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BEFORE THE ENERGY FACILITY SITING COUNCIL  
OF THE  
STATE OF OREGON

IN THE MATTER OF THE FOURTH REQUEST	)	
TO AMEND THE SITE CERTIFICATE FOR THE	)	TEMPORARY ORDER ON
SUMMIT WESTWARD PROJECT	)	AMENDMENT #3
	)	

Energy Facility Siting Council

July 23, 2004

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Table of Contents

- I. INTRODUCTION ..... 1
- II. PROCEDURAL HISTORY and EXPEDITED REVIEW ..... 1
- III. DESCRIPTION OF THE PROPOSED AMENDMENT ..... 2
  - A. Description of the Facility ..... 2
  - B. Changes to the Facility Proposed by Summit ..... 3
  - C. Changes to Site Certificate Proposed by Summit ..... 3
- IV. FINDINGS ON COMPLIANCE WITH STANDARDS ..... 5
  - A. Council Standards in OAR Chapter 345 Division 22 ..... 6
    - 1. Organizational Expertise OAR 345-022-0010 ..... 6
    - 2. Structural Standard OAR 345-022-0020 ..... 7
    - 3. Soil Standard OAR 345-022-0022 ..... 8
    - 4. Land Use Standard OAR 345-0222-0030 ..... 8
    - 5. Protected Area Standard OAR 345-022-0040 ..... 9
    - 6. Financial Assurance and Retirement Standards OAR 345-022-0050 ..... 9
    - 7. Fish and Wildlife Habitat Standard OAR 345-022-0060 ..... 11
    - 8. Threatened and Endangered Species Standard OAR 345-022-0070 ..... 11
    - 9. Scenic and Aesthetic Values Standard OAR 345-022-0080 ..... 12
    - 10. Historic, Cultural and Archeological Resources Standard OAR 345-022-0090 ..... 13
    - 11. Recreational Standard OAR 345-022-0100 ..... 13
    - 12. Public Services Standard OAR 345-022-0010 ..... 14
    - 13. Waste Minimization Standard OAR 345-022-0120 ..... 14
  - B. Public Health and Safety ORS 469.401(2) ..... 15
  - C. Requirements of Agencies Other than EFSC ..... 15
  - D. OAR 345 Division 24 Carbon Dioxide Standard for Base Load Plants ..... 16
- V. PROPOSED ORDER AND SITE CERTIFICATE AMENDMENTS ..... 26

1

**SUMMIT / WESTWARD PROJECT**  
**SITE CERTIFICATE AMENDMENT #3**  
**TEMPORARY ORDER**

2

3 **I. INTRODUCTION**

4 The Oregon Energy Facility Siting Council (EFSC or “the Council”) issues this order in accordance  
5 with ORS 469.405 and OAR 345-027-0070 and OAR 345-027-0080. This order addresses a  
6 request by Westward Energy LLC (Summit) for amendment #4 of its site certificate for the  
7 Summit/Westward Project (the Summit Project). The Summit Project is a 520 megawatt natural  
8 gas-fired electric generating facility located about 4.5 miles north of Clatskanie, Oregon.

9

10 This is a temporary order, issued under the expedited amendment review process described at OAR  
11 345-027-0080. Any person may request a contested case on this amendment request within 15 days  
12 of the issuance of this temporary order. If no one requests a contested case, the Council will  
13 finalize this order and issue the site certificate amendment.

14

15 In this request for amendment, Summit proposes to construct the facility in phases. Phased  
16 construction requires an amendment because the construction schedule is a condition of the site  
17 certificate, and because the construction schedule affects the payment schedule for carbon dioxide  
18 offsets and for the bond or letter of credit required to assure facility retirement and site restoration.

19

20 The Council issued the site certificate for the Summit Project on October 3, 2002. The Council  
21 granted amendment #1 in February 2004, and amendment #2 in April 2004. This amendment, if  
22 granted, will be amendment #3.<sup>1</sup>

23

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

26

27 **II. PROCEDURAL HISTORY and EXPEDITED REVIEW**

28 Summit submitted the request to amend the site on May 16, 2004. Summit requested expedited  
29 amendment review under OAR 345-027-0080, based on the following:

- 30
- 31 • Expedited review is needed in order to allow phased construction. The phased construction  
32 is necessary in order for Summit and its financial partners to take advantage of one-time  
33 only tax economic stimulus tax incentives that depend on the Summit/Westward project  
34 commencing commercial operation by December 31, 2005.
  - 35
  - 36 • Construction must begin by August 2004 in order to meet the December 2005 deadline for  
37 operation. Without expedited review, Westward Energy LLC and its financial partners  
38 would lose the opportunity to take advantage of the one-time-only tax incentives. This  
39 would unduly harm Westward Energy.
  - 40

---

<sup>1</sup> In April 2004, Summit requested an extension of the construction deadlines. That request was entitled “request for amendment 3”. The amendment request addressed in this order is Summit’s fourth request for amendment. However, if construction begins before October 3, 2004, then the request for extension will be withdrawn and the amendment addressed in this order will be the third amendment of the site certificate.

- 1       • Summit could not reasonably have foreseen the need for this amendment in time to submit  
2 the request through the normal review process. Summit and its parent company have been  
3 diligently marketing the project since the site certificate was issued. The volatility in the  
4 energy market has put substantial roadblocks in the way of financing of generating facilities.  
5 And, the business transaction needed to support the financing of phase 1 construction in  
6 order to take advantage of the aforementioned tax incentives only began to take shape in  
7 March 2004.  
8
- 9       • The proposed amendment would allow phased construction, phased payment schedules for  
10 carbon dioxide offsets, and would reduce the amount of the site restoration bond. However,  
11 Summit proposes no change to the facility itself. Therefore, the proposed amendment would  
12 not likely result in any adverse impact to the environment, public safety, or other resources  
13 protected by Council standards.  
14

15 For these reasons, the Council Chair granted expedited review on May 24, 2004<sup>2</sup>  
16

17 Pursuant to OAR 345-027-0080, ODOE issued notice to the Council’s mailing list, affected  
18 property owners as defined at OAR 345-021-0010(f), and ODOE’s list of persons interested in the  
19 Summit Project. The notice stated where the public could review the amendment request and set a  
20 comment deadline of June 11, 2004. ODOE also issued notice to the agencies, tribes and  
21 governments listed in OAR 345-002-0040 and asked for comments by June 11, 2004. ODOE  
22 received one public comment, a letter from the Port of St. Helens. In this order, we discuss the  
23 Port’s comments in the section on the retirement and financial assurance standard.  
24

25 On June 30, 2004, ODOE issued a proposed order recommending approval with conditions. ODOE  
26 issued notice of the proposed order to the Council’s mailing list and to persons on the mailing list  
27 set of for the Summit/Westward project. The notice stated that the Council would consider the  
28 proposed order at a meeting to be held on July 23, 2004, that the Council would issue a temporary  
29 order, and that anyone could request a contested case on the temporary order within 15 days of the  
30 July 23 meeting.  
31

32 In reviewing the proposed amendment, the Council applies substantive land use criteria in effect on  
33 the date Summit submitted the request for amendment and all other state statutes, administrative  
34 rules and local government ordinances in effect on the date of the amendment.  
35

### 36 **III. DESCRIPTION OF THE PROPOSED AMENDMENT**

#### 37 **A. Description of the Facility**

38 The Summit project is a 520 megawatt natural gas-fired electric generation facility, located about  
39 4.5 miles north of Clatskanie, Oregon in Columbia County. The site is on land leased from the Port  
40 of St. Helens, which owns more than 900 acres in the Port Westward Industrial Park. The facility  
41 includes provisions for transmission services to be provided by Portland General Electric, water  
42 supply to be provided by the Port of St. Helens under its existing water right, and processing of  
43 waste water through brine crystallizers to achieve zero discharge of process and cooling water. The  
44 site certificate includes a removal/fill permit for construction on wetlands, issued by Division of  
45 State Lands (DSL), a Water Pollution Control Facilities (WPCF) permit issued by DEQ for

---

<sup>2</sup> Karen Green letter to David Stewart-Smith May 24, 2004 “Letter Granting Expedited Review” In a letter dated June 21, 2004, Summit Westward explained that while it’s plans had changed somewhat, expedited review was still needed in order to support financing the project in September. The letter is discussed at page XX.

1 discharge of sanitary waste, and a second WPCF permit for discharge of process and cooling water  
2 to on-site ponds that are needed in connection with the zero discharge facility.

3  
4 Under amendment #1, approved in February 2004, Summit may contract with either Portland  
5 General Electric or with Clatskanie Public Utility District (CPUD) for transmission services. Under  
6 amendment #2, approved in April 2004, Summit may discharge process wastewater to the Port of  
7 St. Helens, which would then discharge it to the Columbia river under its existing National Pollutant  
8 Discharge Elimination System (NPDES) permit (a federal permit administered in Oregon by DEQ).

## 9 10 **B. Changes to the Facility Proposed by Summit**

11 In its request for amendment, Summit proposes to build the facility in two phases. In phase 1,  
12 Summit would construct the first unit, with capacity of approximately 260 MW. Construction  
13 would begin before October 3, 2004 as stated in the original site certificate. In phase 2 Summit  
14 would build the remaining 260 MW unit. The required payments to the Oregon Climate Trust for  
15 carbon dioxide offsets would also be phased. The Climate Trust would bill Summit for half the  
16 payment at start of construction. The other half would be due when Summit begins construction of  
17 phase 2. Required payments to the Climate Trust for contracting and selecting funds would be due  
18 at the request of the Climate Trust. Summit further requested changes to the Memorandum of  
19 Understanding between Summit and the Climate Trust, as discussed in section IV.D of this order.

20  
21 Summit also proposes to reduce the required bond or letter of credit for retirement and site  
22 restoration, using new cost estimation methods developed by an independent consultant for the  
23 Oregon Department of Energy. Summit proposed to reduce the amount of the bond from  
24 approximately \$11 million to approximately \$1.7 million due at start of phase 1 construction. The  
25 bond would increase to \$2.4 million at start of construction on phase 2. In its proposed order, the  
26 Department recommended retirement security in the amount of \$3.048 million for phase 1,  
27 increasing to \$3.926 million for phase 2.

28  
29 The amendment would not involve changes to the site or to the facility itself.

## 30 31 **C. Changes to Site Certificate Proposed by Summit**

32 Summit proposes to amend its Site Certificate as follows:

33  
34 1. Amend Condition D.3(1)(c) as follows:

35  
36 (c) A current detailed cost estimate, a comparison of that  
37 estimate with the dollar amount of the bond or letter of credit  
38 required by Condition (4) contained in the retirement fund,  
39 and a plan for ensuring the availability of adequate funds for  
40 completion of retirement.

41  
42 2. Delete Condition D.3(5) as follows:

43  
44 ~~(5) The certificate holder shall describe in the report submitted to~~  
45 ~~the Council, pursuant to OAR 345-026-0080, the status of the~~  
46 ~~retirement fund or other instrument to ensure it has adequate~~  
47 ~~funds to restore the site.~~

48  
49 3. Amend Condition D.3(4) as follows:

- 1  
2 (4) Before beginning construction of the facility, the certificate holder  
3 shall submit to the State of Oregon through the Council a bond or  
4 letter of credit in the amount of ~~\$11,062,500~~ 2,401,205 (in 20024  
5 dollars as of the first second quarter) naming the State of Oregon,  
6 acting by and through the Council, as beneficiary or payee.  
7  
8 (a) If the Certificate Holder finances energy facility construction in two  
9 phases, then before beginning construction of Phase 1, the Certificate  
10 Holder shall submit a bond or letter of credit in the amount of  
11 ~~\$4,700,000~~ \$1,762,225 (in 20024 dollars as of the first second  
12 quarter). Before beginning construction of Phase 2, the Certificate  
13 Holder shall increase the amount of such bond or letter of credit to  
14 ~~\$8,640,000~~ \$2,401,205 (in 20024 dollars as of the first second  
15 quarter). [~~Amendment No. 1~~]  
16  
17 (b) The calculation of 20024 dollars as of the second quarter shall be  
18 made using the U.S. Gross Domestic Product Implicit Price Deflator,  
19 as published by the U.S. Department of Commerce, Bureau of  
20 Economic Analysis, or any successor agency (the “Index”). If, at any  
21 time, the Index is no longer published, the Council shall select a  
22 comparable calculation of 20024 dollars. The form of the bond or  
23 letter of credit and identity of the issuer shall be subject to approval  
24 by the Council.  
25  
26 (~~b~~c) The amount of the bond or letter of credit account shall increase  
27 annually by the percentage increase in the Index.  
28  
29 (~~e~~d) The certificate holder shall not revoke or reduce the bond or letter of  
30 credit before retirement of the facility without approval by the  
31 Council.  
32

33 4. Amend Condition D.3(8) as follows:  
34

- 35 (8) Not later than 10 years after the date of commercial operation of the  
36 facility, or, if the facility commences commercial operation in phases,  
37 not later than 10 years after the date of commercial operation of Phase  
38 1, and every 10 years thereafter during the life of the energy facility,  
39 the certificate holder shall complete an independent Phase I  
40 Environmental Site Assessment of the energy facility site, in  
41 accordance with an accepted industry standard, such as ASTM  
42 Standard E1527. Within 30 days after its completion, the certificate  
43 holder shall deliver the Phase I Environmental Site Assessment report  
44 to the Department.  
45

46 5. Amend Condition D.9(2)(a) as follows:  
47

- 48 (a) The certificate holder shall disburse all selection and contracting  
49 funds to The Climate Trust ~~prior to beginning construction~~ upon the

1                                    request of The Climate Trust, in accordance with the terms of the  
2                                    MOU.

3  
4                    6.        Add the following as Condition D.9(10):  
5

6                    (10)    If the certificate holder begins construction of Phase 1, but not Phase  
7                    2, the certificate holder shall comply with Conditions D.9(1) through  
8                    D.9(9) in connection with construction of Phase 1. If the certificate  
9                    holder later begins construction of Phase 2, the certificate holder shall  
10                   comply with Conditions D.9(1) through D.9(9) in connection with the  
11                   construction of Phase 2.  
12

13                   7.        Amend Condition G.1(4) as follows:  
14

15                   (4)       The certificate holder shall begin construction of the facility by  
16                   October 3, 2004. The certificate holder shall report promptly to  
17                   the Department the date that it began construction of the  
18                   facility, as defined in OAR 345-001-0010(10). In reporting the  
19                   beginning of construction, the certificate holder shall describe  
20                   all work on the site performed before beginning construction,  
21                   including work performed before the Council issued the site  
22                   certificate, and shall state the cost of that work, pursuant to  
23                   OAR 345-026-0048. If the certificate holder finances  
24                   construction of the facility in two phases, the certificate holder  
25                   shall report the beginning of construction of each phase.  
26

27                   8.        Amend Condition G.1(5) as follows:  
28

29                   (5)       The certificate holder shall complete construction of the  
30                   facility by April 3, 2007. The completion of construction date  
31                   is the day by which (1) the facility is substantially complete as  
32                   defined by the certificate holder's construction contract  
33                   documents; (2) acceptance testing is satisfactorily completed;  
34                   and, (3) the energy facility is ready to commence continuous  
35                   operation consistent with the Site Certificate. The certificate  
36                   holder shall report promptly to the Department the date it  
37                   completed construction of the facility. If the certificate holder  
38                   finances construction of the facility in two phases, the  
39                   certificate holder shall report the date of completion of each  
40                   phase.  
41

#### 42    **IV.        FINDINGS ON COMPLIANCE WITH STANDARDS**

43  
44    Under the General Standard of Review, OAR 345-022-0000(1), to issue the requested amendment  
45    the Council must determine that it complies with:

46    a) standards adopted by the Council pursuant to ORS 469.501,

- 1 b) other Oregon statutes and administrative rules identified in the project order, excluding those for  
2 which the federal government has delegated the decision on compliance to a state agency other  
3 than the Council, and  
4 c) statewide planning goals as provided in OAR 345-022-0030  
5

6 The permits issued by agencies other than the Council under this site certificate are: the WPCF  
7 process wastewater permit issued by DEQ, a sanitary waste WPCF permit issued by DEQ and a  
8 Removal/Fill (wetlands) permit issued by the State Lands Division. This amendment does not  
9 affect any of those permits.  
10

## 11 **A. Council Standards in OAR Chapter 345 Division 22**

12

### 13 **1. Organizational Expertise OAR 345-022-0010**

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

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

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

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

### 41 **Discussion**

42

43  
44 In its Final Order on the ASC, the Council found that Summit met the Organizational Expertise  
45 standard based on its relationship with Summit Power NW LLC and its intention to enter into  
46 turnkey contracts with Siemens Westinghouse (SWPC) for engineering, procurement, construction,

1 operations and maintenance. This amendment does not involve any change in Summit's  
2 organization or personnel, or its relationship with any of the above mentioned contractors. Nor does  
3 it alter the scope of the project in a way that might require different expertise or experience.

4  
5 Summit states that it has since entered into both an EPC contract and a 25 year operations and  
6 maintenance contract with SWPC.

7  
8 Section (2) of the standard does not apply because Summit did not take credit for any ISO program.

9  
10 Sections (3) and (4) of the standard address third party permits (permits that the certificate holder  
11 will not obtain directly but rely on a third party). Summit relies on third party agreements for water  
12 supply, wastewater discharge and transmission services. Those agreements are not affected by the  
13 proposed change in construction schedule.

### 14 15 16 **Conclusion**

17 The Council finds that the proposed amendment complies with the Organizational Expertise  
18 Standard. No new conditions are required.

### 19 20 **2. Structural Standard OAR 345-022-0020**

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

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

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

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

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

### 35 **Discussion**

36 In its Final Order approving the Summit project, the Council found that the project satisfies the  
37 Structural Standard. The proposed amendment changes the construction schedule and the  
38 schedule for payment for retirement and carbon dioxide offsets. It does not change any seismic  
39 conditions or hazards, or any of the conditions recommended to achieve compliance. Nor does  
40 Summit propose any changes in the physical facility. Nothing in the proposed amendment alters  
41 the basis for the Council's finding of compliance with the standard.

### 42 **Conclusion**

43  
44 The Council finds that the proposed amendment complies with the Structural standard. No new  
45 conditions are required.

1  
2 **3. Soil Standard OAR 345-022-0022**

3 To issue the amendment, the Council must find that

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

8 In the Final Order approving the Summit project, the Council found that the construction and  
9 operation of the Summit project would not have a significant adverse impact on soils. Site  
10 Certificate condition D.5.(4) requires that related and supporting pipelines be constructed in existing  
11 roadways. The Summit wastewater pipe approved in amendment #2 will comply with this  
12 condition. In approving amendment #2 in April 2004, the Council found that the facility complied  
13 with changes to the soil standard that the Council adopted in August 2003.

14  
15 This proposed amendment affects the construction schedule and the payment of bonds or letters of  
16 credit for carbon dioxide offsets and site restoration. However, Summit does not propose any  
17 changes to the physical facility or to the site. Therefore this amendment does not change any of the  
18 Council's prior findings of compliance with the Soil Standard.

19  
20 **Conclusion**

21  
22 The Council finds that the proposed amendment complies with the Soil Protection Standard. No  
23 new conditions are required.

24  
25 **4. Land Use Standard OAR 345-0222-0030**

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

27  
28 *ORS 469.503(4) the facility complies with the statewide planning goals adopted by the Land*  
29 *Conservation and Development Commission.*

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

32 *\*\*\**

33 *(b) The council determines that:*

34 *(A) The proposed facility complies with applicable substantive criteria from the affected*  
35 *local government's acknowledged comprehensive plan and land use regulations that are required*  
36 *by the statewide planning goals and in effect on the date the application is submitted, and with*  
37 *any Land Conservation and Development Commission administrative rules and goals and any*  
38 *land use statutes directly applicable to the facility under ORS 197.646(3)\*\*\*.*

39  
40 **Discussion**

41  
42 In the Final Order approving the Summit project, the Council found that the project complied with  
43 all applicable substantive criteria from Columbia County's comprehensive plan and zoning  
44 ordinance, and with LDCD rules applicable under ORS 197.646.

1 The proposed amendment does not change the site or the proposed use. The only changes are to the  
2 construction schedule and the conditions regarding payments for carbon dioxide offsets and site  
3 restoration. Therefore, nothing in this amendment changes the Council’s prior findings of  
4 compliance with the applicable Land Use criteria.  
5

6 **Conclusion**  
7

8 The Council finds that the proposed amendment complies with its Land Use standard. No new  
9 conditions are required.  
10

11 **5. Protected Area Standard OAR 345-022-0040**

12 To issue the amendment, the Council must find that “...the design, construction and operation  
13 of the facility are not likely to result in significant adverse impact ...” to listed protected areas.  
14

15 **Discussion**  
16

17 In the Final Order approving the Summit project, the Council identified eight protected areas  
18 within 20 miles of the site. None were closer than 12 miles from the site. The Council found that  
19 the facility was not likely to result in adverse impact to any listed area, and imposed no conditions.  
20

21 The proposed amendment does not change the site or its potential impact on any listed protected  
22 area. The amendment would only change the construction schedule and the payments for carbon  
23 dioxide offsets and site restoration.  
24

25 **Conclusion**  
26

27 The Council finds that the proposed amendment complies with the Protected Area standard. No  
28 new conditions are required.  
29

30 **6. Financial Assurance and Retirement Standards OAR 345-022-0050**

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

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

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

39 **Discussion**  
40

41 In its Final Order approving the ASC, the Council found that Summit has demonstrated that it can  
42 adequately restore the site to a useful, nonhazardous condition. The Council found that a bond or  
43 letter of credit in the amount of \$11,062,500 (2002 dollars) was satisfactory to ensure adequate site  
44 restoration, and conditioned the site certificate to require a bond or letter of credit in that amount.  
45 The Council found that Summit has a reasonable likelihood of obtaining the required bond.  
46

1 The amendment would change the site certificate conditions related to this standard in two ways. It  
2 would reduce the estimate of site restoration costs considerably. Summit estimated a retirement  
3 cost of \$1.7 million for a 1 unit plant, or \$2.4 million for a 2 unit plant. Summit proposed phasing  
4 the bond, with \$1.7 million due at start of phase 1, increasing to \$2.4 million at the start of phase 2.  
5

6 The reduction in retirement cost estimate is based on two factors. First, the Port of St. Helens,  
7 which owns the property and will lease it to Summit Power, stated that it will not wish to have the  
8 sub-foundation removed at facility retirement<sup>3</sup>. The site is zoned RIPD (Resource Industrial  
9 Development) and its expected use is as industrial land. Soil conditions at the site require a  
10 substantial rock and gravel foundation to reduce potential damage from the maximum probable  
11 seismic event (*see* Final Order on Site Certificate for the Summit/Westward Project, Structural  
12 Standard). That sub-foundation would be expensive to remove, but would be useful for any future  
13 industrial development on the site. Therefore, Summit stated that facility retirement would not  
14 include removal of the foundation work.  
15

16 Second, Summit's new retirement cost estimate is based on an estimating methodology recently  
17 developed for ODOE.<sup>4</sup> Summit adapted the spreadsheets prepared for that methodology and  
18 included them as part of its application for amendment. Among other issues, the methodology  
19 allows credit for sale of scrap material and results in a lower retirement cost estimate than the \$11  
20 million figure cited in the original site certificate.  
21

22 On review of Summit's request as presented in the spreadsheet, ODOE recommended that the  
23 retirement estimate include the cost of removing concrete slabs and other above grade foundation  
24 structures. The recommendation is based on the fact that a new occupant of this industrial site  
25 would probably not erect buildings with exactly the same footprint as the Summit facility. ODOE  
26 also recommended adding funds for removal of the stormwater detention pond, and significantly  
27 increasing the cost estimate for loading and disposal of debris. Finally, the request for amendment  
28 did not include recommended costs for administration costs and hazardous material management.  
29

30 Adding these costs, plus a 20% contingency, would increase the retirement cost of a one unit plant  
31 to \$3,047,724. Making similar adjustments for a two unit plant would yield a retirement cost  
32 estimate of approximately \$3.9 million.  
33

34 By letter dated June 25, 2004, Summit provided revised cost spreadsheets for a two unit site. The  
35 revised estimates included the foundation removal, detention pond removal, and increased costs of  
36 removing and disposing debris as requested by ODOE . Using the spreadsheet methodology  
37 described above, Summit arrived at a new total retirement cost of \$3,925,841 for the two unit plant.  
38 This figure includes the 20% contingency and ODOE's recommended numbers for administrative  
39 costs and hazardous materials management. This estimate appears acceptable.  
40

41 Summit did not provide a revised estimate for a one unit plant. Therefore, for a one unit plant  
42 ODOE recommended using the \$3,047,724 figure described above.  
43

---

<sup>3</sup> May 27, 2004 letter from Paul Langner, Port of St. Helens, to Energy Facility Siting Council

<sup>4</sup> The new methodology was developed as a result of a dispute about the appropriate amount for the retirement bond for the COB project, a 1000 MW facility proposed near the California Oregon border. The issue is currently under review in the contested case in the COB Application for Site Certificate. Contrary to Westward's letter of June 21, 2004, the new methodology has not yet been accepted by the Council.

1 Summit also requests removal of two conditions that refer to status reports for the retirement fund.  
2 These conditions appeared in several site certificates during a time period when applicants met  
3 the retirement standard by depositing money into a sinking fund, which would grow to the required  
4 amount over a period of years. Current Council rules, however, require a bond or letter of credit  
5 rather than a sinking fund. Therefore, the reference to a retirement fund no longer applies. The  
6 Council grants Summit's request to delete the reference to the sinking fund.

7  
8 In approving the site certificate, the Council found that Summit was reasonably likely to obtain a  
9 bond in the amount of \$11 million. Summit points out that the issuance of a bond for the much  
10 smaller amount is all the more likely.

### 11 12 13 **Conclusion**

14  
15 The proposed amendment does not affect Summit's ability to meet the Financial Assurance and  
16 Retirement standard. If anything, it reduces the amount of the required retirement bond, making  
17 that bond easier to secure. The Council finds that that the proposed amendment meets the standard.  
18 Conditions D.3(1), D.3(4), D.3(5) and D.3(8) will be amended as proposed by Summit, except that  
19 the retirement bond for phase 1 shall be \$3.048 million, and shall be increased at start of phase 2  
20 construction to \$3.926 million.

### 21 22 **7. Fish and Wildlife Habitat Standard OAR 345-022-0060**

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

24  
25 *“\*\*\*the design, construction, operation and retirement of the facility, taking into*  
26 *account mitigation, are consistent with the fish and wildlife habitat mitigation goals and*  
27 *standards of OAR 635-415-0025 in effect as of September 1, 2000.”*

### 28 29 **Discussion**

30  
31 In its Final Order approving the site certificate, the Council classified the habitat areas to be affected  
32 by the facility, and imposed conditions to ensure that the mitigation of impacts on those habitat  
33 areas would be consistent with the fish and wildlife habitat mitigation goals and standards of OAR  
34 635-415-0025. The proposed amendment changes only the schedule of construction but does not  
35 change the facility design or the habitat characteristics of the site.

### 36 37 **Conclusion**

38  
39 The Council finds that the proposed amendment complies with the Fish and Wildlife Habitat  
40 Standard. No new conditions are required.

### 41 42 **8. Threatened and Endangered Species Standard OAR 345-022-0070**

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

44  
45 *“(1) For plant species that the Oregon Department of Agriculture has listed as*  
46 *threatened or endangered under ORS 564.105(2), the design, construction, operation*  
47 *and retirement of the proposed facility, taking into account mitigation:*

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

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

6 (2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as  
7 threatened or endangered under ORS 496.172(2), the design, construction, operation  
8 and retirement of the proposed facility, taking into account mitigation, are not likely to  
9 cause a significant reduction in the likelihood of survival or recovery of the species.”  
10

### 11 Discussion

12  
13 In its Final Order approving the site certificate, the Council identified several listed species within  
14 the project area. Based on recommendations from the Oregon Department of Fish and Wildlife, the  
15 Council concluded that the facility would be constructed, operated and retired without significant  
16 adverse impacts to these species.

17  
18 The Department of Fish and Wildlife and Department of Agriculture have identified no new listed  
19 species in the analysis area for this project. The proposed amendment does not change the facility  
20 or the site, but only affects the construction schedule. Therefore the proposed amendment does not  
21 affect the Council’s prior findings of compliance with the standard.  
22

### 23 Conclusion

24  
25 The Council finds that the proposed amendment complies with its Threatened and Endangered  
26 Species standard. No new conditions are required.  
27

## 28 9. Scenic and Aesthetic Values Standard OAR 345-022-0080

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

30 “(1) Except for facilities described in sections (2), to issue a site certificate, the  
31 Council must find that the design, construction, operation and retirement of the facility,  
32 taking into account mitigation, are not likely to result in significant adverse impact to  
33 scenic and aesthetic values identified as significant or important in applicable federal  
34 land management plans or in local land use plans in the analysis area described in the  
35 project order.

36 (2) The Council may issue a site certificate for a special criteria facility under OAR  
37 345-015-0310 without making the findings described in section (1). However, the  
38 Council may apply the requirements of section (1) to impose conditions on a site  
39 certificate issued for such a facility.”  
40

### 41 Discussion

42  
43 In the Final Order approving the site certificate, the Council found that the Summit/Westward  
44 project had no adverse effect on any scenic or aesthetic resources identified in any local land use.  
45 The proposed amendment does not affect the facility or the site. Columbia County has not added  
46 any new scenic or aesthetic resources to its inventory within the analysis area for the facility.  
47 Therefore the proposed amendment does not affect the Council’s prior findings of compliance. The

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

3  
4 **Conclusion**  
5

6 The Council finds that the proposed amendment complies with its Scenic and Aesthetic Values  
7 standard. No new conditions are required.  
8

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

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

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

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 **Discussion**

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

27 **Conclusion**  
28

29 The Council finds that the proposed amendment complies with its Historic, Cultural and  
30 Archeological Resources standard. No new conditions are required.  
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,*  
36 *are not likely to result in a significant adverse impact to important recreational*  
37 *opportunities in the analysis area as described in the project order. The Council shall*  
38 *consider the following 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

1 **Discussion**

2  
3 In the final order approving the site certificate, the Council found that the facility would not affect  
4 any recreational resources within the analysis area. The proposed amendment does not change the  
5 facility or the site. Therefore the proposed amendment does not affect prior findings of compliance.  
6

7 **Conclusion**

8  
9 The Council finds that the proposed amendment complies with its Recreation standard. No new  
10 conditions are required.  
11

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

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

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

19  
20 **Discussion**

21  
22 In its Final Order approving the site certificate, the Council identified several potential impacts to  
23 the listed public services, particularly in the area of traffic safety. The Council imposed conditions  
24 requiring Summit to use portable toilets during construction, implement roadway related  
25 improvements, and construct a fire protection system. The proposed amendment does not change  
26 the facility or the site, and does not change any of the conditions imposed under this standard.  
27

28 **Conclusion**

29  
30 The Council finds that the proposed amendment complies with its Public Services standard. No  
31 new conditions are required.  
32

33 **13. Waste Minimization Standard OAR 345-022-0120**

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

35  
36 *“\*\*\*(a) The applicant’s solid waste and wastewater plans are likely to minimize*  
37 *generation of solid waste and wastewater in the construction, operation, and retirement*  
38 *of the facility, and when solid waste or wastewater is generated, to result in recycling*  
39 *and reuse of such wastes;*

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

43  
44 **Discussion**

45  
46 In its Final Order approving the site certificate, the Council identified programs proposed by the  
47 applicant to minimize generation of waste and recycle waste generated during construction and

1 operation. The Council imposed Summit commitments regarding waste minimization, disposal and  
2 recycle as condition in the site certificate. In amendment #2, the Council authorized process water  
3 discharge either to storage ponds or to the Port of St. Helens. The proposed amendment does not  
4 change either the site or the facility. Therefore the existing conditions remain sufficient.  
5  
6

### 7 **Conclusion**

8  
9 The Council finds that the proposed amendment complies with its Waste Minimization standard.  
10 No new conditions are required.  
11

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

13  
14 In the Final Order approving the site certificate, the Council considered safety factors and imposed  
15 conditions based on : (1) potential for cooling tower fogging and icing affecting driving conditions  
16 on public roads, (2) potential health concerns regarding electric and magnetic fields from high-  
17 voltage transmission lines, (3) coordination with the Oregon Public Utility Commission (the  
18 "PUC") to ensure that the certificate holder designs and builds the electrical transmission lines and  
19 natural gas pipeline in accordance with the appropriate codes and standards, and  
20 (4) pipeline safety monitoring consistent with OAR 345-027-0020(3)(b).  
21

22 The proposed amendment does not change the facility or its design, and does not affect any  
23 conditions imposed under this statute. Therefore the proposed amendment does not affect any prior  
24 Council findings regarding public health and safety, and no new conditions are required.  
25

### 26 **C. Requirements of Agencies Other than EFSC**

27  
28 The facility requires WPCF permits from the Department of Environmental Quality for wastewater  
29 discharge, a wetlands permit from Division of State Lands, and use of third party permits for water  
30 use and process water discharge. None of these permits of agencies other than the Council is  
31 affected by the proposed amendment.  
32

33 The one requirement of an agency other than EFSC that the proposed amendment will affect is the  
34 Department of Environmental Quality's noise standards at OAR 340 Division 35. The Council  
35 imposed conditions to minimize noise impact on local residents during construction, although  
36 construction noise is exempt from the requirements of OAR 340 Division 35. The Council also  
37 imposed conditions requiring silencers on short duration noise sources. Finally, the Council  
38 imposed conditions requiring noise testing within 6 month of the start of operation.  
39

40 The phased construction does require a modification to this condition. Specifically, Summit should  
41 test within six months of the start of unit 1 operations, and again within six months of the start of  
42 two unit operation if the project is constructed in two phases.  
43

44 Accordingly, the Department recommends that condition (4) under the noise standard be modified  
45 as follows:  
46

47 (4) Within six months after the start of commercial operation of the energy facility, the  
48 certificate holder shall retain a qualified noise specialist to measure noise levels associated with  
49 the energy facility operation when the facility is operating in a maximum noise mode. If the

1 Summit/Westward Project is constructed in two stages, then the noise measurements shall be  
2 performed within six months after the start of commercial operation of the first combustion  
3 turbine unit and shall be repeated within six months after the start of commercial operation of  
4 the second combustion turbine unit.  
5

#### 6 **D. OAR 345 Division 24 Carbon Dioxide Standard for Base Load Plants**

7  
8 In the order approving the site certificate, the Council found that Summit would comply with the  
9 standards of Division 24 by providing carbon dioxide (“CO<sub>2</sub>”) offset funds to the Climate Trust. In  
10 its request for amendment, Summit proposes three changes: (1) Summit proposes to split the CO<sub>2</sub>  
11 offset payments into equal halves, to reflect splitting the project into two phases. (2) Summit  
12 proposes to make the payment for selection and contracting funds payable at the request of the  
13 Climate Trust, and (3) Summit proposes changes to the Memo of Understanding (MOU) that would  
14 make offset payments due when Summit obtains its financing, rather than at start of construction.<sup>5</sup>  
15

16 In this order, we consider each of Summit’s requests. Also, we discuss appropriate corrections to  
17 the site certificate description of the facility, specifically the description of power augmentation  
18 through duct firing, and clarification of certain other conditions.  
19

#### 20 **Discussion**

##### 21 Changes to Facility Description Regarding Power Augmentation

22  
23  
24 The Council changes Section C.1.a, The Energy Facility, in the description of “Major Structures  
25 and Equipment” and “Output” to reflect changes that were incorporated into the Council’s rules in  
26 September 2003. This will update the site certificate description to reflect current rules regarding  
27 power augmentation.  
28

29 The current site certificate states that the duct burning that the facility will employ is not considered  
30 power augmentation under Council rules. While that was true under the rules in effect when the  
31 Council granted the original site certificate on October 3, 2002, it is no longer the case. When the  
32 Council updated its rules in September 20003, it revised the definition of power augmentation by  
33 adding OAR 345-001-0010(44), revising the definition of “new and clean basis” OAR 345-001-  
34 0010(34), and making other related changes in OAR 345, Division 24.  
35

36 The earlier definition of power augmentation had tied its measurement to the average annual site  
37 condition. However, the earlier description of power augmentation created an anomalous situation:  
38 the Summit/Westward Project had duct burning, the most common form of power augmentation,  
39 but because the facility was designed so that its duct burning would not be operated at the average  
40 annual site condition, it was not possible to account for its carbon dioxide (“CO<sub>2</sub>”) emissions under  
41 the rule.  
42

43 The Council’s 2003 rule revisions corrected that problem. A site certificate holder must now meet  
44 the CO<sub>2</sub> standard for duct burning or other power augmentation at the times of the year that it

---

<sup>5</sup> In a letter dated June 21, 2004, Westward Energy, LLC, notified the Council that it had changed its plans and no longer intended to begin construction prior to completing financing for the facility. Therefore, the letter indicated that the changes that it requested to delay monetary path payments until it had financing were moot. Nevertheless, the Department recommends that the Council address the issue that the certificate holder raised regarding this issue in case the certificate holder should again change its plans.

1 intends to employ the equipment. Therefore, the description in the first paragraph under “Major  
2 Structures and Equipment” and the second paragraph under “Output” need to be corrected. The  
3 Council changes site certificate section C.1.a “Major Structures and Equipment” as follows:  
4

5 Section C.1.a first paragraph: amend the sentence: “*Duct firing would be provided in the HRSGs  
6 and would be used to supplement steam generation capacity during conditions under which exhaust  
7 energy from the CTGs declines*” to read  
8

9 *Duct firing, or “power augmentation,” would be provided in the HRSGs and would be used  
10 to supplement steam generation capacity during conditions under which exhaust energy  
11 from the CTGs declines.*  
12

13 Also in section C.1.a, amend the first paragraph under “Output” as follows:  
14

15 *During summer months, plant output from the base load facility would decrease because the  
16 equipment is less efficient at higher temperatures. During these months the Project would  
17 use duct firing to bring net electric output closer to the energy facility’s rated capacity.  
18 However, the Office does not consider this to be This is “power augmentation” as that term  
19 is defined in Council rules under OAR chapter 345, divisions 1 and 24, because the duct  
20 firing would not result in the production of extra power in excess of the plant’s nominal  
21 capacity*  
22

23 Proposed Changes to Site Certificate Conditions, Section D.9, Carbon Dioxide Standard for Base  
24 Load Gas Plants.  
25

26 The following discussion sequentially addresses proposed changes in the site certificate conditions.  
27

28 **Bond or Letter of Credit for Monetary Path Payment Requirement.** The certificate holder  
29 requested that it have the option of providing a bond or a letter of credit to meet its monetary path  
30 obligations. While the current site certificate makes reference to both a bond and letter of credit, it  
31 is not structured to distinguish clearly between using the two forms of security. If the certificate  
32 holder provides a letter of credit, then The Climate Trust, as the qualified organization, will draw  
33 funds directly from the letter of credit. On the other hand, if the certificate holder provides a bond,  
34 The Climate Trust will draw funds directly from the certificate holder unless the certificate holder  
35 fails to make payment as requested. In the latter case, The Climate Trust would then have recourse  
36 to the bond. The Council adopts several changes to conditions and the memoranda of  
37 understanding (“MOUs”) to facilitate the use of either a bond or a letter of credit.  
38

39 The changes to Condition D.9(1)(b) and (1)(d)(B) provide for alternative forms of MOUs with The  
40 Climate Trust, depending on whether the certificate holder is using a bond or a letter of credit. (The  
41 MOUs are discussed below.) Condition D.9(1)(b) also specifies that the certificate holder must  
42 enter into an appropriate MOU with The Climate Trust before beginning construction of the facility.  
43 Likewise, proposed changes to Condition D.9(2)(b) - (f) set out in detail the certificate holder’s  
44 specific obligations for disbursing funds.  
45

46 **Disbursement of Selection and Contracting Funds.** The certificate holder requested that the  
47 Council remove the requirement in Condition D.9(2)(a) that it must disburse all selection and  
48 contracting funds to The Climate Trust before beginning construction of the facility. It proposed  
49 instead that the site certificate require disbursement “upon request of The Climate Trust in

1 accordance with the MOU.” The certificate holder noted that OAR 345-024-0710(4) allows the  
2 qualified organization to request the selection and contracting funds at its discretion.

3  
4 The Council adopts the changes to Condition D.9(2)(a) requested by the certificate holder.  
5 However, the Council notes that removing the requirement that selection and contracting funds be  
6 disbursed before beginning construction does not prohibit The Climate Trust from requesting such  
7 funds be disbursed upon signing the MOU, which must occur before beginning construction.  
8 Likewise, The Climate Trust might delay receipt of funds, at its discretion. The proposed change  
9 places no constraints on when The Climate Trust can require the certificate holder to disburse  
10 selection and contracting funds.

11  
12 **Power Augmentation Clarification in Conditions.** Conditions D.9(3)(b) and (c) and D.9(4)(b)  
13 and (c) relate to the calculation of CO<sub>2</sub> emissions from power augmentation. The Department  
14 recommends that the Council clarify these conditions to be consistent with the newly stated  
15 definition for power augmentation in OAR 345-001-0010(44) and the revised definition for “new  
16 and clean basis” in OAR 345-024-0010(34). The Council delegates to the Department certain  
17 technical decisions relating to calculating the emissions from power augmentation in Conditions  
18 D.9(3)(b), D.9(4)(d), and D.9(5)(b)-(d) as it has done in previous site certificates.

19  
20 **Payment in Cash.** Condition D.9(6) provides for payment in certain instances “in cash.” The  
21 Council drops this requirement, lest too literal an interpretation lead to the certificate holder  
22 delivering bags of cash to The Climate Trust. The intent of the condition is that the certificate  
23 holder may disburse funds immediately and directly without using a bond or letter of credit. This  
24 disbursement could be by check, electronically, or by other means of direct payment.

25  
26 **Clarification of Condition D.9(9).** Experience has shown that the introductory sentence of  
27 Condition D.9(9) may be confusing. Therefore, the Council restates that sentence to clarify its  
28 meaning. This does not change the intent or meaning of the statement.

29  
30 **Construction in Phases.** The certificate holder proposed a new Condition D.9(10) that would  
31 provide it the option of constructing the facility in two phases and applying the conditions in  
32 Section D.9 separately to each phase. The proposed condition referred only to conditions relating to  
33 construction, whereas some of the conditions apply to the pre-construction and operational stages of  
34 the facility. The Council approves Condition D.9(10) with minor changes so that it applies to each  
35 phase appropriately throughout the life of the site certificate and the facility.

36  
37 **Memoranda of Understanding with The Climate Trust.** The certificate holder requested that the  
38 Council, through the MOUs, constrain The Climate Trust’s ability to request selection and  
39 contracting funds and offset funds. The certificate holder requested that it be relieved of the  
40 obligation to meet the requirements of the CO<sub>2</sub> standard until it reported that it had obtained  
41 financing for the facility, even though it might have already begun construction. The Council  
42 denies the certificate holder’s request in this matter. (See footnote number 1 as well.)

43  
44 The requirement to provide a bond or letter of credit for the monetary path payment requirement  
45 before beginning construction is in statute and in rule, as is the provision that the qualified  
46 organization, i.e. The Climate Trust, can request offset funds when it is contractually obligated to  
47 pay any funds to implement offset projects. The unconditioned ability of the qualified organization  
48 to request selection and contracting funds is also in statute and rule. ORS 469.501(2)(d) and OAR  
49 345, Division 24. Furthermore, the qualified organization is obligated to enter into contracts  
50 obligating at least 60 percent of the offset funds within two years of the certificate holder beginning

1 construction of the facility. ORS 469.501(2)(e) and OAR 345, Division 24. Beginning of  
2 construction is defined in statute. ORS 469.300(7). Therefore, there is no basis in statute or rule for  
3 the Council to restrain the access of the qualified organization to the bond or letter of credit or to  
4 impose additional restrictions on the access of the qualified organization to selection and  
5 contracting funds or offset funds, once construction has begun. The statute and rules are written on  
6 the principle that a certificate holder that begins construction must be able to meet all its site  
7 certificate obligations fully and in a timely manner.  
8

9 **MOU for Letter of Credit.** Notwithstanding the denial of the certificate holder's request for  
10 limitations in the MOU, the Department recommends that the Council adopt some conforming  
11 changes to Attachment A, which is the MOU and form of letter of credit. The revised MOU would  
12 become Attachment A-1 to this order and the site certificate. The proposed changes update  
13 references to the original site certificate, reference phases of construction, delete references to a  
14 bond, and remove the requirement in Section 1.3 that the certificate holder disburse selection and  
15 contracting funds contemporaneously with the signing the MOU. The latter change, along with the  
16 change in Section 1.5, makes the MOU consistent with the recommended change to Condition  
17 D.9(2)(a).  
18

19 In addition to those changes, the Council adopts Section 1.7 to clarify how to handle excess funds  
20 that may remain in the letter of credit after The Climate Trust has fully withdrawn the offset funds.  
21 It also recommends that the Council clarify Section 4.2 regarding the responsibilities of The  
22 Climate Trust for its use of offset funds.  
23

24 **MOU for a Bond.** The Council adopts Attachment A-2 of this Order as Attachment A-2 to the site  
25 certificate as the MOU for use of a bond as security for the monetary path payment requirement. It  
26 is structured under the same general principles of the letter of credit, but reflects the difference that  
27 the bond is security if the certificate holder does not meet its obligations to disburse directly  
28 selection and contracting funds and offset funds as requested by The Climate Trust. It also provides  
29 an approved form of a bond. It is consistent with the recommended change to Condition D.9(2)(a).  
30

### 31 **Conclusion**

32

33 The Council finds that the proposed amendment complies with the Carbon Dioxide standards at  
34 OAR 345 Division 24. The conditions in the site certificate shall be modified as follows:  
35

#### 36 **D.9. CARBON DIOXIDE STANDARD FOR BASE LOAD GAS PLANTS**

- 37 (1) Before beginning construction of the facility, the certificate holder shall submit to The  
38 Climate Trust a bond or letter of credit in the amount of the monetary path payment  
39 requirement (in 2002 dollars) as determined by the calculations set forth in Condition (3)  
40 and based on the estimated heat rates and capacities certified pursuant to Condition (4) and  
41 as adjusted in accordance with the terms of this Site Certificate pursuant to Condition (3)(c).  
42 For the purposes of this Site Certificate, the "monetary path payment requirement" means  
43 the offset funds determined pursuant to OAR 345-024-0550 and -0560 and the selection and  
44 contracting funds that the certificate holder must disburse to The Climate Trust, as the  
45 qualified organization, pursuant to OAR 345-024-0710 and this Site Certificate. The offset  
46 fund rate for the monetary path payment requirement shall be \$0.85 per ton of carbon  
47 dioxide (in 2002 dollars). The calculation of 2002 dollars shall be made using the Index set  
48 forth in Condition D.3(4)(a) and as required below in subsection (g).  
49

- 1 (a) The form of the bond or letter of credit and identity of the issuer shall be subject to  
2 approval by the Council.  
3
- 4 (b) The form of the Memorandum of Understanding (“MOU”) between the certificate  
5 holder and The Climate Trust establishing the disbursement mechanism to transfer  
6 selection and contracting funds and offset funds to The Climate Trust shall be  
7 substantially in the form of ~~Attachment A to this Site Certificate. The MOU shall be~~  
8 ~~substantially in the form of~~ Attachments A-1 or A-2 to this site certificate.  
9 Attachment A-1 is an MOU for use with a letter of credit. Attachment A-2 is an  
10 MOU for use with a bond as security. The certificate holder shall use the appropriate  
11 MOU depending on whether it chooses to provide a letter of credit or a bond as  
12 security. The certificate holder shall enter into the appropriate MOU with The  
13 Climate Trust before beginning construction of the facility. [Amendment 3]  
14
- 15 (c) Either the certificate holder or The Climate Trust may submit to the Council for the  
16 Council’s resolution any dispute between the certificate holder and The Climate  
17 Trust that concerns the terms of the bond, letter of credit, MOU concerning the  
18 disbursement mechanism for the monetary path payments, or any other issues related  
19 to the monetary path payment requirement. The Council’s decision shall be binding  
20 on all parties.  
21
- 22 (d) The bond or letter of credit shall remain in effect until such time as the certificate  
23 holder has disbursed the full amount of the monetary path payment requirement to  
24 The Climate Trust. The certificate holder may reduce the amount of the bond or  
25 letter of credit commensurate with payments it makes to The Climate Trust. The  
26 bond or letter of credit shall not be subject to revocation before disbursement of the  
27 full monetary path payment requirement.  
28
- 29 (e) In the event that the Council approves a new certificate holder for the energy  
30 facility:  
31
- 32 (A) The new certificate holder shall submit to the Council for the Council’s  
33 approval the form of a bond or letter of credit that provides comparable  
34 security to the bond or letter of credit of the current certificate holder. The  
35 Council’s approval of a new bond or letter of credit will not require a Site  
36 Certificate amendment.  
37
- 38 (B) The new certificate holder shall submit to the Council for the Council’s  
39 approval the form of an MOU between the new certificate holder and The  
40 Climate Trust that is substantially in the form of Attachments A-1 or A-2 to  
41 this Site Certificate. In the case of a dispute between the new certificate  
42 holder and The Climate Trust concerning the disbursement mechanism for  
43 monetary path payments or any other issues related to the monetary path  
44 payment requirement, either party may submit the dispute to the Council for  
45 the Council’s resolution as provided in Condition (1)(c). Council approval of  
46 a new MOU will not require a Site Certificate amendment. [Amendment 3]  
47
- 48 (f) If calculations pursuant to Condition (5) demonstrate that the certificate holder must  
49 increase its monetary path payments, the certificate holder shall increase the bond or  
50 letter of credit sufficiently to meet the adjusted monetary path payment requirement

1 within the time required by Condition (3)(c). Alternately, the certificate holder may  
2 disburse any additional required funds directly to The Climate Trust within the time  
3 required by Condition (3)(c).  
4

- 5 (g) The amount of the bond or letter of credit shall increase annually by the percentage  
6 increase in the Index and shall be prorated within the year to the date of  
7 disbursement to The Climate Trust from the date of Council approval of the Site  
8 Certificate.  
9

- 10 (2) The certificate holder shall disburse to The Climate Trust offset funds and selection and  
11 contracting funds as requested by The Climate Trust. The certificate holder shall make  
12 disbursements in response to requests from The Climate Trust in accordance with  
13 subsections (a), (b), and (c).  
14

- 15 (a) The certificate holder shall disburse all selection and contracting funds to The  
16 Climate Trust ~~prior to beginning construction upon the request of the Climate Trust~~  
17 in accordance with the terms of the MOU. [Amendment 3]  
18

- 19 (b) If the certificate holder has provided a letter of credit as security for the offset funds,  
20 upon ~~Upon~~ notice pursuant to subsection (c), The Climate Trust may request from the  
21 issuer of the ~~bond or~~ letter of credit the full amount of all offset funds available or it  
22 may request partial payment of offset funds at its sole discretion. Notwithstanding  
23 the specific amount of any contract to implement an offset project, The Climate  
24 Trust may request up to the full amount of offset funds the certificate holder is  
25 required to provide to meet the monetary path payment requirement. [Amendment 3]  
26

- 27 (c) ~~The certificate holder shall provide that the issuer of the bond or letter of credit~~  
28 ~~disburse offset funds to The Climate Trust within three business days of a request by~~  
29 ~~The Climate Trust for the offset funds in accordance with the terms of the bond or~~  
30 ~~letter of credit. The Climate Trust may request disbursement of offset funds by~~  
31 ~~providing notice to the issuer of the bond or letter of credit that The Climate Trust~~  
32 ~~has executed a letter of intent to acquire an offset project. The Climate Trust may~~  
33 request disbursement of offset funds pursuant to subsection (b) by providing notice  
34 to the issuer of the letter of credit that The Climate Trust has executed a letter of  
35 intent to acquire an offset project. The certificate holder shall require that the issuer  
36 of the letter of credit disburse offset funds to The Climate Trust within three business  
37 days of a request by The Climate Trust for the offset funds in accordance with the  
38 terms of the letter of credit. [Amendment 3]  
39

- 40 (d) If the certificate holder has provided a bond as security for the offset funds, upon  
41 notice pursuant to subsection (e), The Climate Trust may request from the certificate  
42 holder the full amount of all offset funds available or it may request partial payment  
43 of offset funds at its sole discretion. Notwithstanding the specific amount of any  
44 contract to implement an offset project, The Climate Trust may request up to the full  
45 amount of offset funds the certificate holder is required to provide to meet the  
46 monetary path payment requirement. [Amendment 3]  
47

- 48 (e) The Climate Trust may request disbursement of offset funds pursuant to subsection  
49 (d) by providing notice to the certificate holder that The Climate Trust has executed

1 a letter of intent to acquire an offset project and by providing an invoice to the  
2 certificate holder for the offset funds. [Amendment 3]  
3

4 (A) The certificate holder shall disburse offset funds to The Climate Trust in the  
5 amount requested within ten business days of the certificate holder's next  
6 scheduled construction draw, but in no case to exceed 40 calendar days from  
7 the date of the invoice. [Amendment 3]  
8

9 (B) The certificate holder shall provide The Climate Trust with a schedule listing  
10 the dates for receipt of invoices prior to each construction draw and the dates  
11 for each construction draw. [Amendment 3]  
12

13 (C) If, in addition to providing written notification that The Climate Trust has  
14 executed a letter of intent to sign an offset contract, The Climate Trust  
15 provides written notification to the certificate holder certifying that the  
16 receipt of offset funds within five business days is important to the timely  
17 implementation of the offset project, the certificate holder shall disburse to  
18 The Climate Trust the amount of offset funds requested within five business  
19 days of the receipt of such notice. [Amendment 3]  
20

21 (f) If the certificate holder has provided a bond as security for the offset funds and the  
22 certificate holder fails to disburse offset funds within the time limits of subsection  
23 (e), the full penal amount of the bond shall become payable immediately upon  
24 demand by The Climate Trust. The full penal amount means all offset funds that the  
25 certificate holder is required to disburse to The Climate Trust, taking into account  
26 any previous disbursements, but irrespective of a partial payment that may have been  
27 requested pursuant to subsection (d). [Amendment 3]  
28

29 (3) The certificate holder shall submit all monetary path payment requirement calculations to  
30 the Office for verification in a timely manner before submitting a bond or letter of credit for  
31 Council approval and before entering into an MOU with The Climate Trust. The certificate  
32 holder shall use the contracted design parameters for capacities and heat rates that it reports  
33 pursuant to Condition (4) to calculate the estimated monetary path payment requirement,  
34 along with the estimated annual hours of operation with operate power augmentation  
35 technologies. The certificate holder shall use the Year One Capacities and Year One Heat  
36 Rates that it reports for the facility pursuant to Condition (5) to calculate whether it owes  
37 additional monetary path payments.  
38

39 (a) The net carbon dioxide emissions rate for the base load gas plant shall not exceed  
40 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with  
41 carbon dioxide emissions and net electric power output measured on a new and clean  
42 basis, as defined in OAR 345-001-0010.  
43

44 (b) If the certificate holder uses power augmentation technologies, as defined in Council  
45 rules, the net carbon dioxide emissions rate for incremental emissions for the facility  
46 operating with power augmentation technologies that increase the capacity and heat  
47 rate of the facility above the capacity and heat rate that it can achieve as a base load  
48 gas plant ~~on a new and clean basis~~ (“power augmentation technologies”) shall not  
49 exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power  
50 output, with carbon dioxide emissions and net electric power output measured on a

1 new and clean basis adjusted for the average temperature, barometric pressure and  
2 relative humidity at the site during the times of year when the site certificate holder  
3 intends to operate the facility, as the ~~Council-Department~~ may modify such basis  
4 pursuant to Condition (4)(d). [Amendment 3]  
5

6 (c) When the certificate holder submits the Year One Tests reports required in Condition  
7 (5), it shall increase its monetary path payments if the calculation using reported data  
8 shows that the adjusted monetary path payment requirement exceeds the monetary  
9 path payment requirement for which the certificate holder had provided a bond or  
10 letter of credit prior to beginning construction, pursuant to Condition (1). The  
11 certificate holder shall submit its calculations to the Office of Energy for verification.  
12

13 (A) The certificate holder shall make the appropriate calculations and fully  
14 disburse any increased funds directly to The Climate Trust within 30 days of  
15 filing the Year One Tests reports.  
16

17 (B) In no case shall the certificate holder diminish the bond or letter of credit it  
18 provided before beginning construction or receive a refund from The Climate  
19 Trust based on the calculations made using the Year One Capacities and the  
20 Year One Heat Rates.  
21

22 (4) The certificate holder shall include an affidavit certifying the heat rates and capacities  
23 reported in subsections (a) and (b).  
24

25 (a) Before beginning construction of the facility, the certificate holder shall notify the  
26 Council in writing of its final selection of a gas turbine vendor and heat recovery  
27 steam generator vendor and shall submit written design information to the Council  
28 sufficient to verify the base load gas plant's designed new and clean heat rate (higher  
29 heating value) and its net power output at the average annual site condition.  
30

31 (b) Before beginning construction of the energy facility, the certificate holder shall  
32 submit written design information to the Council sufficient to verify the facility's  
33 designed new and clean heat rate and its net power output at the average-site  
34 ~~condition~~ temperature, barometric pressure and relative humidity at the times the  
35 certificate holder intends to operate with duct burning or other power augmentation.  
36 [Amendment 3]  
37

38 (c) If the ~~net power output and heat rate that the~~ certificate holder reports pursuant to  
39 subsection (b) ~~indicate~~ that the Project will use power augmentation technologies,  
40 before beginning construction of the energy facility, the certificate holder shall  
41 specify the estimated annual average hours that it will operate the power  
42 augmentation technologies. [Amendment 3]  
43

44 (d) If the Project uses power augmentation technologies, upon a timely request by the  
45 certificate holder, the ~~Council-Office~~ may approve modified parameters for testing  
46 the power augmentation technologies on a new and clean basis, pursuant to OAR  
47 345-024-0590(1). The ~~Council's-Office's~~ approval of modified testing parameters  
48 for power augmentation technologies shall not require a Site Certificate amendment.  
49 [Amendment 3]  
50

- 1 (5) Within the first 12 months of commercial operation of the facility, the certificate holder shall  
2 conduct a 100-hour test at full power without power augmentation technologies (“Year One  
3 Test-1”) and, if appropriate, a test at full power with power augmentation technologies  
4 (“Year One Test-2”). A 100-hour test performed for purposes of the certificate holder’s  
5 commercial acceptance of the facility shall suffice to satisfy this condition in lieu of testing  
6 after beginning commercial operation.  
7
- 8 (a) Year One Test-1 shall determine the actual heat rate (“Year One Heat Rate-1”) and  
9 the net electric power output (“Year One Capacity-1”) on a new and clean basis,  
10 without degradation, with the results adjusted for the average annual site condition  
11 for temperature, barometric pressure, and relative humidity, and using a rate of  
12 117 pounds of carbon dioxide per million Btu of natural gas fuel pursuant to OAR  
13 345-001-0010(35).  
14
- 15 (b) If appropriate, Year One Test-2 shall determine the actual heat rate (“Year One Heat  
16 Rate-2”) and net electric power output (“Year One Capacity-2”) for the facility  
17 operating with power augmentation technologies, without degradation, with the  
18 results adjusted for the average site condition for temperature, barometric pressure,  
19 and relative humidity at the times the certificate holder intends to operate power  
20 augmentation technologies, and using a rate of 117 pounds of carbon dioxide per  
21 million Btu of natural gas fuel pursuant to OAR 345-001-0010(35). The full power  
22 test shall be 100 hours’ duration unless the ~~Council-Department~~ has approved a  
23 different duration pursuant to Condition (4)(d). [Amendment 3]  
24
- 25 (c) The certificate holder shall notify the Office of Energy at least 60 days before  
26 conducting the tests required in sub-sections (a) and (b), as appropriate unless the  
27 certificate holder and the Department have mutually agreed that less notice will  
28 suffice. [Amendment 3]  
29
- 30 (d) Before conducting the tests required in subsections (a) and (b), as appropriate, the  
31 certificate holder shall, in a timely manner, provide to the Office a copy of the  
32 protocol for conducting the tests. The certificate holder shall not conduct the tests  
33 until the Department has approved the testing protocols. [Amendment 3]  
34
- 35 (e) Within two months after completing the Year One Test(s), the certificate holder shall  
36 provide to the Council a report of the results of the Year One Test(s).  
37
- 38 (6) If calculations pursuant to Condition (7) demonstrate that the certificate holder must  
39 supplement its monetary path payments (“supplemental monetary path payment  
40 requirement”), the certificate holder shall provide a bond or letter of credit sufficient to meet  
41 the supplemental monetary path payment requirement within the time required by Condition  
42 (7)(b). The bond or letter of credit shall not be subject to revocation before disbursement of  
43 the supplemental monetary path payment requirement. Alternately, the certificate holder  
44 may disburse ~~in cash~~ any such supplemental monetary path payments directly to The  
45 Climate Trust within the time required by the Condition (7). [Amendment 3]  
46
- 47 (7) If the certificate holder uses power augmentation technologies, the certificate holder shall  
48 submit all supplemental monetary path payment requirement calculations to the Office for  
49 verification. The certificate holder shall use the Year One Capacity-2 and Year One Heat

1 Rate-2 that it reports for the facility pursuant to Condition (5)(b) to calculate whether it owes  
2 supplemental monetary path payments, pursuant to subsections (a) and (b).  
3

4 (a) Each five years after beginning commercial operation of the facility (“five-year  
5 reporting period”), the certificate holder shall report to the Office the annual average  
6 hours the facility operated with power augmentation technologies during that five-  
7 year reporting period, pursuant to OAR 345-024-0590(6). The certificate holder shall  
8 submit five-year reports to the Office within 30 days of the anniversary date of  
9 beginning commercial operation of the facility.  
10

11 (b) If the Office determines that the facility exceeds the projected net total carbon  
12 dioxide emissions calculated pursuant to Conditions (4) and (5), prorated for five  
13 years, during any five-year reporting period described in subsection (a), the  
14 certificate holder shall offset excess emissions for the specific reporting period  
15 according to subsection (A) and shall offset the estimated future excess emissions  
16 according to subsection (B), pursuant to OAR 345-024-0600(4). The certificate  
17 holder shall offset excess emissions using the monetary path as described in OAR  
18 345-024-0710, except that selection and contracting funds shall equal 20 percent of  
19 the value of any offset funds up to the first \$250,000 (in 2002 dollars) and 4.286  
20 percent of the value of any offset funds in excess of \$250,000 (in 2002 dollars). The  
21 certificate holder shall disburse the funds to The Climate Trust within 30 days after  
22 notification by the Office of the amount that the certificate holder owes.  
23

24 (A) In determining the excess carbon dioxide emissions that the certificate holder must offset for  
25 a five-year period, the Office shall apply OAR 345-024-0600(4)(a). The certificate holder shall  
26 pay for the excess emissions at \$0.85 per ton of carbon dioxide emissions (in 2002 dollars). The  
27 Office shall notify the certificate holder and The Climate Trust of the amount of payment  
28 required, using the monetary path, to offset excess emissions.  
29

30 (B) The Office shall calculate estimated future excess emissions and notify the  
31 certificate holder of the amount of payment required, using the monetary  
32 path, to offset them. To estimate excess emissions for the remaining period of  
33 the deemed 30-year life of the facility, the Office shall use the parameters  
34 specified in OAR 345-024-0600(4)(b). The certificate holder shall pay for the  
35 estimated excess emissions at \$ 0.85 per ton of carbon dioxide (in  
36 2002 dollars). The Office shall notify the certificate holder of the amount of  
37 payment required, using the monetary path, to offset future excess emissions.  
38

39 (8) The combustion turbine for the base load gas plant and power augmentation technologies, as  
40 appropriate, shall be fueled solely with pipeline-quality natural gas or with synthetic gas  
41 with a carbon content per million Btu no greater than pipeline-quality natural gas.  
42

43 (9) ~~With respect to incremental capacity and fuel consumption increases for which the~~  
44 ~~certificate holder has not previously complied with the carbon dioxide standard, the~~  
45 ~~certificate holder shall comply substantially with Conditions (1) through (8) in lieu of the~~  
46 ~~Council’s requiring an amendment, provided that After the certificate holder has complied~~  
47 ~~with the conditions relating to the carbon dioxide standard before beginning construction,~~  
48 ~~incremental increases in capacity and heat rate that otherwise fall within the limits specified~~  
49 ~~in OAR 345-027-0050(2) do not require an amendment of the site certificate if the~~

1 certificate holder complies substantially with Conditions (1) through (8) and (10), except as  
2 modified below, and if: [Amendment 3]  
3

4 (a) The Council determines, pursuant OAR 345-027-0050, that the certificate holder  
5 does not otherwise require an amendment, and further provided that:  
6

7 (b) The certificate holder shall meet the appropriate carbon dioxide emissions standard  
8 and monetary offset rate in effect at the time the Council makes its determination  
9 pursuant to OAR 345-027-0050.  
10

11 (10) If the certificate holder begins construction of Phase 1, but not Phase 2, the certificate holder  
12 shall comply with Conditions D.9(1) through D.9(9) in connection with construction of for  
13 Phase 1. If the certificate holder later begins construction of Phase 2, the certificate holder  
14 shall comply with Conditions D.9(1) through D.9(9) in connection with the construction of  
15 for Phase 2. [Amendment 3]  
16  
17

## 18 **V. TEMPORARY ORDER AND SITE CERTIFICATE AMENDMENTS**

19  
20 The Council finds that the changes to the facility proposed in Summit's Fourth Request for  
21 Amendment meet the Council's standards and should be issued as Amendment #3. (Summit's  
22 Third Request for Amendment is tabled at this time). The site certificate section C.1 "Facility  
23 Description" shall be amended to describe the division of the energy facility into two units of  
24 approximately equal electrical generating capacity, with construction in two phases. Phase 1 refers  
25 to the construction of one combustion turbine and the heat recovery steam generator. Phase 2 refers  
26 to the construction of the second combustion turbine and associated connections to the heat  
27 recovery steam generator.  
28

29 Section C.1.a of the site certificate is amended as shown in the discussion of the Carbon Dioxide  
30 Standard, to reflect the current Council rules regarding Power Augmentation. Council amends the  
31 conditions of the site certificate as shown in the sections of this order that discuss compliance with  
32 the Council's Retirement and Financial Assurance Standard, DEQ's Noise Standard, and the  
33 Council's Carbon Dioxide Standard. With the foregoing changes, the Council approves Summit's  
34 Fourth Request for Amendment.  
35  
36

Issued this day of July 23, 2004

ENERGY FACILITY SITING COUNCIL

By: \_\_\_\_\_  
Karen Green , Chair

37