



Coos County Planning Department
Coos County Courthouse Annex, Coquille, Oregon 97423
Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
Physical Address: 225 N. Adams, Coquille, Oregon
(541) 396-7770
FAX (541) 396-1022 / TDD (800) 735-2900
planning@co.coos.or.us
Jill Rolfe, Planning Director

STAFF REPORT

Tuesday, July 30, 2019

APPLICANT: Seth King, Perkins Coie LLP on behalf of Pacific Connector Gas Pipeline, LP.

APPELLANTS: Katy Dodds, Natalie Ranker, The Elk Lake Corporation and Cary Norman, Represented by Tonia Moro, Attorney at Law, P.C.

FILE NUMBER: AP-19-002

HEARING DATE AND TIME: August 7, 2019 at 10:00 a.m. The hearing will be held in the large conference room of the Owen Building.

TYPE OF APPLICATION: Appeal of an Extension (EXT-18-012) of a Conditional Use Application Authorization.

This hearing is to consider the recommendation made by the Hearings Officer and deliberated toward a decision. The hearing was conducted on May 31, 2019. The record is officially closed. There will be no testimony taken at the meeting regarding the merits of the appeal.

CHALLENGE OF EX PARTE CONTACTS: - ORS 215.422 and 197.835(12)

An *ex parte* contact is an oral or written communication by someone other than County staff with a Commission member outside of the formal land use proceedings, which concerns any matters that relate to a case which will come before the Planning Commission.

A member of the decision-making body receiving the contact must (1) publicly announce the content of the ex parte contact at the hearing where action will be considered or taken on the subject to which the communication related; and (2) place the substance of the contact in the record of the case.

CHALLENGES: Any participant has the right to rebut the substance of an ex parte contact on a subject or issue which will be considered or decided in the proceeding. If the contact does not relate to an issue to be considered or decided by the Planning Commission, then it is not the proper subject of a challenge.

County Counsel will be available to provide guidance on this issue but it is important to note that each commissioner should disclose any potential contacts. Attending meetings or presentations may not be legally described as an ex parte contact, but you should disclose attendance just to ensure all contacts have been noted for the record.

For the record the current commission has been decision makers in the past and have reviewed several other applications acting as decision makers.

CONFLICTS OF INTEREST:

Conflicts of interest relating to Board members are specifically governed by ORS 244.120, as well as the general provisions of ORS Chapter 244. There are three (3) different levels of analysis of conflicts of interest for Board members. First, Board members are prohibited from participating in any case where the commissioner or a family member, or any business in which they are engaged, has a direct or substantial

financial interest. Moreover, this prohibition covers any business the member has served in the previous two years and any situation where there are negotiations or an arrangement for partnership or employment.

In addition to that specific statute related to land use cases, Board members, under the definition of “public officials” [ORS 244.020(15)], are also covered under the general provisions of Chapter 244 related to actual and potential conflicts of interest. For potential conflicts of interest as defined in ORS 244.020(13) [see below], the commissioner must publicly announce the nature of the potential conflict prior to taking any action. Where a commissioner has an actual conflict of interest as defined in ORS 244.020(1), the commissioner must publicly announce the nature of the actual conflict, and refrain from participating in any discussion or vote on the issue; however, if the vote is necessary to meet a requirement for a minimum number of votes to take official action on the issue, the commissioner may not participate in the discussion on the issue, but may vote on the issue. Any announced conflict of interest must be recorded in the official record.

ORS 244.020(13): “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated....

ORS 244.020(1): “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated ...

BIAS

A member of the Board shall not participate in a decision if he or she has an actual bias regarding the application. Actual bias means prejudgment of the facts to such a degree that the Board member is rendered incapable of rendering a decision on the merits of the matter based on the evidence and arguments presented. *1000 Friends of Oregon v. Wasco County Court, 304 Or 76, 747 P2d 39 (1987)*.

A member of the Board with actual bias must recuse him or herself from the hearing. Additionally, if allegations of decision maker bias are made regarding a specific Board member, but the Board member believes that they can objectively judge this matter on its merits, the Board member should make a statement reaffirming their ability to make an objective decision.

I. RELEVANT CRITERIA FOR THE EXTENSION:

Coos County Zoning and Land Development Ordinance (CCZLDO)

- Article 5.8 Appeal Requirements
- § 5.2.600 Expiration and Extensions of Conditional Uses.
 - OAR 660-033-0140 Agricultural Land
 - Division 33 AGRICULTURAL LAND

660-033-0010 Purpose

The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.

- #### **II. PROPERTY LOCATION:**
- The original conditional use application was approved for a natural gas pipeline alternative segment of the original route referred to as the Blue Ridge Alignment.

The subject properties are shown on the vicinity map and further described in the original authorization.

III. BACKGROUND:

On October 21, 2014, the Board of Commissioners adopted and signed Order No. 14-09-062PL, File No. HBCU-13-06, approving the Applicant's request for a conditional use permit to authorize development of the Blue Ridge alternative alignment for a portion of the pipeline and to authorize associated facilities, subject to conditions of approval.

This approval became effective on the date the appeal period for the approval expired pursuant to Coos County Zoning and Land Development Ordinance § 5.0.250.5, on November 11, 2014. Section 5.0.250 is based on ORS 215.427 Final action on permit and 215.417 Time to act under certain approved permits. Coos County's acknowledged an ordinance calculates the appeal period date all appeals have been exhausted. Therefore, the permit became final once the 21 days appeal expired and 21 days after October 21, 2014 is November 11, 2014. The following application have been filed and reviewed:

1. The applicant filed for an extension to that decision on November 9, 2016 and staff issued a decision on December 28, 2016 to extend the decision out to November 11, 2017.
2. The applicant filed for an extension to extend the November 11, 2017 final action date on November 9, 2017 and staff issued a decision on January 2018 to extend the application to November 11, 2018.
3. The applicant filed the current extension on November 8, 2018 prior to the expiration date.

This application was set to expire on November 11, 2018 but the applicant requested this extension prior to that date (received on November 8, 2018). Staff reviewed this application and mailed out a notice of decision but then issued a reconsideration to respond to new information received from opponents. The reconsideration was made to allow staff to make some important clarifications and address some of the objections. The County Administrative process does not provide for a comment period; however, comments may be made and are included in the record.

The application was appealed within the appeal period. A public hearing was held on May 31, 2019. The record was left open for additional opportunity to submit testimony and evidence. The first submittal period closed and final argument in the matter was received on July 8, 2019. Staff can print the record or you can view under AP-19-002 Moro on line at <http://www.co.coos.or.us/Departments/Planning/PlanningDepartment--Applications2019.aspx> .

The Hearings Officer submitted his recommendation on July 10, 2019 and this hearing was scheduled. Notice of the hearing was provided. Please find attached the recommendation for the Hearing Officer.

Jill Rolfe, Planning Director

Coos County Staff Members

Jill Rolfe, Planning Director

Crystal Orr, Planning Specialist

Amy Dibble, Planner II

Sierra Brown, Planning Specialist

Attachment - Hearings Officer Recommendation