

SUPPLEMENTAL STAFF REPORT

TO: Andrew Stamp, Hearing Officer

FROM: Patty Evernden, Planning Director 

RE: APPLICATION HBCU-10-01 SUBMITTED BY PCGP

DATE: July 8, 2010

This supplemental staff report responds to questions raised by the hearings officer concerning archaeological resource issues and coordination between the applicant and the tribes.

The consultations, surveys, and reports undertaken by the applicant regarding compliance with state and federal law governing cultural and archaeological resources are explained in Section 4.10 of the FEIS. As described in Sections 4.10.1.3 and 4.10.2.3 of that document, Pacific Connector has surveyed the pipeline route, and has prepared a Cultural Resources Survey Report identifying locations of archaeological sites along the route, and filed that report with both FERC and the State Historic Preservation Officer (SHPO), as required under state and federal law. However, the report is not included in the record because under state and federal law, the contents of the report cannot be made available for public review in order to protect specific cultural sites that may be of interest to artifact hunters. This confidentiality requirement is also recognized in CBEMP Policy #18¹, which provides that the county "shall refrain from widespread dissemination of site-specific information about identified archaeological sites."

Portions of the proposed pipeline will travel through lands that are identified as "Areas of Archaeological Concern" on the Coos County Comprehensive Plan Goal 5 Element map. You are correct that the reference in LDO Section 3.2.700 to acknowledged "archaeological site" locations is a reference to this map. Presumably it also is a reference to any sites that have been identified by the applicant in the course of the surveys required under state and federal law.

The applicable county requirements governing archaeological resources are CBEMP Policy #18 and Section 3.2.700 of the LDO, which directly implements Policy #18. The correct application of Section 3.2.700 and Policy #18 was one of the issues addressed in the prior LUBA appeal of the Jordan Cove LNG terminal², and was also considered in the remand proceedings before the County Board of Commissioners. As explained by LUBA, Policy #18 is only triggered upon the applicant's submittal of a "site plan application" that identifies "all areas proposed for excavation, clearing or construction." The county requirements for coordination and consultation with the tribes do not begin under Policy #18 until such an application has been submitted. At that point, the tribes have 30 days to submit a written statement regarding any objections to the specific development proposal, and if the tribes and the applicant cannot agree on appropriate protective measures, the county must hold a public hearing to resolve the dispute.

In its review of the LNG terminal on remand, the Board of Commissioners adopted the following interpretation of Policy #18 and Section 3.2.700:

¹ Policy #18 is found in Appendix 3 – CBEMP of the Coos County Zoning & Land Development Ordinance (LDO)

² LUBA 2007-260

"LUBA's remand regarding archaeological resources issues under Policy #18 is based upon a lack of clarity regarding whether LDO 3.2.700 implements Policy #18. As explained in more detail below, the Board finds that the 'Site Plan Application' requirement contemplated by Policy #18 is intended by the county to be implemented through the submittal of a 'plot plan' under LDO 3.2.700 at the time the applicant requests a zoning compliance (verification) letter under LDO 3.1.200 for the issuance of building permits by the State of Oregon Building Codes Division. In its final opinion LUBA stated:

'We leave open the possibility that the county might interpret LDO 3.2.700 to fully implement CBEMP Policy #18 because all development subject to CBEMP Policy #18 will require a zoning compliance letter and the decision making required by Paragraph III of CBEMP Policy #18, including any required 'administrative review' and 'quasi-judicial hearing' will occur under LDO 3.2.700(4). But any attempt to defer the quasi-judicial hearing and necessary decision making that may be required to resolve disputes between the tribes and the applicant to a point in time after the conditional use approval is granted, must ensure that the required decision making and quasi-judicial hearing will be provided later before the proposed development can commence.'

"Consistent with the above-quoted portion of LUBA's decision, the Board of Commissioners finds that LDO 3.2.700 provides the county's intended process for the tribe(s) review of proposed development in order to fully implement Policy #18. Although the plan policy and code provision do not expressly cross-reference each other, the stated purpose of LDO 3.2.700 is to provide a 'Process for Tribe(s) Review and Response of Proposed Development within Acknowledged Archaeological Sites,' and Policy #18 is also designed to protect such sites. Like Policy #18, LDO 3.2.700 provides the Tribes a 30-day review period within which to review a development proposal and respond in writing.

"Significantly, LDO 3.2.700 makes clear that the time for compliance with applicable requirements regarding protection of archaeological resources is at any time before a 'zoning compliance letter' is requested for purposes of obtaining building permits, not at the time of conditional use permit approval. Under LDO 3.2.700, this is accomplished through the applicant's submittal of a 'plot plan showing exact location of excavation, clearing, and development.' The time for application of the Policy #18 and LDO 3.2.700 requirements is prior to obtaining a zoning compliance letter and building permit under LDO 3.1.200 (LDO 3.2.700 refers to a 'zoning compliance letter,' which the Board finds is the equivalent of a 'zoning verification letter' as described under LDO 3.1.200).

"Therefore, the Board finds that the 'Site Plan Application' contemplated by Policy #18 is the 'plot plan' contemplated under LDO 3.2.700, which expressly implements the policy. JCEP must comply with the specific coordination and administrative hearing requirements of Policy #18 prior to obtaining a zoning

compliance (verification) letter as required for issuance of building permits under LDO 3.1.200, rather than as part of its conditional use permit approval. The administrative review and hearing required under Policy #18 will occur at the time a 'plot plan' and related information are submitted for obtaining the necessary zoning compliance letter. In order to ensure compliance with the notice and quasi-judicial hearing requirements of Policy #18, in the event that no agreement can be reached between the Tribe(s) and the applicant, the Board adopts the following condition of approval:

"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 issue the requested zoning compliance (verification) letter and 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 CBEMP Policy #18 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 Section 5.8.200 of the CCZLDO with the Board of Commissioners serving as the Hearings Body."

"The Board concludes that the above-stated findings and condition of approval are based exclusively on the Board's interpretation of Policy #18, LDO 3.2.700 and 3.1.200, and the evidence already in the record."

Regarding the Pacific Connector application, a zoning compliance letter will be required prior to obtaining a building permit from State Building Codes in order to construct and connect the pipeline to the meter station at the LNG terminal. At that point, the notice required under Policy #18 must be provided to the tribes, who will be entitled to submit comments and concerns

regarding resource sites along the entire pipeline route. Other state agencies may also require county sign-off on a land use compatibility statement. The planning department would ask for comment from the appropriate tribe (Coquille or Confederated) consistent with Section 3.2.700 prior to issuance of a zoning compliance letter or sign-off on a land use compatibility statement.

Attached is the adopted map Goal 5 map. The area north of the notification line is subject to comment from the Confederated Tribes of Coos Lower Umpqua and Siuslaw Indians.