



# APPEAL OF A DIRECTOR'S DECISION

SUBMIT TO COOS COUNTY PLANNING DEPT. AT 225 N. ADAMS STREET OR  
MAIL TO: COOS COUNTY PLANNING 250 N. BAXTER, COQUILLE OR 97423.  
EMAIL: [PLANNING@CO.COOS.OR.US](mailto:PLANNING@CO.COOS.OR.US) PHONE: 541-396-7770

Planning Director Appeal Fee \$250.00 / Hearings Body or Officer Appeal Fee \$2500.00  
 Date Received: 3/25/19 Fee Received 250.00 FILE # AP- 19-002  
 If the correct fee is not with the appeal it will not be processed.

List the names and signatures of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative. This can be attached to this form marked as Attachment "A".

Appellant: Kathy Dodds, Natalie Ranker, and The Elk Lake Corporation, and CARY A. NORMAN

Mailing address: 3783 Spruce St, North Bend 97459

Phone: 541-435-4125 Email: wisewalker@hotmail.com

Signature: *Kathy Dodds* *Natalie Ranker* *Cary A. Norman*

Appellant's Representative: Tonia Moro, Tonia L. Moro Attorney at Law P.C.

Mailing address: 19 S. Orange Street, Medford OR 97501

Phone: 541-973-2063 Email: Tonia@ToniaMoro.com

Signature: *[Signature]*

The name of the applicant: Seth King, Perkins Cole representing Pacific Connector Gas Pipeline, Inc.

County application file number being appealed: EXT-18-012

Planning Director's Decision  Hearings Body or Hearings Officer Decision

The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160:  
See Attachment "A"

The appeal deadline, as stated in the Director's Decision: March 25, 2019

The nature of the decision and the specific grounds for appeal, citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule. (This can be attached to this form marked as Attachment "B".)  
See Attachment "B"

The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria should or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application. (This can be attached to this form marked as Attachment "C".)  
See Attachment "C"

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Attachment "A"

The Elk Lake Corp. and Carey Norman achieved party status pursuant to 5.8.150 because they were entitled to and did receive notice of the decision and are aggrieved or have interests adversely affected by the decision because they own property affected by the pipeline, and otherwise live, work and recreate in the areas affected by the decision.

Kathy Dodds, Natalie Ranker are aggrieved or have interests adversely affected by the decision because they own property near the pipeline and otherwise live, work, and recreate in the areas affected by the decision.

This decision approves development within Coos County which is directly adverse to Kathy Dodds, Natalie Ranker, and The Elk Lake Corp's interests.

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Attachment "B"

The March 8, 2019, decision on reconsideration in EXT-18-012 an Extension of a Conditional Use Permit for the Pacific Connector Gas Pipeline Blue Ridge Alignment, which, according to the County was set to expire Nov 11<sup>th</sup>, 2018.

Grounds for appeal, relevant to the specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statue or Rule are as follows:

The County violated CCZLDO 5.2.600 and the rule it implements. It has misconstrued applicable rule and exceeded its authority in re-interpreting the rule to conclude, as understood, that the applicant has initiated the development action by applying for other agency permits.

The county has violated the CCZLDO 5.0.500 when it failed to deem the permit automatically revoked due to the inconsistencies of the pipeline project proposed in the application pending FERC approval.

The county specifically violated CCZLDO 5.2.600 (1)(a) (b) (ii) & (iv) and the rule it impliments. The county erred in determining that the applicant was unable to begin development during the approval period for reasons for which the applicant was not responsible.

The director's decision misconstrues LUDO 5.2.600(2) and the record does not otherwise support a finding of compliance.

The County erred in giving the Applicant additional CUP extensions on Non-Resource lands after the permit had expired and also beyond 2 years from the date of the original extension.

The county continues to violate SECTION 5.0.150 (1) as the applicant does not have the private right to property, and SECTION 5.0.175 (1) as the applicant does not have private right of property acquisition pursuant to ORS Chapter 35. This is also a new criteria that prevents approval of the extension application.

The county violates Section 5.2.600 and the rule it implements because the permit is void and became null and void when the applicant failed to file an application for extension before it expired on October 21, 2016.

The decision misconstrues LUDO 5.2.600.1.c. and there is insufficient evidence in the record to support the director's decision that this criteria has been met. The applicable criteria has changed or the County has purposely avoided applying amended and new land use criteria to zones within the County to benefit the applicant which is beyond its authority. The additional criteria include but are not limited to CCZLDO §4.11.125 (Special Development Considerations) and CCZLDO §§5.11.100 - 5.11.300(Geologic Assessments) adopted pursuant to Ordinance Ord. 17-04-004PL dated May 2, 2017, effective July 31, 2017 and those amendments adopted in AM-18-005. Moreover, the adoption of Section 5.0.175 (1) also constitutes new criteria.

The applicable criteria is 5.2.600(2) relating to the non-resource CUP permitted uses. The director's decision misconstrues 5.2.600(2) (2013). The provision allows for one extension of up to 2 years and it requires that the use or development begin within the first two years of the date of approval or a new application must be obtained. The date of approval is the date of approval, October 21, 2014. Neither the use nor the development has begun in over four years. Any changes to the provision since 2013 not applicable to the extension request. As understood it has changed since CUP application was filed and is not an applicable goal post. The extension of the permit on non-resource lands has exceeded the applicable time limit of 2 years and, for that matter, the new limit of 4 years.

Moreover, application of Section 5.2.600(2) (as amended in 2018) is beyond the scope of the County's authority. As understood it is an attempt to avoid the application of hazard related criteria that are applicable if the application was filed today and would have been applicable at the time the CUP application was filed. The county may not legislate around the rule's prohibition of extensions when the applicable criteria has changed.

The extension continues to impose a taking of the property of the landowners along the Blue Ridge alignment through inverse condemnation. The county is aware that the landowners have not consented to this application. The county is aware that the applicant may not and for some segments will not obtain federal approval to build the pipeline proposed. The county is aware that the permit constitutes a cloud over the land owners ability to sell and fully use their

property. The county must prevent further damage to the landowners by denying the extension and inviting the applicant to reapply when it knows what alignment FERC will approve.

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Attachment "C"

Appellants assert that former version of Section 5.2.600 (2013) applies for several reasons, including the fact that it's substantive provisions were in effect at the time the original CUP application was filed. As the provision the director applied - the amended version - is similar, the arguments are relevant to the amended version as well.

The County has previously determined that more than applying for additional permits is necessary to initiate the development action and without appropriate legislative authority may not now reinterpret the LDO which adopts the state rule. The county mis-construes the state rule and has no authority to limit its interpretation to deem that extensions are not required or allow endless extensions of resource land development permits simply because the permit holder is seeking other permits it needs, especially where as here the applicant and the county know that the applicant proposes its development on lands it has no current rights to and knows and knew in 2014 that the third party permits would take years to obtain. "Development" does not mean seeking additional permits within the meaning of the rule. The development action is the building of a pipeline. The rule does not state that merely the "process" of development need be started. Neither does it state that merely an "action plan" must be implemented.

Moreover, the Applicant has proposed significant changes to the **entire** pipeline route and configuration in applications to other governmental agencies, including the Federal Energy Regulatory Commission (FERC). FERC approval of the entire 200 plus miles of the pipeline (including that portion in Coos County Coastal Management Zone) is required for the applicant to build the pipeline. There are even changes proposed along the Blue Ridge alignment, including changes in the temporary work areas. The new pipeline route and the changes to the Blue Ridge alignment have not been approved and it is not compliant with the applicable criteria. Thus, the applicant has abandoned the project proposed in the application which led to the permit decision. Said another way, the application/project authorization by the permit and the extension application is not a complete application or project.

The **reason** the applicant has not started construction is because it does not propose to and will not obtain FERC authority to build the alignment the county approved pursuant to the permit subject to this application. Thus, it is the applicant's failure to pursue a FERC permit authorizing the county approved pipeline which prevents it from having authority to proceed now or later to build the pipeline approved by the county. The FERC permit is not the causation of the default because 1) the FERC's permit will not authorize the pipeline approved by county in the permits (only portions of it), and thus, the applicant will have to obtain a new and additional permit from the county; and 2) the FERC permit will not cure the default because the FERC permit will not issue within the "current" approval period and the applicant has not even determined that it will

begin construction after it issues as it will only make its final investment decision after it issues. Moreover to the extent the county has issued LUCS to third party agencies regarding this alignment, those LUCS cannot be based upon the permit subject to this application.

The applicant was **responsible** because the applicant continues to change the project presented to FERC and because it willfully failed to even attempt to satisfy FERC's economic test when it did propose the project approved by the county over 5 years ago to FERC. Thus, it is the applicant's failure to diligently prosecute the last application which results in the applicant's inability to obtain the necessary FERC permit before the end of the last and even the now extended current extension period.

To the extent the director interprets the provision differently, the director misconstrues the provision. It's aim is to require diligence in exercising permitting rights and not to allow the avoidance of the county's legitimate police and land use powers to regulate the uses of land by extending old decisions that may no longer be valid due to changes in legislation or other circumstances. Moreover, the county does not have authority to apply standards that limit the inquiry necessary to determine if the applicant was responsible for the delay. It must consider the evidence presented and make a determination based upon substantial evidence in the record.

A application to extend a permit cannot extend a void permit. ORS 197.015 defines "final decision" as the final determination made by a local government, and the rule which LUDO 5.2.600 implements uses the same term so there is no authority for the director to interpret the term differently. And to do so misconstrues the rule the LUDO states it is implementing. Moreover, to the extent the former section 5.2.600 (2013) defined the expiration "final decision" date and/or the county has interpreted the such provision to be the date of the Board of Commissioner's decision when no appeal is taken, the director has misconstrued the criteria and exercised authority she does not have to change the final decision date. This record demonstrates that the county has so interpreted the provision. Finally, to the extent the county has required physical receipt of applications and fees to meet filing deadlines, the director's reliance on an electronic service date misconstrues the LUDO and is beyond the authority of the director to re-interpret.

See above for the discussion concerning 5.2.600(1)(c) and 5.2.600(2) and 5.2.600(2)(2018).



## ARTICLE 5.8 APPEAL REQUIREMENTS

### SECTION 5.8.100 Appeals General

Coos County has established an appeal period of fifteen (15) days from the date written notice of administrative or Planning Commission decision is mailed with the exception of Property Line Adjustments and lawfully created parcel determinations, which are subject to a twelve (12) day appeal period. The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article.

**SECTION 5.8.150 standing to Appeal a Planning Director's Decision:** A decision by the Planning Director to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period and meet one of the following criteria: 1. In the case of a decision by the Planning Director, the appellant was entitled to notice of the decision; or 2. The person is aggrieved or has interests adversely affected by the decision.

**SECTION 5.8.160 Standing to Appeal a Hearings Body, Appointed Hearings Officer(s) or Board of Commissioner Decision:** A decision by the Hearings Body, Appointed Hearings Officer(s) or Board of Commissioners to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period. In the case of an appeal of a Hearings Body decision to the Board of Commissioners, the appellant must have appeared before the Hearings Body or appointed Hearings Officer(s) orally or in writing. [OR 04 12 013PL 2/09/05]

**SECTION 5.8.170 Appeal procedures:** An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section. If an appellant fails to correctly fill out the form, and there has already been a public hearing on the matter, the Board of Commissioners may deny the appeal based on failure to comply with this section. In the event the appeal is denied based on a failure to comply with this section, a refund of unexpended fees shall be returned to the appellant.

The appeal form shall contain the following:

1. The name of the applicant and the County application file number;
2. The name and signature of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative;
3. The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160;
4. The date that the notice of the decision was mailed as written in the notice of decision;
5. The nature of the decision and the specific grounds for appeal citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule.
6. The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria should or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application.
7. Appeals of Planning Director's decision will be de novo;
8. Appeals of Planning Commission's or appointed Hearings Officer(s) decision shall be reviewed by the Board of Commissioners or Hearings Officer if the Board of Commissioners so chooses. The Board of Commissioners shall, provided there has been an initial evidentiary hearing:
  - a. Decline to hear the matter and enter an order affirming the lower decision; or
  - b. Accept the appeal and: i. Make a decision on the record without argument; ii. Make a decision on the record with argument; iii. Conduct a hearing de novo; or iv. Conduct a hearing limited to specific issues.
  - c. In the decision, the Board shall affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.
  - d. If the Board allows argument only on the record, no new evidence shall be submitted.
  - e. Any legal issues not specifically raised are considered waived for purposes of appeal to the Land Use Board of Appeals (LUBA).
  - f. Where a hearing is limited to specific issues, any evidence or argument submitted must be relevant to the specific issue.
  - g. All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the on the last day of the appeal period. If the last day of the appeal period falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following the deadline date. All items to be mailed to another party must be postmarked no later than the end of the appeal period.
  - h. The decision of the Board of Commissioners shall not be final for the purpose of appeal until reduced to writing and signed by the Board.