September 10, 2013

Andrew Stamp, Hearings Officer
c/o Jill Rolfe, Coos County Planning Director
Coos County Courthouse
250 N. Baxter
Coquille, OR 97423

Re: South Dunes Power Plant Appeals Hearing; Appeal File Nos. AP-13-01 & AP-13-02;
Application File No. SP-12-02; Applicant's Sur-rebuttal

Dear Hearings Officer Stamp:

This letter is submitted on behalf of Jordan Cove Energy Project, L.P., the "Applicant," in the
above-captioned case, as its sur-rebuttal during the second open record period. Please make the
letter a part of the hearing record.

The purpose of this letter is to respond to the issues raised by Appellants and other opponents of
the project in the first open record period, which closed on September 3, 2013. Appellants and
other opponents raise similar issues, and many of these issues were already addressed in the
Applicant's submittal during the first open record period. Nevertheless, the Applicant's
responses will be summarized herein categorized by issue.

1. Coos County Comprehensive Policy ("CCCP") 5.11

As discussed on the record at the public hearing, absent anything more, comprehensive plan
policies are not applicable review criteria for quasi-judicial land use applications. Both the
Oregon Coast Alliance ("ORCA") and Oregon Shores have again, incorrectly, raised CCCP
Policy 5.11 as an applicable review criterion for the design and site plan review application.
CCCP Policy 5.11 is not referenced as a criterion in CCZLOD Section 5.6.400, Site
Development Criteria and Standards. Accordingly, CCCP Policy 5.11 is irrelevant to the
application. In further response, CRAG Law Center's reference to the decision in Southern
Oregon Pipeline Information Project, Inc. v. Coos County, 57 Or LUBA 44 (2008) is misplaced.
While CRAG is correct that the power plant site is outside the Coos Bay coastal shorelands
boundary, that fact does not elevate CCCP Policy 5.11 to an applicable review criterion for the
design and site plan review application under CCZLDO Section 5.6.400. Further, it should be noted that the plan implementation strategies of CCCP Policy 5.11 are essentially legislative directives to the County. Accordingly, CCCP Policy 5.11 is inapplicable to the application for design and site plan review.

2. **Hazardous Facility: ORS Chapter 455**

As previously decided by the Coos County Board in the decisions referenced by the Director in her staff report at the hearing, ORS Chapter 455 is part of the State of Oregon's building code statute which is inapplicable to land use applications. Rather, these regulations are addressed at the time of building permit applications. ORS Chapter 455.446 is implemented by the administrative rules adopted by the State Department of Geology and Mineral Industries (DOGAMI) at Division 5 of OAR Chapter 632. Division 5 controls the procedures for obtaining exemptions and exceptions to the statute and rule for various types of facilities. In consultation with the Coos County Counsel and Planning Director, Coos County has determined not to make the determinations referenced in sections (1) and (2) of OAR 632-005-0070. Accordingly, it appears that the county has elected not to make a determination of whether a facility or structure is subject to DOGAMI's tsunami inundation zone rules and, specifically, whether the proposed power plant and gas conditioning facility is a "hazardous facility" within the meaning of ORS 455.447(1)(b). Rather, the state building official will make such determination at the time of building permit application. Finally, as pointed out in the applicant's prior rebuttal, even if the integrated power plant and gas conditioning facility are determined by the authority enforcing the Oregon Structural Specialty Code to be a "hazardous facility," ORS 455.447(4) only requires the developer of such facilities to consult with DOGAMI for assistance in determining the impact of possible tsunamis on the proposed development and for assistance in preparing methods to mitigate risk at the site of a potential tsunami. The applicant submits that the integrated power plant and gas conditioning facility is not a "hazardous facility" under the statute, but nonetheless, is already in consultation with DOGAMI.

3. **NEPA**

Compliance with the National Environmental Policy Act ("NEPA") has been raised by Citizens Against LNG, ORCA and Jonathan Hansen. The applicant understands their arguments to be that no land use permits can be applied for or obtained prior to the completion of the NEPA environmental impact analysis. The opponents misconstrue the applicable law.

The opponents erroneously claim that the county must condition the local permitting process on the approval of a complete and satisfactory NEPA analysis. ORCA Supplemental Comments at 2-3. However, NEPA does not apply to state or local actions and only applies to the decisions of federal agencies, as "major federal actions." 42 U.S.C. § 4332(2)(C) (emphasis added). NEPA was enacted by Congress for the environmental review of actions carried out by the
federal government, and imposes certain obligations on the federal government, but not state or local governments. See 42 U.S.C. § 4331(b). A requirement of NEPA is that all agencies of the federal government prepare an environmental impact statement ("EIS") when they undertake or fund "major federal actions" that significantly affect the quality of the human environment, but once again the obligation is on a federal agency and not on a local or state government.

42 U.S.C. § 4332(2)(C); see also 40 C.F.R. § 1501.4 (the Council on Environmental Quality's NEPA regulations also explicitly reference that a federal agency is the responsible party for completing an EIS, "[i]n determining whether to prepare an environmental impact statement the Federal agency shall . . .") (emphasis added). The courts have also found that "NEPA does not regulate the conduct of private parties or state or local governments. NEPA requires the federal government to issue an environmental impact statement before taking any action 'significantly affecting the quality of the human environment.' 42 U.S.C. § 4332(2)(C). Since NEPA requires only action by the government, no private party can comply with NEPA. It is for that reason that in a lawsuit to compel compliance with NEPA, no one but the federal government can be a defendant." Forest Guardians v. Bureau of Land Management 188 F.R.D. 389, 393 (D.N.M. 1999).

It is clear that the local and state permitting processes are separate from the federal NEPA process. As a result, Coos County is only obligated to comply with its laws and nothing more or less. State and local permits for a project are frequently issued before the NEPA review is completed for federal approvals required for that project. For example, the Cape Wind Project, a proposed offshore wind farm in Nantucket Sound which has been the subject of a complex permitting process spanning 11 years, had state and local permits issued prior to the lead agency ever issuing an EIS for the project. In fact, the state and local permitting process for Cape Wind was completed in 2009, a year earlier than the NEPA process, which was completed in 2010. Cape Wind Project Timeline, available at http://www.capewind.org/article26.htm (last accessed on Sept. 9, 2013). Similarly, BrightSource Energy's Ivanpah Project, the largest concentrating solar power project currently in operation in the U.S., completed its state permitting process before completing its federal NEPA permitting process. BrightSource Energy, Inc., Press Release, "U.S. Bureau Of Land Management Approves BrightSource Energy's Ivanpah Solar Electric Generating System," (Oct. 7, 2010), available at http://www.brightsourceenergy.com/us-bureau-of-land-management-approves-brightsource-energies-ivanpah-solar-electric-generating-system. The Coos County permitting process is not subject to NEPA, and thus no conditions related to the adequacy of the NEPA analysis should be placed on the County's permitting process. To the extent concerns have been raised about the adequacy of the NEPA process, this is a question of federal law that should be raised in the federal administrative process for the Project's EIS.
4. **7-D**

As set forth in the applicant's prior rebuttal statements, supplemental site plans have been submitted during the hearing process to remove all project facilities and components from the 7-D zoning district area. Accordingly, no portion of the proposed power plant or gas conditioning facility any longer extends into the 7-D zoning district. Accordingly, all references to zoning district 7-D, or related CBEMP policies are inapplicable to this application.

5. **Floodplain**

The flood plain issue was also addressed extensively in the applicant's prior rebuttal statements. As previously stated, the applicant obtained a Letter of Map Amendment ("LOMA") from the Federal Emergency Management Agency ("FEMA") regarding the proposed power plant and gas conditioning facility site. The LOMA removed the site from the County's Special Flood Hazard Area. Accordingly, the county's flood plain regulations with respect to the Special Flood Hazard Areas are no longer applicable to any portion of the proposed power plant and gas conditioning facility site.

6. **Lakeside Airport**

The letter submitted on August 22, 2013 by Shawn Malone on behalf of ORCA incorrectly asserts that the proposed power plant and gas conditioning facility site is within the airport surfaces floating zone for the Lakeside Airport. According to the Coos County Planning Department, that assertion is incorrect and the County has furnished a map which show the respective locations of the proposed power plant and gas conditioning facility site relative to the distant location of the Lakeside Airport. Accordingly, the comments made by ORCA are inapplicable to this application and the regulations of the CCZLDO for the Lakeside Airport are irrelevant. The map is attached as Exhibit A.

7. **EFSC, OAR 345**

As previously indicated in the applicant's prior rebuttal statements, the applicant will comply with the applicable standards of review of the Energy Facility Siting Council ("EFSC"). However, EFSC standards are not applicable to Coos County's review of the application for design and site plan review under CCZLDO Section 5.6.400.

8. **DEQ Noise Standards**

Jody McCaffrey on behalf of Citizens Against LNG incorrectly asserts that the Department of Environmental Quality ("DEQ") regulations governing new industrial noise sources are applicable to the design and site plan review application through Coos County Comprehensive Plan, plan implementation strategy 5.12(5). As above stated, comprehensive plan policies are
not applicable review criteria to design and site plan review applications under the criteria set forth in CCZLDO Section 5.6.400. DEQ's noise standards will be applicable during the EFSC review of the proposed facility and prior to the issuance of building permits.

Thank you for the opportunity to provide this sur-rebuttal.

Very truly yours,

[Signature]

Mark D. Whitlow

MDW

Enclosure

Cc: JCEP (w/encls.)
Airport Surfaces
Lakeside Airport Map
Geo-Referenced

SP-12-02
Application Site

Exhibit A