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BEFORE THE ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON

IN THE MATTER OF THE THIRD REQUEST TO AMEND THE SITE CERTIFICATE FOR THE SUMMIT/WESTWARD PROJECT))))	PROPOSED ORDER ON AMENDMENT #4 EXTENDING CONSTRUCTION DEADLINE
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Oregon Department of Energy

August 23, 2004

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1

SUMMIT / WESTWARD PROJECT
PROPOSED ORDER on SITE CERTIFICATE AMENDMENT #4
EXTENSION of SITE CERTIFICATE

2

3

4 **I. INTRODUCTION**

5 The Oregon Department of Energy (“ODOE” or the “Department”) issues this order in accordance
6 with ORS 469.405 and OAR 345-027-0070 and OAR 345-027-0080. This order addresses the third
7 request by Westward Energy LLC (“Summit”) for amendment of its site certificate for the
8 Summit/Westward Project (the “Summit Project”). The Summit Project is a 520-megawatt natural
9 gas-fired electric generating facility located about 4.5 miles north of Clatskanie, Oregon.

10

11 In this request for amendment, Summit asks to extend the dates for beginning and completion of
12 construction. As originally issued, the site certificate required Summit to begin construction by
13 October 3, 2004. Pursuant to OAR 345-027-0030, Summit must either begin construction by that
14 date or seek an amendment to extend the date.

15

16 The Energy Facility Siting Council (“EFSC” or the “Council”) issued the site certificate for the
17 Summit Project on October 3, 2002. The Council granted amendment #1 in February 2004, and
18 amendment #2 in April 2004.

19

20 Summit submitted its request to extend the construction dates on April 2, 2004. Because Summit
21 expected to begin construction within the original deadline, they requested that ODOE not process
22 this request until it was certain that the extension would be necessary. Subsequently, on May 16,
23 2004, Summit submitted its Fourth Request for amendment, in which it proposed to divide the
24 project into two phases and to submit bonds or letters of credit on a phased schedule commensurate
25 with the two phases of construction. The Council issued a temporary order approving the phased
26 construction schedule on July 23, 2004¹. Although it was Summit’s fourth amendment request, it
27 was the third amendment granted.

28

29 The extension of construction deadlines, if granted, will therefore be the fourth amendment issued
30 by the Council. For this reason, the amendment described in this order is amendment #4, even
31 though Summit’s request to extend deadlines was their third amendment request.

32

33 The definitions in ORS 469.300 and OAR 345-001-0010 apply to terms used in this order, unless
34 otherwise defined in this order.

35

36 **II. PROCEDURAL HISTORY**

37 Summit submitted the request to amend the site certificate on April 2, 2004. As noted above,
38 Summit stated that it expected to begin construction before October 3, 2004, which would render
39 this extension request unnecessary. However, the Department has reviewed the extension request
40 and issues this proposed order just in case construction is delayed further.

41

42 On April 9, 2004 ODOE issued notice to the Council’s mailing list, affected property owners as
43 defined at OAR 345-021-0010(f), and ODOE’s list of persons interested in the Summit Project. The

¹ The temporary order granting amendment #3 was subject to request for contested case within 15 days of the date the Council issued the temporary order. No such request was made.

1 notice stated where the public could review the amendment request and set a comment deadline of
2 May 13, 2004. ODOE also issued notice to the agencies, tribes and governments listed in OAR 345-
3 002-0040 and asked for comments by May 13, 2004. ODOE received no comments from the public,
4 and no concerns were raised by any other agencies, tribes or local governments.
5

6 In reviewing the proposed amendment, the Council applies substantive land use criteria in effect on
7 the date Summit submitted the request for amendment and all other state statutes, administrative
8 rules and local government ordinances in effect on the date of the amendment.
9

10 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

11 **A. Description of the Facility**

12 The Summit Project is a 520-megawatt natural gas-fired electric generation facility, located about
13 4.5 miles north of Clatskanie, Oregon in Columbia County, Oregon. The site is on land leased from
14 the Port of St. Helens, which owns more than 900 acres in the Port Westward Industrial Park. The
15 facility includes provisions water supply to be provided by the Port of St. Helens under its existing
16 water right, and processing of wastewater through brine crystallizers to achieve zero discharge of
17 process and cooling water. The site certificate includes a removal-fill permit for construction on
18 wetlands, issued by the Department of State Lands (“DSL”), a Water Pollution Control Facilities
19 (“WPCF”) permit issued by DEQ for discharge of sanitary waste, and a second WPCF permit
20 issued by DEQ for discharge of process and cooling water to on-site ponds that are needed in
21 connection with the zero discharge facility.
22

23
24 Under amendment #1, approved in February 2004, Summit may contract with either Portland
25 General Electric or with Clatskanie Public Utility District (“CPUD”) for transmission services.
26 Under amendment #2, approved in April 2004, Summit may discharge process wastewater to the
27 Port of St. Helens, which would then discharge it to the Columbia River under its existing National
28 Pollutant Discharge Elimination System (“NPDES”) permit (a federal permit administered in
29 Oregon by DEQ). Amendment #3 was granted on a temporary basis on July 23, 2004, under the
30 expedited review process described at OAR 345-027-0080. It allowed Summit to divide the project
31 into two phases of roughly equal generating capacity and to submit a bond or letter of credit for site
32 restoration and for carbon dioxide offsets for each separate phase of construction, on a schedule and
33 in amounts commensurate with the phased construction.
34

35 **B. Changes to Site Certificate Proposed by Summit**

36 Summit does not propose to change the facility. The only change would be to the dates when
37 Summit must begin and complete construction.
38

39 Summit proposes to change Site Certificate Condition G.1.(4) as follows:

40
41 *The certificate holder shall begin construction of the facility by October 3, ~~2004~~ 2006****
42

43 Summit also proposes to change Condition G.1.(5) as follows :

44
45 *The certificate holder shall complete construction of the facility by April 3, ~~2007~~ 2009****
46

47 Summit proposed no other changes.
48

1 **IV. FINDINGS ON COMPLIANCE WITH STANDARDS**

2 Under the General Standard of Review, OAR 345-022-0000(1), to issue the requested amendment
3 the Council must determine that the amendment complies with:

- 4 a) Standards adopted by the Council pursuant to ORS 469.501,
- 5 b) Other Oregon statutes and administrative rules identified in the project order, excluding those
6 for which the federal government has delegated the decision on compliance to a state agency
7 other than the Council, and
- 8 c) Statewide planning goals as provided in OAR 345-022-0030

9
10 The permits issued by agencies other than the Council under this site certificate are: the WPCF
11 process wastewater permit issued by DEQ, a sanitary waste WPCF permit issued by DEQ, and a
12 Removal-Fill (wetlands) permit issued by the Department of State Lands.

13
14 Under OAR 345-027-0030, in order to approve an amendment extending construction deadlines, the
15 Council must find that the facility complies with Council standards and regulations of other
16 agencies as in effect on the date of the amendment.

17
18 **A. Council Standards in OAR Chapter 345, Division 22**

19
20 **1. Organizational Expertise, OAR 345-022-0010**

- 21 (1) *To issue a site certificate, the Council must find that the applicant has the*
22 *organizational expertise to construct, operate and retire the proposed facility in*
23 *compliance with Council standards and conditions of the site certificate. To*
24 *conclude that the applicant has this expertise, the Council must find that the*
25 *applicant has demonstrated the ability to design, construct and operate the proposed*
26 *facility in compliance with site certificate conditions and in a manner that protects*
27 *public health and safety and has demonstrated the ability to restore the site to a*
28 *useful, non-hazardous condition. The Council may consider the applicant's*
29 *experience, the applicant's access to technical expertise and the applicant's past*
30 *performance in constructing, operating and retiring other facilities, including, but*
31 *not limited to, the number and severity of regulatory citations issued to the applicant.*
32
- 33 (2) *The Council may base its findings under section (1) on a rebuttable presumption that*
34 *an applicant has organizational, managerial and technical expertise, if the applicant*
35 *has an ISO 9000 or ISO 14000 certified program and proposes to design, construct*
36 *and operate the facility according to that program.*
37
- 38 (3) *If the applicant does not itself obtain a state or local government permit or approval*
39 *for which the Council would ordinarily determine compliance but instead relies on a*
40 *permit or approval issued to a third party, the Council, to issue a site certificate,*
41 *must find that the third party has, or has a reasonable likelihood of obtaining, the*
42 *necessary permit or approval, and that the applicant has, or has a reasonable*
43 *likelihood of entering into, a contractual or other arrangement with the third party*
44 *for access to the resource or service secured by that permit or approval.*
45
- 46 (4) *If the applicant relies on a permit or approval issued to a third party and the third*
47 *party does not have the necessary permit or approval at the time the Council issues*
48 *the site certificate, the Council may issue the site certificate subject to the condition*
49 *that the certificate holder shall not commence construction or operation as*

1 *appropriate until the third party has obtained the necessary permit or approval and*
2 *the applicant has a contract or other arrangement for access to the resource or*
3 *service secured by that permit or approval.*
4

5 **Discussion**

6 In its Final Order on the ASC, the Council found that Summit met the Organizational Expertise
7 standard based on its relationship with Summit Power NW LLC and its intention to enter into
8 turnkey contracts with Siemens Westinghouse (“SWPC”) for engineering, procurement,
9 construction, operations and maintenance. This amendment does not involve any change in
10 Summit’s organization or personnel, or its relationship with any of the above mentioned contractors.
11 Nor does it alter the scope of the project in a way that might require different expertise or
12 experience.

13
14 Summit states it has entered into both an EPC contract and a 25-year operations and maintenance
15 contract with SWPC.

16
17 Section (2) of the standard does not apply because Summit did not take credit for any ISO program.

18
19 Sections (3) and (4) of the standard address third party permits (permits that the certificate holder
20 would not obtain directly but instead would rely on a third party to obtain such permits). Summit
21 relies on third party permits for water supply, wastewater discharge, and transmission services.
22 Those permits are not affected by the proposed change in construction schedule.

23
24 **Conclusion**

25 ODOE recommends the Council find that the proposed amendment complies with the
26 Organizational Expertise Standard. No new conditions are recommended.

27
28 **2. Structural Standard, OAR 345-022-0020**

29 To issue the amendment, the Council must find that:

- 30 (a) *The applicant, through appropriate site-specific study, has adequately characterized*
31 *the site as to seismic zone and expected ground motion and ground failure, taking*
32 *into account amplification, during the maximum credible and maximum probable*
33 *seismic events; and*
34 (b) *The applicant can design, engineer, and construct the facility to avoid dangers to*
35 *human safety presented by seismic hazards affecting the site that are expected to*
36 *result from all maximum probable seismic events. As used in this rule "seismic*
37 *hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami*
38 *inundation, fault displacement, and subsidence;*
39 (c) *The applicant, through appropriate site-specific study, has adequately characterized*
40 *the potential geological and soils hazards of the site and its vicinity that could, in the*
41 *absence of a seismic event, adversely affect, or be aggravated by, the construction*
42 *and operation of the proposed facility; and*
43 (d) *The applicant can design, engineer and construct the facility to avoid dangers to*
44 *human safety presented by the hazards identified in subsection (c).*

45
46 **Discussion**

47 In its Final Order approving the Summit Project, the Council found that the facility satisfies the
48 Structural Standard. The proposed amendment extends the deadline for beginning and completion
49 of construction. It does not change any seismic conditions or hazards, or any of the conditions
50 recommended to achieve compliance. Nor does Summit propose any changes in the physical

1 facility. There has been no change in circumstance that would alter the original finding of
2 compliance.

3
4 Condition E.2.(1) of the site certificate requires:

5
6 *Before beginning construction of the facility, the certificate holder shall report to the*
7 *Department and the Oregon Department of Geology and Mineral Industries (“DOGAMI”)*
8 *with the results of final site-specific geotechnical investigations and recommendations for*
9 *design of the energy facility and related or supporting facilities.*

10
11 By letter dated July 14, 2004, DOGAMI has stated that Summit provided them with the final
12 geotechnical report, and that DOGAMI reviewed the report and considers the condition met.²
13 DOGAMI indicated no new geotechnical concerns about the site.

14 15 **Conclusion**

16 ODOE recommends the Council find that the proposed amendment complies with the Structural
17 standard. No new conditions are recommended.

18 19 **3. Soil Standard, OAR 345-022-0022**

20 To issue the amendment, the Council must find that

21
22 ****the design, construction, operation and retirement of the facility, taking into account*
23 *mitigation, are not likely to result in a significant adverse impact to soils including, but not*
24 *limited to, erosion and chemical factors such as salt deposition from cooling towers, land*
25 *application of liquid effluent, and chemical spills.*

26 27 **Discussion**

28 In the Final Order approving the Summit Project, the Council found that the construction and
29 operation of the Summit Project would not have a significant adverse impact on soils.

30
31 This amendment extends the deadlines for start and completion of construction. Summit does not
32 propose any changes to the facility or to the site. Therefore this amendment does not affect any of
33 the Council’s prior findings of compliance with the Soil Standard.

34 35 **Conclusion**

36 ODOE recommends the Council find that the proposed amendment complies with the Soil
37 Protection Standard. No new conditions are recommended.

38 39 **4. Land Use Standard OAR 345-022-0030**

40 To issue the amendment to the site certificate, the Council must find that:

41
42 *ORS 469.503(4) The facility complies with the statewide planning goals adopted by the*
43 *Land Conservation and Development Commission.*

44
45 *ORS 469.504(1) A proposed facility shall be found in compliance with the statewide*
46 *planning goals under ORS 469.503(4) if:*

47
48 *****

² DOGAMI July 14, 2004 letter from Mike Dougherty to Adam Bless

1 (b) *The council determines that:*

2
3 (A) *The proposed facility complies with applicable substantive criteria from*
4 *the affected local government’s acknowledged comprehensive plan and*
5 *land use regulations that are required by the statewide planning goals*
6 *and in effect on the date the application is submitted, and with any Land*
7 *Conservation and Development Commission administrative rules and*
8 *goals and any land use statutes directly applicable to the facility under*
9 *ORS 197.646(3)***.*

10
11 **Discussion**

12 In the Final Order approving the Summit Project, the Council found that the facility complied with
13 all applicable substantive criteria from Columbia County’s comprehensive plan and zoning
14 ordinance, and with LDCD rules applicable under ORS 197.646.

15
16 The proposed amendment does not change the site or the proposed use. The only changes are to the
17 deadlines for start and completion of construction. However, on September 17, 2003, Columbia
18 County adopted changes to the Columbia County Comprehensive Plan (the “Comprehensive Plan”)
19 and Columbia County Zoning Ordinance (the “CCZO”) that affect development in riparian and
20 wetland areas. Specifically, the County amended CCZO Section 1170: Riparian Corridors,
21 Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone, Section CCZO
22 1180: Wetland Area Overlay, and Section CCZO Section 1550: Site Design Review, and the
23 associated subsections.

24
25 At ODOE’s request, Summit demonstrated that the Summit Project would comply with the
26 Columbia County land use changes. That analysis is summarized below:

27
28 Relevant changes to CCZO Section 1170 and the associated subsections address the protection and
29 restoration of riparian corridors. Summit points out that the Summit Project site would not be
30 located within any riparian corridor boundary. The Columbia River, Bradbury Slough, and John
31 Slough are near the site of the proposed facility. Bradbury Slough, which is fish bearing and has a
32 flow greater than 1,000 cubic feet per second, is the water body nearest the facility site. Under
33 CCZO Section 1172(A)(3), the riparian corridor boundary for Bradbury Slough is “75-feet upland
34 from the top-of-bank.” The facility site is well outside the riparian corridor boundary for the
35 Bradbury Slough. (Figure B-1 and Figure C-2 of the Restated ASC illustrate the general location of
36 the Summit Project in relation to Bradbury Slough.) Because it is not located within any riparian
37 corridor boundary, the prohibitions and variance provisions of CCZO Section 1170 are not
38 applicable to the proposed facility.

39
40 Relevant changes to CCZO Section 1180 and the associated subsections address the protection of
41 significant wetland within identified Wetland Areas.

42
43 *Section 1180: Wetland Area Overlay.*

44
45 *Section 1181: Purpose. The purpose of this zone is to protect significant wetland within the*
46 *identified Wetland Areas as shown on the State Wetland Inventory and Local Wetland*
47 *Inventories, from filling, drainage, or other alteration which would destroy or reduce their*
48 *biological value. The Wetland Area Overlay does not apply to land legally used for*
49 *commercial forestry operations or standard farm practices, both of which are exempt from*
50 *these wetland area corridor standards. The use of land for commercial forestry is regulated*

1 by the Oregon Department of Forestry. The use of land for standard farm practices is
2 regulated by the Oregon Department of Agriculture, with riparian area and water quality
3 issues governed by ORS 568.210 to ORS 568.805.
4

5 *Section 1182: Definition. A significant wetland is an area that is inundated or saturated by*
6 *surface water or ground water at a frequency and duration sufficient to support, and that*
7 *under normal circumstances does support, a prevalence of vegetation typically adapted for*
8 *life in saturated soil conditions. In case of dispute over whether an area is of biological*
9 *value and should be considered a significant wetland, the County shall obtain the*
10 *recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil*
11 *and Water Conservation District, and the Division of State Lands.*
12

13 Summit points out that before it was amended in 2003, the Comprehensive Plan explicitly exempted
14 the Port Westward area from the Wetland Area Overlay. The amendments to the Comprehensive
15 Plan deleted that exemption and extended the Wetland Area Overlay to all “significant” wetlands,
16 as defined in CCZO Section 1182, within the “identified Wetland Areas as shown on the State
17 Wetland Inventory maintained by the Department of State Lands (“DSL”), which includes the
18 National Wetland Inventory and any Local Wetland Inventory. [Columbia County Comprehensive
19 Plan, Article X(A)(2)] To the extent that inventoried wetlands are present on the Summit Project
20 site, those wetlands would be included in the Wetland Area Overlay.
21

22 *Section 1183: Permitted Uses. Uses and development activities permitted outright or*
23 *conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if*
24 *they will not result in filling, drainage, removal of vegetation, or other alteration which*
25 *would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage*
26 *improvements necessary to ensure effective drainage on surrounding agricultural lands*
27 *under Oregon Department of Agriculture wetland rules shall be allowed where such an*
28 *action has been fully coordinated with the Oregon Department of Fish and Wildlife, the*
29 *Columbia County Soil and Water Conservation District, and the Division of State Lands.*
30 *Existing drainage ditches may be cleared to original specifications without County review.*
31

32 The Summit Project would be located on RIPD zoned lands and is permitted outright for that zone.
33 Exhibit K of the Restated ASC provides the information on which the Council based its conclusion
34 that the facility would comply with applicable substantive criteria from Columbia County’s
35 acknowledged Comprehensive Plan and CCZO. In the Final Order, the Council found that “the
36 proposed fill complies with uses designated for [RIPD lands] and with the acknowledged
37 comprehensive plan.” (Final Order, page104)
38

39 Summit argues that CCZO Section 1183’s requirement that the permitted activity “not result in
40 filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a
41 significant wetland” does not preclude an activity in the Wetland Area Overlay that is authorized by
42 a removal-fill permit from DSL and the U.S. Army Corps of Engineers. Such authorizations, while
43 allowing a permittee to fill wetlands, include compensatory mitigation requirements ensuring that
44 wetland areas and functions are maintained on a net basis. Thus, if an activity is permitted outright
45 or conditionally in the underlying zone and any wetland fill or other impacts to significant wetlands
46 included in the Wetland Area Overlay are authorized by a valid DSL removal-fill permit, the
47 activity is a permitted use in the Wetland Area Overlay. ODOE contacted the Columbia County
48 Planning Department by telephone on August 19, 2004 and they agreed with this interpretation.
49

1 Applying Summit’s interpretation of CCZO Section 1183, the Summit Project would not result in
2 filling of wetlands that “would destroy or degrade a significant wetland as defined in Section 1182.”
3 (CCZO § 1183) By virtue of an approved removal/fill permit, DSL and the U.S. Army Corps of
4 Engineers have authorized Summit to fill 0.48 acre of wetland and ditch on the Summit Project site.
5 Included with that authorization is the requirement that Summit mitigate for the wetland fill on a
6 1.5:1.0 ratio. The approved wetland mitigation plan for the Summit Project would create 0.75 acre
7 of wetland on the Summit Project site, thus ensuring that there will be no destruction or degradation
8 of wetland area or function as a result of the Summit Project. Exhibit J of the Restated ASC and the
9 Joint Removal-Fill Permit Application provide a complete analysis of wetland impacts and
10 compensatory mitigation.

11
12 Summit points out that because the Summit Project is permitted outright in the RIPD zone, and
13 because Summit has obtained a valid removal-fill permit, the Summit Project would not destroy or
14 degrade a significant wetland included in the Wetland Area Overlay. Accordingly, the Summit
15 Project should be treated is a permitted use under CCZO Section 1183.

16
17 Changes to CCZO Section 1550: Site Design Review, and the associated subsections, are not
18 substantive and simply result in renumbering the provisions of that section.

19
20 Based on this analysis, ODOE recommends that the Council find that the Summit Project remains in
21 compliance with the substantive criteria from the County’s comprehensive plan and zoning
22 ordinance in effect on the date the amendment request was submitted.

23
24 **Conclusion**
25 ODOE recommends the Council find that the proposed amendment complies with its Land Use
26 standard. No new conditions are recommended.

27
28 **5. Protected Area Standard OAR 345-022-0040**
29 To issue the amendment, the Council must find that “...the design, construction and
30 operation of the facility are not likely to result in significant adverse impact ...” to listed
31 protected areas.

32
33 **Discussion**
34 In the Final Order approving the Summit Project, the Council identified eight protected areas within
35 20 miles of the site. None were closer than 12 miles from the site. The Council found that the
36 facility was not likely to result in adverse impact to any listed area, and imposed no conditions.

37
38 The proposed amendment does not change the site or its potential impact on any listed protected
39 area. The amendment would only change the deadlines for start and completion of construction. No
40 new protected areas within 20 miles of the site have been identified

41
42 **Conclusion**
43 ODOE recommends the Council find that the proposed amendment complies with the Protected
44 Area standard. No new conditions are recommended.

45
46 **6. Financial Assurance and Retirement Standards OAR 345-022-0050**
47 To issue the amendment, the Council must find that:
48

- 1 (1) The site, taking into account mitigation, can be restored adequately to a useful, non-
2 hazardous condition following permanent cessation of construction or operation of
3 the facility.
4 (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a
5 form and amount satisfactory to the Council to restore the site to a useful, non-
6 hazardous condition.
7

8 Discussion

9 In its Final Order approving the ASC, the Council found that Summit has demonstrated that it can
10 adequately restore the site to a useful, nonhazardous condition. The Council found that a bond or
11 letter of credit in the amount of \$11,062,500 (2002 dollars) was satisfactory to ensure adequate site
12 restoration, and conditioned the site certificate to require a bond or letter of credit in that amount.
13 The Council found that Summit has a reasonable likelihood of obtaining the required bond.
14

15 The Council's temporary order approving Amendment #3, granted on an expedited basis, reduced
16 the amount of the required retirement bond to \$3.047 million for a one-unit plant or \$3.926 million
17 for a two-unit plant. Since the Council had already found that Summit was likely to secure a bond
18 for \$11 million, the Council concluded that securing a bond for up to \$3.96 million was all the more
19 likely.
20

21 The amendment proposed here does not change the cost of retirement or Summit's ability to secure
22 the required bonds. It only extends the deadlines for start and completion of construction.
23

24 Conclusion

25 The proposed amendment does not affect Summit's ability to meet the Financial Assurance and
26 Retirement standard. ODOE recommends the Council find that that the proposed amendment meets
27 the standard. No new conditions are recommended.
28

29 7. Fish and Wildlife Habitat Standard OAR 345-022-0060

30 To issue the amendment, the Council must find that:
31

32 *“***the design, construction, operation and retirement of the facility, taking into*
33 *account mitigation, are consistent with the fish and wildlife habitat mitigation goals and*
34 *standards of OAR 635-415-0025 in effect as of September 1, 2000.”*
35

36 Discussion

37 In its Final Order approving the site certificate, the Council classified the habitat areas to be affected
38 by the facility, and imposed conditions to ensure that the mitigation of impacts on those habitat
39 areas would be consistent with the fish and wildlife habitat mitigation goals and standards of OAR
40 635-415-0025. The proposed amendment changes the schedule of construction but does not change
41 the facility design or the habitat characteristics of the site.
42

43 Conclusion

44 ODOE recommends the Council find that the proposed amendment complies with the Fish and
45 Wildlife Habitat Standard. No new conditions are recommended.
46

47 8. Threatened and Endangered Species Standard OAR 345-022-0070

48 To issue the amendment, the Council must find that:
49

- 1 “(1) For plant species that the Oregon Department of Agriculture has listed as threatened
2 or endangered under ORS 564.105(2), the design, construction, operation and
3 retirement of the proposed facility, taking into account mitigation:
4 “(a) Are consistent with the protection and conservation program, if any, that the
5 Oregon Department of Agriculture has adopted under ORS 564.105(3); or
6 “(b) If the Oregon Department of Agriculture has not adopted a protection and
7 conservation program, are not likely to cause a significant reduction in the
8 likelihood of survival or recovery of the species; and
9 “(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as
10 threatened or endangered under ORS 496.172(2), the design, construction, operation
11 and retirement of the proposed facility, taking into account mitigation, are not likely
12 to cause a significant reduction in the likelihood of survival or recovery of the
13 species.”
14

15 **Discussion**

16 In its Final Order approving the site certificate, the Council identified several listed species within
17 the project area. Based on recommendations from the Oregon Department of Fish and Wildlife, the
18 Council concluded that the facility would be constructed, operated and retired without significant
19 adverse impacts to these species.
20

21 No new listed species have been identified in the analysis area for the Summit Project. The
22 proposed amendment does not change the facility or the site, but only extends the deadlines for
23 construction. Therefore the proposed amendment does not affect the Council’s prior findings of
24 compliance with the standard.
25

26 **Conclusion**

27 ODOE recommends the Council find that the proposed amendment complies with its Threatened
28 and Endangered Species standard. No new conditions are recommended.
29

30 **9. Scenic and Aesthetic Values Standard OAR 345-022-0080**

31 To issue the amendment, the Council must find that:
32

- 33 “(1) Except for facilities described in sections (2), to issue a site certificate, the Council
34 must find that the design, construction, operation and retirement of the facility,
35 taking into account mitigation, are not likely to result in significant adverse impact
36 to scenic and aesthetic values identified as significant or important in applicable
37 federal land management plans or in local land use plans in the analysis area
38 described in the project order.
39 “(2) The Council may issue a site certificate for a special criteria facility under OAR 345-
40 015-0310 without making the findings described in section (1). However, the Council
41 may apply the requirements of section (1) to impose conditions on a site certificate
42 issued for such a facility.”
43

44 **Discussion**

45 In the Final Order approving the site certificate, the Council found that the Summit Project had no
46 adverse effect on any scenic or aesthetic resources identified in any local land use. The proposed
47 amendment does not affect the facility or the site. Columbia County has not added any new scenic
48 or aesthetic resources to its inventory within the analysis area for the facility. Therefore the
49 proposed amendment does not affect the Council’s prior findings of compliance. The Council did

1 impose conditions to minimize the facility’s impact on the view shed of local residents. The
2 proposed amendment does not affect those conditions.

3
4 **Conclusion**

5 ODOE recommends the Council find that the proposed amendment complies with its Scenic and
6 Aesthetic Values standard. No new conditions are recommended.

7
8 **10. Historic, Cultural and Archeological Resources Standard OAR 345-022-0090**

9 To issue the amendment, the Council must find that:

10
11 *“*** the construction, operation and retirement of the facility, taking into account*
12 *mitigation, are not likely to result in significant adverse impacts to:*

- 13
14 (a) *Historic, cultural or archaeological resources that have been listed on, or*
15 *would likely be listed on the National Register of Historic Places;*
16 (b) *For a facility on private land, archaeological objects, as defined in ORS*
17 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*
18 (c) *For a facility on public land, archaeological sites, as defined in ORS*
19 *358.905(1)(c).”*

20
21 **Discussion**

22 In its Final Order approving the site certificate, the Council identified historic and archeological
23 resources in the Port Westward area, but none in the analysis area for the Summit Project. The
24 Council also imposed conditions requiring Summit to train construction personnel on cultural-media
25 identification and to work with certain tribes during groundbreaking activities. The proposed
26 amendment does not change the facility or the site. All current conditions continue to apply.

27
28 **Conclusion**

29 ODOE recommends the Council find that the proposed amendment complies with its Historic,
30 Cultural and Archeological Resources standard. No new conditions are recommended.

31
32 **11. Recreational Standard OAR 345-022-0100**

33 To issue the amendment, the Council must find that:

34
35 *“***the design, construction and operation of a facility, taking into account mitigation, are*
36 *not likely to result in a significant adverse impact to important recreational opportunities in*
37 *the analysis area as described in the project order. The Council shall consider the following*
38 *factors in judging the importance of a recreational opportunity:*

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

44
45 **Discussion**

46 In the final order approving the site certificate, the Council found that the facility would not affect
47 any recreational resources within the analysis area. The proposed amendment does not change the
48 facility or the site. Therefore the proposed amendment does not affect prior findings of compliance.

1 **Conclusion**

2 ODOE recommends the Council find that the proposed amendment complies with its Recreation
3 standard. No new conditions are recommended.

4
5 **12. Public Services Standard OAR 345-022-0010**

6 To issue the amendment, the Council must find that:

7
8 *“*** the construction and operation of the facility, taking into account mitigation, are not*
9 *likely to result in significant adverse impact to the ability of public and private providers*
10 *within the analysis area described in the project order to provide: sewers and sewage*
11 *treatment, water, storm water drainage, solid waste management, housing, traffic safety,*
12 *police and fire protection, health care and schools.”*

13
14 **Discussion**

15 In its Final Order approving the site certificate, the Council identified several potential impacts to
16 the listed public services, particularly in the area of traffic safety. The Council imposed conditions
17 requiring Summit to use portable toilets during construction, implement roadway related
18 improvements, and construct a fire protection system. The proposed amendment does not change
19 the facility or the site, and does not change any of the conditions imposed under this standard.

20
21 **Conclusion**

22 ODOE recommends the Council find that the proposed amendment complies with its Public
23 Services standard. No new conditions are recommended.

24
25 **13. Waste Minimization Standard OAR 345-022-0120**

26 To issue the amendment, the Council must find that:

27
28 *“****

29 *“(a) The applicant’s solid waste and wastewater plans are likely to minimize*
30 *generation of solid waste and wastewater in the construction, operation, and*
31 *retirement of the facility, and when solid waste or wastewater is generated, to*
32 *result in recycling and reuse of such wastes;*

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

37
38 **Discussion**

39 In its Final Order approving the site certificate, the Council identified programs proposed by
40 Summit to minimize generation of waste and to recycle waste generated during construction and
41 operation. The Council imposed on Summit commitments regarding waste minimization, disposal
42 and recycling as conditions in the site certificate. In amendment #2, the Council authorized process
43 water discharge either to storage ponds or to the Port of St. Helens. The proposed amendment does
44 not change either the site or the facility. Therefore the existing conditions remain sufficient.

45
46 **Conclusion**

47 ODOE recommends the Council find that the proposed amendment complies with its Waste
48 Minimization standard. No new conditions are recommended.

1 **B. Public Health and Safety ORS 469.401(2)**

2
3 In the Final Order approving the site certificate, the Council considered safety factors and imposed
4 conditions based on : (1) potential for cooling tower fogging and icing affecting driving conditions
5 on public roads, (2) potential health concerns regarding electric and magnetic fields from high-
6 voltage transmission lines, (3) coordination with the Oregon Public Utility Commission (the
7 “PUC”) to ensure that the certificate holder designs and builds the electrical transmission lines and
8 natural gas pipeline in accordance with the appropriate codes and standards, and (4) pipeline safety
9 monitoring consistent with OAR 345-027-0020(3)(b).

10
11 The proposed amendment does not change the facility or its design, and does not affect any
12 conditions imposed under this statute. Therefore the proposed amendment does not affect any prior
13 Council findings regarding public health and safety, and no new conditions are recommended.

14
15 **C. Requirements of Agencies Other than EFSC**

16
17 The facility requires WPCF permits from the Department of Environmental Quality for wastewater
18 discharge, a removal-fill permit from the Department of State Lands, and use of third party permits
19 for water use and process water discharge. The facility must also meet noise standards of DEQ.

20
21 The WPCF permit requirements have not changed, and Summit’s existing WPCF permits for
22 process water and sanitary water discharge would remain valid. Under Amendment #2, Summit
23 would have the option of discharging process water to the Port of St. Helens, which would
24 discharge the water under its National Pollutant Discharge Elimination (NPDES) permit. The Port’s
25 NPDES permit and its contractual arrangements with Summit remain valid.

26
27 Although the EQC amended the noise regulations at OAR Chapter 340, Division 35, effective June
28 11, 2004, the modifications are applicable only to wind energy facilities and do not affect the
29 Summit project. The Summit project remains in compliance with the existing applicable noise
30 standards.

31
32 The one agency other than EFSC that has amended its regulations since issuance of the Summit
33 Project site certificate is the Department of State Lands (“DSL”), which modified its regulations
34 covering wetland removal-fill permitting effective January 15, 2003. At the Department’s request,
35 Summit demonstrated that the Summit Project would comply with the newly promulgated
36 regulations set forth at OAR Chapter 141, Chapter 85.³ That analysis is set forth below:

37
38 Administrative Rule Standards

39 OAR 141-085-0025 sets forth the requirements that must be addressed by an applicant for a
40 removal-fill permit as follows:

- 41
42 *“(1) Any person planning an activity subject to the Removal-Fill Law or these rules must*
43 *obtain an individual permit or other authorization from the Department before*
44 *conducting the activity. Persons may submit an application in order for the*

³ Summit argues that the new DSL removal-fill rules are not applicable to this application for amendment, citing OAR 141-085-0022(2). ODOE does not agree with Summit’s interpretation of that provision. However, the facility remains in compliance with applicable DSL regulations because Summit provided an analysis under the new rules, and the only new conditions proposed are conditions that reflect commitments made by Summit. Stoel-Rives letter of August 17, 2004 from Greg Corbin to Adam Bless.

1 *Department to determine if an activity is subject to these rules and requires an*
2 *authorization.”*

3
4 Summit has filed and obtained a removal-fill permit from DSL.

5
6 “(2) *To obtain an individual permit, a complete application is required in order for the*
7 *Department to process the application and issue the permit. The applicant is*
8 *responsible for providing sufficient detail in the application to enable the*
9 *Department to render the determinations and decisions required by these rules.***”*

10
11 Summit submitted a complete Joint Permit Application that contained sufficient detail to enable
12 DSL to issue a removal-fill permit.

13
14 “(3) *A completed and signed application on forms provided by the Department along with*
15 *any maps, photos and drawings, as required, that includes [the information*
16 *described in subsections (a)-(o)].”*

17
18 The Joint Permit Application submitted by Summit prior to issuance of the removal-fill permit was
19 complete, signed, on forms provided by DSL, and included maps and drawings showing the
20 location and design of the Summit Project as they relate to wetlands delineated on the facility site.
21 The Joint Permit Application also included all the necessary and available information to meet each
22 of the criteria listed in subsections (a) -(o) of the rule.

23
24 “(4) *If reasonably expected adverse impacts to the water resources cannot be avoided,*
25 *minimized, rectified or reduced, a complete application must also include a*
26 *compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will*
27 *meet the requirements in OAR 141-085-0121 thru -0176, or a compensatory*
28 *mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary*
29 *impacts to waters of the state, as required in OAR 141-085-0171.”*

30
31 Summit’s Mitigation Plan, describing the steps Summit would take to compensate for unavoidable
32 wetland impacts at the facility site, was approved by DSL. The Mitigation Plan’s compliance with
33 OAR 141-085-0121 thru -0176, OAR 141-085-0115, and OAR 141-085- 0171, regulations
34 promulgated by DSL after issuance of the Summit/Westward site certificate, is discussed below.

35
36 “(5) *If the proposed activity involves a wetland, a wetland determination or delineation*
37 *report that meets the requirements in OAR 141-090-0005 thru -0055 shall be*
38 *submitted by the applicant or required by the Department.”*

39
40 The Delineation and supporting documents that were included in the Restated ASC identify and
41 delineate the wetlands at the 53-acre facility site, some of which are affected by the proposed
42 facility. DSL concurred in writing with the Delineation (Det. #01-0566).

43
44 “(6) *If the proposed activity involves a wetland, the application shall include a functional*
45 *attribute assessment of the wetland as described in OAR 141-085-0121.”*

46
47 The Joint Permit Application and supporting documents included a functional attribute assessment.
48 Additional detail is provided below under OAR 141-085-0121.

1 “(7) *If the proposed activity will directly affect an estuary as defined in OAR 141-085-*
2 *0010, a complete application must include [additional information].***”*
3

4 The proposed facility would not directly affect an estuary as defined in OAR 141-085-0010.
5

6 “(8) *An applicant for fill and removal of material at locations not more than one mile*
7 *apart may combine them into one application. Applicants for linear transportation*
8 *or utility corridor projects may apply on a single application if the projects:*

9 “(a) *Consist of integrally-related activities; and*

10 “(b) *Are planned, phased, designed and budgeted as a discrete construction unit.”*
11

12 The Summit Project does not consist of integrally-related activities.
13

14 “(9) *The Department may require additional information necessary to make an informed*
15 *decision on whether or not the application and project complies with these rules and*
16 *ORS 196.800 to 196.990.”*
17

18 Summit worked closely with the Department, DSL, and the U.S. Army Corps of Engineers to
19 provide additional information necessary to the making of an informed decision on the Joint Permit
20 Application.
21

22 “(10) *The application may include the fee as described in OAR 141-085-0064.”*
23

24 Summit included the appropriate fees with the Joint Permit Application submittal.
25

26 OAR 141-085-0029 describes review standards and permit conditions for individual removal-fill
27 authorizations as follows:
28

29 “(1) *In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and*
30 *196.825 the Department shall evaluate the information provided in the application;*
31 *conduct its own investigation; and review and consider the comments submitted*
32 *during the public review process in order to apply the following standards to*
33 *determine whether or not to issue an individual removal-fill authorization.”*
34

35 As set forth below, Summit provided information to DSL in response to which DSL determined to
36 issue an individual removal-fill authorization.
37

38 “(2) *Effective Date of Review Standards. The Department may consider only standards*
39 *and criteria in effect on the date the Department receives the complete application or*
40 *renewal request (OAR 141-085-0036).”*
41

42 In issuing Summit’s removal-fill permit, DSL considered the Joint Permit Application under rules
43 in effect at the time it was submitted. The information provided by Summit in response to the
44 Department’s request addresses the DSL regulations made effective January 15, 2003.
45

46 “(3) *Considerations for Approval. To issue an individual removal-fill permit the*
47 *Department must determine that the proposed removal-fill activity will not be*
48 *inconsistent with the protection, conservation and best use of the water resources of*
49 *this state and would not unreasonably interfere with the paramount public policy of*

1 *this state to preserve the use of its waters for navigation, fishing and public*
2 *recreation, by:*

3
4 *“(a) Considering the public need for the project including the social, economic or*
5 *other public benefits likely to result from the project. If the applicant is a*
6 *public body, the Department may rely on the public body's findings as to*
7 *local public need and benefit;”*

8
9 Summit states that the proposed Summit Project's energy output and benefits would provide
10 competitive electricity supplies in the regional power market, and may provide critical affordable
11 power supplies to two aluminum companies that operate smelters at The Dalles, Oregon, and
12 Goldendale, Washington. In its Final Order, the Council found “that the proposed fill is needed for
13 the energy facility to go forward and that in fact some removal-fill activity would be needed for any
14 use of this land in the manner for which it is zoned.” Final Order, page 103.

15
16 *“(b) Considering the economic cost to the public if the project is not*
17 *accomplished;”*

18
19 Summit states that the economic benefits expected from the proposed Summit Project are
20 summarized in the Golden Northwest's Power Resource Development Strategy and are contained
21 within the introductory section of the Notice of Intent to Apply for a Site Certificate, dated February
22 27, 2001. The Council found that “[t]he economic cost to the public if the proposed fill is not
23 accomplished is that land that Columbia County has designated [Rural Industrial – Planned
24 Development (“RIPD”)] could not be fully developed.” Final Order, page 103.

25
26 *“(c) Considering whether the project would interfere with public health and*
27 *safety;”*

28
29 Summit states that Restated Exhibit J, at pages J-13 and J-14, and other materials referred to in
30 Restated Exhibit J provide a complete discussion of whether the fill, as originally proposed, would
31 conform to sound policies of conservation and would not interfere with public health and safety.
32 Based on the discussion in Restated Exhibit J, the Council found that the Summit Project would
33 conform to sound policies of conservation and would not interfere with public health and safety. In
34 particular, Summit states, the Council found that “[t]he proposed fill will conform to sound policies
35 of conservation because opportunities to avoid impacts to wetlands and aquatic resources have been
36 evaluated and incorporated in the site selection and final design layout and because the applicant
37 will mitigate impacts under a mitigation plan reviewed and approved by EFSC in consultation with
38 DSL.” Final Order, page 104.

39
40 *“(d) Considering whether the project is compatible with the local comprehensive*
41 *land use plan. The Department will not issue an individual removal-fill*
42 *permit for a project that is not consistent or compatible with the local*
43 *comprehensive land use plan and/or zoning ordinance. The Department may*
44 *issue an individual removal-fill permit requiring the applicant to obtain local*
45 *land use approval prior to beginning the authorized activity;”*

46
47 Summit elected to obtain a Council determination that the proposed facility complies with the
48 statewide planning goals. The Restated ASC provides the information on which the Council based
49 its analysis of whether the facility complies with applicable substantive criteria from the affected
50 local governments’ acknowledged comprehensive plans and land use regulations required by the

1 statewide planning goals and any Land Conservation and Development Commission administrative
2 rules and goals and any land use statutes and rules directly applicable to the facility under ORS
3 197.646(3). In the Final Order, the Council found that “the proposed fill complies with uses
4 designated for [RIPD lands] and with the acknowledged comprehensive plan.” Final Order, page
5 104.

6
7 *“(e) Determining the degree to which, if at all, the project, will unreasonably*
8 *interfere with navigation, fishing and public recreation uses of the waters of*
9 *the state;”*

10
11 Summit states that Restated Exhibit J, at page J-18, outlines the reasons the Summit Project would
12 not unreasonably interfere with navigation, fishing and public recreation uses of the waters of the
13 state. The wetlands that would be affected by the Summit Project are not navigable waters, do not
14 support fishing, and are on private property and are therefore unavailable for public recreation.
15 Summit points out that this Amendment Request does not increase the likelihood that the Summit
16 Project would unreasonably interfere with navigation, fishing and public recreation uses of the
17 waters of the state.

18
19 *“(f) Considering the degree to which, if at all, the project will increase erosion or*
20 *flooding upstream and downstream of the project or redirect water from the*
21 *project site onto adjacent nearby lands;”*

22
23 Summit states that the Summit Project is not expected to increase erosion or flooding upstream and
24 downstream of the Summit Project or to redirect water from the Summit Project site onto adjacent
25 nearby lands.

26
27 *“(g) Considering the practicable alternatives for the project in accordance with*
28 *(4) as presented in the application; and”*

29
30 See discussion of OAR 141-085-0029(4) below.

31
32 *“(h) Considering practicable mitigation (including compensatory mitigation) for*
33 *all reasonably expected adverse impacts of project development, as required*
34 *by subsection (5).”*

35
36 See discussion of OAR 141-085-0029(5) below.

37
38 *“(4) Alternatives Analysis. The Agency will issue an individual removal-fill permit only*
39 *upon the Agency's determination that a fill or removal project represents the*
40 *practicable alternative that would have the least adverse effects on the water*
41 *resources and navigation, fishing and public recreation uses....”*

42
43 Summit states that the Council has determined that there are no practicable alternatives to the
44 Summit Project or the fill proposed at the facility site. Final Order, pages 103-104. Summit has
45 conducted extensive design and redesign to avoid and to minimize to the maximum extent
46 practicable the amount of wetland impacts from the Summit Project. Additionally, the unavoidable
47 wetland impacts associated with the Summit Project would not have an adverse impact on the water
48 resources and navigation, fishing and public recreation uses of the waters of the state. Restated
49 Exhibit J, at pages J-18 and J-20. Accordingly, Summit states, the Summit Project's proposed

1 wetland impacts represent the practicable alternative that would have the least adverse effect on the
2 water resources and navigation, fishing and public recreation uses.

3
4 “(5) *Mitigation. The Department will only issue an individual removal-fill permit for the*
5 *practicable alternative with the least adverse effects to the water resources upon the*
6 *Department's determination that the project includes appropriate and practicable*
7 *steps to reduce (mitigate) reasonably expected adverse impacts of the project to the*
8 *water resources and navigation, fishing and public recreation uses. Mitigation shall*
9 *be considered in the following sequence:*

10
11 “(a) *Avoidance. The Department shall first consider whether the project can be*
12 *accomplished by avoiding removing material or placing fill material in or on*
13 *waters of the state altogether (e.g., by moving the location of a proposed*
14 *structure, either on-site or off-site, to avoid filling wetlands);”*

15
16 Summit states that there are no alternatives to the Summit Project’s site or design that would allow
17 Summit to further avoid wetland impacts. Summit has conducted extensive facility design and
18 redesign to avoid wetland impacts to the maximum extent practicable. The wetland impacts
19 proposed in the Restated ASC are unavoidable wetland impacts. Of those impacts, the current Site
20 Certificate authorizes the fill of 0.48 acre of jurisdictional wetlands and other waters on the facility
21 site. The Council, the U.S. Army Corps of Engineers and DSL approved that amount of fill. With
22 respect to the wetland impacts proposed in the Restated ASC, the Council found that:

23
24 “Summit/Westward has undertaken site redesign to avoid and
25 minimize potential impacts to regulated "waters of the state."
26 Redesigned elements include (1) shifting the final site layout of the
27 power island, (2) moving and reorienting the cooling towers, (3)
28 redesigning and shifting the wastewater retention ponds, (4) moving
29 appurtenant components of the power island, and (5) laying out the
30 final design of all related or supporting linear facilities, including the
31 natural-gas pipeline, transmission line, and water supply pipeline,
32 within existing roads or upland areas.” Final Order, page 101.

33
34 Summit states that the Council’s finding remains accurate and applicable to this Amendment
35 Request.

36
37 “(b) *Minimization. If the Department determines that the project cannot be*
38 *accomplished without adverse impacts to water resources and/or navigation,*
39 *fishing and public recreation uses, the Department shall then consider*
40 *whether limiting the degree or magnitude of the removal-fill and its*
41 *implementation can minimize adverse impacts (e.g., bio-engineered and non-*
42 *structural streambank stabilization techniques, such as bank sloping and*
43 *revegetation, shall be installed instead of solutions relying primarily on*
44 *concrete and riprap, whenever technically feasible, suitable and*
45 *environmentally preferable);”*

46
47 Summit states that it will minimize the impacts associated with wetland fill by using best practices
48 contained in a grading and erosion control plan.

1 “(c) *Rectification. If the Department determines that project impacts to the waters*
2 *of the state cannot be further minimized, the Department shall then consider*
3 *whether repairing, rehabilitating or restoring (e.g., restoring site conditions*
4 *along a pipeline corridor after installation is complete) the removal fill*
5 *impact area can rectify the impact;”*
6

7 Summit states that the approved fill of 0.48 acres would be permanent and would not be subject to
8 rectification. The wetland fill would be mitigated according to the approved Mitigation Plan
9 (Foothill Associates, March 2002).

10
11 “(d) *Reduction or elimination. When removal fill impacts have been minimized*
12 *and rectified to the maximum extent practicable, the Department will*
13 *consider whether the impacts can be further reduced or eliminated over time*
14 *by monitoring and taking appropriate corrective measures (e.g., assure that*
15 *site restoration methods have effectively revegetated the site); and”*
16

17 Summit states that the Mitigation Plan is designed to reduce or eliminate Summit Project impacts to
18 wetlands through the use of best practices and the creation of 0.75 acre of compensatory wetland.
19 The Mitigation Plan includes provisions for three consecutive years of mitigation monitoring,
20 including wetland condition, trend detection, hydrology, floristics, and wildlife. Success criteria for
21 the Mitigation Plan are established and will be monitored. Contingency plans are identified in the
22 event that success criteria are not met during the monitoring period. Mitigation Plan, pages 12-14.
23

24 “(e) *Compensation. The Department shall then consider how the applicant's*
25 *project would compensate for reasonably expected adverse impacts of project*
26 *development by replacing or providing comparable substitute wetland or*
27 *water resources and/or navigation, fishing and public recreation uses.*
28 *Compensatory mitigation may not be used as a method to reduce*
29 *environmental impacts in the evaluation of practicable alternatives.”*
30

31 Summit would compensate for 0.48 acre of permanent wetland fill by creating approximately 0.75
32 acre of new wetland (1.5:1 ratio). Wetland compensation is expected to yield a net gain of wetland
33 functions over time. Mitigation Plan, page 8.
34

35 “(6) *Direct and Indirect Effects. The Department shall impose conditions that mitigate*
36 *the direct effects of project development and conditions that mitigate the indirect*
37 *effects that reach beyond the immediate project area (e.g., a condition requiring that*
38 *equipment must be washed down away from any wetland) when necessary to*
39 *mitigate the reasonably expected adverse impacts of project development to the*
40 *waters of the state.”*
41

42 Summit states it does not expect that direct or indirect effects of the Summit Project would reach
43 beyond the immediate facility area.
44

45 “(7) *Permit Conditions. If the project meets the requirements of this section, the*
46 *Department shall impose applicable general conditions in order to reduce or*
47 *eliminate the reasonably expected adverse impacts of project development to waters*
48 *of the state. The Department may also require additional, site-specific and/or*
49 *project-specific conditions, or may modify these general conditions, as listed below,*
50 *as appropriate:***”*

1
2 DSL included applicable general and specific conditions in the approved removal-fill permit.
3

4 “(8) *Long Term Protection of Mitigation Sites.*

5 “(a) *The individual removal-fill permit along with site access control (e.g.*
6 *fencing, signing) is usually sufficient legal means to achieve maintenance and*
7 *long-term protection of mitigation sites. However, in some instances*
8 *compensatory mitigation sites and indirect compensatory wetland mitigation*
9 *sites will need to be permanently protected from destruction with appropriate*
10 *real estate instruments or agreements (e.g. conservation easements, deed*
11 *restrictions, long-term management agreements with land trusts or public*
12 *ownership).***”*

13
14 Summit states it would protect the compensatory wetland mitigation site by means of a long-term
15 lease of the site from the Port of St. Helens.

16
17 OAR 141-085-0121 describes the circumstances under which compensatory wetland mitigation
18 may be required as follows:

19
20 “(2) *For projects where reasonably expected adverse impacts to the water resources*
21 *including wetland functions cannot otherwise be avoided, or minimized, a CWM plan*
22 *will be required to compensate for the reasonably expected adverse impacts of the*
23 *project by replacing the functional attributes of the wetland impacted by project*
24 *development. Compensatory wetland mitigation shall be limited to replacement of*
25 *the functional attributes of the lost wetland.”*

26
27 The approved Mitigation Plan for the Summit Project is a CWM plan.

28
29 “(3) *For projects described in (2) requiring CWM and involving project development on*
30 *0.2 (two-tenths) of an acre or less of wetlands, there is a rebuttable presumption that*
31 *on-site CWM is impracticable. The applicant may propose to fulfill CWM*
32 *requirements through off-site CWM without first considering on-site CWM.”*

33 Project development at the Summit Project would affect more than 0.2 of an acre, and this rule
34 would not apply.

35
36 “(4) *For projects described in (2) requiring CWM involving project development impacts*
37 *greater than 0.2 (two-tenths) of an acre, the applicant shall first consider on-site*
38 *CWM to provide the replacement of the functional attributes of the lost wetland. If*
39 *on-site CWM is impracticable as documented by the applicant, off-site CWM shall be*
40 *utilized.***”*

41
42 Summit states it would provide on-site compensatory wetland mitigation.

43
44 “(5) *The Department will review the CWM plan for sufficiency and compliance with these*
45 *rules. The Department may make recommendations for improvements to CWM*
46 *plans, at any time prior to the permit decision, based on the demonstrated success of*
47 *existing CWM projects. The Department will approve the final CWM plan as a part*
48 *of the individual removal-fill permit. In approving the final CWM plan, the*
49 *Department may, after consulting with the applicant, require conditions necessary to*

1 *ensure success of the CWM plan and to ensure the requirements in these rules are*
2 *met.”*

3
4 DSL has already issued the removal-fill permit for the Summit Project, and this rule would not
5 apply.

6
7 “(6) *To the extent possible, the Department shall develop and make available to the*
8 *public a listing of known compensatory wetland mitigation sites (e.g., wetland*
9 *mitigation banks).”*

10
11 Because the Summit Project would provide on-site compensatory mitigation, Summit would not
12 make reference to the DSL list of known compensatory wetland mitigation sites.

13
14 “(7) *The applicant shall complete and include in the application an assessment of*
15 *wetland functional attributes. The assessment shall assess:*
16 “(a) *Existing functional attributes at the proposed project impact site;*
17 “(b) *Functional attributes reasonably expected to be adversely impacted,*
18 *including those functional attributes decreased or lost due to the proposed*
19 *project;*
20 “(c) *Existing functional attributes at the proposed CWM site, if the site is*
21 *currently wetland; and*
22 “(d) *The net gain or loss of specific functional attributes at the direct CWM site as*
23 *a result of the proposed CWM project.”*

24
25 Summit states it conducted a baseline wetland functional assessment for each wetland that could be
26 affected by the Summit Project for inclusion in the Restated ASC. The intensive grazing and haying
27 regimes implemented by the current land tenant adversely affect the existing wetland functions and
28 values. The functional attributes of the CWM site and expected gains are discussed in the
29 Mitigation Plan (Mitigation Plan, pages 5-8).

30
31 The Mitigation Plan addresses impacts to one wetland (Wetland #11) and the east-west drainage
32 ditch on the Summit Project site. The Mitigation plan assesses Wetland #11 with a
33 hydrogeomorphic classification as “depressional, with hydrology dominated by limited overland
34 flow, direct precipitation, and seasonal high groundwater” (Mitigation Plan, page 5). The
35 hydrogeomorphic classification is confirmed by additional site study and analysis conducted for
36 preparation of a new joint permit application that is the subject of another amendment request. In
37 connection with producing a new wetland mitigation plan for that wetland fill proposal, Fishman
38 Environmental Services (“FES”) conducted a functional assessment using the Hydrogeomorphic
39 (“HGM”) assessment method (FES Mitigation Plan, July 2004). According to that assessment, the
40 wetlands are designated as “Depressional Outflow” (FES Mitigation Plan, page 2). FES assessed ten
41 functional capacities, each of which scored low (0.4 or lower).

42
43 “(8) *Wetland functional attributes to be assessed include, but are not limited to:*
44 “(a) *Water quality and quantity functions;*
45 “(b) *Fish and wildlife habitat functions;*
46 “(c) *Native plant communities and species diversity functions; and*
47 “(d) *Recreational and educational values.”*

48
49 In connection with the preparation of the Summit Project Mitigation Plan, David Evans and
50 Associates conducted a Wetland Assessment for the Summit Project implementing Oregon

1 Freshwater Wetland Assessment Method (“OFWAM”) (Attachment 2 to Joint Permit Application).
2 That Wetland Assessment evaluated the following functions for each OFWAM wetland area
3 identified on the facility site: (1) Wildlife Habitat; (2) Fish Habitat; (3) Water Quality (Pollutant
4 Removal); (4) Hydrologic Control; (5) Sensitivity to Future Impacts; (6) Enhancement Potential; (7)
5 Education; (8) Recreation; and (9) Aesthetic Quality.

6
7 *“(9) A functional assessment of the impact site is not needed if the proposed CWM plan
8 utilizes payment to provide or the purchase of credits from a wetland mitigation bank
9 to satisfy all the compensatory wetland mitigation requirements.”*

10
11 Summit would not utilize payment to provide or the purchase of credits from a wetland mitigation
12 bank to satisfy all the compensatory wetland mitigation requirements, so this rule would not apply.

13
14 *“(10) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the
15 requirements of OAR 141-085-0121(7).”*

16
17 Summit states it conducted an OFWAM assessment to describe all of the wetland areas at the
18 facility site. The Mitigation Plan (Foothill Associates, March 2002) addresses impacts to one
19 wetland (Wetland #11) and the east-west drainage ditch on the facility site. The Mitigation Plan
20 adds to the OFWAM assessment for Wetland #11 with an HGM classification of that wetland as
21 “depressional, with hydrology dominated by limited overland flow, direct precipitation, and
22 seasonal high groundwater” (Mitigation Plan, page 5). A formal HGM assessment was not
23 conducted at the time because it was not required by the applicable DSL rules.

24
25 Summit confirmed the HGM classification by means of additional site study and analysis conducted
26 for preparation of a new joint permit application that is the subject of another amendment request.
27 In connection with producing a new wetland mitigation plan for that wetland fill proposal, Fishman
28 Environmental Services (“FES”) conducted a functional assessment using the HGM assessment
29 method. According to that assessment, the wetlands are designated as “Depressional Outflow.” FES
30 assessed ten functional capacities, each of which scored low (0.4 or lower).

31
32 *“(11) HGM is the preferred, but not required, functional assessment method. When HGM
33 is used, the Willamette Valley HGM guidebook should be used for appropriate HGM
34 classes in the Willamette Valley; until additional guidebooks are developed by the
35 Department, the "Judgmental Method" in the Willamette Valley Guidebook may be
36 used to assess wetland functions in other regions.***”*

37
38 As noted above, Summit did not conduct a formal HGM assessment for the Joint Permit
39 Application, because it was not required under the applicable DSL rules. However, FES conducted
40 an HGM assessment of wetland functions in preparing an assessment and mitigation plan for a new
41 removal-fill permit application (July 2004). The Summit Project site is outside the Willamette
42 Valley ecoregion. Accordingly, Summit used the “Judgmental Method” in the Willamette Valley
43 Guidebook to conduct the assessment.

44
45 *“(12) If best professional judgment is used to evaluate any or all wetland functional
46 attributes, a discussion of the basis of the conclusions is required.***”*

47
48 The FES Mitigation Plan (July 2004) includes a detailed discussion of the rationale for reaching
49 each HGM score.

1 “(13) *Additional assessments or data may be required by the Department if the functional*
2 *assessment results, public/agency review comments, or the Department's review*
3 *indicate that there may be reasonably expected adverse impacts to rare or listed*
4 *plant or animal species, adjoining property owners, or if the project's effects are not*
5 *readily apparent.*”
6

7 Summit states that the Summit Project’s effects with respect to wetlands are well documented in
8 Restated Exhibit J and supporting materials. There are no expected adverse impacts to rare or listed
9 plant or animal species or adjoining property owners. A detailed analysis of habitats known to be
10 important to rare, endangered, threatened, and candidate species is provided in Exhibits P and Q of
11 the Restated ASC. The potential impacts of the wetland fill proposed in the Restated ASC on rare
12 and listed species are presented in the Biological Assessment prepared for the U.S. Army Corps of
13 Engineers 404 permit. Based on that analysis, Summit expects that would be no adverse impacts on
14 rare or listed species.
15

16 OAR 141-085-0126 outlines the requirements for compensatory wetland mitigation projects as
17 follows:
18

- 19 “(1) *CWM projects shall replace:*
20 “(a) *Wetland habitat type(s) impacted by the project, as classified per Cowardin*
21 *system (e.g., palustrine forested); and*
22 “(b) *HGM class/subclass(es) impacted by the project (e.g., riverine impounding),*
23 *using the Oregon HGM Statewide Classification (Oregon Department of*
24 *State Lands 2001); and*
25 “(c) *The functional attributes of the lost wetland (impact wetland).*”
26

27 Summit’s approved CWM would replace lost palustrine emergent wetland areas with 0.75 acres of
28 palustrine emergent wetland constructed as isolated depressional wetlands. Mitigation Plan, page 6.
29

- 30 “(2) *The Department may approve exceptions to the requirements of OAR 141-085-*
31 *0126(1) if the applicant demonstrates, in writing, that the alternative CWM:*
32 “(a) *Is environmentally preferable;*
33 “(b) *Replaces wetland functions that address problems (such as flooding) that are*
34 *identified in a watershed management plan or water quality management*
35 *plan approved by a watershed council or public agency;*
36 “(c) *Replaces wetland types (Cowardin/HGM) and functions historically lost in*
37 *the region; or*
38 “(d) *Replaces rare or uncommon plant communities appropriate to the region, as*
39 *identified in the most recent ONHP plant community classification.*”
40

41 Summit states that the CWM does not require an exception. Accordingly, this provision does not
42 apply to this Amendment Request.
43

- 44 “(3) *A permit holder, with the approval of the Department, may at any time contract with*
45 *a third party to construct, monitor or maintain the CWM site. The permit holder*
46 *cannot delegate responsibility for compliance with the CWM requirements unless the*
47 *authorization has been transferred in accordance with OAR 141-085-0034.*”
48

49 Summit states it would be responsible for construction, monitoring, and maintenance of the CWM
50 site. Summit would obtain approval from DSL for any third-party contractor with which it might

1 enter into a contract for the provision of services associated with the construction, monitoring, and
2 maintenance of the CWM site.

3
4 “(4) *For linear projects (e.g., roads or utility lines with wetland impacts in several*
5 *watersheds), the applicant may compensate for all wetland impacts at a single CWM*
6 *site.”*

7
8 Summit states that the CWM for the Summit Project is not intended to compensate for wetland
9 impacts associated with any linear facility.

10
11 “(5) *CWM projects:*

12 “(a) *Shall be completed prior to or concurrent with the authorized removal-fill*
13 *project. The Department may approve non-concurrent CWM if the applicant*
14 *clearly demonstrates, in writing, the reason for the delay or that there is*
15 *benefit to the water resources in doing so. The ratio of CWM required for*
16 *delayed projects may be increased according to the provisions of OAR-141-*
17 *085-0136;”*

18
19 Summit states it will complete the CWM project concurrently with the authorized removal-fill
20 project.

21
22 “(b) *Shall include native vegetation plantings aimed at re-establishment of a*
23 *dominance of native plants;”*

24
25 Summit states that all replanting would include native vegetation. Section 4.4 of the Mitigation Plan
26 details the mitigation site planting proposed for the CWM project. Mitigation Plan, pages 10-11.

27
28 “(c) *Shall not rely on features or facilities that require frequent and regular long-*
29 *term maintenance and management. For example, permanent water control*
30 *structures may be acceptable, whereas pumping from a groundwater well to*
31 *provide hydrology is not.”*

32
33 Summit states that the CWM does not rely on features or facilities that require frequent and regular
34 long-term maintenance and management. Summit would protect and maintain the CWM site
35 beyond the 5-year monitoring period, primarily by using fencing and signage to restrict access to
36 the site.

37
38 “(6) *CWM sites may fulfill multiple purposes including stormwater retention or detention*
39 *provided:*

40 “(a) *The requirements of OAR 141-085-0126(1) and (2) are met;*

41 “(b) *No alteration is required to maintain the stormwater functions that would*
42 *degrade the functional attributes; and*

43 “(c) *The runoff water entering the CWM site has been pretreated to the level*
44 *necessary to assure that state water quality standards and criteria are met in*
45 *the mitigation area.”*

46
47 Summit states that the CWM for the Summit Project does not fulfill multiple purposes.
48 Accordingly, this provision is not applicable.

1 “(7) *CWM using wetland enhancement must conform to the following additional*
2 *requirements....*”
3

4 Summit states that the CWM for the Summit Project does not use wetland enhancement.
5 Accordingly, this provision is not applicable.
6

7 “(8) *A conservation easement, deed restriction or similar legally binding instrument shall*
8 *be part of a CWM plan, as specified in OAR 141-085-0029(8).*”
9

10 Summit states it would protect the compensatory wetland mitigation site by means of a long-term
11 lease of the site from the Port of St. Helens.
12

13 OAR 141-085-0136 sets forth ratio requirements for compensatory wetland mitigation plans as
14 follows:
15

16 “(2) *Except as provided in Sections (3) through (6) of this section, the following minimum*
17 *ratios shall be used in the development of CWM plans:*

18 “(a) *Restoration: One (1) acre of restored wetland for one (1) acre of impacted*
19 *wetland.*”
20

21 Summit states it is not proposing any wetland restoration. Accordingly, this provision does not
22 apply to this Amendment Request.
23

24 “(b) *Creation: One and one-half (1.5) acres of created wetland for one (1) acre of*
25 *impacted wetland.*”
26

27 Summit would create 0.75 acre of wetland to compensate at a ratio of 1.5:1.0 for the 0.48 acre of
28 wetlands and ditch permanently filled by the Summit Project.
29

30 “(c) *Enhancement: Three (3) acres of enhanced wetland for one (1) acre of*
31 *impacted wetland.*”
32

33 Summit states it is not proposing any wetland enhancement. Accordingly, this provision does not
34 apply to this Amendment Request.
35

36 “(d) *Enhancement of cropped wetland as determined by the Department: Two (2)*
37 *acres of enhanced wetland for one (1) acre of impacted wetland.*”
38

39 Summit states it is not proposing any enhancement of cropped wetland. Accordingly, this provision
40 does not apply to this Amendment Request.
41

42 “(e) *Conservation in Lieu: Variable: See OAR 141-085-0131(4).*
43

44 Summit states it is not proposing any conservation in lieu of mitigation. Accordingly, this provision
45 does not apply to this Amendment Request.
46

47 “(3) *The Department shall double the minimum ratio requirements for project*
48 *development impacting existing CWM sites; for example, using enhancement to*
49 *compensate for impacts to an existing CWM site will require a ratio of six (6) acres*
50 *enhanced for every one (1) acre impacted.*”

1
2 Summit states that the Summit Project would not affect any existing CWM sites. Accordingly, this
3 provision does not apply to this Amendment Request.

4
5 “(4) *The Department may increase the ratios when:*

6 “(a) *Mitigation is proposed to compensate for an unauthorized removal or fill*
7 *activity; and/or*”
8

9 Summit states that the proposed mitigation is not to compensate for an unauthorized removal or fill
10 activity. Accordingly, this provision does not apply to this Amendment Request.

11
12 “(b) *Mitigation is not proposed for implementation concurrently with the*
13 *authorized impact.*”
14

15 Summit states that the Mitigation Plan would be implemented concurrently with the authorized
16 impact. Accordingly, this provision does not apply to this Amendment Request.

17
18 “(5) *At the option of the applicant, CWM may consist of any one or a combination of the*
19 *following CWM ratios for commercial aggregate mining operations where both the*
20 *mining operation and the CWM are conducted on converted wetlands (not including*
21 *pasture).****”
22

23 Summit states that the Summit Project does not involve commercial aggregate mining operations.
24 Accordingly, this provision does not apply to this Amendment Request.

25
26 “(6) *The Department may also apply the following CWM measures for commercial*
27 *aggregate mining operations on converted wetland (not including pasture).***...*”
28

29 Summit states that the Summit Project does not involve commercial aggregate mining operations.
30 Accordingly, this provision does not apply to this Amendment Request.

31
32 OAR 141-085-0141 sets forth requirements for all compensatory wetland mitigation plans as
33 follows:

34
35 “(1) *On-site or off-site CWM involving the creation, restoration and/or enhancement of*
36 *wetlands by the applicant. A CWM plan shall, at a minimum, include:****”
37

38 This part of the rule includes a very detailed list of the information to be provided in a complete
39 CWM plan. Summit’s Mitigation Plan complies with this requirement.

40
41 “(2) *Other CWM. A CWM plan using conservation in lieu must include:****”
42

43 Summit states that it does not propose using conservation in lieu of mitigation. Accordingly, this
44 provision does not apply to this Amendment Request.

45
46 OAR 141-085-0151 describes monitoring requirements for CWM plans involving on-site or off-site
47 creation, restoration or enhancement of wetlands as follows:

48
49 “(2) *The permitholder shall monitor the CWM site and provide to the Department:*

1 “(a) *A post construction report demonstrating "as-built" conditions including*
2 *grading and discussing any variation from the approved plan. Unless waived*
3 *by the Department, the post construction report shall be submitted within*
4 *ninety (90) calendar days of completing grading;”*
5

6 Summit states that it will provide to DSL a post construction report as required by this provision.
7

8 “(b) *An annual written monitoring report that includes all data necessary to*
9 *document compliance with CWM conditions and success in meeting the*
10 *CWM goals. These data may include photographs, topographic surveys,*
11 *plant survival data, hydrologic data and other information as required to*
12 *demonstrate compliance. The report shall include the following sections:*

13 “(A) *Introduction;*

14 “(B) *Goals, objectives and success criteria;*

15 “(C) *Methods;*

16 “(D) *Results;*

17 “(E) *Summary and recommendations;*

18 “(F) *Figures;*

19 “(G) *Appendices with data and photographs.”*
20

21 Summits states that it will provide to DSL monitoring information in the format required by this
22 provision to demonstrate compliance with permit conditions.
23

24 “(3) *Monitoring shall be conducted for 5 years unless otherwise specified by the*
25 *Department.”*
26

27 Summit’s Mitigation Plan provides for 3 years of continuous monitoring. Mitigation Plan, page 12.
28 Summit states it would commit to extending the monitoring proposed in the Mitigation Plan to 5
29 years to comply with this rule.
30

31 OAR 141-085-0171 provides that “[p]rojects that do not result in the permanent loss of wetland
32 functions and values, must, as part of the application, provide a rehabilitation plan for temporary
33 impacts, including:
34

35 “(1) *Plans and specifications for rehabilitating the area of temporary impacts, including*
36 *grading plans and planting plans, timeline and location of fill disposal areas; and*
37

38 “(2) *Planting plans shall specify species, number and spacing. If mature trees are lost as*
39 *a result of the temporary impact, such trees shall be replaced at a ratio of 1.5:1.”*
40

41 Summit states that there would be no temporary wetland impacts associated with the wetland fill
42 proposed in the Restated ASC. Accordingly, this provision does not apply to this Amendment
43 Request.
44

45 OAR 141-085-0176 addresses financial security instruments required of applicants as follows:
46

47 “(1) *Financial Security Instruments are required for CWM projects for impacts greater*
48 *than (two-tenths) of an acre. Financial security instruments are not required when*
49 *CWM is satisfied by purchase of credits from wetland mitigation bank or payment to*

1 *provide mitigation is utilized. To ensure compliance with CWM requirements, the*
2 *Department may allow for any of the following types of financial security instruments:*
3 *“(a) Surety bond;*
4 *“(b) Certificate of Deposit;*
5 *“(c) Irrevocable letter of Credit; or*
6 *“(d) Such other financial instrument as the Department deems appropriate to*
7 *secure the financial commitment of the applicant to fulfill the success of the*
8 *CWM.”*
9

10 Summit states it will work with the Department to provide the appropriate financial security
11 instrument. In this case, the “Department” referred to in the rule is DSL. ODOE does not
12 recommend a new condition regarding this instrument, because Summit’s commitment is to work
13 with DSL and because the Council’s continuing enforcement authority over the site certificate
14 ensures that the mitigation plan will be implemented.
15

16 **Conclusion**

17 ODOE recommends that the Council find that Summit has appropriately analyzed its compliance
18 with DSL’s amended rules. In its wetlands analysis, Summit identifies actions that are designed to
19 comply with regulations promulgated by DSL after issuance of the Summit Project site certificate
20 but prior to the Council’s consideration of this amendment request. ODOE recommends that the
21 Council consider the following actions to be commitments by Summit. To find that Summit
22 complies with OAR 345-021-0010(1)(j) and ORS 196.800-990, ODOE recommends that the
23 Council adopt the following conditions in the site certificate:
24

- 25 **(1) Within ninety days after completing grading of the compensatory wetland**
26 **mitigation site, the certificate holder shall provide to the Department of State**
27 **Lands a post construction report demonstrating “as-built” conditions including**
28 **grading and discussing any variation from the approved plan, as more fully**
29 **described in OAR 141-085-0151(2)(a).**
30
31 **(2) During the five-year period following completion of grading of the**
32 **compensatory wetland mitigation site, the certificate holder shall provide to the**
33 **Department of State Lands an annual written monitoring report that includes**
34 **all data necessary to document compliance with compensatory wetland**
35 **mitigation conditions and success in meeting the compensatory wetland**
36 **mitigation goals, as more fully described in OAR 141-085-0151(2)(b) and OAR**
37 **141-085-0151(3).**
38

39 ODOE recommends that the Council find that, subject to conditions (1) and (2) above, Summit
40 complies with OAR 345-021-0010(1)(j) and ORS 196.800-990.
41

42 **D. Carbon Dioxide Standard for Base Load Gas Plants OAR 345-024-0550**

43 To issue the amendment, the Council must find that:
44

45 **** the net carbon dioxide emissions rate of the proposed facility does not exceed*
46 *0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with*
47 *carbon dioxide emissions and net electric power output measured on a new and*
48 *clean basis. For a base load gas plant designed with power or augmentation*
49 *technology as defined in OAR 345-001-0010, the Council shall apply the standard*

1 for a non-base load power plant, as described in OAR 345-024-0590, to the
2 incremental carbon dioxide emissions from the designed operation of the power
3 augmentation technology.***
4

5 **Discussion**

6 In the order approving the site certificate, the Council found that Summit would comply with the
7 standards of Division 24 by providing carbon dioxide (“CO₂”) offset funds to the Climate Trust. In
8 amendment #3, granted by temporary order on July 23, 2004, the Council approved a payment
9 schedule commensurate with construction in two phases. The payment schedule and memoranda of
10 understanding with the Climate Trust were modified, but the amount of carbon dioxide offset and
11 total required offset payment were not affected.
12

13 The extension of construction deadlines does not affect carbon dioxide emissions or the amount of
14 required offset payment. The conditions issued under amendment #3 continue to apply.
15

16 **Conclusion**

17 ODOE recommends that the Council find that the proposed amendment complies with the Carbon
18 Dioxide standards at OAR Chapter 345, Division 24. No new conditions are recommended
19

20 **E. Considerations for Extending Construction Deadlines OAR 345-027-0070(9)**

21
22 OAR 345-027-0070(9)(b) identifies three factors the Council must consider when considering an
23 amendment that extends the deadlines for beginning or completing construction. Each factor is
24 discussed below:
25

26 “(A) *Whether the Council has previously granted an extension of the deadline.*”
27

28 The Council has not previously granted an extension of the deadline for beginning construction or
29 the deadline for completing construction of the Summit Project.
30

31 “(B) *Whether there has been any change of circumstances that affects a previous Council*
32 *finding that was required for issuance of a site certificate or amended site certificate.*”
33

34 As described above in sections III.A through D of this order, the Department recommends that the
35 Council find that there is no change of circumstances that affects prior Council findings of
36 compliance in the Final Order or the Orders granting prior amendments.
37

38 “(C) *Whether the facility complies with all Council standards.*”
39

40 The proposed amendment extends construction deadlines but does not change the facility or the site.
41 As described above in sections III.A through D of this order, the facility, with the construction
42 deadlines extended, remains in compliance with all Council standards.
43

44 **V. PROPOSED ORDER AND SITE CERTIFICATE AMENDMENTS**

45
46 ODOE recommends that the Council find that the Summit Project, with the extension of deadlines
47 for start and completion of construction proposed in Summit’s Third Request for Amendment,
48 meets the Council’s standards.
49

1 ODOE recommends that the Council approve Summit's Third Request for Amendment and issue
2 the amendment as Amendment #4, with conditions G.1.(4) and (5) amended as requested, and with
3 two new conditions regarding monitoring and reporting of wetland mitigation as described at
4 section IV.C of this order. ⁴

5
6

OREGON DEPARTMENT OF ENERGY

By: _____

David Stewart-Smith date
Asst. Director, Energy Resources Division

7

⁴ The Council granted Summit's Fourth Request for Amendment by temporary order on July 23, 2004. Although it was the fourth amendment requested, it was the third amendment to be granted by the Council. Therefore, this extension in construction deadline will be the fourth amendment to be issued.