
STAFF REPORT



Monday, June 03, 2019

Andrew Stamp, Coos County Hearings Officer
Andrew H. Stamp, P.C.
4248 Galewood Street
Lake Oswego, OR 97035

RE: Remand Hearing Scheduled for June 10, 2019 at 1:30 pm. **COUNTY REMAND FILE NUMBER:** REM-19-001

This is a Remand of a County Final Decision (File Number HBCU-15-05/CD-15-152/FP-15-09) by the Land Use Board of Appeals (LUBA No. 2016-095) for additional findings (addressing seven total assignments of error). The remand request was filed by the applicant, Seth King, Perkins Coie LLP on behalf of Pacific Connector Gas Pipeline, LP.

LUBA remanded the matter to the County to address the errors. OSCC, 76 Or LUBA at 387. Deb Evans, Ron Schaaf, Rogue Climate, Hannah Sohl, and Jody McCaffree appealed LUBA's decision to the Oregon Court of Appeals in an effort to expand the scope of the remand. The Court of Appeals denied these petitioners' arguments by affirming LUBA's decision without opinion. Oregon Shores Conservation Coalition v. Coos County, 291 Or App 251, 416 P3d 1110 (2018). The Court of Appeals petitioners then petitioned the Oregon Supreme Court to review the case, but the Supreme Court denied the petition without considering the case on the merits, allowing the Court of Appeals decision to stand. Oregon Shores Conservation Coalition v. Coos County, 363 Or 481, 424 P3d 728 (2018). On September 20, 2018, the Court of Appeals entered an appellate judgment. On September 26, 2018, LUBA entered a notice of appellate judgment, finding that the appellate court decisions did not require any change in LUBA's final opinion and order. On March 15, 2019, Applicant submitted a letter pursuant to ORS 215.435(2)(a) requesting that the County initiate the remand.

Pursuant to ORS 215.435(2)(a), the County has jurisdiction to take action on remand.

SCOPE OF HEARING: The Board of Commissioners voted on May 7, 2019 to appoint a hearings officer to hold a "de novo" evidentiary hearing on remand, as authorized by Coos County Zoning and Land Development Ordinance (LDO) 5.8.800(5)(c). The scope of the hearing **will be limited** to the issue identified by LUBA in its final opinion as follows:

I. REMAND ISSUES RAISED:

A. ISSUES RAISED BY OREGON SHORES CONSERVATION COALITION

- (i) **Second Assignment of Error** – Failed to Correctly Interpret and Adopt Adequate Findings Supported by Substantial Evidence in Response to Coos Bay Estuary Management Plan ("CBEMP") Policy #5 - The Board erred by: (1) interpreting CBEMP Policy #5.I.b to require an evaluation only of the public benefits of the dredging itself and not the public benefits of the upland use served by the dredging activity; (2) concluding that the "public need" standard is met if the dredging is needed to enable construction of a use that is permitted or conditionally allowed on adjacent upland or shoreland property; and (3) failing to adopt adequate findings

supported by substantial evidence in the whole record that the Project would not unreasonably interfere with public trust rights.

- (ii) **Third Assignment of Error** – Failed to Adopt Findings in Response to CBEMP Policies #4 and #4a - The Board erred by failing to adopt findings addressing compliance with CBEMP Policies 4 and 4a.
- (iii) **Fourth Assignment of Error** - Failed to Adopt Adequate Findings in Response to CBEMP Policy #30 - The Board erred by failing to address whether subsidence due to dewatering is an issue under CBEMP Policy #30.I.c, and if so, adopt findings resolving that issue.
- (iv) **Fifth Assignment of Error** – Failed to Adopt Adequate Findings in Response to Special Condition 5 of the CBEMP 7-D Management Unit - The Board erred by failing to adopt adequate findings in response to Special Condition 5, which applies to the placement of fill in the CBEMP 7-D management unit.
- (v) **Sixth Assignment of Error** - Failed to Adopt Adequate Findings Addressing Denial of Federal Energy Regulatory Commission (“FERC”) Permit - The Board erred by adopting findings of compliance with local approval standards predicated upon Applicant obtaining a FERC permit without addressing whether FERC’s 2016 denial of the permit application precluded Applicant, as a matter of law, from obtaining a FERC permit for the Project.
- (vi) **Seventh Assignment of Error** – Improperly Construed Applicable Law in Determining that the Southwest Oregon Regional Safety Center (“SORSC”) is a Permitted as an “Accessory Use” to a Fire Station in the Industrial Zoning District - The Board erred by failing to adopt a reviewable interpretation that the SORSC is permitted in the Industrial zone as an “accessory use,” as that term is defined in CCZLDO 2.1.200 (2015 addition of CCZLDO).\

B. ISSUE RAISED BY CONFEDERATED TRIBES OF COOS LOWER UMPQUA AND SIUSLAW INDIANS

- (i) **First Assignment of Error** - Improperly Deferred CBEMP Policy #18 - The Board erred by improperly deferring an analysis of compliance with CBEMP Policy #18 concerning consideration of impacts to historical cultural, and archaeological sites to a second stage proceeding.

C. ISSUE RAISED BY JODY MCCAFFREE

- (i) **First Assignment of Error** - Commissioner Sweet failed to disclose the substance of any ex parte communication that occurred at a 2014 community luncheon presentation by Applicant about aspects of the Project.

II. APPLICABLE CRITERIA AND RESPONSE

A. COOS BAY ESTUARY MANAGEMENT PLAN POLICIES

RESPONSE: The applicant has provided findings to policies 4 and 5 that seem to reasonably address the issues and provide links to evidence in the existing record. Staff has listed policies in the order LUBA addressed them.

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:
 - b. A need (ie. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights;

Policy #4 *Resource Capability Consistency and Impact Assessment*

1. *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.

#4a Deferral of (I) Resource Capability Consistency Findings, and (II) Resource Impact Assessments

Local government shall defer, until the time of permit application, findings regarding consistency of the uses/activities listed in Policy #4 with the resource capabilities of the particular management unit.

Additionally, the impact assessment requirement for those uses/activities as specified in Policy #4 shall be performed concurrently with resource capability findings above at the time of permit application.

- I. This strategy shall be implemented through an Administrative Conditional Use process that includes local cooperation with the appropriate state agencies:*
- a. Where aquaculture is proposed as a use, local government shall notify the Oregon Department of Fish & Wildlife (ODFW) and Department of Agriculture in writing of the request, with a map of the proposed site;*
 - b. Where log storage dredging is proposed as an activity local government shall notify the Oregon Department of Environmental Quality (DEQ) in writing of the request, together with a map of the proposed site.*
- II. Within twenty (20) days of receipt of the notification, the state agency shall submit in writing to the local government a statement as to whether the proposed use/activity will:*
- a. Be consistent with the resource capabilities of the management unit or,*
 - b. If determined not to be consistent, whether the proposal can be made consistent through imposition of conditions on the permit.*

- III. *The appropriate state agency shall also perform the impact assessment required in Policy #4. If no statement is received from the state agency by the expiration of the twenty (20) day period, local government shall:*
- a. *Presume consistency of the proposal with the resource capabilities of the management unit; and*
 - b. *Make findings appropriate to that presumption; and*
 - c. *Perform the assessment of impacts required by Policy #4.*
- IV. *For all other uses/activities specified above, local government shall:*
- a. *Determine through appropriate findings whether the proposed use/activity is consistent with the resource capabilities of the management unit, and*
 - b. *Perform the assessment of impacts required by Policy #4.*
- V. *This strategy recognizes:*
- a. *That resource capability consistency findings and impact assessments as required by LCDC Goal #16 can only be made for the uses specified above at the time of permit application, and*
 - b. *That the specified state agencies have expertise appropriate to assist local government in making the required finding and assessments.*

This strategy is based upon the recognition that the need for and cumulative effects of estuarine developments were fully addressed during development of this Plan and that no additional findings are required to meet Implementation Requirement #1 of Goal #16.

Policy #30 Restricting Actions in Beach and Dune Areas with "Limited Development Suitability" and Special Consideration for Sensitive Beach and Dune Resources (moved from Policy #31) 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;*
- b. *Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;*
- 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. ****

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.*

Policy 18 - Local government shall provide protection to historical, cultural and archaeological sites and shall continue to refrain from widespread dissemination of site-specific information about identified archaeological sites.

RESPONSE: The applicant has offered into evidence an agreement to satisfy policy #18 and resolve this matter.

B. CBEMP 7-D MANAGEMENT UNIT SPECIAL CONDITION #5

5. *The wetland in the southeast portion of this district can be filled for a development project contingent upon satisfaction of the prescribed mitigation described in Shoreland District #5.*

Response: In order for the fill to be allowed, the Board must find that a need (ie. a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights, to the extent applicable. Special development condition number 5 was put into place to address any potential mitigation that was reserved to fulfill development described in exceptions 18, 22 and 25 (Volume II Part III of the CCCP). These exceptions explain that the county was anticipating the development of North Bay Marine Industrial Park and North Spit Access Road and Fill. Exception 22 that specific Shoreland District 5 was to designate this for water dependent industrial use, and to allow appropriate mitigation associated with that development in this and adjacent segments.

The Coos County Comprehensive Plan describes Shoreland District 5-WD as a large portion of this unit, 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 unit 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).

Note the relevant part of this language is that uses need not be limited to those specifically mentioned in Exception #22 but utilizing the site for development purpose as described will result in filling of 123 acres of freshwater and saltwater wetlands, commonly known as Henderson Mash which is an acknowledged Dredge Material Disposal site.

To find out the link between 7-D and shoreland district 5 staff has read through exception 25 that was specifically taken for potential development in both 6-WD and 7-D and it states that mitigation for the freshwater wetland that is the subject of the exception will be provided pursuant to the required Corps of Engineer permit. The applicant is not proposing a North Spit Access Corridor and is not using any of the planned mitigation that is addressed in the exception documents. The plan was very careful to reserve the mitigation for exceptions to be able to balance the cumulative impacts. It is important that if the applicant is planning a project beyond the exceptions that appropriate mitigation be completed which should be through the Corps of Engineer. Therefore, it is appropriate for the county to find that any filling will be subject to the Department of State Lands and Corps of Engineer permits. Staff would agree with the applicants suggested finding that the Board should find that Shoreland District #5 does not prescribe any mitigation in this instance. As a result, Special Condition 5 does not limit the Applicant's proposed fill in the 7-D zone. The Board finds that the filling of Wetland J will still be subject to compliance with other applicable requirements of the CBEMP, which were found to be met in the original decision, as well as the requirements of the Department of State Lands and the U.S. Army Corps of Engineers, including Applicant's proposed Compensatory Wetland Mitigation Plan.

C. OTHER ISSUES

(i) ACCESSORY STRUCTURE

The application has chosen not to move forward with these issues. Therefore, the Applicant withdraws the request to include the SORSC in the Applications. Accordingly, the Board should find that the SORSC is not proposed to be located in the Industrial zoning district, and the Board is not required to make a use interpretation that the SORSC is accessory to the fire station in the Industrial zoning district. Therefore, the Board will not be adopting any of the findings LUBA had an issue within the original proceedings. The Board should find that these findings address this issue consistent with LUBA's remand.

(ii) FINDINGS TO ADDRESS LOCAL APPROVAL STANDARDS

The applicant has requested the following finding to address this issue:

Board find that Applicant is not precluded as a matter of law from obtaining a FERC permit for the Project. As support for this conclusion, the Board should rely upon the fact that FERC's 2016 denial was "without prejudice to Jordan Cove and/or Pacific Connector submitting a new application to construct and/or operate LNG export facilities or natural gas transportation facilities should the companies show a market need for these services in the future." Rec. 1320. As a result, FERC's decision did not preclude Applicant from applying for another FERC certificate for an LNG export terminal and related pipeline on the North Spit. The Board should also rely upon the fact that, subsequent to FERC's denial, Applicant applied for a new FERC permit, and that application is currently pending. See FERC Notice of Applications dated October 2017 in Exhibit 3.

As explained above, the County is not required to ascertain whether it is feasible for Applicant's new application to satisfy FERC's approval standards. Therefore, a reasonable person would rely upon this evidence to show that a FERC permit is "available" and thus not precluded as a matter of law.

Staff finds this an acceptable finding to address the error found by LUBA.

(iii) **FAILURE OF COMMISSIONER SWEET TO DISCLOSE SUBSTANCE OF EX PARTE COMMUNICATION**

This issue will be addressed before beginning deliberations on remand. The Board should call for Board members to disclose any conflicts of interest, bias, or ex parte communications. As part of these disclosures, Commissioner Sweet should disclose on the record the substance of any ex parte communications that occurred at the 2014 luncheon. The Board should then permit parties to rebut the substance of any such communication on the record. The Board should then proceed with its deliberations and make a decision on the Applications on remand. Upon following these steps, the Board should find that it has followed the correct procedures and has complied with LUBA's remand on this issue.

I. CONCLUSION:

At this time there has been no other testimony received. Staff found the solutions proposed by the application in the remand application were reasonable to address the issues found by LU BA.

 Planning Director

Coos County Staff Members
Jill Rolfe, Planning Director
Amy Dibble, Planner II
Crystal Orr, Planning Specialist
Sierra Brown, Planning Specialist

Applicants Request for Remand

REM-19-001



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March 14, 2019

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VIA EMAIL AND OVERNIGHT DELIVERY

Jill Rolfe
Coos County Planning Director
225 N Adams St
Coquille, OR 97423

**Re: Jordan Cove Energy Project Land Use Applications
Coos County File Nos. HBCU-15-05/FP-15-09
Applicant's Request to Initiate Remand Proceedings**

Dear Jill:

This office represents Jordan Cove Energy Project L.P. ("JCEP"). As you are aware, the Land Use Board of Appeals ("LUBA") entered a final opinion and order remanding, on limited grounds, Coos County ("County")'s decision to approve JCEP's land use applications for a liquefied natural gas export terminal and related facilities (County File Nos. HBCU-15-05/FP-15-09) ("Applications"). *Oregon Shores Conservation Coalition et al. v. Coos County*, 76 Or LUBA 346 (2017). Pursuant to ORS 215.435(2)(a), JCEP requests that the County proceed to review the Applications on remand to address the limited issues sustained by LUBA.

"Resolved issues" are outside the scope of the remand pursuant to *Beck v. City of Tillamook*, 313 Or 148, 153, 831 P2d 678 (1992). "Resolved issues" include: "(1) [I]ssues presented in the first appeal and rejected by LUBA; and (2) issues which could have been, but were not, raised in the first appeal." *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32, 35 (1994).

LUBA's decision was affirmed on appeal by the Oregon Court of Appeals. *Oregon Shores Conservation Coalition v. Coos County*, 291 Or App 251, 416 P3d 1110 (2018). The Oregon Supreme Court then denied review. *Oregon Shores Conservation Coalition v. Coos County*, 363 Or 481, 424 P3d 728 (2018). An appellate judgment was entered on September 20, 2018. As a result, the County has jurisdiction to take action on remand.

Jill Rolfe
March 14, 2019
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Enclosed with this letter please find a check payable to "Coos County" in the amount of \$2,500.00 for the remand application fee. JCEP will submit to the County a narrative and evidentiary support addressing the limited remand issues very soon.

JCEP looks forward to working with the County to obtain approval of the Applications on remand. Feel free to contact me with any questions. Thank you for your attention to this request.

Very truly yours,



Seth J. King

Encl.

cc: Steve Pfeiffer (via email) (w/encl.)
Client (via email) (w/encl.)

**BEFORE THE BOARD OF COMMISSIONERS
OF COOS COUNTY, OREGON**

In the Matter of Land Use Requests for the Jordan Cove Energy Project on the North Spit as Follows: (1) a Conditional Use Permit to Authorize a Liquefied Natural Gas Export Terminal; (2) a Floodplain Certification Application for a Portion of the Project Located in the Industrial Zoning District; (3) a Driveway Confirmation Application for Access Connections to the Project Site; (4) Compliance Determinations for Various Permitted Uses and Activities, Including Fire Station, Processing Facility, Land Transportation Facility, Utility Facility, Excavation to Create New Water Surface, Fill, Mitigation, and Restoration; and (5) Time Extensions for Four Conditional Use Permit Approvals Pertaining to the Project.

NARRATIVE IN SUPPORT OF THE APPLICATIONS FILED BY JORDAN COVE ENERGY PROJECT L.P.

COUNTY FILE NOS. HBCU-15-05/CD-15-152/FP-15-09

ON REMAND FROM THE LAND USE BOARD OF APPEALS IN *OREGON SHORES CONSERVATION COALITION V. COOS COUNTY*, 76 OR LUBA 346 (2017)

I. Introduction.

The Oregon Land Use Board of Appeals (“LUBA”) remanded the decision of the Coos County (“County”) Board of Commissioners (“Board”) to approve concurrent land use applications (“Applications”) filed by Jordan Cove Energy Project L.P. (“Applicant” or “JCEP”) to develop a liquefied natural gas (“LNG”) export terminal and related facilities (together, “Project”), primarily on the North Spit, in the County. *Oregon Shores Conservation Coalition et al. v. Coos County*, 76 Or LUBA 346 (2017) (“OSCC”). The remand identified specific errors committed by the Board in its decision and provided instructions to the Board and Applicant for addressing these errors. See copy of LUBA’s final opinion and order in Exhibit 1. This narrative addresses LUBA’s limited remand. For the reasons explained below and based upon the evidence included herewith, the Board should find that Applicant has addressed each of the remand issues. The Board should approve the Applications on remand.

II. Summary of Applications.

The Applications consist of the following land use requests:

- (1) Conditional use permit to authorize an LNG export terminal on the North Spit;
- (2) Floodplain development permit for a portion of the Project located in the Industrial zoning district;
- (3) Driveway confirmation permit for access connections to the Project site;
- (4) Determinations that various permitted uses and activities, including a fire station, processing facility, land transportation facility, utility facility, excavation to create new water surface, fill, mitigation, and restoration, comply with applicable standards; and
- (5) Time extensions for four conditional use permits previously approved by the County, including County File No. ACU-13-22 (upland LNG terminal), County File No. ACU-13-23 (port slip and access waterway), County File Nos. ACU-12-12/ABI-12-02 (fill in 6-WD management unit), and County File Nos. ACU-12-16/ACU-12/17/ACU-12/18 (fill in Industrial zone and 7-D management unit).

A complete summary of the Project components is set forth in the Board's original decision approving the Applications. Rec. 16-31.¹ Except where expressly noted below, the Project has not been modified on remand.

III. Original Proceedings, Appeal, and LUBA Decision.

In the original proceedings, the Board approved the Applications on August 30, 2016, by adopting Final Decision and Order No. 16-08-071PL. Opponents appealed the Board's decision to LUBA and raised 16 assignments of error, some of which included sub-assignments of error. LUBA sustained eight of these assignments of error, in part, and determined that the Board erred in the following ways:

¹ In this narrative, "Rec. ____" shall refer to the Record the County filed with LUBA followed by the page number in the Record where the cited information is located.

- Failed to Correctly Interpret and Adopt Adequate Findings Supported by Substantial Evidence in Response to Coos Bay Estuary Management Plan (“CBEMP”) Policy #5 - The Board erred by: (1) interpreting CBEMP Policy #5.I.b to require an evaluation only of the public benefits of the dredging itself and not the public benefits of the upland use served by the dredging activity; (2) concluding that the “public need” standard is met if the dredging is needed to enable construction of a use that is permitted or conditionally allowed on adjacent upland or shoreland property; and (3) failing to adopt adequate findings supported by substantial evidence in the whole record that the Project would not unreasonably interfere with public trust rights. *OSCC*, 76 Or LUBA at 352-358 (OSCC second assignment of error).
- Failed to Adopt Findings in Response to CBEMP Policies #4 and #4a - The Board erred by failing to adopt findings addressing compliance with CBEMP Policies 4 and 4a. *OSCC*, 76 Or LUBA at 359-361 (OSCC third assignment of error).
- Failed to Adopt Adequate Findings in Response to CBEMP Policy #30 - The Board erred by failing to address whether subsidence due to dewatering is an issue under CBEMP Policy #30.I.c, and if so, adopt findings resolving that issue. *OSCC*, 76 Or LUBA at 361-363 (OSCC fourth assignment of error).
- Failed to Adopt Adequate Findings in Response to Special Condition 5 of the CBEMP 7-D Management Unit - The Board erred by failing to adopt adequate findings in response to Special Condition 5, which applies to the placement of fill in the CBEMP 7-D management unit. *OSCC*, 76 Or LUBA at 363-364 (OSCC fifth assignment of error).
- Failed to Adopt Adequate Findings Addressing Denial of Federal Energy Regulatory Commission (“FERC”) Permit - The Board erred by adopting findings of compliance with local approval standards predicated upon Applicant obtaining a FERC permit without addressing whether FERC’s 2016 denial of the permit application precluded Applicant, as a matter of law, from obtaining a FERC permit for the Project. *OSCC*, 76 Or LUBA at 364-365 (OSCC sixth assignment of error).
- Improperly Construed Applicable Law in Determining that the Southwest Oregon Regional Safety Center (“SORSC”) is a Permitted as an “Accessory Use” to a Fire Station in the Industrial Zoning District - The Board erred by failing to adopt a reviewable interpretation that the SORSC is permitted in the Industrial zone as an “accessory use,” as that term is defined in CCZLDO 2.1.200. *OSCC*, 76 Or LUBA at 365-369 (OSCC seventh assignment of error).

- Improperly Deferred CBEMP Policy #18 - The Board erred by improperly deferring an analysis of compliance with CBEMP Policy #18 concerning consideration of impacts to historical cultural, and archaeological sites to a second stage proceeding. *OSCC*, 76 Or LUBA at 374-381 (Tribes' first assignment of error).
- Failure by Commissioner Sweet to Disclose Substance of *Ex Parte* Communication - Commissioner Sweet failed to disclose the substance of any *ex parte* communication that occurred at a 2014 community luncheon presentation by Applicant about aspects of the Project. *OSCC*, 76 Or LUBA at 371-372 (McCaffree first assignment of error).

LUBA remanded the matter to the County to address the errors. *OSCC*, 76 Or LUBA at 387. Deb Evans, Ron Schaaf, Rogue Climate, Hannah Sohl, and Jody McCaffree appealed LUBA's decision to the Oregon Court of Appeals in an effort to expand the scope of the remand. The Court of Appeals denied these petitioners' arguments by affirming LUBA's decision without opinion. *Oregon Shores Conservation Coalition v. Coos County*, 291 Or App 251, 416 P3d 1110 (2018). The Court of Appeals petitioners then petitioned the Oregon Supreme Court to review the case, but the Supreme Court denied the petition without considering the case on the merits, allowing the Court of Appeals decision to stand. *Oregon Shores Conservation Coalition v. Coos County*, 363 Or 481, 424 P3d 728 (2018). On September 20, 2018, the Court of Appeals entered an appellate judgment. On September 26, 2018, LUBA entered a notice of appellate judgment, finding that the appellate court decisions did not require any change in LUBA's final opinion and order. On March 15, 2019, Applicant submitted a letter pursuant to ORS 215.435(2)(a) requesting that the County initiate the remand.

Pursuant to ORS 215.435(2)(a), the County has jurisdiction to take action on remand.

IV. Procedural Status on Remand.

The scope of the remand is limited to the specific issues remanded by LUBA and summarized in Section III of this narrative (above). The Board is not permitted on remand to reconsider issues that have already been addressed and are resolved:

“The logical corollary is that parties may not raise old, resolved issues again. When the record is reopened at LUBA's direction on remand, the 'new issues' by definition include the remanded issues, but not the issues LUBA affirmed or reversed on the merits, which are old, resolved issues.”

Beck v. City of Tillamook, 313 Or 148, 153, 831 P2d 678 (1992). “Resolved issues” include: “(1) [I]ssues presented in the first appeal and rejected by LUBA; and (2) issues which could have been, but were not raised in the first appeal.” *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32, 35 (1994).

Accordingly, the County notice for the remand proceedings should advise the public that testimony regarding “resolved issues” will not be accepted, and the Board should deny any “resolved issues” raised on remand. Where required by the scope of the remand, the Board is permitted to accept new evidence in these proceedings.

V. Responses to Remand Issues.

The Board should adopt the findings set forth below in response to LUBA’s remand.

A. Response to Remand Issue 1 - CBEMP Policy #5

1. Applicable Law.

In order for the County to approve dredging in the 5-DA and 6-DA CBEMP zones, the County must adopt findings that, among other things, the dredging is: (1) “required for navigation or other water-dependent use that requires an estuarine location,” and (2) a “need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights.” CBEMP Policy #5.I.

2. Board’s Original Decision and LUBA Decision on Appeal.

a. Public Need.

The Applications propose dredging in the 5-DA and 6-DA zones to develop an access channel from the navigation channel to the marine slip associated with the Project. As a result, CBEMP Policy #5.I applies to the Applications. In the original decision, the Board determined that Applicant’s proposed dredging activities were consistent with CBEMP Policy #5.I.

In reaching this conclusion, the Board found that the “need (i.e., a substantial public benefit)” referenced in CBEMP Policy #5.I was limited to a “need” for the dredging activity:

“The Board concludes that the term ‘need (substantial public benefit)’ used in Goal 16 and CBEMP Policy #5 refers to a public benefit for the

dredging activity, and does not require the applicant to prove that there is a public need or benefit for the underlying proposed land use (i.e. a marine slip and ship terminal, or more generally, an LNG export facility).”

Rec. 86. The Board also found that, in determining whether there was a “need,” the Board was not required to balance the benefits with the detriments of the activity:

“Furthermore, the Board specifically rejects the argument that the public need/benefit standard requires the County to balance need/benefit with (and weigh against) public detriments. In the previous sentence of Policy 5, the drafters required that an applicant for a non-water-dependent use to demonstrate that dredging and fill ‘is needed for a public use and would satisfy a public need that outweighs harm to navigation, fishing and recreation.’ That specific language does not come out of Goal 16, but rather is taken from ORS 196.825(4). Had the drafters of the CBEMP intended to impose a similar balancing test requirement onto the ‘public need/benefit’ standard, they could have easily done so (as they expressly did in the prior sentence), but they chose not to do so.”

Rec. 88. Finally, the Board found that if the dredging was to facilitate development of a permitted or conditional use, there was *per se* a need/benefit associated with the dredging:

“The Board believes that the ‘need/substantial benefit’ standard is met if the applicant demonstrates that the dredging or fill activity is needed to enable [construction of] a permitted or condition[al] use allowed in the neighboring coastal shoreland zone and related upland zones. In other words, Coos County has, via its enactment of the CBEMP (aka: Zoning Ordinance), set forth the panoply of uses that the County believes would serve a need and/or a substantial public benefit in each particular zone (*i.e.*, it has established a list of uses that are deemed appropriate in each zone in question.). If the applicant is proposing one of those favored uses, and there is a need to conduct fill or dredging activity in order to facilitate that favored use, then there is, *ipso facto*, a substantial benefit to allowing the applicant to conduct that fill/removal so that it can construct and operate the use.”

Rec. 88 (emphasis in original). On the basis of these and other findings, the Board concluded that, for purposes of CBEMP Policy #5, there was a “public need” for the dredging associated with the access channel:

“The locational question under CBEMP Policy #5, therefore, is much more simple: Goal 16 and Policy #5 ask if there [is] a public need for dredging so that this deep water industrial port facility [can] be located in this shoreline area.

“The clear answer to the required question is ‘yes.’ The applicant has shown that there is a need to perform dredging and filling activities at the proposed location in order to make the 5-WD and 6-WD zones usable as a deep-water port facility.”

Rec. 89. On appeal to LUBA, OSCC challenged each of the Board’s three primary findings identified above as well as the Board’s ultimate conclusion that the dredging activities proposed in the Applications were consistent with CBEMP Policy #5. LUBA sustained OSCC’s challenge, but only in part.

First, LUBA held that the “public need” analysis under CBEMP Policy #5 should be focused on the “public need” for the use the dredging serves, not on the need for the dredging *per se*:

“If the ‘substantial public benefit’ analysis is limited to evaluation of the public benefits of the dredge or fill activity itself, then the standard would never be met, as it is difficult to conceive of any public benefit from dredging or filling that is distinct from the use that dredging or filling serves. * * * * We conclude that, contrary to the county’s finding, CBEMP Policy 5(I)(b) requires the county to evaluate the substantiality of the public benefits provided by the use that the proposed dredging serves, in this case the LNG terminal, or at least those components of the terminal that are properly viewed as water-dependent uses.”

OSCC, 76 Or LUBA at 354. However, LUBA denied OSCC’s contention that regardless of the language of CBEMP Policy 5, Goal 16 requires a balancing of the benefits and detriments of a proposed use before it can be allowed under CBEMP Policy #5.I.b:

“Given the absence of an express or fairly implied requirement to balance or weigh benefits against adverse consequences under Goal 16 IR2(b), and the fact that adverse consequences expressly addressed under a different standard, we decline to read Goal 16 IR(2)(b) to include an implicit requirement to balance or weigh public benefits of the proposed use against adverse consequences.”

OSCC, 76 Or LUBA at 355. Finally, LUBA concluded that the Board erred in finding that dredging associated with a permitted or conditional use necessarily provided a public benefit:

“The county’s view that the ‘need/substantial public benefit’ standard in CBEMP Policy 5(l)(b) and Goal 16 IR2(b) is met simply by the fact that the proposed dredging serves a use allowed under the county’s code, conflates CBEMP Policy 5(l)(a) and (b) and gives no independent effect to the latter. Even if the proposed dredging serves a water-dependent use allowed under the county’s code, the county can allow the dredging only if it also finds that the use provides a substantial public benefit.”

OSCC, 76 Or LUBA at 356.

b. Public Trust.

In the original decision, the Board concluded that, subject to conditions, the security zones placed around LNG vessels in Coos Bay would not unreasonably interfere with the public trust:

“The testimony from Amergent Techs provides clarifications regarding the limited impacts caused by LNG vessel passage and docking in Coos Bay. Importantly, the memo clarifies that the Safety/Security zones are not ‘exclusion zones.’ Rather, they are regulated navigation areas. Essentially, that means that the Coast Guard will control traffic near the LNG ships but will still allow boat pilots [to] transit the zone on a case-by-case basis. The Board’s understanding of this explanation is that the Coast Guard will let known vessels pass but can forceably exclude vessels or delay [those] that it does not recognize. As a practical matter, local commercial fisherman operating known vessels should experience no significant delays as they will receive permission from the COTP to proceed. Less frequent users of the bay, such as recreational boaters, may experience some delay as the COTP makes efforts to identify them and conduct a threat assessment. Given that clarification, the Board believes that there will be no unreasonable interference with public trust rights.”

Rec. 100-101. On appeal, OSCC contended that the Board’s conclusion on this point was erroneous because the Board’s inference from the testimony that “known” vessels could proceed without delay was not supported by substantial evidence in the whole

record. OSCC, 76 Or LUBA at 357. LUBA sustained OSCC's contention because the testimony in the record did not support the inference the Board made in its findings:

“Nothing in the record cited to us explains the distinction between a ‘known’ and ‘unknown’ boat. That problem aside, as Oregon Shores argues, the county’s understanding that all ‘known’ boats would be able to transit the security zone with minimal delay is not supported by the Amergent Techs memo, much less by the Coast Guard statements in the record. Neither the Amergent Techs memo nor the Coast Guard statements suggest that the Coast Guard’s case-by-case evaluation would rely on a distinction between ‘known’ and ‘unknown’ boats, and allow the former passage through the security zone without delay, although that may well be the case. The county’s findings rely on its understanding of the Amergent Techs testimony as the primary basis for its conclusion that the transit of approximately 100 LNG tankers per year through the narrow estuary will not unreasonably interfere with navigation or public trust access to the estuary. * * * * We agree with Oregon Shores that remand is necessary for the county to adopt more adequate findings, supported by substantial evidence, on this point.”

OSCC, 76 Or LUBA at 357-358. LUBA acknowledged that there was additional evidence in the record that could potentially support the Board’s conclusion that the expected volume of vessel traffic would not unreasonably interfere with public trust rights, but the Board did not refer to this evidence in its original decision. *Id.*

Based upon the Board’s errors in analyzing the “public need” and “public trust” standards, LUBA remanded the issue back to the Board for further proceedings. *Id.*

3. Findings on Remand.

On remand, the Board should adopt the following findings:

a. Public Need.

The Board should find there is a public need for the water-dependent aspects that are dependent upon the dredging of the access channel in the 5-DA and 6-DA CBEMP zones. As support for this conclusion, the Board should rely upon the following testimony in the record:

- The narrative for the Applications dated November 3, 2015, which described enhanced commerce, job creation, and ad valorem tax revenues generated by the Project (Rec. 9370);
- ECONorthwest’s report entitled “Economic Impact Analysis of the Construction of an LNG Terminal and Natural Gas Pipeline in Oregon” and dated March 6, 2012 (Rec. 11753 - 11770), which made the following conclusions about the economic impact of the Project:
 - Direct economic output from the Project of approximately \$6.641 billion in Oregon and Washington, including downstream impacts.
 - Overall net value added to the economy of approximately \$1.738 billion over a three-year period.
 - Over 5,000 jobs created per year during Project construction.
- The letter from Robert Braddock describing the following energy-related benefits to the Project (Rec. 3753-3755):
 - “One public benefit of the Project is it will contribute to reduced air emissions by expanding the use of natural gas in areas of the western Pacific basin where coal has been the historically dominant fuel used for the generation of electric power. Natural gas results in fewer lifecycle greenhouse gas emissions than coal, even when natural gas production, transportation, liquefaction, revaporization and leakage are accounted for.”
 - The reduction in energy consumption associated with a West Coast LNG facility, which would result in shorter transit distance to Asian markets compared to East Coast facilities and as a result, lower the energy consumed to deliver the LNG to the point of consumption.
 - The opportunity to accelerate the conversion to cleaner marine fuel by having a reliable and cost-effective supply of LNG fuel available.
- U.S. Department of Energy Order No. 3041 FTA Nations December 2011 (Rec. 4847 - 4862) and U.S. Department of Energy Order No. 3413 Non-FTA Nations March 2014 (Rec. 4863 - 5026), which concluded that exporting LNG from the

facility to either Free Trade Agreement Nations or Non-Free Trade Agreement Nations is not inconsistent with the public interest.

- Oral testimony from several local residents at the public hearing for the Applications, which detailed the importance of diversifying and expanding the local economy in light of the decline in the fishing and lumber sectors.
- Letter from Richard Whitman, then-Natural Resources Advisor to Governor Kitzhaber, dated February 12, 2015 (Rec. 7514), which explained that “the project has great potential to support the economy of the central and southern Oregon coast, creating jobs and a strong energy infrastructure in one of the areas of Oregon that is continuing to suffer from the recession and long-term structural changes in the economy.”

A reasonable person would find that this diverse and extensive evidence supports the conclusion that there is a public need/benefit associated with the Project. Therefore, dredging to develop an access channel to facilitate use of the Project satisfies CBEMP Policy #5.I.b. The Board should find that these findings address LUBA’s remand on this issue.

b. Public Trust.

The Board should find that the Project will not unreasonably interfere with public trust rights. As support for this conclusion, the Board should rely upon the U.S. Coast Guard Waterway Suitability Report, which provides that security zones around LNG vessels would not be exclusion zones and, in fact, upon gaining permission from the U.S. Coast Guard Captain of the Port’s representative, fishing vessels would be allowed to enter the security zone: “The expectation is that the COTP’s Representative will work with the Pilots and patrol assets to control traffic, and will allow vessels to transit the Safety/Security zone based on a case-by-case assessment conducted on scene.” Rec. 3033.

Further, Amergent Techs, a maritime security expert firm, explained that, based upon expected transit time for an LNG vessel (approximately 90 minutes each from breakwater entrance to dock), maximum delay to fishing caused by an LNG vessel would last only 20-30 minutes per vessel trip. Rec. 3764. Further, the number of LNG vessels would be limited to 100 per year. Rec. 3763. At the rate of 100 vessels per year, and a 20-30 minute delay associated with each trip of each vessel, over the course of a seven-day period, there would be a maximum of six out of a possible 168 hours when use of the Bay would be potentially restricted due to LNG vessel passage. Rec. 3763. This is

less than one hour per day. That leaves a total of 162 hours per week of unrestricted use of the Bay. The Board should find that this is not an unreasonable interference with public trust rights. Further, the dates and times that LNG vessels would be in transit in the Bay would be announced in advance and would be posted online and on a message board, which allows local vessels to make plans to avoid the narrow portions of the estuary at those times. *Id.*

Based upon these facts, the Board should find that the Project will not unreasonably interfere with public trust rights. Further, in light of the limited time when use of the Bay is even potentially restricted, the Board need not concern itself with whether vessels are “known” or “unknown” to the Coast Guard. Stated another way, even if a vessel must wait out the passage of an LNG vessel, it is of such a short duration that the Board should find that it is not an unreasonable interference.

The Board should find that these findings address LUBA’s remand on this issue.

B. Response to Remand Issue 2 - CBEMP Policies #4 and #4a

1. Applicable Law.

In areas subject to CBEMP Policy #5, an applicant must minimize the adverse impacts of dredging activities. CBEMP Policy #5.I.d. Further, “[i]dentification and minimization of adverse impacts” must follow the procedure in CBEMP Policy #4. In turn, that policy requires that dredging in development aquatic units must be supported by findings demonstrating “the public’s need and gain which would warrant any modification or loss to the estuarine system, based upon a clear presentation of the impacts of the proposed alteration, as implemented in Policy #4a.” CBEMP Policy #4.II.d. The impact assessment is not required to be “lengthy or complex,” but it should provide a summary of the expected impacts. CBEMP Policy #4.III. The assessment 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.”

Id. The impact assessment must follow the procedures and meet the standards outlined in CBEMP Policy #4a.

2. Board’s Original Decision and LUBA Decision on Appeal.

In the original decision, the Board determined that adverse impacts associated with dredging for the access channel in the CBEMP 5-DA and 6-DA zones would be minimized because Applicant would limit dredging to only that amount and those locations that are reasonably needed for dredging and Applicant would use best management practices when conducting such dredging. Rec. 105-106. In reaching this conclusion, the Board stated that it relied upon expert testimony submitted by Applicant. *Id.* The Board did not adopt findings directly addressing CBEMP Policies #4 or #4a.

On appeal, in its third assignment of error, OSCC contended that the County “failed to adopt any findings addressing CBEMP Policy 4 or 4a, or provide a ‘clear presentation of the impacts of the proposed alteration[.]’” OSCC, 76 Or LUBA at 360. LUBA sustained this contention and remanded “for the county to adopt findings addressing compliance with CBEMP Policy 4 and 4a.” OSCC, 76 Or LUBA at 361.

3. Findings on Remand.

On remand, the Board’s task is to consider and adopt findings in response to CBEMP Policies #4 and #4a. To complete this task, the Board should adopt the following findings:

#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.

RESPONSE: The County should find that JCEP has identified and minimized impacts associated with its proposed dredging activities. As support for this conclusion, the Board should rely upon the memorandum from David Evans and Associates, Inc. ("DEA") dated January 26, 2016. Rec. 1900-1903. Consistent with the impacts assessment methodology under CBEMP Policy #4, DEA's memo begins with an explanation of the type and extent of alterations expected:

"Dredging within Coos Bay will be required for the Jordan Cove LNG Project as part of the construction of the LNG terminal's slip and access channel and for construction of a barge berth that will be used to receive shipments of large equipment needed for construction of Project facilities and maintenance of the facility."

Rec. 1900. The record reflects that JCEP is proposing to dredge approximately 1.36 acres for the access triangle, which will include impacts to areas that are intertidal, algae/mudflats/sand, shallow subtidal, deep subtidal, developed below high mean tide, and eelgrass. Rec. 9652. Dredging in the access channel will affect approximately 30

acres below the mean higher high water (“MHHW”) line. Dredging of the access channel would affect about 15.2 acres of deep subtidal below -15.3 feet; about 5.8 acres of shallow subtidal to the mean lower low water (“MLLW”) line; and about 8.1 acres of intertidal strata between the MHHW and MLLW lines. Rec. 9304. DEA’s memo further describes the types of resources affected, including coho salmon habitat and benthic habitat. Rec. 1902-1903.

DEA’s memo describes in detail the expected impacts associated with dredging, first noting activities and resources that will not be impacted by Project-related dredging:

“Dredging activities associated with the Project are not expected to adversely or unreasonably impact navigation, access to waterways for commercial fishing and crabbing, oyster harvesting and other resource extraction, and public rights to water resources.”

Rec. 1900. The memo then explains the expected type and extent of impacts, which DEA concludes will be small, localized in nature, and will not result in population-level impacts:

“While dredging may result in increased in turbidity or removal of aquatic habitat, these impacts will be localized to the dredging area and [are] short-term in nature. In addition, the portions of Coos Bay affected by dredging are a small fraction of the overall size of the bay; therefore, any impacts associated with dredging activities will likewise be relatively small geographically and will not result in population-level impacts to aquatic species and/or habitat or unreasonably harm navigation, fishing and recreation.”

Id. DEA’s memo then includes separate sections addressing each impact type in detail, including sediment transport, deposition, and flow velocity; erosion and sedimentation; turbidity; water quality; and aquatic species and habitat. Rec. 1901-1903.

Finally, JCEP has proposed to comply with many measures to avoid and minimize adverse impacts, including the following:

- Limiting dredging to the smallest area possible to accommodate cargo vessels (Rec. 9652);
- Limiting work to the Oregon Department of Fish and Wildlife-approved in-water work window, which extends from October 1 through February 15 (Rec. 1902);

- Utilizing a turbidity curtain to minimize impacts to water quality (Rec. 9371-9372); and
- Carrying out dredging in accordance with the requirements of state and federal law, including Section 404 of the Clean Water Act (“CWA”); Section 7 of the Endangered Species Act; Section 401 of the CWA, which addresses water quality; and Oregon’s Removal-Fill law (Rec. 1900).

Impacts that cannot be avoided or minimized will be mitigated for at the Kentuck, West Jordan Cove, West Bridge, and Eelgrass mitigation sites. *Id.*

There is no expert testimony to the contrary set forth in the record. The Board should find that JCEP has demonstrated, based upon substantial evidence in the whole record, that adverse impacts associated with Project dredging will be minimized.

The Board should find that these findings respond to LUBA’s remand concerning CBEMP Policy #4.

#4a Deferral of (I) Resource Capability Consistency Findings, and (II) Resource Impact Assessments

Local government shall defer, until the time of permit application, findings regarding consistency of the uses/activities listed in Policy #4 with the resource capabilities of the particular management unit.

Additionally, the impact assessment requirement for those uses/activities as specified in Policy #4 shall be performed concurrently with resource capability findings above at the time of permit application.

I. This strategy shall be implemented through an Administrative Conditional Use process that includes local cooperation with the appropriate state agencies:

- a. Where aquaculture is proposed as a use, local government shall notify the Oregon Department of Fish & Wildlife (ODFW) and Department of Agriculture in writing of the request, with a map of the proposed site;**
- b. Where log storage dredging is proposed as an activity local government shall notify the Oregon Department of Environmental Quality (DEQ) in writing of the request, together with a map of the proposed site.**

II. Within twenty (20) days of receipt of the notification, the state agency shall submit in writing to the local government a statement as to whether the proposed use/activity will:

- a. Be consistent with the resource capabilities of the management unit or,**
- b. If determined not to be consistent, whether the proposal can be made consistent through imposition of conditions on the permit.**

III. The appropriate state agency shall also perform the impact assessment required in Policy #4. If no statement is received from the state agency by the expiration of the twenty (20) day period, local government shall:

- a. Presume consistency of the proposal with the resource capabilities of the management unit; and**
- b. Make findings appropriate to that presumption; and c. Perform the assessment of impacts required by Policy #4.**

IV. For all other uses/activities specified above, local government shall:

- a. Determine through appropriate findings whether the proposed use/activity is consistent with the resource capabilities of the management unit, and**
- b. Perform the assessment of impacts required by Policy #4.**

V. This strategy recognizes:

- a. That resource capability consistency findings and impact assessments as required by LCDC Goal #16 can only be made for the uses specified above at the time of permit application, and**
- b. That the specified state agencies have expertise appropriate to assist local government in making the required finding and assessments. This strategy is based upon the recognition that the need for and cumulative effects of estuarine developments were fully addressed during development of this Plan and that no additional findings are required to meet Implementation Requirement #1 of Goal #16.**

RESPONSE: As noted above, CBEMP Policy #4 requires findings demonstrating the public's need and gain that would warrant modification or loss to the estuarine

ecosystem, based upon a clear presentation of the impacts of the proposed alteration, as implemented in CBEMP Policy #4a. None of the prerequisites to providing notice to state agencies under CBEMP Policy #4a are triggered by the Applications. Therefore, this policy requires the County to complete the impacts assessment consistent with CBEMP Policy #4. Upon completion of that assessment, the Board should find that its findings address this issue consistent with LUBA's remand.

C. Response to Remand Issue 3 - CBEMP Policy #30

1. Applicable Law.

Among other things, CBEMP Policy #30 requires the County to only permit development in areas designated as "Beach and Dune Areas with Limited Development Suitability" on the County Special Considerations Map upon adoption of findings that identify "[m]ethods for protecting the surrounding area from any adverse effects of the development." CBEMP Policy #30.l.c. A separate provision of that policy requires findings "[w]hether drawdown of groundwater would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of saltwater into water supplies." CBEMP Policy #30.l.e.

2. Board's Original Decision and LUBA Decision on Appeal.

In the original decision, in response to OSCC's contention that dewatering activities during construction of the Project tank/slip facilities in the 6-WD zone would cause subsidence, the Board concluded that site stability and subsidence were not regulated under CBEMP Policy #30.l.e, the only subsection of the policy that directly regulates drawdown of groundwater. Rec. 135.

On appeal, OSCC contended that subsidence due to dewatering could be a potential issue under CBEMP Policy #30.l.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(l)(c), JCEP does not cite them. We conclude that remand is necessary to address whether subsidence is a potential issue under CBEMP Policy 30(l)(c) and, if so, adopt findings resolving that issue. * * * *

"The fourth assignment of error is sustained in part."

OSCC, 76 Or LUBA at 363.

3. Findings on Remand.

On remand, the Board should find that subsidence from dewatering associated with the Project construction will not have an “adverse effect” upon the “surrounding area” for purposes of CBEMP Policy #30.I.c. The Board should reach this conclusion because it is highly unlikely that subsidence resulting from dewatering associated with Project construction in the 6-WD and 7-D zones will occur because JCEP’s expected dewatering rates during Project construction are well below the high capacity of the aquifer in this location. As support for this conclusion, the Board should rely upon JCEP’s Resource Report No. 6 (“Geological Resources”), which explains that modeling indicates that the aquifer can withstand pumping of up to 10 million gallons of water per day, a high capacity:

“The Coos Bay-North Bend Water Board will supply the LNG Terminal site with water during construction and operation. Additional water will be supplied during construction using temporary wells installed at Ingram Yard. Additionally, localized dewatering wells may be used to lower groundwater levels to facilitate soil improvement techniques during site preparation. All on-site construction wells will be operated only for the period of construction; therefore, any impacts to groundwater levels from pumping on-site during construction will be temporary, and water levels will recover when the pumping is terminated.

“The Coos Bay-North Bend Water Board uses a portion of the Dune-Sand Aquifer for public water supply; the closest well is approximately 3,500 feet north of the LNG Terminal site (Groundwater Solutions Inc. 2006). Model simulations for the Dune-Sand Aquifer indicate that a maximum of 10 million gallons per day could be pumped with little risk of inducing seawater to flow into the wells (Jones 1992). * * * * The low risk of inducing seawater from pumping of the Dune-Sand Aquifer at high rates indicates that the aquifer has a high capacity. Therefore, reduction of the groundwater level at the LNG Terminal site is considered unlikely; therefore, ground subsidence is not anticipated to occur.”

See Resource Report No. 6 at 17 in Exhibit 2. Further, the record reflects that, during Project construction, expected dewatering rates will range from about 2.14 - 5.62 million gallons per day and construction activities causing dewatering will be limited to approximately 165 days total. See Rec. 4138, 4155 (dewatering analysis prepared by GSI

Water Solutions, Inc.). This figure is well below the daily capacity of the aquifer, and is relatively short in duration, which indicates that the risk of dewatering-induced subsidence is unlikely. Based upon this evidence, the Board should find that such subsidence is not an “adverse effect” for purposes of CBEMP Policy #30.I.c., and as a result, JCEP should not be required to implement any protective measures to ensure compliance with this policy on this issue.

The Board should find that these findings address this issue consistent with LUBA’s remand.

D. Response to Remand Issue 4 - Special Condition 5 of CBEMP 7-D Zone

1. Applicable Law.

In the CBEMP 7-D management unit, the activity of fill is subject to compliance with Special Condition 5:

“The wetland in the southeast portion of this district can be filled for a development project contingent upon satisfaction of the prescribed mitigation described in Shoreland District #5.”

CCZLDO 3.2.286.

2. Board’s Original Decision and LUBA Decision on Appeal.

In the original decision, the Board determined that Applicant’s proposed fill in the 7-D management unit would comply with Special Condition 5:

“The Board finds that the application proposes fill in the southeast portion of this district for a development project and will mitigate in accordance with prescribed mitigation. Therefore, the Board finds that the proposed fill is consistent with Special Condition 5.”

Rec. 70. On appeal, in its fourth assignment of error, OSCC contended that the County’s finding was inadequate and not supported by substantial evidence. LUBA agreed with OSCC, concluding that “[t]he findings do not identify the proposed mitigation for fill in the wetland in the southeast portion of the 7-D district, or relate it in any way to ‘the prescribed mitigation described in Shoreland District #5.’”

OSCC, 76 Or LUBA at 364. As a result, LUBA remanded for the County to adopt more adequate findings on this point. *Id.*

3. Findings on Remand.

On remand, the Board should find that Applicant is proposing to fill a small area of the wetland in the southeast portion of the CBEMP 7-D zone (Wetland J) in conjunction with the Project. *Compare* Rec. 9408 (depicting Wetland J) and Rec. 9403 (depicting fill areas in the 7-D zone). Therefore, Applicant is proposing to fill the wetland in the southeast portion of the district for a development project, and this activity is subject to Special Condition 5.

In order for the fill to be allowed, the Board must find that, to the extent applicable regulations in Shoreland District #5 prescribe mitigation, they have been satisfied.

The Board should find that Shoreland District #5 is commonly known as the CBEMP 5-WD zone. Special Conditions 8, 9a, and 9b of this zone require mitigation in accordance with the Henderson Marsh Mitigation Plan (“HMMP”). *See* CCZLDO 3.2.261.

Wetland J lies outside of Henderson Marsh and associated HMMP boundaries. As such, there is no prescribed mitigation associated with filling Wetland J in the HMMP. Moreover, the HMMP does not provide general guidance for fill or mitigation for wetlands not expressly identified in the HMMP area. While Condition 15 of the HMMP addresses specific wetlands outside of the main Henderson Marsh area and prescribes specific mitigation components for these additional wetlands as supplements to the main mitigation of the HMMP, Wetland J is not included in the list in Condition 15.

For these reasons, the Board should find that Shoreland District #5 does not prescribe any mitigation in this instance. As a result, Special Condition 5 does not limit Applicant’s proposed fill in the 7-D zone. The Board finds that the filling of Wetland J will still be subject to compliance with other applicable requirements of the CBEMP, which were found to be met in the original decision, as well as the requirements of the Department of State Lands and the U.S. Army Corps of Engineers, including Applicant’s proposed Compensatory Wetland Mitigation Plan. The Board should find that these findings address this issue consistent with LUBA’s remand.

E. Response to Remand Issue 5 - Consequences of FERC Denial

1. Applicable Law.

Where a local government relies upon a land use applicant obtaining permits from another agency as a means of demonstrating compliance with applicable approval criteria, the local government must find, based upon substantial evidence in the whole record, that the applicant is not precluded as a matter of law from obtaining the permits from the other agency. *Bouman v. Jackson County*, 23 Or LUBA 626, 647 (1992). This standard does not require the local government to determine that “it is feasible to comply with all discretionary state agency permit approval standards because the state agency, which has expertise and established standards and procedures, will ultimately determine whether those standards are met.” *Id.* Instead, the local government need only determine that the necessary agency permit is “available.” *Miller v. City of Joseph*, 31 Or LUBA 472, 478 (1996).

2. Board’s Original Decision and LUBA Decision on Appeal.

In the original decision, the Board imposed a condition requiring Applicant to obtain state and federal permits for the Project:

“The applicant shall obtain any and all necessary state and federal permits, including required permits from USACE, DSL, and DEQ, among others.”

Rec. 215. The Board relied upon this condition to find compliance with CBEMP Policies #5 and #8. Rec. 106-107, 108. The Board also relied upon evidence that, in turn, relied upon a FERC permit, to find compliance with CBEMP Policy #30. Rec. 134-135.

On appeal to LUBA, OSCC contended that because FERC denied Applicant’s application for a permit for an LNG terminal on the North Spit, the County erred in relying upon FERC permits to demonstrate compliance with applicable approval criteria. In short, OSCC contended that the County’s findings were erroneous because the record did not include substantial evidence that Applicant was not precluded as a matter of law from obtaining the FERC permit.

LUBA sustained this assignment of error:

“In our view, given that the required FERC permit had, in fact, been denied during the proceeding before the county, the county erred in adopting findings of compliance with local approval standards that are

unconditionally predicated on the applicant obtaining a FERC permit, without first addressing whether the denial means that JCEP is precluded, as a matter of law, from obtaining the FERC permit.”

OSCC, 76 Or LUBA at 365. As a result, LUBA remanded the matter to the County to consider this issue. *Id.* LUBA expressly noted that the County could consider FERC applications and decisions that post-dated the County’s original decision. *Id.*

3. Findings on Remand.

On remand, the Board should find that Applicant is not precluded as a matter of law from obtaining a FERC permit for the Project. As support for this conclusion, the Board should rely upon the fact that FERC’s 2016 denial was “without prejudice to Jordan Cove and/or Pacific Connector submitting a new application to construct and/or operate LNG export facilities or natural gas transportation facilities should the companies show a market need for these services in the future.” Rec. 1320. As a result, FERC’s decision did not preclude Applicant from applying for another FERC certificate for an LNG export terminal and related pipeline on the North Spit. The Board should also rely upon the fact that, subsequent to FERC’s denial, Applicant applied for a new FERC permit, and that application is currently pending. See FERC Notice of Applications dated October __, 2017 in Exhibit 3. As explained above, the County is not required to ascertain whether it is feasible for Applicant’s new application to satisfy FERC’s approval standards. Therefore, a reasonable person would rely upon this evidence to show that a FERC permit is “available” and thus not precluded as a matter of law.

The Board should find that these findings address this issue consistent with LUBA’s remand.

F. Response to Remand Issue 6 - SORSC

1. Applicable Law.

Pursuant to the version of the CCZLDO applicable to the Applications, uses that are accessory to uses permitted outright in the Industrial zoning district are also permitted there. CCZLDO 4.4.200 (2015). Under the applicable definition, “accessory uses” are uses that: (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. CCZLDO 2.1.200 (2015).

2. Board's Original Decision and LUBA Decision on Appeal.

In the original decision, the Board found that the SORSC was permitted in the Industrial zone as an accessory use to the fire station:

“The SORSC is permitted in the IND zone as an accessory use to the Fire Station because the SORSC meets the definition of ‘Accessory Use.’ The SORSC serves, and is subordinate in purpose to, the Fire Station because the SORSC is a training center for firefighters who will work at the Fire Station. The SORSC contributes to the comfort and convenience of the firemen who utilize the Fire Station because the SORSC offers training to current and future firefighters. The SORSC is located on the same unit of land as the Fire Station. See Applicant Figures 2, 3, and 9.”

Rec. 144. The Board denied OSCC's contentions that the SORSC was not allowed in the Industrial zone because it would house government offices and schools, which OSCC contended were not allowed in the Industrial zone. Rec. 144-145.

On appeal, OSCC contended that the County's finding that the SORSC was “subordinate” to the fire station misconstrued applicable law and was not supported by substantial evidence:

“According to Oregon Shores, no reasonable person could conclude that the various government office and educational components that make up the bulk of the SORSC, including a regional training facility for up to 100 persons, are ‘subordinate’ to a local fire station staffed by four firefighters.”

OSCC, 76 Or LUBA at 367. LUBA sustained OSCC's assignment of error:

“Because the findings are conclusory and do not address key language and considerations in the code definition of ‘accessory use,’ it is hard to say whether the county's conclusion that the SORSC components are accessory to the fire station embodies an interpretation of LDO 2.1.200 that is inadequate for review, or an interpretation that is simply implausible, i.e., inconsistent with the express language, purpose and policy underlying LDO 2.1.200. To the extent the county's decision interprets LDO 2.1.200 to the effect that a use is ‘subordinate’ to a primary use as long as it provides some support to the primary use, regardless of how minimal and tangential that support is compared to the putative

accessory use's purpose and function, we reject the interpretation as implausible.

“We do not intend to foreclose the possibility that the board of commissioners can adopt an interpretation of LDO 2.1.200 that is sustainable under the deferential standard of review we apply under ORS 197.829(1)(a), supporting a conclusion that some or all of the SORSC components are ‘accessory’ to the fire station, as defined at LDO 2.1.200. However, the present decision includes no such interpretation. Further, any sustainable interpretation of LDO 2.1.200 must give effect to all of its applicable terms. The 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.’ See n 17.”

OSCC, 76 Or LUBA at 368-369. As a result, LUBA remanded this issue for further Board action. *Id.*

3. Findings on Remand.

On remand, Applicant withdraws the request to include the SORSC in the Applications. Accordingly, the Board should find that the SORSC is not proposed to be located in the Industrial zoning district, and the Board is not required to make a use interpretation that the SORSC is accessory to the fire station in the Industrial zoning district. Therefore, the Board will not be adopting any of the findings LUBA had an issue with in the original proceedings.

The Board should find that these findings address this issue consistent with LUBA’s remand.

G. Response to Remand Issue 7 - CBEMP Policy #18

1. Applicable Law.

The County is required to follow the procedures and adopt the findings described in CBEMP Policy #18 before approving a development proposal that involves a cultural, archaeological, or historical site. Pursuant to CBEMP Policy #18, the County must

provide a copy of the site plan for the proposed development to the Coquille Tribe and the Confederated Tribes of the Coos, Siuslaw, and Lower Umpqua, who then have 30 days to respond whether the project would “protect the cultural, historical, and archaeological values of the site, or if not, whether the project could be modified by appropriate measures to protect those values.” CBEMP Policy #18.II. If no adverse impacts have been identified, and the proposal is otherwise consistent with the CBEMP, the County must approve the development proposal. CBEMP Policy #18.III. If the applicant and the Tribes have agreed upon “appropriate measures” to protect the site, the County is required to impose these measures on any approval. *Id.* If the applicant and the Tribes cannot agree upon “appropriate measures,” the Board must hold a quasi-judicial hearing to resolve the dispute. *Id.* At the hearing, the Board must “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.” *Id.*

2. Board’s Original Decision and LUBA Decision on Appeal.

All of the proposed uses and activities located within the CBEMP trigger the potential application of CBEMP Policy #18. In the original decision, at Applicant’s request, the Board deferred adopting findings addressing CBEMP Policy #18 on the merits, subject to the following condition of approval:

“The Board shall hold a quasi-judicial hearing to determine compliance with CBEMP Policy 18. The hearing shall be a public hearing at which the governing body shall determine by preponderance of the 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. For purposes of this condition, the public hearing shall be subject to the provisions of section 5.7.300 of the CCZLDO with the Board of Commissioners serving as the Hearings Body. The Board’s decision in that matter shall constitute the Board’s decision regarding the Applications’ consistency with CBEMP Policy 18.”

Rec. 216. On appeal, the Confederated Tribes made multiple challenges to the Board’s findings, primarily that the Board erred in deferring its CBEMP Policy #18 obligations to an undetermined future time.

LUBA sustained these challenges, concluding that the County improperly deferred an analysis of compliance with CBEMP Policy #18 when there was no second stage

application proceeding to which the analysis could be deferred, the County's proposed condition requiring future consideration of CBEMP Policy #18 did not adequately ensure that the process would be initiated and completed before development, and the County did not determine, as required by applicable case law, that there was insufficient evidence in the record to determine compliance or the feasibility of compliance with CBEMP Policy #18 at that time. *OSCC*, 76 Or LUBA at 378-379.

Additionally, LUBA concluded that the County's analysis was flawed because it unfairly put the Confederated Tribes in a compromised position when CBEMP Policy #18 was finally taken up for consideration and because the County did not adequately explain its interpretation that CBEMP Policy #18 permits a deferral to a later proceeding:

“Moreover, it is important to note that CBEMP Policy 18 requires coordination with and the resolution of disputes raised by a sovereign government. Unlike CBEMP Policy 18, the Tribes are not merely another participant in the proceedings. The Tribes are entitled under CBEMP Policy 18 to special notification and consideration of issues raised, as well as the power to compel the applicant into negotiations to resolve those issues, and to compel county resolution of unsuccessfully negotiated issues. That power is considerably vitiated if the applicant can first obtain county approval of the proposed development, and only then sit down with the Tribes to negotiate changes to the approved development. Given the inertia of an existing conditional use permit approval, the county is less likely in a deferred CBEMP Policy 18 proceeding to force the applicant to accept changes to a development proposal that the county has already considered and approved. It is even less likely in such a deferred proceeding that the county would take seriously arguments that the application cannot comply with CBEMP Policy 18 and must be (retroactively) denied.

“The county's findings include no interpretation of CBEMP Policy 18 explaining why it believes compliance with the policy can be deferred to a second stage proceeding, other than deferral 'seemed reasonable.' Record 126. It is not clear to us if the question of whether compliance with CBEMP Policy 18 can be deferred to a second stage proceeding is a matter of local or state law. Even if it is purely a matter of local law, in the absence of an adequate local interpretation, for the reasons set out above we conclude under ORS 197.829(2) that the county erred in deferring compliance with CBEMP Policy 18 to a second stage proceeding.”

OSCC, 76 Or LUBA at 380. LUBA remanded for the Board to either consider CBEMP Policy #18 on the merits or to provide an adequate interpretation why the policy could be deferred. *Id.*

3. Findings on Remand.

CBEMP Policy #18 applies to all Project uses and activities on lands subject to the CBEMP. On remand, the Board should consider CBEMP Policy #18 on the merits and adopt the following findings:

For two reasons, the County should find that historical, archaeological, and cultural resources are protected in the Project area consistent with CBEMP Policy #18. First, the Project will not adversely affect inventoried resources. There is only one inventoried resource from the Shoreland Values Map located within the Project area. Applicant 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 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 site or the resource. 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 Exhibit 4.

Second, Applicant has entered a Memorandum of Agreement (“MOA”) with the Confederated Tribes to implement CBEMP Policy #18. A copy of the MOA is included in Exhibit 5. The MOA incorporates a Cultural Resources Protection Agreement entered between Applicant and the Confederated 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 5. In the MOA, Applicant and the Confederated 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 in the Project area. Applicant is willing to accept a condition of County approval of the Applications requiring compliance with the MOA and its attachments.

For these reasons, and subject to the proposed condition, the County should find that the Applications are consistent with CBEMP Policy #18. Further, the Board should find that these findings address this remand issue as directed by LUBA.

H. Response to Remand Issue 8 - Ex Parte Communication

1. Applicable Law.

Parties to a quasi-judicial land use proceeding are entitled to a tribunal that is impartial and has not engaged in ex parte contacts concerning the matter at issue. *Fasano v. Board of County Commissioners*, 264 Or 574, 588, 507 P2d 23 (1973), *overruled on other grounds* 288 Or 585 (1980). If a member of the local government decision-making body receives communication outside the hearing process regarding the substance of a quasi-judicial land use application, the decision-maker may cure the issue by disclosing the substance of the communication on the record and then allowing an opportunity for rebuttal:

“No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

“(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

“(b) Has a public announcement of the content of the communication and of the parties’ right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.”

ORS 215.422(3).

2. Board's Original Decision and LUBA Decision on Appeal.

Before making the original decision, at the Board deliberations on August 16, 2016, Board members had an opportunity to disclose conflicts of interest, bias, and *ex parte* communications. During that time, Commissioner Main disclosed his attendance at a civic luncheon in 2014 at which Applicant presented information to a broad group of attendees about some aspects of the Project now included in the Applications. Commissioner Main mentioned that Commissioner Sweet also attended the lunch. Commissioner Sweet did not disclose the substance of what occurred at the luncheon.

On appeal, petitioner Jody McCaffree contended that Commissioner Sweet erred by failing to disclose that he attended the luncheon. LUBA questioned whether attendance at the luncheon resulted in any *ex parte* communication that required additional disclosure; however, LUBA sustained Ms. McCaffree's contention and remanded the matter for Commissioner Sweet to disclose the substance of any such *ex parte* communication:

"With respect to Chair Sweet's attendance at a 2014 luncheon presentation by JCEP on the LNG project, intervenor does not dispute that Sweet failed to disclose the content of the presentation, which the other attending commissioner, Main, treated as an *ex parte* communication. It may be that the presentation does not qualify as an *ex parte* communication, or if so that Main's disclosures was sufficient for both commissioners. However, because the county's decision must be remanded for other reasons, it is appropriate to remand also to allow Chair Sweet to disclose the substance of any *ex parte* communication that occurred at the presentation."

"The first assignment of error (McCaffree) is sustained, in part."

OSCC, 76 Or LUBA at 372.

3. Findings on Remand.

Before beginning deliberations on remand, the Board should call for Board members to disclose any conflicts of interest, bias, or *ex parte* communications. As part of these disclosures, Commissioner Sweet should disclose on the record the substance of any *ex parte* communications that occurred at the 2014 luncheon. The Board should then permit parties to rebut the substance of any such communication on the record. The Board should then proceed with its deliberations and make a decision on the

Applications on remand. Upon following these steps, the Board should find that it has followed the correct procedures and has complied with LUBA's remand on this issue.

VI. Conclusion.

For the reasons stated above, and based upon the evidence submitted herewith, the Board should find that Applicant has addressed the remand issues identified by LUBA. Therefore, the Board should approve the Applications on remand, subject to the conditions of approval identified in the original decision.

Prepared by:

Seth J. King and Steven L. Pfeiffer,
Perkins Coie LLP

Date of Submittal: April 5, 2019

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

11/27/17 PM 2:07 LUBA

3
4 OREGON SHORES CONSERVATION COALITION,

5 *Petitioner,*

6
7 and

8
9 JOHN CLARKE, DEB EVANS, RON SCHAAF,
10 ROGUE CLIMATE, HANNAH SOHL,
11 STACEY McLAUGHLIN, JODY McCAFFREE, and THE
12 CONFEDERATED TRIBES OF COOS, LOWER UMPQUA
13 and SIUSLAW INDIANS,

14 *Intervenors-Petitioners,*

15
16 vs.

17
18 COOS COUNTY,

19 *Respondent,*

20
21 and

22
23 JORDAN COVE ENERGY PROJECT L.P.,

24 *Intervenor-Respondent.*

25
26 LUBA No. 2016-095

27
28 FINAL OPINION

29 AND ORDER

30
31 Appeal from Coos County.

32
33 Courtney Johnson, Portland, filed the petition for review and argued on
34 behalf of petitioner. With her on the brief was Crag Law Center.

35
36 Kathleen P. Eymann, Bandon, filed a petition for review and argued on
37 behalf of intervenor-petitioner John Clarke.

1 Tonia L. Moro, Medford, filed a petition for review and argued on behalf
2 of intervenors-petitioners Deb Evans, Ron Schaaf, Rogue Climate and Hannah
3 Sohl.

4
5 Jody McCaffree, North Bend, filed a petition for review and argued on
6 her own behalf.

7
8 Stacy McLaughlin, Myrtle Creek, represented herself.

9
10 Denise Turner Walsh, Carlsbad, California, filed a petition for review on
11 behalf of intervenor-petitioner Confederated Tribes of Coos Lower Umpqua
12 and Siuslaw Indians. Richard K. Eichstaedt argued on behalf of the
13 Confederated Tribes.

14
15 Keith A. Leitz, Coos County Legal Counsel, Coquille, filed a response
16 brief and argued on behalf of respondent.

17
18 Seth J. King, Portland, filed response briefs and argued on behalf of
19 intervenor-respondent. With him on the brief was Perkins Coie LLP.

20
21 BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN Board
22 Member, participated in the decision.

23
24 REMANDED 11/27/2017

25
26 You are entitled to judicial review of this Order. Judicial review is
27 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a county board of commissioners' decision approving a conditional use permit for a liquified natural gas (LNG) export terminal at Jordan Cove in Coos County, near the city of Coos Bay.

INTRODUCTION

Petitioner Oregon Shores and several intervenors-petitioners filed petitions for review. With minor exceptions, the five petitions for review filed do not present overlapping challenges. Therefore, we provide here only a general summary of the facts and legal context. Specific facts and legal standards relevant to particular challenges are set out under the pertinent assignments of error.

In 2015, intervenor-respondent Jordan Cove Energy Project L.P. (JCEP) applied to the county to construct an LNG export terminal at Jordan Cove, located on the North Spit at Coos Bay, located in Coos County.¹ The proposed facility would receive approximately 1.04 billion cubic feet per day of natural

¹ JCEP had previously obtained county approvals for an LNG import terminal. See *SOPIP, Inc. v. Coos County*, 57 Or LUBA 44, *aff'd* 223 Or App 495, 196 P3d 123 (2008), and *SOPIP, Inc. v. Coos County*, 57 Or LUBA 301 (2008). The county also approved a separate application for a 49.72-mile section of a natural gas pipeline to serve the LNG import terminal. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011). Various components and iterations of the project have over the years generated a number of permits and decisions from several bodies, including proceedings before the Federal Energy Regulatory Commission (FERC).

1 gas via pipeline, liquify the gas to produce approximately 6.8 million metric
2 tons of LNG, and load the LNG on tanker ships for export to international or
3 domestic markets in the non-contiguous United States.

4 The LNG facility consists of a number of components, including (1) the
5 LNG export terminal, (2) a marine slip and access channel, (3) a barge berth,
6 (4) a gas processing center, and (5) a fire station and emergency training center,
7 along with associated roads and utilities. The project would also require
8 significant dredging, dredge disposal, shoreline stabilization, and wetland
9 impact mitigation.

10 The terminal, gas processing facility, and fire station and emergency
11 training center will be located on upland areas zoned for industrial uses. Much
12 of the port facilities (slip, barge berth, tugboat dock, etc.) will be located in
13 coastal shoreland areas, which are generally zoned to allow for water-
14 dependent uses. The marine slip and access channel will require dredging in
15 Jordan Cove, designated a natural estuary, and Henderson Marsh, a Statewide
16 Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open
17 Spaces) inventoried wetland.

18 The county hearings officer held a hearing on December 18, 2015, and
19 held the record open thereafter for additional testimony and rebuttal. On May
20 2, 2016, the hearings officer issued a decision with recommendations to
21 approve the applications. On August 16, 2016, the county board of
22 commissioners held a public meeting to deliberate on the recommendations,

1 and voted to adopt the hearings officer’s findings as the county’s decision, with
2 minor modifications. The county’s final decision was issued on August 30,
3 2016. This appeal followed.

4 **FIRST ASSIGNMENT OF ERROR (OREGON SHORES)**

5 The Coos Bay Estuary Management Plan (CBEMP) governs the use of
6 the Coos Bay estuary and adjacent shorelands, implementing Statewide
7 Planning Goal 16 (Estuarine Resources). The CBEMP designates a number of
8 estuarine resources in the Jordan Cove area. Some are designated as
9 “Development” zones, others as “Natural” zones in which development,
10 including dredging and filling, is limited or prohibited.

11 Under the first assignment of error, petitioner Oregon Shores
12 Conservation Coalition (Oregon Shores) cites to testimony that development of
13 the gas processing facility will involve placement of fill in the 7-NA (Natural
14 Aquatic) zoning district, a zone that comprises much of Jordan Cove, in which
15 placing fill is prohibited. According to Oregon Shores, the county adopted no
16 findings addressing the proposal to place fill in the 7-NA zone to support the
17 gas processing facility.

18 Intervenor-respondent JCEP (JCEP) responds that the application did not
19 propose placing fill anywhere in the 7-NA zone. JCEP also notes that the
20 county rejected testimony that the application proposes to place fill in the 7-NA
21 zone. Record 197 (findings discussing an opponents’ letter “arguing,
22 incorrectly, that the applicant’s map on page 407 shows that the applicant

1 intends to place fill in the 7-NA aquatic zone.”). As far as we can tell, JCEP is
2 correct that the application did not propose, and the decision does not approve,
3 the placement of fill in the 7-NA zone.

4 The first assignment of error (Oregon Shores) is denied.

5 **SECOND ASSIGNMENT OF ERROR (OREGON SHORES)**
6 **THIRD ASSIGNMENT OF ERROR (ROGUE INTERVENORS)²**

7 The application proposes dredging within areas zoned 5-DA and 6-DA
8 (Development Aquatic Management Units), to construct an access channel
9 from the navigation channel to the marine slip. Such dredging is subject to
10 CBEMP Policy 5(I),³ which implements Goal 16, Implementation Requirement

² We follow the parties in referring to intervenors-petitioners Deb Evans, Ron Schaaf, Rogue Climate, and Hannah Sohl as “Rogue Intervenors.”

³ CBEMP Policy 5(I) (Estuarine Fill and Removal) provides, in relevant part:

“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 requires an estuarine location or, in the case of fill 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

1 2 (Goal 16 IR2).⁴ Under CBEMP Policy 5(I), dredging is allowed in the
2 estuary only if, in relevant part, (1) it is “required for navigation or other water-
3 dependent use that requires an estuarine location,” and (2) a “need (i.e., a
4 substantial public benefit) is demonstrated and the use or alteration does not
5 unreasonably interfere with public trust rights.”

6 In two sub-assignments under the second assignment of error, Oregon
7 Shores challenges the county’s findings that JCEP has demonstrated that
8 dredging required for the marine slip and access channel will (1) provide a
9 substantial public benefit, and (2) not unreasonably interfere with public trust
10 rights. In their third assignment of error, intervenors-petitioners Rogue
11 Intervenors advance additional arguments under both the “substantial public
12 benefit” and “interference with public trust rights” standards.

“d. Adverse impacts are minimized.”

⁴ Goal 16, Implementation Requirement 2 provides, as relevant:

“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.”

1 **A. Need/Substantial Public Benefit**

2 Under CBEMP Policy 5(I)(a), the county found that the proposed
3 dredging is required for a “water-dependent use that requires an estuarine
4 location[,]” the water-dependent use being components of the LNG terminal.
5 The Statewide Planning Goals define “water-dependent” in relevant part as “[a]
6 use or activity which can be carried out only on, in, or adjacent to water areas
7 because the use requires access to the water body for water-borne
8 transportation, recreation, energy production, or source of water.” *See* full
9 quote at n 26, below. Oregon Shores does not challenge the county’s finding
10 that the LNG terminal is a “water-dependent” use for purposes of CBEMP
11 Policy 5(I)(a) or Goal 16.⁵

12 With respect to CBEMP Policy 5(I)(b), Oregon Shores argues that the
13 county misconstrued the need/substantial public benefit standard in three
14 ways.⁶ First, Oregon Shores argues that the county erred in interpreting
15 CBEMP Policy 5(I)(b) to require evaluation only of the public benefits of the

⁵ However, as discussed below, intervenors-petitioners Rogue Intervenors challenges the conclusion that an LNG *export* terminal qualifies as a “water-dependent use” for purposes of Goal 16 and CBEMP Policy 5(I)(a).

⁶ Because CBEMP Policy 5 implements Goal 16, on review the county’s interpretations of the policy are not entitled to deference under ORS 197.829(1) or *Siporen v City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010).

1 dredging activity itself, divorced from the public benefits of the land-based use
2 that the dredging serves.⁷

3 We agree with Oregon Shores. If the “substantial public benefit”
4 analysis is limited to evaluation of the public benefits of the dredge or fill
5 activity itself, then the standard would never be met, as it is difficult to
6 conceive of any public benefit from dredging or filling that is distinct from the
7 use that dredging or filling serves. While the text of CBEMP Policy 5(I)(b)
8 and Goal 16 IR2 is not entirely clear on this point, the context indicates that the
9 four standards do not apply only to the proposed dredging or fill. We note that
10 Goal 16 IR2(c) requires a finding that “no feasible alternative upland locations
11 exist,” which clearly contemplates evaluation of the proposed land use, not
12 proposed dredging, since dredging does not generally take place on upland
13 locations. We conclude that, contrary to the county’s finding, CBEMP Policy
14 5(I)(b) requires the county to evaluate the substantiality of the public benefits
15 provided by the use that the proposed dredging serves, in this case the LNG

⁷ The county’s findings state on this point:

“The Board concludes that the term ‘need (substantial public benefit)’ used in Goal 16 and CBEMP Policy #5 refers to a public benefit *for the dredging activity*, and does not require the applicant to prove that there is a public need or benefit for the underlying proposed land use (*i.e.*, a marine slip and ship terminal, or more generally, an LNG export facility).” Record 86 (emphasis in original).

1 terminal, or at least those components of the terminal that are properly viewed
2 as water-dependent uses.

3 Next, Oregon Shores argues that the county erred in interpreting CBEMP
4 Policy 5(I)(b) to require evaluation only of the public benefits, and not to
5 require any consideration of detriments or adverse impacts.⁸ The county's
6 interpretation of Policy 5(I)(b) is based on the observation that the adjoining
7 Policy, CBEMP Policy 5(I)(a), expressly requires that the proponent of a non-
8 water-dependent use demonstrate that there is a need for the use that
9 "outweighs harm to navigation, fishing and recreation[.]" See n 3. As the
10 findings note, this expressly required balancing test implements a statute. The
11 county inferred that because CBEMP Policy 5(I)(b) does not expressly require
12 a similar balancing test, the drafters of CBEMP Policy 5(I)(b) did not intend
13 the county to engage in a similar balancing of benefits and detriments.

⁸ The county's findings state, in relevant part:

"[T]he Board specifically rejects the argument that the ['public need/benefit' standard requires the County to balance need/benefit with (and weigh against) public detriments. In the previous sentence of Policy 5, the drafters required that an applicant for a non-water-dependent use to demonstrate that dredging and fill 'is needed for a public use and would satisfy a public need that outweighs harm to navigation, fishing and recreation.' That specific language did not come out of Goal 16, but rather is taken from ORS 196.825(4). Had the drafters of the CBEMP intended to impose a similar balancing test requirement on to the 'public need/benefit' standard, they could [] easily have done so (as they expressly did in the prior sentence), but they chose not to do so." Record 88.

1 As Oregon Shores argues, the question is not what the drafters of
2 CBEMP Policy 5 intended, but what the drafters of Goal 16 IR2 intended,
3 which CBEMP Policy 5(I)(b) implements almost verbatim. The text of Goal 16
4 IR2(b) does not expressly require balancing or weighing of benefits against
5 detriments, but requires only a demonstration of a “substantial public benefit.”
6 That could be understood to represent a “net” public benefit, after
7 consideration of both benefits and detriments. However, the fact that another
8 implementation requirement, Goal 16 IR2(d), requires that “adverse impacts
9 are minimized” suggests that potential adverse consequences of the proposed
10 use are evaluated under a different standard. Given the absence of an express
11 or a fairly implied requirement to balance or weigh benefits against adverse
12 consequences under Goal 16 IR2(b), and the fact that adverse consequences are
13 expressly addressed under a different standard, we decline to read Goal 16
14 IR(2)(b) to include an implicit requirement to balance or weigh public benefits
15 of the proposed use against adverse consequences.

16 Finally, Oregon Shores challenges the county’s view that the
17 “need/substantial public benefit” standard is satisfied if the dredging activity is
18 needed to construct a permitted or conditional use allowed on the nearby
19 coastal shorelands or upland areas.⁹ Oregon Shores argues that this

⁹ The county’s findings state, in relevant part:

“The Board believes that the ‘need/substantial benefit’ standard is met if the applicant demonstrates that the dredging or fill activity

1 interpretation conflates CBEMP Policy 5(I)(a) with 5(I)(b), and Goal 16 IR2(a)
2 with IR2(b). According to Oregon Shores, the fact a water-dependent use is
3 allowed on coastal shorelands under the county's zoning code does not
4 automatically demonstrate that there is a "substantial public benefit" for
5 purposes of CBEMP Policy 5(I)(b) and Goal 16 IR2(b).

6 We agree with Oregon Shores. CBEMP Policy 5(I)(a) and Goal 16
7 IR2(a) in relevant part require that the proposed dredging serve a water-
8 dependent use allowed under the county's code. The county's view that the
9 "need/substantial public benefit" standard in CBEMP Policy 5(I)(b) and Goal
10 16 IR2(b) is met simply by the fact that the proposed dredging serves a use
11 allowed under the county's code, conflates CBEMP Policy 5(I)(a) and (b) and
12 gives no independent effect to the latter. Even if the proposed dredging serves
13 a water-dependent use allowed under the county's code, the county can allow

is needed to enable [construction of] a permitted or condition[al]
use allowed in the neighboring coastal shoreland zone and related
upland zones. In other words, Coos County has, via its enactment
of the CBEMP (aka: Zoning Ordinance), set forth the panoply of
uses that the County believes would serve a need and/or a
substantial public benefit in each particular zone (*i.e.*, it has
established a list of uses that are deemed to be appropriate in each
zone in question.). If the applicant is proposing one of those
favored uses, and there is a need to conduct fill or dredging
activity in order to facilitate that favored use, then there is, *ipso
facto*, a substantial benefit to allowing the applicant to conduct
that fill/removal so that it can construct and operate the use."
Record 88 (emphasis in original).

1 the dredging only if it also finds that the use provides a substantial public
2 benefit.

3 **B. Interference with Public Trust Rights**

4 CBEMP Policy 5(I)(b) and Goal 16 IR2(b) also require that the proposed
5 dredging does not unreasonably interfere with public trust rights. The public
6 trust doctrine protects public access to and use of navigable waters and
7 submerged lands, for navigation, fishing and commercial uses. *See, e.g., Weise*
8 *v. Smith*, 3 Or 445, 450 (1869) (stating that navigable waters are “public
9 highways” that each person has an “undoubted right to use * * * for all
10 legitimate purposes of trade and transportation.”).

11 **1. Navigable Water**

12 Oregon Shores first argues that the county erred by limiting the scope of
13 public trust assets to submerged lands, and failing to include the waters
14 overlaying those lands. JCEP responds that, while the findings cite to a circuit
15 court case stating that the public trust doctrine protects only submerged lands,
16 the findings in fact evaluate impacts on navigation and fishing and other uses
17 of the navigable waters overlaying submerged lands. As discussed below,
18 JCEP is correct that the county in fact evaluated impacts on navigation, fishing
19 and other uses of navigable water, and did not limit its analysis to impacts on
20 submerged lands.

1 **2. Security Zone**

2 Oregon Shores next challenges the county’s findings regarding the
3 impact of security zones around LNG tankers on commercial and recreational
4 boat movements in the estuary. The application proposes that approximately
5 100 LNG tankers will traverse the Coos Bay Estuary to and from the LNG
6 terminal per year. For each passage, the Coast Guard will impose a security
7 zone extending 500 yards from the tanker in all directions, in which all other
8 vessel movements are restricted. Oregon Shores argues that, because portions
9 of the estuary are less than 1,000 yards wide, each tanker passage will
10 completely halt navigation, fishing and commercial use of those portions of the
11 estuary until the LNG tanker passes. Oregon Shores contends that the county’s
12 conclusion that the proposed security zone provisions will not unreasonably
13 interfere with public trust rights relies on an inference from testimony in the
14 record that is not supported by substantial evidence.

15 The record includes a statement from the Coast Guard that it will “allow
16 vessels to transit the Safety/Security zone based on a case-by-case assessment
17 conducted on scene.” Record 3033. JCEP’s consultant, Amergent Techs,
18 interpreted this statement to mean that the Coast Guard would allow some
19 boats to transit the security zone with minimal delay. Record 1817. In its
20 findings, the county understood Amergent’s testimony to be that all “known”
21 boats would be allowed to transit the security zone without delay, presumably
22 meaning only unknown boats will be delayed. Based on that understanding,

1 the county concluded that tanker passage would not unreasonably interfere
2 with navigation or public trust access to the estuary.¹⁰

3 Nothing in the record cited to us explains the distinction between a
4 “known” and “unknown” boat. That problem aside, as Oregon Shores argues,
5 the county’s understanding that all “known” boats would be able to transit the
6 security zone with minimal delay is not supported by the Amergent Techs
7 memo, much less by the Coast Guard statements in the record. Neither the
8 Amergent Techs memo nor the Coast Guard statements suggest that the Coast
9 Guard’s case-by-case evaluation would rely on a distinction between “known”
10 and “unknown” boats, and allow the former passage through the security zone

¹⁰ The county’s findings state, in relevant part:

“The testimony from Amergent Techs provides clarifications regarding the limited impacts caused by LNG vessel passage and docking in Coos Bay. Importantly, the memo clarifies that the Safety/Security zones are not ‘exclusion zones.’ Rather, they are regulated navigation areas. Essentially, that means that the Coast Guard will control traffic near the LNG ships but will still allow boat pilots [to] transit the zone on a case-by-case basis. The Board’s understanding of this explanation is that the Coast Guard will let known vessels pass but can forcibly exclude vessels or delay [vessels] that it does not recognize. As a practical matter, local commercial fishermen operating known vessels should experience no significant delays as they will receive permission from the COTP [Captain of the Port] to proceed. Less frequent users of the bay, such as recreational boaters, may experience some delay as the COTP makes efforts to identify them and conduct a threat assessment. Given that clarification, the Board believes that there will be no unreasonable interference with public trust rights. * * *” Record 100-01.

1 without delay, although that may well be the case. The county’s findings rely
2 on its understanding of the Amergent Techs testimony as the primary basis for
3 its conclusion that the transit of approximately 100 LNG tankers per year
4 through the narrow estuary will not unreasonably interfere with navigation or
5 public trust access to the estuary. JCEP argues that there is other evidence in
6 the record that could support that conclusion, noting testimony that delay
7 caused to recreational or fishing vessels by an LNG vessel would last only 20-
8 30 minutes, and that the LNG transit times would be announced in advance, so
9 local vessels could make plans to avoid the narrow portions of the estuary at
10 those times. Record 3764. While that evidence could lend support to a finding
11 that LNG tanker transit will not unreasonably interfere with public trust rights,
12 the findings do not cite that evidence, and JCEP does not argue that that
13 evidence is sufficient, in itself, to “clearly support[]” the county’s decision on
14 this point, in the absence of adequate findings. ORS 197.835(11)(b).¹¹ We

¹¹ ORS 197.835(11)(b) provides:

“Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.”

1 agree with Oregon Shores that remand is necessary for the county to adopt
2 more adequate findings, supported by substantial evidence, on this point.

3 **3. Adverse Impacts of Climate Change**

4 Rogue Intervenors argue in their third assignment of error that the county
5 erred in failing to consider the adverse impacts of climate change created by
6 LNG shipped via the LNG terminal, in evaluating whether the proposed
7 dredging serves a use that provides “substantial public benefits” and does not
8 unreasonably interfere with public trust rights. Rogue Intervenors contend that
9 in evaluating both standards the county must consider the impact of greenhouse
10 gas emissions on ocean acidification, sea level rise and other climatic changes.

11 We disagree with Rogue Intervenors. As discussed above, the
12 “substantial public benefits” standard does not include an implicit requirement
13 to balance the public benefits of the proposed LNG terminal against detriments
14 or adverse impacts of that use, much less consider the adverse effects of
15 greenhouse gases on climate that could be attributed to the eventual
16 consumption of the natural gas that is shipped to markets around the world via
17 the LNG facility. Nor have Rogue Intervenors established that the public trust
18 doctrine requires evaluation of the contributions of greenhouse gases
19 attributable to consumption of natural gas shipped via the terminal.

20 The second assignment of error (Oregon Shores) is sustained, in part.

21 The third assignment of error (Rogue Intervenors) is denied.

1 **THIRD ASSIGNMENT OF ERROR (OREGON SHORES)**

2 As noted above, CBEMP Policy 5(I)(d) allows dredging in development
3 aquatic management units (5-DA and 6-DA) only if “[a]dverse impacts are
4 minimized.” CBEMP Policy 5(II) provides that “[i]dentification and
5 minimization of adverse impacts as required in [Policy 5(I)(d)] shall follow the
6 procedure set forth in Policy 4.” CBEMP Policy 4(I)(d) provides in relevant
7 part that dredging and fill in development aquatic units must be supported by
8 findings demonstrating “the public’s need and gain which would warrant any
9 modification or loss to the estuarine system, based upon a clear presentation of
10 the impacts of the proposed alteration, as implemented in Policy #4a.”¹²
11 CBEMP Policy 4(II) sets out standards for an impact assessment.¹³ CBEMP

¹² CBEMP Policy 4(I)(d) provides, in part”

“Where the impact assessment requirement (of Goal #16 Implementation Requirements #1) has not been satisfied in this Plan for certain uses or activities [as identified in Policy #4] 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.”

¹³ CBEMP Policy 4(II) provides, in relevant part:

“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;

1 Policy 4a includes additional requirements and procedures for the impact
2 assessment.

3 Oregon Shores argues that the county failed to adopt any findings
4 addressing CBEMP Policy 4 or 4a, or provide a “clear presentation of the
5 impacts of the proposed alteration[.]” Oregon Shores notes that the record
6 includes an analysis of the impacts of proposed dredging, prepared by David
7 Evans & Associates (DEA), at Record 1900-03. However, Oregon Shores
8 argues that the county did not adopt the DEA analysis as part of its findings,
9 and further that the DEA analysis did not follow the procedure set out in
10 CBEMP Policy 4a.

11 JCEP concedes that the county did not adopt findings directly addressing
12 CBEMP Policy 4 or 4a, but argues that the record includes evidence that
13 “clearly supports” a finding of compliance with those policies, and therefore
14 the decision may be affirmed on this point notwithstanding inadequate
15 findings, pursuant to ORS 197.835(11)(b). *See* n 11. JCEP argues that the
16 record includes ample evidence that the “public’s need and gain” would

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- “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.”

1 warrant any modification or loss to the estuarine system, in the forms of
2 economic gains from the proposed terminal. CBEMP Policy 4(I)(d). JCEP
3 contends that the DEA analysis at Record 1900-03 provides the “clear
4 presentation of the impacts” of the proposed dredging that CBEMP Policy 4
5 requires, and LUBA should rely on the DEA analysis to conclude that CBEMP
6 Policy 4 is met.

7 The “clearly supports” standard of review at ORS 197.835(11)(b) allows
8 LUBA to overlook nonexistent or inadequate findings only if compliance with
9 the applicable approval standard is “obvious” or “inevitable.” *Marcott*
10 *Holdings v. City of Tigard*, 30 Or LUBA 101 (1995). CBEMP Policy 4
11 requires the county to exercise considerable subjective judgment, including
12 identifying “the public’s need and gain,” and determining whether that need or
13 gain warrants modification or loss to the estuarine system, and to ensure that
14 impacts of the proposed alteration are minimized or mitigated. ORS
15 197.835(11)(b) does not authorize LUBA to affirm decisions based on LUBA’s
16 evaluation of evidence under standards such as CBEMP Policy 4, which
17 require the exercise of significant subjective judgment. Accordingly, we agree
18 with Oregon Shores that remand is necessary for the county to adopt findings
19 addressing compliance with CBEMP Policy 4 and 4a.

20 The third assignment of error (Oregon Shores) is sustained.

1 **FOURTH ASSIGNMENT OF ERROR (OREGON SHORES)**

2 Proposed development in coastal shorelands, in the 6-WD (Water-
3 Dependent Development Shorelands) and 7-D (Development Shorelands)
4 zones, is subject to compliance with CBEMP Policy 30, which requires in
5 relevant part that the county justify development in these areas “only upon the
6 establishment of findings that shall include at least * * * [m]ethods for
7 protecting the surrounding area from any adverse effects of the development[.]”
8 CBEMP Policy 30(I)(c).¹⁴ This language implements Statewide Planning Goal
9 18 (Beaches and Dunes), Implementation Requirement 1(c) (Goal 18 IR1(c)).

¹⁴ CBEMP Policy 30(I) provides:

“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;
- “b. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
- “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

1 JCEP's consultant prepared a site investigation report addressing
2 CBEMP Policy 30(I), which identified "erosion and migration of disturbed
3 dune sands from the site" as an adverse effect of development for purposes of
4 CBEMP Policy 30(I)(c). To identify "methods for protecting" the surrounding
5 beach and dune areas from those adverse impacts, the report relied on "State
6 DEQ and FERC permits that require mitigation of erosion, re-vegetation, and
7 monitoring of permanent stabilization measures." Record 9801.

8 Oregon Shores argues that the report fails to identify methods for
9 "protecting" surrounding beaches and dunes from the identified adverse
10 impacts. According to Oregon Shores, the term "protect[]" as used in CBEMP
11 Policy 30(I)(c) and Goal 18 IR1(c) has the same meaning as the term "protect"
12 as defined in the statewide planning goals, *i.e.*, "[s]ave or shield from loss,
13 destruction, or injury for future intended use." Oregon Shores notes that
14 LUBA has interpreted the term "protect" as used in the context of Goal 16 to
15 require measures that will reduce the adverse impacts of development to a *de*
16 *minimis* or insignificant level. *Columbia Riverkeeper v. Clatsop County*, 61 Or
17 LUBA 96, 111, *aff'd* 238 Or App 439, 464-65, 243 P3d 82 (2010). Oregon

"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."

1 Shores contends that mitigation and monitoring do nothing to reduce impacts to
2 a *de minimis* level.

3 JCEP responds that the report describes more than mitigation and
4 monitoring, but also prescribes re-vegetation and stabilization measures to
5 reduce erosion and migration of disturbed sand. Record 9800-01. Oregon
6 Shores does not present any argument regarding why the proposed re-
7 vegetation and stabilization of soils are insufficient to ensure compliance with
8 CBEMP Policy 30(I)(c). Absent a more developed argument, we agree with
9 JCEP that Oregon Shores fails to explain why re-vegetation and stabilization
10 measures are insufficient to satisfy CBEMP Policy 30(I)(c).

11 Oregon Shores also argues that the county erred in dismissing concerns
12 raised by Oregon Shores and the State of Oregon regarding potential
13 subsidence from dewatering activities during construction of the tank/slip
14 facilities within the 6-WD zone. Record 7751, 8178. The county concluded
15 that subsidence or site stability due to dewatering is not an issue that is within
16 the scope of the only provision of the policy that explicitly addresses impacts
17 on groundwater, CBEMP Policy 30(I)(e). *See* n 14; record 135. Oregon
18 Shores argues, however, that subsidence due to dewatering is a potential issue
19 under CBEMP Policy 30(I)(c), because it could constitute an “adverse effect[]
20 of the development” on the surrounding area within the meaning of subsection
21 (c).

1 JCEP responds that the county adopted an alternative finding that the
2 proposed groundwater dewatering is “within historic levels that did not lead to
3 the loss of stabilizing vegetation,” and that Oregon Shores failed to challenge
4 that alternative finding. Record 135. However, the quoted finding addresses
5 “loss of stabilizing vegetation,” which is an issue addressed under CBEMP
6 Policy 30(I)(e). *See* n 14. Oregon Shores’ argument is based on the language
7 of CBEMP Policy 30(I)(c). If there are findings concluding that subsidence
8 from proposed dewatering is not a potential issue under CBEMP Policy
9 30(I)(c), JCEP does not cite them. We conclude that remand is necessary to
10 address whether subsidence is a potential issue under CBEMP Policy 30(I)(c)
11 and, if so, adopt findings resolving that issue.

12 Finally, Oregon Shores argues that the finding of compliance with
13 CBEMP Policy 30(I)(c) relies on the applicant obtaining FERC permits, but
14 notes that FERC has denied JCEP the permits for the proposed LNG terminal.
15 This issue is raised under the sixth assignment of error, and we address it there.

16 The fourth assignment of error is sustained in part.

17 **FIFTH ASSIGNMENT OF ERROR (OREGON SHORES)**

18 The county approved placing fill in the 7-D (Development Shorelands)
19 zone, which is subject to “special conditions” at Coos County Land
20 Development Ordinance (LDO) 3.2.286. Special Condition 5 states that “[t]he
21 wetland in the southeast portion of this district can be filled for a development
22 project contingent upon satisfaction of the prescribed mitigation described in

1 Shoreland District #5.” The county’s finding of compliance with Special
2 Condition 5 states:

3 “The Board finds that the application proposes fill in the southeast
4 portion of this district for a development project and will mitigate
5 in accordance with all prescribed mitigation. Therefore, the Board
6 finds that the proposed fill is consistent with Special Condition 5.”
7 Record 70.

8 Oregon Shores argues that the foregoing finding is inadequate and not
9 supported by substantial evidence, because the county failed to identify the
10 proposed mitigation, or explain how the proposed mitigation satisfies the
11 “prescribed mitigation described in Shoreland District #5.”

12 JCEP does not dispute that the above-quoted finding is inadequate, but
13 argues that no party raised any issue under Special Condition 5 during the
14 proceedings below, and thus no party can challenge on appeal whether the
15 county’s finding of compliance with Special Condition 5 is adequate, pursuant
16 to ORS 197.763(1).

17 Oregon Shores replies that a participant submitted testimony below that
18 at one point quotes Special Condition 5 and at another point raises objections
19 to proposed mitigation at the West Jordan Cove Mitigation Site, which is
20 apparently where the application proposed to conduct mitigation. Record
21 5984. While that testimony does not advance any specific issues under Special
22 Condition 5, it is sufficient to allow Oregon Shores to challenge the adequacy
23 of the county’s findings addressing Special Condition 5. *Lucier v. City of*
24 *Medford*, 26 Or LUBA 213, 216 (1993).

1 On the merits, we agree with Oregon Shores that the county's only
2 finding of compliance with Special Condition 5 is conclusory and inadequate.
3 The findings do not identify the proposed mitigation for fill in the wetland in
4 the southeast portion of the 7-D district, or relate it in any way to "the
5 prescribed mitigation described in Shoreland District #5." Remand is
6 necessary for the county to adopt more adequate findings on this point.

7 The fifth assignment of error (Oregon Shores) is sustained.

8 **SIXTH ASSIGNMENT OF ERROR (OREGON SHORES)**

9 Oregon Shores argues that the county found compliance with CBEMP
10 Policies 5, 8 and 30 based in part on the condition that JCEP obtain and comply
11 with state and federal permits, including FERC permits.¹⁵ However, Oregon
12 Shores cites testimony that on March 11, 2016, during the proceedings before
13 the hearings officer, FERC denied JCEP's application for a permit for the
14 proposed LNG terminal. Because the required FERC permits have been
15 denied, Oregon Shores argues, the county erred in relying on FERC permits to
16 demonstrate compliance with applicable approval criteria. *See Bouman v.*
17 *Jackson County*, 23 Or LUBA 626, 647 (1992) (where a local government

¹⁵ Oregon Shores advances a similar challenge to the county's findings of compliance with CBEMP Policy 17. However, in response to intervenor's waiver challenge Oregon Shores concedes that no issues were raised below under CBEMP Policy 17. Intervenor also argues that no issues were raised below under CBEMP Policy 30, but in its reply brief Oregon Shores cites to locations in the record where issues of compliance with Policy 30 were raised.

1 relies on the applicant obtaining state agency permits, the record must include
2 substantial evidence that the applicant is not precluded as a matter of law from
3 obtaining the state agency permits).

4 JCEP responds that at the time of the county's decision JCEP's request
5 for FERC to reconsider its denial was still pending, and thus the record at that
6 time included substantial evidence that JCEP was not precluded as a matter of
7 law from obtaining the required FERC permits. JCEP acknowledges that FERC
8 later denied its request for reconsideration, but argues the decision denying
9 reconsideration post-dates the county's decision and thus is not in the
10 evidentiary record (although LUBA has taken official notice of the decision
11 denying reconsideration). JCEP also notes that LUBA has taken official notice
12 of the fact that JCEP has initiated a pre-filing with FERC, which is a necessary
13 step to filing a new application for a FERC permit. Thus, JCEP argues that
14 even if LUBA looks beyond the evidentiary record there is no reason to
15 conclude that JCEP is precluded, as a matter of law, from obtaining FERC
16 permits for the LNG terminal.

17 The county's findings observe that "[i]f it stands" FERC's March 11,
18 2016 permit denial decision "may very well kill the entire project, at least for
19 the time being." Record 83. The findings note, however, that the primary basis
20 for denial (lack of LNG contracts) could potentially be remedied, and further
21 noted that JCEP had appealed the March 11, 2016 denial. *Id.* However, the
22 findings do not appear to address whether or not the March 11, 2016 denial

1 means that JCEP is precluded, as a matter of law, from obtaining FERC permits
2 for the LNG terminal. As noted, with respect to several policies the findings
3 expressly rely on JCEP obtaining FERC permits in order to satisfy applicable
4 county criteria. In our view, given that the required FERC permit had, in fact,
5 been denied during the proceeding before the county, the county erred in
6 adopting findings of compliance with local approval standards that are
7 unconditionally predicated on the applicant obtaining a FERC permit, without
8 first addressing whether the denial means that JCEP is precluded, as a matter of
9 law, from obtaining the FERC permit. Remand is necessary for the county to
10 consider that question, and on remand the county may consider the FERC
11 decisions or applications that post-date the county's decision in this appeal.

12 The sixth assignment of error (Oregon Shores) is sustained.

13 **SEVENTH ASSIGNMENT OF ERROR (OREGON SHORES)**

14 JCEP proposes to construct the Southwest Oregon Regional Safety
15 Center (SORSC) on a parcel zoned for industrial and water-dependent uses.¹⁶
16 The SORSC is a large “multiorganizational office complex” on eight acres that
17 includes a fire station as one component. Record 143-44. A fire station is a
18 permitted use in the industrial zone. Record 143. The proposed fire station
19 would have a daily staff of four persons. Record 9826. The SORSC also

¹⁶ Apparently, the SORSC facility is intended to meet the requirements of a 2014 Memorandum of Understanding entered into between intervenor and the State of Oregon.

1 includes a number of other components, including (1) offices for the Coos
2 County sheriff, Coast Guard, and Port of Coos Bay, (2) a security center, (3) a
3 personal safety access point (apparently a type of emergency call center), and
4 (4) a training center for the sheriff and Southwestern Oregon Community
5 College. Record 144. These uses would have a daily staff of approximately 12
6 persons. The training center includes classrooms to train up to 100 persons.
7 Record 9826. All the latter components of the SORSC are not allowed uses in
8 the industrial zone. However, the county approved them as “accessory uses” to
9 the fire station.

10 According to the county’s decision, LDO 2.1.200 defines “accessory
11 uses” as uses that (1) are subordinate to and serve a principal use; (2)
12 subordinate in area or purpose to that principal use; (3) contribute to the
13 comfort, convenience, or necessity of occupants of the principal use; and (4)
14 are located on the same unit of land as the principal use. Record 144.¹⁷ The

¹⁷ The version of the LDO 2.1.200 definition of “accessory use” available on the county’s website is different than the version paraphrased in the decision, perhaps reflecting an inaccurate paraphrase, or more recent amendments. The website version states:

“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. A use that constitutes, in effect, conversion to a use not permitted in the district is not an accessory use.”

1 county rejected arguments that the various SORSC components are not
2 “subordinate” to the fire station:

3 “The SORSC serves, and is subordinate in purpose to, the Fire
4 Station because the SORSC is a training center for firefighters
5 who will work at the Fire Station. The SORSC contributes to the
6 comfort and convenience of the firemen who utilize the Fire
7 Station because the SORSC offers training to current and future
8 firefighters. * * *

9 “* * * * *

10 “* * * Although the SORSC will house government offices for the
11 Coos County Sheriff, the Coast Guard, and the Port, these ‘offices’
12 are permitted in conjunction with a permitted or conditionally
13 permitted use. [LDO] 4.4.200(26). In this regard, this is no
14 different than a fast food restaurant that has a manager’s office—
15 the office is not a separate land use from a restaurant but is rather
16 an inherent part of the restaurant. In this case, the offices will
17 occur in conjunction with the Fire Station, which is a permitted
18 use under [LDO 4.4.200(20). * * *” Record 144.

19 Oregon Shores argues that the county’s finding that the SORSC is
20 “subordinate” to the fire station misconstrues the applicable law and is not
21 supported by substantial evidence. According to Oregon Shores, no reasonable
22 person could conclude that the various government office and educational
23 components that make up the bulk of the SORSC, including a regional training
24 facility for up to 100 persons, are “subordinate” to a local fire station staffed by
25 four firefighters.

26 JCEP responds that the county’s interpretation of the code term
27 “accessory use” is not inconsistent with the express language of that term, as
28 defined, and must be affirmed under the deferential standard of review that

1 LUBA must apply to a governing body's code interpretations, under ORS
2 197.829(1) and *Siporen*, 349 Or at 259.¹⁸ JCEP argues that the county viewed
3 the SORSC office components to be an enhancement to the fire station, finding
4 that "offices for public safety and security entities * * * will have a role in
5 responding to fire and other natural events as service providers." Record 144.
6 With respect to the training center, JCEP does not dispute that it will function
7 as a training center for fire fighters and other emergency responders from
8 around the region, not limited to training staff at the fire station, but argues that

¹⁸ ORS 197.829 provides:

- "1. [LUBA] 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.
- "2. If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, [LUBA] may make its own determination of whether the local government decision is correct."

1 the LDC definition of “Accessory Uses” does not require that an accessory use
2 serve *only* the principal use.

3 The county’s “interpretation” is conclusory, and largely inadequate for
4 review. The findings do not attempt to explain the meaning of “subordinate”
5 and the other key terms in the LDO 2.1.200 definition of “accessory use,” and
6 the rationales offered for the county’s conclusion are strained at best. The
7 findings analogize the proposed government offices (sheriff, port, coast guard)
8 to the offices for a primary business use, providing the example of an office for
9 a restaurant. The flaw in that analogy is that the proposed government offices
10 are not “offices” for the fire station. It may be true that staff in the government
11 offices will occasionally provide support for the fire station, during an
12 emergency, for example. But that is not the *function* of those government
13 offices; any support the offices might provide to the fire station in an
14 emergency would be, at best, ancillary to the offices’ main function. Even if,
15 as JCEP argues, the LDO 2.1.200 definition of “accessory use” does not limit
16 an accessory use to serving *only* the primary use, it is difficult to understand
17 how a use can be viewed as “accessory” to the primary use when any support or
18 service it provides to the primary use is ancillary, and the purported
19 “accessory” use has a main function that has nothing to do with the primary
20 use.

21 Similarly, with respect to the regional training center, the fact that the
22 four firefighters staffing the fire station may take classes at the 100-seat

1 training center does little to demonstrate that the training center is
2 “subordinate” to the fire station, under any conceivable interpretation of that
3 term. LDO 2.1.200 requires that the accessory use be “subordinate in area or
4 purpose to that principal use[.]” However, the findings do not discuss whether
5 any of the SORSC components are subordinate in “area” or “purpose” to the
6 fire station. The findings do not describe how much area is occupied by the fire
7 station, versus the area occupied by other SORSC components, or discuss the
8 purpose of those components, and to what extent those components “serve” the
9 fire station, as opposed to serving other purposes.¹⁹

10 Because the findings are conclusory and do not address key language
11 and considerations in the code definition of “accessory use,” it is hard to say
12 whether the county’s conclusion that the SORSC components are accessory to
13 the fire station embodies an interpretation of LDO 2.1.200 that is inadequate
14 for review, or an interpretation that is simply implausible, *i.e.*, inconsistent with
15 the express language, purpose and policy underlying LDO 2.1.200. To the
16 extent the county’s decision interprets LDO 2.1.200 to the effect that a use is
17 “subordinate” to a primary use as long as it provides some support to the
18 primary use, regardless of how minimal and tangential that support is compared

¹⁹ As far as we can tell, the findings do not discuss the proposed security center, or the personal safety access point (which we understand to be a type of emergency call center). It is possible that these uses are allowed in the industrial zone under the category of “emergency services,” a permitted use that includes the proposed fire station. LDO 4.4.210(4). However, without findings about the nature of these uses, it is hard to tell.

1 to the putative accessory use’s purpose and function, we reject the
2 interpretation as implausible.

3 We do not intend to foreclose the possibility that the board of
4 commissioners can adopt an interpretation of LDO 2.1.200 that is sustainable
5 under the deferential standard of review we apply under ORS 197.829(1)(a),
6 supporting a conclusion that some or all of the SORSC components are
7 “accessory” to the fire station, as defined at LDO 2.1.200. However, the
8 present decision includes no such interpretation. Further, any sustainable
9 interpretation of LDO 2.1.200 must give effect to all of its applicable terms.
10 The findings do not include an interpretation, at least one adequate for review,
11 explaining why the proposed SORSC components are subordinate to and serve
12 a principal use, and subordinate in area or purpose to that principal use. Or, in
13 the words of the version of LDO 2.1.200 on the county’s website, whether the
14 SORSC uses are “customarily incidental and subordinate to the principal use,”
15 and “subordinate in extent, area and purpose to the principal use.” *See* n 17.
16 Because it may be possible on remand for the county to adopt a more
17 sustainable interpretation under which at least some components of the SORSC
18 can be viewed as subordinate to the fire station use, we conclude that it is
19 appropriate to remand this issue to the county for further proceedings.

20 The seventh assignment of error (Oregon Shores) is sustained.

1 **FIRST ASSIGNMENT OF ERROR (McCAFFREE)**

2 Intervenor-petitioner Jody McCaffree (McCaffree) argues that (1) the
3 county commission chair, Sweet, was biased in favor of the proposed LNG
4 terminal and (2) the county commissioners failed to declare *ex parte*
5 communications.

6 **A. Bias**

7 McCaffree alleges that Chair Sweet was biased in favor of the proposed
8 LNG terminal. According to McCaffree, on April 22, 2016, Chair Sweet sent a
9 letter, on county letterhead, to FERC expressing support for the Jordan Cove
10 LNG terminal and Pacific Connector Pipeline Project applications then pending
11 before FERC. Supplemental Record 527. In addition, McCaffree quotes Chair
12 Sweet as making public statements in support of the Jordan Cove project. *Id.* at
13 529-30. McCaffree contends that the letter and statements demonstrate that
14 Chair Sweet was incapable of deciding the land use application pending before
15 the county with the requisite impartiality.

16 In order to succeed in a bias claim, the petitioner must first establish that
17 the evidence of bias offered by petitioner relates to the “matter” before the
18 tribunal. *Columbia Riverkeeper v. Clatsop County*, 267 Or App 578, 608-10,
19 341 P3d 790 (2014). The “matter” is “precisely and narrowly defined,” as the
20 individual land use decision that the county board of commissioners considered
21 and decided in the local proceeding. *Id.* at 608.

1 Second, in order to disqualify a decision-maker from participating, a
2 party must meet the “high bar for disqualification,” demonstrating that “actual
3 bias” has occurred, not simply an “appearance of bias.” *Columbia Riverkeeper*,
4 267 Or App at 610; cf. *Friends of Jacksonville v. City of Jacksonville*, 42 Or
5 LUBA 137 (2002) (finding actual disqualifying bias occurred when a city
6 council member stated during his election campaign that he could not be
7 objective in reviewing a pending application were he to be elected).

8 Finally, to demonstrate actual bias, the petitioner must establish that “the
9 decision maker has so prejudged the particular matter as to be incapable of
10 determining its merits on the basis of the evidence and arguments presented.”
11 *Columbia Riverkeeper*, 267 Or App at 602. To demonstrate actual bias,
12 petitioner must identify “explicit statements, pledges, or commitments that the
13 elected local official has prejudged the specific matter before the tribunal.” *Id.*
14 at 609-10.

15 We disagree with McCaffree that Chair Sweet’s April 11, 2016 letter, or
16 his public statements, demonstrate that Chair Sweet was incapable of
17 determining the merits of the land use application based on the evidence and
18 arguments presented. As the Court of Appeals recently explained in *Columbia*
19 *Riverkeeper*, 267 Or App at 599:

20 “A judge is expected to be detached, independent and nonpolitical.
21 A county commissioner, on the other hand, is expected to be
22 intensely involved in the affairs of the community. He is elected
23 because of his political predisposition, not despite it, and he is
24 expected to act with awareness of the needs of all elements of the

1 county, including all government agencies charged with doing the
2 business of the people.

3 “* * * * *

4 “The goal of [the *Fasano v. Washington County Commission*, 264
5 Or 574, 588, 507 P2d 23 (1973) impartiality requirements] is that
6 land-use decisions should be made fairly. * * * *Fasano* cannot be
7 applied so literally that the decision-making system is aborted
8 because an official charged with the public duty of adjudication
9 fears that his motivation might possibly be suspect.” (Internal
10 citations and quotation marks omitted).

11 As far as McCaffree has established, Chair Sweet’s statements of support
12 of the LNG terminal represent no more than the general appreciation of the
13 benefits of local economic development that is common among local
14 government elected officials. Those statements fall far short of demonstrating
15 that Chair Sweet was not able to make a decision on the land use application
16 based on the evidence and arguments of the parties.

17 **B. *Ex Parte* Communications**

18 McCaffree also argues that the commission erred by failing to disclose
19 the contents of Chair Sweet’s April 11, 2016 letter to FERC during the
20 proceedings below, and by failing to disclose that Chair Sweet attended a
21 luncheon in 2014 at which JCEP’s representative offered a presentation about
22 the proposed LNG terminal. Another commissioner, Main, also attended the
23 luncheon, and disclosed that he had attended the luncheon and heard the
24 presentation, which he characterized as general in nature.

25 ORS 215.422(3) provides:

1 “No decision or action of a planning commission or county
2 governing body shall be invalid due to *ex parte* contact or bias
3 resulting from *ex parte* contact with a member of the decision-
4 making body, if the member of the decision-making body
5 receiving the contact:

6 “(a) Places on the record the substance of any written or oral *ex*
7 *parte* communications concerning the decision or action;
8 and

9 “(b) Has a public announcement of the content of the
10 communication and of the parties’ right to rebut the
11 substance of the communication made at the first hearing
12 following the communication where action will be
13 considered or taken on the subject to which the
14 communication related.”

15 In response, JCEP argues, and we agree, that the letter from Chair Sweet
16 to FERC does not qualify as *ex parte* contact for two reasons. First, the letter
17 from Chair Sweet to FERC is not “*ex parte* contact” because it does not
18 “concern[] the decision or action” made by the county commission as required
19 by ORS 215.422(3)(a), but rather it concerns a separate decision or action by
20 FERC. Second, the letter from Chair Sweet does not qualify as an “*ex parte*
21 contact” because the letter was *from* Chair Sweet *to* FERC. As the text of ORS
22 215.422(3) indicates, the statute only governs required disclosures when the
23 decision-maker “receiv[es] the contact.” As a result, no disclosure of the April
24 11, 2016 letter was required pursuant to the statute.

25 With respect to Chair Sweet’s attendance at a 2014 luncheon
26 presentation by JCEP on the LNG project, intervenor does not dispute that
27 Sweet failed to disclose the content of the presentation, which the other

1 attending commissioner, Main, treated as an *ex parte* communication. It may
2 be that the presentation does not qualify as an *ex parte* communication, or if so
3 that Main's disclosure was sufficient for both commissioners. However,
4 because the county's decision must be remanded for other reasons, it is
5 appropriate to remand also to allow Chair Sweet to disclose the substance of
6 any *ex parte* communications that occurred at the presentation.

7 The first assignment of error (McCaffree) is sustained, in part.

8 **SECOND ASSIGNMENT OF ERROR (McCAFFREE)**

9 In her second assignment of error, McCaffree argues that in the
10 proceedings below, the county hearings officer misapplied applicable law and
11 prejudiced McCaffree's rights due to bias against unrepresented parties. Citing
12 to various statements by the hearings officer, McCaffree argues that the
13 statements demonstrate a bias in favor of testimony coming from attorneys for
14 the project applicant, over testimony from unrepresented project opponents.
15 According to McCaffree, the hearings officer's bias against unrepresented
16 opponents violated Statewide Planning Goal 1 (Citizen Involvement).

17 JCEP responds that McCaffree failed to preserve the issue by objecting
18 before the local decision-maker. Even if the issue is preserved, JCEP argues
19 that McCaffree has failed to demonstrate that the hearings officer was biased,
20 or that any bias prejudiced McCaffree's procedural rights. Further, JCEP
21 argues that McCaffree has failed to establish that any error committed by the
22 hearings officer tainted the county commission's consideration and final

1 decision. Finally, JCEP argues that Goal 1 is not directly applicable to the
2 proposed permit applications.

3 It is not clear to us that a decision-maker's bias is properly viewed as a
4 *procedural* error, even if evidence of the alleged bias stems from comments
5 made by the decision-maker during a hearing. McCaffree does not identify any
6 *procedure* that the hearings officer failed to follow. In any case, as we
7 understand, some of the unrepresented parties below objected to the hearings
8 officer's apparent preference for argument from represented parties.²⁰ To the
9 extent preservation principles require lodging an objection to the alleged bias
10 of the hearings officer against unrepresented parties, an objection was made.

11 On the merits, we have no trouble agreeing with McCaffree that the
12 hearings officer's comments regarding the testimony were unnecessary and
13 unfortunate. Nonetheless, we do not believe that those comments are sufficient
14 to demonstrate that the hearings officer was biased in the sense that the
15 hearings officer was unable to make a decision based on the arguments and
16 evidence presented. Moreover, even if we concluded that the hearings officer
17 was biased, JCEP is correct that the hearings officer was not the final county
18 decision-maker. McCaffree offers no argument as to why the hearings officer's
19 alleged bias tainted the proceedings before, or the decision of, the board of

²⁰ After the hearings officer expressed a preference for hearing testimony from represented parties, one participant stated: "I'm not going to waste my time [testifying before the hearings officer]. I am not an attorney and you ain't going to listen to me anyway[.]" McCaffree Petition for Review 18.

1 commissioners, the final decision-maker. Accordingly, McCaffree's arguments
2 under this assignment of error do not provide a basis for reversal or remand.

3 The second assignment of error (McCaffree) is denied.

4 **THIRD ASSIGNMENT OF ERROR (McCAFFREE)**

5 In her third assignment of error, McCaffree argues that the findings
6 adopted by the county commissioners demonstrate bias in favor of the
7 application, because the findings generally cite and rely on evidence submitted
8 by proponents, and ignore or erroneously discredit opposing evidence.

9 As an example, McCaffree argues that the county chose to rely on a
10 report from one of JCEP's experts (Sullivan) regarding sedimentation from
11 dredging, notwithstanding that Sullivan is a landscape architect and not an
12 engineer, while rejecting the opponent's expert testimony (Ravens) from a
13 licensed engineer. The Ravens testimony had been submitted in an earlier
14 proceeding related to the LNG pipeline, but the county chose not to rely upon it
15 in that proceeding. McCaffree submitted the Ravens testimony again in this
16 present proceeding on the LNG terminal. According to McCaffree, the
17 county's rejection of the Ravens testimony and reliance on a report filed by a
18 landscape architect indicates that county decision-makers were biased in favor
19 of the applicant.

20 JCEP responds that the Sullivan report was prepared by multiple authors
21 including an environmental specialist, and a biologist. Record 1907-08.
22 Further, JCEP argues that, while the county chided McCaffree for

1 mischaracterizing the testimony of the opponents’ engineer regarding
2 sedimentation, the county in fact accepted and considered that testimony, and
3 did not reject it.²¹ JCEP argues that simply because the commissioners did not
4 find the Ravens testimony persuasive does not mean that the commissioners
5 were biased or that the Ravens testimony does not constitute substantial
6 evidence.

7 Although couched as an argument regarding “bias,” McCaffree’s
8 arguments can be more accurately described as a substantial evidence
9 challenge. JCEP argues, and we agree, that McCaffree’s arguments regarding
10 how the county weighed the evidence regarding sedimentation does not
11 demonstrate that the county was “biased” in favor of the application or, more
12 accurately, that the county’s findings regarding sedimentation are not
13 supported by substantial evidence.

14 The third assignment of error (McCaffree) is denied.

²¹ The county’s findings state, in relevant part:

“On page 23 of her letter dated January 12, 2016, Ms. McCaffree cites to previously submitted testimony from Dr. Tom Ravens, and states that ‘[o]ur sedimentation expert actually proved [Pacific Connector] to be wrong on this issue * * *.’ This statement is demonstrably false. In fact, the hearings officer [in a different decision] previously rejected Dr. Ravens’ analysis. *See* Hearings Officer Recommendation HBCU 10-01 (Remand) at pp. 40-57, which is incorporated herein by reference.” Record 107 (emphasis added).

1 **ASSIGNMENT OF ERROR (THE TRIBES)**

2 Intervenor-petitioner The Confederated Tribes of the Coos, Lower
3 Umpqua & Siuslaw Indians (the Tribes) advance four sub-assignments of error,
4 each essentially arguing that the county failed to properly apply CBEMP Policy
5 18, Protection of Historical, Cultural and Archaeological Sites.

6 CBEMP Policy 18 provides in relevant part that a development proposal
7 involving a cultural, archeological or historical site shall include a site plan
8 application showing all areas proposed for excavation, clearing, and
9 construction, and submit that site plan to the Tribes for a 30-day review
10 period.²² The county must then conduct a review of the site plan and approve

²² CBEMP Policy 18 provides, in relevant part:

“Local government shall provide protection to historical, cultural and archaeological sites and shall continue to refrain from widespread dissemination of site specific information about identified archaeological sites.

“I. This strategy shall be implemented by requiring review of all development proposals involving a cultural, archaeological, or historical site to determine whether the project as proposed would protect the cultural, archaeological, and historical values of the site.

“II. The development proposal, when submitted, shall include a 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 Tribes] in writing, together with a copy of the Site Plan Application. [The Tribes] shall have the right to submit a written

1 or deny based in part on whether the Tribes and the applicant have agreed on
2 “appropriate measures” to protect cultural, archeological or historical
3 resources.²³

statement to the local government within thirty (30) days of receipt of such notification, stating whether the project as proposed would protect the cultural, historical, and archaeological values of the site or, if not, whether the project could be modified by appropriate measures to protect those values. [giving examples of appropriate measures].”

²³ CBEMP Policy 18 continues:

“III. Upon receipt of the statement by [the Tribes], or upon expiration of [the Tribes’] 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 Tribes], 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 Tribes] 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.”

1 Initially, the county failed to provide notice and a 30-day comment
2 period to the Tribes as required by CBEMP Policy 18(II). On December 18,
3 2015, the Tribes submitted an initial set of testimony that included information
4 on archeological sites in the area, and noting that the Tribes had earlier
5 designated the entirety of Jordan Cove as a site of archeological significance.
6 The Tribes also took the position that the project would not protect the cultural
7 and archeological values of the site, and objected that the applicant had not
8 provided the site plan as required by CBEMP Policy 18(II), which limited the
9 Tribes' ability to provide focused objections. The county corrected its notice
10 error and gave the Tribe 30 days to submit additional testimony, and the Tribes
11 submitted a second set of testimony on January 12, 2016. However, the county
12 did not initiate the administrative review process set out in CBEMP Policy
13 18(III), but instead apparently chose to consider the Tribes' testimony within
14 the ongoing conditional use permit proceeding.

15 As noted, the county hearings officer held the only public hearing on
16 December 18, 2015, and issued his recommendations on May 4, 2016. In his
17 findings, later adopted by the commissioners, the hearings officer expressed
18 skepticism about the Tribes' claim that the entirety of Jordan Cove has been
19 designated as an archeological site, and criticized the Tribes for failing to
20 provide site-specific objections and for failing to take a clear position on
21 whether the proposal would protect the cultural, historical, and archaeological
22 values of the site. With respect to the site plan required by CBEMP Policy

1 18(II), the hearings officer speculated that a plot plan found in the application
2 was intended to be that site plan. Ultimately, however, the hearings officer
3 made no findings of compliance with CBEMP Policy 18, but instead accepted
4 JCEP's request to impose a condition of conditional use permit approval,
5 deferring entirely consideration of CBEMP Policy 18 to a subsequent
6 proceeding.²⁴ Accordingly, the county imposed Condition E.1., which provides,
7 in its entirety:

²⁴ Intervenor requested the following condition of approval:

“Upon receipt of the statement from the Tribe(s) under CBEMP Policy 18.II, the County shall take one of the following actions: (1) if no adverse impacts to cultural, historical or archeological resources on the site have been identified, the County shall find that the Applications are consistent with CBEMP Policy 18; (2) if the Tribe(s) and the applicant reach agreement regarding the measures needed to protect the identified resources, the County shall find that the Applications are consistent with CBEMP Policy 18, subject to any additional measures the County believes are necessary to protect those resources; or (3) if the County finds that there will be adverse impacts to identified CBEMP Policy 18 resources on the site and the applicant and the Tribe(s) have not reached agreement regarding protection of such resources, then the Board of County Commissioners shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by [a] preponderance of the evidence whether the development project may be allowed to proceed, subject to any modifications deemed necessary by the governing body to protect the cultural, historical, and archeological values of the site. For purposes of this condition, the public hearing shall be subject to the provisions of [LDO 5.7.300] with the Board of Commissioners serving as the

1 “The Board shall hold a quasi-judicial hearing to determine
2 compliance with CBEMP Policy 18. The hearing shall be a public
3 hearing at which the governing body shall determine by
4 preponderance of the evidence whether the development project
5 may be allowed to proceed, subject to any modifications deemed
6 necessary by the governing body to protect the cultural, historical,
7 and archaeological values of the site. For purposes of this
8 condition, the public hearing shall be subject to the provisions of
9 section 5.7.300 of the CCZLDO with the Board of Commissioners
10 serving as the Hearings Body. The Board’s decision in that matter
11 shall constitute the Board’s decision regarding the Applications’
12 consistency with CBEMP Policy 18.” Record 216.

13 **A. Subassignments of Error A, C, and D**

14 In these subassignments of error, the Tribes allege the county erred by
15 deferring its CBEMP Policy 18 project review obligations by: (1) refusing to
16 recognize and consider the Tribe’s testimony regarding identified
17 archaeological sites and districts within the project area and significant adverse
18 impacts from the project; (2) approving the LNG Terminal without requiring
19 the applicant to submit the site plan required by CBEMP Policy 18(II); and (3)
20 deferring CBEMP Policy 18 determinations for an undetermined amount of
21 time.

Hearings Body. The Board’s decision in that matter shall
constitute the Board’s decision regarding the Applications’
consistency with CBEMP Policy 18.” Record 126.

1 **1. Deferral**

2 Because subassignments of error A, C, and D rest upon the petitioners’
3 challenge to the county’s decision to defer its CBEMP Policy 18 obligations,
4 we begin with that issue.

5 The Tribes contend that, as a matter of law, the county cannot defer the
6 procedures and determination of compliance with CBEMP Policy 18. To the
7 extent deferral of compliance with CBEMP Policy 18 is permissible in some
8 cases, the Tribes argue that it is not permissible in the present case.

9 In response, JCEP cites *Rhyne v. Multnomah County*, 23 Or LUBA 442,
10 447-48 (1992), for the proposition that local governments are permitted to
11 defer a determination of compliance with a permit approval standard until a
12 second stage in the approval process, as long as the second stage approval
13 process provides the same notice and hearing as the initial stage:

14 “Where the evidence presented during the first stage approval
15 proceedings raises questions concerning whether a particular
16 approval criterion is satisfied, a local government essentially has
17 three options potentially available. First, it may find that although
18 the evidence is conflicting, the evidence nevertheless is sufficient
19 to support a finding that the standard is satisfied or that feasible
20 solutions to identified problems exist, and impose conditions if
21 necessary. Second, if the local government determines there is
22 insufficient evidence to determine the feasibility of compliance
23 with the standard, it could on that basis deny the application.
24 Third, if the local government determines that there is insufficient
25 evidence to determine the feasibility of compliance with the
26 standard, instead of finding the standard is not met, it may defer a
27 determination concerning compliance with the standard to the
28 second stage. In selecting this third option, the local government
29 is not finding all applicable approval standards are complied with,

1 or that it is feasible to do so, as part of the first stage approval (as
2 it does under the first option described above). Therefore, the
3 local government must assure that the second stage approval
4 process to which the decision is making is deferred provides the
5 statutorily required notice and hearing, even though the local code
6 may not require such notice and hearing for second stage decisions
7 in other circumstances. *Holland v. Lane County*, 16 Or LUBA
8 583, 596-97 (1998).” *Id.* (Footnotes omitted).

9 There are several problems with JCEP’s reliance on *Rhyne*. First, *Rhyne*
10 contemplates a multi-stage approval process, where consideration of criteria
11 that apply at the first stage can be safely deferred to the second stage, if the
12 requisite determinations and assurances are made, because no development is
13 possible until the final, second stage approval is obtained. However, the permit
14 applications in the present case do not involve a multi-stage approval process.
15 The county has, in effect, created an *ad hoc* multi-stage conditional use permit
16 approval process, where compliance with most standards are finally determined
17 in the first stage, leaving only compliance with one standard (CBEMP Policy
18 18) to be resolved at a second stage solely devoted to that purpose. That *ad*
19 *hoc* approach might be permissible in some cases, with respect to some kinds
20 of approval standards, but it requires basic assurances that Condition E.1 lacks.

21 Notably, nothing in Condition E.1 requires that the second stage
22 approval be obtained prior to development, or indeed provides any assurances
23 that there will be a second stage approval process at all. Condition E.1 is silent
24 regarding the timing and initiation of the second stage. JCEP’s request
25 suggested that the second stage process would be initiated only when the

1 Tribes submitted the statement described in CBEMP Policy 18(II). *See* n 23
2 (“Upon receipt of the statement from the Tribe(s) * * *.”). But that is not
3 consistent with CBEMP Policy 18, which contemplates that the CBEMP Policy
4 18 process is initiated by the applicant filing the development application with
5 the required site plan. The Tribes took the position that JCEP has not yet
6 submitted the required site plan to the county, and that its efforts to provide a
7 response to the application were hampered by the lack of the site plan. In his
8 findings, the hearings officer identified a “plot plan” that he believed was
9 intended to represent the site plan required by CBEMP Policy 18(II), but that
10 issue was never resolved. Absent an adequate condition of approval that
11 specifies how and when the CBEMP Policy 18 review process will be initiated,
12 there is no assurance that it will ever be initiated and completed prior to
13 development.

14 In addition, as a predicate to the deferral option, *Rhyme* requires that the
15 local government determine that there is insufficient evidence to determine
16 compliance or the feasibility of compliance with the applicable standard. *See*
17 *also Gould v. Deschutes County*, 227 Or App 601, 611-12, 206 P3d 1106
18 (2009) (to defer a finding of compliance with first stage approval criteria to a
19 second stage approval process, the county must find that eventual compliance
20 with the applicable approval standards is “feasible” in the sense that the county
21 can rule out denial as the outcome required by the hearing record). The county
22 made none of the determinations required by either *Rhyme* or *Gould*, but simply

1 stated that intervenor’s request to defer consideration of Policy 18 “seemed
2 reasonable.” Record 126.

3 More fundamentally, we question whether CBEMP Policy 18 is the
4 kind of approval standard that can be deferred. CBEMP Policy 18 is more than
5 an approval standard, it also invokes a particular process. That process is
6 explicitly linked to the initial development application. *See* ns 22 and 23
7 (requiring the county to notify the Tribes within three days of receiving the
8 application, and providing 30 days for the Tribes to respond). CBEMP Policy
9 18 clearly contemplates that resolution of issues raised by the Tribes, which
10 may change the scope, scale and footprint of the development proposal
11 considerably, or even cause it to be denied outright, will be completed before
12 the development is approved.

13 Moreover, it is important to note that CBEMP Policy 18 requires
14 coordination with and the resolution of disputes raised by a *sovereign*
15 government. Under CBEMP Policy 18, the Tribes are not merely another
16 participant in the proceedings. The Tribes are entitled under CBEMP Policy 18
17 to special notification and consideration of issues raised, as well as the power
18 to compel the applicant into negotiations to resolve those issues, and to compel
19 county resolution of unsuccessfully negotiated issues. That power is
20 considerably vitiated if the applicant can first obtain county approval of the
21 proposed development, and only then sit down with the Tribes to negotiate
22 changes to the approved development. Given the inertia of an existing

1 conditional use permit approval, the county is less likely in a deferred CBEMP
2 Policy 18 proceeding to force the applicant to accept changes to a development
3 proposal that the county has already considered and approved. It is even less
4 likely in such a deferred proceeding that the county would take seriously
5 arguments that the application cannot comply with CBEMP Policy 18 and must
6 be (retroactively) denied.

7 The county's findings include no interpretation of CBEMP Policy 18
8 explaining why it believes compliance with the policy can be deferred to a
9 second stage proceeding, other than deferral "seemed reasonable." Record 126.
10 It is not clear to us if the question of whether compliance with CBEMP Policy
11 18 can be deferred to a second stage proceeding is a matter of local or state
12 law. Even if it is purely a matter of local law, in the absence of an adequate
13 local interpretation, for the reasons set out above we conclude under ORS
14 197.829(2) that the county erred in deferring compliance with CBEMP Policy
15 18 to a second stage proceeding.

16 **B. Subassignment of Error B**

17 In this subassignment of error, the Tribes argue the county erred to the
18 extent it rejected the Tribes' claim that the entirety of Jordan Cove is a cultural
19 and archeological site for purposes of CBEMP Policy 18. That claim is based

1 in part on the fact that in 2015 the Tribes designated Jordan Cove as a
2 “significant” archaeological site under ORS 358.905(1)(b)(B).²⁵

3 JCEP responds that the skepticism expressed in the hearings officer’s
4 findings that the entirety of Jordan Cove is a cultural or archeological site for
5 purposes of CBEMP Policy 18 was merely nonbinding *dicta*, which would
6 have no preclusive effect on any future proceeding to consider compliance with
7 CBEMP Policy 18. We agree with JCEP that the challenged findings are *dicta*,
8 given that the county completely deferred consideration of compliance with the
9 policy to a second stage proceeding. As explained above, that deferral was
10 erroneous, and remand is necessary for the county to conduct the proceedings
11 required by CBEMP Policy 18, before approving the conditional use permit
12 application. On remand, questions regarding the location and scope of
13 archeological sites affected by the development remain issues to be resolved.

14 The first assignment of error (The Tribes) is sustained, in part.

15 **FIRST ASSIGNMENT OF ERROR (ROGUE INTERVENORS)**

16 As noted, the application proposes development in areas designated as
17 coastal shorelands under Statewide Planning Goal 17. OAR chapter 660,
18 division 037 implements Goal 17 and the state policy to generally limit
19 development of coastal shorelands to uses that are “water-dependent.” The

²⁵ ORS 358.905(1)(b)(B) provides that a “Site of archaeological significance” means “Any archaeological site that has been determined significant in writing by an Indian tribe.”

1 Goals define “water-dependent” to mean “[a] use or activity which can be
2 carried out only on, in, or adjacent to water areas because the use requires
3 access to the water body for water-borne transportation, recreation, energy
4 production, or source of water.” Statewide Planning Goals, Definitions 8.

5 OAR 660-037-0040(6) provides additional definitions for purposes of
6 the rule, which the county has implemented verbatim in LDO 2.1.200. In
7 relevant part, OAR 660-037-0040(6)(C) defines “water-borne transportation”
8 to mean uses of water access that fit into one of three subcategories, uses which
9 are themselves transportation, uses which “require the receipt of shipment of
10 goods by water,” or uses which are themselves not water-borne transportation,
11 but that are “necessary to support water-borne transportation,” with the
12 example provided of “terminal and transfer facilities.”²⁶

²⁶ OAR 660-037-0040(6) provides, in relevant part:

“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.

1 The county concluded that the components of the LNG facility located
2 on coastal shorelands are “water-dependent uses” as defined at LDO 2.1.200

“(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.[, and] *terminal and transfer facilities*).

“* * * * *

“(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.

“* * * * *

“(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.” (Emphasis added.)

1 and OAR 660-037-0040(6), because the facility involves “water-borne
2 transportation” and is also a “terminal and support.” Record 44.

3 On appeal, Rogue Intervenors argue that the county erred in concluding
4 that the facility constitutes “water-borne transportation,” to the extent it relied
5 upon OAR 660-037-0040(6)(a)(C)(ii), for uses of water access “[w]hich
6 require the receipt of shipment of goods by water[.]” Rogue Intervenors argue
7 that “water-borne transportation” under subcategory (ii) is limited to uses
8 related to the *import* of goods, and therefore does not include a facility
9 dedicated to exporting LNG.

10 JCEP responds that Rogue Intervenors do not challenge the county’s
11 alternative conclusion that the facility is a “terminal,” and therefore an express
12 example of a water-dependent industrial use. JCEP is correct. OAR 660-037-
13 0040(6)(a)(C)(ii) is one of three separate subcategories of uses of water access
14 that concern “water-borne transportation.” The third, OAR 660-037-
15 0040(6)(a)(C)(iii), expressly includes “terminals and transfer facilities.” *See*
16 *also* OAR 660-037-0040(6)(b) (citing “terminals” as a typical example of an
17 industrial water-dependent use). Even if the OAR 660-037-0040(6)(a)(C)(ii)
18 subcategory is limited to import facilities, as Rogue Intervenors argue, there
19 can be no possible dispute that a facility that loads goods onto cargo ships is a
20 “terminal” for purposes of OAR 660-037-0040(6)(a)(C)(iii) and thus properly
21 viewed as “water-borne transportation” for purposes of the definition of
22 “water-dependent use.”

1 The first assignment of error (Rogue Intervenors) is denied.

2 **SECOND ASSIGNMENT OF ERROR (ROGUE INTERVENORS)**

3 The proposed LNG facility includes a 20-acre gas-processing facility,
4 located on an industrially zoned portion of the site. The gas-processing facility
5 first refines natural gas arriving by pipeline to remove water and carbon
6 dioxide.²⁷ The refined gas is then sent through a multi-stage liquefaction
7 process to cool and liquefy the gas. Record 18. The resulting product, LNG, is
8 stored at a temperature of -260 degrees in large storage tanks and eventually
9 transferred to LNG tankers via a cryogenic line. When the LNG reaches its
10 ultimate destination, it is unloaded and converted back into gaseous form.

11 The industrial zone allows the processing of mineral resources as an
12 allowed use. LDO 2.1.200 defines “Mineral Resources—Processing” as “[t]he
13 act of refining, perfecting, or converting a natural mineral into a useful

²⁷ The county’s decision describes the refinement process:

“* * * Once natural gas is transferred to the Applicant through the metering station, the gas would go through a processing plant. The processing facility would consist of two feed gas pre-treatment trains, each containing two systems in the series: a CO2 removal process which utilizes a primary amine to absorb CO2, followed by a dehydration system which uses two solid absorbents to remove water and mercury from the feed gas. The gas processing units would remove substances that would freeze during the liquefaction process, namely CO2 and water. Mercury would also be removed to prevent corrosion to downstream equipment. Trace amounts of hydrogen sulfide (H2S) would be removed as well. * * *” Record 22.

1 product.” In this assignment of error, Rogue Intervenors argue that the county
2 misconstrued LDO 2.1.200 in concluding that the gas-processing facility
3 processes a mineral resource. According to Rogue Intervenors, the gas-
4 processing facility does not convert natural gas into a “useful product,” but
5 instead takes natural gas that is of household quality, and converts it for
6 transportation purposes only into LNG, which is not itself a “useful product.”
7 Rogue Intervenors argue that, as a matter of law, transforming a useful product
8 into a non-useful product for transportation does not fit within the definition of
9 “Mineral Resources—Processing” at LDO 2.1.200.

10 The county board of commissioners rejected that argument below:

11 “* * * In its gaseous form, natural gas on the mainland of the U.S.
12 is not a useful product for consumers living in Hawaii, for
13 example, because there is no way to get it to that market in an
14 unrefined form. The natural gas is refined and then converted into
15 a liquid form so that it may be transported and used as a ‘useful
16 product’ throughout the Pacific Rim.” Record 141.

17 The county concluded that “[i]f a mineral needs to be further processed or
18 ‘perfected’ to make transportation economically viable, then it follows that
19 further processing is required to make the mineral a ‘useful product’ for the
20 intended market.” *Id.*

21 JCEP argues, and we agree, that the commissioners’ interpretation of
22 LDO 2.1.200—that processing a natural mineral into a form that allows it to be
23 transported to markets renders that natural mineral a “useful product” for that
24 purpose—is consistent with the express language of LDO 2.1.200’s definition

1 and accordingly must be affirmed. That the natural gas arriving at the gas-
2 processing facility is of “household quality” and is already one form of useful
3 product does not mean that it cannot be further processed into a different, but
4 still useful, product, even if the usefulness of that product is to allow
5 transportation to markets where the product will be processed further to return
6 it to a gaseous and more useful form.

7 The second assignment of error (Rogue Intervenors) is denied.

8 **FOURTH ASSIGNMENT OF ERROR (ROGUE INTERVENORS)**

9 Rogue Intervenors argue that the county erred in failing to impose a
10 condition making the conditional use permit approval effective only when and
11 if JCEP obtains all required state and federal approvals for the proposed LNG
12 terminal, including FERC approval. In addition, Rogue Intervenors note that
13 the gas processing facility will require a new electrical power plant, for which
14 JCEP has not yet filed applications. Rogue Intervenors argue that the county
15 should have made its permit decision effective only when and if the county
16 approves the application for the new power plant.

17 The county’s decision requires JCEP to obtain all required state and
18 federal permits (which are required in any event by state and federal law), but
19 does not delay the effective date of the conditional use permit approval until all
20 required permits and approvals are obtained. JCEP responds, and we agree,
21 that Rogue Intervenors have not identified any law that requires the county to
22 impose a condition delaying the effectiveness of its permit approval until all

1 other permits and approvals have been obtained. Absent a more developed
2 argument, Rogue Intervenors' fourth assignment of error provides no basis for
3 reversal or remand.

4 The fourth assignment of error (Rogue Intervenors) is denied.

5 **FIRST ASSIGNMENT OF ERROR (CLARKE)**

6 The proposed gas processing facility includes two "amine contactor"
7 towers, or thermal oxidizers, that will vent heated gas into the atmosphere. The
8 facility is located across the estuary from the Southwest Oregon Regional
9 Airport. A portion of the LNG terminal site is within the approach surface of
10 Runway 13, but as proposed the gas processing facility is not within the
11 approach surface or the associated flight path.

12 In three sub-assignments of error, intervenor-petitioner John Clarke
13 (Clarke) challenges the county's findings regarding compliance with LDO
14 4.11.445(4), which provides:

15 "Industrial Emissions. No new industrial, mining or similar use
16 * * * shall, as part of its regular operation, cause emissions of
17 * * * steam that could obscure visibility within airport approach
18 surfaces, except upon demonstration, supported by substantial
19 evidence, that mitigation measures imposed as approval conditions
20 will reduce the potential for safety risk or incompatibility with
21 airport operations to an insignificant level. The review authority
22 shall impose such conditions as necessary to ensure that the use
23 does not obscure visibility."

24 JCEP submitted a "thermal plume" study to demonstrate compliance
25 with LDO 4.11.445(4). The study evaluated the plumes generated by the gas
26 processing facility, as well as the electrical power plant that is not part of this

1 application. According to the study, the thermal oxidizers will generate only
2 four percent of the heat plumes from both sources, and the plumes from all
3 sources will meet applicable aviation standards. Clarke objected during the
4 proceedings below that the thermal oxidizers will produce steam, which will
5 obscure visibility within the airport approach surface, stating that “[b]asic
6 physics tell you that heated air released into cool, damp air will produce
7 steam.” Record 7158. JCEP responded with a letter from Himes, a registered
8 engineer with 46 years of experience including 10 years designing LNG
9 facilities, who testified in relevant part that “[t]here are no visible or steam
10 plumes from the facility.” Record 3757. The county found that Himes’
11 testimony constitutes substantial evidence and is more credible than any
12 evidence to the contrary. Record 172.

13 Clarke argues that (1) Himes’ statement that the thermal oxidizers will
14 not produce visible steam plumes is not substantial evidence, given the
15 “common knowledge” that heated air released into a cool atmosphere will
16 produce steam; (2) although the gas processing facility is proposed to be
17 located outside of Runway 13’s surface approach area, the applicant did not
18 seek, and the county did not approve, site plan approval, and it is possible that
19 the gas processing facility could be moved to a location within the surface
20 approach area; and (3) the county failed to adopt any “mitigation measures” to
21 ensure that steam plumes will not obscure visibility within the airport surface
22 approach area.

1 JCEP responds, and we agree, that Clarke’s arguments do not provide a
2 basis for reversal or remand. Himes’ expert testimony is substantial evidence
3 that the thermal oxidizers will not produce visible plumes of steam, and that
4 testimony is not undermined by Clarke’s statement, based on “common
5 knowledge,” that heated air released into cool air produces steam. In any case,
6 LDO 4.11.445(4) is concerned only with obscured visibility within the surface
7 approach area. Clarke’s speculation that the gas processing facility could be
8 moved from its proposed and approved location into the surface approach area
9 is just that—speculation. JCEP proposed a specific location for the gas
10 processing facility, and justified that facility’s compliance with LDO
11 4.11.445(4) based in part on that proposed location, outside the surface
12 approach area. Clarke does not explain how the gas processing facility could
13 be relocated from that approved location west to a site within the surface
14 approach area without modifying the conditional use permit or otherwise
15 triggering evaluation under LDO 4.11.445(4)

16 The first assignment of error (Clarke) is denied.

17 The county’s decision is remanded.

6.4.3.2 Karst Terrain

Karst terrain describes a distinctive topography that results from the dissolution of soluble carbonate and evaporite rocks by slightly acidic surface water or groundwater. Karst terrain is characterized by the presence of sinkholes, caverns, and disappearing streams.

Karst terrain has not been identified within the LNG Terminal site on the National Karst Map (Weary and Doctor 2014). Carbonate or evaporate rocks have not been identified within the LNG Terminal site (Beaulieu and Hughes 1975). The hazards associated with karst terrain are not anticipated for the LNG Terminal.

6.4.3.3 Fluid Extraction

Ground subsidence due to fluid extraction can occur when large quantities of subsurface fluids (such as oil, gas, or groundwater) have been withdrawn from certain types of rocks and sediments. Rock and sediments compress as fluid pressure in the material is reduced by pumping activities and effective stress on the rock or sediment increases. As a result of the increased stress, the porosity and volume of porous material is reduced. The reduction in volume decreases the thickness of the unit, which results in subsidence at the ground surface.

Ground subsidence due to extraction for oil and gas is not likely given the lack of commercially viable oil and gas deposits within the LNG Terminal site.

The LNG Terminal site is located on the North Spit of Coos Bay at the southern end of the Dune-Sand Aquifer. Groundwater extraction wells are present on the Siuslaw National Forest Oregon Dunes Recreation Area north of the LNG Terminal site. Three of the Roseburg Forest Product Company (RFP) wells are within the footprint of a proposed construction laydown area on the RFP property. The laydown area will revert back to use by RFP following construction.

The Coos Bay-North Bend Water Board will supply the LNG Terminal site with water during construction and operation. Additional water will be supplied during construction using temporary wells installed at Ingram Yard. Additionally, localized dewatering wells may be used to lower groundwater levels to facilitate soil improvement techniques during site preparation. All on-site construction wells will be operated only for the period of construction; therefore, any impacts to groundwater levels from pumping on-site during construction will be temporary, and water levels will recover when the pumping is terminated.

The Coos Bay-North Bend Water Board uses a portion of the Dune-Sand Aquifer for public water supply; the closest well is approximately 3,500 feet north of the LNG Terminal site (Groundwater Solutions Inc. 2006). Model simulations for the Dune-Sand Aquifer indicate that a maximum of 10 million gallons per day could be pumped with little risk of inducing seawater to flow into the wells (Jones 1992). With no permanent water supply wells planned for the LNG Terminal, there will be no reduction in the groundwater level from pumping at the LNG Terminal site during plant operations. The low risk of inducing seawater from pumping of the Dune-Sand Aquifer at high rates indicates that the aquifer has a high capacity. Therefore, reduction of the groundwater level at the LNG Terminal site is considered unlikely; therefore, ground subsidence is not anticipated to occur.

6.4.3.4 Underground Mining

Ground subsidence may occur in areas where abandoned underground mines that could collapse are located. Abandoned underground mines have not been identified in the vicinity, and therefore, the LNG Terminal will be unaffected by mine subsidence. The hazards associated with underground mines collapse are not anticipated.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Jordan Cove Energy Project, L.P.

Docket Nos. CP17-495-000
PF17-4-000

Pacific Connector Gas Pipeline, LP

CP17-494-000
PF17-4-000

NOTICE OF APPLICATIONS

(October 5, 2017)

Take notice that on September 21, 2017, Jordan Cove Energy Project, L.P. (Jordan Cove), 5615 Kirby Drive, Suite 500, Houston, Texas 77005, filed in Docket No. CP17-495-000 an application under section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, seeking authorization to site, construct and operate a natural gas liquefaction and liquefied natural gas (LNG) export facility (LNG Terminal) on the bay side of the North Spit of Coos Bay in unincorporated Coos County, Oregon. The LNG Terminal will be capable of receiving up to 1,200,000 dekatherms per day (Dth/d) of natural gas via the Pacific Connector Gas Pipeline, liquefying it, storing it in two cryogenic storage tanks, and loading the LNG onto ocean going vessels for export, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Also take notice that on September 21, 2017, Pacific Connector Gas Pipeline, LP (Pacific Connector), 5615 Kirby Drive, Suite 500, Houston, Texas 77005, filed an application in Docket No. CP17-494-000, pursuant to section 7(c) of the NGA, and Parts 157 and 284 of the Commission's regulations, for: (1) a certificate of public convenience and necessity (i) authorizing Pacific Connector to construct, install, own, and operate a new, approximately 229-mile natural gas pipeline under Part 157, Subpart A of the Commission's regulations, (ii) approving the *pro forma* Tariff and non-conforming provisions submitted herewith, and (iii) approving the proposed initial rates for service; (2) a blanket certificate authorizing Pacific Connector to engage in certain self-implementing routine activities under Part 157, Subpart F, of the Commission's regulations; and (3) a blanket certificate authorizing Pacific Connector to transport natural gas, on an open access and self-implementing basis, under Part 284, Subpart G of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's website web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Docket No. CP17-495-000, et. al. -2-

Questions regarding this application should be directed to Rose Haddon, Director, Regulatory Affairs, Jordan Cove Energy Project, L.P., 5615 Kirby Drive, Suite 500, Houston, Texas 77005, or by telephone at 866-227-9249, or email at: rose.haddon@jordancovelng.com

On February 10, 2017, the Commission staff granted Jordan Cove's request to utilize the Pre-Filing Process and assigned Docket No. PF17-4-000 to staff activities involved with Jordan Cove's LNG Terminal and the Pacific Connector. Now, as of the filing of the application on September 21, 2017, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP17-495-000 for the Jordan Cove Energy Project and in Docket No. CP17-494-000 for the Pacific Connector, as noted in the caption of this Notice.

Within 90 days after the Commission issues a Notice of Application for the applications in the two instant dockets, the Commission staff will issue a Notice of Schedule for Environmental Review that will indicate the anticipated date for the Commission's staff issuance of the final EIS analyzing both proposals. The issuance of a Notice of Schedule for Environmental Review will also serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Docket No. CP17-495-000, et. al. -2-

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's web site (www.ferc.gov) under the "e-Filing" link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comment Date: 5:00 pm Eastern Time on October 26, 2017

Kimberly D. Bose,
Secretary.



HISTORICAL
RESEARCH
ASSOCIATES, INC.

To:	Natalie Eades, Manager, Environment, Jordan Cove Energy Project, LP and Pacific Connector Gas Pipeline, LP
From:	Emily K. Ragsdale, MA, RPA
Subject:	CS-26 Archaeological Investigations Summary, Jordan Cove Liquefied Natural Gas Terminal and Pacific Connector Gas Pipeline Project
Date:	November 16, 2018

Jordan Cove Energy Project, LP (JCEP) contracted Historical Research Associates, Inc. (HRA) to conduct a survey on Jordan Point to determine if archaeological site CS-26 shown on the Coos Bay Shoreland Values map is present within the area of potential effects (APE) for the proposed Jordan Cove Liquefied Natural Gas Terminal and Pacific Connector Gas Pipeline Project (Project) and if this reported resource would be impacted by project construction. HRA conducted site-specific background research, reviewed the results of excavations completed with the mapped site location, and, in September of 2018, completed a pedestrian survey. HRA found no evidence of CS-26 during the survey or in the subsurface investigations. If the site exists, it is not within the Project APE. As such, it is not expected that the Project will have any adverse impacts to CS-26. Therefore, in our best professional judgment, we conclude, based upon the information reviewed to date, that no modifications are necessary to the Project to protect the cultural, historical, and archaeological values of archaeological site CS-26.



HISTORICAL
RESEARCH
ASSOCIATES, INC.

Emily K. Ragsdale

Senior Archaeologist

SUMMARY OF EXPERIENCE

Ms. Ragsdale is the Portland HRA office's lead archaeologist and is responsible for project implementation and supervision. She acts as project manager, principal investigator, and/or quality control on a wide variety of projects. Ms. Ragsdale's experience includes prehistoric and historic archaeological research, survey, evaluation, and data recovery; archaeological monitoring, monitoring plans, and inadvertent discovery plans; agency and tribal consultation; GIS data management; Historic Properties Management Plans (HPMPs); and National Register of Historic Places (NRHP) eligibility documentation and recommendations. Ms. Ragsdale has worked for HRA for 12 years and has authored, prepared, and/or edited over one hundred technical reports.

EDUCATION

MA, Anthropology, 2005, Northern Arizona University
BA, Anthropology, 2001, University of Nevada

PROFESSIONAL REGISTRATION AND CERTIFICATIONS

Register of Professional Archaeologists, since 2006

PROFESSIONAL AFFILIATIONS

Society for American Archaeology, since 2003
Association of Oregon Archaeologists, since 2015
Association of Washington Archaeologists, since 2015

RELEVANT EXPERIENCE – CULTURAL RESOURCES MANAGEMENT

Pacific Connector Natural Gas Pipeline, Southern Oregon 04/2006 - ongoing
Since 2013, Ms. Ragsdale has acted as the Project Manager for a 232-mile proposed natural gas pipeline that crosses Coos, Douglas, Jackson, and Klamath Counties in southwestern Oregon.

Ms. Ragsdale manages the budget and provides project oversight and quality control on deliverables. Prior to this time she worked on the project in the capacity as Project Archaeologist, directing field crews, securing permits, coordinating with tribes and agencies, and authoring reports.

BPA John Day-Big Eddy No. 1 Re-Conducting Project Cultural Resource Monitoring, Sherman and Wasco Counties ***09/2017 - ongoing***

Senior Archaeologist for archaeological monitoring of the construction of Bonneville Power Administration's re-conducting project. The project involved monitoring and coordination of construction crews in order to ensure cultural resources were not impacted during construction activities.

Site Treatment and Monitoring at Frain Ranch ***06/2017 - ongoing***

Senior Archaeologist for a project to assist PacifiCorp with the management and resolution of damage caused by vandalism to features at a precontact archaeological site. Ms. Ragsdale and team conducted background research, secured a permit, completed a field visit to assess the damage, produced a list of potential treatment plans for the site, assisted in coordination with the State Historic Preservation Office, worked with a subcontractor to completed 3D artifact modeling, and conducted monitoring of the site treatment.

Cultural Resource Investigations for the John Day-Big Eddy Re-Conducting Project, Wasco and Sherman Counties, Oregon. ***11/2016 - ongoing***

Senior Archaeologist for cultural resource investigations for Bonneville Power Administration's re-conducting project. Investigations included background research, field survey, and evaluation of historic aboveground structures. The HRA team also conducted archaeological testing and evaluation of one site in the area of potential effects and made recommendations regarding project effects.

Cultural Resources Inventory for the Swan Lake North Pumped Storage Project, Klamath County, Oregon ***01/2015 - ongoing***

Senior Archaeologist for the 2015-2017 cultural resource investigations for the pumped storage project in support of a permit application with the Federal Energy Regulatory Commission. During the 2015 studies, Ms. Ragsdale and team completed additional background research, conducted a survey of the pumped storage facilities, worked with Dr. Douglas Deur to complete ethnographic studies, and produced a report. The report included a recommended area of potential effects, a discussion of potential project effects to resources that could be eligible for the National Register of Historic Places, and a Historic Properties Management Plan. In 2017, HRA completed National Register of Historic Places evaluations and/or project effects assessments for 22 archaeological and architectural resources. The project required coordination with multiple agencies, including the Bureau of Land Management, the Klamath Tribes, the Oregon Department of State Lands, and the Bureau of Reclamation.

Historic Properties Management Plan Implementation for the North Umpqua Hydroelectric Project (FERC Project No. P-1927), Douglas County, Oregon ***08/2013 - ongoing***

Senior Archaeologist for ongoing support to the PacifiCorp Cultural Resource Coordinator. Under Ms. Ragsdale's supervision, HRA's work has included conducting background and document research; providing desktop archaeological and historic above ground reviews for fast-track operations and maintenance activities; developing research designs and studies following the guidelines of the National Historic Preservation Act, the State Historic

Preservation Office, the United States Forest Service, and the Bureau of Land Management; facilitating consultation with the agencies and tribes; conveying and advising on regulatory legislation and agency policies; providing PacifiCorp staff training; obtaining survey and excavation permits; completing pedestrian and subsurface field surveys to identify cultural resources; communicating and working with tribal monitors; conducting archaeological excavations to provide determinations of eligibility and determinations of project effects to historic properties; developing monitoring plans and completing construction monitoring; providing emergency monitoring services; collecting, analyzing, managing, and producing GIS data; providing GIS-based maps and GIS support; collecting, processing, analyzing, and curating archaeological samples and artifacts; and writing and producing survey, excavation, monitoring, and evaluation reports. Ms. Ragsdale also assisted in developing a revised HPMP for the project, which included attending stakeholder meetings, presenting recommendations for revisions, negotiating with agencies, revising and developing an Area of Potential Effect, and planning strategically for future HPMP implementation in terms of reviewing PacifiCorp activities for potential effects to historic properties, executing the annual monitoring program, and completing determinations of eligibility.

Cultural Resource Services for the Access Road Upgrades Project, Multiple Counties, Oregon and Washington ***02/2016 - 08/2018***

Senior Archaeologist for investigations conducted in nine districts for Bonneville Power Administration's access road project. HRA worked on the North Team and drafted consultation letters, reviewed background records, completed field surveys, and produced 14 separate reports. Work was closely coordinated with BPA cultural staff and involved two SHPOs and multiple public land managers.

Cultural Resource Investigation for the Olympia-Grand Coulee No. 1 Insulator Replacement Project, Phase II and III, Kittitas and King Counties, Washington ***12/2016 - 5/2018***

Senior Archaeologist for investigations for a Bonneville Power Administration project to replace insulators on 277 structures along a 60-mile stretch of transmission line. Ms. Ragsdale and team conducted literature review, secured permits with the United States Forest Service, surveyed 383 acres, identified 17 resources, and authored a report that included National Register of Historic Places evaluations (or preliminary evaluations) and project effects assessments.

Cultural Resource Investigations for the Kingsley Reservoir Project, Hood River County, Oregon ***04/2017 - 01/2018***

Senior Archaeologist for a project entailing raising the height of the Upper Green Point dam and subsequently expanding the breadth of the reservoir. Ms. Ragsdale oversaw archaeological investigations, including permitting, survey, and reporting. She also coordinated with HRA's architectural history staff to evaluate the dam and assess project effects to historic-era resources.

Cultural Resource Investigations for the Fox Creek Mid-Reach 10 Habitat Restoration Project, Grant County, Oregon. ***07/2017 - 11/2017***

Senior Archaeologist for cultural resource investigations for a project of the Bonneville Power Administration and the Confederated Tribes of the Warm Springs Reservation to restore natural riverine function and habitat complexity in Fox Creek, a tributary of the North Fork of the John Day River. Ms. Ragsdale and team completed background research, field survey, and technical reporting.

***Cultural Resource Inventory for the La Pine to State Park Transmission Line Project,
Deschutes County, Oregon*** **03/2016 - 07/2017**

Senior Archaeologist for cultural resource investigations for a new 8.88 mile long transmission line proposed by Midstate Electric Cooperative. The project is in central Oregon and runs parallel to the Bonneville Power Administration's Pilot Butte-La Pine No. 1 Transmission Line. HRA conducted background research, drafted research designs, obtained permits (from the Oregon State Historic Preservation Office, Bureau of Land Management, and United States Forest Service), completed survey and Phase II testing field investigations, conducted laboratory analysis, and drafted a report of the findings.

***Cultural Resource Investigations for the Pacific Direct Current Intertie (PDCI) Upgrade Project,
Lake, Jefferson, Crook, Deschutes, and Wasco Counties, Oregon*** **07/2012 - 04/2017**

Senior Archaeologist/Project Manager for cultural resources investigations for the PDCI Project, which consisted of upgrades to a 264 mile long segment of the Celilo-Sylmar No. 1 transmission line in central Oregon. Work included literature review, permitting, intensive survey, identification of high probability areas and subsurface testing, resource recordation, site delineation, evaluation testing of 22 sites, laboratory analysis, reporting, site forms completion, curation, and archaeological construction monitoring. The goal of the investigations was to identify resources eligible for the National Register and to assess potential project effects. Throughout the life of the project, HRA coordinated work and the subsequent results with the BPA, multiple federal and non-federal land managers, various private land owners, the State Historic Preservation Office, and tribal representatives.

***Cultural Resources Monitoring of Trenching near the John Day Substation, Sherman County,
Oregon*** **02/2017 - 03/2017**

Senior Archaeologist for archaeological monitoring of Pacific Power's excavation of 1000 feet of trenching in order to relocate electrical transmission lines underground. Ms. Ragsdale coordinated the monitoring and provided quality control for a monitoring memo.

***Cultural Resource Investigations for the Kitson Springs Slide Repair at MP 2.6 Project, Lane
County, Oregon*** **07/2016 - 09/2016**

Senior Archaeologist for cultural resource investigations for a project involving evaluation of a slide on Kitson Springs Road (FS Road 023) and determining a solution to dewater, stabilize, and repair the slide area. HRA worked with Lane County, the Willamette National Forest, and the Western Federal Lands Highway Division of the Federal Highway Administration. The investigations involved background research, a pedestrian survey, and technical reporting.

Cultural Resource Inventory for the Graham Restoration Project, Lane County, Oregon **05/2016 - 08/2016**

Senior Archaeologist for cultural resource studies for a U.S. Fish and Wildlife project to restore 56 acres of oak forest, wetland prairie, and wetland. HRA conducted archival research, completed a pedestrian survey, made recommendations for possible future archaeological work, and prepared a report with the findings.

***Cultural Resource Inventory for the Little Sheep Creek Fish Ladder Extension Project,
Wallowa County, Oregon*** **04/2016 - 06/2016**

Senior archaeologist for a cultural resource inventory for a proposed project to restore fish passage at a tan acclimation facility. HRA conducted background research, an archaeological

pedestrian survey, and excavated shovel probes within the area of potential effects, and produced a technical report.

Cultural Resource Inventory for the Ringold Russian Knapweek Spray, Burn, and Seed Project, Franklin County, Washington ***12/2015 - 02/2016***

Senior Archaeologist for cultural resource studies for a U.S. Fish and Wildlife project to restore 291 acres of sagebrush steppe habitat within the Hanford Reach National Monument. Ms. Ragsdale and team conducted archival research, completed a pedestrian survey, recorded archaeological resources, and prepared a report with the findings.

Cultural Resource Inventory for the Veneta Prairie Restoration Project, Lane County, Oregon ***08/2015 - 11/2015***

Senior Archaeologist for cultural resource studies for a U.S. Fish and Wildlife project to restore 25 acres of habitat and wetland. Ms. Ragsdale and team conducted archival research and a pedestrian survey, recommended possible future archaeological work, and prepared a report with the findings.

Cultural Resource Inventory for the Kingzett Restoration Project, Lane County, Oregon ***05/2015 - 09/2015***

Senior Archaeologist for cultural resource studies for a U.S. Fish and Wildlife project to restore 150 acres of habitat and wetland. Ms. Ragsdale and team conducted archival research and a pedestrian survey, recommended possible future archaeological work, and prepared a report with the findings.

Cultural Resource Inventory for the Bird Haven Restoration Project, Linn County, Oregon ***05/2015 - 09/2015***

Senior Archaeologist for cultural resource studies for a U.S. Fish and Wildlife project to restore 150 acres of habitat and wetland. Ms. Ragsdale and team conducted archival research and a pedestrian survey, recommended possible future archaeological work, and prepared a report with the findings.

Cultural Resource Inventory for the Kamkaun Springs Restoration Project, Klamath County, Oregon ***02/2015 - 09/2015***

Senior Archaeologist for cultural resource studies for a U.S. Fish and Wildlife project to restore 17 acres of habitat and wetland. Ms. Ragsdale and team conducted archival research and a pedestrian survey, recorded a previously identified site, recommended possible future archaeological work, and prepared a report with the findings.

Cultural Resource Services for the FY14 Redmond District Wood Pole Replacement Project, Oregon and California ***03/2014 - 06/2015***

Permit Coordinator for a cultural resource inventory for proposed pole replacement of towers along nine separate transmission lines extending from just south of Madras, Oregon, to Alturas, California. HRA conducted background research, identified probability areas, performed a field survey for archaeological resources, evaluated the transmission lines, and produced 10 separate reports.

Cultural Resource Inventory for the Willamette Bluffs Restoration Project, Polk County, Oregon ***02/2015 - 06/2015***

Senior Archaeologist for a U.S. Fish and Wildlife project to restore 17 acres of habitat and wetland. Ms. Ragsdale and team conducted archival research and a pedestrian survey, recorded

a several archaeological sites, recommended possible future archaeological work, and prepared a report with the findings.

Lewis River Historic Properties Management Plan Implementation for the Swift No. 1 (FERC No, 2111), Yale (FERC No. 2071) and Merwin (FERC No. 935) Hydroelectric Projects, Clark, Skamania, and Cowlitz Counties, Washington **11/2006 - 05/2015**

Senior/Project Archaeologist for implementation tasks including PacifiCorp activity review; background research; archaeological and historical architectural surveys along project transmission lines, reservoir drawdown zones, timber harvest areas, and project facilities; GIS data management and mapping; site patrolling and monitoring plans; regulatory legislation and agency policies review; a damage assessment and mitigation planning for a vandalized site; tribal, State Historic Preservation Office, and United States Forest Service consultation; management of specific sites of concern to tribes; and monitoring, survey, and annual reporting.

Cultural Resource Investigations for the Transmission Line 39 Structure 3/24 Pole Replacement Project, Douglas County, Oregon **11/2014 - 04/2015**

Senior Archaeologist for background research, field investigations, and reporting for a single pole replacement within the North Umpqua Hydroelectric Project boundary.

Cultural Resources Inventory for the Proposed Alvey-Fairview No. 1 Rebuild Project, Lane, Douglas, and Coos Counties, Oregon **01/2012 - 04/2014**

Project Archaeologist for investigation for Bonneville Power Administration's rebuild project of a 97 mile long transmission line. HRA completed background research, produced a review of the archaeology and history of the project area, conducted a pedestrian survey of the transmission line right-of-way (ROW), completed subsurface investigations at identified High Probability Areas, surveyed access roads outside the ROW, and recorded and evaluated the transmission line and four substations.

Cultural Resource Survey for the John Day Powerhouse-John Day No. 1-4 Conductor Replacement Project, Sherman County, Oregon **12/2013 - 01/2014**

Project Archaeologist for cultural resource studies for Bonneville Power Administration's line conductor replacement project on four transmission lines. Ms. Ragsdale and team completed background research, field survey, and evaluation of the transmission lines.

Archaeological Monitoring at Site 35MU24, 40 Mile Loop/Blue Lake Trail Project, Multnomah County, Oregon **07/2013 - 11/2013**

Project Archaeologist for monitoring at Site 35MU24 during construction or operation of the trail extension within Blue Lake Park.

Cultural Resources Assessment for the Bravo Bentonite Mine Project, Wasco County, Oregon **02/2013 - 11/2013**

Project Archaeologist for a cultural resources assessment for the proposed Bravo Bentonite Mine. The project occupies 765 acres of land west of the John Day River near Clarno, Oregon. It is situated entirely on land owned by the Bureau of Land Management. Working in consultation with the BLM, Ms. Ragsdale and team completed background research, conducted a pedestrian survey of the project Area of Potential Effects, and drafted a technical report.

Phase II Evaluation of Site 35DO1372 Field Investigations, North Umpqua Hydroelectric Project, Douglas County, Oregon

03/2013 - 10/2013

Project Archaeologist for a Phase II evaluation of Site 35DO1372 in the North Umpqua drainage for PacifiCorp. The goal of the investigation was to determine the site's NRHP eligibility and identify the potential for transmission line pole replacement and future maintenance activities to affect the resource. HRA completed field investigations, performed artifact analysis, and drafted a technical report. The results were used for appropriate future management of the site.

Cultural Resources Survey of approximately 40 miles of WRAP Route SE-2, Pasco to Clarkston, Washington

09/2011 - 08/2013

Project Archaeologist for archaeological field survey and treatment plans in proposed ground disturbance areas where historic properties or sensitive areas are known or anticipated in proximity to a proposed fiber optic route.

Cultural Resource Surveys at Twenty-Eight Locations in Eastern Oregon, Grant and Umatilla Counties, Oregon

11/2012 - 07/2013

Project Archaeologist for an archaeological survey for the Oregon Department of Fish and Wildlife for improvements to a series of fish passages in northeastern Oregon. Ms. Ragsdale and team completed background research, conducted a pedestrian and subsurface cultural resources survey, recorded various archaeological and aboveground resources, and produced a report summarizing the work and making recommendations with regards to project effects.

Phase II Evaluation of Site 35DO606 Field Investigations, North Umpqua Hydroelectric Project, Douglas County, Oregon

05/2012 - 06/2013

Project Archaeologist for field investigations, artifact analysis, and reporting for appropriate future management of the site, to determine the site's NRHP eligibility and identify the potential for future maintenance activities to affect this resource.

Cultural Resources Survey Table Rock Road/Swanson Creek Bridge Project, Jackson County, Oregon

09/2012 - 05/2013

Project Archaeologist for cultural resources assessment for a series of road improvement projects. Ms. Ragsdale and team conducted background and archival research, completed a field survey, and drafted a technical report.

Literature Review and Cultural Resources Field Survey for the Wallicut-Baker Bay Property, Columbia Land Trust Estuarine Habitat Restoration Project, Pacific County, Washington

03/2013 - 05/2013

Project Archaeologist for a cultural resources inventory for the Wallicut-Baker Bay Columbia Land Trust Estuarine Habitat Restoration project. The project involved dike and structure removal, invasive vegetation clearing, ditch filling, tidal channel restorations, and restoration of native plant communities on a 113 acre parcel. Ms. Ragsdale and team completed background research, conducted pedestrian and subsurface field investigations, and produced a report.

BPA Albany-Eugene Monitoring, Linn and Lane Counties, Oregon

06/2012 - 02/2013

Project Archaeologist for construction monitoring of eight segments of the Albany-Eugene No. 1 Transmission Line. HRA developed a monitoring plan and an unanticipated discovery plan and

monitored all ground-disturbing construction activities to look for evidence of cultural resources 50 years or older.

Archaeological Resources Field Survey for the FY13 Pilot Butte-La Pine Wood Pole Replacement Project, Deschutes, Klamath, Lake, and Jefferson Counties, Oregon

11/2012 - 01/2013

Project Archaeologist for a cultural resource inventory for proposed pole replacement on 18 structures along the Pilot Butte-La Pine No. 1 Transmission Line. The inventory was conducted for the Bonneville Power Administration to determine if historic properties eligible for inclusion in the National Register of Historic Places were present. Ms. Ragsdale and team conducted background research, identified probability areas, performed a field survey for archaeological resources, and produced a report.

Cultural Resource Inventory, Burnt Swamp Road Maintenance and Pole Replacement, Douglas County, Oregon

08/2012 - 12/2012

Project Archaeologist for background research, field investigations, and reporting for two culvert replacement locations within the North Umpqua Hydroelectric Project boundary.

Cultural Resource Inventory for the Santiam Substation Transformer Phase Separation Project, Linn County, Oregon

10/2012 - 11/2012

Project Archaeologist for a cultural resource inventory for Bonneville Power Administration's project transformer separation project. HRA conducted background research, identified probability areas, performed a field survey for archaeological resources, and assessed project impacts to the substation.

Avoidance Plan for Site 35MU24, 40 Mile Loop Trail Project, Multnomah County, Oregon

09/2011 - 11/2012

Project Archaeologist for plan to avoid adverse effects to Site 35MU24 during construction or operation of the trail extension within Blue Lake Park.

Cultural Resources Inventory of 5,200 Acres and Archaeology Site Evaluation for Fort Carson at Pinon Canyon Maneuver Site in Training Area 7 and 10, Colorado

09/2011 - 10/2012

Project Manager for cultural resource investigations on behalf of the United States Army's Installation Management Command. The Army contracted HRA and their subcontractor Alpine Archaeological Consultants to complete work at Fort Carson's Pinon Canyon Maneuver Site in Training Areas 7 and 10. HRA and Alpine surveyed 5,200 acres, completed archaeological site evaluations, and produced a report.

Cultural Resource Inventory for the Bonneville-Hood River No. 1 Pole Replacement Project, Washington County, Oregon

07/2012 - 08/2012

Project Archaeologist for investigations for Bonneville Power Administration's project to replace three transmission line structures. HRA completed background research, identified probability areas, conducted a field survey for archaeological resources, and evaluated the transmission line.

Archaeological Survey of the Cow Creek Grade Control Project, Douglas County, Oregon

05/2012 - 08/2012

Project Archaeologist for background research, archaeological survey, reporting, and consulting with the Cow Creek Band of Umpqua Tribe of Indians on the project, who requested that a tribal monitor be allowed to observe the studies.

Archaeological Survey Canyonville Hydrotest Project, Douglas County, Oregon
05/2012 - 08/2012

Project Archaeologist for archival research and field studies in order to determine whether archaeological resources were present.

2012 Cultural Resources Services for the Swan Lake Pumped Storage Project, Klamath County, Oregon and Modoc County, California
04/2012 - 08/2012

Project Archaeologist for a field survey to identify cultural resources along a proposed transmission line route for a pumped storage project.

Albany Eugene Transmission Line Rebuild Supplemental Cultural Resources Survey, Linn and Lane County, Oregon
03/2012 - 08/2012

Project Archaeologist for supplementary cultural resource investigations for the Bonneville Power Administration's (BPA) Albany-Eugene Transmission Line Rebuild Project. The investigations were conducted determine if historic properties eligible for inclusion in the National Register of Historic Places will be affected by access roads and ford crossings designed after the initial cultural resource inventory was conducted in 2010. HRA conducted a field survey for archaeological resources and produced an addendum report.

Archaeological Data Recovery at the Medhold Site (45PI728), Old Madigan Hospital, Joint Base Lewis-McChord, Washington
08/2011 - 08/2012

Project Archaeologist for data recovery investigations at the Medhold Site to mitigate adverse effects associated with destruction of a National Register eligible prehistoric/historic site located at the Old Madigan Hospital, including public outreach tours.

Archaeological Investigations for the Lewis River 2012 Timber Harvest Surveys (Unit 10, 15, and 25)
05/2012 - 06/2012

Project Archaeologist for archaeological investigations for PacifiCorp's 2012 Lewis River timber harvest projects, located in units 10, 15, and 25. HRA completed three cultural review checklists, conducted field investigations, and produced a report.

Cultural Resources Assessment of Routes SW-2, SW-3, and SC-1 of Round One of the Washington Rural Access Project, Cowlitz and Clark Counties, Washington
03/2011 - 06/2012

Project Archaeologist for archaeological field survey and treatment plans in proposed ground disturbance areas where historic properties or sensitive areas are known or anticipated in proximity to three proposed fiber optic routes.

Cultural Resource Inventory for the FY12 Redmond District Wood Pole Replacement Project, Deschutes County, Oregon
01/2012 - 06/2012

Project Archaeologist for an inventory for Bonneville Power Administration's project to replace 12 structures along two transmission lines. Ms. Ragsdale conducted background research, produced a general review of the archaeology and history of the project area, and conducted a cultural resources survey.

Cultural Resource Inventory for the Keeler-Forest Grove No. 1 14-Pole Replacement Project, Washington County, Oregon
05/2012 - 05/2012

Project Archaeologist for an inventory for Bonneville Power Administration's project to replace 14 transmission line structures. HRA conducted background research, produced a review of the

archaeology and history of the project area, completed a field survey, and recorded and evaluated the transmission line.

Fort Lewis Archaeological Site Monitoring Joint Base Lewis-McChord Task 3, Washington
08/2011 - 04/2012

Project Archaeologist for archaeological monitoring of 39 historic and prehistoric sites to assess current conditions and record any changes to the sites since the last time the site was visited (especially changes due to vandalism, military training or natural erosion).

Willamette Greenway Trail: Chimney Park - Pier Park Pedestrian Bridge Cultural Resources Investigations
04/2011 - 03/2012

Project Archaeologist for cultural resources assessment including obtaining a permit from the Oregon SHPO, archaeological field investigations, technical reporting, and Historical Resources (Section 106) Documentation.

Archaeological Survey for the Swift FSC Project at Swift Camp, Skamania County, Washington
12/2010 - 03/2012

Project Archaeologist for presence/absence testing for archaeological resources and assisting PacifiCorp with agency and tribal consultation to fulfill requirements of the Lewis River Historic Properties Management Plan as part of efforts to improve fish passage in the river.

Cultural Resource Inventory for the Pearl-Marion No. 1 Line Structure 6/2 Relocation Project, Clackamas County, Oregon
11/2011 - 02/2012

Project Archaeologist for investigations for Bonneville Power Administration's project to relocate a transmission line structure. Ms. Ragsdale and team completed background research, conducted a field survey, and evaluated the transmission line.

Historic Trolley Line Investigations, City of Astoria, Clatsop County, Oregon
09/2011 - 01/2012

Project Archaeologist for research and recording portions of two historic trolley lines inadvertently discovered during excavations for a water pipe installation on Marine Drive and Bond Street.

Valsetz Water Storage Project Desktop Analysis, Polk County, Oregon 09/2011 - 01/2012

Project Archaeologist for SHPO records review, historic map review, and a summary report on cultural resources for a potential water storage site near the coastal mountain divide in the Valsetz basin on the Siletz River.

Baseline Wind Energy Project Environmental Impacts Assessment, Gilliam County, Oregon
10/2010 - 01/2012

Project Archaeologist for cultural resources investigations in support of project environmental review by the Oregon Energy Facility Siting Council for a 200-500 MW wind energy project. Work included archival and historic map research and archaeological survey of approximately 20,000 acres of project facilities.

Archaeological Site Verification for Fiscal Year 2010 on Prehistoric and Historic Sites Located On Joint Base Lewis-McChord, Washington
10/2010 - 01/2012

Project Archaeologist for examination of 55 sites in 13 training areas, including detailed historic research to determine the site histories of the resources followed by field investigations to determine the extent of archaeological deposits and site integrity.

Cultural Resources Field Survey for the Tri-Cities Maintenance Headquarters Project, Franklin County, Washington ***11/2011 - 12/2011***

Project Archaeologist for an inventory for Bonneville Power Administration's maintenance headquarters facility and storage yard development project. Ms. Ragsdale and team conducted background research, produced a general review of the archaeology and history of the project area, conducted a cultural resources survey, and documented one transmission line.

Archaeological Investigation of the Spokane Line Replacement Project, Spokane County, Washington ***03/2011 - 09/2011***

Project Archaeologist for research, tribal and agency consultation, field investigations, development of FERC Resource Report 4, and a technical report that meet DAHP and FERC guidelines for cultural resources surveys.

Supplemental Cultural Resources Survey for the McAllister Area Project, City of Olympia, Thurston County, WA ***06/2011 - 08/2011***

Project Archaeologist for cultural resources assessment for improvements to the McAllister Wellfield, including supplemental background research, field investigations, and reporting.

Cultural Resource Inventory for the FY11 Redmond District Critical Wood Pole Replacement Project, Wasco and Deschutes Counties, Oregon ***04/2011 - 08/2011***

Project Archaeologist for an inventory for Bonneville Power Administration's project to replace four structures along two transmission lines. Ms. Ragsdale and team completed background research, probability area identification, field survey, and recordation of the two lines to determine if historic properties were present that could be affected by the project.

Abernathy Creek Restoration Project, Cultural Resources Assessment, Cowlitz County, Washington ***03/2011 - 07/2011***

Project Archaeologist for historical map research and identifying an APE for archaeological resources, and survey and shovel probe testing to identify archaeological deposits in a stream restoration area.

Joint Base Lewis-McChord Probability Model Archaeological Survey, Pierce and Thurston Counties, Washington ***07/2009 - 07/2011***

Project Archaeologist for archaeological survey conducted to test a probability model developed to predict probable locations of prehistoric sites.

Cultural Resources Assessment of Route SW-1 of Round One of the Washington Rural Access Project, Pacific County, Washington ***02/2011 - 06/2011***

Project Archaeologist for archaeological field survey and treatment plans in proposed ground disturbance areas where historic properties or sensitive areas are known or anticipated in proximity to a proposed fiber optic route.

Archaeological Inventory Survey on Joint Base Lewis-McChord, Washington ***10/2010 - 06/2011***

Project Archaeologist for archaeological survey of 150 acres to identify cultural resources within remaining undeveloped portions of the Cantonment area and adjacent training areas.

Data Recovery Plan for Site 35DO58, Douglas County, Oregon ***12/2010 - 03/2011***

Project Archaeologist for data recovery plan to mitigate for adverse effects within the North Umpqua Hydroelectric Project associated with pole replacement and road improvements.

Supplemental Archaeological Survey for the Port of Tillamook Bay Alternate Projects, City of Tillamook, Tillamook County, Oregon ***09/2010 - 11/2010***

Project Archaeologist for background research, SHPO and Tribal consultation, field investigation, and a technical report to aid in the development of a series of industrial projects on port property.

Cultural Resources Investigation of the Commercial Street Bridge, City of Salem, Marion County, Oregon ***07/2010 - 11/2010***

Project Archaeologist for background research and field investigations to determine whether archaeological resources are located in the Area of Potential Effect for replacement of a bridge built in 1928 over Pringle Creek.

Cultural Resource Inventory Proposed Albany-Eugene Transmission Line Rebuild Project, Linn and Lane Counties, Oregon ***04/2010 - 11/2010***

Project Archaeologist for cultural resource investigations for Bonneville Power Administration's proposed rebuild project. HRA conducted background research, produced a general review of the archaeology and history of the project area, conducted a cultural resources survey, and recorded and evaluated the transmission line, two substations, and a railroad.

Archaeological Investigations, Barkley Springs Habitat Enhancement Project, Klamath County, Oregon ***05/2010 - 10/2010***

Project Archaeologist for background research to identify the land use history of the project area, limited field investigations to document the presence or absence of archaeological sites, and working closely with the Klamath Tribe to ensure that their concerns were met throughout the project.

Cultural Resource Inventory Satsop-Aberdeen No. 2 Critical Tower Replacement Project, Grays Harbor County, Washington ***06/2010 - 08/2010***

Project Archaeologist for an archaeological survey for Bonneville Power Administration's project to replace on 20 transmission line structures. Ms. Ragsdale and team conducted background research, completed a field survey, and evaluated the transmission line.

Archaeological Investigation of the Wenatchee Facilities Modifications Project, Spokane Replacement, Spokane County, Washington ***05/2010 - 08/2010***

Project Archaeologist for cultural resource investigations for a pipe replacement project. The project involved replacement of approximately 1000 meters of pipeline and use of associated work areas. HRA performed background research and conducted archaeological survey to determine whether any archaeological resources were present within the project area.

Archaeological Investigation of the Wenatchee Facilities Modifications Project, Plymouth to Zillah and Yakima to Wenatchee, Yakima, Benton, Kittitas, and Chelan Counties, Washington ***02/2010 - 08/2010***

Project Archaeologist for cultural resource investigations for a series of pipeline improvements involving smart pigging and valve replacement.

Archaeological Site Verification on Prehistoric and Historic Sites Located on Fort Lewis, Washington ***07/2009 - 08/2010***

Project Archaeologist for fiscal year 2009 site verification studies including examination of 55 sites in 15 training areas to determine the extent of archaeological deposits and site integrity.

Cultural Resource Inventory near Gray Army Airfield at Fort Lewis, Pierce County, Washington
10/2007 - 08/2010

Research Archaeologist for six cultural resource inventory tasks near Gray Army Airfield.
Principal Investigator for Task 2 site verification investigations at 55 prehistoric and historic sites to relocate, verify, record and perform limited subsurface testing on previously identified archaeological sites not currently on file with the Washington Department of Archaeology and Historic Preservation. When possible, National Register Places recommendations for the sites were verified.

Archaeological Inventory Survey at Fort Lewis, Washington
07/2009 - 05/2010

Project Archaeologist for identification of cultural resources within remaining undeveloped portions of the Cantonment area in association with anticipated growth of the base under the Army's "Grow the Army" program.

Archaeological Testing for National Register Eligibility on Twelve Site Locations, Fort Lewis, Washington
07/2009 - 04/2010

Project Archaeologist for Phase II evaluation of 12 historic and prehistoric archaeological sites to determine whether these resources are eligible for the National Register of Historic Places, in order to protect them from future disturbances associated with military training.

Cultural Resources Assessment for the Blue Lake Park Nature and Golf Learning Center for Metro, City of Portland, Oregon
02/2009 - 08/2009

Project Archaeologist for cultural resources assessment to determine whether archaeological resources were present in the proposed development area.

Fort Lewis Site Verification, Pierce County, Washington
07/2008 - 06/2009

Project Archaeologist for verification activities at 41 previously identified sites to re-identify resources, establish whether archaeological remains were present, and make recommendations concerning the eligibility of those resources for the National Register of Historic Places.

Second Phase of Bradwood Landing Pipeline Survey, Northwestern Oregon/Southwestern Washington
05/2006 - 05/2009

Field Archaeologist for Phase II cultural resources studies. The project included a critical issues assessment, a sensitivity study for designing a sampling strategy, and all cultural resources studies associated with completion of Section 106 and FERC requirements for the project.

Phase I Archaeological Survey for a 1-mile Looping Project on the Olympia Gas Line, Thurston County, Washington
03/2008 - 03/2009

Research Archaeologist for an archaeological survey for a 1-mile looping project along the Olympia Gas pipeline. The project involved coordination with three tribes and Fort Lewis, on which a portion of the project was located. HRA produced a report which including an abbreviated cultural background for the area, results of the project, and recommendations for additional studies.

KXL Pipeline Project, Eastern Texas
06/2008 - 12/2008

Project Archaeologist for cultural resources investigations in 13 counties for a proposed 36-inch crude oil pipe running through eastern Texas.

Christophe Harbour Archaeological Investigations at Sites 1, 2, and 3, St. Kitts, West Indies
11/2008

Project Archaeologist for archaeological investigations at Sites 1 and 2, slave villages with associated industrial complexes, and Site 3, a prehistoric scatter and 18th century occupation, involving excavated test units and backhoe stripping of larger areas for identification of structures and features.

Yakima County Solid Waste Programs Cheyne Landfill Expansion Project Cultural Resources Assessment, Yakima County, Washington
08/2007 - 08/2008

Research Archaeologist for development of a sensitivity map for the potential occurrence of archaeological resources, followed by field survey and shovel probes to determine whether any archaeological resources were present.

Archaeological Survey for the Hawks Prairie Project, Pierce County, Washington
10/2007 - 05/2008

Research Archaeologist for pedestrian survey of 43 acres slated for a housing development.

Beaverton CarMax Cultural Resources Study, Oregon
02/2008 - 04/2008

Research Archaeologist for a cultural resources study for a CarMax automobile dealership involving pedestrian survey and background research.

Jackson Prairie FERC Permit Variance Survey Lewis County, Washington 08/2007 - 01/2008

Research Archaeologist for archaeological survey of a 20-acre Storage Facility work site for meeting Section 106 compliance requirements of a FERC Permit Variance Survey.

Kelso Airport survey and assessment, Cowlitz County, Washington
09/2006 - 06/2007

Research Archaeologist for reconnaissance-level cultural resource assessment to determine whether proposed airport improvements have the potential to affect cultural resources that could be eligible for the National Register of Historic Places.

Plymouth to Goldendale Smart Pigging Project along the 1400 Ignacio/Sumas Line, Benton and Klickitat County, Oregon
02/2007 - 05/2007

Research Archaeologist for field investigations regarding a series of improvements at existing meter stations as well as individual block valves along the line between Goldendale and Plymouth, Washington.

Glendale Meter Station Phase I Archaeological Survey, Douglas County, Oregon
01/2007 - 03/2007

Research Archaeologist for survey of 1-acre meter station site on Williams Northwest Pipeline's Eugene/Grant's Pass Lateral pipeline.

TECHNICAL REPORTS

Ahlman, Todd M., Brian Herbel, Eric Carlson, Michael Falkner, Cathy Bialas, Lindsay Ponte, Jen Olander, Emily Ragsdale, Weber Greiser, Sam Willis, Chris Knutson, Matt Sneddon, Lynette Scriver-Colburn, and Glenn Stelter

2014 Literature Review and Cultural Resource Survey for the Pacific Direct Current Intertie (PDCI) Uprate Project, Lake, Jefferson, Crook, Deschutes, and Wasco Counties, Oregon.
Report by Historical Research Associates submitted to the Bonneville Power Administration, Portland, Oregon.

- Anderson, Frederick C., **Emily K. Ragsdale**, Jennifer Hushour, and Barbara Montgomery
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MEMORANDUM OF AGREEMENT

BETWEEN:

**JORDAN COVE ENERGY PROJECT L.P., PACIFIC CONNECTOR GAS PIPELINE,
LP,**

and

**THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW
INDIANS**

This Memorandum of Agreement (“MOA”) is made and entered into by and between Jordan Cove Energy Project L.P., a Delaware limited partnership (“JCEP”), Pacific Connector Gas Pipeline LP a Delaware limited partnership (“PCGP”) (JCEP and PCGP are hereinafter referred to as “Jordan Cove” or the “Applicant”) and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (“Tribe”).

I. PURPOSE

The purpose of this MOA is to establish a process and substantive terms to implement Policy 18 of the Coos Bay Estuary Management Plan (“CBEMP”) and parallel Coos County (“County”) land use regulations applicable in areas outside of the Coos Bay Estuary to Jordan Cove’s land use applications and approvals by Coos County and the City of North Bend (“City”). For purposes of this MOA, reference to “Policy 18” shall include both CBEMP Policy 18 and the land use regulations applicable outside of the Coos Bay Estuary. This MOA establishes the Parties’ agreed upon “appropriate measures” to protect the cultural, archaeological and historical values of the sites where the Project (as defined below) will be built as required by CBEMP Policy 18. The Parties agree this MOA applies to both new applications requiring compliance with CBEMP Policy 18 and to existing approvals that have conditions requiring compliance with CBEMP Policy 18 or its implementing land use regulations.

II. BACKGROUND

JCEP proposes to construct, operate, and eventually decommission a liquefied natural gas (“LNG”) export facility and supporting infrastructure to be located on the North Spit of Coos Bay, and PCGP proposes to construct, install, own and operate a 36-inch diameter gas pipeline and supporting infrastructure spanning 229-miles across Klamath, Jackson, Douglas, and Coos Counties in the State of Oregon (“the Pipeline”) (the LNG Terminal and the Pipeline are collectively referred to as the “Project”), all as set forth in Jordan Cove’s applications filed under

Sections 3 and 7 of the Natural Gas Act with the Federal Energy Regulatory Commission (“FERC”) on September 21, 2017.

In 2015, Jordan Cove applied to Coos County for a conditional use permit to construct and operate a LNG export terminal at Jordan Cove, located on the North Spit at Coos Bay, located in Coos County (“LNG Facility”). The LNG Facility consists of a number of components, including (1) the LNG export terminal, (2) a marine slip and access channel, (3) a barge berth, (4) a gas processing center, and (5) a fire station and emergency training center, along with associated roads and utilities. The Project would also require significant dredging, dredge disposal, shoreline stabilization, and wetland impact mitigation.

The LNG Terminal, gas processing facility, and fire station and emergency training center will be located on upland areas zoned for industrial uses. Much of the port facilities (slip, barge berth, tugboat dock, etc.) will be located in coastal shoreland areas, which are generally zoned to allow for water-dependent uses. The marine slip and access channel will require dredging in Jordan Cove, designated a natural estuary, and Henderson March, a Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) inventoried wetland.

The Coos County Hearings Officer held a hearing on December 18, 2015. On May 2, 2016, the Hearings Officer issued a decision with recommendations to approve the applications. On August 16, 2016, the County Board of Commissioners held a public meeting to deliberate on the recommendations, and voted to adopt the Hearings Officer’s finding as the County’s decision, with minor modifications. The County’s final decision was issued on August 30, 2016. An appeal was promptly filed with the Oregon Land Use Appeals Board (“LUBA Appeal”). The Tribe intervened in the LUBA Appeal.

On November 27, 2017, the LUBA issued its Final Opinion and Order (“FDO”) and remanded the matter for the County to further address CBEMP Policy 18 in the context of Jordan Cove’s conditional use permit application.

Jordan Cove has provided the Tribe with a Site Plan for the Project, as required by Policy 18, and the Parties agree that there are cultural, archaeological and historical sites identified on the County’s adopted and acknowledged inventory located within the Project area, as more specifically listed or depicted in Attachment A. The Parties further agree that there is a potential for unknown or unrecorded cultural, archaeological and/or historical sites to be encountered within the Project area.

The Tribe and the Jordan Cove met, conferred and agreed upon appropriate measures to protect the cultural, historical and archaeological values of identified inventoried sites, together with unknown or unrecorded sites that may be encountered during construction within the Project area during construction (“Cultural Resources”).

III. SUBSTANTIVE REQUIREMENTS

A. Standards

1. Policy 18 requires either no adverse impacts to cultural, historic and archeological sites within the Project area or the implementation of appropriate measures to protect the cultural, historical and archaeological values of such sites.

B. Parties Obligations

1. For any land use application for the Project that may adversely affect a Cultural Resources identified in Attachment A, Jordan Cove shall (i) submit to the County or City, as applicable, a detailed cultural resource survey prepared by an archaeologist meeting the Secretary of the Interior's Guidelines as defined in 36 CFR Part 61 Tribe regarding the nature and location of the Cultural Resource; (ii) an analysis of the impacts of the potential impacts to the Cultural Resource; and (iii) if necessary, a recommendation, after consulting with the Tribe, of appropriate measures to protect the cultural, archaeological and historical values of the Cultural Resource. If the Tribe and Jordan Cove are unable to agree upon the appropriate measures to protect such sites, either Party may invoke Section 3.11 of the Cultural Resources Protection Agreement.

2. Subject to the County imposing a condition on any approval requiring compliance with this MOA to ensure compliance with CBEMP Policy 18, the Tribe agrees that Jordan Cove's land use applications for the Project comply with CBEMP Policy 18.

3. The Parties agree that an executed copy of this MOA shall be entered into the County and/or City record for any land use applications or approvals where compliance with the CBEMP Policy 18 is at issue.

IV. APPROPRIATE MEASURES TO PROTECT CULTURAL, ARCHAEOLOGICAL AND HISTORICAL VALUES

A. The Parties have executed a comprehensive Cultural Resources Protection Agreement ("CRPA"), Attachment B, which is attached hereto and incorporated fully herein by this reference. The CRPA includes and incorporates several relevant attachments, including 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.

B. The Parties agree that the CRPA and the UDP constitute "appropriate measures" under the CBEMP Policy 18 as 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.

V. PERMIT CONDITIONS

A. The Parties agree that compliance with this MOA shall become a condition of any County and/or City issued land use permit for activities within the Project area that involve a Cultural Resource.

IN WITNESS WHEREOF, the Parties hereto have executed this MOA as of the last date written below.



**for Jordan Cove Energy Project, L.P.
and Pacific Connector Gas Pipeline, LP**



DATE



**Mark Ingersoll, Tribal Council Chairman
CONFEDERATED TRIBES OF COOS,
LOWER UMPQUA AND SIUSLAW INDIANS**

DATE

V. PERMIT CONDITIONS

A. The Parties agree that compliance with this MOA shall become a condition of any County and/or City issued land use permit for activities within the Project area that involve a Cultural Resource.

IN WITNESS WHEREOF, the Parties hereto have executed this MOA as of the last date written below.



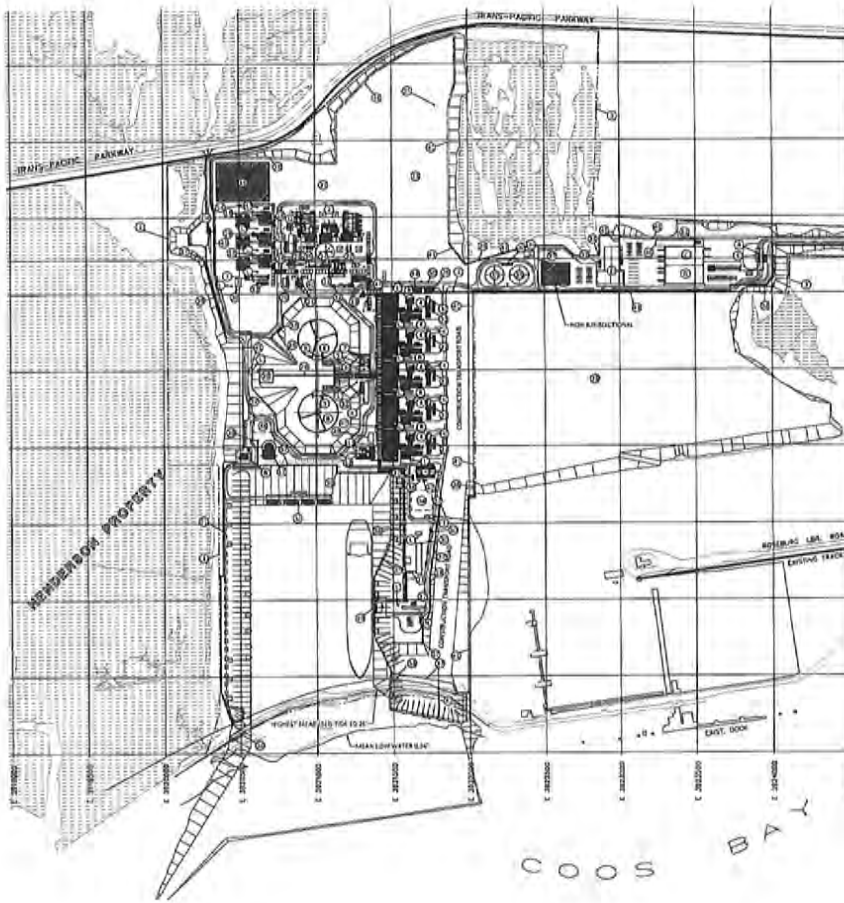
**for Jordan Cove Energy Project, L.P.
and Pacific Connector Gas Pipeline, LP**

DATE

**Mark Ingersoll, Tribal Council Chairman
CONFEDERATED TRIBES OF COOS,
LOWER UMPQUA AND SIUSLAW INDIANS**

DATE

**2002 CBEMP Goal 5 Map
on File with Coos County**



ITEM	FACILITIES LEGEND
1	FIELD WORK
2	EXISTING BUILDING
3	PROPOSED BUILDING
4	EXISTING PAVED DRIVEWAY
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ITEM	FACILITIES LEGEND
1	EXISTING DRIVEWAY
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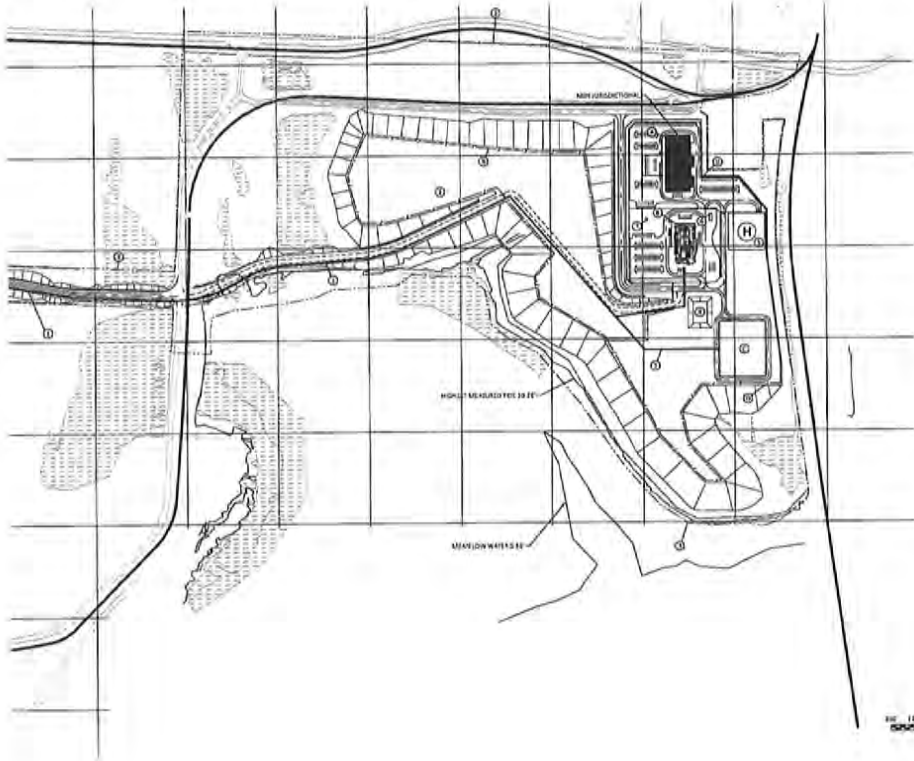


INDICATES ANNUAL NORTH BEARING OF A SURVEY POINT (OF 1942)

REELS: 1. EXISTING BOTTLE NECK BRIDGE

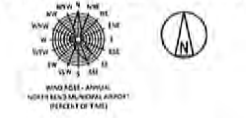
- GROUP BOUNDARY
- DEMARCATION MARK
- PROPERTY BOUNDARY
- ANNUALLY PAVED DRIVEWAY
- DRIVEWAY UNDER CONSTRUCTION
- DRIVEWAY UNDER BATTLE WITH SECURITY
- DRIVEWAY UNDER CONSTRUCTION





ITEM	FACILITIES LEGEND
A	WALL BUILDING
B	ADDITIONAL BUILDINGS
C	EXISTING BUILDING
D	STREET LIGHT

ITEM	FACILITIES LEGEND
1	ACCESS AND UTILITY TRENCH (SEE NOTE 1)
2	REPAIRS TO CONSTRUCTION FACILITIES
3	REPAIRS TO ROADWAY
4	REPAIRS TO UTILITIES
5	REPAIRS TO WATER MAINS
6	REPAIRS TO SEWER MAINS
7	REPAIRS TO GAS MAINS
8	REPAIRS TO TELEPHONE MAINS
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73	REPAIRS TO FIBER OPTIC MAINS
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86	REPAIRS TO CABLE MAINS
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94	REPAIRS TO FIBER OPTIC MAINS
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97	REPAIRS TO SEWER MAINS
98	REPAIRS TO GAS MAINS
99	REPAIRS TO TELEPHONE MAINS
100	REPAIRS TO CABLE MAINS



- NOTES:
1. REVISIONS NOTED ARE IN PENCIL
 2. FOR GENERAL PURPOSES, THE FOLLOWING TRENCH DEPTHS ARE ASSUMED:
 3. FOR ACCESS AND UTILITY TRENCHES, THE FOLLOWING DEPTHS ARE ASSUMED:
 4. TRENCHES SHALL BE EQUIPPED WITH SLOPED SIDES
 5. FILL SHALL BE:
 6. FILL SHALL BE COMPACTED TO 95% PROCTOR STANDARD
 7. FILL SHALL BE COMPACTED TO 90% PROCTOR STANDARD
 8. FILL SHALL BE COMPACTED TO 85% PROCTOR STANDARD
 9. FILL SHALL BE COMPACTED TO 80% PROCTOR STANDARD
 10. FILL SHALL BE COMPACTED TO 75% PROCTOR STANDARD
 11. FILL SHALL BE COMPACTED TO 70% PROCTOR STANDARD
 12. FILL SHALL BE COMPACTED TO 65% PROCTOR STANDARD
 13. FILL SHALL BE COMPACTED TO 60% PROCTOR STANDARD
 14. FILL SHALL BE COMPACTED TO 55% PROCTOR STANDARD
 15. FILL SHALL BE COMPACTED TO 50% PROCTOR STANDARD
 16. FILL SHALL BE COMPACTED TO 45% PROCTOR STANDARD
 17. FILL SHALL BE COMPACTED TO 40% PROCTOR STANDARD
 18. FILL SHALL BE COMPACTED TO 35% PROCTOR STANDARD
 19. FILL SHALL BE COMPACTED TO 30% PROCTOR STANDARD
 20. FILL SHALL BE COMPACTED TO 25% PROCTOR STANDARD
 21. FILL SHALL BE COMPACTED TO 20% PROCTOR STANDARD
 22. FILL SHALL BE COMPACTED TO 15% PROCTOR STANDARD
 23. FILL SHALL BE COMPACTED TO 10% PROCTOR STANDARD
 24. FILL SHALL BE COMPACTED TO 5% PROCTOR STANDARD
 25. FILL SHALL BE COMPACTED TO 0% PROCTOR STANDARD

LEGEND	DESCRIPTION
---	SECURITY FENCE
---	DEMARCATION FENCE
---	ADJACENT PAVED ROADS AND PARKING
---	NEW ROADS AND PARKING



**CULTURAL RESOURCES PROTECTION AGREEMENT
BETWEEN
THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS
AND
JORDAN COVE ENERGY PROJECT LP
AND
PACIFIC CONNECTOR GAS PIPELINE L.P.**

THIS CULTURAL RESOURCES PROTECTION AGREEMENT (“Agreement”) is entered into as of this 20th day of July, 2018 (“Effective Date”) by and between Jordan Cove Energy Project LP, a Delaware limited partnership (“JCEP”) and Pacific Connector Gas Pipeline L.P., a Delaware limited partnership (“PCGP”) (JCEP and PCGP are hereinafter referred to as “Jordan Cove”), and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, a federally recognized Indian tribe (“CTCLUSI” or the “Tribe”). Jordan Cove and the Tribe are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

I. RECITALS

WHEREAS, JCEP proposes to construct, operate, and eventually decommission a liquefied natural gas (“LNG”) export facility and supporting infrastructure to be located on the North Spit of Coos Bay (“LNG Terminal”), and PCGP proposes to construct, install, own and operate a 36-inch diameter gas pipeline and supporting infrastructure spanning 229-miles across Klamath, Jackson, Douglas, and Coos Counties in the State of Oregon (“the Pipeline”) (the LNG Terminal and the Pipeline are collectively referred to as the “Project”), all as set forth in Jordan Cove’s applications filed under Sections 3 and 7 of the Natural Gas Act with the Federal Energy Regulatory Commission (“FERC”) on September 21, 2017; and

WHEREAS, FERC is responsible for compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470, (“NHPA”), which requires it to take into account the effects of its undertakings on historic properties by identifying the properties within a proposed undertaking’s area of potential effects that are listed or eligible for listing in the National Register of Historic Places, 36 C.F.R. § 800.4, evaluate the effects of the proposed undertaking on those properties, *Id.* § 800.5, and if adverse effects are found, resolve such adverse effects through avoidance, minimization or mitigation. *Id.* At 800.6; and

WHEREAS, the Parties expect FERC, the State Historic Preservation Office (“SHPO”) and other federal agencies will document compliance with the requirements of the NHPA through execution of a memorandum of agreement that will address resolution of any adverse effects identified within the “area of potential effects” for the Project; and

WHEREAS, Jordan Cove has developed, with input from the Tribe, SHPO and other federally recognized tribes, the plan and procedures addressing Unanticipated Discoveries of Cultural Resources and Human Remains, which outlines the procedures Jordan Cove will follow should Project construction result in the unanticipated or inadvertent discovery of archaeological sites, cultural resources or human remains; and

WHEREAS, the Tribe descends from the indigenous people who resided along the southern Oregon coast for countless generations, and

WHEREAS, the Tribe's ancestral territory extends from the mouth of Tenmile Creek (Lane County) in the north, south to Fivemile Point halfway between the mouths of Whiskey Run Creek and Cut Creek (coinciding with the border between Sections 30 and 31, Township 27 South, Range 14 West, Coos County), thence east to the crest of the Coast Range to Weatherly Creek on the Umpqua River ("Ancestral Territory"); and

WHEREAS, the LNG Terminal and a portion of the Pipeline run through the Tribe's Ancestral Territory; and

WHEREAS, the Tribe is deeply concerned by the potential effects of construction and operation of the LNG Terminal and the Pipeline on the Tribe's cultural resources; and

WHEREAS, cultural resources within the Jordan Cove Area include identified and unidentified but probable archaeological sites and items such as stone tools, fish traps, residential remains, cemetery remains, secondary deposits, historic bottle dumps, early frame houses, and mill works, dating from several thousand to less than one hundred years old, and all of which are a central part of the cultural heritage of the Tribe and of the region; and;

WHEREAS, during previous iterations of the Project, archaeological studies have been conducted and two archaeological sites were identified within the area of potential effects identified at that time - Sites 35CS221 and 35CS227 as requiring additional investigation; and

WHEREAS, as set forth in this Agreement, the Tribe will participate in the identification of potential adverse impacts to Site 35CS227, and the development of measures to avoid or mitigate any such impacts through design measures for the Project, and at least one archaeologist will monitor adjacent construction activities; and

WHEREAS, on July 31, 2006 through Resolution No. 2006-097, and again on July 29, 2015 through Resolution No. 2015-049 the Tribal Council designated the Jordan Cove Area as a Site of Tribal Cultural and Religious Significance; and

WHEREAS, construction, operation and decommissioning of the Project must take place in compliance with local, state and federal laws, including Section 106 of the NHPA, the National Environmental Policy Act (NEPA), the Native American Graves Protection and Repatriation Act (NAGPRA), Oregon laws regarding sites and artifacts (Oregon Revised Statutes (ORS) 358.905 *et seq.*), Oregon laws regarding Indian Graves and Protected Objects (ORS 97.740 *et seq.*; and the Coos Bay Estuary Management Plan; and

WHEREAS, the Parties seek to work cooperatively to avoid, minimize and, where appropriate, mitigate adverse effects to the Tribe's cultural resources from the Project Activities pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, the Parties enter into this Agreement in a spirit of cooperation to provide a means by which the Parties can address the matters set forth in this Agreement with the goal of minimizing adverse effects to the Tribe's cultural resources arising from the construction, operation and decommissioning of the Project.

II. DEFINITIONS

- 2.1** "Applicable Law" means all applicable federal, state, and local laws, statutes, rules, regulations, codes, or ordinances, of a Governmental Authority.
- 2.2** "Archaeologist" means a scientist meeting all standards and requirements of the Secretary of the Interior set forth in 36 CFR Part 61, with a graduate degree in anthropology and the required experience to properly identify and record Cultural Resources.
- 2.3** "Area of Potential Effect" means that area delineated through the section 106 process for the Project.
- 2.4** "Cultural Resources" mean districts, sites, buildings, structures, Native American Human Remains and funerary objects, and all other physical objects that are significant to the Tribe's history, architecture, archeology and culture, including, but not limited to, historic properties and Traditional Cultural Properties to which the Tribe attaches religious and cultural significance.
- 2.5** "Curation" means the management and preservation of collections in accordance with the National Park Service's regulations in 36 CFR Part 79, unless otherwise agreed to in writing.
- 2.6** "Governmental Authority" means any (a) national, state, county, municipal or local government and any political subdivision thereof, (b) court or administrative tribunal, or (c) other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction.
- 2.7** "Ground Disturbing Activities" means any activity that compacts or disturbs the surface or subsurface within the Project Area. Ground Disturbance can be caused by the use of hand tools (shovels, pick axe, posthole digger, etc.), heavy equipment (excavators, backhoes, bulldozers, trenching and earthmoving equipment, etc.), and heavy trucks (large four-wheel drive trucks, dump trucks and tractor trailers, etc.). Trenching, bulldozing, excavating, scraping, vibrodensification, geo-piering and plowing are typical examples of Ground Disturbance Activities. Project types that usually involve Ground Disturbance include acquisition/demolition/relocation of

structures; vegetation management; landslide stabilization; and infrastructure projects such as utilities, storm water management, and flood control.

- 2.8** “Mitigate” means to minimize the potential effects to Cultural Resources where avoidance is not reasonably practicable. This may include, but is not limited to, data recovery, Monitoring, or relocation or Curation of the Cultural Resource.
- 2.9** “Monitor” means observance of Project Activities by a person determined by CTCLUSI to be knowledgeable and qualified in identifying Cultural Resources.
- 2.10** “Native American Human Remains” means the physical remains or partial remains of the body of a person of established or probable Native American ancestry.
- 2.11** “Person” means an individual, entity, corporation, partnership, limited liability company, joint venture, association, or unincorporated association or Governmental Authority.
- 2.12** “Project Activities” means testing, pre-construction, construction, operation, and decommissioning Ground Disturbing Activities within the Project Area that are reasonably likely to have adverse effects on Cultural Resources.
- 2.13** “Project Area” means the area depicted on Exhibit “A” attached hereto, as it may be amended from time to time.
- 2.14** “Traditional Cultural Property” or “TCP” means a property that is either eligible for listing or listed on the National Register of Historical Places (“NRHP”) based on its associations with the cultural practices, traditions, or beliefs, of the Tribe. TCPs are rooted in the Tribe’s history and are important in maintaining the continuing cultural identity of the Tribe.
- 2.15** “Unanticipated Discovery” means the unintentional encounter or discovery of Cultural Resources or Human Remains.
- 2.16** “Unanticipated Discovery Plan” or “UDP” means the agreed-upon plan attached to the FERC Memorandum of Agreement resulting from the conclusion of the section 106 process, a draft of which is attached to this Agreement as Exhibit “B”, or, until issuance of a certificate by the FERC, an agreed upon-plan that is required by a Governmental Authority as a condition of an authorization, certification, approval or permit associated with Project Activities, or, in the absence of an agreed-upon plan that is required by a Governmental Authority, Exhibit B.

III. STIPULATIONS

3.1 Purpose. This Agreement sets forth the terms and conditions governing:

- (a) communication and information exchange protocols between the Parties;

- (b) the Tribe's participation in the identification of Cultural Resources within the Project Area; assessment of adverse impacts to Cultural Resources; and the development of measures to avoid, minimize or mitigate any potential effects in accordance with Applicable Law, and;
- (c) Monitoring of Cultural Resources during Project Activities; and
- (d) reimbursement to the Tribe for reasonable costs associated with implementation of this Agreement in accordance with the terms of the cost reimbursement agreement attached hereto as Exhibit 'C' and to fund a full-time position within the Tribe's Historic Preservation Office in accordance with the terms of section 3.9.

3.2 Mitigation Preferences.

- (a) Jordan Cove agrees to avoid adverse impacts to Cultural Resources to the extent reasonably practicable. If adverse impacts are unavoidable then Jordan Cove agrees to minimize or mitigate any potential impacts in accordance with Applicable Law and considering the preferences set out in subparagraph (b) of this Section 3.2.
- (b) For Project Activities that may impact Cultural Resources, Jordan Cove shall, in accordance with Applicable Law, apply the following order of preference with respect to preferred mitigation methodologies:
 - (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and;
 - (5) Compensating for the impact, including but not limited to the relocation or Curation of the Cultural Resource.

3.3 Communication and Information Sharing. The Parties agree to the following information sharing and communication protocols:

- (a) Within thirty (30) days of execution of this Agreement, Jordan Cove will identify individuals who will be the primary contact(s) or their designated representative for the purposes of implementing this Agreement and principal(s) who will be responsible for overall compliance with the Agreement and resolving any disputes in accordance with the terms of this Agreement; CTCLUSI will identify tribal officials or representatives who will be the primary contact for the purposes of implementing this Agreement and principals responsible for resolving any disputes.
- (b) Jordan Cove will provide CTCLUSI with complete copies of permit applications required for Project Activities and provide CTCLUSI an opportunity to comment on such permit applications pursuant to Applicable law.
- (c) Prior to all Project Activities, Jordan Cove will seek CTCLUSI's expertise and opinions related to potential discovery of Cultural Resources in the Project Area and the need for Monitoring of the Project Activities. CTCLUSI shall provide such expertise and opinions to Jordan Cove pursuant to subsection (f) below.
- (c) Jordan Cove will provide timely, good faith responses to, and will take into consideration all timely written comments received from CTCLUSI related to Cultural Resources that could be affected by Project Activities pursuant to the terms of this Agreement.
- (d) Jordan Cove will provide CTCLUSI with a schedule for all Project Activities, updated at a minimum quarterly, identifying dates on which or by which comments or Monitoring would be required under the terms of this Agreement ("Project Activity Schedule").
- (e) Jordan Cove principals and CTCLUSI principals, in each case identified in accordance with subsection (a) above, will meet not less than quarterly and in coordination with the submission of updated Project Activities schedules, to discuss such schedules. CTCLUSI shall identify which Project Activities require Monitoring or comments to be provided by CTCLUSI. At least once a year, during a meeting to be held in February, the principals shall also review progress under the Agreement and whether the Agreement needs to be amended.
- (f) In addition to the Project Activity Schedule, prior to undertaking each Project Activity, Jordan Cove will provide CTCLUSI with a Project Activity Notice in a form substantially as included as Exhibit "D". CTCLUSI shall provide any response or comment to such Project Activity Notice pursuant to the schedule set out below:
 - 1. Not less than thirty (30) days, unless such notification is not practicable, before commencing any Project Activities requiring a Monitor from

CTCLUSI, Jordan Cove will provide CTCLUSI with a Project Activity Notice describing the activity to be taken, timing and any other information reasonably necessary to facilitate CTCLUSI Monitoring of such Project Activity, such as the scope of equipment to be used and number of construction fronts. If there are any material changes to the plans set out in the Project Activity Notice, Jordan Cove agrees to provide CTCLUSI with an additional notice and opportunity to comment. In the event of an emergency, Jordan Cove agrees to provide CTCLUSI with a summary of the Project Activities undertaken during the emergency, as soon as practicable following conclusion of the emergency.

2. Within twenty (20) days of receiving the Project Activity Notice, CTCLUSI will submit to Jordan Cove any comments or concerns, including requests for additional investigations or surveys, related to the proposed Project Activity.
 3. Within seven (7) days of receiving CTCLUSI's comments, Jordan Cove will provide CTCLUSI notice regarding any changes Jordan Cove decides to make to the proposed Project Activity based on CTCLUSI's comments.
- (d) The Parties will use reasonable efforts to informally resolve disputes arising under this Section 3.3. Disputes arising under this Section 3.3 that cannot be informally resolved between the Parties shall be subject to the dispute resolution provisions of this Agreement.
- (e) Jordan Cove agrees to provide notice to staff, contractors, and consultants engaged by Jordan Cove to undertake Project Activities that are reasonably likely to affect Cultural Resources of the provisions of this Agreement and Jordan Cove's responsibilities under this Agreement.
- (h) Jordan Cove agrees to work with CTCLUSI to develop a cultural resources awareness and training program, which shall be utilized during the onboarding process for all employees and contractors engaged in Project Activities at the LNG Terminal.

3.4 Identification of Cultural Resources; Assessment and Resolution of Adverse Impacts

- (a) The Parties agree to work cooperatively to identify Cultural Resources and to assess and resolve any adverse impacts thereto in compliance with this Agreement and Applicable Laws. To the extent of any conflict, the provisions of Applicable Laws shall control.
- (b) The Parties agree that the scope of Cultural Resource identification efforts shall, to the extent allowed by Applicable Law, include reference to and use of ethnographic analysis reports.

3.5 Monitoring During Applicable Project Activities.

- (a) CTCLUSI may have Monitors present at Project Activities. All Monitors may be required to execute an Access Agreement substantially in the form attached hereto as Exhibit "E" for access to any lands within the Project Area, other than federal lands, that are owned or controlled by Jordan Cove.
- (b) JCEP and PCGP will permit Tribal staff members or designated representatives ("Tribal Monitors") to be present in the Project Area, at the Tribe's option, to monitor Applicable Project Activities, subject to applicable access, safety, and security rules and policies.
- (c) Jordan Cove will ensure that (1) the Tribe is provided reasonable notice of Project Activities as set out in this Agreement, and (2) Tribal Monitor are granted reasonable access to the Project Area and any Project Activities as necessary to perform his or her duties as a Tribal Monitor. Jordan Cove shall provide to CTCLUSI the equipment set out in the Project Activity Notice.
- (d) Tribal Monitor access to any portion of the Project Area shall be subject to all applicable security and safety rules, laws, and regulations, and Jordan Cove's and its contractors' security and safety policies, including requirements relating to the use of proper clothing and safety equipment, including safety glasses or goggles, masks, rebreathers, hazmat suits, hard hats, or safety vests, provided that Jordan Cove reserves the right for itself and its contractors to prohibit access to any portion of the Project Area by any Person, including any Tribal Monitors, in its sole and absolute discretion to the extent of any actual or threatened breach of any such rules, laws, regulations, or policies.
- (e) Jordan Cove acknowledges that the Tribe may incur certain costs in connection with a qualified Tribal Monitor's archaeological and/or safety training directly related to monitoring activities hereunder. Jordan Cove will reimburse the Tribe for all reasonable costs associated with Monitoring activities, pursuant to the Cost Recovery Agreement between the Parties, which is attached hereto as Exhibit "C" and incorporated herein by this reference.
- (f) Jordan Cove shall hold the Tribe and its officers and employees harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses (including attorney's fees) arising out of injury or death to persons, or damage to property caused by the negligence of Jordan Cove, its officers, employees, agents, assigns, and subcontractors in the performance of obligations arising under this Agreement, provided the Tribe promptly notifies Jordan Cove in writing of any such claim, and provided that Jordan Cove shall have the exclusive right to control the defense.

- (g) The Tribe shall hold Jordan Cove, its officers and employees harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses (including attorney's fees) arising out of injury or death to persons, or damage to property caused by the negligence of the Tribe and its officials, employees, agents, and subcontractors in the performance of obligations arising under this Agreement, provided: (i) Jordan Cove promptly notifies the Tribe in writing of any such claim; (ii) the Tribe shall have the exclusive right to control the defense; and (iii) the amount does not exceed and is otherwise covered by the Tribe's liability insurance.
- (h) The Tribe shall maintain, during the term and each renewal or extension of this Agreement, at its own expense, the following insurance: (i) statutory workers' compensation insurance or equivalent industrial accident insurance covering all employees as required by law; (ii) commercial automobile liability coverage (if the use of automobiles is required) for all owned, hired, borrowed, leased, or non-owned automobiles, providing bodily injury and property damage liability coverage with a combined single limit of \$1,000,000; and (iii) commercial general liability insurance (including, but not limited to, premises operations, property damage, products/completed operations, contractual liability, and personal injury) with limits of at least \$1,000,000 per occurrence/ \$2,000,000 annual aggregate.
- (i) Upon request of the Tribal Council, and subject to any necessary safety requirements, Jordan Cove shall allow reasonable site access to Tribal Council Members and to Tribal Council authorized Tribal cultural leaders, to perform ceremonies and blessings prior to a Tribal Council identified Ground Disturbing Activity.

3.6 Inadvertent Discoveries.

If Cultural Resources are discovered in the Project Area, including during Project Activities, Jordan Cove agrees to:

- (a) Promptly inform the Tribe of the discovery; and
- (b) Comply with the procedures and protocols set forth in the UDP, which is attached hereto as Exhibit "B" and incorporated herein by this reference. The Parties expect the UDP to remain substantially in the form as the document attached hereto as this document has been provided to FERC.

3.7 Confidentiality

For purposes of this Agreement, the Parties agree as follows:

- (a) Tribal Confidential Information means all information whether written or oral, including ethnographic reports, provided by the Tribe to Jordan Cove regarding: potential burial sites, archeological objects, funerary objects or objects of cultural patrimony as defined by ORS 358.905, sacred or religious sites and traditional gathering locations.
- (b) Jordan Cove Confidential Information means all information whether written or oral provided by Jordan Cove which it designates as confidential at the time the information is provided to the Tribe in furtherance of the activities under this agreement. Jordan Cove Confidential Information, includes, but is not limited to, technical reports, operations information, construction plans and similar information.
- (c) Receiving Party means the party receiving Confidential Information.
- (d) Disclosing Party means the party disclosing the Confidential Information.
- (e) Confidential Information shall not include information that (i) is available in the public domain; (ii) was in the Receiving Party's possession prior to the date of this Agreement and not covered by any confidentiality requirements; (iii) the Receiving Party received from a third party who was not under any obligation of confidentiality with respect to the information.
- (f) The Receiving Party will not disclose the Disclosing Party's Confidential Information and will maintain such information as confidential using practices no less stringent than the Receiving Party applies to its own confidential information. The Receiving Party agrees not to disclose Confidential Information without the prior written consent of the Disclosing Party; provided, however, the Receiving Party may disclose Confidential Information to the Receiving Party's affiliates, officers, directors, partners, employees, accountants, advisors, consultant and representatives (Related Persons) but only to the extent necessary for purposes of this Agreement. The Receiving Party shall be responsible for any acts or omissions of its Related Persons with respect to Confidential Information provided pursuant to the terms of this Agreement.
- (g) If Jordan Cove or the Tribe become aware of a disclosure of Confidential Information in violation of the terms of this Agreement, the party making such discovery shall promptly notify the other party of such disclosure. Jordan Cove and the Tribe agree that the unauthorized disclosure of Confidential Information would cause irreparable harm that would be difficult to quantify. Accordingly, Jordan Cove and the Tribe agree the Disclosing Party would be entitled to injunctive relief in the event of a breach of this Agreement with respect to Confidential Information in addition to any other remedies that may be available to the Disclosing Party at law or in equity. The Receiving Party shall not contest the Disclosing Party's right to

seek any such relief on the grounds that monetary damages would be available to compensate the Disclosing Party for any such breach.

- (h) Nothing in this Agreement shall convey to either Party any rights in or to the Confidential Information, including any rights of ownership or license, whether arising under patent, copyright, trademark, trade secret or any other intellectual property or other proprietary right.
- (i) Notwithstanding anything contained herein to the contrary, the commitments and obligations set forth in this Section 3.7 shall continue until the earlier to occur of Jordan Cove notifying the Tribe that (i) Project Activities are complete or (ii) the Project has been cancelled.

3.8 Funding of full time position. Jordan Cove agrees to provide in accordance with the terms of a separate agreement to be entered into between CTCLUSI and Jordan Cove within sixty (60) days of execution of this Agreement funding for a full-time position to assist CTCLUSI's Tribal Historic Preservation Office in carrying out CTCLUSI's obligations under this Agreement and other duties as assigned by CTCLUSI.

3.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without reference to conflicts of law rules, and the federal laws of the United States.

3.10 Dispute Resolution.

- (a) All standards and procedures contained within Applicable Law pertinent to the provisions of this Agreement shall control.
- (b) The Parties desire to prevent disputes regarding compliance with this Agreement whenever possible, and to quickly and effectively resolve disagreements when they arise. All disputes under this Agreement shall be considered Confidential Information and shall be subject to the provisions of Section 3.7, subject to Applicable Law.
- (c) To the extent possible, the Parties will use reasonable efforts to negotiate a mutually agreeable resolution to any disagreements by the parties responsible for the day-to-day implementation of the provisions of this Agreement. In the event such parties are not able to resolve any disagreements within a reasonable period of time, the dispute shall be elevated to the principals designated under section 3.3(a) by either party providing written notice to the other party's principal.

- (d) Upon receipt of a notice as set out in subparagraph (c) above, the principals agree to meet in person no later than ten (10) days after receipt of the notice, unless the Parties mutually agree to a different time and manner of meeting.
- (e) The Principals will attempt, in good faith, to resolve the dispute between the Parties.
- (f) If the parties are unable to resolve the disputed issues through joint discussions under this Section, either party may request arbitration by providing a written arbitration demand to the other party. The party on whom the demand is served shall have ten (10) days after receipt of the arbitration demand to advise the other party as to whether it will agree to arbitration.
- (g) If the parties do not agree to arbitrate, then each party reserves the right to terminate this Agreement pursuant to Section 3.13, and/or to argue that failure to comply with this Agreement results in a violation of Applicable Law and any permits, certifications or approvals related to the Project.
- (h) Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) or other mutually agreed-upon procedures. All arbitration hearings shall be held at Coos Bay, Oregon or such other place mutually agreed to by the Parties. If either Party fails to abide by such arbitration ruling, the Parties agree to enforce the arbitration award in Oregon state courts or any federal court having jurisdiction.
- (i) In determining any matter(s) the arbitrators shall apply the terms of the Agreement, without adding to, modifying or changing the terms in any respect, and shall apply the laws of the State of Oregon.
- (j) Prior to submitting to arbitration, the Parties may mutually agree to engage in mediation, in which case the Commercial Mediation Procedures of the AAA shall apply or other mutually agreed-upon procedures.

3.11 Limited Waiver of Sovereign Immunity

- (a) CTCLUSI hereby grants an irrevocable, limited waiver of sovereign immunity to compel arbitration, once the Tribe has provided written notice to agree to arbitration pursuant to Subsection 3.11(f), and to enforcement of an arbitration award. Furthermore, for the sole and limited purpose of enforcement of any arbitration award, CTCLUSI expressly waives its sovereign immunity from suit by Jordan Cove, JCEP and PCGP and consents to be sued in the Oregon state courts or, if Oregon state courts lack jurisdiction over the suit, then in the United States District Court for the District of Oregon and appeals may be made to the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court.

- (b) Relief against the Tribe is specifically limited to the following actions and remedies:
- (1) Injunctive relief as necessary to enforce arbitration awards or orders pursuant to Section 3.10.
 - (2) An Action to compel arbitration, once the Tribe has provided written notice to agree to arbitration pursuant to Subsection 3.10(f).

3.12 Term and Termination

- (a) This Agreement shall be for a term of ten (10) years from the Effective Date unless extended upon the mutual written agreement of the Parties.
- (b) This Agreement may be terminated by either Party by providing thirty (30) days written notice to the other Party. If this Agreement is terminated pursuant to this Section, then each party reserves all rights to argue that termination of this Agreement results in a violation of Applicable Laws and any permits, certifications or approvals related to the Project.

3.13 General Provisions.

- (a) If any term or provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction for any reason, the Parties agree to modify such provision to the extent required to render it valid, legal, or enforceable, and the remainder of this Agreement shall in no way be affected and shall remain valid and enforceable for all purposes.
- (b) All words in this Agreement shall be deemed to include any number or gender as the context or sense of this Agreement requires. The words "will," "shall," and "must" in this Agreement indicate a mandatory obligation subject to the terms hereof and Applicable Law. The use of the words "include," "includes," and "including" followed by one or more examples is intended to be illustrative and shall be deemed to be followed by the words "without limitation." The words "day" and "days" refer to calendar days unless otherwise stated. The words "month" and "months" refer to calendar months unless otherwise stated. The words "hereof", "hereto" and "herein" refer to this Agreement, and are not limited to the article, section, paragraph or clause in which such words are used.
- (c) The headings and captions contained herein are for the purposes of convenience and reference only and are not to be construed as a part of this Agreement. All references to any Section in this Agreement are to Sections of this Agreement, unless otherwise noted.
- (d) No third party shall be a beneficiary of a Party's rights or benefits under this Agreement, other than as expressly set forth herein.

- (e) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY WITH RESPECT TO ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT LOSSES OR DAMAGES FROM ITS PERFORMANCE UNDER THIS AGREEMENT OR ANY FAILURE OF PERFORMANCE HEREUNDER OR RELATED HERETO, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT, STRICT LIABILITY OT OTHERWISE; provided, however, that the limitations of this clause (e) shall not apply to any rights to defense and indemnification of Jordan Cove, the Tribe or any other Indemnified Parties as provided elsewhere in this Agreement.
- (f) Except as the Parties may otherwise agree in writing or as otherwise provided herein, each Party shall bear its respective fees, costs and expenses in connection with this Agreement and the transactions contemplated hereby.
- (g) No waiver by any Party, whether express or implied, of any right under any provision of this Agreement shall constitute a waiver of such Party's right at any other time or a waiver of such Party's rights under any other provision of this Agreement unless it is made in writing. No failure by any Party hereto to take any action with respect to any breach of this Agreement or default by another Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default by such latter Party.
- (h) **Each Party acknowledges that it and its attorneys have been given an equal opportunity to draft, review, negotiate, and modify the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities or any other matters are to be resolved against the drafting party, or any similar rule operating against the drafter, shall not be applicable to the construction or interpretation of this Agreement.**
- (i) This Agreement shall apply to Jordan Cove's successors and assigns.
- (j) Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be delivered by (1) hand, (2) same-day or overnight courier, (3) certified mail, return receipt requested, or (4) email to the other Party at the address set forth below:
- i. If to the Tribe:
- Confederated Tribes of Coos,

Lower Umpqua and Siuslaw Indians
1245 Fulton Avenue
Coos Bay, Oregon 97420
Attention: Tribal Council Chairman
E-mail: MCorvi@ctclusi.org (with CC to SScott@ctclusi.org and
scott@wheatlawoffices.com)

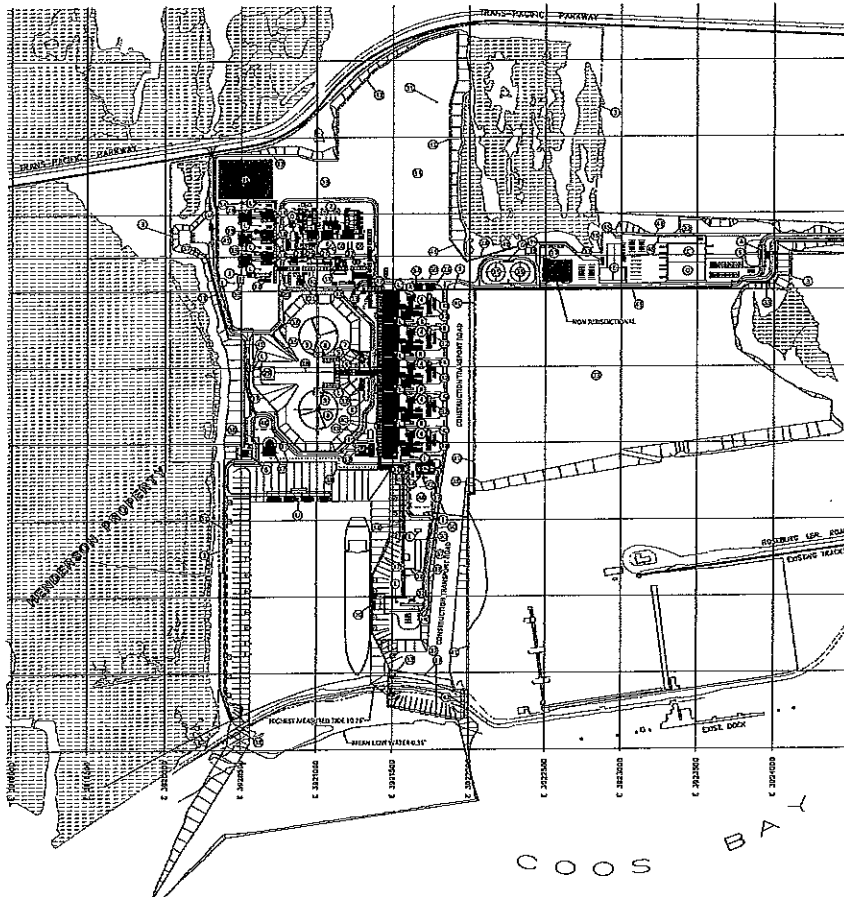
ii. If to Jordan Cove:

Jordan Cove Energy Project L.P.
Pacific Connector Gas Pipeline L.P.
c/o Jordan Cove LNG L.L.C.
5615 Kirby Drive, Suite 500
Houston, Texas 77005
Attention: Manager Tribal Affairs
E-mail: (with a CC to
neades@pembina.com)

Each Party shall have the right to change the place to which notice shall be sent or delivered by sending a written notice to the other Party in like manner. Notices, demands, offers or other written instruments shall be deemed to be received: (1) if delivered by hand, by same-day or overnight courier service, or certified mail on the date actually received at the address of the intended recipient; or (2) if sent by email, upon actual receipt.

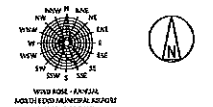
[Signature pages follow.]

Exhibit A
Project Area

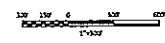


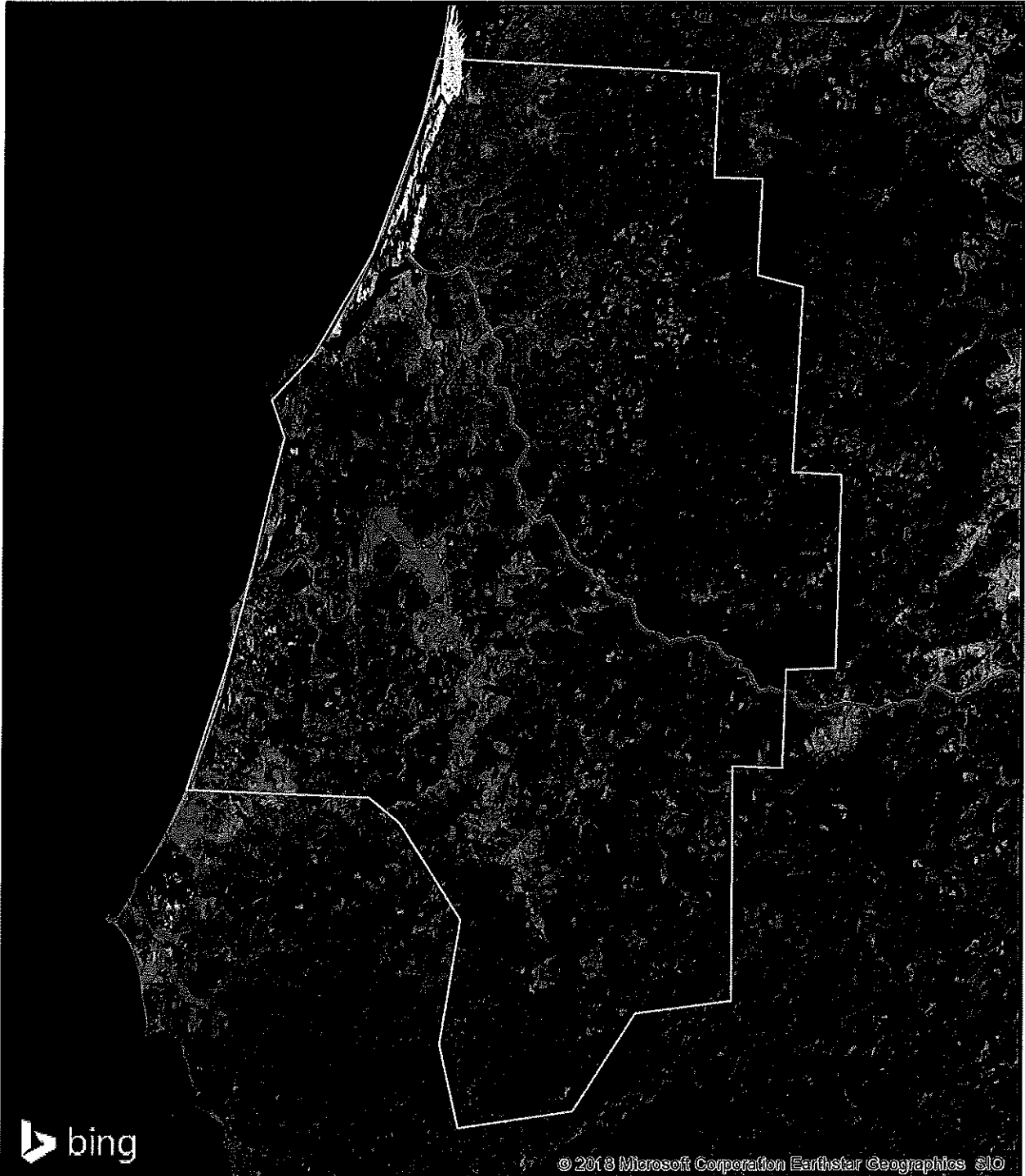
(FYA)	FACILITIES LEGEND
1	HEAVY GAS STORAGE
2	SLURRY STORAGE TANK
3	PROPERTY BOUNDARY
4	INDUSTRIAL WASTE TREATMENT TANKS
5	WATER TREATMENT PLANT BUILDING
6	WATER STORAGE TANK
7	WATER STORAGE TANK (WITH DRAIN)
8	WATER STORAGE TANK
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(FYA)	FACILITIES LEGEND
A	WATER STORAGE TANK
B	WATER STORAGE TANK
C	WATER STORAGE TANK
D	WATER STORAGE TANK
E	WATER STORAGE TANK
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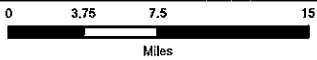


- 1. SECURITY FENCE
- 2. DEMARCATION FENCE
- 3. PROPERTY BOUNDARY
- 4. ASPHALT PAVED ROADS AND PARKING
- 5. GRAVEL ROAD AND PARKING
- 6. DRAINAGE CANALS AND DRAINAGE
- 7. PERMISSIBLE WALKER ROUTES
- 8. PERMISSIBLE WALKER ROUTES WITH SECURITY FENCE





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REV
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REVISED DATE:
Date: 8/7/2018

EXHIBIT



PACIFIC CONNECTOR GAS PIPELINE, LP

MAP BOOK

COOS COUNTY, OREGON

□ Coos County
— Route

Exhibit "B"
Unanticipated Discovery Plan



Jordan Cove LNG, LLC

DRAFT

Unanticipated Discovery Plan

Jordan Cove Energy Project

and

Pacific Connector Gas Pipeline Project

July 2018

- 18 -

Unanticipated Discovery Plan

1.0 Introduction

This document provides an Unanticipated Discovery Plan (UDP) that will be followed by Jordan Cove Energy Project, LP (JCEP) and Pacific Connector Gas Project, LP (PCGP) (JCEP and PCGP are collectively referred to as "Jordan Cove"). JCEP is seeking authorization from the Federal Energy Regulatory Commission (FERC) to site, construct and operate a natural gas liquefaction and liquefied natural gas (LNG) export facility on the North Spit of Coos Bay, Oregon (LNG Terminal). PCGP will simultaneously be seeking an authorization from FERC to construct and operate an approximately 229-mile long, 36-inch diameter natural gas transmission pipeline from near Malin, Oregon to the LNG Terminal (the LNG Terminal and Pipeline are collectively referred to as the "Project"). This UDP provides the procedures Jordan Cove, its personnel and consultants will follow in the event that unanticipated discoveries of historic properties, archaeological objects, archaeological sites, or human remains, funerary objects, sacred items and items of cultural patrimony are made during the construction and operation of the Project.

Potential unanticipated discoveries fall into two primary classes. The first class includes archaeological objects, materials or features such as hearths, pit features, or remains of dwellings. The second class consists of human remains, funerary objects, sacred items and items of cultural patrimony. The two classes are governed by different laws and regulations and require different treatment procedures.

Procedures for dealing with unanticipated discovery of human remains are outlined in Section 3.0, and procedures for dealing with the unanticipated discovery of archaeological objects are outlined in Section 4.0.

This UDP is intended to:

- Comply with applicable Federal and State and local laws and regulations – the National Historic Preservation Act of 1966, 16 U.S.C. § 470 and its implementing regulations at 36 CFR Part 800, 36 CFR Part 63; 36 CFR Part 61; the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. §§ 3001 *et. seq.* and its implementing regulations at 43 CFR Part 10; Archaeological Resources Protection Act of 1979, as amended and its implementing regulations at 36 CFR Part 296; Oregon Revised Statutes (ORS) 97.740-97.760 for Indian Graves and Protected Objects; ORS 358.905-358.961 for the Protection of Archaeological Objects and Sites; ORS 390.235 for Archaeological Permit Requirements; OAR 736-051-0080 through 0090 Administrative Rules for Oregon Archaeological Excavation Permits; the Government to Government Cultural Resource Cluster Group "Treatment of Native American Human Remains Discovered Inadvertently or Through Criminal Investigations on Private and Non-Federal Public Lands in Oregon"; and Federal Energy Regulatory Commission's Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects (July 2017);
- Describe to regulatory and review agencies the procedure Jordan Cove and its contractors will follow to address the unanticipated discovery of archaeological

objects, historic properties or human remains, funerary objects, sacred items and items of cultural patrimony; and

- Provide direction and guidance to Project personnel as to the proper procedure to be followed should an unanticipated discovery occur.
- Provide contact information for all parties that require notification – State police, LCIS, SHPO and affected Tribes.

2.0 Training and Orientation

Jordan Cove, in consultation with the FERC, will designate a Cultural Resources Coordinator (CRC) who will be responsible for all archaeological materials and historic properties-related activities on the Project. The CRC will be a professional archaeologist (meeting the Secretary of the Interior's Guidelines as defined in 36 CFR 61). For practical purposes, the CRC may designate an Environmental Inspector (EI) or other supervisor to provide notifications required under this UDP but may not delegate any of the CRC's other responsibilities, unless the EI is a professional archaeologist and meets the requirements of 36 C.F.R. Part 61, in which case the EI may act in the CRC's place if the CRC is unavailable. The CRC will provide archaeological/cultural resource orientation for Jordan Cove and advise construction contractors and personnel on the procedures to follow in the event that an unanticipated discovery is made. Training will occur as part of the pre-construction on-site training program for foremen, environmental inspectors (EIs), construction supervisors, and all other supervisory personnel who supervise any construction or inspection activities. Training will involve both general and detailed instructions regarding how to follow the requirements of the UDP, basic archaeological artifact and site identification, and an overview of the state and federal laws pertaining to the protection of archaeological resources. General instructions shall include:

- Ensure that all construction supervisors have contact information for the CRC.
- Stop work immediately if archaeological objects (artifacts, historic or prehistoric features [wells, privies, shell middens, etc.], bones, or any item suspected of being archaeological), funerary objects, sacred items and items of cultural patrimony are identified.
- Contact the construction supervisor immediately. The construction supervisor shall notify the CRC or its designee as soon as possible.
- Restrict access to the discovery.
- Drawings, photographs, or analysis will not be permitted without consultation and approval from the appropriate Indian Tribes.
- The discovery will not be shared with the media or individuals not pertinent to the assessment or protection of the remains.
- Comply with all unanticipated discovery procedures.
- Treat human remains, funerary objects, sacred objects, and objects of cultural patrimony with dignity and respect. Do not touch any human remains.
- A description of the potential penalties for failure to report discoveries or to comply with the procedures outlined in this UDP.
- The penalties that could be incurred by anyone who illegally collects or destroys any archaeological objects, archaeological sites, or historical artifacts, funerary

objects, sacred objects and objects of cultural patrimony and associated materials and/or their context.

3.0 Procedures for the Inadvertent Discovery of Human Remains or Burial Sites

Any human remains, burial sites, or burial related objects that are discovered during construction will at all times be treated with dignity and respect.

Pursuant to ORS 97.745(4), if suspected Native American remains are encountered on private or non-federal public lands, Jordan Cove will notify the state police, SHPO, the Oregon Commission on Indian Services (OCIS), the FERC, and the appropriate Indian Tribe(s) as soon as possible but in all cases, within twenty-four hours of the determination.

In accordance with NAGPRA, if the remains are found on federal lands, in addition to contacting those entities listed in the previous paragraph, the CRC will immediately contact the applicable federal land management agency in accordance with the requirements of 43 C.F.R. § 10.4. The federal land management agency will then be responsible for further contact with any appropriate Indian Tribes.

Indian Tribes that may have ancestral burial sites in the Project area include, but are not limited to, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians, and the Klamath Tribes.

The CRC will, in all cases of a potential discovery, complete a form or provide other written documentation acceptable to FERC and SHPO to document a potential discovery. The CRC and all EIs will comply with the following procedures:

- A. If any Jordan Cove personnel or contractors believe he or she has made an unanticipated discovery of human remains (skeletal, teeth or hair), the remains will not be moved or disturbed, and the construction supervisor shall be immediately notified. The construction supervisor shall, in turn, immediately notify the CRC and the appropriate EI.
- B. The CRC or its designee will be responsible for taking appropriate steps to protect the discovery. The construction activity that resulted in the exposure of the discovery will be immediately halted, followed, as soon as possible, by the cessation of all other ground-disturbing activity within 300 ft (91 m) of the discovery, unless a greater distance is required by SHPO to protect a discovery. Construction activities may continue elsewhere on the Project site. After all construction activity within 300 ft (91 m) of the discovery has been halted, the following steps will be taken to ensure that no further disturbance occurs to the discovery:
 - i) secure an area at least 300 ft (91 m) around the discovery using orange safety fencing or a similar material, as necessary;
 - ii) prevent vehicle traffic through the area immediately surrounding the discovery except as necessary to remove vehicles and equipment already present in the area;
 - iii) consult with the SHPO to determine whether a 24-hour guard is needed to ensure that the find is secure at all times or consult with the applicable federal land management agency if the lands are federal;

- iv) limit access to the area surrounding the discovery to essential personnel, who will be identified by the CRC; and
- v) If the remains are suspected to be Native American, no photographs will be allowed unless approval is provided by the appropriate Indian Tribe(s). If the state police determine the discovery to be a crime scene, then any photographs will be taken at the direction of the state police.

C. The CRC or its designee will immediately call the state police, SHPO, the LCIS, the appropriate Indian Tribe(s) and FERC, who will, according to their responsibilities, examine the discovery and determine whether it should be treated as a crime scene or as a human burial/cemetery. The CRC or its qualified designee will also have a physical anthropologist examine the discovery to concur with the coroner on whether the remains are human and whether or not they are contemporary. The physical anthropologist will have been previously agreed upon by the Indian Tribe(s). In the event of a disagreement between the coroner and the physical anthropologist, the opinion of the physical anthropologist shall control. A forensic anthropologist may also be required to determine whether the remains are of Native American ancestry. If the remains are determined to be or suspected to be of Native American ancestry, no photographs will be taken. If the discovery occurs on federal lands, the CRC will also immediately notify the applicable federal land management agency, and the Federal Land Archaeologist, if qualified to do so, will make, in consultation with the appropriate Indian Tribe(s), the determination as to whether the remains are human and of possible Native American ancestry. If the Federal Land Archaeologist is not qualified to determine whether the remains are human, the Federal Land Archaeologist will engage a forensic anthropologist or osteo-archaeologist, who shall consult with the appropriate Indian Tribes to determine whether the remains are of Native American ancestry. All work within 300 ft buffer around the discovery will halt until permission to resume work is provided by FERC, the SHPO or the applicable federal agency for finds on federal lands.

D. If the remains are determined to be non-human by the archaeologist and/or forensic anthropologist, and there are no archaeological objects identified in association with the remains, then the archaeologist or forensic anthropologist will inform the CRC, who will notify the Construction Superintendent that construction can resume. The CRC will complete the Discovery Form and take photographs of any find. The photographs shall be sufficient for a trained archaeologist to determine that the remains are not human by reviewing them. The Discovery Form and photographs shall be submitted to FERC, the SHPO and the appropriate Indian Tribe(s) within 15 days of the discovery.

E. If the remains are determined to be non-human by the archaeologist and/or forensic anthropologist, but associated with an archaeological site, the CRC shall follow the procedures identified in Section 4 below.

F. If the remains are determined to be human and associated with a crime scene by the appropriate county coroner, then the CRC shall immediately inform the Construction Superintendent to follow the coroner's protocol for removal of the remains. The CRC will complete the Discovery Form and take photographs of the find to the extent allowed by State law. The Discovery Form and photographs shall be submitted to FERC and the SHPO within 15 days of the discovery.

G. If the remains are determined to be human, not to be the result of criminal activity and not within an archaeological context, and not of Native American Ancestry, the CRC or its designee will notify the SHPO as soon as possible but in all cases within

24 hours. The SHPO will be kept informed of all discussions regarding the remains until their final status is resolved.

The CRC or its designee will contact the OCIS as well as all appropriate Indian Tribes and notify them of the discovery by phone or e-mail as soon as possible but in all cases within twenty-four hours of the discovery. The appropriate Indian Tribe(s) also will be notified in writing within three days of the discovery, and this notification shall include information on the site of the human remains along with the name of the person or agency in charge of the find.

H. If the remains are determined to be human, within an archaeological context, and of Native American ancestry, the CRC shall follow the steps in Section 4 subparagraphs (5) - (13) for the unanticipated discovery of an archaeological site and the following:

- Notifications to the appropriate agencies and Indian Tribes shall indicate that human remains have been identified.
- No photographs shall be taken of Native American human remains.
- No further assessment shall be conducted until a Tribal representative(s) is present.
- The public and non-essential personnel will be excluded from the site.
- The discovery will not be shared with the media or any individuals who are not required for the assessment and protection of the remains.
- The CRC shall request that the appropriate Indian Tribe(s) inform them of any requests they have regarding the treatment of the remains and such requests shall be honored to the greatest extent possible.
- Field investigations to determine the NRHP-eligibility of archaeological materials shall avoid contact with the human remains.
- The CRC will consult with the SHPO and appropriate Tribe(s) to develop field investigations designed to evaluate the potential for additional human remains to be present without disturbing them.
- The CRC will consult with the Construction Superintendent, the SHPO, and appropriate Tribe(s) to determine if the remains can be avoided by an alternative construction technique. If such a technique is possible, construction shall resume upon approval from SHPO and will be monitored by a professional archaeologist and the appropriate Indian Tribe(s) if they request to do so.
- If disturbance of the remains cannot be avoided and the remains are not part of a crime scene or are part of an historic cemetery, the CRC will consult with the SHPO and appropriate Indian Tribe(s), if applicable, or likely descendants to develop a treatment plan. The treatment plan will outline measure to be implemented, including addressing how the remains should be excavated, repatriated, reinterred and reported. The treatment plan will clearly state that Jordan Cove shall be responsible for all costs associated with implementation of an approved treatment plan. Human remains will not be permanently curated.
- If disturbance of the remains cannot be avoided and the remains are part of an archaeological site that will also be affected by construction, the CRC will consult with the SHPO and appropriate Tribe(s) to develop a treatment plan for the site that includes provisions for temporary curation, reporting, repatriation

and re-internment of the human remains and disposition of any artifacts. The treatment plan will be implemented after approval from the SHPO.

I. The FERC will consult with the appropriate Indian Tribes to determine best practices for handling human remains of Native American ancestry. No work is to take place 300 feet of the area of the delineated discovery until a treatment plan has been approved and implemented.

J. Jordan Cove will offer to compensate the appropriate Indian Tribe(s) for their time and expenses related to any activities associated with the implementation of this UDP. In the event Jordan Cove has entered into a cost recovery agreement with a Tribe addressing such costs, Jordan Cove will abide by the terms of such agreement.

K. Jordan Cove will be responsible for any reburial costs associated with any human remains encountered during construction of the Project that are not associated with a criminal site.

L. If multiple sets of remains are found, which are determined to be of Native American ancestry, Jordan Cove will consult with the appropriate Tribe(s) to determine the appropriate action, including rerouting around any such sites.

4.0 Procedures for the Inadvertent Discovery of Archaeological Objects or Sites

In Oregon, it is illegal to disturb an archaeological site or object on private or non-federal public land without obtaining an archaeological excavation permit (ORS 358.920[1] [a]). When archaeological objects or archaeological sites are identified inadvertently, this law applies once the discovery is determined to be archaeological. Similarly, federal laws prohibit the disturbance of archaeological resources on federal lands in the absence of a valid permit (43 C.F.R. §§ 7.5 and 7.6). The CRC and the EIs will be aware of and follow the procedures set out below:

A. If any Jordan Cove personnel or contractors believe he or she has found archaeological object or an archaeological site, all work within 100 ft (30 m) of the discovery will stop and the Construction Superintendent will be notified immediately. The Construction Superintendent shall notify the EI and the CRC or its designee as soon as possible but no later than within 24 hours of the discovery. The area of work stoppage will be adequate to provide for the security, protection, and integrity of the objects found and therefore may need to be greater than 100 ft depending on the nature of the find. Examples of archaeological objects include but are not limited to:

- i) An area of charcoal or charcoal-stained soil;
- ii) An arrowhead, stone tool, or stone flakes (chips);
- iii) A cluster of animal bones or burned rocks in association with stone tools or flakes (chips);
- iv) A cluster of tin cans, bottles, or other historic materials older than 50 years that have not previously been identified as objects that can be removed; or
- v) A dense pocket of shells.

B. The CRC or the EI onsite will make an initial determination regarding whether the discovery consists of an archaeological site and/or an archaeological object.

Appropriate Indian Tribes shall be notified of such determination. The CRC or EI shall prepare a report regarding the determination. The report shall be provided to Appropriate Indian Tribes for review and comment. If the CRC or EI initially determines it is not an archaeological site or object and an Indian Tribe disagrees, the SHPO shall make the final determination.

C. If it is determined that the discovery consists of archaeological objects or a site, the Construction Superintendent, CRC, and/or EI will take appropriate steps to protect the discovery site. At a minimum, the construction activity that resulted in the exposure of the discovery will be immediately halted, followed as soon as possible by the cessation of all other ground-disturbing activity within 100 ft (30 m) of the discovery. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the buffer zone around the site, provided, however, a travel corridor will be allowed along the edge of the buffer zone furthest removed from the discovery, provided that:

- a) vehicles will not be allowed to pass closer than 45 ft from the discovery;
- b) the edge of the travel corridor nearest the discovery will be secured using orange safety fencing or similar material; and
- c) the CRC will consult with the SHPO to determine whether a 24-hour guard is needed to ensure that the find is secure at all times or if the discovery occurs on federal lands, the CRC will consult with the applicable federal land management agency regarding implementation of any security measures.

D. Work in the immediate area will not be re-started until treatment of the discovery has been completed and authorization to proceed has been provided by FERC and/or the SHPO as applicable, and after any required permits have been issued.

E. The buffer zone of 100 ft (30 m) will be established using orange safety fencing or a similar material.

F. The CRC or its qualified designee will arrange for the discovery to be evaluated by a professional archaeologist as soon as possible. The archaeologist must meet the Secretary of the Interior standards as described in 36 CFR Part 61. The appropriate Indian Tribe(s) shall be notified, afforded and opportunity to monitor the examination and provide comments on any written reports provided to Jordan Cove by the archaeologist. The professional archaeologist shall examine the find within 48 hours of notification. The archaeologist will recommend whether the discovery is potentially eligible for listing in the National Register of Historic Places (NRHP) pursuant to 36 CFR §800.4 and 36 CFR Part 63. The CRC will consider the archaeologist's conclusion, make its own recommendation, and then submit documentation, including any documentation or comments provided by an Indian Tribe(s), about the find, the archaeologist's recommendation and its recommendation to FERC, the SHPO and any appropriate Indian Tribe(s) for concurrence within 72 hours of receipt of the professional archaeologist's recommendation. The documentation will be in memorandum form with appropriate photographs included to facilitate FERC and SHPO's review of the conclusions reached.

G. If FERC, in consultation with the SHPO, Jordan Cove, and the appropriate Indian Tribe(s) determines that the discovery is eligible for listing under the NRHP ("NRHP-eligible") as a pre-contact deposit, FERC, Jordan Cove, the SHPO, and the

appropriate Indian Tribe(s) will consult to determine if the Project will adversely affect the resource pursuant to 36 CFR 800.5.

H. If FERC, in consultation with the SHPO, Jordan Cove, and the appropriate Indian Tribe(s) determines that the discovery is not NRHP-eligible, then Jordan Cove will prepare a memorandum to this effect and deliver it to the SHPO and the FERC for concurrence. A copy will also be provided to the appropriate Indian Tribe(s). To the extent any Indian Tribe disagrees with the conclusions in such memorandum, the Indian Tribe reserves its rights pursuant to paragraph L below.

I. If FERC, in consultation with the SHPO, Jordan Cove, and the appropriate Indian Tribe(s) determines that the resource is NRHP-eligible and that the Project will have an adverse effect on it, Jordan Cove will first propose whether or not avoidance or minimization of adverse effects is possible via alternative construction techniques.

J. If it is determined that avoidance or minimization of adverse effects via alternative construction techniques to an NRHP-eligible site is not possible, then Jordan Cove will develop a treatment plan in consultation with the appropriate Indian Tribe(s), designed to mitigate the adverse effect pursuant to 36 CFR 800.6. Jordan Cove will consult with the FERC, SHPO, and the appropriate Indian Tribe(s) and follow state and federal regulations for applicable treatment measure(s). Jordan Cove will provide FERC, the SHPO and the appropriate Indian Tribe(s) with a draft treatment plan for review and comment. The SHPO will provide approval of the treatment plan, which will be implemented in accordance with any schedule set out in the plan. Treatment measures may include mapping, photography, subsurface testing and sample collection, complete data recovery, or other activities. Jordan Cove will provide a report on the methods, analysis, and results in compliance with 36 CFR 800.11 and in accordance with the treatment plan. The specific work plan and schedule for these procedures will be included in the treatment plan.

K. If FERC, in consultation with the SHPO, Jordan Cove, and the appropriate Indian Tribe(s) determines that the resource is NRHP-eligible but that the Project will not adversely affect it, then Jordan Cove will prepare a memorandum to this effect and deliver it to the SHPO and the FERC for concurrence and provide a copy to the appropriate Indian Tribe(s).

L. Jordan Cove will ensure that field investigations, research, analysis, reporting, and curation of any materials collected during these investigations are sufficiently funded and implemented and follow all federal and state guidelines and procedures. All treatment efforts shall be conducted under an Oregon permit for archaeological excavation (OAR 736-051-0080 through 0090).

M. If any Indian Tribe does not agree with the findings of the SHPO and Jordan Cove's archaeologist, such Tribe reserves the right to address its concerns with the Advisory Council on Historic Preservation pursuant to 36 C.F.R. Part 800, and otherwise reserves all rights under state and federal law to obtain relief.

N. Upon completion of the treatment plan, Jordan Cove will submit a summary report to the SHPO and appropriate Indian Tribe(s) within thirty (30) days of completion of the treatment plan. If archaeological data recovery is a component of the treatment plan, a full report will be submitted to the SHPO, appropriate Indian Tribes, and the OCIS in accordance with any schedule set out in the treatment plan.

5.0 Parties to Contact

Notice required under this UDP shall be made to those parties set out in the table below. Any party may update its contact information at any time. An effort will be made to update this information on an annual basis during the life of the Project.

Contacts for the Discovery of Archaeological Resources				
Organization	Name	Role	Contact Information	Mailing Address
Jordan Cove	To Be Determined	Cultural Resource Coordinator (CRC)	Office: Mobile: Email:	
Historical Research Associates	Bradley Bowden	Archaeological/ Historical Consultant	Office: (503) 247-1319 Direct: (971) 386-2042 Mobile: (206) 898-5781 Email: bbowden@hrassoc.com	1825 SE 7 th Ave, Portland, OR 97214
Oregon State Historic Preservation Office (SHPO)	Dr. Dennis Griffin	State Archaeologist	Office: (503) 986-0674 Fax: (503) 986-0793 Email: dennis.griffin@state.or.us	Heritage Conservation Division Oregon Parks and Recreation Dept., 725 Summer Street NE, Suite C, Salem, OR 97301-1266
Oregon State Historic Preservation Office (SHPO)	John Pouley	Assistant State Archaeologist	Office: (503) 986-0675 Fax: (503) 986-0793 Email: john.pouley@state.or.us	Heritage Conservation Division Oregon Parks and Recreation Dept., 725 Summer Street NE, Suite C, Salem, OR 97301-1266
Federal Energy Regulatory Commission (FERC)	Paul Friedman	FERC Cultural Resources Contact	Office: (202) 502-6353 Fax: (202) 208-0353 Email: paul.friedman@ferc.gov	888 First Street NE, Washington, D.C. 20426
Federal Energy Regulatory Commission (FERC)		Alternate FERC Contact	Office: Fax: (202) 208-0353 Email:	888 First Street NE, Washington, D.C. 20426
Federal Land Owners				
BLM Coos Bay District	William Kerwin	Archaeologist	Office: (541) 756-0100 Phone: (541) 751-4306-3246 Email: wkerwin@blm.gov	1300 Airport Lane North Bend, OR 97459

Contacts for the Discovery of Archaeological Resources				
Organization	Name	Role	Contact Information	Mailing Address
BLM— Medford District	Cheryl Foster-Curley	Archaeologist	Office: (541) 618-2200 Phone: (541) 618-2280 Email: cfostercurley@blm.gov	3040 Biddle Road Medford, OR 97504
BLM— Roseburg District	Molly Casperson	Archaeologist	Office: (541) 440-4930 Phone: (541) 440-3284 Email: mcasperson@blm.gov	777 NW Garden Valley Blvd. Roseburg, OR 97471
BLM— Lakeview District: Klamath Falls Resources Area	Laird Naylor II	Archaeologist	Office: (541) 883-6916 Phone: (541) 885-4139 Email: lnaylor@blm.gov	2795 Anderson Avenue, Bldg. #25 Klamath Falls, OR 97603
Umpqua National Forest	Christopher Kelly	Heritage Program Manager/Tribal Liaison	Office: (541) 957-3200 Phone: (541) 957-3350 Email:	2900 NW Stewart Parkway, Roseburg, OR 97471
Rogue River – Siskiyou National Forest	Melissa Schroeder	Heritage Program Manager/Tribal Liaison	Office: (541) 618-2200 Phone: (541) 618-2077 Email:	3040 Biddle Road, Medford, OR 97504
Fremont – Winema National Forest	John Kaiser	Klamath Ranger District Forest Archaeologist	Office: (541) 883-6714 Phone: (541) 947-6260 Email:	2819 Dahlia Street Suite A, Klamath Falls, OR 97601
Fremont – Winema National Forest	Amy Gowen	Tribal Government Relations	Office: (541) 883-6741 Email:	
Bureau of Reclamation Klamath Basin	Adam Nickels	Archaeologist	Office: (541) 883-6935 Fax: (916) 978-5005 Phone (916) 978-5053 Email:	6600 Washburn, Klamath Falls, OR 97603

Contacts for the Discovery of Human Remains				
Organization	Name	Role	Contact Information	Mailing Address
Oregon State Police	Sergeant Chris Allori		Office: (503) 731-4717 Mobile: (503) 708-6461 Dispatch: (503) 731-3030	
Coos Bay Area Command State Police	Lieutenant Jeff Lewis		Office: (541) 888-2677 Email: jeffrey.lewis@state.or.us	
Oregon Medical Examiner's Office	Karen Gunson	Oregon State Medical Examiner	Office: (971) 673-8200	

Contacts for the Discovery of Human Remains				
Organization	Name	Role	Contact Information	Mailing Address
Oregon Medical Examiner's Office	Eugene Gray	Forensic Administrator	Office: (971) 673-8200 Email: Eugene.Gray@state.or.us	
Oregon Medical Examiner's Office	James Olson, M.D.	Deputy State Medical Examiner-Southern Region	Office: (541) 440-4453	
Tribal Contacts				
Oregon Commission on Indian Services (OCIS)	Karen Quigley	Executive Director	Office: (503) 986-1067 Fax: (503) 986-1071 Email: Karen.Quigley@state.or.us	900 Court Street NE, Rm. 167, Salem OR 97301-1347
Coquille Indian Tribe	Kassandra Rippee	THPO & Archaeologist	Office: (541) 756-0904 ext. 1216 Mobile: (541) 808-5554 Fax: (541) 756-0847 Email: kassandraripee@coquilletribe.org	3050 Tremont Street, North Bend, OR 97459
Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians	Stacy Scott	THPO, Cultural Resources Protection Specialist	Office: (541) 888-7513 Mobile: (541) 297-5543 Fax: (541) 888-2853 Email: sscott@ctclusi.org	1245 Fulton Avenue, Coos Bay, OR 97420
Confederated Tribes of Grand Ronde	Briece Edwards	Deputy THPO	Office: (503) 879-2084 Fax: (503) 879-2126 Email: THPO@grandronde.org	9615 Grand Ronde Road, Grand Ronde, OR 97347
Confederated Tribes of Siletz	Robert Kentta	Cultural Resource Program Director	Office: (541) 444-2532 Home: (541) 444-2204 Mobile: (541) 351-0148 Fax: (541) 444-2307 Email: Rkentta@ctsi.nsn.us	PO Box 549, Siletz, OR 97380
Cow Creek Band of Umpqua Tribe of Indians	Jessie Plueard	THPO and Cultural Programs Manager	Office: (541) 677-5575 X5577 Fax: (541) 677-5574 Email: jplueard@cowcreek.com	2371 NE Stephens St. Suite 100, Roseburg OR 97470
The Klamath Tribes	Perry Chocktoot	Director of Culture and Heritage	Office: (541) 783-2219 X159 or (541) 891-5450 Fax: (541) 783-2764 x107 Email: perry.chocktoot@klamathtribes.com	PO Box 436, Chiloquin, OR 97624