Staff Report

FILE # AM-18-010/HBCU-18-002

REPORT DATE: February 15, 2019

HEARING DATE: February 22, 2019

LOCATION: Owen Building Large Conference room
201 N. Adams, Coquille

APPLICANT: Pacific Connector Gas Pipeline

REQUEST: Pacific Connector Gas Pipeline Company, LP (“Applicant” or “PCGP”) proposes to develop approximately 3.67 miles of the Pacific Connector Gas Pipeline (“Pipeline”) within Coos County (“County”) on land in the Industrial, Exclusive Farm Use, and Forest zoning districts and in Coos Bay Estuary Management Plan (“CBEMP”) management units 7-D, 7-NA, 13A-NA, DDNC-DA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS.

BACKGROUND:
Applicant’s request includes the following applications (together, “Application”):

- Text amendment to allow subsurface low-intensity utilities in the DDNC-DA CBEMP management unit includes changes to both the Plan and Ordinance;
- Conditional use permit to authorize the Pipeline in the Forest zoning district;
- Compliance determinations for the Pipeline in the Exclusive Farm Use, Industrial, 7-D, 7-NA, 13A-NA, DDNC-DA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS, where the it is permitted, subject to compliance with conditions; and
- Floodplain development permit to permit grading and installation of a Pipeline in a Special Flood Hazard Area in the Balance of County.

The Pipeline is a 36-inch diameter interstate natural gas pipeline that extends approximately 229 miles from an existing hub where regional pipelines intersect in Malin, Oregon to the Jordan Cove gas liquefaction facility and related terminal on the North Spit in the County. In order to install and operate the Pipeline as a whole, Applicant must obtain a certificate of convenience and necessity from the Federal Energy Regulatory Commission (“FERC”). FERC’s jurisdiction generally preempts application of local zoning provisions to the Pipeline except in the Coastal Zone, which includes the County. In the Coastal Zone, Applicant must obtain both federal and local approval to site the Pipeline.

The pipeline alignment addressed by the applicant has been referenced to as the “Early Works Alignment” consists of approximately 3.67 miles long and begins with Milepost 0.0 occurring at the meter station at the Jordan Cove Energy Project campus on the North Spit. The application describes the Early Works Alignment as traveling south beneath Coos Bay and into the City of
North Bend at approximately Milepost 0.66. After that, the Early Works Alignment continues to the east, again beneath Coos Bay, before exiting the City of North Bend and re-entering the unincorporated area of the County at Milepost 1.58. Next, the pipeline exits the estuary in approximately the Kentuck Slough area. The Early Works Alignment then generally turns to the southeast along approximately the same route as the County-approved PCGP pipeline. The applicant has provided a table starting on page 2 which describes the location and zoning districts that the proposed pipeline will cross. This crosses into the City of North Bend as well but that is not part of this review. The applicant has provided detailed map in there exhibits.

The construction of the pipeline will require acquisition of temporary construction right-of-way, temporary extra-work areas (“TEWAs”), and permanent easement as described the applicants narrative page 3. The permanent easement for the Pipeline is 50 feet wide centered over the pipe as installed. Applicant is negotiating terms for the permanent easements with landowners.

Applicant previously obtained a County conditional use permit for an alignment of the Pipeline that crosses Haynes Inlet (County File No. HBCU-10-01/REM-11-01) as well as two alternate alignments: Brunschmid/Stock Slough alignment (County File No. HBCU-13-04) and Blue Ridge alignment (County File No. HBCU-13-06). Those permits are still valid and in effect. The current request is not to amend any of those permits but to obtain approval of an alternate alignment of the Pipeline.

The applicant explains that realigning the Pipeline to avoid crossing Haynes Inlet and utilizing horizontal directional drilling (“HDD”) (as opposed to trenching) as a means for crossing Coos Bay will have fewer impacts to the environment than the previously proposed alignment. While Applicant utilizes the HDD method to place the Pipeline underneath the estuary in Coos Bay, Applicant will utilize trenching to locate the Pipeline in the upland areas of the Early Works Alignment. The applicant has provided a detailed summary of the HDD and open trench starting on page 5 of the application narrative.

Proposal: The applicant is proposing to change low intensity subsurface utilities to an allowable use within the Coos Bay Estuary Management Deep Draft Navigation Channel which is a development aquatic management unit. In Statewide Planning Goal 16 Development Management Units are listed as a permissible use. The changes proposed seem to be consistent with the Statewide Planning Goal.

I. Text Amendment
Additions shown in Bold and Italic and deletions shown with strikethrough

- Coos County Comprehensive Plan Vol. II, Park 1, Section 5
LOWER BAY/UPPER BAY

MANAGEMENT CLASSIFICATION - DA

AQUATIC UNIT Deep-Draft Navigation Channel (37' authorized draft)

Project Description: The entrance and lower bay section includes a federally authorized project extending from the Entrance Bar at the outer (western) extremity of the jetties to the railroad bridge at Bay Mile 9.0 north of Pony Slough. The project specifies a 47-foot deep channel with "suitable" width across the Entrance Bar, a 37-foot deep by 300-foot wide channel to the railroad bridge, a Buoy Storage area between Sitka Dock and Pigeon Point (not part of federal project), and north of Empire at Bay Mile 6.0, and at Anchorage Basin southwest of Roseburg Lumber Company at Bay Mile 7.5. In-bay disposal sites are located off of Coos Head ("G") and North Bend Airport ("D"). Two other in-bay disposal sites at Bay Miles 4 and 5 are included in this unit.

The upper bay section includes a federally authorized project from the railroad bridge (Mile 9.0) to Isthmus Slough at Bunker Hill (Mile 15.0). The federal project involves a navigation channel 37-feet deep by 300 to 400-feet wide, and Turning Basins at North Bend (Mile 12.0) and Coalbank Slough (Mile 14.5).

Management Objective: This unit shall be regularly maintained to authorized depths as the deep-draft navigation channel. Confllicting uses and activities are not permitted.

A. Uses

1. Aquaculture N
2. Commercial N
3. Docks N
4. Industrial & Port Facilities N
5. Log Dump/Sort/Storage (in-water) N
6. Marinas N
7. Mining/Mineral Extraction N
8. Recreation facilities
   a. Low-intensity N
   b. High-intensity N
9. Utilities
   a. Low-intensity (Subsurface) N-A
   b. High-intensity N
10. Bridge Crossing Support Structures and dredging necessary A
     for installation
11. Bridge crossings A

GENERAL CONDITIONS (the following conditions applies to ALL uses and activities):

1. Inventoried resources requiring mandatory protection in this unit shall be protected, and is subject to Policies #17 and #18.

   • Coos County Zoning and Land Development Ordinance Chapter III

GENERAL LOCATION: LOWER BAY/UPPER BAY

ZONING DESIGNATION: DDNC-DA
ZONING DISTRICT: Deep-Draft Navigation Channel (37' authorized draft)

SPECIFIC BOUNDARIES: The authorized 37' deep-draft navigation channel plus subtidal areas historically used for in-water DMD.

SECTION 3.2.201. Management Objective:

This district shall be regularly maintained to authorized depths as the deep-draft navigation channel. Conflicting uses and activities are not permitted.

SECTION 3.2.202. Uses, Activities and Special conditions.

Table DDNC-DA sets forth the uses and activities which are permitted, which may be permitted as conditional uses, or which are prohibited in this zoning district. Table DDNC-DA also sets forth special conditions which may restrict certain uses or activities, or modify the manner in which certain uses or activities may occur. Reference to "policy numbers" refers to Policies set forth in the Coos Bay Estuary Management Plan.

A. Uses

1. Aquaculture N
2. Commercial N
3. Docks N
4. Industrial & Port Facilities N
5. Log Dump/Sort/Storage (in-water) N
6. Marinas N
7. Mining/Mineral Extraction N
8. Recreation facilities
   a. Low-intensity N
   b. High-intensity N
9. Utilities
   a. Low-intensity (Subsurface) N-P-G
   b. High-intensity N
10. Bridge Crossing Support Structures and dredging necessary for installation P-G
11. Bridge crossings P-G

GENERAL CONDITIONS (the following conditions applies to ALL uses and activities):

1. Inventoried resources requiring mandatory protection in this unit shall be protected, and is subject to Policies #17 and #18.

STAFF ANALYSIS:

The applicant suggested a slightly different change and that can be acceptable. Staff thought it was more consistent to add the subsurface in the manner shown above. However, after staff reviewed the suggested language in more detail, taking into consideration the other Development Aquatic zones and navigational channels it may be better to amend the language by adding a “9a” to limit the use to subsurface. For example if you look at CSDNC-DA which is the Charleston Shallow-Draft Navigation Channel it provides for low-intensity utilities only permitted if designed so as not to interfere with navigation. This would require the addition of “S” after the (P-S, G).
SPECIAL CONDITIONS:

Uses:

9a. Low-intensity utilities only permitted if it is installed under the surface so not to interfere with navigation.

A. COOS COUNTY ZONING AND LAND DEVELOPMENT CRITERIA FOR TEXT AMENDMENT

SECTION 5.1.100 LEGISLATIVE AMENDMENT OF TEXT ONLY
An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners.

RESPONSE: This Application seeks a legislative text amendment of CCZLDO 3.2.202 to authorize “subsurface low-intensity utilities” in the DDNC-DA estuary zone. PCGP acknowledges that the amendment is within the Board’s authority.

SECTION 5.1.110 WHO MAY SEEK CHANGE:
Coos County shall consider the appropriateness of legislative plan text and map amendment proposals upon:

3. The submission of formal request made by either: ***b. An application filed by a citizen or organization, accompanied by a prescribed filing fee. If a Measure 56 notice is required the applicant shall be responsible for the payment of all cost associated with that service.

RESPONSE: PCGP qualifies to file a CCZLDO text amendment pursuant to CCZLDO 5.1.110.3.b. A “citizen” is defined in CCZLDO 2.1.200 as follows:

CITIZEN: Any individual who resides or owns property, within the planning area; any public or private entity or association within the planning area, including corporations, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens.

PCGP is a partnership within the planning area. Therefore, PCGP is a “citizen” and has the authority to initiate the text amendment. PCGP has submitted the required application form and fee. The application was properly initiated.

SECTION 5.1.115 ALTERATION OF A RECOMMENDED AMENDMENT BY THE PLANNING DIRECTOR: The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

RESPONSE: PCGP acknowledges that the Planning Director may recommend an alteration of a proposed amendment; however, suggestions were provided in regards to the proposal.
SECTION 5.1.120 PROCEDURE FOR LEGISLATIVE AMENDMENT: The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223). Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615.

RESPONSE: The county will follow procedures and the applicant will follow the requirements.

SECTION 5.1.125 MINOR TEXT CORRECTIONS: The Director may correct this ordinance or the Comprehensive Plan without prior notice or hearing, so long as the correction does not alter the sense, meaning, effect, or substance of any adopted ordinance.

RESPONSE: This provision is not applicable.

SECTION 5.1.130 NEED FOR STUDIES: The Board of Commissioners, Hearings Body, or Citizen Advisory Committee may direct the Planning Director to make such studies as are necessary to determine the need for amending the text of the Plan and/or this Ordinance. When the amendment is initiated by application, such studies, justification and documentation are a burden of the initiator.

RESPONSE: The need for the text amendment is explained by the applicant. When the amendment is initiated by application the Board, Hearings Body or Citizen Advisory Committee may not direct the Planning Director to make studies necessary to determine the need for amending the text of the plan or ordinance. The applicant has submitted an application and addressed a need with justification for this amendment.

PCGP seeks an amendment to allow subsurface low-intensity utilities in the DDNC-DA zoning district. The need for the amendment is that the Deep Draft Navigation Channel runs through the middle of the entire estuary and currently prohibits any utility line crossings, which effectively forecloses making any utility connections across Coos Bay. This restriction may frustrate the ability to provide public services to the community and may limit economic development of the North Spit, which is an area designated for water-dependent industrial development.

The management objective of the district is to maintain the area as the designated deep-draft navigation channel, including prohibiting conflicting uses. CCZLDO 3.2.201. The proposed subsurface low-intensity utilities are consistent with this objective because they would be below ground and thus not located within the portion of the Deep Draft Navigation Channel utilized by vessels.

Further, these utilities would be limited to those that are “low-intensity” in nature and would still be subject to compliance with general conditions, including review for consistency with CBEMP Policies 17 and 18. This is considered a low impact use and there may be other utilities already sited under the navigation channel that was in existence prior the adoption this current plan. The extension of utilities complies is consistent with planning for industrial uses on the North Spit.

b. Compliance with Statewide Planning Goals.

The proposed text amendment must comply with the Oregon Statewide Planning Goals (“Goals”). ORS 197.175(2)(a); 1000 Friends of Oregon v. LCDC, 301 Or 447, 724 P2d 268 (1986). To achieve this, the County’s decision must explain why the text amendment is consistent with the Goals. Alternatively, if a Goal is not applicable, the County must adopt findings.
explaining why the Goal is not applicable. *Davenport v. City of Tigard*, 22 Or LUBA 577, 586 (1992). The responses below provide findings explaining why the text amendment complies with the Goals, or alternatively, why the Goals are not applicable to the text amendment.

**Goal 1: Citizen Involvement.**

*To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

RESPONSE: Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in all phases of the planning process. The County has adopted such a program for text amendments, and it is incorporated within the CCZLDO and has been acknowledged by LCDC. Among other things, the County’s program requires notice to citizens, agencies, neighbors, and other interested parties followed by a public hearing before the County makes a decision on the text amendment. These procedures will provide ample opportunity for citizen involvement in all phases of this text amendment.

Staff agrees with the applicant’s suggestion that the County should find that, upon compliance with the County’s notice and hearing procedures, the County has reviewed the text amendment in a manner consistent with Goal 1. *See Wade v. Lane County*, 20 Or LUBA 369, 376 (1990) (Goal 1 is satisfied as long as the local government follows its acknowledged citizen involvement program).

**Goal 2: Land Use Planning.**

*To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

RESPONSE: Goal 2 requires establishing a land use planning process and policy framework as a basis for all land use decisions and requires an adequate factual base for all land use decisions. In the present case, the provisions of the CCZLDO and the ORS establish the land use planning process and policy framework for considering the text amendment. Further, the enclosed materials, including this narrative and the enclosed exhibits, demonstrate that the text amendment satisfies all applicable approval criteria. As such, there is an adequate factual base for the County’s decision.

Additionally, Goal 2 requires that the County coordinate its review and decision on the text amendment with appropriate government agencies. In its review of the text amendment, the County has provided notice and an opportunity to comment to affected government agencies, including nearby cities and the State Departments of Land Conservation and Development and Transportation.

The text amendment is consistent with Goal 2.

**Goal 3: Agricultural Lands.**

*To maintain and preserve agricultural lands.*

RESPONSE: Goal 3 concerns agricultural lands. The DDNC-DA district does not include agricultural lands. Therefore, Goal 3 does not apply to the text amendment.

**Goal 4: Forest Lands.**
To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

RESPONSE: Goal 4 protects forest lands. The DDNC-DA district does not include forest land. Therefore, Goal 4 does not apply to the text amendment.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.

To protect natural resources and conserve scenic and historic areas and open spaces.

RESPONSE: Goal 5 protects certain types of inventoried resources. The DDNC-DA district does not cross Goal 5 inventoried natural resources. Therefore, Goal 5 does not apply to the text amendment.


To maintain and improve the quality of the air, water and land resources of the state.

RESPONSE: Staff agrees with the applicant that Goal 6 addresses “[a]ll waste and process discharges from future development.” The text amendment does not create any discharges. Any proposed low-intensity utility in the DDNC-DA management unit will, at the time it is proposed, be subject to review for compliance with applicable County environmental protections and development standards that have been previously deemed consistent with Goal 6. The proposed text amendment does not alter those environmental protections and development standards. Therefore, the text amendment is consistent with Goal 6.

Goal 7: Areas Subject to Natural Hazards.

To protect people and property from natural hazards.

RESPONSE: Goal 7 requires local governments to identify and plan for natural hazard areas and coordinate their natural hazard plans and programs with state agencies. The County has a natural hazard inventory and has made provisions for consideration, through the CCZLDO, of natural hazards during the land use planning process. The text amendment complies with the CCZLDO’s natural hazard provisions, which implement the County’s approved comprehensive plan. Any new uses or activities will comply with the hazards program; therefore, the text amendment consistent with Goal 7.

Goal 8: Recreational Needs.

To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RESPONSE: Goal 8 does not apply to the text amendment because it does not affect inventoried recreational needs or facilities.

Goal 9: Economic Development.
To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.

**RESPONSE:** The text amendment complies with Goal 9 as explained by the application and is consistent with the County’s comprehensive plan. The North Spit Waterfront plan and industrial lands addressed in both the Balance of County and the CBEMP are vital to economic growth in Coos County. The allowances of certain utilities will facilitate the growth envisioned and increase economic opportunities to the future and current development.

**Goal 10: Housing.**

To provide for the housing needs of the citizens of the state.

**RESPONSE:** Goal 10 is not applicable to the text amendment. This will not change the housing element of the comprehensive plan.

**Goal 11: Public Facilities and Services.**

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

**RESPONSE:** The applicant explained that Goal 11’s implementing rules require that each local government adopt a public facilities plan to serve areas within urban growth boundaries containing a population of more than 2,500 persons. Goal 11 also limits the extension of public services outside of urban growth boundaries when the purpose for doing so is to stimulate urban development outside of urban growth boundaries.

The text amendment will allow limited extension of low-intensity utility lines in the DDNC-DA management unit; however, no urban development is permitted in this location. Therefore, the text amendment will not stimulate urban development in the DDNC-DA management unit. The fact is the zoning regulations in place provide for limits that would prevent this use from stimulating urban development.

**Goal 12: Transportation.**

To provide and encourage a safe, convenient and economic transportation system.

**RESPONSE:** The text amendment does not involve or affect transportation. The proposed amendment would permit low-intensity utilities in the Deep Draft Navigation Channel; however, they will only be located below (subsurface) ground. As a result, they would not interfere with navigation in the channel. This text amendment will not be inconsistent with Goal 12 or the comprehensive plan.

**Goal 13: Energy Conservation.**

To conserve energy.

**RESPONSE:** The text amendment will facilitate energy conservation by allowing underground low-intensity utilities to locate in the Deep Draft Navigation Channel, which will provide for more direct routing of utility lines and delivery of utility services than can occur under existing conditions. Staff agrees with applicant that this text amendment is consistent with Goal 13.

**Goal 14: Urbanization.**
To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

RESPONSE: Staff does not find that the text amendment is inconsistent with Goal 14.

Goal 15: Willamette River Greenway.

RESPONSE: Goal 15 is not applicable to the text amendment.

Goal 16: Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries.

RESPONSE: Goal 16 requires that local governments divide all estuaries into, at a minimum, Natural, Conservation, and Development management units. The CBEMP complies with Goal 16 by creating and maintaining three “Aquatic Management Units” and seven “Shoreland Management Units” including the baseline Natural, Conservation, and Development management units that Goal 16 requires. The DDNC-DA zone is a “development aquatic” management unit. Goal 16 allows in development management units “pipelines, cables, and utility crossings, including incidental dredging necessary for their installation,” where such uses are “consistent with the purposes of” the development management unit and “adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring dredge or fill.”

The text amendment that this Application seeks would allow underground low-intensity utilities. This allowance is consistent with the purposes of the Goal 16 development management unit because the subsurface location does not interfere with the use of development management units for navigation and water-dependent uses. Also, this is consistent with other uses in the development aquatic zones and navigational channels as discussed earlier in this report. Therefore, the text amendment that this Application seeks is consistent with Goal 16.

Goal 17: Coastal Shorelands.

To conserve, protect, where appropriate develop and where appropriate restore the resources and benefits of coastal beach and dune areas; and
To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

RESPONSE: Goal 18 concerns beaches and dunes. This is an aquatic management unit that is not subject to Goal 18.

Goal 19: Ocean Resources.

To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

RESPONSE: Goal 19 calls for the conservation of ocean resources and not applicable to this text amendment.

II. Criteria for the Pipeline (Utility Facility/Low Intensity Utility Facility)
   a. Balance of County.
      i. Exclusive Farm Use Zone.

Section 4.6.200 Development and Use Permitted: The following uses and their accessory uses are permitted outright in the Exclusive Farm Use zone and the Forest/Mixed Use overlays subject to applicable siting and development standards set forth in Sections 4.6.240. Accessory structures and uses subordinate to any authorized primary use shall be permitted unless otherwise exempted by this ordinance.

1. Non-residential Uses

   q. Utility facility including service lines for the generation of power not for public sale.

Section 4.6.220 Hearings Body Conditional Development and Use: The following uses and their accessory uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards in the "Exclusive Farm Use" zone and "Mixed Use" overlay subject to the applicable requirements in § 4.6.230 and applicable siting and development requirements in § 4.6.240.

1. Non-Residential Uses

f. Utilities
   iii. Utility facilities necessary for public service, except for the purpose of generating power for public use by sale and transmission towers over 200 feet in height. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided. An associated transmission line may be allowed if it is necessary for public service and meets the following:

ORS 215.283 - Uses Permitted in Exclusive Farm Use Zones in Nonmarginal Lands Counties

(1) The following uses may be established in any area zoned for exclusive farm use:

   (c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial utility facilities for the purpose of
generating electrical power for public use by sale or transmission towers over 200 feet in height.

(A) ORS 215.275 (Utility facilities necessary for public service); or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 (Associated transmission lines necessary for public service) and 469.300 (Definitions).

RESPONSE: The Early Works Alignment will cross approximately 0.48 miles of properties zoned Exclusive Farm Use (EFU). The applicant chooses to address ORS to the extent there may be a conflict with the Coos County Zoning and Land Development Ordinance and the applicable requirements of ORS Chapter 215 and OAR 660, Division 33 which does permit this use as a (type 1) allowed "outright". This is discussed in the Final Decision and Order, County File No. 10-01-045PL ("2010 Order") this was covered by a reference to Brentmar v. Jackson County, 321 Or 481, 496, 900 P2d 1030 (1995) ("legislature intended that the uses delineated in ORS 215.213(1) be uses ‘as of right,’ which may not be subjected to additional local criteria”). The applicant is correct this interpretation is consistent with the County’s findings for other alignments as staff cited to in this paragraph. Furthermore, the 2010 Order covered why the Pipeline is an interstate pipeline that will distribute natural gas.

Furthermore Order 2010 provides this discussion regarding the applicable criteria and staff would recommend that this finding is still on point and addresses the criteria:

"Under state law, utility facilities sited on EFU lands are subject to ORS 197.275, as well as the administrative rules adopted by LCDC. ORS 215.275 provides:

1 OAR 660-033-0130(16) provides as follows:

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;
(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
(C) Lack of available urban and nonresource lands;
(D) Availability of existing rights of way;
(E) Public health and safety; and
(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order
215.275 Utility facilities necessary for public service; criteria; rules; mitigating impact of facility. (1) A utility facility established under ORS 215.213 (1)(c) or 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c) or 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;
(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
(c) Lack of available urban and nonresource lands;
(d) Availability of existing rights of way;
(e) Public health and safety; and
(f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 (1)(c) or 215.283 (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from

to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c) or 215.283 (1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. (Emphasis added).

The exception in Subsection 6 states that subsections 2-5 do not apply to “interstate natural gas pipelines.” This appears to be a legislative recognition of federal preemption on the issue of route selection for interstate gas pipelines.

The negative inference created by the stated exceptions to subsections 2 through 5 is that an applicant for an interstate natural gas pipeline is technically supposed to be subject to ORS 215.275(1). This subsection contains the requirement that the applicant to show that the proposed facility “is necessary for public service.” According to subsection 2, the “necessary for public service” requirement is met if the applicant demonstrates that “the facility must be sited in an exclusive farm use zone in order to provide the service.” Of course, given that the determination of whether something is “necessary” is dependent on analysis which is set forth in subsections 2 through 5, it remains unclear exactly what an applicant proposing a natural gas pipeline is required to do to demonstrate that its facility is “necessary.” LCDC seems have recognized this in their administrative rule implementing ORS 215.275, as they exempt FERC-regulated pipelines from the “necessary for public service” test. See OAR 660-033000139(16).2

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2 OAR 660-033-0130 (16) provides:

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;
Given the nature of ORS 215.275(2)-(5), the hearings officer concludes that ORS 215.275(1) contains no substantive standards applicable to interstate natural gas pipelines, but even if it did, those requirements would be preempted by federal law.”

Staff finds that the pipeline is a locationally dependent linear facility that must cross EFU land in order to achieve a reasonably direct route. In order to achieve the project purpose, the pipeline must start at the Jordan Cove LNG shipping export terminal and exit Coos County on the county’s eastern boundary in order to eventually connect to the existing pipelines near Roseburg, Medford and Malin, Oregon. Given the number and configuration of EFU zoned lands in the rural portions of Coos County, it is not possible for the pipeline to avoid all EFU zoned lands and maintain a reasonably direct route through Coos County. The applicant is working through the Federal Process which requires an Environmental Impact Study and the main point of this application is look at the alternative route that will minimize the impacts to Haynes Inlet. The applicant has described that the only reasonable path to do so requires a southward initial leg followed by a turn to the east. The applicant further states that there is limited option for exiting the Bay and these constraints require the Pipeline to cross a small area of EFU zoning.

For reasons discussed in this section including prior decisions and the evidence presented by the applicant it is reasonable for the county to conclude the Pipeline must be sited in an EFU zone in order to provide the service, and, as a result, the Pipeline is a “utility facility necessary for public service” that the EFU zone allows outright and no further standards apply.

ii. Forest Zone

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. (Emphasis added).

3 The location of the Jordan Cove LNG terminal itself was selected as the result of a separate alternatives analysis approved by FERC.
The Early Works Alignment will cross approximately 0.90 miles of properties zoned Forest (“F”). The Early Works Alignment complies with the applicable approval criteria in the F zone, as follows.

CCZLDO 4.6.110 - Administrative Conditional Development and Use:
The uses and their accessory uses listed in this section may be permitted as an administrative conditional use subject to applicable development standards for Forest and Forest Mixed Use zone and the following criteria:

1. Non-Residential Uses

... (h) New electrical transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal) with rights-of-way 50 feet or less in width.

RESPONSE: The Early Works Alignment is a new gas line with a permanent right-of-way width of 50 feet. The County has previously classified and approved the Pipeline as a gas “distribution line” in the F zone. See Final Decision and Order, County File No. 10-08-045PL 80.

It is important to note that the language in [OAR 660-006-0025(4)(q)] expressly and unambiguously defines all new utility lines as "distribution" lines, with the exception of new electric lines, which are identified as "transmission" lines. For purposes of this state rule, and the corresponding county code provision, there is no such thing as a natural gas "transmission" line. While there was disagreement over this in prior hearings the text of the rule is not ambiguous and cannot be changed by the hearings officer or the County.

Based upon the analysis in the 2010 Order and the information provided by the applicant, the Early Works Alignment and its associated facilities are permitted as an administrative conditional use within the County’s Forest zone.

CCZLDO 4.6.130 - Additional Criteria for All Administrative and Hearings Body Application Review:

All Conditional Use Applications (Administrative and Hearings Body) are subject to requirements that are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands as follows:

1. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

RESPONSE: The County has previously determined, and LUBA has agreed, that this criterion does not require Applicant to identify a particular area of geographic analysis, exhaustively describe all farm and forest practices on nearby lands, or consider non-profit practices. See Final Decision and Order, County File No. 10-08-045PL at 91; see also Comden v. Coos County, 56 Or LUBA 214 (2008).

The applicant provided the following statements for why the county can conclude that the Pipeline will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands:
“First, the Pipeline will have limited effects on forest land during and after construction in the form of a cleared corridor. The Pipeline will be mostly subsurface to avoid surface impacts to forestry. Additionally, as stated, the Pipeline will cross less than one mile of land in the F district. Further, consistent with its Erosion Control and Revegetation Plan (included in Exhibit 6), Applicant will replant forest vegetation that it fells for construction purposes. In fact, after construction, Applicant will reforest all but 3.54 acres of F district land (a 30-foot corridor within the 50-foot right-of-way) disturbed during construction. Landowners will be unable to conduct accepted forest practices during construction of the Pipeline but will be able to continue when construction is completed and Applicant has restored felled vegetation.

Likewise, the Pipeline will not force a significant change in or significantly increase the cost of accepted farm practices on agriculture or forest land in the F district. The Pipeline’s subsurface nature will also ensure that farming equipment can cross the right-of-way without impacting the Pipeline’s structural integrity. Construction of the Pipeline will temporarily interrupt farming practices in the right-of-way and in temporary work areas but those short-term impacts will not cause a significant change in accepted farming practices because of their temporary nature and because farming practices will be able to continue on lands directly adjacent to the temporary construction areas. Following construction of the Pipeline, adjacent farming practices, including crop lands and grazing pastures, may resume in all affected areas.

The Pipeline will not force a significant increase in the cost of accepted farm or forest practices on lands devoted to farm or forest use for the above reasons, and also because PCGP will compensate landowners for the permanent right-of-way and for any demonstrated loss in crop production in temporary construction areas.”

Staff agrees with the statements provided. This is consistent with the finding in the 2010 order.

2. **The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.**

**RESPONSE:** The applicant has address the fire hazards as follows:

“The Pipeline will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel. The Pipeline will be designed and maintained to conform with or exceed U.S. Department of Transportation requirements in Title 49 Code of Federal Regulations (“CFR”), Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards; 18 CFR § 380.15, Site and Maintenance Requirements; and other applicable federal and state regulations. Additionally, Applicant will comply with its Fire Prevention and Suppression Plan, which requires employee training, prohibitions on smoking and burning, having extinguishers available, compliance with BLM standards, and coordination with local emergency responders. A copy of this plan is in Exhibit 7. The fire risk to the Pipeline is low, which means that the risk that the Pipeline poses to fire suppression personnel, and to increased fire hazard and suppression cost, is also low.”

Staff suggests that this become a condition of approval to ensure that the fire hazards are addressed.

3. **All uses must comply with applicable development standards and fire siting and safety standards.**

**RESPONSE:** This is addressed under the development standards section.
4. A “Forest Management Covenant”, which recognized the right of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules, shall be recorded in the deed records of the County prior to any final County approval for uses authorizing any type of residential use in the Forest and Forest Mixed Use zones. There may be other criteria listed that applies to individual uses.

RESPONSE: The Application does not propose a residential use in either the Forest or Forest Mixed Use zones. Therefore, this provision is not applicable to the Application.

5. The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones. Replacement dwellings may be sited in close proximity to the existing developed homesite. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. These criteria may include setbacks from adjoining properties, clustering near or among existing structures, sitting close to existing roads and sitting on that portion of the parcel least suited for growing trees.

RESPONSE: The Pipeline is neither a “dwelling” nor a “structure” within the meaning that the CCZLDO gives those terms. The County has previously determined that the Pipeline is not a “structure” within the meaning of CCZLDO 2.1200’s specific definition of that term. The Pipeline is a subsurface natural gas pipeline. Therefore, this criterion does not apply to the Early Works Alignment.

6. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

RESPONSE: As discussed above, the Pipeline is a subsurface natural gas pipeline, not a dwelling. This criterion is not applicable.

7. Approval of a dwelling shall be subject to the following additional requirements:

a. Approval of a dwelling requires the owner to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

b. The Planning Department shall notify the County Assessor of the above condition at the time the dwelling is approved.

c. If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The Assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.

d. Upon notification by the Assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, it will notify the owner and Assessor that the land is not being managed as forest land. The Assessor will then remove the forest
land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

e. The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

RESPONSE: As discussed above, the Pipeline is a subsurface natural gas pipeline, not a dwelling. This criterion is not applicable.

CCZLDO 4.6.140 - Development and Siting Criteria

This section contains all of the development standards for uses (unless otherwise excepted out by a use review) and all of the siting standards for development.

1. Minimum Lot Size for the creation of new parcels shall be at least 80 acres. Minimum lot size will not affect approval for development unless specified in use. The size of the parcel will not prohibit development as long as it was lawfully created or otherwise required to be a certain size in order to qualify for a use.

RESPONSE: The Pipeline will not create a new parcel nor change the size of any existing parcel. Therefore, this criterion does not apply to the Early Works Alignment.

2. Setbacks: All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from any right-of-way line, whichever is greater.

3. Fences, Hedges and Walls: No requirement, except for vision clearance provisions in Section 7.1.525.

4. Off-Street Parking and Loading: See Chapter VII.

RESPONSE: These criteria do not apply to the Early Works Alignment. The Pipeline is a linear, underground utility facility that crosses several property lines rather than a building or above-ground structure. Consequently, the setback standard is not applicable to the Pipeline. The Pipeline does not qualify as a hedge, fence or wall, and therefore the standard for fences, hedges and walls does not apply to the Pipeline or its necessary components. The off-street parking and loading standards are not applicable to the Pipeline.

5. Minimizing Impacts: In order to minimize the impact of dwellings in forest lands, all applicants requesting a single family dwelling shall acknowledge and file in the deed record of Coos County, a Forest Management Covenant. The Forest Management Covenant shall be filed prior to any final County approval for a single family dwelling.

RESPONSE: The Pipeline is an interstate natural gas pipeline. The Applicant is not requesting a dwelling. Therefore, this criterion does not apply to the Early Works Alignment.

6. Riparian Vegetation Protection. Riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained except that:
a. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the trees;  
b. Riparian vegetation may be removed to provide direct access for a water dependent use if it is a listed permitted within the zoning district;  
c. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures;  
d. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan;  
e. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways;  
f. Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps; or  
g. The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland, stream, lake, or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure’s “footprint”.  
h. Riparian removal within the Coastal Shoreland Boundary will require a conditional use. See Special Development Considerations Coastal Shoreland Boundary.  
i. The 50’ measurement shall be taken from the closest point of the ordinary high water mark to the structure using a right angle from the ordinary high water mark.

**RESPONSE:** The Pipeline is a public utility project as explained in this report. Therefore, in accordance with subsection e. of the above criteria, the Early Works Alignment is an exception to the 50-foot riparian protection vegetation zone, and riparian vegetation may be removed in order to site the Pipeline pursuant to the exemption cited above. Nonetheless, the Early Works Alignment will comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction.

7. **All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards.** The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the applicant is outside the rural fire protection district, the applicant shall provide evidence that they have contacted the Coos Forest Protective Association of the proposed development.

**RESPONSE:** As discussed above, the Pipeline is an interstate natural gas pipeline, not a dwelling or structure within the meaning of the CCZLDO. Therefore, this criterion does not apply to the Early Works Alignment.

8. **The Planning Director may authorize alternative forms of fire protection when it is determined that these standards are impractical that shall comply with the following:**

   a. **The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;**
b. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

c. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use; and

d. Road access shall be provided to within 15 feet of the water’s edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

RESPONSE: These fire protection criteria are not applicable to a subsurface gas pipeline like the Pipeline. Therefore, these criteria do not apply to the Early Works Alignment.

9. Fire Siting Standards for New Dwellings:

a. The property owner shall provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and sufficient ¾ inch garden hose to reach the perimeter of the primary fuel-free building setback.

b. If another water supply (such as a swimming pool, pond, stream, or lake) is nearby, available, and suitable for fire protection, then road access to within 15 feet of the water’s edge shall be provided for pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

RESPONSE: The Pipeline is not a new dwelling. Therefore, these standards do not apply to the Early Works Alignment.

10. Firebreak:

a. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.

b. Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.

c. The owners of the dwelling shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in “Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991, and published by Oregon Department of Forestry and shall demonstrate compliance with Table 1.

RESPONSE: As discussed above, the Pipeline is an interstate natural gas pipeline, not a structure or dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.
11. **All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.**

**RESPONSE:** As discussed above, the Pipeline is an interstate natural gas pipeline, not a structure within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

12. **If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).**

**RESPONSE:** This fire protection criterion does not apply to the Pipeline, which is a subsurface gas pipeline. Therefore, this criterion does not apply to the Early Works Alignment.

13. **The dwelling shall not be sited on a slope of greater than 40 percent.**

**RESPONSE:** As discussed above, the Pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

14. **If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.**

**RESPONSE:** As discussed above, the Pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

15. **The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.**

**RESPONSE:** As discussed above, the Pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

16. **Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment.**

**RESPONSE:** Although Applicant will utilize existing roads as access roads to the Pipeline, this Application does not propose to construct any new permanent public road, bridge, private road, or driveway. Applicant may construct temporary access roads during the construction phase. If Applicant does so, such temporary access roads will comply with this criterion. Therefore, this criterion does not apply to the Early Works Alignment.

17. **Access to new dwellings shall meet road and driveway standards in Chapter VII.**

**RESPONSE:** As discussed above, the Pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

**CCZLDO Section 4.8.700 Fire Siting Safety Standards**
All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards.

**RESPONSE:** As discussed above, the Pipeline is neither a structure nor a dwelling. Therefore, the fire siting and safety standards of this Section are not applicable to this application.

For the reasons set forth above, the Pipeline is allowed as an administrative conditional use within the F zone.

**iii. Industrial Zoning District.**

The Early Works Alignment will cross approximately 0.26 miles of properties zoned Industrial.

**SECTION 4.3.200 ZONING TABLES FOR URBAN AND RURAL RESIDENTIAL, MIXED COMMERCIAL-RESIDENTIAL, COMMERCIAL, INDUSTRIAL, MINOR ESTUARY AND SOUTH SLOUGH**

* * * *

As used in the zoning tables the following abbreviations are defined as:

“CD” compliance determination review (permitted with standards) with clear and objective standards. (Staff review usually referred to as Type I process or ministerial action.) These uses are subject to development standards in sections 4.3.225, 4.3.230 and notices requesting comments may be provided to other agencies as a result. The process takes a minimum of 30 days to complete. Industrial zones may require additional review. All structures and uses shall meet the applicable Development and Siting Criteria or Special Development Considerations and Overlays for the zoning district in which the structure will be sited.

* * * *

98. Utility Facility - Service Lines in conjunction with a Utility Facility IND - CD

**SECTION 4.3.210 - CATEGORIES AND REVIEW STANDARDS**

The following categories provide a definition and specific standards that will regulate the Development, Use or Activity identified in the table above.

* * * *

(76) UTILITY FACILITIES - In zones in which utility facilities are listed as a conditional use in the zoning table, this use shall comply with the compatibility standard found in Section 4.3.220.

(e) UTILITY FACILITY - SERVICE LINES - A distribution line for supplying a utility service including but not limited to telephone, power, water, sewer, etc. Sewer lines are not permitted to be located outside of an urban unincorporated boundary or urban growth boundary unless as required to mitigate a public health hazard as described in Statewide Planning Goal 11 or as allowed by the Coos County Comprehensive Plan or other Coos County Zoning and Land Use Development Ordinance provisions.

**RESPONSE:** The Pipeline is correctly classified as a “Utility Facility - Service Lines” in the Industrial zone because it is a utility line that is transporting natural gas supply for its distribution.
to end users. The Pipeline does not involve locating sewer lines outside of an urban unincorporated boundary or urban growth boundary.

“Utility Facility - Services Lines” are allowed in the Industrial zone, subject to a determination of compliance with applicable standards. As explained below, the Pipeline complies with applicable standards. Therefore, the Pipeline is permitted in the Industrial zone.

Section 4.3.225 General Siting Standards

All new USES, ACTIVITIES and DEVELOPMENT are subject to the following siting standards:

(1) Agricultural and Forest Covenant - Any applicant for a dwelling permit adjacent to a Forest or Exclusive Farm Zone shall sign a statement on the Compliance Determination or Zoning Clearance Letter acknowledging that: “the normal intensive management practices occurring on adjacent resource land will not conflict with the rural residential landowner’s enjoyment of his or her property.

RESPONSE: The Pipeline is an interstate natural gas pipeline. Applicant is not requesting approval for a dwelling. Therefore, this standard does not apply to siting the Pipeline in the Industrial zone.

(2) Fences, Hedges, and Walls: No requirement, but vision clearance provisions of Section 7.1.525 apply.

RESPONSE: The Pipeline is an interstate natural gas pipeline. Applicant is not planning to install any fences, hedges, or walls around the Pipeline. Therefore, this standard does not apply to siting the Pipeline in the Industrial zone.

(3) Limitation on uses of manufactured dwellings/structures for commercial purposes pursuant to ORS 466 et seq. Manufactured dwellings shall not be used for commercial purposes except:
   (a) Where use of the manufactured dwelling for commercial purposes is authorized by the Building Codes Agency.
   (b) Where used as a temporary sales office for manufactured structures; or
   (c) As part of an approved home occupation.

RESPONSE: The proposal does not utilize manufactured dwellings for commercial purposes. Therefore, this standard does not apply to siting the Pipeline in the Industrial zone.

(4) New lots or parcels - Creation of lots or parcels, unless it meets the circumstances of § 5.6.130, shall meet the street frontage, lot width, lot depth and lot size. Minimum road frontage/lot width shall be met unless waived by the Planning Director in consultation with the County Surveyor and County Roadmaster due to creating an unsafe or irregular configuration:

(a) Minimum Street frontage should be at least 30 feet; and

(b) Minimum lot width and Minimum lot depth is 50 feet.

Minimum parcel/lot size cannot be waived or varied unless otherwise provided by a specific zoning regulation. Tax lot creation and consolidations do not change the legally created status of a lot or parcel.
RESPONSE: Applicant is not creating any new lots or parcels in conjunction with developing the Pipeline. Therefore, this standard does not apply to the Pipeline.

(5) Parking - Off-street access, parking and loading requirements per Chapter VII apply.

RESPONSE: Applicant will maintain access to the Pipeline via the access roads identified in the application (See Exhibit 4). Parking and loading standards will not apply to the Pipeline.

(6) Riparian -

RESPONSE: The riparian vegetation setback does not apply when siting public utilities. This was addressed under a prior section of the report.

(7) Setbacks:

(a) All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from the right-of-way line, whichever is greater. This setback may be greater under specific zoning siting requirements.

RESPONSE: Consistent with previous County decisions, the Pipeline is an interstate natural gas pipeline, not a “structure” within the meaning of the CCZLDO. Therefore, this setback standard is not applicable to the Pipeline.

(b) Firebreak Setback - New or replacement dwellings on lots, parcels or tracts abutting the “Forest” zone shall establish and maintain a firebreak, for a distance of at least 30 feet in all directions. Vegetation within this firebreak may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.

RESPONSE: The Pipeline is an interstate natural gas pipeline, not a new or replacement dwelling. Therefore, this firebreak setback is not applicable to the Pipeline.

SECTION 4.3.230 ADDITIONAL SITING STANDARDS

This section has specific siting standards and criteria set by the zoning district for USES, ACTIVITIES and DEVELOPMENT:

(6) Industrial (IND) and Airport Operations (AO) - The following siting standards apply to all USES, activities and development within the IND and AO zoning districts.

(a) Minimum lot/parcel size –
   i. No minimum lots size standard for this zone.
   ii. Minimum street frontage and minimum lot width is 20 feet.

RESPONSE: Applicant is not proposing to create or modify any lots. This standard is not applicable to the Pipeline.

(b) Setback -
   i. Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts.
   ii. Setback exception – Front yard setback requirements of this Ordinance shall not apply in any residential district where the average depth of existing front yards on developed lots within
the same zoning district block, but no further than 250 feet from the exterior side lot lines of the lot and fronting on the same side of the street as such lot, is less than the minimum required front yard building setback. In such cases the front yard setback requirement on any such lot shall not be less than the average existing front yard building setback.

RESPONSE: The Pipeline is a linear, underground utility facility that crosses several properties. It is not a building or above-ground structure. Consequently, the setback standard is not applicable to the Pipeline.

(c) Building Height - does not have any requirement, except those sites abutting a residential or controlled development zone shall have a max height of 35 feet plus one (1) additional foot in height for each foot of setback exceeding 5 feet (i.e. if the setback is 10 feet, the maximum building height would be 40 feet). However, spires, towers, domes, steeples, flag poles, antennae, chimneys, solar collectors, smokestacks, ventilators or other similar objects may be erected above the prescribed height limitations, provided no usable floor space above the height limits is added. Such over height object shall not be used for advertising of any kind.

RESPONSE: The portion of the Early Works Alignment in the Industrial zone does not abut a residential or controlled development zone. Furthermore, the Pipeline is an underground facility. This standard is not applicable.

(d) Building Density or Size limits –

i. For building or buildings located within an Unincorporated Community Boundary as adopted by the Coos County Comprehensive Plan Volume 1 Part 2 § 5.5 the following square foot requirements apply:
   1. Urban Unincorporated Community shall not exceed 60,000 square feet of floor space; or
   2. Rural Unincorporated Community shall not exceed 40,000 square feet of floor space.

RESPONSE: The portion of the Early Works Alignment located in the Industrial zone is not within an Unincorporated Community Boundary. This standard is not applicable to the Pipeline.

(e) Design Standards:

i. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;

RESPONSE: The Pipeline will generally be located below the surface and is not located on a single property which is what this standard applies. This standard is not applicable to the Pipeline.

ii. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent Rural Residential, Urban Residential or Controlled Development Zoning districts.

RESPONSE: The Pipeline will not involve any illuminated public or private parking areas. Therefore, this standard is not applicable to the Pipeline.
iii. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of this zoning designation, screen plantings or other screening methods;

RESPONSE: The Pipeline will not involve any exposed storage areas, service areas, utility buildings, or similar accessory areas.

iv. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and

RESPONSE: The Pipeline will not typically have on-site workers or visitors and will not involve activities that generate a need for trash receptacles or trash service. This standard is not applicable to the Pipeline.

v. Hours of operation may be required in areas predominantly surrounded by residential zones.

RESPONSE: Staff finds no reason to impose hours of operation to this request.

iv. CBEMP Management Units.

The Early Works Alignment crosses 10 Coos Bay Estuary Management Plan (“CBEMP”) districts, including 7-Development (7-D), 7-Natural Aquatic (7-NA), 13A-Natural Aquatic (13A-NA), Deep-Draft Navigation Channel (DDNC-DA), 45A-Conservation Aquatic (45A-CA), 15-Natural Aquatic (15-NA), 13B-Natural Aquatic (13B-NA), 14-Development Aquatic (14-DA), 14-Water Dependent (14-WD) and 15-Rural Shorelands (15-RS).

Table 4.5 - CBEMP Development Standards

RESPONSE: The CBEMP purpose statement (CCZLDO 3.2.100) explains that the land development standards of Table 3.2 govern all development within the Coos Bay Estuary Shoreland Districts. As discussed in detail in the other zones above, the Pipeline is a subsurface gas pipeline that will not alter any lot configurations and does not constitute a structure subject to height restrictions, building setbacks, or parking requirements. Consequently, the standards included in Table 3.2 are not applicable to the Early Works Alignment.

CCZLDO 3.2.175 - Site-Specific Zoning Districts (CBEMP)

This Ordinance shall divide the lands affected by the Coos Bay Estuary Management Plan into specific zoning districts as identified in Sections 3.2.200. The following zoning districts delineate the appropriate requirements which shall apply to all lands within the individual districts. A detailed “Uses and Activities” table follows the “Management Objectives” statement presented for each respective aquatic and shoreland district. The tables describe specific uses and activities deemed appropriate and inappropriate for each district. The Use and Activity tables for each district are subordinate to the “Management Objective” for the respective districts in that allowed uses and activities must be consistent with the respective districts’ “Management Objective” statements.

RESPONSE: As this section explains, development in a CBEMP management unit must comply both with the use chart and the management objective of that management unit. This section of the narrative explains how the Early Works Alignment complies with these requirements.

1. 7-D
In three segments, the Early Works Alignment crosses approximately .03 miles of the 7-D zoning district.
**CCZLDO 3.2.285 - Management Objective**

This shoreland district, which borders a natural aquatic area, shall be managed for industrial use. Continuation of and expansion of existing non-water-dependent/non-water-related industrial uses shall be allowed provided that this use does not adversely impact Natural Aquatic District #7. In addition, development shall not conflict with state and federal requirements for the wetlands located in the northwest portion of this district.

**RESPONSE:** The Pipeline is part of a utility facility which has been established as an Industrial Use. The only new proposed development is for the pipeline. The management unit requires the consideration of impacts to the 7-NA. The pipeline will be drilled and located under the bay. The drilling will occur on the shoreland as described in the applicants narrative (page 5) under the aquatic areas; therefore, not causing adverse impacts from the development that will occur within 7-D. The proposal will not cause conflict with the state and federal requirements for the wetlands located in the northwest portion of this district. The applicant will address any necessary stated and federal permits. Therefore, the Early Works Alignment complies with the 7-D district’s management objective.

**CCZLDO 3.2.286 - Uses, Activities and Special Conditions**

A. Uses:

15. **Utilities**
   
a. Low-intensity P-G

**RESPONSE:** The 7-D district permits “low-intensity” utilities, subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Furthermore, the County has previously approved the Pipeline as a “low-intensity utility” in the County’s estuary zones. See Final Decision and Order, County File No. 10-08-045PL at 48. Therefore, the Pipeline is a “low-intensity utility” and the 7-D district permits the Early Works Alignment subject to general conditions, as follows.

**GENERAL CONDITIONS (the following condition applies to all uses and activities):**

1. Uses in this district are only permitted as stated in Policy #14 “General Policy on Uses within Rural Coastal Shorelands”. Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this policy.
2. Inventoried resources requiring mandatory protection in this unit district are subject to Policies #17 and #18.
3. All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation.
4. All permitted uses shall be consistent with the respective flood regulations of local governments as required in Policy #27.
5. All permitted uses in dune areas shall be consistent with the requirements of Policy #30.
6. In rural areas (outside of UGBs) utilities, public facilities, and services shall only be provided subject to Policies #49, #50, and #51.

RESPONSE: The applicable Policies are 14, 17, 18, 23, 27, 30, 49, 50, and 51. These are addressed under the policy section of this report.

2. 7-NA

The Early Works Alignment crosses approximately .08 miles of the 7-NA CBEMP management unit.

CCZLDO 3.2.290 - Management Objective
This aquatic district shall be managed to protect natural resources. Maintenance, replacement and repair of bridge crossing support structures shall be allowed.

RESPONSE: The Pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 7-NA district, Applicant will utilize HDD construction techniques for the Pipeline to minimize construction impacts to natural resources. Therefore, the Early Works Alignment satisfies the 7-NA zone’s management objective.

CCZLDO 3.2.291 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
   a. Low-intensity P-G

RESPONSE: The 7-NA zone permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 7-NA district permits the Early Works Alignment subject to general conditions, as follows.

GENERAL CONDITION (the following condition applies to all uses and activities):

1. Inventoried resources requiring mandatory protection in this unit are subject to Policies #17 and #18.

RESPONSE: CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the policy section of this report.

3. 13A-NA
The Early Works Alignment crosses approximately 0.21 miles of the 13A-NA CBEMP management unit.

**CCZLDO 3.2.425 - Management Objective**

_This district shall be managed to allow the continuance of shallow-draft navigation while protecting the productivity and natural character of the aquatic area. The openings in the two road dikes are designated mitigation sites [M-5(a) and (b), "low" priority]. Maintenance, and repair of bridge crossing support structures shall be allowed. However, future replacement of the railroad bridge will require Exception findings._

**RESPONSE:** The Pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 13A-NA district, Applicant will utilize HDD construction techniques for the Pipeline to minimize construction impacts to natural resources. Construction and operation of the Pipeline will not affect the continuance of shallow-draft navigation in, or the natural character and aquatic area of, the 13A-NA district. The Pipeline will not affect the M-5(a) and (b) mitigation sites. Therefore, the Early Works Alignment satisfies the management objective of the 13A-NA district.

**CCZLDO 3.2.426 - Uses, Activities and Special Conditions**

_A. Uses:

9. Utilities
   a. Low-intensity P-G_

**RESPONSE:** The 13A-NA district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 13A-NA district permits the Early Works Alignment subject to general conditions, as follows.

**GENERAL CONDITION (the following condition applies to all uses and activities):**

1. _Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18._

**RESPONSE:** CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the policy section of this report.

4. **45A-CA**

The Early Works Alignment crosses approximately 0.12 miles of the 45A-CA CBEMP management unit.

**CCZLDO 3.2.525 - Management Objective**

_This district will be managed to protect the natural resources of the subtidal area adjacent to the channel, and to provide necessary navigational facilities and permit log storage._

A
temporary pipeline for dredged material disposal activities shall be allowed across this district. Outfall shall go directly to the main navigation channel.

**RESPONSE:** The Pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 45A-CA district, the Applicant will utilize HDD construction techniques for the Pipeline to minimize construction impacts to natural resources. The Pipeline will not adversely affect the natural resources of the subtidal area adjacent to the channel or the continued provision of necessary navigational facilities and log storage in the 45A-CA district. Therefore, the Early Works Alignment satisfies the 45A-CA district’s management objective.

**CCZLDO 3.2.526 - Uses, Activities and Special Conditions**

**A. Uses:**

9. **Utilities**
   a. **Low-intensity P-G**

**RESPONSE:** The 45A-CA district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 45A-CA district permits the Early Works Alignment subject to general conditions, as follows.

**GENERAL CONDITIONS**

1. **All uses and activities: Inventoried resources requiring mandatory protection are subject to Policies #17 and #18.**

**RESPONSE:** CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the policy section of this report.

5. **13B-NA**

The Early Works Alignment crosses approximately 0.67 miles of the 13B-NA CBEMP management unit.

**CCZLDO 3.2.435 - Management Objective**

*This district shall be managed so as to protect the productivity of the extensive tideflats and subtidal beds in the aquatic area. Maintenance/repair of bridge crossing support structures is appropriate in this district.*

**RESPONSE:** The Pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 13B-NA district, the Applicant will utilize HDD construction techniques for the Pipeline to minimize construction impacts to natural resources. The Pipeline will not adversely affect the productivity of the extensive tideflats and subtidal beds in the aquatic area of the 13B-NA district. Therefore, the Early Works Alignment satisfies the 13B-NA district’s management objective.

**CCZLDO 3.2.436 - Uses, Activities and Special Conditions**

**A. Uses:**
9. **Utilities**
   a. **Low-intensity P-G**

**RESPONSE:** The 13B-NA district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 13B-NA district permits the Early Works Alignment subject to general conditions, as follows.

**GENERAL CONDITION (the following condition applies to all uses and activities):**

1. **Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.**

**RESPONSE:** CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the policy section of this report.

6. **14-WD**

The Early Works Alignment crosses approximately 0.04 miles of the 14-WD CBEMP management unit. The 14-WD is shown below as a small upland area abutting the road.

![Image of 14-WD area]

**CCZLDO 3.2.440 - Management Objective**

*This shoreland district is in close proximity to a natural channel and shall be managed as a barge loading site; in addition, recreation and access for recreation shall be allowed.*

**RESPONSE:** The 14-WD is not currently developed with a barge loading site or any type of recreational use. The Pipeline will not affect use of management of the 14-WD district as a barge loading site nor recreation access in the 14-WD district. Therefore, the Early Works Alignment complies with the 14-WD district’s management objective.

**CCZLDO 3.2.441 - Uses, Activities and Special Conditions**

A. **Uses:**

15. **Utilities**
a. Low-intensity P-G

**RESPONSE:** The 14-WD district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 14-WD district permits the Early Works Alignment subject to general conditions, as follows.

**GENERAL CONDITIONS:**

1. Uses in this district are only permitted as stated in Policy #14, "General Policy on Uses within Rural Coastal Shorelands". Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this Policy.

2. All permitted uses shall be consistent with the respective flood regulations of local governments as required in Policy #27.

3. In rural areas (outside of UGBs) utilities, public facilities and services shall only be provided subject to Policies #49, #50, and #51.

4. All uses and activities: Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.

**RESPONSE:** CBEMP Policies #14, 17, 18, 27, 49, 50, and 51 are required to be addressed. These are addressed under the policy section of this report.

7. 15-RS

The Early Works Alignment will cross approximately 0.20 miles of the 15-RS CBEMP management unit.

**CCZLDO 3.2.450 - Management Objective**

This district shall be managed to maintain the present character of and uses in the area, which include low-intensity rural development having minimal association with the adjacent aquatic area. The district contains three designated mitigation sites: U-8(a) and U-9(a) shall be protected for pre-emptive uses as "medium" priority sites (see Policy #22).
RESPONSE: The Pipeline will not change the present character of uses in the 15-RS district, including low-intensity rural development having minimal association with the adjacent aquatic area, nor will the Pipeline affect the mitigation sites in the 15-RS district. The mitigation site is not within the project area. Therefore, the Early Works Alignment satisfies the 15-RS district’s management objective.

CCZLDO 3.2.451 - Uses, Activities and Special Conditions

A. Uses:

15. Utilities
   a. Low-intensity P-G

RESPONSE: The 15-RS district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 15-RS district permits the Early Works Alignment subject to general conditions, as follows.

GENERAL CONDITIONS (the following conditions apply to all uses and activities):

1. Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.
2. All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation. The following conditions apply to all permitted uses.
3. Where "agricultural lands" or "forest lands" occur within this district, as identified in the "Special Considerations Map", uses in these areas shall be limited to those permitted in Policies #28 and #34.
4. Uses in this district are only permitted as stated in Policy #14, "General Policy on Uses Within Rural Coastal Shorelands"; except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this Policy.
5. All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.
6. On designated mitigation/restoration sites, all uses/activities shall only be permitted subject to the conditions in Policy #22.
7. In rural areas (outside UGB's) utilities, public facilities and services shall only be provided subject to Policies #49, #50, and #51.

RESPONSE: CBEMP Policies #14, 17, 18, 22, 23, 27, 28, 34, 49, #50, and #51 are applicable. These are addressed under the policy section of this report.

8. 15-NA

In two segments, the Early Works Alignment crosses approximately 0.43 miles of the 15-NA CBEMP management unit.
CCZLDO 3.2.455 - Management Objective
This natural aquatic district shall be managed to protect its natural resource productivity. The district also contains a designated mitigation site (U-9c), which shall be protected from preemptive uses as a "medium" priority site (see Policy #22).

RESPONSE: The Pipeline will not affect the natural resource productivity of the 15-NA district or the district’s mitigation sites. The use will not be located near the U-9c. Therefore, the Early Works Alignment satisfies the 15-NA district’s management objective.

CCZLDO 3.2.456 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
   a. Low-intensity P-G

RESPONSE: The 15-NA district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 15-NA district permits the Early Works Alignment subject to general conditions, as follows.

GENERAL CONDITIONS:

1. All uses and activities: Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.

RESPONSE: CBEMP Policies #17 and #18 apply to this use. These are addressed under the policy section of this report.

9. 14-DA

In two segments, the Early Works Alignment crosses approximately 0.12 miles of the 14-DA CBEMP management unit.
This area shall be managed to allow access to the natural Kentuck Channel for the purposes of transporting jetty stone quarried in the uplands above the district. This district also permits filling of the small bermed aquatic area at the western end of the existing fill, to provide additional space for rock loading. Dredging and other activities shall be limited to the minimum necessary to accomplish this purpose. That is, if necessary, a "bathtub" may be dredged adjacent to the existing barge off-loading site to allow moorage of a barge during low tide. However, access to and use of the natural channel shall only occur when tides are sufficiently high to facilitate safe navigation. Future dredging of the natural channel (beyond the "bathtub") in District 13B NA is otherwise not allowed. Upon completion of filling in the small bermed area, it will become part of Shoreland District 14 WD.

RESPONSE: Staff has highlighted the bermed area in red that is referenced in the management unit. The shipping transportation described in the management unit is no occurring at this time. It appears that fill was never completed to fully create the upland area within the berm. The proposed Pipeline construction and operation will not interfere with access to the natural Kentuck Channel for the purposes of transporting jetty stone quarried in the uplands above the district. Additionally, it will not preclude filling of the small bermed aquatic area at the western end of the existing fill to provide additional space for rock loading. Therefore, the Early Works Alignment satisfies the 14-DA district’s management objective.

CCZLDO 3.2.446 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
   a. Low-intensity P-G

RESPONSE: The 14-DA district permits “low-intensity” utilities subject to general conditions, addressed below. The Pipeline is a “low-intensity utility.” CCZLDO 2.1.230 defines “low-intensity utility” as a “public service structure” that includes “gas lines.” The Pipeline is a gas line that will serve the public by providing natural gas. Therefore, the Pipeline is a “low-intensity utility” and the 14-DA district permits the Early Works Alignment subject to general conditions, as follows.
GENERAL CONDITIONS:

1. All uses and activities: Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.

RESPONSE: CBEMP Policies #17 and #18 apply to this use. These are addressed under the policy section of this report.

10. DDNC-DA

In two segments, the Early Works Alignment crosses approximately 0.13 miles of the DDNC-DA CBEMP management unit, which currently prohibits the Pipeline. Therefore, this Application requests a text amendment to CCZLDO 3.2.202 to allow “subsurface low-intensity utilities,” subject to general conditions, in the DDNC-DA zone. The amendment is covered in the first part of this report. Upon adoption of this amendment, the Pipeline will be permitted in the DDNC-DA CBEMP management unit, subject to general conditions as follows.

In all other Development Aquatic Management Units Low-Intensity is listed uses in all other Development Aquatic and this would be consistent with the change of use. It is appropriate to limit this to subsurface given the purpose of the segment as it is for navigation. The other segments require that general Policies #17 and #18 apply. The county may consider adopting a Special Condition Policy #31 to make this subsurface. This would not change the recommendation that the provisions under DDNC-DA can be met.

GENERAL CONDITIONS (the following conditions apply to ALL uses and activities):

1. Inventoried resources requiring mandatory protection in this unit shall be protected and are subject to Policies #17 and #18.

RESPONSE: CBEMP Policies #17 and #18 apply to this use. These are addressed under the policy section of this report.

IV. CBEMP Policies.

As detailed above, the Early Works Alignment crosses through several CBEMP management units, each of which requires compliance with specified CBEMP Policies. As discussed below, the Pipeline complies with each of the applicable CBEMP Policies.

Policy #14 General Policy on Uses within Rural Coastal Shorelands

I. Coos County shall manage its rural areas within the "Coos Bay Coastal Shorelands Boundary" by allowing only the following uses in rural shoreland areas, as prescribed in the management units of this Plan, except for areas where mandatory protection is prescribed by LCDC Goal #17 and CBEMP Policies #17 and #18:

a. Farm uses as provided in ORS 215.203;

b. Propagation and harvesting of forest products;

c. Private and public water-dependent recreation developments;

d. Aquaculture;

e. Water-dependent commercial and industrial uses, water-related uses, and other uses only upon a finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be
accommodated on uplands or shorelands in urban and urbanizable areas or in rural areas built upon or irrevocably committed to nonresource use;

f. Single-family residences on lots, parcels, or units of land existing on January 1, 1977, when it is established that:
   1. The dwelling is in conjunction with a permitted farm or forest use, or
   2. The dwelling is in a documented “committed” area, or
   3. The dwelling has been justified through a goal exception; and
   4. Such uses do not conflict with the resource preservation and protection policies established elsewhere in this Plan;

g. Any other uses, including non-farm uses and non-forest uses, provided that the Board of Commissioners or its designee determines that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas. In addition, the above uses shall only be permitted upon a finding that such uses do not otherwise conflict with the resource preservation and protection policies established elsewhere in this Plan.

This strategy recognizes (1) that Coos County's rural shorelands are a valuable resource and accordingly merit special consideration, and (2) that LCDC Goal #17 places strict limitations on land divisions within coastal shorelands. This strategy further recognizes that rural uses "a through "g" above, are allowed because of need and consistency findings documented in the "factual base" that supports this Plan.

RESPONSE: The Applicant identified appropriately that general conditions of the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of CBEMP Policy #14. The Pipeline is a permitted use in each of these CBEMP districts. The Pipeline is a necessary component of the approved marine terminal and LNG facility, which the Board has previously found are water-dependent and must be located in CBEMP shoreland zones.

The applicant stated that the Pipeline would be considered a necessary component of the primary industrial and port facilities use. Alternatively, the Pipeline would be described as an “other use” in CBEMP Policy 14.I.e. As an “other use,” the Pipeline would be reviewed in each CBEMP district as a low-intensity utility. In either event, CBEMP Policy #14.I.e requires a “finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be accommodated on uplands or shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use,” a finding that was already made by the Board in the prior decisions approving the Port’s marine terminal and JCEP’s upland terminal. Staff agrees with this analysis.

The Pipeline must run from Malin to the JCEP LNG terminal, which is located on the North Spit in CBEMP shoreland districts. Given the long distance between these two points and the rural nature of the County, it is not possible to connect these two points with a linear facility like the Pipeline while remaining wholly within urban or urbanizable areas and/or rural exception areas. Further, the Pipeline serves the need of facilitating use of the JCEP and Port terminals. The route is ultimately chosen through the Federal permitting process given the environmental assessment and other criteria. This limits the applicant’s ability to locate the Pipeline within urban/urbanizable area or rural exception area. Therefore, staff agrees with the applicant that this policy has been addressed.
Policy #17  Protection of "Major Marshes" and "Significant Wildlife Habitat" in Coastal Shorelands

Local governments shall protect from development, major marshes and significant wildlife habitat, coastal headlands, and exceptional aesthetic resources located within the Coos Bay Coastal Shorelands Boundary, except where exceptions allow otherwise.

I. Local government shall protect:
   a. "Major marshes" to include areas identified in the Goal #17, "Linkage Matrix", and the Shoreland Values Inventory map; and
   b. "Significant wildlife habitats" to include those areas identified on the "Shoreland Values Inventory" map; and
   c. "Coastal headlands"; and
   d. “Exceptional aesthetic resources” where the quality is primarily derived from or related to the association with coastal water areas.

II. This strategy shall be implemented through:
   a. Plan designations, and use and activity matrices set forth elsewhere in this Plan that limit uses in these special areas to those that are consistent with protection of natural values; and
   b. Through use of the Special Considerations Map that identified such special areas and restricts uses and activities therein to uses that are consistent with the protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation; and
   c. Contacting Oregon Department of Fish and Wildlife for review and comment on the proposed development within the area of the 5b or 5c bird sites.

This strategy recognizes that special protective consideration must be given to key resources in coastal shorelands over and above the protection afforded such resources elsewhere in this Plan.

RESPONSE: That the county agrees with the applicant that the County must find that inventoried resources in the 7-D, 7-NA, 13A-NA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS CBEMP management units, and subject to adoption of the text amendment, in the DDNC-DA district, are protected.

The Early Works Alignment does not cross through any Major Marshes, Significant Wildlife Habitats, or Coastal Headlands, as identified on the County’s Shoreland Values Inventory Map. The Early Works Alignment also does not cross exceptional aesthetic resources as identified on the County’s maps. Because there are no inventoried resources, CBEMP Policy #17 is not applicable to the Early Works Alignment. There have been no comments received from ODFW or Department of State Lands in regard to this policy. Therefore, this policy has been addressed.

Policy #18  Protection of Historical, Cultural and Archaeological Sites.

Local government shall provide protection to historical, cultural and archaeological sites and shall continue to refrain from widespread dissemination of site-specific information about identified archaeological sites.

I. This strategy shall be implemented by requiring review of all development proposals involving a cultural, archaeological or historical site, to determine whether the project as proposed would protect the cultural, archaeological and historical values of the site.
II. The development proposal, when submitted shall include a Site Plan Application, showing, at a minimum, all areas proposed for excavation, clearing and construction. Within three (3) working days of receipt of the development proposal, the local government shall notify the Coquille Indian Tribe and Coos, Siuslaw, Lower Umpqua Tribe(s) in writing, together with a copy of the Site Plan Application. The Tribe(s) shall have the right to submit a written statement to the local government within thirty (30) days of receipt of such notification, stating whether the project as proposed would protect the cultural, historical and archaeological values of the site, or if not, whether the project could be modified by appropriate measures to protect those values.

“Appropriate measures” may include, but shall not be limited to the following:

a. Retaining the prehistoric and/or historic structure in situ or moving it intact to another site; or
b. Paving over the site without disturbance of any human remains or cultural objects upon the written consent of the Tribe(s); or
c. Clustering development so as to avoid disturbing the site; or
d. Setting the site aside for non-impacting activities, such as storage; or
e. If permitted pursuant to the substantive and procedural requirements of ORS 97.750, contracting with a qualified archaeologist to excavate the site and remove any cultural objects and human remains, reinterring the human remains at the developer’s expense; or
f. Using civil means to ensure adequate protection of the resources, such as acquisition of easements, public dedications, or transfer of title.

If a previously unknown or unrecorded archaeological site is encountered in the development process, the above measures shall still apply. Land development activities which violate the intent of this strategy shall be subject to penalties prescribed in ORS 97.990.

III. Upon receipt of the statement by the Tribe(s), or upon expiration of the Tribe(s) thirty day response period, the local government shall conduct an administrative review of the Site Plan Application and shall:

a. Approve the development proposal if no adverse impacts have been identified, as long as consistent with other portions of this plan, or
b. Approve the development proposal subject to appropriate measures agreed upon by the landowner and the Tribe(s), as well as any additional measures deemed necessary by the local government to protect the cultural, historical and archaeological values of the site. If the property owner and the Tribe(s) cannot agree on the appropriate measures, then the governing body shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by preponderance of evidence whether the development project may be allowed to proceed, subject to any modifications deemed necessary by the governing body to protect the cultural, historical and archaeological values of the site.

IV. Through the “overlay concept” of this policy and the Special Considerations Map, unless an exception has been taken, no uses other than propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation shall be allowed unless such uses are consistent with the protection of the cultural, historical and archaeological values or unless appropriate measures have been taken to protect the historic and archaeological values of the site.
This strategy recognizes that protection of cultural, historical, and archaeological sites is not only a community’s social responsibility; it is also legally required by ORS 97.745. It also recognizes that cultural, historical, and archaeological sites are non-renewable cultural resources.

Policy #22 Mitigation Sites: Protection Against Pre-emptory Uses

Consistent with permitted uses and activities:

“High Priority” designated mitigation sites shall be protected from any new uses or activities which could pre-empt their ultimate use for this purpose.

“Medium Priority” designated mitigation sites shall also be protected from uses which would pre-empt their ultimate use for this purpose.

4 Camp Castaway: No trace remains of the beach site on the North Spit where the first European settlers made landfall in 1852, during a storm, and set up camp.
However, repair of existing dikes or tidegates and improvement of existing drainage ditches is permitted, with the understanding that the permitting authority (Division of State Lands) overrides the provisions of Policy #38. Wetland restoration actions, designed to answer specific research questions about wetland mitigation and/or restoration processes and techniques, may be permitted upon approval by Division of State Lands and as prescribed by the uses and activities table in this Plan.

“Low Priority” designated mitigated sites are not permanently protected by the Plan. They are intended to be a supplementary inventory of potential sites that could be used at the initiative of the landowner. Pre-emptory uses shall be allowed on these sites, otherwise consistent with uses and activities permitted by the Plan. Any change in priority rating shall require a Plan Amendment.

Except as provided above for research of wetland restoration and mitigation processes and techniques, repair of existing dikes, tidegates and improvement of existing drainage ditches, “high” and “medium” priority mitigation sites shall be protected from uses and activities which would pre-empt their ultimate use for mitigation.

I. This policy shall be implemented by:
   a. Designating "high" and "medium" priority mitigation sites on the Special Considerations Map; and
   b. Implementing an administrative review process that allows uses otherwise permitted by this Plan but proposed within an area designated as a "high" or "medium" priority mitigation site only upon satisfying the following criteria:
      1. The proposed use must not entail substantial structural or capital improvements (such as roads, permanent buildings or nontemporary water and sewer connections); and
      2. The proposed use must not require any major alteration of the site that would affect drainage or reduce the usable volume of the site (such as extensive site grading/excavation or elevation from fill); and
      3. The proposed use must not require site changes that would prevent the expeditious conversion of the site to estuarine habitat; or
      4. For proposed wetland restoration research projects in “medium” priority mitigation sites the following must be submitted:
         i. A written approval of the project, from Division of State Lands, and
         ii. A description of the proposed research, resource enhancement, and benefits expected to result from the restoration research project.
   c. Local government’s review and comment on state and federal waterway permit applications for dike/tidegate and drainage ditch actions.

This policy recognizes that potential mitigation sites must be protected from pre-emptory uses. However, “low priority” sites are not necessarily appropriate for mitigation use and are furthermore in plentiful supply. It further recognizes that future availability of “medium priority” sites will not be will not be pre-empted by repair of existing dikes, tidegates and drainage ditches, or otherwise allowed by this policy. This insures the continuation of agricultural production until such time as sites may be required for mitigation. This policy also recognizes that research activities designed to gain further understanding of wetland restoration and mitigation processes and techniques are needed. The consideration of
"medium priority" mitigation sites for this purpose will facilitate future identification and successful use of mitigation sites (OR 95-11-010PL 1/24/96).

RESPONSE: The Applicant states that CBEMP Policy #22 is potentially applicable to the Pipeline in the 15-RS CBEMP management unit. However, according to County maps, the Early Works Alignment would not cross any designated mitigation sites in the 15-RS estuarine zone. Therefore, Policy #22 does not apply to the Early Works Alignment and staff agrees after reviewing the map of the area.

Policy #23 Riparian Vegetation and Streambank Protection

I. Local government shall strive to maintain riparian vegetation within the shorelands of the estuary, and when appropriate, restore or enhance it, as consistent with water-dependent uses. Local government shall also encourage use of tax incentives to encourage maintenance of riparian vegetation, pursuant to ORS 308.792 - 308.803.

Appropriate provisions for riparian vegetation are set forth in the CCZLDO Section 4.5.180 (OR 92-05-009PL).

RESPONSE: The general conditions of the 7-D and 15-RS CBEMP management units require consideration of CBEMP Policy #23. This policy is purportedly implemented through the requirements of CCZLDO Section 4.5.180, Riparian Protection Standards in the Coos Bay Estuary Management Plan. CCZLDO 4.5.180 no longer exists. However, the former CCZLDO 4.5.180 generally required that riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland Fish and Wildlife habitat inventory maps, shall be maintained. The standard also provided the following exception, “[r]iparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways, provided that the vegetation to be removed is the minimum necessary to accomplish the purpose.” The Pipeline qualifies as a public utility and would therefore have been exempt from the 50-foot riparian vegetation maintenance requirements of the former CCZLDO Section 4.5.180 provided the vegetation removal is the minimum necessary for the Pipeline installation. Applicant has designed the project to minimize impacts to riparian vegetation as much as possible. Therefore, the Early Works Alignment complies with Policy #23.

II. Local government shall encourage streambank stabilization for the purpose of controlling streambank erosion along the estuary, subject to other policies concerning structural and non-structural stabilization measures.

This strategy shall be implemented by Oregon Department of Transportation (ODOT) and local government where erosion threatens roads. Otherwise, individual landowners in cooperation with the Oregon International Port of Coos Bay, and Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands and Oregon Department of Fish & Wildlife shall be responsible for bank protection.

This strategy recognizes that the banks of the estuary, particularly the Coos and Millicoma Rivers are susceptible to erosion and have threatened valuable farm land, roads and other structures.

RESPONSE: This policy only mandates the strategy for erosion that threatens road otherwise the intent is to recognize erosion and the susceptibility of erosion on valuable farmland, road and structures. Therefore, the applicant is correct in their analysis that this policy is not a binding approval criterion for the Pipeline. However, the Applicant will comply with the Erosion Control and Re-vegetation Plan in their Exhibit 6, which will minimize and mitigate for any streambank erosion associated with the Pipeline in these two districts. Therefore, this policy has been addressed.
Policy #27  Floodplain Protection within Coastal Shorelands.
The respective flood regulations of local government set forth requirements for uses and activities in identified flood areas; these shall be recognized as implementing ordinances of this Plan.

This strategy recognizes the potential for property damage that could result from flooding of the estuary.

RESPONSE: The general conditions in the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of CBEMP Policy #27.

Policy #27 is satisfied through compliance with the implementing floodplain ordinance in the former CCZLDO Article 4.6, the Floodplain Overlay zone. The Floodplain Overlay zone is currently CCZLDO 4.11. The Applicant describes how the Pipeline satisfies the applicable floodplain standards in both within and outside the CBEMP districts. However, the applicant is working on supplemental information that should be provided to ensure compliance with applicable Floodplain Standards in Article 4.11, see letter dated February 14, 2019 attached to this report. Staff will note the application incorrectly marked floodway and none of the proposal is located in a floodway.

Policy #28  Recognition of LCDC Goal #3 (Agricultural Lands) Requirements for Rural Lands Within the Coastal Shorelands Boundary

Unless otherwise allowed through an Exception, Coos County shall manage all rural lands designated within the Coastal Shorelands Boundary as being suitable for "Exclusive Farm Use" (EFU) of ORS 215. Allowed uses are listed in Appendix 1, of the Zoning and Land Development Ordinance.

This policy shall be implemented by using the Special Considerations Map (Policy #3) to identify EFU suitable areas and to abide by the prescriptive use and activity requirements of ORS 215 in lieu of other management alternatives otherwise allowed for properties within the "EFU-overlay" set forth on the Special Considerations Map and, except where otherwise allowed by exceptions, for needed housing and industrial sites.

The "EFU" zoned land within the Coastal Shorelands Boundary shall be designated as "Other Aggregates Sites" inventories by this Plan pursuant to ORS 215.298(2). These sites shall be inventoried as "1B" resources in accordance with OAR 660-16-000(5)(b). Coos County will re-evaluate these inventoried sites pursuant to the requirements of said rule at, or before, County's periodic review of the Comprehensive Plan. (OR 92-08-013PL 10/28/92).

RESPONSE: The general conditions in the 15-RS CBEMP management unit require consideration of CBEMP Policy #28. Staff has reviewed this policy and to the extent that some of the 15-RS may be identified as agricultural lands the applicant has addressed the pipelines as subject to ORS 215. There are no mandatory criteria that the applicant needs to address. The applicant has addressed the applicability of the policy and again it has been addressed.

Policy #30  Restricting Actions in Beach and Dune Areas with "Limited Development Suitability" and Special Consideration for Sensitive Beach and Dune Resources (moved from Policy #31)

1. Coos County shall permit development within areas designated as "Beach and Dune Areas with Limited Development Suitability" on the Coos Bay Estuary Special Considerations Map only upon the establishment of findings that shall include at least:
a. The type of use proposed and the adverse effects it might have on the site and adjacent areas;
b. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
c. Methods for protecting the surrounding area from any adverse effects of the development; and
d. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use; and
e. Whether drawdown of groundwater would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of saltwater into water supplies. Implementation shall occur through an administrative conditional use process which shall include submission of a site investigation report by the developer that addresses the five considerations above.

II. This policy recognizes that:

a. The Special Considerations Map category of "Beach and Dune Areas with Limited Development Suitability" includes all dune forms except older stabilized dunes, active foredunes, conditionally stabilized foredunes that are subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) subject to ocean flooding;
b. The measures prescribed in this policy are specifically required by LCDC Goal #18 for the above-referenced dune forms, and that
c. It is important to ensure that development in sensitive beach and dune areas is compatible with, or can be made compatible with, the fragile and hazardous conditions common to beach and dune areas.

III. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977 (see Section 3. Definitions for "development"). Criteria for review of all shore and beachfront protective structures shall provide that:

a. Visual impacts are minimized;
b. Necessary access to the beach is maintained;
c. Negative impacts on adjacent property are minimized; and
d. Long-term or recurring costs to the public are avoided.

IV. Local government shall cooperate with state and federal agencies in regulating the following actions in beach and dune areas by sending notification of Administrative Conditional Use decision:

a. Destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage),
b. The exposure of stable and conditionally stable areas to erosion,
c. Construction of shore structures which modify current or wave patterns leading to beach erosion, and
d. Any other development actions with potential adverse impacts.

RESPONSE: A general condition in the 7-D CBEMP management unit requires consideration of CBEMP Policy #30. The Early Works Alignment does not cross or impact any area that the County’s maps designate as a Beach and Dune Area with Limited Development Suitability. Therefore, this policy does not apply to the application.
Policy #34 - Recognition of LCDC Goal #4 (Forest Lands) Requirements for Forest Lands within the Coastal Shorelands Boundary.

Unless otherwise allowed through an Exception, Coos County shall manage all rural lands designated on the Special Considerations Map as "Forest Lands" within the Coastal Shorelands Boundary consistent with the "Forest Uses" requirements of LCDC Goal #4. Allowed uses are listed in Appendix 3 of the Zoning and Land Development Ordinance.

Where the County's Comprehensive Plan identified major marshes, significant wildlife habitat and riparian vegetation on coastal shorelands subject to forest operations governed by the Forest Practices Act, the Forest Practice program and rules of the Department of Forestry shall be carried out in such a manner as to protect and maintain the special shoreland values of the major marshes, significant wildlife habitat areas, and forest uses especially for natural shorelands and riparian vegetation.

This policy shall be implemented by using the Special Considerations Map (Policy #3) to identify "Forest Lands", and to abide by the prescriptive use and activity requirements of LCDC Goal #4 in lieu of other management alternatives otherwise allowed for properties within the "Forest Lands-Overlay" set forth on the Special Considerations Map, and except where otherwise allowed by Exception for needed housing and industrial sites.

This policy recognizes that the requirements of LCDC Goal #4 are equal and not subordinate to other management requirements of this Plan for "Forest Lands" located within the Coastal Shorelands Boundary.

RESPONSE: A general condition in the 15-RS CBEMP management unit requires consideration of CBEMP Policy #34. This requirement requires a review of the Agricultural and Forest Lands Map to find the overlay areas as shown above. Therefore, this is not applicable.

Policy #49 Rural Residential Public Services
Coos County shall provide opportunities to its citizens for a rural residential living experience, where the minimum rural public services necessary to support such development are defined as police (sheriff) protection, public education (but not necessarily a rural facility), and fire protection (either through membership in a rural fire protection district or through appropriate on-site fire precaution measures for each dwelling).

Implementation shall be based on the procedures outlined in the County's Rural Housing State Goal Exception.
I. This strategy is based on the recognition:
   a. That physical and financial problems associated with public services in Coos Bay and North Bend present severe constraints to the systems’ ability to provide urban level services, and
   b. That rural housing is an appropriate and needed means for meeting housing needs of Coos County’s citizens.

Policy #50 Rural Public Services
Coos County shall consider on-site wells and springs as the appropriate level of water service for farm and forest parcels in unincorporated areas and on-site DEQ-approved sewage disposal facilities as the appropriate sanitation method for such parcels, except as specifically provided otherwise by Public Facilities and Services Plan Policies #49, and #51. Further, Coos County shall consider the following facilities and services appropriate for all rural parcels: fire districts, school districts, road districts, telephone lines, electrical and gas lines, and similar, low-intensity facilities and services traditionally enjoyed by rural property owners.

This strategy recognizes that LCDC Goal #11 requires the County to limit rural facilities and services.

Policy #51 Public Services Extension

I. Coos County shall permit the extension of existing public sewer and water systems to areas outside urban growth boundaries (UGBs) where such service provision is solely for:
   a. development of designated industrial sites;
   b. development of "recreational" planned unit developments (PUD’s);
   c. curing documented health hazards;
   d. providing domestic water to an approved exception for a rural residential area.

II. This strategy shall be implemented by requiring:
   a. that those requesting service extensions pay for the costs of such extension; and
   b. that the services and facilities be extended solely for the purposes expressed above, and not for the purpose (expressed or implied) of justifying further expansion into other rural areas; and
   c. that the service provider is capable of extending services; and
   d. prohibiting hook-ups to sewer and water lines that pass through resource lands as allowed by "I, a through d" above; except, that hook-ups shall be allowed for uses covered under "II, a through d" above.

RESPONSE: General conditions in the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of Policy #49, #50 and #51. The Pipeline is not in need of rural residential public services. Therefore, these policies are not applicable to the Pipeline.

V. OVERLAY ZONES AND SPECIAL DEVELOPMENT CONSIDERATIONS

SECTION 4.11.125 - Special Development Considerations.
The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed in the Balance
of County zoning. The adopted maps and overlays have to be examined in order to determine how the inventory applies to the specific site.

* * * *

3. Historical, Cultural and Archaeological Resources, Natural Areas and Wilderness (Balance of County Policy 5.7)

The Historical/Archeological maps have inventoried the following:

- Historical;
- Area of Archaeological Concern;
- Botanical;
- Geological Resources.

* * * *

b. Areas of Archaeological Concern: Coos County shall continue to refrain from widespread dissemination of site-specific inventory information concerning identified archaeological sites. Rather, Coos County shall manage development in these areas so as to preserve their value as archaeological resources.

   i. This strategy shall be implemented by requiring development proposals to be accompanied by documentation that the proposed project would not adversely impact the historical and archaeological values of the project's site. "Sufficient documentation" shall be a letter from a qualified archaeologist/historian and/or a duly authorized representative of a local Indian tribe(s).

   ii. Properties which have been determined to have an "archaeological site" location must comply with the following steps prior to issuance of a "Zoning compliance Letter" for building and/or septic permits.

      1) The County Planning Department shall make initial contact with the Tribe(s) for determination of an archaeological site(s). The following information shall be provided by the property owner/agent:

         a) Plot plan showing exact location of excavation, clearing, and development, and where the access to the property is located;
         b) Township, range, section and tax lot(s) numbers; and
         c) Specific directions to the property.

      2) The Planning Department will forward the above information including a request for response to the appropriate tribe(s).

      3) The Tribe(s) will review the proposal and respond in writing within 30 days to the Planning Department with a copy to the property owner/agent.

      4) It is the responsibility of the property owner/agent to contact the Planning Department in order to proceed in obtaining a "Zoning Compliance Letter" (ZCL) or to obtain further instruction on other issues pertaining to their request.

   iii. In cases where adverse impacts have been identified, then development shall only proceed if appropriate measures are taken to preserve the archaeological value of the site. "Appropriate measures" are deemed to be those, which do not compromise the integrity of remains, such as:

      1) Paving over the sites;
      2) Incorporating cluster-type housing design to avoid the sensitive areas; or
      3) Contracting with a qualified archaeologist to remove and re-inter the cultural remains or burial(s) at the developer's expense. If an archaeological site is encountered in the process of development, which previously had been unknown to exist, then, these three appropriate measures shall still apply. Land
development activities found to violate the intent of this strategy shall be subject to penalties prescribed by ORS 97.745 (Source: Coos Bay Plan).

iv. This strategy is based on the recognition that preservation of such archaeologically sensitive areas is not only a community's social responsibility but is also a legal responsibility pursuant to Goal #5 and ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable, cultural resources (Source: Coos Bay Plan).

RESPONSE: The County has not inventoried any archaeological sites within the Balance of County segment of the Pipeline. Further, the MOA discussed in response to CBEMP Policy #18 is limited to instances when CBEMP Policy #18 is applicable, and it does not apply to the Balance of County. Nevertheless, the CRPA and the UDP attached to the MOA and included in Exhibit 9 will apply to the Balance of County and establish procedures for coordination between Applicant and the Tribes in the event of an unanticipated discovery of archaeological resources. Applicant is willing to accept a condition of approval requiring compliance with the CRPA and UDP. For these reasons, and subject to the proposed condition, the Pipeline satisfies this special consideration with the condition that applicant follow the MOA.

4. Beaches and Dunes (Policy 5.10)

The Beaches and Dunes map has inventoried the following:

- **Beaches and Dunes**
  - Suitable for most uses; few or no constraints (Does not require a review)
  - Limited Suitability; special measures required for most development
  - Not Suitable for Residential, commercial or Industrial Structures

Purpose Statement:

Coos County shall base policy decisions for dunes on the boundaries for these areas as identified on the plan map titled “Development Potential within Ocean Shorelands and Dunes” and the boundaries delineates following specific areas "Suitable", "Limited Suitability" and "Not Suitable" areas of development potential.

RESPONSE: The Early Works Alignment does not cross any areas the County maps designate as beach and dune areas with limited development suitability or that are unsuitable for development. Therefore, this criterion does not apply to the Early Works Alignment.

* * * *

7. Natural Hazards (Balance of County Policy 5.11)

The Natural Hazards map has inventoried the following hazards:

- **Flood Hazard**
  - Riverine flooding
  - Coastal flooding
- **Landslides**
- **Earthquakes**
  - Liquefaction potential
  - Fault lines
- **Tsunamis**
- **Erosion**
  - Riverine streambank erosion
Coastal ▪ Shoreline and headlands ▪ Wind

Wildfire
  - High wildfire hazard
  - Gorse fire

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a. Flooding: Coos County shall promote protection of valued property from risks associated with river and coastal flooding along waterways in the County through the establishment of a floodplain overlay zone (/FP). See Sections 4.11.211-257 for the requirements of this overlay zone.

1. Floodplain Overlay Zone

CCZLDO 4.11.231 - Lands to Which [The Floodplain Overlay Zone] Applies

This Ordinance shall apply to all areas of special flood hazards within the jurisdiction of Coos County that have been identified on the Flood Insurance Maps dated March 17, 2014 as described in Section 4.11.232.

RESPONSE: The Early Works Alignment of the Pipeline will be installed below existing grades, and no permanent structures will be placed above existing grades within the FEMA 100-year floodplain. In addition, at the completion of the Pipeline installation, all construction areas will be restored to their pre-construction grade and condition. Floodplain compliance will be verified prior to construction and the issuance of a zoning compliance letter. Therefore, except where noted below, the provisions of the Floodplain Overlay zone do not apply to the Early Works Alignment.

CCZLDO 4.11.251 - General Floodplain Permit Approval Standards

In all areas of special flood hazards, the following standards are required:

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7. Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, roads and driveway maintenance, landscaping, gardening and similar uses which are excluded from the definition because it is the County’s determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.

Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before “other development” may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer’s certification that the “other development” shall not:

a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or
b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.

**RESPONSE:** In the Balance of County, the Pipeline is located in the designated 100-year floodplain, which is a type of special flood hazard area, near Kentuck Slough. The Pipeline is not located in a designated floodway. The Pipeline will be located below-grade; however, Applicant will complete grading, which is a type of “other development,” in order to install the Pipeline. Therefore, this provision is applicable, and Applicant must obtain the County’s review and authorization of a floodplain application before the “other development” may occur. Applicant will submit the licensed engineer’s certification that the “other development” will not result in a cumulative increase of more than one foot during the occurrence of the base flood discharge, as required by subsection b. of this section. Once the report is filed it is reasonable to find the proposal complies with the requirements of the flood hazard overlay.

**SECTION 4.11.257 - Critical Facility**

Construction of new critical facilities shall be, to the extent practicable, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available, taking into account cost and practicability. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

**RESPONSE:** This provision only applies to “critical facilities” as defined in CCZLDO 4.11.220.9. The County should find that the Pipeline is not a “critical facility” because it is not designed to produce, use, or store hazardous materials, and because it will be designed to withstand a 500-year flood event. Therefore, the Pipeline does not meet the definition in CCZLDO 4.11.220.9.

Alternatively, the Pipeline is a “critical facility;” however, it is not feasible for Applicant to devise a route for the Pipeline that does not cross the Special Flood Hazard Area near the Kentuck Slough given the need for the Early Works Alignment both to avoid Haynes Inlet and to connect with the existing approved Pipeline alignment. The Pipeline does not have floors because it is a gas pipeline. Applicant has designed the Pipeline to ensure to the greatest possible extent that gas will not leak or be released into floodwaters or elsewhere. To the extent this provision is applicable, it is satisfied.

**SECTION 4.11.125.7…**

b. Landslides: Areas subject to landslides (mass movement) include active landslides, inactive landslides, earth flow and slump topography, and rockfall and debris flow terrain as identified on the 2015 Coos County Comprehensive Plan Hazards Map (mapped as the very high-existing landslides).

Coos County shall permit the construction of new structures in an inventoried Landslide hazard area (earth flow/slump topography/rock fall/debris flow) through a conditional use process subject to a geological assessment review as set out in Article 5.11.
RESPONSE: Although portions of the Early Works Alignment pass through landslide areas inventoried in the County’s Hazards Map, the Pipeline is not a “structure” within the meaning of CCZLDO 2.1.200 because it is a subsurface natural gas pipeline and not a “walled and roofed building … that is principally above ground.” Therefore, the landslide hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment.

c. Tsunamis: Coos County shall promote increased resilience to a potentially catastrophic Cascadia Subduction Zone (CSZ) tsunami through the establishment of a Tsunami Hazard Overlay Zone (THO) in the Balance of County Zoning. See Sections 4.11.260-4.11.270 for the requirements of this overlay zone.

SECTION 4.11.270 Tsunami Hazard Overlay Zone (Purpose, Applicability, and Uses)

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2. Applicability of Tsunami Hazard Overlay Zone

The Tsunami Inundation Zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary and Coquille Estuary Management Plans when the Estuary Policies directly reference this section. Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section:

a. Except as provided in subsection (b), all lands identified as subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section.

b. Lands within the area subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) that have a grade elevation, established by fill or other means, higher than the projected elevation of the XXL magnitude local source tsunami event are exempt from the requirements of this section. Grade elevations shall be established by an elevation survey performed by a Professional Land Surveyor licensed in Oregon.

RESPONSE: Segments of the Early Works Alignment are located in the balance of County; however, all permanent improvements associated with the Early Works Alignment will be located below grade. Therefore, they will not be subject to inundation from a tsunami. The Tsunami Hazard Overlay Zone is not applicable to the Pipeline.

SECTION 4.11.125.7…

d. Earthquakes: Areas subject to earthquakes include fault lines and liquefaction potential, as identified on the 2015 Coos County Comprehensive Plan Natural Hazards Map.

Coos County shall permit the construction of new structures in known areas potentially subject to earthquakes (fault line and liquefaction potential) through a conditional use process subject to a geologic assessment review as set out in Article 5.11. Coos County shall support Oregon State Building Codes to enforce any structural requirements related to earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the geologic assessment report at the time of review.
**RESPONSE:** Although portions of the Early Works Alignment pass through areas of liquefaction potential as identified by the County’s Natural Hazards Map, the Pipeline is not a “structure” within the meaning of CCZLDO 2.1.200 because it is a subsurface natural gas pipeline and not a “walled and roofed building … that is principally above ground.” Therefore, the landslide hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment. This development consideration is only applicable outside of the estuary. The applicant has addressed this criteria.

e. **Erosion:** Coos County shall promote protection of property from risks associated with shoreline, headland, and wind erosion/deposition erosion hazards.

Coos County shall promote protection of property from risks associated with bank erosion along rivers and streams through necessary erosion-control and stabilization measures, preferring non-structural solutions when practical.

Any proposed structural development within a wind erosion/deposition area, within 100 feet of a designated bank erosion area, or on a parcel subject to wave attack, including all oceanfront lots, will be subject to a geologic assessment review as set out in Article 5.11.

**RESPONSE:** The Early Works Alignment does not cross any area identified as a shoreline, headland, or wind erosion/deposition erosion hazard on the County’s Natural Hazards Map. Therefore, the erosion hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment.

f. **Wildfires:** Coos County shall promote protection of property from risks associated with wildfires and gorse fires by requiring all new dwellings, permanent structures, and replacement dwellings and structures shall, at a minimum, meet the following standards on every parcel designated or partially designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map:

* * * *

**RESPONSE:** The Pipeline is not a “dwelling, permanent structure, or replacement dwelling or structure.” The Pipeline is a subsurface natural gas pipeline and not a dwelling. Furthermore, the Pipeline is not a “structure” within the meaning of the CCZLDO because it is not a “walled and roofed building … that is principally above ground.” Therefore, the wildfire hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment.

**Conclusion:** The applicant will need to provide an elevation certificate or supplemental information for final compliance with the floodplain standards. The applicant has addressed all other requirements and staff suggests that the Hearings Officer can recommend approval.

**Jill Rolfe,**
Planning Director
Application is attached

Attachment 1 – Application
Attachment 2 – Order #10-08-045PL
Attachment 3 – February 14, 2019 letter from the applicant