

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

In the Matter of the Final Retirement Plan and)
Termination of the Perennial Wind Chaser)
Station Site Certificate)

FINAL ORDER ON FINAL
RETIREMENT PLAN AND SITE
CERTIFICATE TERMINATION

Issued by

Oregon Department of Energy
550 Capitol Street NE
Salem, Oregon 97301-3742

September 2022

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I. INTRODUCTION

The Energy Facility Siting Council (Council) issues this final order in accordance with OAR 345-027-0110(7) and (8) approving the retirement plan proposed by Perennial WindChaser LLC (certificate holder)¹ for the components of Perennial Wind Chaser Station constructed to date (2020); and, based on the findings of fact below affirming that the facility site has been restored in accordance with the approved retirement plan, approve the request for site certificate termination for the Perennial Wind Chaser Station.

The findings of fact and conclusions of law, as presented in this order, are based on review of the July 18, 2022 Application for Termination for the Perennial Wind Chaser Station Site Certificate and comments received on the proposed retirement plan during the July 29 – August 31, 2022 comment period.

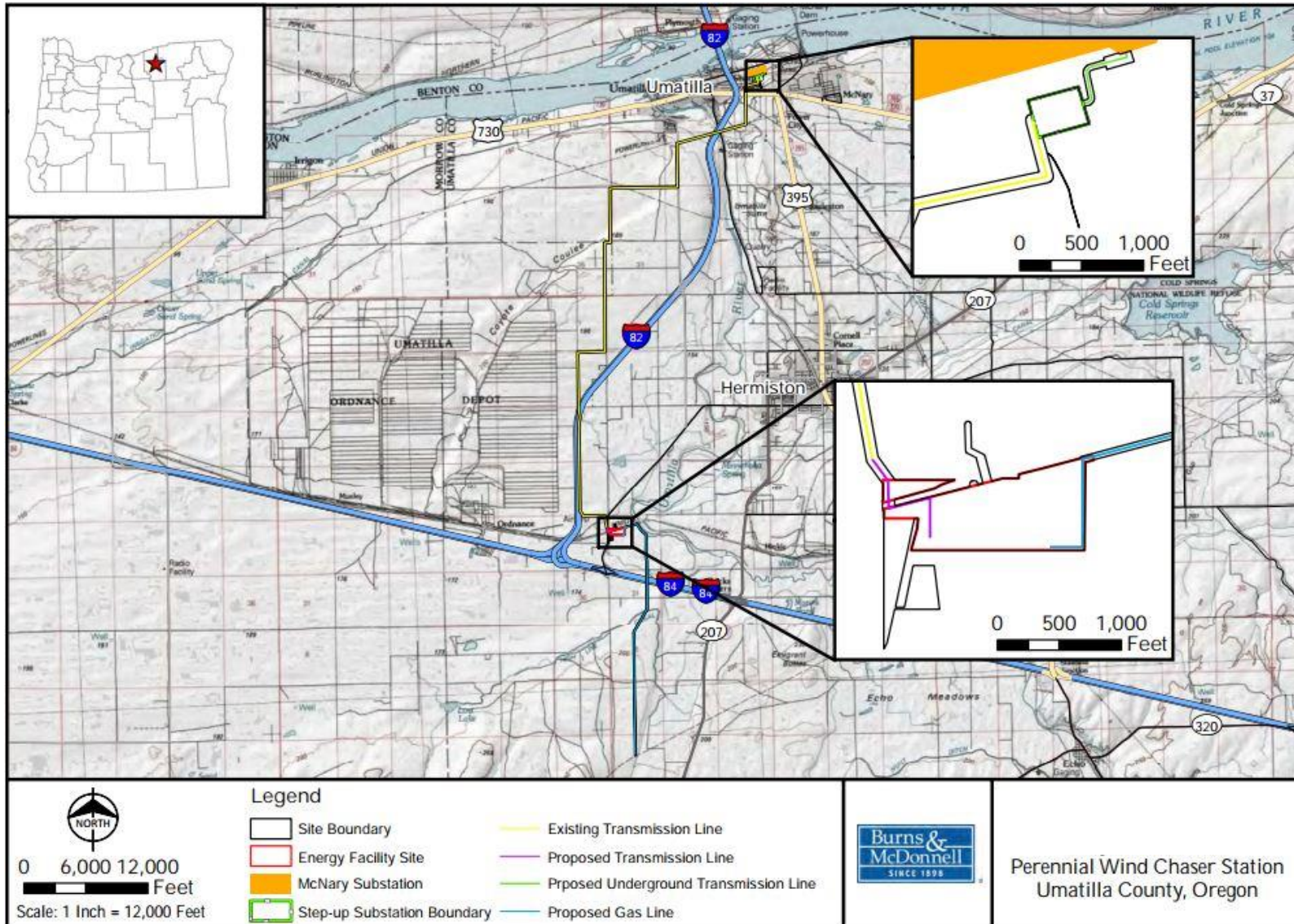
I.A. Approved Facility and Location

The Perennial Wind Chaser Station Site Certificate authorizes construction and operation of a natural gas facility that would consist of up to four natural gas-fired combustion turbine generators with a maximum capacity of 415 megawatts (MW). In addition, the facility was approved to include the following related and supporting facilities: lateral natural gas pipeline, reconducted transmission line, step-up substation, interconnecting water pipelines, utility lines, temporary construction facilities, and operations and maintenance facilities.

The location of the approved facility site boundary is located in northwestern Umatilla County just northeast of the intersection of Interstate 84 and Interstate 82, as presented in Figure 1 below. The site boundary crosses or is located within multiple zones in the city and county of Umatilla including: Exclusive Farm Use (EFU), Light Industrial (LI), Rural Tourist Commercial (RTC), General Rural, Heavy Industrial, Agricultural Residential, Neighborhood Commercial, Residential, single family; and, Residential, multi-family.

¹ The certificate holder is a wholly-owned subsidiary of Perennial Power Holdings, Inc., which is a wholly-owned subsidiary of Sumitomo Corporation and Sumitomo Corporation of America.

Figure 1: Perennial Wind Chaser Station - Regional Location of Approved Site Boundary



I.B. Site Certificate Procedural Summary

Final Order on Application for Site Certificate

The Council issued *Final Order on the Application for Site Certificate* (Final Order on the ASC) for the Perennial Wind Chaser Station on September 18, 2015. The site certificate became effective upon execution on September 23, 2015. Council imposed Conditions A.1 and A.2 which required the certificate holder to begin construction within three years of the effective date of the site certificate (that is, before September 23, 2018), and complete construction within six years of the effective date (September 23, 2021).

Final Order on Amendment 1

The Council issued *Final Order on Request for Site Certificate Amendment 1* on November 22, 2019, authorizing extensions to the construction deadlines by two years, from September 23, 2018 to September 23, 2020 for commencement; and, from September 23, 2021 to September 23, 2023 for completion. The First Amended Site Certificate was fully executed on December 20, 2019.

Commencement of Facility Construction

On June 25, 2020, pursuant to OAR 345-026-0048², the certificate holder submitted a draft compliance plan to the Department for review and approval. The draft compliance plan identified conditions and the compliance plan for those conditions that the certificate holder considered to be applicable to the facility components planned for construction in 2020, including an approximately 200-foot by 30-foot access road and access bridge crossing the Westland Irrigation District canal located in Umatilla County in EFU zoned land.

On September 18, 2020, following review of the June 25, 2020 compliance plan, additional information requested by the Department and an updated compliance plan received in September 2020, the Department sent a letter to the certificate holder stating they had demonstrated compliance with all applicable pre-construction site certificate conditions. On September 21, 2020, the Department sent a letter to the certificate holder acknowledging that sufficient evidence had been received to demonstrate that construction³ had commenced prior to the September 23, 2020 construction commencement deadline.

² OAR 345-026-0048 states, "Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council."

³ ORS 469.300(6) defines "construction" as "work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000."

Since the initial 12-week construction period in 2020, no other facility components have been constructed.

II. SITE CERTIFICATE TERMINATION PROCESS RULES AND FINDINGS OF FACTS

II.A. Application for Termination Procedural Summary

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

- (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.*

On July 18, 2022 the certificate holder submitted to the Department a proposed final retirement plan and an application to terminate the site certificate. After evaluating the proposed final retirement plan, the Department concluded that it contained all of the requirements of OAR 345-027-0110(5), as listed above.

Facility components constructed in 2020 are presented in Figures 2 and 3 below. Because the only facility components constructed were the access road and bridge, the proposed final retirement plan only applies to these components. The certificate holder requests to leave these facility components in place and asserts that they are “beneficial and necessary to maintain the usefulness”⁴ of the property, which certificate holder owns.

⁴ PER Application to Terminate Site Certificate, p. 2. 2022-07-18.

On July 29, 2022 the Department issued notice of the proposed retirement plan and application to terminate site certificate to all persons and property owners in sub (a) above which included property owners within 500-feet of the property boundary for which the site boundary of the facility components constructed in 2020 are located, Council's general mailing list and the special mailing list established for the facility. 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/PER.aspx>

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Figure 2: Perennial Wind Chaser Station Site Boundary and Call-out of Road and Bridge Location

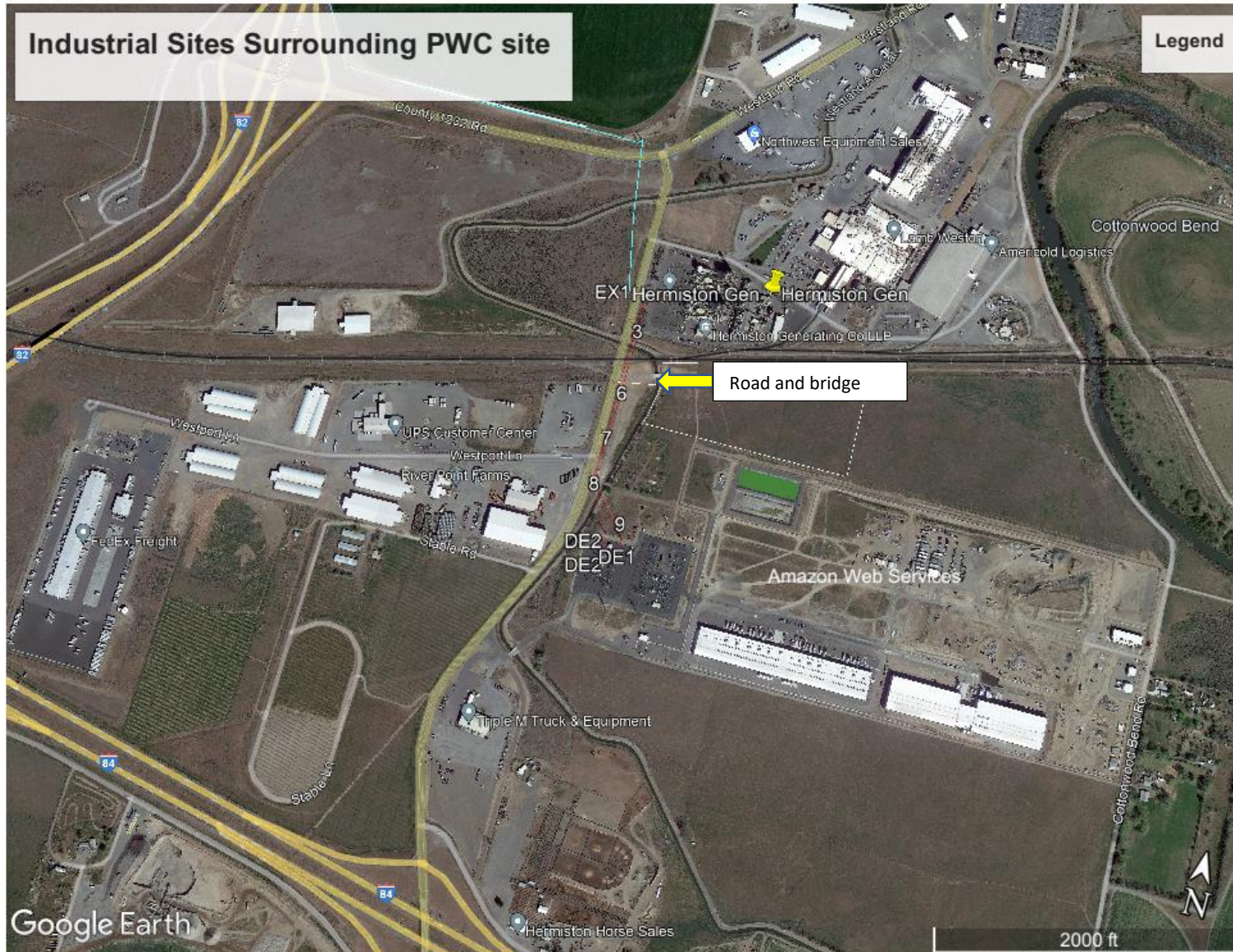


Figure 3: Perennial Wind Chaser Station – Road and Bridge (Current Conditions)



II.B. Certificate Holder's Proposed Retirement Plan

Findings of Fact

The certificate holder's proposed retirement plan is evaluated based on the requirements established in OAR 345-027-0110(5).

(5)(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment

The proposed plan for retirement of the facility components constructed in 2020, including the road and bridge, includes no tasks or actions and leaves the road and bridge in place, as presented in Figure 3 above. The road and bridge are located on 0.15 acres of the approximately 20-acre property. According to the application⁵, the property is accessed via Westland Road. The Westland Irrigation District canal is located approximately 200 feet east of Westland Road and must be crossed in order to access the remainder of the property.

To support the proposed retirement plan, the Application for Termination includes Exhibit 2: 1200-C Termination and Exhibit 3: Letter from Umatilla County. Exhibit 2 provides the Oregon Department of Environmental Quality's (DEQ) Stormwater Permitting Program termination of the 1200-C Construction Stormwater Permit, dated April 27, 2022. Termination by DEQ of 1200-C permits can only occur once DEQ has determined that all exposed soils have been stabilized through vegetation, paving or building; and, that all temporary erosion and sediment controls have been removed and properly disposed. Exhibit 3 provides comments from Umatilla Planning Director, Robert Waldher, dated May 17, 2022 affirming that the access road and bridge constructed on the property are considered accessory to the use of the property and would be considered by Umatilla County Planning Department to be allowable as a continued use after site certificate termination.

The Council finds that the DEQ termination of the 1200-C permit, which relied upon certificate holder certification and review of photo evidence, and letter from Umatilla County provide sufficient evidence that the proposed retirement plan satisfies OAR 345-027-0110(5)(a).

(5)(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;

Actions to restore the site following construction of the road and bridge occurred in 2020-2022, including stabilization of exposed soils, revegetation via hydroseeding and removal and disposal of erosion and sediment control materials, as is evidenced by the DEQ's April 2022 termination of the 1200-C permit (Application for Termination Exhibit 2). The certificate holder proposes to

⁵ Application for Site Certificate – Exhibit B – Page B-2

maintain the road and bridge in place, as described in this order, with no subsequent restoration actions.

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 in its retirement plan what "useful, non-hazardous" means for each specific energy facility site and Council's responsibility to analyze that request and determine whether or not they agree. In making its determination the Council may evaluate a combination of the underlying zoning of the property and the uses allowed in that zoning, the surrounding land uses 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 bridge and road are located is in unincorporated Umatilla 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 of these listed uses, and most if not all of the other uses listed in the statute require access to the property. In the certificate holder's request they include a May 7, 2022 letter from Robert Waldher, Umatilla County Planning Director supporting maintaining the road and bridge in place on the property. In that letter Mr. Waldher states in part:

"Our department finds that the existing developments on the property (i.e. access road, and bridge) have received proper permits through the County Planning Department, are considered accessory to the use of the property, and will be allowed to continue use after project termination".

Surrounding Uses: According to the Umatilla County Planning Department's West County Zoning map, available on their webpage⁶, the properties to the north, south and west of the facility site have varying types of industrial zoning and the east side of the property is zoned Exclusive Farm Use. According to the certificate holder's request, and as can be seen on the map submitted in their request, these surrounding industrial zoned lands include an Amazon data center, a United Parcel Service customer center, a Fed Ex freight center and an EFSC jurisdictional gas plant, among other industrial uses.

Desires of the Landowner: The parent company of the certificate holder is the underlying landowner and it is their desire, as stated in their request, to retain the road and bridge to

⁶ https://co.umatilla.or.us/fileadmin/user_upload/Planning/GIS_Maps/WestCounty_Zoning.pdf

allow access to the property for a future use that is allowed by the underlying zoning designation.

The Council finds that leaving the road and bridge in place is consistent with the underlying zoning and potential uses of the property, is consistent with the surrounding uses and is desired by the property owner. Therefore, the Council finds that the certificate holder’s proposed retirement plan satisfies OAR 345-027-0110(5)(b).

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

A detailed cost estimate for retirement of the road and bridge is presented in Table 1 below.

Table 1: Proposed Retirement Plan

Facility Component	Retirement Cost Estimate
Roads	\$0
Concrete Removal, Crushing & Disposal	\$0
Grading and Seeding	\$0
Source: Application for Termination, Exhibit 6 – see Attachment 1 of this order	

As presented in the table, because the retirement plan proposes to maintain the road and bridge in place, the proposed retirement plan offers no cost for retirement. The plan for ensuring adequate funds is not applicable under the certificate holder’s proposed retirement plan. However, Application for Termination Exhibit 7 provides a copy of the letter of credit issued on September 16, 2020 by MUFG Bank, Ltd to the certificate holder for \$110,000. The \$110,000 represents the decommissioning estimate at pre-construction, as required as a preconstruction condition to be estimated and provided via letter of credit or bond issued by a Council approved financial institution to the Department.

The Council finds that the cost estimate and evidence provided on the availability of adequate funds satisfies OAR 345-027-0110(5)(c).

(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.

During the 31-day comment period, two written comments were received. All public comments received were entered into the siting docket available on the ODOE webpage. Issues raised in public comments are summarized below and included in Attachment 2.

- Columbia Riverkeeper – Columbia Riverkeeper contends that the construction of the access road and bridge were done so in violation of the Clean Water Act and pre-construction conditions in the site certificate; therefore, to discourage other applicants from such illegal behavior, EFSC’s final site retirement plan should require the certificate holder to remove these two facility components.
- Friends of the Columbia Gorge – Although Friends of the Columbia Gorge does not oppose the termination of the site certificate, they indicate that construction commencement at the facility was not authorized nor demonstrated, and thus the site certificate expired on September 23, 2020. Furthermore, they state that that the phased approach to constructing the facility was not authorized or contemplated in the site certificate.

On August 29, 2022 the certificate holder requested additional time to respond to the two submitted comments. The Department granted their request, and the certificate holder was allowed seven days to respond (September 6, 2022). Their response is included in Attachment 2.

In response to the issues raised in the comments referenced above, the certificate holder asserts that it would be more negatively impactful to the environment to remove the bridge than to leave it in place. Deconstruction activities include but are not necessarily limited to digging, blasting, crushing and scooping with large machinery that could impact the public health, safety and environment.

The Council finds the Columbia Riverkeeper’s comments are not specific to the certificate holder’s proposed retirement plan, but rather focus on issues not currently under review or relevant. The question of whether the bridge and road were constructed in violation of the Clean Water Act and pre-construction conditions were evaluated separately by DEQ and the Department. The Council affirms the Department’s analysis of preconstruction compliance and affirms that DEQ’s termination of the 1200-C permit demonstrates that there are no pending or unresolved compliance issues.

The Council finds that Friends of the Columbia Gorge comments similarly are not within the scope of Council’s review of the proposed retirement plan. The question of whether the Department erred in authorizing a phased construction approach is not under review or part of the Application for Termination.

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.

(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.

The certificate holder was required to adhere to, and the Department was required to evaluate 25 preconstruction and 6 construction conditions associated with the road and the bridge. However, only the most relevant conditions to the request to retire the facility and terminate the site certificate, as well as the submitted comments, are included below.

PRE-LU-01

Prior to beginning construction, the certificate holder shall obtain all required land use approvals from Umatilla County as listed in the letter from the Umatilla County Board of Commissioners dated May 14, 2015, and shall submit all associated applications and pay all associated application fees.

[Final Order Condition E.5]

As previously stated, and as if evidenced by the May 7, 2022 letter from the Umatilla County Planning Director sent to the Department, the certificate holder received all required land use approvals from Umatilla County for the road and the bridge, which the County determined are accessory to the use of the property and may remain if the site certificate is terminated.

PRE-RT-01

Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.

[Final Order Condition G.3] [Mandatory Condition 345-025-0006(8)]

Prior to beginning construction, the certificate holder submitted a letter of credit determined by the Department to be the amount necessary to remove the road and the bridge. This amount was based on the retirement costs approved in the site certificate, adjusted for inflation. The current amount of the letter of credit is \$110,000, which the Department still retains. A copy of this letter of credit is included in the certificate holder's request (Exhibit 6). Only after termination of the site certificate has been approved and all appeal periods have concluded will the letter of credit be returned to the certificate holder.

GEN-GS-04

The certificate holder shall design, construct, operate, and retire the facility: (a) Substantially as described in the site certificate (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and (c) In compliance with all applicable permit requirements of other state agencies

[Final Order Condition A.4; Mandatory Condition 345-025-0006(3)]

In October 2020, based on information received from Columbia Riverkeeper that the certificate holder did not have an active DEQ National Pollutant Discharge Elimination System Construction Stormwater Discharge Permit, the Department coordinated with DEQ. The certificate holder asserted that based on their evaluation of the requirements, this permit was not required for the construction activities associated with the road and the bridge. However, after DEQ evaluated the construction activities they concluded that this permit was needed. Subsequent to that determination the certificate holder applied for and received this permit from DEQ.

Application for Termination Exhibit 6 is DEQ's termination of this permit. Therefore, the constructed portions of the facility complied with condition GEN-GS-04.

GEN-OE-01

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.

[Final Order Condition B.5; Mandatory Condition 345-025-0006(7)]

The certificate holder is requesting to retain the road and the bridge, therefore, there will be no activities required to restore the site to a useful, non-hazardous condition. After completing the construction of the road and the bridge and coming into compliance with DEQ's permitting requirements, there are no conditions on the site that would preclude restoration to a useful, non-hazardous condition.

RET-RT-01

The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

[Final Order Condition G.1; Mandatory Condition 345-025-0006(9)]

The certificate holder's submittal of the proposed final retirement plan and application to terminate the site certificate is consistent with this condition.

(7) 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.

For the reasons stated in the analysis in the criteria above, and summarized immediately below, the Council approves the proposed final retirement plan as the final retirement plan and issues this final order also approving the site certificate termination.

- The constructed road and bridge are accessory to the use of the property;
- Removing the road and bridge would be more negatively impactful to the public health, safety and environment than leaving them in place; and
- Leaving the road and bridge will leave the property in a useful, non-hazardous condition

(7) The Council's order may be appealed as described in ORS 183.480.

This statute generally states that a final order is appealable to the Court of Appeals within 60 days of the date the order is served. However, please see the statute for specific details.

II.C. Site Certificate Termination

(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

Findings of Fact

Application for Termination includes Exhibit 2: 1200-C Termination and Exhibit 3: Letter from Umatilla County. Exhibit 2 provides the Oregon Department of Environmental Quality's (DEQ) Stormwater Permitting Program termination of the 1200-C Construction Stormwater Permit, dated April 27, 2022. Termination by DEQ of 1200-C permits can only occur once DEQ has determined that all exposed soils have been stabilized through vegetation, paving or building; and, that all temporary erosion and sediment controls have been removed and properly disposed. Exhibit 3 provides comments from Umatilla Planning Director, Robert Waldher, dated May 17, 2022 affirming that the access road and bridge constructed on the property are considered accessory to the use of the property and would be considered by Umatilla County Planning Department to be allowable as a continued use after site certificate termination.

Based on these facts, the Council finds that the certificate holder has completed the retirement of the facility in accordance with the approved retirement plan.

III. GENERAL CONCLUSIONS

- The certificate holder submitted all requirements associated with OAR 345-027-0110, Termination of a Site Certificate.
- The Council reviewed the proposed final retirement plan, timely submitted public comments and the certificate holder's response to those comments and concludes that the road and bridge can be left in place because:
 - they are accessory to the use of the property;

- removing them would be more negatively impactful to the public health, safety and environment than leaving them in place; and
 - leaving them in place will leave the property in a useful, non-hazardous condition
- As a result, the Council approves the proposed final retirement plan as the final retirement plan.

- The Council determines that because there are no facility components to remove, the certificate holder has complied with the final retirement plan and terminates the site certificate for the Perennial Wind Chaser Station.
- The Council has the authority to issue a single final order both approving the proposed final retirement plan as the final retirement plan and terminating the site certificate for Perennial Wind Chaser Station.

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IV. FINAL ORDER

The Council issues this single order with findings of fact, reasoning, and conclusions of law approving both the proposed final retirement plan as the final retirement plan and terminating the site certificate for Perennial Wind Chaser Station.

Issued this 27th day of September 2022

The OREGON ENERGY FACILITY SITING COUNCIL

By: _____
Marcia L. Grail, Chair
Oregon Energy Facility Siting Council

Attachment 1: Proposed Retirement Plan

Attachment 2: Public Comments on Application to Terminate Site Certificate

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Appeal Rights

[To be included in the final order as served]

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