:**

(3) During construction of the energy facility, either the Summit/Westward on-site electrical transmission line or the alternate electric transmission line, or other related or supporting facilities, the certificate holder shall establish a complaint response system at the construction manager's office to address noise complaints.

**13. Revise Condition F.1.c(4) on page 27 as follows:**

(4) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the Summit/Westward on-site transmission line or the alternate electric transmission line.

**14. Revise Condition F.1.c(5) on page 27 as follows:**

(5) The certificate holder shall take reasonable steps to reduce or manage exposure to electromagnetic fields ("EMF"), consistent with Council findings presented in the "Report of EMF Committee to the Energy Facility Siting Council," March 30, 1993, and subsequent findings. Effective on the date of this site certificate, the certificate holder shall provide information to the public, upon request, about EMF levels associated with the energy facility and the Summit/Westward on-site electrical transmission line or the alternate electric transmission line.

**15. Revise Condition F.1.c(6) on page 27 as follows:**

(6) At least 30 days before beginning preparation of detailed design and specifications for the Summit/Westward on-site electrical transmission line or the alternate electric transmission line, and the related or supporting natural gas pipeline, the certificate holder shall consult with the Oregon Public Utility Commission ("PUC") staff to ensure that its designs and specifications are consistent with applicable codes and standards.

**B. Department of Energy's Conforming Changes**

The Department recommended that the Council make certain changes to conform other parts of the Site Certificate to the requested amendment.

**1. Revise Site Certificate cover page title as follows:**

First Amended Site Certificate for the Summit/Westward Project.

**2. Revise First Page Title as follows:**

First Amended Site Certificate Summit /Westward Project.

**3. Revise second and third paragraphs of "A. Introduction" on page 1 as follows:**

The findings of fact, reasoning and conclusions of law underlying the terms and conditions of this Site Certificate are set forth in the Council's Final Order in the Matter of the Application for a Site Certificate for the Summit/Westward Project, which the Council granted on October 3, 2002, and the Council's Final Order in the Matter of the Site Certificate for the Summit/Westward Project Request for Amendment No. One, which the Council granted on February 13, 2004, and which by ~~this reference~~ ~~is~~these references are incorporated herein (collectively, the "Final Orders."). [Amendment No. 1]

In interpreting this Site Certificate, any ambiguity shall be clarified by reference to, and in the following priority: (1) this Site certificate; (2) the record of the proceedings that led to the Final Order(s); and (3) the Application for a Site Certificate for the Summit/Westward Project~~, which the Department of Energy ("Department") filed on April 3, 2002~~. As used in this Site Certificate, the "application for site certificate" or the "ASC" includes: (a) the Restated Application for a Site Certificate-for the Summit/Westward Project, which the Department of Energy ("Department") filed on April 3, 2002; and, (b) the certificate holder's First Request to Amend the Site Certificate for the Summit/Westward Project, which the certificate holder submitted on July 10, 2003. Also as used in this Site Certificate, "Site Certificate" means the Site Certificate as amended by the Council. [Amendment No. 1]

**4. Revise Condition B(3) as follows:**

(3) This Site Certificate does not address, and is not binding with respect to, matters that were not addressed in the Council's Final Order(s). These matters include, but are not limited to: building code compliance; wage, hour and other labor regulations; local government fees and charges; other design or operational issues that do not relate to siting the Summit Project; and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council. ORS 469.401(4) and 469.503(3). [Amendment No. 1]

**5. Revise Condition C.1.b, line 5 on page 6 as follows:**

As a related or supporting facility for which PGE will provide permitting and construction services, the site certificate for the Summit/Westward Project's transmission line is a "third-party permit." In this case the permit is the PWGP site certificate. Our findings are therefore part of the discussion of the EFSC Organizational Expertise Standard, OAR 345-022-0010(3), located at Section D.2.c

of the Final Order, dated October 3, 2002, approving this Site Certificate. [Amendment No. 1]

**6. Revise Condition C.1.b, "Electric Transmission Line " discussion, paragraph one beginning at line 23 on page 5, as follows:**

**Electric Transmission Line.** The Summit Project has two options for delivering electric power to the regional grid, as described below. The certificate holder shall choose one option prior to beginning construction. [Amendment No. 1]

Under one option, the~~The~~ Summit Project would deliver electric power to the regional grid at the BPA Allston Substation by interconnecting with a 230-kV transmission line to be erected by PGE after issuance of an approved site certificate for the PWGP. PGE would install a 230-kV circuit that terminates on a "dead-end" structure on the Summit Project site. Summit/Westward would construct a single-circuit 230-kV transmission line, about 1,000 feet long, entirely on the 53-acre parcel it has leased from the Port, to establish a connection between the energy facility collector yard and the PGE "dead-end" structure (the "Summit/Westward on-site electrical transmission line"). This transmission line would be located entirely on the Summit Project site and would require no off-site right-of-way. ~~Conditions contained in this Site Certificate with respect to the transmission line apply only to the Summit/Westward on-site electrical transmission line.~~ [Amendment No. 1]

**7. Revise "Transmission Line Corridor" discussion in Condition C.2.b at line 39, page 6, as follows:**

**Transmission Line Corridor.** One option for the ~~The proposed~~ transmission line would interconnect with a "dead-end" structure to be erected on the Summit Project site about 1,000 feet east of the Summit Project collector yard. ~~The~~This transmission line option would be located in Section 22, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, and would require no off-site right-of-way. ~~Conditions contained in this Order with respect to the transmission line apply only to the Summit/Westward on-site electrical transmission line.~~ [Amendment No. 1]

**Discussion**. The Council adopts changes in numbers 1 through 7 above to update references, clarify the transmission options and to eliminate ambiguity.

**8. Revise Condition D.5(3) as follows:**

(3) Upon completion of construction of the facility and upon retirement of the facility, the certificate holder shall restore vegetation to the extent practicable and shall landscape portions of the site disturbed by construction and retirement in a manner compatible with the surroundings and proposed use. [Amendment No. 1]

**Discussion.** The Council adopts this change to bring the condition into compliance with the revised standard for soil protection.

**9. Revise proposed new Condition D.2.(8) as follows:**

(8) The certificate holder shall not begin operation of the energy facility until:

(a) in the event that the certificate holder elects to contract for transmission service with PGE/T, the Port Westward to BPA Allston Substation Transmission Line is constructed in compliance with the PWGP site certificate, which contains severable conditions for the segment of the transmission line between the energy facility and the BPA Allston Substation; or [Amendment No. 1]

(b) in the event that the certificate holder elects to contract for transmission service with CPUD such that electricity will be transmitted from the Summit Project to the Bradbury Substation, the Bradbury Substation and the transmission line from the Bradbury Substation to the CPUD Wauna Substation ~~is~~are constructed. [Amendment No. 1]

**Discussion**. The Council adopts this change to clarify the choice between the two transmission routes and adds a requirement that the Bradbury Substation be constructed before the Certificate Holder can begin operation if the Certificate Holder contracts with CPUD to transmit electricity.

**10. Revise Condition D.2(9) on page 8 as follows:**

(9) In the event that the certificate holder elects to contract for transmission service with PGE/T, the ~~The~~ certificate holder shall apply to amend its site certificate to include the Summit Project to BPA Allston Substation Transmission Line if PGE, or any successor-in-interest, ~~abandons its efforts to obtain a site certificate for the PWGP or~~ allows the PWGP site certificate to expire. [Amendment No. 1]

**Discussion.** The Council deletes reference to "abandoning efforts to obtain a site certificate" because PGE has a site certificate for PWGP. That conditional case is moot.

**11. Revise Condition D.4(2) as follows:**

(2) The certificate holder shall provide for parking and loading spaces in compliance with the requirements of Columbia County Zoning Ordinance §1400, except as otherwise noted in Section VI of Attachment E of the Final Order, dated October 3, 2002, approving the Site Certificate, regarding variances. [Amendment No. 1]

**12. Revise Condition H(2) on page 31 as follows:**

(2) The certificate holder shall ensure that related and supporting facilities are constructed in the corridors described in the Final Order(s) and as shown in the ASC and in the manner described in the Final Order(s) and the ASC. [Amendment No. 1]

**13. Revise Condition H(4) on page 31 as follows:**

(4) If any provision of this agreement and certificate is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement and certificate did not contain the particular provision held to be invalid. In the event of a conflict between the conditions contained in the Site Certificate and the Council's Final Order(s), the conditions contained in this Site Certificate shall control. [Amendment No. 1]

**14. Identification of the Amendment Number in the Site Certificate.**

Following the convention of the Council, the Council inserts the number of the amendment at the end of each modified condition in the Site Certificate.

**Discussion.** The Council adopts the changes in 11 through 14 to update references and to conform the requested amendments to the Site Certificate.

**Conclusion.** The Council adopts the amendments to Site Certificate conditions discussed in Section IV(A) and (B), pursuant to the findings in Section V.

## V. Compliance with Siting Standards

In addressing the standards set forth in this section, the Council assesses the impacts of the changes proposed in the amendment request and the compliance with applicable standards, pursuant to OAR 345-027-0070(9).

OAR 345-027-0070(9) provides:

> In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:
>
> (a) For an amendment that enlarges the site, the Council shall consider, within the area added to the site by the amendment, whether the facility complies with all Council standards; * * *

This is an amendment that enlarges the site by adding a transmission line that goes off the energy facility site. The following discussion of applicable standards, substantive criteria, state statutes, administrative rules, and local government ordinances addresses the current versions of Chapter 345, Divisions 22 and 24, rules and other applicable criteria.

## A. Organizational Expertise Standard, OAR 345-022-0010

This standard has four paragraphs. The first two paragraphs, -0010(1) and -0010(2), relate to application qualifications and capability and the final two paragraphs, -0010(3) and -0010(4), relate to third-party permits.

### Applicant Qualification and Capability, OAR 345-022-0010(1)

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

**Discussion.** As described in the Final Order adopted October 3, 2002, the Certificate Holder's reliance on Summit Power NW, LLC, for development of the Summit Project, and the Certificate Holder's intentions to enter into a turnkey Engineering, Procurement, and Construction Contract and turnkey Operations and Maintenance Contract with Siemens Westinghouse enabled the Council to find that the Certificate Holder met the requirements of OAR 345-022-0010(1). This amendment request to add a transmission alternative will not significantly change general construction procedures, plans, or specifications, nor will it impact Westward Energy's qualifications as the Certificate Holder.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0010(1).

### Applicant Qualification and Capability OAR 345-022-0010(2)

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

**Discussion**. OAR 345-022-0010(2) is not addressed herein because the Certificate Holder does not have an ISO 9000 or 14000 certified program.

> **Third-Party Services and Permits, OAR 345-022-0010(3)**
> If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

**Discussion.** The Final Order dated October 3, 2002, notes that with two exceptions the Certificate Holder will itself obtain all necessary permits and approvals. The first exception involves the transmission line that would run from the Summit Project to the BPA Allston Substation. As indicated in that Final Order, the Certificate Holder would rely on Portland General Electric Transmission Group ("PGE/T") to obtain the necessary permit and authorization from the Council for the transmission line. The second exception involves a new diversion point for water that the Certificate Holder would purchase from the Port of St. Helens (the "Port"). As indicated in that Final Order, the Certificate Holder would rely on the Port to obtain the necessary authorization from the Oregon Water Resources Department to allow withdrawal of water from groundwater wells for the benefit of the Summit Project. The amendment request does not affect those existing third-party permits.

With this amendment request, the Certificate Holder would have the option of relying on CPUD to obtain the necessary permits and approvals to build the Bradbury Substation and a transmission line from the Bradbury Substation directly to the CPUD Wauna Substation substantially on the route shown in Exhibit C of the First Amendment Request. While this transmission line is not a related or supporting facility for the Summit Project, if CPUD were not providing the transmission services, the electrical transmission line to interconnect at Wauna would be a related or supporting facility. Also, if CPUD were not providing transmission services, there would be no need for a new substation.

Because part of the transmission line route is in an existing BPA right-of-way, BPA may be the party obtaining a permit for a section of the line. For simplicity, this discussion addresses CPUD as if it were the only party that might need to obtain a permit, but the findings apply to the likelihood of BPA obtaining a permit as well.

**Columbia County:** On August 1, 2003, Jim Holycross, planner II, Planning Division, Department of Land Development Services, Columbia County, wrote the Department that there is a reasonable likelihood that Columbia County will be able to approve a conditional use permit to CPUD for the Bradbury Substation and the portion of the transmission line in the county.

As noted above, the new location for the substation is in the same zone and adjacent to the site addressed in Mr. Holycross's letter. Therefore, the Council finds that Mr. Holycross's conclusion applies equally to the new location for the substation.

**Clatsop County:** On August 13, 2003, Randy Trevillian, acting director, Department of Community Development, Clatsop County, wrote that the section of the transmission line that is in Clatsop County is an allowed use under applicable Clatsop County Zoning Ordinance Requirements and standards.

**DSL:** The new location for the Bradbury Substation avoids delineated wetlands. CPUD is also proposing to build an electrical transmission line between the Bradbury and Wauna Substations. CPUD has provided a broadly-defined route, but it is still in planning and negotiation phases for final route selection. At this stage, CPUD has a great deal of flexibility in designing the route and placing towers to avoid wetlands. While it is conceivable that CPUD might potentially require a removal fill permit somewhere along the transmission route, the Council does not delay this amendment until the specific route is finalized and all wetlands are delineated. In this instance, it is reasonable to conclude that CPUD will be able to design the transmission line to enable it to comply with DSL requirements, even if that requires obtaining a removal/fill permit.

The Council finds that there is a reasonable likelihood that CPUD will acquire the necessary permits, pursuant to OAR 345-022-0010(3).

**CPUD Contract:** The Certificate Holder reported that CPUD has been planning for some time to establish the Bradbury Substation and associated transmission facilities in the Port Westward area. It stated that CPUD has had several preliminary discussions with the BPA Transmission Business Line regarding the proposed facilities. The Certificate Holder summarized the most recent discussions with BPA that focused on transmission facilities capable of integrating power from the Summit Westward Project at CPUD's Wauna Substation and BPA's Driscoll switch yard as follows:

> On June 3, 2003, representatives of CPUD met with BPA to discuss construction of a transmission line from the proposed Bradbury Substation to the District's existing Wauna Substation. The Wauna Substation interconnects with the BPA transmission grid at the Driscoll switch yard.
>
> CPUD discussed these proposed facilities in detail with BPA and explained that the facilities would allow CPUD to supply new retail loads in the Port Westward area, increase reliability on the CPUD's distribution system, and potentially integrate power from the Summit/Westward Project. CPUD and BPA also discussed the potential impact of the proposed facilities on the BPA transmission system. BPA explained the studies that had been undertaken with regard to interconnection at the Allston Substation. BPA indicated that it had informally examined CPUD's proposed interconnection at the Wauna Substation/Driscoll switchyard. BPA suggested that the potential impact to the BPA transmission system would appear to be substantially the same between the two interconnection options. BPA

indicated that further study would be necessary particularly with regard to the potential impact on the BPA transformer at Clatsop, Oregon.

CPUD and BPA also discussed potential placement of the new CPUD transmission line within the BPA transmission line corridor. One option would involve replacement of a section of the existing BPA wood structure transmission line, which operates at 115 kV, with a new metal monopole line that would carry both BPA's 115 kV and CPUD's new 230 kV circuits in the existing BPA transmission line corridor. This idea was received with interest by BPA and a meeting was arranged to inspect the proposed transmission line route.

On June 10, 2003, CPUD representatives met with BPA representatives to inspect the proposed transmission line route from the Bradbury Substation site to the Wauna Substation. BPA made no commitments during the site tour. However, BPA raised no issues that CPUD could not address during the design phase of a transmission line that would be located in the proposed corridor.

CPUD has also retained Power Engineers, an independent consulting firm, to provide design engineering and construction services for the transmission facilities. Power Engineers has inspected the proposed transmission line route and reviewed CPUD information regarding the proposed facilities. On June 19, 2003, CPUD received a preliminary assessment of construction feasibility, schedule and cost for the proposed transmission line.

On July 30, 2003, Department staff asked the BPA account executive for CPUD to review the summary stated above. The account executive confirmed the substance of the summary as it related to BPA's consultations with CPUD.

BPA is obligated by its open access tariffs, ultimately, to provide transmission services to those who wish to transmit power over the BPA system. The Council finds that is reasonably likely that CPUD will obtain BPA approval should CPUD decide to proceed with the transmission service proposal as described in this Order.

In Exhibit D of its amendment request, the Certificate Holder provided a letter from Mr. Gregory A. Booth, general manager of CPUD, dated July 3, 2003. Mr. Booth wrote that CPUD is willing to negotiate contractual arrangements for the transmission of power from the Project to interconnection with BPA. In his letter, Mr. Booth states the CPUD's preferred alternative is the transmission path described in the application for amendment. He states that it is CPUD's intention to build the Bradbury Substation. He also states that the "preferred transmission connection would be to construct a 230 kV transmission line to connect the Bradbury Substation with the District's existing 230 kV Wauna Substation."

In his letter, Mr. Booth also includes general assertions relating to CPUD's intentions and authority to provide transmission service on alternate paths to points of interconnection with BPA. Neither the application for amendment nor Mr. Booth's letter contain any specific evidence about alternate paths that would allow the Council to determine whether

those routes would comply with OAR 345-022-0010(3). The Council notes that an alternate transmission line would be an energy facility potentially subject to Council jurisdiction. Thus, a blanket approval of a transmission contract with CPUD over any route that CPUD decides to build might place the Council in the position of finding that CPUD would be reasonably likely to obtain a site certificate from the Council for an unidentified facility.

Furthermore, OAR 345-027-0060(1)(c)-(f) requires a Certificate Holder that requests an amendment to provide a detailed description of the proposed change, to provide specific language for amending the Site Certificate, to identify the standards relevant to the proposed change, and to provide an analysis of the proposed change. The Certificate Holder has met these criteria for one specific transmission route for eventual interconnection with BPA.

For these reasons, the Council approves only the specific route described in the proposal presented in the First Amendment Request by the Certificate Holder. Specifically, the condition contained in this Order and the First Amended Site Certificate that allows the Certificate Holder to contract for transmission services from CPUD only authorizes the Certificate Holder to enter into a contract for transmission services from CPUD for transmission from the Bradbury Substation directly to the Wauna Substation substantially along the route shown in Exhibit C of the request. It is not an unconditional approval for the Certificate Holder to enter into a contract with CPUD for transmission services along other routes.

The Council finds that the Certificate Holder has a reasonable likelihood of entering into a contractual agreement with CPUD for CPUD to provide transmission services via the Bradbury Substation directly to the Wauna Substation, pursuant to OAR 345-022-0010(3).

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0010(3).

**Third-Party Services and Permits, OAR 345-022-0010(4)**

> If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

**Discussion.** The Site Certificate requires the Certificate Holder (1) before commencing construction, to submit to the Department of Energy a contract for transmission service requiring PGE/T to comply with any requirements imposed under the Port Westward Generating Project Site Certificate, and (2) not to begin operation until PGE/T has constructed the Port Westward to BPA Allston Substation Transmission Line in

compliance with the Port Westward Generating Project Site Certificate. This amendment request to add a transmission alternative to the Summit/Westward Site Certificate does not affect either of these conditions to the extent that the Certificate Holder chooses to contract for services using the Port Westward to Allston Substation transmission line constructed by PGE/T.

In the event it chooses to contract with CPUD for the transmission alternative proposed herein, the proposed change to the Certificate would require the Certificate Holder (1) to submit to the Department of Energy a contract for transmission service by CPUD from the Bradbury Substation to the CPUD Wauna Substation before commencing construction, and (2) not to begin operation until the Bradbury Substation and the transmission line from the Bradbury Substation to CPUD's Wauna Substation are constructed.

This amendment would add conditions related to the new alternative route and would not otherwise affect conditions in the Site Certificate required for compliance with this rule.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0010(4).

**B. <u>Retirement and Financial Assurance Standard, OAR 345-022-0050</u>**

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

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

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

**Discussion.** In the Final Order dated October 3, 2002, the Council found that the Certificate Holder has demonstrated that it can adequately restore the energy facility site to a useful, nonhazardous condition following facility retirement. The Council also found that site restoration costs would be about $11,062,500 (in 2002 dollars). The Council found that the Certificate Holder has a reasonable likelihood of obtaining a bond or letter of credit satisfactory to the Council in an amount adequate to restore the site to a useful, nonhazardous condition.

The alternative line is shorter than the currently approved transmission line. Either transmission line option would have one pole or tower on the energy facility site. Given that no additional poles or towers will need to be removed, adding the alternative does not materially affect the costs of restoring the facility site. The Council finds that allowing an option to use the alternative transmission line would not affect the Certificate Holder's compliance with the retirement and financial assurance standard.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0050.

**C. Structural Standard, OAR 345-022-0020**

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

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to seismic zone and expected ground motion and ground failure, taking into account amplification, during the maximum credible and maximum probable seismic events; and

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

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

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

**Discussion.** In the Final Order dated October 3, 2002, the Council found that the proposed facility site had been adequately characterized in terms of seismic zone and that the Certificate Holder could construct the facility in order to avoid seismic hazards. The Council imposed site certificate conditions to ensure avoidance of seismic hazard.

The Council finds that this amendment request to add a transmission alternative will not require any changes to avoid seismic or soils hazards. The amendment request does not affect the conditions included in the Site Certificate to satisfy the Council's structural standard.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0020.

**D. Soil Protection Standard, OAR 345-022-0022**

To issue a site certificate, the Council must find that the design, construction, operation and retirement 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.

**Discussion.** In the Final Order the Council noted that the Certificate Holder had adequately characterized soils within the impact area and found that the construction of the facility would not have a significant adverse impact on soils. The Site Certificate includes conditions related to soil protection.

This amendment request to add a transmission alternative will not require any changes to avoid adverse impact on soils. The alternative electric transmission line will not require any poles or towers outside of the energy facility site, and would simply follow an aerial corridor from the Summit Project site to the Bradbury substation. Thus, the alternative electric transmission line will comply with existing conditions contained in the Site Certificate regarding soil protection.

However, due to the recent amendment of this administrative rule to include both operation and retirement, Condition D.5(3) must be revised to apply the soil protection conditions to all activities within the site, including retirement. The findings and associated conditions in Section D.3 (Retirement and Financial Assurance) of the Final Order demonstrate that the site can be restored to a useful, nonhazardous condition upon retirement. Any additional soil protection measures unique to retirement may be applied to the site by the site restoration plan, which will be submitted to the Council within two years of retirement pursuant to Condition D.3(1). With the change to Condition D.5(3) to incorporate retirement, the Council finds that the amendments are consistent with the soil protection standard and associated findings in the Final Order.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0022.

**E. <u>Land Use Standard, OAR 345-022-0030</u>**

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

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

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

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

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

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

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

**Discussion.** In the ASC, the Certificate Holder elected to demonstrate to the Council that the proposed facility complies with Statewide Planning Goals. The Council identified all aspects of facility construction, operation, and retirement that would implicate local or statewide land use review requirements and then found that the proposed facility would meet all applicable criteria.

Conditions B(6), B(7), and B(8) adequately direct Columbia County to issue a conditional use permit for the proposed use. However, adding the proposed transmission alternative to the Site Certificate requires additional Council findings related to the land use standard before it can direct the counties to issue the permits. The Council adopts the following findings.

This transmission alternative includes the construction, operation, and retirement of an alternative electric transmission line. The line would be constructed in a corridor from the Summit Project site to the Bradbury substation. The line would cross land included in the Primary Agriculture-38 ("PA-38") zone. Pursuant to Columbia County Zoning Ordinance ("CCZO") section 303.8, "[f]acilities necessary for public utility service" are included as conditional uses in the PA-38 zone. CCZO section 1503 contains general criteria for all conditional uses. Pursuant to CCZO section 1503.5, the proposed use satisfies the following criteria:

*A. The use is listed as a Conditional Use in the zone which is currently applied to the site;*

As noted above, "[f]acilities necessary for public utility service" may be permitted as conditional uses in the PA-38 zone. The Certificate Holder proposed a use that involves the transmission of electricity to the proposed Bradbury Substation, which will be owned and operated by CPUD. The alternative electric transmission line from the Summit Project to the Bradbury Station is a facility necessary for public utility service. See also discussion under CCZO section 1503.5(F) below.

*B. The use meets the specific criteria established in the underlying zone;*

The specific criteria for the PA-38 zone are set forth in CCZO Section 303. The proposed use meets all standards contained in CCZO section 303.4. In particular, the alternative electric transmission line will not involve the placement of any poles or towers in or any other ground disturbance of the PA-38 zone; and, the line itself will be confined to a transmission corridor, as shown in the map received on December 22, 2003, no wider than 60 feet and no higher than 125 feet.

*C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;*

The alternative electric transmission line provides the most direct route from the Summit Project to the proposed Bradbury Substation. No improvements, including transmission towers or poles, will be located on land zoned PA-38. The line itself will not interfere with any existing improvements or natural features of the site.

*D. The site and proposed development [are] timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;*

As the Council previously found, adequate transportation systems, public facilities, and services either exist or are planned for the Summit Project as a whole. See Attachment E, Final Order, Summit/Westward Project dated October 3, 2002, at page 15. As set forth above, CPUD plans to construct the Bradbury Substation, regardless of whether it will provide transmission service for the Summit Project. Given the planned availability of the Bradbury Substation, the site and proposed alternative electric transmission line are timely.

*E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;*

The proposed alternative electric transmission line will be about 300 feet long and will cross wetland and part of the parcel that will serve as the laydown area for the Summit Project. The line will connect to the proposed Bradbury Substation, which will be in the laydown area. After the Summit Project is constructed, the laydown area not used for the substation will be returned to its approximate prior condition.

An aerial transmission line, with no towers or poles in the PA-38 zone, will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties. The proposed use will not alter the power plant use planned for the adjacent RIPD zone to the east and will not alter potential agricultural use of the surrounding PA-38 zone to the south and west.

*F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;*

The Agricultural Goal as set forth in the Columbia County Comprehensive Plan ("CCCP") is "[t]o preserve agricultural land for agricultural uses." In particular, Policy 17 under the Agricultural Goal is to "[a]llow non-farm uses in accordance with ORS 215.283." In turn, ORS 215.283(1)(d) allows "[u]tility facilities necessary for public service" to be established in any area zoned exclusive farm use, excluding "transmission towers over 200 feet in height." The proposed use does not include any towers or poles in the PA-38 zone and the line will be no more than 125 feet high.

ORS 215.275 sets forth criteria for establishing that a utility facility is necessary for public service. In particular, ORS 215.275(1) provides that a utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. With regard to the alternative electric transmission line, the Certificate Holder considered alternatives and demonstrated there is no reasonably direct way for the line to reach the proposed Bradbury Substation site without crossing the PA-38 zone. Thus, pursuant to ORS 215.275(2)(b), the proposed facility is "locationally dependent," because the line must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route.

The proposed line provides a direct route, and due to the directness of the route, will not require any towers or poles in the PA-38 zone. Given the lack of any structure and given that there will not be additional disturbance to the land to allow for the transmission line, there is no damage or restoration that might fall within the scope of ORS 215.275(4), and there is no mitigation or minimization of impacts within the scope of ORS 215.275(5).

*G. The proposal will not create any hazardous conditions.*

The potential hazards from construction and operation of an electric transmission line are already addressed in the Site Certificate, and conforming amendments to reflect the alternative electric transmission line are set forth in the conditions in Section IV.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0030.

**F. <u>Protected Area Standard, OAR 345-022-0040</u>**

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. Cross-references in this rule to federal or state statutes or regulations are to the version of the statutes or regulations in effect as of August 28, 2003.***

**Discussion**. Recent amendments to OAR 345-022-0040 changed the list of protected areas to include those areas designated as of August 28, 2003 (the list previously referenced those areas designated as of March 29, 2002). This amendment does not affect this amendment request because there are no newly-designated protected areas within the vicinity of the energy facility.

In the Final Order dated October 3, 2002, the Council identified eight protected areas within 20 miles of the proposed facility site. The Council found that the facility could be operated without adverse impacts to any of the protected areas and imposed no conditions relating to protected areas.

The alternative electric transmission line is about 300 feet long and will not be visible from any of the protected areas identified in the Final Order. Thus, the request, if approved, will not change the facility's impacts on protected areas as previously analyzed. The Council finds that the addition of a transmission line alternative will not affect the Certificate Holder's compliance with the protected area standard.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0040.

**G. <u>Fish and Wildlife Habitat Standard, OAR 345-022-0060</u>**

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

**Discussion.** In the Final Order dated October 3, 2002, the Council classified the habitat areas to be affected by the proposed facility and by the related or supporting facilities. The Council imposed a number of conditions to ensure that construction and operation of the facility would be consistent with OAR 635-415-0025.

The transmission alternative would not involve any poles or towers outside of the energy facility site. The corridor would cross over wetlands and into the adjacent laydown area. Given that protection of wetlands and disturbance of the laydown area have already been taken into account in the Final Order of October 3, 2002, and in the existing site certificate conditions, the addition of this transmission alternative described herein will not change any aspect of facility siting, construction, or operation that would impact fish and wildlife habitat. However, conditions will need conforming amendments to reflect the alternative electric transmission line, as noted in the conditions in Section IV. The Council finds the alternative transmission line option would not affect the Certificate Holder's compliance with the fish and wildlife habitat standard.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0060.

## H. Threatened and Endangered Species Standard, OAR 345-022-0070

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

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

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

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

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

**Discussion.** Within the areas the Council reviewed in preparing its Final Order dated October 3, 2002, the Council identified several listed species within the Project area. Based on recommendations from the Oregon Department of Fish and Wildlife, the Council concluded that the facility could be constructed and operated without significant adverse impacts to these species.

The Council finds that, given that the alternative transmission corridor would cross wetland into the adjacent laydown area and given that protection of wetlands and disturbance of the laydown area have already been taken into account in the original Final Order and existing Site Certificate, the addition of this transmission alternative described herein will not change any aspect of facility siting, construction, or operation that would impact threatened and endangered species. However, conditions with conforming amendments to reflect the alternative electric transmission line are noted in the conditions in Section IV.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0070.

## I. Scenic and Aesthetic Values Standard, OAR 345-022-0080

(1) Except for facilities described in sections (2), to issue a site certificate, the Council must find that the design, construction, operation and retirement of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic and aesthetic values identified as significant or important in

applicable federal land management plans or in local land use plans in the analysis area described in the project order. ***

**Discussion.** In the Final Order, the Council identified the relevant view-sheds and analyzed the impacts of the proposed facility. The Council found that the facility could be constructed without significant adverse impacts under this standard and imposed site certificate conditions relating to lighting at night, landscaping, and dust control during construction. However, the Council did not find that the proposed facility met the scenic and aesthetic values standard, because the "special criteria facilities" process through which the Council issued the Site Certificate did not require such a finding. Nevertheless, there are adequate findings in that Final Order for the Council to conclude that the proposed facility does meet the requirements of the scenic and aesthetic values standard.

In its request, the Certificate Holder did not propose to expand the visible parts of the facility. In lieu of a 1,000-foot onsite line as currently approved, this alternative would instead allow for an approximately 300-foot electric transmission line to connect to the Bradbury Substation. Thus, the impacts previously identified by the Council will not change, and the conditions previously imposed will remain sufficient.

The addition of a transmission alternative will not have any effect on the scenic and aesthetic values in the area of the facility. The Council incorporates by reference the findings regarding the scenic and aesthetic values standard in the Final Order dated October 3, 2002, and it finds that nothing has changed regarding those findings other than the proposed changes in this Order.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0080.

**J. <u>Historic, Cultural, and Archeological Resources Standard, OAR 345-022-0090</u>**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction, operation and retirement 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;

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

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

**Discussion.** In the Final Order dated October 3, 2002, the Council identified certain archaeological sites in the Port Westward area and reported Native American camp sites, a possible historic site, and a Native American village within the analysis area. The Council imposed conditions requiring the Certificate Holder to instruct construction personnel on

cultural material identification and to work with the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of the Siletz Indian Reservation of Oregon, and the Chinook Tribe in Washington during ground-breaking activities. However, the Council did not find that the proposed facility met the historic, cultural and archaeological resources standard, because the "special criteria facilities" process through which the Council issued the Site Certificate did not require such a finding. Nevertheless, there are adequate findings in that Final Order for the Council to conclude that the proposed facility does meet the requirements of the historic, cultural and archaeological resources standard.

Adding a transmission alternative will have no impact on any identified historic and cultural resources. In this request, the Certificate Holder does not propose to change any aspect of facility siting, construction, or operation that would impact the identified historic and cultural resources. Thus, the impacts previously identified by the Council will not change and the conditions previously imposed will remain sufficient. The Council incorporates by reference the findings regarding the historic, cultural and archaeological resources standard in the Final Order dated October 3, 2002, and it finds that nothing has changed regarding those findings.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0090.

**K. <u>Recreation Standard, OAR 345-022-0100</u>**

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

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

**Discussion.** In the Final Order dated October 3, 2002, the Council noted several recreation opportunities within five miles of the Project site. The Council concluded that the proposed design, construction, and operation of the facility would not have significant adverse impacts on these recreation opportunities. However, the Council did not find that the proposed facility met the recreation standard, because the "special criteria facilities" process through which the Council issued the Site Certificate did not require such a finding. Nevertheless, there are adequate findings in that Final Order for the Council to conclude that the proposed facility does meet the requirements of the recreation standard. The Council did not impose any conditions related to the Council's recreation standard.

Adding a transmission alternative will have no impact on any identified recreation opportunities. In this request, the Certificate Holder does not propose to change any aspect of facility siting, construction, or operation that would impact the identified recreation resources. Thus, the impacts on recreation opportunities previously identified by the Council will not change and no additional conditions are necessary. The Council incorporates by reference the findings regarding the recreation standard in the Final Order dated October 3, 2002, and that it find that nothing has changed regarding those findings.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0100.

**L. <u>Public Services Standard, OAR 345-022-0110</u>**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.***

**Discussion.** In the Final Order dated October 3, 2002, the Council identified potential impacts to local economies and noted the public services and facilities that the construction and operation of the Project would likely require. The Council imposed conditions requiring Summit/Westward to use portable toilets during construction, implement transportation and roadway-related improvements, and construct a fire protection system. However, the Council did not find that the proposed facility met the public services standard, because the "special criteria facilities" process through which the Council issued the Site Certificate did not require such a finding. Nevertheless, there are adequate findings in that Final Order for the Council to conclude that the proposed facility does meet the requirements of the public services standard.

Adding a transmission alternative will not change any aspect of facility siting, construction, or operation that will impact the identified public and private service providers, other than the ability of the CPUD to provide the transmission service described. CPUD's ability to do so is demonstrated in the subsection regarding third-party services and permits, above. Thus, the impacts on local services previously identified by the Council will not change and the conditions previously imposed will remain sufficient. The Council incorporates by reference the findings regarding the public services standard in the Final Order dated October 3, 2002, and it finds that nothing has changed regarding those findings except as noted above.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0110.

**M. <u>Waste Minimization Standard, OAR 345-022-0120</u>**

(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, operation, and retirement 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. * * *

**Discussion.** In the Final Order dated October 3, 2002, the Council found that the Certificate Holder had proposed adequate strategies to minimize solid waste and wastewater generation and to maximize recycling. The Council made required compliance with a number of these strategies as conditions in the site certificate. However, the Council did not find that the proposed facility met the waste minimization standard, because the "special criteria facilities" process through which the Council issued the Site Certificate did not require such a finding. Nevertheless, there are adequate findings in that Final Order for the Council to conclude that the proposed facility does meet the requirements of the waste minimization standard.

Adding a transmission alternative will not change any aspect of facility siting, construction, or operation that will impact the strategies to minimize solid waste and wastewater generation and to maximize recycling. The Council incorporates by reference the findings regarding the waste minimization standard in the Final Order dated October 3, 2002, and it finds that nothing has changed regarding those findings.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 345-022-0120.

**N. <u>Carbon Dioxide Standard</u>**

**Standard for Base Load Gas Plants, OAR 345-024-0550**

To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power or augmentation technology as defined in OAR 345-001-0010, the Council shall apply the standard for a non-base load power plant, as described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. ***

**Discussion**. The Council made changes to the administrative rules relating to the $CO_2$ standard on August 28, 2003. However, the changes that affect the Summit Project were clarifications to the previous rule or are adequately incorporated by the existing conditions. There is no need to change the $CO_2$ conditions for the Summit Project for it to continue to comply with the $CO_2$ standard.

In the Final Order dated October 3, 2002, the Council found that the Certificate Holder satisfied the requirements of OAR 345-024-0550 *et. seq.* by making payments in compliance with the monetary path payment requirement of OAR 345-024-0710. The Council imposed conditions to ensure compliance with this standard.

Adding a transmission alternative will not require any changes to comply with the carbon dioxide standard for base load gas plants. The transmission alternative does not affect the Certificate Holder's compliance with the standard or any of the conditions imposed by the Council to ensure compliance.

**Conclusion**. The Council finds that the Certificate Holder meets the requirements of OAR 345-024-0550 through -0710.

**O. <u>Noise OAR 340-035-0035(1)(b)(B)</u>**

The Council applies and enforces the Department of Environmental Quality's ("DEQ") noise standards for energy facilities under its jurisdiction. The DEQ noise regulations for industrial and commercial noise sources apply to the Summit Project. Under the DEQ regulations, the generating facility would be located on a "previously unused industrial site" and according to the regulations:

> No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, $L_{10}$ or $L_{50}$, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point. OAR 340-035-0035(1)(b)(B)(i).

**Discussion.** In the Final Order dated October 3, 2003, the Council found that the proposed facility would comply with the applicable numeric noise limits established by DEQ. The Council imposed design, consultation, and survey related conditions to ensure compliance.

Adding a transmission alternative would not create any additional noise impacts at the facility. Thus, the noise levels previously identified by the Council will not change and the noise related conditions previously imposed will remain sufficient. However, conditions with conforming amendments to reflect the alternative electric transmission line are noted in the amendment language above.

**Conclusion.** The Council finds that the Certificate Holder meets the requirements of OAR 340-035-0035(1)(b)(B)(i).

## P. Wetlands, OAR 345-022-0000

Pursuant to OAR 345-022-0000, the Council must determine compliance with applicable statutes, ORS 196.800-.990, and applicable DSL regulations, OAR 141-085-0005 *et seq.* relating to fill and other operations taking place within wetlands. These regulations require persons to obtain a removal/fill permit if more than 50 cubic yards of material will be removed or altered within "waters of the state." The overall standard to be considered in granting a removal/fill permit is whether the proposed activity would not "unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation." ORS 196.825(2).

**Discussion.** In the Final Order dated October 3, 2002, the Council found that the proposed facility and its related or supporting facilities would avoid most wetlands, but may impact several identified wetland or other waters areas. The Council found that the Certificate Holder could meet the statutory and regulatory standards for obtaining the necessary DSL permit and imposed conditions to ensure compliance with the standards.

Adding a transmission alternative would involve the construction and operation of an alternative electric transmission line, which would follow a corridor from the Summit Project site to the Bradbury Substation. The line would not involve any poles or towers outside of the energy facility site, but it would cross a delineated wetland. The suspension and operation of transmission line over the wetland should not impact it. Also, conditions in the Site Certificate to protect wetlands would also apply to the transmission line construction and operation. Furthermore, this corridor would cross into the existing laydown area and given that disturbance of the laydown area has already been taken into account in the existing Site Certificate, the addition of this transmission alternative described herein will not change any aspect of facility siting, construction, or operation that would impact wetlands. The Council finds that the wetland impacts previously identified by the Council will not change and the wetland-related conditions previously imposed will remain sufficient.

**Conclusion.** The Council finds that approval of this amendment request will satisfy the Council's obligation to determine compliance with DSL removal/fill permit requirements.

## Q. Public Health and Safety, ORS 469.401(2)

The Council is required to impose conditions in the Site Certificate for the protection of public health and safety.

**Discussion.** The Site Certificate has several conditions relating to public health and safety, including cooling tower fogging and icing, electric fields, and magnetic fields; none of these conditions will be impacted by the proposed amendment to the Site Certificate. The Council finds that adding a transmission alternative will not impact public health and safety and will not affect the Certificate Holder's compliance with the public health and safety standards. However, conditions with conforming amendments to reflect the alternative electric transmission line are noted in the conditions in Section IV.

**Conclusion.** The Council finds that the Certificate Holder can continue to meet the Council's conditions that protect public health and safety, pursuant to ORS 469.401(2).

## VI. Conclusions

The Council finds that the actions in the Certificate Holder's request are consistent with current Council rules, with other applicable statutes and rules, and with statewide land use planning goals and would not cause a significant adverse impact to public health and safety or the environment. In preparing this proposed order, the Council limited its consideration to the effects that may be produced by the proposed change to the facility described in the Certificate Holder's First Request to Amend the Site Certificate for the Summit/Westward Project, as it was subsequently revised. In considering those effects, the Council reviewed state statutes, administrative rules, and local government ordinances.

Based on the above findings, the Council concludes that it should amend the Site Certificate for the Summit/Westward Project as the Certificate Holder requested with modifications to the conditions as noted above in Section IV.

## FINAL ORDER

Based on the above findings of fact, discussions and conclusions of law, the Energy Facility Siting Council determines that it shall approve amendment number one and that the chairperson of the Council shall execute the site certificate amendment in the form of the "First Amended Site Certificate for the Summit/Westward Project." This incorporates Attachments to the original Site Certificate for the Summit/Westward Project. The First Amended Site Certificate for the Summit/Westward Project (without the original Attachments, which remain in effect) is attached to this order and is incorporated by reference into this order.

Approved this 13th day of February 2004.

/s/ Karen H. Green
Karen H. Green, Chair
Oregon Energy Facility Siting Council

**ATTACHMENT**

FIRST AMENDED SITE CERTIFICATE (WITHOUT THE ORIGINAL ATTACHMENTS, WHICH REMAIN IN EFFECT)

**NOTICE OF THE RIGHT TO APPEAL**

You have the right to appeal this order to the Oregon Supreme Court pursuant to ORS 469.405. To appeal, you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was

personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal.

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