

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

In the Matter of the Retirement Plan and	)	FINAL ORDER ON
Termination of the Fifth Amended	)	RETIREMENT PLAN AND SITE CERTIFICATE
Site Certificate for the Summit Ridge	)	TERMINATION
Wind Farm	)	

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April 19, 2024

DRAFT

**Table of Contents**

I. INTRODUCTION..... 3  
I.A Approved Facility and Location ..... 3  
I.B Site Certificate Procedural Summary..... 5  
II. SITE CERTIFICATE TERMINATION RULES AND PROCEDURAL SUMMARY ..... 5  
II.A Application for Termination Rules..... 5  
II.B Application to Terminate Procedural Summary ..... 6  
III. FINDINGS OF FACT ..... 7  
III.A Constructed Related or Supporting Facilities ..... 7  
III.B Certificate Holder’s Proposed Retirement Plan..... 12  
IV. ANALYSIS ..... 12  
IV.A Retirement Plan..... 12  
IV.B Site Certificate Termination..... 19  
V. GENERAL CONCLUSIONS..... 19  
VI. FINAL ORDER..... 20

**Table of Tables**

Table 1: Summary of Comments from Friends of the Columbia Gorge, Oregon Wild, and Central Oregon LandWatch ..... 16  
Table 2: Reviewing Agency Consultation Summary..... 17

**Table of Figures**

Figure 1: Summit Ridge Wind Farm Site Boundary Location ..... 4  
Figure 2: Location of Substantially Modified Road ..... 8  
Figure 3: Photographs of Substantially Modified Road ..... 9  
Figure 4: Substantially Modified Road - Disturbance and Revegetation Area..... 11

## **I. INTRODUCTION**

Summit Ridge Wind, LLC (certificate holder) and Aypa Power LLC (certificate holder parent company) seek approval from the Energy Facility Siting Council (EFSC or Council) of a retirement plan and to terminate the Summit Ridge Wind Farm Site Certificate. In accordance with OAR 345-027-0110(7) and (8) and based on the findings and reasons discussed below, the Council issues this final order:

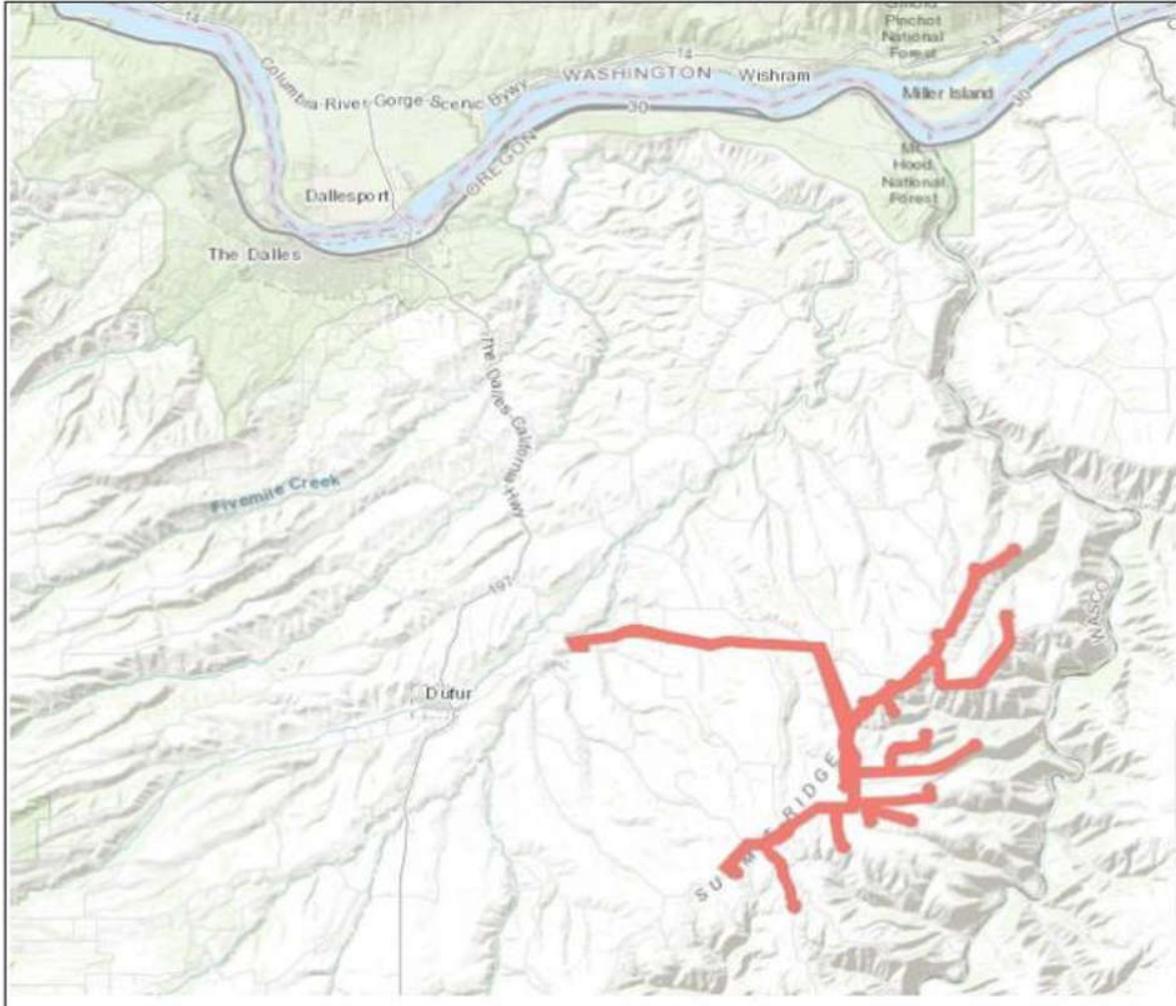
- 1) approving the retirement plan for the portion of the Summit Ridge Wind Farm previously constructed, and
- 2) approving the application to terminate the site certificate for the Summit Ridge Wind Farm.

The findings of fact and conclusions of law, as presented in this order, are based on Council's April 19, 2024 review of the Application for Termination of the Site Certificate for the Summit Ridge Wind Farm and comments received on the proposed retirement plan during the 19-day comment period (March 13 through April 1, 2024).

### **I.A Approved Facility and Location**

The Fifth Amended Site Certificate for the Summit Ridge Wind Farm (as issued December 18, 2020) authorized construction and operation of a wind energy generation facility (the "facility") in Wasco County, Oregon approximately 17 miles southeast of The Dalles, and eight miles east of Dufur, Oregon, as shown in Figure 1 below. The Fifth Amended Site Certificate authorizes construction and operation of a 194.4 megawatts (MW) facility, with up to 72 wind turbines and an approximately eight mile 230 kilovolt (kV) transmission line extending west from the facility, within an approximately 11,000 acre site boundary.

Figure 1: Summit Ridge Wind Farm Site Boundary Location



## **I.B Site Certificate Procedural Summary**

The site certificate procedural history is listed below.

August 19, 2011: The Council issued its Final Order on the Application for Site Certificate and granted a site certificate for the Summit Ridge Wind Farm.

August 7, 2015: The Council issued its Final Order on Amendment 1 and granted the First Amended Site Certificate, which approved a construction timeline extension and allowed flexibility in turbine layout and design.

November 4, 2016: The Council issued its Final Order on Amendment 2 and granted a Second Amended Site Certificate, which approved a transfer of certificate holder ownership, a construction timeline extension, flexibility in turbine layout and design, and authorized a variance to a road setback requirement for 17 wind turbines.

December 15, 2017: The Council issued its Final Order on Amendment 3 and granted a Third Amended Site Certificate, which approved a transfer of certificate holder ownership to Pattern Renewables 2 LP.

August 23, 2019: The Council issued its Final Order on Amendment 4 and granted a Fourth Amended Site Certificate, which approved a construction timeline extension, requiring the certificate holder to begin construction by August 19, 2020 and complete construction of the facility by August 19, 2023.

December 18, 2020: The Council issued its Final Order on Amendment 5 and granted a Fifth Amended Site Certificate, which approved a transfer of certificate holder ownership from Pattern Renewables 2 LP (certificate holder owner and parent company) to Aypa Power LLC (new owner). The existing certificate holder, Summit Ridge Wind, LLC, was maintained.

August 17, 2023: The certificate holder submitted preliminary Request for Amendment 6 (pRFA6) of the Summit Ridge Wind Farm Site Certificate, requesting the construction completion deadline be extended.

February 14, 2024: The certificate holder notified the Oregon Department of Energy (Department) that pRFA6 was being withdrawn and that review of a Retirement Plan and Site Certificate Termination was instead being requested through their submittal of an Application for Termination.

April 19, 2024: Council will review and have the opportunity to approve or deny the certificate holder's proposed retirement and application for site certificate termination.

## **II. SITE CERTIFICATE TERMINATION RULES AND PROCEDURAL SUMMARY**

### **II.A Application for Termination Rules**

OAR 345-027-0110 – Termination of a Site Certificate

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*(4) In an application for termination of the site certificate, the certificate holder must include a proposed final retirement plan for the facility and site.*

*\*\*\**

*(5) In the proposed final retirement plan, the certificate holder must include:*

- (a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;*
- (b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process;*
- (c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement; and*
- (d) An updated list of property owners, as described in OAR 345-021-0010(1)(f).*

*(6) Within 15 days after receiving an application for termination of a site certificate, the Department must:*

- (a) Send a notice of the application, specifying a date by which comments on the application are due, by mail or email to:
  - (A) All persons on the Council's general mailing list, as defined in OAR 345-011-0020;*
  - (B) All persons on any special list established for the facility; and*
  - (C) The property owners on the updated list submitted by the certificate holder under section (5) of this rule;**
- (b) Send copies of the application for termination by mail or email to the reviewing agencies for the facility, and ask those agencies to comment by a specified date; and*
- (c) Post an announcement of the application for termination on the Department's website.*

*(7) The Council must review the proposed final retirement plan and must consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter and applicable conditions in the site certificate. If the plan is approved, the Council must issue an order authorizing retirement according to the approved or modified final retirement plan and subject to any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.*

*(8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council must issue an order terminating the site certificate.*

## **II.B Application to Terminate Procedural Summary**

Summit Ridge Wind, LLC (certificate holder) and Aypa Power LLC (certificate holder parent company) submitted an Application to Terminate the Fifth Amended Site Certificate on March 8, 2024. On March 13, 2024, the Department issued Public Notice requesting comments on the proposed retirement plan and Application to Terminate to the persons and property owners identified in OAR 345-027-0110(6)(a) above, which included Council's general mailing list and the special mailing list established for the facility and property owners within 500-feet of the property boundary for which the site boundary is located.

On the same day, the Department sent copies to reviewing agencies and posted the request and public notice of the project page at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/SRW.aspx>.

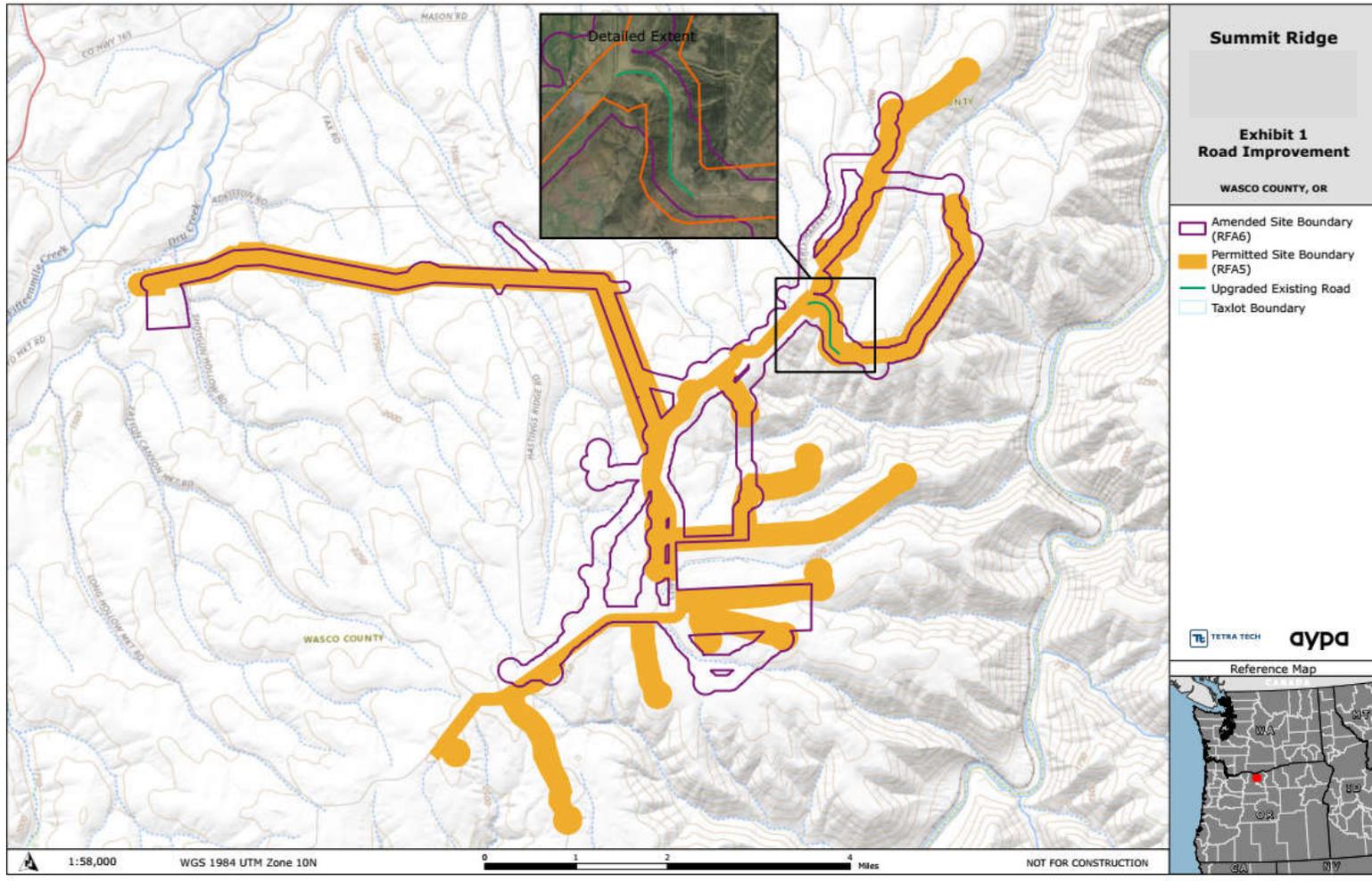
### **III. FINDINGS OF FACT**

#### **III.A Constructed Related or Supporting Facilities**

Construction of an approved related or supporting facility commenced in August 2020. The related or supporting facility included substantial modifications of existing road necessary to serve facility access during wind turbine construction, and specifically consisted of applying gravel to 0.79-of-a-mile existing, mostly-dirt road. The work temporarily disturbed approximately 1.2 acres. The area in which the work was done is in unincorporated Wasco County, in Wasco County's Exclusive Farm Use (EFU) zone. The location of the improved road relative to the site boundary is shown in Figure 2.

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Figure 2: Location of Substantially Modified Road



The certificate holder provided the following photographs of the improved road.

**Figure 3: Photographs of Substantially Modified Road**

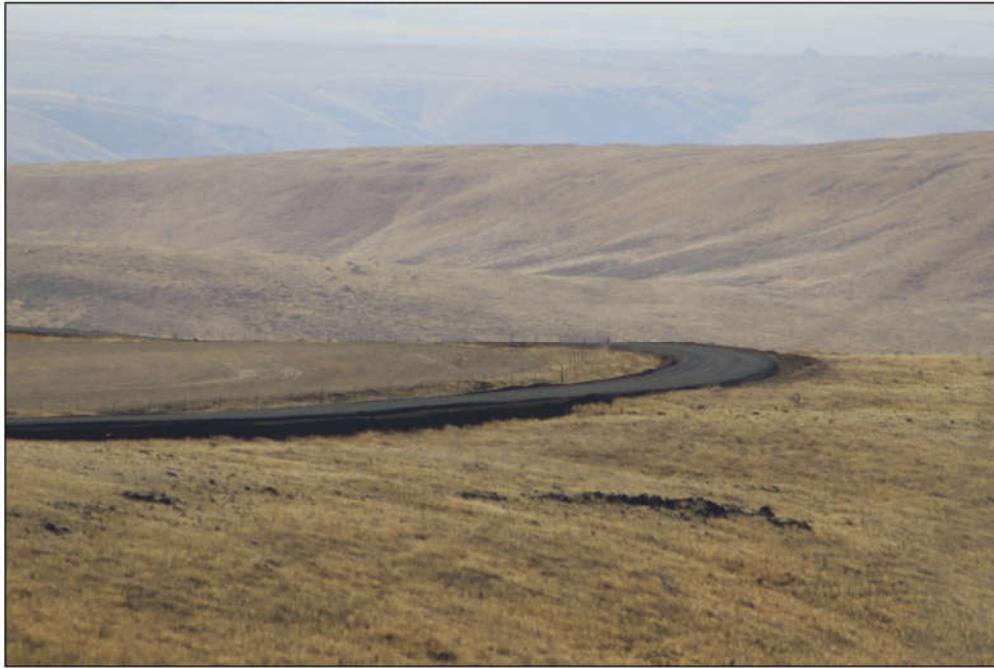


Image 1. Road Improvement View 1.



Image 2. Road Improvement View 2.

The graveling caused disturbance to an area less than two feet along the roadside, which was continuous on the south side of the road and affected the north side in a few places. Dryland wheat is grown north of the road upgrade; south of the road upgrade there is a mix of native rabbitbrush/buckwheat shrub steppe and native perennial grassland. After completing the road improvements, disturbed areas were revegetated in October 2020.

Photographs of the road improvement disturbance and revegetation area are presented below.

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**Figure 4: Substantially Modified Road - Disturbance and Revegetation Area**

Narrow road improvement temporarily disturbed edge. Fully revegetated in 2022, primarily by non-native cheatgrass (tan) and tall tumble mustard (green, photo 2b).

2a



2b



### III.B Certificate Holder's Proposed Retirement Plan

The certificate holder has not proposed a separate retirement plan, but rather proposes "to leave the infrastructure (improved road) in place for use by private property owners."

To support this proposal, the following documentation is included in the Application for Termination:

- Revegetation and noxious weed monitoring results from July 7, 2022, as performed by Northwest Wildlife Consultants. The 2022 memo concludes that there was no evidence of any erosion associated with the road improvement and that grasses present before the road improvement have revegetated the disturbed area, precluding future erosion.
- A landowner, Kortge Ranches, LLC, letter dated March 5, 2024 affirming their agreement to retain the access road improvements and acknowledging that, upon termination of the Site Certificate, the certificate holder would not be responsible for maintenance of the road.

## IV. ANALYSIS

### IV.A Retirement Plan

The certificate holder's proposal to leave the road improvements in place is evaluated based on the following provisions in OAR 345-027-0110.

*(1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.*

The certificate holder, through its' parent company Aypa, applied to terminate the site certificate on March 8, 2024.

*(2) A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.*

The certificate holder posits that this two-year timeframe is not triggered. They acknowledge the "initial phase" of construction - modifications/improvements to the access road - was concluded on August 18, 2020, but they assert that did not constitute cessation of construction because construction of the entire facility was not completed. Council disagrees. It is not accurate to state construction had not ceased simply because construction of the entire facility was not completed. However, Council concludes the two-year deadline to apply to terminate a site certificate following cessation of construction was not triggered because, although no construction activities had taken place at the site since August 18, 2020, in pRFA6, the certificate holder timely requested to extend the construction completion deadline.

*(3) If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-025-0006(16).*

This provision is not applicable because the certificate holder has applied to terminate the site certificate.

*(4) In an application for termination of the site certificate, the certificate holder must include a proposed final retirement plan for the facility and site. The certificate holder must submit two printed copies of the application for termination and the proposed final retirement plan, and an electronic version of the application for termination and the proposed final retirement plan in a non-copy-protected electronic format acceptable to the Department. The certificate holder must submit additional printed copies of the application for termination and the proposed final retirement plan to the Department upon request.*

As discussed above, the certificate holder has not provided a separate retirement plan because the only work conducted at the site has been substantial improvements to an access road which is proposed to remain in place.

*(5) In the proposed final retirement plan, the certificate holder must include:  
(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;*

The certificate holder has not provided a separate retirement plan because the only construction conducted has been substantial improvements to an access road, which is proposed to remain in place. Certificate holder contends that the current state of the facility – *i.e.*, the improved/upgraded road, poses no threat to public health, safety and the environment, thus meeting this requirement.

As discussed above, actions to restore the site following construction of the road improvements included revegetation and noxious weed control within disturbance areas, as required per Conditions 5.6 and 9.1. In the Application to Terminate, Attachment 1 provides photographic representations of current conditions of the road improvements, demonstrating stabilization (also provided in this order, Figure 4). Based on consultation with Oregon Department of Environmental Quality Stormwater Quality Inspector Martha Cruse, the Department and DEQ concur that the site has been adequately stabilized.<sup>1</sup>

In the Application to Terminate, Attachment 2 provides the 2022 revegetation and noxious weed control monitoring results. The memo indicates that there was no evidence of any erosion associated with the road improvement and that grasses present before the road improvement have revegetated the disturbed area, precluding future erosion.

Based on the photographic evidence provided in Figure 4 and DEQ's concurrence on site stabilization, the Council finds that there is substantial evidence that the proposal to leave the road improvements in place protects public health, safety and the environment, in satisfaction of OAR 345-027-0110(5)(a).

*(b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process;*

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<sup>1</sup> SRW Termination Request DEQ Comments 2024-03-31

As discussed above, actions to restore the site following construction of the road improvements included revegetation and noxious weed control within disturbance areas, as required per Conditions 5.6 and 9.1. In the Application to Terminate, Attachment 1 provides photographic representations of current conditions of the road improvements, demonstrating stabilization (also provided in this order, Figure 4). Based on consultation with Oregon Department of Environmental Quality Stormwater Quality Inspector Martha Cruse, the Department and DEQ concur that the site has been adequately stabilized.<sup>2</sup>

Restoring the site of an energy facility to a useful, non-hazardous condition does not necessarily mean returning it to the state that it was in prior to construction of the facility. It is the certificate holder's responsibility to propose what restoration to a "useful, nonhazardous condition" means for each specific energy facility site and Council's responsibility to analyze that request and determine whether they agree. In making its determination the Council may evaluate (among other possible factors) the underlying zoning of the property and the uses allowed in that zoning, and the desires of the landowner to determine what, if any, of the energy facility components may remain. These are analyzed in turn below.

Zoning designation: The property on which the improved road is located is in unincorporated Wasco County within EFU zoned land. While this zoning designation is primarily for the purpose of agricultural activities, there are other uses allowed in that zone as established in ORS 215.283. These include but are not limited to churches, utility facilities necessary for a public service, farm dwellings, farm stands, parks and playgrounds, community centers, golf courses, non-farm dwellings and commercial utility facilities for the purposes of generating power for public use by sale. Some of these uses are allowed without any regulatory review whereas others require a much more significant review. However, all these listed uses, and most if not all the other uses listed in the statute require access to the property. Based on the Department's consultation with Wasco County Planning Department, the Wasco County Board of Commissioners concurred that the road is consistent with County-road standard requirements and is allowable within EFU zoned land.<sup>3</sup>

Desire of the landowner: Kortge Ranches, LLC, the owner of the property on which the improved access road is located, provided a signed letter dated March 5, 2024, affirming their agreement to retain the access road improvements and acknowledging that, upon termination of the Site Certificate, the certificate holder would not be responsible for maintenance of the road.<sup>4</sup>

The Council finds that leaving the improved road in place is consistent with the underlying zoning and potential uses of the property and is desired by the property owner. Therefore, the Council finds that the certificate holder's proposal to leave the road improvements in place satisfies OAR 345-027-0110(5)(b).

*(c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement;*

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<sup>2</sup> SRW Termination Request DEQ Comments 2024-03-31.

<sup>3</sup> SRW Termination Request Wasco County BOCC Comments 2024-04-03.

<sup>4</sup> SRW Application to Terminate Site Certificate 2024-03-08.

Because the certificate holder proposes to leave the road improvements in place, there are no corresponding costs for retirement. Further, the property owner acknowledges that, upon termination of the Site Certificate, the certificate holder would not be responsible for maintenance of the road. Given these factors, the Council finds there will be no cost for completion of retirement and OAR 345-027-0110(5)(c) is satisfied.

*(d) An updated list of property owners, as described in OAR 345-021-0010(1)(f).*

The Application for Termination Attachment 4 includes an updated property owner list, as required in OAR 345-021-0010(1)(f).

*(6) Within 15 days after receiving an application for termination of a site certificate, the Department must:*

*(a) Send a notice of the application . . .*

The Application for Termination was received on March 8, 2024. The Department issued Public Notice of the Application for Termination on March 13, 2024, in compliance with subsection (6).

*(7) The Council must review the proposed final retirement plan and must consider any comments received from the public and the reviewing agencies...*

*[(7) is continued below, following Council's evaluation of comments]*

During the 19-day comment period, 1 written comment was received from Friends of the Columbia Gorge, Oregon Wild, and Central Oregon LandWatch (collectively referred to as "Friends"). In their written comments received on April 1, 2024, 5 substantive comments were provided along with supporting documentation. Those comments and Council's evaluation are presented in Table 1 below.

**Table 1: Summary of Comments from Friends of the Columbia Gorge, Oregon Wild, and Central Oregon LandWatch**

<b>Friends Comment</b>		<b>Council Evaluation</b>
1	Prior to any Council Order in this matter, ODOE should procure a final, dated copy of the undated letter from Wasco County included in the Termination Application.	In the Department’s review of the Application for Termination, it consulted with Wasco County Planning Department and the Board of Commissioners and obtained a signed letter, dated April 4, 2024. That letter is included on the record and relied upon in this order.
2	The Site Certificate expired under its own terms and the applicable law when the Site Certificate Holder failed to lawfully commence construction of the Project prior to the Site Certificate’s construction start deadline.	The Council makes no findings or conclusions regarding Comments 2, 3 and 4 as those comments are not specific to the certificate holder’s proposed retirement plan, but rather focus on issues not under review by Council.
3	The Council never approved “phased construction” of the Project; and ODOE lacked authority to retroactively approved “phased construction” without oversight and approval by the Council.	
4	Because the Site Certificate Holder never applied to the Council for a site certificate amendment to extend the August 19, 2020 construction commencement deadline prior to that deadline, the certificate expired on that deadline and is null and void.	
5	The Site Certificate expired under its own terms and the applicable law when the Site Certificate Holder failed to complete construction of the Project prior to the Site Certificate’s construction completion deadline.	

During the Department’s review of the Application for Termination, it consulted with reviewing agencies and the Special Advisory Group and received comments from the Wasco County Board of Commissioners and Oregon Department of Environmental Quality (DEQ). Those comments are summarized below:

**Table 2: Reviewing Agency Consultation Summary**

Reviewing Agency/Special Advisory Group	Comment
Wasco County Planning Department/Board of Commissioners	<p>Planning and Public Works Director considers the road to have been built to a fair standard, with good rock and width, and feels it would have a greater impact and disturbance to remove the road at this time.</p> <p>Planning Director concurs that the road is consistent with road standard requirements; has no concerns about its existence separate from development. No long-term permits or maintenance are required</p>
Oregon Department of Environmental Quality	Based on review of maps, the area is stabilized.

To the extent the comments received relate to the proposed retirement plan, the Council finds that they have not raised any questions of relevant fact or law and that the certificate holder’s proposed retirement plan would result in a useful, nonhazardous site; it would better protect the public health, safety and the environment than deconstructing the components.

Subsection (7) is continued below:

*(7) ...The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter **and applicable conditions in the site certificate**. If the plan is approved, the Council must issue an order authorizing retirement according to the approved or modified final retirement plan and subject to any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480. [Emphasis added]*

While several Site Certificate conditions apply during and post-construction of the road improvements, following are the most relevant the certificate holder’s proposal, which seeks to apply the actions completed at the site to date as those that would be necessary to restore the site to a useful, nonhazardous conditions, while leaving the road improvements in place.

*Condition 2.11 Any matter of non-compliance under the site certificate shall be the responsibility of the certificate holder. Any notice of violation issued under the site certificate shall be issued to the certificate holder. Any civil penalties assessed under the site certificate shall be levied on the certificate holder.*

The Department affirms that no notices of violation have been issued by the Department or any other agency with permit authority for permits issued or required for the road improvements that were completed in 2020. There are no unresolved matters of non-compliance with the terms and conditions

of the site certificate. Therefore, terminating the site certificate would not result in conflict with this condition.

*Condition 4.6 The certificate holder shall obtain all necessary federal, state, and local permits or approvals required for construction, operation, and retirement of the facility or ensure that its contractors obtain the necessary federal, state, and local permits or approvals.*

Based on the Department's consultation with Wasco County Planning Department/Board of Commissioners, there are no permits required to allow permanent use/maintenance of the road.<sup>5</sup> Therefore, terminating the site certificate would not conflict with this condition.

*Condition 9.1 The certificate holder shall conduct all construction work in compliance with an Erosion and Sediment Control Plan (ESCP) satisfactory to the Oregon Department of Environmental Quality and as required under the National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge General Permit #1200-C. The certificate holder shall include in the ESCP any procedures necessary to meet local erosion and sediment control requirements or storm water management requirement.*

On August 5, 2020, prior to construction at the site, the certificate holder lawfully obtained a National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge General Permit #1200-C from the Oregon Department of Environmental Quality (DEQ) (Permit 126989). In December 2020, following completion of disturbance and restoration actions at the site, the certificate holder submitted a Request to Terminate the 1200-C permit. Subsequently, the permit expired. DEQ affirmed that the site has been adequately stabilized.<sup>6</sup> Therefore, terminating the site certificate would not conflict with this condition.

*Condition 9.6 Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use and in compliance with the Revegetation and Weed Control Plan (Exhibit 1 to the Final Order). Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.*

As discussed above, after improving the access road, the approximately 1.2 acres of temporary disturbance were revegetated. In the Application to Terminate, Attachment 2 provides the 2022 revegetation and noxious weed control monitoring results. The memo indicates that there was no evidence of any erosion associated with the road improvement and that grasses present before the road improvement have revegetated the disturbed area, precluding future erosion. Therefore, terminating the site certificate would not conflict with this condition.

*Condition 14.3 The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.*

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<sup>5</sup> SRW Termination Request Wasco County BOCC Comments 2024-04-03.

<sup>6</sup> SRW Termination Request DEQ Comments 2024-03-31.

The Department concurs that based on the semi-annual and annual reporting conducted under OAR 345-026-0080(1) the certificate holder has complied with this condition. Therefore, terminating the site certificate would not conflict with this condition.

*Condition 14.4 The certificate holder must retire the facility in accordance with a retirement plan approved by the Council if the certificate holder permanently ceases construction or operation of the facility. The retirement plan must describe the activities necessary to restore the site to a useful, non-hazardous condition, as described in OAR 345-027- 21 0110(5). After Council approval of the plan, the certificate holder must obtain the necessary authorization from the appropriate regulatory agencies to proceed with restoration of the site.*

For the reasons discussed above, the certificate holder's proposal to leave the road improvements in place is consistent with this condition.

#### **IV.B Site Certificate Termination**

*OAR 345-027-0110(8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council must issue an order terminating the site certificate.*

As stated in Section IV.A., Council authorizes the certificate holder to leave the road improvements in place due to, among other reasons, the work done to stabilize the soils and revegetate the impacted area and because the property owner would like to have them left in place. Therefore, Council finds the certificate holder has completed facility retirement and orders the site certificate for the Summit Ridge Wind Farm to be terminated.

#### **V. GENERAL CONCLUSIONS**

The certificate holder has met the requirements associated with OAR 345-027-0110, Termination of a Site Certificate.

The Council reviewed the proposal to leave the road improvements in place and associated evidence submitted in lieu of proposing a separate final retirement plan, public comments, reviewing agency consultations and concludes that the road improvements can be left in place because:

- they are accessory to the use of the property;
- they are consistent with uses allowed in the underlying zone and on the subject property;
- work done to stabilize soils and revegetate the area around the improved road allows for leaving the road in place in a manner that is protective of the public health, safety and environment; and
- leaving the improved road in place will leave the property in a useful, non-hazardous condition.

**VI. FINAL ORDER**

The Council issues this single order with findings of fact, reasoning, and conclusions of law approving the proposal to leave the road improvements in place and associated evidence submitted in lieu of proposing a separate final retirement plan and terminating the site certificate for the Summit Ridge Wind Farm.

Issued this 19<sup>th</sup> day of April 2024

The OREGON ENERGY FACILITY SITING COUNCIL

By: \_\_\_\_\_  
Kent Howe, Chair  
Oregon Energy Facility Siting Council

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