

**COOS COUNTY HEARINGS OFFICER
ANALYSIS, CONCLUSIONS, AND
RECOMMENDATIONS
TO THE COOS COUNTY BOARD OF COMMISSIONERS**

**THE JORDAN COVE ENERGY PROJECT, L.P. (“JCEP”)
COOS COUNTY, OREGON**

**COUNTY FILE No. HBCU-19-003
“OMNIBUS II” LAND USE APPLICATION
DECEMBER 24, 2019**

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TABLE OF CONTENTS

I.	Land Use Requests.....	6
	A. Introduction and Overview	6
	B. Application Timeline.....	7
	C. Scope of Review.....	7
	D. Procedural Issues Raised by Opponents.....	11
II.	Applicable Approval Criteria.....	13
	A. New Proposals.....	13
	1.Meteorological Station	13
	a.4-CS Zone- Allowed Uses – CCZLDO §3.2.256.....	14
	b.4-CS Zone- Management Objective – CCZLDO §3.2.255.....	14
	c.4-CS Zone- General Conditions – CCZLDO §3.2.256.....	14
	1.General Condition 1.....	14
	2.General Condition 2.....	14
	3.General Condition 3.....	14
	4.General Condition 4.....	14
	5.General Condition 5.....	14
	d.4-CS Zone- General Development Standards – CCZLDO §3.2.100.....	14
	2.Industrial Wastewater Pipeline	15
	a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	15
	b.7-D Zone – Allowed Uses - CCZLDO §3.2.285.....	15
	c.7-D Zone – Management Objectives - CCZLDO §3.2.285.....	16
	d.7-D Zone – General Conditions - CCZLDO §3.2.286.....	16
	1.General Condition 1.....	16
	2.General Condition 2.....	16
	3.General Condition 3.....	17
	4.General Condition 4.....	17
	5.General Condition 5.....	17
	e.7-D Zone- General Development Standards – CCZLDO §3.2.100.....	17
	3.Tempoorary Concrete Batch Plant	18
	a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	18
	4.Emergency Preparedness Response Center.....	19
	a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	19
	5.Helipad.....	20
	a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	20
	6.Administration Building.....	22
	a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	22
	7.Workforce Housing.....	25
	a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	25

8. Wastewater Treatment Facilities.....	30
a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	31
9. Park & Ride.....	31
a. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	32
10. Temporary Construction Laydown.....	32
a. IND Zone Laydown.....	32
1. IND Zone – Allowed Uses - CCZLDO §4.3.200.....	33
b. CBEMP Zone Laydown.....	33
1. 3-WD, 3-NWD, 6-WD Zones – Allowed Uses. CCZLDO. §3.1.450.4... 34	34
2. 3-WD Zone – Management Objective - §3.2.240.....	34
3. 3-NWD Zone – Management Objective - §3.2.242.01.....	34
4. 6-WD Zone – Management Objective - §3.2.275.....	35
5. 3-WD, 3-NWD, 6-WD Zones – Gen’l Dev Stds - CCZLDO §3.2.100... 35	35
11. Temporary Barge Berth.....	36
a. 6-DA Zone - Allowed Uses - CCZLDO §3.1.450.4.....	37
b. 6-DA Zone – Management Objective - CCZLDO §3.2.280.....	37
c. 6-DA Zone – General Devmt Stds - CCZLDO §3.2.100.....	38
12. Shoreline Stabilization (Sheetpile Bulkhead)	38
a. 5-WD Zone - Allowed Uses - CCZLDO §3.2.261.....	39
b. 5-WD Zone – Management Objective - CCZLDO §3.2.260.....	39
c. 5-WD Zone – General Conditions - CCZLDO §3.2.261.....	39
1. General Condition 1.....	39
2. General Condition 2.....	39
3. General Condition 3.....	39
4. General Condition 4.....	39
5. General Condition 5.....	39
6. General Condition 6.....	40
7. General Condition 7.....	40
d. 5-WD Zone – Special Conditions - CCZLDO §3.2.261.....	40
e. 5-WD Zone – General Dev’t Stds - CCZLDO §3.2.100.....	40
13. Pile Pike 7.3 Protection (Rock Apron).....	40
a. 5-DA Zone - Allowed Uses - CCZLDO §3.2.271.....	41
b. 5-DA Zone – Management Objective - CCZLDO §3.2.270.....	46
c. 5-DA Zone – Special Conditions - CCZLDO §3.2.271.....	46
d. 5-WD Zone - Allowed Uses - CCZLDO §3.2.261.....	46
e. 5-WD Zone – Management Objective - CCZLDO §3.2.260.....	47
f. 5-WD Zone – General Conditions - CCZLDO §3.2.261.....	47
1. General Condition 1.....	47
2. General Condition 2.....	47
3. General Condition 3.....	48
4. General Condition 4.....	48
5. General Condition 5.....	48
6. General Condition 6.....	48
7. General Condition 7.....	48

g.5-WD Zone – Special Conditions - CCZLDO §3.2.261.....	48
h.5-WD Zone – General Dev’t Stds - CCZLDO §3.2.100.....	48
14. Relocation of Primary Access to LNG Terminal Site.....	49
15. Temporary Dredge Lines	49
a. 6-WD and 7-D Zones - Allowed Uses - CCZLDO §3.1.450.4.....	49
b. 6-WD Zone – Management Objective - CCZLDO §3.2.275.....	50
c. 7-D Zone – Management Objective - CCZLDO §3.2.285.....	50
d. 6-WD and 7-D Zones - General Dev’t Stds - CCZLDO §3.2.100.....	51
e. 13B-NA Zone - Allowed Uses - CCZLDO §3.2.436.....	51
f. 13B-NA Zone – Management Objective - CCZLDO §3.2.435.....	51
g. 13B-NA Zone - General Dev’t Stds - CCZLDO §3.2.100.....	52
h. 13B-NA Zone - General Conditions - CCZLDO §3.2.436.....	52
i. 13B-NA Zone - Special Conditions - CCZLDO §3.2.436.....	52
j. 14-DA Zone - Allowed Uses - CCZLDO §3.2.446.....	53
k. 14-DA Zone - Management Objective - CCZLDO §3.2.445.....	54
l. 14-DA Zone - General Conditions - CCZLDO §3.2.446.....	54
m. 14-DA Zone - Special Conditions - CCZLDO §3.2.446.....	54
B. Modifications of Existing Proposals Requiring New Land Use Approval.....	55
1. Gas Processing	55
a.6-WD Zone - Allowed Uses - CCZLDO §3.2.276.....	55
b.6-WD Zone – Management Objectives - CCZLDO §3.2.275.....	55
c.6-WD Zone – General Dev’t Stds - CCZLDO §3.2.100.....	56
d.6-WD Zone – General Conditions - CCZLDO §3.2.276.....	56
1.General Condition 1	56
2.General Condition 2.....	56
3.General Condition 3.....	56
4.General Condition 4.....	56
5.General Condition 5.....	57
6.General Condition 6.....	57
e.6-WD Zone – Special Conditions - CCZLDO §3.2.276.....	57
2.Fire Station.....	57
a.6-WD Zone - Allowed Uses - CCZLDO §3.2.276.....	58
b.6-WD Zone – Management Objectives - CCZLDO §3.2.275.....	59
c.6-WD Zone – General Dev’t Stds - CCZLDO §3.2.100.....	59
C. Proposals That Do Not Require New Land Use Approval.....	61
D. Approval Criteria in Balance of County Zones	62
1. IND Zone – Additional Conditional Use Review Stds - CCZLDO §4.3.220.6.....	62
a. CCZLDO §4.3.220.6 (a)	62
b. CCZLDO §4.3.220.6 (b)	62
c. CCZLDO §4.3.220.6 (c).....	63
d. CCZLDO §4.3.220.6 (d)	63
e. CCZLDO §4.3.220.6 (e).....	64

f. CCZLDO §4.3.220.6 (f)	65
2. IND Zone – General Siting Standards - CCZLDO §4.3.225.....	79
3. IND Zone – Special Development Considerations - CCZLDO §4.11.....	84
E. Approval Criteria in Estuary Zones – CBEMP Policies.....	129
1.CBEMP Policy #4.....	129
2.CBEMP Policy #5.....	134
3.CBEMP Policy #5a.....	137
4.CBEMP Policy #8	139
5.CBEMP Policy #9.....	114
5.CBEMP Policy #13.....	143
6.CBEMP Policy #14	144
7.CBEMP Policy #16.....	146
8.CBEMP Policy #17.....	150
9.CBEMP Policy #18.....	152
10.CBEMP Policy #20.....	155
11.CBEMP Policy #23.....	156
12.CBEMP Policy #27.....	157
13.CBEMP Policy #30.....	157
14.CBEMP Policy #49.....	160
15.CBEMP Policy #50.....	161
16.CBEMP Policy #51.....	161
F. Southwest Oregon Regional Airport Overlay Zone.....	163
1.CCZLDO §4.11.425 – Imaginary Surface & Noise Impact Boundary.....	163
2.CCZLDO §4.11.430 – Notice of Land Use Permit Applications	164
3.CCZLDO §4.11.435 – Height Limitations	164
4.CCZLDO §4.11.440 – Procedures.....	165
5.CCZLDO §4.11.445 – Land use Compatibility Requirements	165
6.CCZLDO §4.11.450 – Water Impoundments	169
7.CCZLDO §4.11.455 – Wetland Mitigation, Creation, Enhancement.....	169
8.CCZLDO §4.11.460 – Non-Conforming Uses	170
III. Miscellaneous Issues Raised by Opponents.....	172
A. Lack of a Suitable Skilled Workforce.....	172
B. Noise Disturbing Marine Wildlife.....	173
C. Cumulative Impacts Analysis.....	177
D. Land Ownership and Authority to Apply.....	177
E. Lack of Evidence.....	178
F. Likelihood of Financial Success of the JCEP Project as a Whole.....	180
G. Dredging of the Coos Bay Ship Channel.....	181
H. Oregon State Agency Comments.....	181
I. Grahek E-mail.....	181
J. Williams E-mail.....	182
K. Clarke/Adams E-mail.....	184
L. Eymann Letter.....	185
IV. Conclusion and Conditions of Approval.....	186

I. Land Use Requests.

A. Introduction and Overview.

Applicant Jordan Cove Energy Project L.P. (“JCEP”) intends to develop a liquefied natural gas facility and port terminal (“LNG Terminal”) in Coos County (“County”). JCEP has submitted multiple applications in various local jurisdictions (including the County) regarding the LNG Terminal. With this application (“Application”), JCEP seeks concurrent land use approvals in accordance with the Coos County Zoning and Land Development Ordinance (“CCZLDO”) and the Coos Bay Estuary Management Plan (“CBEMP”) for Administrative Conditional Uses (“ACU”), a driveway confirmation, Compliance Determinations (“CD”), a Hearings Body Conditional Use (“HBCU”), and a Floodplain Development Permit, for specific uses and activities within the County that will provide necessary infrastructure for the construction and operation of the LNG Terminal at locations both within and near the LNG Terminal. The current application is known as “Omnibus II.”

The Application recognizes that, at the time this Omnibus II application was submitted (August 11, 2019), the Omnibus I application was still pending on remand. Currently pending before the County is the remand of a previous County authorizations for the LNG Terminal facility in 2016, which the County approved in County File No. HBCU-15-05/FP-15-09, Order No. 16-08-071PL. *See* Application Exhibit 1. That approval is currently on remand (the “Application On Remand”). This Application proposes modification of certain project components that were approved in the 2016 decision. For that reason, the application is generally organized in two parts. First, in Section II.A., are JCEP’s entirely new proposals. Second, in Section II.B. are modified proposals for which JCEP seeks new land use approval. The hearings officer follows this format for the sake of simplicity.

This Application proposes the following new developments and activities:

- ❖ A meteorological station in the 4-CS zone;
- ❖ An industrial wastewater pipeline in the IND zone;
- ❖ A concrete batch plant in the IND zone;
- ❖ A safety, security, and emergency preparedness, management and response center in the IND zone;
- ❖ A helipad in the IND zone;
- ❖ Corporate and administrative offices in the IND zone;
- ❖ Temporary workforce housing in the IND zone;
- ❖ A wastewater treatment facility in the IND zone;

- ❖ A park and ride in the IND zone;
- ❖ Temporary construction laydown uses and activities in the IND, 6-WD, 3-WD, and 3-NWD zones;
- ❖ A temporary barge berth in the 6-DA zone;
- ❖ Shoreline stabilization within the 5-WD zone;
- ❖ Pile dike rock apron in the 5-DA zone;
- ❖ Provision of primary access to the LNG Terminal in the 6-WD zone (driveway confirmation); and
- ❖ Temporary dredge transport lines in the 6-DA, 7-NA, 13B-NA, and 14-DA zones.

As noted above, this Application also proposes the following developments that are the subject of modifications in the nature and/or location of uses approved in the above referenced County authorization in 2016 and which require new land use approval due to these modifications:

- ❖ Gas processing in the 6-WD zone; and
- ❖ A fire station in the 6-WD zone.

B. Application Timeline.

August 11, 2019	Application Filed
August 29, 2019	Application Declared Complete
September 23, 2019	Staff Report issued
September 30, 2019	Public Hearing
October 14, 2019	First Open Record Closed
October 28, 2019	Second Open Record Closed
November 4, 2019	Final Argument Submitted
December 24, 2019	Hearings Officer’s Recommendation.

C. Scope of Review.

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

In addition, where the ordinance provisions were ambiguous, the hearings officer applied the *PGE v. BOLI* methodology to arrive at what he 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 hearings officer attempted to rely, as much as possible, on past interpretations adopted by the Coos County

Board of Commissioners, while still making sure that the interpretation would be affirmed if appealed.

The hearings officer believes that the conclusions made herein would be affirmed if appealed. However, the Board of Commissioners does not have to accept the recommended legal or factual conclusions of the hearings officer. There are other possible factual conclusions that could be drawn from the evidence. The Board may weigh the evidence and draw its own conclusion from that evidence. The Board also has the authority to modify or overturn the hearings officer's recommended interpretations and reach different legal conclusions.

The standard by which the Land Use Board of Appeals (LUBA) and the courts will review the Board's decision is also an important consideration. ORS 197.829 provides as follows:

197.829 Board to affirm certain local government interpretations.

(1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;*
- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;*
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or*
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.*

The Oregon Supreme Court has construed ORS 197.829(1) to require the LUBA and the courts to affirm a local government code interpretation of its own code if the interpretation is "plausible." *Siporen v. City of Medford*, 349 Or 247, 255, 243 P3d 776 (2010); *Southern Oregon Pipeline Information Project, Inc. v. Coos County*, 57 Or LUBA 44 (2008), *aff'd without op.*, 223 Or App 495, 195 P3d 123 (2008), *rev den.*, 346 Or 65 (2009). That deferential standard of review applies only to interpretations of local law adopted by the governing body (as opposed to the interpretations made by lesser bodies such as planning staff, Hearings Officers or Planning Commissions. *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994)). However, if the Board formally adopts a hearings officer's recommendation as its own findings, the deference principle applies. *See Derry v. Douglas County*, 132 Or App 386, 888 P2d 588 (1995). LUBA has also clarified that the deferential standard of review set forth in ORS 197.829(1) applies to a County's interpretation of plan maps as well. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

One important exception to this principle occurs when the local code provision implements state law: LUBA and the courts are not required to give deference to a local government's interpretation of state law, or to code interpretations if the code standard at issue implements or

mimics state law. *Oregon Shores Cons. Coalition v. Coos County*, 51 Or LUBA 500, 519 (2006).¹ Interpretations of any local code provisions which implement Statewide Planning Goals, as an example, will be reviewed by the LUBA to ensure that they are consistent with the language, policy, and purpose of the Goals. ORS 197.829(1)(d).

The Board should also be mindful of past decisions made in related cases concerning the LNG facility and associated pipeline. As early as 1969, Oregon courts recognized that a governing body is not necessarily bound to decide a matter in the same manner as a previous governing body. In *Archdiocese of Portland v. Washington County*, 254 Or 77, 87-8, 458 P2d 682 (1969), the Court stated:

“Implicit in the plaintiff’s contention is the assumption that the Board of County Commissioners of Washington County is bound by the action of previous Boards of County Commissioners in that county. This assumption is not sound. Each Board is entitled to make its own evaluation of the suitability of the use sought by an applicant. The existing Board is not required to perpetuate errors of its predecessors. Even if it were shown that the previous applications were granted by the present Board, there is nothing in the record to show that the conditions now existing also existed at the time the previous applications were granted.”

See also Alexanderson v. Clackamas County, 126 Or App 549, 869 P2d 873, *rev den*, 319 Or 150, 877 P2d 87 (1994); *Okeson v. Union County*, 10 Or LUBA 1, 2 (1983); *Reeder v. Clackamas County*, 20 Or LUBA 238 (1990); *BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30, 46-47 (1988); *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-712 (1986).

The LUBA has stated, in dicta, that “[A]rbitrary and inconsistent interpretation of approval criteria in deciding applications for land use permits may provide a basis for remand. *See Friends of Bryant Woods Park v. City of Lake Oswego*, 26 Or LUBA 185, 191 (1993), *aff’d* 126 Or App 205, 868 P2d 24 (1994) (although local legislation may be susceptible of more than one interpretation, local government may not “arbitrarily * * * vary its interpretation”). Thus, it is generally accepted that a county must provide some reason for the change in the interpretation, and cannot arbitrarily flip-flop between interpretations from case to case. For example, when a local government determines that comprehensive plan objectives are mandatory approval standards in one case, it may not later determine that plan objectives are mere guidelines in a different case, *absent some explanation for the disparity*. *Welch v. City of Portland*, 28 Or LUBA 439, 448 (1994); *Smith v. Clackamas County*, 25 Or LUBA 568, 570 n.1 (1993).²

¹ *See also Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992); *Kenagy v. Benton County*, 115 Or App 131, 134, 838 P2d 1076 (1992); *Crosley v. Columbia County*, 65 Or LUBA 164 (2012)(LUBA does not give deference to the County’s interpretation of state law, or to its own code to the extent that those code provisions implement and mimic ORS 215.130(5)-(11)).

² Perhaps the most important limitations in this area is set forth in the case of *Holland v. Cannon Beach*, 154 Or App 450, 962 P2d 701 (1998). Under *Holland*, a County cannot conclude that a code standard or plan policy is inapplicable in an initial phase of a case, and then change its mind when the case comes back from LUBA on other issues.

Finally, it is important to note that the LUBA has stated that there may be circumstances where a change in long-standing interpretations may require notice and an opportunity for comment. *Wicks v. City of Reedsport*, 29 Or LUBA 8, 19 (1995); *Heceta Water Dist. v. Lane County*, 24 Or LUBA 402, 419 (1993); *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630, 638-9 (1999). In summary, it is *possible* for the Board to change the manner in which it interpreted its code in past decisions pertaining the LNG terminal. To be clear, however, the hearings officer does not recommend any interpretational changes at this time.

Nonetheless, if the Board *is* inclined to change a past interpretation, the hearings officer recommends that the Board: (1) provide notice to the parties, and (2) hold a public hearing accepting comment and analysis from the parties on the issue or issues subject to the change.

In *Holland*, petitioner's subdivision application was denied by the city council on the basis that it did not comply with certain comprehensive plan provisions. On appeal to LUBA, the Board remanded the decision on the basis that the comprehensive plan provisions relied on to support the denial were not applicable to the application. On remand, the city council determined that the application must be denied because it did not comply with a provision in the zoning code related to slope and density. Unfortunately for the city, the city staff had in an earlier staff report concluded that that standard was not applicable, relying on advice from the city attorney. That interpretation had been adopted by the city council in its first decision. So essentially, the decision on remand reversed an earlier, unchallenged code interpretation in the same case.

Petitioner again appealed, and LUBA affirmed the city's new denial decision. Before the court of appeals, the city argued the earlier staff determination had no import, since the city council had made a different determination than had staff previously that the newly applied standard was in fact applicable. The city argued the council's interpretation of its own code was subject to *Clark* deference under ORS 197.829(1). The Court of Appeals rejected this argument, holding that because the city council had adopted the previous staff determination that the standard at issue was inapplicable, that the standard continues to be inapplicable during the pendency of the case, in order to comply with the "no changing of the goal posts" rule. *See* ORS 227.178(3).

Holland provides a caveat to the holdings of earlier decisions stating that there is no requirement that a local government's decision be consistent with past decision, and that the law only requires that the decision be correct when made. *Compare Okeson v. Union County*, 10 Or LUBA 1 (1983); *Halverson-Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 193, 205 (2000). Under *Holland*, once a case comes back on remand from LUBA, any interpretations set forth in the earlier decision which were not appealed become binding on the local government. However, *Holland* appears to have its own set of limits. *See e.g., Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630 (1999) (the rule advanced in *Holland* is limited to interpretations governing the same application); *Greer v. Josephine County*, 37 Or LUBA 261, 275 (1999) ("As construed in *Holland*, ORS 227.178(3) constrains a local government's ability to change interpretations regarding the applicability of its approval criteria, but we do not read *Holland* as constraining reinterpretations of the meaning of indisputably applicable standards.").

D. Procedural Issues Raised By Opponents

1. Motion to Vacate the Planning Director's Completeness Decision

Attorney Tonia L. Moro moved to vacate the Planning Director's decision to declare the application complete because she felt it lacked certain evidence. Moro letter dated October 14, 2019, Exhibit 6, p. 1.

Ms. Moro's motion is denied. Completeness review is performed by Coos County Planning Staff, not the hearings officer. CCZLDO §5.0.200.1; ORS 215.427(2). The hearings officer does not have legal authority to reverse or overrule the completeness determination once it has been decided by the Coos County Planning Director. In any event, Ms. Moro cannot show prejudice to substantial rights, as the Record shows the Applicant did timely submit the information and evidence she feels should have been submitted with the application.

Other opponents, including Oregon Shores Conservation Coalition and Jody McCaffree, make similar arguments:

“The application should have been deemed incomplete due to lack of data and information that was provided. A hearing was held on September 30, 2019. On October 14, 2019 Jordan Cove submitted nothing but exhibits and most of these exhibits were available to Jordan Cove far in advance of the filing of their application and **ALL BUT ONE WERE AVAILABLE TO THEM PRIOR TO THE HEARING**. At the hearing Jordan Cove provided **NO REBUTTAL** and said that they would provide that on October 14th which they **DID NOT PROVIDE**. They are not only making a mockery of the entire land use process they are prejudicing citizens' substantial rights to a fair and unbiased land use process. The Planning Director should have made Jordan Cove supply the information prior to the application being deemed complete.” (Capital emphasis in original).

See McCaffree letter of October 28, 2019, at p. 1, Exhibit 19.

As just explained, the hearings officer does not have legal authority to reverse or overrule the Planning Director's completeness determination. The Record shows the Applicant submitted large amounts of evidence on October 14 (Exhibit 12) and October 28 (Exhibit 14). The hearings officer is sympathetic to opponents' difficulties in digesting and responding to such a large volume of evidence. But the hearings officer should point out:

- ❖ It is the Applicant's prerogative to decide when and how to provide the evidence sufficient to meet its burden. As long as the applicant meets the deadlines set for the Open Records Period, the hearings officer cannot dictate the Applicant's timing or strategy. In this case the Applicant JCEP met all deadlines in a timely manner.

- ❖ The remedy for a party who feels aggrieved in such situations is to ask for the Record to be re-opened for a reasonable time to examine the new evidence. ORS 197.763(b). No party made such a request, so any claim of a violation of substantial rights must fail.
- ❖ One of the reasons the Applicant JCEP supplies such a large volume of additional evidence is that the opponents continually and strenuously fault the Applicant for failing to provide sufficient evidence (Just a few examples from Exhibit 9, OSCC letter of October 14, 2019: “The Applicant should provide both the County and the public with the above requested evidence...The Application materials fail to provide sufficient information to meaningfully evaluate consistency the applicable criteria...Oregon Shores was unable to locate any data sufficient to evaluate the potential impacts...Absent further information, the County cannot conclude that the Application materials are consistent with the requirements...” *et cetera*). To put it another way, the opponents complain that the Applicant has not submitted *enough* evidence.... and then complain that the Applicant has submitted *too much* evidence.

2. Application of CCZLDO §5.0.500.

In her letter dated October 14, 2019, Ms. Tonia Moro argues that “[t]o the extent the modifications [Proposed in Omnibus II] rely on any aspect of the prior pending application the county shall deem that reliance insufficient as the prior application is de-facto revoked.” She goes on to say that “[t]he county’s LDO expressly disallows applicants to collect approvals for various and alternative aspects of a project. The code implicitly recognizes the need to view a development and its impacts holistically.” The hearings officer disagrees with the idea that the code demands a “holistic” approach in all cases. CCZLDO §5.0.500 provides:

*SECTION 5.0.500 INCONSISTENT APPLICATIONS:
Submission of any application for a land use or land division under this Ordinance which is inconsistent with any previously submitted pending application shall constitute an automatic revocation of the previous pending application to the extent of the inconsistency.
Such revocation shall not be cause for refund of any previously submitted application fees.*

The word “pending” is critical to understanding this code provision: it only applies if two applications seeking approval for the same property are “pending” at the same time. The “Omnibus II application” under review here was submitted while the Omnibus I application was still “pending.” Thus, CCZLDO §5.0.500 does apply here, and requires that the Omnibus II application act to modify or “revoke” whatever aspects of Omnibus I application that are inconsistent with Omnibus II.

That issue can simply be addressed by a condition of approval. The hearings officer recommends that the Board of Commissioners work with staff and the Applicant to develop a comprehensive list of changes from Omnibus I and Omnibus II, and condition the final Omnibus II approval such that the aspects of the Omnibus I application that were modified by Omnibus II are no longer approved.

II. Applicable Approval Criteria.

A. New Proposals.

The Applicant seeks approval of the following new proposals. Some proposals are subject to an Administrative Conditional Use (“ACU”), some are subject to a Compliance Determination (“CD”), and one is subject to a Hearings Body Conditional Use (“HBCU”). In addition, several proposals require a floodplain development permit. Sections II.A. and II.B. describe the various proposals and how they comply with applicable approval criteria. Sections II.D. and II.E. provide collective responses to additional approval criteria applicable to the proposals.

1. Meteorological Station.

JCEP proposes to construct a meteorological station in the County’s 4-CS CBEMP zone. Exhibit 2 shows the proposed location of the meteorological station, which is on the west side of the lagoon adjacent to the northern extent of the snowy plover nesting area. The station will be mounted on an approximately 40-foot-high lattice tower or wooden pole, with a 30-foot-by-30-foot triangular or square footprint. The purpose of the meteorological station is to provide real-time meteorological data for ships transporting liquefied natural gas and their support vessels, both as they enter and leave the Coos Bay Deep Draft Navigation Channel.

4-CS Zone - Allowed Uses - CCZLDO 3.2.256

Hearings Officer’s Findings: The 4-CS zone permits, subject to general conditions, “low-intensity utilities.” Furthermore, in accordance with CCZLDO §3.2.175, all uses in the 4-CS zone must be consistent with the zone’s “management objective.”

CCZLDO §2.1.200 defines “low-intensity utility” as “public service structures” that “consist of communication facilities[.]” The meteorological station is a “communication facility” that serves the public. The station’s purpose is to communicate weather conditions to maritime vessels to ensure the safety of navigation into and out of port. Such communication is a public service because it will enhance the viability, safety, and efficiency of maritime navigation into and out of the Port of Coos Bay, which is essential for the County’s economy.

Therefore, the meteorological station is permitted in the 4-CS zone as a “low-intensity utility,” subject to general conditions and the zone’s “management objective.” For the following reasons, the meteorological station satisfies the zone’s management objective and applicable general conditions.

4-CS Zone - Management Objective - CCZLDO §3.2.255.

This shoreland district shall be managed to maintain the existing lagoon and its ability to handle effluents and to allow development of a freshwater marsh.

Hearings Officer’s Findings: The meteorological station will not affect the 4-CS zone’s purpose of maintaining the existing lagoon and its ability to handle effluents and to allow development of a freshwater marsh. The station is a small, ground-based facility which has the limited purpose of

communicating weather data to ensure the safety of maritime navigation in and out of the port. The station is not within the lagoon or the nearby marsh, and the station will not adversely affect these features. Therefore, the meteorological station satisfies the 4-CS zone's management objective.

4-CS Zone - General Conditions - CCZLDO §3.2.256.

- 1. Uses in this district are only permitted as stated in Policy #14 "General Policy on Uses within Rural Coastal Shorelands." Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this policy.**

Hearings Officer's Findings: This general condition does not apply to "low-intensity utilities," which are permitted outright in the 4-CS zone. The condition applies "except as permitted outright." CCZLDO §3.2.256 allows "low-intensity utilities" with a "P" symbol. CCZLDO §3.2.150 explains that the "P" symbol "means the use or activity is permitted outright[.]" Therefore, CBEMP Policy #14 does not apply to the meteorological station.

- 2. All permitted uses are subject to Policy #13 which states general use priorities in coastal shorelands.**

Hearings Officer's Findings: The meteorological station complies with CBEMP Policy #13 for the reasons discussed in section II.E. of this Recommendation.

- 3. All permitted uses in dune areas shall be consistent with the requirements of Policy #30.**

Hearings Officer's Findings: The meteorological station complies with Policy #30 for the reasons discussed in Section II.E. of this Recommendation, "CBEMP Policies," beginning on p. 129.

- 4. In rural areas (outside of UGBs) utilities, public facilities and services shall only be provided subject to Policies #49, #50, and # 51.**

Hearings Officer's Findings: The meteorological station complies with Policies #49, #50, and #51 for the reasons discussed in Section II.E. of this Recommendation.

- 5. Inventoried resources requiring mandatory protection in this unit are subject to Policies #17 and #18.**

Hearings Officer's Findings: The meteorological station complies with Policies #17 and #18 for the reasons discussed in Section II.E. of this Recommendation, "CBEMP Policies."

4-CS Zone - General Development Standards - CCZLDO 3.2.100

Minimum Lot Size - None

Lot Dimension/Street Frontage - 20' Minimum Lot Width, No Minimum Lot Depth; 20' Minimum Street Frontage

Setbacks - 35' from centerline of adjacent right-of-way or 5' from adjacent right-of-way boundary if no adjacent right-of-way

Building Heights/Parking/Road Standards - No Maximum Building Height; Required parking subject to staff determination via CCZLDO 7.5.100.5.

Hearings Officer's Findings: The meteorological station will comply with the above general development standards of the 4-CS zone.

Therefore, for the above reasons and the reasons further set forth in Section II.E. of this Application, the meteorological station with all applicable approval criteria of the 4-CS zone. The hearings officer recommends approval of the meteorological station.

2. Industrial Wastewater Pipeline.

JCEP proposes to construct a new industrial wastewater pipeline ("IWWP") at the location shown in Application Exhibit 3. The IWWP will support the function of various facilities that JCEP has proposed that are associated with the LNG Terminal, including by transporting industrial waste to an ocean outfall. Most of the IWWP is within the public right-of-way (TransPacific Parkway). However, as Application Exhibit 3 shows, the easternmost portion of the IWWP exits the public right-of-way and crosses the County's IND and 7-D zones.

CCZLDO 4.3.200 - IND Zone - Allowed Uses

Hearings Officer's Findings: CCZLDO 4.3.200 permits in the IND zone, subject to a Compliance Determination process, a "Utility Facility - Service Lines in conjunction with a Utility Facility." Compliance Determination uses in the IND zone must comply with CCZLDO 4.3.220, 4.3.225, 4.3.330, and the Special Development Considerations and Overlays of CCZLDO 4.11.

The IWWP qualifies as a "Utility Facility - Service Lines in conjunction with a Utility Facility." CCZLDO §4.3.210.76.e. explains that "Utility Facility - Service Lines" are "distribution line[s] for supplying a utility service including but not limited to telephone, power, water, sewer, etc." The IWWP is a utility line to supply wastewater services. Therefore, it is allowed in the IND zone subject to a Compliance Determination. The IWWP complies with CCZLDO §§ 4.3.220, 4.3.225, 4.3.230, and CCZLDO §4.11 for the reasons discussed in Section II.D. of this Recommendation, "Approval criteria in Balance of County Zones," beginning on p. 129.

7-D Zone - Allowed Uses - CCZLDO 3.2.285

Hearings Officer's Findings: The 7-D zone permits, subject to general conditions, "high-intensity utilities." Furthermore, in accordance with CCZLDO 3.2.175, all uses in the 7-D zone must be consistent with the zone's "management objective."

CCZLDO §2.1.200 defines "high-intensity utility" as storm water and treated wastewater outfalls (including industrial wastewater). The IWWP is a pipeline that transports industrial waste from the LNG facility to its ocean outfall. Therefore, the IWWP is permitted in the 7-D zone as a "high-intensity utility," subject to general conditions and the zone's "management objective." For

the following reasons, the IWWP satisfies the zone's management objective and applicable general conditions.

7-D Zone - Management Objective - CCZLDO § 3.2.285

This shoreland district, which borders a natural aquatic area, shall be managed for industrial use. Continuation of and expansion of existing non-water-dependent/non-water-related industrial uses shall be allowed provided that this use does not adversely impact Natural Aquatic District #7. In addition, development shall not conflict with state and federal requirements for the wetlands located in the northwest portion of this district.

Hearings Officer's Findings: The 7-D zone's management objective explains that the County must manage the zone for industrial use. The IWWP is an industrial wastewater pipeline that will support industrial uses associated with the LNG facility to construct on the North Spit by transporting industrial waste associated with that facility to its ocean outfall. Further, the 7-D zone allows high-intensity utilities, which include the IWWP. The 7-D zone's management objective allows "continuation and expansion of existing non-water-dependent/non-water-related industrial uses ... provided that this use does not adversely impact" the 7-NA zone. The IWWP is not a "continuation of [or] expansion of existing non-water-dependent/non-water-related industrial uses." The IWWP is, rather, a new proposal, and it is associated with, and supportive, of water-dependent development. Therefore, the 7-D zone's management objective does not require JCEP to show that the IWWP will not impact the 7-NA zone. Finally, the IWWP will not conflict with state and federal requirements for the wetlands located in the 7-D zone. Although the County's Shoreland Values Inventory Map shows a wetland near the area for the IWWP, the IWWP is not within a delineated wetland. Application Exhibit 3 includes a site plan depicting the IWWP and the delineated wetland. The site plan shows that the IWWP does not cross the wetland.

7-D Zone - General Conditions - CCZLDO 3.2.286

- 1. Uses in this district are only permitted as stated in Policy #14 "General Policy on Uses within Rural Coastal Shorelands". Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this policy.***

Hearings Officer's Findings: This general condition does not apply to "high-intensity utilities," which are permitted outright in the 7-D zone. The condition applies "except as permitted outright." CCZLDO §3.2.286 allows "high-intensity utilities" with a "P" symbol. CCZLDO §3.2.150 explains that the "P" symbol "means the use or activity is permitted outright[.]" Therefore, CBEMP Policy # 14 does not apply to the IWWP.

- 2. Inventoried resources requiring mandatory protection in this unit district are subject to Policies #17 and #18.***

Hearings Officer's Findings: The IWWP complies with CBEMP Policies #17 and 18 for the reasons discussed in Section II.E. of this Recommendation, "CBEMP Policies," beginning on p. 129.

- 3. All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation.**

Hearings Officer's Findings: The IWWP complies with CBEMP Policy #23 for the reasons discussed in Section II.E. of this Recommendation.

- 4. All permitted uses shall be consistent with the respective flood regulations of local governments as required in Policy #27.**

Hearings Officer's Findings: The IWWP complies with CBEMP Policy #27 for the reasons discussed in Section II.E. of this Recommendation.

- 5. All permitted uses in dune areas shall be consistent with the requirements of Policy #30.**

Hearings Officer's Findings: The IWWP complies with CBEMP Policy #30 for the reasons discussed in Section II.E. of this Recommendation.

- 6. In rural areas (outside of UGBs) utilities, public facilities, and services shall only be provided subject to Policies #49, #50, and #51.**

Hearings Officer's Findings: The IWWP complies with CBEMP Policies #49, 50 and 51 for the reasons discussed in Section II.E. of this Recommendation.

7-D Zone - General Development Standards - CCZLDO 3.2.100

Hearings Officer's Findings: The general development standards of CCZLDO §3.2.100 include standards for lot size, width and depth, building height, setbacks, and parking.³ These standards cannot logically be applied to an underground pipeline.

Opponent Ocean Shores Conservation Coalition makes another allegation of insufficient evidence regarding the construction and placement of the industrial wastewater pipeline. OSCC faults the Applicant for failing to provide:

“...information required to address the BLM’s concerns regarding the feasibility of installing and co-locating the IWWP along the Trans Pacific Parkway. The Applicant should address the concerns raised by BLM prior to any final decision in this matter, and any materials submitted by the Applicant in relation to the above concerns should be provided to the County and the public for review prior to the close of the opportunity for comment. Absent such information, the Applicant cannot demonstrate that the proposed IWWP in the IND zone is consistent with the requisite criteria, including CCZLDO 4.11.125.4 - Beaches and Dunes (Policy 5.10) and CBEMP Policy #30. As such, the County must deny the Application.”

³ Ordinarily the hearings officer would excerpt these standards for the reader’s benefit. The CCZLDO §3.2.100 development standards, however, are contained in Table 3.2 which is four pages long.

OSCC letter dated October 14, 2019, Exhibit 9, p. 3. It is unclear what the BLM's concerns have to do with Coos County land use approval criteria. In any event, the Applicant did submit such information, on October 28, 2019. *See* Exhibit 14, subexhibit 30 - Response to FERC Environmental Information Request dated October 4, 2019. This 46-page submittal from JCEP to FERC addresses the Bureau of Land Management's questions regarding the Project's industrial wastewater pipeline, just as the OSCC requested. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

As for compliance with CBEMP Policy #30, *see* discussion of Policy #30 in §E.11 of this Recommendation, "CBEMP Policies."

Therefore, for the above reasons, and the reasons further discussed in Sections II.E. and II.D. of this Recommendation, the hearings officer finds that the IWWP complies with all applicable approval criteria.

3. Temporary Concrete Batch Plant.

JCEP proposes to construct a temporary concrete batch plant in the IND zone. Exhibit 2 shows the location for the plant (Boxcar Hill). The plant will provide concrete supply for construction of the LNG Terminal and related facilities. The concrete needed for construction is approximately 130,000 cubic yards. Local aggregate sources have been investigated and have been found to have deficiencies (chert inclusions) that preclude their use for concrete. Regional sourcing for the availability of on-spec aggregates has been confirmed. A concrete washout area will be located adjacent to the batch plant to allow for containment and disposal of wastewater related to concrete batching operations. The disposal of concrete wastewater will follow all necessary environmental regulations. Any discharges from the concrete batch plant will be subject to measures that minimize the potential for accidental discharges during construction, and additional best practices, including containment for washout, will be utilized. JCEP will employ dust suppression techniques to mitigate any impacts to air quality from concrete batching. The batch plant will operate for 30-36 months.

IND Zone - Allowed Uses - CCZLDO 4.3.200

Hearings Officer's Findings: CCZLDO 4.3.200 permits in the IND zone subject to a Hearings Body Conditional Use the "mineral processing" of "aggregate." A Hearings Body Conditional Use in the IND zone must comply with CCZLDO 4.3.220, 4.3.225, 4.3.230, and the Special Development Considerations and overlay zones of CCZLDO 4.11.

The concrete batch plant qualifies as a "mineral processing" of "aggregate" use and is thus allowed in the IND zone subject to an HBCU. CCZLDO §2.1.200 defines "aggregate processing" as "the act of processing an aggregate resource into a refined product." The purpose of the concrete batch plant is to process aggregate into concrete, a refined product, for use in constructing the LNG Terminal. Therefore, the plant qualifies as an HBCU in the IND zone. The plant satisfies the applicable approval criteria of CCZLDO §§4.3.220, 4.3.225, 4.3.230 and 4.11 for the reasons discussed in Section II.D. of the application narrative.

JCEP's temporary concrete batch plant is a conditional use in the IND zone. CCZLDO §4.3.200. As a result, it must demonstrate that it is compatible with surrounding properties or that it can be made so through the imposition of conditions. CCZLDO §4.3.220(f)i. This is discussed in Section II(D). Therefore, for the reasons discussed above and in Section II.D. of this Recommendation, after robustly evaluating the substantial evidence presented by the Applicant and opponents, the hearings officer recommends approval of the plant.

4. Emergency Preparedness Response Center.

JCEP proposes to construct in the IND zone an emergency preparedness and response center, to be known as the Southwest Oregon Regional Safety Center ("SORSC"). The SORSC will be located adjacent to the LNG Terminal and will include an adjacent administration building. Application Exhibit 2 shows the location JCEP proposes for the SORSC and the administration building (South Dunes). The SORSC will manage safety, security and emergency response for the LNG Terminal and related facilities. The facility will provide a combined safety center for Jordan Cove Security Center, Sheriff's Department, Sheriffs/911 Dispatch, and the Emergency Operations Center. The SORSC facility houses surveillance, communications, command and control systems, and supports security and response operations in the JC LNG area of operations and provides emergency dispatch to the entirety of Coos County. The goal of this facility is to fully support safety and security requirements of the LNG Terminal and related facilities. It is also intended to serve as a cornerstone to improve communications between individual agencies and provide a platform for collaboration. This will increase efficiency of operations and improve the efficacy of emergency response throughout Coos County.

IND Zone - Allowed Uses - CCZLDO 4.3.200

Hearings Officer's Findings: CCZLDO §4.3.200 permits in the IND zone, subject to a Compliance Determination, "emergency preparedness centers." A Compliance Determination use in the IND zone must comply with CCZLDO §§4.3.220, 4.3.225, 4.3.230, and the Special Development Considerations and Overlays of CCZLDO §4.11.

The SORSC is allowed in the IND zone as an "emergency preparedness center," subject to a Compliance Determination (CD) process⁴. Although the CCZLDO does not define "emergency preparedness center," the purpose and function of the SORSC is to manage safety, security, and emergency responsiveness. Therefore, it qualifies as an emergency preparedness center. Moreover, the SORSC complies with CCZLDO §§4.3.220, 4.3.225, 4.3.230, and 4.11 for the reasons discussed in Section II.D. of this Recommendation.

Opponent Oregon Shores Conservation Coalition writes:

"Given the stated role of the SORSC in emergency response, the

⁴ Although LUBA remanded the County's 2016 LNG Terminal decision because it did not adopt adequate findings explaining why the SORSC was permitted as an accessory use in the IND zones the County has amended its land use regulations to permit a new primary use type ("emergency preparedness center") that applies to the SORSC. Therefore, LUBA's remand does not restrict approval of the SORSC in this Application.

County should consider whether the proposed siting is in accordance with industry safety standards. Further, the County should not issue any permits regarding this proposed use until the Applicant has obtained the requisite state and federal permits, authorizations, and agreements in relation to the SORSC.”

OSCC letter dated September 30, 2019 at p. 9, Exhibit 4. OSCC does not name these “industry safety standards” nor specify what “requisite state and federal permits, authorizations, and agreements” it refers to. Nor does OSCC explain why such standards, permits, authorizations, and agreements (if they exist) are mandatory approval standards. The hearings officer is unsure what this quoted passage means, beyond “we think that the SORSC should be sited and built safely and lawfully.”

Therefore, for the reasons discussed above and in Section II.D. of this Recommendation, the hearings officer recommends the Board of Commissioners approve the SORSC.

5. Helipad.

JCEP proposes to construct a helipad on the site of the SORSC. The purpose of the helipad is to facilitate emergency incident management response by enabling enhanced emergency evacuation of, or access to, the LNG Terminal site.

IND Zone - Allowed Uses - CCZLDO 4.3.200

Hearings Officer’s Findings: The IND zone permits, subject to a Compliance Determination, “Accessory uses and structures to Emergency Services and Governmental Services include storage caches and standby power generating equipment.” A Compliance Determination use in the IND zone must comply with CCZLDO 4.3.220, 4.3.225, 4.3.230 and the Special Development Considerations and Overlays of 4.11.

The helipad is an accessory use to the SORSC, which is an emergency preparedness and response center, which is a type of emergency services and governmental services use. CCZLDO §2.1.200 defines “accessory use” as “a use, building or structure that is customarily incidental and subordinate to the principal use, main building or structure, and subordinate in extent, area and purpose to the principal use.” The helipad is incidental and subordinate to the SORSC in extent, area, and purpose. It is a parking area for an emergency response vehicle, and the SORSC is an emergency response facility. A helicopter is an invaluable accessory to emergency response personnel, as it can serve as an aerial vantage point to observe the extent of a fast-developing scenario and direct resources where they shall be most effective, enhancing command and control when responding to urgent situations. A helicopter also allows specialized personnel to be rapidly brought to (or evacuated from) the site in circumstances when time is of the essence. The hearings officer further defines these terms “incidental” and “subordinate” in the context of the discussion of the administration building, and the same analysis applies here. See *infra* at pp. 22-25.

Therefore, the helipad is allowed in the IND zone subject to a CD and the approval criteria of CCZLDO §§4.3.220, 4.3.225, 4.3.230 and 4.11. The helipad satisfies those criteria for the reasons set forth in Section D. of this Recommendation. Therefore, the helipad satisfies all the approval

criteria for a CD in the IND zone. The hearings officer recommends that the County approve the helipad.

Opponent Oregon Shores Conservation Coalition writes:

“Oregon Shores does not concede that the proposed helipad is an accessory use as that term is defined under CCZLDO 2.1.200. Specific Definitions - Accessory Use and categorized under CCZLDO Sec. 4.3.210(1). Per Oregon Shores’ review of the Application materials, there is insufficient evidence to meaningfully evaluate how helicopter flights in and out of the proposed helipad would impact other flight traffic from the airport. Absent this information, the County cannot approve the proposed helipad in the IND zone.

On the basis of the present record, the proposed helipad fails to demonstrate consistency with the applicable criteria for the IND zone. On the basis of the present record, the County cannot approve the proposed use within the IND zone. As discussed below, the proposed helipad fails to meet the applicable approval criteria of CCZLDO 4.3.220, 4.3.225, 4.3.230 and 4.11.”

See OSCC letter dated September 30, 2019, at p. 9. Exhibit 4. Oregon Shores makes virtually the same comments about all of the Applicant’s proposals (the batch plant, the SORSC, the helipad, the corporate and administrative offices, the temporary workforce housing, the wastewater treatment facilities, the park & ride, the temporary construction laydowns, etc):

- (1) OSCC does not agree this is an accessory use to the LNG plant, and
- (2) there is insufficient evidence to evaluate this proposal.

Given that OSCC’s two letters were submitted on September 30, 2019, and October 14, 2019, it is unsurprising they fault the Applicant for insufficient evidence. The Applicant made two voluminous submissions on October 14 (Exhibit 12) and October 28 (Exhibit 14), which OSCC would not have seen at the time of their writing. For the sake of avoiding unnecessary repetition, the hearings will not repeat “that evidence was submitted later” to every assertion of insufficient evidence made by OSCC and the other opponents.

As for OSCC’s assertion that the Applicant’s various ancillary uses do not qualify as “accessory uses,” one must consider the definition of “Accessory Structures or Uses”:

- (1) are subordinate to and serve a principal use;
- (2) subordinate in area or purpose to that principal use;
- (3) contribute to the comfort, convenience, or necessity of occupants of the principal use; and
- (4) are located on the same unit of land as the principal use, or otherwise permitted.

CCZLDO §2.1.200. As long as the Applicant can make a credible showing that it intends a particular use to be subordinate to and serve the LNG plant, by contributing to the comfort, convenience, or necessity of LNG plant workers and management, that is sufficient. In the case of a helipad, it is obvious that access to a helicopter will contribute to the mission of site safety by allowing aerial “eyes and ears” to observe conditions not viewable from the ground, as well as enhance command and control when responding to urgent situations. A helicopter also allows personnel to be rapidly brought to (or evacuated from) the site in circumstances when time is of the essence. Helicopters have proven themselves as invaluable emergency equipment, which is why most big cities have them available.

6. Administration Building.

JCEP proposes to develop in the IND zone an administration building adjacent to the SORSC. The administrative and corporate offices will be located in the administration building, adjacent to the SORSC. Application Exhibit 2 shows the location JCEP proposes for the administration building. The administration building will provide business, administrative, and information management support for the operations of the LNG Terminal and related facilities.

IND Zone - Allowed Uses - CCZLDO 4.3.200

Hearings Officer’s Findings: CCZLDO §4.3.200 permits in the IND zone subject to a Compliance Determination “Accessory Development to industrial use.” Compliance Determination uses in the IND zone are subject to CCZLDO 4.3.220, 4.3.225, 4.3.230, and the Special Development Considerations and Overlays of CCZLDO 4.11

The area to construct the administration building is within the County’s IND zone. The administration building qualifies as an “accessory use” to the LNG Terminal, which is a primary industrial use. CCZLDO §2.1.200 defines “accessory use” as “A use, building or structure that is (1) customarily incidental and subordinate to the principal use, main building or structure, and (2) subordinate in extent, area and purpose to the principal use.”

In *Oregon Shores Conservation Coalition et al. v. Coos County*, 76 Or LUBA 346 (2017), *aff’d without op.*, 291 Or App 251, 416 P3d 1110 (2018), *rev den.*, 363 Or 481, 424 P3d 728 (2018) (“*OSCC v. Coos County*”), LUBA held that the SORSC could not be considered an accessory use to a fire station. The LUBA stated:

[t]he findings do not include an interpretation, at least one adequate for review, explaining why the proposed SORSC components are subordinate to and serve a principal use, and subordinate in area or purpose to that principal use. Or, in the words of the version of LDO 2.1.200 on the county's website, whether the SORSC uses are "customarily incidental and subordinate to the principal use," and "subordinate in extent, area and purpose to the principal use."

Id. at 349. LUBA also chastised the County for not defining the terms “incidental” and “subordinate.” The hearings officer corrects that error by defining these terms below.

Under general rules of statutory construction, a dictionary can be used to assist in determining the plain and ordinary meaning of these words. Webster's Third Internat'l Dictionary (1981), 1142 defines "incidental" as:

1 : subordinate, nonessential, *or* attendant in significance."

Webster's Third New Internat'l Dictionary (1981) defines "subordinate" as:

"1: placed in a lower order, class, or rank: holding a lower or inferior position.

In *Leonetti Furniture Manufacturing Co. v. City of Beaverton* 13 Or LUBA 59 (1985), LUBA considered these same definitions and concluded that the local government has a fair amount of leeway in how it interprets these terms:

It is apparent [the terms incidental and subordinate] are not mathematically precise. Concededly, they might be given the meaning contended by petitioner. That is, an incidental and subordinate use is one measurably less than a primary or predominant use, however slight the difference. However, it is also possible to define the terms, as the city did, to describe a use of substantially lesser magnitude than the principal use. Another variant is to interpret "incidental" solely in terms of whether the secondary use is essential to the primary use. Because the terms are capable of such different meanings, they must be considered ambiguous, contrary to petitioner's claim.

In *Leonetti*, the City of Beaverton found that the retail component of a Costco store was not incidental and subordinate to the wholesale sales component of the same store. Other key "accessory use" cases include:

- ❖ *McCormick v. City of Baker*, 46 Or LUBA 50 (2007) (four tennis courts and a clubhouse used by up to 48 persons a weekend is not an accessory use to a 1,988 s.f. residence, even though the activity is non-commercial).
- ❖ *Yunker v. Means*, 271 Or 56, 530 P2d 846 (1975) (A garage or carport attached to the house has been held to be part of the house and not an accessory use").
- ❖ *Medford Assembly of God v. City of Medford*, 12 Or LUBA 167 (1984), *aff'd*, 72 Or App 333, 695 P2d 1379, *rev den*, 299 Or 203, &00 P2d 251 (1985) (parochial school is not an accessory use to a Church when the code lists school under a different land use category).
- ❖ *McPeck v. Coos County*, 26 Or LUBA 165 (1993) (LUBA upheld County determination that a principle use must exist on a property before an accessory use is allowed).

- ❖ *Fleming v. Coos County*, 34 Or LUBA 328 (1998) (4800 s.f. hanger used to store nine antique cars, a personal ultralight aircraft, tools, and a catamaran is an accessory use to a residence).
- ❖ *Reed v. Jackson County*, 61 Or LUBA 253 (2010) (LUBA stated in dicta that large commercial weddings held on EFU-zoned property would satisfy the requirement that the accessory use be “incidental and customarily subordinate to principal uses” and “necessarily and customarily associated with, and appropriate, clearly incidental, and subordinate to” the principal farm **uses** allowed in EFU zones, as required by [the local code].).
- ❖ *Kukaska v. Linn County*, 69 Or LUBA 347 (2014) (medical hardship dwelling is an accessory use to a principle dwelling).
- ❖ *Kaplowitz v. Lane County*, 74 Or LUBA 386 (2016) (5,000 s.f. horse barn / arena modified to include a yoga / dance studio, a guest room, a recording studio, 2 storage rooms, two bathrooms and a mudroom is accessory to a 3,600 s.f. residence when used for non-commercial purposes).
- ❖ *Nicholas Kamps-Hughes v. City of Eugene*, ___ Or LUBA ___ (LUBA No. 2019-028, June 6, 2019) (Accessory Dwelling Unit (ADU) was not accessory to a primary dwelling despite being comparable in size, “because it did not supplement, aid, or contribute to the use of the existing dwelling or be “secondary or subordinate” to the existing dwelling in any manner other than size.”

The administration building is a building/structure that is customarily incidental and subordinate to the LNG Terminal. The administration building’s purpose is to provide business, administrative, and information management support for the operations of the LNG Terminal and related facilities. The administration building would not exist but for the LNG Terminal, because its only purpose is to support and manage the LNG terminal operations. The nearby administration building will allow close supervision of workplace operations, immediate consultation with specialists, engineers and supervisors, monitoring of equipment and supply levels from the crucial to the mundane, and quick supervisory action in the case of unusual situations. In addition, employees will have easy access to appropriate staff to handle any of the myriad questions or concerns that can arise in the modern workplace, such as scheduling, time off, medical leave, pay, *et cetera*.

The administration building is also subordinate in extent and area to the LNG Terminal because it is smaller than and co-located with the various components of the LNG Terminal. JCEP requires the administration building on the North Spit because proximity to the LNG Terminal is necessary for the administration building to effectuate its supportive role. “Management by walking around” can be highly effective, but it requires close proximity to the site being managed.

Finally, the administration building satisfies the applicable approval criteria of CCZLDO §§4.3.220, 4.3.225, 4.3.230 and 4.11, for the reasons set forth in Section II.D. of this Recommendation.

Opponent OSCC writes:

“The Application materials fail to provide sufficient information to meaningfully evaluate consistency with the applicable criteria. On the basis of the present record, the County cannot approve the proposed corporate and administrative offices in the IND zone.

Both the proposed administrative building and the proposed SORSC appear to be located just west of an identified wetland located on the boundary between the IND zone and 8-WD CBEMP zone. As discussed previously, Oregon Shores’ was unable to locate any data sufficient to evaluate the potential impacts that the construction and operations of both the proposed SORSC and the proposed administrative building may have on this identified wetland. As stated in our previous comment, such data must be provided to the County and public for review prior to the close for opportunity for comment and any final decision in this matter.”

See OSCC letter dated October 14, 2019 at p. 3. Exhibit 9. The Applicant did submit such information that same day, on October 14, 2019. *See* Applicant’s Exhibit 12, subexhibit 22 - FERC Resource Report 3 dated September 2017: This report, which is part of JCEP’s application to FERC, discusses and evaluates the existing fish, wildlife, and vegetation resources impacted by the Project, methods for avoidance and minimization, and proposals for mitigating construction and operation impacts. The exhibit includes the biological studies that are appendices to the report.

Specifically on the subject of wetlands, *see* Applicant’s Exhibit 12, subexhibit 26 - JCEP Response to Removal-Fill Comments Version 2.0 dated August 30, 2019: this exhibit consists of JCEP’s responses to public comments filed with the Oregon Department of State Lands concerning JCEP’s application for removal and fill of wetlands and waters associated with the Project. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

Therefore, for the reasons discussed above and in Section II.D. of this Recommendation, the hearings officer recommends the Board approve the administration building.

7. Workforce Housing.

JCEP proposes to construct temporary workforce housing in the IND zone. The Applicant’s Exhibit 2 shows the location of the workforce housing. The Applicant’s Exhibit 4 is a conceptual plan that shows the location and layout for the temporary workforce housing. The temporary workforce housing will house construction workers during the construction of the SORSC and the administration building and other aspects of the LNG Terminal. It will include a kitchen and dining facility, a recreation complex, living quarters, and laundry facilities, among other things.

IND Zone - Allowed Uses - CCZLDO 4.3.200

Hearings Officer's Findings: JCEP proposes to construct temporary workforce housing in the form of temporary dwellings for construction workers (and related facilities) in the IND zone. The workforce housing will house workers during construction of the LNG Terminal, including all related project components described herein, are complete. CCZLDO §4.3.200 permits "Temporary Dwelling During Construction." in the IND zone subject to a Compliance Determination. A Compliance Determination in the IND zone must comply with CCZLDO §§4.3.220, 4.3.225, 4.3.230, and the Special Development Considerations and Overlays of CCZLDO §4.11.

CCZLDO §4.3.210.27.m.i. explains that Temporary Dwellings During Construction are allowed for up to one year. The permit is subject to renewal if the construction they serve has not been completed. The workforce housing satisfies the applicable approval criteria of CCZLDO §§4.3.220, 4.3.225, 4.3.230 and 4.11, for the reasons set forth in Section II.D. of this Recommendation.

Opponent Natalie Ranker writes:

"Weyerhaeuser evaluated Ingram Yard when they vacated the property and found areas of concern containing low levels of bioaccumulating materials that must not be placed in the water. JCEP's plan is to dredge and spread these materials over shoreline that would cause damage to clams, sand shrimp, and crabs as well as to spread this on the land where they will be building their workforce housing, highly detrimental to human and aquatic species."

See Natalie Ranker letter dated October 28, 2019, at p. 1, Exhibit 18. Ms. Ranker cites to no evidence that would support her claims, and provides no basis for her conclusion that that JCEP's activities would be "highly detrimental to human and aquatic species." This argument is insufficiently developed to allow a response. Nonetheless, the Applicant's evidence addressed the issue of soil contamination raised by Ms. Ranker and other opponents:

"Demolition and Clearing

Site preparation would include demolition, clearing, and removal and relocation of existing infrastructure to enable earthworks to progress. During this initial phase the IWWP and several existing utilities would be relocated. Other demolition and clearing activities would include:

- ❖ Removal and disposal of hydrocarbon contaminated soils – The South Dunes portion of the site contains small areas of hydrocarbon-contaminated soils remaining after the decommissioning of the former Weyerhaeuser paper mill. The contamination is located in the vicinity of the proposed site for the permanent buildings. Jordan Cove plans to conduct additional testing to further characterize the area of potentially contaminated soils and would develop a disposal plan for the approval of ODEQ and would remove

and dispose of the contaminated soils in accordance with the approved plan.”

See Exhibit 14, Subexhibit 27, Draft EIS, p. 117 of 1120. The outcome of the contaminated soils testing resulted in a “No Further Action” letter from the Oregon DEQ:

“Potentially Contaminated Soils and Groundwater

The site of the LNG terminal was a livestock ranch until 1958. After it was acquired as part of the mill complex, the tract was occasionally used for log-sorting activities. In 1972/1973, the COE spread materials dredged during maintenance of the Coos Bay navigation channel on the site. From the late 1970s through the early 1980s, sand, boiler ash, and wood debris from milling operations were placed on the majority of what is defined as the LNG terminal site. Weyerhaeuser, which acquired the mill in 1981, spread decant solids from its wastewater treatment facility at the LNG terminal site between 1985 and 1994. The South Dunes site was originally developed as a sulfite pulp and paper mill by the Menasha Wood Ware Corporation in 1961. It was acquired by Weyerhaeuser in 1981 and converted to a recycle paper mill in 1995. The mill was closed in 2003.

Between 1981 and 1992, Weyerhaeuser leased the southern portion of the property adjacent to the geographic Jordan Cove portion of Coos Bay to a fish hatchery operation. The buildings for both the mill and the fish hatchery have been removed. Jordan Cove conducted multiple Phase I and Phase II Environmental Site Assessments at the terminal tract to assess for environmental contamination. Phase I protocols consist of record searches, inventories, site visits, and other non-intrusive information gathering. Phase II protocols consist of intrusive environmental media sampling. Phase II Environmental Site Assessments were conducted to address the findings of the Phase I Environmental Site Assessments (CH2M Hill 1996; Thiel Engineering 2004; GRI 2005; PES Environmental 2006; GRI 2007b; GSI Water Solutions 2012; GRI 2017b; SHN 2017; SHN 2018). The details of these investigations are all included in FERC filings for the Project and are only generally summarized in the following section.

A Phase I Environmental Site Assessment of the APCO site conducted by SHN in 2013 (SHN 2013a) identified dredge spoils that may have been affected by historical industrial activities upstream of the site as a recognized environmental condition. The existing Boxcar Hill site is being used as a recreational facility with all-terrain vehicle (ATV) rentals, riding trails, and camping. A Phase I Environmental Site Assessment of the Boxcar Hill site did not identify any recognized

environmental conditions in connection with the site (SHN 2017). A limited (specifically for the Port Laydown area and not entire property parcels) Phase I Environmental Site Assessment was conducted for the Port Laydown site in February 2018 (SHN 2018) which identified numerous concerns including a potential off-site source of contamination (D.B. Western facility cited for violations including illegal disposal of solid and hazardous waste), potentially contaminated dredge material, burn piles within the site, and the potential for lead in soil from target shooting activities. Contaminants identified as both soil and groundwater concerns include: tributyl tin, heavy metals (arsenic, barium, lead, cadmium, chromium, mercury, selenium and silver), copper, polychlorinated biphenyls (PCB), polycyclic aromatic hydrocarbons (PAH), semi-volatile organic compounds (SVOC), volatile organic compounds (VOC), total petroleum hydrocarbons (TPH), dioxins and furans, and formaldehyde. A Phase II Environmental Site Assessment to assess for soil and groundwater contamination is planned for this site.

The following Phase II Environmental Site Assessment investigations were conducted at the proposed LNG terminal site to determine if contaminated soils and/or groundwater are present:

- ❖ In 1996, Weyerhaeuser conducted Phase II Environmental Site Assessment investigations which found that VOCs, SVOCs, metals, petroleum hydrocarbons, and PCBs (analytes tested) in the fill were below levels that would necessitate cleanup work (CH2M Hill 1996).
- ❖ With the exception of arsenic and PCB, material present at the site is below the current (1996) Oregon residential soil cleanup standards. PCB in one ash discrete sample exceeded the residential standard, but was well below the industrial soil standard. Arsenic detected at the site is within typical background concentration levels for the western United States and, therefore, does not represent any substantial environmental issue.
- ❖ Phase II Environmental Site Assessment investigations were conducted by PES Environmental, Inc. (PES) in April 2006 (PES 2006). These investigations focused on the South Dunes site (inclusive of the portions of this site to be used for the LNG terminal) as well as the Ingram Yard site.
- ❖ Another Phase II Environmental Site Assessment investigation was completed at the LNG terminal site by GRI in October 2006 (GRI 2007b). The assessment was conducted at test pits in the area of the former Ingram Yard and along a wastewater pipeline

- ❖ GRI performed a Phase II Environmental Site Assessment investigation in 2005 of the Roseburg property (GRI 2005), which has been used for wood-processing activities since 1968.

- ❖ GRI conducted a Phase II Environmental Site Assessment in July 2017 (GRI 2017b) of the APCO site. Grading for the north access road and the ground improvement geotechnical test site required excavation of between 12 inches and 60 inches of soil from a 2-acre area from April 7 through April 15, 2014. During the grading activities, ash-amended soils were encountered, with a total of 5,600 cy of ash/soil mixture excavated and stockpiled in the area of the north access road in berms as indicated in the 1200C permit. On May 8, 2014, the ODEQ determined that these actions, while not prohibited, required a solid waste letter of authorization before commencement of grading activities. The ODEQ required Jordan Cove to obtain a solid waste authorization letter; on July 16, 2014, a solid waste authorization letter was submitted to the ODEQ. Jordan Cove would be required by the ODEQ to provide prior notice to the ODEQ should any grading or ground disturbance activities be planned to occur on the LNG terminal site. Provisions for long-term disposal of disturbed LNG terminal site soils and any other specific mitigation measures would be specified in detail in the final engineering design.

The results of Phase II environmental sampling activities at the LNG terminal site identified contaminants in soil at levels below or slightly exceeding the applicable ODEQ risk-based concentrations (RBC) and EPA screening levels at several locations. Analytical results from samples collected from the LNG terminal site found low concentrations of PAHs, TPH, metals, VOCs, SVOCs, PCBs, dioxins, furans, and butylin compounds in soil samples. It is noted that regulatory updates to toxicity values for some compounds have changed the screening levels used in preliminary risk assessments since the preparation of these environmental site assessment reports. Table 4.2.1.2-1 presents a subset of chemicals detected at the site and represents contaminants that either exceed or approach current ODEQ and EPA regulatory screening levels or were present in multiple sample locations at both the South Dunes site and LNG terminal site. Table 4.2.1.2-1 includes applicable ODEQ RBCs for the soil ingestion, dermal contact, and inhalation exposure pathway under the occupational and construction worker scenarios (ODEQ 2015) and the EPA regional screening levels for industrial soils (EPA 2018a). Table 4.2.1.2-1 also includes ODEQ-established natural background concentrations for naturally occurring metals in soil. The maximum detected concentrations for selected compounds generally encountered

in on-site soils, as summarized by previous environmental investigations, are also included in table 4.2.1.2-1 (CH2M Hill 1996; GRI 2005; PES 2006; GRI 2007b).

As a part of the investigations, a screening-level human and ecological risk assessment of residual contamination was conducted and concluded that residual contaminants did not exceed ODEQ's screening levels for the occupational and construction worker exposure scenarios (PES 2006). Based on the findings of previous environmental investigations, the ODEQ has recommended a "No Further Action" determination for the former Weyerhaeuser mill and the LNG terminal site. A copy of this determination letter is provided in Jordan Cove's September 2017 application to the FERC. A "Condition" of the No Further Action determination states that "While surface soils at the LNG terminal site meet human health and ecological screening criteria, they contain low levels of potentially bio-accumulating chemicals and must not be placed in waters of the state."

Implementation of erosion controls for runoff during and construction and operation, as well as revegetation plans would prevent the low-level contamination from entering surface waters. Jordan Cove's ECRP lists the specific measures to be used for erosion and sediment control practices, wind erosion and dust control, and clearing and grading. Peripheral erosion and sediment control would be provided along the site perimeter, and at all operational drain inlets and outlets at all times during construction. Sediment basins would be employed if necessary."

See Exhibit 14, Subexhibit 27, Draft EIS, pp. 232-234 of 1120. The hearings officer is satisfied that this unrefuted evidence, in particular the "No Further Action" letter from the Oregon Department of Environmental Quality, shows that the state's experts have examined this issue and found no reason for concern. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

For the reasons discussed above and in Section II.D. of this Recommendation, the hearings officer recommends the that Board approve the temporary workforce housing.

8. Wastewater Treatment Facilities.

JCEP proposes to construct wastewater treatment facilities in the IND zone to serve the LNG Terminal and related facilities. During construction of the LNG Terminal and related facilities, there may be wastewater streams discharged to the IWWP, including: effluent from temporary sanitary treatment facilities, water from construction dewatering, hydrostatic test water, effluent from the oily water separator, contact stormwater not managed under JCEP's 1200-C permit (stormwater that flows into and through the oily water separator and then the sump) and wheel wash and equipment wash water (no detergent or solvents used) that discharges into the oily water separator and then the

IWWP. Seepage from settling ponds, currently discharged via Outfall 003, will continue in the early phases of construction, overlapping for a short time with discharge of construction-related wastewaters until the ponds are filled during regrading of the South Dunes site. Application Exhibit 5 shows how, after construction, wastewater sources will be treated through permanent wastewater treatment facilities.

IND Zone - Allowed Uses- CCZLDO 4.3.200

Hearings Officer's Findings: CCZLDO §4.3.200 permits in the IND zone subject to a Compliance Determination "Accessory Uses" to residential and industrial uses. A Compliance Determination use in the IND zone is subject to CCZLDO §§4.3.220, 4.3.225 4.3.230, and the Special Development Considerations and Overlays of §4.11.

JCEP proposes to construct wastewater treatment facilities in the IND zone to serve the LNG Terminal and related facilities. The wastewater treatment facilities qualify as either an integral component of the primary use or as accessory uses to residential (temporary workforce housing) and industrial uses (*i.e.*, SORSC, LNG Terminal), which accessory uses are allowed in the IND zone subject to a CD process. CCZLDO §4.3.210.1 explains that accessory uses are "subordinate to any authorized primary use." CCZLDO §2.1.200 defines "accessory use" as "A use, building or structure that is (1) customarily incidental and subordinate to the principal use, main building or structure, and (2) subordinate in extent, area and purpose to the principal use." The wastewater treatment facilities will serve the LNG Terminal and related facilities, including temporary workforce housing and the SORSC, and their location is contingent upon the same in order to serve those uses. Thus, the wastewater treatment facilities are subordinate and incidental to the LNG Terminal and related facilities that they will serve. The wastewater treatment facility satisfies the applicable approval criteria of CCZLDO §§4.3.220, 4.3.225, 4.3.230 and 4.11, for the reasons set forth in Section II.D. of this Recommendation.

For the reasons discussed above and in Section II.D. of this Recommendation, the wastewater treatment facilities comply with all approval criteria for a CD in the IND zone. The hearings officer recommends that the Board approve the wastewater treatment facilities.

9. Park and Ride.

JCEP proposes to construct a park and ride facility in the IND zone to transport workers to and from the construction sites for the LNG Terminal, including all related project components described herein. The park and ride has two component parts. The first is in South Dunes, near the construction site for the SORSC and Administration Building in this Application. At this location, JCEP proposes to pick-up/drop-off workers and store buses used for transportation. The pick-up/drop-off location will be a covered parking area, and JCEP proposes to use available on-site parking areas at the sites of the SORSC and Administration Building to store buses. Application Exhibit 4 shows the location in the area known as South Dunes where buses will pick up and drop off workers.

The second part of the park and ride is a pick-up/drop-off point for workers that is located at the site of the Myrtlewood Factory (north of the JCEP campus). Application Exhibit 4 also shows the location of this site. Workers will park their vehicles at this site and board buses for pick-up and

drop-off to construction sites for various components of the overall LNG Terminal project. Only IND-zoned areas of the site will be used for parking and pick-up/drop-off and JCEP will not make physical alterations to the site. JCEP understands there is currently at this site an ongoing parking violation situation associated with recreational vehicles. JCEP will, in conjunction with its use of the site as a pick-up/drop-off/parking location, remedy this ongoing violation.

IND Zone - Allowed Uses - CCZLDO 4.3.200.

Hearings Officer's Findings: CCZLDO §4.3.200 permits "Transportation Facilities." in the IND zone, subject to a Compliance Determination. A Compliance Determination use in the IND zone is subject to CCZLDO §§4.3.220, 4.3.225, 4.3.230, and the Special Development Considerations and Overlays of CCZLDO §4.11.

The park and ride in the IND zone qualifies as a "transportation facility." CCZLDO §4.3.200 explains that a "transportation facility" "includes any physical facility that moves or assists in the movement of people or goods." CCZLDO §4.3.210.80 further explains that a "transportation facility" also includes "parking, storage, repair and servicing of fleet vehicles used for the transport of people." The park and ride is a physical facility (the park and ride includes a covered pick-up/drop-off area at South Dunes and buses and parking areas, all of which qualify as physical facilities) that moves or assists in the movement of people, namely construction workers to the site of construction of the proposals in this Application. Moreover, it will store buses used for the transport of people. The park and ride is thus a valid "transportation facility" and is allowed subject to a CD process in the IND zone. Furthermore, the park and ride satisfies CCZLDO §§4.3.220, 4.3.225, 4.3.230, and 4.11, for the reasons set forth in Section II.D. of this Recommendation.

Therefore, for the reasons discussed above and in Section II.D. of this Recommendation, the park and ride complies with all approval criteria for a CD in the IND zone. The hearings officer recommends that the Board approve the park and ride.

10. Temporary Construction Laydown.

In the construction industry, a "laydown site" is a space of ground or pavement located near or at a construction site that is for the receipt, storage and partial assembly of the project equipment and materials to be installed or constructed. In this case, the temporary construction laydown will include offices, trailers, overflow parking, storage of material, and fabrication of construction materials. The purpose of the laydown is to store and fabricate materials necessary for the construction of the LNG Terminal and related facilities. JCEP proposes to install a construction laydown site in the IND, 3-WD, 3-NWD, and 6-WD zones. Specifically, the construction laydown in the IND zone is located at the Boxcar Hill and South Dunes laydown sites. The construction laydown in the 3-WD and 3-NWD zone is located at the Port Laydown site. The construction laydown in the 6-WD zone is located at Ingram Yard. Application Exhibit 2 shows the location of the laydown sites described above.

This Recommendation first addresses approval criteria for laydown activities in the IND zone, and then addresses approval criteria for laydown activities in the CBEMP zones 3-WD, 3-NWD, and 6-WD.

IND Zone Laydown:

IND Zone - Allowed Uses - CCZLDO 4.3.200.

Hearings Officer's Findings: CCZLDO §4.3.200 permits "Accessory uses and structures to Emergency Services and Governmental Services" and "Accessory Development to industrial uses." in the IND zone, subject to a Compliance Determination. A Compliance Determination Use in the IND zone is subject to CCZLDO §§4.3.220, 4.3.225, 4.3.230, and the Special Development Considerations and Overlays of CCZLDO §4.11.

The construction laydown at the Boxcar Hill and South Dunes laydown sites qualifies as an "accessory" use to both industrial and emergency services and governmental services uses. CCZLDO §4.3.210.1 explains that such uses must be "subordinate" to an authorized primary use, specifically an authorized primary industrial use. Moreover, CCZLDO §2.1.200 defines "accessory use" as "a use, building or structure that is (1) customarily incidental and subordinate to the principal use, main building or structure, and (2) subordinate in extent, area and purpose to the principal use."

The construction laydown at Boxcar Hill and South Dunes is subordinate to multiple uses, including the LNG Terminal itself, the SORSC, and the concrete batch plant. The Boxcar Hill and South Dunes temporary construction laydown sites will exist only to facilitate the construction of these uses. Therefore, it is customarily incidental and subordinate to these primary uses. Moreover, it is subordinate in extent, area, and purpose to that use because it will exist only temporarily, at locations entirely determined by the need to construct the LNG Terminal, SORSC, and concrete batch plant, and only to facilitate construction of those primary uses. Therefore, the proposed Boxcar Hill and South Dunes temporary construction laydown is allowed as an "Accessory Development to industrial use" in the IND zone. The laydown complies with CCZLDO §§4.3.220, 4.3.225, 4.3.230, and §4.11, as discussed in Section II.D. of this Recommendation.

CBEMP Zones Laydown.

3-WD, 3-NWD, 6-WD Zones - Allowed Uses - CCZLDO 3.1.450.4

Hearings Officer's Findings: CCZLDO §3.1.450.4 provides that "[t]he special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts." Special temporary uses are subject to the management objective of the subject zone and the general development standards of CCZLDO §§3.2.100, which apply to all development in the CBEMP zones.

The construction laydown at the Port Laydown and Ingram Yard laydown sites is located in the 3-WD and 3-NWD zones and the 6-WD zone, respectively. That laydown all qualifies as a "special temporary use" in accordance with CCZLDO §3.1.450.4. CCZLDO §3.1.450.4 provides that "the special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts." No CBEMP zone explicitly references "special temporary use." However, CCZLDO §3.1.450 is entitled "[s]upplemental provisions that apply to all zoning listed in Article 3." Therefore, the reasonable interpretation of CCZLDO §3.1.450.4 is that "special temporary uses" are allowed in all CBEMP zones unless

explicitly prohibited. Neither the 3-WD, 3-NWD, nor the 6-WD zone explicitly prohibit “special temporary uses.” Therefore, such uses are allowed in all three zones.

CCZLDO §2.1.200 defines “temporary use” as “a use that is not lasting or permanent but is in effect for a certain amount of time only.” The definition also explains that “temporary uses include but are not limited to medical hardship dwellings or dwellings that are allowed while building a new home” and that once a temporary use is no longer needed, it must be removed. The construction laydown at the Port Laydown and Ingram Yard sites is a use that is in effect for a certain amount of time only--namely, only as long as necessary to complete construction of the authorized Port and Industrial facility and accessory improvements. Upon completion of construction, JCEP will terminate the laydown as soon as that task is completed. The laydown is thus similar to a temporary dwelling used while building a new home because its purpose is to provide necessary storage and other support for constructing the LNG Terminal and other related uses.

For these reasons, the construction laydown at the Port Laydown and Ingram Yard sites is allowed as a “special temporary use.” The construction laydown at the Port Laydown and Ingram Yard sites satisfies the management objectives of the 3-WD, 3-NWD and 6-WD zones, and the general development standards of CCZLDO §3.2.100, as follows.

3-WD Zone - Management Objective - CCZLDO 3.2.240.

This shoreland district shall be managed to efficiently utilize the property for water-dependent or related commercial/industrial development. Development must be conducted in a manner that is consistent with the Plan's general policy regarding beaches and dunes. Any area of disturbed snowy plover habitat shall be replaced elsewhere on the North Spit (see Districts #1CS and #2CS) such that: (1) sites created as habitat are made available before or concurrently with alteration of existing habitat, and (2) there is no net loss of habitat.

Hearings Officer's Findings: The temporary construction laydown is water-related industrial development. The temporary nature of this operation must be emphasized. Its purpose is to facilitate construction of projects related to JCEP's LNG Terminal, which is an industrial use that will ship liquefied natural gas out of the port. Thus, the temporary construction laydown that facilitates that use is also a water-related, industrial use. The temporary construction laydown will comply with applicable CBEMP policies pertaining to beaches and dunes (for the reasons discussed in Section II.E. of this Recommendation), and will not result in the loss of any identified existing snowy plover habitat. Therefore, the temporary construction laydown complies with the 3-WD zone's management objective.

CCZLDO 3.2.242.01 - 3-NWD Zone - Management Objective

This shoreland district shall be managed to efficiently utilize the property for non-water-dependent commercial/industrial development. Development must be conducted in a manner that is consistent with the Plan's general policy regarding beaches and dunes.

Hearings Officer's Findings: The temporary construction laydown is water-related industrial development. Its limited purpose is to facilitate construction of the LNG Terminal and related

facilities. Furthermore, the temporary construction laydown will comply with applicable CBEMP policies pertaining to beaches and dunes (for the reasons discussed in Section II.E. of this Recommendation). Therefore, the temporary construction laydown complies with the 3-NWD zone's management objective.

6-WD Zone - Management Objective - CCZLDO 3.2.275.

This district shall be managed so as to protect the shoreline for water-dependent uses in support of the water-related and non-dependent, non-related industrial use of the area further inland. To assure that the district shoreline is protected for water-dependent uses while still allowing nonwater-dependent uses of the inland portion of the property (outside of the Coastal Shoreland Boundary), any new proposed use of the property must be found by the Board of County Commissioners (or their designee) to be located in such a manner that it does not inhibit or preclude water-dependent uses of the shoreline. Further, use of wetlands in the district must be consistent with state and federal wetland permit requirements.

Hearings Officer's Findings: The temporary construction laydown will not prejudice the use of the 6-WD zone's shoreline for water-dependent uses. The temporary nature of this operation must be emphasized. Moreover, the laydown does not occur within or otherwise impact any identified wetlands in the 6-WD zone. Therefore, the temporary construction laydown satisfies the management objective of the 6-WD zone.

3-WD, 3-NWD, 6-WD Zones - General Development Standards - CCZLDO 3.2.100

Minimum Lot Size:

3-WD - None

3-NWD - None

6-WD - None

Lot Dimension/Street Frontage

3-WD - 20' Minimum Lot Width, No Minimum Lot Depth; 20' Minimum Street Frontage

3-NWD - 20' Minimum Lot Width, No Minimum Lot Depth; No Minimum Street Frontage

6-WD - 20' Minimum Lot Width, No Minimum Lot Depth; 20' Minimum Street Frontage

Setbacks

3-WD - 35' from centerline of adjacent right-of-way or 5' from adjacent right-of-way boundary if no adjacent right-of-way

3-NWD - None

6-WD - 35' from centerline of adjacent right-of-way or 5' from adjacent right-of-way boundary if no adjacent right-of-way

Building Heights/Parking/Road Standards

3-WD - No Maximum Building Height; Required parking subject to staff determination via CCZLDO 7.5.100.5.

3-NWD - No Maximum Building Height; Required parking subject to staff determination via CCZLDO 7.5.100.5.

6-WD - No Maximum Building Height; Required parking subject to staff determination via CCZLDO 7.5.100.5.

Hearings Officer's Findings: The temporary construction laydown will comply with the above general development standards of the 3-WD, 3-NWD, and 6-WD zone.

For the reasons discussed above and in Sections II.D. and II.E. of this Recommendation, the hearings officer finds the temporary construction laydown satisfies all applicable approval criteria.

11. Temporary Barge Berth.

JCEP proposes to construct a temporary barge berth in the 6-DA zone. Application Exhibit 2 shows the location (Access Channel) and Application Exhibit 6 shows a conceptual design of the temporary barge berth.

In the 2019 Omnibus I Application on Remand, JCEP proposed to construct a Material Offloading Facility ("MOF") (previously referred to as a "barge berth") and a slip and access channel. JCEP proposes in this Application to modify that previous proposal to include, during the construction of the MOF and slip and access channel, a temporary material barge berth within the footprint of the slip and access channel. The application states that this small reconfiguration will facilitate safer and more efficient unloading. Its purpose is to receive materials until the MOF is capable of doing so. JCEP cannot complete the MOF within a single in-water work window.

The temporary barge berth will be utilized to convey large cargoes such as steel LNG tank elements, as well as potentially other bulk supplies that may include steel pipe pile, sheet pile or aggregate, other project elements, such as major equipment may also be delivered to the site. In this manner, fewer truck trips to site will be required, thus reducing project related traffic. The temporary barge berth will be sized to accommodate ocean going barges ranging in length from 100 to 250 feet long, and 45 to 55 feet wide with a loaded draft of 10 feet. The barges will be berthed with one end pushed approximately 60 feet into the excavated slot and tied off to piling driven into the berm around the berth opening. The excavated floor of the berth will be approximately 65 feet wide and extend approximately 500 feet from the back of the berth to the point where EL -12 MLLW meets the natural submarine slope. The temporary barge berth will be operational during the majority of the tidal changes, however restricted during low to extreme low water events to prevent the grounding of a barge. JCEP will remove the temporary barge berth when it excavates the berm in which the temporary barge berth sits. Exhibit 6 shows the conceptual design of the temporary barge berth.

Opponent Jody McCaffree states that the applicant's proposed temporary barge berth is not allowed in the 6-WD zone. *See* McCaffree letter dated October 14, 2019, Exhibit 8, p. 7. The barge berth is located in the 6-DA estuarine zone; therefore, the provisions of the 6-WD zone are not applicable to this Project component.

6-DA Zone - Allowed Uses - CCZLDO 3.1.450.4

Hearings Officer's Findings: CCZLDO §3.1.450.4 provides that "[t]he special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts." Special temporary uses are subject to the management objective of the subject zone and the general development standards of CCZLDO §3.2.100, which apply to all development in the CBEMP zones.

The temporary barge berth qualifies as a "special temporary use" in accordance with CCZLDO §3.1.450.4, which provides that "the special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts." No CBEMP zone explicitly references "special temporary use." However, CCZLDO §3.1.450 is entitled "[s]upplemental provisions that apply to all zoning listed in Article 3." Therefore, the reasonable interpretation of CCZLDO §3.1.450.4 is that "special temporary uses" are allowed in all CBEMP zones unless explicitly prohibited. The 6-DA zone does not explicitly prohibit "special temporary uses." Therefore, such uses are allowed in the zone.

CCZLDO §2.1.200 defines "temporary use" as "a use that is not lasting or permanent but is in effect for a certain amount of time only." The definition also explains that once a temporary use is no longer needed, it must be removed. The temporary barge berth is a use that will remain effective for a certain amount of time only--namely, only as long as necessary to complete construction of the MOF. JCEP will dismantle the temporary barge berth once the MOF is constructed. Therefore, the temporary barge berth is allowed as a "special temporary use." The temporary barge berth complies with the management objective of the 6-DA zone and the general development standards of CCZLDO §3.2.100, as follows.

6-DA Zone - Management Objective - CCZLDO 3.2.280

This aquatic district shall be managed to provide water access for the industrial uses in the adjacent uplands.

Hearings Officer's Findings: The temporary barge berth will receive materials necessary to construct and support the LNG Terminal. Therefore, its purpose is to provide water access for the LNG Terminal, which is an industrial use, and its related uses. The temporary barge berth satisfies the management objective of the 6-DA zone.

6-DA Zone - General Development Standards - CCZLDO 3.2.100

CCZLDO 3.2.100 and Table 2 do not include any general development standards applicable to a "DA" zone.

Hearings Officer's Findings: Because CCZLDO §3.2.100 and Table 2 of that section do not include general development standards for a "DA" zone, there are no general development standards applicable to the temporary barge berth.

For the reasons discussed above, the temporary barge berth satisfies all approval criteria for a special temporary use in the 6-DA zone. The hearings officer recommends the Board approve the temporary barge berth.

12. Shoreline Stabilization (Sheetpile Bulkhead).

JCEP proposes in the 5-WD zone shoreline stabilization in the form of an approximately 100-foot-long extension of the sheetpile bulkhead at the northwest corner of the slip and access channel to minimize slope cut-back at this location.

5-WD Zone - Allowed Uses - CCZLDO 3.2.261.

Hearings Officer's Findings: The 5-WD zone allows "retaining wall shoreline stabilization," subject to an Administrative Conditional Use. Retaining wall shoreline stabilization in the 5-WD zone is also subject to the special and general conditions of the 5-WD zone and the zone's management objective.

The extension of the sheetpile bulkhead at the northwest corner of the access channel qualifies as retaining wall shoreline stabilization and is thus allowed in the 5-WD zone. CCZLDO §2.1.200 defines "shoreline stabilization" as "The protection of the banks of tidal or non-tidal streams, rivers or estuarine waters by nonstructural (vegetative) or structural (riprap, bulk heading, etc.) means." The same section defines "bulkhead" as "A retaining wall along a waterfront that separates uplands from aquatic areas." JCEP's proposed shoreline stabilization in the 5-WD zone is an extension of the sheetpile bulkhead at the northwest corner of the slip and access channel, which bulkhead separates upland and aquatic areas. The purpose of the bulkhead is to minimize slope cut-back at this location. Therefore, the bulkhead extension satisfies the definition of retaining wall shoreline stabilization and is thus allowed in the 5-WD zone, subject to general and special conditions and the management objective of the zone.

The hearings officer finds the proposed sheetpile bulkhead satisfies those approval criteria, as follows.

5-WD Zone - Management Objective - CCZLDO 3.2.260.

A large portion of this district, compared to other areas of the bay, possesses characteristics that make it an exceptional future development resource not only for the Bay Area, but for Coos County and the State of Oregon as well. The site's location on the deep-draft channel in the lower bay gives it even greater attributes as a water-dependent industrial development site. Therefore, the Plan reserves this portion of the district for an integrated industrial use that takes advantage of the site's unique characteristics, particularly its attributes for deep-draft development. Uses need not be limited to those specifically mentioned in Exception #22. Utilizing the site for development purposes as described will require the filling of 123 acres of freshwater

and saltwater wetlands, commonly known as Henderson Marsh (Dredged Material Site #4x). The Plan intends that development within the road corridor will be for the purposes of developing and maintaining an access road, rail and utility corridor, and pulp mill effluent pipeline.

Hearings Officer's Findings: The purpose of the shoreline stabilization is to protect against slope cut-back and erosion that would degrade Pile Dike 7.3. Such protection facilitates navigation in the deep draft navigation channel, which in turn facilitates water-dependent industrial development. Specifically, the shoreline stabilization supports the LNG Terminal and associated industrial development, which development qualifies as "integrated industrial use." Therefore, the shoreline stabilization satisfies the 5-WD zone's management objective.

5-WD Zone - General Conditions - CCZLDO 3.2.261.

1. Uses in this district are only permitted as stated in Policy #14, "General Policy on Uses Within Rural Coastal Shorelands". Except as permitted outright, or where findings are made in the Plan (see Coastal Shorelands Goal "Linkage Findings" section), uses are only allowed subject to the findings in this policy.

Hearings Officer's Findings: The shoreline stabilization complies with Policy #14 as discussed in Section II.E. of this Recommendation.

2. All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.

Hearings Officer's Findings: The shoreline stabilization complies with Policy #27 as discussed in Section II.E. of this Recommendation.

3. Wherever possible, dredged material, especially from the federal channel or other major project, is to be used for the fill material. This method of obtaining fill will be incorporated into the overall project phasing, unless it can be demonstrated that it will have an adverse impact on the development effort.

Hearings Officer's Findings: The shoreline stabilization does not involve "fill." Therefore, this general condition does not apply to the Recommendation.

4. All permitted uses in dune areas shall be consistent with the requirements of Policy #30.

Hearings Officer's Findings: The proposed shoreline stabilization is not subject to compliance with Policy #30.

5. No use or activity shall pre-empt the use of the designated dredged material disposal site in this district, as required by Policy #20.

Hearings Officer's Findings: The shoreline stabilization complies with Policy #20 as discussed in Section II.E. of this Recommendation.

6. Inventoried resources requiring mandatory protection in this unit are subject to Policies #17 and #18.

Hearings Officer's Findings: The shoreline stabilization complies with Policies #17 and #18 as discussed in Section II.E. of this Recommendation.

7. In rural areas (outside UGBs) utilities, public facilities and services shall only be provided subject to Policies, #49, #50, and #51.

Hearings Officer's Findings: The shoreline stabilization complies with Policies #49, 50, and 51 as discussed in Section II.E. of this Recommendation.

5-WD Zone - Special Conditions - CCZLDO 3.2.261

1. A retaining wall is a temporary activity that will not pre-empt the ultimate use of the site. These activities, where occurring at the interface with the estuary, are only permitted subject to the findings required by Policy #9, "Solutions to Erosion and Flooding Problems".

Hearings Officer's Findings: The shoreline stabilization complies with Policy #9 as discussed in Section II.E. of this Recommendation.

5-WD Zone - General Development Standards - CCZLDO 3.2.100.

Hearings Officer's Findings: The general development standards of CCZLDO §3.2.100 include standards for lot size, lot width and depth, street frontage, setbacks, building height, parking, and road standards. The general development standards of CCZLDO §3.2.100 cannot logically be applied to shoreline stabilization or a retaining wall.

For the reasons discussed above and in Sections II.D. and II.E. of this Recommendation, the shoreline stabilization in the 5-WD zone complies with all applicable approval criteria. The hearings officer recommends the Board should approve the shoreline stabilization.

13. Pile Dike 7.3 Protection (Rock Apron).

JCEP seeks approval for a pile dike rock apron in the 5-DA and 5-WD zones. The pile dike rock apron will be located along the side slope of the access channel. Application Exhibit 2 shows the location of (and Application Exhibit 7 shows a conceptual design of) the pile dike rock apron.

One of the purposes of the pile dike rock apron is to protect Pile Dike 7.3, which is located immediately west of the access channel. The rock apron will arrest slope migration (or equilibration) before it progresses to a condition that has potential negative impacts on Pile Dike 7.3. The design is a 50-foot-wide by 3-foot-high by approximately 1,100-foot-long rock apron set back approximately 20 feet from the top (slope catch point) of the side slope of the access channel. The proposed rock size is a well-graded 6-inch to 22-inch angular stone with a median size of 14 inches. This median stone size and gradation will be sufficient to protect against potential stone displacement due to anticipated wave action or currents. The proposed design adds additional rock to proactively

maintain the current function and longevity of Pile Dike 7.3. The new rock apron will be placed directly over the visible apron rock in a careful manner, so the new rock apron will not extend towards the access channel beyond the end-line of the existing visible rock.

5-DA Zone - Allowed Uses - CCZLDO 3.2.271.

Hearings Officer's Findings: CCZLDO §3.2.271 permits both shoreline stabilization (rip-rap) and navigational structures within the 5-DA zone, subject to an ACU process. Both shoreline stabilization and navigational structures are subject to certain special conditions of in the 5-DA zone the zone, the zone's management objective, and to the general development standards of CCZLDO §3.2.100.

CCZLDO §2.1.200 defines "shoreline stabilization" as:

SHORELINE STABILIZATION: The protection of the banks of tidal or non-tidal streams, rivers or estuarine waters by nonstructural (vegetative) or structural (riprap, bulk heading, etc.) means. See also definitions for "Riprap" and "Bulkhead".

The same Code section defines "riprap" and "bulkhead" as:

RIPRAP: A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. Similar use of other hard material, such as concrete rubble, is also riprap.

BULKHEAD: A retaining wall along a waterfront that separates uplands from aquatic areas.

JCEP proposes to install a pile dike rock apron as described above to protect Pile Dike 7.3 from degradation. The proposed rock apron satisfies the definition of riprap shoreline stabilization in CCZLDO §2.1.200. Therefore, the pile dock rock apron qualifies as riprap shoreline stabilization and is allowed in the 5-DA zone subject to an ACU process and compliance with the 5-DA zone's management objective, special conditions, and the general development standards of CCZLDO §3.2.100.

Even if the rock apron did not for some reason meet the definition of "shoreline stabilization," it would easily fall within the meaning of "navigational structures," which is also a "ACU-S" in the 5-DA District. The Zoning Code defines the term "navigational structures" as follows:

NAVIGATIONAL STRUCTURES: Groins, pile dikes, fills, jetties and breakwaters that are installed to help maintain navigation channels, or protect marinas and harbors by controlling water flow, wave action and sand movement.

Websters New World International Dictionary (Unabridged) (1981) defines a “jetty” as a structure (as a pier or mole of wood or stone) extending into a sea, lake, or river to influence the current or tide or to protect a harbor. The same dictionary defines a “groin” as a rigid structure built out at an angle from a shore to protect the shore from erosion by currents, tides, and waves or to trap sand (as for making a beach.)” The rock apron is either a jetty or a groin as defined by this dictionary.

Since navigational structures are subject to CBEMP Policies 5 and 8, the hearings officer has addressed these two policies in Section II(E).

Opponent Michael Graybill alleges that the proposed rock apron fails to comply with definition of “shoreline stabilization,” which is an allowed ACU within the 5-DA zone, on the sole basis that the proposed rock apron is not parallel to the shoreline. (*see* Graybill letter dated October 27, 2019, Exhibit 17, pp. 1-3). Mr. Graybill asserts that structures such as this rock apron which are designed and intended to minimize slope migration or erosion within a waterway constitute “shoreline stabilization” only if located entirely at or on the shoreline. As discussed below, there is no basis for this unduly narrow interpretation when, as in this instance, one of the purposes of the structure is to prevent or minimize erosive impacts to the adjacent pile dike and, in turn, to the intertidal area extending to mean higher high tide, *i.e.* shoreline.

The proposed rock apron commences at the shoreline and extends waterward toward the federal navigation channel and is intended to comply with USACE direction to protect Pile Dike 7.3 and adjacent inter-tidal areas extending to MHHT from erosive impacts. *See* Exhibit 12 subexhibit 26 at p. 75. The applicant points out that the Pile Dike 7.3 has two purposes, which are (1) improve the stability of the Channel and (2) abate bank erosion in the adjacent inter-tidal area. *Id* at p. 75. *See also* Draft EIS, Exhibit 14 subexhibit 27 at p. 239

The hearings officer quotes from Exhibit 12, Sub-Exhibit 26, at p. 75-6, which is an exchange between the US Army Corps of Engineers and the Applicant. USACE asks the applicant to comment on the reasons rock the rock apron:

COMMENT 7 PIKE DIKE ROCK APRON Pile Dike-Rock Apron:
Comments raised concerns that no alternatives were presented regarding the proposed 6,500 cubic yards (cy) of rock riprap proposed to protect the existing pile dike against erosion from the slip and access channel location, depth and dimensions. With no alternatives presented on the dimensions or design alignment of the slip and access channel, no reasonable range of alternatives can be considered. There is no discussion on impact avoidance, minimization, and/or mitigation to offset any adverse impacts to waters of the state. Please address:

- Why 6,500 cy?
- Why not more?
- Why not less?
- Why any at all?

The Applicant provides the following response:

RESPONSE TO COMMENT 7: JCEP is requesting Section 408 of the Clean Water Act approval from USACE. Through this process, USACE is required to ensure the proposed alterations will not be injurious to the public interest or affect USACE project's ability to meet their authorized purpose. There are two existing federally authorized projects within the footprint of the Project: the FNC and a series of five pile dikes. Through analyses and coordination with the USACE, it was determined that the JCEP could potentially impair the long-term ability of the existing Pile Dike 7.3 rock apron to serve its intended purpose. In July 2019, the USACE 408 review team approved the preliminary rock apron design, as proposed in the ODSL JPA. Pile Dike 7.3 was constructed in 1957 to abate bank erosion and improve the stability of the FNC in the Jarvis Turn and is designated according to the approximate river mile location: Pile Dike 7.3. The purpose of the rock apron is to arrest potential slope migration from access channel dredging, or equilibration, before it can progress to a condition that could potentially impair the long-term ability of the Pile Dike 7.3 rock apron to protect the FNC and impact the adjacent intertidal and shallow sub-tidal areas. In collaboration with the USACE, multiple alternatives and design iterations were considered to protect Pile Dike 7.3. The criteria used to guide the alternatives analysis process include:

1. Protect the USACE's Pile Dike 7.3 and adjacent shoreline stability
2. Minimize vessel strike risk
3. Minimize estuarine impacts.

Four rock apron alternatives that were considered are detailed below. The Proposed Alternative is shown in Figure 6. This alternative involves an approximately 50-foot-wide by 3-foot-deep by 1,100-foot long rock apron that extends from the shore to the end of Pile Dike 7.3, with a conservative estimate of 6,500 cy. The cubic yardage of fill material has been slightly overestimated to account for all rock apron impacts that may be necessary due to construction accuracy to -35 feet (MLLW) within Coos Bay. Rock size/gradation for the apron is anticipated to be a well graded 6-inch to 22-inch angular stone with a median size of approximately 14-inches. This median stone size and gradation is stable against potential stone displacement due to anticipated wave action, currents, or propwash. Using this median stone size and gradation results in a 3-foot apron thickness which equates to an average 3-stone thick layer appropriate for underwater placement and future settlement of the apron. The preferred alternative meets all three criteria listed above. (Emphasis Added).

In addition, the hearings officer notes that the Draft Environmental Impact Statement (“DEIS”) states the following at page 239:

A rock apron has been proposed to arrest slope migration, or equilibration, before it can progress to a condition that could potentially negatively impact Pile Dike 7.3. Construction of the Pile Dike rock apron is expected to produce a localized, temporary increase in turbidity; however, the long-term effect of the rock apron would improve shoreline stability including accounting for the effects of marine traffic. (Emphasis Added).

Exhibit 14, Sub-Exhibit 27. Thus, the Applicant is correct that the rock apron serves more than one purpose.

In this instance, it is important to note, as stated in the Applicant’s written application narrative, that the rock apron constitutes “riprap,” which is expressly included in the definition of “shoreline stabilization” set forth in CCZLDO §2.1.200 as an acknowledged type of structural shoreline stabilization. The term “riprap” is defined in CCZLDO §2.1.200 to include:

“Riprap: A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment . . .”

Taken together, these definitions confirm that the placement of riprap for the purpose of protecting an in-water structure, which in this instance is designed to protect both the channel and adjacent intertidal areas extending to the mean higher high tide line *i.e.* shore, from degradation via erosive hydraulics constitutes “shoreline stabilization.”

Mr. Graybill also argues that the in-water placement of 6500 cy of rock associated with this protective structure constitutes prohibited “fill” in this zoning district. *See* Graybill letter dated October 27, 2019, at p. 3. Exhibit 17. The Code defines the term “fill” as follows:

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.

Nonetheless, the Code also treats “fill” and “shoreline stabilization” as two separate activities. In the case of shoreline stabilization, the placement of this material is an inherent and essential component of the rock apron as riprap for purposes of achieving shoreline stabilization, and, as such, is accessory to such requested activity. While construction of the rock apron necessarily involves the

placement of “fill” material, the deposited material is an incidental accessory activity which would not occur but for the rock apron as a primary shoreline stabilization structure and, accordingly, is not subject to regulation under the CCZLDO as a primary use in this district. Further, the fact that the Department of State Lands regulates broadly the placement of organic material in waters of the state as “fill” under an independent regulatory scheme has no relevance as to how such activity is defined or regulated under the CCZLDO.

Finally, in its Application, the Applicant addressed the reason for selecting shoreline stabilization, as opposed to alternative measures narrative in support of the Applications:

“During JCEP’s early coordination with the United States Army Corps of Engineers (“USACE”) Northwest Division, Portland District, Section 408 Project Development Team, a need was identified to protect Pile Dike 7.3 from slope migration (erosion) or equilibration. JCEP and USACE determined that implementing a pile dike rock apron (riprap) is the necessary protective measures to arrest slope migration before it progresses to a condition that will negatively impact Pile Dike 7.3. The pile dike rock apron is rriprap, a nonstructural solution.

Further, the pile dike rock apron complies with paragraph I of Policy #9. Land use management practices and nonstructural solutions are inadequate to protect Pile Dike 7.3. Without protective rriprap, wind, waves, and currents will erode Pile Dike 7.3. The design of the pile dike rock apron will minimize adverse impacts on water currents, erosion and accretion patterns. The pile dike rock apron is consistent with the development management unit requirements of the Estuarine Resources Goal (16). Goal 16 explains that development management units “provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses,” and that permissible uses include “navigation and water-dependent commercial and industrial uses.” A primary purpose of Pile Dike 7.3 is to assist with navigation in the Coos Bay Deep Draft Navigation Channel. Thus, the rriprap is a use that will facilitate navigation, which in turn will facilitate industrial development of the North Spit, including creation of a slip and access channel for maritime navigation that will support that development. Goal 16 allows such uses in development management units.

Paragraphs II and III do not apply to the pile dike rock apron or the shoreline stabilization.

Therefore, the pile dike rock apron and shoreline stabilization complies with CBEMP Policy #9.”

Application Narrative, at p. 89. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

Mr. Graybill does not directly refute or rebut this discussion in his testimony. Therefore, the hearings officer finds that Mr. Graybill's contentions on this issue do not warrant a denial.

The pile dike rock apron complies with those criteria, as follows.

5-DA Zone - Management Objective - CCZLDO 3.2.270

This district shall be managed so as to efficiently utilize the aquatic area for access to the deep-draft channel in support of upland water-dependent uses.

Hearings Officer's Findings: Supporting navigation channels is one of the primary functions of pile dikes, including Pike Dike 7.3. Moreover, Pile Dike 7.3 is proximate to the slip and access channel so that ships can access in and out of Ingram Yard. Thus, the pile dike rock apron will have a primary function of facilitating access to the deep-draft navigation channel in support of upland water-dependent industrial uses.

5-DA Zone - Special Conditions - CCZLDO 3.2.271

1. These activities are only permitted subject to the general findings required by Policy #9, "Solutions to erosion and flooding problems" preferring non-structural to structural solutions, and to the specific findings for rip-rap.

Hearings Officer's Findings: The pile dike rock apron complies with CBEMP Policy #9, as discussed in Section II.E. of this Recommendation.

CCZLDO 3.2.100 and Table 2 do not include any general development standards applicable to a "DA" zone.

Hearings Officer's Findings: Because CCZLDO §3.2.100 and Table 2 of that section do not include general development standards for a "DA" zone, there are no general development standards applicable to the pile dike rock apron.

5-WD Zone - Allowed Uses - CCZLDO 3.2.261

Hearings Officer's Findings: CCZLDO §3.2.271 permits within the 5-WD zone, subject to an ACU process, riprap shoreline stabilization. Riprap shoreline stabilization in the 5-WD zone is also subject to general and certain special conditions of the zone, the zone's management objective, and to the general development standards of CCZLDO §3.2.100.

As mentioned above, CCZLDO §2.1.200 defines "shoreline stabilization" as "the protection of the banks of tidal or non-tidal streams, rivers or estuarine waters by nonstructural (vegetative) or structural (riprap, bulk heading, etc.)." The same section defines "riprap" as "a layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used." JCEP proposes to install a pile dike rock apron as described

above to protect Pile Dike 7.3 from degradation. The proposed rock apron satisfies the definition of riprap shoreline stabilization in CCZLDO §2.1.200. Therefore, the pile dock rock apron qualifies as riprap shoreline stabilization and is allowed in the 5-WD zone subject to an ACU process and compliance with the 5-WD zone's management objective, general and special conditions, and the general development standards of CCZLDO §3.2.100. The pile dike rock apron complies with those criteria, as follows.

5-WD Zone - Management Objective - CCZLDO 3.2.260

A large portion of this district, compared to other areas of the bay, possesses characteristics that make it an exceptional future development resource not only for the Bay Area, but for Coos County and the State of Oregon as well. The site's location on the deep-draft channel in the lower bay gives it even greater attributes as a water-dependent industrial development site. Therefore, the Plan reserves this portion of the district for an integrated industrial use that takes advantage of the site's unique characteristics, particularly its attributes for deep-draft development. Uses need not be limited to those specifically mentioned in Exception #22. Utilizing the site for development purposes as described will require the filling of 123 acres of freshwater and saltwater wetlands, commonly known as Henderson Marsh (Dredged Material Site #4x). The Plan intends that development within the road corridor will be for the purposes of developing and maintaining an access road, rail and utility corridor, and pulp mill effluent pipeline.

Hearings Officer's Findings: The purpose of the pile dike rock apron is to protect the integrity of Pile Dike 7.3, which in turn facilitates navigation in the deep draft navigation channel, which in turn facilitates water-dependent industrial development. Specifically, the pile dike rock apron supports the LNG Terminal and associated industrial development, which development qualifies as "integrated industrial use." Therefore, the pile dike rock apron satisfies the 5-WD zone's management objective.

5-WD Zone - General Conditions - CCZLDO 3.2.261

Riprap shoreline stabilization in the 5-WD zone is subject to the following general conditions.

1. Uses in this district are only permitted as stated in Policy #14, "General Policy on Uses Within Rural Coastal Shorelands". Except as permitted outright, or where findings are made in the Plan (see Coastal Shorelands Goal "Linkage Findings" section), uses are only allowed subject to the findings in this policy.

Hearings Officer's Findings: The pile dike rock apron complies with Policy #14 as discussed in Section II.E. of this Recommendation.

2. All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.

Hearings Officer's Findings: The pile dike rock apron complies with Policy #27 as discussed in Section II.E. of this Recommendation.

3. Wherever possible, dredged material, especially from the federal channel or other major project, is to be used for the fill material. This method of obtaining fill will be incorporated into the overall project phasing, unless it can be demonstrated that it will have an adverse impact on the development effort.

Hearings Officer's Findings: The pile dike rock apron does not involve fill. Therefore, this general condition does not apply to the Recommendation.

4. All permitted uses in dune areas shall be consistent with the requirements of Policy #30.

Hearings Officer's Findings: The pile dike rock apron is not subject to compliance with Policy #30.

5. No use or activity shall pre-empt the use of the designated dredged material disposal site in this district, as required by Policy #20.

Hearings Officer's Findings: The pile dike rock apron complies with Policy #20 as discussed in Section II.E. of this Recommendation.

6. Inventoried resources requiring mandatory protection in this unit are subject to Policies #17 and #18.

Hearings Officer's Findings: The pile dike rock apron complies with Policies #17 and #18 as discussed in Section II.E. of this Recommendation.

7. In rural areas (outside UGBs) utilities, public facilities and services shall only be provided subject to Policies, #49, #50, and #51.

Hearings Officer's Findings: The pile dike rock apron complies with Policies #49, 50, and 51 as discussed in Section II.E. of this Recommendation.

5-WD Zone - Special Conditions - CCZLDO 3.2.261

1. A retaining wall is a temporary activity that will not pre-empt the ultimate use of the site. These activities, where occurring at the interface with the estuary, are only permitted subject to the findings required by Policy #9, "Solutions to Erosion and Flooding Problems".

Hearings Officer's Findings: The pile dike rock apron is not a temporary retaining wall. Rather, it is a riprap rock apron that JCEP intends to remain permanently. Therefore, this special condition of the 5-WD zone does not apply to the pile dike rock apron.

5-WD Zone - General Development Standards - CCZLDO 3.2.100.

Hearings Officer's Findings: The general development standards of CCZLDO §3.2.100 include standards for lot size, lot width and depth, street frontage, setbacks, building height, parking, and road standards. The pile dike rock apron is riprap that will extend into the estuary to support Pile Dike 7.3. The general development standards of CCZLDO §3.2.100 cannot logically be applied to riprap that extends into the estuary.

For the reasons discussed above and in Sections II.D. and II.E. of this Recommendation, the pile dike rock apron complies with all applicable approval criteria. The County should approve the pile dike rock apron.

14. Relocation of Primary Access to LNG Terminal Site.

Previously, JCEP proposed using the TransPacific Parkway as the primary access to the LNG Terminal site. JCEP now proposes to relocate the primary site access to Jordan Cove Road, with secondary access from TransPacific Parkway. This is a new access point that will require a driveway/access verification. JCEP has submitted with this Application an application for such a driveway/access verification. The Applicant states the primary site access will comply with the standards of CCZLDO Chapter 7, specifically CCZLDO §7.1.425, regarding access. It appears there are no approval standards beyond the access standards. *see* Exhibit 1, signed verification permit by Scott Murry, County Road Access Manager as the designee of the Roadmaster. The access standards appear to be ministerial in nature.

15. Temporary Dredge Lines.

JCEP proposes to construct two temporary dredge lines. JCEP proposes to construct the first temporary dredge line in the 6-WD and 7-D zones. This temporary dredge line will transport dredged material from JCEP's dredging in the slip and access channel to a disposal site in South Dunes. Exhibit 2 shows the location of this dredge line.

JCEP proposes to construct the second temporary dredge line in the 13B-NA and 14-DA zones. This temporary dredge line will transport dredged material from the Coos Bay Deep Draft Navigation Channel, which JCEP seeks approval to widen in a separate pending application, to the Kentuck Mitigation Site. Application Exhibit 2 shows the location of this dredge line.

6-WD and 7-D Zones - Allowed Uses - CCZLDO 3.1.450.4

Hearings Officer's Findings: CCZLDO 3.1.450.4 provides that "[t]he special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts." Special temporary uses are subject to the management objective of the subject zone and the general development standards of CCZLDO 3.2.100, which apply to all development in the CBEMP zones.

The temporary dredge line in the 6-WD and 7-D zones qualifies as a "special temporary use" in accordance with CCZLDO §3.1.450.4. JCEP requires the dredge line to facilitate dredging and the construction of the MOF and temporary barge berth in the slip and access channel. CCZLDO §3.1.450.4 provides that "the special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts." No CBEMP

zone explicitly references “special temporary use.” However, CCZLDO §3.1.450 is entitled “[s]upplemental provisions that apply to all zoning listed in Article 3.” Therefore, the reasonable interpretation of CCZLDO §3.1.450.4 is that “special temporary uses” are allowed in all CBEMP zones unless explicitly prohibited. The 6-WD and 7-D zones do not prohibit “special temporary uses,” and accordingly, special temporary uses are allowed in the 6-WD and 7-D zones.

CCZLDO §2.1.200 defines “temporary use” as “a use that is not lasting or permanent but is in effect for a certain amount of time only.” The definition also explains that “temporary uses include but are not limited to medical hardship dwellings or dwellings that are allowed while building a new home” and that once a temporary use is no longer needed, it must be removed. The temporary dredge line is a use that is in effect for a certain amount of time only--namely, only as long as necessary to transport dredge material from the dredging of the slip and access channel to a disposal site at South Dunes. JCEP will dismantle the dredge line when that dredging is completed.

For the above reasons, the temporary dredge line in the 6-WD and 7-D zones is allowed as a “special temporary use.” The dredge line satisfies the management objective of the 6-WD and 7-D zones, and the general development standards of CCZLDO §3.2.100, as follows.

6-WD Zone - Management Objective - CCZLDO 3.2.275.

This district shall be managed so as to protect the shoreline for water-dependent uses in support of the water-related and non-dependent, non-related industrial use of the area further inland. To assure that the district shoreline is protected for water-dependent uses while still allowing nonwater-dependent uses of the inland portion of the property (outside of the Coastal Shoreland Boundary), any new proposed use of the property must be found by the Board of County Commissioners (or their designee) to be located in such a manner that it does not inhibit or preclude water-dependent uses of the shoreline. Further, use of wetlands in the district must be consistent with state and federal wetland permit requirements.

Hearings Officer’s Findings: The temporary dredge line in the 6-WD zone does not preclude or inhibit water-dependent uses of the shoreline within the 6-WD zone. Moreover, it is not located within and will not affect wetlands. Therefore, the temporary dredge line satisfies the management objective of the 6-WD zone.

7-D Zone - Management Objective - CCZLDO 3.2.285

This shoreland district, which borders a natural aquatic area, shall be managed for industrial use. Continuation of and expansion of existing non-water-dependent/non-water-related industrial uses shall be allowed provided that this use does not adversely impact Natural Aquatic District #7. In addition, development shall not conflict with state and federal requirements for the wetlands located in the northwest portion of this district.

Hearings Officer’s Findings: The temporary dredge line in the 7-D zone will not affect the zone’s management for industrial uses. Rather, the purpose of the dredge line is to transport dredge material from JCEP’s work in the slip and access channel, and the purpose of which is to provide water

access for the LNG Terminal and related facilities. The temporary dredge line thus facilitates industrial uses. Further, the temporary dredge line is not a continuation or expansion of an existing use. Finally, it does not cross a wetland and does not interfere with state or federal requirements for the same. Therefore, the temporary dredge line satisfies the management objective of the zone.

6-WD and 7-D Zones - General Development Standards - CCZLDO 3.2.100.

Hearings Officer's Findings: The development standards of the 6-WD and 7-D zones include standards for lot size, width and depth, setbacks, parking, and building height. These standards cannot logically be applied to a dredge pipeline. Therefore, these standards do not apply to the temporary dredge line.

13B-NA Zone - Allowed Uses - CCZLDO 3.2.436.

Hearings Officer's Findings: CCZLDO §3.2.436 allows, subject to an Administrative Conditional Use Process and general and special conditions, a “temporary alteration.” Uses in the 13B-NA zone are also subject to the zone’s management objective and the general development standards of CCZLDO §3.2.100.

The temporary dredge line qualifies as a “temporary alteration.” JCEP requires the dredge line to facilitate dredging and the construction of the MOF and temporary barge berth in the slip and access channel.

CCZLDO §2.1.200 defines “temporary alteration” as “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.” CCZLDO §2.1.200 further provides that temporary alterations cannot occur for more than three (3) years and the applicant must restore the affected area to its previous condition after that time.”

The temporary dredge line is a temporary estuarine alteration. It will not last for more than three years, and JCEP will restore the area to its previous condition when the need to transport dredged material from JCEP’s work widening the Coos Bay Deep Draft Navigation Channel has ended.

For the above reasons, the temporary dredge line qualifies as a “temporary alteration” and is allowed in the 13B-NA zone, subject to general and special conditions, the management objective of the zone, and the general development standards of CCZLDO § 3.2.100. The temporary dredge line satisfies the management objective of the 13B-NA zone, applicable general and special conditions, and applicable general development standards, as follows.

13B-NA Zone - Management Objective - CCZLDO 3.2.435.

This district shall be managed so as to protect the productivity of the extensive tideflats and subtidal beds in the aquatic area. Maintenance/repair of bridge crossing support structures is appropriate in this district.

Hearings Officer's Findings: The temporary dredge line will not affect the productivity of tideflats or subtidal beds in the 13B-NA zone. Therefore, the temporary dredge line satisfies the management objective of the zone.

13B-NA Zone - General Development Standards - CCZLDO 3.2.100.

CCZLDO 3.2.100 and Table 2 do not include any general development standards applicable to an "NA" zone.

Hearings Officer's Findings: Because CCZLDO §3.2.100 and Table 2 of that section do not include general development standards for an "NA" zone, there are no general development standards applicable to the temporary dredge line in the 13B-NA zone.

13B-NA Zone - General Conditions - CCZLDO 3.2.436.

1. Inventoried resources requiring mandatory protection in this unit are subject to Policies #17 and #18.

Hearings Officer's Findings: The temporary dredge line satisfies Policies #17 and #18, as discussed in Section II.E. of this Recommendation.

CCZLDO 3.2.436 - 13B-NA Zone - Special Conditions

10. This activity is only permitted subject to Policy #5a.

Hearings Officer's Findings: The temporary dredge line satisfies Policy #5a for the reasons discussed in Section II.E. of this Recommendation.

JCEP's proposed temporary dredge transport line is classified as a "Temporary Alteration" in the 13B-NA estuarine zone. CCZLDO §3.2.446.B.12. In order to approve the line at this location, the County must adopt findings that it is consistent with CBEMP Policy #5a. *Id.* Among other things, this policy requires findings that the temporary dredge transport line is consistent with the resource capabilities of the area under CBEMP Policy #4. The hearings officer finds that the temporary dredge transport line is consistent with the resource capabilities of the area under CBEMP Policy #4. As support for this conclusion, the hearings officer relies upon the discussion of the potential impacts of the temporary dredge transport line on specific habitat areas and proposed mitigation measures set forth in JCEP's Exhibit 12 subexhibit 22 (FERC Resource Report 3) at §§3.1.4 and 3.3.

For example, regarding essential fish habitat ("EFH"), this report concludes:

"While these activities likely would adversely impact EFH through both temporary and permanent impacts to submerged aquatic vegetation, the potential adverse impacts to EFH will not be substantial, because the areas affected are small in comparison to the overall availability of EFH in Coos Bay. Furthermore, EFH affected by the Navigation Reliability Improvements is expected

to recover to pre-dredging conditions within one month to one year (Newell et al. 1998). Permanent eelgrass impacts at the access channel will result in isolated impacts to 2.7 acres of eelgrass, which is less than 0.6% of the estimated total area where eelgrass was detected in lower Coos Bay. This impact will result in an unnoticeable and extremely localized, short-term loss in forage food available for listed fish. Located south of the impact site, the mitigation site will be created within an existing eelgrass bed to replace the narrow band of eelgrass habitat lost at the impact site. The mitigation site will take several years to develop, but it will result in a longterm benefit to eelgrass, listed fish, critical habitat, and EFH.”

See Exhibit 12 subexhibit 22, “Fish, Wildlife, and Vegetation,” Resource Report No. 3, p. 15 of 792. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

14-DA Zone - Allowed Uses - CCZLDO 3.2.446.

Hearings Officer’s Findings: CCZLDO §3.2.446 allows, subject to an Administrative Conditional Use Process and general and special conditions, a “temporary alteration.” Uses in the 14-DA zone are also subject to the zone’s management objective and the general development standards of CCZLDO §3.2.100.

The temporary dredge line qualifies as a “temporary alteration.” JCEP requires the dredge line to facilitate dredging and the construction of the MOF (for which JCEP seeks approval in the Application on Remand) and temporary barge berth (for which JCEP seeks approval in this Application) in the slip and access channel.

CCZLDO §2.1.200 defines “temporary alteration” as “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.” CCZLDO § 2.1.200 further provides that temporary alterations cannot occur for more than three (3) years and the applicant must restore the affected area to its previous condition after that time.”

The temporary dredge line is a temporary estuarine alteration. It will not last for more than three years, and JCEP will restore the area to its previous condition when the need to transport dredged material from JCEP’s work widening the Coos Bay Deep Draft Navigation Channel has ended.

For the above reasons, the temporary dredge line qualifies as a “temporary alteration” and is allowed in the 14-DA zone, subject to general and special conditions, the management objective of the zone, and the general development standards of CCZLDO §3.2.100. The temporary dredge line satisfies the management objective of the 14-DA zone, applicable general and special conditions, and applicable general development standards, as follows.

14-DA Zone - Management Objective - CCZLDO 3.2.445.

This area shall be managed to allow access to the natural Kentuck Channel for the purposes of transporting jetty stone quarried in the uplands above the district. This district also permits filling of the small bermed aquatic area at the western end of the existing fill, to provide additional space for rock loading. Dredging and other activities shall be limited to the minimum necessary to accomplish this purpose. That is, if necessary, a "bathtub" may be dredged adjacent to the existing barge off-loading site to allow moorage of a barge during low tide. However, access to and use of the natural channel shall only occur when tides are sufficiently high to facilitate safe navigation. Future dredging of the natural channel (beyond the "bathtub") in District 13B NA is otherwise not allowed. Upon completion of filling in the small bermed area, it will become part of Shoreland District 14 WD.

Hearings Officer's Findings: The temporary dredge line does not affect access to the natural Kentuck Channel for transporting jetty stone quarried in the uplands above the 14-DA zone. Moreover, the temporary dredge line is not itself a proposal for dredging but a proposal to transport dredged material, so the management objective's limitations on dredging do not apply to the temporary dredge line. Therefore, the temporary dredge line satisfies the management objective of the 14-DA zone.

14-DA Zone - General Conditions - CCZLDO 3.2.446

1. Inventoried resources requiring mandatory protection in this unit are subject to Policies #17 and #18.

Hearings Officer's Findings: The temporary dredge line satisfies Policies #17 and #18 for the reasons discussed in Section II.E. of this Recommendation.

14-DA Zone - Special Conditions - CCZLDO 3.2.446

12. This activity is subject to Policy #5a.

Hearings Officer's Findings: The temporary dredge line satisfies Policy #5a for the reasons discussed in Section II.E. of this Recommendation.

For the above reasons, the temporary dredge lines satisfy all approval criteria for temporary alterations in the 6-WD, 7-D, 13B-NA, and 14-DA zones. The hearings officer recommends that the County approve the temporary dredge lines.

B. Modification of Existing Proposals Requiring New Land Use Approval.

JCEP's Application seeks approval for the following proposed uses which represent modifications of similar or the same uses at a different location than approved previously by Coos County in 2016. These modified proposals require new land use authorization.

1. Gas Processing.

JCEP previously proposed gas processing in the IND zone. *See* discussion in Final Decision and Order, No. 16-08-07PL (HBCU-15-05), at p. 12. JCEP now proposes in this Application to relocate that gas processing proposal to the 6-WD zone. Application Exhibit 2 shows the new location of the gas processing at the Ingram Yard site. The gas processing conditions natural gas transmitted to the LNG Terminal site by the Pacific Connector Gas Pipeline, for which JCEP has sought approval in separate applications in the County and elsewhere. Processing prepares the gas for liquefaction and storage and transport at and from the LNG Terminal. The gas will undergo mercury (Hg) and acid gas (CO₂ and H₂S) removal and dehydration to remove moisture. The relocation of gas processing for which JCEP here seeks approval will increase the efficiency of the conditioning process by consolidating all gas processing near the liquefaction area and reducing its necessary footprint by using only one liquefaction train instead of two (which the prior design proposed to use).

6-WD Zone - Allowed Uses - CCZLDO 3.2.276

Hearings Officer's Findings: CCZLDO § 3.2.276 allows in the 6-WD zone, subject to an Administrative Conditional Use, "Industrial & Port Facilities." Industrial & Port Facilities in the 6-WD zone are also subject to the management objective of the 6-WD zone and to general and special conditions of the zone, and to the general development standards of CCZLDO 3.2.100.

The gas processing qualifies as an "industrial & port facility." CCZLDO §2.1.200 defines "Industrial (Uses) and Port Facility" as the "[p]ublic or private use of land or structures for manufacturing, processing, port development, and energy generating facilities." The gas processing is the private use of land for "processing" of natural gas. Therefore, it qualifies as an "industrial & port facility." The gas processing satisfies the management objective, general development standards, and general and special conditions of the 6-WD zone as follows.

6-WD Zone - Management Objective - CCZLDO 3.2.275

This district shall be managed so as to protect the shoreline for water-dependent uses in support of the water-related and non-dependent, non-related industrial use of the area further inland. To assure that the district shoreline is protected for water-dependent uses while still allowing nonwater-dependent uses of the inland portion of the property (outside of the Coastal Shoreland Boundary), any new proposed use of the property must be found by the Board of County Commissioners (or their designee) to be located in such a manner that it does not inhibit or preclude water-dependent uses of the shoreline. Further, use of wetlands in the district must be consistent with state and federal wetland permit requirements.

Hearings Officer's Findings: The gas processing does not preclude or inhibit in the zone water-dependent uses of the shoreline. Moreover, the gas processing is not located within and will not affect wetlands. Therefore, the gas processing satisfies the management objective of the 6-WD zone.

6-WD Zone - General Development Standards - CCZLDO 3.2.100

Minimum Lot Size - None

Minimum Lot Width/Depth/Street Frontage - 20'; N/A; 20'

Setbacks - 35' from centerline of adjacent right-of-way or 5' from adjacent right-of-way boundary if no adjacent right-of-way

Building Height - None

Parking - Required parking subject to staff determination via CCZLDO 7.5.100.5.

Hearings Officer's Findings: The gas processing will satisfy the above general development standards of the 6-WD zone.

6-WD Zone - General Conditions - CCZLDO 3.2.276

1. Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.

Hearings Officer's Findings: The gas processing complies with Policies #17 and #18 for the reasons discussed in Section II.E. of this Recommendation.

2. All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation.

Hearings Officer's Findings: The gas processing complies with Policy #23 for the reasons discussed in Section II.E. of this Recommendation.

3. Uses in this district are only permitted as stated in Policy #14 "General Policy on Uses within Rural Coastal Shorelands." Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this policy.

Hearings Officer's Findings: The gas processing complies with Policy #14 for the reasons discussed in Section II.E. of this Recommendation.

4. All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.

Hearings Officer's Findings: The gas processing complies with Policy #27 for the reasons discussed in Section II.E. of this Recommendation.

5. All permitted uses in dune areas shall be consistent with the requirements of Policy #30.

Hearings Officer's Findings: The gas processing is not subject to compliance with Policy #30.

6. In rural areas (outside of UGBs) utilities, public facilities and services shall only be provided subject to Policies #49, #50, and #51.

Hearings Officer's Findings: The gas processing complies with Policies #49, 50, and 51 for the reasons discussed in Section II.E. of this Recommendation.

6-WD Zone - Special Conditions - CCZLDO 3.2.276

An Industrial & Port Facility is subject to review and approval when consistent with Policy #16.

Hearings Officer's Findings: The gas processing complies with Policy #16, for the reasons discussed in Section II.E. of this Recommendation.

Opponent Jody McCaffree alleges that “the Ingram yard site is contaminated and **proper environmental studies are not being done on the property.**” (underline and bold emphasis in original). Ms. McCaffree does not specify what sort of “environmental study” she would consider proper, explain what she means by “contaminated,” or explain why it matters, vis-à-vis the relevant approval criteria.

Ms. McCaffree also states that “[t]idal muds need to be tested prior to any Coos County approval and Jordan Cove’s sedimentation plan **MUST CONTAIN TESTING FOR ALL POTENTIAL CONTAMINANTS AND CURRENTLY DOESN’T**” (All-caps emphasis in original). See McCaffree letter of October 28, 2019, at p. 9. Exhibit 19.

This argument is too vague and undeveloped to enable legal review and offers no legal basis to deny this application. It seems that, to Ms. McCaffree, *any* degree of “contamination” in sand or soil, no matter how miniscule or innocuous, should be grounds to deny this project. Oregon and Coos County land use law does not agree. Nevertheless, the hearings officer has reviewed the Applicant’s detailed evidence discussing soil contamination and the Oregon DEQ “No Further Action” letter at pp. 26-30.

Therefore, for the reasons discussed above and in Section II.E. of this Recommendation, the gas processing satisfies all approval criteria of the 6-WD zone. The hearings officer recommends that the Board of Commissioners should approve the gas processing.

2. Fire Station.

JCEP proposes to construct a fire station in the 6-WD zone. The use is a standalone fire department building within the access and utility corridor that JCEP has established for the LNG Terminal site. JCEP initially proposed to co-locate this use with the SORSC in the IND zone. JCEP now proposes to relocate the fire station proposal from the IND zone to the 6-WD zone. Exhibit 2

shows the location JCEP proposes for the fire station. Splitting the fire station from the SORSC and relocating it will improve emergency incident response time. A fire station is a normal and customary component of a LNG Terminal. Fire water storage tanks will be located and stored adjacent to and used by the fire station. The fire department will house Jordan Cove Fire Department chief and staff. The LNG Terminal will provide electric power for operation of the fire department building.

6-WD Zone - Allowed Uses - CCZLDO 3.2.276.

Hearings Officer's Findings: The fire station qualifies as an "accessory use" to the LNG Terminal, which is a primary industrial and port facility use. CCZLDO §3.1.450.5 requires the following:

- 5. Accessory Uses. Uses customarily accessory to the lawfully established principal use shall be allowed in all cases unless specifically prohibited or restricted:*
- a. An accessory use may be located on the same lot, parcel or tract or on a contiguous lot, parcel or tract under the same ownership as the lot, parcel or tract that contains the principal use;*
 - b. The use complies with the definition of "Accessory Structure or Use" pursuant to this Ordinance; c. The noncontiguous lot, parcel or tract is in the "same ownership" as the lot, parcel or tract on which the principal use is located;*
 - d. The accessory use shall only be allowed subject to an administrative conditional use and findings that establish that the use is compatible with surrounding uses or may be made compatible through the imposition of conditions.*

The fire station satisfies the definition of "accessory use." CCZLDO §2.1.200 defines "accessory use" as:

ACCESSORY USE: A use, building or structure that is (1) customarily incidental and subordinate to the principal use, main building or structure, and (2) subordinate in extent, area and purpose to the principal use.

Under general rules of statutory construction, a dictionary can be used to assist in determining the plain and ordinary meaning of these words. Webster's Third Internat'l Dictionary (1981), 1142 defines "incidental" as:

1 : subordinate, nonessential, *or* attendant in significance."

Webster's Third New Internat'l Dictionary (1981) defines "subordinate" as:

"1: placed in a lower order, class, or rank: holding a lower or inferior position.

The purpose and function of the fire station is to support the LNG Terminal by providing emergency incident response capability to protect people and property in the area of the LNG Terminal. Therefore, the fire station is incidental and subordinate to the LNG Terminal. Furthermore, the fire station is subordinate in extent, area, and purpose to the LNG Terminal. Its purpose is to support the LNG Terminal, which is a subordinate purpose. It is subordinate in extent and area because it is smaller than, and co-located with, the LNG Terminal. Finally, the fire station is located at Ingram Yard, on the same lot, parcel, or tract as the LNG Terminal. Therefore, the fire station satisfies CCZLDO §2.1.200's definition of an accessory use.

The surrounding land is either zoned industrial or has an estuary zoning designation (including 6-WD) that authorizes port and industrial uses. JCEP proposes the fire station as a component part of the larger LNG Terminal site development. JCEP has approved and pending applications, including this Application, that propose to develop the LNG Terminal site with the LNG Terminal and supporting facilities, including the fire station. The applicable County zoning designations authorize JCEP's proposals, which means the County has planned and determined that JCEP's proposals are the kind that are compatible with the area in which JCEP proposes them. Moreover, the purpose of the fire station is to supply the LNG Terminal site with emergency management response capability to prevent and minimize the damage from accidents and other emergency events. Further, the fire station is by definition "compatible" with surrounding uses because its purpose is to protect them from harm. No party objected to the plan to locate the fire station in the 6-WD zone.

Therefore, the fire station is compatible with surrounding uses. The fire station satisfies the management objective and general development standards of the 6-WD zone, as follows.

6-WD Zone - Management Objective - CCZLDO 3.2.275.

This district shall be managed so as to protect the shoreline for water-dependent uses in support of the water-related and non-dependent, non-related industrial use of the area further inland. To assure that the district shoreline is protected for water-dependent uses while still allowing nonwater-dependent uses of the inland portion of the property (outside of the Coastal Shoreland Boundary), any new proposed use of the property must be found by the Board of County Commissioners (or their designee) to be located in such a manner that it does not inhibit or preclude water-dependent uses of the shoreline. Further, use of wetlands in the district must be consistent with state and federal wetland permit requirements.

Hearings Officer's Findings: The fire station does not preclude or inhibit water-dependent uses of the shoreline within the 6-WD zone. Moreover, the fire station is not located within and will not affect identified wetlands. Therefore, the fire station satisfies the management objective of the 6-WD zone.

CCZLDO 3.2.275 - 6-WD Zone - General Development Standards

The general development standards for the 6-WD zone, outside the UGB, for industrial development, are as follows:

Minimum Lot Size - None

Minimum Lot Width/Depth/Street Frontage - 20'; N/A; 20'

Setbacks - 35' from centerline of adjacent right-of-way or 5' from adjacent right-of-way boundary if no adjacent right-of-way

Building Height - None

Parking - Required parking subject to staff determination via CCZLDO 7.5.100.5.

Hearings Officer's Findings: The fire station will satisfy the above general development standards of the 6-WD zone.

For the above reasons, the fire station satisfies all approval criteria for an accessory use in the 6-WD zone and the hearings officer recommends it be approved.

C. Proposals That Do Not Require New Land Use Approval.

JCEP requests confirmation that relocation of these previously-authorized facilities does not require land use approval:

- Relocation of a guardhouse within the 6-DA zone;
- Relocation of LNG tanks within the 6-WD zone; and
- Relocation within the IND zone of meter station associated with natural gas pipeline.

JCEP proposes only a minor relocation within the same zone of each of these previously-approved components. The earlier approval of these facilities in 2016 was conceptual in nature rather than site-specific and is not subject to site plan approval. Thus, the hearings officer finds that no new land use approval is required to relocate the proposals within the same zone.

D. Approval Criteria in Balance of County Zones.

Each development in the IND zone in this Application must respond to each of the approval criteria listed in this section. These proposals include:

- ❖ the Industrial Wastewater Pipeline in Section II.A.2.,
- ❖ the concrete batch facility in Section II.A.3.,
- ❖ the SORSC in Section II.A.4.,
- ❖ the helipad in Section II.A.5.,
- ❖ the administration building in Section II.A.6.,
- ❖ the workforce housing in Section II.A.7.,
- ❖ the wastewater treatment facilities in Section II.A.8.,
- ❖ the park and ride in Section II.A.9., and
- ❖ the temporary construction laydown (located in the IND zone) in Section II.A.10 of this Recommendation.

This section collectively refers to these proposals as the “IND Zone Proposals”. Each proposal satisfies the approval criteria of the IND zone, as follows:

CCZLDO 4.3.220.6 - IND Zone - Additional Conditional Use Review Standards

(a) Industrial developments within an Unincorporated Community Boundary:

- vi. shall not occupy more than 8,000 square feet of floor space in any building or combination of buildings within an Urban Unincorporated Community Boundary; or**
- vii. shall not occupy more than 4,000 square feet of floor space in any building or combination of buildings in a Rural Unincorporated Community Boundary.**

Hearings Officer’s Findings: None of the IND Zone Proposals are located within an unincorporated community boundary. Therefore, these criteria do not apply to any of the IND Zone Proposals.

- (b) Industrial development within an Urban Growth Boundary is not subject to floor square foot limitation but a notice to the city is required as described in subsection (c)(v) below.**

Hearings Officer’s Findings: All of the IND Zone Proposals are located outside an urban growth boundary. Therefore, this criterion does not apply to the IND Zone Proposals.

(c) Industrial developments on land planned and zoned for industrial uses as of January 1, 2004, located outside of an urban growth boundary when exceeding the size limits of subsections (a) above:

- i. Location: A qualifying site must be located outside of a city Urban Growth Boundary (UGB), and may not be closer than three (3) miles from a UGB of a city containing a population of 20,000 or more.**
- ii. Building Size: Subject to building permit approval process; there shall be no limitation on the size or type of industrial buildings authorized.**
- iii. Sewer Facilities: Subject to DEQ approval, on-site sewer facilities may be allowed to serve authorized industrial development on qualifying lands, but shall be limited in size to meet only the needs of the authorized industrial use.**
- iv. Other uses not permitted: On qualifying lands, retail, commercial and non-accessory residential development is prohibited.**
- v. Notice to cities: At least 21 days prior to taking action, notice of pending industrial development (including sewer facilities serving the development) under this section shall be sent to any city within an urban growth boundary within ten (10) miles of the subject site. If the city objects to the pending development, the city and the County shall negotiate to establish conditions of approval, or changes in the development to mitigate concerns raised by the city. If the city requests conditions of approval a notice of decision will be sent to allow an opportunity for a public hearing.**

Hearings Officer's Findings: The "size limitations of subsections (a) above" are "8000 square feet square feet of floor space in any building or combination of buildings within an Urban Unincorporated Community Boundary" or "4,000 square feet of floor space in any building or combination of buildings in a Rural Unincorporated Community Boundary." The size limitations by default apply only to buildings within rural or urban unincorporated community boundaries. Because none of the IND Zone Proposals are located within such boundaries, the "size limitations of subsections (a) above" do not apply the IND Zone Proposals and, by extension, neither do the criteria of this subsection (c).

(d) The following standards apply to any land identified as an abandoned or diminished mill site regardless of current zoning:

- i. On property outside of an Urban Growth Boundary. An "abandoned or diminished mill site" is a former or current wood products mill site that was closed after January 1, 1980, or has been operating at less than 25% of capacity since January 1, 2003, and contains, or contained, permanent buildings used in the production or manufacturing of wood products. The County shall identify and determine the boundaries of abandoned or diminished mill sites (the boundary may only include those areas that were improved for the processing or manufacturing of wood products).**

- ii. Location: The site must be located outside of a city UGB.**
- iii. Building Size: Subject to the building permit approval process; there shall be no limitations on the size or type of industrial buildings authorized for lands that qualify under this section.**
- iv. Sewer facilities: Subject to DEQ approval, on-site sewer facilities, or the extension of sewer facilities from a city UGB or County urban unincorporated area, may be allowed to serve authorized industrial development on qualifying lands, but shall be limited in size to meet only needs of the authorized industrial use. The presence of the sewer facilities may not be used to justify an exception to statewide land use planning goals protecting agricultural lands or forestlands or relating to urbanization.**
- v. The governing body of a county or its designee shall determine the boundary of an abandoned or diminished mill site. For an abandoned or diminished mill site that is rezoned for industrial use under this section, land within the boundary of the mill site may include only those areas that were improved for the processing or manufacturing of wood products.**
- vi. A permit may be approved on an abandoned or diminished mill site as defined in ORS 215.402 or 227.160 for industrial development and accessory uses subordinate to such development on the mill site. The governing body or its designee may not approve a permit for retail, commercial or residential development on the mill site.**
- vii. For land that on June 10, 2003, is zoned under statewide land use planning goals protecting agricultural lands or forestlands and that is rezoned for industrial, the governing body of the county or its designee may not later rezone the land for retail, commercial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.**

Hearings Officer's Findings: None of the IND Zone Proposals are located on land identified as an abandoned or diminished mill site. Therefore, these criteria do not apply to the IND Zone Proposals.

(e) Regionally Significant Industrial Areas – See Special Development Considerations and Overlays

Hearings Officer's Findings: None of the IND Zone Proposals are within a “regionally significant industrial area” identified as a special development consideration or overlay. Therefore, this criterion does not apply to the IND Zone Proposals.

(f) Conditional Use Review Criteria - The following criteria only apply to Use, Activity or Development identified as conditional uses in the zoning table:

Hearings Officer's Findings: Among the IND Zone Proposals, only the “temporary” and “non-commercial” concrete batch facility is listed as a conditional use in the zoning table at CCZLDO §4.3.200. Therefore, the criteria of this subsection (f) apply only to the concrete batch facility. These

criteria do not apply to the other IND Zone Proposals. The concrete batch plant is discussed further below.

(f) Conditional Use Review Criteria - The following criteria only apply to Use, Activity or Development identified as a conditional uses in the zoning table:

i. COMPATIBILITY: The proposed USE, ACTIVITY OR DEVELOPMENT is required to demonstrate compatibility with the surrounding properties or compatibility may be made through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses and not potential or future uses in the surround area.

Thus, a conditional use is “compatible” if it is “capable of existing together with the surrounding uses without discord or disharmony.” *Id.* Compatibility is to be measured against “existing surrounding uses and not potential or future uses.” *Id.* See also *Clark v. Coos County*, 53 Or LUBA 235 (2007). Further, the compatibility analysis does not require consideration of impacts to “activities,” which are separate and apart from “uses” under the CBEMP.

The temporary and non-commercial concrete batch plant in the area known as Boxcar Hill is compatible with surrounding properties. CCZLDO §4.3.220.6.f. establishes that the test for compatibility under this criterion “is where the proposed use is compatible with the *existing* surrounding uses and not potential or future uses in the surround (*sic*) area.” (Emphasis added).

The Applicant states that the County’s practice is to limit “surrounding uses” to those that are within the applicable 250-foot notice radius from the boundaries of the property ownership. However, the hearings officer believes that the “surrounding uses” should focus the analysis on the “status of those living nearby.” In *Marineau v. City of Bandon*, 15 Or. LUBA 375 (1987), LUBA stated in dicta:

“Here, the ordinance does not call for evaluation of the impacts on surrounding land uses. Compatibility with scenic views is the issue. The difference is significant. When surrounding land uses are protected under particular ordinance provisions, the status of those living nearby is given special significance.” (Emphasis added).

The study area should vary depending on the degree of potential impact. Fortunately, in this case, the LNG Terminal and concrete batch plant are proposed to be located in an area zoned for industrial use, which is devoid of permanent residents. Sensitive receptors, such as children, elderly, and infirm are not expected to be near the project area where localized construction emissions will occur. Thus, it does not matter if the County chooses a 250-foot study area or a 1000-foot or 2000-foot study area. The hearings officer in this case assumed a very broad study area of 2000 feet.

A brief discussion of the term “compatible” is in order, as it appears in so many land use cases. As shown above, Coos County has essentially adopted the dictionary definition of “compatible” into its zoning code. Webster’s Third New International Dictionary, defines the term “compatible as follows:

“Capable of existing together in harmony.” Capable of existing together without discord or disharmony.

Webster 's Third New International Dictionary, 1993. See generally Vincent v. Benton County, 5 Or LUBA 266 (1982), aff'd, 60 Or App 324, 653 P2d 279 (1982) (noting this definition). The same dictionary offers the following definitions of the terms used in the definition above.

Harmony: “Correspondence, accord” <lives in *harmony* with her neighbors>

Correspondence: “the agreement of things with one another, a particular similarity.”

Accord: “to bring into agreement : reconcile.”

LUBA has stated that even though compatibility is defined as there being an “agreement,” it does not require that the surrounding landowners necessarily agree that the proposed use is compatible. *Clark v. Coos County, 53 Or LUBA 325 (2007)*. Rather, it is up to the decision-maker to make a determination, based on the evidence in the record, whether the proposed use is compatible with its surroundings. In other words, neighbors do not necessarily have “veto” power over an application. Nonetheless, neighbor testimony is important when evaluating whether two land uses are going to be able to live in harmony with one another.

LUBA has considered a number of cases where the “compatibility” standard has been an issue, and a set of rules for analysis has emerged from the case law:

- ❖ Compatibility is measured by assessing both the characteristics and scale of the use and the surrounding uses. *Hannan v. Yamhill County, 6 Or LUBA 83, 92 (1982)*. “For example, how intensive is the use, how much traffic it will generate and are these characteristics ‘compatible’ with existing structures and uses.” *Ruef v. City of Stayton, 7 Or LUBA 219 (1983)*.
- ❖ The compatibility analysis is not a balancing test of need versus impact. *Vincent v. Benton County, 5 Or LUBA 266 (1982)*.
- ❖ Compatibility does not necessarily mean that *all* negative impacts of the proposed use be eliminated. *Clark v. Coos County, 53 Or LUBA 325 (2007)*. However, it does, by its very definition, preclude such negative impacts that prevent the proposed and existing uses from existing in harmony or agreement with each other.
- ❖ The compatibility standard extremely subjective, and the fact that there is conflicting

evidence will not necessarily create an issue requiring remand, since LUBA is not allowed to substitute its judgment for the decision-maker. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601, 617 (1993). *See also Knudsen v. Washington County*, 39 Or. LUBA 492 (2001).

- ❖ The decision-maker “is entitled to appropriate deference in selecting the factors it chooses to consider and how it weights those factors.” *Clark v. Coos County*, 53 Or LUBA 325 (2007). Thus, the result of the analysis may hinge on which relevant factors the local decision maker felt deserved emphasis. *Knight v. City of Eugene*, 41 Or LUBA 279 (2002).
- ❖ The manner in which the term “surrounding uses” is defined can have an influence on the outcome of the analysis. *Id.*
- ❖ What is critical is that the decision-makers findings, as a whole, respond to the compatibility issues raised below. *Id.*

Opponent Bill McCaffree asserts: “The proposed Concrete Batch Plant for the Jordan Cove terminal does not meet the criteria for compatibility of the surrounding properties from uses due to machinery noise, dust, and truck traffic.” McCaffree October 28, 2019 letter, Exhibit 15, p. 1. Opponent Tonia Moro makes a similar point by stating “the applicant must address how noise from the [concrete batch] plant will not affect wildlife as a surrounding use or those human uses related to wildlife which may be impacted.” *See* Tonia Moro letter dated October 14, 2019, Exhibit 6, p. 4. With regard to this latter comment, the hearings officer disagrees that “wildlife” is a “use” for purposes of CCZLDO §4.3.220(f)I, but even if it were, any wildlife living in the industrial area or in the dunes to the north would be well-accustomed to the noise and similar human-generated impacts generated by ATVs and similar traffic associated with adjacent recreational areas.

The hearings officer finds that JCEP’s temporary concrete batch plant is compatible with existing surrounding uses. As support for this conclusion, the hearings officer relies in part upon the supporting letter from neighbor Todd Goergen. Exhibit 10. More importantly, However, the Kiewit, Black & Veatch, and JGC (“KBJ”) memorandum in JCEP’s Exhibit 14 Sub-Exhibit 35, which explains how the plant will either not have off-site impacts or will minimize or mitigate the effects of noise and dust. The KBJ memorandum notes:

- ❖ The plant will only be in operation for 30-36 months, and once work is complete, it will be decommissioned. The temporary nature of this plant must be emphasized.
- ❖ The plant will be located within the boundaries of a five-acre property and set back behind a security fence. This reduces the effects of dust on surrounding uses.
- ❖ JCEP or its contractors will obtain and comply with all required permits to erect and operate the plant, including an applicable air quality permit and a 1200-A permit.
- ❖ JCEP will develop and comply with a stormwater management plan, a site-specific fugitive dust plan, and will develop a wastewater treatment system.

- ❖ Concrete batch plants do not typically generate significant plumes of steam or smoke as part of their operations, which should prevent impacts to local visibility.
- ❖ When the facility is closed, lighting will be limited to a level that is appropriate for security purposes.
- ❖ Typical hours will be from 6:00am to 6:00pm on weekdays, with some extended hours for special projects.
- ❖ The plant will be limited to supplying materials for construction of the Project and will not offer concrete to the general public.

JCEP states it will also comply with the dust control and emissions control measures set forth in Section 9.2.3 of JCEP's Exhibit 34, "Resource Report No. 9 – Air and Noise Quality" (567 pages). Those measures include:

"9.2.3 Mitigation

During construction, ambient air quality will be affected by emissions and fugitive dust generated by construction equipment. Fugitive dust and emissions from construction activities generally do not result in a significant increase in regional pollutant levels, although local pollutant levels could intermittently increase during the construction phase of this project. Fortunately the LNG Terminal would be located in an area zoned for industrial use and is void of permanent residents. Sensitive receptors, such as children, elderly, and infirm are not expected to be near the project area where localized construction emissions will occur.

Regardless, the LNG Terminal would utilize techniques to minimize the air quality impacts during construction and operation of the LNG Terminal. Construction activities must comply with the Oregon DEQ Regulations for dust control in OAR 340-208-0210 and JCEP will operate according to the Erosion and Sediment Control Plan. During construction of the LNG Terminal dust control mitigation measures would include one or more of the following:

- Dust suppression techniques, such as watering, which would reduce fugitive PM emissions from construction activities such as material storage, land clearing, grading, excavation, and concrete batching;
- Wheel washing stations, as necessary, to prevent tracking of materials onto public roads;
- Street sweepers, as needed, to clean any inadvertent materials tracked onto public roads near the project site;

- Material hauling operations will endeavor to prevent spillage. Methods can include covering loads, limiting fill height in trucks, and proper training of operators;
- Excavated materials being hauled off-site on public roads will be covered; and
- Enclosing cement storage silos at the Batch Plant.

Speed will be limited to 15 mph for non-earthmoving equipment on the site in active construction areas to ensure personnel safety and reduce emissions. However, speed will only be limited by the safe travel speed of the haul road and equipment for earthmoving operations. Unnecessarily constraining haul speeds would lengthen the project and cause additional fugitive emissions from extended support operations and supervision. Wind fencing is not an appropriate dust mitigation measure for the Terminal Site design and construction process and would cause unnecessary burdens for the project.

The LNG Terminal would minimize vehicular and crankcase emissions from gasoline and diesel engines by complying with applicable EPA mobile and stationary source emissions performance standards and by using engines manufactured to meet these standards. Additionally, the LNG Terminal will minimize emissions using the following techniques:

- ❖ KBJ (EPC Contractor) will self-perform the majority of the construction activities for the LNG terminal and will utilize their company-owned fleet. The average age of the fleet is 6 years old. MOVES emission factors used to create the emissions estimates for the construction of the LNG Terminal used national average emission rates from similar equipment. The equipment in the KBJ fleet are newer than the national average and therefore are likely more efficient and the emissions calculated in Table 9.2-6 provide a conservative estimate of project-related emissions.
- ❖ Local subcontractors and outside rental equipment owners will comply with federal, state, and local laws;
- ❖ Performing regular maintenance of the emission units, which maintains efficient combustion. Efficient combustion reduces the fuel required to operate the emission units and thus reduces combustion emissions. The maintenance program for the KBJ equipment includes daily inspections, 500 operation hour preventative maintenance, engine oil analysis, and equipment specific activities;

- ❖ Operating equipment only within the manufacturer's guidelines;
- ❖ Equipment will not be modified or retrofitted without manufacturer involvement to ensure warranty and liability criteria are met;
- ❖ Combustion of ultralow sulfur diesel (ULSD) in heavy construction, diesel-burning equipment;
- ❖ Use of industry recognized standard emissions controls on stationary construction equipment;
- ❖ Following the KBJ Idling Policy, which includes requirements such as not allowing construction vehicles and equipment to idle for more than a set amount of time if the vehicle or equipment is not in motion to reduce fuel consumption, which reduces NOX, CO, PM, VOCs, SO2, and GHGs emissions; and
- ❖ Reducing roadway traffic congestion and minimizing vehicle trips through implementation of the Traffic Impact Study included in the Resource Report 8. Some traffic congestion and emissions reduction techniques include utilizing on-site and offsite parking and locating the Batch Plant and laydown areas in the North Spit to avoid excessive traffic through the project area.

When construction is commenced the decision to use alternative fuels to reduce emissions would be based on technical, operational, commercial, and resource availability considerations. KBJ does not own alternative fuel equipment, however, KBJ's newer fleet and rigorous equipment maintenance program and policies will help ensure maximum fuel efficiency and minimize emissions. Also, alternative fuel infrastructure is not widely available in the area to support a project of this magnitude.

During operations of the LNG Terminal air pollution mitigation measures will include:

- ❖ The combustion turbines will be equipped with post-combustion emission controls (catalytic oxidizers and selective catalytic reduction), which reduces NOX, CO, and VOC emissions;
- ❖ The auxiliary boiler will be equipped with post-combustion emission controls (catalytic oxidizers and selective catalytic reduction), which reduces NOX, CO, and VOC emissions;
- ❖ The combustion turbines will fire natural gas for facility startup and boil-off gas during normal operations, which reduces the consumption of diesel fuel;
- ❖ The HRSG steam will be used to drive a steam generator, providing ancillary power to the facility which reduces the

need for additional power to be produced or purchased for the LNG Terminal;

- ❖ Tier 2 and Tier 3 stationary engines are specified which comply with emission limits for PM, NOX and NMHC;
- ❖ Performing regular maintenance of the emission units, which maintains efficient combustion. Efficient combustion reduces the fuel required to operate the emission units and thus reduce the amount of combustion emissions emitted; and
- ❖ A halon-free, fire-suppression system. This system would remove the possibility of a release of ozone-depleting substances.”

Applicant’s Exhibit 34, “Resource Report No. 9 – Air and Noise Quality,” Section 9.2.3, pp. 31-33 of 567. All of this testimony and substantial evidence is un rebutted by the opponents.

Additionally, as mentioned above, the surrounding properties are not developed with sensitive uses. As set forth in the staff report, surrounding properties are zoned Recreational and Industrial. To the east is the estuary, which is not developed with a use; to the south is undeveloped industrial property where the Project is proposed; and to the west and north are recreational areas. Although opponents contend that noise from the batch plant will disturb or interfere with use of the recreational areas, their own testimony notes the extensive use of noisy off-road vehicles in the dunes, an indication that the area is not a pristine location free of ambient noise. Further, although the County has approved a land use application to permit the owner of the Boxcar Hill property to expand/relocate his campground to the north of the property, this is not yet an existing use and thus relevant to the analysis.

Mr. McCaffree also complained about the truck traffic around the proposed concrete batch plant. October 28, 2019 letter, at p. 1. Exhibit 15. The Applicant had engineering firm David Evans & Associates prepare a 458-page Traffic Impact Analysis (“TIA”), found at Exhibit 12, subexhibit 16. This study indicates that traffic into and out of the concrete plant will not be a significant problem. See also Applicant’s Exhibit 14, subexhibit 27, Draft EIS, Section 4.10.1.2, pages 901-903 of 1120. This evidence is un rebutted by the opponents. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

Opponent Jody McCaffree asserts the “heavily used Boxcar Hill camping area below would be negatively affected by the Jordan Cove project should it proceed.” Focusing on the proposed temporary concrete batch plant, Ms. McCaffree asserts:

“In 2017 Todd Georgen applied for and obtained a permit to extend the Oregon Sand Park Campground and add another 250 Camping spaces.⁸ (See Exhibit 21 and 22)

What Jordan Cove is proposing with their Cement batch plant and offices will take out some 250 planned Camping sites that had been approved and 65 current camping sites at Boxcar hill

campground directly south of the Dunes National Recreation Area. This would be a loss of Recreational opportunities for many people. The staff report that was prepared for the proposed expanded campground area stated that was a compatible use due to the property to the west being in federal ownership and used for recreation purposes. There are lots of negative impacts to nearby towns that allow LNG terminals and work camps for the temporary workers. In 2007 when Royal Dutch Shell built an LNG export terminal on Russia's Sakhalin Island... (*irrelevant story about Russia follows*)

McCaffree letter dated October 14, 2019, at p. 22, Exhibit 8.

Ms. McCaffree appears to have her facts incorrect. Todd Goergen himself wrote a letter supporting the Applicant's proposals. Steve Miller wrote a letter asking about the fate of the Boxcar Hill Campground (Miller letter dated September 30, 2019, Exhibit 3), based on a map or diagram submitted in a City of North Bend land use application, Mr. Miller identified that diagram as the "applicant's June 10, 2019 submittal to the City of North Bend (North Bend Record No. FP4-19 and CBE 5-19) in Exhibit G, page 428 of 1623, you will find a KBJ diagram dated July 3, 2017"). That diagram is not part of the Record in this Coos County land use application, but Mr. Miller's question seems to be answered by Mr. Goergen's letter (Exhibit 10). That letter reads as follows:

"Dear Mr. Stamp,

I wish to offer the following written testimony as an affected property owner (Oregon Dunes Sand Park, LLC) on Coos County Hearing File #HBCU-19-003. Oregon Dunes Sand Park (ODSP) owns several parcels in close proximity to the proposed Jordan Cove LNG Project. Specifically, we own one parcel (T25S-R13- Section 34C TL1700) that the project wishes to use during construction as a Laydown Area and Concrete Batch Plant.

Currently, a small portion (6 Acres +/-) of that parcel is occupied by an operating campground (Boxcar Hill Campground). This business operation is comprised of 61 serviced sites and 7 dry camping sites. ODSP owns nearly 100 acres of industrial zoned land which shares a common property line with the USFS and Oregon Dunes National Recreation Area (ODNRA).

The Laydown Area will comprise less than 20 acres and leave nearly 80 acres for continued commercialized recreational use with direct dune access to 6000+ acres of open riding area on the ODNRA.

ODSP intends to relocate and expand campground facilities up to a total of 277 campsites on a portion of our lands lying north of the proposed Boxcar Laydown Area. Please see attached Coos County Planning Zoning Compliance Letter # 19-306.

As we have enough land to accommodate the Boxcar Laydown Area and expand / enhance recreational amenities with direct access to the ODNRA, we believe this scenario provides a win-win for all parties concerned. Once the construction phase is complete, ODSP will resume control over the laydown area and make an independent business decision as to that site's future use.

Therefore, ODSP strongly supports the applicant's request for permit approvals with appropriate conditions to allow planned developments and activities within the Coos Bay Estuary Management Plan (CBEMP) Zoning Districts as enumerated in File # HBCU-19-003.

Regards,
R. Todd Goergen, Managing Member
Oregon Dunes Sand Park, LLC”

See Goergen letter dated October 14, 2019, Exhibit 10.

It thus appears Mr. Goergen, the owner of the affected property, agrees with the Coos County Planning Director – and the Applicant – that the Jordan Cove Energy Project (including the temporary concrete batch plant) is wholly compatible with recreational uses in his park and campground. The hearings officer so finds.

Apparently Ms. McCaffree disagrees. She came to a different conclusion after reading Mr. Goergen’s letter, stating:

“Goergen’s letter **proves** that Jordan Cove’s proposed polluting and noisy cement batch plant would not be a compatible use as is required under CCZLDO 4.3.220:

CCZLDO Section 4.3.220 Additional Conditional Use Review Standards for uses, development and activities listed in table 4.3.200

* * * *

(6) Industrial (IND) and Airport Operations (AO)

* * * *

(f) Conditional Use Review Criteria - The following criteria only apply to Use, Activity or Development identified as a conditional uses in the zoning table:

i. COMPATIBILITY: The proposed USE, ACTIVITY OR DEVELOPMENT is required to demonstrate compatibility with the surrounding properties or compatibility may be made

through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses and not potential or future uses in the surround area.

It is unclear why Mr. Goergen did not provide a zoning compliance letter for his proposed sand park under ACU-17-009 (See McCaffree-CFR Oct 14 exhibits 21 and 22) In any event Jordan Cove's proposed laydown area and cement batch plant would harm recreational opportunities for thousands of tourist and recreation enthusiasts who visit the Dunes National Recreation Area all throughout the year. (See Exhibits 72 and 73).

Tourism spending accounted for 3,300 jobs in Coos County in 201720. Those jobs would be negatively impacted as would also jobs in fishing, clamming, crabbing and oyster growing by the Jordan Cove project. (See Exhibits 38 to 42) For more details on this please see the comments that we submitted on Oct 14, 2019."

See McCaffree letter dated October 28, 2019, at p. 28. Exhibit 19.

The hearings officer disagrees. Both Mr. McCaffree and Mrs. McCaffree are essentially complaining about a proposed temporary industrial use in an area Coos County has specifically zoned for industrial uses. Given that the industrial area is not surrounded by sensitive uses, the short-term nature of the batch plant, its limited impacts, JCEP's proposed mitigation measures, and the substantial evidence the Applicant has placed in the record, the hearings officer finds that the concrete batch plant can exist together with surrounding uses without discord or disharmony. The zoning code anticipated construction in this area, and a certain amount of construction-related impacts are inevitable. However, having the concrete batch plant located on site creates less impacts than if finished (wet) concrete would be trucked to the site. Therefore, the temporary concrete batch plant will be consistent with this provision.

Opponent Oregon Shores Conservation Coalition writes:

"JCEP proposes to construct a concrete batch plant in the IND zone, located in the vicinity of Boxcar Hill. According to the Applicant, the plant will provide concrete supply for construction of the LNG Terminal and related facilities. It is unclear whether this plant is proposed solely for the processing of concrete. If other aggregate will be processed in the proposed plant, these materials should be identified prior to any final decision in this matter. According to the Applicant, the concrete needed for construction is approximately 130,000 cubic yards, and the batch plant is proposed to operate for 30-36 months (2.5 to 3 years). According to the Applicant, local aggregate sources have been investigated and have been found to have deficiencies (chert

inclusions) that preclude their use for concrete. Hence, regional sourcing for the availability of on-spec aggregates has been confirmed. The Applicant provides no information regarding the traffic impacts associated with the trucks delivering the regionally sourced supply of aggregate to the batch plant on the North Spit for processing, and should do so prior to any final decision in this matter.

The Applicant states that “a concrete washout area will be located adjacent to the batch plant to allow for containment and disposal of waste water related to concrete batching operations.” Oregon Shores was unable to identify the specific location, method of disposal, and estimated volume of waste water or runoff related to the concrete batch plant. The Applicant should provide this information prior to any final decision in this matter. The Application asserts that “the disposal of concrete waste water will follow all necessary environmental regulations.” The Application narrative fails to identify “necessary environmental regulations” applicable to the disposal of concrete waste water, and do not provide sufficient information regarding the method of concrete waste water disposal sufficient to evaluate compliance with any applicable environmental regulations. It further claims that “any discharges from the concrete batch plant will be subject to measures that minimize the potential for accidental discharges during construction, and additional best practices, including containment for washout, will be utilized.” Oregon Shores was unable to locate sufficient information regarding the specific measures and best practices the Applicant proposes to use to allow for a robust evaluation of the proposed use against the applicable criteria. Further, Oregon Shores was unable to identify which sources of water (e.g. City, County, private well) the Applicant proposes to use for the production of concrete at the proposed plant. It is unclear how any byproduct water will be disposed. JCEP states that it will “employ dust suppression techniques to mitigate any impacts to air quality from concrete batching.” Again, Oregon Shores was unable to locate sufficient information regarding the specific dust suppression techniques the Applicant proposes to use to allow for a robust evaluation of the proposed use against the applicable criteria. The Applicant should provide the above information to the County and the public for review prior to any final decision in this matter.” (footnotes omitted)

See OSCC letter dated September 30, 2019 at pp. 7-8, Exhibit 4. OSCC fails to relate these concerns to specific Coos County approval criteria. In some cases, the hearings officer is able to “connect the dots” and relate the concerns to certain approval criteria, such as “compatibility” for the temporary concrete batch plant. That is not always possible, however.

The Applicant did “provide the above information to the County and the public for review prior to any final decision in this matter.” It is located in the following exhibits:

- ❖ Exhibit 14, subexhibit 27 - Draft Environmental Impact Statement (“DEIS”) issued by the Federal Energy Regulatory Commission (“FERC”) dated March 2019: This report assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act. It also proposes avoidance, minimization, and mitigation measures.
- ❖ Exhibit 14, subexhibit 28 - Supplemental Response to Comments on DEIS dated September 3, 2019: This letter includes JCEP’s responses filed with FERC to comments regarding the DEIS for the Project and the Pacific Connector Gas Pipeline.
- ❖ Exhibit 14, subexhibit 30 - Response to FERC Environmental Information Request dated October 4, 2019: This submittal from JCEP to FERC addresses the Bureau of Land Management’s questions regarding the Project’s industrial wastewater pipeline.
- ❖ Exhibit 14, subexhibit 33 - Letter from Black & Veatch dated January 11, 2016: This letter from Black & Veatch engineer Earl Himes Jr., explains how the Project industrial emissions will not adversely affect airport approach surfaces.
- ❖ Exhibit 14, subexhibit 34 - Resource Report No. 9 (Air and Noise Quality): This report was submitted by JCEP to FERC to evaluate air and noise impacts caused by construction and operation of the Project and to propose measures to mitigate such impacts.
- ❖ Exhibit 14, subexhibit 35 - Letter Addressing Concrete Batch Plant dated October 28, 2019: This letter, which was prepared by the joint venture team of Kiewit, Black & Veatch, and JGC, describes and depicts the proposed concrete batch plant, its potential impacts, and measures designed to minimize and mitigate those impacts to existing surrounding uses.

The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence. In light of this evidence, the hearings officer finds the proposed fire station is compatible with surrounding uses, via the use of Best Management Practices, as set forth in Exhibit 14, subexhibits 33, 34, and 35, and any incompatibilities shall be addressed by conditions of approval.

The area proposed for the plant is bounded by large swaths of currently vacant IND-zoned property to the north and south, which is currently vacant and is owned by JCEP. To the east and west of the area lie, respectively, a small sliver of recreation-zoned property abutting the bay and an area of recreation-zoned property. The area where JCEP proposes to construct the plant is compatible with the areas to the north and south because they share the same IND zoning and therefore can accommodate similar uses over time. The area is compatible with the recreation-zoned areas to the east because this area is currently undeveloped. The single use to the west is a commercial campground facility, and discussions with the owner and operator indicate that they support the proposed use at this location and foresee no incompatibility. Thus, the concrete batch plant is compatible with surrounding uses.

ii. Within a City Urban Growth Boundary:

i. Signage – This category does not apply to address markers/stakes, County Road signs, or State or Federal Highway signs. This requirement only applies in the City of Bandon Urban Growth Boundary.

a) All signs must be located on the same property on which the activity to which the sign refers is located. Signs attached to a building, which are allowed by a temporary right-of-way permit to extend into the right-of-way, are not considered off-site signs.

b) No sign shall interfere with the required vision clearance area.

c) Signs placed on or affixed to vehicles and/or trailers which are parked in the public right-of-way, public property, or private property so as to be visible from a public right-of-way where the apparent purpose is to display the sign are prohibited.

d) The area of a sign shall be the area of the smallest rectangle required to encompass the outside of all words, numbers, letters, logos and symbols.

e) Electronic displays or reader boards are prohibited.

f) Manually changed reader boards are prohibited except the following:

i. Gas station price signs;

ii. An eating and drinking establishment may have one erasable sign, provided that it does not exceed six square feet in area and it does not intrude into the right-of-way.

iii. A church may have a bulletin board not exceeding ten (10) square feet in area, provided it has been approved by the Planning Commission as part of the Conditional Use.

iv. When the angle of a double-sided sign is less than 10 degrees, only one side will be calculated in the sign area.

g) Signs, except as otherwise specifically allowed herein, are prohibited in the public right-of-way.

h) No freestanding sign shall exceed a height of fifteen (15) feet, measured from existing grade to the highest point of the sign.

i) No sign attached to any building shall exceed twenty (20) feet in height, or the height of the building, whichever is less.

- j) No single sign shall exceed forty-eight (48) square feet in size.***
- k) Except as otherwise allowed in this chapter, all signs shall comply with the building setback requirements.***
- l) No sign projecting from a structure or mounted on a pole shall be less than eight feet above the ground at its lowest point.***
- m) No freestanding signs shall be permitted in the public right-of-way, except as otherwise specifically allowed in this Chapter.***
- n) Signs attached to a building and projecting into a public right-of-way shall require a temporary right-of-way permit approved by County Road Department or ODOT depending on the type of road.***
- o) No sign, or portion thereof, shall be so placed as to obstruct any fire escape or human exit from any portion of a building.***
- p) The total exterior sign area for a building shall not be affected by the number of businesses located in the building. The building owner is ultimately responsible for allocating this allowed area to the businesses located therein and for insuring compliance of sign area limitations in the case of multiple businesses being located on a property.***
- q) Nuisances or Hazardous Conditions prohibited:***
 - i. The illumination of signs shall be designed to eliminate negative impacts on surrounding right-of-way and properties.***
 - ii. No sign or light source shall create a distraction, hazard, or nuisance.***
 - iii. Signs shall not be used at a location or in a manner so as to be confused with, or construed to be, traffic control devices.***
 - iv. All signs shall be securely fastened to their supporting surface or structure.***
- r) An eating and drinking establishment may attach to a window a menu, identical to those distributed to customers. Such a menu will not be used in the calculation of total sign area allowed.***
- s) Incidental signs displayed strictly for a direction, safety, or the convenience of the public, including but not limited to signs that identify restrooms, public telephones, parking area entrances, and exits are allowed. Individual signs in this category shall not exceed two square feet in area, and shall not be considered in calculating the total sign area allowed.***

Hearings Officer's Findings: The concrete batch plant is not within a city UGB. Therefore, these criteria do not apply to the plant.

iii. Design Standards:

1. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;

Hearings Officer's Findings: The landscape for the concrete batch plant will be designed and installed to minimize soil erosion. The remainder of the criterion does not apply to the plant because there are no boundaries of the site that abut public roads or property lines that are common to other owners of property that are zoned for residential.

2. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent Urban Residential, Rural Residential or Controlled Development district.

Hearings Officer's Findings: This criterion does not apply to the concrete batch plant because the proposed development site does not abut urban residential, rural residential, or controlled development zones.

3. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of this zoning designation, screen plantings or other screening methods;

Hearings Officer's Findings: Exposed storage areas, service areas, utility buildings, structures, and similar accessory areas and structures at the site of the concrete batch plant will comply with all setbacks, screen plantings, or other screening methods of the IND zone.

4. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and

Hearings Officer's Findings: Trash service will be provided to the concrete batch plant.

5. Hours of operation may be required in areas predominantly surrounded by residential zones.

Hearings Officer's Findings: This criterion does not apply to the concrete batch plant because it is not predominantly surrounded by residential zones.

CCZLDO 4.3.225 - IND Zone - General Siting Standards

All new USES, ACTIVITIES and DEVELOPMENT are subject to the following siting standards:

(1) Agricultural and Forest Covenant - Any applicant for a dwelling permit adjacent to a Forest or Exclusive Farm Zone shall sign a statement on the Compliance Determination or Zoning Clearance Letter acknowledging that: "the normal intensive management practices occurring on adjacent resource land will not conflict with the rural residential landowner's enjoyment of his or her property.

Hearings Officer's Findings: None of the IND Zone Proposals are located adjacent to a forest or exclusive farm use zone. Therefore, this criterion does not apply to the IND Zone Proposals.

(2) Fences, Hedges, and Walls: No requirement, but vision clearance provisions of Section 7.1.525 apply.

Hearings Officer's Findings: None of the IND Zone Proposals involve fences, hedges, or walls. The vision clearance standards of CCZLDO §7.1.525 forbid visual obstructions greater than thirty-six (36) inches in height within a "vision clear area," which is an area along the right-of-way of the street for a minimum of 100 feet where the speed limit is less than 35 M.P.H, and not less than 150 feet where the speed limit is greater than 35 m.p.h. The clear vision area shall be effective from a point in the center of the access not less than 25 feet back from the street right-of-way line. The IND Zone Proposals will not involve visual obstructions within the vision clear area that CCZLDO §7.1.525 establishes. Therefore, the IND Zone Proposals satisfy these criteria.

(3) Limitation on uses of manufactured dwellings/structures for commercial purposes pursuant to ORS 466 et seq. Manufactured dwellings shall not be used for commercial purposes except:

- (a) Where use of the manufactured dwelling for commercial purposes is authorized by the Building Codes Agency.***
- (b) Where used as a temporary sales office for manufactured structures; or***
- (c) As part of an approved home occupation. [OR-92-07-012PL]***

Hearings Officer's Findings: None of the IND Zone Proposals involve the use of manufactured dwellings for commercial purposes. Therefore, these criteria do not apply to the IND Zone Proposals.

(4) New lots or parcels - Creation of lots or parcels, unless it meets the circumstances of 5.6.130, shall meet the street frontage, lot width, lot depth and lot size. Minimum road frontage/lot width shall be met unless waived by the Planning Director in consultation with the County Surveyor and County Roadmaster due to creating an unsafe or irregular configuration:

- (a) Minimum Street frontage should be at least 30 feet; and***
- (b) Minimum lot width and Minimum lot depth is 50 feet.***

Minimum parcel/lot size cannot be waived or varied unless otherwise provided by a specific zoning regulation. Tax lot creation and consolidations do not change the legally created status of a lot or parcel.

Hearings Officer's Findings: None of the IND Zone Proposal involves the creation of a new lot or parcel. Therefore, these criteria do not apply to the IND Zone Proposals.

(5) Parking - Off-street access, parking and loading requirements per Chapter VII apply.

Hearings Officer's Findings: The IND Zone Proposals are subject to the parking requirements of Chapter 7.5. CCZLDO §7.5.175 lists the parking required by specific use. CCZLDO §7.5.100.5 explains that “[p]arking space requirements for a use not specifically mentioned shall be the same as for a use which has similar traffic-generating characteristics as determined by the Planning Director.” The Applicant has submitted diagrams showing its parking plan (e.g., Application Exhibit 4 and the KBJ Overall Plot Plan), and it certainly appears it is feasible for the Applicant to meet the CCZLDO Chapter 7 requirements due to the ample space, suitable terrain, traffic volume, etc. Still, it is somewhat unclear whether these plans demonstrate full compliance with all of the CCZLDO §7.5.150 requirements (such as providing 16 sf of landscaping for each 10 required parking spaces, and each 16-sf area of landscaping including one tree and one three-gallon shrub or living ground cover, as mandated by CCZLDO §7.5.150.5).

Therefore, the hearings officer recommends a Condition of Approval requiring the Applicant to submit a Parking Plan demonstrating compliance with all of the CCZLDO §7.5 requirements, to be determined by the Planning Director in consultation with the Roadmaster.

With this Condition of Approval, the IND Zone Proposals can satisfy this criterion.

The IND Zone Proposals' compliance with additional parking requirements is discussed below.

(6) Riparian -

(a) Riparian vegetation setback within 50 feet of an estuarine wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps, shall be maintained except:

- i. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.***
- ii. Riparian vegetation may be removed to provide direct access for a water-dependent use if it is a listed permitted within the zoning district;***
- iii. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures;***

- iv. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan;*
- v. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways;*
- vi. 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 to site or maintain irrigation pumps; or*
- vii. The 50-foot 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 is not more than 100% of the size of the existing structure's "footprint".*

(b) Riparian removal within the Coastal Shoreland Boundary requires an Administrative Conditional Use application and review. See Special Development Considerations Coastal Shoreland Boundary.

(c) The 50' measurement shall be taken from the closest point of the ordinary high-water mark to the structure using a right angle from the ordinary high water mark.

Hearings Officer's Findings: None of the IND Zone Proposals are located within 50 feet of an estuarine wetland, stream, lake or river identified by the applicable County maps. Therefore, these criteria do not apply to the IND Zone Proposals.

(7) Setbacks:

- (a) All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from the right-of-way line, whichever is greater. This setback may be greater under specific zoning siting requirements.***
- (b) Firebreak Setback - New or replacement dwellings on lots, parcels or tracts abutting the "Forest" zone shall establish and maintain a firebreak, for a distance of at least 30 feet in all directions. Vegetation within this firebreak may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.***

Hearings Officer's Findings: All of the IND Zone Proposals except for the IWWP, which is not a building or structure, will comply with the thirty-five-foot setback from any road right-of-way centerline or five feet from the right-of-way- line, whichever is greater. Therefore, all the IND Zone Proposals comply with subsection (a) above.

Furthermore, none of the IND Zone Proposals abuts the forest zone. Therefore, subsection (b) above does not apply to any of the IND Zone Proposals.

CCZLDO 7.5 - Additional Parking Requirements

CCZLDO 7.5.150 - Parking Area Design

- 1. Ingress and Egress: In any zoning district, driveways or access ways providing ingress and egress for private/public parking areas or garages and parking spaces shall be permitted, together with any appropriate traffic control devices in any required yard or setback area.**

Hearings Officer's Findings: This section does not impose approval criteria on the IND Zone Proposals.

- 2. Minimum Standards for Parking: All public or private parking areas and parking spaces shall be designed and laid out to conform to the minimum standards as specified in the Parking Table and Diagram. All parking lot designs shall be reviewed and approved by the County Roadmaster.**

Hearings Officer's Findings: The Applicant has submitted diagrams showing its parking plan (e.g., Application Exhibit 4 and the KBJ Overall Plot Plan), and it certainly appears it is feasible for the Applicant to meet the CCZLDO Chapter 7 requirements due to the ample space, suitable terrain, traffic volume, *etc.* Still, it is somewhat unclear whether these plans demonstrate full compliance with all of the CCZLDO §7.5.150 requirements. These are ministerial, non-discretionary matters.

Therefore, the hearings officer recommends a Condition of Approval requiring the Applicant to submit a Parking Plan demonstrating compliance with all of the CCZLDO §7.5 requirements, to be determined by the Planning Director in consultation with the Roadmaster.

With this Condition of Approval, the proposal can satisfy this criterion.

- 3. Service Drive: Groups of three or more parking spaces, except those in conjunction with single-family or two-family dwelling structures on a single lot, shall be served by a service drive so that no backward movement, or other maneuvering of a vehicle within a public right-of-way, other than an alley, will be required. Service drives shall be designed and constructed to facilitate the flow of traffic, provide maximum safety for ingress and egress and maximum safety of pedestrians.**

Hearings Officer's Findings: The Applicant has submitted diagrams showing its parking plan (e.g., Application Exhibit 4 and the KBJ Overall Plot Plan), and it certainly appears it is feasible for the Applicant to meet the CCZLDO Chapter 7 requirements due to the ample space, suitable terrain,

traffic volume, etc. Still, it is somewhat unclear whether these plans demonstrate full compliance with all of the CCZLDO §7.5.150 requirements (such as parking areas will have service drives to eliminate the need for backward movement or other maneuvering of vehicles and to facilitate the flow of traffic, provide maximum safety for ingress and egress and maximum safety for pedestrians). Therefore, the hearings officer recommends a Condition of Approval requiring the Applicant to submit a Parking Plan demonstrating compliance with all of the CCZLDO §7.5 requirements, to be determined by the Planning Director in consultation with the Roadmaster. These are ministerial, non-discretionary matters.

With this Condition of Approval, the proposal can satisfy this criterion.

4. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or use.

Hearings Officer's Findings: None of the IND Zone Proposals abuts a residential zone. This criterion does not apply to the Application.

5. Landscaping: For every 10 required parking spaces, 16 square feet of landscaping will be required. Each 16 square foot area should include one tree and three one-gallon shrubs or living ground cover.

Hearings Officer's Findings: The Applicant has submitted diagrams showing its parking plan (e.g., Application Exhibit 4 and the KBJ Overall Plot Plan), and it certainly appears it is feasible for the Applicant to meet the CCZLDO Chapter 7 requirements due to the ample space, suitable terrain, traffic volume, etc. Still, it is somewhat unclear whether these plans demonstrate full compliance with all of the CCZLDO §7.5.150 requirements (such as providing 16 sf of landscaping for each 10 required parking spaces, and each 16-sf area of landscaping including one tree and one three-gallon shrub or living ground cover, as mandated by CCZLDO §7.5.150.5). Therefore, the hearings officer recommends a Condition of Approval requiring the Applicant to submit a Parking Plan demonstrating compliance with all of the CCZLDO §7.5 requirements, to be determined by the Planning Director in consultation with the Roadmaster. These are ministerial, non-discretionary matters.

With this Condition of Approval, the proposal can satisfy this criterion.

6. Sign standards: All signs must comply with the current manual on uniform traffic control devices.

Hearings Officer's Findings: The Applicant has stated that all signage in all parking areas associated with the IND Zone Proposals will comply with the current manual on uniform traffic control devices.

CCZLDO 4.3.230 - IND Zone - Additional Siting Standards

(6) Industrial (IND) and Airport Operations (AO) - The following siting standards apply to all USES, activities and development within the IND and AO zoning districts.

(a) Minimum lot/parcel size –

- i. No minimum lots size standard for this zone.**
- ii. Minimum street frontage and minimum lot width is 20 feet.**

Hearings Officer's Findings: The IND Zone Proposals, with the exception of the IWWP which is a utility pipeline and not a building or structure, will comply with the 20-foot minimum street frontage and lot width requirement of subsection (a)(ii) above.

Subsection (a)(i) does not impose approval criteria on the IND Zone Proposals.

(b) Setback -

- i. Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts.**
- ii. Setback exception – Front yard setback requirements of this Ordinance shall not apply in any residential district where the average depth of existing front yards on developed lots within the same zoning district block, but no further than 250 feet from the exterior side lot lines of the lot and fronting on the same side of the street as such lot, is less than the minimum required front yard building setback. In such cases the front yard setback requirement on any such lot shall not be less than the average existing front yard building setback.**

Hearings Officer's Findings: The IND Zone Proposals do not abut a residential zone. These criteria do not apply to the Application.

- (c) Building Height - does not have any requirement, except those sites abutting a residential or controlled development zone shall have a max height of 35 feet plus one (1) additional foot in height for each foot of setback exceeding 5 feet (i.e. if the setback is 10 feet, the maximum building height would be 40 feet). However, spires, towers, domes, steeples, flag poles, antennae, chimneys, solar collectors, smokestacks, ventilators or other similar objects may be erected above the prescribed height limitations, provided no usable floor space above the height limits is added. Such over height object shall not be used for advertising of any kind.**

Hearings Officer's Findings: None of the IND Zone Proposals involve a building on a site that abuts a residential or controlled development zone. Therefore, this criterion does not apply to the IND Zone Proposals.

(d) Building Density or Size limits –

- i. For building or buildings located within an Unincorporated Community Boundary as adopted by the Coos County Comprehensive Plan Volume 1 Part 2 § 5.5 the following square foot requirements apply:**

- 1. Urban Unincorporated Community shall not exceed 60,000 square feet of floor space; or**
- 2. Rural Unincorporated Community shall not exceed 40,000 square feet of floor space.**

Hearings Officer's Findings: None of the IND Zone Proposals are located within an unincorporated community boundary. Therefore, these criteria do not apply to the IND Zone Proposals.

(e) Design Standards:

- i. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;**

Hearings Officer's Findings: The landscape for the IND Zone Proposals will minimize soil erosion. Furthermore, the exterior portions of the properties where the IND Zone Proposals are located will provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all site boundaries abutting public roads. None of the IND Zone Proposals abut a residential zone. Therefore, the IND Zone Proposals comply with this criterion.

- ii. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent Rural Residential, Urban Residential or Controlled Development Zoning districts.**

Hearings Officer's Findings: None of the IND Zone Proposals abuts a residential zone. This criterion does not apply to the Application.

- iii. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the zoning designation, screen plantings or other screening methods;**
- iv. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and**
- v. Hours of operation may be required in areas predominantly surrounded by residential zones.**

Hearings Officer's Findings: With respect to each of the IND Zone Proposals (except the IWWP, which is a utility pipeline) any exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures will comply with the applicable setbacks of the zoning designation, trash service will be provided to each individual proposal, and the area for trash service is identified on the plot plan.

Subsection (v) above is not an approval criterion.

CCZLDO 4.11 - IND Zone - Special Development Considerations

CCZLDO 4.11.125.1 - Mineral & Aggregate Plan Implementation Strategies (Balance of County Policy 5.5)

CCZLDO 4.11.125.1 imposes approval criteria on development within 500 feet of a County-mapped protected mineral and aggregate site.

Hearings Officer's Findings: None of the IND Zone Proposals are within 500 feet of a County-mapped protected mineral and aggregate site. Therefore, this criterion does not apply to the IND Zone Proposals.

CCZLDO 4.11.125.2 - Water Resources (Balance of County Policy 5.8)

The water resources maps have inventoried the following:

- **Existing municipal watersheds;**
 - **Watersheds for potential reservoir sites;**
 - **Dam & Reservoir sites considered suitable by the Water Resources Department;**
 - **Possible Future Reservoir sites suggested by Coos Bay-North Bend Water Board;**
 - **Existing wells in the Dunes Aquifer;**
 - **Approximate extent of Dunes Aquifer; and**
 - **Existing Water District Withdrawal Points.**
- a. 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 Coos County Health Department 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.**

Hearings Officer's Findings: None of the IND Zone Proposals are located within an area where the Oregon State Water Resources Department, the Oregon State Environmental Quality Commission, or the Coos County Health Department 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. Therefore, this criterion does not apply to the IND Zone Proposals.

b. Coos County shall protect the following dam sites identified by the Oregon Water Policy Review Board for possible future water resource development or until alternative methods of meeting water needs are developed:

- ***West Fork of the Millicoma River, site 223.***
- ***South Fork of Coquille River at Eden Ridge, Site 430.***
- ***North Fork Coquille River, Site 146A.***
- ***Rock Creek at Rasler Creek, Site 201.***
- ***Catching Creek, Site 101.***
- ***Fourmile Creek, Site 158.***
- ***Joe Ney Slough, (no site number)***
- ***North Fork Floras Creek at Oakietown, Site 435.***

(Source: Oregon State Water Resources Department) Implementation shall occur through appropriate designation on the Water Resource Map, which is an implementation measure." Interim uses shall be limited to farm and forest uses, as these do not materially interfere with the possible use of these sites for dams. This strategy recognizes: (1) the responsibility of the State Water Policy Board under ORS 536.300 to study and formulate programs for the use and control of water resources in the state, and (2) the responsibility of the county to protect potential water resources consistent with Oregon Statewide Planning Goal #5 provisions.

Hearings Officer's Findings: None of the IND Zone Proposals are located within one of the above-listed dam sites. Therefore, this criterion does not apply to the IND Zone Proposals.

CCZLDO 4.11.125.3 - Historical, Cultural and Archaeological Resources, Natural Areas and Wilderness (Balance of County Policy 5.7)

The Historical/Archeological maps have inventoried the following:

- ***Historical;***
- ***Area of Archaeological Concern;***
- ***Botanical; and***
- ***Geological Resources.***

Purpose Statement:

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.

a. Historical Structures: 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:

- i. This strategy shall be implemented by requiring Planning Director review of site and architectural plans. The proposed project shall be consistent with the original historical character of the site and structure.**
- ii. This strategy recognizes that enlargement, expansion or modification of historical structures is not inconsistent with Coos County's historic preservation goal. The Planning Director shall approve the alteration or modification if the proposal is found to be compatible with the character of the resource with respect to style, scale, texture and construction materials or it is found to enhance the historical value of the resource. Further, this strategy recognizes that the site and architectural modification may be necessary to preserve, protect or enhance the original historical character of the structure.**
- iii. If there is evidence to show that the cost of repairs or restoration cost more than the value of the structure then the Planning Commission may authorize the structure to be removed and replaced with something of like value.**
- iv. Staff shall refer to the Oregon State Historical Preservation Office data for details on locations of historical structures.**

Hearings Officer's Findings: None of the IND Zone Proposals involve the expansion, enlargement or other modification of an identified historical structure or site. Therefore, these criteria do not apply to the IND Zone Proposals.

b. Areas of Archaeological Concern: Coos County shall continue to refrain from widespread dissemination of 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.

- i. 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).**

- ii. Properties which have been determined to have an "archaeological site" location must comply with the following steps prior to issuance of a "Zoning compliance Letter" for building and/or septic permits.**
- 1) The County Planning Department shall make initial contact with the Tribe(s) for determination of an archaeological site(s). The following information shall be provided by the property owner/agent:**
 - a) Plot plan showing exact location of excavation, clearing, and development, and where the access to the property is located;**
 - b) Township, range, section and tax lot(s) numbers; and**
 - c) Specific directions to the property.**
 - 2) The Planning Department will forward the above information including a request for response to the appropriate tribe(s).**
 - 3) The Tribe(s) will review the proposal and respond in writing within 30 days to the Planning Department with a copy to the property owner/agent.**
 - 4) It is the responsibility of the property owner/agent to contact the Planning Department in order to proceed in obtaining a "Zoning Compliance Letter" (ZCL) or to obtain further instruction on other issues pertaining to their request.**
- iii. 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).**
- iv. 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).

Hearings Officer's Findings: None of the IND Zone Proposals are within, and none will affect, an archaeological site identified on the County's "Goal 5 Element Historical, Botanical, Geological & Archaeological Locations" map. Therefore, these criteria do not apply to the IND Zone Proposals. However, the applicant has submitted an agreement with the tribes to ensure any unanticipated discover will be covered.

c. Botanical: Coos County shall protect sites of special botanical interest by use of appropriate zoning for the site inventoried on the Botanical Resources Map. Such significant Botanical Areas shall be preserved in their natural character, as consistent with the zoning established for the site. However, this is not meant to preclude the development of residences adjacent to the Yoakum Point Darlingtonia Bog; as otherwise allowed by the Coos County Comprehensive Plan, residences may be permitted adjacent to the bog provided care is taken during construction of such to ensure that the bog is not disturbed in any way. This strategy recognizes the value of Significant Botanic Areas, and also that residential development can occur in a compatible way with the Yoakum Point Darlingtonia Bog.

Hearings Officer's Findings: None of the IND Zone Proposals are within an area of special botanical interest identified on the County's "Goal 5 Element Historical, Botanical, Geological & Archaeological Locations" map. Therefore, this criterion does not apply to the IND Zone Proposals.

d. Geological Sites: Coos County shall protect the Geologic Sites inventories on the Geologic Resources Map through appropriate zoning that preserves the sites in their natural character. Appropriate zoning (as designated on the Official Zoning Map) and public ownership of the sites ensures that the sites will be preserved in their natural character. This strategy recognizes the value of inventoried Geologic Sites.

Hearings Officer's Findings: None of the IND Zone Proposals are within a Geologic Site that is inventoried and identified on the County's "Goal 5 Element Historical, Botanical, Geological & Archaeological Locations" map. JCEP incorporates its response to CBEMP Policy #18 set forth later in this narrative in response to this criterion.

CCZLDO 4.11.125.4 - Beaches and Dunes (Policy 5.10)

The Beaches and Dunes map has inventoried the following:

Beaches and Dunes:

- **Suitable for most uses; few or no constraints (Does not require a review)**
- **Limited Suitability; special measures required for most development**

- **Not Suitable for Residential, commercial or Industrial Structures**

Purpose Statement:

Coos County shall base policy decisions for dunes on the boundaries for these areas as identified on the plan map titled “Development Potential within Ocean Shorelands and Dunes” and the boundaries delineates following specific areas "Suitable", "Limited Suitability" and "Not Suitable" areas of development potential.

- a. **Limited Suitability: “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.**

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 designated mitigation sites must be protected from other uses.

Implementation shall occur through an Administrative Conditional Use process, which shall include submission of a site investigation report that addresses this subsection, by a qualified registered and licensed geologist or engineer.

- i. **Coos County shall permit development within areas designated as "Beach and Dune Areas with Limited Development Suitability" 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.**

Hearings Officer’s Findings: Among the IND Zone Proposals, only the IWWP is within an area identified by County maps as a beach or dune area with limited development suitability. These criteria do not apply to the IND Zone Proposals, except for the IWWP.

The IWWP is within a beach or dune area of limited development suitability, according to the County’s Development Potential within Ocean Shorelands and Dunes map. Therefore, the code requires that JCEP submit a site investigation report from a qualified registered and licensed geologist or engineer that addresses the above criteria.

JCEP has met this requirement with a technical memorandum prepared by SHN Consulting Engineers & Geologists, Inc., which provides analysis and evidentiary support for a conclusion of consistency with this Policy. The subject report is found in the Record as Application Exhibit 11. That report concludes:

“Based on the assessment described herein, and the required implementation of specific BMPs described herein and attached as Exhibit A and B, we conclude based on our best professional judgment, that the development of the proposed facilities as described is a suitable activity relative to Limited Suitability Development dune areas will be consistent with Policy 30 review criteria as established under the CBEMP. Further, the intended uses are consistent with past and current industrial uses in the immediate project vicinity.”

See “Focused Development Suitability Analysis to Provisions of the Coos Bay Estuary Management Plan, Policy #30 Beaches and Dunes,” prepared by SHN Consulting Engineers & Geologists, Inc. (July 2019), Applicant’s Exhibit 11, p. 15.

- ii. 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. Coos County shall cooperate with state and federal agencies in regulating the following actions in the beach and dune areas with limited development potential:***
 - a) Destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage);***
 - b) The exposure of stable and conditionally stable areas to erosion;***
 - c) Construction of shore structures which modify current air wave patterns leading to beach erosion; and***
 - d) Any other development actions with potential adverse impacts.***

Hearings Officer’s Findings: This subsection (ii) does not impose approval criteria on the IND Zone Proposals.

b. Unsuitable: Coos County shall prohibit residential development and commercial and industrial buildings within areas designated as "Beach and Dune Areas Unsuitable for Development". The "Beach and dune Areas Unsuitable for Development" includes: active foredunes; other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping; and interdune areas (deflation plains) that are subject to ocean flooding.

The measures prescribed in this policy are specifically required by Statewide Planning Goal #18 for the above referenced dune forms, and that 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.

Implementation shall occur through an Administrative Conditional Use process, which shall include submission of a site investigation report by a registered civil engineer or geologist that addresses this subsection. Coos County shall permit other developments in these areas only:

i. When specific findings have been made 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, and

ii. When it is demonstrated that the proposed development:

a) is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and

b) is designed to minimize adverse environmental effects, and

iii. When breaching of foredunes is contemplated the following specific criteria has to be addressed:

a) the breaching and restoration is consistent with sound principles of conservation, and either

b) the breaching is necessary to replenish sand supply in interdune areas, or

c) 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).

iv. 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. Coos County shall cooperate with state and federal agencies in regulating the following actions in the beach and dune areas with limited development potential:

a) Destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage);

- b) The exposure of stable and conditionally stable areas to erosion;**
- c) Construction of shore structures which modify current air wave patterns leading to beach erosion; and**
- d) Any other development actions with potential adverse impacts.**

Hearings Officer's Findings: None of the IND Zone Proposals are located in a beach or dune area that is "unsuitable" for development. Therefore, these criteria do not apply to the IND Zone Proposals.

CCZLDO 4.11.125.5 - Non-Estuarine Shoreland Boundary (Balance of County Policy 5.10)

The Coastal Shoreland Boundary map has inventoried the following:

- **Coastal Shoreland Boundary**
- **Beach Erosion**
- **Coastal Recreation Areas**
- **Area of Water-Dependent Uses**
- **Riparian Vegetation**
- **Fore Dunes**
- **Head of Tide**
- **Steep Bluffs over 50% Slope**
- **Significant wetland wildlife habitats**
- **Wetlands under agricultural use**
- **Areas of Exceptional Aesthetic or Scenic Quality and Coastal Headlands**
- **Headland Erosion**

Purpose Statement:

Protection of major marshes (wetlands), habitats, headlands, aesthetics, historical and archaeological sites: 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. 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.

Coos County shall consider:

i. "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;

ii. "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;

iii. "Coastal headlands" to include Yoakum Point, Gregory Point, Shore Acres, Cape Arago south to Three-Mile Creek, Five Mile Point, and Coquille Point;

iv. "Exceptional resources Aesthetic or Scenic Quality" to include the coastal headlands identified above, and other areas identified in the Coastal Shorelands Inventory Map; and

v. "Historical, cultural and archaeological sites" to include those identified in the Historical, Cultural and Archaeological Sites Inventory and Assessment.

Hearings Officer's Findings: JCEP acknowledges this aspirational policy and implementation objectives but notes that these provisions do not constitute approval criteria that apply to the IND Zone Proposals.

a. Uses allowed within the Coastal Shoreland Boundary: 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.

i. Uses within the Coastal Shoreland Boundary: 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 are allowed 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; or g) any other uses, provided that the Board of Commissioners determines that such uses:**
- g) **any other uses, provided that the Board of Commissioners determines that such uses:**
 - a. **Satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas;**
 - b. **Are compatible with the objectives of Statewide Planning Goal #17 to protect riparian vegetation and wildlife habitat;**
 - c. **The "other" use complies with the implementation standard of the underlying zone designation; and**
 - d. **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.**

Hearings Officer's Findings: JCEP states that it acknowledges the above policy objectives, but correctly notes that these provisions do not constitute approval criteria that apply to IND Zone Proposals. CCZLDO §4.11.125(5)(a)(i)(a)-(g) above explain that the County must manage its rural areas within the Coastal Shorelands Boundary "through implementing ordinance measures that allow the following uses[.]" These provisions do not themselves restrict the uses allowed in rural areas within the Coastal Shorelands Boundary, including where JCEP proposes to construct the IND Zone Proposals. Rather, these provisions obligate the County to implement such restrictions through separate ordinances. These provisions do not create any obligation for JCEP or this Application. Therefore, they do not constitute approval criteria for this Application.

However, because all of the IND Zone Proposals except the concrete batch plant proposed in Section II.A.3. of the Application and portions of the temporary construction laydown proposed in Section II.A.10. of the Application (Boxcar Hill laydown) are located within the County's Coastal Shorelands Boundary, this narrative addresses the remaining provisions of CCZLDO §4.11.125(5).

- ii. **A site plan and design review is only necessary when required in Coos County Comprehensive Plan Volume I Part 3 § 3.5: Structures associated with the above uses, with the exception of farm and forest uses, shall only be permitted after an Administrative Conditional Use Review or higher review addressing the criteria and**

requirements of this subsection below and upon a finding that such uses do not otherwise conflict with the Special Development Considerations and Overlay Zones found in this Ordinance.

- a) Site Review and Approval Criteria. Construction, site development and landscaping shall be carried out in substantial accord with the plans, drawings, sketches and other documents as approved.**

Nothing in this subsection shall be construed to prevent ordinary repair, maintenance and replacement of any part of the building or landscaping which does not involve a substantial change from the purpose and objectives of this section. Proposed “substantial changes” shall be submitted to the Planning Director for approval. All variances from the site development criteria which are deemed necessary by the applicant shall be requested pursuant to ARTICLE 5.3. These standards are intended to provide a frame of reference for the applicant to the development of a site and building plans as well as a method of review. These standards shall not be regarded as inflexible requirements, nor do they advocate any particular architectural style, for they are intended to encourage creativity, invention and innovation. The following standards shall be utilized in reviewing the plans, drawings, sketches and other documents required under for this review:

1. Landscaping

- a. The landscape shall be such to minimize soil erosion and lessen the visual impact;**
- b. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.**

2. Structures

- a. Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed buildings;**
- b. The achievement of such relationship may include the enclosure of space in conjunction with other existing buildings or other proposed buildings and the creation of focal points with respect to avenues of approach, terrain features or other buildings.**

3. Drives, Parking and Circulation

With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to the location and number of access points, general

interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and must comply with the standards found in Chapter VII. The Roadmaster is responsible for determining compliance with this subsection.

4. Surface Water Drainage

Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties, the public storm drainage system, or create environmental problems.

5. Utility Service

- a. Whenever feasible, electric, telephone and other utility lines shall be underground;**
- b. Any utility installations remaining above ground shall be located so as to have a harmonious relation to neighboring properties and the site;**
- c. The proposed method of sanitary sewage disposal from all buildings shall be indicated.**

Hearings Officer's Findings: Coos County Comprehensive Plan Volume I, Section 3.5 does not require site plan and design review for the IND Zone Proposals located outside of the Non-Estuarine Coastal Shorelands Boundary. The proposed uses are not located within a non-estuarine Coastal Shorelands Boundary as shown in the Coos County Comprehensive Plan Maps. Therefore, these criteria do not apply to the IND Zone Proposals.

b) Application Submittal and Review Procedure.

1. Submission of Documents - A prospective applicant for a building or other permit who is subject to site design review shall submit the following to the County Planning Director:

- a. A site plan, drawn to scale, shows the proposed layout of all structures and other improvements;**
- b. A landscape plan, drawn to scale, showing the location of existing trees proposed to be retained on the site, the location and design of landscaped areas, the varieties and sizes of trees and plant materials to be planted on the site, other pertinent landscape features, and irrigation systems required to maintain trees and plant materials;**

c. Architectural drawings or sketches, drawn to scale, including floor plans, in sufficient detail to permit computation of yard requirements and showing all elevations of the proposed structures and other improvements as they will appear on completion of construction;

d. Specifications as to type, color and texture of exterior surfaces of proposed structures including reflective surfaces of solar collectors;

e. An application request which shall include:

1) Name and address of applicant;

2) Statement of applicant's legal interest in the property (owner, contract purchaser, lessee, renter, etc.) and a description of that interest, and in case the applicant is not the owner, verification of the owner's consent;

3) Address and legal description of the property;

4) Statement explaining the intended request;

5) The required fee; and

6) Any other materials or information as may be deemed necessary to assist in evaluation of the request. The request will be made prior to deeming the application complete. However, if this review is before the hearings body they may request for additional information to ensure compliance.

2. Threshold Standard. The Planning Director has the discretion to waive part or all of the site plan requirements if, in the Director's judgment, the proposed development is "de minimis" in extent to the existing development.

Hearings Officer's Findings: The IND Zone Proposals are not subject to site design review. Therefore, subsection 1 above does not apply. Subsection 2 is not an approval criterion for the IND Zone Proposals.

b. Land Divisions within the Coastal Shoreland Boundary: This strategy recognizes that Coos County's rural shorelands are a valuable resource and accordingly merit special consideration under Statewide Planning Goal #17. 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:

- i. 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;***
- ii. That the new land divisions fulfill a need that cannot otherwise be accommodated in other uplands or in urban and urbanizable areas;***
- iii. That the new land divisions are in a documented area, "committed" area; or***
- iv. That the new land divisions have been justified through a goal exception.***

Hearings Officer's Findings: None of the IND Zone Proposals involve a land division. Therefore, these criteria do not apply to the IND Zone Proposals.

c. Coastal Lakes and Minor Estuary Coastal Shorelands: Coos County shall consider the following general priorities for the overall use of ocean, coastal lake or minor estuary coastal shorelands (from highest to lowest):

- i. promote uses, which maintain the integrity of estuaries and coastal waters;***
- ii. provide for water-dependent uses;***
- iii. provide for water-related uses;***
- iv. provide for nondependent, nonrelated uses, which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;***
- v. provide for development, including nondependent, nonrelated uses, in urban areas compatible with existing or committed uses;***
- vi. permit nondependent, nonrelated uses, which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.***

In addition, priority uses for flood hazard and floodplain areas shall include agriculture, forestry, recreation and open space uses, which are water-dependent. This strategy shall serve as a guide when evaluating discretionary zoning and land development actions. This strategy recognizes Statewide Planning Goal #17 requirements.

Hearings Officer's Findings: This section does not constitute approval criteria that apply to the IND Zone Proposals.

d. Non-structural solutions for erosion control: Coos County shall prefer non-structural solutions to problems of erosion and flooding to structural solutions in ocean, coastal lake or minor estuary shorelands. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads, seawalls, and similar protective

structures and fill shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns. Implementation of this strategy shall occur through county review of and comment on state and federal permit applications for such projects. This strategy is based on the recognition that non-structural solutions are often more cost-effective as corrective measures but that carefully designed structural solutions are occasionally necessary.

Hearings Officer's Findings: This section does not constitute approval criteria that apply to the IND Zone Proposals.

e. Riparian vegetation in Coastal Shoreland Boundary: Maintain, restore or enhancing riparian vegetation as consistent with water dependent uses requires a conditional use. 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. Variances to riparian vegetation setback shall not be permitted within the CSB unless it is to allow for a water dependent use as permitted by the zoning. If a property owner would like to remove vegetation in the Coastal Shoreland Boundary then a conditional use is required. The Planning Department will request comments from ODFW and DEQ regarding water quality and fish habitat. An applicant may provide reports from a qualified biologist.

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.

Hearings Officer's Findings: None of the IND Zone Proposals is near a riparian area, will affect riparian vegetation, or will involve timber harvest. Therefore, this criterion does not apply to the IND Zone Proposals.

CCZLDO 4.11.125.6 - Significant Wildlife Habitat (Balance of County Policy 5.6)

Uses and activities deemed compatible with the objective of providing adequate protection for all identified Statewide Planning Goal 5 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.

- a. 5c Bird Sites protection shall be implemented by:**
- i. County reliance upon the Oregon Department of Forestry and Oregon Department of fish and Wildlife insuring adequate protection of "5c" bird sites from possible adverse impacts of timber management practices thru the Forest Practices Act;**
 - ii. Use of the Fish and Wildlife Plan Maps and detailed inventories above to identify "5c" bird sites subject to special protection;**
 - iii. For "5c" bird site protection, stipulating in the Zoning and Land Development Ordinance that conflicting uses shall be reviewed by the Oregon Department of Fish and Wildlife to determine that any proposed use is not expected to produce significant and unacceptable environmental impacts on any of the "5c" bird sites; and**
 - iv. Stipulating on County Zoning Clearance Letters that establishment of conflicting uses adjacent to "5c" bird sites shall be permitted only pursuant to the provisions of this policy.**
 - v. Coos County shall require a location map for any development activity with the exception of grazing within its regulatory scope that is determined to be within a "5c" bird habitat. The location map shall be referred to the Oregon Department of Fish and Wildlife requesting an opinion within 10 days as to whether the development is likely to produce significant and unacceptable impacts upon the "5c" resource, and what safeguards it would recommend to protect the resource. If ODFW's determinations the development will impact the "5c" bird habitat a conditional use will be required by the applicant. ODFW's and the applicants findings will be reviewed based upon sound principles of conservation and appropriate balancing of the ESEE consequences so if conflicting uses are allowed the resource site is protected to some extent. The ACU will be processed pursuant to Article 5.0. If ODFW's determination does not show any impacts then a zoning compliance letter may be issued if the use is permitted or has completed a conditional use process.**

Hearings Officer's Findings: None of the IND Zone Proposals are within a significant bird resting, feeding or nesting habitat that County maps identify. Therefore, these criteria do not apply to the IND Zone Proposals.

- b. 5b Bird Sites protection shall consider the following to be "5b" resources, pursuant to the inventory information available in this Plan and OAR 660-16-000(5)(b):**
- Osprey Nesting Sites**
 - Snowy Plover Habitat (outside the CREMP)**
 - Spotted Owl Nesting Sites**

This policy recognizes the requirements of OAR 660-16. Coos County's Planning Staff is unable to perform ground verification; therefore, the County relies on ODFW for the applicable information.

Coos County shall require a location map for any development activity with the exception of grazing within its regulatory scope that is determined to be within a "5b" bird habitat. The location map shall be referred to the Oregon Department of Fish and Wildlife requesting an opinion as to whether the development is likely to produce significant and unacceptable impacts upon the "5b" resource. Oregon Department of Fish and Wildlife staff shall respond prior to any development.

Hearings Officer's Findings: None of the IND Zone Proposals is within a significant bird resting, feeding or nesting habitat or a Snowy Plover habitat that County maps identify. Therefore, these criteria do not apply to the IND Zone Proposals.

c. BIG GAME RESOURCES AND HABITAT

Roosevelt elk, black-tailed deer, black bear and cougar are the big game species found in Coos County. Their estimated populations are given below:

Estimated big game population in Coos County, 1976. Species Estimated Population:

- ***Roosevelt Elk 4,953***
- ***Black-tailed Deer 10,632***
- ***Black Bear 1,066***
- ***Cougar 43***

The sensitive areas are entirely on the forestlands in the County, and there is no development in these areas. Peripheral areas have value as deer and elk habitat, but the wildlife value of these areas is reduced because of the density of existing development. The habitat value of impacted areas is limited or non-existent for big game because the density of development is too great. 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. A location map shall be provided to the Oregon Department of Fish and Wildlife requesting an opinion within 10 days as to whether the development is likely to produce significant and unacceptable impacts to the resource, and what safeguards it would recommend to protect the resource. This does not require a conditional use.

Hearings Officer's Findings: This criterion does not apply to IND Zone Proposals. The above explains that "the sensitive areas are entirely on forestlands in the County." All of the IND Zone Proposals are located in the County's IND zone.

CCZLDO 4.11.125.7 - Natural Hazards (Balance of County Policy 5.11)

The Natural Hazards map has inventoried the following hazards:

- **Flood Hazard**
 - **Riverine flooding**
 - **Coastal flooding**
- **Landslides**
- **Earthquakes**
 - **Liquefaction potential**
 - **Fault lines**
- **Tsunamis**
- **Erosion**
 - **Riverine streambank erosion**
 - **Coastal**
 - **Shoreline and headlands**
 - **Wind**
- **Wildfire**
 - **High wildfire hazard**
 - **Gorse fire**

Purpose Statements:

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 river and coastal flooding, landslides, liquefaction potential due to earthquakes, fault lines, tsunamis, river bank erosion, coastal erosion along shorelines and headlands, coastal erosion due to wind, and wildfires, including those areas affected by gorse.

This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property associated with new development. The determination of whether a property is located in

one of the above referenced potentially hazardous areas shall be made by the reviewing body (Planning Director, Planning Commission, Board of Commissioners, or any designee based upon adopted inventory mapping). A specific site may not include the characteristics for which it is mapped. In these circumstances staff shall apply § 5.11.100.2.c.

Hazard review shall not be considered applicable to any application that has received approval and requesting an extension to that approval or any application that was deemed completed as of the date this ordinance effective (July 31, 2017). If a land use authorization has expired the applicant will be required to address any applicable hazards.

- a. Flooding: Coos County shall promote protection of valued property from risks associated with river and coastal flooding along waterways in the County through the establishment of a floodplain overlay zone (/FP). See Sections 4.11.211-257 for the requirements of this overlay zone.**

Hearings Officer's Findings: This Recommendation addresses the floodplain-overlay-related approval criteria in the section below regarding the floodplain overlay zone.

- b. Landslides: Areas subject to landslides (mass movement) include active landslides, inactive landslides, earth flow and slump topography, and rockfall and debris flow terrain as identified on the 2015 Coos County Comprehensive Plan Hazards Map (mapped as the very high-existing landslides). Coos County shall permit the construction of new structures in an inventoried Landslide hazard area (earth flow/slump topography/rock fall/debris flow) through a conditional use process subject to a geological assessment review as set out in Article 5.11.**

Hearings Officer's Findings: None of the IND Zone Proposals crosses any area that the County's Natural Hazards Map designates as "Very High - Existing Landslide." Therefore, this criterion does not apply to the IND Zone Proposals.

- c. Tsunamis: Coos County shall promote increased resilience to a potentially catastrophic Cascadia Subduction Zone (CSZ) tsunami through the establishment of a Tsunami Hazard Overlay Zone (THO) in the Balance of County Zoning. See Sections 4.11.260-4.11.270 for the requirements of this overlay zone.**

Hearings Officer's Findings: This Recommendation addresses the tsunami-overlay-related approval criteria in the section below regarding the floodplain overlay zone.

- d. Earthquakes: Areas subject to earthquakes include fault lines and liquefaction potential, as identified on the 2015 Coos County Comprehensive Plan Natural Hazards Map. Coos County shall permit the construction of new structures in known areas potentially subject to earthquakes (fault line and liquefaction potential) through a conditional use process subject to a geologic assessment review as set out in Article 5.11. Coos County shall support Oregon State Building Codes to enforce any structural requirements**

related to earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the geologic assessment report at the time of review.

Hearings Officer's Findings: None of the IND Zone Proposals crosses any area that the County's Natural Hazards Map identifies as an area subject to earthquakes. Therefore, this criterion does not apply to the IND Zone Proposals.

- e. Erosion: Coos County shall promote protection of property from risks associated with shoreline, headland, and wind erosion/deposition erosion hazards. Coos County shall promote protection of property from risks associated with bank erosion along rivers and streams through necessary erosion-control and stabilization measures, preferring non-structural solutions when practical.***

Any proposed structural development within a wind erosion/deposition area, within 100 feet of a designated bank erosion area, or on a parcel subject to wave attack, including all oceanfront lots, will be subject to a geologic assessment review as set out in Article 5.11.

Hearings Officer's Findings: None of the IND Zone Proposals are within a wind erosion / deposition area or within 100 feet of a designated bank erosion area, or on a parcel subject to wave attack. Therefore, this criterion does not apply to the IND Zone Proposals.

- f. Wildfires: Coos County shall promote protection of property from risks associated with wildfires and gorse fires by requiring all new dwellings, permanent structures, and replacement dwellings and structures shall, at a minimum, meet the following standards on every parcel designated or partially designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map:***

1. The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district or is provided fire protection by contract.

2. When it is determined that these standards are impractical the Planning Director may authorize alternative forms of fire protection that shall comply with the following:

a. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions, as established by credible documentation approved in writing by the Director;

b. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons per dwelling or a stream that has a continuous year round flow of at least one cubic foot per second per dwelling;

- c. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use; and**
- d. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.**

3. Fire Siting Standards for New Dwellings:

- a. The property owner shall provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and sufficient $\frac{3}{4}$ inch garden hose to reach the perimeter of the primary fuel-free building setback.**
- b. If another water supply (such as a swimming pool, pond, stream, or lake) is nearby, available, and suitable for fire protection, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.**

4. Firebreak:

- a. A firebreak shall be established and maintained around all structures, including decks, for a distance of at least 30 feet in all directions.**
- b. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.**
- c. Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.**
- d. The owners of the dwelling shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding all structures that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by Oregon Department of Forestry and shall demonstrate compliance with Table 1.**

5. Wildfires inside urban growth boundaries. Certain areas inside urban growth boundaries may present special risks and may be made subject to additional or different standards and requirements jointly adopted by a city and the county in the form of code requirements, master plans, annexation plans, or other means.

Hearings Officer's Findings: These criteria do not apply to the IND Zone Proposals, none of which are located on a parcel designated or partially designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map.

CCZLDO 4.11.200 - Overlay Zones

Floodplain Overlay

CCZLDO 4.11.231 - Lands to Which This Overlay Applies

This Ordinance shall apply to all areas of special flood hazards within the jurisdiction of Coos County that have been identified on the Flood Insurance Maps dated March 17, 2014 as described in Section 4.11.232.

Hearings Officer's Findings: CCZLDO §4.11.220.3 explains that “area of special flood hazard” means “the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year.” Therefore, land within the 100-year floodplain is by definition within an “area of special flood hazard.” The County’s natural hazard map appears to identify all floodplain within the County as a 100-year floodplain. However, JCEP stated that it believes this mapping feature is in error, since the same mapping also identifies much of the same area with the “X” designation, which is a FEMA designation for 500-year floodplain. All the IND Zone Proposals are within the “X” zone. Based upon JCEP’s proposed interpretation, JCEP requests that the County confirm that the Floodplain Overlay does not apply to the IND Zone Proposals, and that no floodplain development permit is required for these proposals.

The Staff Report agrees with the Applicant on this point:

“Several proposals in this Application are subject to CBEMP Policy #27, which subjects proposals in the CBEMP zones to the Floodplain Overlay. Of those proposals, only the pile dike rock apron in the 5-WD zone and the shoreline stabilization in the 5-WD zone is within a 100-year floodplain (outside the “X” flood zone), and accordingly, only these proposals require a floodplain development permit. These are not structural and any criteria that references structures are not applicable to the request. The applicant states that the pile dike rock apron and shoreline stabilization are not considered “other development” within the meaning of this subsection. The applicant has addressed the criteria.”

Staff Report, p. 87. The hearings officer agrees that several proposals in this Application are subject to CBEMP Policy #27, which subjects proposals in the CBEMP zones to the Floodplain Overlay. Of those proposals, only the pile dike rock apron in the 5-WD zone and the shoreline stabilization in the

5-WD zone is within a 100-year floodplain (outside the “X” flood zone), and accordingly, only these proposals require a floodplain development permit.

CCZLDO 4.11.235 - Establishment of Development Permit

1. Floodplain Application Required *A floodplain application shall be submitted and approved before construction or regulated development begins within any area of special flood hazard established in Section 4.11.232. The permit shall be for all structures including manufactured homes, as set forth in the “DEFINITIONS,” and for all development including fill and other activities, also as set forth in the “DEFINITIONS.”*

Hearings Officer’s Findings: Per the above analysis, the hearings officer concludes that only the pile dike rock apron and shoreline stabilization in the 5-WD zone are subject to the Floodplain Overlay. These proposals are not “structures” but instead qualify as “development” within the meaning of CCZLDO §2.1.200. Therefore, these proposals require floodplain development permits.

These terms are defined in CCZLDO §2.1.200 as follows:

DEVELOPMENT: The act, process or result of developing.

DEVELOP: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

STRUCTURE: Walled and roofed building including a gas or liquid storage tank that is principally above ground.

Clearly the pile dike rock apron and shoreline stabilization are not “structures” under the Code definition, as they lack walls or roofs. The pile dike rock apron and shoreline stabilization fit the definition of “development” within the meaning of CCZLDO §2.1.200 as they are manmade changes in the shore terrain built to provide protection from waves, water and wind.

2. Application.

An application shall be made on the forms furnished by the Planning Department and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures which may be submitted by a registered surveyor;***
- b. Elevation in relation to mean sea level of floodproofing in any structure;***

- c. **Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4.11.252; and**
- d. **Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.**
- e. **Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level, or NAVD 88, whichever is applicable, of the area in question including existing and proposed structures, fill, storage of materials, and drainage facilities. Applicants shall submit certification by an Oregon registered professional engineer or land surveyor of the site's ground elevation and whether or not the development is located in a flood hazard area. If so, the certification shall include which flood hazard area applies, the location of the floodway at the site, and the 100 year flood elevation at the site. A reference mark shall be set at the elevation of the 100 year flood at the site. The location, description, and elevation of the reference mark shall be included in the certification; and**
- f. **Any other information required to make a determination.**

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not “structures” with “floors” or floodproofing. The pile dike rock apron in 5-WD is comprised of riprap, while the shoreline stabilization in this zone is a bulkhead. These developments will not alter a watercourse.

CCZLDO 4.11.251 - General Standards

In all areas of special flood hazards, the following standards are required:

1. Anchoring

- a. **All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure; and**
- b. **All manufactured homes must likewise be 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's “Manufactured Home Installation in Flood Hazard Areas” guidebook for additional techniques).**

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not structures or manufactured homes. Therefore, these criteria do not apply.

2. Construction Materials and Methods

- a. **All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;**

- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and***
- c. 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.***

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not structures. The definitions of "new construction" and "substantial improvement" are limited to structures. Therefore, these criteria do not apply.

3. Utilities

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;***
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and***
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.***

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not developments that incorporate utilities. Thus, these criteria do not apply.

4. Land Divisions Proposals

- a. All land division proposals shall be consistent with the need to minimize flood damage;***
- b. All land division proposals that are proposing public utilities and facilities such as sewer, gas, electrical, and water systems shall be required to locate and construct them to minimize or eliminate flood damage;***
- c. All land division proposals that consist of three or more lots shall have adequate drainage provided to reduce exposure to flood damage; and***
- d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).***

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization do not involve land divisions. Therefore, these criteria do not apply.

5. Review of Applications

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source [Section 4.11.243(2)], applications for structural development shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

Hearings Officer's Findings: JCEP stated it acknowledges this provision, which does not impose approval criteria.

6. AH Zone Drainage

Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not structures. Therefore, this criterion does not apply.

7. 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.**

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not "other development" within the meaning of this subsection. Therefore, these criteria do not apply.

8. COMMUNITY OFFICIAL BASE FLOOD ELEVATION DETERMINATION REQUEST AND PROCEDURES: The Coos County Planning Department shall sign a community official

base flood elevation (BFE) confirmation received from a mortgage insurance company if:

- a. The development is located outside of the mapped flood hazard area;**
- b. A Letter of Map Revision or Amendment has been approved by FEMA; or**
- c. The property has an approved flood hazard determination application that shows the development was built to flood proofing standards or is located above the base flood elevation.**

If the development is located within the mapped flood hazard area and there is not a flood hazard determination on file with the Coos County Planning Department a confirmation letter will not be signed until a flood hazard application has been approved as complying with Sections 4.11.211 through 4.11.252.

Hearings Officer's Findings: These criteria do not apply to the pile dike rock apron and shoreline stabilization, neither of which is outside a mapped flood hazard area, is the subject of a letter of map revision or amendment approved by FEMA, or has an approved flood hazard determination application.

CCZLDO 4.11.252 - Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30, AH, and AE) as set forth in Section 4.11.232, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section 4.11.243(2), Use of Other Base Flood Data (In A and V Zones), the following provisions are required:

1. Residential Construction

- a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation; and**
- b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:**
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;**
 - ii. The bottom of all openings shall be no higher than one foot above grade; and**
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.**

Hearings Officer's Findings: Part of the pile dike rock apron is located in an AE flood zone. But these criteria nonetheless do not apply to the pile dike rock apron because it is not "new construction" or a "substantial improvement," the definitions of both of which are limited to "structures," which are defined in CCZLDO §2.1.200 as a "Walled and roofed building including a gas or liquid storage tank that is principally above ground." Thus, the pile dike rock apron is not a structure, as it has no roof of walls. The other shoreline stabilization is not within an AE zone.

2. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;***
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;***
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 4.11.243(3)(b);***
- d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 4.11.252(1)(b);***
- e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below);***
- f. Applicants shall supply a comprehensive Maintenance Plan for the entire structure to include but not limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure; and***
- g. Applicants shall supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.***

Hearings Officer's Findings: Part of the pile dike rock apron is located in an AE flood zone. But these criteria nonetheless do not apply to the pile dike rock apron because it is not "new construction" or a "substantial improvement," the definitions of both of which are limited to "structures," and the pile dike rock apron is not a structure within the meaning of CCZLDO §2.1.200. The other shoreline stabilization that JCEP is not within an AE zone.

3. Manufactured Dwellings

- a. Manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 4.11.252(1)(b) above;**
- b. The bottom of the longitudinal chassis frame beam in A zones, shall be at or above BFE;**
- c. The manufactured dwelling shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques); and**
- d. Electrical crossover connections shall be a minimum of 12 inches above BFE.**

Hearings Officer's Findings: Part of the pile dike rock apron is located in an AE flood zone. But these criteria nonetheless do not apply to the pile dike rock apron because it is not a manufactured dwelling. The other shoreline stabilization is not within an AE zone.

4. Recreational Vehicles

Recreational vehicles placed on sites are required to:

- a. Be on the site for fewer than 180 consecutive days; and**
- b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or**
- c. Meet the requirements of Section 4.11.252(3) above and the elevation and anchoring requirements for manufactured homes.**

Hearings Officer's Findings: Part of the pile dike rock apron is located in an AE flood zone. But these criteria nonetheless do not apply to the pile dike rock apron because it is not and does not involve recreational vehicles. The other shoreline stabilization is not within an AE zone.

5. Small Accessory Structures

Relief from elevation or floodproofing as required in Section 4.11.252(1) or 4.11.252(2) above may be granted for small accessory structures that are:

- a. Less than 200 square feet and do not exceed one story;**
- b. Not temperature controlled;**
- c. Not used for human habitation and are used solely for parking of vehicles or storage of items having low damage potential when submerged;**
- d. Not used to store toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall unless confined in a tank, that is installed in compliance with this ordinance or stored at least one foot above Base Flood Elevation;**
- e. Located and constructed to have low damage potential;**
- f. Constructed with materials resistant to flood damage;**
- g. Anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;**
- h. Constructed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect or:**
 - i. provide a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;**
 - ii. the bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening;**
 - iii. openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions without manual intervention; and**
 - iv. Constructed with electrical and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.**

Hearings Officer's Findings: Part of the pile dike rock apron is located in an AE flood zone. But these criteria nonetheless do not apply to the pile dike rock apron because it does not require relief from the floodproofing standards of CCZLDO §4.11.252(1) or §4.11.252(2). The other shoreline stabilization is not within an AE zone.

6. Below-Grade Crawlspace

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas:

- a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas;**
- b. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade;**
- c. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE;**
- d. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters;**
- e. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade;**
- f. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas;**
- g. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means; and**

h. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

For more detailed information refer to FEMA Technical Bulletin 11-01.

Hearings Officer's Findings: Part of the pile dike rock apron is located in an AE flood zone. But these criteria nonetheless do not apply to the pile dike rock apron because it does not involve below grade crawlspaces. The other shoreline stabilization is not within an AE zone.

CCZLDO 4.11.253 - Before Regulatory Floodway

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Hearings Officer's Findings: Part of the pile dike rock apron is within an AE flood zone. A technical memorandum addressing flood risks associated with these proposed uses within the Floodplain Overlay and compliance with applicable criteria in this Section has been prepared by SHN Consultants. This memorandum dated July 19, 2019 is attached as Application Exhibit 11. Specially, the SHN analysis confirms that the minimal fill associated with the proposed pile dike rock apron and shoreline stabilization “. . . will have no measurable effect on the estuary nor will it affect flooding within the estuary,” which confirms compliance with the applicable Overlay zone criteria. This evidence refutes some of the allegations made by opponent Jody McCaffree:

“The above is NOT shoreline stabilization as it is not anywhere near the actual shoreline area as the applicant has suggested. This is more on the order of their proposed marine slip dock stabilization. This will clearly affect the hydrology of Henderson marsh and significantly affect shorebird habitat. These tidal areas that would be taken out of production would be a significant loss to migratory shorebirds and other habitat. According to a new study birds have been disappearing at an alarming rate including shorebirds. Experts say habitat loss was the No. 1 reason for bird loss. (*See Exhibit 69*)”

See McCaffree letter dated October 14, 2019, p. 10, Exhibit 8. Ms. McCaffree's concern about the effects of the rock apron on the hydrology of Henderson marsh is wholly speculative. Ms. McCaffree's subexhibit 69 is an Associated Press news article about the decline of wild bird populations in the USA and Canada due to predation by cats, flying into windows, being hit by cars, and habitat loss. It says nothing about Oregon birds in general or Coos County birds in particular. It is unclear which approval criteria the bird article might relate to.

CCZLDO 4.11.254 - Floodway

Located within areas of special flood hazard established in Section 4.11.232 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

Hearings Officer's Findings: The floodway provisions do not apply to the proposed development.

CCZLDO 4.11.255 - Standards for Shallow Flooding Areas (AO Zones)

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

Hearings Officer's Findings: The shallow flooding area provisions of CCZLDO §4.11.255 do not apply to the pile dike rock apron or shoreline stabilization because they are not within a shallow flooding area.

CCZLDO 4.11.256 - Coastal High Hazard Areas

Located within areas of special flood hazard established in Section 4.11.232 are Coastal High Hazard Areas, designated as Zones V1-V30, VE, and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this ordinance and state building code, the following provisions shall also apply:

Hearings Officer's Findings: The coastal high hazard area provisions of CCZLDO §4.11.256 do not apply to the pile dike rock apron or shoreline stabilization because they are not within a Coastal High Hazard Area.

CCZLDO 4.11.257 - Critical Facility

Construction of new critical facilities shall be, to the extent practicable, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available, taking into account cost and practicability. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

Hearings Officer's Findings: The pile dike rock apron and shoreline stabilization are not "critical facilities." As defined in CCZLDO §4.11.220, this criterion does not apply.

Tsunami Hazard Overlay Zone

CCZLDO 4.11.270 - Tsunami Hazard Overlay Zone (Purpose, Applicability and Uses)

1. Purpose

The purpose of the Tsunami Hazard Overlay Zone is to increase the resilience of the community to a local source (Cascadia Subduction Zone) tsunami by establishing standards, requirements, incentives, and other measures to be applied in the review and authorization of land use and development activities in are as subject to tsunami hazards. The standards established by this section are intended to limit, direct and encourage the development of land uses within are as subject to tsunami hazards in a manner that will:

- a. Reduce loss of life;**
- b. Reduce damage to private and public property;**
- c. Reduce social, emotional, and economic disruptions; and**
- d. Increase the ability of the community to respond and recover.**

Significant public and private investment has been made in development in areas which are now known to be subject to tsunami hazards. It is not the intent or purpose of this section to require the relocation of or otherwise regulate existing development within the Tsunami Hazard Overlay Zone. However, it is the intent of this section to control, direct and encourage new development and redevelopment such that, over time, the community's exposure to tsunamis will be reduced.

Hearings Officer's Findings: This provision as a policy statement and does not impose approval criteria applicable to the Application.

2. Applicability of Tsunami Hazard Overlay Zone

The Tsunami Inundation Zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary and Coquille Estuary Management Plans when the Estuary Policies directly reference this section. Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section:

- a. Except as provided in subsection (b), all lands identified as subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section.**
- b. Lands within the area subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s)**

(TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) that have a grade elevation, established by fill or other means, higher than the projected elevation of the XXL magnitude local source tsunami event are exempt from the requirements of this section. Grade elevations shall be established by an elevation survey performed by a Professional Land Surveyor licensed in Oregon.

Hearings Officer's Findings: All the IND Zone Proposals are, according to the County's Natural Hazard's Map, subject to inundation from an XXL magnitude local source tsunami event. None of the IND Zone Proposals have a grade elevation higher than the projected elevation of the XXL magnitude local source tsunami event. Therefore, the IND Zone Proposals are subject to the requirements of the Tsunami Hazard Overlay Zone.

3. Uses

In the Tsunami Hazards Overlay Zone, except for the prohibited uses set forth in subsection 5 all uses permitted pursuant to the provisions of the underlying zone map be permitted, subject to the additional requirements and limitations of this section.

Hearings Officer's Findings: JCEP stated it acknowledges this provision. Opponent Natalie Ranker states:

“Workforce housing is not in compliance with County regulations and common sense. This housing lies within an area of extremely high Tsunami Hazard on the DOGAMI map....Boxcar Hill Laydown area and Batch Plant is only yards from a tsunami inundation zone located in a high to very high risk liquifaction zone for soil base.”

See Ranker letter dated October 28, 2019, p. 1, Exhibit 18. Steve Miller expressed similar concerns in his letter dated October 14, 2019. Exhibit 5.

The proposed workforce housing, temporary laydown area and temporary concrete batch plant are subject to the requirements of the Tsunami Hazard Overlay Zone. Ms. Ranker's and Mr. Miller's concerns are addressed by the following evidence in the Record:

- ❖ Applicant's Exhibit 12, subexhibit 17 - Letter Addressing Liquefaction Hazard dated October 14, 2019: This letter, which is prepared by the Project geotechnical engineering joint venture team of Kiewit, Black & Veatch, and JGC (“KBJ”), addresses the geotechnical assessment criteria of CCZLDO 5.11, with reference to two different data reports and a geologic assessment, which are included in the next three exhibits.
- ❖ Applicant's Exhibit 12, subexhibit 18 - Geotechnical Data Report dated April 21, 2017: This report, which was prepared by engineers at GRI, summarizes the results of subsurface investigations, geotechnical laboratory testing, and other in situ testing completed at the Project site between 2005 and 2017. The data summarized in the report is attached to the report and included in this exhibit.

- ❖ Applicant's Exhibit 12, subexhibit 19 - Geotechnical Report dated April 23, 2018: This report, which was prepared by KBJ, is a geotechnical evaluation for the Project site. It summarizes site conditions, geologic and seismic hazards, and recommends measures to mitigate these hazards. The report identifies the risk for liquefaction of soils in certain locations and recommends vibrocompaction to mitigate this risk as it causes granular soil to rearrange into a more dense pattern. See Sections 6.1.5 and 7.3 of this report.
- ❖ Applicant's Exhibit 12, subexhibit 20 - Geotechnical Data Report, 2018 Subsurface Investigation Program dated August 22, 2019: This report, which was prepared by KBJ, presents data collected during a geotechnical subsurface investigation performed from August to October 2018 for the Project site.

More specifically, the Geotechnical Report dated April 23, 2018 (Applicant's Exhibit 12, subexhibit 19) discusses in detail the risks of tsunami, earthquake and geologic hazards, concluding these can be sufficiently mitigated by vibrocompaction, which causes granular soil to rearrange into a more dense pattern. See Sections 6.1.5 and 7.3 of this report, on pages 35 and 42, respectively. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

4. Prohibited Uses

Unless authorized in accordance with subsection 6, the following uses are prohibited in the specified portions of the Tsunami Hazard Overlay Zone:

a. In areas identified as subject to inundation from the L magnitude local source tsunami events set forth on the TIM, the following uses are prohibited:

- i. Hospitals and other medical facilities having surgery and emergency treatments area as;***
- ii. Fire and police stations;***
- iii. Hospital and other medical facilities having surgery and emergency treatment areas;***
- iv. Fire and police stations;***
- v. Structures and equipment in government communication centers and other facilities required for emergency response;***
- vi. Building with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or childcare centers;***
- vii. Buildings for colleges or adult education schools with a capacity of greater than 500 persons; and***
- viii. Jails and detention facilities***

Hearings Officer's Findings: Among the IND Zone Proposals, only the SORSC and helipad are subject to the above, because they are “facilities required for emergency response” and are within an area subject to inundation from an L magnitude local source tsunami event. Therefore, the SORSC and helipad are permissible only if they satisfy the “use exception” criteria of subsection 5(c) below (although the CCZLDO says subsection 6, that appears to be a typo--it is subsection 5(c) that governs permitting of the above structures).

- b. In areas identified as subject to inundation from the M magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:**
 - i. Tanks or other structures containing, housing or supporting water or fire suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;**
 - ii. Emergency vehicle shelters and garages;**
 - iii. Structures and equipment in emergency preparedness centers;**
 - iv. Standby power generating equipment for essential facilities;**
 - v. Covered structures whose primary occupancy is public assembly with a capacity of greater than 300 persons;**
 - vi. Medical facilities with 50 or more resident, in capacitated patients;**
 - vii. Manufactured home parks, of a density exceeding 10 units per acre; and**
 - viii. Hotels or motels with more than 50 units.**

Hearings Officer's Findings: Among the IND Zone Proposals, only the SORSC is subject to the above because it is a “structure . . . in [an] emergency preparedness center” and is within an area subject to inundation from an M magnitude local source tsunami event. Therefore, the SORSC is permissible in the location to construct it only if it satisfies the criteria of subsection 5 below (although the CCZLDO says subsection 6, that appears to be a typo--it is subsection 5 that governs permitting of the above structures).

- c. Notwithstanding the provisions of Article 5.6 of the Coos County Zoning and Land Development Ordinance, the requirements of this subsection shall not have the effect of rendering any lawfully established use or structure nonconforming. The Tsunami Hazard Overlay is, in general, not intended to apply to or regulate existing uses or development.**

Hearings Officer's Findings: JCEP states that it acknowledges this provision, which is not an approval standard for this land use application.

5. Use Exceptions.

A use listed in subsection (4) of this section maybe permitted upon authorization of a Use Exception in accordance with the following requirements:

- a. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.***

Hearings Officer's Findings: The SORSC and helipad are not public schools. Therefore, this criterion does not apply to the SORSC and helipad.

- b. Fire or police stations may be permitted upon findings that there is a need for a strategic location.***

Hearings Officer's Findings: The SORSC and helipad are not fire or police stations. Therefore, this criterion does not apply to the SORSC and helipad.

- c. Other uses prohibited by subsection (4) of this section may be permitted upon the following findings:***

Hearings Officer's Findings: The SORSC and helipad are not the uses listed in subsections 5.a and 5.b. above. Therefore, both the SORSC and helipad must satisfy the following criteria:

- i. There are no reasonable, lower-risk alternative sites available for the proposed use;***

Hearings Officer's Findings: The hearings officer finds that the SORSC and the helipad must be located in immediate proximity to the proposed terminal operation for effective emergency response, and these locational criteria is particularly reluctant given the significant distance to establish emergency service providers in the cities of Coos Bay and North Bend. Other emergency response units could easily be tied up in traffic on the TransPacific Parkway, so it is crucial to have first responders close to hand. The hearings officer finds that the TransPacific Parkway creates a potential choke point for traffic, so it would be highly unwise to site emergency responders in a location that would require use of the TPP to get to the LNG Terminal. The first few minutes of a disaster are often the most critical to avoiding greater harms. In the case of a helipad, it is obvious that access to a helicopter will contribute to the mission of site safety by allowing aerial "eyes and ears" to observe conditions not viewable from the ground, as well as enhance command and control when responding to urgent situations. A helicopter also allows personnel to be rapidly brought to (or evacuated from) the site in circumstances when time is of the essence.

Given this location priority, there are no reasonable, lower-risk alternative sites available for the SORSC and helipad serving the specific terminal other than the proposed on-site locations.

- ii. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized;***

Hearings Officer's Findings: JCEP will provide adequate evacuation measures at the SORSC that it proposes such that life safety risk to the occupants of the building is minimized. The helipad is not a building.

- iii. The buildings will be designed and constructed in accordance with the Oregon Structural Code to minimize the risk of structural failure during the design earthquake and tsunami event; and**

Hearings Officer's Findings: Final occupancy of the SORSC will occur only upon issuance of construction permits in accordance with the Oregon Structural Code. The helipad is not a structure, but mandatory compliance with the Structural Code will be achieved as applicable.

- iv. Developers of new essential facilities, hazardous facilities and major structures described in subsection (1)(a)(E), (b) and (c) of ORS 455.447 and new special occupancy structures described in subsection (1)(e)(A), (D) and (F) of ORS 455.447 that are located in an identified tsunami inundation zone shall consult with the State Department of Geology and Mineral Industries for assistance in determining the impact of possible tsunamis on the proposed development and for assistance in preparing methods to mitigate risk at the site of a potential tsunami. Consultation shall take place prior to submittal of design plans to the building official for final approval. The process for construction of certain facilities and structures in tsunami inundation zones including establishment of zones, rules and exceptions are set out in ORS 455.446. The provision of ORS 455.446 does not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas. Decisions made under ORS 455.446 are not land use decisions. Applications, reviews, decisions and appeals for Use Exceptions authorized by this subsection with the exclusion of subsections iii and iv shall be in accordance with the requirements for an administrative conditional use procedure as set forth in Article 5.2 – Conditional Uses.**

Hearings Officer's Findings: The SORSC and helipad are “essential facilities” in accordance with ORS 455.447(1)(a)(G), which defines the same to include “facilities required for emergency response.” The SORSC and helipad are such facilities because the SORSC is an emergency preparedness center and the helipad is an accessory to it that serves its purpose. Moreover, the SORSC and helipad are located in an identified tsunami inundation zone. Therefore, this criterion applies to the SORSC and helipad. Accordingly, the record indicates that JCEP has consulted with the Department of Geology and Mineral Industries (“DOGAMI”) for assistance in preparing methods to mitigate risk at the site of a potential tsunami. JCEP acknowledges this requirement and will comply. JCEP states evidence of such consultation will be provided upon request. The hearings officer believes it is feasible for the Applicant to design the SORSC in a manner that complies with the Oregon Structural Code, and suggests a Condition of Approval to that effect.

7. Flexible Development Option

- a. The purpose of the Flexible Development Option is to provide incentives for, and to encourage and promote, site planning and development within the Tsunami Hazard Overlay Zone that results in lower risk exposure to tsunami hazard than would otherwise be achieved through the conventional application of the requirements of this chapter. The Flexible Development Option is intended to:**

- i. Allow for and encourage development designs that incorporate enhanced evacuation measures, appropriate building siting and design, and other features that reduce the risks to life and property from tsunami hazard; and*
 - ii. Permit greater flexibility in the siting of buildings and other physical improvements and in the creation of new lots and parcels in order to allow the full realization of permitted development while reducing risks to life and property from tsunami hazard.*
- b. The Flexible Development Option may be applied to the development of any lot, parcel, or tract of land that is wholly or partially within the Tsunami Hazard Overlay Zone.*
- c. The Flexible Development Option may include any uses permitted outright or conditionally in any zone, except for those uses prohibited pursuant to subsection 5 of this section.*
- d. Overall residential density shall be as set forth in the underlying one or zones. Density shall be computed based on total gross land area of the subject property, excluding street right of-way.*
- e. Yards, setbacks, lot area, lot width and depth, lot coverage, building height and similar dimensional requirements may be reduced, adjusted or otherwise modified as necessary to achieve the design objectives of the development and fulfill the purposes of this section.*
- f. Applications, review, decisions, and appeals for the Flexible Development Option shall be in accordance with the requirements for an administrative conditional use procedure as set forth in Article 5 of the Coos County Zoning and Land Development Ordinance.*
- g. Approval of an application for a Flexible Development Option shall be based on findings that the following criteria are satisfied:*
 - i. The applicable requirements of sub-paragraphs and of this subsection are met; and*
 - ii. The development will provide tsunami hazard mitigation and/ or other risk reduction measures at a level greater than would otherwise be provided under conventional land development procedures. Such measures may include, but are not limited to:*
 - 1. Providing evacuation measures, improvements, evacuation way finding techniques and signage;*

- 2. Providing tsunami evacuation structure(s) which are accessible and provide capacity for evacuees from off-site;**
- 3. Incorporating building designs or techniques which exceed minimum structural specialty code requirements in a manner that increases the capacity of structures to withstand the forces of a local source tsunami; and**
- 4. Concentrating or clustering development in lower risk portions or areas of the subject property, and limiting or avoiding development in higher risk areas.**

Hearings Officer's Findings: This Application does not seek approval of a Flexible Development Option. Therefore, these criteria and this section does not apply to the IND Zone Proposals.

E. Approval Criteria in Estuary Zones - CBEMP Policies.

1. CBEMP Policy #4 Resource Capability Consistency and Impact Assessment.

I. Local government concludes that all proposed actions (approved in this Plan) which would potentially alter the integrity of the estuarine ecosystem have been based upon a full consideration of the impacts of the proposed alteration. Except for the following uses and activities:

a. Natural Management Units

- ~ Aquaculture***
- ~ Log storage***
- ~ Bridge Crossings***

b. Conservation Management Units

- ~ High-intensity water-dependent recreation***
- ~ Aquaculture***
- ~ New or expanded log storage***
- ~ Log storage dredging***
- ~ Dike maintenance dredging***
- ~ Minor navigational improvements requiring dredging or fill***
- ~ Bulkheading***
- ~ Water intake or withdrawal and effluent discharge***
- ~ Riprap***

c. Development Management Units

- ~ Aquaculture***
- ~ New or expanded log storage***
- ~ Mining and mineral extraction***
- ~ Water-related and non-dependent, non-related uses not requiring fill***
- ~ Dredging***
- ~ Bulkheading (except for Aquatic Units #3DA, #5DA and #6DA)***
- ~ Fill***
- ~ In-water structures***
- ~ Flow-lane disposal of dredged material and other activities which could affect the estuary's physical processes or biological resources***
- ~ Application of pesticides***

d. Any other uses and activities which require the resource capability consistency test as a condition within a particular management unit.

For uses and activities requiring the resource capabilities test, a special condition is noted in the applicable management unit uses/activities matrix. A determination of

consistency with resource capability and the purposes 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.**

Where the impact assessment requirement (of Goal #16 Implementation Requirements #1) has not been satisfied in this Plan for certain uses or activities (i.e., those identified above), then such uses or activities shall not be permitted until findings demonstrate the public's need and gain which would warrant any modification or loss to the estuarine ecosystem, based upon a clear presentation of the impacts of the proposed alteration, as implemented in Policy #4a.

III. An impact assessment need not be lengthy or complex, but it should give reviewers an overview of the impacts to be expected. It may include information on:

- a. the type and extent of alterations expected;**
- b. the type of resource(s) affected;**
- c. the expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and**
- d. the methods which could be employed to avoid or minimize adverse impacts.**

This policy is based on the recognition that the need for and cumulative effects of estuarine developments were fully addressed during the preparation of this Plan and may be mitigated by the imposition, as necessary, of conditions through the administrative conditional use process.

Hearings Officer Findings: CEBMP Policy #4 and #4a implement Statewide Planning Goal 16, Implementation Requirement No. 1, which is known as the “impact assessment of potential estuary alterations” requirement.⁵ Goal 16 provides, in relevant part:

IMPLEMENTATION REQUIREMENTS

- 1. Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water**

⁵ See Edward J. Sullivan, *Protecting Oregon's Estuaries*, 23 OCEAN AND COASTAL L. J. 373, 408 (2018).

structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

- a. The type and extent of alterations expected;*
- b. The type of resource(s) affected;*
- c. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and*
- d. The methods which could be employed to avoid or minimize adverse impacts.*

LUBA has stated that Implementation Requirement 1 is best understood to require that the local government (1) review an impact assessment that adequately identifies potential adverse impacts on the estuary's physical processes or biological values from development allowed under proposed comprehensive plan or zoning amendments, and (2) ensure that such impacts are avoided or minimized. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

In *Oregon Coast Alliance*, LUBA remanded the case back to the city for more adequate findings, because the finding did not describe potential adverse impacts, address expert testimony regarding those impacts, or explain why compliance with city standards is sufficient to minimize potential adverse impacts).

Except as provided below, CBEMP Policy #4 generally does not apply to most of the Applicant's proposals, as they do not involve constructing permanent structures in estuary zones.

Several opponents predict that constructing the proposed LNG terminal will have catastrophic results, and tied their objections to CBEMP Policy #4, without giving any reasons. For example, opponent Oregon Shores Conservation Coalition states "the construction, installation, and operation of the proposals and associated project components will likely have serious and irreparable adverse impacts on the Coos Bay region's waterways, natural resources, wetlands, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion, aesthetic values, recreation, water quality, energy conservation, public safety, and public welfare. For these reasons, the proposed project is inconsistent with the public interest as well as the requisite criteria within CBEMP Policy #4." OSCC letter dated October 14, 2019 at p. 4. Exhibit 9.

Ms. McCaffree has a similar apocalyptic view: "What Pembina has planned would be nothing short of another Love Canal for their workers and a death sentence for our Coos Estuary." Jody McCaffree letter dated October 28, 2019, Exhibit 19, p. 7. Neither OSCC nor Ms. McCaffree explain why they believes CBEMP Policy #4 applies to this Omnibus II application.

OSCC and Ms. McCaffree are particularly concerned about the well-being of Dungeness crabs, and submitted a study by Sylvia Yamada entitled “Potential Impact of Jordan Cove LNG Terminal Construction on the Nursery Habitat of Dungeness Crab” dated January of 2016. Record Exhibit 9, first attachment. The same study was submitted by opponent Jody McCaffree at Exhibit 19, subexhibit 9. The study states that these crabs were “consistently abundant” from 2002 through 2014. It further states that:

“...estuaries are important nursery habitat for Dungeness crabs. These need to be kept in mind when a trench is dug in Haynes Inlet, the Trans Pacific Parkway is to be expanded and an upland area is cut out to create a berth for ocean-going vessels. Not only will the turbidity during the construction phase be of concern to the ecological community, the ongoing dredging to maintain the berth and shipping channels will continue to be a disturbance to the ecosystem. It will result in habitat loss for native species, including the valuable Dungeness crab. In one study between 45 and 85% of the Dungeness crabs died during a simulated dredging operation (Chang and Levings, 1978). Marine habitat modification by construction of the Jordan Cove Energy Project could impact the important Oregon Dungeness fishery.”

The hearings officer has previously found the Yamada study to be too vague to constitute substantial evidence, in light of the often voluminous and contradictory evidence in the record. The same holds true here. Neither OSCC nor Ms. McCaffree explain which specific proposal will have any effect on crabs. The hearings officer has previously found the Yamada study to be too vague to constitute substantial evidence, in light of the often voluminous and contradictory evidence in the record. The same holds true here. Ms. Yamada’s conclusion is unhelpful to the opponents in several ways. First, the opponents allege that the dredging needed for the LNG plant will have seriously detrimental effects on the marine habitat, decimating the crab, fish and oysters that live nearby. Yet the studies and photographs offered by the opponents show these marine populations thriving after ODOT engaged in massive dredging and fill as part of the 1998 Haynes Inlet Slough Bridge Project on Highway 101 (approved as Coos County Ordinance 98-07-006PL, September 30, 1998). The 1988 Southwest Oregon Regional Airport (SORA) expansion caused over 32 acres of fill to be placed in Coos Bay, with massive encroachments into the Bay itself. *Morse v. Oregon Division of State Lands*, 285 Or 197, 202, 590 P2d 709 (1979). How is it that the vastly larger amount of dredging and fill used in a huge 1988 airport runway extension and a 1998 bridge replacement project seemed to have no serious long-term effects on crab, fish, eelgrass and oysters, whereas the comparatively small amount of dredging will irrevocably damage that same marine population? The opponents offer no answer. The hearings officer finds that the minimal environmental aftereffects of the 1988 SORA expansion and 1998 ODOT bridge replacement project provides substantial evidence that the local wildlife (both flora and fauna) has remarkable regenerative power and is unlikely to be substantially harmed in the long-term by the Applicant’s current proposal. In fact, the success of the 1988 airport project and 1998 bridge replacement are both conclusive and dispositive on this issue.

Next, Ms. Yamada offers such vague and nebulous statements that no conclusions can be drawn from them. Phrases like turbidity “*will be of concern to the ecological community*” or “*could impact the important Oregon Dungeness fishery*” are far too indeterminate to be considered substantial evidence. Yamada cites to a forty-year old “simulated dredging” study that apparently showed some partial Dungeness crab habitat loss, somewhere at some unknown time, but without knowing more about this study no comparison may be drawn with the current land use applications at issue. It is common knowledge that the Coos Bay channel has been dredged many times in the recent past, and the opponents’ own evidence does not even attempt to account for such dredging. Certainly, the Yamada study does not undermine the strength of the Applicant’s case.

The Applicant’s experts conducted years of scientific studies of Coos Bay sealife and came to this conclusion:

“Based on measures and actions that will be in place to eliminate or mitigate potential adverse effects from actions during operation of LNG carrier transit, including waves size and propeller wash, LNG gas or hazardous substance spills or introduction of invasive species to marine resources, we conclude that the Project would not significantly affect marine resources.”

DEIS, March 2019, p. 426, Exhibit 14, subexhibit 27. The Applicant also submitted a 1074-page scientific report entitled “Biological Assessment and Essential Fish Habitat Assessment” (September, 2018), Exhibit 14, subexhibit 36. The opponents have failed to refute its conclusions of no significant adverse impacts on sealife and/or wildlife. The opponents’ dire predictions of environmental devastation seem appear to be febrile exaggerations, at the very least. The hearings officer carefully reviewed the Applicant’s expert testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

The only component of this Omnibus II land use application that potentially triggers CBEMP Policy #4 is the temporary dredge line. This subsection requires a showing that the temporary dredge line in the 13B-NA and 14-DA zones is consistent with the resource capabilities of the areas in which it is located, in accordance with Policy #4. Policy #4 explains that “all proposed actions (approved in this Plan), which would alter or potentially alter, the integrity of the estuarine ecosystem have been based upon a full consideration of the impacts of the proposed alteration and a demonstration of the public’s need and gain, which warrant such modification or loss,” except for certain enumerated activities.

Therefore, Policy #4 explains that, with the exception of the uses specifically listed, the County has completed resource capability findings for all uses and activities allowed in the respective County zones. The temporary dredge line is not among the uses and activities that Policy #4 lists as an exception to this rule. Accordingly, identification of the temporary dredge line in the subject zone as an allowed activity constitutes a determination of compliance with the resource capabilities standard, which, in turn, supports the conclusion that the temporary dredge line is consistent with the resource capabilities of the areas in which it is located.

CBEMP Policy #5 Estuarine Fill and Removal

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

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

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

c. No feasible alternative upland locations exist; and

d. Adverse impacts are minimized.

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

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

II. Other uses and activities which could alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met.

Identification and minimization of adverse impacts as required in "d" above shall follow the procedure set forth in Policy #4.

As required by Goal #16, only dredging necessary for on-site maintenance of existing functional tidegates, associated drainage channels and bridge crossing support structures is permitted in Natural and Conservation Management Units (applies to 11-NA, 18A-CA, 20-CA, 30-CA, 31-NA and 38-CA). Dredging necessary for the installation of new bridge crossing support structures is permitted in Conservation Management Units and may be allowed in Natural Management Units where consistent with the resource capabilities of the area and the purposes of the management unit.

In the Conservation Management Unit, new dredging for boat ramps and marinas, aquaculture requiring dredge or fill or other alteration of the estuary, and dredging necessary for mineral extraction may be allowed where consistent with the resource capabilities of the area and the purposes of the management unit.

This strategy shall be implemented by the preparation of findings by local government documenting that such proposed actions are consistent with the Comprehensive Plan,

and with the above criteria "a", "b", "c", "d", "e" and "f"; however, where goal exceptions are included within this Plan, the findings in the exception shall be sufficient to satisfy above criteria "a" through "d". Identification and minimization of adverse impacts as required in "e" above shall follow the procedure set forth in Policy #4a. The findings shall be developed in response to a "request for comment" by the Division of State Lands (DSL), which shall seek local government's determination regarding the appropriateness of a permit to allow the proposed action.

"Significant" as used in "other significant reduction or degradation of natural estuarine values", shall be determined by: a) the U.S. Army Corps of Engineers through its Section 10.404 permit processes; or b) the Department of Environmental Quality (DEQ) for approvals of new aquatic log storage areas only; or c) the Department of Fish and Wildlife (ODFW) for new aquaculture proposals only.

This strategy recognizes that Goal #16 limits dredging, fill and other estuarine degradation in order to protect the integrity of the estuary.

Hearings Officer Findings: CBEMP Policy #5 generally does not apply to these proposals, because they do not involve “dredging” or “fill” in the Coos Bay estuary. Policy 5 applies to the rock apron to the extent that the apron is labeled a “navigational structure” and not Shoreline stabilization.”

The rock apron is required for navigation because it is designed, in part, to protect Pile Dike 7.3, which is itself a type of navigational structure needed to help stabilize the location of the deep draft channel.

There is a need (*i.e.*, a substantial public benefit) for the rock apron because without the rock apron, there is a risk that the new marine slip and related dredging will cause slope migration of the channel. The Channel needs to be maintained in its current location, and any rock formations that help accomplish this serve a public interest.

The rock apron does not unreasonably interfere with public trust rights, because the amount of submerged land that will be occupied by the rock apron is minor in relation to the public purpose that it serves. *Compare Morse v. Oregon Division of State Lands*, 285 Or 197, 202, 590 P2d 709 (1979).

The location of the rock apron is, of course, site specific, and therefore no feasible alternative upland locations exist.

Adverse impacts are minimized, and the effects of the rock apron may be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained.

Several opponents mentioned CBEMP Policy #5. Except as noted above, generally this policy does not apply to the Applications. Although the “impact minimization” standard of this policy is potentially applicable pursuant to CBEMP Policy #5a.II.b, that policy is not triggered by the Applications for the reasons explained at page 87 of the narrative in support of the Applications.

Opponent Jody McCaffree raises multiple issues tangentially related to Policy #5:

“A need (ie., a substantial public benefit) has not been demonstrated by the applicant. The project would unreasonably interfere with navigation, fishing and public recreation and would therefore not be in compliance with CBEMP Policy 5(I)(b). Components of the terminal and LNG tanker ships would conflict with the navigable airspace of the Southwest Oregon Regional Airport among many other public benefit and use impacts.

There is no American public benefit to the loss of fish, marine and wildlife habitat due to the destructive nature of all the proposed dredging for the Jordan Cove / Pacific Connector Project. The Pacific Connector Pipeline construction is projected to impact 485 wetlands and waterbodies in Southern Oregon, many of which are salmon bearing.

The Coos Bay Estuary is already 303D limited and this project will only make that situation worse. Jordan Cove’s sedimentation expert expects us to believe that there would be no negative impacts with sedimentation or turbidity from all their proposed dredging. Our sedimentation expert actually proved Jordan Cove’s data to be incorrect on this issue during the land use process under Coos County File No. REM 10-01 for HBCU-10-01. (*See Exhibit 29*).

McCaffree letter of October 14, 2019, Exhibit 8, p. 4.

First, the fact that Coos Bay is “303D limited” is irrelevant, and the vast majority of Oregon’s waterways are similarly classified.

Second, Ms. McCaffree’s subexhibit 29 is a 2011 criticism of a 2010 Geoengineers report, entitled “Limitation of the Haynes Inlet sediment transport study” by Professor Tom Ravens. Professor Ravens’ eight-year-old opinion of a nine-year-old sediment report says little about the evidence the Applicant has submitted in *this* application. Professor Ravens’ paper does not “prove Jordan Cove’s data to be incorrect on this issue during the land use process under Coos County File No. REM 10-01 for HBCU-10-01.” Professor Ravens does not state that Jordan Cove’s data was incorrect; he simply criticizes some facets of their choice of computer model, which “leads one to question the reliability of the project’s findings.” (Exhibit 8, subexhibit 29, p. 2). Such ambiguous statements “prove” nothing. In any event, in that case, the Coos County Board of Commissioners rejected Professor Ravens’ opinion. Ms. McCaffree fails to produce any substantial evidence that JCEP’s current proposals will make Coos Bay “worse” from a water quality, TDML perspective. Ultimately, this argument is insufficiently developed to enable legal review.

Third, “public need” or “substantial public benefit” are not an approval criteria when no permanent dredging is involved. Here, the dredging activity was approved by Coos County in the Omnibus I application. This Omnibus II application does not propose any different dredging activity that would trigger a need to reevaluate the “public need” for the overall project.”

The hearings officer is also mindful that the Ordinance language from Coos County's CBEMP Policy #5 was not created in a vacuum, but rather originates in Statewide Planning Goal 16. 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.**

The County extensively addressed the public need issue in the remand of Omnibus I (Final Decision and Order No. 16-08-071 PL, found in the Record as Application Exhibit 1). Nothing in this land use application mandates a repetition of that analysis, but it is hereby incorporated into this Recommendation by this reference.

2. CBEMP Policy #5a: Temporary Alterations

- I. Local government shall support as consistent with this Plan: (a) temporary alteration 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.***

Hearings Officer's Findings: The temporary dredge line in the 13B-NA, and 14-DA zones are subject to Policy #5a. CCZLDO §2.1.200 defines "temporary alteration" as "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." CCZLDO §2.1.200 further provides that temporary alterations cannot occur for more than three (3) years and the applicant must restore the affected area to its previous condition after that time." The temporary dredge line fits this definition.

The temporary dredge line in the 13B-NA, and 14-DA zones comply with Paragraph I of Policy #5a because it is consistent with the resource capabilities of the management units, as further described below. In the 14-DA zone, which is a development management unit, the temporary dredge line satisfies the management objective of the zone, as described above, and thus the temporary dredge line in the 14-DA zone is consistent with the purpose of the 14-DA zone.

- 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); and

Hearings Officer's Findings: This subsection requires a showing that the temporary dredge line in the 13B-NA and 14-DA zones is consistent with the resource capabilities of the areas in which it is located, in accordance with Policy #4. Policy #4 explains that "all proposed actions (approved in this Plan), which would alter or potentially alter, the integrity of the estuarine ecosystem have been based upon a full consideration of the impacts of the proposed alteration and a demonstration of the public's need and gain, which warrant such modification or loss," except for certain enumerated activities.

The CBEMP states that the County has already considered the resource capabilities of the 13B-NA and 14-DA zones and determined that temporary alterations do not trigger Policy #4a. By way of contrast, where the County wished to trigger Policy #4a, it did so with language like this example: regarding high-intensity recreational uses in the 18A-CA zone, the Code states:

8a,8b. These uses are only allowed subject to the making of resource capability consistency findings and impact assessments (see Policy #4a). Boat ramps for public use where no dredging or fill for navigational access is needed (see definition of "Recreation").

(CCZLDO §3.2.486, Special Conditions for 18A-CA zone, p. III-192). No similar mention of Policy #4a. exists in the code sections discussing the 13B-NA and 14-DA zones. Therefore, the hearings officer concludes the County did not intend for "temporary alterations" to trigger Policy #4a. This makes sense, as such as alterations are by definition temporary, and thus unlikely to cause any lasting harm to natural resources in Coos Bay.

Therefore, Policy #4 explains that, with the exception of the uses specifically listed, the County has completed resource capability findings for all uses and activities allowed in the respective County zones. The temporary dredge line is not among the uses and activities that Policy #4 lists as an exception to this rule. Accordingly, identification of the temporary dredge line in the subject zone as an allowed activity constitutes a determination of compliance with the resource capabilities standard, which, in turn, supports the conclusion that the temporary dredge line is consistent with the resource capabilities of the areas in which it is located.

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; and

Hearings Officer's Findings: The temporary dredge line, which consists of a contained pipe utilized solely for the transmission of material resulting from authorized dredging, in the 13B-NA and 14-DA zones does not involve 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

Hearings Officer's Findings: The temporary dredge line in the 13B-NA, and 14-DA zones does not involve fill or structures. JCEP will remove the dredge lines when JCEP no longer has a need to transport dredge spoils from dredging in the DDNC and slip and access channel.

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.

Hearings Officer's Findings: JCEP will states it will comply with durational limits on the temporary dredge line that it proposes in the 13B-NA and 14-DA zones.

3. CBEMP Policy #8: Estuarine Mitigation Requirements

Local government recognizes that mitigation shall be required when estuarine dredge or fill activities are permitted in inter-tidal or tidal marsh areas. The effects shall be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained as required by ORS 196.830 (renumbered in 1989). However, mitigation shall not be required for projects which the Division of State Lands determined met the criteria of ORS 196.830(3).

This strategy shall be implemented through procedures established by the Division of State Lands, and as consistent with ORS 196.830 and other mitigation/restoration policies set forth in this Plan.

This strategy recognizes the authority of the Director of the Division of State Lands in administering the statutes regarding mitigation.

Hearings Officer's Findings: CBEMP Policy 8 applies to the rock apron proposed in the 5-DA zone to protect Pile Pike 7.3 to the extent that such activity is a "navigational" activity. Policy 8 requires that an applicant provide mitigation for estuarine dredge or fill activities permitted by the County. CBEMP Policy 8 specifically exempts these mitigation requirements where DSL has determined the

application meets the criteria established at ORS 196.830(3). The following two-part response is necessary.

1. The County has the ability to rely on DSL and the Corps' regulatory programs to ensure compliance with its own approval criteria.

Policy #8 Estuarine Mitigation Requirements recognizes that Department of State Lands (DSL) has the expertise to regulate mitigation. The applicant has applied for the necessary permits through the Oregon Department of State Land ("DSL") and the United States Army Corps of Engineers ("USACE") Coos County is involved in these permitting processes through the land use compatibility portion of the application. Therefore, the applicant has complied with this policy.

The applicant's mitigation proposal has been discussed with DSL, the Corps, and other involved state and federal resource agencies. The final form of the mitigation required of JCEP will be determined through the DSL and Corps permitting process. By including a condition of approval requiring compliance with the DSL and Corps programs, the County can ensure that its criteria under CBEMP Policy 8 have been met before work on the Project is initiated.

2. The last sentence in CBEMP Policy 8 reflects the County's reliance on the DSL program to resolve the scope and extent of any mitigation required.

In this case, DSL is evaluating the project under its own program. A copy of the Estuarine Mitigation Plan shows the applicant's response to this criterion and the mitigation requirement administered by DSL and the Corps.

The reference to ORS 196.830 bears examination at this time. ORS 196.830 relates to "estuarine resource replacement" as a condition for fill or removal from an estuary. The Oregon Legislature defined that term to mean the "creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features and water quality." ORS 196.830(1).

ORS 196.830(2) requires DSL to make mitigation a condition of its approval. ORS 196.830(3) states: "If the director requires estuarine resource replacement, the director shall consider:

- (a) The identified adverse impacts of the proposed activity;
- (b) The availability of areas in which replacement activities could be performed;
- (c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;
- (d) The recommendations of any interested or affected state or local agencies; and
- (e) The extent of compensating activity inherent in the proposed activity."

As provided above, DSL's requirements address the same issues raised in the CBEMP. The USACE criteria for mitigation are similar to DSL's. The hearing officer recommends that the County condition its authorization, as stated above. Compliance with DSL's administrative rules for estuarine mitigation pursuant to ORS 196.830 and other mitigation requirements imposed by DSL and the Corps through the permits issued in response to the Joint Permit Application will satisfy

CBEMP Policy 8. Thus, the County can ensure compliance with CBEMP Policy 8 by conditioning the County's approvals on compliance with DSL and Corps regulatory requirements.

4. CBEMP Policy #9: Solutions to Erosion and Flooding Problems

Local government shall prefer nonstructural solutions to problems of erosion and flooding to structural solutions. Where shown to be necessary, water and erosion control structures such as jetties, bulkheads, seawalls and similar protective structures and fill whether located in the waterways or on shorelands above ordinary high-water mark shall be designed to minimize adverse impacts on water currents, erosion and accretion patterns.

I. Further, where listed as an “allowable” activity within respective management units, riprap may be allowed in Development Management Units upon findings that:

- a. Land use management practices and nonstructural solutions are inadequate; and***
- b. Adverse impacts on water currents, erosion and accretion patterns are minimized; and***
- c. It is consistent with the Development Management Unit requirements of the Estuarine Resources Goal.***

II. Further, where listed as an “allowable” activity within respective management units, riprap may be allowed in Conservation Aquatic Management Units upon findings that:

- a. Land use management practices and nonstructural solutions are inadequate; and***
- b. Adverse impacts on water currents, erosion and accretion patterns are minimized; and***
- c. Riprap is consistent with the resource capabilities of the area and the purposes of maintaining Conservation management units.***

III. Further, where listed as an “allowable” activity within respective management units, riprap shall only be allowed in Natural Aquatic (NA) units upon findings that:

- a. There is a need to protect from erosion: uses existing as of October 7, 1977, unique natural resources and historic archaeological values, or public facilities; and***
- b. Land use management practices and nonstructural solutions are inadequate; and***
- c. It is consistent with the natural management unit as set forth in this Plan and required by Goal #16; and***

d. Adverse impacts on water currents, erosion and accretion patterns and estuarine organisms and their habitat are minimized.

Implementation of this policy shall occur through local review of and comment on state and federal permit applications for such projects.

This strategy is based on the recognition that nonstructural solutions are often more cost effective as corrective measures, but that carefully designed structural solutions are occasionally necessary. The strategy also recognizes Statewide Planning Goals #16 and #17 requirements and the Oregon Administrative Rule classifying Oregon estuaries (OAR 660-17-000 as amended June, 1981).

Hearings Officer's Findings: The pile dike rock apron in the 5-DA zone and the shoreline stabilization that it proposes in the 5-WD zone (riprap) are subject to Policy #9 to the extent they are classified as "shoreline stabilization." These proposals comply with Policy #9 for the reasons set forth below.

During JCEP's early coordination with the United States Army Corps of Engineers ("USACE") Northwest Division, Portland District, Section 408 Project Development Team, a need was identified to protect Pile Dike 7.3 from slope migration (erosion) or equilibration. JCEP and USACE determined that implementing a pile dike rock apron (riprap) is the necessary protective measures to arrest slope migration before it progresses to a condition that will negatively impact Pile Dike 7.3. The pile dike rock apron is rriprap, a nonstructural solution.

Further, the pile dike rock apron complies with paragraph I of Policy #9. Land use management practices and nonstructural solutions are inadequate to protect Pile Dike 7.3. Without protective rriprap, wind, waves, and currents will erode Pile Dike 7.3. The design of the pile dike rock apron will minimize adverse impacts on water currents, erosion and accretion patterns. The pile dike rock apron is consistent with the development management unit requirements of the Estuarine Resources Goal (16). Goal 16 explains that development management units "provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses," and that permissible uses include "navigation and water-dependent commercial and industrial uses." A primary purpose of Pile Dike 7.3 is to assist with navigation in the Coos Bay Deep Draft Navigation Channel. Thus, the rriprap is a use that will facilitate navigation, which in turn will facilitate industrial development of the North Spit, including creation of a slip and access channel for maritime navigation that will support that development. Goal 16 allows such uses in development management units.

Opponent Michael Graybill alleged the Applicant had failed to demonstrate compliance with CBEMP Policy #9 (Graybill October 27, 2019 letter, Exhibit 17, p.4). Specifically, Mr. Graybill alleges "The applicant has failed to demonstrate that "land use management practices and nonstructural solutions are inadequate to attain the desired outcome."

That is not correct. The required Policy #9 demonstration is found on page 89 of the Application Narrative:

“During JCEP’s early coordination with the United States Army Corps of Engineers (“USACE”) Northwest Division, Portland District, Section 408 Project Development Team, a need was identified to protect Pile Dike 7.3 from slope migration (erosion) or equilibration. JCEP and USACE determined that implementing a pile dike rock apron (riprap) is the necessary protective measures to arrest slope migration before it progresses to a condition that will negatively impact Pile Dike 7.3. The pile dike rock apron is rriprap, a nonstructural solution.

Further, the pile dike rock apron complies with paragraph I of Policy #9. Land use management practices and nonstructural solutions are inadequate to protect Pile Dike 7.3. Without protective rriprap, wind, waves, and currents will erode Pile Dike 7.3. The design of the pile dike rock apron will minimize adverse impacts on water currents, erosion and accretion patterns. The pile dike rock apron is consistent with the development management unit requirements of the Estuarine Resources Goal (16). Goal 16 explains that development management units “provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses,” and that permissible uses include “navigation and water-dependent commercial and industrial uses.” A primary purpose of Pile Dike 7.3 is to assist with navigation in the Coos Bay Deep Draft Navigation Channel. Thus, the rriprap is a use that will facilitate navigation, which in turn will facilitate industrial development of the North Spit, including creation of a slip and access channel for maritime navigation that will support that development. Goal 16 allows such uses in development management units.”

The hearings officer finds this demonstration, supported by substantial evidence provided by the Applicant, is an adequate showing of compliance with CBEMP Policy #9.

Paragraphs II and III do not apply to the pile dike rock apron or the shoreline stabilization

Therefore, the hearings officer finds that the pile dike rock apron and shoreline stabilization complies with CBEMP Policy #9.

5. CBEMP Policy #13: Overall Use Priorities Within Coastal Shorelands.

1. Local governments shall maintain the following priorities for the overall use of coastal shorelands (from highest to lowest):

- a. Promote uses which maintain the integrity of estuaries and coastal waters;***
- b. Provide for water-dependent uses;***
- c. Provide for water-related uses;***

- d. Provide for nondependent, nonrelated uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;*
- e. Provide for development, including nondependent, nonrelated uses in urban areas compatible with existing or committed uses;*
- f. Permit nondependent, nonrelated uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.*

In addition, priority uses for flood hazard and floodplain areas outside of incorporated cities shall include agriculture, forestry, recreation and open space.

This strategy recognizes that the Coos Bay Estuary Management Plan's shoreland designations, and permitted uses and activities are based upon and establish general priorities for the use of coastal shoreland resources.

Hearings Officer's Findings: The meteorological station is subject to Policy #13. Nonetheless, Policy #13 does not create mandatory approval criteria that apply to the meteorological station. The policy establishes a priority system for Coos County to apply with respect to land use within coastal shorelands. The 4-CS zone allows low-intensity utilities like the meteorological station. Permitting low-intensity utilities in the 4-CS zone does not upset the aspirational priority system that Policy #13 establishes with respect to land use within coastal shorelands. The meteorological station is a use that maintains the integrity of estuaries and coastal waters and is both a water-dependent and a water-related use. The purpose of the meteorological station is to provide real time meteorological data for ships transiting the Coos Bay Deep Draft Navigation Channel. The station is thus dependent on the existence of water and shipping transit. Therefore, it is consistent with Policy #13 for the County to allow the meteorological station in the 4-CS zone.

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

- I. Coos County shall manage its rural areas with 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:*
 - 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, 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 non-resource use;**
- f. Single family residences on lots, parcels, or units of land existing on January 1, 1977 when it is established that:**
- 1. The dwelling is in conjunction with a permitted farm or forest use, or**
 - 2. The dwelling is in a documented "committed" area, or**
 - 3. The dwelling has been justified through a goal exception, and**
 - 4. Such uses do not conflict with the resource preservation and protection policies established elsewhere in this Plan;**
- g. Any other uses, including non-farm and non-forest uses, provided that the Board of Commissioners 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.

Hearings Officer's Findings: The gas processing in the 6-WD zone, and the shoreline stabilization and pile dike rock apron in the 5-WD zone, are subject to and comply with Policy #14, as addressed below.

The 6-WD zone allows the gas processing "subject to the findings" in Policy #14. The gas processing is a "water-dependent industrial use" because it is an essential part of the LNG Terminal to develop on the North Spit, which will receive natural gas from the Pacific Connector Gas Pipeline, condition it, convert it to liquefied natural gas, and place it on vessels for transport through the Coos Bay Deep Draft Navigation Channel. As noted, the gas processing is the "conditioning" phase of this process, which is integral and essential to the purposes and operation of the LNG Terminal, and which has no independent purpose work unless a component of the LNG Terminal. The LNG Terminal is a water-dependent industrial use and thus, so is its essential components, including the gas processing. The gas processing is also a "water-related" use in accordance with subsection e. of Paragraph I of Policy #14.

For the above reasons, the Board should find that the gas processing “satisf[ies] a need which cannot be accommodated on uplands or in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.” In sum, the gas processing must be located at this location as a component of the LNG Terminal because it is an essential link in the chain of processes necessary to accept and process natural gas from the Pacific Connector Gas Pipeline for conversion to liquefied natural gas for transport out of Coos Bay. The gas processing could not serve its function if it was not located in the port and near the water.

The 5-WD zone allows the pile dike rock apron and shoreline stabilization “subject to the findings” in Policy #14. The pile dike rock apron and shoreline stabilization are “water-dependent industrial uses.” Their purpose is to protect Pile Dike 7.3 and to protect against erosion and slope cut-back. Pile Dike 7.3 has a primary purpose of facilitating navigation in the Coos Bay Deep Draft Navigation Channel. Specifically, JCEP seeks to protect Pile Dike 7.3 as part of its larger plan for developing the North Spit with the LNG Terminal and related uses, the terminal itself and such related uses being water-dependent industrial uses. Thus, owing to the fact that they are essential to protect the viability of industrial uses in the 5-WD zone, these uses are themselves a species of industrial use. The pile dike rock apron and shoreline stabilization are indisputably water-dependent (Pile Dike 7.3 is in the water, and “shoreline stabilization” cannot exist without a shore, which cannot exist without water) and it is an essential component of an overall plan to develop the North Spit with industrial uses. Further, the pile dike rock apron and shoreline stabilization are “water-related uses” because they are in the water and their purpose is to protect Pile Dike 7.3, a primary purpose of which pile dike is to facilitate maritime navigation.

For the above reasons, the hearings officer recommends that the Board find that the pile dike rock apron and shoreline stabilization in the 5-WD zone comply with Policy #14. Really, the pile dike rock apron satisfies a need that cannot be accommodated upland or in urban or urbanizable areas because its location in the estuary, at the location JCEP has proposed, is necessary to protect Pile Dike 7.3. The hearings officer recommends this finding.

7. CBEMP Policy #16: Protection of Sites Suitable to Water-Dependent Uses; and Special Allowance for New Non-Water-Dependent Uses in "Urban Water-Dependent (UW) Units."

Local government shall protect shorelands in the following areas that are suitable for water-dependent uses, for water-dependent commercial, recreational and industrial uses.

- a. Urban or urbanizable areas;***
- b. Rural areas built upon or irrevocably committed to non-resource use; and***
- c. Any unincorporated community subject to OAR Chapter 660, Division 022 (Unincorporated Communities).***

This strategy is implemented through the Estuary Plan, which provides for water-dependent uses within areas that are designated as Urban Water-dependent (UW) management units.

I. Minimum acreage. The minimum amount of shorelands to be protected shall be equivalent to the following combination of factors:

- a. Acreage of estuarine shorelands that are currently being used for water-dependent uses; and**
- b. Acreage of estuarine shorelands that at any time were used for water-dependent uses and still possess structures or facilities that provide or provided water-dependent uses with access to the adjacent coastal water body. Examples of such structures or facilities include wharves, piers, docks, mooring piling, boat ramps, water intake or discharge structures and navigational aids.**

II. Suitability. The shoreland area within the estuary designated to provide the minimum amount of protected shorelands, shall be suitable for water-dependent uses. At a minimum such water-dependent shoreland areas shall possess, or be capable of possessing, structures or facilities that provide water-dependent uses with physical access to the adjacent coastal water body. The designation of such areas shall comply with applicable Statewide Planning Goals.

III. Permissible Non-Water-Dependent Uses. Unless otherwise allowed through an Exception, new non-water-dependent uses which may be permitted in "Urban Water-Dependent (UW)" management units are a temporary use which involves minimal capital investment and no permanent structures, or a use in conjunction with and incidental and subordinate to a water-dependent use. Such new non-water-dependent uses may be allowed only if the following findings are made, prior to permitting such uses:

- 1. Temporary use involving minimal capital investment and no permanent structures:**
 - a. The proposed use or activity is temporary in nature (such as storage, etc); and,**
 - b. The proposed use would not pre-empt the ultimate use of the property for water-dependent uses; and**
 - c. The site is committed to long-term water-dependent use or development by the landowner.**
- 2. Use in conjunction with and incidental and subordinate to a water-dependent use:**
 - a. Such non-water-dependent uses shall be constructed at the same time as or after the water-dependent use of the site is established, and must be carried out together with the water-dependent use.**
 - b. The ratio of the square footage of ground-level indoor floor space plus outdoor acreage distributed between the non-water-dependent uses and the water-dependent uses at the site shall not exceed one to three (non-water-dependent to water-dependent).**

c. Such non-water-dependent uses shall not interfere with the conduct of the water-dependent use.

This policy shall be implemented through provisions in ordinance measures that require an administrative conditional use application be filed and approved, and the above findings be made, prior to the establishing of the proposed uses or activities.

Hearings Officer's Findings: The gas processing in the 6-WD zone is subject to Policy #16.

Paragraph I of Policy #16 does not impose approval criteria on the gas processing in the 6-WD zone. Paragraph I is a planning directive.

Paragraph II of Policy #16 does not impose approval criteria on the gas processing in the 6-WD zone. The gas processing does not affect the suitability for water-dependent uses of "the shoreland area within the estuary designated to provide the minimum amount of protected shorelands."

Paragraph III of Policy #16 does not apply to the gas processing in the 6-WD zone because it is a water dependent use. Further, Paragraph III applies only to uses in Urban Water Dependent "UW" zones. *Compare Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1, 15-16 (2005). The 6-WD zone (where the gas plant will be sited) is, as the name implies, a "WD" zone, not a "UW" zone.

In her letter dated October 14, 2019, attorney Tonia Moro argues that the LNG terminal is not a water dependent use. The definition of "water-dependent" is a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water. CCZLDO §2.1.200. The term is defined as follows:

WATER-DEPENDENT: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

A. *The following definitions also apply:*

- 1. access: means physical contact with or use of the water;*
- 2. energy production: means uses which need quantities of water to produce energy directly (e.g., hydroelectric facilities, ocean thermal energy conversion);*
- 3. recreational: e.g., recreational marinas, boat ramps and support;*
- 4. require: means the use either by its intrinsic nature (e.g., fishing, navigation, boat moorage) or at the current level of technology cannot exist without water access;*
- 5. source of water: means facilities for the appropriation of quantities of water for cooling processing or other integral functions;*

6. *water-borne transportation: means uses of water access:*
 - i. *which are themselves transportation (e.g., navigation);*
 - ii. *which require the receipt of shipment of goods by water; or*
 - iii. *which are necessary to support water-borne transportation (e.g., moorage fueling, servicing of watercraft, ships, boats, etc. terminal and transfer facilities).*

B. Typical examples of water-dependent uses include the following:

1. *aquaculture;*
2. *certain scientific and educational activities which, by their nature, require access to coastal waters: estuarine research activities and equipment mooring and support;*
3. *commercial: e.g., commercial fishing marinas and support; fish processing and sales; boat sales, rentals, and supplies;*
4. *industrial: e.g., manufacturing to include boat building and repair; water-borne transportation, terminals, and support; energy production which needs quantities of water to produce energy directly; water intake structures for facilities needing quantities of water for cooling, processing, or other integral functions.*
5. *recreation: means water access for fishing, swimming, boating, etc. Recreational uses are water-dependent.*

*See also OAR 660-037-0040(6).*⁶ In the Omnibus I decision issued in 2016, the County found that LNG terminal is an industrial use that involves “water borne transportation” and is also a “terminal and support” within the meaning of OAR 660-037-0040(6) and CCZLDO §3.2.271.

⁶ OAR 660-037-0040(6) provides:

(6) "Water-Dependent Use".

(a) The definition of "water-dependent" contained in the Statewide Planning Goals (OAR Chapter 660, Division 015) applies. In addition, the following definitions apply:

(A) "Access" means physical contact with or use of the water.

(B) "Requires" means the use either by its intrinsic nature (e.g., fishing, navigation, boat moorage) or at the current level of technology cannot exist without water access.

(C) "Water-borne transportation" means uses of water access:

(i) Which are themselves transportation (e.g. navigation);

(ii) Which require the receipt of shipment of goods by water; or

(iii) Which are necessary to support water-borne transportation (e.g. moorage fueling, servicing of watercraft, ships, boats, etc. terminal and transfer facilities).

(D) "Recreation" means water access for fishing, swimming, boating, etc. Recreational uses are water dependent only if use of the water is an integral part of the activity.

(E) "Energy production" means uses which need quantities of water to produce energy directly (e.g. hydroelectric facilities, ocean thermal energy conversion).

(F) "Source of water" means facilities for the appropriation of quantities of water for cooling processing or other integral functions.

Water-related uses are those uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

The applicant is proposing a “water-dependent” use that requires a location adjacent to water areas with a deep-draft slip and navigation channel. The hearings officer’s finding on this point is consistent with the manner in which the Board of Commissioners interpreted the Ordinance in 2007. *See* Order 07-11-289 PL, at p. 6, and in the Omnibus I decision.

8. CBEMP Policy #17: Protection of “Major Marshes” and Significant “Wildlife Habitats” in Coastal Shorelands.

Local government 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 map “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.***

II. This strategy shall be implemented through:

(b) Typical examples of water dependent uses include the following:

(A) Industrial - e.g., manufacturing to include boat building and repair; water-borne transportation, terminals, and support; energy production which needs quantities of water to produce energy directly; water intake structures for facilities needing quantities of water for cooling, processing, or other integral functions.

(B) Commercial - e.g., commercial fishing marinas and support; fish processing and sales; boat sales, rentals, and supplies.

(C) Recreational - e.g., recreational marinas, boat ramps, and support.

(D) Aquaculture.

(E) Certain scientific and educational activities which, by their nature, require access to coastal waters - estuarine research activities and equipment mooring and support.

(c) For purposes of this division, examples of uses that are not “water dependent uses” include restaurants, hotels, motels, bed and breakfasts, residences, parking lots not associated with water-dependent uses, and boardwalks.

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 that identifies 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.

Hearings Officer's Findings: The meteorological station and gas processing in the 4-CS and 6-WD zones, respectively, the temporary dredge line in the 13B-NA and 14-DA zones, the IWWP in the 7-D zone, and the pile dike rock apron and shoreline stabilization in the 5-WD zone, are all subject to Policy #17. These proposals comply with Policy #17.

LUBA previously noted that “[t]here is simply nothing in the text of CBEMP Policy 17 that suggests it is to be implemented by limiting uses on properties that adjoin or are located near inventoried major marshes or significant wildlife habitat to avoid possible impacts on such marshes and habitat.” *SOPIP, Inc. v. Coos County*, 54 Or LUBA 44 (2008), *aff’d without op.*, 223 Or App 495 (2008), *rev. denied*, 346 Or 65 (2009). Thus, CBEMP Policy #17’s implementation strategy provides the roadmap for analysis.

Paragraph I of Policy #17 requires that development protect major marshes, significant wildlife habitats, coastal headlands, and exceptional aesthetic resources. There are no inventoried significant wildlife habitats, major marshes, or coastal headlands in the area of the meteorological station, gas processing, IWWP, pile dike rock apron, shoreline stabilization (5-WD and 7-D), or temporary dredge line in this Application. Furthermore, according to the Coos County Comprehensive Plan, there are no identified exceptional aesthetic resources in the areas for these developments: “There are no areas of exceptional or aesthetic or scenic quality within the Planning Area [See Section 4.3].” Plan Volume II, Part 2, Section 3.3-3. The Planning Area is defined as “all lands west of the Oregon Coast Highway,” subject to limited exceptions not applicable here. Plan Volume II, Part 2, Section 3.1-1.

The IWWP in the 7-D zone crosses an area identified on the County’s Shoreland Values Inventory Map as a freshwater wetland, which is a significant wildlife habitat. Paragraph II of Policy #17 explains that Policy #17’s mandate to “protect” identified resources is implemented by zoning to limit allowed uses to those that are consistent with protecting resources. The IWWP is a “high-intensity” utility and “high-intensity” utilities are allowed in the 7-D zone. Thus, the County has made the determination that high-intensity utilities like the IWWP are consistent with protecting the freshwater wetland in the 7-D zone. Further, the IWWP will not negatively impact the freshwater

wetland because, although the County's Shoreland Values Inventory Map shows the IWWP crossing a freshwater wetland, the IWWP does not in fact cross an existing delineated wetland boundary based upon available site-specific delineations.

Therefore, the meteorological station and gas processing in the 4-CS and 6-WD zones, respectively, the temporary dredge lines in the 6-DA, 7-NA, 13B-NA, and 14-DA zones, respectively, the IWWP in the 7-D zone, the pile dike rock apron in the 5-WD zone, and the shoreline stabilization in the 6-WD zone, all comply with Paragraph I of Policy #17.

Paragraph II of Policy #17 does not impose approval criteria on the Application.

Therefore, the meteorological station, gas processing, IWWP, pile dike rock apron, shoreline stabilization (5-WD), and temporary dredge line all comply with Policy #17.

9. CBEMP Policy #18: Protection of "Historical, Cultural and Archaeological Sites."

Local government shall provide special 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 an archaeological or historical site to determine whether the project as proposed would protect the historical and archaeological values of the site.

II. The development proposal, when submitted shall include a Site Plan Application, 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 Site Plan Application. 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 historical and archaeological values of the site, or if not, whether the project could be modified by appropriate measure to protect those values.

"Appropriate measures" may include, but shall not be limited to the following:

- a. Retaining the historic structure in-situ or moving it intact to another site; or***
- b. Paving over the site without disturbance of any human remains or cultural objects upon the written consent of the Tribe(s); or***
- c. Clustering development so as to avoid disturbing the site; or***
- d. Setting the site aside for non-impacting activities, such as storage; or***

e. If permitted pursuant to the substantive and procedural requirements of ORS 97.750, contracting with a qualified archaeologist to excavate the site and remove any cultural objects and human remains, reintering the human remains at the developer's expense; or

f. Using civil means to ensure adequate protection of the resources, such as acquisition of easements, public dedications, or transfer of title.

If a previously unknown or unrecorded archaeological site is encountered in the development process, the above measures shall still apply. Land development activities, which violate the intent of this strategy, shall be subject to penalties prescribed in ORS Chapter 97.990.

III. Upon receipt of the statement by the Tribe(s), or upon expiration of the Tribe(s) thirty-day response period, the local government shall conduct an administrative review of the Site Plan Application and shall:

a. Approve the development proposal if no adverse impacts have been identified, as long as consistent with other portions of this Plan, or

b. Approve the development proposal subject to appropriate measures agreed upon by the landowner and the Tribe(s), as well as any additional measures deemed necessary by the local government to protect the cultural, historical and archaeological values of the site. If the property owner and the Tribe(s) cannot agree on the appropriate measures, then the governing body 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 archaeological values of the site.

c. Through the "overlay concept" of this policy and the Special Considerations Map, unless an exception has been taken, no uses other than propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation shall be allowed unless such uses are consistent with the protection of the cultural, historical and archaeological values, or unless appropriate measures have been taken to protect the historic and archaeological values of the site.

This strategy recognizes that protection of historical and archaeological sites is not only a community's social responsibility, is also legally required by ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable cultural resources.

Hearings Officer's Findings: The meteorological station, gas processing, and IWWP in the 4-CS, 6-WD and 7-D zones, respectively, the temporary dredge line in the 6- 13B-NA and 14-DA zones, the

pile dike rock apron in the 5-WD zone, and the shoreline stabilization in the 5-WD zone, are all subject to Policy #18.

CBEMP Policy #18 applies to all proposed uses and activities in the CBEMP. CBEMP Policy #18 requires the County to provide notice of a development proposal involving a historical, cultural, or archaeological site to the Coquille Tribe and the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw (collectively, "Tribes"). The tribes then have 30 days to respond and state whether the development would protect the cultural, historical, and archaeological values of the site either as proposed or as modified by appropriate measures.

For two reasons, the hearings officer finds that historical, archaeological, and cultural resources are protected in the areas where these project components would be developed. First, the project will not adversely affect County-inventoried resources.

There is a County-inventoried resource located in the vicinity of the area of the identified project components. JCEP retained the professional archaeologists and researchers at Historical Research Associates, Inc. ("HRA") to survey the area where the resource is mapped to determine whether the project components would impact this resource. After conducting site-specific research, reviewing the results of past excavations in the area, and completing a pedestrian survey, HRA found no evidence of the resource. Accordingly, HRA concluded that the resource was not located within the project area and the project would not have adverse impacts to the resource. HRA also concluded, based upon available information, that no modifications were necessary to the project to protect the cultural, historical, and archaeological values of the resource/site. Due to the sensitive nature of the cultural resources involved, HRA's full report is confidential and cannot be disclosed in this proceeding. HRA has prepared a summary of its methodology and findings, which is included in Application Exhibit 8.

Second, JCEP has entered a Memorandum of Agreement ("MOA") with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians ("Tribes") to implement Policy #18. A copy of the MOA is included in Application Exhibit 9. The MOA incorporates a Cultural Resources Protection Agreement entered between JCEP and the Tribes ("CRPA"). The CRPA provides a process for the exchange of project-related information, confidentiality requirements, commitments to mitigation, monitoring agreements, agreements for the treatment of unanticipated discovery of cultural resources, site access agreements, and cost recovery agreements. The CRPA, in turn, incorporates an Unanticipated Discovery Plan ("UDP"), which provides procedures in the event of an unanticipated discovery of historic properties, archaeological objects, archaeological sites or human remains, funerary objects, sacred items, and items of cultural patrimony, during the construction and operation of the project. The CRPA and UDP are included as Exhibits to the MOA in Exhibit 9. In the MOA, JCEP and the Tribes agreed that the CRPA and the UDP constituted appropriate measures under CBEMP Policy #18 that would protect the cultural, historical, and archaeological values of the sites along the Early Works Alignment. JCEP is willing to accept a condition of County approval of the Application requiring compliance with the MOA and its attachments.

For these reasons, and subject to the proposed condition, the hearings officer finds that the Application is consistent with CBEMP Policy #18.

10. CBEMP Policy #20: Dredged Material Disposal Sites.

Local government shall support the stockpiling and disposal of dredged materials on sites specifically designated in Plan Provisions, Volume II, Part 1, Section 6, Table 6.1, and also shown on the "Special Considerations Map." Ocean disposal is currently the primary disposal method chosen by those who need disposal sites. The dredge material disposal designated sites on the list provided on Table 6.1 has decreased because the ocean has become the primary disposal method, the in-land DMD sites have diminished and those which have remained on the DMD list are sites which may be utilized in the future and not be cost prohibitive. Consistent with the "Use/Activity" matrices, designated disposal sites shall be managed so as to prevent new uses and activities, which would prevent its ultimate use for dredged material disposal. A designated site may only be released for some other use upon a finding that a suitable substitute upland site or ocean dumping is available to provide for that need. Sites may only be released through a Plan Amendment. Upland dredged material disposal shall be permitted elsewhere (consistent with the "use/activity" matrices) as needed for new dredging (where permitted), maintenance dredging of existing functional facilities, minor navigational improvements or drainage improvements, provided riparian vegetation and fresh-water wetland are not affected. For any in-water (including intertidal or subtidal estuarine areas) disposal permit requests, this strategy shall be implemented by the preparation of findings by local government consistent with Policy #5 (Estuarine Fill and Removal) and Policy #20c (Intertidal Dredged Material Disposal). Where a site is not designated for dredged material disposal, but is used for the disposal of dredged material, the amount of material disposed shall be considered as a capacity credit toward the total identified dredged material disposal capacity requirement.

I. This policy shall be implemented by:

- a. Designating "Selected Dredged Material Disposal Sites" on the Special Considerations Map; and**
- b. Implementing an administrative review process (to preclude pre-emptory uses) that allows uses otherwise permitted by this Plan but proposed within an area designated as a "Selected DMD" site only upon satisfying all of the following criteria:**
 - 1. The proposed use will not entail substantial structural or capital improvements, such as roads, permanent buildings and 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.**
- c. Local government's review of and comment on applicable state and federal waterway permit applications for dike/tidegate and drainage ditch actions.**

II. This strategy recognizes that sites designated in the Comprehensive Plan reflect the following key environmental considerations required by LCDC Goal #16:

- a. Disposal of dredged material in upland or ocean waters was given general preference in the overall site selection process;**
- b. Disposal of dredged material in estuary waters is permitted in this plan only when such disposal is consistent with state and federal law.**
- c. Selected DMD sites must be protected from pre-emptory uses.**

Hearings Officer's Findings: Stabilization is not located within the selected dredge material disposal site located within the 5-WD zone. Therefore, Policy #20 is not applicable to these proposed uses.

11. CBEMP Policy #23: Riparian Vegetation and Streambank Protection.

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 3.2.180 (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 and 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 has threatened valuable farm land, roads and other structures.

Hearings Officer's Findings: The gas processing in the 6-WD zone and the IWWP in the 7-D zone are subject to Policy #23.

The hearings officer has reviewed Plan Policy #23 and does not see that that policy creates a

mandatory approval standard applicable to a quasi-judicial land use process. Rather, the policy 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).

The gas processing and IWWP comply with Paragraph I of Policy #23, which requires that an applicant “strive” to implement the provisions of CCZLDO §3.2.180. CCZLDO §3.2.180 requires maintenance of riparian vegetation within 50 feet of an estuarine wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps except in certain identified circumstances. Neither the gas processing nor the IWWP affects or is located within riparian vegetation within 50 feet of an inventoried estuarine wetland, stream, lake or river identified on County maps. Therefore, Paragraph I of Policy #23 does not apply to the gas processing or the IWWP.

Paragraph II of Policy #23 does not impose approval criteria on the Application. Therefore, the gas processing and IWWP complies with Policy #23.

12. CBEMP Policy #27: Floodplain Protection within Coastal Shorelands

The respective Flood Regulations of local governments 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.

Hearings Officer’s Findings: The gas processing in the 6-WD zone, the IWWP in the 7-D zone, the pile dike rock apron and shoreline stabilization in the 5-WD zone, are all subject to Policy #27. The Floodplain Overlay zone of CCZLDO §4.11 constitutes the County’s flood regulations and implements this policy. The applicable project components comply with the requirements of the County’s floodplain overlay for the reasons discussed in Section II.D. of this Recommendation. This conclusion is based upon the analysis set forth in the SHN Consulting Engineers & Geologists, Inc. technical memorandum included as Application Exhibit 11. That study states the minimal fill associated with the proposed pile dike rock apron and shoreline stabilization “. . . will have no measurable effect on the estuary nor will it affect flooding within the estuary.” Applicant’s Exhibit 11, p. 10, “Estuary Flood Risk and Hazard Study, Jordan Cove LNG Energy Project Site,” SHN Consulting Engineers & Geologists, Inc. July 2019.

Based upon this evidence, the hearings officer finds that the Application is consistent with Policy #27.

13. CBEMP Policy #30: Restricting Actions in Beach and Dune Areas with "Limited Development Suitability"; and Special Consideration for Sensitive Beach and Dune Resources.

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

- a. The type of use proposed and the adverse effects it might have on the site and adjacent areas; and**
- b. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation; and**
- c. 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; and**
- e. Whether drawdown of groundwater 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.

II. 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 stabilized 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 LCDC 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 beach and dune areas.**

III. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977 (see Section 3. Definitions for "development"). Criteria for review of all shore and beachfront protective structures shall provide that:

- a. visual impacts are minimized;**
- b. necessary access to the beach is maintained;**
- c. negative impacts on adjacent property are minimized; and**
- d. long-term or recurring costs to the public are avoided.**

IV. Local government shall cooperate with state and federal agencies in regulating the following actions in beach and dune areas by sending notification of Administrative Conditional Use decision:

- a. Destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage);**
- b. The exposure of stable and conditionally stable areas to erosion;**
- c. Construction of shore structures which modify current or wave patterns leading to beach erosion; and**
- d. Any other development actions with potential adverse impacts.**

Hearings Officer's Findings: The meteorological station (4-CS zone), the temporary construction laydown (3-WD and 3-NWD), and segments of the IWWP (7-D) are subject to Policy #30. Of these proposals, only the IWWP, temporary construction laydown (3-WD and 3-NWD), and the meteorological station are located in a beach and dune area identified as "limited suitability" by the County's "Beach and Dune Areas with Limited Development Suitability" map.

CBEMP Policy #30 implements statewide Planning Goal 18. The Board of Commissioners has previously held that the types of potential adverse effects or hazards that must be considered under this policy are limited to a review of potential adverse geologic impacts that might result as a result of the proposed development. *Borton v. Coos County*, 52 Or. LUBA 46, 52 (2006); Order 07-12-309P at p. 37. In *Borton*, the Board interpreted Policy 5.10(2), which is a counterpart to CBEMP Policy #30, and which has identical language. The Board found that Policy 5.10(2) only requires consideration of geologic impacts such as the stability and potential for movement of the dunes in order to ensure that the proposed development is consistent with the capabilities and limitations of the dunes. LUBA affirmed this interpretation, starting:

"The county's interpretation that Policy 5.10(2), which implements Implementation Requirement 1 of Goal 18, addresses development limitations, such as adverse geological or geotechnical impacts, that are specific to development in beach and dune areas is consistent with the text, context and policy of Goal 18. Policy 5.10(2) does not require consideration of general development issues, such as noise impacts or water availability, that are unrelated to the particular geological or geotechnical development issues posed by beach and dune areas. As explained earlier, consideration of such general development impacts will properly be made during a future permitting process. The county's interpretation of Policy 5.10(2) is reasonable and is consistent with the language of the goal that it implements."

However, in the 2016 Omnibus I decision, OSCC contended that dewatering activities during construction of the Project tank/slip facilities in the 6-WD zone would cause subsidence. The Board

incorrectly concluded that “site stability” and “subsidence” were not regulated under CBEMP Policy #30. I.e., On appeal, OSCC contended that subsidence due to dewatering could be a potential issue under CBEMP Policy #30.I.c as an “adverse effect” on the “surrounding area.” LUBA agreed with OSCC and remanded for adoption of additional findings:

“If there are findings concluding that subsidence from proposed dewatering is not a potential issue under CBEMP Policy 30(I)(c), JCEP does not cite them. We conclude that remand is necessary to address whether subsidence is a potential issue under CBEMP Policy 30(I)(c) and, if so, adopt findings resolving that issue. * * * * “The fourth assignment of error is sustained in part.”

OSCC, 76 Or LUBA at 363. On remand, the County determined based on the evidence in the record that dewatering was not going to have an “adverse effect” upon the “surrounding area” for purposes of CBEMP Policy #30.I.c. This application does not raise similar concerns.

CBEMP Policy #30 requires implementation through an administrative conditional use process. During that process, the developer is required to submit a site investigation report addressing specific criteria in order to develop on any designated beach dune areas which has limited suitability. Application Exhibit 10 is such a site report, which demonstrates that these proposals comply with Policy # 30. That report concludes:

“Based on the assessment described herein, and the required implementation of specific BMPs described herein and attached as Exhibit A and B, we conclude based on our best professional judgment, that the development of the proposed facilities as described is a suitable activity relative to Limited Suitability Development dune areas will be consistent with Policy 30 review criteria as established under the CBEMP. Further, the intended uses are consistent with past and current industrial uses in the immediate project vicinity.”

“Focused Development Suitability Analysis to Provisions of the Coos Bay Estuary Management Plan, Policy #30 Beaches and Dunes,” prepared by SHN Consulting Engineers & Geologists, Inc. (July 2019), Applicant’s Exhibit 11, p. 15.

Paragraphs II, III, and IV of Policy #30 do not impose approval criteria with which any JCEP proposal must comply.

Based upon the report that is Exhibit 10 to the Application, the hearings officer recommends that the Board find that the proposed segments of the IWWP, meteorological station, and the temporary construction laydown activity are consistent with CBEMP Policy #30.

14. CBEMP Policy #49: Rural Residential Public Services.

Coos County shall provide opportunities to its citizens for a rural residential living experience, where the minimum rural public services necessary to support such development are defined as police (sheriff) protection, public education (but not

necessarily a rural facility), and fire protection (either through membership in a rural fire protection district or through appropriate on-site fire precaution measures for each dwelling).

Implementation shall be based on the procedures outlined in the County's Rural Housing State Goal Exception.

I. This strategy is based on the recognition:

- a. that physical and financial problems associated with public services in Coos Bay and North Bend present severe constraints to the systems' ability to provide urban level services, and***
- b. that rural housing is an appropriate and needed means for meeting housing needs of Coos County's citizens.***

Hearings Officer's Findings: The meteorological station, gas processing, pile dike rock apron and shoreline stabilization, and IWWP in the 4-CS, 6-WD, 5-WD and 7-D zones, respectively, are subject to Policy #49. Policy #49 does not impose approval criteria on the meteorological station, gas processing, pile dike rock apron, shoreline stabilization or IWWP. None of these proposals are utilities or public services regarding the rural residential living experience of citizens of the County.

15. 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.

Hearings Officer's Findings: The meteorological station, gas processing, pile dike rock apron and shoreline stabilization, and IWWP in the 4-CS, 6-WD, 5-WD and 7-D zones, respectively, are subject to Policy #50. Policy #50 does not impose approval criteria on the meteorological station, gas processing, pile dike rock apron, shoreline stabilization or IWWP. None of these proposals are utilities or public services regarding farm and forest parcels in unincorporated areas or water service for farm and forest parcels. Further, the IWWP is a low-intensity facility for supplying wastewater services at a level no greater than that traditionally enjoyed by rural property owners, and is therefore appropriate for the rural land on which JCEP proposes to construct it.

16. 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:

- a. development of designated industrial sites;**
- b. development of "recreational" planned unit developments (PUDs);**
- c. curing documented health hazards;**
- d. providing domestic water to an approved exception for a rural residential area;**
- e. development of "abandoned or diminished mill sites" as defined in ORS 197.719(1) and designated industrial land that is contiguous to the mill site.**

II. This strategy shall be implemented by requiring:

- a. that those requesting service extensions pay for the costs of such extension; and**
- b. that the services and facilities be extended solely for the purposes expressed above, and not for the purpose (expressed or implied) of justifying further expansion into other rural areas; and**
- c. that the service provider is capable of extending services; and**
- d. prohibiting hook-ups to sewer and water lines that pass through resource lands as allowed by "I, a through d" above; except, that hook-ups shall be allowed for uses covered under "II, a through d" above.**
- e. That the service allowed by "e" above is authorized in accordance with ORS 197.719.**

Hearings Officer's Findings: The meteorological station, gas processing, pile dike rock apron and shoreline stabilization and IWWP in the 4-CS, 6-WD, 5-WD and 7-D zones, respectively, are subject to Policy #51. Policy #51 does not impose approval criteria on the meteorological station, gas processing, pile dike rock apron, shoreline stabilization, or IWWP . None of these proposals are public sewer or water systems.

F. Southwest Oregon Regional Airport Overlay Zone.

CCZLDO 4.11.400 - Southwest Oregon Regional Airport

The Southwest Oregon Regional Airport is located within the City of North Bend; however, portions of the Approach, Transitional, Conical and the Horizontal Surfaces span into the Coos County's jurisdiction. The City of North Bend has adopted airport standards and Coos County is adopting the portions of those standards that apply to the Approach, Transitional, Horizontal and Conical Surfaces. The provisions listed below apply only to the Southwest Oregon Regional Airport Transitional, Horizontal and Conical Surfaces do (sic) not apply to AO zoning districts or airports as identified (sic) Sections 4.11.300 through 4.11.460.

Hearings Officer's Findings: This provision does not impose approval criteria on the Application.

CCZLDO 4.11.425 - Imaginary Surface and Noise Impact Boundary Delineation

The airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface is delineated for the airport by the most current, and approved North Bend Municipal Airport master plan and airport layout plan, the airport master plan along with the associated maps and documents are made part of the official zoning map of the city of North Bend and Southwest Oregon Regional Airport Surface (NB/AS) Inventory Map for Coos County. All lands, waters and airspace, or portions thereof, that are located within these boundaries or surfaces shall be subject to the requirements of this overlay zone.

Hearings Officer's Findings: Application Exhibit 12 is a map delineating the boundaries of the imaginary surfaces that comprise the County's airport overlay zone. CCZLDO §4.11.420 defines the boundaries of the imaginary surfaces to define both the horizontal and vertical edges or outer reaches of each regulated surface. Thus, a development proposal is not within an imaginary surface unless the location of the proposed use of and structures associated lies within both the horizontal and vertical dimensions of that surface.

The "horizontal surface" is 150 feet above base airport elevation of 17 feet MSL, which means the horizontal surface begins at 167 feet MSL. Thus, a proposal is not within the horizontal surface unless it is within both the horizontal dimension of as specific imaginary surface, which is depicted on Exhibit 12 and is also at least 167 feet high. The exception to this "floor" of the imaginary surfaces is the Runway Protection zone, which is a limited surface extending directly from the runway surface skyward at the slope of departing and arriving aircraft. The incoming vertical elevation of this zone at ascending elevations as applied to Exhibits 2-4, the overlay of Exhibit 13 upon these locations exhibits establishes the floor elevation of the zone at the location of the proposed use.

Of the development proposals included in this Application, none of the uses penetrate the “floor” elevation for the imaginary surfaces of 167 feet in height. Regarding the ascending elevation of the floor of the Runway Protection zone, only the Port laydown construction staging in 3-WD and 3-NWD and the limited easternmost portion of construction staging at Ingram Yard lies within this zone. However, the vertical floor of this zone at these locations is 150’ and 167’ respectively, and these structures and activities in the areas will not reach or “penetrate” this zone height. *See* Applicant’s Exhibit 13.

CCZLDO 4.11.430 - Notice of Land Use, Permit Applications and Overlay Zone Boundary or Surface Changes Within Overlay Zone Area

Except as otherwise provided herein, written notice of applications for land use decisions, including comprehensive plan or zoning amendments, in an area within this overlay zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of land use applications found in Article 5.0.

Hearings Officer’s Findings: This provision does not impose approval criteria on the Application. The County must provide the required notices.

CCZLDO 4.11.435 Height Limitations on Allowed Uses in Underlying Zones

All uses permitted by the underlying zone shall comply with the height limitations in this section.

- 1. A person may not construct an object or structure that constitutes a physical hazard to air navigation, as determined by the Oregon Department of Aviation in coordination with the governing body with land use jurisdiction over the property.***
- 2. Subsection (1) of this section does not apply:***
 - a. To construction of an object or structure that is utilized by a commercial mobile radio service provider; or***
 - b. If a person received approval or submitted an application for approval from the Federal Aviation Administration or the Energy Facility Siting Council established under ORS 469.450 to construct an object or structure that constitutes a physical hazard to air navigation. A variance application will not be required if such application was made.***

Hearings Officer’s Findings: Since these adopted imaginary surfaces, together with the Runway Protection Zone, comprise the regulated airspace under the Overlay zone, the County should conclude that the proposed improvements do not constitute a physical hazard to aviation for purposes of CCZLDO. As noted, Applicant’s Exhibits 12 and 13, together with Application Exhibits 2-4 depicting the location of the proposed uses serve to document the location of the proposed uses and the vertical and horizontal boundaries of the various imaginary surfaces including the Runway Protection zone. These proposed structures, only the structures comprising the gas processing facility

penetrate the horizontal surface depicted on Application Exhibits 13 and 14. These structures, which house the thermal oxidizer, the amino regenerator and the amino contractor, exceed 167' in height but also are the subject of 7460 submittal to the FAA for notice of construction of a physical hazard to air navigation. *See* Applicant's Exhibit 15. Consequently, these structures are exempt from the application of CCZLDO §4.11.435(1) pursuant to CCZLDO §4.11.435(2).

CCZLDO 4.11.440 - Procedures

An applicant seeking a land use approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:

1. A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The airport authority shall provide the applicant with appropriate base maps upon which to locate the property.

2. Elevation profiles and a plot plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level (reference datum NAVD 88).

Hearings Officer's Findings: This Application seeks land use approvals within the area of the overlay zone established and described in CCZLDO §4.11.425. Application Exhibits 12 and 13 depict the location of the airport imaginary surfaces in relation to the property that is the subject of this Application and Applicant's Exhibits 2-4 depict the location of the proposed improvements and structures. Taken together, those exhibits show the location of the proposed activities and related structures in relation to the airport imaginary surfaces. Therefore, the Application complies with this criterion.

CCZLDO 4.11.445 - Land Use Compatibility Requirements

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of this section as provided herein:

- 1. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5. A declaration of anticipated noise levels shall be attached to any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn.***

Hearings Officer's Findings: None of the proposals that JCEP makes in this Application are within the "airport noise impact boundary," which CCZLDO §4.11.420.3 defines as "areas located within

1,500 feet of an airport runway or within the most current, established noise contour boundaries exceeding 55 Ldn.” As to the first sub-criteria, the distance between the airport runway and the closest proposed, use or activity in this Application is at least 2,700 feet, which is well beyond the airport noise impact boundary. Regarding the noise contour boundary parameter, the adopted Master Plan for the North Bend Airport identifies 2020 noise contours of 55 Ldn or greater and none of the proposed uses or activities lies within these contours. *See* Exhibit 14. Therefore, this criterion does not apply to the Application.

- 2. Outdoor Lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.**

Hearings Officer’s Findings: This Application does not propose any structures or light-producing activities that project light directly onto an existing runway or taxiway or into existing airport approach surfaces. Most of the structures and activities that this Application proposes are located on the North Spit, which is across the bay from the airport runway and well removed from the airport approach surface or substantially north at Ingram Yard or South Dunes. The temporary construction laydown activities proposed at the Port Laydown sites is within the Runway Approach zone and any lighting at these locations incorporates shielding to ensure any lighting is directed away from the airport approach surfaces. JCEP will incorporate similar shielding to direct lighting from the remaining airport approach surface. Therefore, this Application complies with this criterion.

- 3. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot’s vision.**

Hearings Officer’s Findings: Materials utilized for structures or activities proposed in this Application will be selected to avoid glare and related visual effects that could obscure a pilot’s vision. The exterior of structures that this Application proposes will generally be painted with flat colors and will not incorporate shiny or glare-producing materials. For example, the LNG tanks that the Application proposes will be constructed of untreated concrete of a light grey color for cryogenic (*i.e.*, operational) purposes. Therefore, the Application complies with this criterion.

- 4. Industrial Emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.**

Hearings Officer’s Findings: This Application does not include request for authorization of a new or expanded industrial, mining or similar use that as part of its regular operations will cause emissions

of smoke, dust or steam that could obscure visibility in airport approach surfaces. Therefore, the Application complies with this approval criterion.

Opponent Jody McCaffree expressed concerns for airport safety, stating:

“There has been no thermal plume study provided nor drawings of project components detailed enough to be able to make the above determinations. We do know that the Amine thermal oxidizer is not only too tall but would be emitting large volumes of emissions as will also the gas flares necessary for safety measures of the Jordan Cove gas processing facility. These gas processing processes are also very noisy but Jordan Cove has not provided any noise impact assessment.”

McCaffree letter of October 28, 2019, Exhibit 19, p. 22.

Ms. McCaffree brings up LNG Terminal design elements (*e.g.* the “amine thermal oxidizer,” the LNG flare) that were part of Omnibus I, not this land use application. Again, it seems Ms. McCaffree was writing before she had the opportunity to examine all the evidence. This is not a criticism of Ms. McCaffree, as she has demonstrated exceptional diligence and perseverance. The same day Ms. McCaffree submitted her letter, October 28, 2019, the Applicant submitted a large volume of evidence attached to Exhibit 14, which included extensive discussions of emissions, airport safety, thermal plumes, and noise assessments (listed below).

Ms. Ranker also raised the issue of thermal plumes:

“There are also numerous problems created by the thermal plumes of the facility that will create problems for the airport. JCEP has continued to cause disruptions with their inability to guarantee safety for residents, tourists, and numerous species of fish and wildlife. This is not the place for their LNG facility.”

See Natalie Ranker letter dated October 28, 2019, pp. 1-2, Exhibit 18. Ms. Ranker cites to no evidence that would support her claims, and provides no basis for her conclusion that that JCEP’s activities would cause problems and disruptions. This argument is insufficiently developed to allow a response.

Opponent Tonia Moro similarly asserted that the proposed temporary batch plant is not “compatible with the Airport overlay. Its emissions pose a hazard to the use of the airport.” Moro letter dated October 14, 2019, Exhibit 6, p. 4. Ms. Moro does not identify what sort of emissions concern her, nor offer any evidence specific to this Application supporting her claim of hazard.

In contrast to the letters from Ms. McCaffree, Ms. Ranker, and Ms. Moro, the Applicant offers substantial evidence showing the concrete batch plant’s emissions will pose no significant hazard:

❖ Exhibit 14, subexhibit 33 - Letter from Black & Veatch dated January 11, 2016:

This letter from Black & Veatch engineer Earl Himes Jr., explains how the Project's industrial emissions will not adversely affect airport approach surfaces. Mr. Himes' professional conclusion: No industrial emissions from the concrete batch plant or any other aspect of the JCEP project (including dust or thermal plume) will pose any significant hazard to airport safety and operations.

- ❖ Exhibit 14, subexhibit 34 - Resource Report No. 9 (Air and Noise Quality): This report was submitted by JCEP to FERC to evaluate air and noise impacts caused by construction and operation of the Project and to propose measures to mitigate such impacts.
- ❖ Exhibit 14, subexhibit 35 - Letter Addressing Concrete Batch Plant dated October 28, 2019: This letter, which was prepared by the joint venture team of Kiewit, Black & Veatch, and JGC, describes and depicts the proposed concrete batch plant, its potential impacts, and measures designed to minimize and mitigate those impacts to existing surrounding uses.
- ❖ Exhibit 14, subexhibit 37 - Thermal Plume Study: This exhibit consists of the study referred to as Exhibit 27 in Mr. Himes' letter (Ex 14 subexhibit 33).
- ❖ Exhibit 14, subexhibit 38 - Airport Imaginary Surfaces Diagram: This graphic consists of Figure 15 referenced in Mr. Himes' letter (ex 14 subexhibit 33, January 11 letter from Earl Himes Jr., Black & Veatch engineer).

The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence. The hearings officer relies on this extensive and substantial evidence to find the JCEP proposal is consistent with this provision and compatible with the surrounding uses.

5. Landfills. No new sanitary landfills shall be permitted within 10,000 feet of any airport runway. Expansions of existing landfill facilities within these distances shall be permitted only upon demonstration that the landfills are designed and will operate so as not to increase the likelihood of bird/aircraft collisions. Timely notice of any proposed expansion shall be provided to the airport sponsor, the Department of Aviation and the FAA, and any approval shall be accompanied by such conditions as are necessary to ensure that an increase in bird/aircraft collisions is not likely to result.

Hearings Officer's Findings: This Application does not propose any new sanitary landfills or expansion of existing landfills. Therefore, this criterion does not apply to the Application.

- 1. Communications Facilities and Electrical Interference. Proposals for the location of new or expanded radio, radiotelephone, television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval.***

Hearings Officer's Findings: This Application does not propose new or expanded radio, radiotelephone, television transmission facilities or electrical transmission lines that are within an airport imaginary surface that this overlay defines. Therefore, this criterion does not apply to the Application.

CCZLDO 4.11.450 - Water Impoundments Within Approach Surfaces and Airport Direct and Secondary Impact Boundaries

1. Any use or activity that would result in the establishment or expansion of a water impoundment shall comply with the requirements of this section.

2. No new or expanded water impoundments of one-quarter acre in size or larger are permitted:

- a. Within an approach surface and within 5,000 feet from the end of a runway; or**
- b. On land owned by the airport sponsor that is necessary for airport operations.**

Hearings Officer's Findings: This Application does not request authorization for the establishment or expansion of a water impoundment a quarter acre in size or larger within an approach surface or within 5,000 feet from the end of a runway or on land owned by the airport sponsor that is necessary for airport operations. Therefore, this criterion does not apply to the Application.

CCZLDO 4.11.455 - Wetland Mitigation, Creation, Enhancement and Restoration Within Approach Surfaces and Airport Direct and Secondary Impact Boundaries

1. Wetland mitigation, creation, enhancement or restoration projects located within areas regulated by the Coos County Zoning and Land Development Ordinance shall be allowed upon demonstration of compliance with the requirements of this section.

2. Wetland mitigation, creation, enhancement or restoration projects existing or approved on the effective date of the ordinance codified in this chapter and are recognized as lawfully existing uses.

3. To help avoid increasing safety hazards to air navigation near public use airports, the establishment of wetland mitigation banks in the vicinity of such airports but outside approach surfaces and areas is encouraged.

4. Applications to expand wetland mitigation projects in existence as of the effective date of the ordinance codified in this chapter, and new wetland mitigation projects, that are proposed within areas regulated by the Coos County Zoning and Land Development Ordinance shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:

- a. It is not practicable to provide off-site mitigation; or**

b. The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge, and the area proposed for mitigation is located outside an approach surface.

5. Wetland mitigation permitted under subsection (4) of this section shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runways or approach surfaces.

6. Applications to create, enhance or restore wetlands that are proposed to be located within approach surfaces or within areas regulated by Coos County Zoning and Land Development Ordinance, and that would result in the creation of a new water impoundment or the expansion of an existing water impoundment, shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:

a. The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge; and

b. The wetland creation, enhancement or restoration is designed and will be maintained in perpetuity in a manner that will not increase in hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces.

7. Proposals for new or expanded wetland mitigation, creation, enhancement or restoration projects regulated under this section shall be coordinated with the airport sponsor, the Department of Aviation, the FAA and FAA's technical representative, the Oregon Department of Fish and Wildlife (ODFW), the Oregon Division of State Lands (DSL), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Army Corps of Engineers (Corps) as part of the permit application.

8. A decision approving an application under this section shall require, as conditions of approval, measures and conditions deemed appropriate and necessary to prevent in perpetuity an increase in hazardous bird movements across runways and approach surfaces.

Hearings Officer's Findings: This Application does not include a proposal for a new or expanded wetland mitigation, creation, enhancement, or restoration project. Therefore, these criteria do not apply to the Application.

CCZLDO 4.11.460 - Nonconforming Uses that Apply to the Southwest Oregon Regional Airport Overlay

1. These regulations shall not be construed to require the removal, lowering or alteration of any structure existing at the time the ordinance codified in this chapter is adopted and not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction

or alteration of which was begun prior to the effective date of the ordinance codified in this section.

2. Notwithstanding subsection (1) of this section, the owner of any existing structure that has an adverse effect on air navigational safety as determined by the Department of Aviation shall install or allow the installation of obstruction markers as deemed necessary by the Department of Aviation, so that the structures become more visible to pilots.

3. No land use or limited land use approval or other permit shall be granted that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this overlay zone.

Hearings Officer's Findings: This Application does not seek authorization for expansion of a non-conforming structure. This criterion is not applicable.

III Miscellaneous Issues Raised by Opponents.

The opponents raise several issues that are outside the scope of this proceeding and/or relate to issues that not applicable approval criteria. By way of example but not limitation, the hearings officer finds that the following contentions are not relevant to the decision in this case:

A. Lack of a Suitable Skilled Workforce.

Opponent Bill McCaffree raises the following issue:

“The available work force for electricians in our part of the country is not meeting the demands in the marketplace. In 2018 the National Electrical Worker’s Benefit Fund, a Union electrical pension fund, sent out a letter asking for retirees to come out of retirement and work for up to 600 hours without losing their pension payments, to help supply an industry shortage of qualified electricians in our area. (See Exhibit“E”) As a 45 year member of IBEW Local 932, Coos Bay, Oregon, I can assure you that the available work force for electricians would certainly have to come from outside the area and most likely from outside of Oregon. The electrical workers union here has less than a hundred members in its local jurisdiction, but says it can supply the 800 or more electricians needed to fill the jobs for the Jordan Cove Project. Jordan Cove has said they would pay approximately \$500 more per week for locals to work on their project, than at a shop in North Bend or Coos Bay just a few miles away. This will empty the shops and impose hardships on the small businesses trying to service their existing customer base. The union will certainly increase wages during this construction period, pressuring the consumers to look for lower priced providers. It’s not likely the local shops will be able to hire or keep enough workers. If local small electrical shops attempt to pay Jordan Cove wages for shop work, they’ll lose business and are likely to go out of business.”

See letter from Bill McCaffree October 28, 2019 letter at p. 3, Exhibit 15.

Mr. McCaffree is essentially saying that the high-paying union-wage construction jobs Jordan Cove will bring to Coos County will be bad for the local economy. That is the first time this hearings officer has heard a union man argue against high-paying union jobs. Mr. McCaffree does not relate his novel economic theory to any of the applicable approval criteria. He seems to be making a public policy argument, which is outside this hearings officer’s purview. Public policy matters are best left to the Coos County Board of Commissioners, to be made outside the context of a quasi-judicial land use decision.

B. Noise Pollution Harming Wildlife.

Opponents Tonia Moro and Jody McCaffree states that the Applicant's proposals will create noise that will harm local Coos Bay bird populations, as well as sand shrimp, clams, and other wildlife:

“A 2017 study published in the journal PLOS ONE found that even though oysters do not have ears they react to noise pollution. The oysters in the study reacted most strongly to noises between 10 and 1000 hertz, showing the most sensitivity to sounds between 10 and 200 hertz. As Douglas Quenqua at The New York Times reports, those lower frequencies are often produced by cargo ships, seismic research, wind turbines and pile driving. Higher frequencies created by jet skis and small boats, however, did not seem to bother the animals. (*See Exhibit 70*)

Marine mammals are particularly sensitive to noise pollution because they rely on sound for so many essential functions, including communication, navigation, finding food, and avoiding predators. An expert panel has now published a comprehensive assessment of the available science on how noise exposure affects hearing in marine mammals, providing scientific recommendations for noise exposure criteria that could have far-reaching regulatory implications. (*See Exhibit 71*).”

McCaffree letter dated October 14, 2019, Exhibit 8, p. 15. The same words are repeated in the McCaffree letter dated October 28, 2019, Exhibit 19, p. 18. Ms. Moro also alleges wildlife will be disturbed in her letter of October 14, 2019, Exhibit 6, p. 3.

In support of her assertions, Ms. McCaffree offers a *Smithsonian* news article about oysters (“Even Without Ears, Oysters Can Hear Our Noise Pollution,” Exhibit 8 subexhibit 70) and a *Science Daily* article about noise bothering marine mammals such as seals and whales . Exhibit 8 subexhibit 70. Ms. Moro offered some journal articles about the effects of chronic noise exposure. All are general articles that say nothing about Oregon wildlife, or Coos Bay wildlife, in particular.

By way of contrast, the Applicant has submitted substantial evidence on the potential impacts to Coos Bay wildlife, including but not limited to:

- ❖ Applicant's Exhibit 12, subexhibit 22 - FERC Resource Report 3 dated September 2017: This report, which is part of JCEP's application to FERC, discusses and evaluates the existing fish, wildlife, and vegetation resources impacted by the Project, methods for avoidance and minimization, and proposals for mitigating construction and operation impacts. The exhibit includes the biological studies that are appendices to the report.
- ❖ Exhibit 14, subexhibit 27 - Draft Environmental Impact Statement (“DEIS”) issued by the Federal Energy Regulatory Commission (“FERC”) dated March 2019: This report assesses

48	114	261	147,987	350	0.14%
60 – 72	116	284	179,093	350	0.17%

the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act. It also proposes avoidance, minimization, and mitigation measures.

- ❖ Exhibit 14, subexhibit 34 - Resource Report No. 9 (Air and Noise Quality): This report was submitted by JCEP to FERC to evaluate air and noise impacts caused by construction and operation of the Project and to propose measures to mitigate such impacts.
- ❖ Exhibit 14, subexhibit 36 - Biological Assessment and Essential Fish Habitat Assessment revised September 2018: This report identifies the extent of effects on endangered or threatened species (including species regulated under a federal fisheries management plan) and their critical habitat. It also recommends measures that would avoid, reduce, or mitigate such impacts.

The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence. The hearings officer has examined these extraordinarily detailed exhibits, all of which have been prepared within the last few years by qualified scientific experts. For example, to address just *one* of the activities mentioned by Ms. McCaffree (pile-driving), the Applicant’s experts offer the following evidence:

“9.4.1.2 Pile Driving

Pile driving is expected to take place between July 2019 and July 2021 over two 10-hour shifts per day, six days per week (*i.e.* not on Sundays or major holidays). Up to 14 concurrent diesel impact pile hammers will be used during construction of the facility to drive approximately 3,600 pipe piles in the plant facility area. Up to six vibratory hammers will be in use to install roughly 11,800 sheet piles.

The pipe piles range from 24 inches to 72 inches in diameter. Maximum sound pressure level data from a pile driving equipment manufacturer for each size pile was used for the analysis. Vibratory pile drivers were modeled using an L_{max} level of 101 dBA at a distance of 50 feet with a usage factor of 20 percent based on RCNM data. These data are shown in Table 9.4-3, below.

Table 9.4-3 Pipe Pile Driving Equipment Sound Levels and Operating Parameters

Pile Diameter (Inches)	Sound pressure level at 23 feet, dBA L _{max}	Est. Total Piles	Est. Piling Hammer Blows Required	Rig Scheduled Deployed Time, Days	Est. Pile Driving Usage Factor
18 – 24	106	1468	255,476	717	0.12%
30 – 36	110	1581	569,847	717	0.26%
48	114	261	147,987	350	0.14%
60 – 72	116	284	179,093	350	0.17%

As pile driving is an impact noise source with a large variation between the maximum and long term average sound levels, the sound level contribution at the NSAs has been calculated using both the Leq / Ldn, as well as the Lmax. As the pile driving events are not synchronized, the Lmax presented is the highest single Lmax level for any single pile driver. The overall Leq shows the cumulative long-term average sound level due to pile driving activities for 14 impact pile driving rigs and 6 vibratory pile driving rigs in operation, simultaneously. The pile rigs were distributed in the model based on the pile driving schedule such that areas that will require larger numbers of piles were assigned more pile driving sources. The impact pile sources were modeled at an elevation equal to half of the average pile length for each hammer diameter and location.

For each impact pile hammer size, a usage factor was developed based on an average pile driving time for each pile size. A total pile impact sound level period of 200 milliseconds per blow was assumed. Each of these is an estimate as the pile driving rate depends on the specific soil composition and conditions at each pile driving location. The usage factor for each rig type was used to calculate the long-term Leq sound levels from the manufacturer Lmax levels.

There will be two daytime and nighttime hours during which there are no planned pile driving activities due to the crew shift change. Table 9.4-3 shows both the A-weighted pile driving sound level contribution predicted for pile driving activities along with the daytime and nighttime period averages. The pile driving noise is expected to be the same during daytime and nighttime, so there is a single level for the pile driving noise contribution during activities. The daytime and nighttime average levels are 0.6 and 1.1 dBA lower, than the pile driving contribution during activity due to these shift-change hours. Table 9.4-4 shows that the predicted Lmax sound levels for pile driving at the receptors will range from 55 to 69 dBA. While most regulatory agencies use Ldn as the favored metric to assess noise annoyance and compliance, both the World Health Organization (WHO) and the American Public Transit Association (APTA) have also issued noise goals in terms of Lmax. WHO's criterion is a nighttime level designed to be protective of people sleeping with windows open, and is set as a nighttime Lmax of 60 dBA (WHO 1999). APTA's criteria are to protect from annoyance due to airborne noise from train operations. The Lmax criteria are 70 dBA for single family homes in low density areas, 65 dBA for "quiet" outdoor recreational areas, and 60 dBA for amphitheaters (APTA 1981). The predicted Lmax levels at the NSAs are all below 65 dBA, as shown in Table 9.4-4.

Table 9.4-4 Predicted Pile Driving Noise Levels at Receptors

Receptor	Predicted A-Weighted Pile Driving Contribution During Activities, dBA	Predicted Period Average Sound Levels, dBA (Includes adjustments for idle shift-change hours)			Existing Ambient Level, dBA L _{dn}	Future Combined Level, dBA L _{dn}	Increase Over Existing Ambient, dB	Predicted Maximum Level, dBA L _{max}
		Day, L _d	Night, L _n	L _{dn}				
NSA 1	54.1	53.5	53.0	59.5	52.7	60.3	7.6	64.7
NSA 2	39.5	38.9	38.4	44.9	65.2	65.2	0.0	54.9
NSA 3	43.0	42.4	41.9	48.4	56.3	57.0	0.7	59.5
REC 1	51.7	51.1	50.6	57.1	55.2	59.3	4.1	69.3

The potential extents of underwater noise above the marine mammal interim behavioral disturbance thresholds during vibratory piling (Deveau and MacGillivray 2017) and during impact piling (O’Neill and MacGillivray 2017) have been identified in two studies. Sheet piles are expected to be installed “in the dry,” behind a soil berm to be installed between the water and the sheet pile location. The modeling in the studies indicates that the highest underwater noise levels from piling would be found where the sound is able to propagate away from the source in deeper water for the furthest distance, before being attenuated by bottom loss in shallower water. The maximum modeled distance to the interim marine mammal behavioral disturbance threshold is less than 2 km from the noise source. On the basis of the noise levels predicted during the studies (Deveau and MacGillivray 2017; O’Neill and MacGillivray 2017), and with reference to Popper, et al. (2014), there is a high likelihood of behavioral responses for fish in the vicinity of vibratory piling. More severe impacts (mortality or injury) to fish due to underwater noise from vibratory piling behind the soil berm are not expected. When piling in water using an impact hammer, there is potential for fish mortality or injury if fish are present within about 100 feet of the largest marine pipe piles (36 inch diameter) during pile driving. The areas with potential piling noise physical impacts to fish would be within the excavated and dredged area required to construct the marine facility.

Additional evaluation and quantification of noise impacts from sound pressure waves generated within the water due to pile driving are provided in the Underwater Noise Impact Assessment, included as Appendix I.9, to this RR9 report.”

See Resource Report No. 9, Air and Noise Quality. pp. 39-41 of 567. Exhibit 14, subexhibit 34.

This brief excerpt - just two and a half pages out of 567 devoted *solely* to air quality and noise pollution – gives some idea of the thoroughness, exactitude and detail of the scientific

evidence offered by the Applicant. The legal standard an Applicant has to meet is “substantial evidence in the whole record.” It is clear the Applicant has met and exceeded that standard. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

C. Cumulative Impacts Analysis.

Some opponents assert that the County is required to perform a “cumulative impacts” analysis of the entire JCEP project, without citing to any applicable approval criteria that would demand such analysis. *See, e.g.*, Jody McCaffree letter dated October 14, 2019, Exhibit 8, p.2 (“All impacts, including cumulative impacts need to be considered.”). *See also* Tonia Moro letter of October 14, 2019, at p. 2. Exhibit 6. There is no legal authority for the County to require an analysis of the cumulative impacts of the entire Project as part of the Applications. Instead, the County has assessed the impacts of each element of the Project within the context of the individual land use application presented, and has imposed mitigation measures on each application in proportion to those impacts. Together, these individual impact assessments and mitigation measures address the entirety of the Project. Any new attempt by the County to address impacts previously or separately addressed could result in imposing mitigation measures that exceed the Project’s actual impacts. As an aside, FERC is conducting a cumulative impacts assessment for the Project, so this step will occur at the federal level.

D. Land Ownership and Authority to Apply.

Opponent Jody McCaffree asserts that JCEP lacks the legal authority to apply for these land use applications:

“The person who signed the application that was filed with Coos County was **Natalie Eades**. She has signed other documents as senior council for Jordan Cove/Pacific Connector, Pembina Pipeline Corporation. (*See Exhibit 23*) She essentially works for **Pembina, a Canadian Energy Company, via JCEP**. She is signing statements with respect to the Coos Estuary that say: *“I am the legal owner of record or an agent having consent of the legal owner of record and am authorized to obtain this zoning compliance letter so as to obtain necessary permits for development from the Department of Environmental Quality and/or the building codes agency.*”

On July 6, 1967, the Oregon Beach Bill was passed by the legislature and signed by Oregon Governor Tom McCall. The Beach Bill declares that all "wet sand" within sixteen vertical feet of the low tide line **belongs to the State of Oregon**. The Beach Bill recognizes public easements of all beach and tidal areas up to the line of vegetation, regardless of underlying property rights. The public has free and uninterrupted use of these areas and property owners are required to seek **state permits** for building and other uses. While some parts of the beach and tidal areas remain privately owned, state and federal courts have

upheld Oregon's right to **regulate development** of those lands and preserve public access.

....

In addition, the Oregon Department of State Lands must also sign off on any removed or dredged material from the Coos Bay Estuary, as explained below.” (Bold and italic emphasis in original).

McCaffree letter dated October 14, 2019, at p. 5-6. Exhibit 8.

It seems that Ms. McCaffree is alleging that a state official needs to give consent for land use applications that involve lands owned by the state of Oregon. She is, generally speaking, correct. Ms. McCaffree submitted her letter on October 14, so she had not yet seen the Applicant's Exhibit 14, subexhibit 29, submitted October 28. That exhibit includes a “Property Owner Certification and Consent” form signed by Vicki Walker, Director of the Oregon Department of State Lands:

PROPERTY OWNER CERTIFICATION AND CONSENT

I hereby certify that the Oregon Department of State Lands is the manager of the submerged and submersible non-trust lands in Coos Bay owned by the State of Oregon. I hereby approve Jordan Cove Energy Project L.P. to file land use applications with Coos County (“County”) for approval under applicable land use regulations of in-water rock apron and shoreline stabilization improvements to be located within our area of ownership, as depicted on attached Exhibit A.

By: _____

Vicki Walker, Director

Date: _____

4/30/19

The hearings officer has examined this exhibit and other substantial evidence submitted by the Applicant (e.g. the property owner consent forms attached to the land use application) and finds that the Applicant has submitted evidence of property owner consent legally sufficient to file a land use application.

E. Failure to Provide Evidence.

Opponents OSCC and Jody McCaffree makes several claims asserting the Applicant has failed to supply necessary evidence, such as:

“The applicant has NOT provided any geological assessment and what is being proposed by the applicant is not compatible with surrounding

recreational properties. They have also not provided a traffic or noise assessment as is required in this zoning.”

See McCaffree letter dated October 14, 2019, at p. 18. Exhibit 8.

Again, Ms. McCaffree submitted Exhibit 8 on October 14, 2019, before she had a chance to see many of the Applicant’s exhibits. The Applicant submitted a letter that same day (Exhibit 12) with ten exhibits (subexhibits 16-26), and then another letter on October 28 (Exhibit 14) with eleven exhibits (subexhibits 27-38). Needless to say, the Applicant addressed geological issues:

Applicant’s Exhibit 12, subexhibit 17 - Letter Addressing Liquefaction Hazard dated October 14, 2019: This letter, which is prepared by the Project geotechnical engineering joint venture team of Kiewit, Black & Veatch, and JGC (“KBJ”), addresses the geotechnical assessment criteria of CCZLDO 5.11, with reference to two different data reports and a geologic assessment, which are included in the subexhibits 18, 19, and 20.

Applicant’s Exhibit 12, subexhibit 18 - Geotechnical Data Report dated April 21, 2017: This report, which was prepared by engineers at GRI, summarizes the results of subsurface investigations, geotechnical laboratory testing, and other in situ testing completed at the Project site between 2005 and 2017. The data summarized in the report is attached to the report and included in this exhibit.

Applicant’s Exhibit 12, subexhibit 19 - Geotechnical Report dated April 23, 2018: This report, which was prepared by KBJ, is a geotechnical evaluation for the Project site. It summarizes site conditions, geologic and seismic hazards, and recommends measures to mitigate these hazards. The report identifies the risk for liquefaction of soils in certain locations and recommends vibrocompaction to mitigate this risk as it causes granular soil to rearrange into a more dense pattern. *See* §§6.1.5 and 7.3 of this report.

Applicant’s Exhibit 12, subexhibit 20 - Geotechnical Data Report, 2018 Subsurface Investigation Program dated August 22, 2019: This report, which was prepared by KBJ, presents data collected during a geotechnical subsurface investigation performed from August to October 2018 for the Project site.

The Applicant also addressed traffic issues: Applicant’s Exhibit 12, subexhibit 16, is a Traffic Impact Analysis dated December 2017 (“TIA”): This TIA analyzes the traffic impacts of the construction and operation of the Project, including the relocation of the workforce housing component to the South Dunes area of the North Spit. The report, which was prepared by the licensed transportation engineers at David Evans and Associates, Inc., recommends intersection improvements (including those proposed in JCEP’s TransPacific Parkway land use applications) and transportation demand management measures to improve safety and efficiency, all of which JCEP is willing to implement. *See* TIA at p. 70. §7.1 of the report addresses how the TIA complies with the provisions of the Coos County Zoning and Land Development Ordinance (“CCZLDO”).

And the Applicant addressed noise issues in Exhibit 14, subexhibit 34 – “Resource Report No. 9 (Air and Noise Quality)”. This highly-detailed 567-page report evaluates air and noise impacts caused by construction and operation of the LNG project, and proposes measures to mitigate such impacts. The

hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

F. Likelihood of Financial Success of the JCEP Project as a Whole.

Opponent Oregon Shores Conservation Coalition wrote:

“The Application materials indicate that the proposals and associated components within Omnibus II would serve to benefit the economy of the Coos Bay region. As discussed previously, the materials do not include sufficient information and analysis to support a robust evaluation of the accuracy of that claim against the applicable criteria. To the contrary, publicly available information suggests that the opposite conclusion is more likely to be true. A June 2019 memo by energy consulting firm McCullough Research found minimal likelihood that the Jordan Cove Energy Project would succeed economically. The memo was authored by Robert McCullough, who has twenty-five years of experience advising government, utilities and aboriginal groups on energy, metals and chemical issues. Mr. McCullough’s recently issued memo is entitled “The Questionable Economics of Jordan Cove LNG Terminal.” The report and Mr. McCullough’s curriculum vitae are attached to this comment. The report makes the following conclusions:

- ❖ The terminal, if constructed as planned, would be at a 600-mile disadvantage compared to other west coast projects in transportation costs, the announced costs are high by market standards, and the proposed technology to be used will make JCEP less efficient than competitors in British Columbia and the Gulf Coast.
- ❖ JCEP will have a 25% cost disadvantage as compared to its competitors.
- ❖ Based on an economic model comparing all possible combinations of feed gas and Asian landed gas prices over the last decade, the chance of JCEP reaching operation is 33%.

As demonstrated by Mr. McCullough’s report, the proposed project is unlikely to succeed or be economically viable. However, as discussed throughout Oregon Shores’ comments and materials for the present Application, the construction, installation, and operation of the proposals and associated project components will likely have serious and irreparable adverse impacts on the Coos Bay region’s waterways, natural resources, wetlands, fish and wildlife values, flood hazards,

floodplain values, land use, navigation, shoreline erosion, aesthetic values, recreation, water quality, energy conservation, public safety, and public welfare.”

OSCC letter dated October 14, 2019, at p. 4. Exhibit 9. Here, OSCC is making an argument unrelated to the relevant land use approval criteria: *i.e.* that the JCEP project is unlikely to be a financial success. That may or may not be true. Undoubtedly JCEP is undertaking considerable financial risk in the hope that their investment will succeed in the long run. That is what most businesses, entrepreneurs, and investors do: hope that expenditures made today will pay dividends in the future. That business decision is for JCEP to make. Obviously, FERC plays a role in that assessment as well. However, it is beyond the scope of this zoning review.

As for the larger question at stake – will the JCEP project financially benefit the Coos County community as a whole? – that is a policy question best left to the Coos County Board of Commissioners. They are the elected officials chosen by Coos County voters to decide such matters, outside the context of a quasi-judicial land use case.

G. Dredging for the Access Channel and the Navigation Reliability Improvements.

Several opponents expressed their dislike of dredging in the federal ship canal (maintained by the US Army Corps of Engineers) and the proposed Navigation Reliability Improvements. Those activities are not part of the current Applications and need not be addressed.

H. Oregon State Agency Comments.

Opponent Oregon Shores Conservation Coalition submitted several hundreds of pages of comments made by Oregon state agencies [*e.g.* the Oregon Department of Geology and Mineral Industries (“DOGAMI”), the Oregon Department of Fish and Wildlife (“ODFW”), the Oregon Department of Environmental Quality (“DEQ”)] on various state and federal applications, some involving activities that have nothing to do with this Coos County land use application. *See* OSCC letter dated October 14, 2019, Exhibit 9, pp. 5-544.

OSCC makes little or no effort to relate these 500+ pages to the relevant Coos County approval criteria in the current application. It is not the hearings officer’s role to “connect the dots” for the parties, nor to reconcile comments addressing unrelated state agency criteria to the criteria set forth in the CCZLDO. Every county land use application succeeds or fails on its own merits, regardless if other agency at some other level of government approves or denies some state permit applying state criteria. If the OSCC wishes to oppose the JCEP project in some Oregon state agency proceeding they are free to do so. Evidence relevant to some state proceeding may be immaterial to a county land use decision. These arguments, if indeed they are cognizable arguments, are simply too undeveloped to allow review.

I. Darcy Grahek E-mail.

Ms. Grahek submitted an email faulting the Applicant for not supplying enough supporting evidence:

“The following are land uses open to interpretation with not nearly enough supporting evidence to garner approval.

- Meteorological station in 4-CS
- Temporary construction laydown uses and activities in the 6-WD, 3-WD, and 3- NWD zones
- Shoreline stabilization in the 5-WD zone
- Pile dike rock apron in the 5-DA zone
- Temporary barge berth in the 6-DA zone
- Temporary dredge material transport pipelines (“TDT Pipelines”) in the 6- DA, 7-NA, 13B-NA, and 14-DA zones
- Relocation of primary access to the LNG Terminal Site in the 6-WD zone
- Wastewater pipeline (high-intensity utility) in the 7-D zone 6

Jordan Cove Energy Project aka Pacific Connector Pipeline as the applicant for permits, has not demonstrated compliance with the applicable approval criteria with in the CBEMP, the Coos County Zoning and Land Development Ordinance (“CCZLDO”), and the Oregon Statewide Planning Goals (“Goals”) for its proposed uses and activities. Please deny further approval for the Jordan Cove Energy Project applications.”

Grahek email dated October 28, 2019, Exhibit 17. Ms. Grahek sent her email on the same day the applicant submitted a large body of evidence (Exhibit 14, containing 2906 pages) so it seems she had not seen all of the Applicant’s evidence when she wrote it. That aside, Ms. Grahek simply alleges the Applicant has not submitted enough evidence, without explaining what evidence might be lacking, or directing her criticism towards any particular approval criteria. Just stating “I don’t think the Applicant has produced enough evidence” is an argument insufficiently developed to allow legal review.

J. J.C. Williams E-Mail.

This e-mail reads in its entirety:

“Date: October 14, 2019
RE: HBCU-19-003/Jordan Cove

Well this is the big one for our county, it puts thousands of people to work and live out on a spit that is under imminent threat from an earthquake and tsunami. It is an irrefutable fact that has been studied by some of the best geologists in the world. They say the threat is 40% over the next 50 years. Every year that it doesn’t happen brings us

closer, and through our government agencies, we are wisely trying to prepare for it.

Goal 7 and 4.11.260Tsunami Hazard Overlay Zone:

The logical conclusion would be not to place a hazardous facility in a hazard zone.

The Pembina Corporation has determined they need to remove the highest point on the spit: it's a dune on their property. This is the loss of some natural protection in the event of a tsunami. The permit they requested should include a condition that creates a vertical shelter or keeps the dune. In conjunction, they will need orderly, well-marked pathways to it for everyone they put to work and to live on the spit.

Policy 5.10 Beaches & Dunes:

There is most definitely a suitability issue with the Concrete Batch Plan and Laydown Areas. They are right on the perimeter of the dunes used for recreation all year around. During the better weather, this brings millions of tourist dollars to our area. Without a doubt, locals will lose some of their "stomping ground", and many of them have a considerable amount invested in their recreational equipment that they use in that exact spot or close by. You can bet security will not allow them anywhere near it.

A point about W_A_T_E_R:

Our county has already experienced a drought, and with global warming it is likely we'll see that happen over and over. I am concerned about the fresh water usage especially during construction. They have determined it will take a tremendous amount of water once up and running. Getting the information and go-ahead solely from our local water board seems ridiculous to me. We need expert opinions for something of this magnitude.

In Conclusion:

Nothing about the project passes what is in the interest of the public. It will completely change the appearance and access to the spit during construction. This is a huge loss to our community and to the environment. Keep in mind the Public Trust issues and that this is a huge project for Oregon, as well as, the largest in Coos County.

Thank you for your time and attention."

J. C. Williams e-mail dated October 14, 2019, Exhibit 11. These appear to be general comments rather than developed arguments related to the approval criteria. It is unclear what the author means by a “hazardous facility.” As far as the availability of fresh water, that is a matter left to the Oregon Water Resources Board. The Applicant adequately addressed tsunami and seismic hazards in multiple exhibits, including:

- ❖ Applicant’s Exhibit 12, subexhibit 17 - Letter Addressing Liquefaction Hazard dated October 14, 2019: This letter, which is prepared by the Project geotechnical engineering joint venture team of Kiewit, Black & Veatch, and JGC (“KBJ”), addresses the geotechnical assessment criteria of CCZLDO 5.11, with reference to two different data reports and a geologic assessment, which are included in the subexhibits 18, 19, and 20.
- ❖ Applicant’s Exhibit 12, subexhibit 18 - Geotechnical Data Report dated April 21, 2017: This report, which was prepared by engineers at GRI, summarizes the results of subsurface investigations, geotechnical laboratory testing, and other in situ testing completed at the Project site between 2005 and 2017. The data summarized in the report is attached to the report and included in this exhibit.
- ❖ Applicant’s Exhibit 12, subexhibit 19 - Geotechnical Report dated April 23, 2018: This report, which was prepared by KBJ, is a geotechnical evaluation for the Project site. It summarizes site conditions, geologic and seismic hazards, and recommends measures to mitigate these hazards. The report identifies the risk for liquefaction of soils in certain locations and recommends vibrocompaction to mitigate this risk as it causes granular soil to rearrange into a more dense pattern. See §§6.1.5 and 7.3 of this report.
- ❖ Applicant’s Exhibit 12, subexhibit 20 - Geotechnical Data Report, 2018 Subsurface Investigation Program dated August 22, 2019: This report, which was prepared by KBJ, presents data collected during a geotechnical subsurface investigation performed from August to October 2018 for the Project site.

The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence.

K. John Clarke/Clarence Adams letter dated October 25, 2019.

Messrs. Clarke and Adams wrote a letter reproduced here:

“Enclosed is Jordan Coves exhibit 21 from page 4282 showing structure elevations. This is incomplete because it is missing the vent stack as referenced on page 33 of Jordan Cove’s Certificate Exemption Application to the Department of Energy dated June 14, 2018 (exhibit 1). The Vent stack is also missing from the FAA aeronautical study dated September 3, 2019 (exhibit 2)1. Hard copy of this submission with follow.”

John Clarke/Clarence Adams letter dated October 25, 2019 (Exhibit 13). It is unclear how this relates to any approval criteria. It does not appear from the record that the “vent stack” is a new proposal, but rather part of the LNG design approved in Omnibus I.

L. Eymann Letter.

Attorney Katy Eymann submitted a letter alleging the applicant had failed to submit adequate evidence on “three issues: 1) Temporary Housing; 2) Dredge line impact on protected resources, and 3) Earthquake/Tsunami Hazards”. Eymann letter of October 13, 2019, Exhibit 7, p. 1.

First, regarding temporary workforce housing, Ms. Eymann opines: “The County should follow the recommendation from the Coos County Housing Analysis and Action Plan which was accepted by the Coos County Board of Commissioners.” *See* Eymann letter dated October 13, 2019, at p. 4. Exhibit 7. This housing plan is simply a recommendation; it appears to be aspirational in nature, and Coos County has not amended the CCZLDO or CBEMP to make it an approval criterion that would be applicable to the Applications. Thus the hearings officer finds the Coos County Housing Analysis and Action Plan does not provide a basis to deny or condition the Applications, and need not be addressed.

Next, Ms. Eymann faults the Applicant for failing to produce evidence on potential dredge line impact on protected resources, and Earthquake/Tsunami Hazards. That may or may not have been true when Ms. Eymann wrote her letter on October 13, but since that day the Applicant has entered into the Record dozens of exhibits and subexhibits, including voluminous scientific evidence on the temporary dredge lines and Earthquake/Tsunami Hazards, such as:

- ❖ Applicant’s Exhibit 12, subexhibit 23 - Dredged Material Management Plan: This plan describes the excavation, dredging, and disposal of materials associated with the Project, including details regarding the temporary dredge line included in the Applications.
- ❖ Applicant’s Exhibit 12, subexhibit 24 - Dredging Pollution Control Plan: This plan provides information pertaining to construction dredging, sequence, schedule, pollution control, and dredge material disposal associated with some elements of the Project. The plan includes details regarding the temporary dredge line included in the Applications.
- ❖ Applicant’s Exhibit 12, subexhibit 25 - Technical Memorandum dated June 10, 2019: This memorandum responds to questions raised during the City of North Bend proceedings pertaining to JCEP’s dredged material disposal application. Some of the responses are relevant to the temporary dredge line included in the Applications.
- ❖ Applicant’s Exhibit 12, subexhibit 26 - JCEP Response to Removal-Fill Comments Version 2.0 dated August 30, 2019: This exhibit consists of JCEP’s responses to public comments filed with the Oregon Department of State Lands concerning JCEP’s application for removal and fill of wetlands and waters associated with the Project.
- ❖ Applicant’s Exhibit 12, subexhibit 17 - Letter Addressing Liquefaction Hazard dated October 14, 2019: This letter, which is prepared by the Project geotechnical engineering joint venture

team of Kiewit, Black & Veatch, and JGC (“KBJ”), addresses the geotechnical assessment criteria of CCZLDO 5.11, with reference to two different data reports and a geologic assessment, which are included in the next three exhibits.

- ❖ Applicant’s Exhibit 12, subexhibit 18 - Geotechnical Data Report dated April 21, 2017: This report, which was prepared by engineers at GRI, summarizes the results of subsurface investigations, geotechnical laboratory testing, and other in situ testing completed at the Project site between 2005 and 2017. The data summarized in the report is attached to the report and included in this exhibit.
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- ❖ Applicant’s Exhibit 12, subexhibit 20 - Geotechnical Data Report, 2018 Subsurface Investigation Program dated August 22, 2019: This report, which was prepared by KBJ, presents data collected during a geotechnical subsurface investigation performed from August to October 2018 for the Project site.
- ❖ Exhibit 14, subexhibit 36 - Biological Assessment and Essential Fish Habitat Assessment revised September 2018: This report identifies the extent of effects on endangered or threatened species (including species regulated under a federal fisheries management plan) and their critical habitat and recommends measures that would avoid, reduce, or mitigate such impacts.

The documents submitted by the Applicant constitute substantial evidence. The hearings officer carefully reviewed this testimony, and finds it to be substantial evidence in the Record that is more credible than any contrary evidence. After the Applicant submitted these thousands of pages of scientific evidence into the Record, Ms. Eymann did not respond. The hearings officer thus assumes these issues were resolved to her satisfaction.

IV. Conclusion and Suggested Conditions of Approval.

The hearings officer has carefully reviewed all documents submitted in the whole Record, and makes this recommendation based on the substantial evidence contained therein. The Applicant’s expert testimony is more credible than any contrary evidence. For the above reasons, the hearings officer recommends the Coos County Board of Commissioners should approve the Application and authorize development of these components of JCEP’s LNG facility. The hearings officer suggests the following Conditions of Approval to ensure compliance with the relevant Coos County approval criteria:

1. Suggested Condition of Approval: the Applicant shall follow the terms of the Memorandum of Agreement (“MOA”) with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (“Tribes”) included in Application Exhibit 9.
2. Suggested Condition of Approval: Prior to the issuance of any construction building permits, the Applicant shall submit a parking site plan demonstrating compliance with CCZLDO §7. Sufficiency shall be determined by the Planning Director in consultation with the Roadmaster.
3. Suggested Condition of Approval: the Applicant shall build the SORSC in a manner that complies with the Oregon Structural Code.
4. Suggested Condition of Approval: the Board of Commissioners work with staff and the Applicant to develop a comprehensive list of changes from Omnibus I and Omnibus II, and condition the final Omnibus II approval such that the aspects of the Omnibus I application that were modified by Omnibus II are no longer approved.
5. Suggested Condition of Approval: the Applicant shall comply with the stabilization methods recommended by SHN’s report in response to Policy #30.
6. Suggested Condition of Approval: the Applicant shall operate the temporary concrete batch plant in conformance with the recommendations set forth in Exhibit 14, subexhibits 33, 34, and 35.
7. Suggested Condition of Approval: the Applicant shall construct its protective rock apron in compliance with Department of State Lands and US Army Corps of Engineers regulatory requirements.