

Crystal Orr

From: Briana Goodwin [bgoodwin@surfrider.org]
Sent: Monday, September 09, 2019 12:03 PM
To: Planning Department; Jill Rolfe
Cc: Coos Bay Chair; Charlie Plybon
Subject: REM-19-001, Remand of a County Final Decision (File Number HBCU-15-05/CD-15-152/FP-15-09) by the Land Use Board of Appeals
Attachments: Surfrider Foundation_Coos County Supplemental Comments (9_9_2019).pdf; Exhibit C - Passing LNG carrier causes ferry scare in Port Aransas.pdf; Exhibit D - Near accident at Port Aransas landing u... Harbor Island export terminal critics.pdf

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Coos County Planning Commission:

Please accept the attached comments on behalf of Surfrider Foundation regarding REM-19-001, Remand of a County Final Decision (File Number HBCU-15-05/CD-15-152/FP-15-09) by the Land Use Board of Appeals.

Please feel free to respond with any questions.

Sincerely,
Bri

--

Bri Goodwin | Oregon Field Manager | [Surfrider Foundation](#)
541-655-0236 | bgoodwin@surfrider.org | fb: [oregonsurfrider](#)



Exhibit 60
Date: 9/9/19



September 9, 2019

Coos County Planning Commission
250 N. Baxter Street
Coquille, OR 97423
Attn: Jill Rolfe

Via email to: planning@co.coos.or.us and jrolfe@co.coos.or.us

RE: REM-19-001, Remand of a County Final Decision (File Number HBCU-15-05/CD-15-152/FP-15-09) by the Land Use Board of Appeals

Dear Coos County Planning Commission,

These supplemental comments are submitted on behalf of the Surfrider Foundation Coos Bay Chapter, in response to the Hearings Officer's August 29, 2019 Order to Reopen the Record in the remand proceeding REM-19-001, relating to the proposed Jordan Cove Energy Project liquefied natural gas ("LNG") terminal in Coos Bay (the "Order"). The Coos Bay Chapter works within the greater Coos County area focusing on a variety of programs, stewardship activities, campaigns and fun events, all for the love of our ocean, waves and beaches.

Recreation to be Impacted

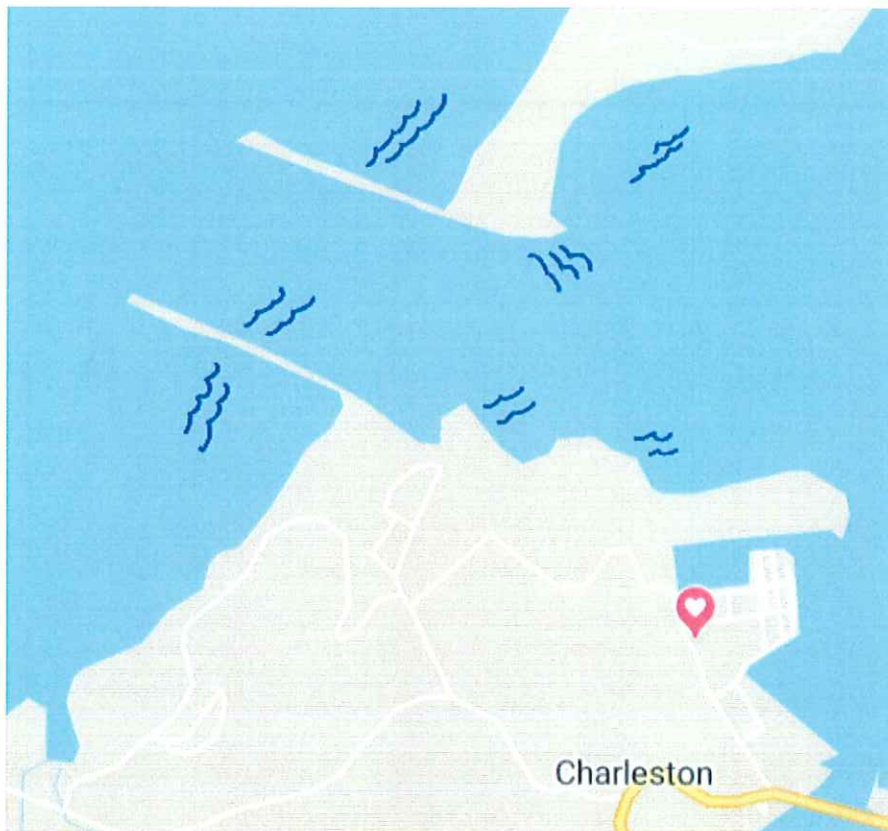
As Surfrider previously commented, the Chapter has serious concerns regarding impacts to surfing in the vicinity of the proposed project. Specifically, surfing near both the north and south jetties - where more than 100 LNG tankers are proposed to be entering and exiting Coos Bay each year - are extremely popular surf spots in southern Oregon. See, e.g., <https://magicseaweed.com/Coos-Bay-Surf-Guide/320/> ("South of the dunes and moated by a complex system of bays and estuaries, the North Bend/Coos Bay area is the epicenter of surfing in south-central Oregon, thanks to a complex system of rocky headlands and coves leading out to Cape Arago. First stop on the Cape Arago Highway is the popular Bastendorff Beach, a wide, sandy cove flanked by Yoakam Head and the south jetty at the entrance to Coos Bay.")

Coos Bay Chapter Chair Sam Schwarz is a Coos Bay area native who has grown up working and playing in the river, bay, waterfront, and beaches. As Sam describes, Bastendorff [Beach, south of the south jetty] is our most popular and accessible surfing location for Coos County. Because of the various features, there is almost always a wave to surf from beginners to advanced." This is where Surfrider's Coos

Bay Chapter hosts surf camps. There are multiple sections of the beach that are referred to as: North end (closest to the south jetty), middles, the creek aka "shitters", South end, etc. Per Schwarz, North end Bastendorff is primarily best near high tide, when it is incoming or outgoing (the same time that fully loaded LNG tankers are proposed to be exiting the Bay).

While the north jetty is more difficult to access and is primarily for advanced surfers, it is a really good wave and heavily surfed in the proper conditions. The jetties are consistently surfed every day, throughout the day. As Schwarz explains, "Some surfers go every morning to the North end and middles. North end is nice because of the rip current along the south side of the jetty. Definitely dozens [of surfers surf there] throughout the day, sometimes a dozen or so in the water at one time if the waves are good! That's pretty consistent year round. More beginners and Stand Up Paddlers in smaller swell and more advanced surfers during larger swell."

There are additionally multiple locations inside the jetties that are premium surf spots. These locations offer unique recreational opportunities sheltered from wind and high seas when ocean conditions are too stormy for surfers and other ocean recreational activities. Some of the surfing locations within the jetties are extremely important to recreational users during the winter season, offering up the only opportunity for this type of recreation for hundreds of miles. These areas are indicated by the blue wave symbols on the map below:



In addition to daytime surfing, surfers surf at all of these spots described above at night, in the moonlight, as well. Schwarz explains that the first time he ever surfed North end was in the moonlight. People also regularly run and jump in the ocean at nighttime in these locations. (See also for example this Youtube video of night surfing in Coos Bay, <https://www.youtube.com/watch?v=eBe1Is3kSY> (submitted separately herewith as Exhibit A) and <https://www.surflife.com/surf-news/how-to-night-surf/18683> for more information on night surfing in general)

With respect to other recreational activities, kayaking and diving are very popular within the Bay, from the bar entrance up to Jordan Cove, and also occur at night. Sailboats also often find safe anchorage on the edge of the channel in this region. It's also an extremely popular area for sports fishermen and sports boats, as well as recreational, commercial, and charter fishing boats, which get a very early start (i.e., at night) while it is still dark. Tides are often critical for bar crossings too with higher tides being much more preferred than lower and ebbing tides when standing waves can become a hazard crossing the bar. This time of year, when it is salmon season, can be particularly busy, with upwards of one hundred boats throughout a single day in the water between the bar and Jordan Cove. Other nighttime recreational uses include kayaking, kayak fishing, and recreational fishing off the jetties.

The map attached as Exhibit B shows several popular SCUBA diving spots identified by the Oregon Department of Fish and Wildlife, many of which are right at the entrance to Coos Bay, where more than 100 LNG tankers are proposed to enter and exit each year as part of the project. In addition to SCUBA diving, these areas are also popular with free divers. The project would thus pose a serious danger to this recreational use. Divers may be unaware of LNG tankers approaching and are not able to quickly get out of the way of a tanker and tankers will not be able to avoid a diver in the water. Beyond the safety concerns LNG tankers pose for the diving community, the impacts to the natural environment caused by dredging has the potential to make these sites no longer desirable to divers, negatively impacting tourism for the area. The unintended consequences of changing the environment from dredging are also very concerning. If dredging changes current patterns, that can pose significant risks to divers who develop their dive plan based on current conditions only to find conditions have changed.

Further, there are numerous recreation and tourism based businesses in the Coos Bay region that depend on healthy and vibrant recreational opportunities in the Bay. Such businesses include Oregon Coast Kayak, South Coast Tours (kayak tours), Surf Waxers (surf rentals and lessons), Bahama Boards (surf rentals and sales), Betty Key Charters (fishing charters), and Canoa Sport Bay Bridge Rentals (kayak, canoe, and stand up paddleboard rentals). These, and many other businesses in the area like them, also depend on the safe navigation of Bay and ocean waters to sustain these recreational opportunities that their businesses, and livelihoods, depend upon.

The proposed project, including the transiting LNG tankers and the required security zone around them, will substantially interfere with all of these public trust uses. The articles submitted herewith as Exhibits C and D, describing a near collision between an LNG tanker and a passenger ferry boat in Port Aransas, Texas in August 2019 illustrate the very real dangers posed by transiting LNG tankers to other watercraft and public trust users.

Weise v. Smith

Respectfully, Surfrider disagrees with the Order's description of *Weise v. Smith*, 3 Or 445. The case focuses on the rights of a riparian owner as related to the rights of the public to utilize navigable waters, and specifically, on the test for "navigability" as that relates to the public's rights to use Oregon's waterways. The case does not differentiate or prioritize certain uses over recreational uses, or otherwise suggest that navigation for liquefied natural gas tankers trumps use for fishing boats, kayakers, or other instruments for navigation like surfboards or stand up paddle boards. Instead, the case supports the fact that the public has the right to utilize Oregon's navigable waterways, consistent with the public trust doctrine, discussed below.

Public Trust Rights in Oregon

Oregon's public trust doctrine is embodied in case law and reflected in its constitution and statutes. In addition to *Weise v. Smith* articulating the public's broad rights to use the state's navigable waters, *Guilliams v. Beaver Lake Club*, 175 P. 437, 442 (Or. 1918) holds that all waters in the state capable of navigation by small craft can be used for recreational purposes and recognizes a broad range of protected public uses including "sailing, rowing, fishing, fowling, bathing, skating, taking water for domestic, agricultural, and even city purposes, cutting ice, and other public uses which cannot now be enumerated or even anticipated." (citing to *Lamprey v. State*, 52 Minn. 181.)

The case law further confirms that recreational pursuits are just as protected as other forms of navigation. See, for example, *Guilliams v. Beaver Lake Club*, at 441 ("[...] we fail to see why commerce should not be construed to include the use of boats and vessels for the purposes of pleasure. The vessel carrying a load of passengers to a picnic is in law just as much engaged in commerce as the one carrying grain or other merchandise." See also *Luscher v. Reynolds*, 153 Or. 625 (Or. 1936) ("A boat used for the transportation of pleasure-seeking passengers is, in a legal sense, as much engaged in commerce as is a vessel transporting a shipment of lumber."))

Similarly, Justice Denecke's concurrence in *State ex. rel Thornton v. Hay*, 462 P.2d 671 (Or. 1969), recognizes the state's broad public trust rights, and the fact that the public trust doctrine is flexible, so as to adapt to the public's changing needs and

uses. (See, e.g., "These rights of the public in tidelands and in the beds of navigable streams have been called "jus publicum" and we have consistently and recently reaffirmed their existence. *Corvallis Sand & Gravel Co. v. State Land Board*, 250 Or. 319, 335-337, 439 P.2d 575 (1968); *Smith Tug & Barge Co. v. Columbia-Pac. Towing*, 250 Or. 612, 638, 443 P.2d 205 (1968). The right of public use continues although title to the property passes into private ownership and nothing in the chain of title reserves or notifies anyone of this public right. *Winston Bros. Co. v. State Tax. Comm.*, 156 Or. 505, 510-511, 62 P.2d 7(1937)" and, citing to a treatise on water and water rights: ""The law regarding the public use of property held in part for the benefit of the public must change as the public need changes. The words of Justice Cardozo, expressed in a different context nearly a half-century ago are relevant today in our application of this law: `We may not suffer it to petrify at the cost of its animating principle.'" 1 Clark (ed-in-chief), *Waters and Water Rights*, at 202 (1967).")

Accordingly, the jus publicum is broad and adaptive and encompasses today's modern uses in Coos Bay and surrounding waters, including kayaking, diving, fishing, clamming, crabbing, stand up paddling, and surfing.

Further, the public trust doctrine's embodiment in state statutes is illustrated, for example, in Oregon Revised Statutes ("ORS"), Section 196.825(1)(b), which provides that in order for the Department of State Lands to issue a removal or fill permit, the director must determine that the project does not unreasonably interfere with the *paramount policy of the state* to preserve the use of its waters for *navigation, fishing and public recreation*. Protecting all of these uses is of paramount importance for the state. ORS Section 390.615 further provides, "Ownership of the shore of the Pacific Ocean between ordinary high tide and extreme low tide, and from the Oregon and Washington state line on the north to the Oregon and California state line on the south, excepting such portions as may have been disposed of by the state prior to July 5, 1947, is vested in the State of Oregon, and is *declared to be a state recreation area.*" (emphasis added).

Similarly, the Oregon legislature recognized the importance of protecting public recreation rights when it passed the Oregon Beach Bill, H.B. 1601 in 1967. (See, e.g., "The Legislative Assembly further declares that it is in the public interest to acquire additional rights and to *do whatever is necessary to preserve and protect scenic and recreational use of Oregon's seashore and ocean beaches.*" (Section 2(3), emphasis added; available at <http://records.sos.state.or.us/ORSOSWebDrawer/RecordView/3749720>)

Accordingly, as the courts and legislature have recognized, it is imperative that Coos County recognize and protect the public's recreational public trust rights in Coos Bay and along the coastal shore where more than 100 LNG tankers are proposed to be transiting each year. The transiting tankers will interfere with these public trust rights in several ways – physically, by taking up a breadth of space as they pass up along the coast through the jetties and up into the Bay to Jordan Cove (and back

out); with the proposed security zone excluding recreational users as a mandate; by posing a physical hazard for smaller watercraft either because of the risk of collision or wake (requiring recreationalists to quickly move out of harm's way); as well as detracting from the natural, calming aesthetic that draws recreationalists to the area. Many tourists come to Coos Bay to enjoy recreation, and may not know in advance that LNG tankers will be transiting in the area, and be surprised and threatened when one suddenly approaches.

The Coos County Conditional Use Permit must be denied because of this substantial interference with public trust rights.

Sincerely,

/x/
Sam Schwarz
Chair
Surfrider Foundation Coos Bay Chapter

/x/
Charlie Plybon
Oregon Policy Manager
Surfrider Foundation

/x/
Briana Goodwin
Oregon Field Manager
Surfrider Foundation

Exhibit A

See video file submitted herewith

Exhibit B

Charleston SCUBA Diving

The nearshore ocean of Charleston is filled with exciting dive sites. Popular harvest targets such as black rockfish, lingcod, and rock scallops can be found in good numbers on just about every rocky area. Viewing dives are excellent among the kelp beds and boulder fields. Highlights include: stalked pink hydroids found at Norton Gulch, extensive populations of Copper rockfish, and the beautifully colored "Simpson Reef" rock greenling in the shallow kelp beds.

Gregory Point Research Reserve is one of the state's oldest subtidal reserve areas. It allows fishing but not for invertebrate harvest. The site provides refuge for species important to local fisheries such as red sea urchins and rock scallops. The Cape Arago Research Reserves (areas A, B & C) pertain only to intertidal areas and does not restrict harvest below the lowest low tide levels. See current sport regulations for details.

Boat dives are best, but some good shore dives can be accessed with rugged wading and swimming. Visibility tends to be best in winter and spring though 10-15 visibility can frequently be found in the summer. Wave heights, current, and boat traffic are critical to consider on any dive. Diving offshore takes extra skill and expertise. This chart should not be used for navigation.

North Jetty/ The Cribs: Consider drift dives on the jetty. Anchor carefully at "The Cribs", dive during slack water. Rockfish and lingcod can be found.

Further up the bay: Empire boat ramp is an easy shore dive. Additionally, there are good boat dives on the east side of the lower bay for crab and clams. Beds of orange sea pens can be found east of the channel around buoy #10A (not on map).

Tri-leg buoy #1: Demarking the entry to the Charleston nar channel and a subtidal jetty that extends from Fossil Point. Many species of fish and invertebrates are found.

OIMB Kelp Bed: A rare estuarine kelp bed. The bottom is low relief sandstone with many juvenile fish.

Charleston Bridge: For those not bothered by low visibility, this is a great viewing dive. Many species of fish and invertebrates can be found on the hard substrates of the bridge and shell hash.

Legend

- Dive Site
- Kelp beds
- Cape Arago Research Reserve Areas A&C
- Cape Arago Research Reserve Area B
- Gregory Point Subtidal Research Reserve

Baltimore Reef: A yellow buoy "BR" demarks the end of this reef. Tidal currents and boat traffic make this dive extremely difficult to execute.

Cape Arago Lighthouse: The kelp bed north of the lighthouse is a good dive in south wind. Depths are 15-45' within the kelp bed and current is minimal.

Gregory Point Research Reserve: This reserve only excludes take of invertebrates. There are many great kelp dives within. Areas within the emergent rocks are protected from swell, but visibility is not as good as offshore. Big lingcod are common in these shallows during winter.

Cape Arago Lighthouse: A steep trail and a long swim will take you to some nice 20-30' kelp dives on the north side of the Cape Arago Lighthouse.

Sunset Bay: The middle of the Sunset Bay is sandy, while the sides are shallow and rocky. Entry is easy, but depths are shallow and good visibility is rare.

Norton Gulch: A narrow gulch just south of Sunset Bay, follow a dirt trail to the water. Swim directly out 200 yards and drop down to 30'. Swim left into shallow purple sea urchin herds, straight out to black rockfish schools and right to some nice ridges and walls. Good visibility is rare.

North Simpson Reef: Great dives can be found along three ridges that extend from Simpson Reef. The wreck of the steamship "Brush" can be found at the northwest corner of the reef.

Simpson Reef: With skilled navigation, excellent dives can be found in the middle of Simpson Reef. The inside of the reef has Oregon's only giant kelp (*Macrocystis*) bed and is an excellent dive, stay distant from sea lions.

South Cove: Extensive kelp beds and shallow depths are found.

Underwater Photos:

- Strawberry anemones, red sea urchins, and a rock scallop at Cape Arago.
- Red soft coral on a wall at South Cove.
- Ochre sea stars and black rockfish at Norton Gulch.
- Copper rockfish among plumose anemones at Charleston tri-leg buoy #1.
- A rock greenling laying on coralline algae at Simpson Reef.
- Sea urchins, cucumbers and anemones among the kelp at Gregory Point Research Reserve.

Consult the current ODFW sport regulations before harvest. More information on shellfish including species identification, harvest maps and regulations can be found at: www.dfw.state.or.us/MRP/Shellfish

Design and photographs: Scott Groth

OREGON
Fish & Wildlife

Exhibit C

See attached article submitted herewith, "Passing LNG carrier causes ferry scare in Port Aransas"

Exhibit D

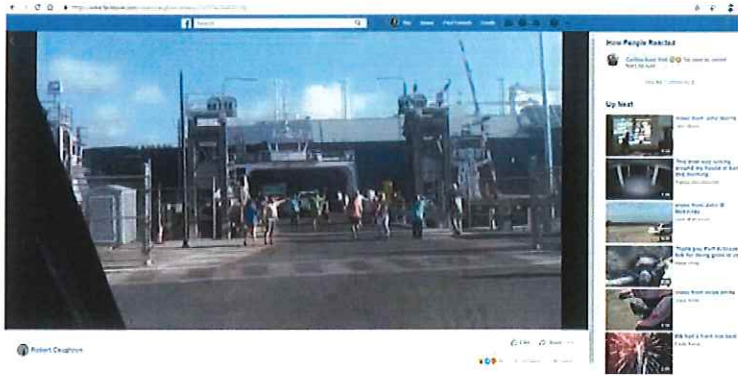
See attached article submitted herewith, "Passing LNG carrier causes ferry scare in Port Aransas "Near Accident at Port Aransas Landing underscores concern of Harbor Island export terminal critics"

Video captures close call between passing LNG carrier and Port Aransas ferry

Tim Acosta, Corpus Christi Caller Times Published 11:45 a.m. CT Aug. 12, 2019 Updated 3:28 p.m. CT Aug. 12, 2019

A massive vessel used to transport liquefied natural gas gave Port Aransas residents and visitors a scare Monday morning when it came close to a ferry.

The incident occurred just after 9 a.m., as a ferry was in the process of being loaded with vehicles and passengers, said Rickey Dailey, with the Texas Department of Transportation. An LNG carrier that was headed for Cheniere Energy's Corpus Christi Liquefaction facility in Gregory approached the ferry landing and began sounding its horn, or "danger signal," Dailey said. That prompted the ferry captain and staff to begin implementing procedure and evacuate passengers on foot.



A video on Aug. 12, 2019 shows an LNG carrier passing closely by a ferry in Port Aransas, causing some passengers to run off in alarm. (Photo: Screenshot via Facebook)

Video of the passing vessel posted to social media shows the LNG vessel passing closely by the ferry as passengers begin to run off the ferry. One woman appears visibly shaken, with her hands on her knees.

The man who filmed the video, Robert Caughron, told the Caller-Times it was a scary sight. He had just boarded the ferry when he said crew members began telling him and another vehicle behind him to back up, while urging others to get off.

"It was bearing down on us," he said. "Those tugboat captains (escorting the carrier), they saved the day."

Caughron said it appeared that the LNG vessel was maneuvered around a dredger doing work in the ship channel, but wound up "off kilter to the line of the channel." He said the tugs were able to push the LNG vessel back on track, but that it looked like a close call.

"I'll never forget it ... it was coming straight at us," Caughron said. "I didn't know what to do."

Dailey confirmed that the vessels did not collide, and that ferry service resumed shortly after the LNG carrier passed. There was a report of a woman who had fallen and scraped her knee, but Dailey said she refused medical treatment.

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Cheniere Energy issued a statement about the incident Monday afternoon.

"We take concerns from the community, and the safe navigation of all vessels, very seriously," the statement reads. "What we learned from the pilots is that — while operating in coordination with the Coast Guard and the Port Authority — the ship took a wider turn than usual at Harbor Island due to the placement of another vessel in the channel. The (LNG) vessel was always in control."

The company's statement also said that three Cheniere tugboats were assisting the LNG carrier through the waterway, as is the company's standard procedure. Coordination between the pilots and applicable parties was ongoing, as well, the statement

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Passing LNG carrier causes ferry scare in Port Aransas

Individuals with questions or concerns about the incident are asked to contact Cheniere by sending an e-mail to Community@cheniere.com or by calling 888-371-3607.

This is a developing story. Check back to Caller.com for updates.

Tim Acosta covers the Port of Corpus Christi, county and city government stories for the Corpus Christi Caller-Times. [Consider supporting local journalism with a digital subscription to the Caller-Times \(https://offers.caller.com/specialoffer?gps-source=CPTOPNAVBAR&utm_campaign=specialoffer&utm_medium=onsite&utm_source=topnavbar\)](https://offers.caller.com/specialoffer?gps-source=CPTOPNAVBAR&utm_campaign=specialoffer&utm_medium=onsite&utm_source=topnavbar).

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NEWS



Near accident at Port Aransas landing underscores concern of Harbor Island export terminal critics

Posted: 7:13 PM, Aug 13, 2019 Updated: 5:26 PM, Aug 13, 2019



By: Greg Chandler



+ Show Caption



PORT ARANSAS, Texas — Passengers ran for safety yesterday when a large LNG tanker nearly hit a ferry boat at the Port Aransas landing.

Nobody was hurt, but opponents of a planned export terminal just across the channel on Harbor Island say the close call underscores their concerns.

The trouble started here, where the channels intersect.

That tanker somehow ended up too close to this dredging vessel and was forced to make a wide turn.

The dredging vessel is there to deepen and widen the ship channel so it can accommodate even bigger tankers, a key part of the proposed Harbor Island Export Terminal.

“Where that dredge is right now, there's a danger, in my estimation at least, between where it's located and where large ships have to turn,” said Port Aransas Mayor Charles Bujan.

A liquefied natural gas tanker got too close to the dredge Monday and was forced to make a wide turn. It nearly hit the ferry landing.

“It was a near miss,” said John Morris of the Port Aransas Conservancy. “There’s no way to way to candy coat when you're less than 100 feet from a stationary object on the opposite side of the channel.”

Morris opposes dredging the ship channel for environmental reasons. He says had the tanker hit either the dredge or the dock and caused an explosion.

“You've got a mile radius of Port A that's no longer there,” he said. “We’ve got churches in that mile, we've got schools, we've got how many visitors on a summer day.”

While Bujan agrees a collision would have been a catastrophe he says safety measures worked as intended, including a submerged natural structure.



Officials say the dredging project is safe.

Opponents say Monday's incident proves otherwise.

“They got lucky this time,” Morris said. “Is next time going to be not so lucky?”

Bujan applauded the ferry captain and the tanker pilot telling KRIS that both followed emergency procedures by the book.

The port is investigating yesterday's incident and the Coast Guard was scheduled to meet today with everyone who was involved.

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Taft man indicted in connection with birthday party shooting

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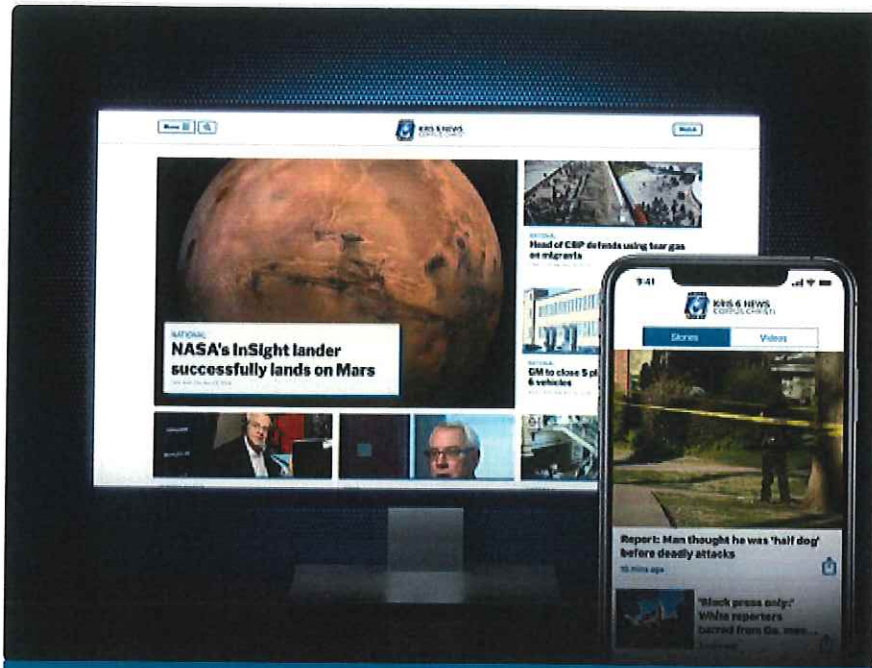
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