BOARD OF COMMISSIONERS  
COUNTY OF COOS  
STATE OF OREGON  

IN THE MATTER OF A CONDITIONAL USE  
APPLICATIONS HBCU-13-06 SUBMITTED BY  
PACIFIC CONNECTOR GAS PIPELINE, L.P.  
FINAL DECISION AND ORDER  
NO. 14-09-062PL  

WHEREAS, Pacific Connector Gas Pipeline, L.P. applied for approval of portions of a  
pipeline to supplement the already approved route as adopted in the Board of  
Commissioners Final Decision and Order No. 10-08-045PL, dated September 8, 2010, as  
ratified by Final Decision and Order No. 12-03-018PL, dated March 13, 2012; and  
The Board of Commissioners invoked its authority under the Coos County Zoning and  
Land Development Ordinance (CZLOD) §5.0.600, to: (1) call up the applications; and (2)  
appoint a Hearings Officer to conduct the initial public hearing for the applications and then  
make a recommendation to the Board. The Board appointed Andrew H. Stamp to serve as  
the Hearings Officer.  

Hearings Officer Stamp conducted a public hearing on this matter on May 30, 2014,  
and at the conclusion of the hearing the record was held open to accept additional written  
evidence and testimony. The record closed with final argument from the applicant received  
by July 8, 2014.  

Hearings Officer Stamp issued his Amended Analysis, Conclusions and  
Recommendations to the Board of Commissioners to approve the application on September  
13, 2014.  

The Board of Commissioners held a public meeting to deliberate on the matter on  
September 30, 2014. The Board of Commissioners, all members present and participation,
unanimously voted to accept the Hearings Officer’s recommended approval with two
modifications to the conditions of approval and corrections to the timeline.

NOW, THEREFORE, the Board adopts the Findings of Fact; Conclusions of Law and
Final Decision attached hereto labeled Exhibit “A” and incorporated into this order herein.

ADOPTED this 21st day of October 2014.

BOARD OF COMMISSIONERS

[Signatures]

COMMISSIONER

[Signatures]

COMMISSIONER

[Signatures]

COMMISSIONER

ATTEST:

[Signature]

Recording Secretary

APPROVED AS TO FORM:

[Signature]

Office of Legal Counsel

Page 2
Order 14-09-062PL
TABLE OF CONTENTS

I. SUMMARY OF PROPOSAL AND PROCESS

A. Summary of Proposal .................................................. 1
B. Process ................................................................. 1
C. Scope of Review ........................................................ 2
D. Procedural Issues ...................................................... 5
   1. Content of the Record: Record of 2010 and 2012 Proceedings Not Part of Record in this Proceeding .................................................. 5
   2. Evidence Found Only at Website Addresses Referenced in Materials Submitted in this Proceeding Are Not Part of the Record ................................ 6

II. LEGAL ANALYSIS

A. Process-Related Issues and Issues Related to Multiple Approval Standards
   1. Issue of Whether a Pipeline Is still a "Utility" if it is Only Used for Exporting Natural Gas ................................................................. 7
   2. Proposed Alternate Alignments Will Not Have a Significant Impact on Wetlands and Water Bodies ..................................................... 10
   3. Potential for Mega Disasters (Tsunamis, Earthquakes, Landslides, etc.) ................................................................. 11

B. Coos Bay Estuary Management Plan (CBEMP) (CCZLDO Article 4.5)
   1. CCZLDO Section 4.5.100 ............................................... 15
   2. CCZLDO Section 4.5.150 ............................................... 16
   3. CCZLDO Section 4.5.180 ............................................... 17
   4. 20-Rural Shorelands (20-RS) .......................................... 18

C. Overlay Zones (CCZLDO Article 4.6)
   1. CCZLDO Section 4.6.210 and 4.6.215 (Permitted and Conditional Uses in IFP zone) ................................................................. 19
   2. CCZLDO Section 4.6.230. Procedural Requirements for Development within Special Flood Hazard Areas ........................................... 20
   3. CCZLDO Section 4.6.235. Sites within Special Flood Hazard Areas ................................................................. 22

D. Forest Zone (F) (CCZLDO Article 4.8)
   1. CCZLDO Section 4.8.300(F) .......................................... 23
   2. CCZLDO Section 4.8.400 ............................................... 23
   a. The PCGP Alternate Alignment Segments Will Not Force a Significant Change in Accepted Farm and Forest Practices ............................................. 27
   b. The PCGP Alternate Alignment Segments will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel ............................................. 29
   3. Section 4.8.600, Section 4.8.700 and Section 4.8.750
      a. CCZLDO Section 4.8.600 (Siting Standards Required for Structures) ................................................................. 35
      b. CCZLDO Section 4.8.700 (Fire Siting Safety Standards) ................................................................. 35
      c. CCZLDO Section 4.8.750 (Development Standards) ................................................................. 35

Findings of Fact and Conclusions of Law  HBCU 13-04
Page 1

EXHIBIT A
F. Exclusive Farm Zone (EFZ) (CCZLDO Article 4.9)
   1. CCZLDO Section 4.9.300 ............................................. 35
   2. CCZLDO Section 4.9.450 ............................................. 36

F. CBEMP Policies – Appendix 3 Volume II
   1. Plan Policy #4 .............................................................. 40
   2. Plan Policy #5 .............................................................. 40
   3. Plan Policy #5a Does Not Apply to the Proposed Alignment ....... 44
   4. Plan Policy #11 Does Not Apply ........................................ 45
   5. Plan Policy #14 General Policy on Uses within Rural Coastal Shorelands .... 45
   6. Plan Policy #17 Protection of “Major Marshes” and “Significant Wildlife Habitat” in Coastal Shorelands .................. 51
   7. Plan Policy #18 Protection of Historical, Cultural and Archaeological Sites .. 52
   8. Plan Policy #22 Mitigation Sites: Protection Against Preemptory Uses .......... 53
   9. Plan Policy #23 Riparian Vegetation and Streambank Protection .......... 55
   10. Plan Policy #27 Floodplain Protection within Coastal Shoreland .............. 57
   11. Plan Policy #28 Recognition of LCDC Goal #3 (Agricultural Lands) Requirements for Forest Lands within the Coastal Shorelands Boundary .................. 58
   12. Plan Policy #34 Recognition of LCDC Goal #4 (Forest Lands) Requirements for Rural Lands within the Coastal Shorelands Boundary .................. 60
   13. Plan Policy #49 Rural Residential Public Services ....................... 60
   14. Plan Policy #50 Rural Public Services .................................. 60
   15. Plan Policy #51 Public Services Extension ................................ 61

G. Special Regulatory Considerations/Inventory Maps
   2. Water Resources – Appendix I, Page 21, Strategy No. 1 .......................... 64
   3. Historical/Archeological Sites & Structures – Appendix I, Pages 19-20, Strategy Nos. 1, 2 & 3 .......................... 65
   5. Non-Estuarine Shoreland Boundary Appendix I, Pages 25-28, Strategy Nos. 5, 7, 8 & 11 ............................................. 70
   6. Significant Wildlife Habitat (ORD 85-08-011L) – Appendix I, Pages 14-18, Strategy Nos. 1, 1a, 2 & 4 .......................... 73
   7. Natural Hazards – Appendix I, Pages 29-30, Strategy Nos. 1, 5 & 6 ............ 75

H. Miscellaneous Concerns Unrelated to Approval Criteria
   1. Potential Bias/Goal 1 Violation ........................................... 76
   2. Condition 25 Has been Modified in a Manner that No Longer Prohibits Export .... 77
   3. The Application is Not Premature ......................................... 78
   4. NEPA Is Not Applicable to this Proceeding .................................. 78
   5. “Public Need” or “Public Benefit” ......................................... 79
   6. OAR 345-023-0005 Does Not Establish a “Need” Requirement for this Application .................. 81
   7. Evidence of Past Misdeeds by Pipeline Companies Is Not a Basis for Denial Unless Evidence Shows Impossibility of Performance, as Opposed to a Propensity Not to 82
Perform

8. Cost of Exporting LNG
85
9. Compliance with CCZLDO Purpose Statements
85
10. Concerns with Regard to Daniels Creek Road Are Not Relevant in this Proceeding
     86
11. The Pipeline Right-of-Way Can Be Successfully Re-vegetated
     88
12. The Modified Blue Ridge Alignment Does Not Face Previously Identified
     "Constructability" Issues
     91
13. Issues Concerning Fish and Wildlife Impacts Do Not Provide a Factual or Legal
     Basis for Denial of the Application
     91
14. Private Utility Standards Do Not Apply
     92
15. Executive Order 13406 of June 23, 2006, Entitled “Protecting the Property Rights
     of the American People” Does Not Prohibit the Application
     93
16. The Proposed Blue Ridge Alternative Route Does Not Cross the 20-CA District, and; Therefore, Arguments Directed at the 20-CA District Provide No Basis for Denial
     94

III. CONCLUSION, PROPOSED CONDITIONS, AND RECOMMENDATION

A. Staff Proposed Conditions of Approval
   1. Pre-Construction
   2. Construction
   3. Post-Construction
   96
   97
   98

B. Applicant’s Proposed Conditions of Approval
   1. Environmental
   2. Safety
   3. Landowner
   4. Historical, Cultural and Archaeological
   98
   100
   100
   101

C. Modified Condition of Approval from HBCU-13-02, Condition 25
   101
I. Summary of Proposal and Process

A. Summary of Proposal.

Pacific Connector Gas Pipeline, L.P. ("Pacific Connector," "PCGP," or "applicant") originally applied to the Federal Energy Regulatory Commission ("FERC") to construct, install, own, operate and maintain an interstate natural gas pipeline ("Pipeline") to transport natural gas from the Jordan Cove liquefied natural gas ("LNG") terminal inland to destinations located throughout the United States. The Coos County Board of Commissioners ("Board" or "BCC") approved a conditional use application in March 2012 for the pipeline.

Since that time, the applicant has changed its request to allow for exportation of natural gas. This request triggered a new review through FERC, which is currently pending. As part of that review, FERC has requested that the applicant request approval for an "alternative" segment for the pipeline known as the "Blue Ridge route." See Maps attached as Record Exhibit 1. There is no approved FERC order for this pipeline request yet, and if FERC further modifies the route, the applicant may be required to go through additional land use reviews.

If approved, the Blue Ridge route would retain the first segment of the Brunschmid alternative route, thereby allowing PCGP to avoid the Brunschmid Wetland Reserve. The Blue Ridge route would eliminate all crossings of Stock Slough, and would reduce the number of miles of crossing on private timberlands. It would place a large portion of this 14 mile segment of the pipeline on a ridgeline, which keeps the pipe away from sensitive wetlands and riparian habitat. Despite these changes, the new segment crosses the same type of zoning that the original segments crossed, and therefore the issues are similar to issues that have previously been addressed.

If approved, the alternative segment would not technically, from the County's perspective, replace the existing segment of the route which the new segments seeks to avoid, but as a practical matter, the applicant would only be allowed to build on either the original route or the alternative, but not both. This is due to the fact that FERC will not be approving both the original segment and the Blue Ridge alternate segments. Thus, it is the County Board of Commissioners' ("Board's") understanding that the applicant would, prior to construction, commit to the Blue Ridge alternative and forego any portion of the approval in HBCU 10-01 for the segment of the originally approved route replaced by the Blue Ridge route, or forego any portion of the Blue Ridge alternative and instead construct the route originally approved in HBCU 10-01.

As discussed herein, the applicant has shown that the applicable criteria are met.

B. Process.

The review timeline for this application is as follows:

- December 5, 2013: Application submitted.

Findings of Fact and Conclusions of Law HBCU 13-06
• May 2, 2014: Application deemed complete
• May 9, 2014: County Mailed Public Notice for Hearing
• May 23, 2014: County Planning Director issued Staff report
• May 30, 2014: Public hearing before the Hearings Officer
• June 17, 2014: Second Open Record Period Closed (Rebuttal Testimony)
• July 1, 2014: Third Open Record Period Closed (Surrebuttal Testimony)
• July 8, 2014: Jody McCaffree’s Motion to Strike surrebuttal evidence submitted by the applicant.
• July 8, 2014: Applicant’s Final Argument
• July 10, 2014: Applicant’s Response to Motion to Strike
• July 14, 2014: Hearings Officer’s Order on Motion to Strike
• September 13, 2014: Hearings Officer Recommendation issued
• September 19, 2014: Amended Hearings Officer Recommendation issued
• September 30, 2014: Board of Commissioners Deliberation and Tentative Decision
• October 21, 2014: Adoption of Final Decision by Board of Commissioners

C. Scope of Review.

When addressing the criteria and considering evidence, the Board used the standard of review required for land use decisions. The applicant has the burden to provide substantial evidence, supported by the record, to demonstrate that all approval standards are met.

In addition, where the ordinance provisions were ambiguous, the Board applied the PGE v. BOLI methodology to arrive at what it believes to be the correct construction of the statute. State v. Gaines, 346 Or 160, 171–172, 206 P3d 1042 (2009). In so doing, the Board attempted to rely, as much as possible, on past interpretation adopted by the Board, while still making sure that the interpretation would be affirmed if appealed. To be clear, however, the Board does not adopt any interpretational changes at this time.

The Board has reviewed the Hearing Officer Recommendation, recognizing that the Board is not obligated to accept the factual or legal conclusions of the hearing officer. The Board has the authority to modify or overturn the hearing officer’s recommended interpretations and reach different legal conclusions. While the Board’s findings and conclusions herein generally parallel the Hearing Officer Recommendation, the findings, conclusions, and ultimate decision are the Board’s own.

D. Procedural Issues.

1. Content of the Record: Record of 2010 and 2012 Proceedings Not Part of Record in this Proceeding

Ms. Jody McCaffree, a vociferous opponent to the Pipeline and LNG terminal who has been involved in every aspect of the project since at least 2010 and perhaps even earlier, requested in writing that the record of the 2010 proceeding for the Pipeline, and possibly the record for the 2012 remand proceeding, be made a part of the record for the review of the current application for the Blue Ridge alternate alignment. In her letter dated June 17, 2014, she states:
I would like to ask that the complete prior records of the original and remanded final decision for this complete pipeline project be included in with this proceeding including all final orders and conditions of approval.

Apparently, the Planning Department staff did not add to the record the thousands of pages of material from those past proceedings. According to the applicant, "[t]o do so would needlessly complicate the proceedings while providing little benefit or clarity regarding factual matters raised in this case." The Board agrees with the applicant that it is incumbent upon the parties to comb through records of previous cases and pull the evidentiary submittals they want the County to review and physically place them before the decision-maker. LUBA has often stated that is incumbent on the parties to a land use proceeding to submit the evidence on which their respective arguments rely. See Rhinhart v. Umatilla County, 53 Or LUBA 601, 603 (2006) (request to incorporate a document in the record does not automatically make it part of the record, unless county specifically grants the request). The Board has emphasized this point to the parties as well in past cases.

In subsequent written testimony, Ms. McCaffree apparently assumed that the record had been supplemented to accommodate her request. For example, in her written testimony she refers to "Fred Messerle’s 2010 comments that are in the record ...." McCaffree letter dated July 1, 2014, at p. 9. Ms. McCaffree, however, appears to have submitted only very limited portions of those materials into the record in this proceeding. See McCaffree letter dated June 17, 2014, at Ex. A.

However, following LUBA precedent, only the evidence that has been physically placed before the decision-maker is a part of the record. The term "placed before" is a term of art, and "does not merely describe the act of setting documents in front of the decision maker." Witham Parts & Equip. Co. v. ODOT, 42 Or LUBA 589, 593 (2002). Rather, it refers to documents that were actually submitted for consideration by the parties in this proceeding in the manner provided by staff. The applicant is correct to object to other parties, including Ms. McCaffree, citing or relying on materials that are extrinsic to the record on this application for the Blue Ridge alternate alignment. For this reason, the Board sustains these objections.

2. Evidence Found Only at Website Addresses Referenced in Materials Submitted in this Proceeding Are Not Part of the Record

In several cases, opponents’ record submissions attempt to incorporate materials found on the internet simply by referencing website addresses. However, web-based materials are not part of the “record” when a party simply references a website address but does not submit the actual content in its record filings. LUBA has often cautioned that to merely refer to a document does not make the contents of that document part of the record in the proceeding. See, e.g., Mannenbach v. City of Dallas, 24 Or LUBA 618, 619 (1992) (simply referring to documents in testimony does not place such documents before the local decision maker.). As the applicant notes:

"Web-based content is neither fixed nor permanent; rather, the content of a website can be changed or deleted without any notice. It is possible that web-based material could change, or be..."
deleted, prior to consideration by [the hearing officer], or after [the hearing officer] make[s] [his] recommendation to the Board of Commissioners. Similarly, a party attempting to rebut website content based on a website address would have no certainty that the web-based content to which they are responding is the same content the other party intended to reference.

Furthermore, allowing parties to incorporate website materials by reference would frustrate administrative and judicial review of land use decisions. Under CCZLDO 5.0.600.C, for example, the Board may conduct its review on the record, considering “only the evidence, data and written testimony submitted prior to the close of the record .... No new evidence or testimony related to new evidence will be considered, and no public hearing will be held.” Similarly, ORS 197.835(2)(a) provides that review of a land use decision by the Land Use Board of Appeals “shall be confined to the record.” Nothing in the CCZLDO, or in the statutes governing land use proceedings, makes web content that is not printed or downloaded and physically submitted to the decision maker a part of the legal “record.” Without a fixed and permanent record, LUBA will not be able to ascertain reliably the evidence on which the Board relied.

For these reasons, neither the hearings officer nor the Board made any effort to view links to websites listed by the parties. If a party only supported an asserted factual point with a link to the evidence intended to provide the foundation for that asserted fact, the Board does not necessarily accept that point as being supported by substantial evidence. In contrast, however, the Board did look at cases cited by the parties, and would have looked at legal reference materials that were referenced in support of legal points, had those been offered. For example, in a prior case, Ms. McCaffree cited to a law review article written by Lewis & Clack Law School Professor Mike Blum. The Board did read that law review article to gain a better understanding of the legal issue Ms. McCaffree was presenting. However, such an article would not be used as a basis for establishing the truth of factual assertions presented therein.

II. Legal Analysis.

A. Process-Related Issues and Issues Related to Multiple Approval Standards.

1. Issue of Whether a Pipeline Is still a “Utility” if it is Only Used for Exporting Natural Gas.

In Case File HBCU-10-01, the Board concluded that the proposed import-only gas pipeline was both a “utility” and a gas “distribution” line as that term is used in OAR 660-006-0025(4)(q). The county code definition of a "low-intensity utility facility" includes gas lines for "public service." CCZLDO §2.1.200. Thus, the county found that gas "distribution" lines are classified as a “low intensity utility” in the Forest zone.

The issue resurfaced in both Case Files HBCU 13-04 and HBCU 13-02, but this time with a twist. By this time, markets had changed and Pacific Connector was seeking to convert the planned pipeline and LNG terminal into export facilities, so it could ship natural gas to overseas markets (presumably places such as Hawaii, South Korea, Japan, India, etc). This prompted a series of new arguments from opponents in HBCU 13-04. For example, Oregon
Shores Conservation Coalition ("OSCC") and others argued that, unlike an LNG import terminal which brings natural gas into the country for use by either County residents or U.S. citizens in general, "it is questionable whether an export pipeline remains a utility, because it would no longer be providing LNG service to the domestic public." Based on this reasoning, opponents argued that since the proposed gas pipeline used for export, it no longer complies with CCZLDO §4.9.450. Ultimately, the County rejected these and similar arguments, finding that the pipeline constituted both a "utility" and a gas "distribution line" within the meaning of state and local law. See Final Opinion and Order 14-01-007PL (HBCU 13-04); Final Opinion and Order 14-01-006PL (HBCU 13-02).

Opponents appealed HBCU 13-02 to LUBA. See McCaffree v. Coos County, ___ Or LUBA ___ (LUBA No. 2014-022, July 15, 2014). At LUBA, opponents continue to advance their argument that change from import to export results in the reclassification of the pipe from a "distribution line" to a "transmission line." LUBA rejected that argument, finding that it was not preserved in the record. (Ironically, the issue had been sufficiently raised in HBCU 13-04, but that case was not appealed.) Despite finding the issue to have been waived, LUBA went out of its way to address the argument on its merits, and found that the "transmission line" argument had no merit.

At the time the hearings officer held the public hearing on this case (May 30, 2014), LUBA had not yet issued its Final Opinion and Order. For this reason, the question was still an open one from a legal standpoint. Opponent Jody McCaffree raised the "transmission line" argument in her submittal dated June 17, 2014 and in her letter dated July 15, 2014, at p. 7. She also raised the issue at the public hearing, going so far as to tell the hearing officer that "he was wrong" in the way he had decided the issue in HBCU 13-04 and HBCU 13-02. At the request of the hearings officer, the applicant extensively addressed the issue in a letter dated June 17, 2014. The applicant's argument features the favored PGE v. BOLI methodology for statutory construction, and largely tracks point by point with the legal analysis set forth in the hearing officer's previous recommendations. The Board agrees with the applicant's analysis.

Of course, whatever doubt still existed with regard to this issue has vanished now that LUBA issued its Final Opinion and Order pertaining to the appeal of HBCU 13-02. See McCaffree v. Coos County, ___ Or LUBA ___ (LUBA No. 2014-022, July 15, 2014). In its opinion dated July 15, 2014, LUBA confirmed that the County was correct in the way it addressed the issue in previous decision. LUBA's analysis is sound, and it is highly unlikely that a higher court would arrive at a different conclusion.

Nonetheless, in light of the fact that the LUBA case could be appealed to the Court of Appeals and beyond, the Board hereby incorporates by reference the Board's findings from HBCU 13-04 beginning on page 6 (under the heading "Issue of Whether the Pipeline is still a "Utility" if it is Only used for Export Use.") up to and including the first paragraphs of page 17. See Attachment B Exhibit 21.

Ms. McCaffree argues that the export pipeline can no longer be considered a "utility public service structure" since "it serves no public service as it was classified to do in the original 2012 Pacific Connector <CUP>." This issue was extensively debated in HBCU 13-04, and the Board addressed the issue in detail in the above-referenced findings, at page 6-17. Ms.
McCaffree makes no effort to demonstrate that those findings are incorrect in any way, and the Board does not see any reason to revisit or alter those findings here.

In her letter dated July 1, 2014, Ms. McCaffree points to two other sources for a distinction between “distribution” and “transmission” lines: OAR 860-024-0020 and 49 C.F.R. § 192.3. McCaffree Surrerbuttal at p. 4-6.

OAR 860-024-0020, promulgated by the Oregon Public Utility Commission (“OPUC”), simply adopts by reference the natural gas pipeline safety rules of the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) of the U.S. Department of Transportation, including the rules in 49 C.F.R. Part 192. Citation to the OPUC and PHMSA regulations does nothing more than establish the definitions used in the federal rules, which are incorporated by reference in the OPUC rules. Ms. McCaffree provides no evidence that the terminology in the Goal 4 rule, and therefore in the CCZLDO provisions implementing Goal 4, were patterned after the PHMSA definitions. Absent such evidence, the OPUC and PHMSA rules provide no insight into the meaning of the term “new distribution line” in the Goal 4 rules CCZLDO.

The two rules cited by Ms. McCaffree do not constitute relevant “context” for interpreting the Goal 4 rules. As the applicant points out, LUBA has held that statutes and rules broadly dealing with the same subject matter as a provision applied in a land use proceeding are not relevant context for purposes of interpreting the intent of the agency that enacted the land use rule if the statutes and rules were adopted for a different regulatory purpose by a different body and were not known to or considered by the agency when it adopted the applied provision.

The applicant cites Schnitzer Steel Industries Inc. v. City of Eugene, __ Or LUBA __ (LUBA No. 2013-038, September 17, 2013), aff’d w/o opinion, 260 Or App 562, 318 P3d 1146 (2014), in support of this proposition. The Code at issue in Schnitzer provided that a “scrap and dismantling yard” (“SADY”) is a “permitted use” in the city’s Heavy Industrial (I-3) zone. The City of Eugene adopted a code interpretation concluding that a SADY use category may include a metal shredder. The petitioner appealed to LUBA, arguing, among other things, that certain statutes and rules that regulate dismantling facilities and exclude the function performed by a metal shredder:

“…A ‘dismantler’ is defined as a person who is engaged in the business of ‘(1) Buying, selling, dealing in or processing, except for processing into scrap metal, motor vehicles for the purpose of destroying, salvaging, dismantling, disassembling, reducing to major component parts, crushing, compacting, recycling or substantially altering in form; or (2) Buying, selling, dealing in or processing motor vehicle major component parts that are stocked in the inventory of the business, if the buying, selling, dealing in or processing of major component parts is not part of a business selling new vehicles or repairing vehicles.” ORS 801.236 ** Also see OAR 735-152-0000(7).

“…To ‘dismantle’ means ‘one or more major component parts are removed from a motor vehicle acquired by a dismantler.’ OAR 735-152-0000(8).

“… ‘Major component part’ includes ‘significant parts of a motor vehicle such as engines…doors…hoods…’ etc. and expressly excludes ‘cores or parts of cores that

Findings of Fact and Conclusions of Law  HBCU 13-06
require [*26] remanufacturing or that are limited in value to that of scrap metal’
ORS 822.137. Also see OAR 735-152-0000(13).”

Schnitzer Steel Industries, Inc., ___ or LUBA at __ (slip op. at __). Petitioner contended these statutes and rules are relevant context and support their reading of the scope of the term “SADY.” LUBA determined that while these statutes and rules deal with similar subject matter, absent some reason to believe these statutes and rules adopted for different regulatory purposes were known to and considered by the city council when it enacted EC Table 9.2450, they are not contextually relevant and shed no light on what the city council may have intended when it authorized SADYs in the I-3 zone.

Like the petition in Schnitzer, Ms. McCaffree cites to authority that merely addresses loosely the same subject matter (natural gas pipelines) as the provision being interpreted. The authorities cited by Ms. McCaffree — federal administrative rules and Oregon PUC rules that adopt the federal rules by reference — do not provide “context” for the DLCD rule. These rules were not adopted by the Land Conservation and Development Commission (“LCDC”), the body that adopted the Goal 4 rules. The federal and state rules cited by Ms. McCaffree do not implement Goal 4, do not mention (and are not mentioned by) the Goal 4 rules, and do not address land use issues. Finally, there is no indication that LCDC was aware of and considered the PHMSA or OPUC rules when it adopted the Goal 4 rules. In fact, the Board previously expressly rejected the contention that gas line classifications under federal law are relevant context for interpreting the Goal 4 rules because the Goal 4 rules do not implement federal law and were not enacted with federal law in mind.1

Ms. McCaffree has offered no basis for departing from that conclusion.

2. Proposed Alternate Alignments Will Not Have a Significant Impact on Wetlands and Water Bodies.

Ms. Jody McCaffree argues that there is a high potential for landslides resulting from steep terrain in the vicinity of the location where the proposed route crosses the Coos River. See letter from Jody McCaffree dated June 17, 2014, at p. 20. She asserts that these potential future landslides will have a negative effect on water quality. She supports her argument by citing to PCGP’s “Resource Report 10,” at p. 29. In that report, PCGP criticized what was then called the “Landowner Amended Route” on the grounds that the location the opponents proposed for crossing the Coos River “would likely be infeasible for an HDD because of the topographic conditions on the north side of the river.” Ms. McCaffree states that the alternative route proposed by the applicant in this case is “very close” to the “Landowner Amended Route” that PCGP criticized in its report. Thus, according to Ms. McCaffree, the PCGP report undermines any conclusion that the route proposed in this application is feasible.

This argument appears to be a cut-and-paste from her previous submittals, and it does not appear that much thought has been put into the argument, because the steep terrain referred to in the “Resource Report 10,” was on the other side of the Coos River. There are sufficient maps in the record to allow the Board to conclude that location of the HDD bore on the east side

1 See Final Decision of Coos County Board of Commissioners, No. 10-08-04PL, HBCU-10-01, at p. 81-87. See Attachment A to Exhibit 21.

Findings of Fact and Conclusions of Law HBCU 13-06

Page 7

EXHIBIT A
of the Coos River is not in an area where landslides are a concern. See Exhibit 4 (Sheet 1 of 14). Ms. McCaffree’s argument is not well-taken.

In her June 17, 2014 letter, Ms. McCaffree also provides pictures which purport to show the effects of hydraulic fractures occurring in Coos County during the installation of the 12-inch pipe by MasTec, Inc. in 2003. These pictures are not correlated or authenticated to any specific location or map, and therefore, the photos are of limited value to the Board. Furthermore, there is no expert testimony explaining the circumstances of these alleged frack-outs. Nonetheless, because of other testimony submitted in this case, the Board is willing to view these photos as providing some evidence of the fact that things did not always go according to plan when the MasTec Inc. pipeline was constructed. However, even assuming for sake of argument that the photos relate to HDD fractures and unplanned releases of drilling mud, it is unclear whether such HDD fractures were caused by the lack of experience of the MasTec Inc. contractors, or whether there was something inherent in the terrain and geology in Coos County that made it unsuitable for HDD operations. It is only the latter situation that would have direct relevance here, and without any evidence to connect these dots, the Board does not give this testimony much weight.

On the other hand, the newspaper article provided by Ms. McCaffree provides more interest. According to the news article:

“[c]rews contaminated streambeds with drilling spoils, threatening fish habitat. Regulators later discovered that project managers had not taken adequate steps to protect hillsides from erosion. That led to even more sediments in fish spawning grounds.”

See Exhibit J to McCaffree Letter dated June 17, 2014. Record Exhibit 17. Although the news article says that “crews contaminated streambeds with drilling spoils,” the Board is left to speculate on whether such spoils entered the water due to hydraulic fractures from the HDD operations occurring in conjunction with MasTec Inc. project. In any event, according to the news article, Judge Hogan “said there did not appear to be serious environmental harm,” and that “lack of government oversight” contributed to the problem. Id. Based on the scant evidence in the record, it is not possible to create much of a link between any previous MasTec’s HDD boring mishaps and the present application.

3. Potential for Mega Disasters (Earthquakes, Landslides, etc).

Opponents continue to express the concern that a gas pipeline would create secondary problems such as explosions and fire if the County is hit by an earthquake, or if a landslide rips out a section of pipe. For its part, the applicant argues that “opponents have not identified any applicable local land use standards relevant to the alleged risk of landslides, and the applicant knows of no such applicable approval standard.” However, earthquakes could lead to landslides, which, in turn, could lead to potential fires and other secondary effects, and therefore implicate various criteria as it relates to Forest zones.

Indeed, a landslide does present a potential risk factor. To address the concern, the applicant attached two reports prepared for the applicant by registered geologists at GeolEngineers, Inc. – the Geologic and Mineral Resources Report (GMRR) and Geologic

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 8

EXHIBIT A
Hazards Evaluation Report (GHER) for the Blue Ridge alternative (Attachments D and E, respectively). The Geo-Hazard Report provides geotechnical and geo-hazard information along the Pipeline route within Coos County, including the Blue Ridge route. It concludes that there are no moderate or high risk shallow-rapid (aka “rapidly moving landslides” or “RML”) hazards for this segment of the Pipeline. In addition, all moderate or high-risk deep-seated landslides were also avoided. As the GMRR describes, the Pipeline alignment was modified numerous times during the route selection process, to avoid existing landslides and areas susceptible to landslides. All of the moderate-and high-hazard deep-seated landslides identified along the alignment were avoided where feasible during final route selection. Furthermore, as indicated in the two reports, the Blue Ridge alternative route crosses less total length of landslide hazards than the previously-approved route. GHER, at 4 tbl. 1 (indicating 6,929 linear feet of landslides crossed by the Blue Ridge route, as compared to 8,580 linear feet crossed by the originally proposed route). The Geo-Hazard Report constitutes substantial evidence that the risk of landslides damaging the Pipeline is low.

Regarding earthquakes, the applicant notes that the Geo-Hazard Report (Section 3.3, entitled Seismic Settings) states:

“Geologic maps of the project area show the many faults that cross the pipeline alignment or that are located in proximity to the pipeline corridor (Walker and MacLeod, 1991). With the exception of the Klamath Falls area, these mapped surface faults are not considered active and are not believed to be capable of renewed movement of earthquake generation (United States Geological Survey [USGS], 2002 interactive fault website).”

See Attachment D to the applicant’s July 1, 2014 letter (Exhibit 20). Regarding other forms of earth movement that may cause displacement of the Pipeline, Appendix A and Appendix B of the Geo-Hazard Report identify the locations along the Pipeline alignment where a geo-hazard exists, what risk level the hazard presents to the Pipeline, and, where avoidance is not possible, if mitigation measures will be required at those locations. Additionally, Table 3 of the Geo-Hazard Report gives a summary of potential liquefaction and lateral spreading hazards. Table 3 shows that the risk of liquefaction and lateral spreading for Stock Slough is low, and that the risk of liquefaction and lateral spreading for the Coos River has been mitigated by avoidance of areas where landslides are likely.

Further, an Erosion Control and Revegetation Plan (ECRP), including BMPs, has been prepared to reduce the potential for construction to adversely affect slope stability. Identified high-risk landslide hazards have been avoided in planning the Pipeline alignment, and mitigation of high-risk areas is not anticipated at this time. If required in the future, mitigation measures may include special construction methods, site stabilization and/or long-term monitoring. Section 11 of the applicant’s ECRP, “Steep and Rugged Terrain,” describes the measures, including construction techniques, that will be utilized to ensure safe and feasible construction; minimize overall construction disturbance; and ensure the long-term safety, stability, and integrity of the Pipeline. These measures include:

---

2 Applicant Rebuttal, Attachment E.

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 9
• routing the Pipeline to ensure safety and integrity of the Pipeline;
• identifying adequate work areas to safely construct the Pipeline;
• utilizing appropriate construction techniques to minimize disturbance and to provide a safe working plane during construction (i.e., two-tone construction; see Drawing 3430.34-X-0019 in Attachment C [of the ECRP]);
• Spoil storage during trench operations on steep slopes (greater than the angle of repose) will be completed using appropriate BMPs to minimize loss of material outside the construction right-of-way and temporary extra work areas. Examples of BMPs that may be used include the use of temporary cribbing to store material on the slope or temporarily end-hauling the material to a stable upslope area and then hauling and replacing the material during backfilling;
• optimizing construction during the dry season, as much as practicable;
• utilizing temporary erosion control measures during construction (i.e., slope breakers/waterbars);
• installing trench breakers in the Pipeline trench to minimize groundwater flow down the trench which can cause in-trench erosion;
• backfilling the trench according to Pacific Connector’s construction specifications;
• restoring the right-of-way promptly to approximate original contours or to stable contours after pipe installation and backfilling;
• installing properly designed and spaced permanent waterbars;
• revegetating the slope with appropriate and quickly germinating seed mixtures;
• providing effective ground cover from redistributing slash materials, mulching, or installing erosion control fabric on slopes, as necessary; and
• monitoring and maintaining right-of-way as necessary to ensure stability.

ECRP, at 46.

In the 2010 Decision (HBCU 10-01), the Board found these measures to be “adequate to address the risk of landslides.” 2010 Decision, at p. 26. The Board finds that these measures are sufficient to demonstrate that the Blue Ridge alternative alignment can be safely constructed as to avoid or mitigate for potential landslide hazards.

While Ms. McCaffree raises concerns regarding potential landslides and the buildability of the “Landowner Amended Route,” See McCaffree letter dated June 17, 2014, at p. 20, these concerns are not germane to the modified Blue Ridge alternative alignment proposed by the applicant. The proposed route is a modification of the originally proposed Blue Ridge alternative and is specifically designed to avoid the ridgeline above the steep slopes that posed landslide risks and construction challenges.3

Finally, Pacific Connector states that it intends to implement a similar level of landslide and Pipeline easement monitoring currently performed on existing Williams-owned pipeline facilities in southwestern Oregon. Monitoring consists of weekly air patrol, annual helicopter survey, quarterly class location 3 land patrol including leak detection, semi-annual class 1 and

---

3 See Applicant Rebuttal, Attachment D (topographical map including comparison of original vs. modified Blue Ridge routes).

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 10

EXHIBIT A
class 2 location land patrol, and annual cathodic protection survey. Observed areas of third-party activities such as logging or development and areas affected by unusual events such as landslides, severe storms, flooding, earthquake or tsunami may require additional inspection and monitoring determined on an individual basis.

In conclusion, the applicant has demonstrated that the risk of landslides has been sufficiently examined and that BMPs are in place to minimize and mitigate for any such risk. This issue was also previously discussed in the County’s decision in Final Decision and Order No. 10-08-045PL, pages 22-26. See Attachment A to Exhibit 21. That discussion is incorporated herein by reference, beginning on the 2nd full paragraph of page 22 and ending after the sentence that concludes that “[t]he Board finds that these BMPs are adequate to address the risks of a landslide.”

With regard to earthquakes, the applicant also submitted substantial evidence to demonstrate the risks are exceedingly low. The applicant states:

The primary seismic hazards to pipelines include potential strong ground shaking, surface fault rupture, soil liquefaction (and related lateral spreading), earthquake-induced landslides and regional ground subsidence. The degree of risk to the proposed pipeline from these hazards varies and depends on several factors, including the magnitude (or size) of the earthquake, the distance of the earthquake origin from the pipeline facilities (lateral and vertical), soil/rock conditions and slope angle of the ground.

The seismic hazard evaluation provided by the applicant included surface rupture from faulting, liquefaction potential and lateral spreading. These geologic hazards were fully assessed based on the risks associated with a large Cascadia-type subduction earthquake (GMRR, at 16-17). The applicant’s evaluation of available data indicates that the seismic hazard risk to the Pipeline is generally low. The Blue Ridge alignment does not cross any mapped Quaternary-age faults. GHER, at 3.

Any localized risks in areas with the potential for liquefaction may be adequately mitigated through proper engineering and design; however, such detailed engineering issues are beyond the scope of the land use review at issue in this proceeding. Pacific Connector will further analyze all locations where mitigation measures were recommended by GeoEngineers to engineer the best type of mitigation to protect the public, the environment, and the integrity of the system. Suffice it to say that the applicant will construct the pipeline to meet all applicable building code and engineering standards, including U.S. Department of Transportation (DOT) requirements, Title 49 CFR, Part 192, Transportation of Natural and Other Gases by Pipeline: Minimum Safety Standards; 18 CFR § 380.15, Site and Maintenance Requirements; and other applicable federal and state regulations.
While coastal areas of Oregon, including Coos Bay, could experience the effects of tsunamis, which can be generated by strong ground motions associated with offshore earthquakes or submarine landslides, Ms. McCaffree’s description of an alleged tsunami risk again fails to demonstrate an understanding of the limited scope of the current application. The Jordan Cove facility is not part of the current application, so Ms. McCaffree’s assertions regarding the potential risk a tsunami poses to that facility are simply irrelevant in this proceeding. See McCaffree Letter, at 22–23

With respect to the Pipeline itself, the GMRR indicates there may be some risk of tsunami-induced scouring at the proposed Pipeline crossing of the Haynes Inlet, but the pipeline will be buried below the temporary scour depth associated with a possible tsunami event. GMRR, at 42. Further, the Haynes Inlet crossing is not a part of the Blue Ridge alternative alignment at issue in this proceeding.

While there is an inundation risk for a small segment of the Blue Ridge alignment beginning on the south side of the Coos River, GHER, Fig. B-1, the pipeline will be buried to sufficient depth and encased in four inches of concrete so as to avoid any potential for tsunami damage to the Pipeline. As noted previously, the Blue Ridge route begins south of the Coos River, so the Coos River crossing is not a part of the current application. In any event, there is no indication that scouring would occur in this area due to a tsunami, and inundation of land above the buried Pipeline does not pose any significant risk to the Pipeline’s structural integrity.

The Pipeline route, including the Blue Ridge alignment, has been sufficiently analyzed for potential geologic hazards, including earthquakes and tsunamis. Where avoidance of such hazards through route selection has not been possible, design, engineering, and construction measures will be adopted to ensure the long-term safety of the Pipeline.

Particularly in light to the lack of expert testimony to the contrary, the Board finds that the applicant’s testimony constitutes substantial evidence demonstrating feasibility of complying with any approval standard that hinges on the need to plan for mega-disasters such as earthquakes, landslides, etc.

**B. Coos Bay Estuary Management Plan (CBEMP)**

The Blue Ridge alternative alignment will, at one location, cross a small portion of a CBEMP zoning district: the 20 RS. Generally speaking, compliance with the standards and policies applicable in those districts was previously addressed in the decisions approving HBCU 10-01 and HBCU 13-04, as well as in the following documents submitted by the applicant in those prior proceedings:

- The application narrative dated April 14, 2010, at pages 26-50;

*Findings of Fact and Conclusions of Law  HBCU 13-06*

Page 12

**EXHIBIT A**
• Correspondence dated May 17, 2010 from Randy Miller of Pacific Connector, specifically addressing compliance with standards in CBEMP aquatic districts;

• Correspondence dated June 9, 2010 from Robert Ellis, Ph.D., of Ellis Ecological Services ("Ellis Report"), and correspondence from Robert Ellis dated June 17, 2010, also addressing concerns about project impacts in CBEMP aquatic districts; and

• Correspondence dated June 17, 2010 from Derrick Welling of Pacific Connector, addressing compliance with standards for upland CBEMP districts.

These documents are not in the record of this proceeding, but were discussed in the final opinion in No. 10-08-045PL, HBCU 10-01, a copy of which is contained in this record at Attachment A to Exhibit 21, and in Final Decision and Order No. 14-01-007PL, Attachment B to Exhibit 21.

1. CCZLDO Section 4.5.100.

One opponent cited CCZLDO 4.5.100(2) as a requirement that land use rules are for the benefit of United States citizens only or creates a requirement that one may only sell to "people from America." However, Section 4.5.100(2) is only a "purpose statement" for the CBEMP zoning districts. Section 4.5.100(2) states:

Section 4.5.100. Purpose. The purpose of this Article is to provide requirements pertaining to individual zoning districts in accordance with the Coos Bay Estuary Management Plan.

Such requirements are intended to achieve the following objectives:
(2) To facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, and other public requirements.

Purpose statements are not approval criteria, which is to say that an applicant is not required to demonstrate compliance with purpose statements to gain approval of a land use application. See Anderson v. City of Grants Pass, 64 Or LUBA 103, 110 (2011) (purpose statements that set out objectives to be achieved through other provisions in a chapter, or that contain language that is merely aspirational, are not mandatory approval criteria); Bridge Street Partners v. City of Lafayette, 56 Or LUBA 387, 392 (2008) (purpose statements which are an expression of goals or objectives in the local governments adoption of land use regulations do not play a role in reviewing applications). Standard Insurance Co. v. Washington County, 16 Or LUBA 30, 34 (1987) (descriptions of characteristics of a zoning district are not approval criteria); Bennett v. City of Dallas, 17 Or LUBA 456, aff'd, 96 Or App 645 (1989); Slotter v. City of Eugene, 18 Or LUBA 135, 137 (1989); Beck v. City of Tillamook, 18 Or LUBA 587 (1990) (purpose statement stating general objectives only is not an approval criterion). Because CCZLDO 4.5.100(2) is part of a purpose statement that is a general expression of the objectives of the County and because purpose statements are not applicable criteria, CCZLDO 4.5.100(2) is not applicable to the Blue Ridge alignment application.

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 13

EXHIBIT A
Moreover, the objective of CCZLDO 4.5.100(2) is to signal the County's intent that the applicable criteria of the CBEMP districts will ensure that there are adequate facilities to serve a development, not that a development is limited to serving only United States citizens. The purpose statement of CCZLDO 4.5.100(2) is not implemented by any approval criterion limiting who may benefit from development within the area of the CBEMP (which as relevant to this application only includes several hundred feet in the 20-RS zone). The opponent has simply misconstrued CCZLDO 4.5.100(2) as an approval standard, and reads into it a purpose that it is not supported by the text of the provision or the context of the applicable criteria of the CBEMP zoning districts.

In light of the above, the Board finds that CCZLDO 4.5.100(2) does not apply to this application because CCZLDO 4.5.100(2) is not itself an approval criterion.

2. **CCZLDO Section 4.5.150.**

CCZLDO 4.5.150 is entitled "How to Use This Article." This section contains specific language that implements the CBEMP. The main purpose is to clearly stipulate where, and under what circumstances, development may occur.

CCZLDO 4.5.150(5)(a) states that the Management Objective provides general policy guidance regarding the uses that are, or may be, allowed in the district. CCZLDO 4.5.150(5)(b) states that to determine whether and under what circumstances a use is allowable certain symbols denote whether the use is permitted or allowed subject to conditional use review. The symbol "P" means the use or activity is permitted outright subject only to the management objective. The symbol "G" indicates the use may be allowed subject to "General Conditions" which provide a convenient cross-reference to applicable CBEMP Policies.

As discussed elsewhere in this decision, the proposed Pipeline is considered to be a "low-intensity" utility facility under the Code. Low-intensity utilities are listed as "P-G" in all of the CBEMP zones where the Pipeline will be located, which are identified and discussed in the 2010 approval for the Pipeline, and as relevant to this application, are addressed below. Also, for each of the CBEMP zones, the applicable "General Conditions" are identified. The applicable CBEMP Policies are addressed separately in this decision.

3. **CCZLDO Section 4.5.180(1).**

CCZLDO Section 4.5.180(1) provides as follows:

**SECTION 4.5.180. Riparian Protection Standards in the Coos Bay Estuary Management Plan.** The following standards shall govern riparian corridors within the Coos Bay Estuary Management Plan:

1. Riparian vegetation within 50 feet of a estuarine 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 by the Coos Soil and Water Conservation District, a port district or U.S. Soil Conservation Service posing an erosion or safety hazard may be removed to minimize said hazard; or
b) riparian vegetation may be removed to provide direct access for a water-dependent use; or
c) Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures; or
d) Riparian vegetation may be removed to facilitate stream or streambank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, USFS stream enhancement plan; or
e) Riparian 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; or
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 for the minimum amount necessary to site or maintain irrigation pumps.

2. The 50’ 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”. (Emphasis Added).

The proposed route does not alter riparian vegetation within 50 feet of a river, and therefore, CCZLDO Section 4.5.180(1) does not apply. CCZLDO Section 4.5.180(1) was addressed in the context of HBCU-13-04 as it relates to the Coos River, and this case does not change any aspect of that decision as it relates to this approval standard.

4. **20-Rural Shorelands (20-RS)**

CCZLDO Section addressing the 20-RS zone states the following pertaining to the boundary of the zone:

**SPECIFIC BOUNDARIES:** This district consists of the majority of both shores of the Coos-Millicoma Rivers, plus Daniels and Lillian Creeks, from the mouth to above the heads-of-tide. The district does not include the Harbor Barge and Tug site, the barge site at the river forks or the log sorting sites at Allegany and Dellwood. **Western Boundary -** The north shore boundary begins at the eastern edge of the Christianson Ranch dike. The south shore boundary begins at the junction of East Catching Slough Road and Gunnell Road. **Eastern**
Boundary - The district ends 1000-feet above heads-of-tide of the Coos and Millicoma Rivers.

The proposed Blue Ridge alternative pipeline route crosses the 20-RS zoning district at one location. This segment of the Pipeline is located on the south bank of the Coos River. For the most part, the route in this location is the same as the route approved in 2013. However, the “Sheet 2” map does show some deviation in the route from what was previously approved.

CCZLDO 4.5.545 identifies the management objective for the 20-RS zoning district.

Section 4.5.545 Management Objective: This district shall be managed for rural uses along with recreational access. Enhancement of riparian vegetation for water quality, bankline stabilization, and wildlife habitat shall be encouraged, particularly for purposes of salmonids protection. This district contains two designated mitigation sites, U17(a) and (b), “medium” priority, which shall be protected as required by Policy #22.

The Blue Ridge alignment will not impact mitigation sites, U-17(a) and (b). Once installed, the Pipeline will not prohibit rural uses or recreational access. Additionally as discussed above, the temporary access road areas within the 20-RS district will be returned to their previous condition following construction. In this area on the south side of the Coos River, the area is pastureland and may continue be used as pastureland following construction. The applicant submitted into the record an “Erosion Control and Revegetation Plan” (“ECRP”), dated June 2013, which outlines the Best Management Practices (“BMPs”) the project will use for temporary and permanent erosion control along the project right-of-way to prevent land movement. Exhibit 8. The ECRP relates to the entire Pipeline, and it provides useful information on erosion control and revegetation procedures that Pacific Connector will utilize during and after construction of the alternate alignment segments proposed in this application. The Board finds that the ECRP constitutes substantial evidence that supports the conclusion that the application satisfies the management objective of the 20-RS zone.

Although not part of this application, the applicant does propose to use the HDD crossing method for the Coos River. This crossing method, if successful, will avoid impacts to the river its banks, and riparian vegetation and will provide the maximum protection to wildlife habitat within and adjacent to the river. The only risk to this zone is a possibility of a hydraulic fracture and unplanned release of drilling muds from the HDD bore. The Board previously determined that an HDD bore was feasible at this location and does not revisit that determination in this case (because it is outside the scope of this application).

Ms. McCaffree argues that although a low intensity utility is allowed in the 20-RS district, that the proposed HDD bore technique is an “activity” that requires a finding of need. See McCaffree letter dated June 17, 2014, at p. 6-7. Ms. McCaffree is confused. An HDD bore is not listed as an “activity” in the 20-CS district, but it is something that can be a considered to be a construction technique for the installation of a utility, which is a permitted use. Under Ms. McCaffree’s theory, a permitted use such as “mining/mineral extraction” would also need to have corresponding activities listed, such as “borehole drilling,” “blasting,” and “rock
crushing.” The correct interpretation is to assume that the provision for a “use” also includes whatever construction techniques are typically employed to build / execute / operate that use.

The management objective for the 20-RS zone is met.

§ 4.5.546. Uses, Activities and Special Conditions. Table 20-RS 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 20-RS 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 Plan Policies set forth in the Coos Bay Estuary Management Plan.

CCZLDO 4.5.546(15)(a) lists low intensity utilities use as permitted subject to CBRMP Policies 14, 17, 18, 22, 23, 27, 28, 34, 49, 50 and 51 located in Appendix 3.

C. Overlay Zones (CCZLDO Article 4.6).


CCZLDO 4.6.210 and 4.6.215 provide as follows:


In a district in which the /FP zone is combined, those uses permitted by the underlying district are permitted outright in the /FP FLOATING ZONE, subject to the provisions of this article.


In a district with which the /FP is combined, those uses subject to the provisions of Article 5.2 (Conditional Uses) may be permitted in the /FP FLOATING ZONE, subject to the provisions of this article.

As detailed above, the Pipeline is permitted either outright or conditionally in each of the base zones that it crosses. As described in the applicant’s narrative supporting its application, the Pipeline is also satisfies each of the applicable Floodplain overlay standards. Therefore, it is also a permitted use in the Floodplain Floating Zone.


CCZLDO 4.6.230 provides as follows:

SECTION 4.6.230. Procedural Requirements for Development within Special Flood Hazard Areas. The following procedure and application requirements shall pertain to the following types of development:
4. Other Development. “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, road and driveway maintenance, landscaping, gardening and similar uses which are excluded from 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.

Compliance with CCZLDO 4.6.230 was raised by opponents in previous cases, but without any substantive analysis. In this case, opponents have advanced no arguments pertaining to this approval standard. As discussed in HBCU-13-04, a natural gas pipeline is not specifically included in the specified list of “other development.” However, because the PCGP construction process will involve the removal and replacement of soil and recontouring activities that are similar to the listed development activities, the applicant submitted documentation demonstrating that the PCGP is consistent with the “other development” standards. Staff addressed this issue in HBCU 13-04, as follows:

The overlay zone in this case will not prohibit the development but there are criteria under “other development” that needs to be addressed. The pipeline is considered as “other development” because it requires such activities as drilling, removing and filling and is not defined as a structure. The PCGP alternate alignments will be installed below existing grades [using HDD crossing methods], and no permanent structures will be placed above existing grades within the floodplain. In addition, at the completion of the installation, all construction areas will be restored to their pre-construction grade and condition. The applicant will use installation methods and mitigation measures to avoid or minimize flotation, collapsing, or lateral movement. A floodplain application addressing the requirements of other development must be obtained from the Coos County Planning Department before the start of the project. Pursuant to CCZLDO § 4.6.285 the county may issue a permit on the condition that all applicable local permits are or will be obtained; therefore, this is a suggested condition of approval.

See Final Opinion and Order 14-01-007PL (HBCU 13-04), at p. 31. Attachment B to Exhibit 21.

*Findings of Fact and Conclusions of Law  HBCU 13-06*

Page 18

**EXHIBIT A**
The purpose of CCZLDO 4.6.230 is to ensure that floodplains are not altered in a manner that increases the flood elevation levels. In this case, the Pipeline does not alter flood elevation levels because it will be buried underground using the HDD crossing method. While it is true that the HDD bore will result in some spoils being removed from beneath the river, those spoils will not be deposited within the floodplain. Therefore, it is easy to conclude that the Pipeline is a "similar use" which can be excluded from definition of "other development" because is not "of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages."

Furthermore, 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. The applicant will use installation methods and mitigation measures to avoid or minimize flotation, collapsing, or lateral movement. A floodplain application addressing the requirements of other development must be obtained from the Coos County Planning Department before the start of the project. Pursuant to CCZLDO 4.6.285, the county may issue a permit on the condition that all applicable local permits are or will be obtained; therefore, the Board has added a condition of approval to ensure compliance with this standard.

3. CCZLDO 4.6.235 (Sites within Special Flood Hazard Areas).

CCZLDO 4.6.235 provides as follows:

SECTION 4.6.235. Sites within Special Flood Hazard Areas.

1. If a proposed building site is in a special flood hazard area, all new construction and substantial improvements (including placement of prefabricated buildings and mobile homes), otherwise permitted by this Ordinance, shall: [remainder of text omitted here, but set forth below]

Compliance with CCZLDO 4.6.235 was raised by opponents in previous cases, but without any substantive analysis. In this case, opponents have advanced no arguments pertaining to this approval standard. CCZLDO 4.6.235 applies to structures that will be built within the 100 year floodplain. The Board finds that CCZLDO 4.6.235 does not apply to this case. Nonetheless, the applicant erred on the side of caution and addressed these criteria as follows:

a. be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques);

Installation methods and mitigation measures will avoid and/or minimize flotation, collapse, or lateral movement hazards and flood damage.
b. be constructed with materials and utility equipment resistant to flood damage;

The entire Pipeline will be constructed with corrosion-protected steel pipe. Where deemed necessary, the Pipeline will be installed with a reinforced concrete coating to protect against abrasion and flood damage.

c. be constructed by methods and practices that minimize flood damage; and

The Pipeline will be constructed by methods and practices that minimize flood damage.

d. electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

The subsurface Pipeline does not include electrical, heating, ventilation, plumbing, or air conditioning components. Therefore, this criterion is not applicable.

The Board finds that CCZLDO 4.6.235 is met to the extent it applies here.

D. **Forest Zone (F) (CCZLDO Article 4.8)**

1. **CCZLDO §4.8.300(F).**

The proposed “Blue Ridge” alternate alignment segments will cross approximately 12 miles of Forest-zoned lands within Coos County. Of these, 5.3 miles of the pipeline will traverse forestlands located on private property, and the remainder (7.64 miles) will traverse forest lands owned by the Federal government and state of Oregon.

The applicant must demonstrate compliance with CCZLDO 4.8.300(F), which is a codification of OAR 660-006-0025(4)(q). This administrative rule allows the following conditional uses in forest zones:

“New electric 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, telephone, fiber optic cable) with rights-of-way 50 feet or less in width.” OAR 660-006-025(4)(q).

Opponents argue that the proposed pipeline use is a gas “transmission line,” which they assert is not allowed in the Forest zone due to CCZLDO 4.8.300(F). They argue that only gas “distribution” lines are allowed, and a distribution line is one that distributes gas to homes in Coos County. The opponents seek to differentiate the proposed Pipeline on the grounds that it does not “distribute” gas to residents or businesses within Coos County, but is instead one that “transmits” gas to foreign locations.

---

4 Identical language is included in CCZLDO 4.8.300(F) regarding conditional uses in the County Forest zone.
As in past cases, the Board concludes that the Pipeline is a “distribution line” within the meaning of OAR 660-006-0025(4)(q). See McCaffree v. Coos County ___ Or LUBA ___ (LUBA No. 2014-022, July 14, 2014), slip op. at 10-11. There is no need to revisit that interpretation and findings in this case.

In any event, the Board finds that even if the application is proposing an interstate gas “transmission” line, and even if CCZLDO 4.8.300(F) and OAR 660-006-0025(4)(q) could be read to bar such gas transmission lines in a Forest zone, those laws would be preempted by the Natural Gas Act.

2. CCZLDO 4.8.400.

CCZLDO 4.8.400 is entitled “Review Criteria for Conditional Uses in Section 4.8.300.” It is similar to, and derived from, state law found at ORS 215.296. This statute states:

(1) A use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

CCZLDO 4.8.400 is worded in a slightly different manner, as follows:

—A use authorized by Section 4.8.300 ... may be allowed provided the following requirements are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.

A. 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; and

However, CCZLDO 4.8.400 applies to applications proposed to be sited on forest land, whereas ORS 215.296 applies to farm land. For this reason, LUBA has held that CCZLDO 4.8.400 does not implement ORS 215.296(1). Comden v. Coos County, 56 Or LUBA 214, 221 (2008). Notably, the reference to “on surrounding lands” is absent in CCZLDO 4.8.400. So presumably, CCZLDO 4.8.400 looks out farther than merely “surrounding lands.” Since the County’s approval standard lacks any particular geographic reference, and so long as all properties that are potentially affected by the proposed conditional use are considered, the standard can be met.
The Staff Report for this case states:

FINDING: Due to the fact that the farm and forest criteria are similar they are reviewed in one section. In prior decisions the applicant has shown they meet these criteria. The Coos County Board of Commissioners have found in two different decisions that the pipeline will not force a significant change in, or significant increase in the cost of accepted farming or forest practices on agricultural or forestlands.

This alternative route would reduce the miles of private timber lands crossed from 9.32 miles to 5.31 miles and will increase the number of BLM timber lands crossed from 1.43 miles to 7.64 miles. Accepted forest practices can best be defined as the propagation, management and harvesting of forest products, consistent with the Oregon Forest Practices Act; however, by inclusion of listed uses in the LDO there are other uses that can co-exist with these practices such as a gas distribution line.

The Coos County Board of Commissioners adopted language that would mitigate for a loss of income from forest practices. These numbers are based on the maximum removal from forest production to account for the entire right-of-way; however, approximately 20 feet of that right-of-way will be replanted and could become part of the production which would further lessen any impacts.

The applicant submitted testimony in the prior review from an expert who stated that an incremental increase in costs to timber operators generally amounts to a range of 1 to 2 percent and Staff finds that analysis to be accurate based on the highest amount of production (2%) that would be removed if all of the properties zoned forest are managed as forestlands. The applicant will include any loss of forest production as part of the compensation paid to landowners by the pipeline operator; therefore, alleviating any cost to the property owners.

In summary the applicant has shown that there will be no significant change in or increase in cost of accepted forest practices.

Accepted farm use means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry of any combination thereof. “Farm use” includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. However, by inclusion of listed
uses in CCZLDO there are other uses that can co-exist with these practices.

The impacts to agricultural lands are even smaller than the impacts to the forestlands and they are not significant to the overall farming operations. Again, the only impact will be at the time of construction and the property owners will be compensated for lost production during construction. Once the construction is completed the property will be vegetated and can be utilized for pasture land. Therefore, there will be no significant impact to accepted farm and forest practices.

The applicant will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression. The pipeline itself will be located underground and shall be maintained to conform with or exceed US Department of Transportation (DOT) requirements found in Title 49 Code of Federal Regulation (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. In the upland areas, vegetation within the permanent easement will periodically be maintained by mowing, cutting and trimming either by mechanical or hand methods. The permanent easement will be maintained in a condition where trees or shrubs greater than six feet tall will be controlled (cut or trimmed) within 15 feet either side of the centerline (for a total of 30 cleared feet). This will limit the overall fuel load within the corridor while discouraging the growth of "ladder fuels" that otherwise could allow fire to reach the lower limbs of mature trees.

In the prior decision the applicant was required at least six months prior to delivery of any gas to the Jordan Cove Energy Project (LNG) import terminal, to: (1) submit a project-specific Public Safety Response Manual to the County, and (2) in order to comply with federal safety regulation, coordinate with local emergency response groups. Meet with local responders, including fire departments, to review plans, and communicate specifics about the pipeline. If requested, Pacific Connector will also participate in emergency simulation exercises and provide feed-back to the emergency responders.

The Board of Commissioners has already adopted the interpretation that the pipeline does not meet the definition of a "structure" which is a walled and roofed building including a gas or liquid storage tank that is principally above ground. This is a linear pipe that is completely located underground. The pipe is connected to a structure but cannot itself be considered a structure. The Board made this
interpretation in the Board of Commissioners Final Decision and Order No. 10-08-045PL, dated September 8, 2010, as ratified by Final Decision and Order No. 12-03-018PL dated March 13, 2013. CCZLDO § 4.8.600, § 4.8.700, § 4.8.750, § 4.9.600 and § 4.9.700 only apply to structures and are not relevant to this review. Therefore, all of the criteria have been satisfied.


In interpreting CCZLDO 4.8.400 and 4.9.400, there are a couple of preliminary points that must be addressed. As the Board previously noted, there are several important limitations on the "significant impact" standard. First, this criterion relates to significant impacts on farming and forest practices and significant cost increases. The applicant is not required to demonstrate that there will be no impacts on farming or forest practices, or even that all impacts that may force a change or increase costs have been eliminated through mitigation or conditions of approval. See generally Rural Thurston, Inc. v. Lane County, 55 Or LUBA 382, 390 (2007).

Secondly, LUBA has affirmed the County’s determination that CCZLDO 4.8.400 is limited in its scope and only applies to potential impacts on commercial farm and forest practices, as opposed to hobby farms or residential lands. Comden v. Coos County, 56 Or LUBA 214 (2008).

Third, in Comden, LUBA further affirmed the county's determination that CCZLDO 4.8.400 is limited in its scope and does not require the extensive analysis applied under the similarly-worded provisions of ORS 215.296(1). For example, LUBA held that the required analysis under CCZLDO 4.8.400 need not include any of the following: (1) identification of a particular geographic area of analysis, (2) an "exhaustive pro forma description of all farm and forest practices on nearby lands," or (3) consideration of farming practices not intended to generate a profit. Id. Furthermore, since this code section does not implement ORS 215.296(1), LUBA rejected attempts to rely on cases interpreting the statute to argue that the code standard was not satisfied. Id.

Specific issues related to this criterion are discussed below.

a. The PCGP Alternate Alignment Segments Will Not Force a Significant Change in Accepted Farm and Forest Practices.

Ms. Jody McCaffree asserts that the Blue Ridge alternate alignment segment will improperly force a significant change in accepted farm and forest practices and increase the cost of fire suppression for various reasons.

As an initial matter, there does not appear to be any Forest-zoned land crossed by the proposed Blue Ridge alternate alignment that is in "farm use." Although Ms. McCaffree contends that this application will impact farm use in violation of CCZLDO 4.8.400, she does not identify any lands subject to CCZLDO 4.8.400 that are in farm use. See McCaffree Letter dated July 1, 2014, at p. 8-9. The Environmental Alignment Sheets submitted by the applicant (Exhibit 4 in the record) show only three areas of the proposed alignment that are not forested. See Sheets 1, 4 and 13. Those areas, all in pasture, correspond to the EFU zone, not the F zone, on the zoning map (Application, Sheet 2 "Amended Blue Ridge Route"). Thus, there does not
appear to be any potential that the proposed Blue Ridge alternate alignment will alter farming practices within the Forestry zone.

The same cannot be said for the impact of the pipeline on forest practices being undertaken on lands zoned “Forest.” As discussed in detail in the findings supporting HBCU 13-04, the alternate alignment segments will have effects on the timbered areas located in the Forest zone both during and after construction in the form of a 30-foot cleared corridor directly over the Pipeline, which is necessary for safety purposes to protect the pipe from potential root damage and allow for ground and aerial surveillance inspections of the Pipeline. However, the remaining 20 feet of permanent right-of-way, as well as the temporary constructions areas, will be reforested following construction in areas that were forested prior to construction, in a manner consistent with the ECRP. Once the restoration occurs, the landowner will be able to continue accepted forest practices in those areas.

Additionally, surrounding forestry operators will also be able to cross the right-of-way for the alternate alignments with heavy hauling and logging equipment, provided they coordinate those crossings with the Pipeline operator and safety precautions are implemented to protect the integrity of the alternate alignments. For example, it may be necessary to provide additional cover directly over the areas of the alternate alignments to provide equipment crossing areas and logging roads. If a landowner demonstrates a need to cross areas of the alternate alignments in order to conduct forestry operations, the applicant has stated that it “is committed to working with that property owner to develop an alternate alignment crossing plan that allows the access points to be constructed and used in a safe manner.” The property owner will be compensated for any additional cost created by compliance with the Pipeline crossing plan as it relates to the proposed alternate alignments. While the requirement to coordinate with the Pipeline operator may be an inconvenience for some forest operators, it does not constitute a significant change in forestry operations, because the operator will be able to continue to cross the Pipeline area in order to access or haul timber. Additionally, timber operators generally develop and carefully consider future harvesting and access plans. The need to consult with the Pipeline operator if those plans include future crossings of the Pipeline right-of-way is not a significant imposition or significant change in normal planning activities. The coordination requirement will also not significantly increase the cost of conducting forestry operations, as the operator will be compensated for any increase in cost created by the presence of the Pipeline or any of the proposed alternate alignments.

For the reasons set forth above, the alternate alignments will not cause a significant change in accepted farming or forest practices, nor will they cause a significant increase in the cost of farm or forest practices on either surrounding farm or forestlands, or on farming or forest practices within the permanent right-of-way itself.

As previously explained, the only part of the 95-foot construction easement, temporary work areas, and permanent right-of-way that will not be returned to timber production will be a 30-foot corridor centered over the Pipeline:

On Forest-zoned land, a 30 foot corridor directly over the pipeline would be kept clear of large vegetation, which is necessary for safety purposes to protect the pipe from potential root damage and allow for ground and aerial surveillance inspections of the pipeline.

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 25

EXHIBIT A
However, the remaining 20 feet of permanent right-of-way, as well as the temporary construction areas, will be reforested following construction in areas that were forested prior to construction, in a manner consistent with the ECRP. Once the restoration occurs, the landowner will be able to continue accepted forest practices in those areas.

See Applicant Rebuttal dated June 17, 2014, at p. 18 (Exhibit 15). See also Final Decision and Order No. 10-08-045PL (HBCU-10-01) at p. 94 (Attachment A to Exhibit 21). Ms. McCaffree, however, insists that “the Jordan Cove / Pacific Connector Gas Pipeline Project” would increase energy costs for forestry operations, result in a permanent loss of timber in the right-of-way, and alter forestry practices. See McCaffree letter dated July 1, 2014, at p 8-9. Her arguments miss the mark. The applicant addressed these issues point by point, as follows:

**Energy costs:** Ms. McCaffree offers no evidence that the proposed Blue Ridge alternate alignment will increase energy costs for forestry operations. The Pipeline transports natural gas within Oregon—it does not buy, sell or export natural gas. Even assuming for purposes of argument that the export of natural gas from the Jordan Cove Energy Project could be attributed to the Pipeline, Ms. McCaffree does not indicate what the likely impact on natural gas prices will be, let alone the degree to which the costs of forestry operations and equipment are tied to natural gas prices. Ms. McCaffree’s speculation is not evidence of a “significant” increase in costs.

**Loss of timber:** The property owner will be compensated for loss of timber value within the temporary and permanent right-of-way. The amount of compensation is decided by agreement with the landowner or, if necessary, through judicial proceedings—not in a land use proceeding. Further, the permanent removal of timber along the thirty-foot strip cleared above the pipeline does not constitute a significant change in forest practices. Since natural gas pipelines necessarily require a cleared corridor, the decision by LCDC in the Goal 4 rules and by Coos County to permit such uses in the Forest zone reflects a legislative determination that such effects do not constitute a significant change in forest practices.

**Alteration of forestry practices:** Ms. McCaffree’s contention that the proposed alignment will significantly change—and increase the costs of—forestry practices is raised for the first time on surrebuttal and appears to rely entirely on testimony from Fred Messerle in 2010. See McCaffree Surrebuttal at 9. Mr. Messerle’s 2010 testimony, however, is not part of the record in this proceeding.

---

Ms. McCaffree also briefly mentions “statements” from “Yankee Creek Forestry.” McCaffree Surrebuttal at p. 9. She does not indicate when or in what form those statements were made. In any event, they are not part of the record in this proceeding.
this proceeding. It was submitted in response to a different alignment that does not overlap the proposed Blue Ridge alternate alignment. Moreover, Mr. Messerle testified in support of the application for the Blue Ridge alternate alignment at the hearing on May 30, 2014, despite the fact that the alignment proposed in the current application crosses land owned by Fred Messerle & Sons, Inc. and zoned for Forest (F) use. See Staff Report at 1.

The Board agrees with the applicant, and finds that Ms. McCaffree’s arguments are unsupported by substantial evidence and are therefore without merit.

b. The PCGP will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

Pursuant to CCZLDO 4.8.400, conditional use review in the Forest zone requires the applicant to demonstrate the following:

The proposed use will not significantly increase fire hazard or significant increase fire suppression costs or significantly increase risks to fire suppression personnel.6

The County has previously found on two occasions that the installation of the Pipeline would not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. See Final Decision and Order No. 10-08 045PL (HBCU 10-01), at page 104-8 under the heading “ii. Fire Suppression Costs and Personnel”), (Attachment A to Exhibit 21), and Final Decision and Order No. 14-01-007PL (HBCU 13-04), at pages 40-45, under the hearing “b. The PCGP will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.” (Attachment B to Exhibit 21).

In HBCU 10-01, the Board agreed with the applicant that the risk of a fire caused by Pipeline rupture is remote, but also noted that the if such a fire did occur, that there is a high likelihood that such a fire would be severe problem for local volunteer firefighters. In HBCU 10-01, the applicant submitted a “Reliability and Safety Report dated March 2010 that detailed how the applicant would coordinate and, if requested, train local fire departments on issues related to emergency response to Pipeline mishaps. An update to that report, dated June 2013, was provided in HBCU 13-04. In HBCU 13-04, the applicant also provided a sample of a “Public Safety Response Manual” that will be distributed to first responders. The reports and manual, labeled “Exhibit H” and “Exhibit I,” were attached to a letter from Rodney Gregory and Bob Peacock dated Sept. 18, 2013, but neither the aforementioned letter, the report, or the manual are included in the record of this case. See Simpson v. City of Lake Oswego, 15 Or. LUBA 283 (1987) (city’s "judicial notice" of prior city approvals does not encompass supporting evidence submitted during the prior proceedings). Nonetheless, the letter, report and manual are all referenced in the Board’s findings in HBCU 13-04, and those findings are in

---
6 The wording for this criterion is taken directly from the Goal 4 rule at OAR 660-006-0025(5).

Findings of Fact and Conclusions of Law  HBCU 13-06
Page 27

EXHIBIT A
the record and constitute substantial evidence in their own right, particularly when no new substantial evidence to the contrary has been submitted into this record.\footnote{LUBA has often stated that a "staff report" can constitute substantial evidence in support of a local government decision, as a local government is entitled to rely on its staff to furnish it with factual information on which to base its decisions. Grover’s Beaver Electric Plumbing v. Klamath Falls, 12 Or LUBA 61, 64 (1984). In comparison, a prior decision that recites facts and makes a determination should likewise be sufficient to constitute substantial evidence.}

The Board also previously imposed a condition of approval related to fire suppression issues. The Board adopts a similar condition in this case.

As described in the applicant’s Reliability and Safety Report dated June 2013 ("Safety Report"),\footnote{See Applicant Rebuttal dated June 17, 2014, at Attachment F. (Exhibit 15).} the Pipeline, including the Blue Ridge alignment, will be subject to exacting safety requirements that will minimize the risk of a fire caused by the Pipeline itself. Specifically, the Pipeline and all associated facilities will be designed and maintained to conform with or exceed U.S. Department of Transportation (DOT) requirements, Title 49 CFR, Part 192, Transportation of Natural and Other Gases by Pipeline: Minimum Safety Standards; 18 CFR § 380.15, Site and Maintenance Requirements; and other applicable federal and state regulations.

At the May 30, 2014 public hearing, various opponents questioned how the applicant will address potential Pipeline leaks and fires. Opponents again did not identify an approval standard to which these concerns relate, and did not provide any information to indicate any increased risk associated with the Blue Ridge alignment at issue in this proceeding. However, the Board finds that this testimony was directed at CCZLD0 4.8.400 so it will be addressed at this juncture.

For the most part, the opponent testimony related to this topic was stated as layperson “opinion” testimony, which is to say that there was no effort to back up points with evidence or expert testimony. The Board gives very little, if any, weight to layperson testimony of this sort, because the testimony has invariably in this case been provided without an adequate foundation.

In stark contrast, the applicant provides expert testimony and backs it up with specific plans and proposed courses of action. In its June 17, 2014 letter, the applicant included the following discussion describing the safety measures the applicant has adopted and attached the Safety Report. See Attachment F to Applicant’s June 17, 2014 letter. Exhibit 15. The applicant states:

\begin{quote}
As described in the Safety Report, the first step in Pacific Connector’s pipeline safety monitoring process is to make sure that the pipeline is constructed properly. During construction, the integrity of coatings designed to protect against corrosion are checked and imperfections are immediately repaired. Pacific Connector will require nondestructive testing (i.e., x-ray inspection) of 100 percent of the welds in the pipeline. In addition, the pipeline will be strength tested to a pressure of up to
\end{quote}
1.5 times the maximum allowable operating pressure depending on class location prior to being placed into service.

Once the pipeline is in the ground and in service, the applicant will implement a number of routine monitoring measures including:

- Performing land patrols which involve observing surface conditions on and near the transmission line right-of-way for indications of leaks, construction activity, and any other factors which might affect safety and operation.
- Performing aerial patrols at least once per calendar year depending on class location;
- Inspecting river crossings;
- Ensuring that class location survey is current, and;
- Conducting leak surveys at least once every calendar year as required by DOT CFR 49 Part 192.

In addition to routine monitoring, potentially affected portions of the pipeline will be inspected during or immediately following any major natural disturbance events, such as an earthquake, floods, wildfires, etc.

During inspections, the applicant will look for signs of unusual activity or indications on the right-of-way. Discoloration of plants or grasses may be indicative of a small leak. Any missing or damaged pipeline markers used to identify the location of the pipeline will be promptly replaced or repaired. Any evidence of unauthorized activity will be reported and investigated. Additional testing will be conducted to verify the effectiveness of CP systems.

In addition, the applicant will monitor the pipeline system using a supervisory control and data acquisition (SCADA) system, and will provide operations control, maintenance availability, and emergency response capabilities 24 hours a day, 7 days per week. The applicant will develop emergency response plans for its entire system, operations personnel will attend training for emergency response procedures and plans prior to commencing pipeline operations, and the applicant will meet with local emergency responder groups (fire departments, police departments, federal land management agencies and other public officials) to review plans and to communicate the specifics about the pipeline facilities in the area and the need for emergency response.
A low voltage cathodic protection (CP) system will also be installed to assist in protecting the buried pipeline from corrosion. The applicant will assess cathodic protection requirements and will install ground-beds and rectifiers following final pipeline installation. Information from the assessment process will be used to determine the design requirements and locations of anode-beds and rectifiers. This work will be completed by qualified consultants.

Following the installation and balancing of the CP system, pipeline personnel will routinely check the voltage and ampereage of the rectifiers, as well as the pipe-to-soil potentials. Continual adjustments will be made as conditions change. In addition to maintenance activities, annual close interval surveys will be completed to determine pipe to soil potentials in accordance with DOT requirements.

With respect to the alleged risk of fire danger, Pacific Connector has developed a plan for treatment and disposal of forest slash in coordination with the BLM and USFS fuel load specifications. As explained in ECRP Section 3.3.2 regarding treatment of forest slash, and ECRP Section 10.2 regarding fuel loading specifications and disposal of slash, these fuel loading specifications are developed specifically for the Pipeline project based on the amount of woody material expected to be encountered during construction. According to the Forest Service, dead and downed woody material greater than 16 inches in diameter does not contribute to fire hazard and will be maintained on site. Slash may also be chipped and scattered across the right-of-way provided that the average depth of wood chips covering the area does not exceed one inch following application. This chip depth will be sufficient to stabilize the soil surface from erosion, while allowing grass seed to germinate and seedlings to develop, and is not expected to significantly increase fuel hazards so long as the maximum tonnage for fuel loading does not exceed 12 tons per acre. The Forest Service has also noted that wood chips can be the most effective means to protect soils from surface and fluvial erosional processes. During right-of-way clean-up and reclamation, slash materials will be spread across the right-of-way at a rate that does not exceed these fuel load specifications. The fuel loading standards will also apply to slash materials that may be generated during periodic right-of-way maintenance activities that will likely occur about every five years along the pipeline.

Moreover, in the event a fire was to occur on the surface in the vicinity of the pipeline, the presence of the pipeline will not increase fire hazards. As explained in Section 1.1 of the Safety
Report referenced above, fires on the surface are not a direct threat to underground natural gas pipelines because of the insulating effects of soil cover over the pipeline. The Safety Report cites a study conducted in North Carolina that measured both surface and subsurface temperatures during a prescribed burn. Fire temperatures on the surface approached 1,500 degrees Fahrenheit, while soil temperature at a depth of approximately 2.5 inches was recorded at 113 degrees Fahrenheit during the burn. The Safety Report acknowledges that specific fuel, climate, geographic, and geological conditions at the study area likely differ from those surrounding the Pipeline area. Despite those expected differences, the study illustrates the order of magnitude a potential fire may have on subsurface temperatures. As noted above, the Pipeline will have a minimum of 3 feet of cover within forested areas. Therefore, any risks associated with fires on the surface above the pipeline are eliminated by the depth to the subsurface pipeline.

For the reasons set forth above, the applicant has addressed prevention, detection and response to leaks, and with respect to Forest-zoned lands has demonstrated that the proposed Blue Ridge alignment will not significantly increase fire hazards.

*See* letter from Marten Law dated June 17, 2014, at p. 21-3. The Board finds that this testimony constitutes substantial evidence, especially given the lack of countervailing testimony.

The presence of the buried Pipeline will also not pose an undue risk of explosion in the event of a forest fire, nor will vegetation management along the right-of-way exacerbate the risk of such a fire. The applicant testified that in the upland areas, vegetation within the permanent easement will be periodically maintained by mowing, cutting and trimming either by mechanical or hand methods. The easement will be maintained in a condition where trees or shrubs greater than six feet tall will be cut or trimmed within 15 feet either side of the centerline (for a total of 30 cleared feet). This will limit the overall fuel load within the corridor while discouraging the growth of “ladder fuels” that otherwise could allow fire to reach the lower limbs of mature trees.

Since the fire risk associated with the Pipeline is low, the Pipeline will not significantly increase risks to fire suppression personnel, nor will it significantly increase suppression costs. The presence of the Pipeline will require coordination between the applicant and local fire personnel. To comply with federal safety regulations, the applicant must coordinate with local emergency response groups prior to commencing Pipeline operations, but there is no requirement that such coordination happen before land use approvals can be issued. While there will be some additional cost to local fire suppression organizations to participate in coordination efforts, the majority of the education and coordination costs will be borne by the applicant and the costs to local departments will not be significant. These efforts will also reduce the risk to fire suppression personnel that may respond to a fire in the vicinity of the Pipeline.

*Findings of Fact and Conclusions of Law*  
HBCU 13-06

Page 31

EXHIBIT A
Further, there is no basis for requiring a detailed Emergency Response Plan at this stage of the proposal. The applicant has proposed a condition of approval requiring submittal of a pipeline-specific Public Safety Response Manual to the County at least six months prior to initiating Pipeline operations, and the maintenance of an Emergency Response Plan during operations. See Applicant Rebuttal (proposing to adopt with minor modifications Applicant’s Proposed Conditions 14 and 19, previously adopted in the 2010 Decision).

In her final submittal dated July 1, 2014, Ms. McCaffree’s asserts that the County cannot rely on documents submitted by the applicant (such as the Safety Report and the ECRP) because the FERC process is not complete and those plans are subject to FERC approval. For purposes of this land use proceeding, however, the County can rely on those documents if the County finds that they constitute substantial evidence relevant to an approval standard. As the applicant has pointed out, the [documents submitted by the applicant to the County and FERC] represent the minimum standards to which the applicant is committed for purposes of the proposed alignment. To the extent FERC imposes additional or more stringent requirements, the applicant will have to comply with those requirements as well. In the unlikely event that FERC were to relax any of the commitments in the applicant’s submittals, they remain commitments binding on the applicant for purposes of approval of this application.

Thus, Ms. McCaffree’s argument provides no basis for denial.

3. CCZLDO 4.8.600, 4.8.700 and 4.8.750
   a. CCZLDO 4.8.600 (Siting Standards Required for Structures).

   Mandatory Siting Standards

   The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Mixed Use zones. * * * * *.

   The Board’s Final Decision and Order No. 10-08-045PL (HBCU 10-01) explains how the proposed Pipeline will meet the siting standards at CCZLDO 4.8.600, .700, and .750. No party raises any issue pertaining to this approval standard. The Board incorporates by reference the discussion contained in that decision beginning at p. 112-114 (under the heading “CCZLDO §4.8.600.”).

   b. CCZLDO Section 4.8.700 (Fire Siting Safety Standards).

   The Board incorporates by reference the discussion contained in Final Decision and Order No. 10-08-045PL (HBCU 10-01), at p. 114 (under the heading: “CCZLDO §4.8.700.”).

   c. CCZLDO Section 4.8.750 (Development Standards).

   The Board incorporates by reference the discussion contained in Final Decision and Order No. 10-08-045PL (HBCU 10-01), at p. 114-5 (under the heading: “CCZLDO §4.8.750 (Development Standards”)”).

E. Exclusive Farm Zone (“EFU”) (CCZLDO Article 4.9)
The applicant notes that the proposed "Blue Ridge" alternative pipeline segments will cross approximately 1.2 miles of property in Coos County which are zoned EFU. All of this property is privately owned. For the reasons explained below, the Board concludes that the Pipeline is consistent with the applicable requirements of state (ORS Chapter 215, OAR 660, Division 33) and local law (CCZLDO).

1. **CCZLDO 4.9.300**

CCZLDO 4.9.300 provides as follows:

*Administrative Conditional Uses.* The following uses and their accessory uses may be allowed as administrative conditional uses in the "Forest" zone subject to applicable requirements in Section 4.8.400 and applicable siting criteria set forth in this Article and elsewhere in this Ordinance. § 4.8.300(F) 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.

As staff notes in its Staff Report dated May 23, 2014, this application proposes a "distribution line" as defined in OAR 660-006-0025(4)(q) for the purpose of transporting natural gas. See discussion at II A (2), supra. The CCZLDO lists this use as an administrative conditional use. However, because the Pipeline crosses both County base zoning districts and CBEMP districts which require a different review process, the application shall be reviewed under the more intensive review procedure.

2. **CCZLDO 4.9.450 Additional Hearings Body Conditional Uses and Review Criteria.**

CCZLDO 4.9.450 is more or less a direct codification of ORS 215.283(1)(c). CCZLDO 4.9.450 provides:

The following uses and their accessory uses may be allowed as hearings body conditional uses in the "Exclusive Farm Use" zone and "Mixed Use" overlay subject to the corresponding review standard and development requirements in Sections 4.9.603 and 4.9.700.

9 ORS 215.283(1) provides, in relevant part:

(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 facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

10 CCZLDO 4.9.600 Siting Standards for Dwellings and Structures in the EFU Zone.
C. Utility facilities necessary for public service.... A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.

In this regard, it is perhaps worthwhile to note that a “utility facility” necessary for public service is a use that is allowed “outright” under ORS 215.283(1). See 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”).

Under state law, utility facilities sited on EFU lands are subject to ORS 197.275, as well as the administrative rules adopted by LCDC.12 ORS 215.275 provides:

11 CCZLDO 4.9.700 Development Standards for dwellings and structures (CCZLDO 2.1.200 defines “Structure: Walled and roofed building includes a gas or liquid storage tank that is principally above ground.” The proposed pipeline is not a “structure” under this definition and therefore the siting standards do not apply.

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

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 34

EXHIBIT A
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 requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(c) 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.
(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).

As previously discussed in Section II A (2), supra, 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 speaking, supposed to be subject to ORS 215.275(1). This subsection contains the requirement that the applicant 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 660-033-0139(16) and n 12 above. Given the nature of ORS 215.275(2)-(5), the Board 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.13

F. CBEMP Policies – Appendix 3 Volume II

1. CBEMP Policy #4

Opponents incorrectly assert that CBEMP Policies 4 and 4a are applicable to the application. Those policies are only applicable to aquatic zoning districts. Further, as referenced above, only those zoning districts showing a special condition noted in the applicable management unit uses/activities matrix require a resource capability consistency and impact assessment for proposed uses and activities. CBEMP zoning district 20-RS does not have a

---

13 As the Board found in its Final Opinion and Order in HBCU 10-01, the case law makes clear that the issue of whether new gas pipelines are "needed" is not relevant to any approval standard contained in ORS 215.275 or CCZLDO §4.9.450. Sprint PCS v. Washington County, 186 Or.App. 470, 63 P.3d 1261 (2003); Dayton Prairie Water Ass'n v. Yamhill County, 170 Or.App. 6, 11 P.3d 671 (2000).

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 36

EXHIBIT A
special condition requiring the resource capabilities test. Accordingly, neither CBEMP Policy 4 nor CBEMP Policy 4a are applicable to this application.

2. **CBEMP Policy #5**

#5 *Estuarine Fill and Removal*

I. Local government shall support dredge and/or fill only if such activities are allowed in the respective management unit, and:

a. The activity is required for navigation or other water-dependent use that require an estuarine location or in the case of fills for non-water-dependent uses, is needed for a public use and would satisfy a public need that outweighs harm to navigation, fishing and recreation, as per ORS 541.625(4) and an exception has been taken in this Plan to allow such fill;

b. *A need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;*

c. No feasible alternative upland locations exist; and

d. Adverse impacts are minimized

e. *Effects may be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained;*

f. The activity is consistent with the objectives of the Estuarine Resources Goal and with other requirements of state and federal law, specifically the conditions in ORS 541.615 and Section 404 of the Federal Water Pollution Control Act (P.L. 92-500). (Emphasis added).

Despite the County having addressed the issue in detail in HBCU 13-04, Exhibit 21, various opponents continue to insist that CBEMP Plan Policy 5 applies to the subject application. See e.g., Jody McCaffree letter dated June 17, 2014, at p. 7-8. In McCaffree v. Coos County, __ Or LUBA __ (LUBA No: 2014-022, June 15, 2014), LUBA found that CBEMP Policy 5 did not apply to the decision modifying Condition of Approval 25. However, LUBA’s analysis was arguably specific to that case, and does not necessarily translate over to this set of facts. We therefore continue to address the issue as if LUBA had not decided it.

In her June 17 letter, Ms. McCaffree attempts to piece together a series of arguments pertaining to CBEMP Policy 5, but her prose is so disjointed that it is virtually incomprehensible. The arguments set forth therein are simply not sufficiently developed to provide a basis for denial of the application.

Ms. McCaffree also appears to be cutting and pasting sentences from her previous submittals, including her discussion of the public trust doctrine. For example, in previous
letters submitted in HBCU 13-04, Jody McCaffree cited CBEMP Policy 5 (I)(b), which requires that an applicant who is proposing dredging and fill operations in an estuary to show that “a need (i.e., a substantial public benefit) is demonstrated,” and that “the use or alteration does not unreasonably interfere with public trust rights.” In her June 17, 2014 letter, she again raises CBEMP Policy 5 (I)(b), but again does not explain why a policy involving dredging and/or removal or filling applies to this particular project, and the Board finds that it does not.

In HBCU 13-04, the Board previously discussed and denied Ms. McCaffree’s misguided “public trust doctrine” arguments, and her new effort to revive that dead issue brings nothing new to the table. See Letter from Jody McCaffree dated June 17, 2014, at p. 8, 9. The public trust doctrine is simply not an approval standard for this case.

Furthermore, as explained above, CBEMP Policy 5 does not apply to the proposed Blue Ridge alignment because no dredging or filling is proposed. Because CBEMP Policy 5 does not apply, and compliance with the public trust doctrine is a component of CBEMP Policy 5, neither CBEMP Policy 5 nor the public trust doctrine apply to the proposed Blue Ridge alignment.

But even if the public trust doctrine did somehow apply, it would not create the sort of “public need” requirement that Ms. McCaffree seeks to impose on the applicant. The Board incorporates by reference herein the findings pertaining to the discussion of CBEMP Policy 5, as set forth in the decision in HBCU 13-04 dated December 13, 2013, at p. 50-57 (under the heading: “Plan Policy 5”).

To reiterate the basic framework set forth in the code, the CBEMP Policies are made applicable to a project by cross reference to the zoning standards applicable to the zone. In this case, only the 20-RS zones are applicable, and neither demand compliance with Policy No. 5.

CBEMP Policy 5, “Estuarine Fill and Removal” is not an approval criterion applicable to the Blue Ridge alignment application. To the extent that CBEMP Policy 5 has been raised as an issue by the Petitioner for Review in LUBA Case No. 2014-022, or by opponents, the plain text of the CCZLDO and CBEMP state that CBEMP Policy 5 is not applicable to the Blue Ridge alignment application.

As explained in the applicant’s brief in McCaffree v. Coos County, Or LUBA ___ (LUBA No. 2014-022, July 15, 2014) (Exhibit 14), CCZLDO 4.5.150 explains how to determine whether a particular use is allowed in a zone, and if so, which CBEMP policies apply. Under the County’s regulatory structure, not all CBEMP policies apply to each zone, and each zone must be individually assessed to determine the applicable CBEMP policies. The CCZLDO further instructs in Section 4.5.150(5)(b) that “P” means a use is permitted, “G” means that the use is allowed subject to General Conditions, and “S” means the use is allowed subject to Special Conditions. The General and Special Conditions each provide a list of the applicable CBEMP policies.

As applied here, the only CBEMP zone within the scope of the Blue Ridge alignment application is the 20-RS zone. Thus, the 20-RS zone is the only zone in the Blue Ridge alignment application subject to any of the CBEMP policies. The Pipeline is a “low-intensity utility” under the County Code, as previously determined by the County. See 2010 Decision, at

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 38

EXHIBIT A
45, 53. CCZLDO 4.5.546(A) lists “Utilities, Low-intensity” as “P-G,” meaning, low-intensity utilities are permitted subject to General Conditions. The list of applicable General Conditions only includes Policies 17, 18, 23, 28, 34, 14, 27, 22, 49, 50, and 51. The General Conditions do not require consideration of CBEMP Policy 5; therefore, CBEMP Policy 5 is not an approval criterion for low intensity utilities such as the Pipeline in the 20-RS zone. Further, because the use is only subject to “General Conditions,” the “Special Conditions” are not applicable.

Additionally, the CCZLDO expressly lists when CBEMP Policy 5 is applicable to specific uses and activities and that the subject matter of CBEMP Policy 5 is “estuarine fill and removal.” For example, for the activity of “dredging” in the 6-Development Aquatic zone, Policy 5 is listed as a Special Condition. See CCZLDO 4.5.281(B)(2)(a), (b). Similarly, the activities of “Dredging” and “Fill” in the 5-Development Aquatic zone are subject to Policy 5. See CCZLDO 4.5.270(B)(2)(a), (b), and (4). Moreover, each of these instances relates to non-incidental dredging and fill, which is the subject of CBEMP Policy 5. Notably, the subject of CBEMP Policy 5 is not “Utilities, Low-intensity,” such as the Pipeline.

To the extent that opponents contend that the Pipeline will also involve “Dredging” and “Fill” that would require compliance with CBEMP Policy 5, the Board denies this contention. The Board previously denied the opponents’ contention in the 2010 Decision, which granted conditional use approval for the Pipeline. See Final Decision and Order No. 10-08-045P1, dated September 8, 2010. The County denied the argument on two grounds: (1) the applicant is not “Dredging” or “Filling” as defined by the CCZLDO; and (2) to the extent the activities constitute dredging within the meaning of the CCZLDO, the type will be “incidental dredging necessary for installation” of a pipeline and thus, no separate request for “Dredging” or “Fill” was required. Id. at 54–57. Nothing in the Blue Ridge alignment application affects this prior analysis and decision.

The Board further finds that a separate request for “Dredging” or “Fill” is not required for the Blue Ridge alignment and therefore Policy 5 is not triggered because the applicant is not proposing to dredge or fill as defined in the Code. Resolution of this issue requires consideration of the following definitions for dredging and fill from CCZLDO 2.1.200:

**DREDGING:** The removal of sediment or other material from a stream, river, estuary or other aquatic area: (1) Maintenance Dredging refers to dredging necessary to maintain functional depths in maintained channels, or adjacent to existing docks and related facilities; (2) New Dredging refers to deepening either an existing authorized navigation channel or deepening a natural channel, or to create a marina or other dock facilities, or to obtain fill for the North Bend Airport runway extension project; (3) Dredging to Maintain Dikes and Tideways refers to dredging necessary to provide material for existing dikes and tideways; (4) Minor dredging refers to small amounts of removal as necessary, for instance, for a boat ramp. Minor dredging may exceed 50 cubic yards, and therefore require a permit. (Emphasis added.)

The applicant is not “Dredging” as defined above because the applicant will not be removing any sediment or other material from aquatic areas in the 20-RS zone. The Coos River crossing (in the 20-CA district) was approved as part of HBCU 13-04, and is not part of this alignment. Rather, the modified Blue Ridge alignment in this application begins in the 20-RS...
zone south of the Coos River. The 20-RS zone is the only zoning district crossed by the Pipeline in this application to which CBEMP Policy 5 could potentially apply. In any event, the applicant will use HDD to cross the Coos River. As explained in the May 2, 2014 letter and attachments from Randy Miller, the HDD bore is designed to achieve a minimum depth of cover of at least 43 feet below the Coos River, which means it will cross underneath the river and not require the removal of material from an aquatic area. The southern terminus of that HDD bore will be in the 20-RS zone. Because the applicant will not be “Dredging,” the applicant does not need to apply for the activity of dredging.

The applicant will also not “fill” any submerged lands or wetlands in the 20-RS zone, as defined by the Code:

FILL: The placement by man of sand, sediment, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land. Except that “fill” does not include solid waste disposal or site preparation for development of an allowed use which is not otherwise subject to the special wetland, sensitive habitat, archaeological, dune protection, or other special policies set forth in this Plan (solid waste disposal, and site preparation on shorelands, are not considered “fill”). “Minor Fill” is the placement of small amounts of material as necessary, for example, for a boat ramp or development of a similar scale. Minor fill may exceed 50 cubic yards and therefore require a permit.

The applicant is not proposing to "fill" — create uplands or raise the elevation of land — within submerged lands or wetlands in the 20-RS zone. The applicant therefore does not need to apply for the activity of fill. CBEMP Policy 5 is not triggered.

The plain text of the CCZLDO and the CBEMP do not require consideration of Policy 5 for low-intensity utilities in the 20-RS zone, and the applicant is not proposing to “Dredge” or “Fill” any areas. The Board finds that CBEMP Policy 5 does not apply to the proposed alignment.

3. CBEMP Policy 5a Does Not Apply to the Proposed Alignment

#5a Temporary Alterations

I. Local governments shall support as consistent with the Plan: (a) temporary alterations to the estuary, in Natural and Conservation Management Units provided it is consistent with the resource capabilities of the management units. Management unit in Development Management Units temporary alterations which are defined in the definition section of the plan are allowed provided they are consistent with purpose of the Development Management Unit. b) alterations necessary for federally authorized Corps of Engineers projects, such as access to dredge material disposal sites by barge or pipeline or staging areas, or dredging for jetty maintenance.

14 The other zones crossed by the modified Blue Ridge alignment are Exclusive Farm Use and Forest, both of which are under the Balance of County and not subject to the CBEMP policies.
II. Further, the actions specified above shall only be allowed provided that:

a. The temporary alteration is consistent with the resource capabilities of the area (see Policy #4);

b. Findings satisfying the impact minimization criterion of Policy #5 are made for actions involving dredge, fill or other significant temporary reduction or degradation of estuarine values;

c. The affected area is restored to its previous condition by removal of the fill or other structures, or by filling of dredged areas (passive restoration may be used for dredged areas, if this is shown to be effective); and

d. The maximum duration of the temporary alteration is three years, subject to annual permit renewal, and restoration measures are undertaken at the completion of the project within the life of the permit.

Mitigation shall not be required by this Plan for such temporary alterations.

This Policy shall be implemented through the administrative conditional use process and through local review and comment on state and federal permit applications.

This Policy is based on the recognition that temporary estuarine fill and habitat alterations are frequently legitimate actions when in conjunction with jetty repair and other important economic activities. It is not uncommon for projects to need staging areas and access that require temporary alteration to habitat that is otherwise protected by this Plan.

In her letter dated June 17, 2014, at p. 7-8, Ms. Jody McCaffree argues that CBEMP Policy 5a applies to this case. For the same reasons explained above in response to CBEMP Policy 5, the Board finds that CBEMP Policy 5a is not an approval criterion for "Utilities, Low-intensity," such as the Pipeline. As noted above, the list of General Conditions for the use of "Utilities, Low-intensity" includes only Policies 17, 18, 23, 28, 34, 14, 27, 22, 49, 50, and 51. The General Conditions do not require consideration of CBEMP Policy 5c, so Policy 5a is not an approval criterion for low intensity utilities in the 20-RS zone.

In addition, the Board has previously denied the contention that CBEMP Policy 5a applies to the Pipeline. In the 2010 decision, the Board found that the Pipeline project will not constitute "temporary alterations." Id. at 56–58. The Board reasoned that because the Pipeline project does not fall within any of the listed categories of the definition of "Temporary Alteration" as defined in CCLZDO 2.1.200 and the "specific definition of pipeline, with incidental dredging necessary for its installation, is a more specific use category than that of 'temporary alterations,' the pipeline use is not deemed to be a temporary alteration which would, as such, require compliance with Policy 5a." Id. at 58. Opponents have not identified any new aspect associated with the Blue Ridge alignment that would cause the application to involve a "temporary alteration."
For these reasons, the Board finds that CBEMP Policy 5a is not an approval criterion for the Blue Ridge alignment.

4. CBEMP Policy 11 Does Not Apply.

CBEMP Policy 11 is, like other CBEMP policies, a legislative direction to the County requiring coordination with state and federal agencies, rather than applicable review criteria for quasi-judicial applications such as the current application by Pacific Connector. Specifically, CBEMP Policy 11 has been implemented legislatively by the County through the enactment of CCZLDO 5.0.450 regarding the coordination with DSL regarding state/federal waterway permit reviews. CBEMP Policy 11 does not present quasi-judicial application review criteria and, therefore, is not applicable to this application.

5. CBEMP Policy #14 General Policy on Uses within Rural Coastal Shorelands.

CBEMP Policy 14 provides in relevant part as follows:

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:

   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.

   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.

CBEMP Policy 14 applies to "Utilities, Low-intensity" in the 20-RS district and the Pipeline is a "Utilities, Low-intensity" use in this district. Among the categories listed in CBEMP Policy 14(I)(a)-(g), the Pipeline is considered an "other use" because the "Utility, Low-intensity" use does not fit into any other category listed. CBEMP Policy 14(I)(g) requires
a finding 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 addressing this issue, Staff states as follows:

The Board of Commissioners has already found in Final Decision and Order No. 10-08-045PL, dated September 8, 2010 as ratified by Final Decision and Order No. 12-03-018PL, dated March 13, 2012 and previous Final Decision and Order Nos. 07-11-289PL and 07-12-309PL that "The proposed LNG terminal is an industrial and port facility that is water-dependent and consistent with the uses allowed in the 6-WD zoning district. The proposed use satisfied a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in other rural areas built upon or irrevocably committed to non-resource use." The North Spit was determined to be the only site possible to accommodate the LNG facility. The pipeline cannot be located solely on the upland locations or urban or urbanizable areas because it must transport natural gas to the LNG terminal. This is a listed use in forest and farm and all of the resources identified in the CCCP will be protected. Therefore, these criteria have been met.

Staff Report dated May 23, 2014, at p. 15.

As noted in the findings supporting the decision in HBCU 13-04, at pp. 59-60, the Board previously interpreted and applied CBEMP Policy 14 in both the application of Jordan Cove Energy Project, L.P. (Coos County Department File No. #HBCU-07-04, Coos County Order No. 07-11-289PL) and in the application of the Oregon International Port of Coos Bay (Coos County Planning Department File No. #HBCU-07-03, Coos County Order No. 07-12-309PL). The Board's decision approving JCEP's LNG terminal application addressed CBEMP Policy 14 as follows:

"The proposed LNG terminal is an industrial and port facility that is water-dependent and consistent with the uses allowed in the 6-WD zoning district. The proposed use satisfies a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in other rural areas built upon or irrevocably committed to non-resource use. The Board relies upon and adopts the conclusions of the hearings officer regarding consistency with Policy #14. The applicant has provided evidence sufficient to establish that [the] proposed site on the North Spit is the only site available below the railroad bridge with sufficient size and the necessary water-dependent characteristics for the proposed facility, including access to one of the only three deep-draft navigation channels in the State of Oregon."
The Board's decision approving the Port's Oregon Gateway Marine Terminal application addressed CBEMP Policy 14 as follows:

"The Board finds that the proposed water-dependent use satisfies a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in other rural areas built upon or irrevocably committed to non-resource use. This fact was recognized in the inventories and factual base portion of the Coos County Comprehensive Plan (CCCP) at Volume II, Part 2, Section 5-82. (See North Spit Industrial Needs under Section 5.8.3 of the CCCP). Background reports produced to support CCCP Volume II, Part 2, generally concluded that large vacant acreages of industrial land with deep-draft channel frontage are in short supply. Further, as documented in the applicant's Description of Alternative Sites and Project Designs contained in its August 24, 2007 Revised Application, the North Spit is the only site available with sufficient size and the necessary water-dependent characteristics suitable for future land needs for import and trans-shipment, with related processing facilities for energy resources and cargo handling, and for marine cargo bound to the West Coast and international ports."

See Final Decision and Order No. 14-01-007PL, at p. 59-60. Attachment B to Exhibit 21. Accordingly, the Board previously determined that compliance with CBEMP Policy 14 was established during the legislative adoption of the CBEMP with respect to the designation of portions of the North Spit, including zoning district 6-WD, as a rural area appropriate for water-dependent industrial development. The North Spit was the only site available below the railroad bridge of sufficient size and with the necessary water-dependent characteristics for the proposed facility, including access to one of only three deep-draft navigation channels in the State of Oregon. The Pipeline was found to be a necessary component of the primary industrial and port facilities use. With respect to the Pipeline, the County found that "following construction, the subsurface pipeline will not be an impediment to the uses associated with the County's rural shoreland areas." 2010 Decision, at pp. 124-126.

In addition, the alternatives analysis required under CBEMP Policy 14 has been accomplished in several descending layers of analysis for, variously, no action or postponed action, system alternatives, LNG terminal site alternatives, LNG terminal layout alternatives, dredging and dredge material disposal alternatives, and pipeline route alternatives, all of which are described with great specificity in Section 3.0 (Alternatives) at pages 3-1 through 3-119 of the Federal Environmental Impact Statement. See Final Decision and Order No. 14-01-007PL, at p. 60. Attachment B to Exhibit 21.

Under CBEMP Policy 14, the Pipeline must be considered a necessary component of the primary industrial and port facilities use, at least in zoning district 6-WD, where the Pipeline segment situated within the boundaries of JCEP's LNG terminal is connected to the LNG terminal meter station at MP00.00, and where other LNG terminal components were described in the decision approving the LNG terminal as "associated facilities." Compare how that same term is utilized in ORS 215.275(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.”

In other locations, the Pipeline is described as an “other use” as that term is used in CBEMP Policy 14.1.e. As an “other use,” the Pipeline would be reviewed in each CBEMP zoning district as a low-intensity utility. In either event, CBEMP Policy 14.1.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 JCEP’s LNG terminal and, again, approving the Port’s Oregon Gateway Marine Terminal.

In light of these prior findings, the Board finds that the Pipeline, as a necessary component of the approved industrial and port facilities use (the LNG terminal), and/or as a CBEMP Policy 14 “other use,” being the low-intensity utility use identified in the CBEMP zoning districts, satisfies a need that 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. Specifically, the various alternative analyses described above conclude that the proposed LNG terminal and its associated facilities (as necessary components of the approved industrial and port facilities use, including the first segment of the pipeline connected to the LNG terminal), and the resulting pipeline alignment extending to the east across upland zoning districts 6-WD, 7-D and 8-WD, are uses that satisfy a need that 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.

Ms. McCaffree incorrectly asserts that the language in General Condition No. 4 in the 20-RS zone (which refers to CBEMP Policy 14) and, further, that the italicized language in CBEMP Policy 14 (shown bolded at page 6 of Ms. McCaffree’s June 17, 2014 letter) require a finding of project need and consistency with resource preservation and protection policies of the Coos County Comprehensive Plan (CCCP). She argues that “it is not sufficient to find that the pipeline is a ‘necessary component’ of the approved LNG facility. The county must find that for each rural shoreland management unit impacted by the application, pipeline cannot be re-routed to non-shoreland areas or shoreland areas committed to non-resource use.” See McCaffree letter dated June 17, 2014, at p. 17. This argument appears to be recycled from materials she submitted in HBCU 13-04.

As an initial response, the bolded language from CBEMP Policy 14(c) and (g) referenced in the June 17, 2014 McCaffree letter to the effect that “[s]uch uses satisfy a need which cannot be accommodated at other upland locations …” provides a legislative direction to the County to adopt zoning district use categories to accommodate the described uses. The legislative nature of this directive is underscored by the last sentence in CBEMP Policy 14 which says: “This strategy further recognizes that rural uses ‘a-g’ above, are allowed because of need and consistency findings documented in the ‘factual base’ that supports this Plan.” Accordingly, any need or consistency findings required by CBEMP Policy 14 have already been accomplished in crafting the related CBEMP zoning districts.

The additional bolded language from CBEMP Policy 14(g) referenced in the McCaffree letter to the effect that “[u]ses shall only be permitted upon a finding that such uses did not
otherwise conflict with the resource preservation and protection policies established elsewhere in this Plan,” is, again, a reference to legislative findings which have already occurred elsewhere in the Plan. For example, CBEMP Policy 4 (further discussed below) requires, at subsection I, that the impacts of the proposed alternate alignment have previously received a full consideration legislatively of the proposed impacts on the resource capability of the estuary. In addition, the relevant part of CBEMP Policy 4 provides that “[f]or uses and activities requiring the resource capabilities test, a special condition is noted in the applicable management unit uses/activities matrix.” No special condition is noted in the 20-RS (or 20-CA) management unit which would require the resource capabilities test.

In further response to this comment, it is important to understand additional two points. First, it is FERC that can propose alternative pipeline routes, not the County. Second, the scope of the land use application before the County is quite limited. In this case, the County has not been presented with an entirely new pipeline proposal. Rather, the applicant is simply asking for approval of an alternative route along a 14-mile segment of the Pipeline. Whether one considers CBEMP Policy 14 in the context of the approved route or the proposed alternative, the Pipeline will cross the Coos River in the vicinity of graveyard point, or a mile or so upstream. In either case, there is no opportunity to accommodate the use at other upland locations or in urban or urbanizable areas. Certainly, Ms. McCaffree suggests one alternative route, which would travel north from the LNG terminal and then cut to the north to avoid the Coos Bay estuary. While this alternative route perhaps should be considered by FERC to the extent it has not already been studied and/or rejected, it is beyond the scope of this land use process.

Furthermore, even to the extent that the Board were to agree with Ms. McCaffree that, as a general matter, the applicant has the burden to demonstrate that “for each rural shoreland management unit impacted by the application, the pipeline cannot be re-routed to non-shoreland areas or shoreland areas committed to non-resource use,” the result would not change. By any reasonable interpretation of CBEMP Policy 14, linear pipeline features will need to cross rural shoreland management units in order to get from the coast to and across the inland portions of Coos County. Given the number of rivers and waterbodies in Coos County, it would not be physically possible to completely avoid any water crossings. Ms. McCaffree’s sole alternative in support of this argument is that the County should have considered a route that went north from the LNG terminal, as opposed to a route that went directly to the East. See Exhibit M to McCaffree letter dated June 17, 2014. The Board has reviewed Ms. McCaffree’s proposed alternative route, but finds that it too requires river crossings (including a crossing of the West Fork of the Millicoma River), and does not therefore avoid other rural shoreland management units.

As noted by the applicant, the question under CBEMP Policy 14(I)(g) is not whether there is a need for the Pipeline itself—as noted many times in proceedings regarding the Pipeline, FERC will determine whether there is a need for the Pipeline when it decides whether to issue a Certificate of Public Convenience and Necessity. The question under CBEMP Policy 14(I)(g) is “locational”: can the Pipeline provide service if—instead of crossing the 20-RS district—it is located in upland locations or in urban or urbanizable areas. In that respect, Policy 14(I)(g) is similar to the inquiry under ORS 215.275 for a “utility facility necessary for public service” on EFU land, i.e., is it necessary to locate the facility within the zone in order to provide service? To the extent opponents construe CBEMP Policy 14(I)(g) as establishing a  

---

*Findings of Fact and Conclusions of Law  HBCU 13-06*

Page 46

EXHIBIT A
requirement that applicants demonstrate a local public need or benefit from their project, they have simply read into the policy language that is not there.

For the reasons listed below, the applicant has demonstrated that the Blue Ridge segment of the Pipeline is “Utilities, Low-intensity” use that satisfies a need that cannot be accommodated at other upland locations or in urban or urbanizable locations.

As the applicant notes in its letter dated June 17, at p. 14:

The County also previously found that the alternatives analysis required under CBEMP Policy 14 has been completed through ‘several descending layers of analysis for, variously, no action or postponed action, system alternatives, LNG terminal site alternatives, LNG terminal layout alternatives, dredging and dredge material disposal alternatives, and pipeline route alternatives, all of which are described with great specificity in Section 3.0 (Alternatives) at pages 3-1 through 3-119 of the FEIS.’

In the present Blue Ridge alignment application, the applicant is only requesting approval for an alternative route along a segment of the Pipeline approximately 14 miles in length. Only 264 feet of the proposed Blue Ridge alignment is in the 20-RS zone. Since the 20-RS zone is the only CBEMP zone in the Blue Ridge alignment application which requires compliance with CBEMP Policy 14, this 264-foot stretch is the only segment of the Blue Ridge alignment subject to CBEMP Policy 14.

As an alternate alignment to the already approved route, the 264-foot stretch cannot be accommodated at other upland locations because it must connect with the already approved route where the HDD surfaces. The Blue Ridge alignment will connect with the already approved route at milepost 11.29 of the Pipeline. The location of the HDD has been selected as part of the previously approved Brunschmid alternative alignment, which was designed to avoid an approved mitigation site on the north side of the Coos River (the Brunschmid Wetland Reserve Project).

In addition, this modified Blue Ridge alignment was proposed to the FERC by affected landowners for the purpose of reducing the number of miles of crossings of private timberlands. The Blue Ridge alignment also reduces the number of miles of EFU land crossed by 1.59 miles from the number of miles of EFU land crossed by the Pacific Connector II Brunschmid alternate.

The applicant has demonstrated that the 264-foot stretch of Pipeline proposed in the 20-RS zone “satisfies a need which cannot be accommodated at other upland locations or in urban or urbanizable lands.” In addition, the Board finds that the use “Utilities, Low-intensity” does not “otherwise conflict with the resource preservation and protection policies established elsewhere in this Plan” because “Utilities, Low-intensity” are listed as a permitted use in the 20-

15 The connection at milepost 11.29 is the only point in the 20-RS zone and the 20-RS zone is the only CBEMP zone in the Blue Ridge alignment application that requires compliance with CBEMP Policy 14. Thus, the connection at milepost 11.29 is the only portion of the Pipeline that is subject to CBEMP Policy 14. The remainder of the Blue Ridge alignment crosses the EFU and Forest zones, both of which are under the Balance of County and not subject to the CBEMP policies.

Findings of Fact and Conclusions of Law   HBCU 13-06

Page 47
RS zone. Notably, the Board has already determined that it is a permitted use and will not conflict with resource preservation and protection.

This plan policy is met.

6. CBEMP 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.

This policy applies to CBEMP zones 20-CA and 20-RS. As discussed in detail below, the proposed route does not alter the crossing of the Coos River that was approved in HBCU 13-04. That crossing route did not contain any identified major marshes, coastal headlands, or exceptional aesthetic resources.

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, which 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.

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.
CBEMP Policy 17 applies to inventoried resources requiring mandatory protection within each of the CBEMP zoning districts. Staff addresses this Policy as follows:

Although the Linkage Matrix has identified that the 20-RS zoning district contains significant wildlife habitat, the plan maps for the area where proposed alternate is located show no significant wildlife habitat inventoried. Therefore, this criterion does not apply to the request.

See Staff Report dated May 23, 2014, at p.11. The Board agrees, and opponents do not present a well-developed argument in opposition. Ms. McCaffree mentions CBEMP Policy 17 in her June 17, 2014 letter, at p. 20, but she does not make any coherent or focused argument in support of her conclusion that the policy is violated. Her argument is simply not developed sufficiently to enable the Board to respond.

This plan policy does not apply.

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

CBEMP Policy 18 applies to CBEMP zones 20-CA and 20-RS. This policy provides, in relevant part:

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 Plot Plan, 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 Plot Plan. 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.

The applicant is conducting a cultural resources survey for the project as required under state and federal law. Prior to issuance of a zoning compliance (verification) letter under CCZLDO 3.1.200 in order to obtain development permits, CBEMP Policy 18 requires the applicant to submit a “plot plan” under CCZLDO 3.2.700, which then triggers the requirement to coordinate with the Tribe to allow for comments when the development is in an inventoried
area of cultural concern. The Tribe has 30 days to comment and suggest protection measures. CBEMP Policy 18 allows for a hearing process should the Tribe and the developer not agree on the appropriate protection measures. In the prior land use approvals related to the LNG project, the Board imposed a condition to ensure compliance with this policy. The applicant and staff suggest that the same condition be imposed for this application. The Board agrees.

This plan policy is met, as conditioned.

8. CBEMP Policy #22 Mitigation Sites: Protection Against Preemptory Uses

CBEMP Policy 22 states:

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.

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 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 mitigation 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

According to Coos County’s maps, the Pipeline would cross the following mitigation sites:

<table>
<thead>
<tr>
<th>Designated Mitigation Site</th>
<th>Priority</th>
<th>Approximate MP</th>
<th>CBEMP Zoning District</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-9(b)</td>
<td>Low</td>
<td>2.70 R</td>
<td>11-NA</td>
</tr>
<tr>
<td>U-12</td>
<td>High</td>
<td>10.90 R</td>
<td>18-RS</td>
</tr>
</tbody>
</table>

Findings of Fact and Conclusions of Law    HBCU 13-06

Page 50

EXHIBIT A
| U-18(a) ² | High | 11.10 R | 18-RS |
| U-22    | Low  | 10.10   | 21-RS |
| U-24    | Low  | 10.97   | 21-RS |

¹ This mitigation site is associated with the Hwy 101 Causeway.
² The Pipeline will also cross CBEMP dredged Material Disposal Site 30(b), which is in the same location as mitigation site U-12 and just to the north of mitigation site U-16(a). The Pipeline installation will be a temporary disturbance to this dredged material disposal site. According to the Management Objectives of 18-RS, the dredge disposal is considered a higher priority than mitigation for this area. CCZLDO 4.5.480 Management Objective provides, "The development of the disposal site would preclude mitigation uses, and vice versa. Use of this site for dredged material disposal is the higher priority because of the scarcity of suitable sites (see Policies #20 and #22)."

None of these sites are located along the route of the "Blue Ridge" segment of the Pipeline. This policy does not apply.

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:

Of the five designated mitigation areas crossed by the Pipeline, two are high priority (U-12 and U-16(a)). However, the designated dredge disposal site (30(b)) is the higher priority in this area (see responses to Policy #20 above).

1. The proposed use must not entail substantial structural or capital improvements (such as roads, permanent buildings or non-temporary 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

This plan policy does not apply to this segment of the Pipeline.

9. CBEMP Policy 23 Riparian Vegetation and Streambank Protection

For this application, CBEMP Policy 23 applies to that portion of the Pipeline that crosses the 20-RS zone. CBEMP Policy 23 states:

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).

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 Milllicoma Rivers are susceptible to erosion and have threatened valuable farm land, roads and other structures.

Staff addresses CBEMP Policy 23 as follows:

Section 4.5.180 Riparian Protection Standards in the Coos Bay Estuary Management Plan requires riparian vegetation protection within 50-feet of an inventoried estuarine wetland, lake, or river with the following exception: (e) Riparian 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 is a public utility project, and therefore is not subject to the 50-foot riparian vegetation protection. Riparian vegetation may be removed in order to site the pipeline pursuant to the exemption cited above, so long as it is the minimum necessary to accomplish the purpose.


Most of CBEMP Policy 23 is framed in aspirational, hortatory, and non-mandatory language. Compare Neuenschwander v. City of Ashland, 20 OR LUBA 144 (1990) (comprehensive plan policies that “encourage” certain development objectives are not mandatory approval standards); Bennett v. City of Dallas, 96 Or App 645, 773 P2d 1340 (1989). However, CBEMP Policy 23 states that “appropriate provisions for riparian vegetation are set forth in the CCZLDO section 4.5.180.” Although it is far from clear that the phrase “appropriate provisions for riparian vegetation” is intended to make CCZLDO 4.5.180 an approval standard, the parties have previously treated it as such.

CCZLDO 4.5.180 is entitled “Riparian Protection Standards in the Coos Bay Estuary Management Plan.” This standard requires riparian vegetation protection within 50 feet of an inventoried wetland, lake, or river with the following exception:
(e) Riparian 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 Board previously held that the pipeline is a “public utility” project, and therefore is not subject to the 50-foot riparian vegetation protection. Riparian vegetation may be removed in order to site the pipeline pursuant to the exemption cited above, so long as it is the “minimum necessary to accomplish the purpose.”

The Board also held in HBCU 10-01 that the applicant must comply with all FERC and Department of State Lands (“DSL”) requirements for wetland and waterbody protection and mitigation both during and after construction, and must restore riparian vegetation 25 feet from the streambanks on either side of waterbodies on private lands where riparian vegetation existed prior to construction, consistent with the erosion control and revegetation plan. The Board agrees that the public utility exception does apply. In addition, subsection II does not apply to this case. While Pacific Connector will restore areas disturbed during construction to their pre-construction condition, the Pipeline does not include independent streambank stabilization projects.

This plan policy is met.

10. CBEMP Policy 27 Floodplain Protection within Coastal Shorelands

CBEMP Policy 27 provides as follows:

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.

This CBEMP Policy applies to CBEMP 6-WD, 7-D, 8-WD, 18-RS, 19-D, 20-RS, 21-RS and 36-UW, and is implemented by the Floodplain Overlay Zone provisions of CCZLDO Article 4.6. While the Pipeline is not specifically addressed under the development options of CCZLDO 4.6.230, certain proposed activities are identified as “other development” requiring a floodplain review.

The applicant addresses this policy by showing compliance with the provisions of Article 4.6. The County has indicated that the Flood Insurance Rate Map (“FIRM”) is consistent with the Federal Emergency Management Agency’s (“FEMA”) flood hazard map for the County. As in the applicant’s narrative, the Pipeline is consistent with the applicable floodplain approval criteria for all areas identified on the FEMA flood hazard map/FIRM as a designated flood area. The FEMA maps identify the 100-year floodplain, which is typically a
larger area than the floodplain\textsuperscript{16} and floodway\textsuperscript{17} areas defined in the Floodplain Overlay standards. In order to be as conservative as possible, the applicant has designed the PCGP so that any portion of the PCGP that crosses an area identified on the FEMA 100-year floodplain map satisfies the more stringent floodway standards.

11. **CBEMP Policy 28 Recognition of LCDC Goal #3 (Agricultural Lands) Requirements for Rural Lands within the Coastal Shorelands Boundary**

CBEMP Policy 28 provides as follows:

 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) designation consistent with the "Agricultural Use Requirements" 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 Aggregate Sites" inventoried by this Plan pursuant to ORS 215.298(2). These sites shall be inventoried as "IB" 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).

For this application, this policy applies to the portion of the alternative alignment that crosses CBEMP zone 20-RS. Staff addressed this criterion as follows:

**FINDING:** This policy is implemented by using the plan map to identify EFU suitable areas. Portions of the properties have been identified as Agricultural Lands in the CBEMP. EFU uses may be impacted during the construction phase of the project. The applicant anticipates that construction (including restoration) will

\textsuperscript{16} "Floodplain" is defined by the CCZLDO as "the area adjoining a stream, tidal estuary or coast that is subject to periodic inundation from flooding."

\textsuperscript{17} "Floodway" is defined by the CCZLDO as "the normal stream channel and that adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations." Pursuant to CCZLDO Sections 4.6.205 and 4.6.270 "floodways" are identified as special flood hazard areas in a Federal Insurance Administration report entitled "Flood Insurance Study for Coos County, Oregon and Incorporated Areas" and accompanying maps.

*Findings of Fact and Conclusions of Law  HBCU 13-06*

Page 54

**EXHIBIT A**
be complete in approximately 3 years. Once the construction is completed then both temporary construction easements and permanent right-of-way on EFU land will be re-vegetated and returned back to pasture land. As explained in the EFU portion of the staff report “Farm use” includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. However, by inclusion of listed uses in LDO there are other uses that can co-exist with these practices and that has clearly been identified by the LDO and ORS. The property will continue to be managed as agricultural land. The County listed Utility facilities necessary for public service as a use in EFU lands as found in CCZLDO §4.9.450. The CCZLDO §2.1.200 definition of a "low-intensity utility facility" includes gas lines. CCZLDO § 4.9.450 is more or less a direct codification of ORS 215.283(1)(c) and the County intended to implement state law and be interpreted consistent with state law. This request meets the definition of a utility facility necessary for public service because it is necessary for the proposed pipeline to cross in the agricultural zone (EFU) in order for the service to be provided. Therefore, this criterion has been addressed.


This policy is implemented by using the Special Considerations Map to identify EFU suitable areas. Certain property along the PCGP alignment is designated as “Agricultural Lands.” As described in detail in the EFU section of the application narrative, the PCGP is allowed as a “utility facility necessary for public service” under the agricultural provisions of ORS 215.283(1)(c) and ORS 215.275(6). Therefore, the PCGP is consistent with the CBEMP Policy 28 requirements for mapped Agricultural Lands.

In addition to referencing ORS Chapter 215, the policy states that allowed uses are listed in Appendix 1 of the CCZLDO. However, Appendix 1 is entitled “CCCP” and does not apply within the CBEMP boundaries and does not provide a list of uses permitted within agricultural zones. Therefore, it is understood that the reference is intended to be to Appendix 4, Agricultural Land Use, which does describe uses allowed within EFU zones.

Subsection 1 of Appendix 4 states, “Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213.” ORS 215.213 describes uses permitted in EFU zones. ORS 215.213(1)(c) permits the following use allowed outright in any EFU-zoned area: “utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.”18 As discussed in the EFU zone section of this narrative, the PCGP is a utility facility necessary for

---

18 The County is not one of the two “marginal lands” counties, and so the provisions of ORS 215.213 do not apply. The parallel provisions of Oregon law applicable to marginal lands counties (set forth in ORS 215.283) do apply. ORS 215.283(1)(c) is identical to ORS 215.213(1)(c).

Findings of Fact and Conclusions of Law   HBCU 13-06

Page 55

EXHIBIT A
public service pursuant to ORS 215.275. Therefore, the PCGP is also an allowed use in those areas identified as Agricultural Lands on the CBEMP Special Considerations Map.

EFU uses will be impacted during the construction phase of the project. The applicant anticipates that construction (including restoration) will be complete in approximately 3 years. Farm use within the temporary 95-foot-wide construction area will be able to resume post-construction. Compliance with state and county land use requirements regarding agricultural lands is addressed in the EFU section of this decision.

Finally, the Board agrees that in most cases, it would be appropriate to impose a condition of approval to ensure that the pipes will be adequately maintained. However, it is not certain that such a condition is enforceable. Congress has expressly pre-empted a state or local government's ability to regulate issues related to the safety of pipelines. The Natural Gas Pipeline Safety Act of 1968 directs the Secretary of Transportation to establish minimum federal safety standards for the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities used for the transportation of gas. The pipeline company is bound to abide by these safety standards. "The 'Natural Gas Pipeline Safety Act of 1968' . . . has entered the field of 'design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities.' . . . As applied to interstate transmission pipelines, the Safety Act must prevail over and pre-empt any state law." United Gas Pipeline Co. v. Terrebonne Parish Police Jury, 319 F.Sup. 1138, 1139 (E.D.La. 1970), aff'd 445 F.2d 301 (5th Cir. 1971). See also generally Northern Border Pipeline Co. v. Jackson County, 512 F.Sup. 1261 (D.Minn.1981) (Natural Gas Pipeline Safety Act of 1968 barred a condition on a construction permit requiring that the gas line be buried a minimum of six feet); Williams Pipe Line Co. v. City of Mounds View, 651 F Supp. 551 (1987).

This plan policy is either met or is unenforceable to the extent it conflicts with federal law.

12. **CBEMP Policy 34 Recognition of LCDC Goal #4 (Forest Lands) Requirements for Forest Lands within the Coastal Shorelands Boundary**

For this application, this policy applies to the portion of the Pipeline alternative alignment that crosses CBEMP zone 20-RS. This policy addresses forest operations in areas of coastal shorelands. There are no identified forest lands in this CBEMP zone that would be crossed by the Pipeline alternative alignment; therefore, the policy does not apply.

13. **CBEMP Policy 49 Rural Residential Public Services**

For this application, this policy applies to the portion of the Pipeline alternative alignment that crosses CBEMP zone 20-RS. This policy addresses acceptable services for rural residential development. The application does not propose rural residential development. This policy does not apply to the proposal.

14. **CBEMP 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.

For this application, this policy applies to the portion of the Pipeline alternative alignment that crosses CBEMP zone 20-RS. This policy addresses acceptable rural services. Staff states that “[t]his policy does not apply to the proposal.” Staff notes that “[t]here are no rural public services requested with this application. Therefore, this criterion is not applicable.” See Staff Report dated May 23, 2014, at p. 17.

Based upon its plain language, CBEMP Policy 50 does not require a finding that a gas utility is “traditionally enjoyed by rural property owners” in order to be allowed in the CBEMP. Rather, the phrase “traditionally enjoyed by rural property owners” is only intended to further modify the characteristics of non-enumerated facilities: i.e. “similar low-intensity facilities and services.” It is intended to recognize that urban level “public services” are not intended to be sited on CBEMP lands. There is no purposeful intent to allow or prohibit gas pipelines on the basis of whether they are “traditionally enjoyed by rural property owners.”

Even if the intent had been to prohibit gas pipelines, such a zoning code provision is contrary to the Natural Gas Act (“NGA”). For example, in Northern Border Pipeline Co. v. Jackson County, Minnesota, 512 F. Supp. 1261 (D. Minn. 1981), the district court enjoined the Jackson County Board of County Commissioners from attempting to regulate a natural gas pipeline facility through the use of its zoning power. Id., 512 F. Supp. 1251 (D.C. Minn. 1981). In that case, the court ruled, “We hold that the County lacks statutory authority to exercise its zoning power over interstate gas pipelines.”

Similarly, courts have held that local regulation of a county or municipality’s streets, alleyways, and other public rights of way are preempted under the NGA. See e.g., Guardian Pipeline, L.L.C. v. 529.42 Acres of Land, 210 F. Supp. 2d 971 (N.D. Ill. 2002) (the court rejected arguments by governmental entities that land held by them could not be condemned because the NGA gave the natural gas company “the overriding authority” to obtain easements from the governmental authorities and any state law to the contrary was preempted); USG Pipeline Co. v. 1.74 Acres In Marion County, 1 F. Supp. 2d 816 (E.D. Tenn. 1998) (the court found that Tennessee law which provided that streets, alleys, squares, or highways of a municipality could not be condemned without the consent of the municipality was preempted under the NGA).

The Board acknowledges that FERC may determine that there is no “public necessity” for a natural gas export terminal. However, that call is ultimately one for FERC, not the Board, to make.

This plan policy is either inapplicable or is met.

15. CBEMP 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) and unincorporated community boundaries (UCB's) or the establishment of new water systems outside UGB's and UCB's where such service is solely for: [additional language not shown].

The CCZLDO provides that this policy applies to lands located in the CBEMP 20-RS zone. This policy addresses extension of water and sewer outside of UGBs when necessary for certain development including industrial and exception land development. The proposal is not for public water or sewer; therefore, this criterion is not applicable.

G. Special Regulatory Considerations / Inventory Maps

<table>
<thead>
<tr>
<th>Table 4.7a</th>
<th>Special Regulatory Consideration Prescribed by the Coos County Comprehensive Plan (Appendix I Balance of County)</th>
</tr>
</thead>
</table>

**TABLE 4.7a**

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix I</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Page</td>
</tr>
<tr>
<td>1. Mineral &amp; Aggregate</td>
<td>1a. Preserve these in their original character until mined</td>
<td>!-12</td>
</tr>
<tr>
<td></td>
<td>b. Agriculture &amp; forestry uses are acceptable per zone and use district requirements.</td>
<td>!-12</td>
</tr>
<tr>
<td></td>
<td>c. Allow new conflicting uses within 500 ft. subject to ESEE findings through the conditional use process.</td>
<td>!-12</td>
</tr>
<tr>
<td></td>
<td>d. Non-exploratory mining operations are conditional uses, where allowed</td>
<td>!-13</td>
</tr>
</tbody>
</table>

1. Mineral & Aggregate – Appendix I, Pages12-13, Strategy Nos. 1 & 2

*Plan Implementation Strategies*

*Strategy No. 1:* Coos County shall manage its identified mineral and aggregate resources (except black sand prospects) in their original character until mined, except where conflicting uses are identified during implementation of the Plan, and such uses are justified based on consideration of the economic, social, environmental and energy consequences of the conflicting uses, or where existing uses have been grandfathered.

Conflicting uses include dwellings and any other structures within 500 feet of the resource site.
Where no conflicts are identified, agriculture, forest or similar open space zoning shall be used to implement this strategy.

When a conflicting use is proposed at a given site, the decision about allowing development of the proposed use or the development or protection of the aggregate resource shall be made through a conditional use process where findings are developed which address the economic, environmental, social and energy consequences of allowing the proposed conflicting use, development of the aggregate resource, or both at the site. The following guidelines must be considered as part of the conditional use process:

- **Economic consequences**: payroll, jobs, taxes, economic opportunity costs associated with developing or not developing each conflicting use, and other pertinent factors.
- **Environmental consequences**: the impacts on air, land and water quality, and on adjacent farm and forest resources associated with developing each conflicting use, and other pertinent factors.
- **Social consequences**: the effect of the proposed uses on public service delivery, the general compatibility of the proposed uses with surrounding cultural land uses, and other pertinent factors.
- **Energy consequences**: the location of the proposed resource development site in relationship to market areas, and other pertinent factors.

The decision to allow one or both of the conflicting uses shall be supported by findings which demonstrate that the decision will foster maximum public gain. Reasonable conditions may be imposed on any authorized development to ensure compatibility. Such conditions may include screening, setbacks and similar measures.

**Strategy No. 2.** Coos County shall regulate new recovery operations by designating such activities as conditional uses in appropriate zones, except where permitted outright in forest zones, to ensure compatibility with adjacent uses.

Site restoration shall conform to the requirements of ORS 517.750 to 517.900, "Reclamation of Mining Lands".

This strategy recognizes that project review by the Hearings Body is necessary to minimize the adverse impacts that are typically associated with mining operations, and which often make such recovery activities incompatible with adjacent uses.

These criteria are a part of the County’s Goal 5 regulatory program. As staff notes, there are no identified mineral or aggregate resources located on the properties subject to this application. The proposal does not include any mining activities. Some of the properties are located within 500 feet of certain identified coal basins. Pursuant to CCZLDO Appendix I, Section 5.5 Mineral & Aggregate Resources Plan Implementation Strategies 4, Coos County recognizes the existence and extent of the coal deposits within the County. However, due to factors concerning the coal's quantity and quality, as well as subsurface location, the resource is not expected to be commercially extracted. Therefore, the resource is classified as a “5a” resource and has not been included as an identified Goal 5 resource. Permitted or conditionally permitted uses shall not be considered conflicting with coal resources within a given zone.
Therefore, these strategies do not apply to this proposal.

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Water Resources</td>
<td>2a. Prohibits new residential and commercial developments in rural areas other than committed areas when evidence or irreversible degradation by new withdrawal or septic tanks has been submitted.</td>
<td>1-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

**2. Water Resources – Appendix I, Page 21, Strategy No. 1**

*Plan Implementation Strategies*

**Strategy No. 1.** Coos County shall not permit further new residential and commercial development in rural areas where the Oregon State Water Resources Department (OSWRD), the Oregon State Environmental Quality commission (EQC), or the Oregon State Health Division (OSHD) has submitted compelling evidence to Coos County that water resources within that area would be irreversibly degraded by new consumptive withdrawal or by additional septic tank or other waste discharges.

Implementation measures in such areas may include a moratorium on construction permits for new residences or new commercial uses in the identified area. If an adequate solution to resolve the problem cannot be reached, such as extension of public water to the area in conformance with this plan, the County shall initiate a process to redesignate any undeveloped land within the area to a resource designation, and shall reallocate any other plan designations on such undeveloped land to other rural areas of the County on an acreage-by-acreage basis.

This strategy is based on the recognition that: (1) prediction of the maximum appropriate level of development requires detailed technical studies of each rural watershed; (2) that such information is not currently available; and (3) that reallocation of non-resource plan designations such as Rural Residential to other rural areas as an appropriate and efficient method of meeting development needs where the state agencies charged with monitoring water quality have submitted compelling evidence that irreversible water resource degradation will
occur in specific rural areas.

The proposed Blue Ridge alignment is neither a residential nor commercial development. The properties are not located within an area where OSWRD, BQC or OSHD has submitted any evidence to Coos County that a water resource would be irreversibly degraded by new consumptive withdrawal or by additional septic tanks or other waste discharges. This strategy does not apply.

\*\*\* TABLE 4.7a \*\*\*

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix I</th>
</tr>
</thead>
</table>
| 3. Historical/Archeological Sites & Structures | 3a. Manage these for their original resource value.  
                                               | b. Develop proposals in identified archaeological areas must have a “sign-off” by qualified person(s).  
                                               | c. Historical structures and sites can only be expanded, enlarged or modified if Coos County finds the proposal to be consistent with the original historical character of the structure or site. |            |
|                                 |                                                                                                          | 1-19       |
|                                 |                                                                                                          | 1-20       |
|                                 |                                                                                                          | 1-19       |
|                                 |                                                                                                          | 1-19       |

3. Historical/Archeological Sites & Structures – Appendix I, Pages 19-20, Strategy Nos. 1, 2 & 3

Plan Implementation Strategies

Strategy No. 1. Coos County shall manage its historical, cultural and archaeological areas, sites, structures and objects so as to preserve their original resource value.

This strategy recognizes that preservation of significant historical, cultural and archaeological resources is necessary to sustain the County's cultural heritage.

Strategy No. 2. Coos County shall permit the expansion, enlargement or other modification of identified historical structures or sites provided that such expansion, enlargement or other modification is consistent with the original historical character of the structure or site;

This strategy shall be implemented by requiring Planning Director review of site and architectural plans to ensure that the proposed project is consistent with the original historical character of the site and structure.

This strategy recognizes that enlargement, expansion or modification of historical structures is not inconsistent with Coos County's historic preservation goal, provided the County finds that the proposed changes are consistent based on site and architectural standards. Further, this

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 61

EXHIBIT A
strategy recognizes (1) that the site and architectural modification may be necessary to preserve, protect or enhance the original historical character of the structure, and (2) that the historical value of many of the county's identified historical structures is often marginal and incidental to the structure's current use as private property.

**Strategy No. 3.** Coos County shall continue to refrain from wide-spread dissemination 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.

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). The Coos County Planning Department shall develop and maintain a list of qualified archaeologists and historians. 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).

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).

As staff notes, there are no historical sites or structures identified on any of the properties to be protected. However, this area is in a potentially significant archeological site. The applicant proposes that Condition No. 24 of the original pipeline decision be imposed as a condition of approval on this application. Therefore, as a condition of approval, the applicant is required to confer with the affected local tribes prior to the issuance of a zoning compliance letter. The applicant will be required to comply with the procedures in the following condition:

At least 90 days prior to the issuance of a zoning compliance (verification) letter for building and/or septic permits under LDO 3.1.200, the County Planning Department shall make initial contact with the Tribe(s) regarding the determination of whether any archaeological sites exist within the area proposed for development, consistent with the provisions of LDO 3.2.700. Once the Tribe(s) have commented or failed to timely comment under the provisions of LDO 3.2.700, the county shall take one of the following actions: (1) if no adverse impacts to cultural, historical or archaeological resources on the site have been identified, the county may approve and

---

*Findings of Fact and Conclusions of Law  HBCU 13-06*

Page 62

**EXHIBIT A**
issue the requested zoning compliance (verification) letter for the related development proposal; (2) if the Tribe(s) and the applicant reach agreement regarding the measures needed to protect the identified resources, the development can be approved with any additional measures the county believes are necessary to protect those resources; or (3) if the County finds that there will be adverse impacts to identified historical, cultural or archaeological resources on the site and the applicant and Tribe(s) have not reached agreement regarding protection of such resources, then the County Board of Commissioners 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 archeological values of the site. For purposes of this condition, the public hearing shall be subject to the provisions of LDO 5.8.200 with the Board of Commissioners serving as the Hearings Body, and the related notice provisions, of LDO 5.0.900(A).

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix 1</th>
</tr>
</thead>
</table>
| 4. Beaches & Dunes | 4a. Permit development within “limited development suitability” only upon establishment of findings. Requires Administrative Conditional Use.  
 b. Prohibits residential, commercial, or industrial development within areas “unsuitable for development”. Permit other developments only upon establishment of findings. Requires Administrative Conditional Use.  
 c. Cooperation with agencies to regulate: destruction of vegetation, erosion shore structures and other developments, requires Administrative Conditional Use and agency comments. | Page 1-23, 1-24, 1-25 |

4. Beaches & Dunes Appendix I, Pages 23-25, Strategy Nos. 2, 3 & 4

2. Coos County shall permit development within areas designated as "Beach and Dune Areas with Limited Development Suitability" on the Special Considerations Map only upon the establishment of findings that consider at least:

   a. the type of use proposed and the adverse effects it might have on the site and adjacent areas;

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 63  EXHIBIT A
b. the need for temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
c. the need for 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.

Further Coos County shall cooperate with affected local, state and federal agencies to protect the groundwater from drawdown, which 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.

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 stable 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 Statewide Planning Goal #18 for the above-referenced dune forms; and that this strategy recognizes that potential mitigation sites must be protected from pre-emptory uses.

3. Coos County shall prohibit residential development and commercial and industrial buildings within areas designated as "Beach and Dune Areas Unsuitable for Development" on the Special considerations Map.

Further, Coos County shall permit other developments in these areas only:

a. When specific findings have been made that consider at least:

   i. the type of use proposed and the adverse effects it might have on the site and adjacent areas
   ii. the need for temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation,
   iii. the need for methods for protecting the surrounding area from any adverse effects of the development, and
   iv. hazards to life, public and private property, and the natural environment, which may be caused by the proposed use, and

b. When it is demonstrated that the proposed development:

   i. is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
   ii. is designed to minimize adverse environmental effects, and

c. When specific findings have been made, where breaching of foredunes is contemplated
that:

i. The breaching and restoration is consistent with sound principles of conservation, and either

ii. The breaching is necessary to replenish sand supply in interdune areas, or

iii. The breaching is done on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards).

Further, Coos County shall cooperate with affected local, state and federal agencies to protect the groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of saltwater into water supplies.

This policy shall be implemented through: (1) review of the Special Considerations Map when development is proposed in these areas, and (2) an Administrative conditional use process where findings are developed based upon a site investigation report submitted by the developer which addresses the considerations set forth above.

This policy recognizes that:

a. The Special Considerations Map category of "Beach and dune Areas Unsuitable for Development" includes the following dune forms:

   i. Active foredunes
   ii. Other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and
   iii. Interdune areas (deflation plains) that are subject to ocean flooding.

b. the measures prescribed in this policy are specifically required by Statewide Planning 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 such areas.

4. Coos County shall cooperate with state and federal agencies in regulating the following actions in the beach and dune areas described in subparagraph (iii) of Policy #1: (1) destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), (2) the exposure of stable and conditionally stable areas to erosion, (3) construction of shore structures which modify current air wave patterns leading to beach erosion, and (4) any other development actions with potential adverse impacts.

This strategy shall be implemented through the processes described in Policies #2 and #3 above and through review and comment by the county on state and federal permits in beach and dune areas.

This strategy recognizes that regulation of these actions is necessary to minimize potential erosion.
The proposed pipeline alignment is not located on properties inventoried Beach and Dune Areas with Development Suitability; therefore, these strategies do not apply.

TABLE 4.7a

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix I</th>
</tr>
</thead>
</table>
| 5. Non-Estuarine Shoreland Boundary | 5 a. Protection of major marshes (wetlands), habitats, headlands, aesthetics, historical and archaeological sites.  
  b. Specifies allowed uses within C.S.B.  
  c. Permits subdivision, major and minor partitions only upon findings.  
  d. Maintain, restore or enhance riparian vegetation as consistent with water dependent uses. Requires Administrative Conditional Use. | 1-25       |
|                                 |                                                                                                         | 1-26       |
|                                 |                                                                                                         | 1-27       |
|                                 |                                                                                                         | 1-28       |
|                                 |                                                                                                         | 5          |
|                                 |                                                                                                         | 7          |
|                                 |                                                                                                         | 8          |
|                                 |                                                                                                         | 11         |

5. Non-Estuarine Shoreland Boundary Appendix I, Pages 25-28, Strategy Nos. 5, 7, 8 & 11

5. Coos County shall provide special protection to major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources, and historic and archaeological sites located within the coastal Shorelands boundary of the ocean, coastal lakes and minor estuaries. Coos County shall consider: (a) "major marshes" to include certain extensive marshes associated with dune lakes in the Oregon Dunes National Recreation Area and wetlands associated with New River as identified in the Inventory text and maps, and on the Special Considerations Map; (b) "significant wildlife habitat" to include "sensitive big-game range", Snowy Plover nesting areas, Bald Eagle, and Osprey nesting areas, Salmonid spawning and rearing areas, and wetlands; (c) "coastal headlands" to include Yaakum Point, Gregory Point, Shore Acres, Cape Arago south to Three-Mile Creek, Five Mile Point, and Coquille Point; (d) "exceptional aesthetic resources" to include the coastal headlands identified above, and other areas identified in the Coastal Shorelands Inventory; and (e) "historical, cultural and archaeological sites" to include those identified in the Historical, Cultural and Archaeological Sites Inventory and Assessment.

This strategy shall be implemented through plan designations and ordinance measures that limit uses in these special areas to those uses that are consistent with protection of natural values, such as propagation and selective harvesting of forest products, grazing, harvesting wild crops, and low intensity water-dependent recreation.

Findings of Fact and Conclusions of Law  HBCU 13-06

Page 66

EXHIBIT A
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.

7. Coos County shall manage its rural areas within the "Coastal Shorelands Boundary" of the ocean, coastal lakes and minor estuaries through implementing ordinance measures that allow the following uses:
   a. farm uses as provided in ORS 215;
   b. propagation and harvesting of forest products consistent with the Oregon Forest Practices Act.
   c. private and public water dependent recreation developments;
   d. aquaculture;
   e. water-dependent commercial and industrial uses and water-related uses only upon finding by the Board of Commissioners that such uses satisfy a need, which cannot otherwise be accommodated on shorelands in urban and urbanizable areas;
   f. single family residences on existing lots, parcels, or units of land when compatible with the objectives and implementation standards of the Coastal Shorelands goal, and as otherwise permitted by the underlying zone;
   g. any other uses, provided that the Board of Commissioners determines that such uses: (1) satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas; (2) are compatible with the objectives of Statewide Planning Goal #17 to protect riparian vegetation and wildlife habitat; and (3) the "other" use complies with the implementation standard of the underlying zone designation.

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 Statewide Planning Goal #17 places strict limitations on land divisions within coastal shorelands.

8. Coos County shall permit subdivisions and partitions within the "Coastal Shorelands Boundary" of the ocean, coastal lakes or minor estuaries in rural areas only upon finding by the governing body: (1) that such land divisions will not conflict with agriculture and forest policies and ordinance provisions of the Coos County Comprehensive Plan and would be compatible with the objectives of Statewide Planning Goal #17 to protect riparian vegetation and wildlife and either; (2) that the new land divisions fulfill a need that cannot otherwise be accommodated in other uplands or in urban and urbanizable areas; or, (3) that the new land divisions are in a documented area, "committed" area; or, (4) that the new land divisions have been justified through a goal exception.

This strategy shall be implemented through provisions in ordinance measures that require the above findings to be made prior to the approval of the preliminary plat of a subdivision or partition.
This strategy recognizes that Coos County's rural shorelands are a valuable resource and accordingly merit special consideration under Statewide Planning Goal #17.

11. Coos County shall maintain riparian vegetation within the shorelands of the ocean, coastal lakes, and minor estuaries, and when appropriate, restore or enhance it, as consistent with water-dependent uses.

Timber harvest, if permitted in the zoning ordinance, shall be regulated by the Oregon Forest Practices Act.

Where the County's Comprehensive Plan identifies riparian vegetation on lands in the coastal shorelands subject to forest operations governed by the FPAct, the Act and Forest Practices Rules administered by the Department of Forestry will be used in such a manner as to maintain, and where appropriate, restore and enhance riparian vegetation.

This strategy shall be implemented by County review of and comment on state permit applications for waterfront development.

This strategy is based on the recognition that prohibiting excessive removal of vegetative cover is necessary to stabilize the shoreline and, for coastal lakes and minor estuaries, to maintain water quality and temperature necessary for the maintenance of fish habitat.

There are no non-estuarine shorelands on the affected properties. The shoreland in this case is estuarine, as it is the boundary between the CBEMP and the Balance of County Zoning, and will be addressed in the findings for Table 7c. Therefore, these strategies do not apply.

TABLE 4.7a

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix I</th>
</tr>
</thead>
</table>
| 6. Significant Wildlife Habitat I ORD 85-08-011L | 6a. Conserve riparian vegetation adjacent to salmonid spawning and rearing areas; density restriction in Big Game Range.  
b. Protect “wet meadows” for agricultural use  
c. Manage riparian vegetation and nonagricultural wetland areas so as to preserve their significant habitat value, and to protect their hydrologic and water quality benefits.  
d. Restrict conflicting uses on “5c” bird sites except as permitted with EESE balancing. 300 ft. setback from Bald Eagle nests. | Page 1-14  
1-17  
1-18  
1-14  |
|                                      |                                                                                                          | Strategy No. 1  
4  
2  
1a |

6. Significant Wildlife Habitat I ORD 85-08-011L) – Appendix I,
Plan Implementation Strategies

1. Coos County shall consider as "5c" Goal #5 resources (pursuant to OAR 660-16-000) the following:
   a. "Sensitive Big-game Range"
   b. Bird Habitat Sites (listed in the following table)
   c. Salmonid Spawning and Rearing Areas

Uses and activities deemed compatible with the objective of providing adequate protection for these resources are all uses and activities allowed, or conditionally allowed by the Zoning and Land Development Ordinance, except that special care must be taken when developing property adjacent to salmonid spawning and rearing areas so as to avoid to the greatest practical extent the unnecessary destruction of riparian vegetation that may exist along stream banks. The Oregon Forest Practices Act is deemed adequate protection against adverse impacts from timber management practices.

This policy shall be implemented by:

a. County reliance on the Oregon Forest Practices Act to ensure adequate protection of "significant fish and wildlife habitat" against possible adverse impacts from timber management practices; and

b. The Zoning and Land Development Ordinance shall provide for an adequate riparian vegetation protection setback, recognizing that "virtually all acknowledged counties have adopted a 50 foot or greater standard" (DLCD report on Coos County, November 28, 1984); and

c. Use of the "Special Considerations Map" to identify (by reference to the detail inventory map) salmonid spawning and rearing areas subject to special riparian vegetation protection; and

d. Stipulating on County Zoning Clearance Letters that removal of riparian vegetation in salmonid spawning and rearing areas shall be permitted only pursuant to the provisions of this policy.

e. Coos County shall adopt an appropriate structural setback along wetlands, streams, lakes and rivers as identified on the Coastal Shoreland and Fish and Wildlife Habitat inventory maps.

The Oregon Department of Fish and Wildlife and the Department of Forestry are working in conjunction with the requirements of this Plan and, are deemed adequate protection against adverse impacts from timber management practices.

1. a. County reliance on the Oregon Forest Practices Act to ensure adequate protection of "significant fish and wildlife habitat" against possible adverse impacts from timber management practices; and

2. Coos County shall manage its riparian vegetation and identified non-agricultural wetland areas so as to preserve their significant habitat value, as well as to protect their

Findings of Fact and Conclusions of Law  HBCU 13-06
Page 69
EXHIBIT A
hydrologic and water quality benefits. Where such wetlands are identified as suitable for conversion to agricultural use, the economic, social, environmental and energy consequences shall be determined, and programs developed to retain wildlife values, as compatible with agricultural use. This strategy is subordinate to Strategy #4, below.

This strategy does not apply to forest management actions, which are regulated by the Forest Practices Act.

This strategy recognizes that protection of riparian vegetation and other wetland areas is essential to preserve the following qualities deriving from these areas:

<table>
<thead>
<tr>
<th>natural flood control flow stabilization of streams and rivers</th>
<th>environmental diversity habitat for fish and wildlife, including fish and wildlife of economic concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>reduction of sedimentation</td>
<td>recreational opportunities</td>
</tr>
<tr>
<td>improved water quality</td>
<td>recharge of aquifers</td>
</tr>
</tbody>
</table>

4. Coos County shall protect for agricultural purposes those land areas currently in agricultural use but defined as "wet meadow" wetland areas by the U.S. Fish and Wildlife Service, and also cranberry bogs, associated sumps and other artificial water bodies.

Implementation shall occur through the placement of the plan designation "Agriculture" on such areas.

This strategy recognizes:

a. That agriculture is an important sector of the local economy;

b. That some of the more productive lands in Coos County's limited supply of suitable agricultural lands are such seasonally flooded areas;

c. That designation of these areas for agricultural use is necessary to ensure the continuation of the existing commercial agricultural enterprise; and

d. That the present system of agricultural use in these areas represents a long-standing successful resolution of assumed conflicts between agricultural use and habitat preservation use, because the land is used agriculturally during months when the land is dry and therefore not suitable as wetland habitat, and provides habitat area for migratory wildlife during the months when the land is flooded and therefore not suitable for most agricultural uses.

The properties have Big Game Habitat designation and Staff has provided notice to Oregon Department of Fish and Wildlife (ODFW). Big Game Habitat only regulates dwelling density. ODFW has recommended that residential development be kept to a general minimum of one dwelling per 80 acres in areas identified as sensitive big game range. ODFW intends that these recommended minimum densities be applied over a broad area.

There are no inventoried bird habitat sites or salmonid spawning and rearing areas. Riparian 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. This criteria has been addressed.

**TABLE 4.7a**

<table>
<thead>
<tr>
<th>PHENOMENON</th>
<th>SPECIAL REGULATORY CONSIDERATIONS SUMMARY</th>
<th>Appendix 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Natural Hazards</td>
<td>7a. Comply with floodplain overlay zone set forth in this Ordinance.</td>
<td>1-29</td>
</tr>
<tr>
<td></td>
<td>b. Support structural protection measures for bankline stabilization projects requiring state and federal permits when the applicant establishes that non-structure measures either are not feasible or inadequate to provide the necessary degree of protection.</td>
<td>1-29</td>
</tr>
<tr>
<td></td>
<td>c. Issue zoning clearance letters in known areas potentially subjected to mass movement, including earth flow, slump topography, rockfall and debris flow pursuant to the provisions of natural hazards Strategy #6 in the Comp Plan.*</td>
<td>1-30</td>
</tr>
</tbody>
</table>

*Requires Administrative Conditional Use

7. **Natural Hazards — Appendix I, Pages 29-30, Strategy Nos. 1, 5 & 6**

**Plan Implementation Strategies**

1. Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include stream and ocean flooding, wind hazards, wind erosion and deposition, *critical streambank erosion, mass movement (earthflow and slump topography),* earthquakes and weak foundation soils. This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property. This strategy recognizes that it is Coos County's responsibility: (1) to inform its citizens of potential risks associated with development in known hazard areas; and (2) to provide appropriate safeguards to minimize such potential risks.

5. Coos County shall promote protection of valued property from risks associated with critical streambank and ocean front erosion through necessary erosion-control stabilization measures, preferring nonstructural solutions where practical. Coos County shall implement this strategy by making "Consistency Statements" required for State and Federal permits (necessary for structural streambank protection measures) that support structural protection measures when the applicant establishes that non-structure measures

---

* These hazards are addressed under policies for "Dunes and Ocean and Lake Shorelands."

Findings of Fact and Conclusions of Law  HBCU 13-06
Page 71

**EXHIBIT A**
either are not feasible or inadequate to provide the necessary degree of protection. This strategy recognizes the risks and loss of property from unabated critical streambank erosion, and also, that state and federal agencies regulate structural solutions.

6. Coos County shall permit the construction of new dwellings in known areas potentially subject to mass movement (earth flow/slump topography/rock fall/debris flow) only:
   a. if dwellings are otherwise allowed by this comprehensive plan; and
   b. after the property owner or developer files with the Planning Department a report certified by a qualified geologist or civil engineer stipulating:
      i. his/her professional qualifications to perform foundation engineering and soils analysis; and
      ii. that a dwelling can or cannot be safely constructed at the proposed site, and whether any special structural or siting measures should be imposed to safeguard the proposed building from unreasonable risk of damage to life or property.

This strategy recognizes the county is responsible for identifying potential hazard areas, informing its citizens of risks associated with development in known hazard areas, and establishing a process involving expert opinion so as to provide appropriate safeguards against loss of life or property.

Implementation shall occur through an administrative conditional use process, which shall include submission of a site investigation report by the developer that addresses the considerations above.

The proposed alternate segment alignment is not part of a bank line stabilization project. This application is not proposing dwellings; therefore, strategy No. 6 is not applicable. The proposed project is not subject to any of these strategies.

H. Miscellaneous Concerns Unrelated to Approval Criteria.

1. Potential Bias / Goal 1 Violation.

In her letter dated June 17, 2014, Jody McCaffree argues that “[a]llowing the [applicant] to be able to file multiple revision applications at such reduced [application] fees makes it harder for citizens to participate. Particularly since each revision has to be appealed in separate land use proceeding processes. This clearly biases the process in favor of the applicant and is not in line with the spirit and intent of Statewide Planning Goal One for Citizens Involvement.” See McCaffree Letter at p. 2.

To the extent that Ms. McCaffree intends to raise a legal point via the above-quoted comments, the “bias” and “Statewide Planning Goal 1” argument is not sufficiently developed to enable a response. Nonetheless, if Ms. McCaffree’s broader point is that the applicant should
be charged more money in order to slow them down from a financial standpoint, the Board disagrees with both the legality and the practicality of the suggestion. The Board has conducted public hearings in each one of these PCGP cases, and has consistently allowed parties to exceed their time limits when their testimony seemed relevant to the approval standards. The hearings officer held the record open for generous periods of time to enable adequate opportunity for public comment and rebuttal. The hearings officer also stated in his recommended order that he was reticent to reject evidence and arguments on procedural grounds, and has erred on granting opponents broad standing when issues of this sort have arisen. The applicant, to its credit, has also been accommodating with scheduling issues, and has given the County sufficient time to make informed and well-reasoned decisions. For this reason, the Board finds that the “spirit and intent” of Goal 1 has not only been met but in fact has been exceeded by a significant margin.

2. Condition 25 Has been Modified in a Manner that No longer Prohibits Export.

In her letter dated June 17, 2014, Jody McCaffree argues that an approval of the Blue Ridge route as an “export” pipeline violates Condition 25 from HBCU-10-01. 19 However, Condition 25 was modified in a manner that now allows for the export of natural gas. LUBA upheld that modification in McCaffree v. Coos County. Of course, the subject matter of the modification is ultimately subject to FERC approval, and it is in fact the FERC process that is the proper venue for most of the policy arguments that Ms. McCaffree raises in this regard.

Ms. McCaffree nonetheless persists in her argument that Condition 25 of the original approval is somehow applicable to the current application and that, by failing to limit the Pipeline to use only for importation of natural gas, the current application violates Condition 25. See McCaffree letter dated July 1, 2014, at p. 1-4. Ms. McCaffree cites no authority in support of her theory that a condition of approval for one development approval automatically becomes a condition of approval or “other requirement of law” for a new development application. Indeed, the notion that a condition of approval from one development decision can be a basis for denying a separate permit application contradicts ORS 215.416(8)(a), which provides that approval or denial must be based on standards and criteria set forth in the County’s adopted ordinances and regulations:

Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

Ms. McCaffree cites no standard or criterion in the County’s adopted ordinances that requires the denial of this application. Although Ms. McCaffree makes much of the fact that Condition 25 was not modified by the Board until after the application in the current matter was

---

19 Final Decision and Order, No. 12-03-018PL (March 13, 2012).

Findings of Fact and Conclusions of Law HBCU 13-06

Page 73

EXHIBIT A
submitted, that would be of relevance only if Condition 25 was an applicable approval standard for this new permit application. It is not.

Furthermore, as the applicant aptly points out, this application concerns only the portion of the Pipeline route located along the proposed Blue Ridge alternative alignment. Thus, this application concerns approximately 14 miles of the Pipeline. This application does not seek a modification of any of the prior approvals for the Pipeline. By approving this segment, the Board’s decision will be subject to only those conditions of approval adopted by the Board in this decision, pursuant to CCZLDO 5.0.350.A:

Conditions of approval may be imposed on any land use decision when deemed necessary to ensure compliance with the applicable provisions of this Ordinance, Comprehensive Plan, or other requirements of law. Any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both the extent and amount to the anticipated impacts of the proposed use or development.

Thus, Condition No. 25 from HBCU 10-01 provides no basis for denial in this case.

3. The Application is Not Premature.

One opponent testified that she believes this application should not be approved until other regulatory processes by FERC are completed. However, the Board has consistently denied this argument in previous cases. The County is required to process a permit within 150 days of when it is deemed complete. ORS 215.427. Additionally, opponents have cited no authority or approval standard, and the Board is aware of none, which requires this application process to be put on hold pending favorable results in related but separate processes. Given the length of time that it takes to complete the various processes, it makes sense that the applicant seeks to complete these applications concurrently, and there is no legal impediment to doing so.

4. NEPA Is Not Applicable to this Proceeding.

In her letter dated June 17, 2014, Jody McCaffree argues that this land use process should be put on hold pending the results of the National Environmental Policy Act (“NEPA”) process currently being processed by FERC. Ms McCaffree argues that “until a final record of decision is issued, the applicant and [FERC] are not to take any action concerning the proposal which would limit the choice of reasonable alternatives addressed in the FEIS.” She further argues that “the applicant is in the process of violating the NEPA regulations by taking inappropriate actions as indicated by all of these land use applications and approval decisions that are being processed prior to the NEPA process being completed.” She asks, rhetorically, “[h]ow can Oregonians be expected to objectively evaluate the range of alternatives that would be provided in a valid EIS if, in fact, Coos County and Oregon Agencies have already issued permits and certifications for one of the alternatives beforehand.” Id. at p. 4.

The answer is that the County land use approvals are all contingent on FERC approval, which, in turn, is based on the results of the NEPA EIS process. Ms. McCaffree seems to
accept, as a premise to her argument, that land use approvals are somehow binding on FERC or otherwise limit the range of alternatives considered by FERC. However, even the facts of this case bear out that Ms. McCaffree is mistaken. The applicant has previously requested land use approval for two alternative route segments in response from requests from FERC. The proposed changes in the County approved route were necessary to: (1) avoid the Natural Resources Conservation Service’s (NRCS) Brunschmid Wetland Reserve Program Easement; and (2) minimize the Stock Slough crossings. The applicant is now pursuing the Blue Ridge alternative segment in response to FERC requests. It is clear that the County land use approvals are not limiting FERC’s considerations of alternatives in any way. In fact, the opposite is true: the FERC process is causing the applicant to apply multiple times for land use approval of the pipeline route.

The Board incorporates by reference the findings that appear on pages 75 to 78 of Final Opinion and Order 14-01-007PL (HBCU 13-04). These incorporated findings provide additional discussion explaining why NEPA does not apply to this land use decision.

5. “Public Need” or “Public Benefit”.

Some opponents continue to assert the belief that the alternative alignment should not be approved because there is no “public need” for the project or a “public benefit” to the community. For example, Ms. McCaffree dedicates three pages of her June 17, 2014 letter arguing that there is a lack of “need” for the Pipeline. In this letter, which appears to be largely recycled arguments from past cases hastily thrown together at the last second, Ms. McCaffree raises a host of policy arguments pertaining to the “public need” for LNG exports. She argues that the Pipeline will result in higher fuel costs in North America, and similar arguments. While all of these issues may be relevant to FERC, public “need” is simply not an approval criterion for this decision. The only thing close to a “public need” requirement in local standards is found in CBEMP Policy 5, and, as noted above, the Board has determined that this policy does not apply.

In fact, Ms. McCaffree’s own evidence tends to undercut the argument that the LNG pipelines are not in the “public interest,” while at the same time making clear that the issue is one that gets decided at the federal level. Exhibit E to McCaffree Letter dated June 17, 2014 provides as follows:

Section 3(a) of the Natural Gas Act of 1938 defines the process for DOE’s reviews of most LNG export applications. In particular, the Secretary of Energy must approve an export application “unless after opportunity for hearing, [the Secretary] finds that the proposed exportation... will not be consistent with the public interest.” Thus, there is “a rebuttable presumption that a proposed export of natural gas is in the public interest,” according to DOE. This presumption must be overcome for DOE to deny an export application. For export approvals, DOE may also attach terms or conditions that it considers necessary to protect the public interest.
The Energy Policy Act of 1992 amended the Natural Gas Act to further limit DOE's ability to deny natural gas export applications. Specifically, DOE must approve applications to export natural gas to the 15 countries that have free trade agreements (FTAs) with the United States covering natural gas. Such applications are automatically deemed in the public interest, and DOE cannot add any terms or conditions to approvals.

In addition to DOE authorization to export LNG, companies must receive authorization from the Federal Energy Regulatory Commission (FERC) for the actual siting and development of LNG projects, as specified under Section 3 of the Natural Gas Act. FERC is also the lead agency responsible for the preparation of the analysis and decisions required under National Environmental Policy Act for the approval of new facilities, including tanker operation, marine facilities, and terminal construction and operation, environmental and cultural impacts. (Footnotes omitted).

See “Drill Here, Sell There, Pay More,” Natural Resources Committee Democrats, at p. 7. But even if that were not the case, it should also be emphasized that the Pipeline has already been approved by the County. The current application is for approval of an alternate alignment segment, which totals approximately 14 miles of pipeline. This alternate alignment segment is not determinative of the “need” for the Pipeline as a whole. As previously mentioned, this alternate alignment is proposed at the behest of FERC, in order to reduce potential impacts to the environment and residents living in the area.

Although Ms. McCaffree contends that the applicant fails to demonstrate a “public need” for the Jordan Cove facility or the Pipeline, she fails to identify any relevant local land use standard incorporating such “public need” standard. See McCaffree letter, at pp. 8-9, 11–17, 31–32. The Board finds that there is no such “public need” standard applicable to these proceedings. As the Board previously explained in HBCU 10-01 approving the conditional use permit for the pipeline:

“[N]eed” is simply not an approval criterion for this decision. Compare Hale v. City of Beaverton, 21 Or LUBA 249 (1991) (Public need is not an approval criterion) with Ruef v. City of Stayton, 7 Or LUBA 219 (1983) (code standard required that a “public need” for a project be established). Although “public need” became a common code standard after the landmark Fasano case, it is no longer a generally applicable criterion in quasi-judicial land use proceedings. Neuberger v. City of Portland, 288 Or 155, 170, 603 P2d 771 (1979).

... Furthermore, since the pipeline is expected to transport natural gas in interstate commerce, any local zoning ordinance requiring the pipeline to serve a “need” by local customers, rather
than the concerns of interstate commerce, is a clear violation of the Commerce Clause. The fact that Oregon law provides for eminent domain proceedings for interstate natural gas pipelines is evidence that Oregon as a state, considers interstate natural gas pipelines to be important and necessary and to serve an important need.

2010 Decision, at p. 144. See Attachment A to Exhibit 21.

In order to receive a Certificate of Public Convenience and Necessity from FERC, the applicant will be required to demonstrate a public need for the Pipeline. Arguments related to the public need for the Pipeline, including the Blue Ridge alignment, are properly addressed in that proceeding, not this Coos County land use proceeding, which is limited to addressing local land use approval criteria.

6. OAR 345-023-0005 Does Not Establish a “Need” Requirement for this Application

Ms. McCaffree also contends that OAR 345-023-0005 is an independent source of a “public need” requirement. See McCaffree Letter dated July 1, 2014 at p. 7 (“In addition, Oregon Administrative Rule 345-023-0005 clearly requires that the applicant must demonstrate a need for the natural gas pipeline”). The Board finds that this argument is being made for the first time in surrebuttal, and for that reason the Board rejects it as untimely.

Nonetheless, even if the issue had been raised in a timely manner, the Board denies it. Ms. McCaffree provided no discussion or analysis as to why OAR 345-023-0005 is applicable to this case. As the applicant points out in its final argument dated July 8, 2014, at p. 9-10:

The “need” standard in OAR 345-023-0005 was promulgated by the Oregon Energy Facility Siting Council (EFSC). It expressly applies only when EFSC is determining whether to issue a “site certificate” for certain non-generating facilities, including natural gas pipelines. See OAR 345-023-0005 (“To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility”).

The applicant, however, is not seeking a site certificate from EFSC. Thus, OAR 345-023-0005 is not applicable in the current proceeding. Moreover, a natural gas pipeline under FERC jurisdiction, including the Pacific Connector Gas Pipeline, is by statute exempt from the requirement to obtain a site certificate from EFSC. See ORS 469.320(2)(b) (“A site certificate is not required for ... [c]onstruction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency”). There is, in other words, no plausible basis...
for concluding that the application for the Blue Ridge alternate alignment of the Pipeline is subject to EFSC’s “need” standard for non-generating facilities.

The applicant is correct: OAR 345-023-0005 does not apply in this case.

7. **Evidence of Past Misdeeds by Pipeline Companies Is Not a Basis for Denial Unless Evidence Shows Impossibility of Performance, as Opposed to a Propensity Not to Perform.**

Some opponents have submitted testimony discussing past environmental damage caused by Williams Pipeline Company and other unrelated pipeline companies. Perhaps the most relevant of this testimony is found at pages 25 – 31 of Jody McCaffree’s letter dated June 17, 2014. Record Exh. 17. Included in that discussion is a 5-page list of various pipe explosions at Williams’ and Transco owned facilities, various fines imposed and/or paid by Williams for violations of laws, and other alleged environmental problems with Williams’ facilities. This testimony appears to be more-or-less recycled from materials she submitted into the record in HBCU 13-04. While this type of testimony is intended to create doubt about whether the applicant can conduct its construction and operation activities as promised, it can seldom form a basis for denial because it requires the decision-maker to speculate about future events and it seeks to punish an applicant for previous acts for while penalties have already been paid.

Moreover, most of the testimony submitted into the record on this topic seems to be aimed more at promoting the idea that natural gas is inherently unsafe and should be prohibited for public use, as opposed to addressing the issue of whether the Blue Ridge route meets land use standards. Nonetheless, as has been pointed out in previous cases, most of the problems with gas pipelines occur with a combination of unauthorized human interference (such as a construction contractor accidentally digging up a pipe), or with regard to older pipelines that are beyond their useful lifespan. With regard to the latter issue, it seems that newer pipelines can create the redundancy needed to take older pipes off line for repair or replacement.

But regardless of that point, the applicant correctly notes in its letters and materials submitted into the record that this case is not really about whether the overall pipeline should be approved or not. Rather, this case is really focused on whether the “Blue Ridge” alignment meets Coos County’s land use standards. Although technically the question is not whether the Blue Ridge route is “better” than the segment of the approved route that it seeks to replace, as a practical matter, such analysis has creeped into many of the submittals. That being said, a denial of this application would merely put the applicant back in the position of seeking to develop the route approved in 2010.

Furthermore, even if the point is well taken that Williams caused accidents and deaths in other cases, it does not necessarily provide a basis to deny the land use application. In a land use case, the decision-maker cannot simply assume that the applicant will fail to live up to its promises. A decision-maker cannot simply speculate that the applicant will fail to maintain his equipment or that it will not follow federal safety and inspection requirements, particularly based on anecdotal evidence of past events, often associated with unrelated actors. *See Champion v. City of Portland*, 28 Or LUBA 618 (1995) (“illegal acts, such as those alleged by
petitioner, might provide the basis for a code enforcement proceeding. However, petitioner fails to show that the alleged illegal activity by the applicants is relevant to any legal standard applicable to the approvals granted by the city in the decision challenged in this appeal."); Canfield v. Lane County, 16 Or LUBA 951, 961 (1988) ("Petitioner's view that the conditions will be violated is speculation. We do not believe the county is obliged to assume future violations of the condition."). Gann v. City of Portland, 12 Or LUBA 1, 6 (1984).

The case of Stephens v. Multnomah County, 10 Or LUBA 147 (1984) provides a good example of how LUBA views this type of "prior violations" testimony. The applicant in Stephens was a business that rented out portable toilets (aka: "Port-a-Johns"). The applicant was seeking a permit to store empty Port-a-Johns on a site. Opponents cited the company’s prior history of DEQ violations as a reason for denial. LUBA responded as follows:

Petitioner also alleges evidence should have been considered that DEQ had charged the applicant with violation of DEQ regulations at other places regarding handling of waste. Petitioner asserts that evidence is relevant to show DEQ regulations will not be followed in the future by the applicant. In land use permit applications, evidence of prior land use violations is not generally considered as grounds for a denial, at least where there are no specific standards authorizing denial for such reasons. See generally 3 Anderson, American Law of Zoning, Section 19.24 (1977). Such evidence of prior violation does not show there will be repeated violations nor is it proper to punish the applicant for previous acts if an enforcement agency has already done so. Pockeik v Sildorf, 390 NYS2d, 49, 358 NF2d 874 (1976). Such evidence of DEQ enforcement actions, particularly at other locations, was properly excluded by the Board.

In a footnote, LUBA provided dicta setting forth an exception to the general rule:

We do not mean to hold evidence of prior violations should be disregarded in all cases. Where such evidence shows impossibility of performance as distinguished from propensity to not perform, there may be a basis for consideration. (Emphasis added).

Thus, if a pipeline company has a track record of non-compliance with applicable law, those facts can be relevant in some circumstances. But the opponents here have not provided sufficient evidence that impossibility of performance is likely in this case.

In HBCU 13-04, the applicant’s attorney, Mr. Mark Whitlow, pointed out that the applicant has prepared the Safety Report, which details the extensive construction, maintenance, monitoring, and education safety measures that will be implemented to significantly reduce the risk of a release. A portion of the Safety Report referenced by Mr. Whitlow is in the record of this proceeding. Exhibit 15. The findings from HBCU 13-04 explained the contents of the report, as follows:

"In Section 1.5 of the Safety Report, the first step in Pacific Connector’s safety monitoring process is to make certain that the
pipeline is constructed properly. During construction, the integrity of the coatings designed to protect against corrosion are checked and any imperfections are immediately repaired. Pacific Connector will also conduct non-destructive inspection of the pipeline welds and strength test the pipeline to meet or exceed federal pipeline regulations prior to the pipeline being placed in service to ensure integrity of materials and construction.

Once the pipeline is in service, Pacific Connector will implement a number of routine monitoring measures including land and aerial patrols, inspection of river crossings, and conducting leak surveys at least once every calendar year as required by federal law. As detailed in the Safety Report, in addition to routine monitoring, potentially affected portions of the pipeline will be inspected immediately following any major natural disturbance event, such as an earthquake, flood, or wildfire. In addition to the federally required surveys, Pacific Connector will monitor and control the pipeline system using a supervisory control and data acquisition system (SCADA).

In addition to internal safety protocols and plans, as described in Safety Report Section 1.5, Pacific Connector will comply with an industry Recommended Practice for pipeline operators to develop a public awareness program. The public awareness program will provide information to landowners, excavators, and emergency responders. It will also identify the target audiences that should receive regular correspondence from the pipeline company such as the general public, landowner, local public officials, and one-call centers. The overall goal of the program is to increase and maintain public and landowner awareness of the pipeline to avoid the type of third party activities that could damage the pipe, and to make those parties aware of appropriate response actions and contacts.

See Attachment B to Exhibit 21 (Copy of Findings in HBCU 13-04). There has been no evidence submitted in this case that undermines these previously adopted findings. The findings themselves constitute substantial evidence in the same way as a staff report. Since there is no credible evidence to the contrary, the Board finds that the construction, maintenance, monitoring, and education safety measures proposed by PCGP are sufficient to support the conclusion that it is feasible to comply with applicable approval standards and conditions of approval.

8. Cost of Exporting LNG.
On page 8 of her letter dated June 17, 2014, Ms. McCaffree raises a policy issue concerning the effect that the export of natural gas will have on domestic fuel prices. The Board finds that Ms. McCaffree does not relate her issue to an approval standard. This type of “policy” based testimony may be relevant to the FERC process, but is not relevant in this local land use process.

In fact, even the evidence submitted by Ms. McCaffree underscores that the issue she raises is one that is being decided at the Federal level (i.e., at the Department of Energy). Her evidence also reveals that there exists a stark lack of LNG terminals on the West Coast of the United States, which suggest that LNG tankers in the Gulf Coast must use the circuitous route through the Panama Canal in order to deliver natural gas to markets in Korea, Japan, and India. The lack of LNG terminals on the West Coast may signal a public need for such facilities. Regardless, that is a matter for FERC to decide.

In the absence of a more focused argument related to an approval standard, the Board finds that this argument provides no basis to deny the application.

9. Compliance with Purpose Statements.

Tom Younker, Julie Eldridge and Christine Keenan submitted a letter dated May 16, 2014, in which they argue that the proposed pipeline is not consistent with the “Purpose” of the EFU, Forest, and Rural Residential zones. CCZLOD 4.1.100 contains general purpose statements for the various zones, and state general objectives only. These purpose statements do not purport to apply as independent approval standards to any specific land use application. Bennett v. City of Dallas, 17 Or LUBA 450, 456, aff'd 96 Or App 645 (1989); Stotter v. City of Eugene, 18 Or LUBA 135, 157 (1989). Therefore, the Board denies the opponents' contentions on this issue.

10. Concerns with Regard to Daniels Creek Road Are Not Relevant in this Proceeding.

Several opponents expressed concerns about potential impacts to Daniels Creek Road. At least two residents living along Daniel Creek Road submitted letters opposing the Blue Ridge route. However, for the most part they make no effort to identify any approval standards to which their concerns are relevant.

As the Board understands the facts, Daniel Creek Road is directly east of Blue Ridge. As the applicant stated at the May 30, 2014 public hearing:

The proposed Blue Ridge alignment does not involve any crossing of Daniels Creek Road, and the applicant is not proposing to widen or alter Daniels Creek Road in conjunction with the proposed Blue Ridge alignment at issue in this proceeding. People with homes on Daniels Creek Road will not have their use of the road halted even temporarily due to construction of the Pipeline. It is possible that local traffic on Daniels Creek Road may increase during construction as drivers seek alternatives to roads that will be directly affected by
construction. Any such impact would be temporary. Moreover, as noted at the hearing, Daniels Creek Road is a county road, not a private facility.

Concern is raised over alleged traffic impacts, environmental degradation to stream and wildlife habitat, loss of property values, damage to “the very essence of country living,” potential disruption to water wells, fire protection, and related issues. The Board finds that the concerns expressed in the letters are generalized in nature, speculative, and for the most part, do not relate to specific approval criteria. All of the concerns raised are unsubstantiated and unsupported with substantial evidence, particularly since the Pipeline will be located in excess of ½ mile away from the homes near Daniel Creek Road.

Furthermore, the few issues raised in these letters that do relate to specific approval criteria have already been discussed in the two previous Pipeline cases, HBCU 10-01 and 13-04. While the Board acknowledges the landowners’ expressed desires that the pipeline be routed on someone else’s land, the Board also finds that the Blue Ridge route is being proposed, at FERC’s request, precisely because it affects fewer private landowners than the original approved route, and has far fewer environmental impacts as well. See Letter from Mark Sheldon, Blue Ridge LNG Route, dated June 10, 2014 (Exhibit 5). In this letter, Mr. Sheldon points out a myriad of reasons why the Blue Ridge route is a “better” route than the approved route. From the standpoint of deciding whether to approve a land use decision, the Board does not factor the relative merits of the two routes into the decision. In other words, the question the Board is tasked to answer is whether the application meets the applicable approval criteria, not whether one route is “better” than the other. Nonetheless, when considering testimony such as that provided in the two above referenced letters, it is difficult to ignore the fact that the proposed Blue Ridge route has less potential impacts than the approved route.

At least one opponent argues that the Pipeline may affect her drinking water supply. However, this testimony is entirely speculative. Moreover, opponents have identified no applicable land use approval standard related to potential impacts to groundwater resources, private wells, or springs, and the Board is unaware of any such standard. Nonetheless, the applicant has previously provided information regarding the potential impacts of the Pipeline on such resources as well as measures proposed to avoid or mitigate potential such impacts. See Resource Report Number 2, at 77–84 (submitted with the application). The Blue Ridge alignment does not cross any EPA-designated sole source aquifers. Id. at 77–78. The potential impacts to local groundwater resources will be avoided or minimized by the use of standard construction techniques and adherence to FERC’s Wetland and Waterbody Procedures and the applicant’s ECRP. See Applicant Rebuttal Letter dated June 17, 2014, at Attachment E.

See Letter dated June 8, 2014 from D. Metcalf to A. Stamp, Ex. 1, at p. 1 (“Our household water comes from an underground spring approximately 400 to 450 feet above our house, so directly under the Blue Ridge Daniels Creek access road. So just a very short distance to Blue Ridge. Working under the assumption that water flows downhill, it seems very possible that it comes from Blue Ridge. I worry that if you start tearing up the roads and forestland to buy this large pipe, that we will no longer have a source of good drinking water. And I also believe that everyone else that lives up on this end of the Creek could possibly be impacted.”).

While Resource Report Number 2 specifically addressed the original Pipeline route, not the Blue Ridge alignment, the report states that “[t]he nearest EPA-designated sole source aquifer is the North Florence Dunal Aquifer, which is more than 35 miles to the north of the proposed pipeline alignment in Lane County, Oregon.” Resource Report Number 2, at 78.

Findings of Fact and Conclusions of Law  HBCU 13-06

EXHIBIT A
Because pipeline construction activity is generally limited to surface disturbance and shallow trenching, is temporary, and is contained within the approved construction work areas, groundwater wells beyond 200 feet of the construction work areas should not be affected by the Pipeline. Further, the applicant has proposed monitoring and mitigation measures to prevent and/or minimize potential impacts to groundwater. See Applicant Surrebuttal Letter dated July 1, 2014 at Attachment F: Groundwater Supply Monitoring and Mitigation Plan.

In contrast to the evidence in the record demonstrating that impacts to water supplies are unlikely and that mitigation plans are in place to address potential such impacts, opponents provide no factual evidence or testimony indicating that such impacts are likely or that the applicant’s proposed mitigation measures are insufficient. Such “speculative testimony” provides no basis for denial. See 2010 Decision, at 44–45.

In summary on this issue, while there is no identified land use approval standard related to this issue, the applicant has provided sufficient information to address opponents’ concerns regarding potential impacts to their private water supplies.


At the May 30, 2014 hearing, one opponent expressed doubt as to whether the applicant will be able to successfully revegetate the pipeline right-of-way following construction. That opponent did not identify any approval standard to which her testimony related. Nonetheless, in response to this testimony, the applicant submitted into the record the ECRP, previously submitted to FERC. Also, in its letter dated June 17, 2014, the applicant provided an additional explanation as to how it will go about revegetating areas disturbed during construction, as follows:

On Forest-zoned land, a 30 foot corridor directly over the pipeline would be kept clear of large vegetation, which is necessary for safety purposes to protect the pipe from potential root damage and allow for ground and aerial surveillance inspections of the pipeline. However, the remaining 20 feet of permanent right-of-way, as well as the temporary construction areas, will be reforested following construction in areas that were forested prior to construction, in a manner consistent with the ECRP. Once the restoration occurs, the landowner will be able to continue accepted forest practices in those areas.

On EFU-zoned land, the alternate alignment segments will have short-term impacts on farming practices within the temporary construction areas and permanent right-of-way during

---

22 The applicant has agreed to include in this proceeding Condition of Approval No. 2 from the 2010 Decision, which provides:

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, including without limitation, provisions requiring: (a) subject to landowner consent, testing and sampling groundwater supply wells for both yield and water quality; and (b) as needed, implementing site-specific measures to mitigate adverse impacts on the yield or quality of groundwater supply.

Findings of Fact and Conclusions of Law  HBCU 13-06
construction activities. However, traditional farming activities may continue both within the temporary construction areas and across the permanent right-of-way following construction. In agricultural areas, the pipeline will be installed so that there will be five feet of soil cover over the pipeline. This will ensure that heavy farming equipment can cross the pipeline area and tilling can occur within the pipeline easement without impacting the structural integrity of the pipeline. Traditional farming activities and farm uses, including crop lands and grazing pastures, may continue in areas surrounding the construction areas both during and following construction.

Additionally, each landowner impacted by the alternate alignment segments will be compensated for any temporary and permanent impacts associated with the alternate alignments. Any landowner requirements will be added as stipulations in the landowner agreements, and Pacific Connector will employ land agents during construction of the alternate alignments to ensure the stipulations are implemented. In addition to landowner compensation, a variety of measures will be implemented to ensure that construction activities associated with the alternate alignments will not impact the ability of landowners to continue normal farming operations following construction. Specific steps will be taken to eliminate or mitigate agricultural impacts.

First, topsoil segregation will be performed over the trench line in croplands, hayfields, and pastures. Pacific Connector will stockpile soil from the trench pile separately from all subsoil and will replace the two horizons in the proper order during backfilling and final grading. The purpose of the topsoil segregation is to prevent the potential loss of soil fertility or the incorporation of excess rock into the topsoil. Pacific Connector will also remove any excess rock from the top 12 inches of the soil to the extent practicable in croplands, hayfields, and pastures. In cases where additional topsoil must be imported into agricultural areas, an independent environmental investigator will ensure that the imported topsoil is free of noxious weeds or other deleterious materials, such as rock.

Second, steps will be taken to avoid soil compaction during and after construction activities. Pacific Connector will test for soil compaction in agricultural areas, as well as other areas. If deemed appropriate, corrective measures will be employed, including deep scarification or ripping to an average depth of 18 inches where feasible using appropriate wing tipped rippers. In addition to ensuring that long-term impacts to soil productivity do not occur, the corrective measures will also minimize or eliminate the potential for increases in surface water runoff, soil
erosion, and sediment delivery. In areas where appropriate, scarifying the subsoil will also promote water infiltration and improve soil aeration and root penetration.

Third, steps will be taken by Pacific Connector to control noxious weeds and soil pests in areas within and adjacent to the right-of-way for the alternate alignments, including agricultural lands. As noted, Pacific Connector consulted with the Oregon Department of Agriculture, as well as BLM and the Forest Service, for recommendations to prevent the introduction, establishment, or spread of weeds, soil pests, and forest pathogens. As recommended, Pacific Connector has conducted initial reconnaissance weed surveys and those surveys will be mapped once complete. Pacific Connector will also conduct pretreatment, primarily through mechanical operations, by mowing to the ground level. Other mechanical methods include disking, ripping, or chopping. Hand pulling methods may also be utilized in appropriate areas. Infested areas will be cleared in a manner to minimize transport of weed seed, roots, and rhizomes or other vegetative material and soil from the site down the construction right-of-way. While Pacific Connector will not engage in widespread herbicide application along the route of the alternate alignments, spot treatments with appropriate herbicides may be conducted where required, depending upon the specific weed and site-specific conditions using integrated weed management principles. In most cases, if an herbicide is used for control, it would be used in combination with other weed control methods. Spot herbicide treatment would only be applied with permission from the landowner or the land managing agency on public lands, and permits for use of herbicides would be obtained prior to any application on federal lands. Any herbicide treatment would be conducted by a licensed applicator using herbicides labeled for the targeted species.

Final grading and permanent erosion control measures of upland areas, including agricultural areas, will be completed within 20 days after the trench is backfilled, weather and soil conditions permitting. During cleanup and initial reclamation, Pacific Connector will complete permanent repairs of any fences, gates, drainage ditches, or other structures removed or damaged during construction. All drain tiles crossed by the pipeline will be probed by a qualified specialist to check for damage. Any damaged drain tiles will be repaired to their original condition or better before backfilling. Pacific Connector will work with individual landowners to address specific restoration of active agricultural areas. The specific reclamation procedures will be determined during those discussions with individual landowners.
to ensure that the reclamation actions are appropriate for each specific crop type or land use.

Pacific Connector will take appropriate measures to make certain that agricultural land is returned as closely as possible to its pre-construction condition. All graded areas associated with the construction of the alternate alignments will be regraded and recontoured as feasible to blend into the surrounding landscape and to reestablish natural drainage patterns. The emphasis during recontouring will be to return the entire right-of-way, as well as any temporary construction areas, to their approximate original contours, to stabilize slopes, control surface drainage, and to aesthetically blend into surrounding contours. Ruts and other scars will be graded and all drainage ditches will be returned to their preconstruction condition.


There is no evidence to the contrary submitted into this record. The applicant’s testimony constitutes substantial evidence and demonstrates that it is feasible to revegetate pipeline ROW. For the reasons set forth above, the Board concludes that, to the extent relevant to an approval standard, the temporary and permanent right-of-way for the Pipeline can be successfully revegetated consistent with the applicant’s ECRP.

12. The Modified Blue Ridge Alignment Does Not Face Previously Identified “Constructability” Issues

At the May 30, 2014 hearing, several opponents noted that when the “Blue Ridge alignment” was proposed in 2010, issues were raised about the “constructability” of the alignment and the alignment ultimately was not selected by FERC. As noted in the June 10, 2014 letter from Mark Sheldon of Blue Ridge LNG Route, however, the “modified” Blue Ridge route contained in this application was developed by PCGP in 2013 in response to a request from FERC staff. It differs significantly from the Blue Ridge route previously reviewed by FERC and proposed by landowners in the original Coos County hearings on the PCGP.

In order to clarify the difference, the applicant submitted two maps (Attachment C and Attachment D to the June 17, 2014 letter) highlighting the difference between the Blue Ridge route proposed in this application and the Blue Ridge route considered in 2010. Attachment C (“Overview – Blue Ridge Route Comparison”) shows the entire Blue Ridge route. The 2010 route (“2010 Landowner Suggested Route”) and the current proposed route (“Amended Blue Ridge Route”) are both depicted, and the area of significant difference is identified by a box. Attachment D (“Map 1 – Blue Ridge Route Comparisons”) shows at a larger scale the area within that box.

As the applicant points out, the current proposed route crosses the 2010 route prior to MP 14 and remains substantially to the west of the 2010 route until rejoining it at MP 17. The current route avoids the steep and narrow ridge to the east, which raised constructability issues in 2010. In other words, the issues previously raised by the applicant with respect to the 2010
route have been addressed by the modification incorporated into the current proposed Blue Ridge route.

This issue provides no basis for denial.

13. Issues Concerning Fish and Wildlife Impacts Do Not Provide a Factual or Legal Basis for Denial of the Application.

At the hearings officer’s request, the applicant submitted Environmental Alignment Sheets, which were made available to the public on the Planning Department’s website on June 3, 2014. See Exhibit 4. As shown on these maps, the Blue Ridge alternate alignment will cross several streams. The Environmental Alignment Sheets also show the method of stream crossing. The applicant indicated at the May 30, 2014 hearing that the crossings will be completed during the ODFW approved “in-water” work window for these coastal streams, July 1 – September 15. The applicant also submitted (with the Application Narrative) a copy of Resource Report 2, which addresses the method of protecting water bodies. The applicant also submitted a ECRP (Applicant’s Rebuttal, Attachment E).

For the first time on surrebuttal, Ms. McCaffree asserts “that vital habitat and salmon bearing streams would be impacted in the Coastal Zone by this alternative route.” McCaffree Surrebuttal at 10. Because this issue is raised for the first time on surrebuttal, this “new issue” is rejected as untimely. Nonetheless, even if the issue had been raised in a timely manner, it would provide no basis for denial. As an initial matter, Ms. McCaffree does not tie her assertion to any approval criterion for this application. Moreover, she provides nothing more than her bare opinion. Ms. McCaffree has not established herself to be an expert in this field and is therefore not permitted to submit opinion testimony.23 Stated another way, her layperson opinion testimony does not constitute “substantial evidence” on a record sufficient to undermine the expert testimony presented on behalf of the applicant, including Resource Report 2 and the ECRP.

Tom Younker, Julie Eldridge and Christine Keenan submitted a letter dated May 16, 2014, in which they discussed the presence of an inventoryed Bald Eagle nest site (T25S R11W Section 32 (Morgan’s Ridge) which apparently is shown on the County’s adopted Goal 5 inventory. However, as the applicant points out, this nest is located several “sections” (and therefore, several miles) away from the closest (northern) portion of the proposed Blue Ridge alternate alignment. The presence of the eagle nest miles away from the pipeline route provides no basis for denial.


23 Ms. McCaffree’s unsupported statements are mere conclusions, and do not constitute evidence. Palmer v. Lane County, 29 Or LUBA 436, 441 (1995) (a statement in a land use application that “a total of 500,000 to 600,000 yards of rock appears to be available at this site depending upon the unexposed rock formations” does not constitute “evidence” because there was no support for the statement.); DLCD v. Curry County, 31 Or LUBA (1996) (When a finding merely states that “[t]here can be no conflict with nearby permitted users on nearly lands,” that finding merely states a conclusion and is unsupported by substantial evidence). Ms. McCaffree’s concern is not factually substantiated and provides no basis for denial.
In the same May 16, 2014 letter mentioned above, Tom Younker, Julie Eldridge and Christine Keenan argue that the Pipeline is a “private utility” and therefore violates “the right-of-way” requirements of the CCZLDO. This argument is not sufficiently developed to allow a response.

The Board understands that the Younker letter’s reference to “Coos County Zoning Land Ordinance 3-13 EFU” is a reference to “page III-13” of the zoning code, which is the section addressing Routine Road Maintenance. Page III-11 might have been the intended reference, as it is the page on which Section 3.2.500 is found (“Right of Way Enhancement”). The Younker letter then purports to quote “Review Standard 15,” which is referenced in Section 3.2.500. In actuality, it quotes a document entitled “City of Portland: Encroachments in Public Right of Way.” The author makes no effort to explain why the City of Portland document is applicable in Coos County, and it is not obvious how it would be applicable.

In any event, the letter concludes on this point by stating that “PCGP is a private utility facility and does not meet the right of way requirements.” However, there is no Code standard that requires the County to determine if the PCGP pipeline is “publicly” or “privately” owned. Nonetheless, the pipeline does fall within the statutory definition of “public utility,” ORS 757.005(1)(a)(A), and is a “utility facility necessary for public service,” within the meaning of CCZLDO 4.9.450(C).


Tom Younker, Julie Eldridge, and Christine Keenan submitted a letter dated May 16, 2014, in which they assert that Executive Order 13406 prohibits the applicant from exercising the right of Eminent Domain. Executive Order 13406 was signed by President George W. Bush on June 23, 2006, in response to the Kelo case. See Kelo v. City of New London, 545 U.S. 469 (2005). It states, in relevant part:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the rights of the American people against the taking of their private property, it is hereby ordered as follows:

Section 1. Policy.
It is the policy of the United States to protect the rights of Americans to their private property, including by limiting the taking of private property by the Federal Government to situations in which the taking is for public use, with just compensation, and for the purpose of benefiting the general public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken.

Sec. 3. Specific Exclusions.
Nothing in this order shall be construed to prohibit a taking of private property by the Federal Government, that otherwise complies with applicable law, for the purpose of:

* * * * *

(b) projects designated for public, common carrier, public transportation, or public utility use, including those for which a fee is assessed, that serve the general public and are subject to regulation by a governmental entity

* * * * *

(g) acquiring ownership or use by a public utility;

However, by federal statute, the applicant will be granted the power of eminent domain in this case if and when it obtains the “Certificate of Public Convenience and Necessity” from FERC. In this regard, 15 U.S.C. 717(t)(2)(h) provides:

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: Provided, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. (Underlined emphasis added).

See also ORS 772.510(3). Thus, there are two bases to deny the opponents’ contention. First, the Executive Order provides an exemption for public utility projects such as the Pipeline. Second, a federal statute takes precedence over an Executive Order, and therefore, Executive Order 13406 provides no basis for denial in this case.

16. The Proposed Blue Ridge Alternative Route Does Not Cross the 20-CA District, and Therefore Arguments Directed at the 20-CA District Provide No Basis for
Denial.

On page 25 of the initial application narrative, the applicant states that “the proposed Blue Ridge alternative segment alignment crosses the 20-CA zoning district.” However, both the revised Application Narrative dated May 2, 2014, as well as the alignment maps accompanying the application, clearly show the Blue Ridge alternative diverging from the approved route at Mile Post 11.29, on the east bank of the Coos River. This segment does not include any portion of the 20-CA district. The 20-CA district is an aquatic district, which only includes lands submerged in whole by waters of the State (i.e. Coos River).

Jody McCaffree uses the applicant’s first application narrative as an opportunity to argue about whether the HDD bore under the Coos River will result in a hydraulic fracture. The Board denies this contention for three reasons. First, the contention is not responsive to the revised application. Second, Ms. McCaffree’s arguments on this topic do not provide a basis to deny the application. The Board understands Ms. McCaffree to suggest that, by allowing a “utility” in the 20-CA zoning district, the County will not necessarily allow an HDD bore under the river, but rather that the County was only allowing a pipe to be “placed *** on the top of the tidal muds and or shorelands.” However, this contention is inconsistent with the plain text of CBEMP Policy 2, which allows “pipelines, cables, and utility crossings, including incidental dredging necessary for their installation.”

Ms. McCaffree seems to be so focused on establishing that CBEMP Policy 5 applies (and presumably, the “public need” standard that she asserts goes along with it) that she is losing sight of the obvious fact that an HDD bore is a vastly more expensive operation and will avoid the environmental hazards associated with an open cut trench. Whatever can be said about the environmental risks associated with an accidental frack-out of bentonite slurry during an HDD bore, it should be obvious that such “worst-case” scenario impacts would be far less than the expected impacts associated with an open trench cut across the Coos River.

Third, in any event, the Board finds that the current segment does not cross the 20-CA zone. While the current segment does cross the 20-RS zone, there are no impacts caused by the HDD bore which differ from what was approved in HBCU 13-04. In fact, if anything, the applicant has made a better record in this case on the issue of HDD boring feasibility, as compared to the record created in prior cases.

III. CONCLUSION AND RECOMMENDATION

For the above stated reasons, the Board concludes that the applicant has met its burden of proof to demonstrate that it has satisfied all applicable approval standards and criteria, or that those standards or criteria can be satisfied through the imposition of conditions of approval. The following conditions are proposed:

A. Staff Proposed Conditions of Approval
1. [Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.]

2. 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 PBRG, including without limitation, provisions requiring: (a) subject to landowner consent, testing and sampling groundwater supply wells for both yield and water quality; and (b) as needed, implementing site-specific measures to mitigate adverse impacts on the yield or quality of groundwater supply.

3. The facility will be designed, constructed, operated and maintained in accordance with U. S. Department of Transportation requirements.

4. [Condition excluded from HBCU 13-04 because it relates to a portion of the approved alignment (MP 13.8 to MP 14.4) not at issue in this proceeding.]

5. The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber, diminution in value to remaining timber caused by increased harvesting costs, and loss of product value due to blow-downs. Whatever incremental costs and value losses to timber lands can be identified and demonstrated to result from the granting of the pipeline easement will be reflected in the company’s appraisal of damages payable to the owner. Therefore, the landowner should not experience any uncompensated logging or access costs.

6. Pacific Connector shall not begin construction and/or use its proposed facilities, including related ancillary areas for staging, storage, temporary work areas, and new or to-be-improved access roads until:

   Pacific Connector files with the Secretary remaining cultural resource survey reports and requested revisions, necessary site evaluation reports, and required avoidance/treatment plans;

   Pacific Connector files with the Secretary comments on the reports and plans from [SHPO], appropriate land management agencies, and interested Indian tribes; the [ACHP] has been afforded an opportunity to comment, and a Memorandum of Agreement has been executed; and

   The Commission staff reviews and the Director of OEP approves the cultural resource reports and plans, and notifies Jordan Cove and Pacific Connector in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.”

1. Pre-Construction

7. Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.

8. [Condition excluded because the proposed Blue Ridge alternative alignment is not in close proximity to residences].
9. Coos River Highway is part of the State Highway system, under the authority and control of the Oregon Transportation Commission. Evidence that the applicant has the appropriate state authorization to cross Coos River Highway shall be provided to the Planning Department prior to zoning clearance authorizing construction activity.

10. Temporary closure of any county facility shall be coordinated with the County Roadmaster. Evidence of Roadmaster approval and coordination of any detour(s) shall be provided to the County Planning Department.

11. Each county facility crossing will require a utility permit from the County Road Department. Construction plan showing pullouts and permits for work within the right-of-way for monitoring sites will also require Roadmaster approval.

12. An analysis of construction impacts shall be provided to the County Roadmaster, which will include a pavement analysis. The analysis must identify the current condition of County facilities and include a determination of the project's impact to the system and the steps that will be necessary to bring back to current or better condition. Prior to issuance of a zoning compliance letter for the project, the applicant shall file a bond, surety, irrevocable letter of credit, cash or other security deposit agreement in the amount of 120% of the estimated cost of necessary improvements to bring County road facilities impacted by pipeline construction back to current or better condition. After five (5) years, the security shall either be forfeited to the County if the applicant does not complete required improvements or be refunded to the applicant if applicant has completed required improvements or there are no improvements to complete.

13. Should any part of the project involve permanent structural streambank stabilization (i.e., riprap), the applicant must contact the Planning Department for a determination of the appropriate review, if any.

14. All necessary federal, state and local permits must be obtained prior to commencement of construction, including any required NPDES 1200-c permits. Prior to the commencement of construction activities, Pacific Connector shall provide the County with a copy of the “Notice to Proceed” issued by FERC. [See Letter from Mark Whitlow, dated June 24, 2010, at p. 52.]

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.

16. [Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.]

17. (a). The pipeline operator shall maintain an emergency response plan in compliance with 49 CFR 192.615.

(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

Findings of Fact and Conclusions of Law HBCU 13-06

Page 92

EXHIBIT A
Construction and Mitigation Procedures referenced at 18 CFR 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.

2. **Construction**

18. Riparian vegetation removal shall be the minimum necessary for construction and maintenance of the pipeline, and shall comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction. The applicant shall restore riparian vegetation 25 feet from the streambanks on either side of waterbodies on private lands where riparian vegetation existed prior to construction, consistent with the applicant's ECRP.

19. [Condition excluded from HBCU 13-04 because it relates to a portion of the approved alignment (Hayes Inlet) not at issue in this proceeding.]

3. **Post-Construction**

20. Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas that were forested prior to construction have been replanted, consistent with the requirements of this approval, the FERC Order, and the applicant's ECRP.

21. Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas have been replanted, re-vegetated and restored to their pre-construction agricultural use, consistent with the requirements of this approval, the FERC Order, and the applicant's ECRP.

22. In order to minimize cost to forestry operations, the applicant agrees to accept requests from persons conducting commercial logging operations seeking permission to cross the pipeline at locations not pre-determined to be "hard crossing" locations. Permission shall be granted for a reasonable number of requests unless the proposed crossing locations cannot be accommodated due to technical or engineering feasibility-related reasons. Where feasible, the pipeline operator will design for off-highway loading at crossings, in order to permit the haulage of heavy equipment. If technically feasible, persons conducting commercial logging operations shall, upon written request, be allowed to access small isolated stands of timber by swinging logs over the pipeline with a shovel parked stationary over the pipeline, subject to the requirement that, if determined by the applicant to be necessary, the use of a mat or pad is used to protect the pipe. The pipeline operator will determine the need for additional fill or a structure at each proposed hard, and shall either install the crossing at its expense or reimburse the timber operator / landowner for the actual reasonable cost of installing the crossing.

23. The pipeline operator will conduct routine vegetation maintenance clearing on the 30-foot strip every 3-5 years.
24. In order to discourage ATV / OHV use of the pipeline corridor, the applicant shall work with landowners on a case-by-case basis to reduce ATV / OHV impacts via the use of dirt and rock berms, log barriers, fences, signs, and locked gates, and similar means. Such barriers placed in key locations (i.e. in locations where access to the pipeline would otherwise be convenient for the public) would be an effective means to deter ATV / OHV use.

B. Applicant's Proposed Conditions Of Approval

1. **Environmental**

   1. [Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.]

   2. [Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.]

   3. [Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.]

   4. The applicant shall submit a final version of the Noxious Weed Plan to the county prior to construction in order to address concerns raised regarding invasive species in farm and forest lands.

   5. The applicant shall employ weed control and monitoring methods consistent with the Weed Control and Monitoring sections of the ECRP. The applicant shall not use aerial herbicide applications.

   6. Any fill and removal activities in Stock Slough shall be conducted within the applicable Oregon Department of Fish and Wildlife in-water work period, unless otherwise modified or agreed to by the Oregon Department of Fish and Wildlife.

   7. [Excluded because condition relates to Haynes Inlet, which is not part of the alternative alignments proposed in this application].

   8. Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint or other deleterious waste materials shall not be allowed to enter waters of the state. No wood treated with leachable preservatives shall be placed in the waterway. Machinery refueling is to occur off-site or in a confined designated area to prevent spillage into waters of the state. Project-related spills into water of the state or onto land with a potential to enter waters of the state shall be reported to the Oregon Emergency Response System at 800-452-0311.

   9. [Excluded because condition relates to Haynes Inlet, which is not part of the alternative alignments proposed in this application].

10. If any archaeological resources and/or artifacts are uncovered during excavation, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted (phone: 503-986-0674).
11. When listed species are present, the permit holder must comply with the federal Endangered Species Act. If previously unknown listed species are encountered during the project, the permit holder shall contact the appropriate agency as soon as possible.

12. The permittee shall immediately report any fish that are observed to be entrained by operations in Coos Bay to the OR Department of Fish and Wildlife (ODFW) at (541) 888-5515.

13. Pacific Connector will comply with all federal and state requirements during the fire season that mandate the amount of water required on the right-of-way for adequate fire suppression during timber removal and construction activities.

2. Safety


15. The pipeline operator shall conduct public education in compliance with 49 CFR 192.616 to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the gas pipeline operator. Such public education shall include a “call before you dig” component.

16. The pipeline operator shall comply with any and all other applicable regulations pertaining to natural gas pipeline safety, regardless of whether such regulations are specifically listed in these conditions.

17. The pipeline operator shall provide annual training opportunities to emergency response personnel, including fire personnel, associated with local fire departments and districts that may be involved in an emergency response to an incident on the Pacific Connector pipeline. The pipeline operator shall ensure that any public roads, bridges, private roads and driveways constructed in conjunction with the project provide adequate access for fire fighting equipment to access the pipeline and its ancillary facilities.

18. The pipeline operator shall respond to inquiries from the public regarding the location of the pipeline (i.e., so called "locate requests").

19. At least six (6) months' prior to delivery of any gas to the Jordan Cove Energy Project LNG terminal, the applicant shall: (1) submit a project-specific Public Safety Response Manual to the County, and (2) in order to comply with federal safety regulations, coordinate with local emergency response groups. Pacific Connector will meet with local responders, including fire departments, to review plans and communicate specifics about the pipeline. If requested, Pacific Connector will also participate in any emergency simulation exercises and provide feedback to the emergency responders.
3. **Landowner**

20. This approval shall not become effective as to any affected property in Coos County until the applicant has acquired ownership of an easement or other interest in all properties necessary for construction of the pipeline, and/or obtains the signatures of all owners of the affected property consenting to the application for development of the pipeline in Coos County. Prior to this decision becoming effective, the County shall provide notice and opportunity for a hearing regarding compliance with this condition of approval and the property owner signature requirement. County staff shall make an Administrative Decision addressing compliance with this condition of approval and LDO 5.0.150, as applied in this decision, for all properties where the pipeline will be located. The County shall provide notice of the Administrative Decision as provided in LDO 5.0.900(B) and shall also provide such notice to all persons requesting notice. For purposes of this condition, the public hearing shall be subject to the procedures of LDO 5.8.200 with the Board of Commissioners serving as the Hearings Body.

21. The permanent pipeline right-of-way shall be no wider than 50 feet.

22. [Intentionally deleted by BCC in Final Decision and Order No. 10-08-045PL.]

23. The applicant 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 utility facility.

4. **Historical, Cultural and Archaeological**

24. At least 90 days prior to the issuance of a zoning compliance (verification) letter for building and/or septic permits under LDO 3.1.200, the County Planning Department shall make initial, contact with the Tribe(s) regarding the determination of whether any archaeological sites exist within the area proposed for development, consistent with the provisions of LDO 3.2.700. Once the Tribe(s) have commented or failed to timely comment under the provisions of LDO 3.2.700, the county shall take one of the following actions: (1) if no adverse impacts to cultural, historical or archaeological resources on the site have been identified, the county may approve and issue the requested zoning compliance (verification) letter for the related development proposal; (2) if the Tribe(s) and the applicant reach agreement regarding the measures needed to protect the identified resources, the development can be approved with any additional measures the county believes are necessary to protect those resources; or (3) if the county finds that there will be adverse impacts to identified historical, cultural or archaeological resources on the site and the applicant and Tribe(s) have not reached agreement regarding protection of such resources, then the County Board of Commissioners 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 archeological values of the site. For purposes of this condition, the public hearing shall be subject to the provisions of LDO 5.8.200 with the Board of Commissioners serving as the Hearings Body, and the related notice provisions, of LDO 5.0.900(A).
25. 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.

5. Miscellaneous

26. The conditional use permits approved by this decision shall be used for the transportation of natural gas.

Adopted this 21st day of October, 2014.