Via Email

September 3, 2013

Jill Rolfe, Planning Director
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Re: ORCA Supplemental Comments on Jordan Cove Energy Project on South Dunes Power Plant Project, File No. SP-12-02

On behalf of Oregon Coast Alliance (ORCA), please accept these supplemental comments on the Applicant Jordan Cove Energy Project, LLC’s (the Applicant) proposed South Dunes Power Plant Project (Project).

The County has not minimized the risk to life and property from well-known natural disasters or hazards

In ORCA’s previous comment letters dated August 20, 2013 and August 22, 2013, ORCA submitted numerous exhibits demonstrating that the Project’s location is subject to significant natural disasters and hazards, including earthquakes and tsunamis. Coos County has not yet updated its Special Considerations Phenomenon 7 – Natural Hazards Map to incorporate the natural hazards that have been identified by the Oregon Department of Geology and Mineral Industries (DOGAMI) and other agencies. Specifically, ORCA submitted maps indicating that the Project’s location is subject to significant earth shaking (Exhibit A), ground shaking amplification (Exhibit B), liquefaction (Exhibit C), flooding (Exhibit D), and tsunami inundation (Exhibits E, L and M). ORCA also submitted exhibits demonstrating the high probability that another Cascadia earthquake will strike on or near the Oregon coast. See Exhibits F, G, H, I, J, and K. Though the County has not updated its special considerations maps to account for these well-known hazards, the County is obligated to regulate development in areas subject to natural disasters and hazards. Under Coos County Comprehensive Plan policy 5.11, “Coos County shall regulate development in known areas potentially subject to natural disasters and hazards so as to
minimize risks to life and property.” The exhibits enumerated above demonstrate that the Project is located in an area that is “potentially subject to natural disasters and hazards,” and, therefore, the County must “minimize risks to life and property.” The County and the Applicant have not made a sufficient showing that appropriate measures have been made to “minimize risks to life and property.”

ORCA also notes that these natural disasters and hazards pose significant risks beyond the disasters and hazards themselves. The Project is a hazardous facility under ORS 455.447(1)(b), and the natural hazards could debilitating the facility, releasing materials that can pose significant risks to the residents of Coos Bay and the surrounding area. The recent 2011 earthquake and tsunami that devastated Japan should be a lesson about the potential impacts of hazardous facilities and natural hazards. The Fukushima nuclear plant that was debilitated in the tsunami is still leaking radioactive water, and recently released 300 tons of highly radioactive water. See Exhibit N (September 3, 2013, BBC article on radioactive water leaks). Though the Applicant is not proposing a nuclear power plant, the location of the Project in an area subject to earthquakes and tsunamis and the hazardous nature of the facility eerily echo the tragedy in Japan. It is, therefore, of the utmost importance that the County utilizes CCCP 5.11 to ensure that appropriate safeguards are in place.

The application cannot be approved until the Applicant demonstrates compliance with the Shoreline Development Zone (7-D)

The County maintains that all development will occur in the Industrial zone (IND), but applications submitted to other state and federal agencies, which are already in the record, demonstrate that components of the development will necessarily be placed within the 7-D zone. Thus, the Applicant must demonstrate compliance with relevant Coos Bay Estuary Management Plan policies (CBEMP).

CBEMP policy 14 permits only limited development in the 7-D zone, and specifically requires that development in 7-D zone be reserved for “water-dependent commercial and industrial uses” where the uses “cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.” The Applicant, therefore, has not demonstrated compliance with the requirements of the 7-D zone, including CBEMP polices 14, 17, 18, 23, 27, and 30.

The County must condition approval of the property on complete and satisfactory NEPA analysis

Because the Project will require compliance with the National Environmental Policy Act (NEPA), the County should condition the application’s approval on satisfactory NEPA analysis. The Applicant must obtain various permits and approvals from both state and federal agencies, but many of those permits and approvals only consider individualized aspects of the Project. Under NEPA, the cumulative impacts of a proposal must be addressed and sufficiently discussed, and it is unlawful to segment different components of a Project. Because the NEPA
analysis will connect all of the dots for the larger Project, the County should condition approval on satisfactory NEPA analysis.

The County must also condition the construction of any aspect of the Project on satisfactory NEPA analysis because NEPA requires “agencies to prepare NEPA documents, such as an [Environmental Assessment] or an [Environmental Impact Statement], ‘before any irreversible and irretrievable commitment of resources’” has occurred. See Metcalf v. Daley, 214 F.3d 1135 (2000); Andrus v. Sierra Club, 442 U.S. 347, 351 (1979) (NEPA analysis must occur “at the earliest possible time to ensure that planning and decisions reflect environmental values”). If the Applicant breaks ground before the agency or agencies have completed their NEPA analysis, then the agencies will have prepared their environmental document too late, in violation of NEPA. Therefore, the County must condition the Project on satisfactory NEPA analysis and must also condition the Project’s ground-breaking activities on the completion of the NEPA analysis.

The Applicant must comply with applicable approval criteria regardless of Ordinance No. 13-07-002PL.

On July 18, 2013, Coos County passed Ordinance No. 13-07-002PL, which deleted the requirement for a Site Plan Review pursuant to Article 5.6 for all uses within the IND zone under section 4.4.610. Though the Applicant may take the position that it no longer needs to perform a site plan review, the Applicant must still comply with all other applicable approval standards and criteria associated with the 7-D zone (outlined above and including Table 7-D) because the record contains evidence that the Applicant will place Project components within the 7-D zone. As noted above, the Applicant has not yet satisfied applicable criteria for the 7-D zone. Therefore, Ordinance No. 13-07-002PL does not absolve Coos County of carrying out its land use process for the proposed Project.

Conclusion

Because the Applicant and County have not provided sufficient complied with relevant comprehensive plan and CBEMP policies, the application must be denied.

Sincerely,

[Signature]

Sean T. Malone
Attorney for Oregon Coast Alliance
cc: Oregon Coast Alliance