EXTENSION OF A LAND USE APPROVAL

SUBMIT TO: COOS COUNTY PLANNING DEPARTMENT AT 225 N. ADAMS ST. COQUILLE
MAIL TO: COOS COUNTY PLANNING 250 N. BAXTER, COQUILLE OR 97423

EMAIL PLANNING@CO.COOS.OR.US ***PHONE: 541-396-7770***

Date Received: 11/8/19 *Fee Received* 600.00 ck *Receipt #:* 214426 *Received by:* MB
Please be aware if the fees are not with the included the application will not be processed.

File # EXT - 19-012 **Prior Application #** HBCU-13-06 **Expiration Date:** November 11, 2019

Land Owner(s)

(print name): Multiple
Mailing address: _____

Phone: _____ Email: _____

Signature: _____

Applicant(s) If different from Property Owner

(print name): Pacific Connector Gas Pipeline, LP
Mailing address: C/O Perkins Coie LLP, Attn: Seth King, 1120 NW Couch Street, Tenth Floor, Portland, OR 97209
Phone: 503-727-2024 Email: SKing@perkinscoie.com

Signature: _____

PROPERTY LOCATION:

_____ _____ _____ _____
Township Range Section Tax lot(s)

See original application materials in County File No. HBCU-13-06.
Site address

Please provide the reason(s) that prevented the applicant from beginning or continuing development within the approval period. The applicant must provide a sufficient reason in order for staff to determine if the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible:

See enclosed.

CRITERIA:
SECTION 5.2.600 EXPIRATION AND EXTENSION of Conditional Uses
Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:
    a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.
    b. Coos County may grant one extension period of up to 12 months if:

        i. An applicant makes a written request for an extension of the development approval period;
        ii. The request is submitted to the county prior to the expiration of the approval period;
        iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
        iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

    c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.
    d. If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.
    e. For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.
    f. Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.

2. Extensions on all non-resource zoned property shall be governed by the following.
    a. The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.
    b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.
    c. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.

3. Time frames for conditional uses and extensions are as follows:
    a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and
    b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.
    c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.
    d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.
    e. Additional extensions may be applied.

4. Extensions are subject to notice as described in § 5.0.900(2) and appeal requirements of 5.8 for a Planning Director's decision.

BEFORE THE PLANNING DIRECTOR

OF COOS COUNTY, OREGON

In the Matter of a request for a time extension of the County Board of Commissioners' Approval, with conditions, of a Conditional Use Permit (County Order No. 14-09-062PL, County File No. HBCU 13-06) to authorize the Blue Ridge Alignment for a segment of the Pacific Connector Gas Pipeline in the Exclusive Farm Use, Forest, and CBEMP 20-RS Zoning Districts.	**NARRATIVE IN SUPPORT OF THE REQUEST FILED BY PACIFIC CONNECTOR GAS PIPELINE, LP**

I. Introduction and Request

Pacific Gas Connector Gas Pipeline, LP, a Delaware limited partnership ("Applicant"), submits this application ("Application") requesting that Coos County ("County") extend, by 12 months, the Board of Commissioners' approval with conditions ("Approval") of a conditional use permit (Order No. 14-09-062PL, County File No. HBCU-13-06) to authorize the Blue Ridge alternate alignment of the Pacific Connector Gas Pipeline ("Pipeline"). For the reasons explained below, the Application satisfies the limited approval criteria that apply to the request. Therefore, the County should approve the Application.

II. Background

On October 21, 2014, the County Board of Commissioners adopted and signed the Approval, authorizing Applicant's request for a conditional use permit for development of the Blue Ridge alternate alignment for the Pipeline and associated facilities, subject to conditions. A copy of the Approval is attached as Exhibit 1. No one filed a timely appeal of the Approval. Pursuant to *former* Coos County Zoning and Land Development Ordinance ("CCZLDO") 5.2.600.3.d, the date of approval for a conditional use permit is the date the appeal period for the approval expires with no appeal filed, or if a timely appeal is filed, the date all appeals have been exhausted and final judgments are effective. Accordingly, the approval period for the Approval commenced on November

11, 2014 after the County approved the Pipeline in Order No. 14-09-062PL, and the ensuing 21-day appeal expired with no appeal being filed. Applicant applied for one-year extensions of the Approval on November 9, 2016; November 9, 2017; and November 8, 2018. The County approved Applicant's applications for one-year extensions of the Approval on December 28, 2016 (EXT-16-007), February 26, 2018 (EXT-17-015), and August 20, 2019 (EXT-18-012) respectively.[1] A copy of the most recent extension is attached as Exhibit 2 to this narrative.

The County has issued various other approvals for the Pipeline project, including approving and extending the original Pipeline alignment ("Original Alignment") and approving and extending another alternate alignment, the Brunschmid/Stock Slough alignment. This Application concerns only the Blue Ridge alignment; the other approvals are not at issue and are not affected by this request.

III. Responses to Applicable CCZLDO Provisions

5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

1. Permit Expiration Dates for all Conditional Use Approvals and Extensions:

a. On lands zoned Exclusive Farm Use, Forest, and Forest Mixed Use:

(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

RESPONSE: A portion of the alignment authorized by the Approval crosses resource-zoned property (Exclusive Farm Use and Forest). As extended, the approval period for the Approval is scheduled to expire on November 11, 2019. As further explained below, the County is authorized to extend the approval period if certain criteria are met, and the Application satisfies these criteria.

[1] Although the County approved these extensions after the Approval was scheduled to expired, Applicant applied for each extension before the Approval expired.

(2) A county may grant one extension period of up to 12 months if:

(a) An applicant makes a written request for an extension of the development approval period;

RESPONSE: Applicant filed with the County a completed, signed application form requesting an extension of the development approval period for the Approval and the applicable $600.00 application fee. Therefore, Applicant has properly initiated this request. The County should find that Applicant's action satisfies this standard.

(b) The request is submitted to the county prior to the expiration of the approval period;

RESPONSE: The approval period for the Approval is scheduled to expire on November 11, 2019. Applicant filed its request with the County on November 8, 2019. The County should find that Applicant has submitted this request before the expiration of the approval period.

(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period[3] for reasons for which the applicant was not responsible.

Coos County has and will continue to accept reasons for which the applicant was not responsible, as, but limited to, financial hardship, death of owner, transfer of property, unable to complete conditions of approval and projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of approval. This is a different standard than actually showing compliance with conditions of approval. This also does not account for other permits that may be required outside of the land use process.

[3] The approval period is the time period the original application was valid or the extension is valid. If multiple extensions have been filed the decision maker may only consider the time period that the current extension is valid. Prior approval periods shall not be considered. For example, if this is the third extension request up for review the information provided during the period within the last extension time

frame shall be considered and not the overall time the application has been approved. This prevents a collateral attack on the original authorization.

RESPONSE: Applicant was prevented from beginning or continuing development within the approval period because the Pipeline has not yet obtained federal authorization to proceed. The Pipeline is an interstate natural gas pipeline that requires pre-authorization by the Federal Energy Regulatory Commission ("FERC"). Until Applicant obtains a FERC certificate authorizing the Pipeline, the Applicant cannot begin construction or operation of the facilities in the County or elsewhere along the Pipeline route. As of the date of this Application, FERC has not yet authorized the Pipeline. Therefore, Applicant cannot begin or continue development of the Pipeline along the alignment that the Approval authorizes.

The County previously accepted this reasoning as a basis to grant a time extension for the Pipeline. First, the County found that the lack of FERC approval meant Applicant could not begin or continue development of the project:

> "In this case, the applicant needs federal approval for the gas pipeline project, and the project cannot commence until those federal approvals are forthcoming. Even the primary opponent to the project, Ms. Jody McCaffree, admits the facts that caused the applicant to be unable to begin or continue development during the approval period, i.e., that [FERC] vacated the federal authorization to construct the pipeline."

See County Final Order No. 14-09-063PL, ACU-14-08/AP 14-02, Exhibit 3 at 13. Likewise, in granting a previous extension of an approval for a different alignment of the Pipeline, the County Planning Director stated:

> "The fact that the project is unable to obtain all necessary permits to begin prior to the expiration of a conditional use approval is sufficient to grant the applicant's requested extension."

See Director's Decision for County File No. ACU-16-013, Exhibit 4 at 13.

Further, the delay in obtaining FERC approval of an alignment for the Pipeline has caused other agencies to also delay their review and decision on Pipeline-related permits. The Pipeline is a complex project that requires dozens of major federal, state, and local permits, approvals, and consultations needed before Applicant and the developer of the related Jordan Cove Energy Project can begin construction. *See* permit

list in Exhibit 5 hereto. The County has previously accepted this explanation as a basis to find that a Pipeline-related time extension request satisfies this standard. *See* County Final Order No. 17-11-064PL, File No. AP 17-004/EXT 17-005, Exhibit 6 hereto at 11. Therefore, Applicant has identified reasons that prevented Applicant from commencing or continuing development within the approval period.

In addition, Applicant is not responsible for FERC not yet approving the Pipeline. Applicant does not control FERC's schedule, and in fact, FERC recently revised its review schedule to extend the dates for FERC to issue the final environmental impact statement and final order for the Pipeline. *See* Exhibit 8. Applicant has worked diligently and in good faith to obtain all necessary Permit approvals. For example, FERC previously approved Applicant's original application for a certificate for an interstate natural gas pipeline in the County. Later modifications to the project nullified that approval, and Applicant applied for a new authorization, which FERC denied. The Board has previously determined that Applicant was not "responsible" for this denial. *See* Exhibit 6 at 9-12.

FERC's denial was *without prejudice*, and Applicant has reapplied for FERC authorization. Applicant has *at all times* since the County issued the Approval, and regardless of FERC's conduct, which the Applicant cannot control, continued to seek the required FERC authorization of the Pipeline. For example, during the 12-month period of the current extension (November 2018-November 2019), Applicant took steps in furtherance of the FERC permitting process. Applicant diligently responded to FERC's requests for additional information in support of the certificate request. *See* record of applicant submittals to FERC in the 12-month FERC docket in Exhibit 7. The certificate request is still pending before FERC. *Id.*

Applicant was, therefore, prevented from beginning or continuing development during the Approval period and was not responsible for the circumstances that prevented it. These approval criteria are satisfied.

(3) Approval of an extension granted under this rule is a ministerial decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

RESPONSE: Applicant requests that the County process this request pursuant to the County's Type II procedures in order to provide notice and an opportunity for public comment.

(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

RESPONSE: This request is Applicant's fourth request for an extension of the Approval.

The approval criteria applicable to a conditional use permit to construct this segment of the Pipeline have not changed since the County issued the Approval on October 21, 2014. In the most recent decision approving an extension of the Approval (which is barely 60 days old), the County's Board of Commissioners agreed with this conclusion and adopted detailed findings regarding same. *See* Exhibit 2 at 20-25.

Therefore, the approval criteria applicable to the Pipeline have not changed since the County issued the Approval. This criterion is satisfied.

(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.

(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.

RESPONSE: The Approval did not authorize any residential development on agricultural or forest land outside of an urban growth boundary. The County should find that this provision is not applicable.

(6) For the purposes of Section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

RESPONSE: The Approval did not authorize any residential development. The County should find that this provision is not applicable.

(7) There are no limits on the number of extensions that can be applied for unless this ordinance otherwise allows.

RESPONSE: This provision permits the County to grant multiple extensions of the Approval.

b. On lands not zoned Exclusive Farm Use, Forest, and Forest Mixed Use:

(1) All conditional uses for residential development including overlays shall not expire once they have received approval.

(2) All conditional uses for non-residential development including overlays shall be valid four (4) years from the date of final approval.

RESPONSE: A portion of the alignment authorized by the Approval crosses resource-zoned property (Exclusive Farm Use and Forest). The approval period for the Approval is scheduled to expire on November 11, 2019. As further explained below, the County is authorized to extend the approval period if certain criteria are met, and the Application satisfies these criteria.

(3) Extension Requests:

a. For all conditional uses subject to an expiration date of four (4) years are eligible for extensions so long as the property has not been:

i. Reconfigured through a property line adjustment or land division; and

ii. Rezoned to another zoning district.

RESPONSE: The Approval does not involve property that has been reconfigured through a property line adjustment or land division nor does it involve property that has been rezoned since the date the County granted the Approval. Therefore, the Approval is eligible for an extension.

(4) An extension shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.

RESPONSE: Applicant has included a completed and signed County extension application form and the required $600.00 fee with this request. The County should find that the request meets the requirements of this provision.

(5) An extension shall be received prior to the expiration of the conditional use or the prior extension.

RESPONSE: The County will receive the extension request on November 8, 2019, which is before the expiration of the Approval period. Therefore, the Application meets the requirements of this provision.

2. Changes or amendments to areas subject to natural hazards[4] do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level of risk as established by Coos County.

[4] **Natural hazards are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.**

RESPONSE: Applicant acknowledges this provision, which provides that changes or amendments to areas subject to natural hazards do not void the Approval.

IV. Conclusion

For the above reasons, the Application meets the requirements of the CCZLDO. Therefore, the County should grant a 12-month extension of the Approval.

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 (CZLDO) §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,

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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

COMMISSIONER

COMMISSIONER

COMMISSIONER

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Office of Legal Counsel

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION OF THE COOS COUNTY BOARD OF COMMISSIONERS

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
(BLUE RIDGE ALTERNATIVE ROUTE)
COOS COUNTY, OREGON

FILE NO. HBCU-13-06
OCTOBER 21, 2014

EXHIBIT A

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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.
- January 3, 2014: Application deemed incomplete.

- 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 1, 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 Surrebuttal 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

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.

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 GeoEngineers, Inc. – the *Geologic and Mineral Resources Report* (GMRR) and *Geologic*

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 lineal feet of landslides crossed by the Blue Ridge route, as compared to 8,580 lineal 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),[2] 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.

- 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).

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;

- 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.

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 2010. 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 CBEMP Policies 14, 17, 18, 22, 23, 27, 28, 34, 49, 50 and 51 located in Appendix 3.

C. Overlay Zones (CCZLDO Article 4.6).

1. CCZLDO 4.6.210 and CCZLDO 4.6 215.

CCZLDO 4.6.210 and 4.6 215 provide as follows:

CCZLDO SECTION 4.6.210. Permitted Uses.

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.

CCZLDO SECTION 4.6.215. Conditional Uses.

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.

2. CCZLDO 4.6.230. Procedural Requirements for Development within Special Flood Hazard Areas.

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.

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).[4]

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.

See Staff Report dated May 23, 2014, at pp. 8-9.

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 intitial 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.

> 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.[5] *See* McCaffree Surrebuttal at 9. Mr. Messerle's 2010 testimony, however, is not part of the record in

[5] 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).

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.[7]

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"),[8] 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 CCZLDO 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:

> 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

[7] 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.

[8] *See* Applicant Rebuttal dated June 17, 2014, at Attachment F. (Exhibit 15).

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 amperage 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.

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 as 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 relvant 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. <u>Exclusive Farm Zone ("EFU") (CCZLDO Article 4.9)</u>

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).[9] 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 4.9.600[10] and 4.9.700.[11]

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[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:

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[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.

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.

(e) 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).

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 (ie., 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

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. 10-08-045PL, 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 Tidegates refers to dredging necessary to provide material for existing dikes and tidegates; (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.[14] 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 5a, 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 le 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.I.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.I.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, the 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(e) 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 routes 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

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.[15] 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.

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/or restoration processes and techniques, may be permitted upon approval by Division of States 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:

Designated Mitigation Site	Priority	Approximate MP	CBEMP Zoning District
M-8(b)[1]	Low	2.70 R	11-NA
U-12[2]	High	10.90 R	18-RS

U-16(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 use, 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 Millicoma 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 mininum necessary to accomplish the purpose.

See Staff Report dated May 23, 2014, at p. 13.

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[16] and floodway[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 "1B" 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

[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."

[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" aud accompanying maps.

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.

See Staff Report dated May 23, 2014, at p. 14.

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).

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.Supp. 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.Supp. 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. 1261 (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 4.7a	Special Regulatory Consideration Prescribed by the Coos County Comprehensive Plan (Appendix I Balance of County)

TABLE 4.7a

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
1. Mineral &Aggregate	*1a. Preserve these in their original character until mined*	*1-12*	*1*
	b. Agriculture & forestry uses are acceptable per zone and use district requirements.	*1-12*	*1*
	c. Allow new conflicting uses within 500 ft. subject to ESEE findings through the conditional use process.	*1-12*	*1*
	d. Non-exploratory mining operations are conditional uses, where allowed	*1-13*	*2*

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 4.7a

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
2. Water Resources	*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.*	1-21	1

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, EQC 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

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
3. Historical/ Archeological Sites & Structures	*3a. Manage these for their original resource value.*	*1-19* *1-20*	*1* *3*
	b. Develop proposals in identified archaeological areas must have a "sign-off" by qualified person(s).	*1-19*	*2*
	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.		

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

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

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 4.7a

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
4. Beaches & Dunes	*4a. Permit development within "limited development suitability" only upon establishment of findings. Requires Administrative Conditional Use.*	*1-23*	*2*
	b. Prohibits residential, commercial, or industrial development within areas "unsuitable for development". Permit other developments only upon establishment of findings. Requires Administrative Conditional Use.	*1-24*	*3*
	c. Cooperation with agencies to regulate: destruction of vegetation, erosion shore structures and other developments, requires Administrative Conditional Use and agency comments.	*1-25*	*4*

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;

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

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
5. Non-Estuarine Shoreland Boundary	*5 a. Protection of major marshes (wetlands), habitats, headlands, aesthetics, historical and archaeological sites.*	*1-25*	*5*
	b. Specifies allowed uses within C.S.B.	*1-26*	*7*
	c. Permits subdivision, major and minor partitions only upon findings.	*1-27*	*8*
	d. Maintain, restore or enhance riparian vegetation as consistent with water dependent uses. Requires Administrative Conditional Use.	*1-28*	*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 Yoakum 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.

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 FPA, 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 effected 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

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
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.*	*1-14*	*1*
	b. Protect "wet meadows" for agricultural use	*1-18*	*4*
	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.	*1-17*	*2*
	d. Restrict conflicting uses on "5c" bird sites except as permitted with EESE balancing. 300 ft. setback from Bald Eagle nests.	*1-14*	*1a*

6. Significant Wildlife Habitat 1 ORD 85-08-011L) – Appendix I,

Pages 14-18, Strategy Nos. 1, 1a, 2 & 4:

Plan Implementation Strategies

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

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:

natural flood control flow stabilization of streams and rivers	*environmental diversity habitat for fish and wildlife, including fish and wildlife of economic concern*
reduction of sedimentation	*recreational opportunities*
improved water quality	*recharge of aquifers*

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 wildfowl 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

PHENOMENON	SPECIAL REGULATORY CONSIDERATIONS SUMMARY	Appendix I	
		Page	Strategy No.
7. Natural Hazards	*7a. Comply with floodplain overlay zone set forth in this Ordinance.*	*1-29*	*1*
	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.	*1-29*	*5*
	*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.**	*1-30*	*6*
	**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."

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).

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 to 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. *Pokoik v Silsdorf*, 390 NYS2d, 49, 358 NE2d 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. CCZLDO 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.[20] 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.[21] *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.

[20] *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.").

[21] 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.

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.[22] *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.

11. The Pipeline Right-of-Way Can Be Successfully Revegetated.

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.

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.

See Letter from Richard Allen dated June 17, 2014, at p. 19-20.

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 inventoried 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.

14. Private Utility Standards Do Not Apply.

[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).

15. Executive Order 13406 of June 23, 2006, Entitled "Protecting the Property Rights of the American People" Does Not Prohibit the Application.

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(f)(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. McCraffree'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 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.

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

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

14. The pipeline operator shall maintain an emergency response plan in compliance with 49 CFR 192.615.

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 feed-back 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).

CJ 2019-000803
COMMISSIONERS' JOURNAL
COOS COUNTY, OREGON

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	BoPTA	R=6Y		Registry of Offices	R=6YAE
	Contracts & Agreements	R=P		Special District Budget	R=P
	County Budget	R=P		Special District Formations, Annexations, Dissoultions, Election Results	R=P
	County Code	R=P		Vacation Proceedings	R=P
	Minutes - BOC	R=P		R=Retention P=Permanent Y=Year AE=After Expiration	

INDEXING INFORMATION

Affected Parties Names:

Coos County Board of Commissioners
Coos County Planning Department
Pacific Connector Gas Pipeline, LP
Citizens of Coos County

Subject of Document : Brief description, minutes, contracts, orders, etc.

Order - final decision & order for AP-19-002

Resolution or Order #: Example: 18-2-156-X

19-08-054PL

Document Remarks:

Final Decision and Order adopting decision on of an Appeal (AP-19-002) filed by Kathy Dodds, Natalie Ranker, Cary Norman, and The Elk Lake Corporation.

Date of Meeting or of Document: "Date Only"

August 20, 2019

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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.

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF APPROVING AN EXTENSION REQUEST APPLIED FOR BY PACIFIC CONNECTOR GAS PIPELINE, LP AND APPEALED BY TONIA MORO, ATTORNEY AT LAW P.C.	FINAL DECISION AND ORDER NO. 19-08-054PL

NOW BEFORE THE Board of Commissioners sitting for the transaction of County business on the 20th day of August 20, 2019, is the matter of the appeal of the Planning Director's March 8, 2019, decision granting Pacific Connector Gas Pipeline, LP's (hereinafter the "Applicant") application for approval of an extension to a conditional use approval for the construction and operation of a natural gas pipeline to provide gas to Jordan Cover Energy Project's liquefied natural gas (LNG) terminal and upland facilities.

The Board of Commissioners invoked its authority under the Coos County Zoning and Land Development Ordinance (CZLDO) §5.0.600.4 to pre-empt the appeal process and appoint a Hearings Officer to conduct the initial public hearing for the application and then make a recommendation to the Board of Commissioners. The Board of Commissioners appointed Andrew H. Stamp to serve as the Hearings Officer.

Hearings Officer Stamp conducted a public hearing on this matter on May 31, 2019. 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 on July 8, 2019.

Hearings Officer Stamp issued his Analysis, Conclusions and Recommendations to the Board of Commissioners on July 10, 2019. Staff presented some revisions to the Findings of Fact; Conclusions of Law and Final Decision for the Board of Commissioners to consider.

The Board of Commissioners held a public meeting to deliberate on the matter on August 6, 2019. All members present and participating unanimously voted to accept the decision of the Hearings Officer with proposed amendments with the understanding that the final draft will be signed at the August 20, 2019 regular scheduled Board of Commissioners Meeting.

NOW, THEREFORE, the Board of Commissioners, having reviewed the Hearings Officer's Analysis, Conclusions and Recommendation, the arguments of the parties, and the records and files herein,

IT IS HEREBY ORDERED that the Planning Director's March 8, 2019, decision granting Pacific Connector Gas Pipeline, LP's (hereinafter the "Applicant") application for approval of an extension to the conditional use approval for the construction and operation of a natural gas pipeline is affirmed, and the Board further adopts the Findings of Fact; Conclusions of Law, and Final Decision attached hereto as "Attachment A" and incorporated by reference herein.

ADOPTED this 20th day of August 20, 2019.

BOARD OF COMMISSIONERS:

COMMISSIONER

COMMISSIONER

COMMISSIONER

RECORDING SECRETARY

APPROVED AS TO FORM:

Office of Legal Counsel

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION OF THE COOS COUNTY BOARD OF COMMISSIONERS

ATTACHMENT A

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
(APPEAL OF THE THIRD EXTENSION REQUEST FOR
COUNTY FILE NO. HBCU 13-06, AKA: THE "BLUE RIDGE ALIGNMENT")
COOS COUNTY, OREGON

FILE NO. AP 19-002
(APPEALS OF COUNTY FILE NOS. EXT-18-012).

AUGUST 20, 2019

I. INTRODUCTION

The Board of Commissioners ("Board") has received and reviewed the record of proceedings and the Hearings Officer's Analysis, Conclusions, and Recommendations to the Coos County Board of Commissioners dated July 10, 2019 ("Recommended Order"). In this decision, the Board adopts the Recommended Order as modified, denies the appeal, and approves the requested application.

A. Nature of the Local Appeal

On November 8, 2018, Pacific Connector Gas Pipeline, LP, (hereinafter, "Applicant" or "Pacific Connector") filed a third one-year extension request to continue the development approval for HBCU 13-06 (Blue Ridge Alternative Alignments). The extension will keep the original approval active until November 11, 2019. Staff assigned File No. EXT-18-012 to the case. The Planning Director's decision approving the extension is dated March 8, 2019.

Four appellants filed a joint Notice of Appeal challenging the Planning Director's decision. Staff assigned File No. AP 19-002 to the appeal. The timeline for the application and appeal is addressed in Section I.C.

Previous one-year extensions are documented as follows:

- File No. EXT 16-007 (Extension to Nov 11, 2017)
  - Application submitted on November 9, 2016
  - Staff decision dated Dec. 28, 2016
  - No local appeal filed
- File No. EXT 17-015 (Extension to Nov. 11, 2018)
  - Application Submitted on Nov. 9, 2017
  - Staff decision dated February 26, 2018
  - No local appeal filed.

B. Detailed Case History of the Pipeline

In 2010, Pacific Connector submitted a land use application seeking development approval to construct and operate a natural gas pipeline to provide gas to Jordan Cove Energy Project's liquefied natural gas ("LNG") terminal and upland facilities. As established in Pacific Connector's original land use application and subsequent proceedings, the Pipeline is within the exclusive siting and authorizing jurisdiction of the Federal Energy Regulatory Commission ("FERC"), requiring a FERC-issued Certificate of Public Convenience and Necessity ("Certificate") prior to construction. Under the federal Coastal Zone Management Act, however, a land use consistency determination is also required within the state's Coastal Zone Management Area ("CZMA"), precipitating Pacific Connector's application for local land use approvals, including the 2010 application to Coos County.

On September 8, 2010, the Board adopted and signed Final Order No. 10-08-045PL, approving Pacific Connector's request for a Conditional Use Permit ("CUP") authorizing

development of the Pipeline and associated facilities, subject to certain conditions. The decision was subsequently appealed to, and remanded by the Oregon Land Use Board of Appeals ("LUBA"). *Citizens Against LNG, Inc v. Coos County*, 63 Or LUBA 162 (2011).

On March 13, 2012, the Board addressed and resolved two grounds from remand, and approved findings supporting approval of the CUP for the Pipeline and associated facilities on remand in Final Order No. 12-03-018PL. The March 13, 2012 decision became final when the 21-day appeal window expired and no appeals were filed on April 2, 2012. The 2010 and 2012 approvals are referred to collectively as the CUP. The CUP authorizes construction and operation of a natural gas pipeline and associated facilities on approximately 49.72 linear miles within Coos County, extending from Jordan Cove Energy Project's LNG Terminal to the alignment section in adjacent Douglas County.

Over the past several years, Pacific Connector has been pursuing the necessary approvals for the Pipeline. Pacific Connector received a FERC Certificate on December 17, 2009. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 129 FERC ¶ 61, 234 (2009). However, due to changes in the natural gas market and Jordan Cove's reconfiguration of its facility from an LNG import facility to an LNG export facility, FERC issued an order on April 16, 2012 vacating Pacific Connector's Certificate despite objections of Pacific Connector. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 139 FERC ¶ 61,040 (2012).

Due to FERC's decision to revoke Pacific Connector's FERC Certificate, it was necessary for Pacific Connector to seek new FERC approval for the Pipeline as reconfigured to serve Jordan Cove's proposed LNG export facility. In June 2012, Pacific Connector initiated the mandatory FERC "pre-filing" process to seek a new FERC Certificate. FERC Docket No. PF12-17-000. Following a public scoping process initiated by FERC that lasted until October 29, 2012, Pacific Connector filed a new application with FERC on June 6, 2013. FERC Docket No. CP-13-492-00.

Pacific Connector's CUP originally contained a condition which prohibited the use of the CUP "for the export of liquefied natural gas" (Condition 25). After the initial FERC authorization for the Pipeline was vacated due to the reconfiguration of the Jordan Cove facility, Pacific Connector applied to Coos County on May 30, 2013 for an amendment to the CUP requesting deletion or modification of Condition 25 as necessary for the use of the Pipeline to serve the Jordan Cove LNG export facility. After a revised application narrative was submitted, the application was deemed complete on August 23, 2013, and the County provided a public hearing before the Hearings Officer. On February 4, 2014, the Board adopted the Hearings Officer's decision and approved Pacific Connector's requested modification of Condition 25. Final Order No. 14-01-006PL, HBCU-13-02 (Feb. 4, 2014).

Project opponents appealed the County's Condition 25 Decision to LUBA, which upheld the County decision on July 15, 2014. *McCaffree et al. v. Coos County et al.*, 70 Or LUBA 15 (2014). After further appeal of the LUBA decision, the Oregon Court of Appeals affirmed LUBA's decision without opinion in December of 2014.

On August 13, 2013, Pacific Connector submitted an application requesting approval of two alternative segments of pipeline route, known as the "Brunschmid" and "Stock Slough" Alternative Alignments. The Hearings Officer recommended approval of these two route amendments and the Board accepted those recommendations on February 4, 2014. Final Decision and Order HBCU-13-04; Order No. 14-01-007PL.

On December 5, 2013, Pacific Connector submitted an application requesting approval of another alternative segment of pipeline route, known as the "Blue Ridge Alternative Alignment." The Hearings Officer recommended approval of this route amendments and the Board accepted those recommendations on October 21, 2014. Final Decision and Order HBCU-13-06; Order No. 14-09-0062PL.

On November 7, 2014, FERC issued a Draft Environmental Impact Statement (DEIS) for the Pipeline, with public comment held open until mid-February 2015. FERC's revised schedule for the project indicated that completion of the Final EIS was scheduled for June 12, 2015, with a FERC decision on Pacific Connector's application expected by September 10, 2015. *Notice of Revised Schedule for Environmental Review of the Jordan Cove Liquefaction and Pacific Connector Pipeline Projects*; Jordan Cove Energy Project, LP, Docket No. CP13-483-000; Pacific Connector Gas Pipeline LP, Docket No. CP13-492-000 (Feb. 6, 2015).

Meanwhile, in light of the withdrawal of its FERC Certificate and the consequent impossibility of obtaining all federal approvals necessary to initiate construction within the original two-year County approval period, Pacific Connector filed a request with the County on March 7, 2014 to extend its original CUP approval (*i.e.* HBCU-10-01- County Ordinance No. 10-08-045PL (Pacific Connector Pipeline Approved, County File No. HBCU-10-01, on remand Final Decision and Order No. 12-03-018PL) for two additional years. The Planning Director approved this request on May 2, 2014, pursuant to extension provisions (then codified at CCZLDO § 5.0.700). The Planning Director's decision was appealed on May 27, 2014 (AP-14-02). The Hearings Officer issued his Analysis, Conclusions and Recommendations to the Board of Commissioners, recommending approval of the application on September 19, 2014. On October 21, 2014, the Board adopted its decision approving an extension of Pacific Connector's conditional use approval for the original alignment for one year, until April 2, 2015. File No. ACU 14-08 / AP-14-02, Final Order No. 14-09-063PL (Oct 21, 2014).

On November 12, 2014, Jody McCaffree and John Clarke filed a Notice of Intent to Appeal the Board's decision to LUBA. Petitioners voluntarily withdrew their Notice of Intent to Appeal, and LUBA dismissed Petitioners' appeal. *McCaffree v. Coos County*, (LUBA No. 2014-102 (Feb. 3, 2015). Accordingly, the Board's decision to extend Pacific Connector's conditional use approval until April 2, 2015 was final and not subject to further appeal.

On January 20, 2015, the Board enacted Final Decision and Ordinance 14-09-012PL. This Ordinance amended Section 5.2.600 of the Zoning Code in a number of substantive ways. Most significantly, it allowed an applicant for a CUP located out of Resource zones to apply for - and obtain - addition extensions to a CUP. It also changed the substantive criteria for extensions.

On March 16, 2015, Pacific Connector filed a request for a second extension of the land use approvals for the original Pipeline alignment. File No. ACU-15-07. Staff reviewed the matter, deemed the application complete on April 8, 2015, and the Planning Director rendered a decision approving the extension request on April 14, 2015. The approval was appealed on April 30, 2015. File No. AP-15-01. After a hearing before a County Hearings Officer, the Hearings Officer issued a written opinion and recommendation to the Board that they affirm the Planning Director's decision granting the one-year extension to April 2, 2016. On October 6, 2015, the Board adopted the Hearings Officer's recommended decision and approved the requested extension. Final Decision No. 15-08-039PL. The Board's approval of Pacific Connector's second extension request was not appealed to LUBA, and that decision is final.

On March 11, 2016, FERC issued an Order denying Pacific Connector's application for a certificate of public convenience and necessity. Nonetheless, on March 16, 2016, Pacific Connector filed for a third extension of the original pipeline alignment, which was approved on April 5, 2016 (ACU-16-013). This decision was not appealed and was valid until April 2, 2017. The FERC Order issued on March 11, 2016 was made "without prejudice," which means that Pacific Connector can file again if it wishes to do so. *See* FERC Order dated March 11, 2016 at 21. On April 8, 2016, Pacific Connector filed a request for a rehearing to FERC. FERC issued a denial of that request on December 9, 2016.

On April 11, 2016, Staff approved the first one-year extension request for the Brunschmid and Stock Slough alignments, (HBCU-13-04 /ACU- 16-003). No local appeal was filed.

On April 11, 2016, Staff approved the third one-year extension request for the original alignment (HBCU-10-01 / ACU-16-013). No local appeal was filed.

On December 28, 2016, Staff approved the first one-year extension request for the Blue Ridge alignment, (HBCU-13-06 /EXT 16-007). No local appeal was filed.

Pacific Connector filed a Request for Pre-Filing Approval with FERC on January 23, 2017. FERC approved that request on February 10, 2017. *Id.*

On February 13, 2017, Pacific Connector submitted a second extension request for the Brunschmid and Stock Slough alignments (County File No. EXT-17-002). The Planning Director approved this extension on May 21, 2017. The opponents did not file an appeal of the Planning Director's decision.

On March 30, 2017, Pacific Connector submitted a fourth extension request for the original pipeline alignment (County File No. EXT-17-005). A notice of decision approving the extension was mailed on May 18, 2017. Opponents filed a timely appeal on June 2, 2017, which staff assigned file no. AP-17-004. The Hearings Officer recommended approval of the extension, and that recommendation was approved by the Board on December 19, 2017 (Final Decision and Order No. 17-11046PL). No further appeal ensued.

On September 21, 2017, Pacific Connector submitted an application to FERC requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act (NGA) to construct, operate, and maintain certain natural gas pipeline facilities.

On February 21, 2018, Pacific Connector submitted a third extension request for the Brunschmid and Stock Slough alignments. The Planning Director approved this extension on May 18, 2018 (HBCU-13-04 / EXT-18-001). The opponents filed a timely appeal of the Planning Director's decision. AP-18-001. The Board issued a final decision approving the extension Nov. 20, 2018 (No. 18-11-072PL). Opponents appealed to LUBA.

On or about March 20, 2018, Pacific Connector filed a fifth extension request of the original pipeline alignment. (EXT 18-003). The Planning Director approved this latest extension request on May 21, 2018, and followed that up with a corrected notice on May 24, 2018. Opponents filed a timely appeal, and the Board of Commissions issued a final decision on Nov 20, 2018. AP-18-002. Opponents appealed to LUBA.

LUBA consolidated the two appeals (AP-19-001 and AP-19-002). On April 25, 2019, LUBA issued a Final Opinion and Order in which it rejected challenges to the Board's decisions to grant additional extensions. *See Williams v. Coos County*, ___ Or LUBA ___ (LUBA Nos. 2018-141/142, April 25, 2019). The opponents appealed this decision to the Oregon Court of Appeals. On August 7, 2019, the Oregon Court of Appeals affirmed LUBA's decision without opinion. *Williams et al. v. Coos County et al.*, 298 Or App 841, __ P3d __ (2019).

C. Timeline

The timeline of key dates for this application is set forth below:

- Application Submitted — November 8, 2018
- Staff Decision — January 24, 2019
- Local Appeal filed — February 8, 2019
- Staff decision withdrawn — February 8, 2019
- Rev. Staff Decision — March 8, 2019
- Local Appeal Filed — March 25, 2019
- Public hearing — May 31, 2019
- First Open Record — June 14, 2019
- Second Open Record — June 28, 2019 (No submittals)
- Applicant's Final Argument — July 8, 2019
- Hearings Officer Recommendation — July 10, 2019
- Board Deliberations — August 6, 2019

On May 31, 2019, Ms. Jody McCaffree submitted a letter requesting that the record be left open. The Hearings Officer granted this request, and held the record open for two weeks. Ms. McCaffree did not submit any substantive comments during the open record period.

II. LEGAL ANALYSIS.

A. Criteria Governing Extensions of Permits

Once a development approval has been granted, as happened in this case, an extension may or may not be allowed, based on the criteria found in CCZLDO §5.2.600. Under the terms of CCZLDO §5.2.600, the Planning Director may approve extension requests as an Administrative Action under the local code. Extension decisions are subject to notice as described in CCZLDO §5.0.900(2) and appeal requirements of CCZLDO §5.8 for a Planning Director's decision. The criteria set forth in CCZLDO §5.2.600 were amended on October 2, 2018 (County File No. AM-18-005), and the current version is reproduced below.

New Version:

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

1. ***Permit Expiration Dates for all Conditional Use Approvals and Extensions:***
   a. ***On lands zoned Exclusive Farm, Forest and Forest Mixed Use:***
      (1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.
      (2) A county may grant one extension period of up to 12 months if:
         (a) An applicant makes a written request for an extension of the development approval period;
         (b) The request is submitted to the county prior to the expiration of the approval period;
         (c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
         (d) The county determines that the applicant was unable to begin or continue development during the approval period[1] for reasons for which the applicant was not responsible.

Coos County has and will continue to accept reasons for which the applicant was not responsible as, but limited too, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of

[1] The "approval period" is the time period that the either the original application was valid, or the extension is valid, as applicable. If multiple extensions have been filed the decision maker may only consider facts that occurred during the time period when the current extension was valid. Prior approval periods shall not be considered. For example, if this is the third extension request up for review the information provided during the period within last extension time frame shall be considered and not the overall time the application has been approved. This prevents a collateral attack on the original authorization.

approval. This is a different standard then actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process.

(3) Approval of an extension granted under this rule is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.
(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.
(5) (a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.
(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.
(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).
(7) There are no limit on the number of extensions that can be applied for unless this ordinance otherwise allows.

b. *On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:*
(1) All conditional uses for residential development including overlays shall not expire once they have received approval.
(2) All conditional uses for non residential development including overlays shall be valid for period of four (4) years from the date of final approval.
(3) Extension Requests:
a. For all conditional uses subject to an expiration date of four (4) years are eligible for extensions so long as the property has not been:
i. Reconfigured through a property line adjustment or land division; and
ii. Rezoned to another zoning district.
(4) An extension shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.
(5) An extension shall be received prior the expiration date of the conditional use or the prior extension.

2. *Changes or amendments to areas subject to natural hazards[2] do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level risk as established by Coos County.*

CCZLDO §5.2.600. These criteria are addressed individually below.

[2] Natural hazards are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

Note: The CUP authorizes the Pipeline to be developed on both resource-zoned and non-resource zoned land. Therefore, the Applicant takes the conservative approach and requests a one-year extension for the entire CUP.

The opponents contend that an old version of CCZLDO 5.2.600 (*i.e.* the 2013 version of the extension criteria) applies to the application. For example, in her letter dated May 31, 2019, Ms. Natalie Ranker argues that "[a]ny changes to [CCZLDO 5.2.600] are not applicable to the extension request." *See also* Tonia Moro's Hearing Memorandum, at p. 11 (making same argument). However, the opponents do not expand on the argument or otherwise provide any further legal support for their position. Moreover, opponents fail to explain how either the County's analysis or decision would be different if the 2013 standards applied to the Application instead of the 2018 version.

Normally, the law that applies to an application is the law in effect on the date the application is submitted (so-called "goal-post rule"). ORS 215.427(3). Opponents do not provide a reasoned explanation why the goal-post rule would not apply in this case. The version of CCZLDO 5.2.600 in effect when Pacific Connector filed its application was adopted in 2018. Therefore, the Board finds that the 2018 version, which is applied in this decision, applies to the application.

On page 6 of the staff report, the Planning Director engaged in a discussion concerning CCZLDO 5.2.600.1.a.(1) and whether Pacific Connector had initiated the development action plan. See Staff Decision dated March 8, 2019, at p. 6-7. In the staff decision, staff argues that Pacific Connector has in fact initiated the development by applying for required permits that implement the approval. In the Staff Report dated May 24, 2019, at p. 6-7, staff notes that this is merely an academic point, since Pacific Connector has in fact requested the extension, an act which is premised on the assumption that the development has not been initiated. Nonetheless, staff's initial conclusion is challenged in the appeal. In the appeal narrative, Ms. Moro notes that the County has always required more action than merely applying for permits to warrant a determination that the development has been initiated. The Board finds that the discussion is a red herring that does not need to be resolved as part of this appeal. The Board does not adopt that portion of the March 8, 2019 staff decision (i.e. the last full paragraph on page 6 and continuing on the middle of page 7) as findings, and that discussion has no further legal effect in this proceeding. For this reason, the argument set forth in Ms. Moro's Hearings Memorandum at p. 7 under subheading ("B") provides no reason for denial.

B. Pacific Connector's Compliance with the Applicable Standards for a Conditional Use Extension Request on Farm and Forest Zoned Lands.

1. The Applicant Meets the Applicable Criteria Set Forth at § 5.2.600.1.a.(2)(a).

CCZLDO §5.2.600.1.a.(2)(a) provides as follows:

(2) A county may grant one extension period of up to 12 months if:
(a) An applicant makes a written request for an extension of the development approval period;

The Board finds that Pacific Connector's application and attachments demonstrate compliance with the code requirements at CCZLDO §5.2.600.1.a.(2)(a) for granting extension requests for land use approvals on farm and forest lands.

This criterion is met because a timely extension request was filed. Pacific Connector submitted a written narrative and application, which specifically request an extension, on November 8, 2018 (EXT-18-012), which is within the development approval period.

In their appeal, the opponents argue that the original CUP permit expired on October 21, 2016. However, it is too late to appeal issues related to the first or second extension requests. Any findings of fact or conclusions or law made in those extension decisions cannot be revisited here, because that would constitute a collateral attack on the earlier extensions.

In any event, even if the issue could be reviewed, it provides no basis for finding that the original CUP is void. CCZLDO 5.0.250(5) states that "[t]he period for expiration of a permit begins when the appeal period for the final decision approving the permit has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective." In this case, the final decision was issued on October 21, 2014, and the appeal period is 21 days. Therefore, the period for expiration began on November 11, 2014.
This criterion is met.

2. Pacific Connector's request was submitted to the County prior to the expiration of the approval period.

CCZLDO § 5.2.600.1.a.(2)(b) provides as follows:

> ***(2) A county may grant one extension period of up to 12 months if:***
> * * * * *
> ***(b) The request is submitted to the county prior to the expiration of the approval period;***

As noted above, the CUP for the Blue Ridge alignment was operating on the second one-year extension request and was set to expire on November 11, 2018. A third extension application was received on November 8, 2018 and is therefore timely submitted prior to the expiration of the previously extended CUP. CCZLDO §5.2.600.1.a.(2)(b).

The opponents argue that the CUP permit became void on November 11, 2017 because Pacific Connector did not submit the extension application EXT 17-015 until November 17, 2017, and that the County did not receive this application until November 20, 2017. Both at the hearing and in the staff report, staff clarified that Pacific Connector submitted the application by email and paid the application fee online on November 9, 2017. Staff accepted this filing as timely. Pacific Connector discusses this in its final argument and correctly notes the following:

> The record reflects that, in 2017, PCGP filed an application for an extension of the Blue Ridge Alignment permit and paid the required fee, and the County received these materials on November

9, 2017, prior to the expiration date on November 11, 2017. *See* bulleted items in cover letter dated November 17, 2017, attached to end of County Exhibit 1. Although PCGP did not make that application complete until November 17, 2017, it does not take away from the application being filed on November 9, 2017.

Even if this were not true, the Board would not entertain this issue in the merits because it is a collateral attack on the staff decision in EXT 17-015, which was issued on February 26, 2018. In that decision, staff stated that Pacific Connector submitted the application for the extension on November 9, 2017, and that factual finding was not appealed.

This criterion is met.

3. Pacific Connector was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

CCZLDO §5.2.600.1.a.(2)(c) & (d) provide as follows:

> ***(2) A county may grant one extension period of up to 12 months if:***
> * * * * *
> ***(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and***
>
> ***(d) The county determines that the applicant was unable to begin or continue development during the approval period[1] for reasons for which the applicant was not responsible.***
>
> ***Coos County has and will continue to accept reasons for which the applicant was not responsible as, but limited too, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of approval. This is a different standard then actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process.***

To approve this extension application, the Board must find that Pacific Connector has stated reasons that prevented it from beginning or continuing development within the current

[1] The approval period is the time period the original application was valid or the extension is valid. If multiple extensions have been filed the decision maker may only consider the time period that the current extension is valid. Prior approval periods shall not be considered. For example, if this is the third extension request up for review the information provided during the period within last extension time frame shall be considered and not the overall time the application has been approved. This prevents a collateral attack on the original authorization.

approval period (*i.e.* since the last extension was applied for and granted), and Pacific Connector is not responsible for the failure to commence development. CCZLDO §5.2.600.1.a.(2)(c), (d).

In the recent appeal of two other pipeline extension decisions, LUBA affirmed (and quoted) the County's determination that applied a "reasonable efforts" test to determine whether Pacific Connector was responsible for not yet obtaining permits from other agencies to allow development of the pipeline to proceed:

> In this case, it is sufficient to conclude that because the Applicant has thus far been unsuccessful in obtaining permits from FERC despite the Applicant's reasonable efforts to obtain same, the Applicant is therefore, not at fault, for failing to begin construction on the pipeline.

Williams v. Coos County, __ Or LUBA __ (LUBA Nos. 2018-141/ 142, April 25, 2019), *aff'd without opinion,* 298 Or App 841 (2019). The Board finds that Pacific Connector has presented credible evidence to support that it has made reasonable efforts in this case. In support of this conclusion, the Board relies upon the following:

In its application narrative for the extension, Pacific Connector explains why it has not begun construction on the Blue Ridge alignment:

> The Applicant was prevented from beginning or continuing development within the approval period because the Pipeline has not yet obtained federal authorization to proceed. The Pipeline is an interstate natural gas pipeline that requires preauthorization by the Federal Energy Regulatory Commission ("FERC"). Until Applicant obtains a FERC certificate authorizing the Pipeline, the Applicant cannot begin construction or operation of the facilities in the County or elsewhere along the Pipeline route. As of the date of this Application, FERC has not yet authorized the Pipeline. Therefore, Applicant cannot begin or continue development of the Pipeline along the alignment that the Approval authorizes.
>
> The County previously accepted this reasoning as a basis to grant a time extension for the Pipeline. First, the County found that the lack of FERC approval meant Applicant could not begin or continue development of the project:
>
> > "In this case, the applicant needs federal approval for the gas pipeline project, and the project cannot commence until those federal approvals are forthcoming. Even the primary opponent to the project, Ms. Jody McCaffree, admits the facts that caused the applicant to be unable to begin or continue development during the approval period, i.e., that

> [FERC] vacated the federal authorization to construct the pipeline."

See County Final Order No. 14-09-063PL, ACU-14-08/AP 14-02, Exhibit 3 at 13.

Continuing, Pacific Connector further states:

> Likewise, in granting a previous extension of an approval for a different alignment of the Pipeline, the County Planning Director stated:
>
> > "The fact that the project is unable to obtain all necessary permits to begin prior to the expiration of a conditional use approval is sufficient to grant the applicant's requested extension."
>
> *See* Director's Decision for County File No. ACU-16-013, Exhibit 4 at 13.
>
> Further, the delay in obtaining FERC approval of an alignment for the Pipeline has caused other agencies to also delay their review and decision on Pipeline-related permits. The Pipeline is a complex project that requires dozens of major federal, state, and local permits, approvals, and consultations needed before Applicant and the developer of the related Jordan Cove Energy Project can begin construction. *See* permit list in Exhibit 5 hereto. The County has previously accepted this explanation as a basis to find that a Pipeline-related time extension request satisfies this standard. *See* County Final Order No. 17-11-064PL, File No. AP 17-00/EXT 17-005, Exhibit 6 hereto at 11. Therefore, Applicant has identified reasons that prevented Applicant from commencing or continuing development within the approval period.
>
> In addition, Applicant is not responsible for FERC not yet approving the Pipeline. Applicant has worked diligently and in good faith to obtain all necessary Permit approvals. For example, FERC previously approved Applicant's original application for a certificate for an interstate natural gas pipeline in the County. Later modifications to the project nullified that approval, and Applicant applied for a new authorization, which FERC denied. The Board has previously determined that Applicant was not "responsible" for this denial. *See* Exhibit 6 at 9-12. FERC's denial was *without prejudice*, and Applicant has reapplied for FERC authorization. Applicant has *at all times* since the County issued the Approval, and regardless of FERC's conduct, which the Applicant cannot

> control, continued to seek the required FERC authorization of the Pipeline. For example, during the 12-month period of the current extension (November 2017-November 2018), Applicant took steps in furtherance of the FERC permitting process. Applicant diligently responded to FERC's requests for additional information in support of the certificate request. *See* record of applicant submittals in the 12-month FERC docket in Exhibit 7. The certificate request is still pending before FERC. *Id.* Applicant was, therefore, prevented from beginning or continuing development during the Approval period and was not responsible for the circumstances that prevented it. These approval criteria are satisfied.

The Board agrees with this analysis and adopts it as findings for this case.

Ms. Moro states that it is clear that Pacific Connector will not obtain federal authorization to proceed with the Blue Ridge alignment. *See* Tonia Moro's Hearings Memorandum at p. 7. In their respective letters dated May 31, 2019, two opponents, Ms. Ranker and Ms. Moro, argue that FERC has rejected the Blue Ridge Alternative as an alternative in the March 29, 2019 DEIS. A third opponent, Ms. Kathy Dodds, states that "FERC has instructed [Pacific Connector] to drop the route over Blue Ridge, and to consider three other routes for the Project, called collectively "The Blue Ridge Variation." Exhibit 4.

Pacific Connector responds to the opponents by agreeing that the DEIS "recommended that PCGP eliminate the Blue Ridge Alignment from the project in favor of another alignment," but that the DEIS is not a final action and has not officially eliminated this alignment from consideration:

> In March 2019, FERC issued the DEIS, which recommended that PCGP eliminate the Blue Ridge Alignment from the project in favor of another alignment. *See* Draft EIS at 3-20 and 3-21 (included as attachment to County Exhibit 1). FERC made this recommendation despite the fact "many additional private parcels" are affected by the favored alignment. *Id.* Although opponents contend that FERC's recommendation to eliminate the Blue Ridge Alignment should dispense with any need for this extension request, opponents are mistaken. The DEIS is a draft document, and only a recommendation at that. As stated at the hearing, PCGP disagrees with FERC's recommendation to eliminate the Blue Ridge Alignment in part due to the significant number of additional private property owners that will be affected by the FERC-recommended alternative. PCGP has submitted comments responding to FERC's recommendation. FERC will issue a Final EIS and Record of Decision for the Application that will identify FERC's decision regarding the Pipeline and its alignment. Until that occurs, FERC has not officially eliminated

> the Blue Ridge Alignment from further federal review. That FERC decision will likely not preclude PCGP from filing an application to amend its certificate to include the Blue Ridge Alignment.
>
> In any event, as has been exhaustively discussed in this and previous proceedings, no local criterion requires a pre-approval by FERC in order for the County to approve the Application.

The Board finds that Pacific Connector is correct that the DEIS is only a draft at this point, and could change as the result of public comments. Moreover, there are no approval criteria that relate to the issue raised. This issue provides no basis for a denial.

Ms. Moro continues to advance the argument that the extensions create a burden on affected property owners, and effectively asks the Board to weigh these detriments against any benefits an extension provides to Pacific Connector as the applicant. *See* Tonia Moro's Hearings Memorandum at p. 8. The criteria do not call for this type of balancing, however.

Ms. Moro states, without citation to any authority, that granting an extension violates the "constitutional rights" of affected landowners because the permit "causes a nuisance, condemnation blight and/or regulatory invasion that has devalued and substantially interferes with their right of possession, use, and enjoyment of the property." *See* Tonia Moro's Hearings Memorandum at p. 8. This argument is not developed sufficiently to give fair notice of the issue raised. To the extent that her clients have a cause of action against the County or Pacific Connector, this is not the proper forum to raise those legal issues.

Ms. Moro and other opponents contend that Pacific Connector must demonstrate that it can cure the "reasons" that prevented implementing the permit within the new 12-month extension period, LUBA has rejected this reading of the code in *Williams*:

> "Finally, we reject petitioners' argument that LDO 5.2.600.1(b)(iii) requires an applicant to demonstrate that the 'reason' can be 'cured' within the extension period. Nothing in the express language of that provision, or any other provision of LDO 5.2.600 cited by petitioners, supports that interpretation."

Williams, __ Or LUBA at __ (slip op. at 9).

4. The Board's Decision at Issue Will Constitute a Land Use Decision.

CCZLDO § 5.2.600.1.a.(3) provides as follows:

> ***(3) Approval of an extension granted under this rule is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.***

Notwithstanding the language in this subsection, at Pacific Connector's request, the County has processed this request pursuant to the County's Type II procedures. The Board finds that this process has provided greater public notice and an opportunity for public comment (including a hearing and extended open record periods) before the final decision was made than would have occurred if the County followed the process under this subsection. Further, the Board finds that the County's decision is a final land use decision, and appeal of that decision will be as determined by Oregon law, not this code section.

5. The Criteria Governing the CUP Have Not Changed.

CCZLDO § 5.2.600.1.a.(4) provides as follows:

> ***Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.***

This request is Pacific Connector's third request for an extension of the original approval. As a result, the County must find that, for that portion of the alignment located on resource land, "applicable criteria for the decision have not changed." CCZLDO 5.2.600.1.a.(4). As explained at page 11 of the Planning Director's May 24, 2019 staff report in this matter, the applicable criteria for the decision have not changed:

> None of the *applicable criteria for the decision* have changed since the last extension was granted in February 2018. The emphasis in this case is on "applicable criteria for the decision".
>
> The following were identified as the criteria that were applicable to the Farm and Forest Zone. Remember that OAR 660 Division 33 only covers Agricultural Lands and some Forest (Mixed Use) Lands: *LDO § 4.8.300(F) New distribution lines with rights-of way 50-feet or less in width LDO § 4.8.400 Review Criteria for Conditional Uses in § 4.8.300 and § 4.8.350 LDO § 4.8.600 Mandatory Siting Standards Required for Dwellings and Structures in the Forest Zone. LDO § 4.8.700 Fire Siting and Safety Standards LDO § 4.8.750 Development Standards LDO § 4.9.450(C) Additional Hearings Body Conditional Use and Review Criteria LDO § 4.9.600 Siting Standards for Dwellings and Structures in EFU LDO § 4.9.700 Development Standards.* Since the approval was received the criteria was renumbered and reformatted but all of the standards remain the same. Therefore, the "applicable" criteria still remain "applicable" for the purposes of an extension subject to OAR 660-033-0140.

Therefore, staff found that the applicable criteria have not changed. In its application narrative, Pacific Connector correctly states:

> The approval criteria applicable to a conditional use permit to construct this segment of the Pipeline have not changed since the County issued the Approval on October 21, 2014. In a recent decision recommending an extension of the Brunschmid/Stock Slough Alignment of the Pipeline, the County's Hearings Officer agreed with this conclusion and adopted detailed findings regarding same. *See* Exhibit 8 at 28-33. On October 24, 2018, the County Board of Commissioners tentatively approved the Hearings Officer's recommendation, subject to minor changes to the decision (that do not alter the underlying conclusion on this issue) to be presented to the Board of Commissioners on November 20, 2018. Therefore, the approval criteria applicable to the Pipeline have not changed since the County issued the Approval. This criterion is satisfied.

Opponents contend that the "applicable criteria" for the CUP permit have changed. *See* Hearing Memorandum from Tonia Moro, received May 31, 2019. All of the opponents' arguments have previously been rejected and are simply a collateral attack on either or both of the previous Blue Ridge extension decisions issued in EXT 16-007 and EXT 17-015. LUBA also rejected the same arguments in *Williams v. Coos County,* __ Or LUBA __ (LUBA Nos. 2018-141/ 142, April 25, 2019), *aff'd without opinion,* 298 Or App 841 (2019).

In her Hearings Memorandum submitted on May 31, 2019, Ms. Moro argues that OAR 660-033-0140 "prohibits an additional one-year extension if the applicable criteria have changed," and that "there is no exemption from this directive simply because the county does not want to apply them." The Board agrees with this argument, as far as it goes. However. OAR 660-033-0140 is not directly applicable to this case. *See Byrd v. Stringer*, 295 Or 311, 666 P2d 1332 (1983) (land use decisions made by local jurisdictions with acknowledged comprehensive plans and land use regulations are not reviewable for compliance with the Statewide Planning Goals and their implementing rules). *See also Gould v. Deschutes County*, 67 Or LUBA 1 (2013) (fact that local jurisdiction had acknowledged land use regulation that slightly differed from OAR 660-033-0140 did not make OAR 660-033-0140 directly applicable to the local land use decision). The Board notes that Mr. King and Mr. Pfeiffer were the attorneys of record for the party that prevailed on that issue in the *Gould* case.

Ms. Moro then goes on to state that "any attempt to grandfather in the pipeline is ultra vires and preempted by the rule." The county has authority to create - or not create - zoning criteria applicable to pipelines, subject only to the requirement that it must comply with applicable statutes set forth in Chapter 197 and 215, the Statewide Planning Goals, and applicable OARs adopted by LCDC. Ms. Moro seeks to have the Board deny the application for the extension but makes no attempt to explain why state law requires the County to create new "hazard" criteria that would be applicable to the pipeline. Ms. Moro mentions ORS 477.205 *et seq.*, but makes no effort to explain how that set of statutes compels the County to make zoning decisions consistent with those statutes. This issue is not developed sufficiently to enable review.

In her Hearings Memorandum submitted on May 31, 2019, Ms. Moro argues that since 2013, the following comprehensive map and code changes, among others, were adopted:

- ❖ CCZLDO §5.0.175, amended by County File AM 14-11 (Ord. 14-09-012PL dated January 20, 2015, effective April 20, 2015).

- ❖ Comprehensive Plan Vol 1, Part 1, §5.11 & Part 2, §3.9 Natural Hazard Maps, amended by County File AM-15-03 and County File AM-15-04 (Ord. 15-05-005PL, dated July 30, 2015, which had a delayed effective date of July 30, 2016 and was again delayed until July 30, 2017).[1]

- ❖ CCZLDO §4.11.125 (Special Development Considerations); CCZLDO §5.11.300(1)(Geologic Assessments), County File AM 16-01 (Ord. 17-04-004PL) dated May 2, 2017, effective July 31, 2017.

This appears to be a cut-and-paste argument lifted from a previous appeal. Nonetheless, each of these three issues is addressed below.

Opponents contend that CCZLDO §5.0.175 constitutes an "applicable criteri[on]" that has changed; however, this contention lacks merit because this provision is a submittal requirement, not an approval criterion. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004); *Frewing v. City of Tigard*, 59 Or LUBA 23 (2008); *Stewart v. City of Salem*, 58 Or LUBA 605 (2008). The term "criteria" is intended to be a term of art: it is a regulatory standard that can form the basis of a denial of a permit. Ms. Moro is correct that the Board has previously ruled that the signature requirement set forth at CCZLDO §5.0.150 is an approval standard because the failure to have signatures could form the basis of denial of an application. That does not make CCZLDO §5.0.175 an approval standard, particularly when it exists as an alternative to CCZLDO §5.0.150.

CCZLDO §5.0.175 is entitled "Application Made by Transportation Agencies, Utilities or Entities." It allows transportation agencies, utilities, or entities with the private right of property acquisition pursuant to ORS Chapter 35 to apply for a permit without landowner consent, subject to following certain procedural steps; provided, however, the approvals do not become effective until the entity either obtains landowner consent or property rights necessary to develop the property. As discussed above, CCZLDO §5.0.175 is an alternative to the traditional requirement that an application must include the landowner's signature. CCZLDO §5.0.150. As such, even if CCZLDO §5.0.175 could be an application requirement, it is not necessarily "applicable" because an applicant could always opt to file its application pursuant to CCZLDO §5.0.150 rather than CCZLDO §5.0.175. For the same reason, CCZLDO 5.0.175 is not mandatory in nature. As such, it is not properly construed to be a "criteri[on]."

[1] County Ordinance No. 15-05-005PL—which adopted amendments to the Coos County Comprehensive Plan (CCCP) pertaining to natural hazards— had an original effective date of July 30, 2016. However, on July 19, 2016, prior to the effective date of Ordinance No. 15-05-005PL, the board "deferred" the effective date of Ordinance No. 15-05-005PL to August 16, 2017.

In 2015, the County amended its comprehensive plan and land use regulations to adopt provisions pertaining to natural hazards, but the County has previously determined that these provisions are not "applicable criteria for the decision." *See* Findings of Fact, Conclusions of Law, and Final Decision of the Coos County Board of Commissioners for AP-17-004 ("2017 Extension Decision") at pp.17-23. With regard to the comprehensive plan provisions, the Board previously determined that they were not "approval criteria" for a Pipeline permit. *Id.* Raising this issue in this extension decision may not be a collateral attack on the previous 2017 Extension Decision because that case dealt with a different segment of pipeline. Even so, there is no reason for the hearing officer to deviate from the Board's prior decision, and the Board adopts its findings from the 2017 Extension Decision herein in support of its conclusion that the natural hazard provisions are not "applicable criteria for the decision." The collateral attack doctrine can be invoked with regard to either or both of previous Blue Ridge extension decisions issued in EXT 16-007 and EXT 17-015, because this issue could have been raised in those cases.

Ms. Moro argues that "the doctrine of collateral attack does not apply for several reasons, including that the affected landowner's appellants have not been a party to the [previous] extension proceedings." *See* Hearings Memorandum at p. 9. However, the "new party" argument applies only to issue preclusion, not collateral attack. *Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 103, 862 P2d 1293 (1993). Neither Ms. Moro nor any other party makes any attempt to explain why issue preclusion would apply instead of collateral attack doctrine. Unfortunately, neither LUBA or the courts have done a good job explaining when the issue preclusion test is applied and when the collateral attack doctrine is applied.

Under the collateral attack doctrine, a local government cannot deny a land use application based on (1) issues that were conclusively resolved in a prior related discretionary land use decision, or (2) issues that could have, but were not, raised and resolved in an earlier related land use proceeding. *Safeway, Inc. City of North Bend*, 47 Or LUBA 489, 500 (2004). In *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282, *aff'd* 195 Or App 763, 100 P3d 218 (2004), LUBA described the doctrine as merely representing the "unexceptional principle that assignments of error that collaterally attack a decision other than the decision on appeal do not provide a basis for reversal or remand." *See also Robson v. City of La Grande*, 40 Or LUBA 250, 254 (2001)(same). In this case, the very same arguments related to natural hazards could have been raised in EXT 16-007 and EXT-17-015.

Ms. Moro argues that the collateral attack doctrine violates ORS 197.005 as well as Statewide Planning Goals 1 and 2. Ms. Moro cites no authority for this argument, nor does she develop the argument sufficiently to enable the Board to understand the basis for her argument. The Board finds that Ms. Moro simply expresses a policy disagreement with the County's extension criteria.

Even if the Board were to reach the merits, the opponents do not identify any errors in staff's determination. The Board has provided guidance to the parties in other extension cases, and these issues were even raised unsuccessfully to LUBA. Therefore, there is no basis for the Board to reach a different conclusion about the comprehensive plan natural hazard provisions in the present case.

For example, in the 2017 Extension Decision in AP-17-004, the Board also concluded that the CCCP and CCZLDO §4.11.125(7) natural hazard provisions are not approval criteria that would apply to the Pipeline "decision" because the CCZLDO includes a "grandfather" clause that exempts the Pipeline from compliance with these provisions: "Hazard review shall not be considered applicable to any application that has received approval and [is] requesting an extension to that approval * * *." CCZLDO §4.11.125(7). *See* Findings of Fact, Conclusions of Law, and Final Decision of the Coos County Board of Commissioners for AP-17-004, at p. 21. Even if the collateral attack doctrine does not apply in this proceeding, the Board sees no reason to deviate from its earlier findings on the issue. More importantly, pursuant to CCZLDO §4.11.125(7), the natural hazard provisions are not "applicable approval criteria" that have changed.

In her Hearings Memorandum submitted on May 31, 2019, Moro attempts to re-litigate issues related to CCZLDO §4.11.125(7) natural hazard provisions were raised and decided in 2017 Extension Decision for other sections of the pipeline. *Compare* Hearings Memorandum, at p. 9, with File No. EXT-17-005/ AP-17-004, Final Ord. No. 17-11-046PL Dec. 19, 2017 at pp. 17-23. Pacific Connector argues that opponents' contention constitutes a "collateral attack" on the previous Board decision:

> Notwithstanding the Board's careful consideration and resolution of the FERC denial issue in the 2017 Extension Decision, opponents nevertheless attempt to resurrect it in the current proceedings. The Hearings Officer should deny opponents' attempt to do so for two reasons. First, opponents' actions is a blatant and impermissible collateral attack on the 2017 Extension Decision.[2] *See Noble Built Homes, LLC v. City of Silverton*, 60 Or LUBA 460, 468 (2010) (a party "cannot, in an appeal of one [local land use decision], collaterally attack a different final [local] land use decision."). Although opponents attempt to frame the question as one of issue preclusion (not collateral attack), they are mistaken. There is simply no authority—and opponents do not cite to any—that permits someone to utilize one land use proceeding to challenge a previous, final, unappealed land use decision.

As mentioned above, the opponents' arguments pertaining to CCZLDO §4.11.125(7) are at the very least a "collateral attack" on the decisions issued in EXT 16-007 and EXT-17-015, because the very same arguments related to natural hazards *could have been raised* in those proceedings. Even so, the argument fails on the merits for the same reasons that are set forth in the 2017 Extension Decision, that portion of which is adopted herein by reference. *See* Final Ord. No. 17-11-046PL Dec. 19, 2017 at pp. 17-23.

Finally, although Ms. Moro contends that the County's amendments to CCZLDO Article 5.11, Geologic Assessment Reports, constitute changed criteria, the Board has previously denied this

[2] *See* Findings of Fact, Conclusions of Law, and Final Decision of the Coos County Board of Commissioners for AP-17-004, dated December 19, 2017.

contention based upon the plain text and context of the CCZLDO. See Final Decision and Order No. 18-11-073PL for County File No. AP-18-002, Nov. 20, 2018, at 32. The Board incorporates that reasoning herein by reference. LUBA affirmed the Board's findings on this issue:

> As noted above, in 2017, the county adopted amendments to the LDO to add LDO Article 5.11, Geologic Assessment Reports. LDO 5.11.300.1 provides in relevant part that "the review and approval of a conditional use in a Geologic Hazard Special Development Consideration area shall be based on the conformance of the proposed development plans with the following standards. * * * ." The remainder of LDO 5 .11.300 contains the requirements for the contents of a geologic assessment, and additional standards for oceanfront development not relevant here. We understand petitioners to argue that LDO 5 .11.3 00 is a new criterion that applies to the 2010 CUP and the 2013 CUP and accordingly, the extensions are prohibited pursuant to LDO 5.2.600.l(c).
>
> Relying on context provided in LDO 4.11.125.7, the board of commissioners interpreted LDO 5 .11.100 to .3 00 to apply only when a landowner proposes to build a "structure" in a Geologic Hazard Special Development Consideration area, and concluded that the 2010 CUP and 2013 CUP do not authorize a structure. [Footnote 2 omitted.] Petitioners argue that the board of county commissioners improperly construed LDO 5.11.300 to only apply when a landowner proposes to build a structure.
>
> Intervenor responds that, based on context provided in LDO 4.11.125. 7 .b., d., and e., the board of commissioners properly construed LDO 5.11.300 as applying only when a landowner proposes to build a "structure" in a Geologic 2 Hazard Special Development Consideration area. Those provisions state generally that the county may allow construction of "new structures" in known areas potentially subject to landslides, earthquakes, and erosion, "subject to a geologic assessment review as set out in Article 5.11." LDO 4.11.125.7.b., d., and e. Absent any developed argument by petitioners as to why we are not required to affirm the board of county commissioners' interpretation under ORS 197.829(1)(a), we agree with intervenor that the board of county commissioners' interpretation is not inconsistent with the express language of LDO 5.11.300 or 10 LDO 4.11.125.7.

Williams, __ Or LUBA at __ (slip op. at 13-15). Opponents do not offer any justification for the Board to reach a different conclusion on this issue in the present case. The Board denies the opponents' contention on this issue.

6. The Extension Does Not Seek Approval of Residential Development.

CCZLDO § 5.2.600.1.a.(5) & (6) provide as follows:

> ***(5) (a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.***
> ***(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.***
> ***(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).***

The original approval did not authorize any residential development on agricultural or forest land outside of an urban growth boundary. The Board finds that these provisions are not applicable.

7. The Code Allowed for Multiple Extensions.

CCZLDO § 5.2.600.1.a.(7) provides as follows:

> ***(7) There are no limit on the number of extensions that can be applied for unless this ordinance otherwise allows.***

This provision provides express authority for the County to grant multiple extensions of the original approval.

C. The Applicant Complies with the Two-Year Extension Limitation for Non-Resource Zone Criteria

CCZLDO § 5.2.600.1.b. provides as follows:

> ***b. On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:***
> ***(1) All conditional uses for residential development including overlays shall not expire once they have received approval.***
> ***(2) All conditional uses for non residential development including overlays shall be valid for period of four (4) years from the date of final approval.***
> ***(3) Extension Requests:***
> ***a. For all conditional uses subject to an expiration date of four (4) years are eligible for extensions so long as the property has not been:***
> ***i. Reconfigured through a property line adjustment or land division; and***
> ***ii. Rezoned to another zoning district.***
> ***(4) An extension shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.***
> ***(5) An extension shall be received prior the expiration date of the conditional use or the prior extension.***

Pacific Connector proposes only a one-year extension due to the fact that the pipeline is located partially on EFU and Forest zoned land. The pipeline is still listed as a conditional or permitted use in all of the CBEMP zones which it traverses. The pipeline is still listed as a conditional or permitted use in rural residential zones.

The original approval does not involve property that has been reconfigured through a property line adjustment or land division nor does it involve property that has been rezoned since the date the County granted the original approval. Therefore, the original approval is eligible for an extension.

Pacific Connector has included a completed and signed County extension application form and the required $561.00 fee with this request. The County received the extension request on November 9, 2018, which was before the expiration of the approval period. Therefore, the application meets the requirements of this provision.

Ms. Moro argues that CCZLDO 5.2.600.2(2018) is "beyond the scope of the County's authority." *See* Hearings Memorandum at p. 11. This provision states:

> ***2.Changes or amendments to areas subject to natural hazards[2] do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level risk as established by Coos County.***

Ms. Moro argues:

> "[CCZLDO 5.2.600(2)(2018)] is an attempt to avoid the application of the 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."

Ms. Moro's argument is conclusory in nature, and appears to reflect a policy disagreement, as opposed to making an argument based on applicable law. Ms. Moro makes no attempt to support the argument in any manner. If there is a legal deficiency with CCZLDO 5.2.600(2)(2018), Ms. Moro makes no effort to explain the legal basis for that assertion. The issue is simply not raised with sufficient specificity to give fair notice of the nature of the problem. For this reason, the argument is rejected.

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[2] Natural hazards are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

This criterion is met.

D. Other Issues Raised by Opponents.

1. No Current Private Right of Condemnation / No signatures of Owners.

LDO 5.0.150(1) provides that an application for a permit "shall include the signature of all owners of the property." This is not an approval criterion for an extension.

Opponents argue that LDO 5.0.175 is a new "approval criteri[on]" within the meaning of LDO 5.2.600(1)(a)(4), and that it applies to the 2014 CUP for Blue Ridge. In *Williams v. Coos County,* __ Or LUBA __ (LUBA No. 2018-141/ 142, April 25, 2019), LUBA rejected that argument. LUBA stated as follows:

> LDO 5.0.175 took effect in 2015. LDO 5.0.175(1) provides that for an application for a permit "[a] transportation agency, utility company or entity with the private right of property acquisition pursuant to ORS Chapter 35 may submit an application to the Planning Department for a permit or zoning authorization required for a project without landowner consent otherwise required by this ordinance." Differently, LDO 5.0.150(1) provides that an application for a permit "shall include the signature of all owners of the property." Petitioners argue that LDO 5.0.175 is a new "approval criteri[on]" within the meaning of LDO 5.2.600.1(c), and that it applies to the 2010 CUP and the 2013 CUP.
>
> The board of commissioners adopted findings that LDO 5.0.175 is not an "approval criteri[on]" but rather is an application submittal requirement. The board of commissioners also adopted alternative findings that even if LDO 5.0.175 is an "approval criterion," it is not "applicable" to the 2010 CUP and the 2013 CUP, because it is an optional provision that allows certain entities to choose to apply for a permit without landowner consent. Petitioners argue that in its decision approving the 2010 CUP, the county concluded that LDO 5.0.150 is an "approval criterion," and accordingly, the county must also conclude that LDO 5.0.175 is an approval criterion, and not merely a submittal requirement.
> As intervenor points out, petitioners' argument does not address the board of commissioners' alternative finding that, even if LDO 5.0.175 could constitute an "approval criterion," it is not an "applicable" approval criterion within the meaning of LDO 5.2.600.1(c) because it merely provides an alternative, optional pathway for certain entities to apply for a permit. We agree with intervenor that absent any challenge to that finding, petitioners' argument provides no basis for reversal or remand.

The opponents also argue that Pacific Connector cannot seek an extension of the CUP because they currently do not have the authority under state or federal law to exercise the private right of condemnation. The opponents base their argument on the fact that Pacific Connector's right of condemnation stems from federal law and is premised on the acquisition of a Certificate of Public Convenience and Necessity. They argue that since Pacific Connector lost its certificate, it may no longer file land use applications. *See* Hearing Memorandum from Ms. Tonia Moro received May 31, 2019, at p. 11.

While Pacific Connector is correct regarding the relevance of the argument to the approval criteria, that point could in itself be irrelevant if the issue is one that affects the jurisdiction of the county to hear an extension request. It certainly makes sense that the same jurisdictional requirements that apply to the initial CUP decision would apply to extension requests as well. Stated another way, jurisdictional requirements for filing an application also apply, implicitly, to the filing of an extension. No party raises this issue, however.

As noted in previous cases, the County has previously determined that the owner signature requirement for filing a land use application is not jurisdictional. *See* Findings of Fact, Conclusions of Law, and Final Decision of the Board of Commissioners dated Sept. 8, 2010, at p. 15-17. Pacific Connector is in the process of applying for a Certificate of Public Convenience and Necessity from FERC. The fact that such a Certificate was previously issued to Pacific Connector is at least indicative that it is plausible for another Certificate to be issued to Pacific Connector in the future. In other words, Pacific Connector is not precluded as a matter of law from obtaining FERC permits. Although FERC denied the previous application, it did so for reasons that can be remedied by obtaining foreign or domestic contracts for the purchase of natural gas. The initial land use decision on the pipeline matter was conditioned to require Pacific Connector to obtain landowner signatures. Pacific Connector will need to obtain a FERC Certificate in order to effectuate that condition.

Moreover, whatever the merits of this argument, this issue could have been raised in either of the two other land use applications that resulted in permit extensions in EXT 16-007 and EXT 17-015. The issue is not jurisdictional, and therefore the issue can be, and has been, waived.

For these reasons, the Board does not agree with the opponent's understanding of CCZLDO 5.0.150 or CCZLDO 5.0.175.

2. The Tort Claim Notice Is Not Relevant

County Exhibit 6 sets forth a Notice of Tort Claim from Cary Norman, which alleges that the County's approval and continued extension of the pipeline permit interferes with the use and enjoyment of the Norman property. The notice alleges potential claims, including inverse condemnation, intentional deprivation of civil rights, and intentional emotional distress.

As Pacific Connector notes, the issues raised in the Notice of Tort Claim are not directed at any of the approval criteria applicable to the application but instead pertain to potential future litigation. Therefore, this is not the appropriate forum to address the substance of the Notice of Tort Claim. Further, because it is not directed at any approval criteria, it does not provide a basis to deny or condition the application.

3. Allegations of Bias

In her letter dated May 31, 2019, Ms. Natalie Ranker challenges the Hearings Officer for bias. She suggests that the fact that the Hearings Officer is compensated by the County for JCEP / Pacific Connector decisions in what she suspects is a "highly lucrative" manner, and that such compensation may lend itself to the possibility of "continued judgments in favor of JCEP." The argument apparently is that approving, as opposed to denying, JCEP permits, leads to more financial compensation for the Hearings Officer. Before the Board deliberated, Larry and Sylvia Mangan raised the same contention. The Board finds that this contention is misplaced for several reasons.

First, the Board finds that Ms. Ranker's contention is baseless because it is premised upon multiple layers of speculation, including that the Hearings Officer's work for the County is "highly lucrative" and that the degree to which it is so somehow turns on whether his recommendations are favorable to Pacific Connector. The Board finds that there is no evidence to support these layers of speculation and thus there is no credibility to this contention. For example, even Mr. and Mrs. Mangan's letter states that they cannot make a "specific assertion," identify any "specific legal conflict of interest," or provide a "specific example" of bias. Therefore, there is no reasonable basis to conclude that the Hearings Officer is biased in favor of Pacific Connector.

Second, the Board finds that, under Oregon law, the Hearings Officer's role is merely to provide a recommendation to the Board, and that is what he has done. The Hearings Officer is not a final decision-maker; it is the Board that makes the final decision. As a result, to constitute error, the bias by the Hearings Officer would have to be of a nature that taints the proceedings before the board, or the Board itself. See *Oregon Shores Conservation Coalition et al. v. Coos County*, 76 Or LUBA 346 (2017) ("Moreover, even if we concluded that the hearings officer was biased, JCEP is correct that the hearings officer was not the final county decision-maker. McCaffree offers no argument as to why the hearings officer's alleged bias tainted the proceedings before, or the decision of, the board of commissioners, the final decision-maker."). The Board has had no contact with the Hearings Officer and, in fact, has disregarded and revised several of his recommendations. The Board finds that the Hearings Officer has not tainted the Board in this matter and thus, even if bias existed, the Board's independent review and decision have cured such bias. The Board denies Ms. Ranker's contention on this issue.

At the August 7, 2019 Board deliberation hearing, the Board was provided an opportunity to disclose any ex parte contacts as described in ORS 215.422 and 197.835(12), conflicts of interest as described in ORS 244.120, and any actual bias regarding the application. *1000 Friends of Oregon v. Wasco County Court,* 304 Or 76, 747 P2d 39 (1987). Board members made disclosures.

Natalie Ranker, Larry and Sylvia Mangan (via written testimony), and Jody McCaffree contended that Commissioner Sweet was biased and should not participate in the deliberations or decision for the Application. The Board finds that most of these allegations were previously raised and rejected by the Board in a land use proceeding involving a related land use development proposed by Jordan Cove Energy Project L.P. ("JCEP") (County File Nos. HBCU-15-05 / CD-15-152 / FP-15-09, August 30, 2016 and AP-18-18-002 November 20, 2018). Opponents then raised these issues on appeal to LUBA:

> "McCaffree alleges that Chair Sweet was biased in favor of the proposed LNG terminal. According to McCaffree, on April 22, 2016, Chair Sweet sent a letter, on county letterhead, to FERC expressing support for the Jordan Cove LNG terminal and Pacific Connector Pipeline Project applications then pending before FERC. Supplemental Record 527. In addition, McCaffree quotes Chair Sweet as making public statements in support of the Jordan Cove project. *Id.* at 529-30. McCaffree contends that the letter and statements demonstrate that Chair Sweet was incapable of deciding the land use application pending before the county with the requisite impartiality."

Oregon Shores Conservation Coalition v. Coos County, 76 Or LUBA 346, 369-370 (2017). After discussing the high bar for disqualifying bias in local land use proceedings, LUBA denied McCaffree's assignment of error and concluded that then-Chair Sweet was not actually biased:

> "We disagree with McCaffree that Chair Sweet's April 11, 2016 letter, or his public statements, demonstrate that Chair Sweet was incapable of determining the merits of the land use application based on the evidence and arguments presented.
>
> * * * *
>
> "As far as McCaffree has established, Chair Sweet's statements of support of the LNG terminal represent no more than the general appreciation of the benefits of local economic development that is common among local government officials. Those statements fall far short of demonstrating that Chair Sweet was not able to make a decision on the land use application based on the evidence and arguments of the parties."

Oregon Shores Conservation Coalition, 76 Or LUBA at 370-71. The Court of Appeals affirmed LUBA's decision on this issue. *Oregon Shores Conservation Coalition v. Coos County*, 291 Or App 251, 416 P3d 1110 (2018). The Supreme Court denied review on this issue. *Oregon Shores Conservation Coalition v. Coos County*, 363 Or 481, 291 Or App 251 (2018). The Board finds that none of the challengers explain why a different outcome is warranted in the present case.

The Board denies the current contentions as follows:

Agreement between Pacific Connector and County: The Board denies the contention that the Board members were biased due to a 2007 agreement between Pacific Connector and the County pursuant to which Pacific Connector pays the County $25,000 a month. The challengers did not adequately explain the terms of the agreement, how they were related to the specific matter pending before the Board, or how the existence of the agreement would cause any of the Board members to prejudge the Application. As a result, the Board finds that the facts alleged by Ms. McCaffree are not sufficient to establish disqualifying actual bias by any Board members.

Reports of JCEP Funding for County Sheriff's Office: For three reasons, the Board denies the contention that the Board members were biased due to funding by JCEP for the County Sheriff's Office. First, JCEP is not the applicant in this case, so even if there were bias in favor of JCEP, it would not necessarily be bias in favor of Pacific Connector. Second, challengers have not adequately explained how the existence of this funding would cause any Board members to prejudge the Application (which is not related to funding of the Sheriff's Office), and they have not identified any "statements, pledges or commitments" from any Board members that the existence of the funding has caused them to prejudge the Application. Third, the Sheriff's Office funding is not contingent upon approval of the Application. Therefore, the challengers have not demonstrated that any Board member demonstrated "actual bias" due to this funding.

Letter from Commissioner Sweet to FERC: The Board denies Ms. McCaffree's contention that Commissioner Sweet was biased due to a letter he wrote to FERC in support of the project in April 2016. Ms. McCaffree did not adequately explain the content of the letter, or how it related to the specific matter pending before the Board. Additionally, the Board finds that, even if the facts alleged by Ms. McCaffree are correct and Commissioner Sweet did express general support for the project in the letter to FERC, the requests pending before FERC are not of the same nature as the applications at issue in this proceeding. In other words, the letter does not demonstrate that Commissioner Sweet has prejudged the specific applications pending before the County or that he is unable to objectively apply the County's approval criteria to the Application. Finally, the Board notes that LUBA, the Court of Appeals, and the Supreme Court all previously concluded that the statements in question simply reflected a generalized support for economic development in the community. As a result, the Board finds that the facts alleged by Ms. McCaffree are not sufficient to establish disqualifying actual bias by Commissioner Sweet.

Statements Made by Commissioners in 2014 and 2015: The Board denies the contention that Commissioners Sweet and Cribbins were biased due to statements they made to the media about the project in 2014 and 2015. The facts alleged by the challengers are not supported by substantial evidence because they did not provide enough details about the statements such as their substance, their timing, or their context, or how they demonstrate prejudgment by the Board members. Further, the Board finds that all of these statements appear to predate the filing of the Application and thus they could not relate to the specific matter pending before the Board. Finally, the Board notes that LUBA, the Court of Appeals, and the Supreme Court all previously concluded that the statements in question simply reflected a generalized support for economic development in the community. The Board finds that the facts alleged by the challengers are not sufficient to establish disqualifying actual bias by any Board members.

Private Meetings Between Pacific Connector and Board Members: The Board denies Ms. McCaffree's contention that Board members were biased due to their attendance at private meetings with Pacific Connector. The facts alleged by Ms. McCaffree are not supported by substantial evidence because she did not provide any details about the meetings such as when and where they occurred, what was discussed, how they related to the matter pending before the Board, or how they would cause the Board members to prejudge the Application. As a result, the Board finds that Ms. McCaffree has not alleged facts sufficient to establish disqualifying actual bias arising from the alleged meetings.

Trip to Colorado: The Board denies the contention that Commissioner Sweet's trip to Colorado in September 2018 caused him to be actually biased in the matter. The record reflects that, on the trip, Commissioner Sweet learned more about the natural gas market and met with elected officials. Challengers did not present any evidence that tied the trip to Pacific Connector or the specific matter pending before the Board. Challengers also did not identify with specificity why the existence of the trip caused Commissioner Sweet to be biased.

Campaign Contribution by JCEP to Commissioner Sweet: The Board denies the contention that a cash contribution by JCEP to Commissioner Sweet's campaign caused him to be biased. Commissioner Sweet acknowledged the campaign contribution on the record. The challengers did not explain why this disclosure was inadequate or what bearing the existence of the contribution has on the ability of Commissioner Sweet to render an unbiased decision. Under similar circumstances, LUBA rejected a bias claim. *Crook v. Curry County*, 38 Or LUBA 677, 690 n 17 (2000) (mere existence of campaign contribution by a party to a decision-maker does not cause the decision-maker to be biased).

Ms. Ranker echoed many of the circumstances identified by Ms. McCaffree, but she did not offer any additional evidence or legal authority to support these allegations. Additionally, Ms. Ranker contended that the Board acted strategically with its legislative text amendments in an effort to benefit Pacific Connector. She raised the following specific allegations:

1) The Board adopted language exempting existing permits seeking extensions from compliance with the provisions of CCZLDO Section 4.11.125 (Special Development Considerations) and CCZLDO Section 5.11.100-5.11.300 (Geologic Assessments) adopted by Ordinance 17-04-004PL dated May 2, 2017, effective July 31, 2017.
2) To benefit Pacific Connector, the Board amended CCZLDO Section 5.0.175 effective January 2015 part of AM-14-11 and Ordinance No. 14-09-012PL. This provision allows an applicant to seek such pipeline permits without a landowner's signature only when it has a right to condemnation.
3) More recently, the Board attempted to simplify and clarify permit extension criteria, allegedly without any review by the citizens advisory committee and without providing notice of the full extent of the changes to DLCD.
4) The Board has allegedly failed to amend the CBEMP for 45 years, again to the benefit of Pacific Connector.

The Board adopts the following findings in response to Ms. Ranker's contentions. The Board denies the first argument because the Board updated its hazards inventories and codes on a

voluntary basis. The Board held public hearings, accepted extensive public testimony on the amendments from the public, and made a decision based upon the relevant law. The amendments do not specifically exempt Pacific Connector from complying with the natural hazard provisions. Further, the provision in question actually benefits a whole variety of permit holders in the County. Therefore, the allegation is not supported by evidence.

The Board denies Ms. Ranker's second contention because this provision is not specific to pipelines, and there is no evidence that it was intended to, or actually does, currently benefit Pacific Connector.

The Board denies Ms. Ranker's third contention because LUBA recently reviewed this allegation and held that the County did not err with its review and notice procedures for the ordinance in question. *McCaffree v. Coos County*, __ Or LUBA __ (LUBA No. 2018-132, June 6, 2019) (slip op. at 9-14).

The Board denies Ms. Ranker's fourth contention because it is factually incorrect. First of all, the Coastal Goals (Statewide Planning Goals 16, 17 & 18) were not adopted by Land Conservation and Development Commission (LCDC) until June 15, 1977 (42 years ago) and the current addition of the Coos Bay Estuary Management Plan was acknowledged by LCDC and became effective for regulatory purposes on January 1, 1986 (33 years ago). There have been several amendments to the Coos Bay Estuary Management Plan especially in the mid to late 1990's at the time of periodic review. This statement is false and not supported by factual evidence.

Finally, before taking final action to approve these findings, Chair Sweet stated that he had not prejudged the Application and that he could evaluate the testimony and evidence in the record and make a decision based upon whether the testimony and evidence demonstrates compliance with applicable criteria.

No other challenges were made, and Board members participated in the deliberations and the decision.

III. CONCLUSION.

To summarize, this extension request concerns both resource and non-resource lands. Under the terms of the relevant criteria, CCZLDO § 5.2.600, there are two different standards for granting an extension. For granting an extension on ***resource lands***, Pacific Connector must show it was unable to begin construction for reasons out of its control. The Board finds that, despite Pacific Connector's diligent pursuit of the federal approvals required, those approvals have not yet been secured, and thus, Pacific Connector was unable to commence its development proposal before the expiration date for reasons beyond Pacific Connector's control.

For granting an extension on ***non-resource lands***, CCZLDO § 5.2.600 only requires that Pacific Connector show that none of the relevant approval criteria have changed since the development approval was given. Pacific Connector's use is still listed as a conditional use in the

relevant non-resource zones under the current zoning regulations, and thus the Board finds Pacific Connector meets this second criterion as well.

For these reasons, the Board finds and concludes that the applicant, Pacific Connector, has met the relevant the CCZLDO § 5.2.600 approval criteria for a CUP extension of one year, to November 11, 2019 (EXT-18-012). Accordingly, the Board denies the appeal and affirms the Planning Director's March 11, 2019 decision granting the one (1) year CUP in County File No. HBCU 14-06, to November 11, 2019 (EXT-18-012), subject to the conditions of approval set forth in Exhibit A to the Planning Director's decision.

Adopted this 20th day of August 2019.

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF AN APPEAL (AP-14-02) OF AN ADMINISTRATIVE CONDITIONAL USE (ACU-14-08) SUBMITTED BY PACIFIC CONNECTOR GAS PIPELINE, L.P.	FINAL DECISION AND ORDER NO. 14-09-063PL

WHEREAS, Pacific Connector Gas Pipeline, L.P. originally received a Conditional Use Permit approval for the Pacific Connector Gas Pipeline on September 8, 2010. Coos County Board of Commissioners, Final Decision and Order No. 10-08-045PL dated Sept. 8, 2010. The opponents appealed the original approval to LUBA (Order No. 10-08-045PL), and eventually prevailed on one substantive issue related to the potential impact to a species of native oysters.

WHEREAS, The County reviewed the case back on remand and conducted additional hearings to address the oyster issue. The County Board of Commissioners issued a final decision on remand on April 12, 2012, Order No. 12-03-018PL. No party appealed the 2012 decision, and, as a result, it constitutes a final decision in the matter.

WHEREAS, Pacific Connector Gas Pipeline, L.P. applied for an extension to the time limitation set forth in OAR 660-033-0140(1). The Planning Director's decision on this matter was issued on May 12, 2014. The decision was followed by an appeal (AP-14-02) filed on May 27, 2014 by Jody McCaffree.

WHEREAS, the Board of Commissioners invoked its authority under the Coos County Zoning and Land Development Ordinance (CZLDO) §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 July 11, 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 August 8, 2014.

Hearings Officer Stamp issued his Analysis, Conclusions and Recommendations to the Board of Commissioners to approve the application on September 19, 2014.

The Board of Commissioners held a public meeting to deliberate on the matter on September 30, 2014. The Board of Commissioners, all members being present and participating, unanimously voted to accept the Hearings Officer's recommended approval as it was presented.

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

COMMISSIONER COMMISSIONER COMMISSIONER

ATTEST:

Bobbi Brooks

Recording Secretary

APPROVED AS TO FORM:

Office of Legal Counsel

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION OF THE COOS COUNTY BOARD OF COMMISSIONERS

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
(APPEAL OF AN EXTENSION REQUEST)
COOS COUNTY, OREGON

FILE NO. ACU 14-08 / AP 14-02
OCTOBER 21, 2014

EXHIBIT A

I. Summary of Proposal and Process

A. Summary of Proposal, Issues to be Decided, And Recommendations.

Pacific Connector Gas Pipeline, L.P. ("PCGP" or "Pacific Connector") originally received a Conditional Use Permit ("CUP") approval for the Pacific Connector Gas Pipeline ("Pipeline") on September 8, 2010. Coos County Board of Commissioners, Final Decision and Order No. 10-08-045PL (Sept. 8, 2010) ("2010 Decision"). Opponents appealed the original approval to LUBA, and eventually prevailed on one substantive issue related to the potential impact to a species of native oysters. The County took the case back on remand and conducted additional hearings to address the oyster issue. The County Board of Commissioners ("Board") issued a final decision on remand on April 12, 2012. Order No. 12-03-018PL (the "2012 Decision"). No party appealed the 2012 decision, and, as a result, it constitutes a final decision on the CUP. The 2012 decision triggered the beginning of a "clock" for implementation of the permit.

The CUP approval contained a number of contingences, not the least of which was the need for PCGP to obtain federal approval from FERC. Apparently, the decision to change the LNG terminal from an import facility to an export facility caused FREC to vacate the "Certificate of Public Necessity and Convenience" that it had previously issued back in 2009. Pacific Connector filed a new application with FERC on May 21, 2013 seeking to construct a gas pipeline to serve the proposed LNG export terminal. Presumably, FERC will issue a new decision on that application sometime in the foreseeable future.

As the applicant notes on page 2 of its Application Narrative, the Ordinance contains a latent ambiguity that makes it unclear how long a conditional use permit remains valid. Depending on how the Ordinance is read, a CUP could remain valid for either two years or four years. Assuming the permit is valid for two years, the permit would expire on April 2, 2014 unless an extension request is made prior to that time.

The applicant requests a two-year extension. However, for reasons discussed in more detail below, this permit may be governed by OAR 660-033-0140, which generally limits individual extensions of land use approvals in EFU lands to one-year periods.

Working under that assumption, if Coos County grants a one-year extension of the CUP, PCGP would have until April 2, 2015 to begin construction on the pipeline.

Thus, this application concerns two rather narrow questions:

(1) Does the CUP remain valid for two years or four years?

(2) Should Coos County grant an extension of the land use approval for the Gas Pipeline project approved on April 2, 2012, and if so, is the extension good period valid for one year or two years.

The answer to the first question is rather complex. OAR 660-033-0140 appears to govern the time period for permits, or portions of permits, that are issued pursuant to county laws that implement ORS 215.275 and 215.283(1), among other listed statutes. Because a

portion of the pipeline is governed by ORS 215.275 and 215.283(1), it follows that at least that portion of the permit is subject to the 2-year time limitation set forth in OAR 660-033-0140(1).

However, with regard to the portions of the pipeline that are not subject to the statutes referenced in OAR 660-033-0140, it could be argued that the default four-year time period set forth in CCZLDO 5.0.700 governs. Nonetheless, in light of the fact that the parties do not argue one way or the other over this issue, the County uses a conservative approach and assumes that the entire permit is valid for only two years. This issue is discussed in more detail in the Section entitled "Legal Analysis," below.

Moving on to the second issue, CCZLDO 5.0.700 contains a set of criteria for evaluating requests for extensions. There are only three substantive approval criteria applicable to this application, as follows:

- An applicant must file an extension request before the permit expires. CCZLDO 5.0.700.A.

- There must have been no substantial changes in the land use pattern of the area or other circumstances sufficient to trigger the filing of a new conditional use permit application for the use. CCZLDO 5.0.700.B.i.

- The applicant must not have been able to begin or continue development during the approval period for reasons outside of the applicant's control. CCZLDO 5.0.700.B.ii.

For the reasons discussed in the Section entitled "Legal Analysis," the Board grants applicant a one-year extension.

The Board notes that the hearings officer identified a potential issue that may arise in the future as to whether the applicant can receive more than one time extension. As the hearings officer recognized, however, "*this case* does not currently raise the issue, so there is no pressing need to deal with this issue in this proceeding." Coos County Hearings Officer Analysis, Conclusions, and Recommendations to the Coos County Board of Commissioners, No. ACU 4-08 / AP 14-02 at 3 (Sept. 19, 2014) ("Hearings Officer Recommendation"). Accordingly, the Board need not, and therefore does not decide this issue at this time.

Similarly, the hearings officer's recommendation considered whether an extension decision under CCZLDO § 5.0700 is a land use decision under OAR 660-033-0140 and ORS 197.015. The Board finds, however, that the interplay of the local ordinance, state regulation, and state statute need not be determined as part of this case. County staff has indicated that the applicant requested that the County provide notice of the Planning Director's May 12, 2014 administrative decision in the same manner as an administrative conditional use to allow for citizen involvement in the same manner as a County land use decision. Accordingly, the County has evaluated the extension request as an administrative decision subject to appeal as a "land use decision," and has provided public notice and an opportunity for all parties to be heard in accordance with the County's local procedures for "Quasi-Judicial Land Use Hearings Procedures." CCZLDO § 5.7.300.

B. Process.

The review timeline for this application is as follows:

- March 7, 2014: Application submitted.
- May 12, 2014: Administrative decision issued.
- May 27, 2014: Jody McCaffree files Appeal.
- July 3, 2014: County Planning Director issued Staff report.
- July 11, 2014: Public hearing before the Hearings Officer.
- July 25, 2014: Second Open Record Period Closed (Rebuttal Testimony).
- August 1, 2014: Third Open Record Period Closed (Surrebuttal Testimony).
- August 8, 2014: Applicant's Final Argument.
- September 19, 2014: Hearings Officer Recommendation issued.
- September 30, 2014: Board of Commissioners Deliberation and Tentative Decision by Board of Commissioners.
- October 21, 2014: Adoption of Final Decision by Board of Commissioners.

C. Scope of Review.

This case presents primarily an issue of law: are there sufficient circumstances present to trigger the need for the applicant to file a new conditional use permit application? In this regard, the facts presented by the parties do not appear to be in significant conflict. However, the parties disagree about the legal ramifications that stem from the substantially undisputed facts. The Board's task is to interpret the Ordinance and determine whether the circumstances presented by this case rise to the level which justify requiring the applicant to submit a new application.

The Board of Commissioners has reviewed the Hearings Officer Recommendation, recognizing that it does not have to accept the legal or factual conclusions of the hearings officer. The Board has the authority to modify or overturn the hearings officer's recommended interpretations and reach different legal conclusions. While the Board's findings and conclusions herein generally parallel the Hearings Officer Recommendation, the findings, conclusions, and ultimate decision are the Board's own.

D. Summary of LUBA's Holding in *McCaffree v. Coos County*.

A few of the key issues raised by Ms. Jody McCaffree and other opponents have now been resolved by LUBA. For this reason, the Board will endeavor to summarize the key holdings from this case.

In *McCaffree v. Coos County*, __ Or LUBA __ (LUBA No. 2014-022 - July 14, 2014), Ms. McCaffree argued, without support in the language of the Coos County code, that the pipeline application is inconsistent with Coos Bay Estuary Management Plan ("CBEMP") Policy 5 ("Estuarine Fill and Removal"). However, LUBA disagreed with Ms. McCaffree and her co-petitioners. Specifically, LUBA denied petitioners' contention that CBEMP Policy 5 would apply to an application that proposed to remove a prohibition on exporting LNG. *McCaffree*, __ Or LUBA at __ (slip op. at 6-7). LUBA reached this conclusion for two reasons. First, LUBA concluded that petitioners' assertions constituted a collateral attack on the County's final decision approving the original conditional use permit. *Id.* Second, LUBA concluded that petitioners did not explain how CBEMP Policy 5 applied to an application to modify a condition "where no ground disturbing activity of any kind is proposed beyond the

ground-disturbing activity that was authorized in the 2010 decision." LUBA's analysis would similarly apply to this case.

Next, Ms. McCaffree argued that the pipeline application is inconsistent with CBEMP Policy 5a ("Temporary Alterations"). LUBA denied a similar contention in *McCaffree*. Specifically, LUBA denied petitioners' contention that CBEMP Policy 5a would apply to an application that proposed to remove a prohibition on exporting LNG. *McCaffree*, __ Or LUBA at __ (slip op. at 8). LUBA reasoned that CBEMP Policy 5a was not applicable because that application did not propose a "temporary alteration" of the estuary. *Id.*

Finally, LUBA denied Ms. McCaffree's argument that the modification of Condition 25 to allow use of the Pipeline for the export of gas converts the Pipeline into a gas "transmission" line that is not allowed in the Forest zone. Specifically, LUBA held that the plain text of the applicable administrative rule did not support the conclusion that the Land Conservation and Development Commission ("LCDC") intended to regulate utility lines based upon the direction that the resource flowed:

> There is nothing in the text of OAR 660-006-0025(4)(q) that suggests that LCDC was concerned with the direction that gas (or oil or geothermal resources for that matter) flows when in the pipeline, or that LCDC intended to allow or prohibit lines that carry gas, oil, geothermal, telephone, fiber optic cable depending on the identity of the end user or the direction that the resources flow when in the lines. Simply because LNG is no longer prohibited from flowing from the pipeline into the terminal does not mean that the pipeline is something other than a "new distribution line * * *."

McCaffree, __ Or LUBA at __ (slip op. at 10). Additionally, LUBA pointed out that the administrative rule's history did not indicate any intent on the part of LCDC to prohibit gas "transmission" lines. *McCaffree*, __ Or LUBA at __ (slip op. at 10-11). In addition to its own assessment of the LCDC rule, the Board relies on LUBA's analysis in *McCaffree* as support for its denial of Ms. McCaffree's contentions on the "transmission line" issue in this case.

In her testimony in this matter, Ms. McCaffree does absolutely nothing to explain why, in light of *McCaffree* and previous approvals for the pipeline, the Board should reach a different conclusion on any of these issues at this time. Therefore, the Board proceeds in this case under the assumption that the issues raised in the LUBA appeal are now settled.

E. <u>Procedural Issue: Contents of Record.</u>

In a letter dated July 11, 2014, Ms. McCaffree 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.

Ms. McCaffree submitted only very limited portions of those materials; the final decisions of the Board of Commissioners were also submitted into the record by counsel for Pacific Connector at the hearing on July 11, 2014. The Planning Department staff has not added to the record the hundreds or thousands of pages of material from those past proceedings, and therefore they are not part of the record.

It 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*, LUBA No. 2006-128, Order Settling Record, at 3 (Nov. 28, 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 record includes only those materials actually submitted by the parties or placed into the record by Planning Department staff.

In several cases, Ms. McCaffree's submissions reference website addresses without physically printing off those website materials and submitting them into the record. 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). A reference to a website address does not make the contents of that website part of the record in this proceeding. As the applicant points out:

> 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 you, or after you make your 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, the Board and LUBA will not be able to ascertain reliably the evidence on which the hearings officer relied.

In light of these concerns, the hearings officer did not, and could not investigate the website addresses provided by the parties. The content of those websites has not been placed into the record. The hearings officer based his recommendation to the Board only on the oral testimony and written materials actually submitted into the record. The Board concurs with the hearings officer's decision to decline review of website materials not placed in the record. As

the Board's review is limited to the record, the Board has also not investigated the content of website materials only provided via reference to a website address. In contrast, internet materials that were printed and placed in the record have been reviewed by the Board as part of its decision-making process.

II. Legal Analysis.

The legal standard at issue, CCZLDO 5.0.700, reads as follows:

> ***SECTION 5.0.700 EXPIRATION AND EXTENSION OF CONDITIONAL USES***
>
> ***All conditional uses, except for site plans, variances and land divisions, remain valid for the period set forth in ORS 215.417.[1] Any conditional use not initiated within said time frame may be granted a two year extension as specified in ORS 215.417 provided that:***
>
> ***A. An application for said extension is filed with the Planning Department prior to the expiration of the deadline. The applicant must state the reasons that prevented him from beginning or continuing development within the approval period; and***
>
> ***B. The Planning director finds:***
>
> ***i. that there have been no substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use; and***
>
> ***ii. that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.***
>
> ***Additional extensions granted are ministerial decisions and not a land use decisions as described in ORS 197.015 and are not subject to appeal as land use decisions per OAR 660-33-140(3). (OR-93-12-017PL 2-23-94) (OR-95-05-006 PL 11-29-95) (OR 05-01-002PL 3-21-05)***

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[1] ORS 215.417 was enacted in 2001 (2001 Or Laws Ch. 532). Although it was since been amended, the version of ORS 215.417 in effect at the time this provision of the Coos County Zoning Code was written provided as follows:

> **215.417 Time to act under certain approved permits; extension.** (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.
> (2) An extension of a permit described in subsection (1) of this section shall be valid for two years.
> (3) For the purposes of this section, "residential development" only includes the dwellings provided for under ORS 215.213 (1)(t), (3) and (4), 215.283 (1)(s), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3). [2001 c.532 §2]

As mentioned in an earlier section of this decision, this application concerns two rather narrow questions:

1. Does the CUP remain valid for two years or four years?

2. Should Coos County grant an extension of the land use approval for the Gas Pipeline project approved on April 2, 2012, and if so, is the extension good period valid for one year or two years.

With regard to the first issue (whether the CUP is valid for two years or four years), the Coos County Zoning and Land Development Ordinance ("CCZLDO") 5.0.700 states that "[a]ll conditional uses, except for site plans, variances and land divisions, remain valid for the period set forth in ORS 215.417. Any conditional use not initiated within said time frame may be granted a two year extension as specified in ORS 215.417 * * *.

ORS 215.417 was enacted in 2001 and provides as follows:

> ***215.417 Time to act under certain approved permits; extension. (1) If a permit is approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit shall be valid for four years.***
>
> ***(2) An extension of a permit described in subsection (1) of this section shall be valid for two years.***
>
> ***(3) For the purposes of this section, "residential development" only includes the dwellings provided for under ORS 215.213 (1)(t), (3) and (4), 215.283 (1)(s), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3). [2001 c.532 §2]***

ORS 215.417 only mentions two "time periods." The first time period is the time for which certain listed permits remain valid: four years. The second time period is the length of time an extension is valid. CCZLDO 5.0.700 takes the four year time period set forth in the statute and makes it the time period for "[a]ll conditional uses, except for site plans, variances and land divisions." Thus, based on a rather straight-forward reading of the Ordinance, it appears that the initial time period for a CUP should be four years, and a subsequence extension is two years.

However, there is a state administrative law that complicates the analysis. OAR 660-033-0140 provides as follows:

> ***Permit Expiration Dates***
>
> ***(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or***

forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

(a) An applicant makes a written request for an extension of the development approval period;

(b) The request is submitted to the county prior to the expiration of the approval period;

(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(3) Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.

(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.

(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

Stat. Auth.: ORS 197.040 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14

It appears that OAR 660-033-0140 applies to at least that portion of the pipeline that traverses EFU zoned lands. OAR 660-033-0140 states that permits pursuant to ORS 215.275 and 215.283(1), among other listed statutes, are only valid for two years unless the County grants one or more one-year extensions. While the Board recognizes it is arguable that these time limitations do not apply to interstate gas pipelines, ORS 215.275(6), the conservative approach is to assume that they do apply. While it might be possible to break the application up in component parts and create separate time limitations period for each part, that may needlessly complicate matters. Thus, to err on the side of the more conservative approach, the Board applies an initial 2-year time period, and will then allow the applicant to apply for one or more one-year extensions for the entire permit, consistent with OAR 660-033-0140.

Turning to the second issue, there are only three substantive approval criteria governing whether an extension should be granted, as follows:

- An applicant must file a written extension request before the permit expires. CCZLDO 5.0.700.A; OAR 660-033-0140(2)(a) & (b).

- There must have been no substantial changes in the land use pattern of the area or other circumstances sufficient to trigger the filing of a new conditional use permit application for the use. CCZLDO 5.0.700.B.i;

- The applicant must not have been able to begin or continue development during the approval period for reasons outside of the applicant's control. CCZLDO 5.0.700.B.ii. OAR 660-033-0140(2)(c) & (d).

In this case, there is no question that the applicant filed a timely written request for an extension that meets the requirements of CCZLDO 5.0.700(A). It is also clear that the "applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible." CCZLDO 5.0.700(B)(ii). In this case, the applicant needs federal approval for the gas pipeline project, and the project cannot commence until those federal approval are forthcoming. Even the primary opponent to the project, Ms. Jody McCaffree, admits the facts that caused the applicant to be unable to begin or continue development during the approval period, i.e., that the Federal Energy Regulatory Commission ("FERC") vacated the federal authorization to construct the pipeline. *See* McCaffree letter dated July 11, 2014 at 5.

Thus, as a practical matter, there is only one approval standard that is contested: have there been any "substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use." CCZLDO 5.0.700.B(i)

The hearings officer attempted to research whether there were any LUBA cases that addressed what type of "circumstances" would justify the denial of an extension request of an extension application. While the hearings officer did not characterize his search as exhaustive, it was sufficiently comprehensive for the Board to conclude that it is unlikely that any case precedent exists. However, as the applicant notes in its letter dated July 25, 2014, LUBA has identified one instance when an extension request would trigger reconsideration of all original approval criteria. As explained below, that instance is distinguishable from this case. In

Heidgerken v. Marion County, 35 Or LUBA 313 (1998), LUBA considered an appeal of Marion County's denial of an applicant's request for an extension of a conditional use permit. On appeal, the applicant contended that the county erred in its application of the local Ordinance criterion applicable to extension requests. LUBA sustained the applicant's assignment of error, in part, concluding that due to "the complete lack of standards" in the county Ordinance, "the county's exercise of discretion under [the Ordinance provision] is tantamount to a decision reapproving or denying the underlying permit." *Heidgerken*, 35 Or LUBA at 326. By contrast, in the case before the Board, CCZLDO 5.0.700 includes specific approval criteria that apply to extension requests. Thus, there is no "complete lack of standards" for such applications in the CCZLDO. Accordingly, unlike *Heidgerken*, the County's approval or denial of an extension application is not tantamount to a decision reapproving or denying the original conditional use permit. As such, the original approval criteria do not apply to this application.

According to the applicant, the test under CCZLDO 5.0.700.B(i) can be thought of as a question: have the relevant land use approval standards – or the facts relevant under those standards – changed so substantially as to materially undermine the legal or factual basis for the prior approval? The Board agrees that this is an accurate way to characterize the test. It also seems relatively clear that the answer to this inquiry is "no."

The first consideration is whether there has been "any substantial changes in the land use pattern of the area." For example, if development had recently occurred in close proximity to the approved pipeline route, it would be prudent to require a new conditional use permit to address impacts of the pipeline on that new development. However, the parties to the case identified no such development, and staff did not identify any new construction or development that would warrant the need to revisit the pipeline CUP. For this reason, the Board finds, based on the record compiled in this case, that there are "no substantial changes in the land use pattern of the area."[2]

Ms. McCaffree argues that new information pertaining to the potential for mega-quakes and tsunamis constitutes a "change in the land use pattern of the area." *See* McCaffree letter dated July 11, 2014, at 22. Her argument is difficult to follow, but she appears to be arguing that a tsunami would change the land use pattern by destroying property adjacent to the estuaries. The Board finds that the term "changes in the land use pattern in the area" is a term of art and refers to changes in development patterns in any given area under consideration. Thus, even if Ms. McCaffree's argument that that new information pertaining to earthquakes and tsunamis merits reconsideration of the CUP, this information could at best be considered below as a "circumstance," not as a "change in the land use pattern."

Ms. McCaffree argues that the County's approval of three identified quasi-judicial applications constitute a significant change in the Ordinance relevant to the pipeline. *See* McCaffree's letter dated July 11, 2014, at 23-24. Presumably, Ms. McCaffree is arguing that the approval of these three land use applications result in a "change in the land use pattern" that trigger the need for a new CUP. However, for the reasons discussed below, none of the three

[2] In most cases, it is necessary to define what constitutes the "area" for purposes of analyzing whether a substantial change has occurred. Here, the parties have not provided any evidence of any changes in land use patterns that are even remotely close to the pipeline route, so the precise delimitation of the "area" is not necessary.

quasi-judicial approvals referenced by Ms. McCaffree constitute any change that is either significant or relevant to the Pipeline:

- Coos County File No. ABI-12-01: The boundary changes referenced under this case file number are irrelevant to the Pipeline. The Coos County boundary interpretation obtained in the related final decision affected only a small portion of land on the North Spit of Coos Bay in the area commonly known as the old Weyerhaeuser Mill Site, the current location of Jordan Cove Energy Project's proposed energy-generating facility, the South Dunes Power Plant (SDPP). The related boundary changes did not affect the zoning districts or ownership through which the Pipeline crosses. The change was neither significant nor relevant to the Pipeline.

- Coos County File No. ACU-12-12/ABI-12-02: This Coos County boundary interpretation is also insignificant and irrelevant to the Pipeline. The affected zoning districts where the boundary change was made are 6-WD and 5-WD, neither of which is crossed by the Pipeline. The boundary change was neither significant nor relevant to the Pipeline.

- Coos County File No. ACU-12-16/ACU-12-17/ACU-12-18: This application approved fill in various locations on the Mill Site to make it ready for development. The anticipated development at the time was the SDPP, which is associated with JCEP's proposed LNG terminal, which is interrelated with the Pipeline. Accordingly, the fill approval was consistent with the proposed Pipeline project, and does not constitute any significant or relevant change of the nature required in the CUP extension criteria. The difference in elevation before and after the approved fill is irrelevant to the Pipeline, a subsurface facility.

For the reasons set forth above, the quasi-judicial boundary interpretations in no way affected or were relevant to the Pipeline and, further, are not the type of Ordinance changes envisioned in the extension criteria.

Moving on, it is important to consider whether there have been any changes in the applicable land use approval standards for the Pipeline. For obvious reasons, a change in applicable law could be a "circumstance" that is "sufficient to cause a new conditional use application to be sought for the same use." For example, if the approval standards had been comprehensively changed since the time of the initial CUP approval, it would make sense to deny the extension and require the applicant to reapply under the new standards. Nonetheless, according to staff, there have been no such legislative changes, and no party identifies any such changes.

Finally, the County needs to consider whether there are any other "factual" circumstances sufficient to cause a new conditional use application to be sought for the same use. A circumstance is generally defined as a fact or condition connected with or relevant to an event or action. For example, Black's Law Dictionary defines the term "circumstances" as "attendant or accompanying facts, events, or conditions." *See* Black's Law Dictionary, 6th Ed. at 243. Thus, the term is very broad in scope, and could encompass a plethora of potential issues. At the July 11, 2014 public hearing on this matter, the hearings officer was careful to point out to the applicant that this criterion is potentially very broad in scope, and that it was

possible that certain changes in facts could constitute grounds for the county to demand that the applicant submit a new application.

Having said that, the Board would be hesitant to require that the applicant undertake a new land use process unless it seemed reasonably likely that the new process could either result in a different outcome, result in new conditions of approval, or require additional evidence or analysis in order to determine compliance. Stated another way, the "circumstances" at issue should only be deemed to be "sufficient" to require a new application if there is a reasonable likelihood that the circumstances could change the outcome of the permitting process, create some reasonable uncertainty about whether an approval would be forthcoming, or would require new evidence to properly evaluate. To use a football analogy, only potentially "game changing" circumstances should trigger a new permitting exercise.

As discussed in detail below, that does not appear to be the case here. The opponents do identify certain changes in factual circumstances, but ultimately those changed circumstances are either too insubstantial or not sufficiently relevant to the applicable land use approval standards as to materially undermine the legal or factual basis for the prior appeal. Thus, there is no basis for requiring the Pacific Connector to file a new application.

In the following sections, the Board addresses specific issues raised in this case.

A. Connection of Pipeline to LNG Export Terminal Is Not a "Change" Requiring a New Application.

The original approval for the pipeline under County File No. HBCU-10-01 (REM-11-01) included the following condition of approval ("Condition 25"):

> The conditional use permits approved by this decision shall not be used for the export of liquefied natural gas.

2010 Decision[3] at 154 (Ex. A). The County included Condition 25 when it approved the pipeline because the applicant voluntarily agreed to it, not because any applicable Oregon or Coos County land use standard distinguished between a natural gas pipeline associated with an import terminal and an otherwise identical natural gas pipeline associated with an export terminal. The Board of Commissioners adopted findings which found the direction of gas flow to be irrelevant under the land use approval standards applied by Coos County:

> Frankly, the Board fails to understand why, from a land use perspective, it matters which direction the gas is traveling, or why exporting gas is a "threat." * * * * * *. Nonetheless, if "reams of testimony" were submitted to FERC, then it seems proper that FERC decide the issue. There is no County zoning Ordinance provision that requires the County to make that decision.
>
> At the hearing, the applicant agreed to a condition of approval limiting the use of the pipeline to import use. Regardless, the case law makes clear that the issue of whether new gas pipelines are

[3] The 2010 Decision is included in the record of this proceeding, AP-14-02, as Exhibit 5.

> "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 P2d 1261 (2003); *Dayton Prairie Water Ass'n v. Yamhill County*, 170 Or App 6, 11 P3d 671 (2000).

2010 Decision at 120. The 2010 Decision does not identify Condition 25 as necessary to ensure compliance with any applicable land use approval standard for the Pipeline.

In 2013, Pacific Connector submitted an application requesting to amend Condition 25. The Board of Commissioners approved that application on February 4, 2014. *See* Final Decision and Order No. 14-01-006PL (the "Condition 25 Decision"). Condition 25 was modified to read:

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

The Board's Final Decision and Order was appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA upheld the Board's decision in *McCaffree.*

To put the matter simply, the Board of Commissioners stated in 2010 that the direction of gas flow in the Pipeline is irrelevant under the applicable land use approval standards for the Pipeline. Condition 25 was included only because Pacific Connector agreed to it at the time, not because it was necessary to ensure compliance with an approval standard. When Pacific Connector requested that Condition 25 be modified, the Board of Commissioners agreed to modify the condition. That decision was made in February 2014, more than a month before Pacific Connector filed the application at issue in this proceeding, requesting an extension of the prior land use approval for the Pipeline. Pacific Connector, in other words, sought extension of an existing land use approval for which the direction of gas flow has been determined to be irrelevant.

Ms. McCaffree nonetheless argues that the association of the Pipeline with an LNG export terminal is somehow a "change" requiring a new application. To the extent her argument is based on the April 2012 decision by the Federal Energy Regulatory Commission (FERC) to vacate its December 17, 2009 order approving a certificate of public convenience and necessity for the Pipeline, she ignores the prior findings by the Board of Commissioners. The Board expressly stated in 2010 that the direction of gas flow does not matter from the perspective of the land use standards applied by Coos County and that the issue of "need" for a natural gas pipeline is to be decided exclusively by FERC. FERC's determination to withdraw a certificate of public convenience and necessity pending a new *federal* process does not affect the legal underpinnings of the Board's prior approval for the Pipeline. It also does not affect the ability of the County to enforce conditions of approval that were tied to FERC's prior conditions. *See* Applicant's Rebuttal dated July 25, 2014, at 11-12.

To the extent Ms. McCaffree's argument is based on a contention that the Pipeline, if associated with an export terminal, is no longer a permitted use in one or more zones, it is too late to raise that argument. It is well understood that a city cannot deny a land use application based on (1) issues that were conclusively resolved in a prior discretionary land use decision, or (2) issues that could have been but were not raised and resolved in an earlier proceeding.

Safeway, Inc. City of North Bend, 47 Or LUBA 489, 500 (2004); *Northwest Aggregate v. City of Scappoose*, 34 Or LUBA 498, 510-11 (1998).[4] The time to present that argument was when Pacific Connector submitted its application to modify Condition 25.

Whether the argument is framed in terms of the Pipeline no longer being a "utility facility necessary for public service" permitted in the EFU zone, or framed as an argument that the "new distribution line" is not allowed in the Forest zone[5] (*see* McCaffree Surrebuttal, at p.3), the result is the same: the decision by the Board of Commissioners to modify Condition 25 – which preceded the application in this case – removed any argument whatsoever that the Pipeline is only a "permitted" or "conditional" use if associated with an LNG import terminal.[6] Ms. McCaffree cannot use this proceeding to re-argue the case for an "import only" restriction in the Coos County land use approval – a restriction that was removed before Pacific Connector applied for a two-year extension of the original approval.

Ms. McCaffree also argues that the "import versus export" distinction is relevant to remedies available under the CCZLDO, but her citations to CCZLDO 1.3.200, 1.3.300 and 1.3.800 provide no support to her argument. Ms. McCaffree also asserts that the current application involves a "change in use" or an approval based on "false information." It does not. Pacific Connector seeks to extend its prior Coos County land use approval for a pipeline to transport natural gas. That use has not changed. She identifies no "false information or data," let alone any such information that is or was relevant to the decisions previously rendered by the Board of Commissioners with respect to the Pipeline.

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[4] The basic rules associated with "separate decisions/collateral attack" are as set forth in cases such as *Dalton v. Polk County*, 61 Or LUBA 27, 38 (2009) (appeal of replacement dwelling permit does not allow challenge of prior partition decision); *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282, 296, *aff'd*, 195 Or App 763, 100 P3d 218 (2004) (appeal of final subdivision plat does not allow challenge of earlier decision modifying tentative plan condition); *Shoemaker v. Tillamook County*, 46 Or LUBA 433 (2004) (appeal of 2003 parking deck permit does not allow petitioner to challenge the 2001 dwelling permit); *Bauer v. City of Portland*, 38 Or LUBA 715, 721 (2000) (appeal of final plat cannot reach issues decided in preliminary plat decision); *Sahagain v. Columbia County*, 27 Or LUBA 341 (1994) (in an appeal to LUBA from one local government decision, petitioners may not collaterally attack an earlier, separate local government decision.); *Headley v. Jackson County*, 19 Or LUBA 109, 115 (1990) (same).

[5] Indeed, Ms. McCaffree attempted to raise the "new distribution line" issue at LUBA. LUBA noted that she failed to preserve the issue by raising it in the local proceeding. *McCaffree*, slip op. at 9. LUBA also addressed and rejected the same argument on the merits:

> There is nothing in the text of OAR 660-006-0025(4)(q) that suggests that LCDC was concerned with the direction that gas (or oil or geothermal resources for that matter) flows when in the pipeline, or that LCDC intended to allow or prohibit lines that carry gas, oil, geothermal, telephone, [or] fiber optic cable depending on the identity of the end user or the direction that the resources flow when in the lines.

Id. at 10.

[6] Testimony and a submittal by John Clarke at the July 11, 2014 hearing goes to this same issue. Mr. Clarke submitted the text of regulations from the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), as well as Oregon Public Utility Commission rules adopting the PHMSA rules by reference. Mr. Clarke's testimony appeared to be directed at demonstrating that the Pipeline is a "transmission" line rather than a "new distribution line" in the Forest zone. However, this argument was rejected by the County Board of Commissioners, and the County's decision was affirmed by LUBA in *McCaffree*.

Moreover, Ms. McCaffree misreads CCZLDO 1.3.200. That provision relates to issuance of permits or verification letters for "a building, structure, or lot that does not conform to the requirements of this Ordinance," i.e., existing non-conforming uses or non-conforming development. The proposed pipeline has not been constructed and therefore could not be either a non-conforming use or a non-conforming development. *See* CCZLDO 3.4.100 (establishing basis for alterations to lawful existing non-conforming uses and structures).

CCZLDO 1.3.300 allows for revocation of a permit by the Planning Director "if it is determined that the application included false information, or if the standards or conditions governing the approval have not been met or maintained ...." Again, Ms. McCaffree does not identify any "false information"; rather she asserts that circumstances have changed since the original approval because the pipeline will not serve an LNG import terminal. Yet the approval has been lawfully amended to remove the "import only" requirement in Condition 25. This is not an opportunity for Ms. McCaffree to collaterally attack that decision.

Finally, CCZLDO 1.3.800 relates to violations of the Coos County Zoning and Land Development Ordinance. In 2012, the Board of Commissioners approved the Pipeline on remand from LUBA. The County's 2012 "remand decision" was lawfully amended just months ago to change the wording of Condition 25. Ms. McCaffree does not explain how the prior approval can now be a "violation" of the very Ordinance under which the decision was made. That is the very essence of an attack that is both collateral and void of substance.

In summary, the approval of the Pipeline by the Board of Commissioners was not based on the direction of gas flow, as made clear both by the 2010 Decision and the approved amendment of Condition 25. It also was not based on a finding of "need" for the Pipeline. In fact, the Board made it clear that the determination of "need" isn't a Coos County issue at all. Rather, it belongs exclusively to FERC. The fact that the Pipeline is now associated with an LNG export terminal therefore is not a "change" relevant to the approval standards for the pipeline and cannot trigger a requirement for a new application.

B. Tsunami and Earthquake Risk Were Considered in the 2010 Decision and Are Considered Prior to Construction

The Board's findings adopted in support of the County's 2010 decision include a section titled "Potential for Mega-disasters (Tsunamis, Earthquakes, etc.)." Final Decision and Order No. 10-08-045PL, Ex. A at 22-26. Exhibit 5. In that section of the findings, the Board noted that "the risk of a tsunami has been studied and planned for," and that "no harm is anticipated to occur to the pipe as a result of a design tsunami event." *Id.* at 22-23. However, Ms. McCaffree argues that there is new information with regard to both tsunamis and Cascadia Subduction Zone earthquakes, and that the new information is of such significance that it should require the filing of a new conditional use application for the Pipeline.

The hearings officer was initially of the opinion that new factual information pertaining to tsunamis and Cascadia Subduction Zone earthquakes might constitute a change in "circumstances sufficient to cause a new conditional use application to be sought for the same use." However, upon reading the submittals by the parties, the hearings officer was convinced that the new facts do not affect the validity of the assumptions underlying the County's findings from 2010. The Board concurs with the hearings officer's assessment.

The applicant correctly points out that there are at least two potential problems with Ms. McCaffree's argument. First, the applicant argues that Ms. McCaffree does not explain how the "new evidence" is relevant to approval standards for the Pipeline. In the initial case, HBCU 10-01, the Board simply assumed, for purposes of analysis, that the issue of landslides, tsunamis, and earthquakes did in fact relate to some of the approval standards applicable in the case. The Board stated: "Since there are any number of Code criteria under which this concern could potentially be relevant, and because the conclusion is the same no matter the specific criterion at issue, the issue is addressed here." 2010 Decision at 36.

However, in this case, the only "standards" that Ms. McCaffree identifies are Statewide Planning Goal 7 and ORS 455.446 to 455.449. She does not explain why a Statewide Planning Goal would be applicable to a quasi-judicial land use application in a county with an acknowledged comprehensive plan and land use ordinances. Planning Department staff indicated at the July 11, 2014 public hearing that the "new studies" have not been adopted by Coos County as part of its Goal 7 program. Goal 7 does not appear to provide a nexus to an approval standard.

Ms. McCaffree's citation to ORS 455.446 to 455.449 also provides no nexus to approval standards. Even if those statutory provisions apply to the Pipeline, they relate to state building code requirements rather than local land use standards. As the applicant notes, ORS Chapter 455 is titled: "Building Code." Building codes are a separate issue from land use approvals, and building code requirements do not, and cannot, drive land use approvals. In fact, the opposite is true: zoning ordinances determine what types of uses and structures can be constructed at any given location, and building codes inform the landowner to what minimum standard those allowed structures can be built. For example, ORS 455.447 authorizes the Oregon Department of Consumer and Business Affairs, after consultation with the Seismic Safety Policy Advisory Commission and DOGAMI, to adopt rules to amend the state building code to establish requirements regarding seismic geologic hazards for certain types of facilities; it also requires developers of such facilities to consult with DOGAMI on mitigation methods if the facility is in an identified tsunami inundation zone. It is *not* implemented through the local government's comprehensive plan and land use ordinances.

While opponents have not identified how evidence related to the potential for mega-disasters (Tsunamis, Earthquakes, etc) relates to approval criteria, the Board continues to assume that there are multiple approval standards for which a discussion of these issues may be relevant. As an obvious example, CCZLDO §4.8.400 contains a standard that requires the applicant to prove that "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." With regard to the relationship between pipelines and forestry operations, it is at least arguable that pipelines could force foresters to change their forest practices in response to potential concerns over pipeline fires. Based on the record created in 2010, the County ultimately found such concerns to be overstated, but it was nonetheless a proper topic of analysis under this criterion. For this reason, the Board does not fault Ms. McCaffree for failing to link the issue of earthquakes to specific approval criteria.

However, the applicant raises a second issue that cannot be so easily overlooked. Ms. McCaffree does not demonstrate how the purported new information would alter or undermine the findings adopted in 2010. She states that "new tsunami inundation mapping was released by

the Department of Oregon Geology and Mineral Industries on February 12, 2012." *See* McCaffree Written Testimony at 21. She also notes that Oregon State University has issued "a new report entitled, '13-Year Cascadia Study Complete – And Earthquake Risk Looms Large.'" McCaffree Written Testimony at 21.

As indicated in the 2010 Decision, the applicant's geotechnical engineers "studied the potential effect of a 'design tsunami event,' which is apparently a 565 year return period," an event that would produce a "predicted three feet of temporary scouring." 2010 Decision at 22-23. In other words, this is not a situation in which the applicant assumed that there would not be a tsunami. To the contrary, the applicant *assumed* that the Pipeline would be in an area impacted by a major tsunami. The Board found, however, that "tsunamis are not much of an issue considering the pipe will be a thicker grade of steel and it will be buried in 5-8 feet of sediment and encased in four inches of concrete." 2010 Decision at 22.

The OSU study, documented by a press release of less than 3 pages (*see* McCaffree letter dated July 11, 2014, Ex. 10) also does not undermine the findings from 2010. As described in the press release, the study indicates that the southern Oregon coast may be most vulnerable to a Cascadia Subduction Zone earthquake (and tsunami event) "based on recurrence frequency." In other words, the study appears to focus on the likelihood that such an earthquake will occur over any given period of time. Again, this was not a case in which the applicant dismissed such an earthquake as an improbable event. To the contrary, the applicant's analysis, as discussed in the 2010 findings, assumed that a major event (a 565 year return period event) would occur during the life of the project. Given the assumption that such a "mega-quake" *would* occur during the life of the project, the Board's 2010 findings are unaffected by a study showing that a quake is even more likely than previously believed.

Ms. McCaffree's surrebuttal dated August 1, 2014 includes, as Exhibit A, a press release regarding a study of earthquake risk, which states, "The highest risk places have a 2 percent chance of experiencing 'very intense shaking' over a 50-year lifespan ...." This is not a change that undermines any assumptions or analysis underlying the original approval because Pacific Connector already assumed that the Pipeline would face the type of seismic and tsunami event that occurs only once in 565 years. Again, the applicant did not assume a "mega-quake" event is improbable and will not occur; rather, the applicant's experts examined what would happen if a rare seismic event *did* occur during the lifetime of the Pipeline. Nothing in Ms. McCaffree's submittals demonstrates that the applicant failed to assess that risk.

In her surrebuttal dated August 1, 2014 Ms. McCaffree also asserts that "the current proposed pipeline would no longer be underground on the North Spit but some 40+ feet in the air, subjecting it to earthquake and tsunami hazards." McCaffree Surrebuttal at 1. She references Exhibit E of her rebuttal submittal, which includes three cross-sections of the access and utility corridor for the LNG terminal – located between the South Dunes Power Plant and gas conditioning facility to the east and the LNG terminal to the west. This relates to the terminal, and is beyond the scope of this proceeding. But even assuming those cross-sections are part of the Pipeline rather than within the scope of the approvals for the Jordan Cove Energy Project, they do not show the Pipeline hanging 40+ feet in midair. Rather, the three cross-sections show the Pipeline buried adjacent to a roadway (Section B-B), secured to a pad along a roadway (Section C-C), and secured to a pad along a roadway that is elevated less than 10 feet. Again, even assuming for purposes of argument that this is a "change" from the application

reviewed by the hearings officer and Board of Commissioners in 2010 and on remand in 2011-2012, Ms. McCaffree does not identify any land use approval standard to which the change is relevant. As already stated, ORS 455.446 to 455.449 point to review of seismic risks under building code, not the CCZLDO.

In any event, the current application is simply for an extension of the prior land use approvals for the Pipeline. The fact that there may now be somewhat different plans before FERC, including the alternate Brunschmid and Stock Slough alignments, does not bar extending the land use approval for the original alignment as approved in 2012. As the Board of Commissioners recognized in the 2010 Decision, FERC will decide the route of the Pipeline. The contents of the record before FERC at any particular moment do not constitute a substantial change in land use approval standards or factual circumstances that prevent the County from extending the prior approval.

C. National Environmental Policy Act ("NEPA") Requirements are Beyond the Scope of this Application.

In its initial approval of the Pipeline in 2010, the Board rejected arguments by opponents who "believed that [the land use approval] process should be put on hold until other regulatory processes are fully completed." 2010 Decision at 143. Ms. McCaffree again takes issue with the concurrent processing of local land use approvals and FERC approvals, and argues that the County should not make any land use decisions while the completion of the federal Environmental Impact Statement (EIS) is still pending. *See* McCaffree letter dated July 11, 2014, at 5-6. Ms. McCaffree, however, fails to identify any *local* land use approval standard that requires the completion of an EIS. This is not surprising because the EIS is a requirement under *federal* law, the National Environmental Policy Act. 42 U.S.C. § 4321 *et. seq.*; 40 C.F.R. § 1502.5.

As the Board previously noted:

> [T]his approval is not very useful to the applicant if it cannot obtain all of the other required authorizations. It makes sense that the applicant seeks to complete the various applications concurrently, given the length of time it takes to complete each process. In any event, FERC will not issue a Notice to Proceed until all of its conditions are satisfied. Accordingly, the Board adopts a condition of approval to ensure that no construction occurs until the Notice to Proceed is issued.

2010 Decision at 143.

In subsequent proceedings related to the amendment of Condition 25, opponents again attempted to raise NEPA as an issue, but the County found these arguments to be "misdirected" because NEPA-related issues were "simply not within the scope" of that proceeding. Condition 25 Decision at 5. In the Brunschmid Decision, the County rejected identical arguments offered by Ms. McCaffree. In the current proceeding, Ms. McCaffree's arguments related to NEPA remain misdirected, and she offers no new arguments to compel reconsideration of this issue.

FERC compliance with its responsibilities under the NEPA is simply beyond the scope of this local land use proceeding and has no bearing on its outcome.[7]

NEPA was signed into law on January 1, 1970. Congress enacted NEPA to establish a process for reviewing actions carried out by the federal government for environmental concerns. NEPA imposes certain obligations on the federal government, but not state or local governments. See 42 U.S.C. § 4331(b). The Act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within the federal agencies. NEPA does not generally apply to state or local actions, but rather applies to the decisions of federal agencies, as "major federal actions." 42 U.S.C. § 4332(2)(C) (emphasis added).

A requirement of NEPA is that all agencies of the federal government prepare an environmental impact statement ("EIS") when they undertake or fund "major federal actions" that significantly affect the quality of the human environment, but once again the obligation is on a federal agency and not on a local or state government. 42 U.S.C. § 4332(2)(C); see also 40 C.F.R. § 1501.4 (the Council on Environmental Quality's NEPA regulations also explicitly reference that a federal agency is the responsible party for completing an EIS, "[i]n determining whether to prepare an environmental impact statement the Federal agency shall ... .") (emphasis added).

The courts have also found that "NEPA does not regulate the conduct of private parties or state or local governments. NEPA requires the federal government to issue an environmental impact statement before taking any action 'significantly affecting the quality of the human environment.' 42 U.S.C. § 4332(2)(C). Since NEPA requires only action by the government, no private party can comply with NEPA. It is for that reason that in a lawsuit to compel compliance with NEPA, no one but the federal government can be a defendant." *Forest Guardians v. Bureau of Land Management,* 188 F.R.D. 389, 393 (D.N.M. 1999).

NEPA also establishes the Council on Environmental Quality ("CEQ"). As the Federal agency tasked with implementing NEPA, the CEQ promulgated regulations in 1978 implementing NEPA. *See* 40 CFR Parts 1500-15081. These regulations are binding on all federal agencies. The regulations address the procedural provisions of NEPA and the administration of the NEPA process, including preparation of EISs.

Among the rules adopted by the CEQ is 40 CFR §1506.1, which is entitled "Limitations on actions during NEPA process." This section provides as follows:

> *(a) Until an agency issues a record of decision as provided in §1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:*
>
> *(1) Have an adverse environmental impact; or*
>
> *(2) Limit the choice of reasonable alternatives.*

[7] The Board finds Ms. McCaffree's vague references to state and federal regulation by the Oregon Public Utilities Commission and U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration to be similarly misplaced in this local land use proceeding. *See* McCaffree Written Testimony, at 6.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

The Coos County land use approvals have no effect on the FERC process, as they do not "limit the choice of reasonable alternatives" being considered by the EIS. If, as part of the NEPA process, FERC ends up choosing a different route as the preferred alternative, then the applicant simply has to go back to the drawing board and re-apply for new land use permits. As a case in point, we have seen that take place here: FERC apparently did not like a portion of the applicant's preferred route, and, as a result, the applicant came back before the County seeking new land use approvals for the Blue Ridge alternative route.

Contrary to the position taken by opponents in previous cases, there do seem to be legitimate reasons why an applicant would seek land use approvals either before seeking FERC approval or via concurrent processes. If the County were to find that land use approval was not forthcoming, then FERC would need to take that into consideration to some extent. *See* 40 CFR

1506(2)(d).[8] However, the reverse is not necessarily true – land use approval does not limit FERC's evaluation in any way.

The County is required to process a permit within 150 days of when it is deemed complete. ORS 215.427. There is nothing in the county plan or implementing ordinances or in any other document which makes either NEPA or the Environmental Impact Statement ("EIS") a "plan" provision or other approval criterion for this application. *See Seto v. Tri-Met*, 21 Or LUBA 185, 202 (1991), *aff'd*, 311 Or 456 (1995); *Standard Ins. Co. v. Washington County*, 16 Or LUBA 717 (1988), *aff'd*, 93 Or. App. 78 (1998), *pet for review withdrawn*, 307 Or 326 (1989). The hearings officer has indicated that his own independent research revealed nothing which would either require or allow the County to put a local land use process on hold pending NEPA review by FERC. In the absence of any contrary legal authority offered by opponents, the Board accepts the hearings officer's characterization of this issue.

In short, the NEPA process and the state-mandated, County-implemented land use process are operating on separate tracks, and appear to have little, if any, intersection. LUBA has held that in cases where a NEPA process must be undertaken in conjunction with a local land use process, the NEPA process need not precede the land use process. *Standard Ins. Co.*, 16 Or LUBA at 724. In *Standard Ins. Co.*, LUBA recognized that even after an EIS is prepared, that local comprehensive plans are "subject to future change." *Id.* LUBA acknowledged the possibility that the adoption of a plan amendment or a series of amendments might result in the need to prepare a supplementary EIS. *Id.* (citing *Comm. for Nuclear Responsibility v. Seaborg*, 463 F. 2d 783, (D.C. Cir. 1971)). Nonetheless, LUBA noted that "there is no requirement that a new EIS precede such plan amendments."

Finally, it is worth noting that under NEPA regulations, until a decision is made and an agency issues a record of decision, no action can be taken that would have an adverse environmental impact or limit the choice of reasonable alternatives. The NEPA process is to be implemented at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delay later in the process and to avoid potential conflicts. 40 CFR 1501.2. In this case, FERC will not issue a "Notice to Proceed" until all of its conditions are satisfied. The Board adopts a condition of approval to ensure that no construction occurs until the Notice to Proceed is issued.

It should also be reasonably clear to all involved that County land use approval of the proposed route should not be viewed by FERC as any sort of endorsement by the County Board of Commissioners. In this regard, Pacific Connector should not attempt to use land use approvals as ammunition in the FERC approval process. At best, County land use approval of the pipeline route simply means that, as conditioned, the proposed route does not violate land use standards and criteria.

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[8] 40 CFR 1506(2)(d) provides:

> To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

D. FERC's Act of Vacating its 2009 Order Approving the Pipeline As an Import Facility Is Not Relevant to These Proceedings.

On December 17, 2009, FERC issued an order approving a certificate of public convenience and necessity for the Pacific Connector Gas Pipeline. 129 FERC ¶ 61,234. Appendix B of that Order, attached to the applicant's July 25, 2014 submittal as "Attachment E," sets forth environmental conditions for that approval. Several of those conditions were incorporated by reference into the conditions of approval for the Board's Final Decision and Order No. 10-08-045PL; the conditions approved by the Board also reference a section of the Final Environmental Impact Statement (FEIS) as well as the applicant's Erosion Control and Revegetation Plan (ECRP).

The opponents take note of the fact that FERC vacated its Order approving the certificate of public convenience and necessity for the Pacific Connector Gas Pipeline in 2012. Ms. McCaffree argues that FERC's decision to vacate its December 17, 2009 Order creates a situation where the Coos County's conditions of approval can no longer reference conditions in that order, or documents included in that FERC record (such as the FEIS and ECRP).

As the applicant correctly notes, the question presented here is not whether those conditions and documents from the prior FERC record remain enforceable by FERC. Rather, they are incorporated into the County's conditions of approval, and the question is whether the content of the condition can be determined. As evidenced by Attachment E to the applicant's July 25, 2014 submittal, the prior FERC conditions have not vanished – they are readily accessible, as are the other documents that were part of that FERC record. As long as the County can determine the content of conditions or documents incorporated by reference in the County's conditions of approval, it can enforce those conditions. FERC's decision to vacate the 2009 Order does not constitute a change of circumstances necessitating a new conditional use application because the meaning of the County's conditions of approval can still be discerned and those conditions can be enforced by the County.

E. CBEMP Policies 5 and 5a Do Not Apply.

Ms. McCaffree argues that "[t]here has been no finding of 'need' and 'consistency' that supports this change of direction of the flow of gas in the pipeline." McCaffree letter dated July 11, 2014, at 7. Ms. McCaffree misunderstands the nature of the current proceeding regarding an extension of time for an existing Conditional Use Permit. The amendment of Condition 25 has already been approved, and this is not the forum in which to appeal that prior decision. To the extent that the Natural Gas Act and related federal regulations require the Pipeline to meet a "public need" or "public interest" standard, this is an issue within FERC's sole jurisdiction and therefore not relevant to this proceeding.

Ms. McCaffree seeks to CMEMP Policy 5 as a nexus to a public need requirement. Ms. McCaffree cites CBEMP Policy 5(l)(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."

However, CBEMP Policy 5 and 5a are inapplicable to the Pipeline application. In the County's 2010 Decision, the Board determined that, in the absence of an applicable local land use approval standard, "'need' is simply not an approval criterion for this decision," rejecting arguments from opponents, including Ms. McCaffree, who had "asserted the belief that eminent domain should not be used unless there is a local 'need' for the project." 2010 Decision at 144. Further, the County found that "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." *Id.*

Ms. McCaffre concedes that a low intensity pipeline (such as is proposed here) is allowed in the Estuary zoning districts, but argues that "that does not mean that the digging of a trench or an HDD would also be allowed." McCaffree letter dated July 11, 2014, at 7. Instead, she argues that "essentially allowing a pipeline structure in these zones could mean you just placed the pipeline on top of the tidal muds and/or shorelands." *Id.* (emphasis removed). While the Board understands the concept behind Ms. McCaffree's argument, it is not supported by any language in the Ordinance. To the contrary, CBEMP Policy #2 allows "pipelines, cables, and utility crossings, including incidental dredging necessary for their installation." Moreover, it simply makes no sense to suggest that utilities which are typically buried beneath the ground should be only allowed across the surface of estuaries. If anything, that result would tend to be the polar opposite of what Policy 5 is trying to achieve. A pipeline set forth above the ground would have a plethora of additional impacts that are not present with a buried pipeline. As just one example, an above ground pipeline would limit opportunities for other uses, such as boating. For these reasons, the Board rejects Ms. McCaffree's argument.

Although Ms. McCaffree does not cite to Statewide Planning Goal 16, the Ordinance language in CBEMP Policy 5(I)(b) that she references has its origins in that Goal. Under the Section of the Goal entitled "Implementation Requirements," the following is provided:

> *2. Dredging and/or filling shall be allowed only:*
> *a. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and,*
> *b. If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and*
> *c. If no feasible alternative upland locations exist; and,*
> *d. If adverse impacts are minimized.*

Coos County's Zoning Ordinance defines the terms "dredging" and "fill" as follows:

> *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 Tidegates refers to dredging necessary to provide material for existing dikes and tidegates; (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.

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 "new dredging" because it is not proposing to deepen the channel of Haynes Inlet. In fact, it is not at all clear that the applicant is dredging at all, since that definition requires the "removal of sediment or other material from the estuary." The applicant is not proposing to remove any sediment from the water. Nonetheless, to the extent that the applicant's activities constitute dredging within the meaning of the code, the type of dredging will be "incidental dredging necessary for installation" of a pipeline. *See* Statewide Planning Goal 16. In this regard, CBEMP Policy 2, entitled "General Schedule of Permitted Uses and General Use Priorities." provides as follows:

MANAGEMENT UNIT: NATURAL

B. Uses and Activities listed below MAY be allowed in Natural Management Units when it is established that such are consistent with the resource capabilities of the area and the purpose of the management units (LCDC Goal #16) (pursuant to "Linkage" and "Goal Exception" findings in this Plan) but also subject to special conditions and other policies set forth elsewhere in this Plan.

* * * * *.

9. Pipelines, cables and utility crossings, including incidental dredging necessary for their installation.

Thus, incidental dredging for pipeline installation is permitted in the 11-NA and 13-NA zones, if the applicant can demonstrate that pipelines are consistent with: (1) the resource capabilities of the area, and (2) the purpose of the management units. This two-part test mirrors the requirement set forth in Statewide Planning Goal 16.

CBEMP Policy #4 provides the test for determining whether that two-part test is met:

> *a determination of consistency with resource capability and the purpose of the management unit shall be based on the following:*
>
> *i. a description of resources identified in the plan inventory;*
>
> *ii. an evaluation of impacts on those resources by the proposed use (see Impact Assessment procedure, below);*
>
> *iii. a determination of whether the proposed use or activity is consistent with the resource capabilities of the area, or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.*[9] (Underlined emphasis added.

CBEMP Policy #2 implements Statewide Planning Goal 16 and provides a general schedule of permitted uses and general use priorities in the aquatic areas of the estuary. The policy divides the aquatic areas into the three management units described in Goal 16, namely those of Natural, Conservation and Development. Each management unit, at Section B., describes the uses and activities that may be allowed, subject to different required findings, in each of the separate management units. As Ms. McCaffree notes, the list of uses for the Natural management unit in Section B of Policy #2 includes "temporary alterations." However, that list also includes "pipelines, cables, and utility crossings, including incidental dredging necessary for their installation," which more closely describes the Pipeline project. The fact that the applicable use category already contemplates incidental dredging activities associated with the installation of "pipelines" indicates that any temporary impacts associated with the use are already contemplated as part of the allowed "pipeline" use designation. Under such circumstances, it would be redundant for the county to separately consider "temporary alterations" associated with the Pipeline. Therefore, the Board continues to find that the Pipeline does not include any "temporary alterations."

Second, the Statewide Planning Goals define what constitutes a "temporary alteration," as follows:

> **TEMPORARY ALTERATION.** Dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include: (1) alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance), (2) alterations to establish

[9] The underlined portion of CBEMP Policy 4, quoted above, is a word-for-word copy of the standard set forth in the GOAL 16 rule, as amended on Oct. 11, 1984 by LCDC.

mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations, and (3) minor structures (such as blinds) necessary for research and educational observation.

The PCGP project does not fall within any of the listed categories.

Third, the pipeline use, including incidental dredging necessary for its installation, is also allowed in both the Conservation and Development management units "without special assessment of the resource capabilities of the area." Because of the specific definition of pipeline, with incidental dredging necessary for its installation, is a more specific use category than that of "temporary alternations," the pipeline use is not deemed to be a temporary alteration which would, as such, require compliance with Policy #5a. Accordingly, the Board continues to finds that CBEMP Policy #5a is inapplicable. Ms. McCaffree has offered no plausible reason for the County to reconsider this prior determination in this limited extension request proceeding.

Similarly, the "need" standard in OAR 345-026-0005 is inapplicable to interstate natural gas pipelines subject to FERC jurisdiction. That regulation 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 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 this extension application is subject to EFSC's "need" standard for non-generating facilities.

On page 10 of her letter dated July 11, 2014, Ms. McCaffree presents an excerpt from the LUBA oral argument in the *McCaffree v. Coos County* case. In the provided dialogue between a LUBA administrative law judge and the applicant's attorney, the attorney for Pacific Connector appears to concede that a change from import to export would require a different analysis when addressing the "public need" question. However, there is insufficient amount of dialogue presented to understand the context of the conversation between the LUBA ALJ and the attorney. The dialogue does not make apparent what criteria they are referring to. For all we can tell, the conversation may be related to the FERC proceeding. Regardless, the Board continues to stand by its prior evaluation and approval of the analysis contained on pages 7 to 15 of the hearings officer's recommendation in HBCU 13-02 under the heading "Limits of the Police Power, A Lawful Condition Must Promote the Health, Safety, Morals, or General Welfare of the Community in Order to Be Constitutional," which is hereby incorporated by reference. In those findings, the hearings officer concludes that Pipeline that has previously received cannot be denied simply on account of the fact that the applicants proposed a change in the direction of the gas. The hearings officer's findings and recommendation in HBCU 13-02

were adopted by the Board and incorporated as the Board's decision. Coos County Final Decision and Order, No. 14-01-006PL (Feb. 4, 2014). While the police power is broad, there would be no public health, safety, morals, or general welfare nexus that would allow the local government to deny a previously approved use on zoning grounds, when there is no physical change in the structure.

F. The County Has Previously Determined that the Pipeline is a "Distribution Line," Not a "Transmission Line" under the DLCD Administrative Rules Implementing Statewide Planning Goal 4.

The 2010 Decision permitted the Pipeline in the Forest zone as a "new distribution line" under the applicable Goal 4 regulations and local zoning. OAR 660-006-0025(4)(q); CCZLDO 4.8.300(F). 2010 Decision at 80–87. The issue was again raised in the proceedings regarding the amendment of Condition 25, with the County finding that the term "distribution line" as used in the applicable Goal 4 regulations was not mutually exclusive of the term "transmission line" as used in ORS 215.276. Instead, the County concluded that the proposed Pipeline, regardless of the direction of gas flowing within it, "constitutes a 'distribution line' as that term is used in OAR 660-006-0025(4)(q), and also that it constitutes a gas 'transmission line' as that term is used in 215.276(1)(c).

On appeal, LUBA found that Ms. McCaffree had not preserved her arguments related to this "distribution line" issue, but also provided alternative reasoning clearly rejecting her contentions on the merits. LUBA's analysis of this issue is conclusive: "The definition of 'transmission line' for purposes of the Exclusive Farm Use statute is inapposite for purposes of determining whether, under the Goal 4 rule that regulates uses in the Forest zone, the pipeline is a 'new distribution line.'" *McCaffree*, __ Or LUBA at __ (slip op. at 10). After review of the text, context, and legislative history, LUBA concluded that "for purposes of conditional uses that are allowed in the Forest zone, all *non-electrical* lines with rights-of-way of up to fifty feet in width are classified as 'new distribution lines.'" *Id.*

Ms. McCaffree's reliance on inapplicable definitions from unrelated federal regulations is misplaced,[10] and her attempt to raise this issue again is rejected. In any event, the County's analysis of this issue and LUBA's analysis in *McCaffree v. Coos County* are determinative of this issue.

G. The County Has Previously Determined that the Pipeline is a "Public Service Structure" as Defined by CCZLDO 2.1.200, and is Permitted in the EFU zone as a "Utility Facility Necessary for Public Service."

On page 11 of her letter dated July 11, 2014, Ms. McCaffree argues that the pipeline use to export natural gas is not a "utility" or a "public service structure. Ms. McCaffree argues that the pipeline cannot be a "public service structure" because it would not be a "structure" as defined in the CCZLDO. However, she ignores the fact that the relevant definition of "utilities" specifically includes "gas lines," and identifies them as "public service structures."[11]

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[10] *See* McCaffree letter dated July 11, 2014, at 13 (citing 49 C.F.R. § 192.3).

[11] CCZLDO 2.1.200:

The County has previously determined that a pipeline used to import natural gas is a "public service structure" as defined in CCZLDO 2.1.200, and is permitted in the EFU zone as a "utility facility necessary for public service." 2010 Decision at 108–12. While gas lines arguably do not qualify as "structures" under the Ordinance's current definition,[12] the County previously addressed any potential confusion arising from the inconsistent definitions of "structure" and "utilities." In the 2010 Decision, the Board analyzed the issue extensively and concluded that, as a result of 2009 amendments to the definition of the term "structure," the "Ordinance contains internal inconsistencies between the formal definition of the term 'structure' and the usage of that term throughout the Ordinance." 2010 Decision at 111. Resolving these inconsistencies based on the clear inclusion of "gas lines" within the definition of "utilities," the Board ultimately found the interstate gas pipeline to be a "utility." *Id.* at 111–12.

Interstate natural gas pipelines are recognized under state land use laws as being a 'utility facility' for purposes of rural zoning in EFU zones. *See* ORS 215.276. Because of this fact, the County cannot conclude that 'interstate natural gas pipelines and associated facilities' are not a 'utility,' notwithstanding any quirks in the zoning Ordinance's definition of 'utility.' To do so would be contrary to the legislative intent behind ORS 215.275.

Ms. McCaffree's attempt to raise this issue once again is a collateral attack on this prior decision. While it might be possible for the Board of Commissioners to deny an extension of a conditional use permit on the grounds that it believes it previously interpreted the law incorrectly, the Board does not see any flaws in its previous holdings. In fact, the Board believes that Ms. McCaffree's analysis on this issue is flawed and would likely be overturned on appeal if adopted by the Board.

H. The Pipeline's Compliance with Applicable CBEMP Policies Has Previously Been Determined;

a. The Applicant Has Previously Demonstrated Compliance with CBEMP Policy 14.

The County comprehensively addressed compliance with CBEMP Policy 14 in the 2010 Decision. *See* 2010 Decision, at 123–26. In that decision, the County found that "[t]his plan policy is met," determining that the Pipeline, "as a necessary component of the approved industrial and port facilities use (the LNG terminal), and/or as a 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." *Id.* at 126. Ms. McCaffree identifies no changes that would affect this analysis.

b. CBEMP Policy 11 Does Not Apply.

UTILITIES: Public service structures which fall into two categories:

1. Low-intensity facilities consisting of communication facilities (including power and telephone lines), sewer, water and gas lines, and
2. High-intensity facilities, which consist of storm water and treated waste water outfalls (including industrial waste water).

[12] CCZLDO 2.1.200 ("STRUCTURE: Walled and roofed building including a gas or liquid storage tank that is principally above ground.").

As the applicant has explained previously, not all CBEMP Policies are applicable to all activities in all CBEMP zoning districts. Instead, CCZLDO 4.5.150 describes how to identify which policies are applicable in which zoning districts. Ms. McCaffree, however, identifies CBEMP policies without explaining how or why such policies apply to the Pipeline. For example, she argues that CBEMP Policy 11 requires the County to receive a determination from various other agencies prior to permit issuance. *See* McCaffree letter dated July 11, 2014, at 14. Yet, Policy 11 is not applicable in any of the zoning districts crossed by the Pipeline (6-WD, 7-D, 8-WD, 8-CA, 11-NA, 11-RS, 13-NA, 18-RS, 19-D,19B-DA, 20-RS, 21-RS, 21-CA, 36-UW).

In any event, Ms. McCaffree reads more into Policy 11 than the text permits. Policy 11 is, like many of the other CBEMP policies, a legislative directive to the County requiring coordination with state and federal agencies, rather than applicable review criteria for land use applications such as the current application by Pacific Connector. Policy 11 does not preclude the County from issuing any permits until all other such approvals have been received, as such a requirement would conflict with the statutory requirement that the County process a permit within 150 days of when it is deemed complete. ORS 215.427.

Regardless, the conditions of approval require the applicant to obtain all necessary state and federal permits prior to construction, thereby providing sufficient evidence that the authority of these agencies over their respective permitting programs will be respected and the permitting efforts will be "coordinated." *See* 2010 Decision, Staff Proposed Condition of Approval #14 ("All necessary federal, state and local permits must be obtained prior to commencement of construction, including any required NPDES 1200-c permits. . . .").

c. CBEMP Policy 4 Does Not Apply.

On page 14 of her letter dated July 11, 2014, at 14, Ms. McCaffree argues that CBEMP Policy 4 requires coordination with various state agencies prior to County sign off on permits. However, CBEMP Policy 4a is similarly inapplicable to a "low-intensity utility facility" such as the Pipeline in any of the CBEMP zoning districts traversed by the Pipeline. Ms. McCaffree's out-of-context recital of the language of Policy 4a, which addresses "Fill in Conservation and Natural Estuarine Management Units," is irrelevant to this proceeding. Policy 4a applies to aquaculture activities involving dredge and fill in the 8-CA, 11-NA, 13-NA, 19B-DA, 21-CA, and 36-UW zones crossed by the Pipeline. However, low-intensity utilities in each of those zones, such as the Pipeline, are subject only to general conditions which do not include Policy 4a. *See* CCZLDO 4.5.376; 4.5.406; 4.5.426; 4.5.541; 4.5.601; 4.5.691. Thus, Policy 4a does not apply to the Pipeline.

Ms. McCaffree identifies no substantial change in land use patterns or the Ordinance which would mandate consideration of the applicability of any of the CBEMP policies to the Pipeline as part of the proceedings for this extension request.

d. The County Has Previously Determined CBEMP Policy 50 to be Inapplicable to the Pipeline.

On page 11 of her letter dated July 11, 2014, Ms. McCaffree attempts to explain why Plan Policy 50 applies to this case. However, the County has previously rejected arguments suggesting that CBEMP Policy 50 was applicable to the Pipeline. In response to "comments suggesting that a gas pipeline should be considered a 'high-intensity' utility facility"

inapplicable for rural parcels, the County determined that "[t]he Ordinance resolves the issue in a manner that is unambiguous and conclusive against [that] argument. Given the recognition that gas lines are a 'low-intensity' facility,' Plan Policy 50 does not assist the opponents in any way." 2010 Decision, at 138. Ms. McCaffree has identified no changes in land use patterns or zoning that would alter the County's prior conclusion that "[t]his plan policy is met." *Id.*

I. Routine Changes to Oregon Coastal Management Program Do Not Create Circumstances that Warrant a New Application Process.

In her letter dated July 11, 2014, Ms. McCaffree argues that a "Notice of Federal Concurrence for Routine Program changes to the Oregon Coastal Management Program" ("OCMP") was issued on March 14, 2014, and that this notice includes some undisclosed changes to the Coos County Comprehensive Plan. Ms. McCaffree concedes that she does not know if these proposed changes will have any impact on the pipelines, but recommends that the extension be denied so that the County may evaluate the issue.

The OCMP implements the federal Coastal Zone Management Act ("CZMA").[13] The CZMA was enacted in 1972 and was designed to foster the development of state programs for "the effective management, beneficial use, protection, and development of the coastal zone."[14] If a state wishes to participate, it submits its program to protect the water and land resources of the coastal zone – its "coastal management program" ("CMP") – to the U.S. Department of Commerce for approval. States are not required to participate; unlike other federal regulatory programs, including the Clean Water Act and the Clean Air Act, the federal government does not administer a coastal zone program if a state elects not to participate.

The CZMA offers a succinct explanation of the effect of an approved CMP, the process for state review of an applicant's certification of consistency with the "enforceable policies" of the CMP, and the process and standard for review by the Secretary of Commerce:

> After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification.

[13] 16 U.S.C. § 1451 et seq.
[14] *Id.* § 1451(a).

> If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.[15]

"Enforceable policies" for purposes of the CZMA consistency determination are those portions of the CMP "which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone."[16]

Oregon's Department of Land Conservation and Development ("DLCD") is in the process of updating Oregon's Coastal Management Program. As one part of that update process, DLCD submitted to the federal Office of Ocean and Coastal Resources Management ("OCRM") the current substantive provisions of the Coos County Comprehensive Plan and CCZLDO that DLCD requested be incorporated into Oregon's Coastal Management Program. OCRM concurred with that incorporation on February 8, 2014. *See* Exhibit 11 attached to McCaffree Letter dated July 11, 2014.

As the applicant correctly points out, all that this "routine change" to Oregon's Coastal Management Program did was to incorporate the County's *current* substantive land use provisions as part of the CMP. That is clear from OCRM's February 18, 2014 letter to DLCD: "Thank you for the Department of Land Conservation and Development's (DLCD) October 1, 2013 request to incorporate *current versions* of the Coos County Comprehensive Plan (which includes the Coos Bay Estuary Management Plan and the Coquille River Estuary Management Plan), and the Coos County Zoning and Land Development Ordinance, into the Oregon Coastal Management Program." *See* Exhibit 11 attached to McCaffree Letter dated July 11, 2014 (emphasis added). The applicant provided DLCD's listing of the relevant Coos County provisions as submitted to OCRM. *See* Attachment A to Marten Law letter dated July 25, 2014. Coos County did not amend, revoke or supplement any of its land use standards applicable to the Pipeline. Rather, DLCD simply provided the federal government with updated information about the provisions of the County's comprehensive plan and land use standards that are incorporated in the Oregon CMP for purposes of making consistency determinations under the CZMA. That does not alter the standards applied by you or the Board of Commissioners in land use proceedings for the Pipeline. In short, Ms. McCaffree's claim that "there are obviously

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[15] *Id.* § 1456(c)(3)(A).
[16] *Id.* § 1453(6a); *see also* 15 C.F.R. § 930.11(h).

changes that have occurred" is incorrect. The routine changes in the State's CMP are not changes in the pipeline or in the local land use standards applicable to the Pipeline.

J. Changes to FEMA Floodplain Mapping Do Not Constitute a Circumstance Which Warrants a New CUP Application.

The Board of Commissioners adopted, as part of the 2010 Decision , the following "pre-construction" condition of approval:

> 15. Floodplain certification is required for "other development" as provided in CCZLDO 4.6.230 occuring in a FEMA flood hazard area. The applicant must coordinate with the County Planning Department.

Under CCZLDO 4.6.230(4) as then in effect, "other development" had to be reviewed and authorized by the Planning Department prior to construction. Authorization could not be issued unless a licensed engineer certified that the proposed development would not:

a. result in any increase in flood levels during the occurrence of the base flood discharge in 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.

This flood hazard review, as described in the CCZLDO, occurs prior to construction. It was not part of the land use review in the 2010 Decision or Final Decision and Order No. 12-03-018PL (Mar. 13, 2012) (the "2012 Decision").

Ms. McCaffree cites "amendments to the CCZLDO having to do with Floodplain Overlay boundaries and Plan Policy 5.11" as a basis for denying the requested extension of those prior approvals for the Pipeline. *See* McCaffree letter dated July 11, 2014, at 23. Although she asserts that "the new FEMA boundaries will directly impact the pipeline and the proposed route," she does not explain how such changes are relevant to the land use approval standards for the Pipeline. She submitted into the record of this proceeding a copy of Final Decision and Ordinance 14-02-001PL, but omitted Attachment A to that Ordinance, which shows the specific changes adopted by the Board.

The applicant submitted a complete copy of Ordinance 14-02-001PL as Attachment B to their Surrebuttal. Nothing in the ordinance alters any finding made by the Board in 2010 and 2012. Critically, the provisions addressing "other development" have been moved to CCZLDO 4.6.217(4), but are identical to the prior version of the Ordinance quoted above, and are still addressed by the Planning Department prior to construction. The changes clarify that the special flood hazard area is based on March 17, 2014 Flood Insurance Rate Map ("FIRM"). CCZLDO 4.6.207(1). Condition 15 of the 2010 decision, however, is not tied to any particular version of the FIRM. The applicant does not vest into any particular FIRM map, nor does it vest into certain editions of the building code or SDC ordinances. Therefore, Condition 15 remains adequate to ensure that, prior to construction, the applicant must meet the standards for "other construction" for portions of the Pipeline within the special flood hazard area of Coos County. The Board's adoption of revised Floodplain Overlay provisions does not constitute

either a "substantial change in the land use pattern of the area" or "other circumstances sufficient to cause a new conditional use application to be sought."

In her surrebuttal dated August 1, 2014, Ms. McCaffree speculates as to how new flood hazard mapping might affect the Pipeline. *See* McCaffree Surrebuttal at p.1. However, the Board of Commissioners did not rely on the FEMA flood hazard boundaries for its findings of compliance with any approval standards in 2010 or on remand in 2012. With Condition 15 in place, the County has assurance that Pacific Connector must address FEMA's mapped flood hazard areas prior to construction. Alterations in those maps are accommodated within the current approval; a new application is unnecessary.

K. Pipeline Alignment

Ms. McCaffree further argues that Pacific Connector has changed the alignment of the pipeline by way of her reference to Exhibits 17 and 18 on page 24 of her July 11, 2014 letter. The simple response is that this application merely seeks to extend the Coos County approval of the original pipeline route. The final decision and order did not include a condition to build the approved alignment. Any potential alternate alignments from the FERC record are irrelevant and do not constitute any change in the County's zoning ordinance or land use patterns in the surrounding area.

L. Potential Impacts to Oysters Were Addressed in the 2010 and 2012 Decisions and by the Oyster Mitigation Plan

Two letters from Ms. Lili Clausen, Clausen Oysters, express concerns regarding access to oyster beds, construction-related suspended sediment impacts, and potential alternative routes. *See* Exhibit 1 (letter from L. Clausen to Coos County Planning Department dated June 28, 2014), Exhibit 3 (Undated submittal from Lili Clauson asking various questions of the County), and Exhibit 7 (letter from L. Clausen to Coos County Planning Department dated July 21, 2014). Ms. Clausen has previously expressed similar concerns in a prior letter dated May 13, 2010, which was specifically considered by the County in its original decision approving the Pipeline. 2010 Decision, at 74–77. The applicant directly addressed issues raised by Ms. Clausen through a letter report prepared by Robert Ellis, Ph.D., of Ellis Ecological Services. That report described the measures taken by the applicant to avoid and mitigate impacts to oyster beds, providing substantial evidence that any impacts on commercial oyster beds in Haynes Inlet (and other natural resources) caused by the Pipeline would be "temporary and de minimis." *Id.* at 74–77, 80.

Various opponents appealed the original 2010 land use approval to LUBA. LUBA remanded the 2010 Decision for further analysis of potential impacts to native Olympia oysters. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162, LUBA No. 2010-086 (March 29, 2011). On remand, the County conducted a land use proceeding in which an extensive record pertaining to native Olympia oysters was developed. After extensive consideration of potential impacts to such native oysters, the County concluded that "the applicant has met its burden of proof to demonstrate that the proposed pipeline construction will reduce any potential harm to the Olympia Oyster population in Haynes Inlet to such a degree that there is at most a de-minimis or insignificant impact on the oyster resources that the aquatic zoning districts 11-NA and 13A-NA require to be protected." 2012 Decision at 68. As part of the remand proceedings,

the applicant has developed an Oyster Mitigation Plan and has agreed to not only relocate Olympia oysters from the Pipeline route, but also to create additional new habitat within the pipeline right of way "that will result in a significant *increase* in the numbers of Olympia oysters in Haynes Inlet." *Id.* at 29; *see also* 2012 Decision, Condition of Approval, Conditions on Remand No. 1 ("The applicant shall comply with the terms and conditions of the applicant's proposed Olympia oyster mitigation plan prepared by Bob Ellis of Ellis Ecological Services, Inc. dated October 7, 2011 (the 'Mitigation Plan')...."

In her July 21, 2014 letter, Ms. Clausen states that "I did not like the tone used in telling me, at the meeting, that the whole oyster issue was settled. We the commercial oyster growers, do expect our concerns to be addressed." However, in his recommendation, the hearings officer indicated that he was "taken aback" by the lack of situational awareness evident in the Clausen Oysters' oral presentation. Neither Ms. Clausen's written nor oral testimony indicates that she or Clausen Oysters had participated in the "remand" proceedings in which oyster issued were extensively discussed and debated, and the hearings officer did not recall Ms. Clausen's or her company's participation in those proceedings. The hearings officer characterized Ms. Clausen's testimony as seeming "unprepared" and consisting merely of a recitation of a "laundry list" of questions regarding the case. Hearings Officer Recommendation, at 38-39.

The County has previously found that the applicant has demonstrated that it will not have a significant impact on oysters in Haynes Inlet, either commercially farmed or wild native oysters. The Board finds that nothing in Ms. Clausen's letters or oral testimony identifies a substantial change in land use patterns, the zoning Ordinance, or the Pipeline that would justify revisiting these prior determinations.

M. The Record Demonstrates the County Commissioners Were Not Biased in Their Decision-Making and Did Not Have Any Impermissible *Ex Parte* Contacts

At the beginning of the Board's deliberations on September 30, 2014, Chair Cribbins asked Commissioners whether they needed to declare any conflicts and bias. All, including the Chair, answered "no." All three commissioners also indicated that they did not need to abstain from participating in the hearing.

The Chair then asked: "Does anyone present today wish to challenge any member of the Board of Commissioners from participating in today's hearing?" The only response was from Jody McCaffree:

> McCAFFREE: You're saying that you don't have a bias when you support the project and ran your campaign on that?
>
> CRIBBINS: Who are you addressing, Ms. McCaffree?
>
> McCAFFREE: Both you and Mr. Sweet.
>
> CRIBBINS: I would challenge you to show where I've ever run my campaign on that. Thank you.
>
> SWEET: I don't think I have a bias.

McCAFFREE: You've openly supported this project though. And that is a bias. Right?

Ms. McCaffree also alleged that Commissioner Sweet had met with representatives of the Jordan Cove project:

McCAFFREE: And you've never met with the applicant privately or in meetings where you've not included opponents of the project? You were seen at the airport meeting with them. That's why I'm questioning you. But you never gave us the opportunity to meet with you.

LEGAL COUNSEL: Was it directly related to this appeal?

McCAFFREE: I have no idea. I wasn't at the meeting.

SWEET: Who was at that meeting?

McCAFFREE: You met with Jordan Cove's representatives, Michael Henricks and, um, Ray [inaudible].

SWEET: Yes, I met with them. It was pretty much social in nature. I don't recall any conversation relating to the pipeline.

CRIBBINS: I have never discussed this appeal with either party.

SWEET: I certainly have not discussed the appeal.

We understand Ms. McCaffree to have raised two allegations: (1) she alleged that Commissioner Cribbins and Commissioner Sweet had supported "this project" in campaigning for office; and (2) she alleged that Commissioner Sweet had been seen meeting with two representatives of the Jordan Cove Energy Project at "the airport." As these allegations involve different factual and legal issues, we address them separately.

With respect to the first allegation, Ms. McCaffree presented no documentation to her claim of bias: no news articles, campaign materials, transcripts of speeches, or other evidence that either Commissioner Cribbins or Commissioner Sweet had campaigned for office based on a promise to support the Pipeline generally or any application specifically. Indeed, Commissioner Cribbins specifically challenged Ms. McCaffree to "show where I've ever run my campaign" on support for the project, and Ms. McCaffree did not respond.

Consideration of this appeal by the Board of Commissioners is "quasi-judicial" in nature. Parties to quasi-judicial proceedings are "entitled to ... a tribunal which is impartial in the matter ...." *Fasano v. Bd. of Cnty. Comm'rs of Wash. Cty.*, 264 Or 574, 588, 507 P.2d 23, 30 (1975).

In the context of land use hearings, however, a Commissioner is "impartial" if he or she is able to render a decision based on the merits of the case. As the Land Use Board of Appeals (LUBA) has put it, local decision makers in quasi-judicial land use proceedings are not expected to be free of bias; rather, they are expected to put whatever positive or negative biases

they may have aside, and render a decision based on the merits. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697 (2005).

We note that the LUBA recently provided an extensive analysis of Oregon law on the question of bias, as it applies to disqualifying members of a county Board of Commissioners from participation in an adjudicatory land use proceeding. *Oregon Pipeline Company, LLC v. Clatsop County*, __ Or LUBA __ (LUBA No. 2013-106, June 27, 2014). Several principles are evident from LUBA's discussion:

- There is a "high bar" for disqualification of a county commissioner for bias because county commissioners, unlike judges, cannot be replaced if they recuse themselves. County commissioners, moreover, are not expected to be "neutral," given that they are elected because of their political predisposition.

- Campaign statements of support or opposition for specific land use actions are not by themselves "sufficient basis for questioning [commissioners'] representations ... that they could decide the matter impartially." *Oregon Pipeline Company* (slip. op. at 30).

As LUBA noted, the Oregon Supreme Court has spoken to how the threshold for recusals differs between judges and county commissioners:

> "[County commissioners] are politically elected to positions that do not separate legislative from executive and judicial power on the state or federal model; characteristically they combine lawmaking with administration that is sometimes executive and sometimes adjudicative. The combination leaves little room to demand that an elected board member who actively pursues a particular view of the community's interest in his policymaking role must maintain an appearance of having no such view when the decision is to be made by an adjudicatory procedure."

1000 Friends of Oregon v. Wasco Co. Court, 304 Or 76, 82-83, 742 P2d 39 (1987).

The "actual bias" necessary to disqualify a county commissioner must be demonstrated in a "clear and unmistakable manner." *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 702, 710 (2001).

In this case, it is clear from the proceedings on September 30 that Commissioners Cribbins and Sweet did not have any direct stake in the outcome of the proceeding:

> LEGAL COUNSEL: I can read the definition of conflicts of interest to see if they apply. Do you have any direct or substantial financial interest in this?
>
> SWEET: No.
>
> LEGAL COUNSEL: Any private benefit?
>
> SWEET: No.

CRIBBINS: Just to be clear, I do not have a financial interest nor a direct interest or benefit.

There is, moreover, no "clear and unmistakable" evidence of "actual bias." At most, there is a general allegation that Commissioners Cribbins and Sweet indicated support for "the project" during their campaigns. Commissioner Cribbins denied the allegation, and no evidence to the contrary was provided by Ms. McCaffree. Ms. McCaffree's general reference to "the project" also undermines any allegation of bias. It is impossible to tell whether her allegation relates to the Pipeline, to the Jordan Cove Energy Project (i.e., the LNG terminal) or to a specific application. The only relevant question with respect to bias in this proceeding is whether each commissioner is capable of rendering a fair judgment on *this appeal*. Each commissioner stated that they could, and there is no "clear and unmistakable" evidence to the contrary.

Ms. McCaffree's second allegation – that Commissioner Sweet met privately with representatives of the Jordan Cove Energy Project – appears to be more an allegation of *ex parte* contacts than of bias. We note that Jordan Cove Energy Project is not the applicant in this case, or even a party. In any event, there is no prohibition on an individual commissioner meeting or conversing with persons – even parties – who may take an interest in matters that come before the Board of Commissioners.

Commissioner Sweet indicated that his airport meeting was "pretty much social in nature," that he didn't remember "any conversation relating to the pipeline," and that he had not discussed the appeal involved in this case. Based on Commissioner Sweet's representations and the absence of any evidence to the contrary, we find that the meeting did not involve any *ex parte* communication with respect to this appeal. To the extent that Commissioner Sweet's meeting with representatives of the Jordan Cove Energy Project might be construed as evidence of bias, we reject that conclusion. Again, there is no legal prohibition on a county commissioner meeting individually with representatives of a major project proposed in the county. The fact that such a meeting took place does not come close to providing "clear and unmistakable" evidence that Commissioner Sweet is incapable of rendering a fair judgment in this appeal.

III. CONCLUSION.

For all of the above stated reasons, and after consideration of the applicable law and all argument and evidence in the record, the Board of Commissioners approves a one year extension to Order No. 12-03-018PL.

NOTICE OF LAND USE DECISION BY THE COOS COUNTY PLANNING DIRECTOR

Coos County Planning
225 N. Adams St.
Coquille, OR 97423
http://www.co.coos.or.us/
Phone: 541-396-7770
Fax: 541-396-1022

Date of this Decision: April 11, 2016

File Number: ACU-16-013

Applicant: Richard Allan, Marten Law representing Pacific Connector Gas Pipeline, LP

Property Information:

Map Number	Acreage	Landowner	Zoning
25-13-00-200	191.58	Oregon International Port of Coos Bay	6-WD
25-13-04-101	4.76	Fort Chicago Holdings II U.S. LLC	6-WD
25-13-04-300	228.88	Roseburg Forest Products	6-WD
25-13-04-400	16.25	Fort Chicago Holdings II U.S. LLC	6-WD
25-13-04-100	97.11	Fort Chicago Holdings II U.S. LLC	6-WD, IND, 7-D
25-13-03-200	69.17	Fort Chicago Holdings II U.S. LLC	7-D, 8-WD, 8-CA
25-13-04-500	48	Oregon International Port of Coos Bay	8-CA, 13A-NA, 11-NA, 11-RS
24-13-36B-700	6.85	Donald & Carol Thompson	11-RS, RR-2, F
24-13-36B-1101	2.25	Hal & Donna Blomquist	RR-2, F
24-13-36B-1100	79.43	Weyerhaeuser Company	F
24-13-36B-100	36.01	Hal & Donna Blomquist	F
24-13-36-100	400	Weyerhaeuser Company	F
24-13-36-200	80	Weyerhaeuser Company	F
25-13-01-100	443.19	Weyerhaeuser Company	F
25-13-01D-200	32.57	Jason & Christine Snelgrove	F
25-13-01D-100	41.03	Gary E. Smith Trust	EFU, F
25-12-06C-100	83.19	Fort Chicago Holdings II U.S. LLC	EFU, F
25-12-06C-601	45.58	Lone Rock Timber Investments I, LLC	F
25-12-07-500	47.42	Lone Rock Timber Investments I, LLC	F
25-12-07-400	78.80	Lone Rock Timber Investments I, LLC	F
25-12-07-1300	71.74	Lone Rock Timber Investments I, LLC	F
25-12-07-1301	8.26	Lone Rock Timber Investments I, LLC	F
25-112-07-1301A02		U.S. A. Federal Aviation Administration	F
25-12-07-2400	40	Steven Sweet	F
25-12-18-300	40	Steven Sweet	F
25-12-18-200	77.14	Steven Sweet	F, EFU
25-12-17-300	2.10	Steven Sweet	EFU
25-12-17-400	12.05	Monte Rutherford	EFU
25-12-17-600	16	Jackie Shaw ETAL	EFU
25-12-17-700	5.47	William Edwards	EFU
25-12-17-900	40	Lone Rock Timber Investments I, LLC	F, EFU
25-12-17-1000	240	Weyerhaeuser Company	F
25-12-20-100	440	Weyerhaeuser Company	F
25-12-29-1100	99.61, 2.25	Donald Fisher 2012 Delaware Trust	F, EFU
25-12-30-501	32.24	Marjorie Brunschmid ETAL	EFU, 18-RS
25-12-30-600	12.04	Gregory Demers	18-RS

25-12-30D-1501	7.71	Agri Pacific Resources, INC	18-RS
25-12-30D-508	3.83	Kay Kronsteiner	18-RS
25-12-30-700	78.78	City of North Bend	19-D
25-12-31-100	107.59	City of North Bend	19-D
25-12-32B-300	17.60	City of North Bend	19-D, 19B-DA, 20-CA
25-12-32B-600	2.60	Fred Messerle & Sons, INC	20-RS
25-12-32-100	126.85	Fred Messerle & Sons, INC	20-RS, EFU
25-12-32-400	60	Fred Messerle & Sons, INC	EFU, F
26-12-05-200	242.89	Fred Messerle & Sons, INC	F
25-12-32-300	102.30	Louis McCarthy ETAL	F
26-12-05-300	23.66	Solomon Joint Living Trust	F
26-12-08B-100	16.09	Michael & Debra Prugh	F, RR-2
26-12-08-900	2.10	Jeffrey Hill	RR-5
26-12-08-1000	2.64	Jeffrey & Gidgette Hill	RR-5
26-12-08-1100	34.06	Alvin & Lou Ann Rode	RR-5, EFU, F
26-12-08-500	17.32	Mark & Melody Sheldon	RR-5
26-12-08B-1400	10.45	Larry & Shirley Wheeker	F
26-12-08-1102	22.91	Jeffrey & Gidgette Hill	F
26-12-08B-1500	15.75	Michael Mcginnis	F
26-12-08-1601	10.63	Gunnell Family Trust	F
26-12-08-1700	25.72	Curtis & Melissa Pallin	F, 21-RS
26-12-07-700	196.18	Fred Messerle & Sons, INC	21-CA, 21-RS, F
26-12-18A-100	77.24	Wright Loving Trust	F
26-12-18A-200	10.01	Paul & Eura Washburn	RR-5
26-12-18A-201	4.08	David & Emily McGriff	RR-5
26-12-18B-1900	2.91	James & Archina Davenport	RR-5
26-12-18B-1700	25.07	Nova & Ellen Lovell	F
26-12-18C-103	57.27	John & Mary Muencrath Trust 12-22-11	F
26-12-18C-300	4.8	Edgar Maeyens Jr	RR-5
26-12-18C-200	38.78	Roseburg Resources Co.	F
26-12-19-200	38.66	Roseburg Resources Co.	F
26-12-19-300	315.54	Roseburg Resources Co.	F
26-12-30-100	43.57	Victor & Arianne Elam	F
26-12-30-600	3.5	Robert Scoville	RR-5
26-12-30-100	40	Jimmie & Carolyn Ketchum	F
26-12-30A-500	70.99	Lone Rock Timber Investments I, LLC	F
26-12-30-1200	75.46	Menasha Forest Products Corporation	F
26-12-30-1400	77.69	Fred Messerle & Sons, INC	F
26-12-31A-100	34.48	Ronald & Molly Foord	F
26-12-32-400	39.68	Fred Messerle & Sons, INC	F
26-12-32-500	161.13	Dee Willis	EFU,F
26-12-31-700	120	Pacific West Timber Company (Oregon) LL	F
26-12-31-900	30	Anna & Daniel Fox	F
27-12-06-100	141.68	Lone Rock Timber Investments I, LLC	F
27-12-06-200	10.06	Steven & Carole Stalcup	F
27-12-06-300	470.98	Menasha Forest Products Corporation	F

27-12-05-100	475.68	USA (CBWRGL)	F
27-12-00-1700	160	Roseburg Resources Co.	F
27-12-00-1600	9.55	Pacificorp	F
27-12-00-1500	470.45	Menasha Forest Products Corporation	F
27-12-00-2500	400	USA (CBWRGL)	F
27-12-00-2400	638.62	Coos County Sheep Co.	F, EFU
27-12-00-2300	637.56	USA (CBWRGL)	F
27-12-22-100	640	Coos County Sheep Co.	F
27-12-23-200	320	USA (CBWRGL)	F
27-12-23-100	183.31	Coos County Sheep Co.	EFU, F
27-12-23-300	117.98	Lucky T LLC	F
27-12-24C-1500	11.10	John & Kara Breuer	F
27-12-24C-1600	10.99	Virgil & Carol Williams	RR-5
27-12-24C-1200	3.63	Mary Metcalf	RR-5
27-12-24C-1700	11	Virgil & Carol Williams	EFU
27-12-25-200	64.10	Charles & Johanna Yates	EFU
27-12-24C1800	11.26	Rodney Dalton	EFU
27-12-24C-2100	10.01	Ted L. Fife Family Trust	EFU
27-12-25-201	11.80	Donald & Shirley Fisher	F
27-12-25-203	47.28	Walter & Wendy Hazen	F
27-12-25-100	155.19	USA (CBWRGL)	F
27-11-00-1500	601.60	Menasha Forest Products Corporation	F
27-11-00-1400	643.31	USA (CBWRGL)	F
27-11-00-1700	629.56	USA (CBWRGL)	F
27-11-32-1000	80	Pacific West Timber Company (Oregon) LL	F
27-11-32-800	269.90	Menasha Forest Products Corporation	F
27-11-32-1300	66.56	Menasha Forest Products Corporation	F
28-11-05-100	340.26	USA (CBWRGL)	F
28-11-05-200	45.99	Windlinx Family Trust	F
28-11-04-600	470.04	Moore Mill & Lumber Co.	F
28-11-04-800	40	Menasha Forest Products Corporation	F
28-11-00-400	640, 240	USA (CBWRGL)	F
28-11-10-1000	80	Pacific West Timber Company (Oregon) LL	F
28-11-10-900	189.67	Lone Rock Timber Investments I, LLC	F
28-11-10-901	1.05	Dora Cemetery Assn.	F
28-11-10-1300	57.25	Cynthia Garrett	F, EFU
28-11-10-1400	128.15	Laird Timberlands, LLC	EFU
28-11-15-100	7.31	Laird Timberlands, LLC	EFU, F
28-11-00-500	280	Moore Mill & Lumber Co.	EFU, F
28-11-00-700	200	Plum Creek Timberlands, L.P.	F
28-11-13-900	437.52	USA (CBWRGL)	F
28-11-24-100	639.76	Keystone Forest Investments, LLC.	F
28-11-00-1900	40	Roseburg Resources Co.	F
28-10-00-3500	34.93	Roseburg Resources Co.	F
28-10-00-3400	503.57	USA (CBWRGL)	F
28-10-00-3600	79.54	Lone Rock Timber Investments I, LLC	F
28-10-00-3300	160	FIA Timber Partners II, L.P.	F

28-10-00-3800	160	FIA Timber Partners II, L.P.	F
28-10-00-4100	480	USA (CBWRGL)	F
28-10-00-4200	440	USA (O& C)	F
28-10-00-4600	280	USA (CBWRGL)	F
28-10-00-4500	160	Lone Rock Timberland Co.	F
28-10-00-5000	320	Tri-W Group Limited Partnership	F
28-10-00-4900	160	Plum Creek Timberlands, L.P.	F
28-10-00-4800	160	Tri-W Group Limited Partnership	F
28-10-00-5600	160	USA (CBWRGL)	F
28-10-00-5500	160	Tri-W Group Limited Partnership	F
28-10-00-5200	160	Tri-W Group Limited Partnership	F
28-09-00-3500	670.72	USA (CBWRGL)	F
28-09-00-300	656.61	Plum Creek Timberlands, L.P	F
29-09-00-200	623.72	USA (CBWRGL)	F
29-09-00-500	160	Lone Rock Timberland Co.	F
29-09-00-600	598.18	Plum Creek Timberlands, L.P	F
29-09-00-700	640	USA (CBWRGL)	F
25-13-04-300	228.88	Roseburg Forest Products Co.	CBEMP
25-13-03-200	69.17	Fort Chicago Holdings II U.S., LLC	IND, CBEMP
28-12-07C-101	17.54	Ron Lafranchi	Q-IND
28-12-07C-1000	17.24	Ron Lafranchi	CREMP, CREMP IND
28-12-07C-900	9.34	LBA Contract Cutting, INC	CREMP, CREMP IND
28-12-18B-1500	8.29	LBA Contract Cutting, INC	CREMP, CREMP IND
27-12-26D-1200	18.85	Spencer & Truly Yates	EFU
28-13-01DB-300	5.56, .54	City of Coquille	City
28-13-01DB-309	10.31	City of Coquille	City
28-13-01DB-310	6.59	City of Coquille	City
25-13-35-400	94.76	Georgia- Pacific Wood Products Northwest	CBEMP
25-13-36-1000	39.18	Georgia- Pacific Wood Products Northwest	CBEMP

This notice is to serve as public notice and decision notice and if you have received this notice by mail it is because you are a participant, adjacent property owner, special district, agency with interest, or person with interest in regard to the following land use application. Please read all information carefully as this decision may affect you. (See attached vicinity map for the location of the subject property).

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and decision, where you may receive more information, and the requirements if you wish to appeal the decision by the Director to the Coos County Hearings Body. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO) Article 5.8. If you are mailing any documents to the Coos County Planning Department the address is 250 N. Baxter,

Coquille OR 97423. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Request for Planning Director Approval for an extension of a conditional use to site natural gas pipeline as provided by Coos County Zoning and Land Development Ordinance (CCZLDO) § 5.2.600 Expiration and Extension of Conditional Uses.

The application, staff report and any conditions can be found at the following link: http://www.co.coos.or.us/Departments/Planning/PlanningDepartment-Applications2016.aspx . The application and all documents and evidence contained in the record, including the staff report and the applicable criteria, are available for inspection, at no cost, in the Planning Department located at 225 North Adams Street, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact Jill Rolfe, Planning Director and the telephone number where more information can be obtained is **(541) 396-7770**.

This decision will become final at 5 P.M. on April 26, 2016 unless before this time a completed **APPLICATION FOR AN APPEAL OF A PLANNING DIRECTOR DECISION** form is submitted to and received by the Coos County Planning Department.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared /Authorized by: _____ **Date:** April 11, 2016
Jill Rolfe, Planning Director

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map

The Exhibits below are mailed to the Applicant only. Copies are available upon request or at the following website: http://www.co.coos.or.us/Departments/Planning/PlanningDepartment-Applications2016.aspx or by visiting the Planning Department at 225 N. Baxter, Coquille OR 97423. If you have any questions please contact staff at (541) 396-7770.

Exhibit C: Staff Report
Exhibit D: Comments received (There were no comments received on this application)

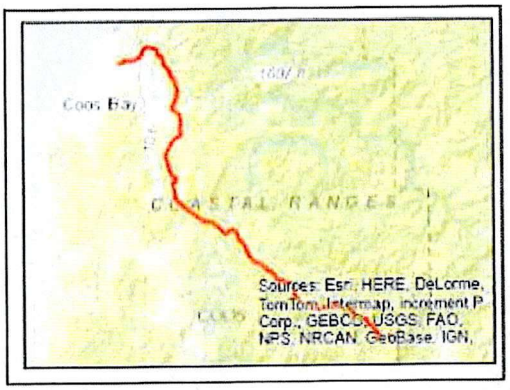
EXHIBIT "A"
CONDITIONS OF APPROVAL

1. All conditions of approval that were placed on File No. HBCU-10-01, Final Order No. 10-01-045PL as amended on remand, File No. REM-11-01, Final Order 12-03-018PL remain in effect and as modified by File No. HBCU-13-02, Final Order No. 14-01-006PL.
2. This application approval grants a one year extension to the approval. Therefore, this conditional use will expired on April 2, 2017 unless another extension is submitted prior to the expiration date.

EXHIBIT "B"
VICINITY MAP

COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
Physical Address: 225 N. Adams, Coquille Oregon
Phone: (541) 396-7770
Fax: (541) 396-1022/TDD (800) 735-2900



File:	ACU-16-013
Applicant:	Pacific Connector Gas Pipeline, LP/ Marten Law
Date:	March 25, 2016
Location:	See Below
Proposal:	Administrative Conditional Use: Extension of Previous Decision

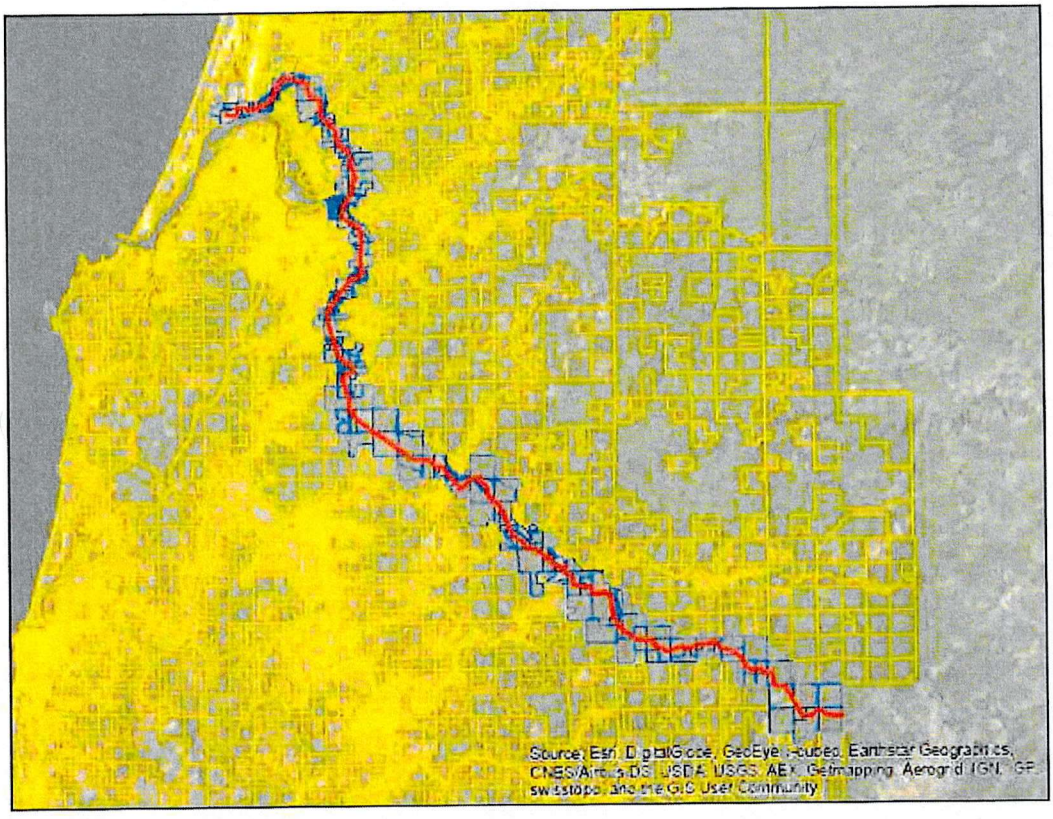


EXHIBIT "C"
Staff Report

File Number: ACU-16-013

Applicant: Richard Allan, Marten Law representing Pacific Connector Gas Pipeline, LP

Property Information:

Map Number	Acreage	Landowner	Zoning
25-13-00-200	191.58	Oregon International Port of Coos Bay	6-WD
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25-13-04-100	97.11	Fort Chicago Holdings II U.S. LLC	6-WD, IND, 7-D
25-13-03-200	69.17	Fort Chicago Holdings II U.S. LLC	7-D, 8-WD, 8-CA
25-13-04-500	48	Oregon International Port of Coos Bay	8-CA, 13A-NA, 11-NA, 11-RS
24-13-36B-700	6.85	Donald & Carol Thompson	11-RS, RR-2, F
24-13-36B-1101	2.25	Hal & Donna Blomquist	RR-2, F
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24-13-36-100	400	Weyerhaeuser Company	F
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25-13-01-100	443.19	Weyerhaeuser Company	F
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25-13-01D-100	41.03	Gary E. Smith Trust	EFU, F
25-12-06C-100	83.19	Fort Chicago Holdings II U.S. LLC	EFU, F
25-12-06C-601	45.58	Lone Rock Timber Investments I, LLC	F
25-12-07-500	47.42	Lone Rock Timber Investments I, LLC	F
25-12-07-400	78.80	Lone Rock Timber Investments I, LLC	F
25-12-07-1300	71.74	Lone Rock Timber Investments I, LLC	F
25-12-07-1301	8.26	Lone Rock Timber Investments I, LLC	F
25-112-07-1301A02		U.S. A. Federal Aviation Administration	F
25-12-07-2400	40	Steven Sweet	F
25-12-18-300	40	Steven Sweet	F
25-12-18-200	77.14	Steven Sweet	F, EFU
25-12-17-300	2.10	Steven Sweet	EFU
25-12-17-400	12.05	Monte Rutherford	EFU
25-12-17-600	16	Jackie Shaw ETAL	EFU
25-12-17-700	5.47	William Edwards	EFU
25-12-17-900	40	Lone Rock Timber Investments I, LLC	F, EFU
25-12-17-1000	240	Weyerhaeuser Company	F
25-12-20-100	440	Weyerhaeuser Company	F
25-12-29-1100	99.61, 2.25	Donald Fisher 2012 Delaware Trust	F, EFU
25-12-30-501	32.24	Marjorie Brunschmid ETAL	EFU, 18-RS

25-12-30-600	12.04	Gregory Demers	18-RS
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25-12-32-100	126.85	Fred Messerle & Sons, INC	20-RS, EFU
25-12-32-400	60	Fred Messerle & Sons, INC	EFU, F
26-12-05-200	242.89	Fred Messerle & Sons, INC	F
25-12-32-300	102.30	Louis McCarthy ETAL	F
26-12-05-300	23.66	Solomon Joint Living Trust	F
26-12-08B-100	16.09	Michael & Debra Prugh	F, RR-2
26-12-08-900	2.10	Jeffrey Hill	RR-5
26-12-08-1000	2.64	Jeffrey & Gidgette Hill	RR-5
26-12-08-1100	34.06	Alvin & Lou Ann Rode	RR-5, EFU, F
26-12-08-500	17.32	Mark & Melody Sheldon	RR-5
26-12-08B-1400	10.45	Larry & Shirley Wheeker	F
26-12-08-1102	22.91	Jeffrey & Gidgette Hill	F
26-12-08B-1500	15.75	Michael Mcginnis	F
26-12-08-1601	10.63	Gunnell Family Trust	F
26-12-08-1700	25.72	Curtis & Melissa Pallin	F, 21-RS
26-12-07-700	196.18	Fred Messerle & Sons, INC	21-CA, 21-RS, F
26-12-18A-100	77.24	Wright Loving Trust	F
26-12-18A-200	10.01	Paul & Eura Washburn	RR-5
26-12-18A-201	4.08	David & Emily McGriff	RR-5
26-12-18B-1900	2.91	James & Archina Davenport	RR-5
26-12-18B-1700	25.07	Nova & Ellen Lovell	F
26-12-18C-103	57.27	John & Mary Muencrath Trust 12-22-11	F
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26-12-30A-500	70.99	Lone Rock Timber Investments I, LLC	F
26-12-30-1200	75.46	Menasha Forest Products Corporation	F
26-12-30-1400	77.69	Fred Messerle & Sons, INC	F
26-12-31A-100	34.48	Ronald & Molly Foord	F
26-12-32-400	39.68	Fred Messerle & Sons, INC	F
26-12-32-500	161.13	Dee Willis	EFU,F
26-12-31-700	120	Pacific West Timber Company (Oregon) LL	F
26-12-31-900	30	Anna & Daniel Fox	F
27-12-06-100	141.68	Lone Rock Timber Investments I, LLC	F
27-12-06-200	10.06	Steven & Carole Stalcup	F

27-12-06-300	470.98	Menasha Forest Products Corporation	F
27-12-05-100	475.68	USA (CBWRGL)	F
27-12-00-1700	160	Roseburg Resources Co.	F
27-12-00-1600	9.55	Pacificorp	F
27-12-00-1500	470.45	Menasha Forest Products Corporation	F
27-12-00-2500	400	USA (CBWRGL)	F
27-12-00-2400	638.62	Coos County Sheep Co.	F, EFU
27-12-00-2300	637.56	USA (CBWRGL)	F
27-12-22-100	640	Coos County Sheep Co.	F
27-12-23-200	320	USA (CBWRGL)	F
27-12-23-100	183.31	Coos County Sheep Co.	EFU, F
27-12-23-300	117.98	Lucky T LLC	F
27-12-24C-1500	11.10	John & Kara Breuer	F
27-12-24C-1600	10.99	Virgil & Carol Williams	RR-5
27-12-24C-1200	3.63	Mary Metcalf	RR-5
27-12-24C-1700	11	Virgil & Carol Williams	EFU
27-12-25-200	64.10	Charles & Johanna Yates	EFU
27-12-24C1800	11.26	Rodney Dalton	EFU
27-12-24C-2100	10.01	Ted L. Fife Family Trust	EFU
27-12-25-201	11.80	Donald & Shirley Fisher	F
27-12-25-203	47.28	Walter & Wendy Hazen	F
27-12-25-100	155.19	USA (CBWRGL)	F
27-11-00-1500	601.60	Menasha Forest Products Corporation	F
27-11-00-1400	643.31	USA (CBWRGL)	F
27-11-00-1700	629.56	USA (CBWRGL)	F
27-11-32-1000	80	Pacific West Timber Company (Oregon) LL	F
27-11-32-800	269.90	Menasha Forest Products Corporation	F
27-11-32-1300	66.56	Menasha Forest Products Corporation	F
28-11-05-100	340.26	USA (CBWRGL)	F
28-11-05-200	45.99	Windlinx Family Trust	F
28-11-04-600	470.04	Moore Mill & Lumber Co.	F
28-11-04-800	40	Menasha Forest Products Corporation	F
28-11-00-400	640, 240	USA (CBWRGL)	F
28-11-10-1000	80	Pacific West Timber Company (Oregon) LL	F
28-11-10-900	189.67	Lone Rock Timber Investments I, LLC	F
28-11-10-901	1.05	Dora Cemetery Assn.	F
28-11-10-1300	57.25	Cynthia Garrett	F, EFU
28-11-10-1400	128.15	Laird Timberlands, LLC	EFU
28-11-15-100	7.31	Laird Timberlands, LLC	EFU, F
28-11-00-500	280	Moore Mill & Lumber Co.	EFU, F
28-11-00-700	200	Plum Creek Timberlands, L.P.	F
28-11-13-900	437.52	USA (CBWRGL)	F
28-11-24-100	639.76	Keystone Forest Investments, LLC.	F
28-11-00-1900	40	Roseburg Resources Co.	F
28-10-00-3500	34.93	Roseburg Resources Co.	F
28-10-00-3400	503.57	USA (CBWRGL)	F
28-10-00-3600	79.54	Lone Rock Timber Investments I, LLC	F

28-10-00-3300	160	FIA Timber Partners II, L.P.	F
28-10-00-3800	160	FIA Timber Partners II, L.P.	F
28-10-00-4100	480	USA (CBWRGL)	F
28-10-00-4200	440	USA (O& C)	F
28-10-00-4600	280	USA (CBWRGL)	F
28-10-00-4500	160	Lone Rock Timberland Co.	F
28-10-00-5000	320	Tri-W Group Limited Partnership	F
28-10-00-4900	160	Plum Creek Timberlands, L.P.	F
28-10-00-4800	160	Tri-W Group Limited Partnership	F
28-10-00-5600	160	USA (CBWRGL)	F
28-10-00-5500	160	Tri-W Group Limited Partnership	F
28-10-00-5200	160	Tri-W Group Limited Partnership	F
28-09-00-3500	670.72	USA (CBWRGL)	F
28-09-00-300	656.61	Plum Creek Timberlands, L.P	F
29-09-00-200	623.72	USA (CBWRGL)	F
29-09-00-500	160	Lone Rock Timberland Co.	F
29-09-00-600	598.18	Plum Creek Timberlands, L.P	F
29-09-00-700	640	USA (CBWRGL)	F
25-13-04-300	228.88	Roseburg Forest Products Co.	CBEMP
25-13-03-200	69.17	Fort Chicago Holdings II U.S., LLC	IND, CBEMP
28-12-07C-101	17.54	Ron Lafranchi	Q-IND
28-12-07C-1000	17.24	Ron Lafranchi	CREMP, CREMP IND
28-12-07C-900	9.34	LBA Contract Cutting, INC	CREMP, CREMP IND
28-12-18B-1500	8.29	LBA Contract Cutting, INC	CREMP, CREMP IND
27-12-26D-1200	18.85	Spencer & Truly Yates	EFU
28-13-01DB-300	5.56, .54	City of Coquille	City
28-13-01DB-309	10.31	City of Coquille	City
28-13-01DB-310	6.59	City of Coquille	City
25-13-35-400	94.76	Georgia- Pacific Wood Products Northwest	CBEMP
25-13-36-1000	39.18	Georgia- Pacific Wood Products Northwest	CBEMP

Reviewing Staff: Jill Rolfe, Planning Director
Date of Report: April 10, 2016

I. PROPOSAL

Request for Planning Director Approval for an extension of a conditional use to site natural gas pipeline as provided by Coos County Zoning and Land Development Ordinance (CCZLDO) § 5.2.600 Expiration and Extension of Conditional Uses.

II. BACKGROUND INFORMATION

On September 8, 2010, the County Board of Commissioners (Board) adopted and signed Final Order No. 10-08-045PL, approving Applicant's request for a conditional use permit authorizing development of the Pipeline and associated facilities, subject to certain conditions. The decision was subsequently appealed to, and remanded by the Oregon Land Use Board of Appeals (LUBA). On March 13, 2012, the Board addressed and resolved two grounds for remand, and approved findings supporting approval of the CUP for the Pipeline and associated facilities on remand in Final Order No. 12-03-018PL.

Over the past several years, Pacific Connector has been pursuing the necessary approvals for the Pipeline. All necessary approvals have not been secured as of the date of this report.

Over the past several years, Pacific Connector has been pursuing the necessary approvals for the Pipeline. Pacific Connector received a FERC Certificate on December 17, 2009. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 129 FERC ¶ 61, 234 (2009). However, due to changes in the natural gas market and Jordan Cove's reconfiguration of its facility from an LNG import facility to an LNG export facility, FERC issued an order on April 16, 2012 vacating Pacific Connector's Certificate despite objections of Pacific Connector. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 139 FERC ¶ 61,040 (2012)

Consequent impossibility of obtaining all federal approvals necessary to initiate construction within the original two-year County approval period, Pacific Connector filed a request with the County on March 7, 2014 to extend its original land use approvals for two additional years. The Planning Director approved this request on May 2, 2014, pursuant to provisions of CCZLDO § 5.0.700. The Planning Director's decision was appealed on May 27, 2014 (AP-14-02).

On local appeal, the Board of Commissioners invoked its authority under CCZLDO § 5.0.600 to appoint a hearings officer to conduct the initial public hearing for the appeal and make a recommendation to the Board. After a public hearing, an extended open record period for written evidence and testimony, and final written argument from the applicant, the Hearings Officer issued his Analysis, Conclusions and Recommendations to the Board of Commissioners, recommending approval of the application on September 19, 2014. In light of limitations contained in OAR 660-033-0140 applicable to extensions in farm- and forest-zoned lands, the Hearings Officer recommended approving the extension request for only one year, extending the CUP approval from April 2, 2014 to April 2, 2015.

On March 16, 2015, Pacific Connector filed a request for a second extension of the land use approvals for the original Pipeline alignment. File No. ACU-15-07. Staff reviewed the matter, deemed the application complete on April 8, 2015, and the Planning Director rendered a decision approving the extension request on April 14, 2015. The approval was appealed on April 30, 2015. File No. AP-15-01. After hearings before a County Hearings Officer, the Hearings Officer issued a written opinion and recommendation to the Board of Commissioners that they affirm the Planning Director's decision granting the one year extension to April 2, 2016. On October 6, 2015, the Board adopted the Hearings Officer's recommended decision and approved the requested extension. Final Decision No. 15-08-039PL (attached as Exhibit G). The Board of Commissioners' approval of Pacific Connector's second extension request was not appealed to LUBA, and that decision is final.

III. APPROVAL CRITERIA & FINDINGS OF FACT

- **SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES**

Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

1. *Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:*

    a. *Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.*

    b. *Coos County may grant one extension period of up to 12 months if:*

        i. *An applicant makes a written request for an extension of the development approval period;*
        ii. *The request is submitted to the county prior to the expiration of the approval period;*
        iii. *The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*
        iv. *The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.*

    c. *Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.*

FINDING: The request covers both the resource and non-resource zoning districts. This section only covers the resources portion of the approval; however, the applicant has requested the conservative approach and requests a one-year extension for the entire ACU. The applicant made a written request for the extension of the Pacific Connector Gas Pipeline development. The applicant submitted the application for an extension on March 17, 2016, prior to the expiration date of April 2, 2016. The applicant has provided the reasons that prevented the applicant from beginning or continuing development within the approval period.

The applicant has explained that the reason that the project has not begun is because the Federal Energy Regulatory Commission's (FERC) final authorization has not been completed. The project cannot begin construction without a final decision from FERC as well as other permitting agencies as listed in the applicant's Exhibit D. The fact that the project is unable to obtain all necessary permits to begin prior to the expiration of a conditional use approval is sufficient to grant the applicant's requested extension.

The last consideration for the extension of a conditional use approval in the resource zone is that the applicable criteria for the decision have not changed. The application criteria pursuant to which the approval was originally granted have not changed. There has been some additional language added to the resource section of the ordinance as well as some renumbering but the language of the criteria has not been altered.

Therefore, the application as presented meets the criteria.

2. *Extensions on all non-resource zoned property shall be governed by the following.*

    a. *The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.*
    b. *If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.*
    c. *If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.*

FINDING: The request covers both the resource and non-resource zoning districts. This section only covers the non-resources portion of the approval; however, the applicant has requested the conservative approach and requests a one-year extension for the entire ACU.

The applicant made a written request for the extension of the Pacific Connector Gas Pipeline development. The applicant submitted the application for an extension on March 17, 2016, prior to the expiration date of April 2, 2016.

The pipeline crosses both resource and non-resource zones, requiring the applicant to request an extension under both subsection one and two of CCZLDO § 5.2.600. In non-resource the extension is for up to two years as long as the use is still listed as a conditional use under the current zoning regulations. The use is still a listed conditional use in the relevant non-resource zones and the applicant requested the extension prior to the expiration. Therefore, the application request complies with the criteria the requested one-year extension shall be granted on all non-resource zoning districts the pipeline was approved to cross.

IV. DECISION:

The applicant has supplied written findings and evidence to support approval of this application. There may be some debate about the FERC decision but that is irrelevant to the criteria. There are conditions that apply to this use that can be found at Exhibit "A".

V. EXPIRATION AND EXTENSION OF CONDITIONAL USES

Time frames for conditional uses are as follows:

a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and
b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.

c. *All non-residential conditional uses within resource zones are valid (2) years from the date of approval.*
d. *For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.*
e. *Additional extensions may be applied.*

This approval has been extended for one year unless the development, activity or use has been extended.

Table 1.6-1
Permits and Approvals Necessary for Construction and Operation

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
Federal				
U.S. Department of Energy (DOE)	Order Granting Long Term, Multi-Contract Authorization to Export Natural Gas to Free Trade Agreement Nations under Section 3 of the Natural Gas Act	Amy Sweeney (202) 586-2627 1000 Independence Ave., SW Room 3E-052 Washington, D.C. 20585	September 2011	Received December 7, 2011[6]
	Order Conditionally Granting Long-Term Multi-Contract Authorization To Export Liquefied Natural Gas To Non-Free Trade Agreement Nations under Section 3 of the Natural Gas Act.	Amy Sweeney (202) 586-2627 1000 Independence Ave., SW Room 3E-052 Washington, D.C. 20585	March 2012	Conditionally received March 24, 2014[1]
Federal Energy Regulatory Commission	Section 7 of the Natural Gas Act – issuance of Certificate of Public Convenience and Necessity	John Peconom (202) 502-6352 888 First St., NE Washington, D.C. 20426	September 2017	November 2018
	Section 3 of the Natural Gas Act – order granting Section 3 authorization		September 2017	November 2018
FERC (as lead agency)	National Historic Preservation Act § 106 Review/Memorandum of Agreement among federal agencies, consulting parties, and SHPO	Paul Friedman (202) 502-8059 888 First St., NE Washington, D.C. 20426	September 2017	November 2018
FERC (as lead agency)	National Environmental Policy Act Review - EIS	John Peconom (202) 502-6352 888 First St., NE Washington, D.C. 20426	September 2017	August 2018

[6] JCEP will submit an amendment to the FTA authorization and pending non-FTA authorization to reflect the new export capacity of the LNG Terminal and will confirm receipt of such authorizations prior to construction.

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
U.S. Army Corps of Engineers	Clean Water Act – issuance of permit under Section 404 to allow placement of dredge or fill material into waters of the United States	Tyler Krug Regulatory Project Manager 541-756-2097 tyler.j.krug@usace.army.mil North Bend Field Office 2201 N. Broadway, Suite C North Bend, OR 97459	October 2017	November 2018
	Section 10 of the Rivers and Harbors Act – permit issued to allow structures or work in or affecting navigable waters of the United States			
	Section 408 of the Clean Water Act – issuance of permit allowing the occupation or alteration of Army Corps of Engineers civil works projects	Marci Johnson U.S. Army Corps of Engineers P.O. Box 2946 Portland, OR 97285 (503) 808-4765	September 2017	November 2018
U.S. Coast Guard (USCG)	Letter of Recommendation and Letter of Recommendation Analysis under the Ports and Waterway Safety Act	Captain Timmons USGS Sector Columbia River 2185 SE 12th Place Warrenton, Oregon 97146	April 2006	December 2017
U.S. Fish and Wildlife Service	Endangered Species Act – consultation under Section 7 and issuance of biological opinion	Joe Zisa 503-231-6179 joe_zisa@fws.gov Oregon Fish and Wildlife Office 2600 SE 98th Ave., Ste. 100 Portland, OR 97266	September 2017	November 2018
	Fish and Wildlife Coordination Act – consultation with federal agencies to prevent loss or damage to wildlife resources		September 2017	November 2018
	Migratory Bird Treaty Act Review		September 2017	

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
National Marine Fisheries Service	ESA Section 7 Consultation – issuance of biological opinion	Chuck Wheeler Fisheries Biologist 541-957-3379 chuck.wheeler@noaa.gov 2900 Stewart Parkway Roseburg, OR 97471	September 2017	November 2018
	Magnuson-Stevens Fishery Conservation and Management Act consultation on Essential Fish Habitat		September 2017	November 2018
	Marine Mammal Protection Act – Issuance of Incidental Harassment Authorization	Jordan Carduner 1315 East West Highway Silver Spring, MD 20910	October 2017	November 2018
Federal Aviation Administration (FAA)	Determination of No Hazard to Air Navigation pursuant to 14 CFR Part 77.	Dan Shoemaker 1601 Lind Ave SW Renton, WA 98055 (425) 227-2791	October 2017	Prior to Construction
USDOI Bureau of Land Management	Mineral Leasing Act – issuance of Right-of-Way Grant	Miriam Liberatore Planning and Environmental Coordinator 541-618-2412 mliberat@blm.gov 3040 Biddle Road Medford, OR 97504	October 2017	November 2018
	Mineral Leasing Act – issuance of Temporary Use Permit			
	Federal Land Policy and Management Act - Amendments to Resource Management Plans			
USDA Forest Service	Mineral Leasing Act - Right-of-Way Grant Letter of Concurrence	David Krantz PCGP Project Manager 541-618-2082 dkrantz@fs.fed.us 3040 Biddle Road Medford, OR 97525	October 2017	November 2018
	Federal Land Policy and Management Act - Amendments to Existing Forest Plans			

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
USDI Bureau of Reclamation	Right-of-Way Grant Letter of Concurrence	Lila Black 541-880-7510 lblack@usbr.gov Klamath Basin Area Office 6600 Washburn Way Klamath Falls, OR 97603	October 2017	November 2018
	Letter of Consent covering lands on which BOR has reserved rights or acquired easements			
Tribal				
Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians	FERC to consult with the Tribes under NHPA Section 106	Ms. Stacy Scott 541-888-9577x7513 sscott@ctclusi.org 1245 Fulton Avenue Coos Bay, OR 97420	FERC to initiate after receipt of applications	November 2018
Coquille Indian Tribe		Kassandra Rippee 541-756-0904x10216 kassandrarippee@coquilletribe.org 3050 Tremont Street North Bend, OR 97459		
Cow Creek Band of Umpqua Indians		Mr Dan Courtney (541) 672-9405 dlcourtney5431@msn.com 2371 Stephens Street, Suite 500 Roseburg, OR 97470		
The Klamath Tribes		Mr. Perry Chocktoot Culture & Heritage Director 541-783-2219x159 Perry.Chocktoot@klamathtribes.com P.O. Box 436 Chiloquin, OR 97624		
Confederated Tribes of the Siletz Indians		Mr. Robert Kentta Cultural Resources Director 541-444-2532 rkentta@ctsi.nsn.us P.O. Box 549 Siletz, OR 97380		

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
Confederated Tribes of the Grand Ronde Community		David Harrelson 503-879-1630 david.harrelson@grandronde.org 9615 Grand Ronde Road Grand Ronde, OR 97347		
State				
Oregon Division of State Parks Office of Historic Preservation	National Historic Preservation Act – Section 106 Consultation	John Pouley Assistant State Archaeologist 503-986-0675 john.pouley@oregon.gov 725 Summer St. NE, #C Salem, OR 97301	Initiated by FERC upon receipt of application	November 2018
Oregon Department of Environmental Quality	CWA 401 Water Quality Certification	Mary Camarata 541-687-7435 camarata.mary@deq.state.or.us 165 East 7th Ave., Ste. 100 Eugene, OR 97401	October 2017	October 2018
	Clean Air Act – issuance of Title V Operating Air Permit		To be filed one year after operation.	Within 1 year of filing
	Clean Water Act – issuance of permit under the National Pollutant Discharge Elimination System ("NPDES") - 1200A General Permit for Concrete Batch Plant		Prior to construction	Prior to construction
	Clean Water Act – issuance of NPDES - 1200-C General Permit for any Contiguous Sites		Prior to construction	October 2018
	Clean Water Act – issuance of NPDES Wastewater Permit for current site conditions – allows discharge of treatment of leachate from landfill through the ocean outfall		Renewed July 26, 2015. Expires June 30, 2020	Issued

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
	CWA 402 NPDES Construction Stormwater Permit		Prior to construction	Prior to construction
	CWA 402 NPDES Operating Stormwater Permit		Prior to operation	Prior to operation
	CWA 402 NPDES Water Pollution Control Facility (WPCF) – Hydrostatic Test Water		Prior to operation	Prior to operation
	Type B NSR Air Permit for LNG Terminal		Updated filed September 2017	Approved June 2015/October 2018
	Air Contaminant Discharge Permit for Compression Facilities		Modifying pending application October 2017	October 2018
Oregon Department of Water Resources	Permit to Appropriate Water	Jerry K. Sauter Water Rights Program Analyst 503-986-0817 jerry.k.sauter@state.or.us Water Right Services Division 725 Summer Street NE, Ste. A Salem, OR 97301	Prior to operation	Prior to operation
Oregon Department of Fish and Wildlife	In-Water Blasting Permit Fish Passage	Sarah Reif Energy Coordinator, Wildlife Division 503-947-6082 sarah.j.reif@state.or.us 4034 Fairview Industrial Drive SE Salem, OR 97302	October 2017	October 2018
	Fish Passage Approval	Greg Apke 4034 Fairview Industrial Dr. SE Salem, OR 97302 503-947-6228 Greg.d.apke@state.or.us	December 2017	October 2018
Oregon Department of Transportation	State Highway Crossing Permit	Roger B. Allemand Permit Specialist – District 8	Prior to construction	Prior to construction

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
	Railroad Flagging Permit	541-774-6360 roger.b.allemand@odot.state.or.us	Prior to Construction	Prior to construction
	Oversize Load Permit	Dave Wells Permit Specialist – District 7 541-957-3588 david.wells@odot.state.or.us	Prior to Construction	Prior to construction
	Overweight Load Permit		Prior to Construction	Prior to construction
	Street Use Permit		Prior to Construction	Prior to construction
Oregon Department of State Lands	Joint Permit with the USACE Removal/Fill Permit	Bob Lobdell 503-986-5282 bob.lobdell@state.or.us 775 Summer Street NE, Ste. 100 Salem, OR 97301	October 2017	October 2018
	Proprietary easements and licenses for land access and gravel use		October 2017	October 2018
	Wetland Report Concurrence	Lynne McAllister Jurisdiction Coordinator 503-986-5300 lynne.mcallister@state.or.us 775 Summer Street NE, Ste. 100 Salem, OR 97301	October 2017	October 2018
Oregon Department of Land Conservation and Development	Coastal Zone Management Consistency Determination	Elizabeth Ruther 503-934-0029 elizabeth.j.ruther@state.or.us 635 Capitol Street, Suite 150 Salem, Oregon 97301-2540	November 2017	October 2018
Oregon Department of Forestry	Operate Mechanical Equipment	Josh Barnard Field Support Unit Manager 503-945-7493 josh.w.barnard@oregon.gov 2600 State Street, Bldg. A Salem, OR 97310	Prior to Construction	Prior to Construction
	Written Plan & Alternate Plan			
Oregon State Building Codes Division (BCD)	Building Permits – for various permanent structures.	Mark Long (503) 373-7235	Prior to Construction	Prior to Construction
BCD	Temporary Building Permit – for any temporary structures.	Mark Long (503) 373-7235	Prior to Construction	Prior to Construction

Agency	Permit/Approval	Contact	Filing Date	Approval/ Anticipated Approval
Oregon State Historic Preservation Office (SHPO)	Section 106 Consultation	John O. Pouley 503-986-0675	September 2017	November 2018
County				
City of North Bend Planning Department	Conditional Use Permit (for pipeline in City of North Bend)	Chelsea Schnabel City Planner City of North Bend (541) 756-8535 cschnabel@northbendcity.org 835 California Avenue North Bend, OR 97459	October 2017	May 2018
Coos County Planning Department	Conditional Use Permit	Jill Rolfe 541-396-7770 jrolfe@co.coos.or.us Coos County Planning Department 225 N. Adams Coquille, OR 97423		Approved 2016
Douglas County Planning Department	Conditional Use Permit	Cheryl Goodhue Planning Department 541-440-4289 cagoodhu@co.douglas.or.us Douglas County Courthouse Justice Building – Room 106 Roseburg, OR 97470		Approved 2010 and 2014
Klamath County Planning Department	Conditional Use Permit – Compressor Station	Mark Gallagher Planning Director 541-883-5121x3064 mgallagher@co.klamath.or.us 305 Main Street Klamath Falls, OR 97601		Approved 2015

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF APPROVING AN EXTENSION REQUEST APPLIED FOR BY PACIFIC CONNECTOR GAS PIPELINE, LP AND APPEALED BY CITIZENS AGAINST LNG	)	FINAL DECISION AND ORDER NO. 17-11-064PL

NOW BEFORE THE Board of Commissioners sitting for the transaction of County business on the 19th day of December, 2017, is the matter of the appeal of the Planning Director's May 18, 2017, decision granting Pacific Connector Gas Pipeline, LP's (hereinafter the "Applicant") application for approval of an extension to a conditional use approval for the construction and operation of a natural gas pipeline to provide gas to Jordan Cover Energy Project's liquefied natural gas (LNG) terminal and upland facilities.

The Board of Commissioners invoked its authority under the Coos County Zoning and Land Development Ordinance (CZLDO) §5.0.600.4 to pre-empt the appeal process and appoint a Hearings Officer to conduct the initial public hearing for the application and then make a recommendation to the Board of Commissioners. The Board of Commissioners appointed Andrew H. Stamp to serve as the Hearings Officer.

Hearings Officer Stamp conducted a public hearing on this matter on August 25, 2017. 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 on September 22, 2017.

Hearings Officer Stamp issued his Analysis, Conclusions and Recommendations to the Board of Commissioners on October 20, 2017. Staff presented some revisions to the Findings of Fact; Conclusions of Law and Final Decision for the Board of Commissioners to consider.

The Board of Commissioners held a public meeting to deliberate on the matter on November 21, 2017. All members present and participating unanimously voted to tentatively accept the decision of the Hearings Officer, and continued the final decision on the matter to allow staff to draft the appropriate order and findings. The meeting was continued to December 5, 2017, for final approval.

On December 5, 2017, the meeting on deliberation was reopened to provide an additional opportunity to the Board of Commissioners to declare any potential ex-parte contacts or conflicts of interest. Commissioner John Sweet revealed two potential ex-parte communications and those present were allowed to challenge and rebut the substance of Commissioner Sweet's disclosure. The deliberation was then continued to December 19, 2017, for final adoption and signatures.

NOW, THEREFORE, the Board of Commissioners, having reviewed the Hearings Officer's Analysis, Conclusions and Recommendation, the arguments of the parties, and the records and files herein,

IT IS HEREBY ORDERED that the Planning Director's May 18, 2017, decision granting Pacific Connector Gas Pipeline, LP's (hereinafter the "Applicant") application for approval of an extension to the conditional use approval for the construction and operation of a natural gas pipeline is affirmed, and the Board further adopts the Findings of Fact; Conclusions of Law, and Final Decision attached hereto as "Exhibit A" and incorporated by reference herein.

ADOPTED this 19th day of December 2017.

BOARD OF COMMISSIONERS:

COMMISSIONER

Absent
COMMISSIONER

COMMISSIONER

Bobbi Brooks
RECORDING SECRETARY

APPROVED AS TO FORM:
Office of Legal Counsel

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION OF THE COOS COUNTY BOARD OF COMMISSIONERS

PACIFIC CONNECTOR GAS PIPELINE
(APPEAL OF A SECOND EXTENSION REQUEST FOR
COUNTY FILE NO. HBCU 10-01 / REM 11-01)
COOS COUNTY, OREGON

FILE NO. AP 17-004 (APPEAL OF COUNTY FILE NO. EXT-17-005).

DECEMBER 19, 2017

EXHIBIT A

I. INTRODUCTION

A. NATURE OF THE LOCAL APPEAL

The appellant challenges the Planning Director's decision to allow the applicant Pacific Connector Gas Pipeline, LP, (hereinafter the "Applicant," "Pacific Connector," or "PCGP"), an additional one-year extension on its development approval, to April 2, 2018.

B. CASE HISTORY

In 2010, Pacific Connector submitted a land use application seeking development approval to construct and operate a natural gas pipeline to provide gas to Jordan Cove Energy Project's liquefied natural gas (LNG) terminal and upland facilities. As established in Pacific Connector's original land use application and subsequent proceedings, the Pipeline is within the exclusive siting and authorizing jurisdiction of the Federal Energy Regulatory Commission (FERC), requiring a FERC-issued Certificate of Public Convenience and Necessity (Certificate) prior to construction. Under the federal Coastal Zone Management Act, however, a land use consistency determination is also required within the state's Coastal Zone Management Area (CZMA), precipitating Pacific Connector's application for local land use approvals, including the 2010 application to Coos County.

On September 8, 2010, the County Board of Commissioners (Board) adopted and signed Final Order No. 10-08-045PL, approving Applicant's request for a CUP authorizing development of the Pipeline and associated facilities, subject to certain conditions. The decision was subsequently appealed to, and remanded by, the Oregon Land Use Board of Appeals (LUBA). On March 13, 2012, the Board addressed and resolved two grounds from remand, and approved findings supporting approval of the CUP for the Pipeline and associated facilities on remand in Final Order No. 12-03-018PL. The March 13, 2012 decision became final when the 21-day appeal window expired and no appeals were filed on April 2, 2012. The 2010 and 2012 approvals are referred to collectively as the CUP. The CUP authorizes construction and operation of a natural gas pipeline and associated facilities on approximately 49.72 linear miles within Coos County, extending from Jordan Cove Energy Project's LNG Terminal to the alignment section in adjacent Douglas County.

Over the past several years, Pacific Connector has been pursuing the necessary approvals for the Pipeline. Pacific Connector received a FERC Certificate on December 17, 2009. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 129 FERC ¶ 61, 234 (2009). However, due to changes in the natural gas market and Jordan Cove's reconfiguration of its facility from an LNG import facility to an LNG export facility, FERC issued an order on April 16, 2012 vacating Pacific Connector's Certificate despite objections of Pacific Connector. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 139 FERC ¶ 61,040 (2012) (attached as Exhibit D).

Due to FERC's decision to revoke Pacific Connector's FERC Certificate, it was necessary for Pacific Connector to seek new FERC approval for the Pipeline as reconfigured to serve Jordan Cove's proposed LNG export facility. In June 2012, Pacific Connector initiated the

mandatory FERC "pre-filing" process to seek a new FERC Certificate. FERC Docket No. PF12-17-000. Following a public scoping process initiated by FERC that lasted until October 29, 2012, Pacific Connector filed a new application with FERC on June 6, 2013. FERC Docket No. CP-13-492-00.

On November 7, 2014, FERC issued a Draft Environmental Impact Statement (DEIS) for the Pipeline, with public comment held open until mid-February 2015. FERC's revised schedule for the project indicated that completion of the Final EIS was scheduled for June 12, 2015, with a FERC decision on Pacific Connector's application expected by September 10, 2015. *Notice of Revised Schedule for Environmental Review of the Jordan Cove Liquefaction and Pacific Connector Pipeline Projects*; Jordan Cove Energy Project, LP, Docket No. CP13-483-000; Pacific Connector Gas Pipeline LP, Docket No. CP13-492-000 (Feb. 6, 2015).

Pacific Connector's CUP originally contained a condition which prohibited the use of the CUP "for the export of liquefied natural gas" (Condition 25). After the initial FERC authorization for the Pipeline was vacated due to the reconfiguration of the Jordan Cove facility, Pacific Connector applied to Coos County on May 30, 2013 for an amendment to the CUP requesting deletion or modification of Condition 25 as necessary for the use of the Pipeline to serve the Jordan Cove LNG export facility. After a revised application narrative was submitted, the application was deemed complete on August 23, 2013, and the County provided a public hearing before a Hearings Officer. On February 4, 2014, the Board adopted the Hearings Officer's decision and approved Pacific Connector's requested modification of Condition 25. Final Order No. 14-01-006PL, HBCU-13-02 (Feb. 4, 2014).

Project opponents appealed the County's Condition 25 Decision to LUBA, which upheld the County decision. *McCaffree et al. v. Coos County et al.*, 70 Or LUBA 15 (2014). After further appeal of the LUBA decision, the Oregon Court of Appeals affirmed LUBA's decision without opinion. *McCaffree v. Coos County*, 267 Or App 424, 341 P3d 252 (2014).

Meanwhile, in light of the withdrawal of its FERC Certificate and the consequent impossibility of obtaining all federal approvals necessary to initiate construction within the original two-year County approval period, Pacific Connector filed a request with the County on March 7, 2014 to extend its original CUP approval for two additional years. The Planning Director approved this request on May 2, 2014, pursuant to provisions of CCZLDO § 5.0.700. The Planning Director's decision was appealed on May 27, 2014 (AP-14-02).

On local appeal, the Board invoked its authority under CCZLDO § 5.0.600 to appoint a Hearings Officer to conduct the initial public hearing for the appeal and make a recommendation to the Board. After a public hearing, an extended open record period for written evidence and testimony, and final written argument from the applicant, Hearings Officer Andrew Stamp issued his Analysis, Conclusions and Recommendations to the Board, recommending approval of the application on September 19, 2014. In light of limitations contained in OAR 660-033-0140 applicable to extensions in farm- and forest-zoned lands, the Hearings Officer recommended approving the extension request for only one year, extending the CUP approval from April 2, 2014 to April 2, 2015.

The Board held a public meeting to deliberate on the matter on September 30, 2014. At the hearing, the Board voted to accept the Hearings Officer's recommended approval as it was presented. On October 21, 2014, the Board adopted its decision approving an extension of Pacific Connector's conditional use approval for one year, until April 2, 2015.

On November 12, 2014, Jody McCaffree and John Clarke (Petitioners) filed a Notice of Intent to Appeal the Board's decision to LUBA. On January 28, 2014, the deadline for Petitioners to file their Petition for Review, Petitioners instead voluntarily withdrew their Notice of Intent to Appeal, and LUBA dismissed Petitioners' appeal. *McCaffree v. Coos County*, __ Or LUBA __, LUBA No. 2014-102 (Feb. 3, 2015). Accordingly, the Board's decision to extend Pacific Connector's conditional use approval until April 2, 2015 is final and not subject to further appeal.

On March 16, 2015, Pacific Connector filed a request for a second extension of the land use approvals for the original Pipeline alignment. File No. ACU-15-07. Staff reviewed the matter, deemed the application complete on April 8, 2015, and the Planning Director rendered a decision approving the extension request on April 14, 2015. The approval was appealed on April 30, 2015. File No. AP-15-01. After a hearing before a County Hearings Officer, the Hearings Officer issued a written opinion and recommendation to the Board that they affirm the Planning Director's decision granting the one-year extension to April 2, 2016. On October 6, 2015, the Board adopted the Hearings Officer's recommended decision and approved the requested extension. Final Decision No. 15-08-039PL. The Board's approval of Pacific Connector's second extension request was not appealed to LUBA, and that decision is final.

On March 11, 2016, FERC issued an Order denying PCGP's application for a certificate of public convenience and necessity. Nonetheless, on March 16, 2016, the applicant's attorney filed for a third extension and it was approved on April 5, 2016 (ACU-16-013). This decision was not appealed and was valid until April 2, 2017.

The FERC Order issued on March 11, 2016 was made "without prejudice," which means that PCGP can file again if it wishes to do so. *See* FERC Order dated March 11, 2016 at 21. On April 8, 2016, PCGP filed a request for a rehearing to FERC. FERC issued a denial of that request on December 9, 2016.

PCGP promptly filed a Request for Pre-Filing Approval on January 23, 2017. *See* Exhibit C to Perkins Coie's September 8, 2017 letter. FERC approved that request on February 10, 2017. *Id*

The Applicant's attorney submitted PCGP's fourth extension request on March 30, 2017 (County File No. EXT-17-005), prior to the expiration of the prior extension approval. A notice of decision approving the extension was mailed on May 18, 2017. An appeal was filed on June 2, 2017 which was within the appeal deadline. On August 25, 2017 the public hearing was held on this matter. Subsequent written testimony was received until September 15, 2017. The applicant's final argument was received on September 22, 2017. On October 20, 2017, the County Hearings Officer issued his recommended order that the Board approve the Applicant's request. On November 21, 2017 the Board of Commissioners held a public hearing to review the

Hearings Officer decision and deliberate on the matter. The Board of Commissioners made a tentative decision and instructed staff to draft the order and findings incorporating the Hearings Officers recommendation for final adoption. The Board generally accepts the Hearings Officer's recommendation and affirms the staff decision for the reasons explained below.

II. LEGAL ANALYSIS.

A. Criteria Governing Extensions of Permits.

Once a development approval has been granted, as happened in this case, an extension may or may not be allowed, based on the criteria found in CCZLDO § 5.2.600. Under the terms of CCZLDO § 5.2.600, the Planning Director may approve extension requests as an Administrative Action under the local code. Extension decisions are subject to notice as described in CCZLDO § 5.0.900(2) and appeal requirements of CCZLDO § 5.8 for a Planning Director's decision. The criteria set forth in CCZLDO § 5.2.600 are reproduced below.

Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:

a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.

b. Coos County may grant one extension period of up to 12 months if:

i. An applicant makes a written request for an extension of the development approval period;
ii. The request is submitted to the county prior to the expiration of the approval period;
iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

d. If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.

e. For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.

f. Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.

2. Extensions on all non-resource zoned property shall be governed by the following.

a. The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.
b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.
c. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.

3. Time frames for conditional uses and extensions are as follows:

a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and
b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.
c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.
d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.

CCZLDO § 5.2.600; *see also* OAR 660-033-0140(2). These criteria are addressed individually below.

> Note: The CUP authorizes the Pipeline to be developed on both resource-zoned and non-resource zoned land. Therefore, the Applicant takes the conservative approach and requests a one-year extension for the entire CUP.

B. <u>Pacific Connector's Compliance with the Applicable Standards for a CUP Extension Request on Farm and Forest Lands</u>

CCZLDO § 5.2.600(1)(a) provides as follows:

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:

a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on

agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.

The Board finds that Pacific Connector's application and attachments demonstrate compliance with the code requirements at CCZLDO 5.2.600(1)(a) and OAR 660-033-0140(1) for granting extension requests for land use approvals on farm and forest lands.

This criterion is met because a timely extension request was filed and the criteria have not changed. (See discussion below).

C. <u>The Applicant Meets the Applicable Criteria Set Forth at § 5.2.600(1)(b).</u>

a. <u>Pacific Connector has made a written request for an extension of the development approval period.</u>

CCZLDO § 5.2.600(1)(b)(i) provides as follows:

b. Coos County may grant one extension period of up to 12 months if:

i. An applicant makes a written request for an extension of the development approval period;

The written narrative and application specifically request an extension submitted by the Applicant on March 30, 2017 of the development approval period. CCZLDO § 5.2.600(1)(b)(i).

This criterion is met.

b. <u>Pacific Connector's request was submitted to the County prior to the expiration of the approval period.</u>

CCZLDO § 5.2.600(1)(b)(ii) provides as follows:

b. Coos County may grant one extension period of up to 12 months if:

ii. The request is submitted to the county prior to the expiration of the approval period;

As noted above, the CUP was set expire on April 2, 2017. On March 30, 2017, Pacific Connector applied for a fourth extension of the approval period. The March 30, 2017 extension application was thus timely submitted prior to the April 2, 2017 expiration of the extended CUP. CCZLDO § 5.2.600(1)(b)(ii).

This criterion is met.

PCGP was unable to begin or continue development during the approval period for reasons for which the Applicant was not responsible.

CCZLDO § 5.2.600(1)(b)(iii) and (iv) provides as follows:

iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

To approve this extension application, the Board must find that PCGP has stated reasons that prevented PCGP from beginning or continuing development within the approval period and PCGP is not responsible for the failure to commence development. CCZLDO § 5.2.600 (1)(b)(iii) & (iv).

These two provisions have generated quite a bit of testimony and discussion among the parties. While there are good arguments on both sides of the debate, PCGP ultimately has the better arguments, as discussed below.

As the Applicant explains, the Pipeline is an interstate natural gas pipeline that requires pre-authorization by FERC. Until PCGP obtains a FERC certificate authorizing the Pipeline, PCGP cannot begin construction or operation of the facilities in the County or elsewhere along the Pipeline route. FERC has not yet authorized the Pipeline. Therefore, PCGP cannot begin or continue development of the Pipeline along the alignment authorized by the approval.

The opponents argue that PCGP's failure to secure the necessary FERC authorizations was PCGP's own fault. *See, e.g.*, Letter from Jody McCaffree dated August 25, 2017. Ms. McCaffree points out that FERC denied PCGP's application and also denied PCGP's request for a rehearing. The opponents' argument is also articulated in letters by Mr. Wim de Vriend dated August 25, 2017 and Sept 8, 2017. Exhibits 6 and 9. For example, in his Sept 8, 2017 letter, Mr. de Vriend points out that PCGP's application was denied because PCGP failed to provide evidence of sufficient market demand, and because PCGP failed to secure voluntary right-of-way from a majority of landowners on the pipeline route.

The Board has reservations about the precedent that would be set by accepting the opponents' contention: The concern is that the opponents' detailed inquiry would only be used in this case, which essentially means that PCGP would be treated differently than other applicants.

In this regard, the Applicant points out that the County previously accepted the "no federal permits in hand" reasoning as a basis to grant a time extension for the Pipeline, without getting into a detailed analysis regarding who is "at fault" for not obtaining the needed permits. In a previous case, the County found that the lack of FERC approval meant PCGP could not begin or continue development of the project:

> "In this case, the applicant needs federal approval for the gas pipeline project, and the project cannot commence until those federal approvals are forthcoming. Even the primary opponent to the project, Ms. Jody McCaffree, admits the facts that caused the applicant to be unable to begin

> or continue development during the approval period, i.e., that [FERC] vacated the federal authorization to construct the pipeline."

See County Final Order No. 14-09-063PL, ACU-14-08/AP 14-02 in Exhibit 3 to the Application narrative at 9.

Likewise, in granting a previous extension of this Approval, the County Planning Director stated:

> "The fact that the project is unable to obtain all necessary permits to begin prior to the expiration of a conditional use approval is sufficient to grant the applicant's requested extension."

See Director's Decision for County File No. ACU-16-013 in Exhibit 2 to Application narrative on page 13. This 2016 decision was not appealed. While previous decisions are not likely going to be considered formal binding "precedent," the Board believes that it is important for the County to be consistent in how it applies its code from case to case. So how rigorous of a look that the County takes in attempting to assign fault for the failure of PCGP to obtain the FERC permits is an issue that could have consequences for future cases.

Arguably, the facts are different for this extension than the facts presented in previous extension requests. Unlike previous extensions, FERC has now issued both a denial and has rejected a rehearing request, and, as of the close of the evidentiary record in this case, there was no current application pending with FERC.

Perhaps the most vexing issue is whether the opponents are correct that PCGP is "responsible" for FERC not yet approving the Pipeline. The code is drafted in a manner that it requires the County to determine, for any given extension request, that the applicant was not "responsible" for the reasons that caused the delay. The *Webster's Third New International Dictionary* (1993) defines the term "responsible" as "answerable as the primary, cause, motive, or agent whether of evil or good." The Board interprets the word "responsible" to be the same as "within the applicant's control." Stated another way, the question is whether the applicant is "at fault" for not exercising its permit rights in a timely manner. The aim of the criterion is to not reward applicants that do not actively pursue their development, while at the same time providing some measure of sympathy and assistance to applicants who are diligently trying to effectuate their permit but who run into unexpected problems that they are not in full control to correct or fix.

Reasons that might typically found to be "beyond the control" of an applicant would include:

- Delays caused by construction contractors or inability to hire sufficient workers;
- Unusual delays caused by abnormal weather years, such as in the case of El Nino or La Nina weather patterns;
- Delays in obtaining financing from banks;
- Delays in getting approval from HOA architectural review committees;

- Encountering unexpected legal problems related to the land, such as a previously unknown adverse possession claim;
- Encountering sub-surface conditions differing from the approved plans,
- Exhuming Native American artifacts; and
- Inability to meet requirements imposed by other governmental agencies.

Failures to act which might be considered to be within the control of an applicant include:

- Failing to apply for required permits;
- Failing to exercise due diligence in pursuing the matter;
- Procrasination.

As shown above, this is a highly subjective determination, and judicial review of well-documented reason for granting or denying an extension is likely limited, at best.

In this case, it is sufficient to conclude that because the Applicant has thus far been unsuccessful in obtaining permits from FERC despite the Applicant's reasonable efforts to obtain same, the Applicant is therefore *not at fault* for failing to begin construction on the pipeline.

The opponents would have the Board delve deeply into FERC's administrative proceedings and assess PCGP's actions and inactions and draw conclusions about same within the context of a complex, multi-party administrative proceeding being conducted by a non-County agency. Both the Applicant and the opponents have apparently been deeply involved in the FERC process, but the Board has had no involvement with that process. The Board believes that the opponents are asking the County to get into too much detail about the reasons for the FERC denial.

FERC has specifically left the door open for PCGP to reapply, and it appears that the pre-filing process has been initiated. The Board sees no harm in leaving these County land use permits in place in the interim. As has been repeatedly pointed out, these permits are conditioned upon - and are worthless without – concurrent FERC approvals.

The Board finds the Applicant's following argument to be compelling:

> Quite simply, th[e] level of inquiry [demanded by the opponents] is absurd: It forces the Hearings Officer to engage in a practically futile exercise and one that greatly exceeds the scope of the extension criteria. It would be akin to asking the Hearings Officer to determine whether an applicant, who needed an extension because it could not obtain financing, was "responsible" for a lender denying the applicant's loan application. The Hearings Officer is neither qualified nor required to conduct this analysis. Thus, properly construed, in order to determine whether PCGP was "responsible" for circumstances that prevented permit implementation under CCZLDO §5.2.600.1.b.iv, the Hearings Officer was only required to verify whether PCGP had exercised

steps within its control to implement the Approval. As explained above, PCGP has taken those steps.

Thinking about how this level of analysis might affect future precedent, the argument from Applicant's counsel, Mr. King, is persuasive. He is correct that it would be asking too much for the County to analyze, as an example, exactly why bank financing was not forthcoming, or who was at fault if an HOA withholds ARC approvals. It is sufficient to conclude that bank financing involves discretionary decision making on the part of a third party who is not under the control of the applicant. If that process does not result in a favorable outcome for an applicant, he or she should not be found to be "responsible" for that failure, given that it was not a decision that was within their complete control.

Beyond that policy point, however, there are further reasons why the Applicant is correct. When construing the text of a provision, an appellate body is to give words their "plain, natural, and ordinary meaning." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). The term "responsible" is not defined in the CCZLDO.

In such cases, Oregon courts rely, to the extent possible, on dictionaries contemporaneous with the enactment of the disputed words. Although the Supreme Court has stated that "no single dictionary is authoritative," *Davidson v. Oregon Government Ethics Com.*, 300 Or 415, 420, 712 P2d 87 (1985), Oregon courts have predominantly used *Webster's Third New International Dictionary* as the authority for determining the plain meaning of a term in an ordinance. The *Webster's Third New International Dictionary* (1993) defines the term "responsible" in a number of ways, including as "answerable as the primary cause, motive, or agent whether of evil or good." As the Applicant notes, "[T]his is the only plausible definition in this context because the issue under CCZLDO 5.2.600.1.b.iv is whether the applicant is at fault in not exercising its permit rights." The Board concurs with and utilizes the Applicant's definition of this term.

The Board finds that PCGP was not the "primary cause" of the circumstances causing PCGP to be unable to begin or continue development during the development approval period. First, PCGP cannot be "responsible" for the FERC denial because PCGP did not request or issue that denial. Stated another way, because PCGP was required to obtain a discretionary permit from another agency as a prerequisite to implementing the permit, PCGP necessarily was not in sole control, *i.e.*, was not the "primary cause," over whether or when FERC issued that permit.

Likewise, although FERC wanted additional evidence of "need," obtaining that evidence was also not within PCGP's control. For example, as FERC's order states, the existence of long-term precedent or service agreements with end users is "significant evidence of need or demand for a project." *See* FERC Order dated March 11, 2016 at 15. Further, the requirement to show this market "need" is reduced if an applicant can show that it has acquired all, or substantially all, of the right-of-way along the pipeline route. *See* FERC Order dated March 11, 2016 at 14-15. But, both of these categories of evidence (precedent agreements with end users and agreements with landowners) are bilateral contracts, which require a meeting of the minds between PCGP and a third party. PCGP cannot unilaterally enter a bilateral contract or coerce another party into such a contract.

Further, PCGP cannot control if or when third parties will enter contracts with PCGP or whether third parties are unreasonable in their negotiations. Under these circumstances, PCGP is not the "primary cause" for not demonstrating a "need" for the Pipeline.

PCGP argues that it worked diligently and in good faith during the one-year approval period to obtain approval of required permits and otherwise implement the Approval. PCGP emphasizes that it has taken affirmative steps to pursue the applicable FERC permits and related move the project closer to fruition:

> During the applicable one-year approval period (April 2016-April 2017), PCGP took the following specific actions to implement the Approval:
>
> - Actively acquired voluntary easements with landowners by reaching agreements with both private landowners and commercial timber companies.
> - Performed civil and environmental surveys within the County to advance the design and routing of the Pipeline
> - Engaged specialist contractors to perform geotechnical investigations along the Pipeline route
> - Negotiated with potential end users for the transmission of natural gas that will be transported by the Pipeline

See letter from PCGP Project Director regarding implementation activities in Exhibit D to Perkins Coie's September 8, 2017 letter. This testimony appears to be largely unrefuted in the record.

Finally, PCGP argues that the delay in obtaining FERC approval of an alignment for the Pipeline has caused other agencies to also delay their review and decision on Pipeline-related permits. The Pipeline is a complex project that requires dozens of major federal, state, and local permits, approvals, and consultations needed before PCGP and the developer of the related Jordan Cove Energy Project can begin construction. *See* permit list in Exhibit 4 to the Application narrative. The County has previously accepted this explanation as a basis to find that a Pipeline-related time extension request satisfies this standard. *See* County Final Order No. 15-08-039PL, File No. AP-01-01, ACU15-07 in Exhibit 5 to the Application narrative at 11. Therefore, PCGP has identified reasons that prevented PCGP from commencing or continuing development within the approval period.

Opponents do not dispute that PCGP engaged in the implementing actions during the approval period. Instead, they note that, subsequent to PCGP filing the Application with the County, FERC denied PCGP's request for reconsideration of FERC's denial of the project certificate. Opponents further contend that PCGP was "responsible" for FERC's denial because PCGP did not meet its burden of proof before FERC.

In its final argument, PCGP states:

> Under opponents' theory that PCGP is the "responsible" party, if PCGP had simply presented additional evidence regarding public need for the project to FERC, FERC would have unquestionably approved the certificate request and would have done so before April 2, 2017. But it is entirely possible that, FERC would not have done so. Even if PCGP presented additional evidence of public need, another party—perhaps one of the opponents even—might have presented evidence that rebutted or undermined PCGP's evidence, causing delay or even denial. Alternatively, even if PCGP had presented additional evidence of public need, FERC might not have issued a decision until after December 10, 2016. A third plausible option is that FERC could have approved the certificate, but that approval could have been bound up in appeals or requests for reconsideration filed by opponents, which would have delayed PCGP's implementation. In short, there are simply too many potential variables and outcomes to declare PCGP the "responsible" party under the circumstances.

The Board agrees with this analysis. The opponents' argument places too high a burden of proof on the Applicant. Again, the Board believes that the County should be able to grant extensions so long as the reason for the delay in the project was caused by external factors that the Applicant does not have a complete ability to control. This should set a fairly low bar, and in general, the County should err on the side of granting extensions.

The opponents have not presented evidence that undermines PCGP's evidence that it was not the "primary cause" for the circumstances causing PCGP to be unable to begin or continue development during the approval period. Therefore, the Board denies opponents' contention on this issue. The Board find that the application satisfies CCZLDO 5.2.600.1.b.iii and iv.

These two criteria are met.

The Criteria Governing the PCGP CUP Have Not Changed.

CCZLDO § 5.2.600.1.c provides as follows:

c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

While the County standards for approving extensions have recently been modified, none of the applicable substantive approval criteria for the Pipeline have changed since the original County decision to approve the Pipeline in 2010.[1]

[1] While the County amended its criteria for evaluating extension applications in January 2015, these amendments did not affect the criteria on which the "decision" – the initial land use approval – was based.

The opponents contend that the approval criteria for a Pipeline permit decision have changed because County Ordinance No. 15-05-005PL—which adopted amendments to the Coos County Comprehensive Plan (CCCP) pertaining to natural hazards—became effective in 2016. The Board does not agree for two reasons.

First, the ordinance in question did not take effect until July 30, 2017. Ordinance No. 15-05-005PL had an original effective date of July 30, 2016. On July 19, 2016, and prior to the effective date of Ordinance No. 15-05-005PL, the Board "deferred" the effective date of Ordinance No. 15-05-005PL to August 16, 2017. The Board understands the term "defer" in this context to be the same as "delay" its implementation. The Board continued to defer the effective date of Ordinance No. 15-05-005PL in public meetings held on August 16, 2016, September 7, 2016, October 19, 2016, December 7, 2016, January 12, 2017, and March 15, 2017. *See generally* Board meeting minutes reflecting Board approval of extensions of the effective date of Ordinance No. 15-05-005PL, attached to County staff memo dated September 1, 2017. PCGP's extension application was deemed complete on or about March 31, 2017. Because the CCCP provisions at issue were not in effect on that date (or at any point during the one-year approval period at issue), they cannot be considered as changes to the "approval criteria."

The Applicant states as follows:

> Although opponents contend that the Board's actions to extend the effective date of Ordinance No. 15-05-005PL were ineffective because the Board failed to follow the correct procedures for amending an earlier land use decision, the Hearings Officer should deny this contention. Even accepting opponents' initial contention as correct—that the Board failed to follow the correct procedures for amending an earlier land use decision when it extended the effective date of Ordinance No. 15-05-005PL—opponents mischaracterize the consequence of the Board's error. To the extent the Board erred, it does not render the Board's action void on its face. Instead, because the Board's decisions to toll the effective date, according to opponents, were appealable land use decisions, they only become void if appealed and reversed or remanded by LUBA. Neither opponents nor any other party have appealed the Board's actions. Therefore, the Board's extension of the effective date of Ordinance No. 15-05-005PL was valid, and the CCCP natural hazard provisions did not take effect until July 30, 2017.

See Applicant's Final Argument, Exhibit 16 at p. 2. In other words, the Applicant is saying that even if the Board's Motions, which are memorialized in minutes, were procedurally and substantively flawed, these decisions constitute a final land use decision that must be appealed to LUBA.

The Board does not believe that the decision to delay the effective date of the Ordinance is a land use decision, for the reasons set forth in detail below. But the Board does agree with

the Applicant's broader point, which is that the decision would need to be appealed and determined to defective by a Court; it is not void on its face.

To constitute a statutory "land use decision," a number of prerequisites must be met. Among other things, the decision at issue must be "final." ORS 197.830(9); *E & R Farm Partnership v. City of Gervais*, 37 Or LUBA 702, 705 (2000). The legislative intent behind the concept of finality is to ensure that local governments have the first opportunity to both preside over and reach a final determination on land use matters within their respective jurisdictions, before those decisions are reviewed by LUBA. The doctrine also serves as a method to achieve judicial efficiency, by making sure that issues are fully vetted at the local level.

The case law addressing the finality concept reveals three separate lines of cases, or prongs, of the doctrine:

(1) what local event or action triggers 'finality,"
(2) whether the decision is binding vs. advisory, and
(3) whether the decision is an interlocutory decision.

The first line of cases could be relevant here. These cases focus on *when* the decision is final at the local level. In other words, this aspect of the finality requirement concerns what specific event triggers the 21-day appeal clock to LUBA (*i.e.* whether that is the oral decision, the point where the decision is reduced to writing and signed, or when it is mailed to the parties, etc). *See generally Columbia River Television v. Multnomah County*, 299 Or 325, 331, 702 P2d 1065 (1985); *Hemstreet v. Seaside Improvement Comm.*, 16 Or LUBA 748, 750 (1988); *Gordon v. Clackamas County*, 10 Or LUBA 240, 247 (1984). Generally speaking, the point in time where the decision is reduced to writing and signed triggers the 21-day clock.[2] ORS 197.830(9).

LUBA has enacted an administrative rule that is aimed at this prong of the finality concept. OAR 661-010-0010(3) creates a default rule by defining the term "final decision" as follows:

> (3) "Final decision": A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s), unless a local rule or ordinance specifies that the decision becomes final at a later date, in which case the decision is considered final as provided in the local rule or ordinance.

[2] Previously, there had been a rule established by the Oregon Court of Appeals in *League of Women Voters v. Coos County*, 82 Or App 673, 729 P2d 588 (1986) stating that, under most circumstances, the time for appealing a local land use decision or limited land use decision was tolled from the time the decision was signed until the local body provided notice of the decision to the appealing party. However, in *Wicks-Snodgrass v. City of Reedsport*, 148 Or App 217, 939 P2d 625 (1997) *rev, den.*, 326 Or 59 (1997), the court concluded that its earlier reading of ORS 197.830(8) was contrary to the language of the statute, and overruled *League of Women Voters*. Under the rule announced in *Wicks-Snodgrass*, the time for a petitioner to appeal a local land use decision to LUBA under ORS 197.830(8) begins to run from the date the local decision becomes final, and not from the date when the local government provides notice of that decision. *Wicks-Snodgrass*, 148 Or App at 223-24.

Thus, under the rule, the oral vote by a Board of Commissioners, is generally not the final decision because it is not reduced to writing. *Elton v. City of Tigard*, 1 Or LUBA 349 (1980); *Noble v. City of Fairview*, 27 Or LUBA 649, 650 n 2 (1994); *Shaffer v. City of Happy Valley*, 44 Or LUBA 536, 544 (2003) (city council action on appeal must be in writing). However, the minutes of that oral vote were memorialized in writing, and that writing could be a land use decision.

Despite the language of the rule set forth in OAR 661-010-0010(3), the Court of Appeals and LUBA have held that a signature is *only* an essential element for finality if another statute, rule or ordinance provides that the signature is necessary for that type of decision. For example, in *Weeks v. City of Tillamook*, 113 Or App 285, 832 P2d 1246 (1992), the Court of Appeals held that an oral decision by the city council, reflected in its minutes, was a final "land use decision" under the circumstances of that case. *Id.* at 289. The court explained that procedural defects in the decision do not mean that there is no land use decision subject to LUBA's jurisdiction; rather, such defects simply mean that "there is a potentially reversible land use decision, if the defects are assigned as error in the appeal." *See also Cascade Geographic Society v. Clackamas County*, 57 Or LUBA 270, 273 n5 (2008); *Beilke v. City of Tigard*, 51 Or LUBA 837 (2006); *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2002); *Cedar Mill Creek Corridor Committee v. Washington County*, 37 Or LUBA 1011 (2000) (A county decision, reflected in a "minute order," determining that a letter from a city transportation director satisfies a plan design element and a specific development's condition of approval is a land use decision subject to LUBA review.); *Halvorson Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 193(2000); *North Park Annex Business Trust v. City of Independence*, 33 Or LUBA 695 (1997); *Urban Resources v. City of Portland*, 5 Or LUBA 299 (1982)(A distinction exists between no land use decision taken and a land use decision made that does not meet legal requirements. The former circumstance vests no jurisdiction in LUBA, the latter circumstances vests jurisdiction and may result in reversal or remand.); *Astoria Thunderbird, Inc. v. City of Astoria*, 13 Or LUBA 297 (1985) (Written minutes that reflect vote of the City Council and that bear the signature of both the city finance director and the secretary to the city council can be considered to be a land use decision.). *But See Sparks v. Polk County*, 34 Or LUBA 731 (1998) (when only one party has signed an intergovernmental agreement, it is not yet a final document for purposes of a LUBA appeal.).

In this case, the minutes of the Board Hearing of March 15, 2017 could constitute a final land use decision, assuming other prerequisites are met. At this meeting, a Motion was made to extend (or "keep in effect") the deferral of Ordinance 15-05-005PL "until the current language is adopted." The minutes are reduced to writing and signed by the Board Chair, Melissa Cribbins, with the words "Minutes Approved by" directly above her signature. There is no requirement that all three Board members must sign a land use decision, despite the fact that having all three signatures in Ordinances does seem to be the County's practice. Nonetheless, despite the general practice, the Coos County Code provides as follows:

> SECTION 01.01.010 MEETINGS OF THE BOARD OF COUNTY COMMISSIONERS
> The Board of Commissioners shall meet for the transaction of County business at such days and times as may be set by the Board. All agreements, contracts, real property

transactions, legislative and quasi-judicial decisions and other formal documents will not be deemed final and binding on the County until reduced to writing, and formally approved and signed by the Board. For purposes of this section "signed by the Board" means signed by at least two (2) members of the Board or, after approval by the Board, signed by the Chairperson, or in the absence of the Chair, by the Vice Chairperson. Board actions other than those listed above will be deemed final upon approval by the Board.

In this case, the deferrals were memorialized in the minutes of the public meetings. The last deferral was set forth in minutes that were approved by the Board and signed by the Chair. Thus, the minutes might therefore constitute a statutory land use decision, if other requirements are met.

However, finality is not the only requirement that is required to meet the definition of a statutory land use decision. In order to constitute a statutory land use decision, the County's decision must also either apply or amend: (1) a provision contained in a local government's comprehensive plan, (2) land use regulation, or it must (3) apply a Statewide Planning Goal. ORS 197.015(11)(a)(A)(i)-(iv). LUBA has repeatedly stated that in order for a challenged decision to be a statutory "land use decision," it must "concern" itself with the application of the comprehensive plan provision or land use regulation, or a Goal. *Jaqua v. City of Springfield*, 46 Or LUBA 566, 574 (2004). In determining whether a local government decision "concerns" the application of a comprehensive plan provision or a land use regulation, " * * * it is not sufficient that a decision may touch on some aspects of the comprehensive plan [or land use regulations], rather the comprehensive plan [or land use regulations] must contain provisions intended as standards or criteria for making the appealed decision. *Billington*, 299 Or at 475." *Portland Oil Service Co. v. City of Beaverton*, 16 Or LUBA 255, 260 (1987).[3] However, the decision does not necessarily have to permit the "use" or "development" of land. *Contrast Medford Assembly of God v. City of Medford*, 6 Or LUBA 68 (1982), *rev'd* 64 Or App 815 (1983), *aff'd* 297 Or 138 (1984). Rather, a local government decision which makes a binding interpretation of its regulations, but without amending or adopting regulation provisions or granting or denying a development application, is a "final" decision, even if other actions are required to give that decision practical effect. *Medford Assembly of God v. City of Medford*, 297 Or 138, 140, 681 P2d 790 (1984); *Hollywood Neigh. Assoc. v. City of Portland*, 21 Or LUBA 381, 384 (1991); *General Growth v. City of Salem*, 16 Or LUBA 447, 451-53 (1988).

In this case, the decision to delay the effective date of the Ordinance is not a decision that requires the County to apply or amend a provision contained in a local government's comprehensive plan, land use regulation, or apply a statewide planning goal. Therefore, the decision is not a land use decision.

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[3] *See also Knee Deep Cattle Co. v. Lane County*, 28 Or LUBA 288 (1994); *Fence v. Jackson County*, 135 Or App 574, 900 P2d 524 (1995) ("We agree with the county that the fact that a regulation is embodied in something called a land use ordinance does not convert it into a land use regulation, subject to LUBA's review, if the substance of the regulation clearly pertains to something other than land use.").

The Board generally disagrees with the substance of the analysis set forth on page 1-3 of Kathleen Eymann's letter dated September 13, 2017. Delaying the effective date of a Comprehensive Plan Amendment is not the same as substantively amending a comprehensive plan. Ms. Eymann is correct that substantive amendments to the comprehensive plan would require the County to undertake the procedures for a Post Acknowledgement Plan Amendment (PAPA). However, simply delaying the effective date of the Ordinance prior to its effective date can be accomplished by a motion made at a public hearing. There are no criteria for such a decision, and it is within the sole discretion of the Board to do so.

Nonetheless, even if the opponents' arguments had merit, they should have been either directed to LUBA in the form of a land use appeal or directed to a Circuit Court. The Applicant is correct when it states that the Board error does not render the Board's action void on its face. Instead, as the Applicant notes, the Board's decision to toll the effective date was either an appealable land use decision or a decision which could be appealed to the Circuit Court. Such action only becomes void if appealed and reversed or remanded by LUBA or by a Circuit Court. Neither such appeal has occurred.

E. <u>Even if the CCCP natural hazard provisions were in effect when PCGP submitted the Application, these provisions are not "approval criteria" for a Pipeline permit.</u>

Opponents contend that the "applicable criteria" for the CUP permit have changed. *See* Letter from Jody McCaffree dated Aug. 25, 2017. *See* Letter from Vim de Vriend dated Aug. 25, 2017. *See* Letter from Kathleen Eymann, Aug. 25, 2017.

For example, in her letter dated Aug. 25, 2017, Ms. Eymann argues that the comprehensive plan is binding law, and cites to *Baker v. City of Milwaukie* and some out of context quotes from the County's Hearings Officer. While Ms. Eymann is correct that the Comprehensive Plan is law, that fact does not end the pivotal inquiry. The more difficult question is whether any of the policies and directives set forth in the Comprehensive Plan constitute applicable "criteria" for the conditional use permit at issue.

We first look at the comprehensive plan policies that the opponents argue are new approval standards. But before doing so, a quick summary of applicable case law is in order. Determining whether any given Comprehensive Plan policy is an "applicable" criterion or approval standard can present vexing questions for practitioners, so a summary of the applicable law should be beneficial to the parties.

In some cases, the plan itself will provide a "roadmap" by expressly stating which, if any, of its policies are applicable approval standards for certain types of development. For example, if the comprehensive plan specifies that a particular plan policy is itself an implementing measure, LUBA will conclude that policy applies as an approval criterion for land use decisions. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990). On the other hand, where the comprehensive plan emphasizes that plan policies are intended to *guide* development actions and decisions, and that the plan must be implemented through the local code to have effect, such plan policies are not approval standards for individual conditional use decisions. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991). Similarly, statements from introductory findings to a comprehensive plan

chapter are not plan policies or approval standards for land use decisions. *19th Street Project v. City of The Dalles*, 20 Or LUBA 440 (1991). Comprehensive plan policies which the plan states are specifically implemented through particular sections of the local code do not constitute independent approval standards for land use actions. *Murphey v. City of Ashland*, 19 Or LUBA 182 (1990). Where the county code explicitly requires that a nonfarm conditional use in an exclusive farm use zone "satisfy" applicable plan goals and policies, and the county plan provides that its goals and policies shall "direct future decisions on land use actions," the plan agriculture goals and policies are applicable to approval of the nonfarm conditional use. *Rowan v. Clackamas County*, 19 Or LUBA 163 (1990).

Often, however, no roadmap is provided. In those cases, the key is to look at the nature of the wording of the plan provision at issue. LUBA has often held that some plan policies in the comprehensive plan will constitute mandatory approval criteria applicable to individual land use decisions, depending on their context and how they are worded. *See Stephan v. Yamhill County*, 21 Or LUBA 19 (1991); *Von Lubken v. Hood River County*, 19 Or LUBA 404 (1990). For example, where a comprehensive plan provision is worded in mandatory language – such as when the word "shall" is used – and is applicable to the type of land use request being sought, then LUBA will find the standard to be a mandatory approval standard. *Compare Axon v. City of Lake Oswego*, 20 Or LUBA 108 (1990) ("Comp plan policy that states that "services shall be available or committed prior to approval of development" is a mandatory approval standard); *Friends of Hood River v. City of Hood River*, __ Or LUBA __ (LUBA No. 2012-050, March 13, 2013). Conversely, use of aspirational language such as "encourage" "promote," or statements to the effect that certain things are "desirable" will generally not be found to be mandatory approval standards. *Id.; Neuschwander v. City of Ashland*, 20 Or LUBA 144 (1990); *Citizens for Responsible Growth v. City of Seaside, 23 Or LUBA 100* (1992), *aff'd w/o op.* 114 Or App 233 (1993).

In some cases, an otherwise applicable plan policy will be fully implemented by the zoning code. Where the text of the comprehensive plan supports a conclusion that a city's land use regulations fully implement the comprehensive plan and displace the comprehensive plan entirely as a potential source of approval criteria, demonstrating that a permit application complies with the city's land use regulations is sufficient to establish consistency/compliance with the comprehensive plan. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 211-12 (1994); *Murphy v. City of Ashland*, 19 Or LUBA 182, 199 (1990); *Miller v. City of Ashland*, 17 Or LUBA 147, 169 (1988); *Durig v. Washington County*, 35 Or LUBA 196, 202 (1998) (explicit supporting language is required to establish that land use regulations entirely displace the comprehensive plan as a source of potentially applicable approval criteria for land use decisions). However, a local government errs by finding that its acknowledged zoning ordinance fully implements the acknowledged comprehensive plan, thus making it unnecessary to apply comprehensive plan provisions directly to an application for permit approval, where the acknowledged zoning ordinance specifically requires that the application for permit approval must demonstrate compliance with the acknowledged comprehensive plan and the county does not identify any zoning ordinance provisions that implement applicable comprehensive plan policies. *Fessler v. Yamhill County*, 38 Or LUBA 844 (2000).

The opponents argue that the Hazard Maps, including the Tsunami, Landslide, Wildfire, Liquefaction, and Earthquake maps adopted in Ord. 15-05-005PL are "in and of themselves" independent approval criterion. *See* Letter from Kathleen Eymann dated Sept. 13, 2017, at p. 5. However, standing alone, the maps accomplish nothing more than identifying land that is subject to an overlay zone. They do not establish criteria. It is only when they are paired with text that establishes criteria do the maps have operative effect.

Opponents identify two provisions that they contend are "approval criteria." The first of these two provisions reads as follows:

> ***"4. Coos County shall permit the construction of new structures in known areas potentially subject to Landslides only:***
>
> ***"i. If dwellings are otherwise allowed by this Comprehensive Plan; and***
>
> ***"ii. After the property owner or developer files with the Planning Department a report certified by a qualified geologist or civil engineer stipulating –***
>
> ***"a) his/her professional qualifications to perform foundation engineering and soils analyses***
>
> ***"b) 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."***

Exhibit A to Ordinance No. 15-05-0005PL at 2 (emphasis added). This provision shall be referred to as the "Landslide Provision." The second provision reads as follows:

> ***"Earthquakes and Tsunamis***
>
> ***"To protect life, minimize damage and facilitate rapid recovery form a local Cascadia Subduction earthquake and tsunami, the County will * * ***
>
> ***"iv. Consider potential land subsidence projections to plan for post Cascadia event earthquake and tsunami redevelopment.***
>
> ***"v. Require a tsunami hazard acknowledgment and disclosure statement for new development in tsunami hazard areas.***
>
> ***"vi. Identify and secure the use of appropriate land above a tsunami inundation zone for temporary housing, business and community functions post event."***

Exhibit A to Ordinance No. 15-05-005PL at 2-3. This provision shall be referred to as the "Tsunami Provision."

The text and context of these two provisions does not support opponents' contention that they are "approval criteria."

According to the introductory section of the CCCP regarding natural hazards, all of the CCCP natural hazard provisions require further implementation by land use regulations:

> "This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property."

Exhibit A to Ordinance 15-05-005PL at 1. This "roadmap" provision strongly suggests that these comprehensive plan policies are not intended to apply directly to permit decisions. No party argues that these provisions "apply" as an interim measure prior to the adoption of the implementing ordinances.

The plain text of the so-called "Landslide Provision" only applies to "dwellings" and "buildings." Although the initial clause refers to "new structures," the remainder of this provision is concerned with protecting "dwellings" and "buildings." For example, it requires a determination whether "dwellings" are allowed and whether "dwellings" can be safely constructed. If the policy was actually concerned with siting all structures, there would be no need to address "dwellings" in particular, especially if the "structure" has different siting or safe construction parameters than "dwellings" do.

As far as the record makes clear, the PCGP pipeline does not authorize construction of any dwellings or buildings. Various opponents note that the pipeline will involve some "structures." Specifically, two above-ground pipe valve structures are authorized by the approval. However, these pipe valve structures are not located in buildings. Although the record does not appear to address the issue, it is also highly unlikely that these values are located in "areas of known landslide hazards." After all, these valves are intended to be used to shut off gas if the pipe is compromised in any way. These structures need to be located in stable areas in order to accomplish their mission.

Kathleen Eymann and Jody McCaffree argue that these gas valves are "structures" because the Code definition of "structure" includes "a gas * * * storage tank that is principally above ground." The Board does not believe that a pipe value is a "storage tank" within the meaning of that definition. But even if it was a storage tank, it would not be a storage tank that is "principally above ground." But again, even if it's a "structure," it is not a dwelling, which is the primary focus of the landslide provision.

Turning to the "Tsunami Provision," it does appear that that at least one of these provisions is written in mandatory terms. This provision requires a tsunami hazard acknowledgment and disclosure statement for new "development" in tsunami hazard zones. No party contends that the pipe is not a development. The maps submitted by the opponents make clear that the pipelines traverses land located in the tsunami hazard zones. *See* Letter from Kathleen Eymann dated Sept. 13, 2017 at p. 6. However, as the Applicant points out, there is also no indication that this provision must be implemented at the time of CUP approval. This

directive could just as easily be implemented outside the land use context. For example, it could be applied at the time of issuance of building permits.

The Applicant is also correct that the CCCP natural hazard provisions are not approval criteria that would apply to the Application because the CCZLDO provides a "grandfather" clause that exempts the Pipeline from compliance with the CCCP natural hazard provisions. *See* CCZLDO 4.11.125 ("Hazard review shall not be considered applicable to any application that was deemed complete as of the date this ordinance became effective (July 31, 2017)." The Application for the extension was deemed complete on or about March 31, 2017. Thus, pursuant to CCZLDO 4.11.125, the Application is not subject to hazard review.

As a final note, Ms. MaCaffree continually raises the issue of NEPA compliance. In this case, she argues that the NEPA process must be completed before land use approvals can be issued. *See* McCaffree Letter dated Aug. 25, 2017 at p. 2. However, NEPA is not an approval standard for a land use case. Ms. McCaffree cites to certain quotes from NEPA, its implementing CFRs, and agency commentary set forth in the Federal Register, but these quotes are all taken out of context. For example, when these quotes refer to "the decision-making process," they are referring to a *federal* decision-making process. One quote even expressly states that the EIS "shall be by federal officials * * *." (Emphasis added). However, Ms. McCaffree is only partially correct when she states that "Coos County has clearly demonstrated that it views the EIS not as a critical part of the decision process." The EIS is not an approval standard. It could be submitted into a record of a land use proceeding and relied on for its evidentiary value. In fact, the county relied on the prior EIS to draw certain factual conclusions related to the original PCGP approvals back in 2010. However, it is simply legally wrong for Ms. McCraffree to argue that the County cannot issue land use permits for a project before that project undergoes an EIS process.

Having said that, the County land use approvals issued in this case are all contingent on FERC approval, which, in turn, is based on the results of the NEPA EIS process. The County land use approvals have absolutely no preclusive effect on the NEPA process, and are worthless to the extent they materially deviate from any final route approved by FERC.

In her letter dated September 8, 2017, Ms. McCaffree rhetorically asked the following question:

How can FERC "have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." [15 USC § 717b(e)(1) if the Jordan Cove and Pacific Connector project are allowed to continue processing land use permit applications for the previously FERC "denied" Jordan Cove / Pacific Connecter LNG terminal design and pipeline?

The short answer is two-fold. First, FERC left the door open for PCGP to apply again. Second, 15 USC § 717b(d) states the following:

> ***(d) Construction with other laws. Except as specifically provided in this chapter, nothing in this chapter affects the rights of States under—***

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);
(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or
(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

Coos County permitting authority is a mandate of the Coastal Zone Management Act of 1972. If not for the CZMA, Coos County would have no land use permitting jurisdiction or authority over the pipeline project.

This criterion is met.

The Applicant complies with the Two-year Extension Limitation.

CCZLDO § 5.2.600.2 provides as follows:

2. Extensions on all non-resource zoned property shall be governed by the following.

a. The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.
b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.
c. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.

The Applicant proposes only a one-year extension due to the fact that the pipeline is located partially on EFU and Forest zoned land. As explained in the Applicant's narrative and as set forth in the CCZLDO and CBEMP, the pipeline is still listed as a conditional or permitted use in all of the CBEMP zones which it traverses, and the pipeline is still listed as a conditional or permitted use in rural residential zones.

This criterion is met.

The Applicant complies with the Two-year Extension Limitation.

CCZLDO § 5.2.600.2 provides as follows:

3. Time frames for conditional uses and extensions are as follows:

a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and
b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.
c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.

d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.

The Pipeline is permitted on EFU lands as a "utility facility necessary for public service" under CCZLDO 4.9.450(C) and ORS 215.283(1)(c). The applicable County criteria at CCZLDO § 4.9.450(C) have not changed since the County's original 2010 decision to approve the CUP.

The Pipeline is permitted as a "new distribution line" under CCZLDO § 4.8.300(F) and OAR 660-006-0025(4)(q). The applicable County criteria at CCZLDO § 4.8.300(F) have not changed since 2010. Accordingly, an additional one-year extension may be authorized for the Pipeline pursuant to CCZLDO § 5.2.600(1)(c).

This criterion is met.

F. Additional Issues.

The Board finds that additional issues raised during the local proceedings do not concern the limited approval criteria that apply to this request and thus do not provide a basis to approve, deny, or further condition the request.

For example, in their appeal statement, appellants contended in Issue B that Applicant is considering a different pipeline route and that this new route does not satisfy various criteria, including CCZLDO 4.11.435, ORS 455.447(4), and all provisions of the CBEMP. In Issue D of that statement, appellants expressed concern that approval of a time extension as requested by the Applicant could be perceived to permit Applicant's modified pipeline route. The Board denies the appellants' issues. The Board is unaware of any changes to the pipeline route involved in this request. Accordingly, approval of this request does not approve any modifications to the pipeline route, only to the time period within which Applicant has to initiate the original pipeline route. Likewise, because no modifications to the pipeline route are requested in this application, the Board takes no position as to whether any modifications would or would not comply with the criteria identified in Issues B and D in the appeal statement.

Other citizens objected to the impacts of the pipeline itself, including potential use of eminent domain and/or damage to private property rights. While the Board recognizes the importance of these concerns, they are not directed at the limited approval criteria applicable to this request. Therefore, the Board finds that these concerns are outside the scope of this proceeding and do not provide a basis to deny or further condition the request.

Further, while Ms. Williams testified at the public hearing that she could not determine how the pipeline would affect her since the route has not been selected, the Board reiterates that this proceeding concerns a time extension only and does not affect the route previously approved by the Board.

G. Procedural

a. Hearings Officer Objection

At the public hearing on August 25, 2017, the Hearings Officer declared that he had no prehearing ex-parte contacts or conflicts of interest relating to this case. He then provided a chance for anyone to challenge his ability to review this matter based on his disclosures. The Hearings Officer received a challenge stating that the Hearings Officer was paid by the Applicant.

The Board rejects this challenge because the Hearings Officer is not paid directly by the Applicant, and the manner of the Hearings Officer's compensation does not bring his objectivity into question. In cases where a Hearings Officer is hired to review a case, the actual cost is charged to an applicant by the Coos County Planning Department. This payment is not directly sent to the Hearings Officer from an applicant. Rather, a Hearings Officer is a contract employee of Coos County. As such, the Hearings Officer does not receive a financial benefit from the actual project approval of denial of an application.

The Hearings Officer also received a challenge alleging that the board as an unwritten clause requiring the Hearings Officer to approve any proposed projects. The Board rejects this challenge because there is no such clause and the Board is the final decision maker in this matter. The Board has the ability to accept, modify, or reject the decisions of the Hearings Officer. The Hearings Officer's role in the matter is limited to holding the public hearing and giving a legal opinion if the matter meets the applicable criteria. The Hearings Officer further stated that he did not have any direct contact with the Board and is not from the area. He had also never visited any of the properties in which the pipeline will cross for this case. He may have driven by a site through is travels, but never specifically to review the site for this case.

Ms. McCaffree also challenged the Hearings Officer, stating that she believed in past cases that the Hearings Officer favored attorney testimony over non-attorney testimony, and that evidenced bias on the part of the Hearings Officer. The Board rejects this objection because there is no evidence of an actual bias. Further, Ms. McCaffree's contention appears to relate to past cases, not the current case.

Finally, the Hearings Officer is not the decision maker in this matter. The Hearings Officer was appointed by the Board as described in ORS 215.406, and the Board is the final decision-maker. Ms. McCaffree has not explained how the Hearings Officer's alleged bias tainted the proceedings before, or the decision of, the Board. The Board denies the contention that the Hearings Officer was biased.

b. Board Objection

On November 21, 2017, the Board held deliberations on this matter in a public hearing. The testimony portion was closed but County Counsel asked the Board to disclose any conflicts or ex-parte contacts, and also asked if any Board member needed to abstain from participating in the matter. Each Board member stated they had no conflicts of interest or ex-parte contacts regarding the extension application or the appeal of the extension application. County Counsel

then asked if anyone present wished to challenge any member of the Board from participation in the proceeding.

Ms. McCaffree raised objections stating that Board members were biased and had received ex parte communications. She submitted a packet of information to support her claims. The packet consisted of seven exhibits. The Board denies Ms. McCaffree's contentions as follows:

i. McCaffree Exhibit A – Email from County Counsel

The Board denies Ms. McCaffree's contention that a 2011 email from an Assistant County Counsel to Ms. McCaffree demonstrates any procedural error by the County. The email requested that Ms. McCaffree refrain from further ex parte communications with Board members on a specific, then-pending application. The Board finds that the email was appropriate at the time given the pending nature of the application and Ms. McCaffree's repeated attempts to communicate with Board members on the substance of that application. The email is limited to that circumstance. The Board finds that the email did not affect Ms. McCaffree's ability to prepare and present her case in the current application proceeding, including presenting both oral and written testimony on the merits. Further, although Ms. McCaffree suggested at the November 21, 2017 Board meeting that Applicant was not held to a similar standard, she also admitted that she was not aware of any recent communications between Applicant and Board members. The Board denies Ms. McCaffree's contentions on this issue.

ii. McCaffree Exhibit B – Luncheon and Comments to Press

The Board denies Ms. McCaffree's contention that quotations from Board members in the press from 2014 demonstrate bias or prejudgment in favor of this application. The comments all pre-date the filing of this application and simply express generalized support for significant economic development projects such as the pipeline associated with this request; however, these comments do not constitute "statements, pledges or commitments" from any Board members that they have prejudged this land use application. Therefore, these statements do not demonstrate "actual bias" by any Board member.

Further, the Board denies Ms. McCaffree's contention that Board member attendance at a community luncheon where JCEP made a presentation about the project resulted in ex parte communications pertaining to this request. The luncheon occurred in 2014, long before Applicant submitted this application. Therefore, by definition, any communications that occurred between Applicant any Board members at this event are necessarily not ex parte as to this application. Additionally, the two Board members who attended the luncheon each disclosed their attendance at the event at the December 5, 2017 Board meeting. Commissioner Sweet disclosed that he attended two community meetings pertaining to the project for the purpose of keeping himself current on the project. He said that approximately 50 or more people attended the events. He said that attendance at the event would not affect his ability to review planning issues related to the project or to make decisions based upon applicable criteria. Commissioner Main disclosed that he attended a luncheon presentation at Bandon Dunes and

said no one affiliated with Applicant spoke with him individually and that the presentation was generalized in nature.

iii. McCaffree Exhibit C – Letter from Commissioner Sweet to FERC

The Board denies Ms. McCaffree's contention that the letter from Commissioner Sweet to FERC demonstrates actual bias. Ms. McCaffree raised this contention in her recent appeal to LUBA of the JCEP decision, and it was rejected. *Oregon Shores Conservation Coalition v. Coos County*, __ Or LUBA at __ (LUBA No. 2016-095, November 27, 2017) (slip op. at 36-37) ("We disagree with McCaffree that Chair Sweet's April 11, 2016 letter * * * demonstrate[s] that Chair Sweet was incapable of determining the merits of the land use application based on the evidence and arguments presented."). LUBA explained that Commissioner Sweet's statements "represent no more than general appreciation of the benefits of local economic development that is common among local government elected officials." *Id.* The Board adopts LUBA's reasoning in response to this issue.

iv. McCaffree Exhibit D – Public Statements by Commissioner Sweet

The Board denies Ms. McCaffree's contention that the public statements attributed to Commissioner Sweet at a January 2015 community meeting demonstrate actual bias. Ms. McCaffree raised this contention as to these specific statements in her recent appeal to LUBA of the JCEP decision, and it was rejected. *Oregon Shores Conservation Coalition*, __ Or LUBA at __ (slip op. at 36-37) ("We disagree with McCaffree that Chair Sweet's * * * public statements [] demonstrate that Chair Sweet was incapable of determining the merits of the land use application based on the evidence and arguments presented."). The Board adopts LUBA's reasoning in response to this issue.

v. McCaffree Exhibit E – Sheriff's Office Budget Request

For three reasons, the Board denies Ms. McCaffree's contention that this exhibit, which shows a budget request for the Sheriff's Office to conduct a major incident command system exercise that will be funded by JCEP, demonstrates that any Board member has "actual bias." First, JCEP is not the applicant in this case, so even if there were bias in favor of JCEP, it would not necessarily be bias in favor of Applicant. Second, Ms. McCaffree has not adequately explained how the existence of this funding would cause any Board members to prejudge the application (which is not related to funding of the Sheriff's Office), and she has not identified any "statements, pledges or commitments" from any Board members that the existence of the funding has caused them to prejudge the application. Third, the Sheriff's Office funding is not contingent upon approval of the application. Therefore, Ms. McCaffree has not demonstrated that any Board member demonstrated "actual bias" due to this funding.

vi. McCaffree Exhibit F – Press Reports of JCEP Funding for County Sheriff's Office

For three reasons, the Board denies Ms. McCaffree's contention that the Board members were biased due to funding by JCEP for the County Sheriff's Office. First, JCEP is not the

applicant in this case, so even if there were bias in favor of JCEP, it would not necessarily be bias in favor of Applicant. Second, Ms. McCaffree has not adequately explained how the existence of this funding would cause any Board members to prejudge the application (which is not related to funding of the Sheriff's Office), and she has not identified any "statements, pledges or commitments" from any Board members that the existence of the funding has caused them to prejudge the application. Third, the Sheriff's Office funding is not contingent upon approval of the application. Therefore, Ms. McCaffree has not demonstrated that any Board member demonstrated "actual bias" due to this funding.

vii. McCaffree Exhibit G – Agreement Between Applicant and County

The Board denies Ms. McCaffree's contention that the Board members were biased due to a 2007 agreement between Applicant and the County pursuant to which Applicant pays the County $25,000 a month. Ms. McCaffree has not adequately explained how the existence of this agreement would cause any Board members to prejudge the application (which is not related to the Agreement), and she has not identified any "statements, pledges or commitments" from any Board members that the existence of the Agreement has caused them to prejudge the application. Further, the Agreement does not require the Board to approve the application. Therefore, Ms. McCaffree has not demonstrated that any Board member demonstrated "actual bias" due to this agreement.

Finally, before taking final action to approve these findings, each Board member stated that he/she had not prejudged the application and that he/she could evaluate the testimony and evidence in the record and make a decision based upon whether the testimony and evidence demonstrates compliance with applicable criteria. For these reasons, the Board finds that it has addressed the contentions that Board members were biased or received undisclosed ex parte communications pertaining to the project.

III. CONCLUSION.

To summarize, this extension request concerns both resource and non-resource lands. Under the terms of the relevant criteria, CCZLDO § 5.2.600, there are two different standards for granting an extension. For granting an extension on ***resource lands***, the Applicant must show it was unable to begin construction for reasons out of its control. The Board finds that, despite the Applicant's diligent pursuit of the federal approvals required, those approvals have not yet been secured, and thus the Applicant was unable to commence its development proposal before the April 2, 2017 date for reasons beyond the Applicant's control.

For granting an extension on ***non-resource lands***, CCZLDO § 5.2.600 only requires that an Applicant show that none of the relevant approval criteria have changed since the development approval was given. The Applicant's use is still listed as a conditional use in the relevant non-resource zones under the current zoning regulations, and thus the Board finds the Applicant meets this second criterion as well.

For these reasons, the Board finds and concludes that the Applicant, Pacific Connector, has met the relevant CCZLDO § 5.2.600 approval criteria for a CUP extension of one year, to

April 2, 2018. The Board affirms the Planning Director's May 18, 2017 decision granting the one (1) year CUP in County File No. HBCU-10-01 / REM-11-01, to April 2, 2018.

EXHIBIT A

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Category/ Accession	Doc Date/ Filed Date	Docket Number	Description	Class/ Type	Files	Size	
Submittal 20191107-5079 Document Components	11/07/2019 11/07/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P., et. al. under CP17-494, et. al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	Word FERC Generated PDF	400K 244K	INFO FILE
Submittal 20191107-5080 Document Components	11/07/2019 11/07/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P., et. al. under CP17-494, et. al. Availability: Privileged	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	174K 170K	INFO FILE
Submittal 20191023-5145 Document Components	10/23/2019 10/23/2019	CP17-494-000 CP17-495-000	Response to U.S. Fish and Wildlife Service Data Request of Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. under Docket Nos. CP17-494, et al. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF FERC Generated PDF	7711K 7788K	INFO FILE
Submittal 20191023-5146 Document Components	10/23/2019 10/23/2019	CP17-494-000 CP17-495-000	Response to U.S. Fish and Wildlife Service Data Request of Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. under Docket Nos. CP17-494, et al. Availability: Privileged	Applicant Correspondence / Deficiency Letter/Data Response	PDF FERC Generated PDF	5346K 518K	INFO FILE
Submittal 20191015-5134	10/15/2019 10/15/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. Response to DLCD August 15, 2019 Information Request under C7-494, et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	2547K 2525K	INFO FILE
Submittal 20191017-0014	10/02/2019 10/15/2019	CP17-494-000 CP17-495-000	Advisory Council on Historic Preservation informs FERC that they will participate in consultation to develop a Section 106 agreement for the Jordan Cove Liquefied Natural Gas Terminal Project et al under CP17-495 et al. Availability: Public	Applicant Correspondence / General Correspondence	Image FERC Generated PDF	44K 58K	INFO FILE
Submittal 20191011-5027	10/10/2019 10/11/2019	CP17-494-000 CP17-495-000	Comment of Citizens for Renewables, Inc / Citizens Against LNG and Jody McCaffree under CP17-495-000, et. al..Availability: Public	Comments/Protest / Comment on Filing Applicant Correspondence /	PDF 3107K PDF 705K		INFO FILE

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					More Files – See List.		
Submittal 20191008-5104	10/08/2019 10/08/2019	CP17-494-000 CP17-495-000	Proposed Draft Memorandum of Agreement of Jordan Cove Energy Project L.P., et. al. under CP17-495, et. al. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF	157K	INFO
					FERC Generated PDF	169K	FILE
Submittal 20191008-5179	10/08/2019 10/08/2019	CP17-494-000 CP17-495-000	Stay Agreement between Oregon Department of Land Conservation and Development and Jordan Cove under CP17-494, et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF	470K	INFO
					FERC Generated PDF	472K	FILE
Submittal 20190918-5147	09/18/2019 09/18/2019	CP17-494-000	Revised Plan of Development of Pacific Connector Gas Pipeline, LP under CP17-494. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF	10170K	INFO
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Submittal 20190917-5111	09/17/2019 09/17/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P., et. al. under CP17-494, et. al. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF	10669K	INFO
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Submittal	09/06/2019	CP17-494-000	Supplement to August 30, 2019 Data Response of Jordan Cove Energy Project L.P., et.	Applicant			INFO

20190906-5147	09/06/2019	CP17-495-000	al. under CP17-495, et. al. Availability: Public	Correspondence / Deficiency Letter/Data Response	PDF	1680K	FILE
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Submittal 20190903-5208	09/03/2019 09/03/2019	CP17-494-000 CP17-495-000	Supplemental Information of Confederated Tribes of Coos, Lower Umpqua & Siulaw Indians under CP17-494, et al Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF	174K	INFO FILE
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Submittal 20190903-5217	09/03/2019 09/03/2019	CP17-494-000 CP17-495-000	Verification to Supplemental Data Request Response under CP17-494, et al. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF	182K	INFO FILE
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Submittal 20190903-5218	09/03/2019 09/03/2019	CP17-494-000 CP17-495-000	Supplemental Response to Comments on DEIS of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP under CP17-494, et. al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF	628K	INFO FILE
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Submittal 20190830-5258 Document Components	08/30/2019 08/30/2019	CP17-494-000 CP17-495-000	Supplemental Response to July 22 Data Request of Jordan Cove Energy Project L.P., et. al. under CP17-494, et. al.. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF	90K	INFO FILE
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Submittal 20190830-5259 Document Components	08/30/2019 08/30/2019	CP17-494-000 CP17-495-000	Supplemental Response to July 22 Data Request of Jordan Cove Energy Project L.P., et. al. under CP17-494, et. al.. Availability: Privileged	Applicant Correspondence / Deficiency Letter/Data Response	PDF	48147K	INFO FILE
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Submittal 20190830-5286	08/30/2019 08/30/2019	CP17-494-000 CP17-495-000	Comprehensive Mitigation Plan of Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P., under CP17-494, et al Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF 4005K PDF 25049K PDF 41103K	INFO FILE
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Submittal 20190827-5086	08/27/2019 08/27/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P., et. al. under CP17-494, et. al.. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF 28K PDF 385K PDF 38980K PDF 31509K PDF 41074K PDF 38703K FERC Generated PDF 149505K	INFO FILE
Submittal 20190816-5051 Document Components	08/16/2019 08/16/2019	CP17-494-000 CP17-495-000	Supplemental Response to July 22 Data Request of Jordan Cove Energy Project L.P., et. al. under CP17-495, et. al.. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF 47K FERC Generated PDF 40K	INFO FILE
Submittal 20190806-5177 Document Components	08/06/2019 08/06/2019	CP17-494-000 CP17-495-000	Response to July 22 Data Request of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP under CP17-494. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF 1321K PDF 44137K PDF 46942K PDF 5272K Excel 19K Excel 21K	INFO FILE

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Submittal 20190806-5178 Document Components	08/06/2019 08/06/2019	CP17-494-000 CP17-495-000	Response to July 22 Data Request of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP under CP17-494. Availability: Privileged	Applicant Correspondence / Deficiency Letter/Data Response	PDF PDF FERC Generated PDF	47280K 21745K 68875K	INFO FILE
Submittal 20190730-5065 Document Components	07/30/2019 07/30/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP, and Jordan Cove Energy Project L.P. - Supplemental Information - Docket Nos. CP17-494. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	29K 33K	INFO FILE
Submittal 20190730-5066 Document Components	07/30/2019 07/30/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP, and Jordan Cove Energy Project L.P. - Supplemental Information - Docket Nos. CP17-494. Availability: Privileged	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	164K 156K	INFO FILE
Submittal 20190729-5138	07/29/2019 07/29/2019	CP17-494-000	Land Statistics Update of PACIFIC CONNECTOR GAS PIPELINE, LP under CP17-494. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	19K 24K	INFO FILE
Submittal 20190715-5023	07/13/2019 07/15/2019	CP17-494-000 CP17-495-000	Certificate of Service filed by Citizens for Renewables / Citizens Against LNG / and Jody McCaffree under CP17-495, et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	8K 12K	INFO FILE
Submittal 20190628-5064	06/28/2019 06/28/2019	CP17-494-000 CP17-495-000	Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP Response to June 21, 2019 Environmental Information Request under CP17-494.et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	224K 229K	INFO FILE
Submittal 20190627-5117	06/27/2019 06/27/2019	CP17-494-000 CP17-495-000	Supplemental Information of Thomas A. Burns under CP17-494, et. al.. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	60K 71K	INFO FILE
Submittal 20190617-5107	06/17/2019 06/17/2019	CP17-494-000 CP17-495-000	Consultation with Oregon Department of Environmental Quality under CP17-494, et. al.. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	2070K 2137K	INFO FILE
Submittal 20190614-0007	06/04/2019 06/14/2019	CP17-494-000 CP17-495-000	Dr. Edgar Maeyens submits letter re the Draft Environmental Impact Statement for the Jordan Cove Energy Project under CP17-494 et al. Availability: Public	Applicant Correspondence / General Correspondence	Image FERC Generated PDF	603K 633K	INFO FILE
Submittal 20190613-5021	06/12/2019 06/13/2019	CP17-494-000 CP17-495-000	Report of Utah Petroleum Association under CP17-494, et. al.. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	192K 200K	INFO FILE

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Submittal 20190606-0009	05/30/2019 06/06/2019	CP17-494-000 CP17-495-000	The Douglas County Global Warming Coalition submits comments re the Jordan Cove LNG Project under CP17-494 et al. Availability: Public	Comments/Protest / Comment on Filing Applicant Correspondence / General Correspondence	Image FERC Generated PDF	30K 41K	INFO FILE
Submittal 20190510-5051	05/10/2019 05/10/2019	CP17-494-000 CP17-495-000	Request for Extension of Comment Period for DEIS of Confederated Tribes of Coos, Lower Umpqua & Siulaw Indians under CP17-494, et. al.. Availability: Public	Applicant Correspondence / Request for Delay of Action/Extension of Time	PDF FERC Generated PDF	291K 322K	INFO FILE
Submittal 20190507-5061	05/07/2019 05/07/2019	CP17-494-000 CP17-495-000	Declaration of Affected Veteran Landowner John Clarke under CP17-494, et. al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	9183K 9194K	INFO FILE
Submittal 20190501-5038 Document Components	04/30/2019 05/01/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP under CP17-494 and CP17-495. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	29K 33K	INFO FILE
Submittal 20190501-5039 Document Components	04/30/2019 05/01/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP under CP17-494 and CP17-495. Availability: Privileged	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	179K 171K	INFO FILE
Submittal 20190416-5186	04/16/2019 04/16/2019	CP17-494-000 CP17-495-000	Supplemental Information Filing of Pacific Connector Gas Pipeline, LP, and Jordan Cove Energy Project L.P under CP17-494, et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	35K 41K	INFO FILE
Submittal 20190412-5238	04/12/2019 04/12/2019	CP17-494-000 CP17-495-000	CZMA Consistency Certification of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP under CP17-494, et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	28K 33K	INFO FILE
Submittal 20190409-5040	04/09/2019 04/09/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. - Response to Coquille Indian Tribe January 10, 2019 Letter - Docket Nos. CP17-494.et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	31K 35K	INFO FILE
Submittal 20190409-5046	04/09/2019 04/09/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. - Response to the Coquille Indian Tribe - Docket Nos. CP17-494, et al. Availability: Public	Applicant Correspondence / Deficiency Letter/Data Response	PDF FERC Generated PDF	2485K 2490K	INFO FILE
Submittal 20190409-5050	04/09/2019 04/09/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. - Response to the Cow Creek Band of Umqua Tribe of Indians - Docket Nos. CP17-494. et al. "Erroneously Filed" Availability: Privileged	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	2482K 2487K	INFO FILE
Submittal 20190409-5054	04/09/2019 04/09/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. - Response to the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians - Docket Nos. CP17-494. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	2669K 2675K	INFO FILE

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Submittal 20190409-5057	04/09/2019 04/09/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. - Response to the Confederated Tribes of Grand Ronde - Docket Nos. CP17-494. et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	2508K 2513K	INFO FILE
Submittal 20190409-5079	04/09/2019 04/09/2019	CP17-494-000 CP17-495-000	Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project L.P. - Response to the Cow Creek Band of Umpqua Tribe of Indians - Docket Nos. CP17-494. et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	2482K 2487K	INFO FILE
Submittal 20190408-5148	04/08/2019 04/08/2019	CP17-494-000	Supplemental Information of S. L. McLaughlin under CP17-494. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	118K 130K	INFO FILE
Submittal 20190321-5022 Document Components	03/21/2019 03/21/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP - Docket Nos. CP17-494. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	28K 33K	INFO FILE
Submittal 20190321-5023 Document Components	03/21/2019 03/21/2019	CP17-494-000 CP17-495-000	Supplemental Information of Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline, LP - Docket Nos. CP17-494. Availability: Privileged	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	920K 1030K	INFO FILE
Submittal 20190313-5175	03/13/2019 03/13/2019	CP17-494-000 CP17-495-000	Supplemental Information of Oregon Department of Environmental Quality under CP17-494. Information requested on local land use. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	302K 304K	INFO FILE
Submittal 20190312-5123	03/12/2019 03/12/2019	CP17-494-000 CP17-495-000	Supplemental Information of Oregon Department of Environmental Quality under CP17-494: Additional Information Request Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	538K 588K	INFO FILE
Submittal 20190311-5167 Document Components	03/11/2019 03/11/2019	CP17-494-000 CP17-495-000	Supplemental Information filed by Pacific Connector Gas Pipeline, LP, and Jordan Cove Energy Project, L.P. under CP17-494. et al. Availability: Public	Applicant Correspondence / Supplemental/Additional Information	PDF FERC Generated PDF	28K 33K	INFO FILE

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Connector Gas Pipeline LP	Docket Nos. CP17-494-000
Jordan Cove Energy Project L.P.	CP17-495-000

NOTICE OF REVISED SCHEDULE FOR THE ENVIRONMENTAL REVIEW AND THE FINAL ORDER FOR THE JORDAN COVE ENERGY PROJECT

(September 27, 2019)

This notice identifies the Federal Energy Regulatory Commission (Commission) staff's revised schedule for the completion of the environmental impact statement (EIS) for the Jordan Cove Energy Project. Previously, a notice was issued identifying October 11, 2019 and January 9, 2020 as the respective dates for the final EIS and Order issuances. The U.S. Forest Service, who is a cooperating agency in the EIS preparation, only recently received critical information from the project proponent that is necessary for it to complete its land and resource management plan amendments; therefore, additional time is required in order to incorporate this new information into the final EIS. Accordingly, staff has revised the schedule for issuance of the final EIS as follows.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS	November 15, 2019
90-day Federal Authorization Decision Deadline	February 13, 2020

Based on the revised final EIS schedule, the Commission currently anticipates issuing a final Order for the project no later than:

Issuance of Final Order	February 13, 2020

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/docs-filing/esubscription.asp.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (i.e., CP17-494 and CP17-495), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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Document Content(s)

CP17-494-000 Revised Notice of Schedule.DOCX.....1-2

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November 7, 2019

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VIA EMAIL AND OVERNIGHT DELIVERY

Ms. Jill Rolfe
Planning Director
Coos County Planning Department
225 N Adams Street
Coquille, OR 97423

Re: Pacific Connector Gas Pipeline Blue Ridge Alternative Alignment
County Order No. 14-09-062PL/County File No. HBCU-13-06
Applicant's Request for Extension of Approval Period

Dear Jill:

This office represents Pacific Connector Gas Pipeline, LP, the applicant requesting an extension of the approval period for the Pacific Connector Gas Pipeline Blue Ridge alternative alignment (County Order No. 14-09-062PL, County File No. HBCU-13-06). Enclosed with this letter please find the following materials:

- Original completed and signed Coos County "Extension of a Land Use Approval" application form;
- Check payable to "Coos County" in the amount of $600.00 for the application fee; and
- Narrative explaining how request satisfies all applicable approval criteria, with eight exhibits.

We are also providing the County an electronic copy of these materials. We are hopeful that, upon receipt of these materials, the County will deem the application complete and process it as a Type II application.

I am the applicant's representative in this matter. Please copy me on all notices, correspondence, staff reports, and decisions in this matter.

If you have any questions, do not hesitate to contact me. We look forward to working with the County toward approval of this request. Thank you for your courtesies in this matter.

Very truly yours,

Seth J. King

SJK:rsr
Enclosures

cc: Client (via email) (w/encls.)
Steven L. Pfeiffer (via email) (w/encls.)