Hearings Officer Andrew Stamp, P.C., Attorney At Law

Staff Present
Jill Rolfe, Planning Director

Others Present: See sign in sheet

Hearing Officer Stamp called the meeting to order at 2:30 p.m. on July 11, 2014 in the matter of an appeal of Pacific Connector Gas Pipeline, File No. AP-14-02. He introduced himself as the Coos County’s Hearings Officer on this matter. He gave his legal background and explained that he is not a county employee. His role in this matter is to conduct a public hearing and make a recommendation to the County Board of Commissioners (Board) in regards to the appeal of an extension request to the original pipeline in the Pacific Connector case that runs through Coos County. This deals with the original approval and does not include the any of the pipeline route amendments as they would have to apply for a separate extension request for that portion.

Staff confirmed that the application would have to apply for a separate extension for any of the amended alignment requests.

Hearing Officer Stamp stated that he will be making a recommendation to the Board and they are free to disregard the recommendation if they disagree with his recommendation or if they disagree with how he analyzes the law or the evidence. In making this recommendation he will apply the state and county’s existing land use laws and in this case the matter is subject to two approval criteria listed in the Coos County Zoning and Land Development Ordinance (CCZLDO). He cannot vary from or change that law. As the hearings officer he will provide an unbiased decision. He explained that he is an unbiased decision maker and bias means having certain preconceived thoughts about an issue, policy, the law of the facts or the parties. To disqualify a decision maker from participating in the hearing a bias must be an actual bias and not an apparent bias. A person that has actual bias or prejudice is when no fact can persuade them to vote, rule or make a recommendation in a different way than their preconceived notations. A person also has a bias when they have a personal interest or financial interest in the outcome. Parties are also entitled to have a decision maker that does not have a conflict of interest. An actual conflict of interest is a situation where a decision maker or a member of the decision maker’s family has a financial stake in the outcome of the proceeding. In this case, the Hearing Officer declared he was both unbiased and has no conflicts of interest. He has no interest in the subject properties, the project or the surrounding properties. He has had no pre-hearing ex parte contacts with any of the parties on the merits of this case nor had he visited the site. He asked the audience if there were any challenges to his statement that he had no conflicts of interest, bias or ex parte contacts. There were no challenges.

Hearing Officer moved on to explain the scope of the hearing. This appeal hearing is considered the first evidentiary hearing as authorized by Coos County Zoning and Land Development Ordinance (CCZLDO). The scope of the hearing is limited to the issue of whether or not the original pipeline permit should be granted an extension for another two years. The CCZLDO identifies two specific
criteria that pertain to that issue and that is what the testimony will be based on today. It is important that the testimony be limited to the specific criteria. He stated he would ask staff to summarize the staff report and there are copies available of the staff report at the sign-in table. The applicant and those in favor of the applications (Proponents) will be asked to testify, then the testimony in opposition to the application followed by neutral parties. The applicant will have a chance for rebuttal or closing statement; however, because this is the initial evidentiary hearing the record may be left open. The applicant has seven days after the close of the record to write a final argument and at the end of the hearing the hearings officer will consult with the applicant to find out if the applicant wants to take advantage of that opportunity. He asked for clarification on the timeline (150 day rule).

Staff confirmed that a waiver was not necessary at this time.

Hearings Officer Stamp stated that if someone would like to testify they needed to fill out one of the request to speak forms and turn it in to staff. Please make sure you sign in on the sheet at the desk. He asked for clarification on notices.

Staff stated that you have to either provide oral or written testimony in order to receive notice. You can request notice in writing.

Hearings Officer Stamp explained that when testifying please come to the podium and state your name and mailing address for the record. If you are representing another party please identify who you are representing. If you have exhibits such as written testimony, photographs and other documents please provide them to staff. Staff will place an exhibit number on them, compile them, and provide them to the hearings officer. The exhibits will be put on the website by staff. Testimony needs to be relevant to the review criteria that staff will identify. He explained that he presents a recommendation to the Board which then holds a meeting for deliberations only and does not take testimony. The Board reviews the entire record and in order for testimony to be reviewed by the Board it needs to be submitted through this hearings process. In order to preserve the right to appeal to LUBA a party or a party's representative must either submit orally or in writing testimony before the close of the public record in this matter. Likewise if the applicant wishes to object to proposed conditions of approval based on constitutional grounds he or she must do that before the close of the record to preserve those objections. Testimony will be limited to five minutes per person except the applicant and appellant who will receive fifteen minutes to present their testimony; however, more time may be granted if needed. He requested that Planning Director Rolfe present the summary of the staff report.

Director Rolfe stated the applicant in the matter is William’s Pacific Connector Gas Pipeline, L.P. and the appellant is Jody McCaffree. The file number is AP-14-02 and the request is for the approval of a (2) year extension of the development period for County File No. HBCU-10-01 (REM-11-01). The conditional use application was approved for a natural gas pipeline and associated facilities on approximately 49.72 miles extending from Jordan Cove Energy Project’s LNG Terminal upland from the Port’s Marine Terminal to the alignment segment in adjacent Douglas County. The applicable criteria in this matter can be found in CCZLDO Article 5.8 Appeals of Discretionary Decisions; § 5.8.150 Standing to Appeal, Appeals of Administrative Decisions §5.8.200; § 5.0.600 Board of Commissioners Review of Application and Appeals; § 5.7.300 Quasi-Judicial Land Use Hearings Procedures; § 5.0.700 Expiration and extensions of Conditional Uses.

Director Rolfe stated the notice of administrative decision was rendered on May 12, 2014 with an appeal deadline of May 27, 2014. An appeal was received on May 24, 2014. On June 17, 2014 the Board of Commissioners unanimously voted to pre-empt the appeal and hire a hearings officer as allowed in LDO § 5.0.600 which states in part “The Board of Commissioners reserves the right to pre-
empt any permit review process or appeal process and hear any permit application or appeal directly. The Board also reserves the right to appoint a Hearings Officer or Hearings Body to hear and consider any permit application or appeal. Notice of appeals of administrative actions shall be promptly forwarded to the Board of Commissioners, which may elect to hear the appeal instead of the Planning Commission.”

The appellant filed the appeal alleging that: (1) the applicant has completely changed the purpose and need of their project, (2) that the Federal Regulatory Energy Commission (FERC) certificate for their import pipeline project was withdrawn/vacated in April 2012 and (3) that the decision is not in compliance with the following Coos County Zoning and Land Development Ordinance provisions:

1. § 5.0.700(B)(i) that there have been no substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use;
2. Coos Bay Estuary Management Plan (CBEMP) Natural Aquatic and Conservation Zoning in the Coos Estuary;
3. CBEMP Policy 5 and 5a; and
4. Current project is not in compliance with Final Decision and Order 10-08-045PL Condition of Approval No. 25 which states that the project shall not be used for the export of liquefied natural gas.

Staff provided a staff report on July 3, 2014 with some findings for the hearings officer to consider. Staff found that the applicant met the criteria for an extension based on the information provided as of the date of the report. The appellant did not provide a detailed argument or any evidence that the criteria for the extension were not met. She asked if there were any questions about the staff report.

Hearings Officer Stamp stated he had one question in regards to condition 25. There was a hearing to amend that condition and that decision has been appealed to the Land Use Board of Appeals (LUBA) and LUBA has not rendered a decision but he asked staff if they knew when a decision would be available.

Director Rolfe replied she thought it would be available next Wednesday (July 16, 2014).

Hearings Officer Stamp asked if as part of that LUBA proceeding if a stay was issued that somehow made condition 25 still binding.

Director Rolfe replied that she did not believe so and there was nothing the CCZLDO that would support that conclusion.

Hearings Officer Stamp stated that was his only question. He called upon the applicant to provide testimony.

Mark Whitlow, Perkins Coie LLP, 1120 Couch St. Portland, stated that he was co-counsel with Richard Allen, Martin Law Group. He stated that the applicant’s presentation would be very brief saving time most of the time for rebuttal. The application was submitted addressing the applicable criteria. Notice was mailed out that an appeal had been filed but which really did not identify what is it was about. The appeal listed many things that weren’t relevant at all listing only code sections. There was only one of the applicable review criterion listed but the appeal did not recite why the application did not meet that criterion. Therefore, the applicant is not sure what the appeal is about. The staff report has done an excellent job of reviewing the applicant’s material and the appeal including the analysis that the application meets the applicable criteria and that appeal did not provide any evidence
or argument to the contrary. Therefore, at this point the applicant is going to rely on the materials submitted and the staff report and save the balance of testimony for rebuttal.

Hearings Officer Stamp asked if the applicant was stating that the appeal was defective in some way or are there any specific challenges to the appeal.

Mr. Whitlow replied that he did not believe the appeal meets the threshold requirements for an appeal. The appeal puts words on paper but does not state the reasons it only cites sections. However, it does not cite any applicable sections and does not supply a narrative to address the applicable criteria. If Hearings Officer Stamp could rule on the face of the written material that was filed as an appeal it could be dismissed because it doesn’t say anything.

Hearings Officer Stamp stated this issue was brought up in a previous appeal but he could not remember the conclusion. He asked if his analysis could be brought into the record so he could remember the prior ruling. He stated he would look at this issue again in relation to the current appeal. It maybe that citing the criteria is sufficient. The appellant does state that the approval is not in compliance with CCZLDO § 5.0.700(B)(I) which is an approval criteria.

Mr. Whitlow replied that he did not want to have the appeal dismissed based on the inadequacy of the appeal as it was filed. He would like to allow the testimony as it is the first evidentiary hearing.

Hearings Officer Stamp asked if the applicant was stating that he did not want to address the adequacy of the appeal as it was filed. In other words the applicant is waiving the issue.

Mr. Whitlow replied that he wanted to move forward on the substance. He did not believe there were any merits to the appeal.

Hearings Officer Stamp interjected that he would not address that issue and then stated he had a question for the applicant if they were done with their testimony.

Mr. Whitlow said they were done with the exception of Mr. Allen’s address which you have.

Hearings Officer Stamp read Mr. Allen’s address as 1001 SW Fifth, Suite 1500 Portland. Mr. Allen confirmed the address.

Hearings Officer Stamp stated that the appellant, Jody McCaffree, in her appeal mentions that the FERC certificate for import pipeline project was withdrawn/vacated in April 2002. He thought that was a reference to the certificate for public need.

Mr. Allen provided the name as Certificate of Public Convenience and Necessity. He clarified that the FERC order was not withdrawn at the applicant’s request. FERC decided that the applicants would have to go through the process for the Jordan Cove LNG Terminal and pipeline because the terminal would be used for export.

Hearings Officer Stamp stated that Mr. Allen had made the distinction between the LNG Terminal and the pipeline. He asked if that LNG Terminal could not be built for any reason, then the pipeline would no longer be needed.

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Mr. Allen replied that was a fair statement. If Jordan Cove Energy is the customer for the pipeline and the customer is not there, the pipeline is not needed.

Hearings Officer Stamp asked if the original land use decision that the county issued, file number HBCU-10-01, had a condition of approval that stated that approval was contingent on receiving any required authorizations from FERC.

Mr. Whitlow responded that even if that condition did not exist if there is no FERC order, then there is no project. Therefore, it does not matter if that condition of approval exists or not. This is a federal project and the applicant is present for local land use authorization.

Hearings Officer Stamp stated the local process is in a sense a side show.

Mr. Whitlow commented that it is very important side show. The proposal has to address the criteria but that is not the matter before this hearing today. The matter is whether the pipeline meets the criteria for an extension under the CCZLDO.

Hearings Officer Stamp stated he understood but would like to noodle through the issues. The issue that has been raised is that the extension request should be denied because FERC has not issued any kind of certificate yet. It seemed to him that the land use is tied to FERC anyway. In other words if the applicant did not receive permits from FERC then the land use authorization would not authorize the use.

Mr. Whitlow agreed with the hearings officer and stated that does not mean that the applicant can’t request a land use approval.

Hearings Officer Stamp agreed with that statement.

Mr. Whitlow stated that the opposition was trying to make that analogy which is false. He requested that the hearing focus on the criteria for the extension and not replicate the irrelevant matters that have been addressed countless times in prior decisions.

Hearings Officer Stamp explained that he was obligated to respond to all legitimate issues raised by opponents in a quasi-judicial land use proceeding concerning a relevant approval criterion2. He wanted to make sure he went through all of the issues.

Mr. Whitlow responded that there has been no type of changes under the meaning of the code that would affect the project’s approval. There has been no change to the project that would affect its ability to adhere to the land use approval criteria. The pipe is the pipe regardless of the direction of the gas and this was addressed before. There have been no changes in the local zoning ordinance that would affect the approval. It was an allowed use then and it is an allowed use now. The type of change that would affect the approval would be if there was a legislative change that would prohibit the use now. There has been no change in the local land use pattern. There have been no zone changes or other changes and impacts to the land use patterns surrounding the facility. Those are the types of changes the code is talking about that would be relevant to an extension.

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Hearings Officer Stamp inquired if Mr. Allen had any more testimony to add to the applicant’s presentation. Mr. Allen replied he did not have any more testimony at this time. The hearings officer called for the Appellant’s testimony.

Jody McCaffree, Appellant, stated she did have stuff to turn in for the record but if the record is going to left open then she would wait.

Hearings Officer Stamp stated that the applicant did not present any new evidence so he told Ms. McCaffree she should turn her testimony in to staff at this hearing.

Ms. McCaffree replied that she did not have seven copies.

Hearings Officer Stamp said turn it in and deal with staff on the copy issues. He had not heard any new evidence yet that would warrant leaving the record open. If I hear new evidence and the applicant would like to keep the record open then he would consider leaving the record open.

Director Rolfe interjected that it was fine to turn it in. She would scan the information and make the copies.

Ms. McCaffree stated that there is more to this request. The applicant is asking for extensions for a conditional use permit that actually should have been withdrawn. The reason it should have been withdrawn is when the application was originally reviewed in 2010 and 2012 a lot of findings used to satisfy the criteria came from the FERC EIS \(^3\) and the FERC decision and both of those have gone away. Those documents are still in the old record but they are not valid any more. One of the things the applicant agreed to was the condition of approval that said they would not use the pipeline for export of liquefied natural gas. The applicant is requesting an extension to a pipeline conditional use permit when the applicant has a project that does not meet the criteria of the original application and conditions of approval. She listed in her written testimony conditions that are pursuant to FERC’s order. She listed of condition numbers six, forty-three, eight, forty-four and two that were based on FERC’s order. The conditions reference an order that is no longer valid. The code is pretty clear when there is a change or something isn’t in line with the ordinance. CCZLDO § 5.0.350(B) states an applicant who has received development approval is responsible for complying with all conditions of approval. Failure to comply with such conditions is a violation of this ordinance, and may result in revocation of the approval in accordance with the provisions of § 1.3.300. She stated that she had the provisions of CCZLDO § 1.3.300 in her written testimony as well. When an applicant comes in and applies and receives approval with conditions and then that application is no longer in compliance with those conditions then it is at risk of being in violation. She specifically referenced condition 25.

Hearings Officer Stamp interjected by stating he wanted to think about condition 25 separately because the applicant did apply to have condition 25 modified removing the language restricting the pipeline to import only.

Ms. McCaffree explained that was on appeal and had not been settled yet.

Hearings Officer Stamp agreed that condition 25 was dependent on how LUBA ruled if it is removed. However, there has been no stay and officially that condition has basically gone away unless LUBA remands that decision. Even so it has no legal affect in that the condition would still be valid. The

\(^3\) Environmental Impact Study

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LUBA final decision will be out shortly which will answer the status of condition 25. He wanted to talk about the other conditions that Ms. McCaffree had listed. Ms. McCaffree had listed conditions that were based on FERC’s decision and the Hearings Officer wanted to go back to that testimony.

Ms. McCaffree stated if you look in Final Decision and Order No. 10-08-045PL staff proposed condition number two states that, to minimize impacts to wells and groundwater, the applicant must comply with the Groundwater Supply Monitoring and Mitigation Plan approved by the Federal Office of Energy Projects within FERC. The applicant had done some of that but that had been withdrawn. Condition number four is pursuant to FERC Order Condition #6. Condition number 8 is based on compliance with FERC’s Order condition #43.

Hearings Officer Stamp stated he understood her testimony but whether or not FERC’s Order was vacated and the applicant is having to go through the process again does not make those conditions invalid. The record contains the FERC documents on which those conditions were based upon. That does not mean that the applicant can move forward with the project without obtaining FERC’s approval.

Ms. McCaffree stated there are rules about what you have to do and one of them is if an applicant is going to go through the estuary digging a trench, which is an activity in estuary that the applicant has to do to install the pipeline, an applicant has to prove that there is a need and a substantial public benefit. The applicant used the FERC order and ruling to address this criterion in the original application.

Hearings Officer Stamp stopped Ms. McCaffree’s testimony and stated that the public need is irrelevant to this hearing. This was discussed in prior applications.

Ms. McCaffree disagreed and stated that was part of the argument that is currently being reviewed at LUBA.

Hearings Officer Stamp replied if LUBA finds in favor of that argument then it will be addressed in the decision. In the prior decision the hearings officer went through a substantial analysis on public trust doctrine argument.

Ms. McCaffree interjected that the applicant has to address that standard.

Hearings Officer Stamp replied that is a completely different public need than what FERC deals with.

Ms. McCaffree agreed that it was different but last time the applicant’s relied on the FERC order to address the criteria. It was used because it had a public benefit. The pipeline was going to bring gas in and distribute it as stated in the application. The applicant is requesting to extend the application itself. She stated at the LUBA hearing, in which in the audio of that hearing, the applicant’s attorney had stated that there was a change, a potential change, in the way the gas would flow in the pipeline and that would trigger a consideration of a public need question. The LUBA judge then asked, you are simply saying you would analyze public need differently for import facility than an export facility. The applicant’s attorney replied yes, it would reach the same conclusion but probably requires additional consideration and he references some the issues the opponents raised.

Hearings Officer Stamp asked if that discussion was for the pipeline or the terminal.
Ms. McCaffree replied that there was a discussion about the pipeline. In the original 2010 application on page two and in the EIS both state that the pipeline will transport gasified natural gas from the Jordan Cove LNG terminal in Coos Bay to existing interstate natural gas transmission pipelines near Malin, Oregon and points in between. The 36-inch diameter pipeline will be a total of 234 miles and will provide natural gas to markets throughout the region. However, this is no longer the case as the gas no longer goes to anyone accept Jordan Cove. The LNG leaves a transmission line and goes straight to Jordan Cove. No gas is provided to anyone else.

Hearings Officer Stamp asked if she thought there was any public benefit.

Ms. McCaffree replied there was for Jordan Cove, a private foreign energy company. A public utility is a utility that serves the public. This pipeline is a transmission line not a distribution line. It does not serve anyone but Jordan Cove and pursuant to the definition is a transmission line.

Hearings Officer Stamp stated that the public need standard in the code deals with the public trust doctrine. He explained that the State of Oregon owns the land underneath any navigable waterway and the public trust doctrine says that the state cannot give that land to a private entity and exclude other people from it, like they did in the Chicago case in the 1800’s.

Ms. McCaffree stated it can’t be given to somebody that would cause determent to the users of the bay which is what they are currently doing. She had testimony from Lilli Clausen concerning the effects on her oyster business. There are other people’s businesses that will be impacted by this pipeline. To get the pipeline here they are going to have to take away people’s private property, and their right to use their own property for this pipeline.

Hearings Officer Stamp responded that was a total different issue.

Ms. McCaffree argued if the pipeline was not a public utility then the code has different criteria that are required to be addressed.

Director Rolfe stated that was incorrect and the criteria would be the same whether or not it is for public sale.

Hearings Officer Stamp stated that for the purpose of this hearing that he understood Ms. McCaffree’s argument and he would wait for the LUBA decision. He requested that staff enter the LUBA decision into the record when it is available. He asked if there were any objections with adding the LUBA decision to the record. There were no objections heard. He stated he would leave the record open specifically to respond to the LUBA case. The LUBA case will answer a lot of the issues that Ms. McCaffree has raised. The LUBA decision will determine how he reviews the public need issue. He requested that Ms. McCaffree move on with her testimony.

Ms. McCaffree stated that the part of the criteria which states there have been no changes to the land use pattern was not adequately addressed because there have been changes. The Department of Geology and Mineral Industries (DOGAMI) has came out with a new study dated February 11, 2012, for tsunami mapping, long after the record was closed in the original decision. The new map shows areas that will be impacted in areas where the pipeline will be installed. This was not shown on previous maps.

Hearings Officer Stamp stopped Ms. McCaffree’s testimony so that he could review the applicable criteria. He read the criteria as follows: there have been no substantial changes to the land use pattern.
of the area. In his legal opinion that would be a physical change. Such as, a use that is now there and was not there at the time of the original application which may causes new impacts that have to be considered. The second part of the criteria says, or other circumstance which is what Ms. McCaffree seems to be providing testimony on. A different circumstance could be a DOGAMI study but it may not be relevant. However, that circumstance has to be sufficient to cause a new conditional use application to be sought for the same use. He stated that it appeared that Ms. McCaffree was stating that DOGAMI’s new maps would be new changes that would result in a change to the original decision.

Ms. McCaffree replied it should be looked at again because it could change the pipeline route.

Hearings officer Stamp stated that telling him that it should be looked at does not meet the review criteria. It has to be sufficient enough to cause a new conditional use.

Ms. McCaffree responded that was only one example of a circumstance that needs to be reviewed. She stated that there was a new study by the earthquake people showing this area was at more risk then originally thought.

Hearings Officer Stamp questioned who the earthquake people were.

Director Rolfe stated she thought that was a DOGAMI study.

Ms. McCaffree testified that Statewide Planning Goal 7 prohibits the siting of hazardous facilities in identified hazard areas and the Planning Goals are what the land use law is based on. The pipeline is a hazardous facility. Now there is bigger tsunami zone and a hirer earthquake hazards risk. She stated she supplied portions of the earthquake study in the record. This pipeline goes through residential areas and the pipe is thin. This puts the area at risk. There is a 40% chance in the Coos Bay area that there will be an earthquake. This area is at higher risk then other areas on the coast. She commented that was new information.

She stated the application for extension was filed March 7, 2014 and it was deemed complete on April 1, 2014. On March 13, 2014 there were new program changes to the Oregon Coastal Management Program.

Hearings Officer Stamp asked Ms. McCaffree to repeat the name of the program. He then asked if this testimony was included in her written materials.

Ms. McCaffree replied that it was included in the materials but she did not copy all of it. The document was titled Notice of Federal Concurrence for Routine Program Changes to the Oregon Coastal Management Program and it states the purpose as updates to the Coos County, City of Coos Bay, and City of North Bend Comprehensive Plans and Land Use Provisions. She stated she did not know what the changes were but it shows that there were changes. This change has to be reviewed to determine if it effects the original approval.

Director Rolfe asked what the date of the document was.

Ms. McCaffree replied the date was March 13, 2014.

Director Rolfe asked if that was in response to the new floodplain maps that were adopted.
Ms. McCaffree replied she was not sure but she was going to bring up the new floodplain maps as well. FEMA came out with the new floodplain maps and the BOC adopted the maps on March 13, 2014. It clearly changes some of the areas as she provided maps to show the changes in her written materials.

Director Rolfe asked what the date of the application for extension was filed.

Ms. McCaffree replied March 7, 2014.

Director Rolfe explained the criteria that are in affect at the time the application was submitted is the applicable criteria. You can’t change the goal post.

Hearings Officer Stamp agreed.

Ms. McCaffree stated that there were other changes and cited Coos County File No. ABI-12-01, Coos County boundary adjustment that was made on March 22, 2012; Coos County File No. ACU-12-12/ABI-12-02 was finalized September 2012 for a boundary change; and Coos County File No. ACU-12-16 that had to do with fill in the Beach and Dune area on Jordan Point. She stated she did not know the impact of any of these cases but they needed to be addressed. The applicant is proposing to fill the site up to 30 feet in some areas bringing it 46 feet above sea level. None of these were considered in the original pipeline decision. She stated she provided examples of what was submitted to FERC and what was submitted in the original approval showing the changes to the project. FERC approval will be based on a new submittal and not what was approved in by Coos County.

Hearings Officer Stamp asked if he were to make the determination that there were sufficient circumstances to cause a new conditional use application to be sought for the same use, based on Ms. McCaffree’s evidence, would it need to be a new application or could the applicant modify the current application to address the changes.

Ms. McCaffree responded that she is tired of coming to the County on all of these little amendments and portions of the project. The County should be waiting until the FERC order is finalized. There would be one process at the local level that would allow for all of the issues to be addressed. The FERC order would address the public need and determine the final route configuration.

Hearings Officer Stamp stated that if FERC does not issue an approval there will be no pipeline.

Ms. McCaffree agreed and stated that was why the application should be postponed until the FERC decision was final. There is an assumption that FERC will approve this project.

Hearings Officer Stamp stated that the applicant is completing the process concurrently.

Ms. McCaffree restated that there should be a FERC decision before the local land use process is started.

Hearing Officer Stamp stated to Ms. McCaffree that she was not answering his question. Would a new conditional use be required to address the changes or could an amendment to the current application be made. It seems like most of the issues have been settled and it is plausible the any changes could be addressed through and amendment process rather than a new conditional use. The issues that Ms. McCaffree has raised seem to be local issues that could be addressed at the local level.
Ms. McCaffree responded that if this is determined not to be a public utility then that would change the application request. She commented that she did not provide all the different regulations in the record.

Hearings Officer Stamp stated that this is a public utility no matter which way the gas flows.

Ms. McCaffree argued that it does not serve the public. It only serves one user.

Hearing Officer Stamp disagreed with that analysis. Public benefit is a really broad concept; it could be that if the pipeline hired a hundred people that could result in a public benefit.

Ms. McCaffree responded that FERC has not made the determination if the pipeline has a public benefit. She stated that if she did not raise the issue in this meeting it would not be addressed.

Hearings Officer Stamp said the question for Ms. McCaffree was can the county deal with the changes, which she had raised in her testimony, or does it require a new conditional use application.

Ms. McCaffree replied it requires a new conditional use. There were unanswered questions such as is this pipeline considered a public utility and would FERC authorize this project. The fact that the original decision was based on FERC’s EIS was reason enough to require a new conditional use. The FERC certificate that was on record before was not even finalized. The FERC certificate was being challenged when it was vacated.

Hearings Officer Stamp stated that Ms. McCaffree had provided at least four or five different examples of changes in the record.

Ms. McCaffree said there were several changes.

Hearings Officer Stamp explained that it was Ms. McCaffree’s appeal and she need to raise the changes in the current proceeding. He understood her testimony and whether or not it was sufficient to cause a new conditional use was the question he would have review. He asked Ms. McCaffree if she had more examples of changes and if so would she please enter them into the record for his review.

Ms. McCaffree raised the applicability of the NEPA\textsuperscript{4} process.

Hearings Officer Stamp responded that the NEPA process does not apply to this application.

Ms. McCaffree argued that she was not wrong about the NEPA process. This is a Coastal Zone Management process which is separate from FERC but there are NEPA requirements.

Hearings Officer Stamp stated NEPA is not an approval standard in this proceeding.

Ms. McCaffree argued that NEPA is an approval standard for the Coastal Zone Management.

Hearings Officer Stamp asked if her NEPA argument was included in her written materials.

Ms. McCaffree replied it was. She stated that the applicant’s attorney admitted in the oral argument portion of the LUBA case that an import pipeline was different from an export pipeline.

\textsuperscript{4} National Environmental Policy Act
Hearings Officer Stamp stated in regards to the LUBA testimony he need more than a little excerpt to understand the context of the argument. He requested the LUBA briefs be included in the record.

Ms. McCaffree concluded her testimony by stating she would supply the audio from the oral arguments in that LUBA case as part of her testimony. She stated that she provided all of the examples of changes that she referenced in her testimony. Based on the changes, new tsunami maps and earthquake studies, a new application is required.

Hearings Officer Stamp called Mr. Clarke to testify next. He asked staff to hold all testimony.

Director Rolfe explained that she attached a copy of Mr. Clarke’s exhibits in case the hearings officer needed it for a reference. She would talk it back after Mr. Clarke concluded his testimony.

John Clarke, 1102 Twin Oakes Lane, Winston OR 97496, stated that he agreed that the physical nature of the pipeline does not change depending on the direction of the gas flow. However, the change is relevant because it changes the type category the pipeline falls in. This pipeline is considered a transmission line pursuant to § 192.3, 49 CFR Chapter 1 (pages provided) as it states transmission line means a pipeline other than a gathering line, that (1) Transports gas to a distribution center, storage facility to a distribution center, or large volume customer that is not down-stream from a distribution center; (2) operates a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field. He also provided an email to show that the Pacific Connector Gas Pipeline was capable of delivering approximately 40 MMcf/d (40,000Dth/d) of natural gas to markets along its route, including markets on Northwest’s Grants Pass Lateral.

Hearings Officer Stamp inquired why this definition was relevant as the transmission line argument was covered in past cases. The Federal law and the Oregon PUC rules do not apply to the land use decision.

Mr. Clarke testified he was not an attorney but this information is relevant to the status of the pipeline. This is a transmission line and he provided an agreement between Jordan Cove and the Coos County Board of Commissioners to show that the transportation of forty million standard cubic feet of natural gas per day flowing in any direction. The future purchase of the gas will have consequences to public lands.

Hearings Officer Stamp stated that he understood Mr. Clarke’s argument but he disagreed. He explained about an argument that Michael Bloom, Law Professor used concerning the Public Trust Doctrine and why he disagreed with it.

Mr. Clarke had nothing further to add.

Hearings Officer Stamp called Mr. Davenport.

James Davenport, 61954 Old Wagon Road Coos Bay.

Hearings Officer Stamp inquired about the location of Old Wagon Road.

Mr. Davenport stated the Hearings Officer should be aware of the location because the pipeline was going through his property.
Hearings Officer Stamp replied that he may have known during the original hearing process but that had been a while ago.

Mr. Davenport explained how to get to Old Wagon Road. He testified when he was in the process of purchasing his home the neighbors had told him about a pipeline going through his property. He called the Planning Department and talked to the gentleman who told him there was no application in place for the pipeline. After completing the purchase of the property he received notice of the hearing on the pipeline. He called the Planning Department again and the gentleman told him there was an application and the proposed pipeline would be going though his property. The pipeline is close to his dwelling. He and his wife have spent a lot of money and time working on this property. He gave a family background including military experiences. He did not understand how a foreign energy company could come in a take his property using eminent domain.

Hearings Officer Stamp replied that there was a legal process for eminent domain.

Mr. Davenport replied it was wrong. He explained that the mortgage on his property states that he is prohibited from causing any devaluing of the property. The pipeline is going to devalue the property and he is stuck.

Hearings Officer Stamp advised him to consult with an attorney on that issue. He informed him that he needed to address the criteria. He asked Mr. Davenport when he purchased his property.

Mr. Davenport replied that he had purchased the property in 2009.

Hearings Officer Stamp stated he had no more opponents so he would move onto neutral parties. He called Lilli Clausen.

Lilli Clausen 93488 Promise Lane, North Bend, stated that she had questions that needed to be answered before she could tell if she objected to the proposal. She explained that she owned an oyster business and was concerned about the impacts to her business.

Hearings Officer Stamp explained to her that there was a hearing that covered all the oyster issues.

Ms. Clausen stated she was not part of that hearing. She explained that some people from the pipeline company came to her business and were asking about drilling under the bay. If they drill under the bay it may not impact her business. She submitted a list of questions in the record.

Hearings Officer Stamp stated that he could not answer her questions.

Ms. Clausen replied that there were important questions to know the answers to in case she had objections to the proposal.

Hearings Officer Stamp reminded Ms. Clausen what the applicable criteria were.

Ms. Clausen said that if a trench is dug instead of drilling that would be a change in the land use pattern. She needed answers to the questions in order to be able to know if there were concerns. She did not want a repeat of the New Carissa as it took over four years for her business to receive payment for the damages. If there was digging in the bay it would case sand or fines to clog the gills of countless oysters. Also access is an issue. This is why it is important to know what the proposal is and if they are drilling or digging. She also wanted to know if there would be an exclusion zone that would
prohibit them from crossing the bridge into town. She stated that all of this information is very important.

Hearings Officer Stamp stated he did not have any answers for her on those issues but the applicant could provide her with answers and it sounds like they have contacted her. He once again reminded her to focus on the criteria.

Ms. Clausen replied that there would be a land use change if they change the way they install the pipe.

Hearings Officer Stamp called for Mary Geddry to testify. He asked that she spell her last name for him.

Mary Geddry, 340 N Collier, Coquille. She references the comment that hearings officer had made earlier in regards public benefit. The statement was, if the pipeline hires one hundred people that could be a public benefit. She asked if that had to be a net gain of jobs to qualify as a public benefit.

Hearings Officer Stamp further justified his comment on public benefit.

Hearings officer Stamp stated he had no other parties to testify. He asked the applicant if they would like to rebut the testimony.

Mr. Whitlow stated that most of the testimony was not relevant and it was the same arguments that were used in prior cases

Hearings Officer Stamp asked if a new study had been done would that be a circumstance that would cause a new conditional use application.

Director Rolfe asked the hearings officer if the study would have to have been adopted into the comprehensive plan in order to apply that regulation.

Hearings Officer Stamp replied that could be true.

Mr. Whitlow explained that the tsunami issue had been addressed in multiple prior decisions. The ORS cite reference that Ms. McCaffree relies on for tsunamis is a building codes statute and not relevant to land use. The updated floodplain maps would be complied with it but does not cause a new conditional use review compliance with the floodplain map was covered under existing condition of approval number 15.

Mr. Allen stated that in a sense the hearings officer was asking for the pipeline to be reapproved.

Hearings Officer Stamp stated that it may be that a lot of the information from the original record may be relevant to this matter.

There was discussion on the prior decisions and the applicant agreed they would submit the prior approvals that discussed the issues raised into the record.

Hearings Officer Stamp asked the applicants to address in the open record period the issue that a new study could potentially be a circumstance that causes a new conditional use application.

The applicant agreed.
Hearings Officer Stamp set the schedule for the post hearing testimony. The first open-record period is to allow the parties to submit evidence to “rebut” evidence related to all issues raised at or before July 11, 2014. However, no “new” issues shall be raised. All rebuttal is shall be submitted by July 25, 2014 at 5:00 p.m. to the Planning Department. One of the reasons he selected that date is that he wanted to be sure that staff entered the pending LUBA decision into the record, and I wanted to give the parties at least a few days to review and discuss the ramifications of the LUBA decision on this case. If the LUBA decision is not forthcoming in that time period, I may further revise this schedule.

The second open-record period is for surrebuttal, which allows all parties to submit new evidence, but only if such evidence is directly responsive to evidence or arguments submitted during the first open record period. Again, no new issues shall be raised. This period is to allow all parties to rebut the rebuttal evidence submitted in the first round. All surrebuttal shall be submitted by August 1, 2014 at 5:00 p.m. to the Planning Department.

The applicant’s final written arguments in support of the application are due by August 8, 2014 at 5:00 p.m. to the Planning Department. The applicant’s final submittal shall be considered part of the record, but shall not include any new evidence.

Hearings Officer Stamp stated that all materials will be compiled by staff and forwarded to me. All material relied upon for the hearing today should be submitted to staff now. He adjourned the meeting at 5:00 p.m.

Submitted by Jill Rolfe, Recording Secretary