Supplemental Report

APPLICANT: Pacific Connector Gas Pipeline, LP
REVIEWING BODY: Board of Commissioners
STAFF CONTACT: Jill Rolfe, Planning Director
REPORT DATE: January 7, 2014
FILE NUMBER: HBCU-13-04

DECEMBER 12, 2013 RECOMMENDATION

The hearings officer provided his recommendation on the alternate section of the pipeline. The recommendation supports an approval but has some conditions that are listed that staff would like to address. The conditions were carried forwarded from the original approval with the exceptions of the ones that did not apply to this area of change. The hearings officer explained why the conditions were excluded from this decision. Staff has two conditions that they would like to address. One is listed on page 92 listed as B.25 under Historical, Cultural and Archaeological and the other one is on page 88 listed as A.17(b) under Pre-Construction.

The first condition on page 92 should be consolidated with condition A.15 page 87 listed under Pre-Construction and should read as follows:

15. Floodplain certification is required for “other development” as provided in CCZLDO 4.6.230 occurring in a FEMA flood hazard area. The applicant must coordinate with the County Planning Department. Prior to beginning construction, the applicant shall provide the County Planning Department with 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.

Reasons for change
This will allow for consistency in the decision and clarifies this condition of approval.

The second condition on page 88 listed as A.17(b) under Pre-Construction should read as follows:

17(b). To minimize impacts to wetlands or waterbodies at the horizontal directional drill (HDD) bore under the Coos River, the applicant must comply with a plan for the HDD crossing of the Coos River approved by FERC under FERC’s Wetland and Waterbody Construction and Mitigation Procedures referenced at 18 C.F.R. 380.12(d)(2). The FERC Wetland and Waterbody Construction and Mitigation Procedures shall be the May 2013 version (notice of which was provided at 78 Federal Register 34374, June 7, 2013). The applicant shall submit a copy of the FERC-approved plan for the HDD crossing to the County Planning Department prior to beginning construction of the Coos River crossing.
**Reasons for change:** The current proposed condition would require that Board of Commissioner be responsible for approving a report detailing the qualification and work history of the contractor selected by the applicant. In part, the current proposed condition states, “[t]he contractor shall demonstrate to the satisfaction of the County Board that it has sufficient experience conducting successful HDD bores of a similar scale and under similar conditions without significant hydraulic fractures or inadvertent surface returns so as to harm aquatic or wetland resources.” Basically this would make Coos County responsible for determining who the contractor would be based on their experience with HDD borers which could make Coos County liable in case of an incident or potentially could cause a lawsuit from the applicants in the event of a disagreement over the contractor’s expertise. There are no land use criteria in place for the Board of Commissioners to use when hiring such contractor because it is beyond the scope of land use and would fall within a building codes area. Coos County does not administer building codes, further substantiating the fact that Coos County lacks expertise in this area.

Staff agrees that the Board of Commissioners needs to make sure that there are safeguards in place to address the criteria but the hearings officer went beyond the criteria with the suggestion of the condition. Staff appreciates the detail and the fact the hearings officer went to great lengths to address all of the issues. However, the hearings officer repeats in several areas the word “experience” and Coos County lacks experience in the engineering field which is what would be required to apply such language. Coos County has experienced the difficulty and financial burden of installing its own pipeline. In that case, which is also referenced in the hearings officer’s decision, Coos County Board of Commissioners contracted with MasTech, Inc and incurred liability. This case again proves the point that the Coos County Board of Commissioners does not have the expertise to issue approval for a contractor to complete this project. The hearings officer states it is highly unusual for a local governmental unit to exercise this sort of control over an applicant. Even if the current Board of Commissioners had the expertise there is no guarantee that this would be the same governmental unit that would review this matter because they are elected officials.

The fact that this condition was not suggested to satisfy the review criteria directly makes it inconsistent with CCZLDO § 5.0.350 Conditions of Approval and not enforceable. The condition also would create another discretionary review and at that point it is unclear what criteria would be applied. The Board of Commissioners should require that the applicant provide their full plan after it is approved by FERC to address the issue that was raised. FERC has the expertise to evaluate such a plan. Furthermore, water crossings are permitted through other agencies that do have the expertise to review and oversee this project as well as the ability to enforce against the contractor or applicant. We have conditions in place that require the applicant to comply with all state and federal agencies. The hearings officer also notes that the applicant has already agreed to provide much of this same information to FERC. See letter from W. Randall Miller to Jill Rolfe dated Sept. 18, 2013.

Finally, on page 21 of the Hearings Officer’s Recommendation, the hearings officer notes that there may be other means to ensure a successful HDD bore, and that his condition was just one of several possibilities. Furthermore, he states “County staff and County Counsel may have additional input for the Board on this issue.” In accordance with the hearings officer’s suggestion, County staff and County Counsel have conferred and are in agreement that condition A.17(b) should read as stated above.

If you have any questions please contact staff.

COOS COUNTY PLANNING DEPARTMENT

*Jill Rolfe, Planning Director*