Greetings Jill,

Please transmit the attached documents to the Hearings Officer in the above referenced matter. Let me know if you have any questions. I will send a hard copy next week. Thank you.

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BEFORE THE COOS COUNTY HEARINGS OFFICER

In the matter of the appeal of Planning Director's approval of Pacific Connector Gas Pipeline's application for a seventh extension of permit HBCU 10-01 (Final Decision and Order 10-08-045PL) in Ext-20-005.	AP-20-01 (Original Alignment)

This memorandum is submitted on behalf of Citizens for Renewables, Rogue Climate and the appellants Natalie Ranker and Kathy Dodds (collectively referred to as "appellant-opponents").

Appellant-opponents request a continuation of these proceedings to allow additional opportunity to present additional evidence, arguments and testimony regarding the application. See ORS 197.763(6). Because of the Christmas and New Year holidays, appellant-opponents ask that you exercise your discretion to keep the record open for such purpose until January 8, 2020. PCGP has asked the county to provide hearing procedures applicable to land use decisions and those would include the extension provisions of ORS 197.763. However, the time limitations of ORS 215.427 do not apply to this application so there is no limitation on when the county's final decision is adopted. It is notable and relevant to the exercise of your discretion that over 158 days elapsed between the time PCGP filed its application and the county issued a staff report. And over 70 days has elapsed since the first notice of appeal was filed. Thus, it is clear that there is no urgency or time limitation and the exercise of your discretion should not limit interested parties to giving up time during the holidays to exercise their statutory opportunity to fully present their case.

Appellant-opponents also request preliminary relief before the record is closed. The first request is that the county take judicial notice of all relevant ordinances and final decisions and orders adopted by the Board of Commissioners (BOC) as may be referenced by participants in these proceedings. The second is that given the issues discussed below, appellant-opponents move for a determination that the application is not complete and remand the decision back to the county. To proceed, allowing PCGP to attempt to address these issues during an open record period will improperly impact the opponents ability to present their arguments.

Relevant Factual Background

Evolution of the Relevant Criteria

In 2018 the County amended LDO 5.2.600 to make it easier for PCGP to get it extensions. See Exhibit 101(excerpt of Ord.18-09-009PL). In 2019, the County applied that amended criteria to PCGP's 2019 extension application. See Exhibit 102 (excerpt from Decision quoting the criteria). In 2019, the county also amended LDO 5.2.600 to respond to a legislative change that allowed only a five year term for residential permits. See Exhibit 103 (excerpt from Ord. 19-12-011). Because the amendment involved only the subsection applicable to residential permits, the 2019 amendment is not relevant here. As understood from a review of the county's docket, there were no other amendments to LDO 5.2.600, to date.

Yet, the LDO published as the current code and as stated in the staff report do not reflect the LDO that was adopted in 2018. The code published on the county's web page states:

> 2c. Additional one-year extensions may be authorized where the applicable criterial for the original decision have not changed, ***unless otherwise permitted by the local government.***

(Emphasis added). But that is not what was adopted by the BOC.

Evolution of the Pipeline and its Permitting

The relevant permit was approved September 8, 2010, Final Decision and Order No 10-08-045PL ("original route decision'). The findings rely heavily on the 2010 Final Environmental Impact Statement issued by FERC which anticipated that PCGP would obtain other state and federal permits. Original Route Decision pp. 22-24, 32-33, 62, 71-72, 75, 77-78, 80, 86, 87, 90, 112, 105-109, 108, 121, 125, 126, 143, 144, 145. And the original route decision requires PCGP to obtain key state and federal permits as a condition precedent and in order to satisfy relevant criteria:

> **Conditions**:
>
> A.1.14. All necessary federal, state and local permits must be obtained prior to commencement of construction, including any required NPDES 1200-c permits. Prior to the commencement of construction activities, Pacific Connector shall provide the County with a copy of the "Notice to Proceed" issued by FERC. [See Letter from Mark Whitlow, dated June 24, 2010, at p. 52.]
>
> B.1.7. The authorized work in Haynes Inlet shall be conducted in compliance with the required U.S. Almy Corps of Engineers Section 404 Permit and OR DEQ's 401 Water Quality Certification and 402 NPDES permits, which will mandate turbidity standards, monitoring requirements, and reporting procedures.

Original route decision pp. 150, 152.

Criteria satisfied by requirement to obtain permits:

In addition to the foregoing, the above-referenced Ellis Report provides the following testimony regarding compliance with the 7-D management objectives: As outlined above, zone 7-D will be used as a temporary construction yard. Construction in the 7-D zone would be required to comply with a DEQ 1200-C Construction Stonnwater Permit, which includes requirements for erosion control plans.

Original route decision p. 51

b. Findings satisfying" the impact minimizaiion criterion of Policy #5 are made for actions involving dredge, fill or other significant temporary reduction or degradation of estuarine values.

This criterion bas been satisfied by the applicant's record submittals consisting of the letters from Randy Miller of Pacific Connector dated May 17, 2010 (describing how the application is consistent with all applicable aquatic management unit purpose statements) and of June 9, 2010 (identifying the state and federal environmental permits required for the aquatic portions of the project and the relationship wi professional opinion that it is feasible for Pacific Connector to obtain the necessary state and federal permits). Specifically, Randy Miller's June 9, 2010 letter describes the need for the PCGP project to obtain permits from the Oregon Department of State Lands (DSL) acting under the Oregon Removal-Fill Law (ORS 196. 800 et seq.) and the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). By cross reference, CBEMP Policy #5 (Estuarine Fill and Removal), at Section l.d contains the relevant criterion that: "adverse impacts are minimized". Mr. Miller's letter, at pages 3-4, specifically states that: "The Corps will also evaluate the proposal under the 404(b)(1) Guidelines (Guidelines) whlch require, among other things, a stringent evaluation of alternative, impact avoidance and mitigation"(emphasis added). Further, the Corps cannot issue a permit under Section 404 without issuance of a water quality certificate by the Oregon Department of Environmental Quality (DEQ) under Section 401 of the CWA. Mr. Miller's letter also points out that the project will require a pennit from the DEQ for a certification under Section 401 of the CWA and for a 1200-C (NPDES) permit under Section 402 of the CWA.

In summary, compliance with CBEMP Policy #5.l.d will be satisfied by the issuance of Pacific Connector's required permits from the Corps, DSL and DEQ, the review criteria of which are coincidental with the approval criteria of Policy #5 as outlined above, thereby being consistent with the review criterion of Policy #5a.II.b.

Original route decision pp. 58-59. See also page 77 ("Any inwater work would comply with turbidity standards as administered under the DEQ Section 401 Clean Water Act certification program").

Yet, the pipeline alignment subject to this permit since 2010 is not the alignment approved by FERC in March 2020. See composite Exhibit 104. The alignment approved by FERC does not cross Hayes Inlet to reach the North Spit; it crosses the Bay starting at Kentuck Slough. See Ordinance No. 19-01-002PL ("HDD alternative route decision"). The HDD alternative route decision also requires PCGP to obtain state permits:

> 4. Applicant shall obtain and comply with any and all necessary state and federal permits associated with the proposed improvements, including required permits from USACE, DSL, and DEQ, among others.

HDD alternative route decision p. 160. And it also relies upon PCGP's requirement to obtain state permits to satisfy applicable criteria (compliance with management directive for the 7-d zone for instance) and was dependent upon the state consenting to PCGP's application to the county because the proposal would require and there was pending PCGP's proprietary application to use state lands for its pipeline. See HDD alternative route decision pp. 16, 85, 86, 159.

And further yet, there are numerous landowners that are subject to this permit that are not on that FERC approved alingnment, including, among others, Mr. and Mrs. Blomquists who are participating in this proceeding. Those landowners are and will continue to be subject to moral and legal obligation to disclose this permit as a governmental designation affecting their property in sales proceedings if the extension is granted. See ORS 105.464.

Evolution of PCGP's Attempt to Obtain State Permits

DEQ denied PCGP's 401 permit in May 2019. See attached composite Exhibit 105 p. 1-4. PCGP has not reapplied. Instead, despite its representations to the county that it would obtain the 401 permit from the state, PCGP is now invoking the law and litigating against the state to avoid getting the 401 permit from the state. Exhibit 105 p. 77-80.

In January 2020, PCGP withdrew its application for a state fill and removal permit from the Division of State Lands (DSL) and for the authority to obtain proprietary rights to use state land for its projects. See attached Exhibit 106. Prior to the withdrawl, the state had prepared a draft denial response to the permit and PCGP has not reapplied. See attached Ex. 107.

In February 2020, the Department of Land Conservation and Development Commission (DLCD) denied PCGP's Coastal Zone Management Act (CZMA) certification. See Ex. 105. PCGP further argued to FERC that FERC still had authority to issue a FERC permit regardless of the state's denial because PCGP could avoid obtaining the state's certification if PCGP could

obtain an override from the Department of Commerce. Ex. 105 p. 63. PCGP has not reapplied and instead on March 19, 2020, PCGP invoked the law to avoid obtaining the state's certification that the project complies with the CZMA seeking the override. See Exhibit 105 p. 68.

Yet PCGP's application states:

> Further, the delay in obtaining FERC approval of an alignment for the Pipeline has caused other agencies to also delay their review and decision on Pipeline-related permits. The Pipeline is a complex project that requires dozens of major federal, state, and local permits, approvals, and consultations needed before Applicant and the developer of the related Jordan Cove Energy Project can begin construction. See permit list in Exhibit 6 hereto.

Application narrative p. 4. Exhibit 6 includes the DEQ 401 permit, the DLCD CZMA certification and the DLS fill and removal and proprietary permits.

Evolution of the Relevant Substantive Criteria for Extension

In 2015 the county amended its code and adopted LDO 5.11.100 to 5.11.300 (Geologic Hazards).Comprehensive Plan Vol 1, Part 1, 5.11 & Part 2, 3.9 Natural Hazard Maps, amended by County File AM-15-03 and County File AM-15-04 (Ord. 15-05-005PL, dated July 30, 2015, which had a delayed effective date of July 30, 2016 and was again delayed until July 30, 2017).

In 2017 the county amended its code and adopted LDO 4.11.125, (Special Development Considerations); LDO 5.11.300(1)(Geologic Assessments), County File AM 16-01 (Ord. 17-04-004PL) dated May 2, 2017, effective July 31, 2017.

In 2018, the county adopted amendments to its code in Ord 18-09-009PL which adopted among other things, subsections 7 and 8 of LDO 4.11.252 (purportedly unintentionally omitted from the ordinance adopting the last update) and which are not published in the codification accessible on line.

In 2019, the county adopted amendments to its code in Ord 19-12-010PL (December 18, 2019) which revised LDO 5.11 and adopted LDO 4.11.150 -155, edited other sections of chapter 4.11 and appears to have adopted what also does not appear to be published in the on-line code: 1) chapter 3.9 adopting a flood hazard study; 2) section 3.9.200 regarding criteria related to landslides and earthquakes and landslide and earthquake reports; 3) section 3.9.300 regarding tsunamis; 4) 3.9.400 regarding tsunami evacuation facilities plan; 5) section 3.9.500 regarding erosion; 6) 3.9.700 regarding wildfire. It also vacated the legacy clause excluding hazards review for prior approved permits. And, the provisions, or many of them, apply to "new development" or "other development" including excavation; not merely "structures."

Relevant Timeline of Events

4.2.19	Start of the 2019-6th-extension period approved in File No. Ap 19-004
5.6.19	Department of Environmental Quality (DEQ) Denied PCGP' 401 Permit.
12.18.19	County Adopts Code Amendments pursuant to Ord 19-12-010 Adopting Hazard and revoked the legacy vesting for extended permits clause
1.24.20	DSL permits withdrawn per correspondence from JCEP (via acknowledgment correspondence from DSL)
2.19.20	DLCD's objection to CZMA certification
2.24.20	JCEP Letter to FERC saying arguing that FERC can issue without DLCD CZMA certification
3.19.20	NOAA Dept of Commerce - PCGP Notice of CZMA objection override appeal
3.30.20	PCGP's Application to county for 7th, the 2020, extension filed
4.2.20	End of 2019 Extension
9.4.20	Staff Report Issued on the 7th extension application
9.24.20	Corrected Notice of Decision published granting the 7th extension

Argument

The Decision Should be Reversed and Remanded to the Planning Department for it to Apply the Correct Criteria

Appellant-opponents have demonstrated that the county has not adopted a version of LDO 5.2.600 as quoted in the staff report. See the discussion above and exhibits 101-103. Staff should be required to apply the criteria adopted by the BOC.

The Decision should be Reversed Because it fails to identify an appropriate basis for finding that PCGP has stated reasons that prevented it from beginning development and it fails to identify an appropriate basis for finding that PCGP was unable to begin development for reasons PCGP was not responsible

PCGP application states that it requires state permits identified in Exhibit 6 and that "delay in obtaining FERC approval" caused delay in getting those permits. But as the evidence submitted herewith and discussed above makes clear, PCGP no longer intends to obtain those

state permits. PCGP is litigating against the State of Oregon to avoid the state's authority to regulate PCGP's use of and impacts to the waters, shorelines and coast of Oregon. The county must demand that PCGP cease making misrepresentations about its intent to obtain the state permits, its intent to avoid impacts to Coos Bay and its coastal range watersheds, its intent to satisfy policy 5 of the CBEMP and its intent to be a good neighbor to the citizens of Coos County and the State.

The staff decision's finding that PCGP was prevented from developing "is that [PCGP] required additional state and federal permitting to be completed" is irrational as it relates to the reference to state permits and the mistake would not have been made, perhaps, if PCGP had not misrepresented its position regarding the state permits.

Moreover, the 2018 adopted criteria specifically states that it is prima facia evidence of a valid reason for an extension if an applicant demonstrates it "has requested other permits." Exhibit 101. This means that if the applicant has not requested other permits that fact is evidence that it is not attempting to satisfy the conditions of approval and is causing the reason for the delay. The county's attempt to now avoid this policy because PCGP has no intention of obtaining those permits is legal error and again demonstrates the county's pattern and practice of ignoring the law to benefit PCGP.

The staff decision is correct, however, when it says the state permits are necessary to comply with the county's imposed conditions of approval: "[Obtaining additional state and federal permitting] is necessary to comply with the conditions of approval placed on the application by the County and to comply with federal law." Staff Report p.3. And this is why it the county must stop extending this permit. The conditions stated above require PCGP to obtain permits from the state. Given the record, the conditions leave no room for PCGP to force/persuade the county to approve a legal override for a state permit. There is no way PCGP will satisfy the condition and thus, extending the permit is futile.

Moreover, extending the permit continues the harm the permit imposes on all landowners, because it is futile; but also, in particular, it harms those landowners not on the FERC approved route. Appellate-opponents are community organizations that have and continue to devote resource to amplify the voices of the impacted landowners and like the Blomquists, they demand that the decision be remanded back to staff to exclude from the extended validity of this permit all landowners not on the FERC approved route. Failure to do so will continue to damage their ability to fully enjoy every stick in the bundle of their real property rights.

The Relevant Criteria has Changed and the Criteria Does not Provide Discretion to the County to ignore that.

Despite the staff decision's attempted alteration of the relevant criteria to suggest that the county has discretion to ignore changes in applicable criteria, the criteria does not allow that. It is clearly intended to disallow extensions when, if a new application was filed at the time of the permit extension request, the substantive criteria applicable to such new application would be

different (and at least more exacting) than when the application was filed.

If the application for PCGP's original alignment was filed today, the hazard zone requirements the county has adopted since 2015 would apply because the legacy clause has been revoked. The October 2018 amendment would require an analysis and flood plain permit; it states, in part:

> SECTION 4.11.252 SPECIFIC STANDARDS
> This was overlooked and unintentionally omitted from the ordinance in the last floodplain update.
> (7) Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, road and driveway maintenance, landscaping, gardening and similar uses which are e because it is the County's determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.
> Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:
>
> a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or,
> b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway

Moreover, even the 2019 amendment imposes susbstantive conditions that require a denial of the extension, including these, among others:

> *b. Landslides and Earthquakes*
> *Landslides: Coos County shall promote protection to life and property in areas potentially subject to landslides. New development or substantial improvements proposed in such areas shall be subject to geologic assessment review in accordance with section 4.11.150. Potential landslide areas subject to geologic assessment review shall include all lands partially or completely within "very high" landslide susceptibility areas as mapped in DOGAMI Open File Report 0-16-02, "Landslide susceptibility map of Oregon."*
>
> f. Wildfires: Coos County shall promote protection of ***life and*** property from risks associated with wildfires. ***New development or substantial improvements shall,***

at a minimum, meet the following standards, on parcels designated or partially designated as "High" or "Moderate" risk on the Oregon Department of Forestry 2013 Fire Threat Index Map for Coos County or as designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map: ...

LDO 4.11.132.

> *1. Except for activities identified in Subsection 2 of this section, as exempt, any new development or substantial improvement in an area subject to the provisions of this section shall require a Geologic Assessment Review.*
>
> *2. The following development activities are exempt from the requirement for a Geologic Assessment Review:*
>
> ***
>
> *b. An excavation and/or fill which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;*
>
> * * *
>
> *C. DEVELOPMENT STANDARDS FOR USES SUBJECT TO GEOLOGIC ASSESSMENT REVIEW*
>
> *In addition to the conditions, requirements and limitations imposed by a required engineering geologic report, all uses subject to a geologic assessment review shall conform to the following requirements:*
>
> *1. Historical, Cultural, and Archaeological Resources: All activities and uses subject to Geologic Assessment Reviews proposed for areas of historical, cultural, or archaeologically sensitive areas, as identified on the Coos County Comprehensive Plan Map, shall require consultation with the appropriate local Tribe prior to the commencement of any and all ground disturbing activity. Proof of this consultation shall be provided as a part of application submission.*

LDO 4.11.155. Clearly the applicable criteria for the underlying decision has changed.

While LDO 5.2.600 attempts to avoid the application of natural hazard safeguards (which remains an astounding policy - putting PCGP's interest over the safety of the community), by stating that amendments to areas subject to natural hazards "do not void the original authorization [because] they do not determine if a use can or cannot be sited ...," this exemption must be interpreted and applied consistently with the state rule it impelements, OAR 660-033-0140. Not only does this provision directly contradict the rule, it directly contradicts LDO 5.2.600.2.c which states that additional extensions are authorized only when the applicable criteria has not changed. That subsection says nothing about "voiding a permit" it says extensions are not allowed. Moreover, the purported exemption conflicts with the text and context of the LDO as there are numerous hazard provisions which state that a permit may be denied if the criteria is not met.

Section 4.11.214 states:

> **SECTION 4.11.214 METHODS OF REDUCING FLOOD LOSSES**
> In order to accomplish its purposes, this ordinance includes methods and provisions for:
> 1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

See also Section LDO 4.11.252.7 set out above and LDO 4.11.155.A.1. In addition, there are numerous uses that are prohibited in tsunami zones also making the exemption patently and facially invalid. See LDO 4.11.270. So alternatively, to be consistent with the rule and the LUDO, the purported exemption could only apply to new criteria which could in no way be grounds for a discretionary denial or substantially change the project.

Finally, the exemption does not apply to historical and cultural requirements of the newly enacted LDO 4.11.155 because it only applied to "natural hazards."

For these reasons the extension should be denied. Alternatively, and at minimum, the decision should be remanded for the planning director to identify the criteria that has changed and make legal conclusions about why the criteria could not be the basis for a discretionary denial or substantially change the project.

Finally, given these issues, appellant-opponents move for a preliminary determination that the application is not complete and remand the decision back to the county. To proceed, allowing PCGP to attempt to address these issues during an open record period will improperly impact the opponents ability to present their arguments.

Conclusion

For the above stated reasons, the director's grant of the permit extension should be reversed and the extension denied. Alternatively, the matter should be returned to the planning director for further proceedings.

/s/ Tonia Moro
Tonia Moro
Attorney for Appellants

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

In The Matter of Adopting language in the Coos County Zoning and Land Development Ordinance.	ORDINANCE No.: 18-09-009PL

SECTION 1. TITLE

This Ordinance shall be known as the "Coos County Ordinance No. 18-09-009PL".

SECTION 2. AUTHORITY

This ordinance is enacted pursuant to the provisions of ORS 203.035 and Chapter 215;

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend the Coos County Zoning and Land Development Ordinance which will, in part,

This ordinance amends Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L which adopted Volume I of the Coos County Comprehensive Plan;

SECTION 4. FINDINGS

The Hearings Body reviewed this matter in accordance with Article 5.1 of the Coos County Zoning and Land Development Ordinance. The Board of Commissioners reviewed the matter in both work sessions and in a public hearing. The Board of Commissions recognizes the needs for legislative updates to include any new land use requirements and improvements to the current requirements. The process in Section 5.1.120 was followed. The Board of Commissioners made a motion to consider that the test amendments were appropriate.

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

Exhibit "A", attached hereto and incorporated herein by this reference, is adopted as amendment to Ordinances 85-03-005L, 84-5-016L and 82-12-022L.

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect

the validity of the reaming portions of this ordinance; and it is herby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L are repealed to the extent that they are in conflict with this ordinance. Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L shall remain in full force and effect in all other respects.

SECTION 8. EMERGENCY CLAUSE

The Board of Commissioners for the County of Coos deems this Ordinance necessary for the immediate preservation and protection of the public peace, safety, health and general welfare for Coos County and declares an emergency exists, and this Ordinance shall be in full force and effective upon its passage.

Dated this 2nd day of October

ATTEST

Recording Secretary

Approved as to form:

Office of Legal Counsel

BOARD OF COMMISSIONERS

absent
Chair

Vice Chair

Commissioner

First Reading: September 6, 2018

Second Reading: October 2, 2018

Effective Date: October 2, 2018

Ex. 101

Language changes are shown in Bold and italics for new and strike through for removed.

CHAPTER IV
BALANCE OF COUNTY ZONES, OVERLAYS & SPECIAL CONSIDERATION

ARTICLE 4.1 GENERAL INFORMATION

Balance of County Zoning is all zones regulated by Coos County outside of the Coos Bay and Coquille Estuary (Chapter III). Within each zone there are activities, development and uses that are implemented through the Coos County Zoning and Land Development Ordinance to ensure they comply with the Coos County Comprehensive Plan. Primary zones can further be restricted by Special Development Considerations and Overlays.

Key definitions:
ACTIVITY: Any action taken either in conjunction with a use or to make a use possible. Activities do not in and of themselves result in a specific use. Several activities such as dredging, piling and fill may be undertaken for a single use such as a port facility. Most activities may take place in conjunction with a variety of uses.

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

DEVELOPMENT: The act, process or result of developing.

USE: The end to which a land or water area is ultimately employed. A use often involves the placement of structures or facilities for industry, commerce, habitation, or recreation.

ZONING DISTRICT: A zoning designation in this Ordinance text and delineated on the zoning maps, in which requirements for the use of land or buildings and development standards are prescribed.

The following sections will be moved to Chapter I, Article 1.5 -
Zone Maps, Special Development Considerations and Overlays:
SECTION 4.1.100 Zoning District Maps: (Moved to Section 1.5.100
SECTION 4.1.110 Amendment of Zoning District Map: (Moved to Section 1.5.200)
SECTION 4.1.120 Interpretation of Zoning District Boundaries: (Moved to Section 1.5.300)
SECTION 4.1.130 Interpretation of Coastal Shorelands Boundary: (Section moved to Section 1.5.400)

SECTION 4.1.140 Unzoned or Multi-zoned Land: (Moved to Section 1.5.500)

SECTION 4.1.160 Special Development Considerations and overlays: (Moved to Section 1.5.600)
SECTION 4.1.170 Split Zoning: (moved to Section 1.5.700)

c. ***The property has an approved flood hazard determination application that shows the development was built to flood proofing standards or is located above the base flood elevation.***

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

SECTION 5.0.250 TIMETABLE FOR FINAL DECISIONS (ORS 215.427):

1. For lands located within an urban growth boundary, and all applications for mineral or aggregate extraction, the County will take final action within 120 days after the application is deemed complete. ***For land divisions within the urban growth boundary or lands designated as Regionally Significant Industrial Areas (RSIA) see Article 5.12 for processing and time tables.***

SECTION 5.0.900 NOTICE REQUIREMENTS (ORS 197.763): ***All applications that receive a notice shall follow this section except for land divisions within the urban growth boundary or lands designated as Regionally Significant Industrial Areas (RSIA). See Article 5.12 for processing and time tables.***

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES:

1. ***Permit Expiration Dates for all Conditional Use Approvals and Extensions :***
   a. ***On lands zoned Exclusive Farm, Forest and Forest Mixed Use:***
      (1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.
      (2) A county may grant one extension period of up to 12 months if:
         (a) An applicant makes a written request for an extension of the development approval period;
         (b) The request is submitted to the county prior to the expiration of the approval period;
         (c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
         (d) The county determines that the applicant was unable to begin or continue development during the approval period[3] for reasons for which the applicant was not responsible.

         Coos County has and will continue to accept reasons for which the applicant was not responsible as, but limited too, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects

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

that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of approval. This is a different standard then actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process.

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

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

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

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

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

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:
    a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.
    b. Coos County may grant one extension period of up to 12 months if:
        i. An applicant makes a written request for an extension of the development approval period;
        ii. The request is submitted to the county prior to the expiration of the approval period;
        iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
        iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
    c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.
    d. If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.
    e. For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.
    f. Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.
    g. ***Approval of an extension granted under this ordinance is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. This type of application request will be processed as a ministerial action not requiring notice or the opportunity for appeal to the Land Use Board of Appeals.***

2. Extensions on all non-resource zoned ***properties not zoned Farm or Forest as covered in Subsection 1 (one) above, shall be governed by the following***.
    a. The Director shall grant an extension*s* of up to two (2) years so long as the **use, development or activity** is still listed as a conditional use under current zoning regulations.
    b. ***The zone has not changed.***
    c. If use or development under the permit has not begun ***the conditional use has not been initiated*** within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use ***or extension*** then that conditional use is deemed to be invalid and a new application is required.
    d. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.
    e. ***The extension shall be filed prior to the expatriation date of the conditional use or prior extension on the county form with the correct fee.***
    f. ***Additional extensions may be requested as long as they continue meet the criteria in Subsections a through f.***
    g. ***If the conditional use has not been initiated within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the***

~~***conditional use or extension of that conditional use then that conditional use is deemed to be invalid and a new application is required.***~~

~~h. ***Approval of an extension granted under this ordinance is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. This type of application request will be processed as a ministerial action not requiring notice or the opportunity for appeal to the Land Use Board of Appeals.***~~

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

~~a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and~~

~~b. All conditional uses for dwellings ***residential development*** within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval. For the purpose of this paragraph, "residential development" means:~~

~~i. Alteration, restoration or replacement of a dwelling,~~

~~ii. Non-farm dwellings,~~

~~iii. Owner of Record dwellings,~~

~~iv. 160 acre and 200 acre non-contiguous forest dwellings,~~

~~v. Template dwellings, or~~

~~vi. Caretaker residence in forest zones.~~

~~c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.~~

~~d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective. ***Additional extensions may be applied for as long as they meet the criteria in this section.***~~

~~e. Additional extensions may be applied.~~

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

SECTION 5.3.350 CRITERIA FOR APPROVAL OF VARIANCES:

No variance may be granted by the Planning Director unless, on the basis of the application, investigation, and evidence submitted;

1. Both findings "a" and "b" below are made:
   - ***a. One of the following circumstances shall apply: (this was accidently omitted during the last update)***
     - i. That a strict or literal interpretation and enforcement of the specified requirement would result in unnecessary physical hardship and would be inconsistent with the objectives of this Ordinance;

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

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
(APPEAL OF THE SIXTH EXTENSION REQUEST FOR
COUNTY FILE NO. HBCU 10-01 / REM 11-01,
AKA: THE "ORIGINAL ALIGNMENT")
COOS COUNTY, OREGON

FILE NO. AP 19-004
(APPEALS OF COUNTY FILE NOS. EXT-19-04).

NOVEMBER 26, 2019

Appellants state that they "object to the numerous errors stated in the Planning Director's decision's 'background' statement because many statements are not true and they are not supported by substantial evidence." The Board finds that appellants' generalized statement is an insufficient way to preserve error in an appeal. If an appellant seeks to challenge specific findings of fact, the appellant has the obligation to identify those issues with sufficient specificity to enable review.

The appellants further state that "[a]ll of the issue[s]raised in the previous proceedings on the 2018 extensions are pending resolution on appeal and have not been resolved so they can be raised again, here." As stated above, opponents' appeals of the 2018 extensions failed at both LUBA and the Oregon Court of Appeals. Further, the Court of Appeals denied opponents' petition for reconsideration. Accordingly, all appeals that are available by right have been exhausted.

B. Criteria Governing Extensions of Permits.

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

New Version:
SECTION 5.2.600 EXPIRATION AND EXTENSION of Conditional Uses

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

(d) The county determines that the applicant was unable to begin or continue development during the approval period[1] for reasons for which the applicant was not responsible.

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

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

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

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

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

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

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

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

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

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

(3) Extension Requests:

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

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

ii. Rezoned to another zoning district.

---

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

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

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

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

CCZLDO 5.2.600. These criteria are addressed individually below.

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

The opponents contend that a previous version of CCZLDO 5.2.600 (*i.e*. the 2013 version of the extension criteria) apply to this case, as opposed to the current version. For example, in the appeal narrative, the appellants state that:

> "[a]ny changes to the provisions since 2010 or since 2013 are not applicable to the extension requests because the provisions in effect at the time of the application constitute the applicable goal posts for subsequent decisions related to the permits. The extension of the permits on non-resource lands has exceeded the applicable time limit of two years."

See Appeal Narrative at p. 2.

ORS 215.427(3) is known as the "goal post" statute. It states that the law that applies to a land use application is the law in effect on the date the application is filed:

> *(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*

Appellants are correct that the "goal post" statute applies to Pacific Connector's application, though it does not have the effect appellants contend that it does. The version of CCZLDO 5.2.600 in effect when Pacific Connector filed its application (March 29, 2019) was adopted in

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

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

In The Matter of Amending language in the Coos County Zoning and Land Development Ordinance (CCZLDO) Chapter IV Balance of County Zoning and Section 5.2 Extensions of Conditional Uses. File Number AM-19-006	ORDINANCE No.: 19-12-011PL

SECTION 1. TITLE

This Ordinance shall be known as the "Coos County Ordinance No. 19-12-0##PL".

SECTION 2. AUTHORITY

This ordinance is enacted pursuant to the provisions of but not limited to ORS Chapter 215 Sections 215.060 & ORS 215.223;

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend the Coos County Comprehensive Plan and Implementing Ordinance. This ordinance amends Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L which adopted the Coos County Comprehensive Plan;

SECTION 4. FINDINGS

The Hearings Body reviewed this matter in accordance with Article 5.1 of the Coos County Zoning and Land Development Ordinance. The Board of Commissioners reviewed the matter on December 18, 2019 and suggested minor changes. The following changes were made to be consistent Statute and Rule that governs Farm and Forest Land Use regulation:

- Farm and Forest proposed updates are to reformat uses into a table and include all legislative updates regarding accessory forest dwellings and changes to reduce requirements for dwellings on high value farmland.
    - Coos County Zoning and Land Development Ordinance Sections – Chapter 4
        - 4.3.225 General Siting Standards
        - 4.6 Resource Zones
        - 4.6.100 Forest and Forest Mixed Use Tables – Took the uses and formatted into a table to make it clear what applies. Change in the use table as follows:

- Additional Forest Dwellings
- Square feet limitation on indoor marijuana processing

- 4.6.130 New and Replacement Dwellings and Structures in Forest Zone – Updated language to reflect requirement in OAR 660-0060-0035.
- 4.6.140 Development and Siting Criteria – No changes
- 4.6.145 Land Division to Preserve Open Space Park – ORS 215.783
- 4.6.150 Exception to Minimum Lot or Parcel Sizes (ORS 215.785)
- 4.6.200 Exclusive Farm Use Table – Reformatted all uses in a table. Updated to reformat to follow OAR tables. Changes as follows:
  - Cider Business – new use pursuant to new legislation
  - Update to high-value farm requirements for dwellings
  - Replacement Dwelling requirements updated in response to new legislation. Reduces the process.
  - Changes to commercial farm processing facility – reduced process and standards
  - Updated Marijuana square footage to be consistent with commercial farm processing facility standards.
- 4.6.210-4.6.240 – No changes to language but will be renumbered to for formatting changes.

- CCZLDO Section Chapter 5
  - Expiration and Extension of Conditional Uses – ORS 215.416 was updated to control the number of extensions for certain farm and forest dwellings. These changes reflect the change in state law. There were some other suggestions that staff and legal counsel suggested to make the section understandable and consistent with other sections of the ordinance.

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

Exhibit "A", attached hereto and incorporated herein by this reference, is adopted as amendment to Ordinances 85-03-005L, 84-5-016L and 82-12-022L.

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect

the validity of the reaming portions of this ordinance; and it is herby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L are repealed to the extent that they are in conflict with this ordinance. Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L shall remain in full force and effect in all other respects.

SECTION 8. EMERGENCY CLAUSE

The Board of Commissioners for the County of Coos deems this Ordinance necessary for the immediate preservation and protection of the public peace, safety, health and general welfare for Coos County and declares an emergency exists, and this Ordinance shall be in full force and effective upon its passage.

Dated this 18th day of December

ATTEST

Michelle Bergland
Recording Secretary

Approved as to form:

Nathaniel Johnson
Office of Legal Counsel

BOARD OF COMMISSIONERS

John W Lumpt
Chair

Vice Chair

Absent
Commissioner

First Reading: December 18, 2019

Effective Date: December 18, 2019

(ii) A farm stand, as described in ~~ORS 215.213 (1)(r) or~~ 215.283 (1)(o), used in conjunction with a marijuana crop; and
(iii) A commercial activity, as described in 215.283 (2)(a), carried on in conjunction with a marijuana crop.

(b) MARIJUANA PROCESSING: The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority. ***The structures used in processing cannot exceed 10,000 square feet. Processing shall be located inside of a structure.***

(c) MARIJUANA PRODUCTION: The manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission, or registered with the Oregon Health Authority and a "person designated to produce marijuana by a registry identification cardholder."

SECTION 4.6.210 DEVELOPMENT AND USE STANDARDS FOR THE EXCLUSIVE FARM USE ZONE. – NO CHANGES TO THIS SECTION OTHER THAN CHANGING THE NUMBER FROM SECTION 4.6.240 TO 4.6.210

SECTION 5.0.500 INCONSISTENT APPLICATIONS:

Submission of any application for a land use or land division under this Ordinance which is inconsistent with any previously submitted pending[2] application shall constitute an automatic revocation of the previous pending application to the extent of the inconsistency. Such revocation shall not be cause for refund of any previously submitted application fees.

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

(1) Permits approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit is valid for four years.

a. Extensions for Residential Development as provided for under ORS 215.213 (3) and (4), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3) shall be granted as follows:

i. First Extension - An extension of a permit for "residential development" as described in Subsection (1) above is valid for two (2) years.

1. The applicant shall submit an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions. Untimely extension requests will not be processed.

---

[2] ***An application is no longer considered pending once the final decision has been issued and no appeals have been filed, or all appeals have been resolved and final judgments on appeal are effective. This provision does not apply to request for extensions on applications. See Section 5.0.250***

2. ***Upon the Planning Department receiving the applicable application and fee, staff shall verify that the application was received within the deadline and if so issue an extension.***
3. ***An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.***

ii. ***Additional Extensions - A county may approve no more than five additional one-year extensions of a permit if:***

1. ***The applicant submits an application requesting the additional extension prior to the expiration of a previous extension;***
2. ***The applicable residential development statute has not been amended following the approval of the permit; and***
3. ***An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.***
4. ***An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.***

(2) Permits approved under ORS 215.416, except for a land division and permits described in Subsection (1)(a) of this section, for agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438, or under county legislation or regulation adopted pursuant thereto, are void two years from the date of the final decision if the development action is not initiated in that period.

a. Extensions for Non-Residential Development as described in Subsection (2) above may be granted if:

i. The applicant submits an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions.
ii. The Planning Department receives the applicable application and fee, and staff verifies that it has been submitted within the deadline;
iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

b. An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.

c. Additional one-year extensions may be authorized where applicable criteria for the original decision have not changed, unless otherwise permitted by the local government.

(3) On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:

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

b. All conditional uses for nonresidential development including overlays shall be valid for period of ~~four (4)~~ ***five (5)*** years from the date of final approval. (Staff note: This will be consistent with the hazards overlay)

c. Extension Requests:
  i. All conditional uses subject to an expiration date of ~~four (4)~~ ***five (5)*** years are eligible for extensions so long as the ***subject*** property has not been:
    1. Reconfigured through a property line adjustment ***that reduces the size of the property*** or land division; ~~and~~ ***or***
    2. Rezoned to another zoning district ***in which the use is no longer allowed.***
d. ~~An~~ e ***E***xtension***s*** shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.
e. ***There shall be no limit on the number of extensions that may be applied for and approved pursuant to this section.*** \
f. An extension ***application*** shall be received prior the expiration date of the conditional use or the prior extension. ***See section 5.0.250 for calculation of time.***

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

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

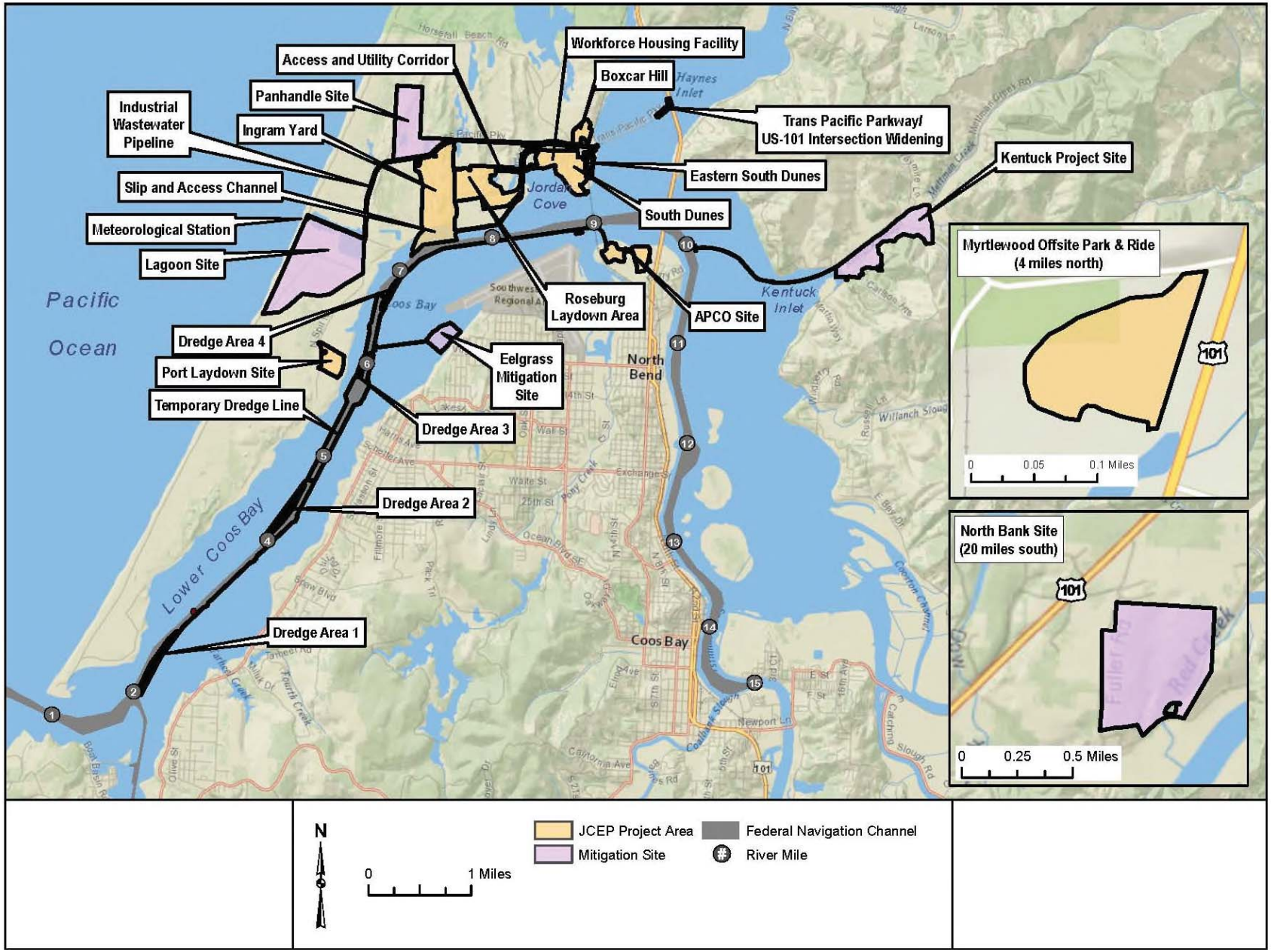
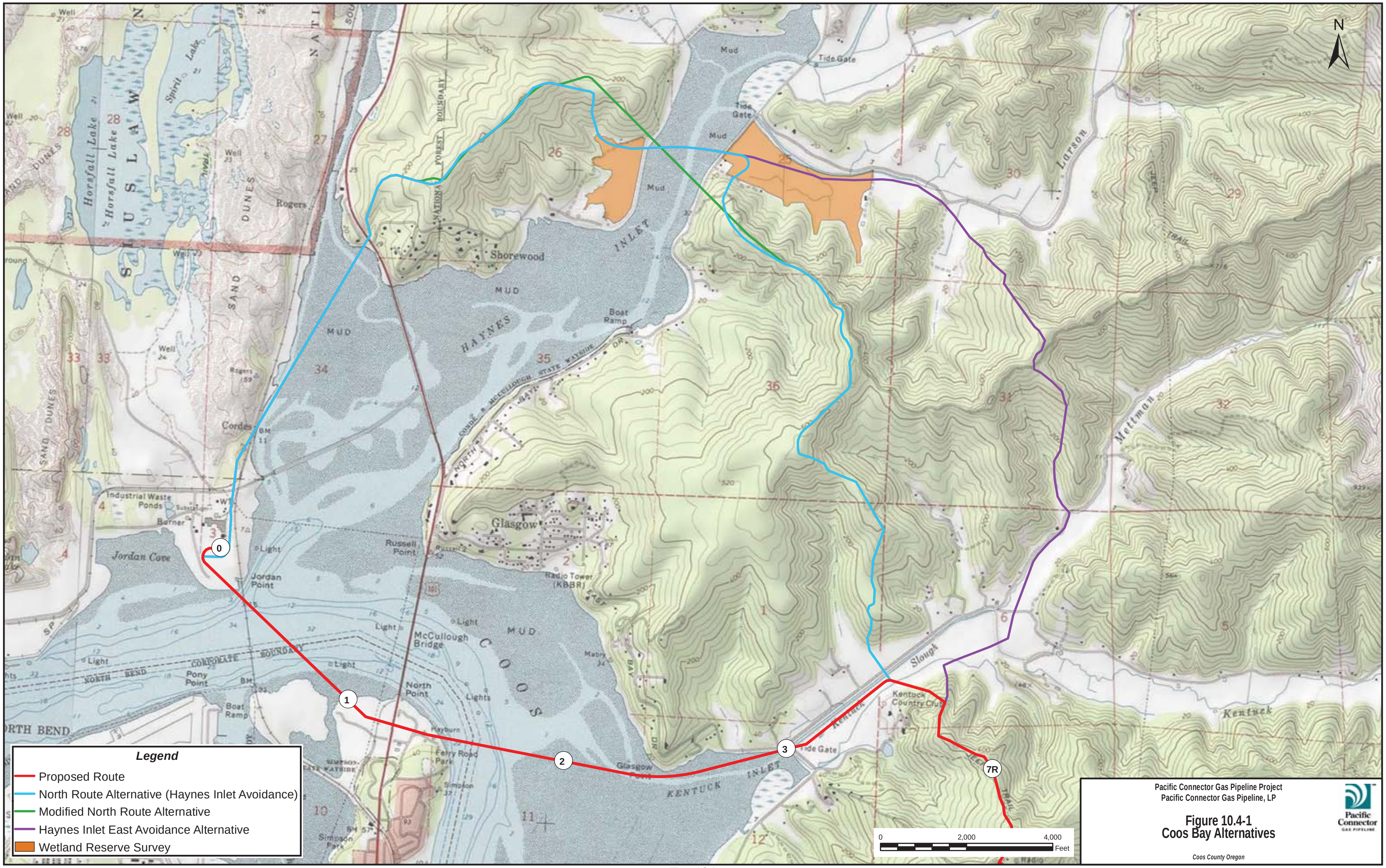
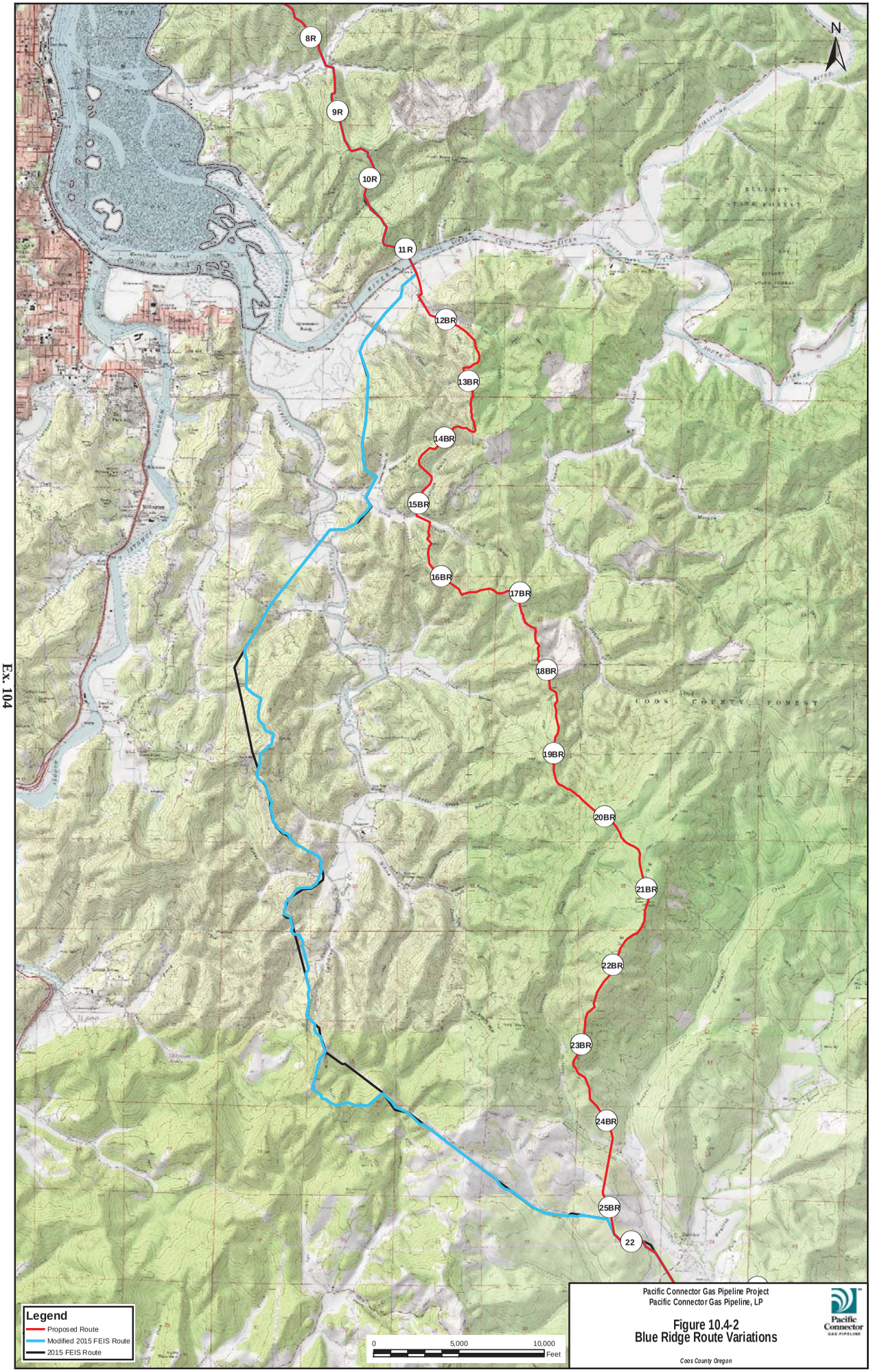


Figure 2.1-1
Jordan Cove LNG Project General Location

Figure 10.4-1
Coos Bay Alternatives

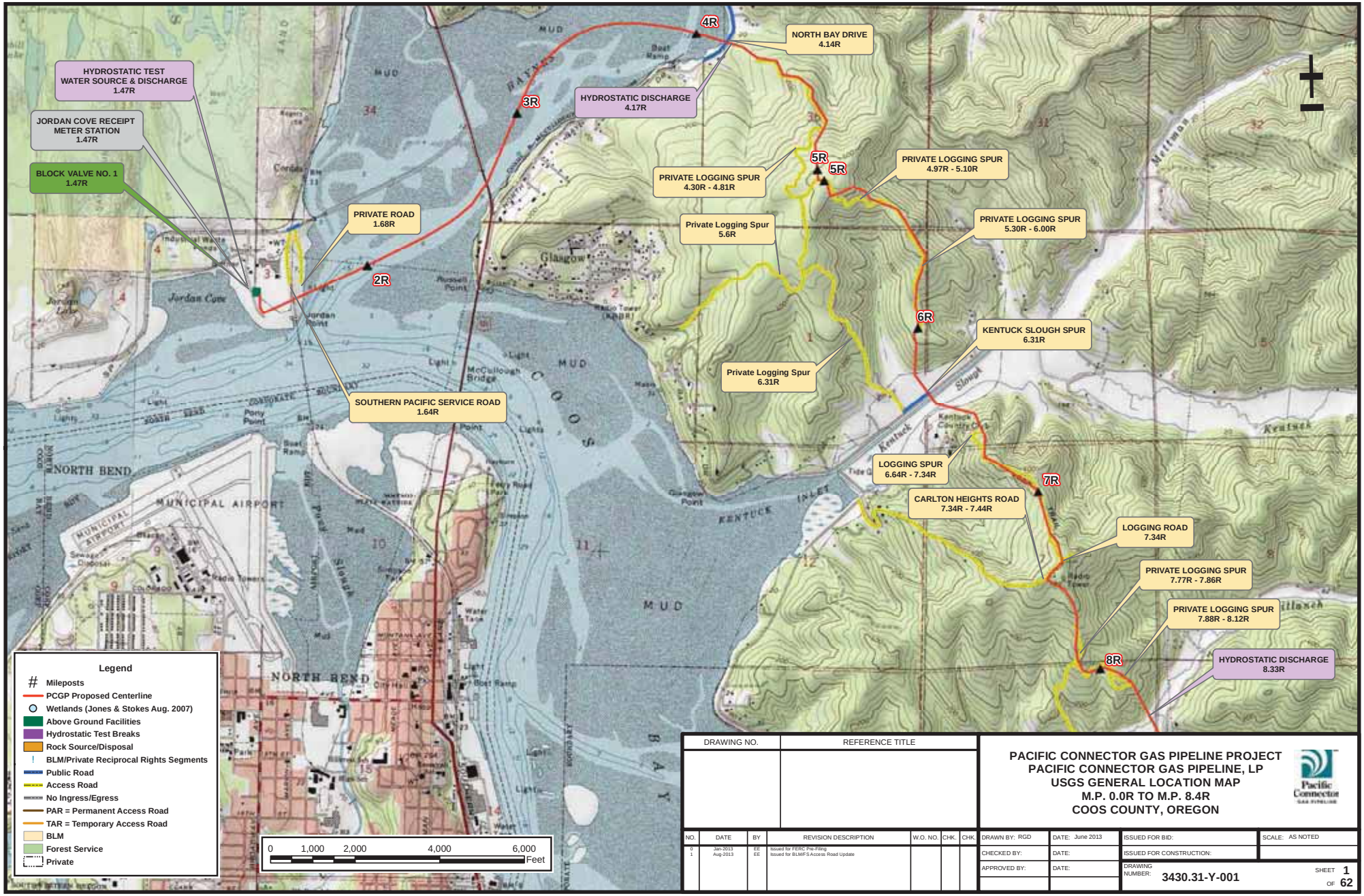

Legend
Proposed Route
North Route Alternative (Haynes Inlet Avoidance)
Modified North Route Alternative
Haynes Inlet East Avoidance Alternative
Wetland Reserve Survey
Pacific Connector Gas Pipeline Project
Pacific Connector Gas Pipeline, LP
Figure 10.4-1
Coos Bay Alternatives
Coos County Oregon
0
2,000
4,000
Feet
N
0
1
2
3
7R
Jordan Cove
Haynes Inlet
Coos Bay
Kentuck Inlet
Glasgow
Shorewood
North Bend

Ex. 104


8R
9R
10R
11R
12BR
13BR
14BR
15BR
16BR
17BR
18BR
19BR
20BR
21BR
22BR
23BR
24BR
25BR
22
N
Legend
Proposed Route
Modified 2015 FEIS Route
2015 FEIS Route
0
5,000
10,000
Feet
Pacific Connector Gas Pipeline Project
Pacific Connector Gas Pipeline, LP
Figure 10.4-2
Blue Ridge Route Variations
Coos County Oregon
Pacific Connector
GAS PIPELINE

Ex. 104

Pipeline Location Maps
Sheets 1–17
Coos County



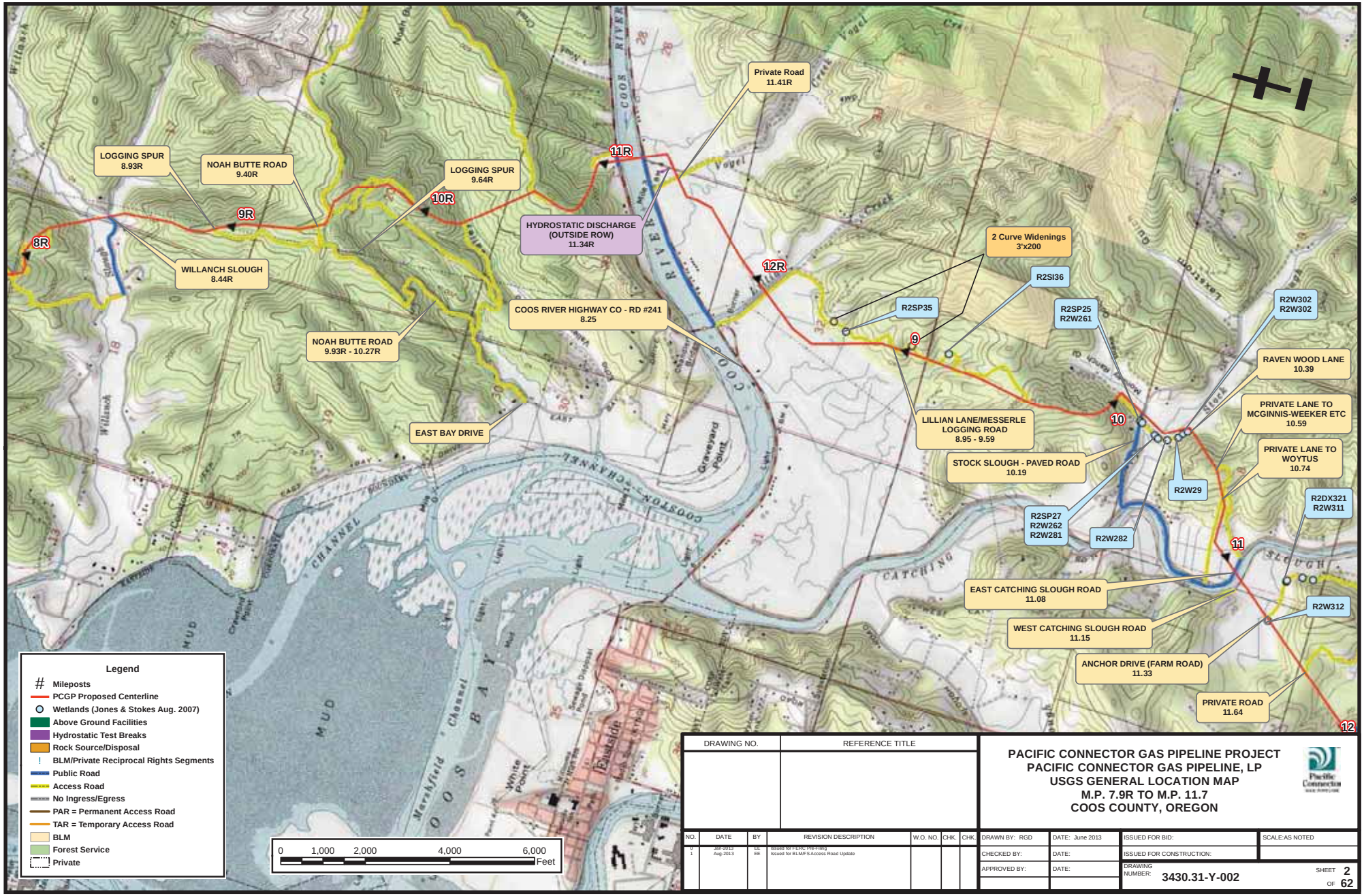
DRAWING NO.	REFERENCE TITLE

PACIFIC CONNECTOR GAS PIPELINE PROJECT
PACIFIC CONNECTOR GAS PIPELINE, LP
USGS GENERAL LOCATION MAP
M.P. 0.0R TO M.P. 8.4R
COOS COUNTY, OREGON

NO.	DATE	BY	REVISION DESCRIPTION	W.O. NO.	CHK.	CHK.
0	Jan-2013	EE	Issued for FERC Pre-Filing			
1	Aug-2013	EE	Issued for BLM/FS Access Road Update			

DRAWN BY: RGD	DATE: June 2013	ISSUED FOR BID:	SCALE: AS NOTED
CHECKED BY:	DATE:	ISSUED FOR CONSTRUCTION:	
APPROVED BY:	DATE:	DRAWING NUMBER: 3430.31-Y-001	SHEET 1 OF 62

Ex. 104



Ex. 104

Oregon

Kate Brown, Governor

Department of Environmental Quality
Western Region Eugene Office
165 East 7th Avenue, Suite 100
Eugene, OR 97401
(541) 686-7838
FAX (541) 686-7551
TTY 711

May 6, 2019

VIA EMAIL, CERTIFIED MAIL, AND U.S. FIRST CLASS MAIL

Derik Vowels
Jordan Cove LNG, LLC
Pacific Connector Gas Pipeline, LP
111 SW 5th Ave., Suite1100
Portland, OR 97204

and

Jordan Cove LNG, LLC
Pacific Connector Gas Pipeline, LP
5615 Kirby, Suite 500
Houston, TX 77005

Tyler Krug, Regulatory Project Manager
North Bend Field Office, Portland District
United States Army Corps of Engineers
2201 N. Broadway Suite C
North Bend, Oregon 97459

Ms. Kimberly D. Bose,
Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, D.C. 20426
FERC Dockets No. CP17-494, CP17-495

Dear Mr.Vowels, Mr. Krug and Ms. Bose:

On October 24, 2017, the U.S. Army Corps of Engineers (Corps) notified the Oregon Department of Environmental Quality (DEQ) that it had received an application from Jordan Cove LNG LLC and Pacific Connector Gas Pipeline LP, (herein collectively referred to as "Jordan Cove" or the "Applicant") for Section 404 (Clean Water Act, or CWA) and Section 10 and 14 (Rivers and Harbors Act) permits related to construction and operation of LNG facilities and an associated pipeline (collectively, the "Project"). Consistent with its regulations, the Corps

determined that the initial application of October 24, 2017 was incomplete on November 3, 2017. Consistent with Corps regulations, the Corps requested additional information from November 2017 through May 2018 before the Corps determined it had received a complete application and issued a public notice on May 22, 2018, which commenced DEQ's water quality certification (401 WQC) review pursuant to CWA Section 401.

The proposed Project consists of two interconnected parts. The 200-acre Jordan Cove LNG Export Terminal would be located in Coos County, Oregon on the North Spit of Coos Bay. The facility would include a slip and access channel, modifications to the federal navigational channel, a marine terminal, a natural gas conditioning and liquefaction facility, temporary workforce housing, security and safety buildings, and wetland mitigation sites. The Pacific Connector gas pipeline is the second part of the Project, consisting of a 229-mile 36-inch diameter pipeline and associated roadways and work areas, extending from the terminal to interconnections with existing pipelines near Malin, Oregon. The Jordan Cove terminal would receive up to 1.2 billion cubic feet per day of natural gas from the Pacific Connector gas pipeline.

DEQ has evaluated the Project application pursuant to Section 401 of the Clean Water Act, 33 USC §1341, ORS 468B.035 through 468B.047, and DEQ's certification rules found in Oregon Administrative Rules 340, Division 048. To certify the Project, DEQ must have reasonable assurance that the proposed activities will be conducted in a manner that will not violate the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, and Oregon water quality standards in Oregon Administrative Rules 340, Division 041, adopted to implement these sections.

Following a preliminary review of the Project, DEQ filed a request for additional information with Jordan Cove on September 7, 2018. Jordan Cove filed responses on October 8, 2018. However, because many of the responses were incomplete or inadequate, the Department filed a supplemental information request with Jordan Cove on December 20, 2018. That request included examples of the information sought. Jordan Cove responded, in part, on January 22, February 20, and April 16, 2019, and committed to filing complete responses by the end of April 2019. DEQ filed additional requests for project information on September 25, 2018, and March 11 and 13, 2019. Jordan Cove filed a response to these requests on April 30, 2019; however, the late date of Jordan Cove's filing prevented any significant review of the material for this decision. OAR 340-048-0020(3).

On March 29, 2019, DEQ reviewed the FAST-41 Coordinated Project Plan for the Project. DEQ notes that the Corps has indicated that JCEP is considering pipeline route changes, and that the Corps intends to issue a revised public notice once it receives sufficient information regarding the changes. DEQ has not yet received information from Jordan Cove regarding these changes to the proposed Project.

DEQ denies Jordan Cove's request for 401 WQC for the Project. DEQ does not have a reasonable assurance that the construction and operation of the Project will comply with applicable Oregon water quality standards, as described in the attached Evaluation and Findings Report, which is incorporated in its entirety by this reference. DEQ's decision, however, is made without prejudice. Jordan Cove may reapply for 401 WQC for the Project, and DEQ will consider additional information that is responsive to the bases for denial in this decision.

In accordance with the Oregon Administrative Procedures Act (Oregon Revised Statute, chapter 183) and OAR 340-048-0045(2), Jordan Cove may request a contested case hearing if dissatisfied with the certification decision. Your request for a hearing must be made in writing to and received by the Department of Environmental Quality within 20 days of the date of mailing of this certification decision, and such request must comply with OAR 340-011-0530(2) and OAR 340-048-0045(2).

A request for a hearing must be mailed to:

Oregon Department of Environmental Quality
Attn: Chris Stine
165 East Seventh Avenue, Suite 100
Eugene, Oregon 97401

If a request for hearing is not received within this 20-day period, your right to a hearing will be considered waived. If you request a hearing, you will be notified of the time and place of the hearing and provided information on the procedures by which contested cases are heard, your rights, the import and effect of such a hearing, and your rights and remedies.

Contested cases are governed by the rules of the Office of Administrative Hearings, specifically OAR 137-003-0501 through -0700. As a corporation, you must be represented by legal counsel at this hearing, if any.

In accordance with OAR 340-048-0045(3), this certification decision is effective upon issuance of this decision, notwithstanding a request for a contested case or other judicial review, if any.

As noted above, this decision is being made without prejudice. Jordan Cove may resubmit an application for 401 WQC with DEQ. If Jordan Cove does so, DEQ strongly recommends that Jordan Cove, the Corps and DEQ hold a pre-application conference to ensure a shared understanding of the information and actions required to complete a subsequent review of an application in a timely manner that would avoid delays in consideration of the application by DEQ, and that is coordinated with both the Corps and the FAST-41 Project Plan being managed by the Federal Energy Regulatory Commission. DEQ also requests that if it does resubmit an application, Jordan Cove clearly indicate in such a submittal whether the applicant is seeking certification for purposes of the permits and licenses for the Project pending before both FERC and the Corps.

If you have any questions, please contact Chris Stine at stine.chris@deq.state,or.us or at (541) 686-7810 or at the address on this letterhead.

Sincerely,

Richard Whitman
Director
Oregon Department of Environmental Quality

Attachment: Evaluation and Findings Report

cc: Ms. Natalie Eades, Jordan Cove LNG
Mr. Mike Koski, Jordan Cove LNG,
Ms. Rose Haddon, Jordan Cove LNG
Mr. Bill Abadie, US Army Corp of Engineers
Mr. Sean Mole, Oregon Department of Energy
Mr. Jim Rue, Oregon Department of Land Conservation and Development
Mr. Keith Andersen, DEQ
Mr. David Belyea, DEQ
Mr. Chris Stine, DEQ
FERC Dockets No. CP17-494, CP17-495
DEQ (file)

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty Service members have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil. The Oregon Military Department does not have a toll free telephone number.

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
Oregon Coastal Management Program
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-6033
www.oregon.gov/LCD

February 19, 2020

Mike Koski
Jordan Cove Energy Project, LP
Pacific Connector Gas Pipeline, LP
Email: mkoski@pembina.com

Project:	*Jordan Cove Energy Project/Pacific Connector Gas Pipeline*
	US Army Corps Federal Permit No.: NWP-2017-41
	FERC Docket Nos: CP17-495-000 and CP17-494-000
Applicants:	Jordan Cove Energy Project, LP and Pacific Connector Gas Pipeline, LP
Location:	Coos Bay, Oregon and Pipeline Route within Coastal Zone
Re:	**Federal Consistency Determination**

Dear Mr. Koski:

The Oregon Department of Land Conservation and Development (DLCD) has completed its review of the Joint Coastal Zone Management Act Certifications that Jordan Cove Energy Project and Pacific Connector Gas Pipeline (JCEP) submitted on April 12, 2019. JCEP certifies that the proposed project complies with, and will be conducted in a manner consistent with, the Oregon Coastal Management Program (OCMP). Pursuant to the section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), its regulation at 15 CFR § 930.63, and having fully considered the project information and public comments submitted, DLCD **objects** to your consistency certification on the basis that it has not established consistency with specific enforceable policies of the OCMP and that it is not supported by adequate information.

JCEP has applied for two major federal permits/licenses needed for the proposed project: the section 404 of the Clean Water Act/section 10 of the Rivers and Harbors Act permits managed by the US Army Corps of Engineers (Corps or USACE) and the Natural Gas Act section 3 Authorization and section 7 Certificate of Public Convenience and Necessity managed by the Federal Energy Regulatory Commission (FERC). The activity that JCEP proposes is to site, construct, and operate a natural gas liquefaction and liquefied natural gas (LNG) export facility on the bay side of the North Spit of Coos Bay, Oregon. To supply the LNG Export Terminal with natural gas, JCEP is proposing to construct and operate a new, approximately 229-mile-long natural gas transmission pipeline and compressor station from interconnections with the existing Ruby Pipeline LLC and Gas Transmission Northwest LLC systems to the LNG Export Terminal. After careful review of the proposed project, in conjunction with receiving extensive public comment, and coordination with coastal partners, **DLCD has determined that the coastal adverse effects from the project will be significant and undermine the vision set forth by the OCMP and its enforceable policies**. Coastal effects analyses show that the project will negatively impact Oregon's coastal scenic and aesthetic resources, a variety of endangered and threatened species, critical

habitat and ecosystem services, fisheries resources, commercial and recreational fishing and boating, and commercial shipping and transportation, among other sectors critical to the state. The degree and extent of these impacts are described further later in this document.

CZMA section 307(c)(3)(A) requires DLCD to notify the federal agencies concerned that the state objects to the certification "at the earliest practicable time." As a result of this objection, **neither FERC nor the Corps can grant a license or permit for this project** unless the U.S. Secretary of Commerce overrides this objection on appeal pursuant to 15 CFR part 930, subpart H.

EXECUTIVE SUMMARY

DLCD is Oregon's designated coastal management agency statutorily responsible for reviewing the required certification of consistency with the OCMP pursuant to CZMA section 307(c)(3)(A). An applicant for any federally-permitted project must obtain a CZMA consistency concurrence for the federal permit or license to be granted in Oregon's coastal zone.

Only DLCD, as the lead state agency authorized by NOAA as part of OCMP, can determine whether a federal action is consistent with the enforceable policies of the OCMP. OAR 660-035-0020; 15 CFR § 930.6. 15 CFR § 930.6 specifically provides that "the State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal * * *consistency certification [.]"

DLCD administrative rules provide that issued state permits or authorizations are the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers (OAR 660-035-0050). DLCD rules provide that "For activities located within the state's jurisdiction that require state or local permits or authorizations, the issued permit or authorization is the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers." NOAA has approved these rules as enforceable policies of the OCMP.

JCEP has not established consistency with all enforceable policies identified by DLCD and JCEP. As DLCD explained nearly two years ago by letter, "DLCD will not concur that a proposed project is consistent with the OCMP until the applicant has obtained the necessary approvals … for the project per OAR 660-035-0050(4)."[1]

On the basis of the current record, the JCEP **has not established that the project is consistent** with the following enforceable policies and underlying standards within them:

1. ORS chapter 196 - Removal-Fill ***(Permit Application Withdrawn)***
2. ORS chapter 274 - Submersible and Submerged ***(Authorization Applications Withdrawn)***
3. ORS chapter 468B - Water Quality ***(Permit Application Denied)***

[1] Patty Snow, DLCD Coastal Program Manager, Letter to Meagan Masten, Pembina Pipeline Corporation, at 2 (Oct. 27, 2017), FERC Accession No. 20171030-5070.

4. ORS chapter 469 - Energy; Conservation Programs; Energy Facilities Public Health and Safety ***(Insufficient Information to Establish Consistency)***
5. ORS chapter 496 - Wildlife Administration ***(Insufficient Information to Establish Consistency)***
6. ORS chapter 509 - General Protective Regulations (Fish Passage) ***(Insufficient Information to Establish Consistency)***
7. Statewide Planning Goal 6 – Air, Water, and Land Resources ***(Permit Application Denied/Withdrawn)***

Where a copy of a state application is provided to establish compliance with an enforceable policy and that state application has either been denied or withdrawn, the consistency certification has not established compliance with an enforceable policy. 15 CFR § 930.6(c); OAR 660-035-0050. For non-state permits and authorizations, DLCD conducts an independent review of the materials submitted by the applicant to demonstrate consistency, along with consulting the relevant state agency or local jurisdiction. For enforceable policies overseen by networked state agency partners, DLCD requests a letter of recommendation from the respective agency that formally recommends whether or not DLCD should consider a project consistent with the associated enforceable policies, with an emphasis on how the project is inconsistent and the associated coastal effects from the project.

DLCD conducted a coastal effects analysis for the JCEP. Coastal effects are any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity. Effects include both direct effects and indirect effects that are later in time or farther removed in distance but are still reasonably foreseeable. As part of the analysis, DLCD determined coastal effects on natural resources, recreation and access, cultural resources, aesthetic resources, and economic resources. DLCD objects to JCEP's certification that the project is consistent with the OCMP and its enforceable policies, because DLCD finds that the coastal adverse effects from JCEP are significant, and JCEP has not established consistency with the enforceable policies of the OCMP.

JCEP has not proposed alternatives to this project that would enable the project to be fully consistent with the OCMP. While DLCD is open to alternatives that would make the project fully consistent with the enforceable policies of the OCMP, additional analysis would be needed to determine whether or not alternatives would be sufficient to meet enforceable policy standards. At this time, JCEP has not established that the proposed activity is consistent with the enforceable policies of the OCMP.

Under the regulations implementing the CZMA, a state may object on alternative bases. A permissible basis is an objection that the applicant has failed, following a written request, to supply information necessary for the state to determine consistency. DLCD objects under 15 CFR § 930.63(c) because Jordan Cove has failed to provide "information necessary* * * to determine consistency."[2] As DLCD and other agencies have repeatedly observed, the applicant has failed to provide information regarding proposals to mitigate numerous impacts or whether and how such mitigation might work. DLCD further

[2] See also 15 CFR § 930.63(a) ("A state agency may assert alternative bases for its objection.")

objects on the additional alternative basis that the applicant has not provided information sufficient to determine whether less harmful alternatives are available.

Based on the foregoing, the proposed project has not established consistency with the seven enforceable policies and underlying standards of the federally approved OCMP. DLCD objects to JCEP's consistency certification. As a result of this objection, the FERC and the Corps cannot grant any license or permit for this project unless this objection is overridden on appeal by the U.S. Secretary of Commerce.

BACKGROUND

Statutory Framework for Consistency Review

The CZMA authorizes a coastal state to review activities requiring federal agency authorizations, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone, for their consistency with the enforceable policies of the state's approved Coastal Management Program (CMP) a process referred to as "consistency review."[3] An applicant seeking federal permits to conduct activities in or affecting the coastal zone must certify that its proposed use is consistent with "the enforceable policies of the state's approved [CMP]." A federal agency cannot grant a permit "until the state … has concurred with the applicant's certification."[4] DLCD is Oregon's designated coastal management agency statutorily responsible for acting on the required certification of consistency with the OCMP pursuant to CZMA section 307(c)(3)(A). An applicant for any project requiring a federal license or permit must obtain a CZMA consistency concurrence for the federal license or permit to be granted in Oregon's coastal zone.

The procedural regulations applicable to this project are available at 15 CFR part 930, subpart D and Oregon Administrative Rule (OAR) chapter 660, division 35. In accordance with the consistency provisions of the federal CZMA and implementing regulations at 15 CFR part 930, the proposed JCEP, which requires authorizations and approvals from multiple federal agencies and which is located in Oregon's Coastal Zone, is subject to the consistency provisions of the CZMA and must be conducted in a manner which is consistent with the enforceable policies of Oregon's federally approved OCMP and any applicable enforceable policies. To be consistent with the OCMP, the proposed project must comply with enforceable policies contained in: 1) the statewide land use planning goals; 2) the applicable acknowledged city or county comprehensive plans and land use regulations; and 3) selected state authorities, *e.g.* those governing removal-fill, water quality, and fish & wildlife protections.

A list of enforceable policies applicable to the project can be found in Appendix 1.C

[3] 16 USC § 1456(c)(3)(A).
[4] 16 USC § 1456(c)(3)(A).

OCMP Jurisdiction and Review Process

DLCD is the designated lead agency of the OCMP under ORS 196.435(1) and 15 CFR §§ 930.6(b) and 930.11(o). The OCMP is a networked program comprising of DLCD as the lead state agency, ten other state agency partners, and local jurisdictions within the coastal zone. Networked state agency partners play critical roles within the OCMP to carry out various state statutes, administrative rules, and permit and authorizations in the coastal zone. 15 CFR § 930.6. DLCD has the sole authority to make consistency determinations for the OCMP.

The Oregon coastal zone includes the state's coastal watersheds and extends seaward three nautical miles and inland to the crest of the coast range, with a few exceptions:

- Along the Umpqua River, where it extends upstream to Scottsburg;
- Along the Rogue River, where it extends upstream to Agness; and
- In the Columbia River Basin, where it extends upstream to the downstream end of Puget Island.

This watershed-based coastal zone was first expressed in 1971 by the Oregon Legislature. Within this zone, the OCMP applies to the land and water areas, except on lands owned by the federal government or held in trust under Indian tribal jurisdiction.

OCMP Federal Consistency Review Authority

Only DLCD is authorized to determine whether a federal action is consistent with the enforceable policies of the OCMP. See OAR 660-035-0020 and 15 CFR § 930.6. 15 CFR § 930.6 specifically provides "the State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal * * *consistency certification."

Further, in its 2017 Program Evaluation Findings, NOAA's Office for Coastal Management (OCM) stated its position regarding the role of DLCD:

> *"Requirements to obtain local permits and local land use compatibility statements are recognized by NOAA as part of the Oregon Coastal Management Program; however,* ***the state cannot delegate or defer its Coastal Zone Management Act federal consistency decision-making authority to a local government permit decision****. Regardless of state law requirements****, only the lead state agency authorized by NOAA as part of a state's coastal management program can determine whether a federal action is consistent with the enforceable policies*** *of the state's NOAA-approved program. State Coastal Zone Management Act decisions must be based on the substantive standards of enforceable policies approved by NOAA and* ***cannot be based on decisions or actions (or non-action) by a local government****. A state coastal management program's* ***lead state agency may***

consider the substantive standards within local enforceable policies *approved by NOAA...*

A state may include a local permit decision or local land use compatibility statement in its findings for a Coastal Zone Management Act review, but a decision by a state to issue an objection cannot be based on a local government… permit or land use compatibility statement*. In addition to not being authorized under the Coastal Zone Management Act and NOAA's regulations regarding state agency decisions for federal consistency, delegating or deferring Coastal Zone Management Act decisions to local governments is contrary to the act's requirements that local interests not outweigh national and regional interests."*[5] (Emphasis Added).

State Statutes and Associated Permits and Authorizations

15 CFR § 930.6(c) provides that "the issuance or denial of relevant state permits can constitute the state agency's consistency concurrence or objection." DLCD administrative rules provide that issued state permits or authorizations are the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers. OAR 660-035-0050. DLCD rules provide that "For activities located within the state's jurisdiction that require state or local permits or authorizations, *the issued permit or authorization is the only acceptable evidence* demonstrating consistency with the enforceable policies that the permit or authorization covers."[6] These rules have been approved by NOAA as enforceable policies of the OCMP. **Therefore, the OCMP objects to this project on the basis that the applicant has not received, and in some cases has not applied for, all required state permits and authorizations.**

Jordan Cove has failed to establish consistency with seven of the applicable enforceable policies identified by DLCD and JCEP. As DLCD explained nearly two years ago in a letter to Jordan Cove, "DLCD will not concur that a proposed project is consistent with the OCMP until the applicant has obtained the necessary approvals … for the project per OAR 660-035-0050 (4).[7]" NOAA has repeatedly held, in considering similar networked programs, that an applicant's failure to secure the permits that demonstrate compliance with the program during the consistency review period provides a valid basis for objection to a consistency certification.[8]

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[5] https://coast.noaa.gov/data/czm/media/OregonCMP2017.pdf

[6] OAR 660-035-0050(4) (emphasis added).

[7] Patty Snow, DLCD Coastal Program Manager, Letter to Meagan Masten, Pembina Pipeline Corporation, at 2 (Oct. 27, 2017), FERC Accession No. 20171030-5070.

[8] Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC from an Objection by the State of Maryland, 6-7 (June 26, 2008), available at https://coast.noaa.gov/data/czm/consistency/appeals/fcappealdecisions/mediadecisions/aes.pdf ("Maryland's federally

Approved Program is a network of state laws and policies. These laws and policies are the 'enforceable policies' of Maryland's Program and require, in part, the issuance of state permits to engage in certain activities within the coastal

Jordan Cove Energy Project Overview

Project Review Details

Under 15 CFR § 930.52, an "applicant" means "any * * * corporation * * * *organized or existing under the laws of any nation[.]" JCEP is an "applicant" under 15 CFR § 930.52 because Pembina is the parent company of Pacific Connector Gas Pipeline L.P. and Jordan Cove Energy Project, L.P. and is a Canadian corporation. Pursuant to 15 CFR § 930.56, DLCD provided JCEP with an advisory letter informing them of the Federal Consistency Review Process on October 27, 2017. *See* Appendix 5.A. JCEP is seeking two major federal permits/licenses needed for the proposed project: the Army Corps section 404/section 10 permit and the Federal Energy Regulatory Commission's energy siting certificate. OCMP has listed these federal licenses or permits activities as subject to review for consistency with the OCMP. 15 CFR §930.53; OCMP Table 7. In the case of multiple federal permits for one project, per 15 CFR § 930.59, DLCD requested that JCEP submit one joint federal consistency application so that these two federal permits/licenses can be reviewed together. JCEP agreed to this request. The applicant for the proposed project submitted a complete application on April 12, 2019. *See* Appendix 1.B. Per 15 CFR § 930.60(a)(1), before consistency review occurs as described above, DLCD has 30 days to review whether the application includes all necessary data and information (NDI). Due to project modifications, JCEP submitted supplemental information to DLCD on May 6, 2019. *See* Appendix 5.B. To initiate federal consistency review, applicants must provide DLCD with the NDI required by 15 CFR § 930.58. On May 13, 2019, DLCD submitted a letter to JCEP informing them that their necessary data and information requirements had been met, review had been initiated, and a review deadline was in place for October 12, 2019. *See* Appendix 5.C. On July 12, 2019, DLCD supplied the federally required 3-month notification letter that the project is still under review. Included in this letter was a request for additional information. *See* Appendix 5.D. On August 15, 2019, DLCD supplied an additional information request to the applicant. *See* Appendix 5.G. JCEP responded to DLCD information requests formally on July 31, 2019, August 23, 2019, and August 20, 2019. *See* Appendices 5.F, 5.H, and 5.I. The responses and associated information were deemed insufficient for OCMP federal consistency review purposes. Under 15 CFR § 930.60(b), an applicant and DLCD may mutually agree in writing to stay the federally mandated six-month review period. DLCD received a request from the applicant on September 16, 2019 to execute a Stay Agreement. A Stay Agreement was executed between DLCD and the applicant, which extended DLCD's decision deadline to February 28, 2020. *See* Appendix 5.K. JCEP submitted a letter to the Oregon Department of Justice (DOJ) regarding federal consistency and conditioning state permits on September 4, 2019. *See* Appendix 5.J. On November 4, 2019, a memo and corresponding matrix was

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zone."); Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Weaver's Cove Energy, LLC and Mill River Pipeline, LLC from Objections by the Commonwealth of Massachusetts, 5-6 (June 26, 2008), available at https://coast.noaa.gov/data/czm/consistency/appeals/fcappealdecisions/media decisions/weaverscoveenergy608.pdf ("A state may require that an applicant obtain and submit relevant state licenses and permits as a condition to possessing necessary information. … Massachusetts's Program requires submission of applicable licenses and permits, authorizing the state to object to projects when an applicant has failed to obtain and submit all applicable licenses and permits during the state's review period. As such, Appellants' failure to obtain applicable state licenses and permits provided Massachusetts with a valid basis upon which to object to the Project.")

provided to JCEP to indicate which state permits and authorizations DLCD was willing to hypothetically condition as part of its Federal Consistency Review. *See* Appendix 5.L. On December 20, 2019, DLCD received a letter from JCEP requesting clarification on DLCD's position as it relates to issuing concurrences with conditions and specifically conditioning a decision on the issuance of state permits linked to enforceable policies of the OCMP. *See* Appendix 5.M. DLCD responded to this letter to clarify the OCMP and federal consistency review process on January 10, 2020. *See* Appendix 5.N. DLCD provided a follow-up clarification letter to JCEP on January 29, 2020, to reiterate the OCMP position, specifically as it related to certain environmental quality permits and associated enforceable policies. *See* Appendix 5.O. A summary of the project overview timeline can be found in Appendix 1.A.

Public Participation

Public Participation, as required by 15 CFR § 930.2, took place in July, August, and September of 2019. DLCD published a public notice for the project on July 23, 2019 and the public comment period closed at midnight on September 21, 2019. *See* Appendix 5.E. The OCMP received approximately **20,000 public comments**. All public comments received during the public comment period were logged, reviewed, and considered for review purposes. **Approximately 80 percent of public comments were opposed to the project and 20 percent were in favor of the project.** Generally, public comments expressed concern on adverse impacts to state or federally listed species, adverse impacts to archeological and historical sites, adverse impacts to water resources, interference with navigation and recreation, insufficient compensatory mitigation, and lack of compliance with the statewide planning goals. Those commenting in favor of the project generally cited the potential economic benefits in terms of jobs and infrastructure investments associated with the project.

The Jordan Cove Project Overview

The Jordan Cove LNG Export Terminal and associated facilities are proposed to be located on the bay side of the North Spit of Coos Bay in Section 5 of Township 25 South, Range 13 West at Latitude/Longitude: 43.432238°, -124.267136°. The primary site for the LNG Export Terminal is approximately 7.5 miles up the existing Coos Bay Federal Navigation Channel, approximately 1,000 feet north of the city limit of North Bend, in Coos County, Oregon, and more than one mile away from the nearest residence. The Pacific Connector gas pipeline would extend for approximately 229 miles across Klamath, Jackson, Douglas, and Coos Counties, Oregon and terminate at the proposed LNG Export Terminal in Coos County. The pipeline would occupy 4,947.7 acres of land during construction and 1,398.57 acres of land as part of a permanent easement.

The export terminal and associated facilities (collectively, the "LNG Export Facilities") include the following components: LNG Export Terminal, Slip and Access Channel, Materials Offloading Facility, Navigation Reliability Improvements, Meteorological Station, Industrial Wastewater Pipeline, Trans Pacific Parkway / US 101 Widening, APCO Sites 1 and 2, Kentuck Site, Eelgrass Mitigation Site, and Temporary Construction Areas.

PCGP is seeking to construct and operate a new 229-mile 36-inch diameter gas pipeline. The proposed pipeline would receive natural gas from interconnections near Malin, Oregon and deliver the gas to the LNG Export Terminal near Coos Bay, Oregon. There, the natural gas would be liquefied, stored, and

loaded onto vessels for transit to Pacific markets. The pipeline is expected to transport up to 1,200,000 decatherms per day (Dth/d) at 1600 psig and produce up to 7.8 million metric tons per annum (mtpa) LNG for export.

COASTAL EFFECTS ANALYSIS

DLCD reviews federal license or permit activities for coastal impacts in five categories: natural resources, recreation and access, cultural resources, aesthetic resources, and economic resources. Coastal effects analyses can include:

1. The affected uses (*e.g.*, commercial and recreational fishing, boating, tourism, shipping, energy facilities) and resources (*e.g.*, fish, marine mammals, reptiles, birds, landmarks).
2. Where and in what densities the uses and resources are found.
3. How the state has a specific interest in the resource or use. (*e.g.*, economic values, harvest amounts, vulnerabilities, seasonal information relevant to the proposed activity).
4. Where the proposed activity overlaps with these resources, uses and values.
5. Impacts to the resources or uses from the proposed activity.
6. A reasonable showing of a causal connection to the proposed activity, including how the impacts from the activity results in reasonably foreseeable effects on the state's coastal uses or resources.
7. Why any required mitigation may be inadequate.
8. Empirical data and information that supports the effects analysis, visualizes the affected area, resources and uses with maps; and shows values, trends and vulnerabilities.

Coos Bay Regional Overview

Coos County has an extremely blue economy, generating over $179 million in goods and services from ocean resources in 2015 alone.[9] Located along the southern coast of Oregon, the Coos Bay area is home to one of the busiest ports in the state.[10] Moreover, some of the largest coastal communities on the Oregon Coast are in the Coos Bay region. As a result, these communities heavily rely on the ocean transportation sector. While the commercial and recreational fishing industry make up a large portion of the marine transportation sector, Coos Bay also serves as a port for mass cargo shipments, passenger expeditions, and tugtow operations. Each of these industries are vital to the sustainability of the Coos Bay area, as they are the main drivers of its economy. Hundreds of commercial and pleasure crafts are reliant on the area's moorage services. Many of these communities identify with the fishing community and have a unified passion for the sustainability and protection of wildlife within the area (*i.e.* shellfish, finfish, Dungeness crab.)

[9] https://coast.noaa.gov/snapshots/#/process?action=ocean&state=41&county=011&bounds=null
[10] Ocean Reports

Home to the second largest estuary in the Oregon, Coos Estuary expands throughout a majority of the county and is of great importance to the community and state. Communities with land use jurisdiction related to the JCEP include Coos County, Coos Bay and North Bend. Other smaller communities in the regional area include Charleston, Empire, Cooston, Glasgow, Hauser, and Lakeside. These communities are known for their charm, historical significance, and natural beauty. The region is also home to the McCullough Bridge and many other historical buildings and monuments.

The Coos Bay community is greatly connected to the region's natural resources. Some of these natural resources include unique environments which provide habitat for several endangered species local to the area. For example, Kentuck Inlet serves as marshland habitat for several endangered and threatened species including Coho salmon and marbled murrelet. In an effort to understand this diverse ecosystem, the region also is home the South Slough National Estuarine Research Reserve, the state's only unit of the National Estuarine Research Reserve System established under the CZMA.[11]

Recreation and access are of critical importance to the Coos Bay community. Recreation opportunities include kayaking, hiking, fishing, bird watching, waterskiing, canoeing, boating, swimming, ATV riding, camping, surfing, scuba diving, biking, and other activities.[12] [13] The region is also home to the popular Oregon Dunes National Recreation Area. Access to the ocean, natural resources, and recreational sites in the region are highly valued by communities and visitors alike. Finally, Coos Bay is also home to several aesthetic resources, such as Cape Arago, Sunset Bay, and Shore Acres State Parks, and Bastendorff Beach County Park.

Considered to be "the best natural harbor between San Francisco and the Puget Sound," Coos Bay is an estuary fed by multiple tributaries, including the Coos River.[14] The Coos Bay Estuary is a 20,566 acre riverine estuary that consists of 12 focal species and nine biotic habitats.[15] Focal species present in the Coos Bay Estuary include bat rays, bay shrimp, Chinook salmon, Coho salmon, Dungeness crab, English sole, green sturgeon, Pacific herring, shiner perch, staghorn sculpin, starry flounder, and steelhead. Coos Bay is home of several estuarine habitats, which are crucial to the survival of several species in the area. Approximately 30 tributaries enter Coos Bay, including the massive Coos River, and mix with saltwater to create prime estuarine habitat for animal species.[16] "These ecosystems and their highly

[11] http://estuaries.noaa.gov/About/Default.aspx?ID=116
[12] Traveloregon.com/places-to-go/cities/lakeside
[13] Visittheoregoncoast.com/cities/Charleston/
[14] Visittheoregoncoast.com/cities/coos-bay/
[15] West Coast Estuaries Explorer, 2019 (The Pacific Marine & Estuarine Fish Habitat Partnership selected focal fish species to encompass the diversity of life histories, habitat use, and ecological roles of species found in West Coast estuaries. The *Nursery Functions of U.S. West Coast Estuaries: The State of Knowledge for Juveniles of Focal Invertebrate and Fish Species* assessment compiled information on the presence of juveniles or the species in general within many estuaries along the West Coast and assessed the nursery habitat potential for 15 ecologically and economically important fish and invertebrate species).
[16] ODFW/Oregon State Doc/LCDC

productive tidal wetlands provide habitat for keystone species such as anadromous salmonids and brant geese, as well as economically important shellfish."[17]

In addition to serving as critical habitat for vulnerable and endangered species, Coos Bay also contains wetlands that benefit the region in a variety of ways. First, wetlands serve as filters for water pollution runoff, and are crucial to protecting marine water quality so that it is suitable for other users. Next, wetlands play a "pivotal part of the natural" ecosystem in providing habitat for migratory species, juvenile species, and other megafauna found in Oregon's wetland systems. Finally, these wetlands serve as "base for commercial fishing jobs and revenue," providing over 479 jobs in Coos County alone.[18] The Coos Bay area has a healthy blue economy, mainly focused on tourism and recreation, as well as living resources (*i.e.* fishing, aquaculture, etc.).[19] As of 2015, Coos County represented over $88 million dollars in wages for ocean jobs.[20]

Oregon includes the home of nine federally recognized Native American tribes, including the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of Siletz Indians, and the Coquille Indian Tribe. Oregon respects the rights and resources of Oregon's native tribes. The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians can "trace their ancestry back to the aboriginal inhabitants of the South Central coast of Oregon."[21] Due to its proximity to several unique natural resources, Coos Bay remains a focal point of coastal culture, for both the Native American tribes and users of the central port for the southern half of Oregon.

Direct and Indirect Effects

The term "coastal effect" is defined as "any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity." 15 CFR § 930.11(g). Effects include both direct effects and indirect effects that are later in time or farther removed in distance but are still reasonably foreseeable.

Natural Resources

Applicable Enforceable Policies: Goal 6, ORS 468B, ORS 196, ORS 274, ORS 469, ORS 496, ORS 509

Oregon has thoroughly documented adverse impacts of dredging on fish, wildlife, and habitat resources in the Coos Bay Estuary in the comments provided to FERC on its Draft and Final Environmental Impact Statements (DEIS) for the JCEP See Appendices 2.A, 2.B, 2.E, 2.F, and 2.G. Further, these comments are reiterated in the Oregon Department of Fish and Wildlife (ODFW) comments to Coos Bay City Council regarding Comprehensive Plan Amendment 187-18-000153: Jordan Cove Energy Project Estuary Navigation and Reliability Improvements, dated August 27, 2009. *See* Appendix 8.A.

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[17] The Coastal Connection: assessing Oregon estuaries for conservation planning.
[18] Coastal County Snapshot
[19] https://coast.noaa.gov/snapshots/#/process?action=ocean&state=41&county=011&bounds=null
[20] https://coast.noaa.gov/snapshots/#/process?action=ocean&state=41&county=011&bounds=null
[21] Ctclusi.org/history

Water Resources

Given the magnitude and scale of the project, impacting as it will hundreds of miles in Oregon including sensitive coastal areas, the project has the potential to significantly affect water quality in the state. Due to insufficient information on the best management practices JCEP proposes for use, there is continued concern from DLCD regarding adverse effects to water resources, specifically the impact on the waters of the state related to land subsidence, soil erosion, and stormwater runoff.

The project would remove some eighteen million cubic yards of material from the estuary. Suspended sediment will make the water murky and increase turbidity. Dredging of this scope could stir up contaminated sediments from past industrial activities, including polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), heavy metals, petrochemicals, pesticides and other persistent and toxic contaminants. Contaminated sediments can enter the food chain, accumulate in the tissues of animals and fish, and present significant health risks to people consuming these foods. Contaminated sediments also pose a major threat to shellfish such as oyster beds, a major local industry. Endangered Oregon Coast Coho salmon would be negatively impacted.

Wetlands

A US Geological Survey report states that "It is not widely accepted that mitigation projects are successful. Although the current wetland permit programs assume that wetland loss is being ameliorated, no long-term, interdisciplinary research shows unequivocally that a created wetland has fully replaced the lost function resulting from a wetland's destruction."[22] As part of its Removal-Fill application review (see Appendix 7.H), Department of State Lands (DSL) noted the following freshwater impacts and pipeline impacts to wetlands and waters, primarily within the coastal zone:

Freshwater Water Impacts:

- Permanent Impacts to 1.91 acres of dunal wetlands (LNG Export Facilities)
- 39, 273 cubic yards of fill
- 23 cubic yards of removal

Pipeline Impacts to Wetlands and Waters:

- Pipeline will affect 342 waterbodies, 66 perennial, 163 intermittent, 100 ditches, nine lakes or stock ponds, and four estuarine crossings
- Pipeline will cross a total of 5.3 miles of wetlands
- Construction right of way and temporary extra work areas will affect 112.9 acres of wetlands, 106.71 acres of palustrine emergent wetlands, 2.3 acres of palustrine scrub-shrub wetlands, and 2.55 acres of palustrine forested wetlands
- 0.64 acres of palustrine unconsolidated bottom or aquatic bed wetlands will be disturbed by the pipeline

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[22] U.S. Department of the Interior, U.S. Geological Survey Fact Sheet FS-246-96 (https://pubs.usgs.gov/fs/1996/0246/report.pdf)

- Permanent vegetation type conversion impacts will affect a total of 0.91 acres of wetlands, including 0.73 palustrine forested and 0.18 palustrine scrub-shrub wetlands
- Approximately 9,800 cubic yards of removal and fill in waters
- Approximately 49,000 cubic yards of removal and fill in wetlands

Fish and Wildlife

Disturbance to Marine Mammals:

Numerous species of marine mammals routinely occur in the nearshore marine waters immediately outside the mouth of Coos Bay, and several species temporarily or permanently reside within the Coos estuary tidal basin.[23] ODFW has identified many species of marine mammals common in the waterway leading to the LNG Export Terminal, including eight species of whales and a species of sea lion. Additionally, California sea lions (*Zalophus californianus*) are common near the docks and marinas immediately inside the mouth of Coos Bay, and Steller sea lions (*Eumetopias jubatus*) sometimes forage in the estuary from haul out sites at nearby Cape Arago. In addition, juvenile northern elephant seals (*Mirounga angustirostris*), orca (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) are occasional visitors to the tidal waters of the Coos estuary. In contrast to the temporary use of the estuary by the species of marine mammals described above, the tidal waters, submerged and submersible lands within the Coos estuary are inhabited year-round by populations of Pacific harbor seals (*Phoca vitulina*). Pacific harbor seals haul out in large numbers on the exposed tideflats at multiple sites located in the lower region of the Coos estuary and in South Slough, and they forage in the estuary for numerous species of resident and transitory estuarine fish. Breeding activities typically occur between February and May, and the harbor seal pups are born and weaned in the estuary from March to June. The ODFW Nearshore Conservation Plan considers the Oregon populations of Pacific harbor seals a Strategy Species and identifies priority conservation actions to limit anthropogenic disturbance, adhere to the federal protections developed by National Marine Fisheries Service (NMFS), and capitalize on opportunities to generate new information and fill data gaps.

Construction of the LNG Export Facilities, operation of the LNG Export Terminal, and the subsequent vessel traffic increase to up to 140 large LNG carrier trips per year would disturb Pacific harbor seal populations that reside year-round within the Coos estuary tidal basin. In particular, harbor seals will be susceptible to immediate and acute disturbance by noise associated with LNG Export Facilities construction as well as longer term chronic disturbance from vessel wakes and noise generated by passage of the LNG carriers through the Coos Navigational Channel. The FEIS includes recommendations that JCEP prepare a Marine Mammal Monitoring Plan that identifies specific measures that would be implemented to reduce noise impacts and to ensure compliance with NMFS underwater noise criteria pertaining to ESA-listed species of whales. DLCD advocated for expanding the scope of the recommended Marine Mammal Monitoring Plan to include consideration of the effects of noise on resident populations of adult and juvenile Pacific harbor seals and to minimize potential disturbance to early season harbor seal breeding and pupping activities. Additional disturbance effects include the

[23] Rumrill, 2003

potential for chronic disturbance to the harbor seal haul out sites associated with vessel wakes generated by the passage of the LNG carriers. Hauled out harbor seals disturbed by the presence of large vessels exhibit an increased likelihood of entering the water (2X increase in disturbance) and higher when the vessels are within 100 meters of the haul out site (3.7X increase in disturbance).[24] Moreover, adult harbor seals also exhibit an increased likelihood of entering the water in response to vessels whenever a pup is present (1.3X increase in disturbance). These observations indicate that harbor seal haul-outs are disturbed by the passage of large vessels, and they suggest that local fitness of the resident population of harbor seals may be reduced by vessel disturbances particularly when they occur during breeding and pupping seasons.[25]

Impacts to Wildlife in Freshwater Wetlands, Uplands, and Beaches on the North Spit:
Freshwater wetland habitats on the North Spit provide functionally important ecological features as they contribute to nutrient cycling where the sandy soil types are very limited in primary nutrients, and they provide freshwater refugia within a short distance of saline habitats. The wetlands and open water ponds are important for production of a number of amphibians including rough skinned newts (*Taricha granulosa*), red-legged frogs (*Rana aurora*), as well as several species of tree frog (*i.e.* Pacific tree frog *Pseudacris regilla*). Three-spined stickleback (*Gasterosteus aculeatus*) occupy a number of the ponds and deeper wetlands. Numerous waterfowl species transition through these ponds including mallards (*Anas platyrhynchos*), bluebills (*Aythya marila*), wood ducks (*Aix sponsa*), and Canada geese (*Branta Canadensis*).

JCEP proposes to mitigate unavoidable impacts to freshwater wetlands at the Kentuck Mitigation Site. The state uses the Fish and Wildlife Habitat Mitigation Policy provided in OAR chapter 635, division 415, to determine necessary mitigation offsets depending on the functions and values of the habitat being impacted, what the policy refers to as Habitat Categories. From 2011- 2014, ODFW determined that within the project area for the JCEP Terminal Facilities and workforce housing there is an approximate Habitat Category 2 total of 33.9 acres as follows: 16.7 estuarine/intertidal habitat; 0.3 acres of low salt marsh; 5.8 acres of intertidal unvegetated sand; 4.7 acres of algae/mud/sand; 3.4 acres of shallow subtidal; and 3.0 acres of eelgrass habitat within the project location where estuarine dredging is proposed. JCEP proposes dredging 15.4 acres of deep subtidal Habitat Category 3 too. The Fish and Wildlife Habitat Mitigation Policy, dictates providing offsets for temporarily impacted areas that may be unavailable to fish and wildlife while vegetation is recovering.

DLCD also considered the effect of converting upland habitat on upland wildlife resources displaced by construction and operation of the LNG Export Facilities. The North Spit is used by a variety of important wildlife such as the western snowy plover (*Charadrius nivosus nivosus*), coastal marten (*Martes caurina*), pacific fisher (*Pakania pennantii*), bald eagle (*Haliaeetus leucocephalus*), rookeries for great blue heron (*Ardea herodius*), black-tailed deer (*Odocoileus hemionus*), American beaver (Castor Canadensis), mountain lion (*Puma concolor*), Roosevelt elk (*Cervus elaphus rooseveltii*), porcupine (*Erethizon dorsatum*), various bat species, and black bear (*Ursus americanus*). There are also 11 species of

[24] Mathews et al., 2016
[25] Mathews et al., 2016

amphibians (8 salamanders, 3 frogs) and at least 10 species of reptiles that have been found to occur on the North Spit.

Impacts of the LNG Export Facilities on Snowy Plover Nesting and Foraging Habitat:
DLCD is particularly concerned about the JCEP's impacts to western snowy plover (hereafter, snowy plover) nesting and foraging habitat. This species is a federally listed threatened species and is also listed as Threatened on the Oregon Endangered Species Act.[26] Snowy plovers populations have declined on the Pacific coast over the past century, but recent nest monitoring has shown stable to increasing populations. The reason for the recent increase is the intensive and coordinated management by state (ODFW, OPRD) and federal agencies (USFWS, USACE, USFS, BLM) to address the threats to the plover including 1) habitat destruction caused by development and recreation, 2) resource extraction, 3) invasion of non-native beachgrass (*Ammophila spp*.), and 3) increased predation by corvids (ravens and crows) and other predators (gulls, coyotes, skunks, etc.).[27] The North Spit is a particularly important component of snowy plover habitat along the Oregon coast, with the highest numbers of nesting plovers and the highest nest success rates among all plover sites.[28] One of the primary reasons for the North Spit's success is the multi-agency maintenance of grass-free sandy beaches within snowy plover habitat restoration areas as well as OPRD recreation management and USFWS predator control. Significant funding and resources have gone into snowy plover recovery on the North Spit. Snowy plover abundance and productivity at the North Spit requires continued management.

Despite these constant and expensive management efforts, there are additional threats which cannot be managed locally. With climate change, the North Spit is experiencing an increased frequency and intensity of storm events. Overwash from high tide events during these storms destroy nests, and prevailing winds during these storm events can cause blowing sand to bury nests. With the predicted rise in sea levels associated with climate change, this only increases the risk of loss of beach habitat for snowy plovers.

Any additional threat puts the snowy plover at risk of declining again. Impacts to plover nesting and foraging areas may come from the noise associated with construction and operation, but more likely from the increased recreational pressure and subsequent increase in predators on the North Spit. On page 4-322 of the DEIS, FERC states "Jordan Cove terminal construction and operations personnel would likely use the North Spit for recreational purposes and increased recreational use could result in increased plover disturbance including destruction of nests by dogs, off-road vehicle traffic, inadvertent trampling, or increased predation if scavengers and predators (corvids, coyotes, striped skunk, feral cats) are attracted to nesting areas due to the presence of trash and food remains." The proposed activity will effect snowy plover and the recovery efforts on the North Spit.

[26] ORS 496.171-192, also see OAR 635-100-0105
[27] USFWS 2007
[28] Lauten et al. 2018, M. Nugent ODFW personal communication

Impacts to Coastal Marten Habitat:

Adjacent to the slip is a large dune occupied by a mature shore pine vegetation community that is potential habitat for the coastal marten (*Martes caurina*). Coastal martens have a limited range and occur in coastal shore pine as well as late-successional mixed conifer forests. Coastal martens have an apparently low survival rate in fragmented forests elsewhere in the United States, and habitat connectivity has been identified as one of the key conservation strategies for this species. Abundance and distribution of the coastal marten in Oregon is still largely unknown, though ongoing research by ODFW, universities, and federal partners is underway. Coastal martens have been documented on trail cameras in close proximity to the LNG Export Terminal site in 2018 and in identical shore pine habitat. Conservation concern for the coastal marten is on the rise. Currently, ODFW considers the coastal marten a State Sensitive Species under OAR 635-100-0040 and an Oregon Conservation Strategy Species. Coastal martens were recently petitioned for listing on the federal Endangered Species Act list[29] and the USFWS has not yet issued its decision.

Impacts from the PCGP Pipeline to Fish and Wildlife Habitat:

The PCGP (pipeline) portion of the project proposes construction of a 36" steel gas pipeline extending 229 miles from the North Spit of Coos Bay to Malin that would connect the LNG export facility to the Ruby LNG pipeline carrying gas primarily from the Rocky Mountain region. The pipeline will cause significant direct and indirect impacts to fish and wildlife habitat, as well as the indirect impacts to water quality associated with an increase in watershed runoff caused by this project, particularly in areas where the pipeline is proposed on slopes exceeding 50%, and where vegetation will be removed from riparian corridors. Impacts include the Coos, Coquille, South Umpqua, and Upper Rogue watersheds. According to FERC, overall the pipeline would affect 352 waterbodies, including 69 perennial streams, 270 intermittent streams, nine perennial ponds, and four estuaries, many of which are in the coastal zone. This is significant because all of these waterbodies provide habitat for fish and wildlife.

In the coastal zone, JCEP proposes to utilize horizontal directional drilling (HDD) for the crossing of the Coos Bay estuary and the Coos River. For other crossings, the applicant would use dry open-cut crossing methods. These actions will both temporarily and permanently impact fish and wildlife habitats in the coastal zone and must be conducted in a manner consistent with the ODFW Fish and Wildlife Habitat Mitigation Policy, the ODFW recommended In-Water Work Windows, and receive applicable ODFW In-Water Blasting and Fish Passage authorizations.

The current and desired future condition of the waterbodies affected by the pipeline is predominantly linked to management actions in the riparian habitats and adjacent uplands. Historically, dredging, rip-rap installation, upland and tidal mudflat leveling, filling of tidal wetlands and saltmarsh, and other development and utilization have impacted some of the aquatic habitats in Coos Bay. However, improvements in forest management that reduce sediment inputs and regulations conserving wetlands and waterways led to substantial recovery of the ecological potential of Coos Bay. Many of the pipeline

[29] 80 FR 18741

impacted streams have historically been ecologically degraded by a number of human impacts including: removal of native coastal riparian forest, road construction with subsequent chronic sediment contribution, and debris torrent and mass-wasting events related to forestry activities. The majority of these streams, many of which are critical for native salmon, trout, sculpin, lamprey, and other aquatic species production, are in a gradual trend of recovery following management guidelines and best management practices (BMPs) implemented through agency and private ownership coordinated efforts.[30] The proposed pipeline construction and maintenance with associated long-term disturbance would introduce an added burden inhibiting ecological recovery. The proposed pipeline stream crossings have the potential to negatively affect watercourse ecosystems through alteration of channel beds and banks, increasing total suspended solids (TSS), alteration of substrate size and quantity in the reach, and changes to the immediate area benthic community. These impacts can result in deleterious impacts for fish due to decreased food availability, changes in foraging range increasing predation, aquatic habitat simplification, and decrease in overall health.

Placement of the pipeline on steep slopes and direct routing parallel to the slope may have geomorphic affects. Coastal sandstone soils are highly susceptible to mass-wasting when undercut and generally disturbed. The project includes construction of an extensive road network to access the pipeline installation and facilitate pipeline maintenance, which will further create potential for mass-wasting slope failures and general sediment production over the current condition. Additionally, the proposed access road networks will likely have long-term chronic effects to fish and wildlife unless seeded, mulched, and closed. Poor stream health conditions for anadromous fish production in the Coos, Coquille, and South Umpqua River basins is largely related to upland disturbance that increase sediment loading and loss of riparian forest since 1900. Sediment transport to streams is a substantial factor currently suppressing recovery of Oregon Coast Coho salmon a threatened species under the federal Endangered Species Act (ESA). Extensive research has documented the impacts of sediments to salmonids. Work to reduce sediment input into coastal and inland streams that will be impacted by the pipeline is foundationally critical for enhancing spawning and rearing habitat for fall Chinook salmon, Oregon Coast threatened Coho salmon, Pacific lamprey (*Entosphenus tridentata*), winter steelhead (*O. mykiss irrideus*) and coastal cutthroat trout (*O. clarki clarki*). Water quality is directly linked to hatch rates and food available for those species. Sediment loading above natural background levels contributes to embedding of substrates, which often results in reduced hatch rates for eggs in redds, inability of fry to emerge from redds, inhibited production of macroinvertebrates that live in the interstitial spaces of gravels, and impacts on the ability of fish to obtain food due to the nature of salmonids to feed predominantly by using their sight.[31]

Impacts to Marbled Murrelet and Northern Spotted Owl Habitat:
The PCGP project would impact late-successional forest wildlife such as the marbled murrelet and the northern spotted owl. Both of these species are listed as "threatened" under the ESA and the Oregon Endangered Species Act, ORS 496.171 to 496.192; OAR 635-100-0105. Both species are experiencing

[30] Oregon Coast Coho Conservation Plan; ODFW (2007).
[31] Burns 1970; Hall and Lanz 1969; Weiser and Wright 1988; Suttle et al. 2004; Tripp and Poulin 1992; Waters 1995

declines in higher suitability habitat. For marbled murrelet as an example, higher-suitability habitat in Oregon is estimated to have reduced by nearly 10 percent, from 853,400 acres in 1993 to 774,800 acres in 2012, a net loss of 78,600 acres.[32] On federal lands, habitat losses were mostly due to wildfire, whereas those on nonfederal lands were largely the result of timber harvest.

The proposed activity will effect marbled murrelet and northern spotted owl habitats. FERC determined that the proposed pipeline would impact over 2,000 acres of forest including over 750 acres of late-stage old growth forest that provides habitat to marbled murrelet, northern spotted owl, and other federally-listed and state-listed threatened and endangered species.[33] FERC notes the potential impacts to both marbled murrelet and the northern spotted owl, including clearance of large trees and understory essential for nesting habitat to create the pipeline right-of-way and for temporary work areas, as well as impacts from ambient noise and human disturbance.

Furthermore, for marbled murrelet, which forages at sea, LNG carrier traffic and their associated impacts (ballast water, dredging, risk of fuel and lubricant spills, etc.) creates additional risk for the species. FERC describes the minimization measure proposed by the applicant to mitigate for these risks, which simply involves a timing restriction for tree removal within the breeding season. ODFW finds this timing restriction measure to be inadequate and looks to the suite of minimization and mitigation measures identified in the 2014 *Revised Conservation Framework for the Northern Spotted Owl and Marbled Murrelet: Jordan Cove Energy and Pacific Connector Gas Pipeline Project* as essential to addressing the coastal effects of the project.[34]

Air Resources

The transport, storage, and liquification of fracked natural gas exposes workers and adjacent communities to numerous toxic air pollutants. Airborne toxins pose more serious risks for workers, as likelihood and severity of exposure increases significantly with proximity to operations, as well as during particular stages of production.[35] The proposed activity would affect air quality in the coastal zone.

Critical Habitat

JCEP LNG Export Terminal Impacts to the Coos Bay Estuary:

JCEP will affect aquatic habitats of Coos Bay and upland habitats on the North Spit. Coos Bay is the largest estuary located entirely in Oregon and supports populations of fish and shellfish that contribute to large commercial and recreational fisheries. The North Spit is an ocean peninsula land feature that provides estuarine, ocean, wetland, and upland habitats to fish and wildlife within a very small geographical area. This unique landform and bay provide a number of strategic benefits for production of fish and wildlife. The aquatic and upland habitats encompassed by the LNG Export Facilities have been subjected historically to a number of landscape and waterway alterations including: dredging,

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[32] Raphael et al. (2016)
[33] ORS 496.171 to 496.182
[34] USFWS 2014
[35] McKenzie, Human health risk assessment of air emissions from development of unconventional natural gas resources, 2012.

riprap installation, leveling, and removal of native coastal pine forest, filling of wetlands, and other development related impacts. These habitats historically would have been primarily characterized as Habitat Category 2 or 3 habitats, (providing essential, important, and/or limited habitat function for fish and wildlife) under the ODFW Fish and Wildlife Habitat Mitigation Policy. Although negatively impacted historically, much of the tidal, subtidal, and upland habitats at the proposed project site have received only minimal disturbance in the past two decades and substantial recovery of ecological function has occurred.

The subtidal, tidal, intertidal, and shoreline features of the Coos Bay estuary tidal basin provide critical habitat for a number of culturally and economically important game and non-game species including, but not limited to: Dungeness crab (*Metacarcinus magister*), red rock crab *(Cancer productus*), cockles (*Clinocardium nuttallii*), gaper clams (*Tresus capax)*, butter clams (*Saxidomus giganteus)*, littleneck clams (*Protothaca staminea*), rockfish (*Sebastes spp.*), lingcod (*Ophiodon elongates*), greenling (*Hexagrammos decagrammus*), California halibut (*Paralichthys californicus*), English sole (*Parophrys vetulus*), Pacific sand dabs (*Citharichthys sordidus*), ghost shrimp (*Neotrypaea californiensis*), mud shrimp (*Upogebia pugettensis*), starry flounder *(Platichthys stellatus)*, smelts (Osmeridae family), (Engraulidae family), sardines (Clupeidae family), fall run Chinook salmon *(Oncorhynchus tshawytscha)*, green sturgeon *(Acipenser medirostris)*, white sturgeon *(A. transmontanus)*, (OC) ESA threatened coho salmon *(Orncorhunchus kisutch)*, and possibly Pacific lamprey (*Entosphenus tridentata*). There is some potential that Pacific smelt (eulachon) (*Thaleichthys pacificus)* may also occur in the vicinity of the LNG Export Terminal. Additionally, the tideflats and subtidal regions of the lower Coos estuary are sites for the commercial harvest of bay clams (gaper clams, butter clams, cockles) and the mudflats in the JCEP area support a commercial fishery for ghost shrimp (*Neotrypaea californiensis*).

Native Olympia oyster (*Ostrea lurida*) have recently re-established as scattered populations within the marine and polyhaline regions of the Coos Bay estuary where they typically occur as individuals or small clusters attached to rip-rap, rock, shell, or other hard substrata. ODFW considers the recovering populations of Olympia oyster a Strategy Species in the Nearshore Conservation Plan.[36] These populations of Olympia oysters are particularly sensitive to smothering and burial by silt and other suspended materials; the proposed activity could expose the oysters to suspended sediment and siltation during dredging activities associated with excavation of the LNG Export Terminal. The proposed slip would create a new deepwater alcove backwater that could affect water flow patterns in the vicinity, salinity patterns, turbidity associated with initial and repeated dredging, and shallow water conversion to deepwater.

Dredging Impacts to Estuarine Habitats and Communities:
Construction of the vessel slip, access channel, temporary material barge berth, the material offloading facility, and rock pile apron will directly affect estuarine habitats. The estuarine portion of the LNG Export Facilities would directly impact 37 acres of estuarine habitat, including two acres of eelgrass habitat, 13 acres of intertidal habitat, four acres of shallow subtidal habitat, and 18 acres of deep

[36] www.oregonconservationstrategy.org

subtidal habitat. The proposed activity also includes extensive dredging and excavation of four submerged areas of the sub-tidal zone in Coos Bay (total 40 acres) along the Federal Navigational Channel and vessel access route to improve navigation reliability for the LNG carriers.

Unconsolidated soft-sediment habitat is widespread in the Coos Bay estuary tidal basin where it occurs extensively throughout the intertidal zone and sub-tidal zone along the bottoms, sides, and margins of primary and secondary tidal channels.[37] Soft-sediment habitats provide a series of diverse, productive, and dynamic ecological functions in the estuary, including provision of habitat and forage areas for invertebrates, fish, birds, and marine mammals, as well as serving as an important source of detritus. Soft sediments also play an important role in the microbial and biogeochemical transformations of organic materials and nutrient cycling, and they typically serve as a sink or reservoir for the deposition of water-borne particles. Diverse communities of motile, epifaunal, and infaunal invertebrates inhabit the soft-sediments, and the communities of crabs, shrimp, amphipods, polychaete worms, copepods, hydroids, anemones, clams, and other invertebrates are specifically adapted to survive, feed, grow, and reproduce themselves in the unconsolidated sediments.[38] Microbial activity and deposition of organic matter associated with fine-grained sediments together support a complex food web that includes multiple resident (infaunal, epifaunal, motile) and transitory (seasonal, migratory) species. In particular, mixed communities of bay clams (*i.e.*, gaper clams, butter clams, cockles, and other species) are known to occur throughout the intertidal zone in the area immediately west and north-west of the airport runway.[39] The known clam beds within ODFW area AP (Airport Runway) are located within 50 meters of the Temporary Dredge Line for the Federal Navigation Channel and within about 500 meters of the proposed JCEP Access Channel.

Mixed communities of shellfish, such as Dungeness crab, red rock crab, bay shrimp, gaper clams, butter clams, littleneck clams, softshell clams, cockles, and many other species are year-round residents of the intertidal and sub-tidal areas of the Coos Bay estuary. Some of these shellfish are motile (*i.e.,* crabs and shrimp) and periodically move to different locations or migrate through the intertidal and sub-tidal zones, while others are stationary (*i.e.,* bivalves) and remain largely in place over the duration of their adult lives. The mixed communities of living bivalves and the beds of their non-living shells (*e.g.*, shell rubble or shell hash) are particularly important because they function to stabilize unconsolidated sediments and provide heterogeneous habitat for numerous species of adult and juvenile fishes, crabs, shrimp, amphipods, worms, and other estuarine organisms. Moreover, filter-feeding by dense populations of living clams can sometimes play an important role in the removal of phytoplankton and smaller particulate materials, thereby decreasing turbidity and increasing light penetration through the estuarine water column. Consequently, maintenance of suitable soft-sediment habitat is essential for survival of the moderately long-lived (life-span 10-15 years or longer) gaper, butter, and cockle clams, particularly in the sub-tidal zone. When soft-sediment habitat is chronically disturbed and altered by dredging of the subtidal zone, there may be a permanent loss and impact to benthic invertebrate

[37] Cortright et al., 1987
[38] Simenstad 1983; Emmett et al., 2000
[39] ODFW 2009; area AP

populations and a decline in the biodiversity of benthic communities. Loss of some or all of these sub-tidal populations of bay clams has implications for both the ecological functioning of sub-tidal habitats and the ability of the bay clams to serve as broodstock to support the recreational and commercial shellfish fisheries in Coos Bay.[40]

It is expected that dredging and removal of the soft-sediments will likely have substantial and immediate local impacts on the sub-tidal populations of benthic invertebrates and shellfish, such as gaper clams, butter clams, and cockles. This may include the physical removal of the clams and their surrounding sediments, as well as a disruption of the mixed ecological communities of shellfish, mobile and infaunal invertebrates, and fish that make use of the sub-tidal habitats. Dredging would directly remove benthic organisms (*e.g.*, worms, clams, benthic shrimp, starfish, and vegetation) from the bay bottom within the access channel and navigation channel modifications. Mobile organisms such as crabs, many shrimp, and fish could move away from the region during the process, although some will be entrained during dredging so that direct mortally or injury could occur.

Large-scale dredging modifications that include subsequent maintenance dredging every 5-10 years may not provide the opportunity for bay clams and other shellfish to recruit successfully and fully re-colonize after the repeated disturbance events. It is also likely that benthic food resources may also be impaired or lost for other estuarine species (*i.e.*, forage fish, salmonids, crab) as a result of dredging actions. Consequently, dredging activities that significantly disturb or remove the mixed communities of long-lived bay clams from soft-sediment habitat in the sub-tidal zones of Coos Bay are expected to have longer-term impacts that extend well beyond a time period of many years.

The JCEP also includes extensive dredging and excavation of four submerged areas of the sub-tidal zone in Coos Bay along the Federal Navigational Channel and vessel access route to improve navigation reliability for the LNG carriers. These actions include dredging of 27 acres of deep subtidal habitat at bend areas along the Federal Navigation Channel, and the dredge lines for this additional activity would include disturbance and modification of another 13 acres of mostly deep subtidal habitat. Following maintenance dredging would disturb the 40 acres of subtidal habitat and result in a short-term reduction in the ecological function of these areas by disturbance of the benthic and epibenthic organisms.

Impacts to Eelgrass:

The JCEP includes construction of a marine terminal slip and dredging of an access channel. These activities will permanently destroy about 1.9 acres of established native eelgrass (*Zostera marina*). Dredging in the intertidal and shallow subtidal zones within the JCEP area is expected to have significant deleterious effects on native eelgrass habitats and the species found therein. Beds of eelgrass occur at several locations throughout the Coos Bay tidal basin where they provide numerous ecological functions, including heterogeneous habitat for a number of fish and wildlife species, nursery habitat for invertebrates and fish, forage areas for shorebirds and waterfowl, primary production and a source of organic-rich detritus, stabilization of unconsolidated sediments, trapping of suspended sediments, and

[40] D'Andrea 2012

contribute to improvements to estuarine water quality.[41] In particular, the emergent blades and rhizomes of eelgrass beds provide complex and heterogeneous multi-dimensional habitat within the unconsolidated soft-sediments in the intertidal and shallow subtidal zones. In many cases, the abundance and species composition of macroinvertebrate, shellfish, and fish communities differ within eelgrass beds in comparison with un-vegetated areas where eelgrass is absent. Eelgrass beds are known to provide habitat for numerous species of invertebrates, including polychaete worms, cockles, gaper clams, butter clams, littleneck clams, Dungeness crab, grass shrimp and epibenthic invertebrates such as harpacticoid copepods, isopods, and gammerid amphipods. In addition, eelgrass beds also provide habitat for a diverse community of fishes, including juvenile salmonids, sculpin, English sole, shiner perch, lingcod, rockfish, pipefish, and herring.

Long-term efforts to remove root wads, large woody debris, and other natural structures embedded in the unvegetated soft sediment of Coos Bay in order to facilitate commercial shipping and recreational boating have greatly exacerbated the lack of structural complexity along the shoreline and further increase the ecological importance of eelgrass beds. The heterogeneous canopies of eelgrass beds provide both primary complexity and an ecological edge effect that presents an important biophysical transition zone for fish and invertebrates that forage in adjacent un-vegetated habitats.

Construction and operation of the LNG Export Terminal would require massive dredging operations in the Coos Bay Estuary, which is critical habitat for Coho salmon and is home to thriving oyster farms, traditional shellfish gathering areas, as well as other aquatic and estuarine life.[42] Dredging and disposal of dredged material will increase turbidity, degrade the shoreline and the bay and negatively impact habitat in the area.

JCEP would develop an Eelgrass Mitigation Site to offset potential impacts to eelgrass habitat from construction and operation of the LNG Export Facilities. The Eelgrass Mitigation Site project components include re-contouring of an existing un-vegetated sandbar to create an area of optimal eelgrass habitat, and transplanting eelgrass from a donor site into the mitigation area. Specifically, the JCEP proposal is to reduce and re-contour a 9.34 acre area of the intertidal shoal down to an average 1.0 to -2.0 ft NAVD 88 (-0.28 to -1.28 ft MLLW) depth to create 6.78 acres of optimal eelgrass habitat. In comments provided to the Coos Bay Planning Commission on September 24, 2019, the ODFW clearly describes adverse impacts to eelgrass habitat and the significant ecological value the habitat provides. *See* Appendix 8.F.

As part of DSL's Removal-Fill application review, they note the following Estuarine Impacts (see Appendix 7.H):

- Permanent impact to 3.08 acres of eelgrass beds (slip and access channel and pile dike rock apron)
- Permanent impact to 19.54 acres of mudflat, salt marsh, and shallow subtidal areas (slip and access channel)

[41] Thom et al. 2003; Kentula and DeWitt 2003
[42] Retzer, 2013

- Permanent impacts to 81.63 acres of deep subtidal habitats (NRI dredging and slip and access channel dredging)
- Total fill in estuary 39, 483 cubic yards
- Total removal in estuary 1,784,475 cubic yards

Introduction of Non-indigenous Species through Ballast Discharge:
Movement and translocation of ballast water associated with vessels is widely considered as the most significant transfer mechanism for nonindigenous species in the marine environment. Filling of LNG carriers at the LNG Export Terminal will be coupled with concurrent discharge of ballast water that will exit the terminal area and mix with the tidal waters of the Coos Bay estuary. Consequently, it is expected that the Coos Bay estuary will receive a very large volume of ballast water that originated in foreign ports, as well as seawater that was pumped into the vessel at sea during transit. Such ballast water typically contains a taxonomically diverse and reproductively viable community of estuarine and marine organisms that have potential to establish themselves as non-indigenous species within the estuarine tidal basin.

Habitat Loss at the JCEP LNG Terminal Site:
A substantial proportion of the upland habitats at the JCEP sites adjacent to the bay are not in pristine condition; however, they have been in a relative state of quiescence for more than a decade. ODFW considers the area predominately as Habitat Category 3, 4, and 5 habitats under OAR 635-415-0025. A substantial component of forested dune habitat remains in Habitat Category 3 condition at the site. The proposed activity would alter these lands through conversion of terrestrial lands into submerged lands; the elimination of the viability of remaining dune and forested dune habitats, largely due to encroachment, removal, disturbance, etc.; and reduction in the viability of immediately adjacent habitat as a result of construction of the LNG Export Facilities, including direct forest clearing of at least 90.0 acres. Further, impacts to the uplands and wetlands at the JCEP sites will essentially render much of the affected habitats area incapable of supporting the native plant and wildlife species that currently occupy the site due to a number of factors including, but not limited to the direct removal and disturbance (*e.g.* disturbance factors such as ship moorage/loading activities and road traffic, machinery and compressor noise), alteration of the surfaces through paving, placement of gravel, removal of the organic layer on the sandy soils, etc. that eliminate capacity of the habitats to support fish and wildlife, and invasion of competitive plants and non-native or native plant and animal colonists such as crows, starlings, and Scotch broom (*Sarothamnus scoparius*) that result in a loss of habitat capacity and function due to competitive interactions. Finally, daily human disturbance occurring post-construction during the operations at the site and the creation of the LNG Export Facility would further fragment the North Spit peninsula, a uniquely rare habitat type on the Oregon Coast.

Recreation and Access Resources

Applicable Enforceable Policies: Goal 6, ORS 468B, ORS 196, ORS 274, ORS 496, ORS 509

The proposed activities of dredging and the operation of the facility would affect public water recreation opportunities to use the navigable waters in Coos Bay and Jordan Cove. Recreational fishing activity in the bay occurs throughout the year for various targets. Safety zone requirements will likely affect all other users of Coos Bay. Coos County reviewed JCEP's position on impacts on local vessels of the Coast

Guard Safety and Security Zone.[43] The county determined that a 500-yard security zone unique to LNG carriers must affect recreational boaters and all other users, reasoning that:

> "the estuary is rarely, if ever, wider than 1000 yards in the vicinity where the LNG ships would use the estuary, and therefore, as a practical matter, the security zone covers the entire width of the estuary in most places. See also Exhibit 54 (State of Oregon DLCD Staff Comments on FERC DEIS, at p. 204). But where exactly does that leave things? The opponents seem to conclude that vessels will need to avoid the entire estuary from the mouth of the bay to the LNG tanker docking stations during LNG tanker passage. If that is indeed the case, then it seems like such a scenario presents a much stronger case for the conclusion that the LNG tankers "substantially interfere" with other navigation. If, however, the US Coast Guard will simply make other vessels move as far away from the channel to the banks (as much as reasonably practical considering the boat's draft), then a substantial inference seems less likely."[44]

The proposed activity would affect recreational navigation; the level of "interference" between LNG tankers and other boat traffic is unclear. This same issue is just one of several that would adversely affect commercial fisheries. All other boats and ships that use the bay are smaller than those proposed as LNG carriers. Besides wood chip carriers, numerous recreational trips are provided and utilized on a range of vessels, including the historic Tall Ships, Lady Washington, and Hawaiian Chieftain. These visit frequently for extensive tourist opportunities, including adventure and evening sails and special events in the bay.

The proposed activity affects the estuary and associated coastal resources used for recreation. Construction and operation of the LNG Export Facility would affect access to, and interest in, the area for recreation. The Coos Bay-North Bend-Charleston area is dubbed "Adventure Coast" and opportunities for water and land-based tourism and recreation are highlighted throughout the region and marketed by the Coos Bay–North Bend Visitor & Convention Bureau.[45] BLM administers lands that include 709 acres classified as an Area of Critical Environmental Concern (ACEC); the remainder are designated as Recreation Management Areas (RMAs). The North Spit Trail System, which is approximately 300 feet from the Trans-Pacific Parkway, is close to the project area. FERC indicates that more than 6,000 people travel annually on the sand road to the North Jetty. Traffic alone in the construction phase would interfere with access to and from the recreational areas of the North Spit. The southern boundary of the Oregon Dunes National Recreation Area (ODNRA) is about 100 feet north of the LNG Export Terminal, across the Trans-Pacific Parkway, and the Horsfall Campground is located about one-half mile to the northeast. On the other side of the recreation area, off road vehicles are

[43] Coos County File No. REM-19-001
[44] Coos County Order to Reopen the Record [Remand File No. REM-19-001/LUBA Case No. 2016-095], August 23, 2019, at p. 2.
[45] https://oregonsadventurecoast.com/.

prohibited and there are bike trails, water trails, and many recreational assets that are near and associated with the general area.

Cultural Resources

Applicable Enforceable Policies: Goal 6, ORS 468B, ORS 196, ORS 274, ORS 496, ORS 509

The 500-acre parcel of land on which the LNG Export Facility would be sited lies on the traditional territory of the Coos Tribe, Siletz Tribe and others. The proposed activity would affect tribal access to salmon and shellfish, aquatic resources important to both tribal culture and livelihoods. The excavations along the PCGP route, export facility, and shipping channel would impact the traditional homelands and culturally significant landscapes of six federally recognized tribes. The rivers, streams, wetlands, shoreline, intertidal resources, and subtidal habitats are traditional locations for fishing, gathering, and transportation used by Tribal nations. The lands of the North Spit and the Coos watershed and geographic area of Coos Bay are considered by the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) to be a Traditional Cultural Property (TCP), "Q'alay ta Kukwis schichdii me." The proposed activity would affect traditional subsistence and the cultural resources of the Coos Indians.

Tribal lands and lands traditionally used by tribal members are the sites of construction of both the LNG Export Terminal and along 229 miles of pipeline. The tribes recognize the high likelihood that the construction of the Project would destroy cultural resources, especially sacred grounds—grave sites and buried villages, as well as traditional cultural plants, animals, fish and marine life. The tribes have indicated that such losses would have serious emotional and cultural consequences for tribes and significant adverse impacts on their traditional way of life and economy, especially the loss of fishing and shellfish harvesting. Tribal governments have expressed concern that the currently proposed fish salvage methods would not adequately capture and protect lamprey, which is an important resource to tribal communities.

Aesthetic Resources

Applicable Enforceable Policies: Goal 6, ORS 468B, ORS 196, ORS 274, ORS 469, ORS 496, ORS 509

One of the policies that the CZMA and the OCMP seek to promote is the preservation and protection of aesthetic values and aesthetic coastal features.[46] FERC highlights serious adverse effects of the LNG Export Facilities on the region's aesthetic resources, stating,

> "Constructing and operating the Jordan Cove LNG Project would result in ***substantial short-term and long-term changes to the existing landscape within the viewshed*** of the Project. As described in the preceding sections, ***the LNG tanks and related facilities at the terminal would be visible from a range of viewpoints within the surrounding area*** and the visual effects were assessed to be low to

[46] 16 USC §§145(2), 1452(2)(F).

> high dependent on the user and viewpoint location. Jordan Cove attempted to optimize design factors for the LNG tanks and has adopted various measures to mitigate for the visibility of the Project facilities, including use of landform contouring and stabilization, vegetative screening, architectural treatments, and use of hooded lighting. However, based on the size and location of the proposed LNG facilities we conclude that the Jordan Cove LNG portion of the Project ***would significantly affect visual resources*** for some views and viewing locations." [emphasis added].[47]

Other visual issues include light pollution affecting westward views of sunsets and the night sky. The dredge spoil piles that would be placed at APCO sites 1 and 2 would tower 50 to 60 feet above ground level of the historic McCullough Bridge, a National Register of Historic Places structure, and would be highly visible throughout the area as well as from all traffic crossing the bridge, especially south bound traffic coming into North Bend.

Noise has significant adverse effects on human health and safety. These effects include sleep disruption, communication interference, cardiovascular and endocrine effects, job performance decrements, and adverse educational effects. The cities of Coos Bay and North Bend, and surrounding residential and recreational areas already experience higher than recommended levels of noise, primarily from transportation sources. Construction of the LNG Export Terminal is expected to take 3-5 years and would produce high noise levels from heavy construction vehicles as well as extremely disturbing noise from pile driving. Once built the LNG Export Terminal would operate continuously, generating very high noise levels. Other noise sources include excavation of a significant volume of solid bedrock, explosive pulsed noises associated with dredging operations, HDD operations will generate continuous noise for the entire duration of the drilling and pipe pull back procedures, and pile driving will create pulsed noise for an extended and imprecisely defined period of time.

Economic Resources

Applicable Enforceable Policies: Goal 6, ORS 468B, ORS 196, ORS 274, ORS 469, ORS 496, ORS 509

Although only about 225,000 of the state's nearly four million residents live in coastal counties, many Oregonians use, rely on, or benefit from the coastal region that supports almost a $60 billion annual coastal and ocean economy driven by fisheries, agriculture, timber, tourism, and ocean industries. Many of the affected communities are eager for jobs, tax revenue and economic development. Economic prosperity is a necessary condition for healthy communities. The proposed activity would recognize both economic benefit and detriment. The proposed activity represents a major investment in the Coos Bay region. Economic effects of the proposed activity also include potential adverse environmental effects and impacts to the long-standing current and future economically important industries (*e.g*. commercial fishing, recreational fishing and hunting, aesthetics, wildlife viewing, and aquaculture) that depend on healthy and abundant fish, wildlife, and habitats.

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[47] DEIS, p. 4-586.

Recreation and Tourism

According to a Travel Oregon study, outdoor recreation continues to be one of the fastest-growing travel markets in the United States. On the Oregon Coast, outdoor recreation accounted for about 10 percent of all visitor spending in 2017, amounting to about $200 million. In 2017, visitors to Coos County spent more than $258.1 million on hotel stays, food & beverage, shopping, recreation, fuel, and more. Even more importantly, visitor spending in Coos County supports more than 3,300 jobs, more jobs than Bay Area Hospital and the forestry/wood products industry combined. Travel generates $1.5 million in local tax revenues. In comparison, direct visitor spending in Oregon topped $11.8 billion in 2017, a 4.7 percent increase over 2016 spending and increased to $12.3 billion in 2018. This spending supports more than 112,000 Oregon jobs and generates $314.5 million in state tax revenues. Visitor spending in Oregon in 2017 divided by the total population of Oregon, 4,141,100 is $2,850. This number goes up exponentially when you look solely at Coos County. For every resident in Coos County, approximately 63,310, visitors to the county spent $4,076 per resident. The Cities of Coos Bay and North Bend, as well as the Coquille Indian Tribe, collect a seven percent tax on overnight stays in hotels, motels, bed & breakfast inns, RV parks and vacation rentals and a portion of this provides a portion of this tax revenue to help with marketing. Travel generates $1.5 million in local tax revenues.[48] Additionally, there are numerous recreation and tourism based businesses in the Coos Bay region that depend on healthy and vibrant recreational opportunities in the Bay.

Fisheries

Fishing activity in the bay occurs throughout the year for various target species. The recreational fishing industry in Oregon has broad scale economic impact and is tied to trips in and out of the bay region. The recreational crab fishery would be among those most vulnerable, as it would be adversely affected by the habitat alterations from construction and dredging and frequent tanker traffic in the navigation zone of the estuary. In addition to clams and crabs, other invertebrates that are harvested commercially and recreationally in the bay include oysters, bay mussels, ghost shrimp, kelp worms, and mud shrimp. Each of these species has a different reproductive cycle and uses different aspects of the habitat.

LNG vessel traffic in Coos Bay would further interfere with ocean-based fisheries. The Dungeness crab fishery is consistently the most valuable single species commercial fishery in Oregon, making the crustacean's well-being of special significance to the economy of Coos Bay and the state. Coos Bay is a crucial "nursery" habitat for the Dungeness crab. The highest number of juvenile crabs are found in soft sediments and eel grass beds of estuaries, where the young crabs find food and shelter from predators.

The Oregon Department of Agriculture (ODA) commented on the 2015 DEIS that the adverse impacts of the project on the commercial oyster industry in the Coos Bay project area had not been disclosed. ODA outlined operations and indicated how dredging and access restrictions during construction and operation would likely jeopardize this local established industry. There are leases in several areas of the bay that host high quality mariculture facilities that are part of the local food economy and are

[48] Nicolas, A. Johnson, "Visitor spending data released by Travel Oregon," The World, July 16, 2018; Runyan and Associates 2019, "Oregon Travel Impacts Statewide Estimates 1992 – 2018," Oregon Tourism Commission.

important renewable resource operations for the area. Clausen Oysters leases land from the Port of Coos Bay and is the largest oyster farm in Oregon.

The Coos Bay area is an important port for commercial fishing and the third largest working waterfront on the Oregon Coast.[49] The Charleston Boat Basin, which is outside of the Coos Bay city limits and closer to the mouth of Coos Bay, is the primary area that houses the commercial fleet. Between 200 and 250 commercial fishing vessels operate out of the Charleston boat basin during the spring, summer, and fall months when major fisheries for Pacific pink shrimp (*Pandalus jordani*), Chinook salmon (*Oncorhynchus tshawytscha*), Pacific hake (whiting; *Merluccius productus*), albacore tuna (*Thunnus alalunga*), and market squid (*Doryteuthis* [*Loligo*] *opalescens*) are operating. A number of these are transient vessels that deliver product to processors or offload for shipment to other processing facilities out of the area. They also take advantage of the ice facilities and marine supply stores that operate near Charleston and in the city of Coos Bay. Over 200 commercial fishing vessels that range in size from about 30 feet long (salmon trollers and small combination vessels) to almost 100 feet long (trawlers and seiners) considered the boat basin their year-round home port. The Port of Coos Bay facilities (ice plant, docks, moorage, etc.) can support a commercial fishing fleet of 250 vessels.[50] Two small fishermen's markets offer retail services on the docks, one in Charleston and one in Coos Bay. Retail seafood stores and seafood restaurants operate in Charleston, Coos Bay, and the adjacent city of North Bend.

Commercial landings are increasing in volume and value in the Charleston/Coos Bay area. In 2017, commercial harvests were seven percent of the Oregon landings by volume but accounted for 21 percent of Oregon's ex-vessel value (ex-vessel value is based on the prices paid by processors to fishermen) for all species for a total of $30.6 million. In 2018, those figures increased to 10 percent of statewide landings by volume and to 23 percent by value to $40.2 million.[51] A standard economic multiplier of 2.5 increases the commercial seafood industry's value to the local community to $76.5 million in 2017 and $100.6 million in 2018. Pink shrimp and other shrimp species, including spot prawns, account for the highest landings volume, but Dungeness crab and related crab species account for the greatest value. In 2018, shrimp and prawn landings were 11,994,911 pounds, followed by Dungeness crab/crab species at 6,000,101 pounds. However, Dungeness crab remains the primary economic driver of commercial fisheries, with a value of $19.7 million in 2018, followed by pink shrimp at $9.3 million.[52]

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[49] Port of Coos Bay 2018 Annual Report; https://www.oipcbannualreport18.com/charlestonmarina. Also, Port of Coos Bay, "Year in Review: Letter from the CEO," June 30, 2019; https://www.portofcoosbay.com/news-releases/2019/1/30/year-in-review-letter-from-the-ceo.

[50] Port of Coos Bay 2018 Annual Report; https://www.oipcbannualreport18.com/charlestonmarina. Also, Port of Coos Bay, "Year in Review: Letter from the CEO," June 30, 2019; https://www.portofcoosbay.com/news-releases/2019/1/30/year-in-review-letter-from-the-ceo.

[51] Pacific States Marine Fisheries Commission; Pacific Fisheries Information Network (PacFIN) APEX fish ticket reporting system for Oregon data. Report: ALL005, WOC All Species by Port Group, with filters for data by year.

[52] Pacific States Marine Fisheries Commission; Pacific Fisheries Information Network (PacFIN) APEX fish ticket reporting system for Oregon data. Report: ALL005, WOC All Species by Port Group, with filters for data by year. (https://reports.psmfc.org/pacfin/f?p=501:1000::::::).

Carefully managed fisheries have been recovering and adding to the economic value of the coastal economy. In 2018, West Coast trawl fishermen increased their groundfish catch by more than 14 million pounds, a 300 percent increase over what they caught in 2017.[53] Trawlers delivering to Charleston share in some of that increase that is expected to continue to grow over time. Much of Oregon's trawl industry relied on groundfish, a federally managed group of almost 100 species of midwater and bottom-dwelling rockfish (yellowtail rockfish, widow rockfish, and others in the genus Sebastes); roundfish (such as sablefish, Pacific hake, lingcod); flatfish (such as starry flounder, soles, petrale); sharks and skates; and other species.[54]

Many of Oregon's fisheries are certified as sustainable according to global Marine Stewardship Council certification standards. Oregon pink shrimp, several rockfish species, Chinook, and Dungeness crab are either certified, have been certified or are undergoing re-certification. This certification makes these fisheries more marketable both locally and globally.

In Oregon, the commercial crabbing fishery is a tremendous economic engine with potential to be impacted by this project. For example, the 2017-2018 Dungeness crab season (December to August) generated $74 million in ex-vessel value.[55] Like many other important fisheries, Dungeness crab use Coos Bay and the surrounding nearshore area for nursery habitat that may be affected by this project's proposed dredging activity, and the Coos Bay fishing fleet relies heavily on crab for its profits.

Hazards and Safety

Reliability and safety of LNG, terminal, carrier traffic and natural gas pipeline

LNG tankers and the LNG tanks at the terminal, if ruptured, present both a risk of asphyxiation and life-threatening burns in the event of natural disaster or human-caused accident to over 16,000 people near the terminal in a "Hazardous Burn Zone." The Society of International Gas Tanker and Terminal Operators (SIGTTO) has developed criteria to minimize risks, including in the site selection and design for LNG ports and jetties. The proposed LNG Export Terminal conflicts with several of SIGTTO's best practices recommendations. SIGGTO discourages siting near population centers. Around 16,000 area residents would likely be at least injured if a release of highly flammable LNG were to be coupled with an ignition source.

Additionally, SIGTTO recommends against siting on a bend, in configurations where vessels would be berthed adjacent to each other, near other docking facilities, in a channel that is less than five times the minimum width of tankers, or where tankers would not have ready escape to the open seas at all times. The proposed activity meets none of these safety recommendations. There is a 90-degree turn from the

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[53] SeafoodNews.com, "West Coast Trawlers see Highest Groundfish Landings Since 2000 with Rockfish Resurgence," Feb. 12, 2019; https://www.seafoodnews.com/Story/1131867/West-Coast-Trawlers-see-Highest-Groundfish-Landings-Since-2000-with-Rockfish-Resurgence.

[54] National Marine Fisheries Service Northwest Fisheries Science Center, Fisheries Resource Analysis and Monitoring Division. "What are groundfish?"; https://www.nwfsc.noaa.gov/research/divisions/fram/economic/economic_data_groundfish.cfm.

[55] *See* https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/docs/Crab%20Newsletter_2018_final.pdf, and https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/news_publications.asp).

ocean entrance into the bay, and then another bend near the proposed site that other ship traffic, including commercial and recreational users, must navigate past to enter the Coos Bay harbor. A fully loaded LNG carrier ship could run aground at the bar. Management practices cannot mitigate these physical constraints in the navigation corridor. Moreover, the transit time for vessels from the proposed site would be 90 minutes, and would require a high tide, due to the draft of these very large ships. If there were a seismic event and tsunami warning, any ship in the loading area would not have adequate time to exit to the open ocean.

Potential impacts on the LNG terminal resulting from an earthquake or tsunami

A 13-year study completed by Oregon State University researchers in 2012 and published by the U.S. Geological Survey concluded that there is a 40 percent chance of a major earthquake in the Coos Bay region during the next 50 years. That earthquake could approach the intensity of the Tohoku quake that devastated Japan in 2011.[56] The Pacific Northwest is vulnerable to earthquakes due to its position on the Cascadia Subduction Zone. Experts estimate a 42 percent likelihood of an earthquake up to a magnitude of 9.0 in the zone within the next 50 years. An earthquake of that magnitude would devastate the Northwest; the most severe impacts, including soil liquefaction, landslides, and tsunamis, would fall on coastal areas. The initial surge of a tsunami could carry marine vessels, other objects and debris inland, smashing coastal buildings and structures. Weeks of inundation that could follow would compound the damage. Spatial analysis completed by DLCD shows that the LNG Export Facilities are within the tsunami inundation zones for each category of tsunami inundation zones, ranging from smaller impact tsunamis to extremely high impact tsunamis. *See* Appendix 11.I.

Spatial restrictions of channel use to recreational and commercial fisheries

The U.S. Coast Guard typically requires exclusion zones of up to 500 meters surrounding LNG tankers transiting and while at dock for safety and national security purposes. ODFW, the Pacific Fisheries Management Council, and Oregon Dungeness Crab Commission have pointed out the access and economic conflicts this practice would create with all other users, including the shellfish (crabbing/clamming) and finfish (rockfish, salmon, and steelhead) fisheries in Coos Bay. Security requirements alone would affect the contribution of fisheries to the economics of Coos County and Southwest Oregon and affect the economic impact of recreational opportunities and the local businesses that depend on them.

[56] 13-Year Cascadia Study Complete – And Earthquake Risk Looms Large; http://oregonstate.edu/ua/ncs/archives/2012/jul/13-year-cascadia-study-complete-%E2%80%93-and-earthquake-risk-looms-large Study Link: Turbidite Event History—Methods and Implications for Holocene Paleoseismicity of the Cascadia Subduction Zone - By Chris Goldfinger, C. Hans Nelson, Ann E. Morey, Joel E. Johnson, Jason R. Patton, Eugene Karabanov, Julia Gutiérrez-Pastor, Andrew T. Eriksson, Eulàlia Gràcia, Gita Dunhill, Randolph J. Enkin, Audrey Dallimore, and Tracy Vallier - http://pubs.usgs.gov/pp/pp1661f/

Wildfire risk

Oregon faces great wildfire risk. The proposed activity could substantially increase wildfire risk from human and equipment activity in heavily timbered areas during PCGP pipeline construction and operation. The majority of the pipeline route is forested and vulnerable to wildfire. Pipeline construction would occur primarily during "fire season." Pipeline construction employs the use of feller-bunchers, chainsaws, bulldozers, track-hoes, rock saws, and other heavy equipment, as well as blasting. Pipeline rupture and explosion during operation is a risk. Areas of the project have extensive soil and seismic characteristics present. Evidence of numerous areas at risk of soil liquefaction and lateral spreading, and extensive landslide-prone conditions have already been identified across the 229-mile route. The Pipeline and Hazardous Materials Safety Administration (PHMSA) reported an increasing number of ruptures and explosions nationwide due to particularly weather-related landslides. PHMSA also issued two sets of protocols calling for renewed efforts to site, engineer, build, and monitor gas pipelines.[57] Landslides can be found along the pipeline route.

Flight Hazards

The proposed project would be situated less than 1.1 miles from the Southwest Oregon Regional Airport located in North Bend. The Federal Aviation Administration (FAA) issued four notices of presumed hazard for the two LNG tanks at the terminal and the two towers at the south dune power plant. These LNG infrastructure facilities violate the FAA Obstruction Standard. This geographical area is regularly consumed naturally by fog and visual impairment is regularly compromised imposing a potential air to surface collision and explosion hazard to the residents of Coos Bay and North Bend. FAA has issued 13 Notices of Presumed Hazard regarding the proximity of the local airport and flight paths to proposed LNG tanks.

Cumulative Effects

Cumulative adverse coastal effects have been defined as the effects of an activity when added to the baseline of other past, present, and future activities in the area of, and adjacent to, the coastal zone. Thus, an analysis of cumulative effects considers the adverse coastal effects of a project when added to the temporary or permanent effects associated with other activities that already are likely to occur. DLCD notes that there are many unmitigable impacts that the proposed activity would have on public health, safety, clean air, clean water, healthy forests, the local economy, and a stable climate.

Channel Modification

DLCD considers cumulative effects from additional large-scale projects in Coos Bay as part of this federal consistency review. This is particularly important related to a proposed Channel Modification project by the Port of Coos Bay. The JCEP terminal will dredge a combined total of 5.7 million cubic yards (CY) from North Spit and Coos Bay in order to create the slip for ships to load LNG and navigate along the Coos Bay

[57] PHMSA, "Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geologic Hazards," Federal Register, 5/2/2019.

channel to the ocean. The Port of Coos Bay has also proposed a navigation channel modification project that will also highly benefit the JCEP project.[58] DLCD recognizes that the Port of Coos Bay channel modification project will convey benefit to the JCEP project both in terms of financial savings and through increased transport efficiency. Accordingly, it is important to consider the impacts of the USACE Port of Coos Bay Channel Modification Project, because they are connected, similar, and cumulative actions. To not consider the combined impacts of the Port's channel modification project and the JCEP project will effectively underestimate the biological and economic impacts to the state's fish and wildlife habitat resources in the Coos Bay estuary, due to these connected, similar, and cumulative actions.

Channel Modification Impacts include deepening and widening of the existing Coos Bay navigational channel to 37' deep and 300'wide, expansion of the Coos Bay navigational channel to 45' deep and 450' wide from the channel entrance to River Mile 8.2, and alteration of the hydrodynamic characteristics of the Coos Bay estuarine tidal basin in response to deepening and widening. Alterations of hydrodynamic characteristics include physical changes in the intrusion of marine waters, coupled with alteration of the salinity regime, conductivity, exchange volume, tidal prism, tidal currents, and other parameters, shifts in the location, configuration, and spatial extent of marine dominated, estuarine, and freshwater-tidal habitats, changes in the composition of ecological communities that reside within the water column, marine-dominated, estuarine, and freshwater-tidal habitats, and changes in the location and potential for rearing of juvenile fish.

Additional impacts from this related project include impacts to the ocean floor outside the mouth of Coos Bay where a large quantity of dredged material (estimated at 18-25 million CY) will be deposited at an ocean disposal site, or multiple sites, deposition of dredged materials on the ocean floor will alter the physical characteristics of the benthic habitat due to both the substantial modification of the bottom topography and the anticipated characteristics of the dredged material (*e.g.* estimated 8.5 million CY of sandstone and siltstone debris), deposition of dredged materials on the ocean floor will impact the benthic communities of resident marine fish and invertebrates, as well as transient species of concern including green sturgeon (*Acipenser medirostris*), dredged materials transported away from the deposition sites have the potential to negatively affect important nearby rocky reef habitats, disposal of dredged materials may occur in areas of heavy Dungeness crab commercial fishing activity, potentially interfering with crab habitat and fishing vessels; and excessive mounding of sediments can alter the wave climate, creating enhanced risk to commercial fishing vessels that navigate nearshore waters during stormy conditions.

Climate Change

Oregon adopted emissions reduction goals to help address climate change with strong leadership and action. According to analysis provided by advocacy organization Oil Change International, by 2050, when Oregon is committed to have reduced emissions to 75 percent below 1990 levels, JCEP's in-state emissions would amount to 16 percent of the total without providing a single kilowatt hour of energy to

[58] US Army Corps of Engineers – USACE Environmental Impact Statement, see Federal Register 82 FR 39417

any individual, family, business, or other consumer in Oregon.[59] Modelling efforts have shown that the total lifecycle carbon and methane emissions of JCEP are predicted to be over 36.8 million metric tons (MMT), the equivalent of 7.9 million passenger vehicles. This is 15.4 times the 2016 emissions of the Boardman coal-fired power plant that Oregon set to retire in 2020. Its total in-state annual emissions are predicted to be over 2.2 MMT, which would make it the largest single source of climate pollution in the state.

The Oregon Ocean Acidification and Hypoxia (OAH) Action Plan produced recommendations and guidance for the state to slow OAH impacts and adapt to the changes we are already seeing in that arena. In addition to their goal of developing effective and efficient ways to reduce excess CO_2 and OAH stressors, they prioritized research actions to include developing strategies to restore, protect, and sustain nursery habitat for valuable shellfish, submerged aquatic vegetation and native shellfish. They also prioritized Oregon's water quality, life history stages of OAH vulnerable marine species, and economic resilience in coastal communities and marine industries.

ENFORCEABLE POLICIES ANALYSIS

Oregon exerts control over private and public land and waters uses and natural resources in its coastal zone including through certain state policies that OCM has approved as enforceable policies of the OCMP. 16 USC § 1453(6a); 15 CFR § 930.11(h). OCMP identified the enforceable polices applicable to the proposed activity. Appendix 5.A; 15 CFR § 930.56. The Joint Coastal Zone Management Act Certifications states, "DLCD staff and Applicant's representatives have consulted to review the Project and identify applicable enforceable policies and the relevant state authorities listed in the OCMP." Consistency Certifications at 5. Tables 1, 2, and 3 of the Joint Coastal Zone Management Act Certifications address consistency with the applicable enforceable polices of the OCMP. Pursuant to 15 CFR § 930.63(b), OCMP now describes how the proposed activity is inconsistent with specific enforceable policies.

Overview of Inconsistent Policies

On the basis of the current record, the JCEP **has not established that the project is consistent** with the following enforceable policies and underlying standards within them:

Enforceable Policy	Mechanism for Inconsistency
Goal 6 - Air, Water, and Land Resources	Permit Application Denied
ORS chapter 196 - Removal-Fill	Permit Application Withdrawn
ORS chapter 274 - Submersible and Submerged Lands	Authorization Applications Withdrawn
ORS chapter 468B - Water Quality	Permit Application Denied
ORS chapter 469 - Energy; Conservation Programs; Energy Facilities Public Health and Safety	Insufficient Information to Establish Consistency

[59] Oil Change International, "Jordan Cove LNG and Pacific Connector Pipeline Greenhous Gas Emissions Briefing," http://priceofoil.org/content/uploads/2018/01/JCEP_GHG_Final-Screen.pdf.

ORS chapter 496 - Wildlife Administration	Insufficient Information to Establish Consistency
ORS chapter 509 - General Protective Regulations (Fish Passage)	Insufficient Information to Establish Consistency

Detailed Enforceable Policy Analysis

DLCD, as a state agency, is required to take actions that are authorized by laws with respect to programs affecting land use in compliance with the goals. ORS 197.180(1)(a). A DEQ certification of water quality standards for a federal permit and license is an example of a program affecting land use. OAR 340-018-0030(5)(g). Goal 2 requires inter alia an adequate factual base for decisions. OAR 660-035-0050(4) provides that for evidence supporting consistency for federal license or permit activities that require state permits or authorizations, "the issued permit or authorization is the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers." Thus, as a basis for a consistency determination, JCEP is required to provide DLCD the issued permit or authorization.

The JCEP consistency certifications relies on "[p]ertinent permits, permit applications, and other agency documentations" provided in exhibits. Examples are Exhibit E - DSL Removal-Fill Application; Exhibit F - DSL Proprietary Authorizations, and Exhibit G - DEQ 401 Water Quality Certification Package. On January 23, 2020, JCEP notified DSL that it was withdrawing its Exhibit E removal fill application 60697-RF from further consideration. On January 24, 2020, JCEP withdrew its applications for twelve proprietary easements. On May 6, 2019, DEQ denied JCEP's request for 401 water quality certification without prejudice; to date JCEP has not submitted a new water quality certification.

Where a copy of a state application is provided to establish compliance with an enforceable policy and that application has either been denied or withdrawn, the consistency certification does not provide substantial evidence of compliance with an enforceable policy. Additionally, where the withdrawn materials are provided as necessary data and information pursuant to 15 CFR § 930.58(a)(2), the application provides insufficient information necessary for DLCD to determine consistency. 15 CFR § 930.63(c). **DLCD objects to the consistency certification due to both insufficient information and a lack of issued state permits tied to enforceable policies of the OCMP.**

ORS chapter 196 - Removal-Fill

The Department of State Lands (DSL) is responsible for regulating removal and fill in waters of the state, which are defined as "all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands" and includes other bodies of water in Oregon. ORS 196.800(15). State law, ORS 196.800 to 196.990, governs the removal-fill regulatory program.

JCEP certifies that the proposed activity complies with ORS chapter 196 – Removal-Fill, an enforceable policy of the OCMP. In order to comply with this enforceable policy, an applicant must demonstrate that the project described in the application:

"(a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.921; and

"(b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation." ORS 196.825(1).

There is a set of factors that DSL must consider in making these findings. ORS 196.825(3). These factors include *inter alia* the public need for the proposed fill or removal, the availability of alternatives to the project for which the fill or removal is proposed, whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety, whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations, whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion, whether the proposed fill or removal is for streambank protection, and whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal.

The JCEP consistency certification relies on "[p]ertinent permits, permit applications, and other agency documentations" provided in exhibits. Where a copy of an application is provided to establish compliance with an enforceable policy and that application has either been denied or withdrawn, the consistency certification has not established compliance with an enforceable policy.

On November 3, 2017, a removal-fill permit application was filed with the DSL. JCEP provided DLCD that application (60697-RF) as part of its consistency certification as Exhibit E. *See* Appendix 7.A and 7.B. A revised application was resubmitted on April 30, 2018. The resubmittal deadline was extended to May 18, 2018. The revised application was resubmitted on May 10, 2018. One June 4, 2018, JCEP requested that DSL suspend review and change the application status to "awaiting revision." On August 24, 2018, JCEP requested that the "awaiting revision" status continue and that a new resubmittal deadline be extended to November 30, 2018. On November 7, 2018, JCEP submitted another revised removal-fill application. DSL deemed the application complete and opened the public comment period on December 6, 2018. Public comment remained open until February 3, 2019. DSL held five public hearings around the state during the public comment period and DSL received more than 49, 000 comments during that time. The removal-fill permit application decision was due on March 5, 2019.

Due to the volume of public comments, DSL requested more information on April 10, 2019 (see Appendix 7.G) and an extension to September 20, 2019 and JCEP agreed. DSL completed review of public comments and sent the Public Review issues and request for additional information letter to JCEP on April 10, 2019. Appendix 7.C. JCEP submitted a response to this letter on May 9, 2019. On July 10, 2019, DSL met with JCEP to review that response. On September 4, 2019, DSL received JCEP's response to public comments. DSL received an additional partial response on October 20, 2019. On September 13, 2019, JCEP requested an extension to January 31, 2020 and DSL agreed. On November 12, 2019, DSL provided a letter to JCEP outlining the remaining issues to resolve public comments. On November 14,

2019, DSL met with JCEP to discuss that letter. On December 5, 2019, JCEP submitted a response to DSL's November 12, 2019 letter. On December 12, 2019, DSL and JCEP met again to discuss the remaining issues, and DSL provided a subsequent letter to JCEP to request information and actions needed to address outstanding issues, with a deadline of January 2, 2020.

JCEP sent an email on January 3, 2020 to DSL with updated impact tables and figures but did not adequately address all outstanding issues. Additionally, on December 18, 2019, DSL received an email and letter from JCEP that did not satisfactorily answer outstanding questions from DSL. This letter also contained incorrect assumptions about agreements between partner agencies regarding a mitigation plan that DSL had not yet received. On January 15, 2020, DSL received an extensive and specific 18-page letter from ODFW that outlined several outstanding issues. ODFW stated that "at this time, it is difficult for ODFW to provide an updated comprehensive review when the most current information has only been provided in a piece-meal fashion," contrary to JCEP's December 18, 2019 communication statement that state agencies were in agreement on these issues. ODFW's letter identifies issues that have not been resolved. *See* Appendix 8.I.

On January 16, 2020, JCEP requested an additional extension to March 31, 2020. DSL denied the extension request on January 21, 2020 due to JCEP's inability to provide timely and sufficient information to address all outstanding questions and issues. *See* Appendix 7.D. DSL had not yet received requested critical information regarding the eelgrass Compensatory Wetland Mitigation plan, the Kentuck Compensatory Wetland Mitigation issues raised by ODFW, the analysis of temporary impacts to wetlands and waters, the stream mitigation to resolve ODFW's comments, and the protection instruments and bonding for the mitigation sites, among other issues. JCEP notified DSL on January 23, 2020 that it was withdrawing its removal fill application 60697-RF from further consideration by DSL. *See* Appendix 7.E. A detailed timeline of the removal-fill process is provided in Appendix 7.G.

Because there is no longer an application pending for a permit required to conduct removal-fill activities necessary to construct and operate the project, there is no longer a record on which to base a consistency determination. **DLCD therefore cannot concur that the project is consistent with the State's removal-fill enforceable policy due to a lack of sufficient information. DLCD also objects that under OAR 660-035-0050(4), "the issued permit or authorization is the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers." JCEP has not met the requirement to provide DLCD a DSL issued removal fill permit.**

Even if JCEP had not withdrawn its removal-fill application, the information that JCEP has provided as part of its application was not sufficient to demonstrate consistency with the state's removal-fill enforceable policy. Among the factors that DSL must consider is whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety, and whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal. ORS 196.825(3)(e), (i). ODFW's January 15, 2020, letter to DSL indicates that

the applicant has not provided all practicable mitigation to reduce adverse impacts.[60] Without this mitigation, the proposed removal fill has not established that it conforms to sound policies of conservation and would not interfere with public health and safety. This in turn means that there is insufficient evidence to conclude that the project is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.921.

ORS chapter 274 - Submersible and Submerged Lands

The people of Oregon are the owners of the submerged and submersible land ("beds and banks") underlying all navigable and tidally influenced waterways. In most cases, this ownership extends to the line of ordinary high water or high tide, but ownership can be mixed, even along the same waterway. DSL is responsible for management of publicly owned submerged and submersible land. The public has rights to use the beds and banks of navigable waterways for any legal activity, such as boating, fishing and swimming, including pulling your canoe or kayak onto the bank. Structures and facilities on these

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[60] ODFW, a networked agency under the OCMP, expressed concerns related to eelgrass mitigation plans at both the local and state level. *See* appendices 8.A, 8.E, 8.H. Regarding JCEP's application for a state removal-fill permit, ODFW outlines their concerns as:

- Several potential problematic issues associated with the proposed JCEP eelgrass mitigation plan that have not been fully considered and addressed by the applicant.
- Concern that the excavated JCEP mitigation basin may refill with sediment, and that the rate of sedimentation may not be conducive to survival, growth, and propagation of the planted eelgrass plants.
- Planned mitigation activities should follow state established in-kind, in-proximity standards and require long-term monitoring and remedial replanting of eelgrass as needed to compensate for losses that may occur over the entire lifespan of the Project.
- The applicant does not demonstrate that serious consideration has been given to avoidance of impacts to eelgrass beds. In a December 11, 2019 meeting with DSL, ODFW, and USACE, the applicant reviewed a draft alternatives analysis that considered alternative sites for eelgrass transplant. ODFW has raised additional alternatives to the applicant since that meeting. However, a more thorough alternatives analysis has not been provided nor has the Compensatory Wetland Mitigation Plan been updated to include the December 2019 analysis. ODFW recommended a more detailed analysis of eelgrass mitigation sites that characterize the location, species composition, and abundance of the eelgrass and other submerged aquatic vegetation at the alternative sites and provide a more detailed rationale for rejection of the alternative sites and acceptance of the proposed site. ODFW determined the existing JCEP Mitigation Plan is incomplete because it does not provide a full description of the steps that were taken to avoid adverse impacts to existing eelgrass beds in Coos Bay.
- ODFW recommends the eelgrass mitigation strategies be re-evaluated to favor avoidance.
- ODFW has identified several issues regarding eelgrass impacts and mitigation raised by the proposed JCEP, including characterization of permanent and transitory impacts to existing eelgrass, and shortcomings inherent in the proposed Eelgrass Mitigation Plan.
- The rationale provided by JCEP for designation of only a portion of the tidal elevation range as "optimal" for eelgrass at the proposed mitigation site is not clear.
- The JCEP includes excavation of about 0.04 million cubic yards of the shoal material to create a shallow circular tidal basin that will retain estuarine water and serve as the primary site for eelgrass mitigation activities. Concern has been repeatedly raised about the likelihood for poor water quality conditions, including low dissolved oxygen concentrations and elevated temperature, and trapping of decaying drift algae and other organic materials within the shallow excavated basin. JCEP does not provide any technical analysis nor rationale for the shape of the shallow excavated tidal basin, nor any explanation about the time frame that is expected for the newly excavated basin to re-fill with sediments.

state-owned lands require an authorization from DSL. ORS chapter 274 governs submerged and submersible lands. JCEP certifies that the proposed activity complies with ORS chapter 274 – Submersible and Submerged Lands, an enforceable policy of the OCMP.

ORS chapter 274 provides substantive standards through identification for when a lease, license, permit, or other authorization is required. The statutes also define conditions and provides enforceable mechanisms for implementation of the substantive provisions. These policies are rendered enforceable by the leases or licenses required in ORS 274.040, 274.530, and 274.885; by the permits in ORS 274.735 and 274.825 and by general authorizations in ORS 274.043, 274.525, and 274.895 where leases are not required; and by prohibited actions in ORS 274.610, 274.710, 274.820, and Oregon Laws 2010, chapter 11, sections 1 and 2. Enforcement implementation includes the opportunity for judicial review under ORS 274.412, cancellations under ORS 274.850, and indemnity requirements under ORS 274.560 and 274.800.

The JCEP consistency certification relies on "[p]ertinent permits, permit applications, and other agency documentations" provided in exhibits. Multiple proprietary authorizations are required in the coastal zone to demonstrate consistency with OCMP enforceable policies. Prior to withdrawal, the applicant did not have a complete application portfolio submitted to DSL for review. JCEP provided DLCD proprietary applications as part of its consistency certification as Exhibit F. JCEP notified DSL on January 24, 2020 that it was withdrawing its proprietary authorization applications from further consideration by DSL. *See* Appendix 7.F. Where a copy of an application is provided to establish compliance with an enforceable policy and that application has been withdrawn, the consistency certification has not established consistency with the associated enforceable policy.

ORS chapter 468B – Water Quality

JCEP certifies that the proposed activity complies with ORS chapter 468B – Water Quality, an enforceable policy of the OCMP. ORS chapter 468B provides for the conservation of the waters of the state, appropriate reuse of water and wastes; protection, maintenance, and improvement of the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic , agricultural, industrial, municipal, recreational and other legitimate beneficial uses; that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; and the prevention, abatement and control of new or existing water pollution. ORS 468B. 015. This enforceable policy further provides for the prevention and abatement of pollution by "requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015 [providing policy] and to conform to the standards of water quality and purity established under ORS 468B.048 [providing rules for standards of quality and purity]." ORS 468B.025.

ORS chapter 468B – Water Quality requires that without holding a permit from DEQ that specifies applicable effluent limitations, an entity may not:

> "(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

"(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

"(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

"(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

"(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state." ORS 468B.050(1).

The JCEP consistency certification relies on "[p]ertinent permits, permit applications, and other agency documentations" provided in exhibits. Where a copy of an application is provided to establish compliance with an enforceable policy and that application has been denied and not resubmitted, the consistency certification has not established compliance with an enforceable policy.

On May 22, 2018, USACE issued a public notice of a complete application from JCEP which commenced DEQ's water quality certification review pursuant to section 401 of the Clean Water Act. JCEP provided DLCD that application as part of its consistency certification as Exhibit G. DEQ made its water quality certification decision on May 6, 2019, denying JCEP's request for 401 water quality certification without prejudice, affording JCEP the opportunity to resubmit an application for 401 water quality certification with DEQ. *See* Appendices 6.D and 6.E. JCEP has to date not submitted a new 401 water quality certification application to DEQ and the current record before DLCD is a **denial of 401 water quality certification.**[61] *See* Appendices 6.D and 6.E.

Summary of DEQ Findings:

- JCEP did not provide evidence that it would use the best controls for preventing dredged materials from entering the waterways, minimizing turbidity, and pollution, and keeping inorganic and organic materials out of public waters.
- JCEP did not demonstrate that it would use the best methods to prevent waste materials from construction of the pipeline, access roads, and water crossings from entering public waters or identify and mitigate landslide risk which would put organic and inorganic materials into waters.
- Stormwater management at the LNG terminal would cause increased turbidity and changes in hydrology in wetlands affecting the resident biological communities.
- Placement of marine sediments upland would be in violation of biocriteria, OAR 340-041-0011.

[61] http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20191219-5010

- No assurance that the project will not violate the dissolved oxygen water quality standard at OAR 340-041-0016.
- There is no assurance that the project will not violate the pH water quality standard at OAR 340-041-0021.
- JCEP has not demonstrated that construction of the pipeline and related activities would avoid disturbance of habitat and biological communities, prevent landslides.
- The pipeline and associated work areas and roadways are likely to violate Oregon's water quality standard for temperature.
- There is no reasonable assurance that the proposed activities would be conducted in a manner that would not violate the Toxic Substances water quality standard at OAR 340-041-0033.
- JCEP's proposed activities do not employ the highest and best treatment to control turbid discharges and would likely violate the Turbidity water quality standard at OAR 340-041-0036.
- JCEP considered methods to avoid and minimize water quality impacts to temperature, turbidity, sedimentation, and biocriteria, DEQ found that the project does not meet the requirements of DEQ's antidegradation policy.

DLCD adopts DEQ's description of how the proposed activity is inconsistent with the water quality certification provisions of the OCMP. (See Appendices 6.D and 6.E).

In DEQ's Evaluation and Findings for 401 Water Quality Certification, DEQ advised:

> "DEQ notes that it has not received an application for WQC for issuance of a FERC permit or license associated with the Project. DEQ did receive information relevant to JCEP's applications to the Corps for Section 404/10 permits on February 6, 2018; May 21, 2018; November 21, 2018; March 19, 2019 and April 30, 2019. However, to the extent there was any ambiguity as to the nature of the materials received by DEQ on February 6, 2018 (specifically, whether that submittal constituted a separate request to DEQ for WQC for any FERC authorization or was a supplement to materials for the Corps' review) JCEP confirmed in correspondence on December 7, 2018, that the February 6, 2018 materials were supplements to its application to the Corps for Section 404 and Section 10 permits. Additionally, contrary to JCEP's assertion in its December 7, 2018, letter to DEQ that JCEP had submitted to DEQ a 401 WQC application on October 22, 2017, no record supports this assertion. The only materials DEQ received regarding the Project in October of 2017 were emailed notices from the Corps on October 23, 2017 and October 24, 2017 of the Corps' receipt of Section 404/10 permit application materials from JCEP. As described above, the Corps deemed that application incomplete (33 CFR § 325.2(a)). As a result, in accordance with DEQ's rule (OAR 340-048-0032(1)) DEQ did not receive a 401 WQC application from JCEP for the Corps' permits until the Corps determined JCEP's application constituted a valid request for certification and issued the Public Notice on May 22, 2018, pursuant to Corps regulations. See 33 CFR § 325.2(b)(1)(ii). In the event that JCEP resubmits an application to DEQ for certification, DEQ requests that JCEP expressly state whether the application is for certification for pending FERC authorizations under the Natural Gas Act as well as the pending Corps Section 404/10 permits." (See Appendix 6.E, page 3)

DLCD therefore cannot concur that the project is consistent with the State's water quality certification enforceable policy. DLCD also objects that under OAR 660-035-0050(4), "the issued permit or authorization is the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers." JCEP has not met the requirement to provide DLCD a DEQ issued water quality certification.

ORS chapter 496 – Wildlife

ORS 496.012 establishes the state's wildlife management policy, including managing to prevent serious depletion of any indigenous species and to maintain all species of fish and wildlife at optimum levels for future generations.

ORS 496.171 to 496.182 authorizes ODFW to develop conservation and recovery plans for wildlife species listed as state threatened or endangered species, including guidelines that it considers necessary to ensure the survival of individual members of the species. These guidelines may include take avoidance and protecting resources sites such as spawning beds, nest sites, nesting colonies, or other sites critical to the survival of individual members of the species. ORS 496.182(2)(a). State land management agencies work with ODFW to determine their agency's role in conservation of endangered and threatened species. ORS 496.172(3). The "taking" of any listed species is prohibited. ORS 498.026(1). Illegal take is a violation of the wildlife laws, subject to criminal prosecution pursuant to ORS 496.992. Thus, the Oregon ESA's primary authority is related to state agency actions on state-owned or managed lands; and prohibits killing or obtaining possession or control without an incidental take permit. Where approval for take is given by USFWS, then this is taken as a waiver under Oregon ESA. ODFW defers to USFWS take permit determinations for species that are listed both state and federally listed. ODFW can be more restrictive than the USFWS in its protection of listed species but cannot be less restrictive. Moreover, ODFW can address the habitat mitigation needs for listed species under the wildlife management policy and the Fish and Wildlife Habitat Mitigation Policy, OAR chapter 435, division 415, on both federal and non-federal lands.[62]

JCEP asserts in their federal consistency application that "[t]he ongoing consultation with ODFW, fish passage measures, and in-water work timing protocols demonstrate that the Project will comply with the current edition of ORS Chs. 496, 498, 506, and 509." Consistency Certification at Table 2-2.

ORS 496.012 provides in full:

> "It is state policy to manage wildlife to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the State Fish and Wildlife Commission

[62] *See California Coastal Commission v. Granite Rock Co.*, 480 US 572 (1987); 43 CFR 24.3(a) ("In general the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State.")

shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management:

> "(1) To maintain all species of wildlife at optimum levels.
> "(2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.
> "(3) To permit an orderly and equitable utilization of available wildlife.
> "(4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.
> "(5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.
> "(6) To provide optimum recreational benefits.
> "(7) To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups."

OCMP, in close coordination with networked state agency partner ODFW, determined that due to the following insufficiencies, JCEP has not established consistency with ORS 496.012:

- Impacts to Category 1 habitats for marbled murrelet and northern spotted owl
- Insufficient compensatory mitigation plans for impacts to Category 2 habitat for marbled murrelet and northern spotted owl
- Insufficient risk assessment and contingency planning for eelgrass mitigation
- Insufficient risk assessment and contingency planning for Horizontal Directional Drilling
- Underestimated impacts to shellfish, benthic communities, and estuarine habitats associated with dredging for the terminal and navigation channel
- No long-term stewardship plan (demonstration of durability) for the Kentuck mitigation site
- Net loss of upland habitat impacted by the LNG Export Terminal
- Underestimated impacts to stream and riparian resources, net loss of riparian habitat with insufficient plans for large woody debris
- Compensatory Wetland Mitigation Plan does not address temporal loss of wetland habitats during post-construction rehabilitation
- Lack of a habitat mitigation plan for upland habitat impacts in juniper woodland, shrub-steppe, and oak woodland habitats
- Out-of-kind and out-of-proximity mitigation proposed on USFS and BLM lands
- Inappropriate/insufficient plans for ensuring instream flow is maintained for aquatic life during hydrostatic testing and dust abatement
- In-water work windows have not been agreed upon, the applicant has indicated a desire to work outside in-water work windows in some areas

DLCD requested that JCEP provide as other information needed for the consistency review "[u]pdated categorization of federal and non-federal habitats in the coastal zone and survey/data that supports the categorization for the FERC's preferred alternative in the DEIS for the pipeline route and terminal." (Appendix 2.B). JCEP stated that it is working with ODFW on categorization, but declined to address the Blue Ridge Variation. JCEP is resisting that route change and claims that it would be premature to gather and provide information. In DLCD's August 15, 2019 request for information, DLCD requested "the information supplementing the Corps federal permit application #NWP2017-41 that is the basis for Corps Supplemental Notice dated July 26, 2019." (Appendix 5.G). A key element of that supplemental notice is the "Blue Ridge Variation." It does not appear that the Corps agrees that it is premature to gather essential information about FERC's recommended alternative. DLCD is allowed by federal regulations governing the CZMA consistency review to request information needed for that review. 15 CFR § 930.63(c).

Further, DLCD requested plans for in-water blasting, but JCEP responded that plans would not be applicable to the consistency review because "[n]o in-water blasting is proposed within the coastal zone." However, the Joint Coastal Zone Management Act Certifications lists "In-Water Blasting Permit (limited to Pipeline in Coastal Zone)" as state authority the project would require. Consistency Certifications at 7. Given the geology of the Oregon coast, it is highly unlikely that in-water blasting will not be needed. There is a likelihood that JCEP may reach bedrock anywhere in the terminal site area and this substrate cannot be dredged without hard rock drilling and/or blasting. Moreover, the coastal zone extends some 53 miles to the east along which the pipeline would be buried. JCEP's claim in its July 31 response to DLCD's request contradicts information in the DEIS. Lithified sedimentary rock found in the Coastal Range has the potential to require blasting to trench for the pipeline. Table 4.1.2.6-1 Summary of Blasting Potential along the Proposed Pacific Connector Pipeline identifies six stretches from MP 0 through MP 59 where blasting potential is categorized as "moderate." Since the Applicant has failed to provide necessary detail and design for their proposed water crossings, it is unreasonable to assume that there would be no water crossings in those stretches that would be part of sedimentary rock formations. It is clear from coordination with ODFW that appropriate information about in-water blasting is necessary to ensure compliance with enforceable policies of the OCMP. Pursuant to 15 CFR § 930.66(3)(b), any in-water blasting should be subject to supplemental coordination.

The DEIS and FEIS description of proposed activities do not describe how the project will avoid serious depletion of Oregon's fish and wildlife resources. Key areas of the project description that are insufficient to determine consistency with the wildlife policy include, but are not limited to: the LNG Export Terminal impacts to the Coos Bay Estuary, dredging impacts to estuarine habitats and communities, impacts to eelgrass, introduction of non-indigenous species through ballast water discharge, disturbance to marine mammals, impacts to wildlife in freshwater wetlands, uplands, and beaches on the North Spit of Coos Bay, impacts of the LNG Export Facilities on Snowy Plover nesting and foraging habitat, impacts to the Coastal Marten habitat, habitat loss at the LNG Export Terminal site,

impacts from the PCGP pipeline to fish and wildlife habitat, impacts to Marbled Murrelet and Northern Spotted Owl habitat, and in-water blasting and in-water work.[63]

ODFW informed DLCD by letter dated February 4, 2020 that it does not find the current proposals for the JCEP/PCGP projects to be consistent with all of the OCMP fish and wildlife Enforceable Policies. ODFW identified the primary issues as incomplete fish passage plans required by ORS 509.580 to 509.910 and OAR chapter 635, division 412, and inadequate avoidance, minimization, and mitigation of impacts to fish and wildlife habitat to ensure consistency with the state Wildlife Policy, ORS 496.012 and OAR chapter 635, division 415. *See* Appendix 8.J.

Fish and Wildlife Habitat Mitigation:
DLCD finds that the applicant has not sufficiently addressed aquatic and upland impacts to fish and wildlife habitats consistent with the Wildlife Policy as implemented through the Fish and Wildlife Habitat Mitigation Policy.[64] Division 415 governs ODFW's provision of biological advice and recommendations concerning mitigation for losses of fish and wildlife habitat caused by development actions. Based on standards in the division 415, JCEP seeks concurrence on the appropriate category to apply to land or water where a development action is proposed. The enforceable policy provides that for Habitat Category 1, impacts to the habitat must be avoided. If impacts cannot be avoided, then the actions do not satisfy the Wildlife Policy. For Habitat Category 2, impacts to the habitat should be avoided and if impacts cannot be avoided, a high level of mitigation as specified in rule, is needed.

In previous versions of the JCEP/PCGP project, the applicant was working cooperatively with ODFW to develop habitat mitigation plans for the LNG Export Facilities and for the pipeline. Draft plans included habitat categorization for areas of direct impact and lists of potential mitigation options were in development. ODFW deems a mitigation plan essential to demonstrate consistency with the state's wildlife enforceable policies. Since the inception of the JCEP, DLCD has been calling for a comprehensive mitigation plan that provides for all of the various mitigation pieces. The primary purpose of this comprehensive mitigation plan would be to ensure that all natural resource impacts are adequately addressed in a seamless fashion both geographically and jurisdictionally, both to avoid duplication and to ensure nothing is overlooked. To date, a sufficient comprehensive mitigation plan has not been developed by JCEP. A comprehensive mitigation plan should follow the mitigation hierarchy of avoid, minimize, and mitigate and include at least the following components of mitigation to address:

- ESA listed species per USFWS and NFMS consultation in Section 7 and Section 10 processes,
- Migratory Bird Treaty Act species including golden and bald eagles,
- Marine mammals per the Marine Mammal Protection Act,
- Fish and wildlife habitat loss (on all land ownerships) per the ODFW Fish and Wildlife Habitat Mitigation Policy,

[63] Oregon Agency Comments on the DEIS.
[64] OAR 635-415-0000 through 635-415-0025

- Fish passage mitigation,
- In-water blasting impacts,
- Water quality/quantity mitigation per DEQ 401 Water Quality Permitting and through WRD Limited License Approvals,
- Wetland/waterway mitigation per DSL removal fill and US Army Corps of Engineers 404/408 permits,
- USFS, BLM, BOR, and USACE mitigation.

DLCD therefore cannot concur that the project is consistent with the State's wildlife management enforceable policies due to a lack of sufficient information.

ORS chapter 469 - Energy; Conservation Programs; Energy Facilities Public Health and Safety

An enforceable policy on state energy provides in part:

> "In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety[.]" ORS 469.310.

JCEP proposes to construct a thermal energy production facility with the capacity to generate more than 25 MW. As proposed, the generating capacity of the thermal power plant facility falls within the jurisdiction of the state Energy Facility Siting Council. ORS 469.300(27); 469.320(1). Barring final engineering which describes how the facility will be incapable of generating more than 25 MW, or a fully executed agreement between the applicant and the state establishing that this is the case, JCEP will require approval from Oregon's Energy Facility Siting Council and will be responsible for meeting Oregon siting standards found in state law. In addition to other standards, these include Oregon's CO_2 emissions standards, the provision of a legally enforceable retirement bond for the project, and a comprehensive discussion of, and preparation for, emergency situations that could endanger humans and the environment from construction and operation activities.

JCEP has withdrawn its application for approval from the Energy Facility Siting Council,[65] but as recognized in DLCD's August 15, 2019 information request, JCEP has yet to provide "engineering designs that demonstrate that facility will" be "below regulatory thresholds."[66](Appendix 9.B)

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[65] https://www.oregon.gov/energy/facilities-safety/facilities/Documents/JCEP-PCGP/2019-04-12-JCEP-App-Withdrawal.pdf.

[66] https://www.oregon.gov/lcd/OCMP/Documents/CZMA_InfoRequest_JCEP_PCGP_August15.pdf.

DLCD therefore cannot concur that the project is not subject to consistency with the State's energy facilities enforceable policies due to a lack of sufficient information.

ORS chapter 509 – General Protective Regulations

Oregon's Fish Passage law, ORS 509.580 to 509.645, requires upstream and downstream fish passage. ORS chapter 509 mandates that "fish passage is required in all waters of this state in which native migratory fish are currently or have historically been present." ORS 509.585(1).

On February 22, 2019, JCEP filed fish passage applications with ODFW and provided DLCD that application (Appendix 8.B) as part of its consistency certification as Exhibit K. In Oregon's comments on the FEIS, ODFW identifies the incomplete or missing Fish Passage Plans (ORS 509.580 through 509.645; OAR 635-412-0005 through 635-412--0040). ODFW has received Fish Passage Plans for the portion of the project located in the coastal zone (see Appendices 8.C and 8.D), however ODFW has requested additional information from JCEP in order to finalize those approvals. ODFW received sufficient information for the Kentuck and APCO mitigation actions within the coastal zone. These actions include the East Bay Drive Bridge, Golf Course Lane Culvert, Kentuck Tide Gate, Kentuck Creek Restoration, and the APCO Bridge. ODFW is working on final fish passage authorizations for these restoration actions.

DLCD, in close coordination with networked state agency partner ODFW, determined that JCEP has not established consistency with ORS 509.580 to 509.645 due to the following insufficiencies for the pipeline and road crossings fish passage plans within the coastal zone:

- Lack of an updated Appendix 3 of the applicant's fish passage application (Horizontal Directional Drill Plans – CZMA) to understand current drilling strategies, potential impacts, and appropriate In-Water Work Windows, and
- Lack of an updated Appendix 6 of the applicant's fish passage application (Stream Crossing Risk Assessment - CZMA) – Stream Restoration actions. This information is critical in the development of site-specific stream crossing restoration plans.

Until this information is provided and determined to meet applicable criteria of enforceable policies, DLCD cannot concur that this project is consistent with fish passage statutes.

In a letter dated February 4, 2020, ODFW confirmed these findings, stating "ODFW does not find the current proposals for the JCEP/PCGP projects to be consistent with all of the OCMP fish and wildlife Enforceable Policies. The primary issues have to do with incomplete fish passage plans (ORS 509.580-509.910 and OAR chapter 635, division 412), and inadequate avoidance, minimization, and mitigation of impacts to fish and wildlife habitat to ensure consistency with the State Wildlife Policy (ORS 496.012 and OAR 635-415)." (See Appendix 8.I)

Statewide Planning Goal 6 - Air, Water and Land Resources Quality

JCEP certifies that the proposed activity complies with Goal 6, an enforceable policy of the OCMP. Goal 6, Air, Water and Land Resources Quality is to "maintain and improve the quality of the air, water and land resources of the state." OAR 660-015-0000(6). This enforceable policy further provides: "All waste

and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate or violate applicable state or federal environmental quality statutes, rules and standards."

Goal 6 requires a determination, supported by substantial evidence, explaining why it is reasonable to expect that applicable state and federal environmental quality standards can be met by the proposed activity. *Salem Golf Club v. City of Salem,* 28 Or LUBA 561, 583 (1994). The JCEP consistency certification relies on "[p]ertinent permits, permit applications, and other agency documentations" provided in exhibits. Where a copy of an application is provided to establish compliance with an enforceable policy and that application has either been denied or withdrawn, the consistency certification has not established compliance with an enforceable policy.

On May 22, 2018, the Corps issued a public notice of a complete application from JCEP which commenced DEQ's water quality certification review pursuant to Section 401 of the Clean Water Act. JCEP provided DLCD that application as part of its consistency certification as Exhibit G. DEQ made its water quality certification decision on May 6, 2019, denying JCEP's request for 401 water quality certification without prejudice; affording JCEP the opportunity to resubmit an application for 401 water quality certification with DEQ (see Appendix 6.D). JCEP has to date not submitted a new 401 water quality certification application to DEQ. JCEP applied for removal fill on November 3, 2017. JCEP provided DLCD that application (60697-RF) as part of its consistency certification as Exhibit E. JCEP notified DSL on January 23, 2020 that it was withdrawing its removal fill application 60697-RF from further consideration by DSL.

DLCD therefore cannot concur that the project is consistent with the State's enforceable policies due to a lack of sufficient information. DLCD also objects that under OAR 660-035-0050(4), "the issued permit or authorization is the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers." JCEP has not met the requirement to provide DLCD with issued permits and authorizations.

ALTERNATIVE BASIS FOR OBJECTION

Alternative Basis of Insufficient Information and Identified Information Necessary to Determine Consistency

Under the regulations implementing the CZMA, a state may object on alternative bases. A permissible basis is an objection that the applicant has failed, following a written request, to supply information necessary for the state to determine consistency. DLCD objects under 15 CFR § 930.63(c) because JCEP has failed to provide "information necessary … to determine consistency."[67] As DLCD and other agencies have repeatedly observed, JCEP has failed to provide information regarding what JCEP intends to do to mitigate numerous impacts or whether and how such mitigation will work. DLCD has informed JCEP that information regarding mitigation of various specific impacts is essential to DLCD's evaluation. JCEP has not explained how it will mitigate many impacts pertinent to the enforceable policies of the OCMP, therefore DLCD must further object "on the [alternative] grounds of insufficient information" as described under each enforceable policy above. 15 CFR § 930.63(c).

DLCD further objects on the additional alternative basis that JCEP has not provided information sufficient to determine whether less harmful alternatives are available. For example, DLCD requested information regarding "[a]lternative analysis for size and shape of slip and access channel."[68] Shallower or less extensive dredging of the access channel, federal navigation channel, and slip would reduce harmful impacts. The project may not actually require the level of proposed dredging or the proposed slip design; if it does not the impacts associated with this activity are inconsistent with enforceable policies of the OCMP.

ESTABLISHING CONSISTENCY

The CZMA regulations give a State the option, at the time it objects to the consistency certification for a proposed project, to describe any alternatives that would permit the project to be conducted in a manner consistent with its management program. NOAA's regulations state:

> "The objection **may** describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program."[69] (emphasis added)

In describing alternatives, NOAA's regulations provide further guidance:

> "If a State agency proposes an alternative(s) in its decision letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement

[67] *See also* 15 CFR § 930.63(a) ("A state agency may assert alternative bases for its objection.")
[68] DLCD Aug. 15, 2019.
[69] 15 CFR § 930.63(b)

demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives."[70]

JCEP has not proposed alternatives to this project that would enable the project to be fully consistent with the OCMP. While the OCMP is open to alternatives that would make the project fully consistent with the enforceable policies of the OCMP, additional analysis would be needed to determine whether or not alternatives would be sufficient to meet enforceable policy standards. **At this time, JCEP's project objectives and our enforceable policies are incompatible.**

The following table outlines what would be required for the proposed project to become consistent with the enforceable policies of the OCMP that it is currently inconsistent with.

INCONSISTENT ENFORCEABLE POLICIES	HOW TO BECOME CONSISTENT
Statewide Planning Goal 6	In order to be consistent, JCEP would need to receive an issued 401 Water Quality Certification from DEQ and Removal/Fill authorization from DSL.
ORS Chapter 468B - Water Quality	In order to be consistent, JCEP would need to receive an issued 401 Water Quality Certification from DEQ.
ORS Chapter 196 – Removal-Fill	In order to be consistent, JCEP would require an approve Removal-Fill authorization from the DSL.
ORS Chapter 274 – Proprietary	In order to be consistent, JCEP would require an approval on all Proprietary Authorizations for areas within Oregon's coastal zone from the DSL
ORS Chapter 496 - Wildlife	In order to be consistent, JCEP would need to establish avoidance of Habitat Category 1 habitat, as identified by ODFW.
ORS 469 - Energy; Conservation Programs; Energy Facilities Public Health and Safety	In order to be consistent, JCEP has to obtain and EFSC license or provide engineering designs that demonstrate that facility will be below regulatory thresholds.

Supplemental Considerations for JCEP and FERC

DLCD and its networked agency partner ODFW believe there may be alternative sites available for avoiding impacts to eelgrass. JCEP states "the proposed Eelgrass Mitigation Site was selected after an updated rigorous evaluation of potential sites" and the evaluation criteria and site evaluations for four prospective sites are provided for Haynes Inlet, Old Hatchery Site, Jordan Cove, and Eelgrass Mitigation Site near Airport.

ODFW states that

> "The JCEP Project Description states that the Jordan Cove Embayment site was rejected because 'the amount of area available for eelgrass mitigation may not be sufficient to satisfy the eelgrass requirements of the JCEP.' This rationale is unfounded because the Jordan Cove Embayment certainly contains the spatially equivalent 8-10 acres of un-vegetated sandy shoal habitat that occurs in the lower intertidal zone at the Eelgrass Mitigation Site near the Airport. Further rationale presented for rejection of the Jordan Cove Embayment site is that the 'shifting nature of eelgrass colonies within Jordan Cove

[70] 15 CFR § 930.64(d)

may make it difficult for a mitigation site to comply with annual performance monitoring criteria or successfully meet eelgrass mitigation requirements.' It is not clear, however, how the shifting nature of eelgrass is likely to differ between the preferred (Eelgrass Mitigation Site near Airport) and the rejected (Jordan Cove Embayment Site) sites because historical assessments, hydrodynamic evaluation, and stability modeling was only conducted at the preferred Eelgrass Mitigation Site near the Airport, but not at the Jordan Cove Embayment Site."

The Jordan Cove Embayment should receive further evaluation as a potential site to conduct the eelgrass mitigation work. Further consideration should specifically be given to compare and contrast the ecological conditions (including existing bathymetry, hydrodynamic conditions, characteristics of surface and sub-surface sediments, stability modeling, wind fetch, exposure to wind chop, tidal currents, erosion, sediment deposition, light attenuation, habitat use by invertebrates, fishes, and waterfowl), land availability, presence of nearby eelgrass, viable design strategy, and current recreational uses between the rejected (Jordan Cove Embayment) and preferred (Eelgrass Mitigation near Airport) sites. Additional analysis and information should be provided regarding the rationale for rejection of the Jordan Cove Embayment as a possible site for the eelgrass mitigation work.

Alternative Ideas that DLCD believe should be explored by JCEP and FERC:

- Analysis of how a small incremental reduction in the overall capacity of the proposed facility as a BMP designed to minimize the overall adverse impacts of the project, including removing the "need" for NRIs to fit the proposed LNG Tanker size
- Analysis of pipeline route alternatives that would not impact the Coos Estuary or Habitat Category 1; several viable upland alternative routes were suggested during the FERC scoping process.[71]
- Analysis of alternative eelgrass mitigation sites

CONCLUSIONS

Based on the foregoing, the proposed project has not established consistency with all of the enforceable policies and underlying standards of the federally approved OCMP and DLCD summarizes the justification for objection below:

1. DLCD objects because **JCEP has failed to demonstrate consistency with the OCMP by failing to obtain necessary permits and by failing to provide sufficient information requested by DLCD**.

    a. JCEP fails to demonstrate that the project is consistent with enforceable policies under the jurisdiction of the Oregon Department of State Lands (DSL).

    b. JCEP fails to demonstrate that the project is consistent with enforceable policies under the jurisdiction of the Oregon Department of Environmental Quality (DEQ).

[71] https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14633140

c. JCEP fails to demonstrate that the project is consistent with the enforceable policies under the jurisdiction of the Oregon Department of Fish and Wildlife (ODFW).

2. DLCD objects because **JCEP has failed to demonstrate that the proposed project would be consistent with enforceable policies contained in a Statewide Planning Goal.**

3. DLCD objects because **JCEP has failed to demonstrate that the proposed project would be consistent with enforceable policies under the jurisdiction of partnering state agencies in Oregon's coastal network.**

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the Department of Land Conservation and Development, which administers the Oregon Coastal Management Program, and to the federal permitting or licensing agency. The Secretary of Commerce may collect fees from you for administering and processing your request. The Department of Commerce, FERC and the Portland District of the U.S. Army Corps of Engineers are being notified of this decision by copy of this letter.

Sincerely,

Jim Rue
Director
Department of Land Conservation and Development

Cc: John Peconom, FERC
Tyler Krug, USACE
Jason Miner, Governor's Office
Annette Liebe, Governor's Office
Steven Shipsey, DOJ
Jesse Ratcliffe, DOJ
Patty Snow, DLCD/OCMP
Heather Wade, DLCD/OCMP
Deanna Caracciolo DLCD/OCMP
Hui Rodomsky, DLCD/OCMP
Sean Mole, ODOE
Mary Camarata, ODEQ
Mary Bjork, OWRD
Sarah Reif, ODFW
John Pouley, OPRD/SHPO
Bob Lobdell, DSL
Jacob Taylor, DSL
Jill Rolfe, Coos County
Chelsea Schnabel, City of North Bend
Carolyn Johnson, City of Coos Bay
Joshua Shaklee, Douglas County

APPENDICIES

1. **CZMA Application Materials**
    A. Project Overview & Detailed Timeline
    B. JCEP Federal Consistency Review Application & Exhibits List – April 12, 2019
    C. Applicable Enforceable Policies – August 1, 2019
2. **FERC Documentation**
    A. Oregon State Agency Scoping Comments on FERC's Notice of Intent to Prepare an Environmental Impact Statement for Docket No. PF 17-4-000 (Jordan Cove Energy Project LP and Pacific Connector Gas Pipeline LP)
    B. State of Oregon Cover Letter & Oregon State Agency Comments on DEIS - July 3, 2019
    C. JCEP Response to DEIS Comments – July 22, 2019
    D. FERC Endangered Species Act, Section 7 Biological Opinion – July 29, 2019
    E. State of Oregon Comments FERC Final Environmental Impact Statement for JCEP – December 23, 2019
    F. ODFW Supplemental FEIS Comments – February 5, 2020
    G. DEQ Supplemental FEIS Comments to FERC – February 10, 2020
3. **U.S. Army Corps of Engineers Application and Documentation**
    A. Joint Permit Application Cover Letter - October 23, 2017
    B. LNG Terminal Joint Permit Application
    C. Pacific Connector Pipeline Joint Permit Application
    D. U.S. Army Corps of Engineers Process Explanation Letter & Information Request – November 3, 2017
    E. U.S Army Corps of Engineers Environmental Data: JCEP Response – December 1, 2017
    F. U.S Army Corps of Engineers Public Notice Extension – July 17, 2018
4. **Local Land Use Information**
    A. LCOG Staff Report: Recommended Denial – August 13, 2019
    B. LUBA Appeal: OSCC vs. JCEP #2016-095
5. **DLCD Correspondence**
    A. CZMA Advisory – October 27, 2017
    B. JCEP Supplements to CZMA Application (project modifications) – May 6, 2019
    C. Review Initiated Letter – May 13, 2019
    D. 3-Month Notification and Information Request – July 12, 2019
    E. CZMA Public Notice – July 23, 2019
    F. JCEP Response to 3 Month Notification & Information Request – July 31, 2019
    G. Second Information Request & Clarification – August 15, 2019
    H. CZMA Information Response Tables – August 20, 2019
    I. Second Information Request Response from JCEP – August 23, 2019
    J. Letter to DOJ on CZMA Conditioning from JCEP – September 4, 2019
    K. Stay Agreement between DLCD and JCEP – October 7, 2019
    L. Conditioning Matrix & Memo, November 3, 2019
    M. Letter from JCEP to DLCD – December 20, 2019
    N. Response Letter to JCEP from DLCD - January 10, 2020 letter
    O. Clarification Letter to JCEP from DLCD - January 29, 2020 letter

6. **DEQ Correspondence**
    A. JCEP Application for DEQ 401 Water Quality Certification – February 6, 2018/ DEQ 401 Water Quality Certification Application Package – February 6, 2018
    B. 401 Technical Memorandum - February 2, 2018
    C. NPDES Permit Modification Application - January 31, 2019
    D. DEQ 401 Water Quality Certification Denial – May 6, 2019
    E. DEQ 401 Evaluation and Findings Report – Mary 2019
7. **DSL Correspondence**
    A. DSL Removal-Fill Application – Part 1
    B. DSL Removal-Fill Application – Part 2
    C. Overview of Decision Process and Need for Additional Information Letter - April 10, 2019
    D. DSL Denial of Extension for Removal-Fill Permit Review – January 21, 2020
    E. JCEP Withdrawal of Removal-Fill Application – January 23, 2020
    F. DSL Receipt of Withdrawal Removal-Fill and Proprietary Permit Applications – January 30, 2020
    G. DSL Removal-Fill JCEP Review Timeline – January 30, 2020
    H. DSL Redacted Removal-Fill Permit Findings
8. **ODFW Correspondence**
    A. Comments to the City of Coos Bay, Comprehensive Plan Amendment 187-18-000153: Jordan Cove Energy Project Estuary Navigation and Reliability Improvements - August 27, 2019
    B. Kentuck and APCO Fish passage Plan Submission – February 22, 2019
    C. JCEP Fish Passage Plan – Temporary Bridge Installation at MP 44.29 – March 25, 2019
    D. PCGP Fish Passage Plan – April 2019
    E. ODFW Comments to Coos Bay Planning Commission - September 24, 2019
    F. ODFW – Protest of BLM RMPA for JCEP – December 20, 2019
    G. ODFW Jordan Cove Protest of USFS RLMP Amendment – January 6, 2020
    H. ODFW Comments to DSL on Removal-Fill – January 15, 2020
    I. ODFW Enforceable Policy Recommendation Letter – February 4, 2020
9. **ODOE Correspondence**
    A. DOGAMI Comments Related to Geologic Hazards and JCEP - December 1, 2017
    B. ODOE Withdrawal of Application for Exemption – April 12, 2019
10. **Reports, Journal Articles, White Papers, and Supplemental Information**
    A. ODFW White Paper: 2019 ODFW Oregon Marbled Murrelet Habitat
    B. Oregon Travel Impacts Report – June 2018
    C. USCG Waterway Suitability Report – July 1, 2008
    D. Site Selection and Design for LNG Ports and Jetties Information Paper No 14
    E. LNG and Public Safety Issues Summary – 2015
    F. Oregon Administrative Rule 660 Division 4 Approval
11. **Maps**
    A. Map 1: Coos Bay Estuary Management Plan Boundaries
    B. Map 2: Coos Bay Estuary Management Plan Unit Types
    C. Map 3: Coos Bay Estuary Management Plan Units

D. Map 3: JCEP Dredge Zones
E. Map 4: JCEP Pipeline Map
F. Map 5: JCEP Estuary Project Map
G. Map 6: Eelgrass Habitat 1
H. Map 7: Eelgrass Habitat 2
I. Map 8: JCEP LNG Facility Tsunami Hazard

12. Other Graphics & Tables

A. Coos Bay Estuary Management Plan Units Table
B. Goal 16: Hierarchy of Uses Graphic

13. FERC Documents

A. DEIS: https://www.ferc.gov/industries/gas/enviro/eis/2019/03-29-19-DEIS/03-29-19-DEIS.pdf
B. FEIS: https://www.ferc.gov/industries/gas/enviro/eis/2019/11-15-19-FEIS.asp

Literature Cited

1. Blaxter, J.H.S., J.A.B. Gray, and E.J. Denton. 1981. Sound and startle responses in herring shoals. Journal of the Marine Biological Association 61:851-869.
2. Cortright, R., J. Weber, and R. Bailey. 1987. The Oregon Estuary Plan Book. Oregon Department of Land Conservation and Development. Salem, Oregon. 126pp.
3. D'Andrea, T. 2012. Bay clam populations in the vicinity of the International Terminal. Oregon Department of Fish and Wildlife. Memorandum. 12pp.
4. Emmett, R., R. Llanso, J. Newton, R. Thom, M. Hornberger, C. Morgan, C. Levings, A. Copping, and P. Fishman. 2000. Geographic signatures of North American west coast estuaries. Estuaries 23: 765-792.
5. Kentula, M. E., and T. H. DeWitt 2003. Abundance of Seagrass (*Zostera marina* L.) and Macroalgae in Relation to the Salinity-Temperature Gradient in Yaquina Bay, Oregon, USA. Estuaries 26, no 4B:21130-1141.
6. Mathews, E.A., L.A. Jemison, G.W. Pendleton, K.M. Blejwas, K.E. Hood, and K.L. Raum-Suryan. 2016. Haul-out patterns and effects of vessel disturbance on harbor seals (*Phoca vitulina*) on glacial ice in Tracy Arm, Alaska. Fishery Bulletin 114:186-202.
7. Mills, K.E., and M.S. Fonseca. 2003. Mortality and productivity of eelgrass Zostera marina under conditions of experimental burial with two sediment types. Marine Ecology Progress Series 255:127-134.
8. ODFW. 2007. Rogue spring chinook salmon conservation plan. Oregon Department of Fish and Wildlife, Salem, Oregon.
9. ODFW. 2016. Oregon Conservation Strategy. Oregon Department of Fish and Wildlife, Salem, Oregon. https://oregonconservationstrategy.org
10. ODFW. 2017. Yaquina Bay Roe Herring Fishery Annual Meeting: 2017 Yaquina Bay Roe Herring Season Update. Memo Provided by ODFW to the Yaquina Bay Roe Herring Fishery Permit Holders. Oregon Department of Fish and Wildlife Marine Resources Program, Newport, Oregon.
11. Rumrill, S.S. 2003. Ecology of the South Slough Estuary: site profile for the South Slough National Estuarine Research Reserve. Oregon Department of State Land/National Oceanic and Atmospheric Administration Technical Report. 238pp.
12. Ruiz, G.M., K.R. Murphy, E. Verling, G. Smith, S. Chaves, A.H. Hines. 2005. Ballast water exchange: efficacy of treating ships' ballast water to reduce marine species transfers and invasion success. Final Report to US Fish and Wildlife Service; 17 pp.
13. Schwarz, A.L., and G.L. Greer. 1984. Responses of Pacific herring, Clupea harengus pallasi, to some underwater sounds. Canadian Journal of Fisheries and Aquatic Sciences 41:1183-1192.
14. Simenstad, C.A. 1983. The ecology of estuarine channels of the Pacific Northwest coast: a community profile. US Fish and Wildlife Service FWS/OBS-83/05. 181pp.
15. Thom, R. M., A. B. Borde, S. Rumrill, D. L. Woodruff, G. D. Williams, J. A. Southard, and S. L. Sargeant. 2003. Factors Influencing Spatial and Annual Variability in Eelgrass

16. marina L.) Meadows in Willapa Bay, Washington, and Coos Bay, Oregon Estuaries. Estuaries Vol. 26, No. 4B, p1117- 1129. August 2003.
17. Thom, R., J. Gaeckle, A. Borde, M. Anderson, M. Boyle, C. Durance, M. Kyte, P. Schlenger, J. Stutes, D. Weitkamp, S. Wyllie-Echeverria, S. Rumrill. 2008. Eelgrass (Zostera marina L.) restoration in the Pacific Northwest: recommendations to improve project success. US Department of Energy Pacific Northwest National Laboratory Technical Report WA-RD 706.1. 32 pp.
18. Thom R.M., J. Gaeckle, K.E. Buenau, A.B. Borde, J. Vavrinec, L.M. Aston, and D.L. Woodruff, et al. 2018. Eelgrass (*Zostera marina* L.) Restoration in Puget Sound: Development of a Site Suitability Assessment Process." *Restoration Ecology* 26, no. 6:1066-1074.
19. Wilson, Ben, and L.M. Dill. 2002. Pacific herring respond to simulated odontocete echolocation sounds. Canadian Journal of Fisheries and Aquatic Sciences 59:542-553.

Jordan Cove Energy Project, L.P.

Pacific Connector GAS PIPELINE

February 24, 2020

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Pacific Connector Gas Pipeline, LP* and *Jordan Cove Energy Project L.P.*
Docket Nos. CP17-494-000 and CP17-495-000
Oregon DLCD Determinations Issued February 19, 2020

Dear Ms. Bose:

On September 21, 2017, Jordan Cove Energy Project L.P. ("JCEP") filed an application pursuant to Section 3(a) of the Natural Gas Act ("NGA"), as amended,[1] and Parts 153 and 380 of the regulations of the Federal Energy Regulatory Commission ("Commission"),[2] for authorization to site, construct, and operate certain liquefied natural gas facilities ("LNG Terminal"). On the same day, Pacific Connector Gas Pipeline, LP ("PCGP," and together with JCEP, "Applicants") filed an application pursuant to Section 7(c) of the NGA,[3] and Parts 157 and 284 of the Commission's regulations,[4] for a certificate of public convenience and necessity authorizing PCGP to construct, install, own, and operate a new natural gas pipeline ("Pipeline," and together with the LNG Terminal, the "Project").

On February 19, 2020, the Oregon Department of Land Conservation and Development ("DLCD") objected to Applicants' certification that the Project will be consistent with Oregon's federally approved coastal zone management program under the Coastal Zone Management Act ("CZMA").[5] The next day, Commissioner McNamee voted "not to issue an order on the Jordan Cove Project" at this time, "without prejudice regarding the Commission's pending action on the Project," in light of DLCD's objection to Applicants' consistency certification.[6] The purpose of this letter is to explain why there is no legal or policy reason for DLCD's objection to affect the Commission's evaluation of the pending applications for the Project under NGA Sections 3 and 7.

Under the CZMA, a federal permit "to conduct an activity . . . affecting . . . the coastal zone of [a] state" shall not be granted "until the state . . . has concurred with the applicant's certification" that "the proposed activity complies with the enforceable policies of the state's approved [coastal zone management] program and that such activity will be conducted in a manner consistent with the program," unless "the Secretary [of Commerce], on his own initiative or upon appeal by the

[1] 15 U.S.C. § 717b(a) (2018).
[2] 18 C.F.R. Pts. 153 and 380 (2019).
[3] 15 U.S.C. § 717f.
[4] 18 C.F.R. Pts. 157 and 284.
[5] *See* Oregon DLCD Coastal Zone Management Act Federal Consistency Objection at 1, Docket No. CP17-494-000 (filed Feb. 20, 2020) ("DLCD Objection").
[6] Statement of Commissioner Bernard L. McNamee Regarding the Jordan Cove Energy Project and Pacific Connector Gas Pipeline (Feb. 20, 2020), https://www.ferc.gov/media/statements-speeches/McNamee/2020/02-20-20-mcnamee-C-8.pdf.

applicant, finds . . . that the activity is consistent with the objectives of [the CZMA] or is otherwise necessary in the interest of national security."[7] For purposes of Secretarial override of a state's objection, a project is consistent with the objectives of the CZMA if it "furthers the national interest as articulated in § 302 or § 303 of the [CZMA], in a significant or substantial manner," its contribution to the national interest "outweighs [its] adverse coastal effects," and "[t]here is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the [state's coastal zone] management program."[8]

"The Commission's CZMA role is very limited,"[9] and DLCD's objection does not prevent the Commission from granting the requested authorization for the LNG Terminal under NGA Section 3 or the requested certificate for the Pipeline under NGA Section 7. As the Commission has explained, its "only responsibility under the CZMA is to withhold *construction authorization* for a project until the state finds that the project is consistent with the state's NOAA-approved coastal zone management plan,"[10] or until the Secretary of Commerce overrides the state's objection.[11] "The Commission's practice has been to authorize" facilities under Sections 3 and 7 "pursuant to its NGA authority after it has completed its necessary review,"[12] and without waiting on state CZMA concurrence or federal override by the Secretary of Commerce.[13] The D.C. Circuit has confirmed that this longstanding practice is lawful so long as the Commission conditions construction on prior receipt of state CZMA concurrence (or override by the Secretary of Commerce)[14]—just as the Commission routinely, and lawfully, grants NGA authorizations while conditioning construction on receipt of other required permits.[15] To the extent DLCD adopted a contrary view in its February 19 objection letter,[16] that is incorrect.[17]

Moreover, none of DLCD's determinations affect the issues the Commission is required to consider in evaluating the pending NGA applications. The Commission's role under NGA Section 3 is to approve a proposed project unless it will not be "consistent with the public interest,"[18] and its role under NGA Section 7 is to determine whether a proposed project "is or will

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[7] 16 U.S.C. § 1456(c)(3)(A) (2018). State coastal zone management programs are subject to federal approval by the National Oceanic and Atmospheric Administration ("NOAA"), an agency of the Department of Commerce. *See Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at PP 122 n.68, 127 (2006).

[8] 15 C.F.R. § 930.121 (2019).

[9] *Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at P 127.

[10] *Id.* (emphasis added).

[11] *See Millennium Pipeline Co.*, 100 FERC ¶ 61,277, at PP 225-231 (2002).

[12] *Broadwater Energy LLC*, 124 FERC ¶ 61,225, at P 57 (2008).

[13] *See, e.g.*, *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, at PP 20-24 (2017); *Broadwater Energy LLC*, 124 FERC ¶ 61,225, at PP 55-67; *Islander E. Pipeline Co.*, 102 FERC ¶ 61,054, at PP 105-06, 115-19 (2003); *Millennium Pipeline Co.*, 100 FERC ¶ 61,277, at PP 225-231.

[14] *See Town of Weymouth v. FERC*, No. 17-1135, 2018 WL 6921213, at *2 (D.C. Cir. Dec. 27, 2018). As the D.C. Circuit explained, when construction is conditioned in this manner, the Commission's orders "do[] not authorize [an] 'activity'" affecting the coastal zone within the meaning of 16 U.S.C. § 1456(c)(3)(A). *Id.* Forbidding "construction [to] commence before all necessary authorizations are obtained" also ensures that "there can be no impact on the environment until there has been full compliance with all relevant federal laws." *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, at P 21.

[15] *See Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017) (Clean Water Act); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1319-21 (D.C. Cir. 2015) (Clean Air Act).

[16] *See* DLCD Objection at 2, 4.

[17] *See Town of Weymouth*, 2018 WL 6921213, at *2. DLCD's decision letter cites no contrary authority.

[18] 15 U.S.C. § 717b(a).

be required by the present or future public convenience and necessity" and "the applicant is able and willing properly to do the acts and to perform the service proposed."[19] By contrast, the determinations underlying DLCD's objection relate only to whether the Project will be consistent with the Oregon Coastal Management Program. Moreover, any later independent review by the Secretary of Commerce would relate only to the Project's consistency with the objectives of the CZMA and/or the Project's necessity in the interest of national security.[20] Those issues are wholly unrelated to the Commission's regulatory responsibilities and are "a matter for [DLCD], the NOAA, and the Department of Commerce, not th[e] Commission."[21]

Policy considerations do not favor, and affirmatively militate against, delaying the issuance of authorizations or certificates under the NGA in light of a state CZMA objection. Such an approach would risk "delay[ing] the in-service date of natural gas infrastructure projects to the detriment of consumers and the public in general."[22] It would also necessarily involve the Commission in legal and factual issues which relate solely to a federal statute (the CZMA) and state-specific coastal zone management programs that the Commission does not administer, and which will often—as here—be "intensely disputed" and "complex."[23] Finally, federalism concerns provide no support for delaying issuance of NGA authorizations as a result of state CZMA objections. A CZMA consistency determination "is a permit issued under federal law,"[24] and state CZMA objections are subject to plenary federal administrative override.[25] Accordingly, the Commission should issue an order authorizing the LNG Terminal and granting a certificate to the Pipeline without further delay.

Should you have any questions, please contact me at dowens@pembina.com or 832-255-3841.

Sincerely,

/s/ David Owens
David Owens
Jordan Cove Energy Project L.P.
Pacific Connector Gas Pipeline, LP

cc: Chairman Neil Chatterjee
Commissioner Richard Glick
Commissioner Bernard L. McNamee

[19] 15 U.S.C. § 717f(e).
[20] *See* 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. §§ 930.120-122.
[21] *Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at P 128.
[22] *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, at P 22.
[23] *Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at PP 127-28.
[24] *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, at P 24.
[25] *See generally* 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. §§ 930.120-131.

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February, 2020, served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

/s/ Victoria Galvez Godfrey
Victoria Galvez Godfrey
Attorney for
Jordan Cove Energy Project L.P.
Pacific Connector Gas Pipeline, LP

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March 19, 2020

Via FedEx Overnight

The Honorable Wilbur L. Ross, Jr., Secretary
United States Department of Commerce
Herbert C. Hoover Building
14th Street and Constitution Avenue, NW
Washington, DC 20230

Oceans and Coasts Section
NOAA, Office of General Counsel
1305 East West Highway
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Silver Spring, MD 20910

Re: Jordan Cove Energy Project, L.P. and Pacific Connector Gas Pipeline, LP's Notice of Appeal of Oregon's Coastal Zone Management Act Consistency Objection

Dear Secretary Ross:

Jordan Cove Energy Project L.P. ("JCEP") and Pacific Connector Gas Pipeline, LP ("PCGP") (collectively, "Appellants") respectfully submit this notice of appeal requesting that you override the Oregon Department of Land Conservation and Development's ("DLCD") objection to Appellants' certifications of consistency with the Oregon Coastal Management Program ("OCMP") for the proposed Jordan Cove Liquefied Natural Gas Project ("LNG Terminal") and Pacific Connector Gas Pipeline Project ("Pipeline," and together with the LNG Terminal, the "Project").

This notice of appeal is filed pursuant to 15 C.F.R. Part 930, Subpart H. Pursuant to 15 C.F.R. § 930.125(b), and as explained further below, Appellants' basis for appeal is that the Project is consistent with the objectives and purposes of the Coastal Zone Management Act ("CZMA"). As such, the Secretary can and should override the Oregon DLCD's objection under 16 U.S.C. § 1456(c)(3) and 15 C.F.R. § 930.120.

BACKGROUND

In response to the increase in natural gas supplies in the U.S. Rocky Mountain and Western Canada production areas and the growth in international demand for liquefied natural gas ("LNG"), Appellants JCEP and PCGP propose to construct and operate, respectively, an LNG export terminal and an interstate natural gas pipeline. The LNG Terminal proposed by JCEP will be located in Coos County, Oregon on the North Spit of Coos Bay. The LNG Terminal will be capable of receiving and liquefying 1.2 million dekatherms per day of natural gas and producing a maximum of 7.8 million metric tons per annum of LNG for export. To supply the LNG Terminal, PCGP will build an approximately 229-mile pipeline to connect the LNG Terminal to existing pipeline systems. The Pipeline will be capable of transporting up to 1.2 billion cubic feet of natural gas per day.

On September 21, 2017, Appellants filed applications with the Federal Energy Regulatory Commission ("FERC") under Sections 3 and 7 of the Natural Gas Act ("NGA") to construct and operate the LNG Terminal and the Pipeline. In connection with the Project, Appellants also filed applications with the U.S. Army Corps of Engineers ("ACOE") for permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Under the CZMA, applicants for federal permits for activities affecting a state's coastal zone must certify that the proposed activity complies with the enforceable policies of the state's federally approved coastal management program and will be conducted in a manner consistent with the program. 16 U.S.C. § 1456(c)(3)(A).[1] A designated state agency evaluates this certification and will ultimately concur or object. *Id.* DLCD is the designated state agency that implements the OCMP and undertakes the CZMA consistency review in Oregon.

Appellants began working with DLCD in October 2017 to obtain its views and assistance in order to ensure the Project would be conducted in a manner consistent with the OCMP, and continued to do so for the next year and a half. *See* 15 C.F.R. § 930.56. As part of this effort, Appellants worked with DLCD to obtain a list of the relevant "enforceable policies" of the OCMP applicable to the Project, and the "necessary data and information" that had to be submitted with the Appellants' consistency certification. 15 C.F.R. §§ 930.57, 930.58. To coordinate and simplify public review and comment of the CZMA consistency review process, DLCD asked Appellants to combine their CZMA submissions into a single document. On April 12, 2019, Appellants submitted their certification that the Project is consistent with

[1] FERC authorizations under NGA Section 3 and Section 7 and ACOE permits under Section 404 and Section 10 are federal license or permit activities listed in the OCMP as requiring CZMA consistency. *See* OCMP Table 7, https://www.oregon.gov/lcd/OCMP/Documents/September2015_Table_7_Listed%20Activities.pdf; *see also* 15 C.F.R. § 930.53.

Oregon's coastal management program.[2] DLCD objected to Appellants' consistency certification on February 19, 2020.[3]

PROCEDURAL CONTEXT FOR APPEAL

When a state objects to a consistency certification, the applicant may appeal the objection to the Secretary of Commerce by filing a notice of appeal within 30 days of receipt of the objection. 15 C.F.R. § 930.125. The notice of appeal must contain "a statement explaining the appellant's basis for [the] appeal." *Id.* Appellants' statement of their basis for appeal—specifically, that the Project is "consistent with the objectives of [the CZMA]," 16 U.S.C. § 1456(c)(3)(A)—is provided herein.

Because this appeal concerns an energy project,[4] the governing regulations provide that the notice of appeal must be accompanied by the consolidated record maintained by the lead federal permitting agency. 15 C.F.R. § 930.127(i). In this case, FERC is the lead federal permitting agency. *See* 15 U.S.C. § 717n(b)(1). The FERC docket numbers for JCEP and PCGP's applications under Sections 3 and 7 of the Natural Gas Act are, respectively, **CP17-495** and **CP17-494**. Online access to these dockets, including downloadable copies of all filings therein, is available through FERC's website at the following URL: **https://elibrary.ferc.gov/idmws/docket_search.asp**.

Appellants believe that providing the above-referenced FERC docket numbers and link to FERC's online docket system is sufficient to satisfy the requirement of 15 C.F.R. § 930.127(i)(2) that Appellants submit copies of the consolidated record with this notice of appeal, particularly in light of the Secretary's "broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties." 15 C.F.R. § 930.127(e)(1). Appellants have conferred with Oregon, and the State agrees to the approach of linking to the FERC docket, in recognition that it is the most practical approach in light of the size of FERC's record. Appellants will file with their opening brief an appendix containing the parts of the consolidated record they believe are relevant to the appeal, and will strive to coordinate with Oregon on the contents of that appendix. *See id.* § 930.127(c).

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[2] Appellants' joint certification document is available on DLCD's website at https://www.oregon.gov/lcd/OCMP/Documents/01CZMA%20Consistency%20Application.pdf. It is also included at Appendix 1.B of DLCD's objection letter, which is available at FERC Docket Nos. CP17-494-000 and CP17-495-000 (Accession No. 20200220-5022) (filed Feb. 20, 2020).

[3] *See* Oregon Department of Land Conservation and Development, CZMA Federal Consistency Objection, Accession No. 20200220-5022, FERC Docket Nos. CP17-494-000 and CP17-495-000 (filed Feb. 20, 2020), *also available at* https://www.oregon.gov/lcd/OCMP/FCDocuments/FINAL-CZMA-OBJECTION_JCEP-DECISION_2.19.2020.pdf ("DLCD Objection").

[4] The Project is an "energy project" because it is a "project[] related to the siting, construction, expansion, or operation of [a] facility designed to explore, develop, produce, transmit or transport energy or energy resources." 15 U.S.C. § 930.123(c).

However, should the Secretary determine that a different approach or additional materials are required for submitting the consolidated record, Appellants alternatively request an extension of time to prepare the full consolidated record for submission. *See* 15 C.F.R. § 930.127(i)(2) ("[T]he Secretary may extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing."). Good cause for an extension exists because of the sheer size and scope of the consolidated record maintained by FERC for the Project, much of which is not relevant to the issues on appeal, and because of the potential need for coordination to prepare the consolidated record in a form acceptable to the Secretary.

BASIS FOR APPEAL

Pursuant to 15 C.F.R. § 930.125(b), Appellants submit the following statement explaining their basis for appeal.

The Secretary should override the Oregon DLCD's objection to Appellants' consistency determination because the Project is consistent with the CZMA's objectives and purposes. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.120. A federally permitted activity is consistent with the objectives or purposes of the CZMA if the following three criteria are met:

a. The activity furthers the national interest as articulated in § 302 or § 303 of the CZMA, in a significant or substantial manner,

b. The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively, and

c. There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's management program.

15 C.F.R. § 930.121. As briefly explained below, the Project satisfies each of these criteria.

I. The Project will significantly and substantially further the national interest articulated in the CZMA.

The Project significantly and substantially furthers the national interest articulated in Sections 302 and 303 of the CZMA, which specifically articulate a national interest in the development of coastal resources and siting of major energy facilities.

Section 302 sets forth Congressional findings. 16 U.S.C. § 1451. It begins by declaring that "[t]here is a national interest in the effective management, beneficial use, protection, and development of

the coastal zone." *Id.* § 1451(a). With respect to energy projects in particular, Section 302 notes that "new or expanded energy activity in or affecting the coastal zone" can help achieve "[t]he national objective of attaining a greater degree of energy self-sufficiency." *Id.* § 1451(j). Section 303 provides Congressional declarations of policy. *Id.* § 1452. Similar to Section 302, it begins by setting out a national policy to both protect and develop coastal resources. *Id.* § 1452(1). Most of Section 303 is structured around how state management programs can "achieve wise use of the land and water resources of the coastal zone." *Id.* § 1452(2). With respect to energy, state management programs "should at least provide for . . . priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to . . . energy." *Id.* § 1452(2)(D).

Both Sections 302 and 303 therefore reflect that it is in the national interest to develop energy facilities in the coastal zone, particularly coastal-dependent energy facilities. In fact, the National Oceanic and Atmospheric Administration ("NOAA") has specifically stated that the "siting of energy facilities" is an "example of an activity that significantly or substantially furthers the national interest" in the preamble to the CZMA regulations establishing this criterion. 65 Fed. Reg. 77,124, 77,150 (Dec. 8, 2000).

Moreover, past appeal decisions have held that "coastal-dependent energy facilities further[] the national interest sufficiently for CZMA purposes." *Decision and Findings in the Consistency Appeal of AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C.* at 10 (June 26, 2008) ("*AES Sparrows Point*") (citation omitted). The Project is a coastal dependent energy facility because it is a facility to be "used primarily . . . in the . . . conversion, storage, transfer, processing, or transportation of, [an] energy resource," 16 U.S.C. § 1453(6), and "location in or near the coastal zone is required to achieve [its] primary goal," *AES Sparrows Point* at 11 n.54 (quoting *Decision and Findings in the Consistency Appeal of Islander East Pipeline Company, L.L.C.* at 9 (May 5, 2004) ("*Islander East*")). The goal of the Project is to "export natural gas supplies derived from existing natural gas transmission systems . . . to overseas markets, particularly Asia" via the LNG Terminal, and to connect the LNG Terminal to existing natural gas transmission systems via the Pipeline. Final Environmental Impact Statement for the Jordan Cove Energy Project at 1-6, Accession No. 20191115-3040, FERC Docket Nos. CP17-494-000 and CP17-495-000 (Nov. 15, 2019) ("Final EIS"). The Project is coastal dependent because it requires LNG to be exported via tankers that will dock at the LNG Terminal. *See AES Sparrows Point* at 11.

As a major coastal dependent energy facility, whose construction and operation will develop the resources of the coastal zone, *see AES Sparrows Point* at 12-13, the Project will substantially and significantly further the national interest articulated in the CZMA.

II. The national interest furthered by the Project outweighs any adverse coastal effects.

The national interest furthered by the Project outweighs any adverse coastal effects, when those effects are considered either separately or cumulatively. The Secretary will make this determination based on a preponderance of the evidence in the record. *AES Sparrows Point* at 16; *Islander East* at 35.

As a threshold matter, there is sufficient information in the record to identify adverse coastal effects and balance those effects against the national interest furthered by the Project. As noted above, consistent with 15 C.F.R. § 930.56, Appellants coordinated with DLCD for well over a year in an effort to identify the enforceable policies applicable to the Project before submitting their consistency certification in April of 2019. In any event, Oregon's contention that the Project's consistency certification was not supported by adequate information is not relevant to this issue. *See* DLCD Objection, *supra* note 3, at 1. As past decisions have explained,

> It is important to note that the sufficiency determination on appeal is different from [the state's] sufficiency determination . . . . On appeal, the question is whether the record contains sufficient information on a project's adverse coastal effects to permit a balancing of those effects against any *national* interest furthered by a project. This inquiry differs from that conducted by a state in examining the sufficiency of information necessary to determine whether a project is consistent with its coastal management program.

AES Sparrows Point at 17-18 (emphasis added).

The consolidated record contains a wealth of information on the reasonably foreseeable coastal effects of the Project (as well as its public benefits) for the Secretary to consider in this inquiry. *See, e.g.*, Final EIS. Among other things, the record reflects that Appellants have proposed numerous ways to mitigate adverse coastal effects. In addition, the exhaustive Final Environmental Impact Statement prepared by FERC staff concludes that many of the Project's impacts will either not be significant or will be reduced to less than significant levels with proper mitigation. *See id.* at ES-6.

The record contains sufficient information to permit the Secretary to balance the coastal effects against the strong national interest furthered by the Project. When considered either separately or cumulatively, the Project's adverse coastal effects are outweighed by the strong national interest that the Project furthers.

III. There is no reasonable alternative available.

Oregon has not proposed a reasonable available alternative that would permit the Project to proceed in a manner consistent with the enforceable policies of the OCMP. Instead, Oregon specifically declined to propose any alternative in its decision letter. *See* DLCD Objection, *supra* note 3, at 1, 48-50. Furthermore, it appears unlikely that any alternative would be acceptable to Oregon. Although DLCD professed in its objection letter to being "open to alternatives that would make the project fully consistent with the enforceable policies of the OCMP" (albeit without identifying any specific alternatives that would achieve consistency), it also declared, in bold letters, that "[a]t this time, [the] project *objectives* and our enforceable policies are incompatible," and that the project would "undermine the vision set forth by the OCMP." *Id.* at 1, 3, 49 (emphasis added).

Under 15 C.F.R. § 930.121(c), the "Secretary shall not consider an alternative unless the State agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program." Past decisions have also made clear that the burden to initially propose an alternative lies with the state. *See AES Sparrows Point* at 42; *Islander East* at 37. As such, there is no alternative for the Secretary to consider, and the third criterion for a Secretarial override is met.

CONCLUSION

Appellants respectfully submit this notice of appeal pursuant to 15 C.F.R. § 930.125. Appellants request that the Secretary override Oregon's consistency objection because the Project is consistent with the objectives and purposes of the CZMA.

Sincerely,

Michael Wigmore /mxe

Michael B. Wigmore

Enclosures

cc: Jim Rue, Director
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Salem, OR 97301-2540
jim.rue@state.or.us

Heather Wade, Coastal Policy Specialist, DLCD, heather.wade@state.or.us

Steven Shipsey, Assistant Attorney General, ODOJ, steven.shipsey@doj.state.or.us

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Jordan Cove Energy Project L.P.	**)**	**Docket No. CP20-_____**
Pacific Connector Gas Pipeline, LP	**)**	

PETITION FOR DECLARATORY ORDER FINDING THAT THE REQUIREMENT TO OBTAIN A CLEAN WATER ACT SECTION 401 CERTIFICATION HAS BEEN WAIVED

Mark K. Lewis
Kevin A. Ewing
Christine G. Wyman
Bracewell LLP
2001 M Street, NW
Suite 900
Washington, D.C. 20036
(202) 828-5834
mark.lewis@bracewell.com
kevin.ewing@bracewell.com
christine.wyman@bracewell.com

Dated: April 21, 2020

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Jordan Cove Energy Project L.P.	**)**	**Docket No. CP20-_____**
Pacific Connector Gas Pipeline, LP	**)**	

PETITION FOR DECLARATORY ORDER
FINDING THAT THE REQUIREMENT TO OBTAIN A CLEAN WATER ACT SECTION 401 CERTIFICATION HAS BEEN WAIVED

Pursuant to 18 C.F.R. § 385.207(a)(2),[1] Jordan Cove Energy Project L.P. ("JCEP") and Pacific Connector Gas Pipeline, LP ("PCGP") respectfully petition the Federal Energy Regulatory Commission ("FERC" or the "Commission") for a declaratory order finding that the requirement for JCEP and PCGP (collectively, "Jordan Cove") to obtain a certification under Section 401 of the Federal Water Pollution Control Act[2] ("Clean Water Act" or "CWA") from the Oregon Department of Environmental Quality ("ODEQ" or "Department") has been waived due to ODEQ's failure to act within one year on Jordan Cove's Section 401 certification request.

I. EXECUTIVE SUMMARY

As explained below, Jordan Cove has received conditional approval from the Commission to construct and operate a liquefied natural gas ("LNG") export terminal and connecting interstate natural gas pipeline (the Pacific Connector gas pipeline) in Oregon (collectively, the "Project"). Construction of the Project may not commence without written authorization of the director of the Commission's Office of Energy Projects, which requires presentation of all applicable

[1] As required by 18 C.F.R. § 381.302(a) (2020), petitioners have submitted via electronic payment the requisite $30,060 filing fee associated with this Petition. Pay.gov Tracking ID #26OOEE5N; Agency Tracking ID #1086782_101518.

[2] 33 U.S.C. § 1341 (2018).

authorizations or evidence of waiver thereof.[3] In this case, a Section 401 water quality certification from ODEQ that the potential discharges associated with the proposed Project will meet applicable water quality provisions is no longer required because the requirement to secure the Section 401 certification has been waived.

Under Section 401 of the CWA, an applicant for a Federal license or permit must provide the Federal agency with a certification from the state that any discharges from the proposed project will comply with applicable water quality provisions. Once the state receives a Section 401 certification request, it has a reasonable amount of time, not to exceed one year, to act on the request. If the state fails to act upon the certification request within a reasonable period of time, the requirement to obtain the certification is waived. Here, Jordan Cove submitted its Section 401 certification request to ODEQ on October 23, 2017. Because ODEQ received the certification request on that date, the starting point for the review period, as a matter of law, is October 23, 2017. Because the statute and FERC precedent require the state to grant or deny the request no later than one year from receipt, ODEQ's review period expired on October 23, 2018.

It is undisputed that ODEQ did *not* act upon Jordan Cove's certification request by October 23, 2018. ODEQ issued a denial on May 6, 2019, more than six months beyond the statutory deadline.[4] Thus, as a matter of law, the Section 401 requirement for the Project has been waived. Although ODEQ has at various times attempted to extend the review period beyond one year, none of those attempts has merit, as explained further below.

Accordingly, Jordan Cove requests a declaration from the Commission (as the lead federal agency) that, given ODEQ's failure to act on Jordan Cove's Section 401 certification request for

[3] *Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline, LP*, 170 FERC ¶ 61,202 at App., Environmental Condition No. 11 (2020).

[4] *See* Letter from R. Whitman (ODEQ) to D. Vowels (Jordan Cove) (May 6, 2019), Att. D at JC-000599-602.

the Project within the statutorily-mandated period, the Section 401 certification requirement has been waived for the Jordan Cove Project and, accordingly, that Jordan Cove has satisfied Environmental Condition No. 11 with respect to Section 401 of the CWA.

II. COMMUNICATIONS

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, the names and mailing addresses of the persons designated to receive service and to whom correspondence and communications concerning this proceeding should be addressed are as follows:

Mark K. Lewis
Kevin A. Ewing
Christine G. Wyman
Bracewell LLP
2001 M Street, NW
Suite 900
Washington, D.C. 20036
(202) 828-5834
mark.lewis@bracewell.com
kevin.ewing@bracewell.com
christine.wyman@bracewell.com

Petitioners request that the foregoing persons be placed on the official service list for this proceeding and respectfully request waiver of Rule 203(b)(3) of the Commission's regulations, 18 C.F.R. § 385.203(b)(3), in order to permit designation of more than two persons for service in this proceeding.

III. INFORMATION REGARDING PETITIONERS

JCEP and PCGP are both Delaware limited partnerships, each with its principal place of business at 5615 Kirby Drive, Suite 500, Houston, Texas, 77005. Both companies are wholly-

owned subsidiaries of Jordan Cove LNG L.P., which is an indirect, wholly-owned subsidiary of Pembina Pipeline Corporation ("Pembina"), a Canadian corporation.[5]

On September 21, 2017, Jordan Cove filed an application with the Commission seeking authorization under Section 3 of the Natural Gas Act ("NGA") to site, construct, and operate one of two components of the larger Project—a new LNG export terminal and associated facilities, including gas treatment facilities, a new marine slip, and other facilities for the construction and operation of the terminal, in Coos County, Oregon.[6] That same day, PCGP filed an application under Section 7 of the NGA for certificates of public convenience and necessity to construct and operate the other component of the Project—a new 229-mile interstate natural gas pipeline to connect the proposed LNG export terminal to existing interstate natural gas pipelines.[7] On March 19, 2020, the Commission issued an order granting JCEP and PCGP the requested authorizations for the Project, subject to certain conditions, including Environmental Condition No. 11.[8]

[5] Pembina acquired Veresen Inc. on October 2, 2017, as previously disclosed to the Commission in Docket Nos. CP17-494-000 and CP17-495-000.

[6] *Jordan Cove Energy Project L.P.*, Application for Authorizations Under Section 3 of the Natural Gas Act, Docket No. CP17-495-000 (filed Sept. 21, 2017).

[7] *Pacific Connector Gas Pipeline, LP*, Abbreviated Application for Certificate of Public Convenience and Necessity and Related Authorizations, Docket No. CP17-494-000 (filed Sept. 21, 2017) ("PCGP Application").

[8] *Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline LP*, 170 FERC ¶ 61,202 (2020) ("March 19 Order"). In 2013, Jordan Cove submitted applications in Docket Nos. CP13-483-000 and CP13-492-000 for authorizations to construct and operate a LNG export terminal and an associated natural gas pipeline similar to the facilities reviewed in the March 19 Order. *See* March 19 Order at PP 5-6. FERC issued a Final Environmental Impact Statement reviewing the potential environmental impacts associated with the proposed facilities on September 30, 2015, and the Commission ultimately denied the applications without prejudice on March 11, 2016. *See* Final Environmental Impact Statement for the Jordan Cove Energy Project, Docket Nos. CP13-483-000, CP13-492-000 (Sept. 30, 2015), Att. E and available in its entirety at https://www.ferc.gov/industries/gas/enviro/eis/2015/09-30-15-eis.asp; *Jordan Cove Energy Project L.P.*, 154 FERC ¶ 61,190 (2016), *reh'g denied*, 157 FERC ¶ 61,194 (2016).

From:	WALKER Vicki
To:	"Natalie Eades"; WALKER Vicki; LOBDELL Robert; RATCLIFFE Jesse D; METZ Eric; JARVIE Kirk
Cc:	Courtney, Aaron; Mike Koski
Subject:	RE: Withdrawal of Jordan Cove"s removal/fill application
Date:	Friday, January 24, 2020 12:17:22 PM
Importance:	High

Dear Ms. Eades:

The Department is in receipt of your January 23, 2020, withdrawal request regarding removal-fill application 60697-RF, and it is so noted for the record. This application will no longer remain active at the Department.

As you know, however, the Department has been processing numerous other reviews and applications related to the Jordan Cove Energy Project. The Department requests your response on whether you seek to withdraw the following delineation report and proprietary applications from further processing:

Wetland Delineation Report review WD 2018-2081

Proprietary applications for use of state-owned waterways:

- 56483-EA Stock Slough crossing
- 56492-EA Vogel Creek crossing
- 56494-EA Kentuck Slough crossing
- 56495-EA Coos River crossing
- 56517-EA T34S, R01W, Section 2 temporary use
- 56518-EA T34S, R01W, Section 2 temporary use
- 62041-EA Coos Bay crossing
- 62042-EA Coos Bay crossing
- 62168-EA Pile Dike Rock Apron
- 62173-EA Kentuck Outflow
- 62174-EA APCO site (bridge easement)
- 62176-RG Navigation Buoy

Thank you for your prompt attention to this matter. If you do not wish to withdraw, we will continue processing the report and the proprietary applications in the regular order of business.

Vicki

Vicki L. Walker | Director
Oregon Department of State Lands
775 Summer St. NE | Salem, OR 97301-1279
503-986-5237 (desk) | 503-798-2019 (cell)
vicki.walker@state.or.us
www.oregon.gov/dsl

From: Natalie Eades <NEades@pembina.com>
Sent: Thursday, January 23, 2020 4:34 PM
To: WALKER Vicki <Vicki.Walker@state.or.us>; LOBDELL Robert <bob.lobdell@dsl.state.or.us>; RATCLIFFE Jesse D <Jesse.D.RATCLIFFE@state.or.us>; METZ Eric <Eric.Metz@dsl.state.or.us>
Cc: Courtney, Aaron <aaron.courtney@stoel.com>; Mike Koski <MKoski@pembina.com>
Subject: Withdrawal of Jordan Cove's removal/fill application

Dear Director Walker: Please find attached a letter withdrawing the removal/fill application filed for the Jordan Cove project.

Regards,

Natalie Eades –Manager, Environment & Regulatory
Jordan Cove LNG, a Pembina Company
O: 971-**940-7834**| M: 713-**504-3933** ¦neades@pembina.com

PROPERTY OWNER CERTIFICATION AND CONSENT

I hereby certify that the Oregon Department of State Lands is the manager of the submerged and submersible non-trust lands in Coos Bay owned by the State of Oregon. I hereby authorize Pacific Connector Gas Pipeline, LP to file land use applications with the City of North Bend ("City") and Coos County ("County") for approval under applicable land use regulations of a new alignment of the proposed Pacific Connector Gas Pipeline ("HDD Alignment") to be located within our area of ownership, as depicted on attached Exhibit A.

By: Eric Metz

Print Name and Title: Eric Metz, Planning and Policy Manager Aquatic Resource Management Program for Oregon Department of State Lands

Date: 9-14-2018

140846483.2

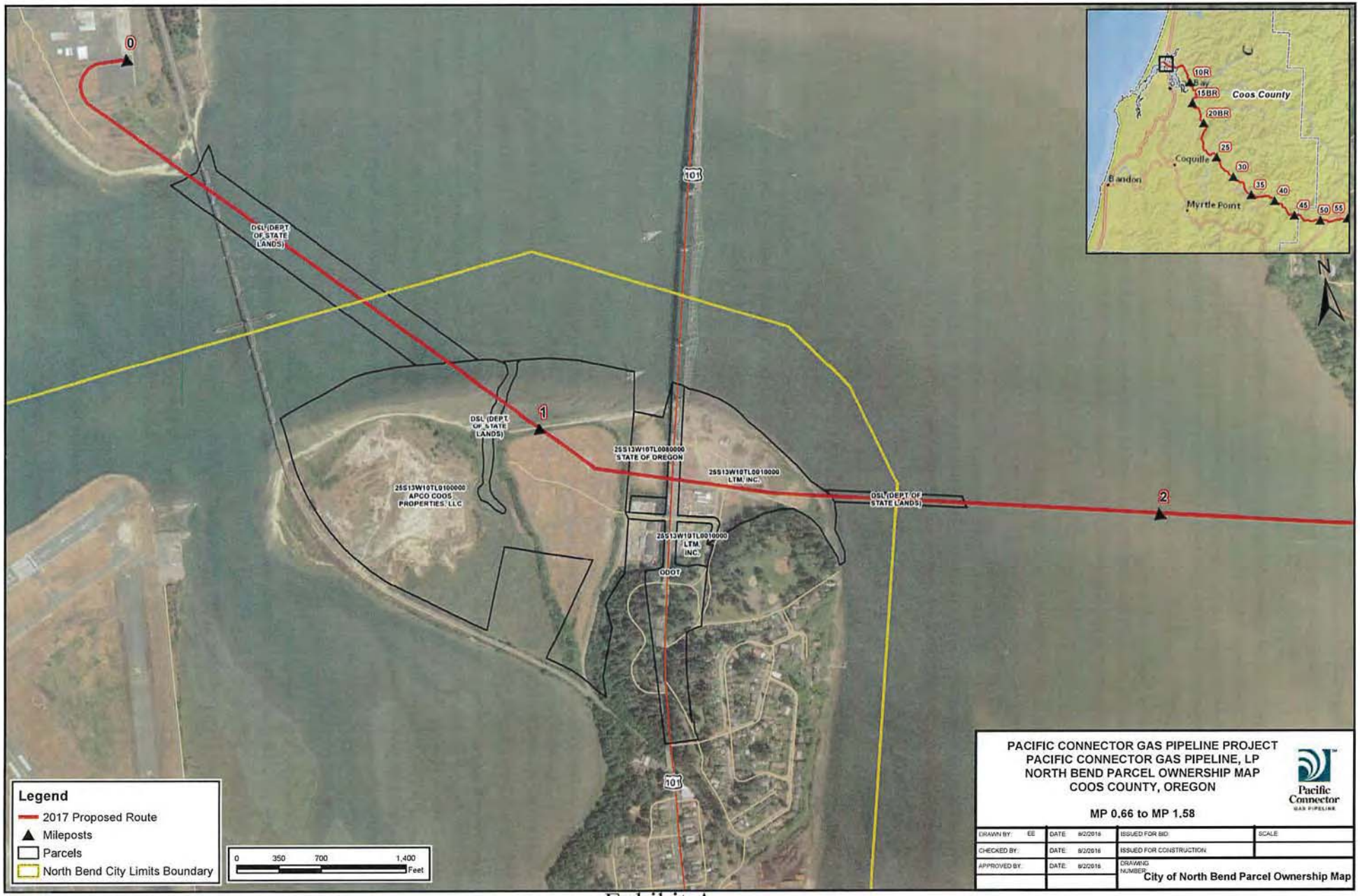


Exhibit A

Exhibit 4b
Page 12 of 22

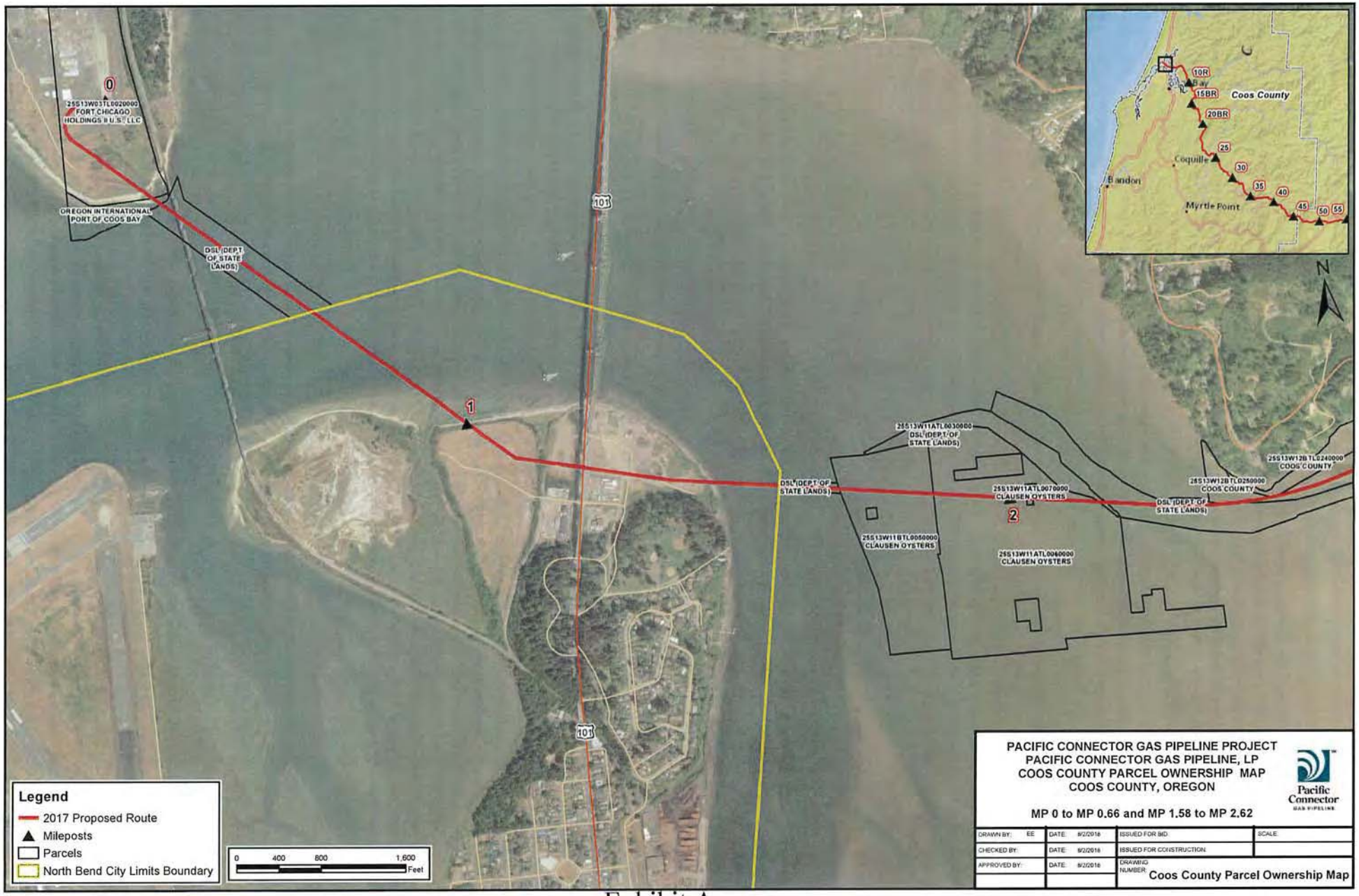


Exhibit A

Exhibit 4b
Page 13 of 22

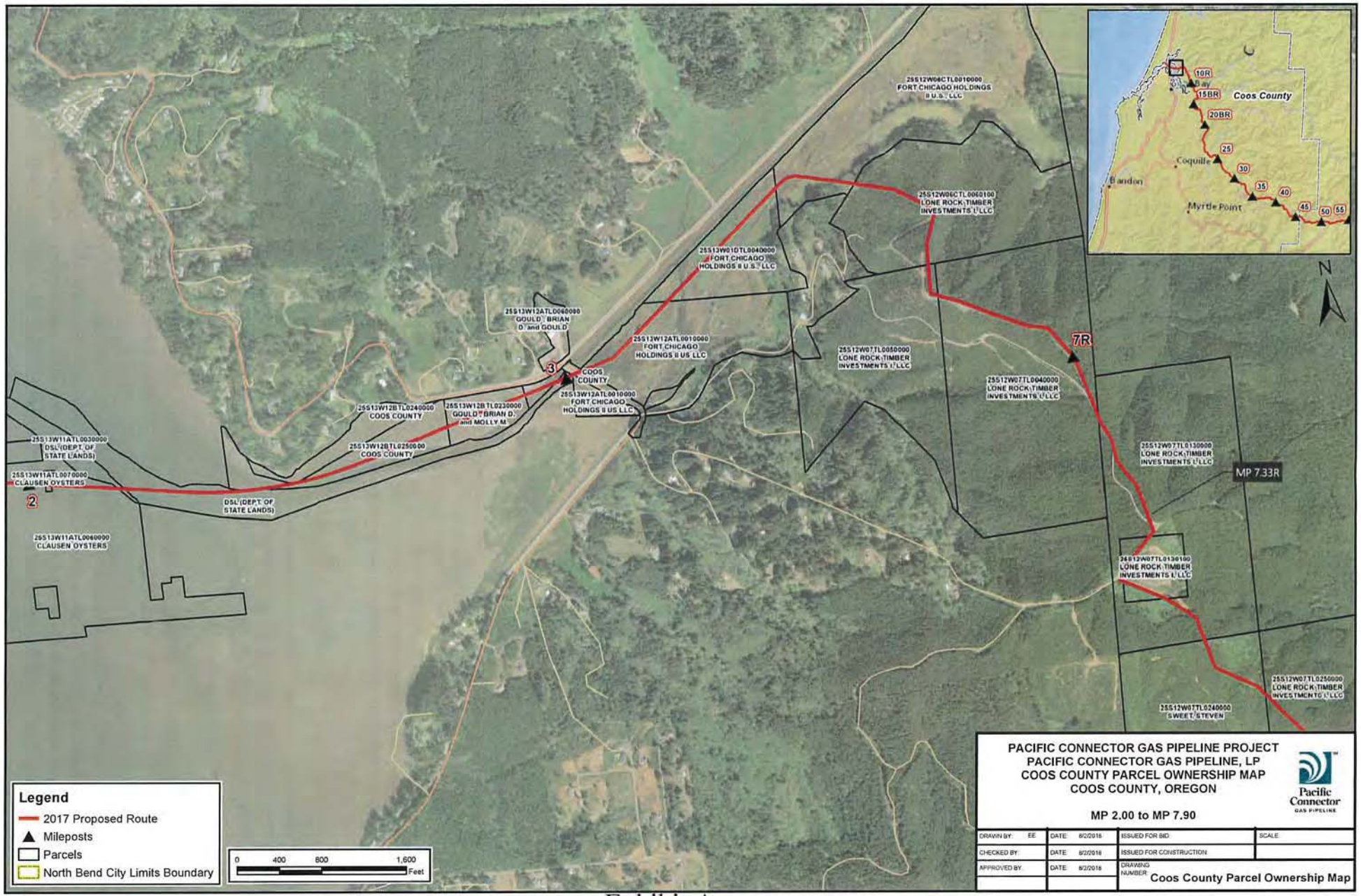

PACIFIC CONNECTOR GAS PIPELINE PROJECT
PACIFIC CONNECTOR GAS PIPELINE, LP
COOS COUNTY PARCEL OWNERSHIP MAP
COOS COUNTY, OREGON
MP 2.00 to MP 7.90
Coos County Parcel Ownership Map
Legend
2017 Proposed Route
Mileposts
Parcels
North Bend City Limits Boundary
0 400 800 1,600 Feet
Coos County
Coquille
Bandon
Myrtle Point
MP 7.33R
25S12W08CTL0010000 FORT CHICAGO HOLDINGS II U.S., LLC
25S12W06CTL0060100 LONE ROCK TIMBER INVESTMENTS I, LLC
25S13W01DTL0040000 FORT CHICAGO HOLDINGS II U.S., LLC
25S13W12ATL0060000 GOULD, BRIAN D. and GOULD
25S12W12ATL0010000 FORT CHICAGO HOLDINGS II US LLC
25S12W07TL0050000 LONE ROCK TIMBER INVESTMENTS I, LLC
25S12W07TL0040000 LONE ROCK TIMBER INVESTMENTS I, LLC
25S13W12BTL0240000 COOS COUNTY
25S13W12BTL0230000 GOULD, BRIAN D. and MOLLY M
25S13W12BTL0250000 COOS COUNTY
25S13W12ATL0010000 FORT CHICAGO HOLDINGS II US LLC
25S13W11ATL0030000 DSL (DEPT. OF STATE LANDS)
25S13W11ATL0070000 CLAUSEN OYSTERS
25S13W11ATL0060000 CLAUSEN OYSTERS
DSL (DEPT. OF STATE LANDS)
25S12W07TL0130000 LONE ROCK TIMBER INVESTMENTS I, LLC
25S12W07TL0130100 LONE ROCK TIMBER INVESTMENTS I, LLC
25S12W07TL0250000 LONE ROCK TIMBER INVESTMENTS I, LLC
25S12W07TL0240000 SWEET, STEVEN
DRAWN BY: EE
DATE: 8/2/2016
ISSUED FOR BID:
SCALE:
CHECKED BY:
DATE: 8/2/2016
ISSUED FOR CONSTRUCTION:
APPROVED BY:
DATE: 8/2/2016
DRAWING NUMBER:

Exhibit A

Oregon
Kate Brown, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregon.gov/dsl

State Land Board

Kate Brown
Governor

Bev Clarno
Secretary of State

Tobias Read
State Treasurer

October 28, 2020

Pembina Pipeline Corporation
Attn: Mike Stapleton
Room 37-081
4000, 585 8th Avenue SW
Calgary, AB T2P 1G1

Re: WD # 2018-0281 **Withdrawn by DSL**
Wetland Delineation Report for Pacific Connector Gas Pipeline
Coos, Douglas, Jackson, Klamath Counties; Linear Route Crossing 4 Counties Comprising Numerous Partial Tax Lots in Multiple Townships
APP # 60697

Dear Mr. Stapleton:

On March 31, 2020, the Department requested via e-mail some additional information needed to complete our review and approval of the wetland delineation report noted above. The request was made to Joel Shaich, the wetland consultant I had been working with during the wetland delineation review. My request was copied to Bob Lobdell, Eric Metz, Natalie Eades, Ryan Childs, Kirk Jarvie, and Vicki Walker. I emailed you on September 10, 2020 to notify you that the report would be withdrawn unless we received your responses or request to withdraw the report. We have not received the requested information. Because the information was not received within 60 days of our request, as required by OAR 141-090-0040(3)(d), the Department has withdrawn the delineation report from further review. The report and map have not been approved by the Department and may not be used for removal-fill permitting.

Please note that withdrawal of the report does not negate state jurisdiction of wetlands or other waters that occur within the study area corridor. Any wetlands or other waters of the state may be subject to the permit requirements of the state Removal-Fill Law. Generally, a state permit is required for fill or excavation of 50 cubic yards or more in a wetland area or below the ordinary high-water line of a waterway (the 2-year recurrence interval flood elevation, if OHWL cannot be determined). However, fill or removal of any amount of material within Essential Salmonid Habitat (ESH) and estuarine habitats may require a state permit. The Coos Bay Estuary and numerous ESH streams are included within the study area corridor.

The Coos Bay Estuary is a state-owned waterway; any activity encroaching within the submerged and submersible land may require a lease, registration, or easement to occupy state-owned land.

Should you wish to obtain Department approval in the future, please resubmit the report, along with a new report cover form, referencing the WD number above, and the required report review fee. Reports may need to be updated prior to submittal if site data is five years old or older or if new reporting requirements are in effect.

Please phone me at 503-986-5300 if you have any questions.

Sincerely,

Jurisdiction Coordinator

Enclosures

ec: Joel Shaich, Pembina Pipeline Corporation
Coos County Planning Department
Douglas County Planning Department
Jackson County Planning Department
Klamath County Planning Department
Tyler Krug, Corps of Engineers
Anita Andazola, Corps of Engineers
Maya Goklany, Corps of Engineers
Jacob Taylor, DSL
Bob Lobdell, DSL
Oregon Coastal Management Program (Coastal Zone, coastpermits@state.or.us)

WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

This form must be included with any wetland delineation report submitted to the Department of State Lands for review and approval. A wetland delineation report submittal is not "complete" unless the fully completed and signed report cover form and the required fee are submitted. Attach this form to the front of an unbound report or include a hard copy of the completed form with a CD/DVD that includes a single PDF file of the report cover form and report (minimum 300 dpi resolution) and submit to: **Oregon Department of State Lands, 775 Summer Street NE, Suite 100, Salem, OR 97301-1279.** A single PDF attachment of the completed cover from and report may be e-mailed to **Wetland_Delineation@dsl.state.or.us**. For submittal of PDF files larger than 10 MB, e-mail instructions on how to access the file from your ftp or other file sharing website. Fees can be paid by check or credit card. Make the check payable to the Oregon Department of State Lands. To pay the fee by credit card, call 503-986-5200.

X Applicant X Owner Name, Firm and Address:
Jordan Cove LNG, LLC
Pacific Connector Gas Pipeline LP
Contact: Derik Vowels
5615 Kirby Drive, Suite 500
Houston, TX 77005

RECEIVED
MAY 14 2018

Business phone # **(503) 997-8689**
Mobile phone # (optional) **971) 232-8637**
E-mail: **derik.vowels@jordancovelng.com**

☐ Authorized Legal Agent, Name and Address:
Carolyn Last
Edge Environmental, Inc.
405 Urban Street, Suite 310
Lakewood, CO 80228

RECEIVED $ 437.00
DEPARTMENT OF STATE LANDS
#4594

Business phone # **(303) 988-8844**
Mobile phone # **(303) 956-4289**
E-mail: **clast@edgeenvironmental.com**

I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact.

Typed/Printed Name: **Derik Vowels** Signature: Derik Vowels
Date: 05/07/2018 Special instructions regarding site access:

Project and Site Information (using decimal degree format for lat/long.,enter centroid of site or start & end points of linear project)

Project Name: **Pacific Connector Gas Pipeline (PCGP)**

Latitude:
Start 43.4326° N
End: : 42.0327° N

Longitude:
Start: 124.2402° W
End: 121.3749° W

Proposed Use: **Natural Gas Transmission Pipeline**

Tax Map # **See Appendix B.**

Project Street Address (or other descriptive location):
Project site consists of a 229-mile proposed pipeline beginning north of Jordan Cove in Coos Bay, Oregon and extending southeast to the vicinity of Malin, Oregon.
City: **N/A** County: **Coos, Douglas, Jackson, and Klamath**

Township Range Section QQ
Tax Lot(s)

Waterway: **See Tables F-2 and F-3 in Appendix F.** River Mile:

NWI Quad(s): **See Appendix C and Table F-6 in Appendix F.**

Wetland Delineation Information

Wetland Consultant Name, Firm and Address:
Noreen Roster, Project Manager
Ecology and Environment, Inc.
333 SW Fifth Avenue, Suite 600
Portland OR 97204

Phone # **(503) 248-5600**
Mobile phone # **(360) 901-0625**
E-mail: **Nroster@ene.com**

The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.

Consultant Signature: Noreen Roster Date: **05/07/2018**

Primary Contact for report review and site access is ☐ Consultant X Applicant/Owner ☐ Authorized Agent

Wetland/Waters Present? X Yes ☐ No Study Area size: **11,236** Total Wetland Acreage: **420**

Check Box Below if Applicable:

X R-F permit application submitted
☐ Mitigation bank site
☐ Wetland restoration/enhancement project (not mitigation)
☐ Industrial Land Certification Program Site
☐ Reissuance of a recently expired delineation
Previous DSL # **WD 2015-0490** Expiration date **06-13-22**

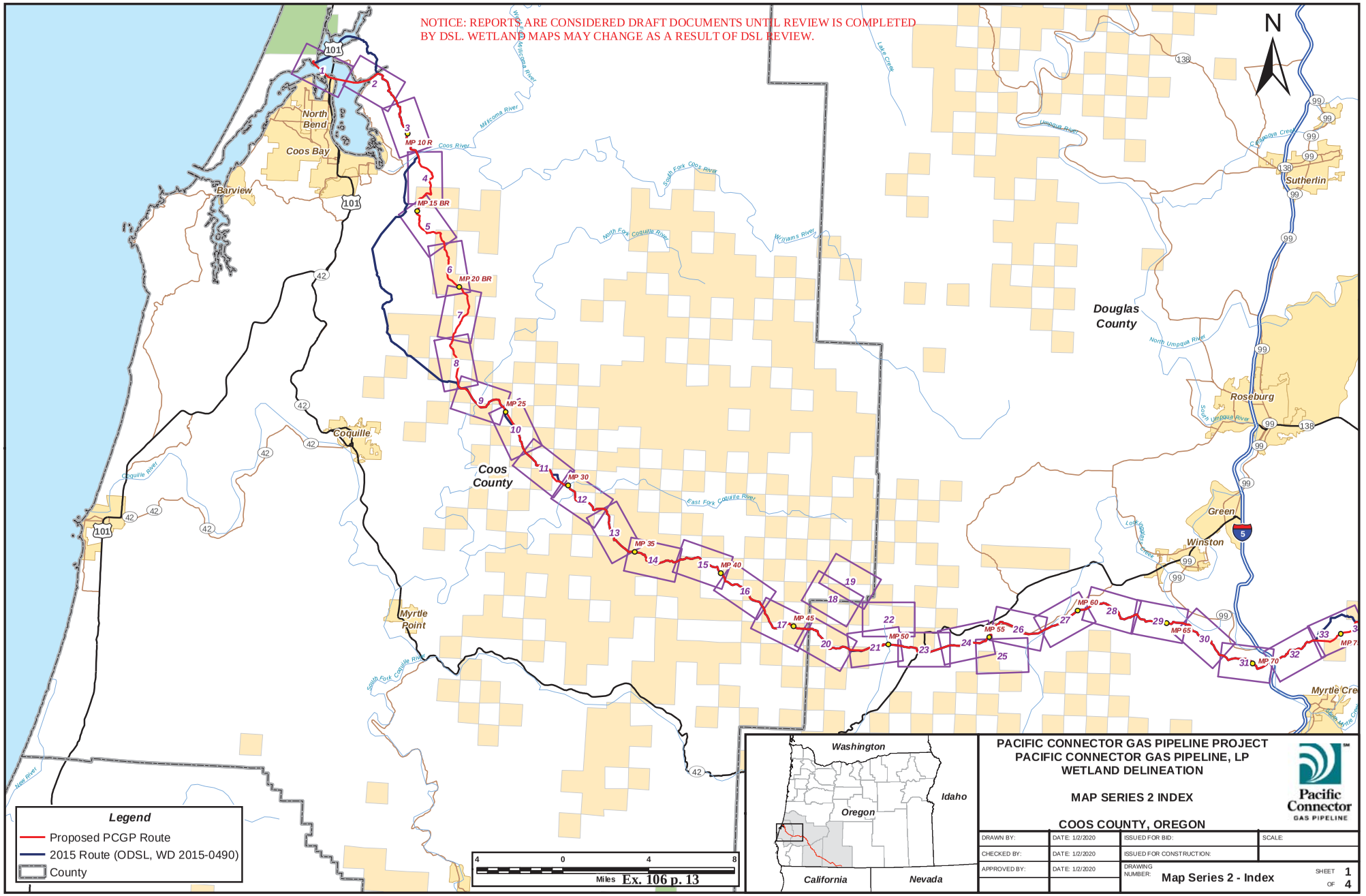
Fees:

X Fee payment submitted **$ 437**
☐ Fee ($100) for resubmittal of rejected report
☐ No fee for request for reissuance of an expired report

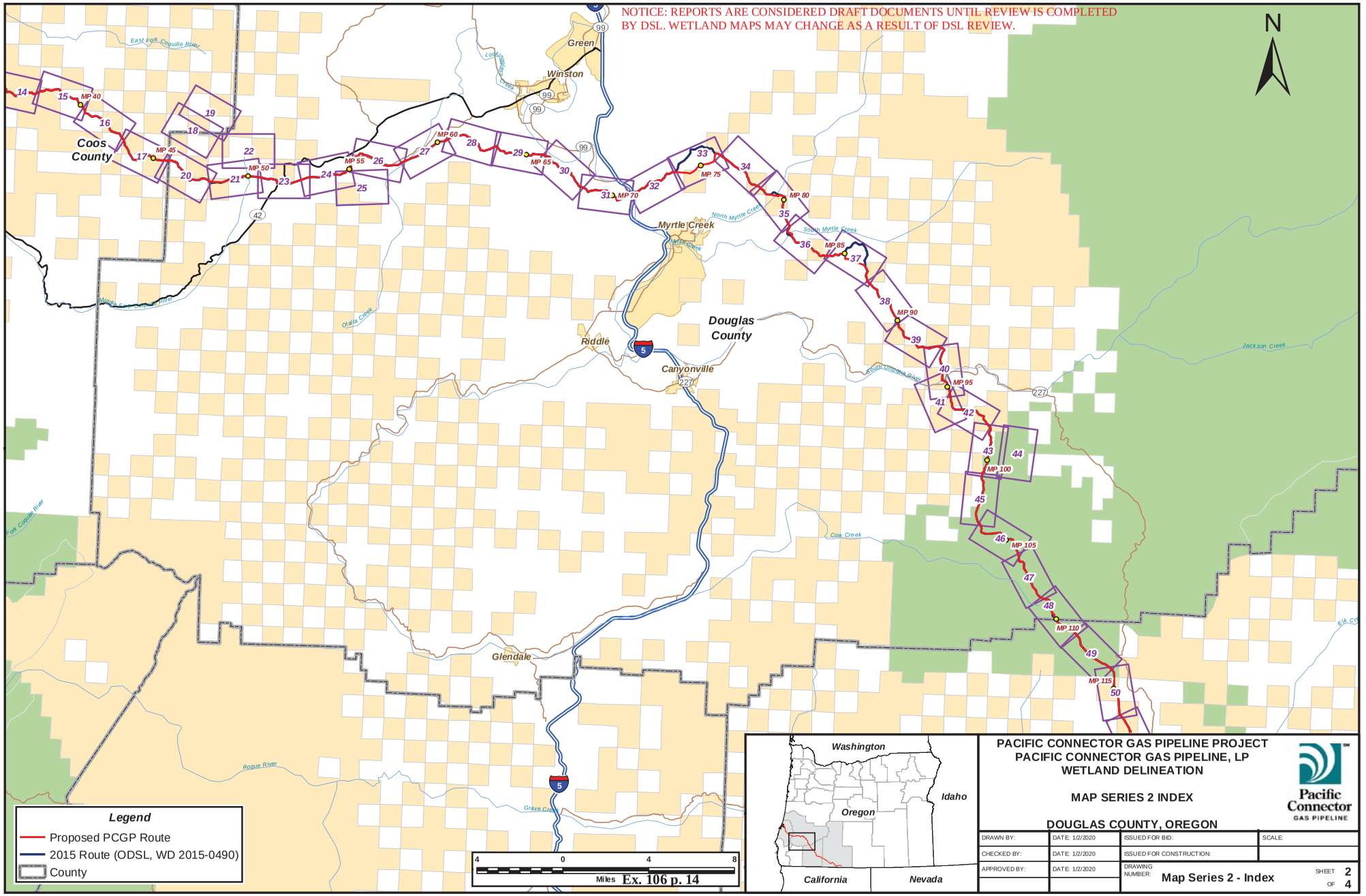
Other Information:	Y	N	
Has previous delineation/application been made on parcel?	X	☐	If known, previous DSL # **54484**
Does LWI, if any, show wetland or waters on parcel?	☐	X	

For Office Use Only

DSL Reviewer: LM	Fee Paid Date: 5 / 14 / 18	DSL WD # 2018-028.1
Date Delineation Received: 5 / 8 / 18	DSL Project #	DSL Site #
Scanned: ☐ Final Scan: ☐	DSL WN #	DSL App. #


NOTICE: REPORTS ARE CONSIDERED DRAFT DOCUMENTS UNTIL REVIEW IS COMPLETED BY DSL. WETLAND MAPS MAY CHANGE AS A RESULT OF DSL REVIEW.
N
North Bend
Coos Bay
Barview
Coquille
Myrtle Point
Coos County
Douglas County
Sutherlin
Roseburg
Green
Winston
Myrtle Cre
MP 10 R
MP 15 BR
MP 20 BR
MP 25
MP 30
MP 35
MP 40
MP 45
MP 50
MP 55
MP 60
MP 65
MP 70
Coos River
South Fork Coos River
North Fork Coquille River
Williams River
East Fork Coquille River
South Fork Coquille River
Coquille River
Umpqua River
North Umpqua River
South Umpqua River
Lake Creek
Millicoma River
West Fork Millicoma River
Calapooya Creek
Lookingglass Creek
Myrtle Creek
Legend
Proposed PCGP Route
2015 Route (ODSL, WD 2015-0490)
County
4 0 4 8
Miles
Ex. 106 p. 13
Washington
Idaho
Oregon
California
Nevada
PACIFIC CONNECTOR GAS PIPELINE PROJECT
PACIFIC CONNECTOR GAS PIPELINE, LP
WETLAND DELINEATION
MAP SERIES 2 INDEX
COOS COUNTY, OREGON
Pacific Connector GAS PIPELINE
DRAWN BY:
DATE: 1/2/2020
ISSUED FOR BID:
SCALE:
CHECKED BY:
DATE: 1/2/2020
ISSUED FOR CONSTRUCTION:
APPROVED BY:
DATE: 1/2/2020
DRAWING NUMBER:
Map Series 2 - Index
SHEET 1
OF 4

NOTICE: REPORTS ARE CONSIDERED DRAFT DOCUMENTS UNTIL REVIEW IS COMPLETED BY DSL. WETLAND MAPS MAY CHANGE AS A RESULT OF DSL REVIEW.



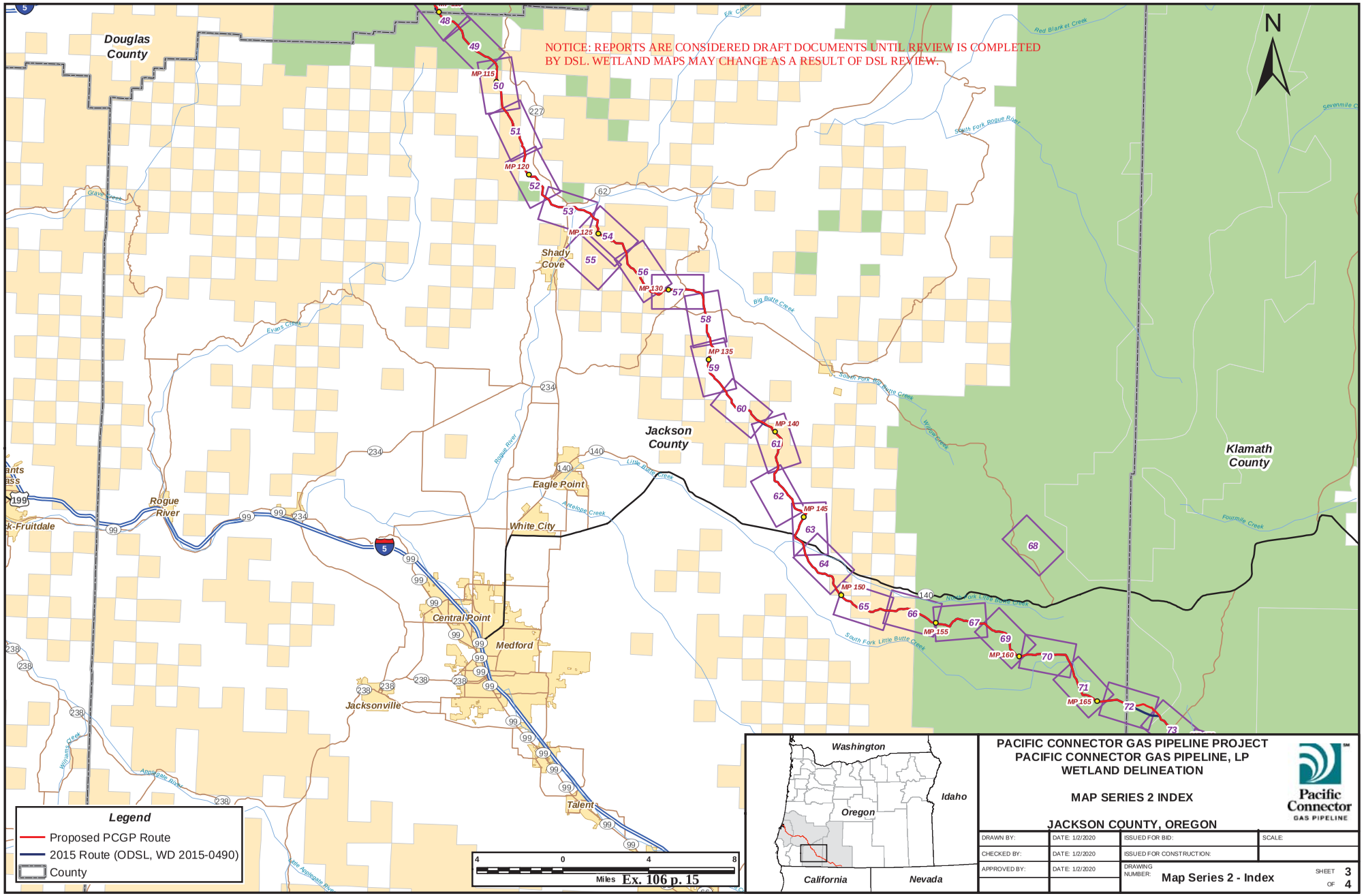
PACIFIC CONNECTOR GAS PIPELINE PROJECT
PACIFIC CONNECTOR GAS PIPELINE, LP
WETLAND DELINEATION

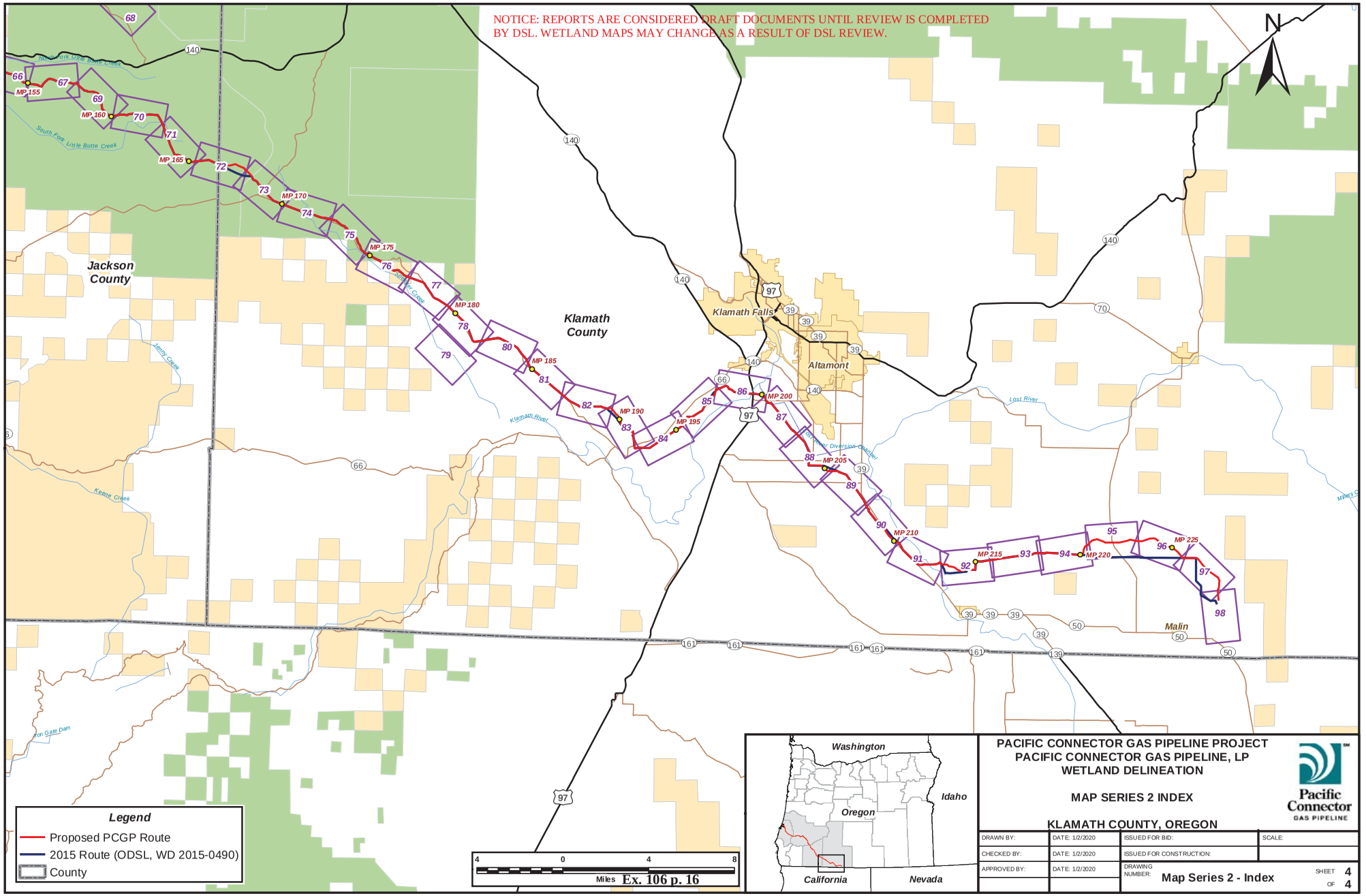
MAP SERIES 2 INDEX

DOUGLAS COUNTY, OREGON

Pacific Connector GAS PIPELINE

DRAWN BY:	DATE: 1/2/2020	ISSUED FOR BID:	SCALE:
CHECKED BY:	DATE: 1/2/2020	ISSUED FOR CONSTRUCTION:	
APPROVED BY:	DATE: 1/2/2020	DRAWING NUMBER: Map Series 2 - Index	SHEET 2 OF 4


NOTICE: REPORTS ARE CONSIDERED DRAFT DOCUMENTS UNTIL REVIEW IS COMPLETED BY DSL. WETLAND MAPS MAY CHANGE AS A RESULT OF DSL REVIEW.
N
Douglas County
Jackson County
Klamath County
Shady Cove
Eagle Point
White City
Central Point
Medford
Jacksonville
Talent
Rogue River
MP 115
MP 120
MP 125
MP 130
MP 135
MP 140
MP 145
MP 150
MP 155
MP 160
MP 165
Legend
Proposed PCGP Route
2015 Route (ODSL, WD 2015-0490)
County
4 0 4 8
Miles
Ex. 106 p. 15
Washington
Idaho
Oregon
California
Nevada
PACIFIC CONNECTOR GAS PIPELINE PROJECT
PACIFIC CONNECTOR GAS PIPELINE, LP
WETLAND DELINEATION
MAP SERIES 2 INDEX
JACKSON COUNTY, OREGON
Pacific Connector GAS PIPELINE
DRAWN BY:
DATE: 1/2/2020
ISSUED FOR BID:
SCALE:
CHECKED BY:
DATE: 1/2/2020
ISSUED FOR CONSTRUCTION:
APPROVED BY:
DATE: 1/2/2020
DRAWING NUMBER:
Map Series 2 - Index
SHEET 3 OF 4


NOTICE: REPORTS ARE CONSIDERED DRAFT DOCUMENTS UNTIL REVIEW IS COMPLETED BY DSL. WETLAND MAPS MAY CHANGE AS A RESULT OF DSL REVIEW.
N
Jackson County
Klamath County
Klamath Falls
Altamont
Malin
MP 155
MP 160
MP 165
MP 170
MP 175
MP 180
MP 185
MP 190
MP 195
MP 200
MP 205
MP 210
MP 215
MP 220
MP 225
Legend
Proposed PCGP Route
2015 Route (ODSL, WD 2015-0490)
County
Miles
Ex. 106 p. 16
Washington
Idaho
Oregon
California
Nevada
PACIFIC CONNECTOR GAS PIPELINE PROJECT
PACIFIC CONNECTOR GAS PIPELINE, LP
WETLAND DELINEATION
MAP SERIES 2 INDEX
KLAMATH COUNTY, OREGON
Pacific Connector GAS PIPELINE
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DATE: 1/2/2020
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Draft Removal-Fill Permit Findings for the Jordan Cove Energy Project

The Oregon Department of State Lands has provided the following DRAFT document in response to a public records request. The Department anticipated making a decision on Jan. 31, 2020 regarding the Jordan Cove Energy Project's removal-fill permit application; staff had begun drafting the permit findings. Jordan Cove withdrew its removal-fill permit application effective Jan. 24, 2020.

Does this document contain the Department's permit decision?
No. The document that follows is an incomplete draft. When writing removal-fill permit findings, the Department reviews information for each of the nine factors considered in making a permit decision and documents information related to each of those factors. *See below for a brief overview of the factors.*

Ultimately, the Department balances all information for all considerations and makes the determinations required by law – whether the project is consistent with the protection, conservation, and best uses of the water resources of the state; and whether the project would not unreasonably interfere with preservation of waters for navigation, fishing, or public recreation.

Because the considerations precede the determinations, the determinations had not yet been made.

How far along was the Department in drafting these permit findings?
Staff had begun putting information from the agency record into the Department Considerations section for the nine factors. The agency record includes information from the application, from the applicant, from the public review period, from other state agencies, etc.

Are any parts of the document final?
The document is an incomplete draft. Drafting of the Department Considerations section was in process.

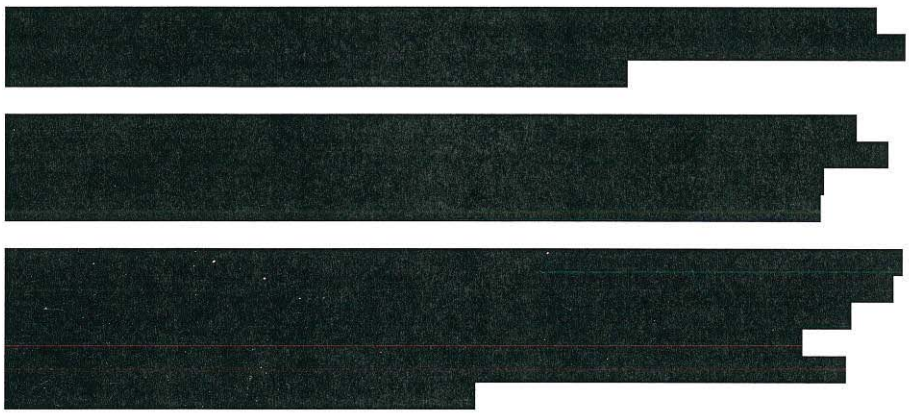
Why is some text redacted?
The redacted text is exempt from disclosure pursuant to ORS 192.355(9)(a), which exempts records that are confidential or privileged under Oregon law. In this case, the redacted text is attorney-client privileged pursuant to ORS 40.225. The redacted text was drafted in furtherance of the rendition of professional legal services.

What are the factors considered in determining whether to issue a permit?
Briefly, the nine factors are 1. public need for and likely benefits from the proposed removal or fill; 2. cost to the public if the removal or fill doesn't occur; 3. availability of alternatives to the project; 4. availability of alternative sites; 5. whether proposed activity conforms to sound policies of conservation and would not interfere with public health and safety; 6. whether the proposed fill or removal conforms with existing public uses of waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land-use regulations; 7. Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion; 8. Whether the proposed fill or removal is for streambank protection; 9. Whether the applicant has provided all practical mitigation to reduce the adverse effects of the proposed fill or removal.

Permit Findings for Application No. 60697-RF, Jordan Cove Energy Project L.P. and Pacific Connector Gas Pipeline L.P.

Department Considerations. In determining whether to issue a permit, the Department will consider all the following factors using all the information in the agency record:

a) Public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed removal or fill. When the applicant for a permit is a public body, the Department may accept and rely upon the public body's findings as to local public need and local public benefit;



The applicant and project proponents have provided information in the application and responses to public comments, supporting social, economic and other benefits to the public from the proposed fill and removal, and the project it facilitates, in the form of:

- Temporary construction jobs for the LNG terminal, associated facilities, and the pipeline (6500 jobs estimated during peak construction).
- Permanent jobs for the operation of the facility (215 permanent family-wage jobs)
- ECONorthwest report estimated additional spin off jobs within the communities for health, food services, retail, etc.
- 500 million dollars to the Community Enhancement Plan by directing eligible Enterprise Zone tax savings to local governments, benefitting Coos Bay, North Bend and Coos County residents.
- 60 million per year approximately in local taxes to Coos, Douglas, Jackson and Klamath Counties.
- 50 million annually approximately to Oregon in new taxes
- The project as planned is an approximately 10-billion-dollar private investment in Southern Oregon. The financial 'infusion' represents the public benefits.

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Project opponents have provided comments indicating negative social and economic impacts of the proposed fill or removal and the project it facilitates in the form of:

- Eelgrass impacts are virtually un-mitigatable, the impacts are not satisfactorily addressed following the states hierarchy for mitigation, avoidance first, minimization second, and lastly look to mitigate adverse impacts from necessary activities resulting in fill and removal in waters of the state. Eelgrass is a highly sensitive very important estuarine resource that provides feeding areas and cover for a multitude of species including crab, Coho and chinook salmon juveniles, a number of rockfish species at times and the 'food chain' of invertebrates and other aquatic organisms that would be impacted by the project and some impacts from the proposed mitigation as well.
- Impacts from dredging the Navigation Reliability Improvements, side slope equilibrium issues after dredging and the direct impacts that would result to adjacent subtidal and intertidal resources and potentially impacting more eelgrass and mudflats that are not accounted for nor mitigated for in the application.
- Impacts from dredging the slip and access channel to eelgrass habitats and intertidal habitats. Impacts to juvenile crabs and aquatic invertebrates understated as habitat impacted at the access channel and slip is intertidal and eelgrass directly adjacent to deeper water which provides more diversity of use by a multitude of species.
- Navigational impacts to the public, impacts to fishing, crabbing, and recreational uses in and around Coos Bay will be impacted by the project.
- Comments indicate that out of town use of Coos Bay and for salmon fishing and crabbing provides significant economic and recreational opportunities that could be lost or significantly hindered by the project construction related impacts and operational impacts of the project.
- Potential impacts to archeological sites of historical significance to the local tribes from the NRI dredging, slip and access channel dredging, vibro-compaction of the upland sites to meet seismic standards, and potentially from the mitigation sites proposed in the bay and the kentuck sites, and possibly areas along the pipeline route.
- Out of kind eelgrass mitigation is not acceptable to the general public. As proposed the eelgrass mitigation is well away from any deep water and the functional and values impacted are not replaced with a different habitat type.
- Mudflats are also very important estuarine features that provide food resources. Any impact to mudflats requires adequate mitigation, current plan does not address these issues. The conversion of mudflats at the proposed eelgrass wetland mitigation site will result in a loss of mudflat. That loss has not been mitigated.
- Kentuck mitigation site is already a functioning wetland and it would be the single largest freshwater wetland impact, but those impacts are dismissed as part of the mitigation effort.
- Out of watershed mitigation issues by consolidating all freshwater wetland conversion along the pipeline to a single mitigation site in Coos Bay.

- Reduced livability and property values in the area due to construction and operational impacts from the project dredging, LNG terminal and associated facilities, and the properties near the pipeline along its entire route. Landowners have mentioned at all venues and commenting methodologies that their properties have been impacted already for over 10 years, some longer whose lands fall along the pipelines entire route.
- Objections to the use of eminent domain to take private properties along the pipeline route for profit of a Canadian gas company.
- Possible impacts to downstream municipal water supplies from construction disturbance along the pipeline corridor.
- Impacts to wells near the pipeline corridor.
- Impacts to irrigation sources and agricultural lands from pipeline construction activities.
- Impacts on thermal loading of streams from right of way clearing, in preparation for the pipeline installation construction.
- No reasonable assurance that the construction and operation of the project will comply with applicable state water quality standards.
- Impacts to fish habitat
- Impacts to 303d listed streams, further degradation of water quality.

[redacted]

b) economic cost to the public if R/F not accomplished;

[redacted]

[redacted]

[redacted]

c) the availability of alternatives to the project for which the fill or removal is proposed;

Jordan Cove explains that the analysis of the alternatives is grounded on the purpose and need for the project, determining a geographic area for potential alternative sites, evaluation against criteria to screen alternatives and identification of reasonable alternatives for the project. Public comments question since the Malin intersection of the Gas Transmission Northwest (GTN) and Ruby pipelines is a fixed element of the purpose and need statement, it requires justification on why that interconnect is the only possible start point for an export pipeline and LNG terminal proposal. This argument is used repeatedly to discount other reasonable alternatives from further consideration.

The Ruby and GTN pipeline interconnect was used previously by Jordan Cove Energy project when the original proposal was for importing LNG to markets in Southern Oregon and northern California. Any alternative site explored by Jordan Cove since that time uses the GTN/Ruby interconnect as a start point for the export pipeline. Anything north or south is discounted for distance and economical reasons but the source gas should dictate the origin or start point, not a fixed location without justification.

For example, if the majority of the gas is sourced from western Canada and a small portion from the Ruby pipeline, it would make more sense to be closer to the point of origin for an export proposal. Numerous public comments raise similar issues around the inadequacies of the alternatives analysis and the overly narrow, unjustified 'fixed elements' of the purpose and need statement as guiding criteria for the flawed alternatives analysis. The other 'fixed element' of the purpose and need statement is the required output of 7.8 Mtpa of LNG for export, this also requires justification which Jordan Cove failed to provide an adequate response. [redacted]

For the record, Jordan Cove Energy Project (JCEP) was submitted as a 2-part application: Part 1 is the LNG Terminal and Part 2 is the pipeline. JCEP is madeup of two entities: Jordan Cove Energy Project, L.P. and Pacific Connector Gas Pipeline (PCGP), L.P. collectively referred to as JCEP. The applicant asserts that PGCP has already executed two precedent agreements with JCEP, as an anchor shipper, for 95.8% of pipeline capacity. The specific LNG export output volume (7.8 mTPA), is used to justify the purpose and need for the project.

The applicant explored other alternatives to the project. The project will provide natural gas from the U.S. Rocky Mountains and western Canada as an outlet for export to Asian markets. As a result, there are no domestic energy alternatives or energy conservation measures that would meet the projects purpose and need such as wind or solar.

System alternatives were explored that could make use of other existing or proposed LNG facilities to meet the stated purpose and need of the proposed project. Adoption of a system alternative could preclude the need to construct all or part of a project, although some modifications or additions to other existing systems would be required.

Jordan Cove explored existing and proposed LNG export terminals, the U.S. East Coast and Gulf Coast LNG export facilities, that are far removed from the Ruby GTN pipeline intersection. One existing LNG export terminal in West Coast of North America, the Kenai LNG plant located in Alaska, cannot be accessed though existing or practicable expansions of pipeline networks.

The Canadian West Coast proposed LNG terminals were explored, but Jordan Cove concludes that none are currently authorized to export U.S. sourced natural gas. Without authorization to export, the Canadian West Coast projects cannot meet the purpose and need, and are not discussed any further.

The applicant then explored LNG terminal site alternatives and based the alternatives analysis focused on characteristics that determine whether or not a proposed alternative site can meet the Projects purpose and need or is reasonable from a technical, cost and logistical perspective. The screening criteria used was 1) Land Availability, 2) Channel depth, 3) Navigational Accessibility, 4) LNG vessel transit distance and 5) Pipeline length and costs. Five sites that could meet the screening criteria were identified for further evaluation. Oregon sites-Coos Bay, Astoria, Wauna and Port Westward and Washington-Grays Harbor. All five site alternatives would require construction of new natural gas pipelines, and in four cases, modification and upgrades to existing transmission pipelines to access western Canadian and U.S. Rocky Mountain natural gas sources from the intersections of the GTN Pipeline and Ruby Pipeline near Malin, OR. The pipeline cost comparison result when applied to the five site alternatives shows that the cost of new pipeline to provide comparible access to western Canadian and U.S. Rocky Mountain gas is between 1.1 billion and 1.8 billion more than siting the LNG terminal in Coos Bay. If the start point was anything else besides the interconnect at the GTN and Ruby Pipelines, the alternatives analysis would yield different results. Environmental analysis was the next step in identifying the proposed LNG terminal location, the analysis explains that the main differences between the potential impacts for the various sites were in regards to the pipeline environmental impacts associated with each LNG terminal location. All other sites not close to the GTN and Ruby interconnect rationally did not fare well and were dismissed from further consideration. Based on the specific purpose and need statement, Coos Bay was determined to be the site that would meet the purpose and need for the project with the least environmental impacts.

Some commenters request further analysis of alternate routes and terminal sites, including Wauna, Oregon, and Humboldt Bay, California. To the extent alternative sites were feasible or practicable, they were analyzed in detail in the March 2019 DEIS. From the DEIS Section 3.3.2: "Three sites (Astoria, Port Westward, and Grays Harbor) would have a significantly greater number of residences located within 1 mile, while one site (Wauna) would have significantly fewer. Three sites (Wauna, Port Westward, and Grays Harbor) would have less impact on freshwater wetlands than the proposed site, while one site (Astoria) would have more. One site (Astoria) is estimated to require significantly more impact on estuarine and open water habitats than the proposed site. All four alternative sites would require at least 100 more miles of supply pipeline than the proposed site, ranging from an estimated 103 miles (Port Westward) to 170 miles (Astoria) of additional pipeline required, which would require an estimated 2,224 to 3,672 additional acres of disturbance for pipeline construction. When evaluating these potential impacts, we have not identified an alternative site that would result in a significant environmental advantage over the proposed site. Therefore, we conclude that none of the regional alternative sites would result in a significant environmental advantage over the proposed site in Coos Bay."

Humboldt Bay was analyzed as an alternative site in the DEIS Section 3.3.1, page 3-9: "California has 11 public ports. The closest deepwater port to Coos Bay in California is the Port of Humboldt Bay. The Port of Humboldt Bay is located approximately 185 miles south of Coos Bay and 225 miles north of San Francisco (the next closest deepwater port is in San Francisco bay). The Samoa Peninsula lies between the Pacific Ocean and Humboldt Bay and hosts several active and former marine facilities, berths, docks, and terminals. According to the 2018 Humboldt Bay Maritime Industrial Use Market Study, 948 acres of land have been designated for Coastal Dependent Industry (CDI) on the Samoa Peninsula including the approximately 344-acre Eureka Municipal Airport site which has waterfront access and is the largest single property on the peninsula.

It is unknown whether a combination of other CDI properties equaling approximately 200 acres is available. The channel system leading into and within Humboldt Bay varies in length, width, and depth. The Bar and Entrance Channel is approximately 8,500 feet long, 500 to 1,600 feet wide, and is authorized to a depth of 48 feet mean low level water (MLLW). The North Bay Channel which serves the Samoa Peninsula is 18,500 feet long, 400 feet wide, and is authorized to a depth of 38 feet MLLW. The distance by air from Malin, Oregon to Humboldt Bay is about 170 miles (the distance from Malin, Oregon to Coos Bay by air is also about 170 miles). We estimate the pipeline distance between these two points would be at least 200 miles, which is comparable to the proposed pipeline. An LNG terminal in Humboldt Bay would impact the environment in a manner similar to that of the proposed Project, including; permanent conversion of land use, dredging, turbidity, loss of wetlands, visual impacts, air quality and noise. Concerns at this location such as marine traffic restrictions, socioeconomic impacts, tsunamis, and public safety would also be the same as the proposed Project.

A natural gas transmission pipeline from Malin, Oregon to Humboldt Bay, California would traverse Klamath County, Oregon as well as Siskiyou and Humboldt Counties, California. The environment crossed by a pipeline from Malin to Humboldt Bay would be similar to that of the proposed route, including; mountainous terrain, several large rivers, three national forests, and BLM-managed lands. This pipeline route would also cross the ranges of over 20 federally-listed threatened and endangered species including NSO, MAMU, and salmon. Concerns with this pipeline route such as rural property values, socioeconomic impacts, and public safety would also be the same as the proposed Project. Based on the expected similar impacts of an LNG terminal in Humboldt Bay and the associated natural gas transmission pipeline from Malin, Oregon to Humboldt Bay, we conclude this alternative would not result in a significant environmental benefit when compared to the proposed action."

[redacted]

Commented [ME1]: [redacted]

d) The availability of alternative sites for the proposed fill or removal;

Commented [ME2]: [redacted]

Jordan Cove used site specific evaluation criteria for potential LNG terminal sites along Coos Bay. The search area was confined to below the Hwy 101 bridge for navigational hazard reasons. The following site specific criteria used to select an LNG terminal site were 1) Environmental Impacts, 2) Parcel Size, 3) Land Availability, 4) Airport approach compatibility, 5) Safety Exclusion Zone and 6) Socio-Economic. Three potential sites in lower Coos Bay were evaluated with priority given to provide safe harbor for the LNG vessels that will call on the LNG terminal to meet US Coast Guard criteria. DB Western, Ingram Yard and South Dunes sites were evaluated using criteria stated above, the DB Western site is directly within the airport runway approach and does not meet land availability requirements and was dismissed. The key differentiating criteria that resulted in Ingram Yard being identified as the best Coos Bay site was the area of estuarine and wetland impacts when compared to the South Dunes site.

The slip and access channel that connects the facility to the navigation channel was the chosen design configuration as opposed to a dock, trestle, or offshore structure design, none of which fit the safety criteria set by the Coast Guard. Other design alternatives were explored such as alternatives to the marine slip and access channel design, LNG storage tank designs, alternative sites to place the Southwest Oregon Regional Safety Center, alternatives for the workforce housing site, alternatives for the primary entrance to the facility, alternatives for electric power, liquefaction alternatives and dual mixed refrigerant alternatives or design alternatives.

Site layout alternatives were also explored for the access and utility cooridors and the raising of the South Dunes site above tsunami elevations are discussed in the application. Dredged Materials Disposal plan contains an alternatives analysis on alternative disposal sites and supporting information. Other alternatives provided were in response to public comments such as the pile dike rock apron and the expanded alteratives analysis for the NRI dredging.

Due to the linear nature of a pipeline, it is impossible to avoid crossing wetlands and waterbodies along the 229 miles of the alignment. As detailed in the application, the preferred route was developed by considering construction requirements for a large diameter, high pressure, natural gas transmission pipeline. Constructability/integrity requirements were the primary consideration for routing the pipeline while minimizing potential impacts to sensitive resources such as the number of waterbody and wetland crossings and landowner encumbrances.

Based on the feasibility analysis, a cross-country route was selected which traverses ridgelines and watershed boundaries to ensure the safety, stability, and long-term integrity of the pipeline. By following ridgelines and watershed boundaries, the route potentially avoids some impacts to wetlands and waterbodies. Pipeline routing alternatives were provided in the application, though JCEP not having access to all properties does limit our impact analysis potential to speculative at best due to the lack of site specific information.

The pipeline portion of the project is still lacking a concurred wetland delineation as required for those properties they have access to along the pipeline alignment cooridor. [redacted]
There are also a number of properties with denied access, those properties for obvious reasons do not have delineation concurrence either.

[redacted]

e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety;

Commented [ME3]: In addressing this we need to look to see if impact can be mitigated and if mitigation proposed is adequate.

The application proposed impacting the following waters of the state for the construction of a slip and access channel for an LNG Terminal, the associated facilities, and the 229 mile Pacific Connector Gas Pipeline across Coos, Douglas, Jackson, and Klamath Counties:

Estuarine impacts;

- Permanent impact to 3.08 acres of eelgrass beds (slip and access channel and pile dike rock apron)

- Permanent impact to 19.54 acres of mudflat, salt marsh and shallow subtidal areas (slip and access channel)
- Permanent impacts to 81.63 acres of deep subtital habitats (NRI dredging and slip and access channel dredging).
- Total fill in estuary 39,483 cubic yards.
- Total removal in estuary 1,784,475 cubic yards.

Freshwater Wetland impacts;

- Permanent impact to 1.91 acres of dunal wetlands (LNG terminal and associated facilities)
- 39,273 cubic yards of fill
- 23 cubic yards of removal

Pipeline Impacts Wetlands and Waters:

- Pipeline will affect 342 waterbodies. Of the 342 waterbodies, 66 are perennial, 163 are intermittent, 100 are ditches, 9 are lakes or stock ponds, and 4 are estuarine crossings (2 HDD bores under Coos Bay and the Coos River Crossing.
- Pipleine will cross a total of 5.3 miles of wetlands. The construction right-of-way and temporary extra work areas will affect 112.19 acres of wetlands. 106.71 acres of palustrine emergent wetlands, 2.3 acres of palustrine scrub-shrub wetlands, and 2.55 acres of palustrine forested wetlands. Additionally 0.64 acres of palustrine unconsolidated bottom or aquatic bed wetlands will be disturbed by the pipeline.
- Permanent vegetation type conversion impacts will affect a total of 0.91 acres of wetlands, including 0.73 palustrine forested and 0.18 palustrine scrub-shrub wetlands.
- Approximately 9800 cubic yards of removal and fill (pipeline installation) in waters.
- Approximately 49,000 cubic yards of removal and fill (pipeline installation) in wetlands.

The November 7, 2018 application proposed several avoidance strategies and best management practices for the construction and operation of the facility to avoid and minimize impacts to waters of the state outlined below.

LNG Terminal and associated facilities:

- The LNG terminal access and utility cooridor was sited to avoid most wetlands as possible given logistical constraints of raising site elevations above the tsunami inundation zones.
- The workforce housing site and Southern Oregon Regional Saftety Center result in unavoidable impacts due to needing to raise the site to elevations above the tsunami inundation zone.

- Some wetlands at the terminal site were avoided by use of retaining walls. Others will be temporarily impacted during construction and restored when no longer needed.
- Temporary impacts at the APCO disposal sites for construction of a temporary pile support for bridge construction, no permanent impacts will result.
- There will be temporary and permanent fill into Coos Bay during the Marine Offloading Facility, the temporary fill will be removed during dredging of the access channel.
- All dredging is proposed to occur within the approved In-water work period
- Dredging pollution and control plans developed to minimize turbidity impacts during dredging.
- Trans-Pacific Parkway widening will result in 0.5 acres of estuarine impact. Sheet piling is proposed to isolate the work area from the bay.
- Dredged materials transfer lines will be placed on piling supports to avoid eelgrass areas between the NRI dredge sites and the APCO disposal site.
- Connection of the access channel and the slip to be excavated from uplands will be separated by a berm (ie. The existing shoreline) until such time the two are connected via dredging.
- 50 foot buffer will be maintained between the slip and the eastern edge of henderson marsh (an adjacent 190 plus acre high value freshwater wetland).
- All piles driven into Coos Bay will be concrete or steel piling, no treated timbers will be used.
- All piles in fish-bearing waters will be driven 'in the dry' in order to minimize acoustic disturbances to fish and aquatic species.
- All equipment cleaned and inspected daily.
- Floating spill containment booms and absorbent booms will be maintained on-site during all phases of constuction to facilitate cleanup in the case of accidental spills.
- A spill prevention, control, and containment plan will be developed and implemented.

Pacific Connector Gas Pipeline:

- Routing efforts to minimize wetland and waterbody crossings. The proposed route primarily follows ridgelines as it traverses the Coast, Klamath, and Cascade mountains and foothills. This ridgeline alignment provides the most stable landscape position for the pipeline and minimizes the number of waterbodies crossed.
- Incorporating FERC's Wetland and Waterbody Construction and Mitigation Procedures into the design minimizes the extent and duration of disturbance in wetlands and waterbodies.
- Locating temporary extra work areas a minimum of 50 feet from the edge of wetlands and waterbodies, where possible, to minimize impacts to wetland buffers and riparian zones as required by FERC's Wetland and Waterbody Procedures.

- Incorporating 5 HDD's to install the pipeline beneath the 1) Coos Bay estuary/2 HDD's; 2) Coos River; 3) Rogue River; and 4) Klamath River. In addition, a Direct Pipe crossing method has been incorporated to cross the South Umpqua River (mile post 71.27).
- Conventional bore will be used to cross the Medford Aquaduct, and 26 other canals, ditches, and drains which include all of the Bureau of Reclamation's jurisdictional facilities in the Klamath Basin.
- Crossing all streams flowing at the time of construction by dry open cut crossing procedures in the FERC manuals.
- Where clearing in wetlands outside the trench line and travel land, PCGP will cut, mow, or shear woody vegetation so that the roots are left intact.
- Sediment barriers will be intalled immediately after clearing and prior to initial ground disturbance.
- Sediment barriers will be properly maintained throughout construction and reinstalled as necessary.
- Where wetlands are adjacent to the construction right-of-way, sediment barriers will be installed to protect the wetlands.
- Sediment barriers will be removed after restoration is complete and revegetation has stabilized the disturbed areas.
- In wetlands where standing water or saturated soils occur or if equipment is causing rutting, timber mats will be used along with low ground pressure equipment.

The Department received thousands of comments that the construction or operation of the facility may lead to adverse effects to aquatic habitats, fishing or public health and safety. In summary they raised concerns about:

- Impacts to navigational safety, safe bar passage for commercial and recreational boaters, and to non-motorized boaters using lower Coos Bay are understated with no mitigation proposed.
- Impacts to fishing, scuba diving, and crabbing in Coos Bay waters, no mitigation proposed.
- Conflict between loaded LNG ships transiting at high tides, corresponding with optimal crabbing tides while currents are the slowest at 'slack tide'.
- Impacts to the dungeness crab fishery from the direct and indirect impacts of dredging (eelgrass beds, intertidal areas and subtidal areas) impacting all life stages of crab.
- Impacts to recreation and tourism, no mitigation proposed.
- JCEP eelgrass mitigation proposal relies on "best case scenario" for success of the mitigation effort without adequate documentation. ODFW is concerned about the excavated JCEP eelgras mitigation basin filling in with sediment, and that the rate of sedimentation may not be conducive to survival, growth, and propogation of the planted eelgrass plants.
- ODFW recognizes that the ODSL mitigation ratio must be at 1.5:1 for creation of a new eelgrass bed at the proposed JCEP eelgrass mitigation site. However, the transplanting of eelgrass proposed by JCEP only achieves a

mitigation ratio of 1:1, which is insufficient to meet ODSL standards. The Applicant predicts that the transplanted eelgrass will survive, grow, and expand over a period of five years to fill out the excavated basin in order to achieve the required mitigation ratio of 1.5:1. The expectation by JCEP for the transplanted eelgrass to flourish has a great deal of uncertainty, and optimism by the applicant should not be considered as a guarantee to meet DSL's required mitigation ratio.

- ODFW recommends that the applicant increase the spatial extent of eelgrass transplants to achieve the mitigation ratio of 1.5:1 at the initiation of the planting (time-zero) rather proceed with the expectation that the required ration will be met after a period of five years. The Applicant will not meet the ODSL mitigation policy standards unless the transplant activities begin with a ratio of 1.5:1.
- ODFW is concerned not only about sediment accretion rates but also there is concern over the lack of characterization or description of the expected underlying sediments that will be exposed by dredging. The underlying sediments may be compacted or anaerobic with relatively little interstitial space for the establishment of eelgrass roots/rhizomes and the movement of water. These expected characteristics of the underlying sediments are not conducive to survival and growth of transplanted eelgrass.
- The proposed mitigation actions for eelgrass should be designed to retain the full array of ecosystem services provided by eelgrass beds in the JCEP area. Planned mitigation activities should follow established in-kind, in-proximity standards established by ODFW.
- ODFW recommends a more detailed analysis of eelgrass mitigation sites that characterize the location, species composition, and abundance of the eelgrass and other submerged aquatic vegetation at the alternative sites. They further recommend JCEP provide a more detailed rationale for rejection of the alternative sites and acceptance of the proposed site. The existing JCEP Mitigation Plan is incomplete because it does not provide a full description of the steps that were taken to avoid adverse impacts to existing eelgrass beds in Coos Bay.
- The applicant does not document that serious consideration was given to avoidance of impacts to eelgrass beds.
- 5 years monitoring is insufficiently short time period to adequately evaluate long-term mitigation success.
- JCEP project description identifies permanent removal of eelgrass associated with the dredging and excavation of the access channel that will be constructed to provide ship access to the LNG terminal. Eelgrass beds that currently inhabit the intertidal and subtidal zones in the area of the proposed access channel will be dug up, salvaged and relocated into the intertidal zone at the Jordan Cove Embayment Site. The proposed mis-match in tidal elevation between eelgrass plants harvested from the access channel site (intertidal and subtidal) and the Jordan Cove transplant site (intertidal only) provides evidence that the transplants may face a high likelyhood for failure.

- ODFW raised concerns over poor water quality issues with the shallow excavated basin design, this will likely cause water quality issues without design modification which is recommended. The proposed mitigation site should be designed to include a functional hydrodynamic connection to the primary tidal channel.
- Unconsolidated soft-sediment habitat is widespread in the Coos Bay estuary where it occurs extensively throughout the intertidal zone and sub-tidal zone along the bottoms, sides, and margins of primary and secondary tidal channels. Impacts from NRI dredging, the resulting side-slope equillibrium and the dredging of the slip and access channel will impact these habitats. Those unconsolidated soft-sediment tidal habitats provide the 'nursery' area for the bottom of the food chain and have implications to the estuary and its fishery. Crab and several species of clams are year round residents of these habitats as they are important feeding and rearing areas. When soft-sediment habitat is chronically disturbed and altered by dredging of the sub-tidal zone, there may be a permanent loss and impact to benthic invertebrate populations and a decline in the biodiversity of benthic communities.
- The JCEP Eelgrass Mitigation Plan does not adequately address the potential for loss of sediment adjacent to NRI areas 2-4, and does not give adequate consideration to loss or disturbance of the important eelgrass donor bed and reference bed located adjacent to NRI 4.
- ODFW recommended truncation of the in-water work period to protect the herring spawing for the Coos Bay dredging, not incorporated into project timelines by JCEP.
- The applicant has verbally committed to redesigning the Kentuck mitigation elevation plan to develop additional acreage that will be below elevation +5.5 NAVDD88 (the elevation threshold for saltmarsh development) on the site. This will offset loss of Category-2 Algae/Mud/Sand habitats that will be dredged and regraded at the eelgrass mitigation site south of the North Bend Airport runway. The exact acreage (6.81 acres + slope area) of grading/dredging at the eelgrass location has of yet not been finalized. ODFW will need updated Kentuck mitigation design plans and a complete eelgrass site dredging/grading plan in order to determine if the loss of the Category-2 Algae/Mud/Sand will be offset. ODFW recommends that the applicant include this information in a revised Compensatory Wetland Mitigation Plan.
- The Kentuck site is slated for disposal of 300,000 cubic-yards of dredge spoils from development of the JCEP access channel. ODFW will need to understand where fill proposed to be disposed of at Kentuck will be relocated in order to allow the Kentuck grading plan to produce the additional acres below elevation +5.5ft. There will also be a need to update the grading and erosion control plans for both the eelgrass mitigation site and Kentuck Mitigation site, which may have additional or different impacts to fish and wildlife.
- ODFW has reviewed the applicant's Comprehensive Mitigation Plan (submitted to the FERC Docket in September 2019; also see the FERC FEIS Sections 2.1.4 and 2.1.5), the proposed mitigation for permanent impacts to

streams and riparian habitats impacted by the pipeline. ODFW does not find the proposed mitigation meets the Fish and Wildlife Habitat Mitigation Policy's goal of no net loss of fish and wildlife habitat. Also, the mitigation actions are almost entirely on U.S. Forest Service (USFS) and Bureau of Land Management (BLM) lands even though impacts will also occur on private lands. While ownership is not necessarily a requirement in the ODFW Fish and Wildlife Habitat Mitigation Policy, having mitigation be in-kind and in-proximity to the impacts are standards of the policy.

- Fish passage approvals within the CZMA mostly addressed with ODFW but not approved, two updated appendices are needed for final review according to ODFW.
- Fish passage plan for the non CZMA streams has not received by ODFW.
- The pipeline will cross 155 perennial streams. The pipeline right-of-way will impact a 75-foot wide corridor through riparian habitats. The excavation of the trench to install the 36" pipe will result in direct stream channel impacts at least 20 feet in width and bank to bank. A number of these stream locations are Essential Salmonid Habitat. Stream habitats often require several years post-disturbance for the channel bed, banks, and upslope to stabilize and recover at least minimal function. Normally in stream channel restoration projects, a minimum of three to five years is often needed moderate function recovery. It is ODFW's understanding that the applicant is developing Stream Function Assessment Method (SFAM) information for stream crossings. However, ODFW has not yet received this information and therefore cannot determine whether or how this information might affect mitigation plans.
- ODFW has noted that the PCGP applicant has not developed a plan to address:
    - The temporal loss of function to aquatic habitats and associated riparian forest (see ODFW Protest of BLM and USFS Plan Amendments, cited above and attached to this letter).
    - Consistency with the habitat categories and mitigation standards of the ODFW Fish and Wildlife Habitat Mitigation Policy,
    - SFAM evaluations for each crossing and how that might change compensatory mitigation,
    - Large Woody Debris that adequately offsets impacts. The PCGP Large Woody Debris Plan (included in the September 2019 Comprehensive Mitigation Plan) documented that up to four pieces of LWD will be placed where streams are rebuilt after trenching and installation of the 36" pipe. This is considered inadequate for restorative uplift to replace lost function (see ODFW protest of the BLM RMPA).
- ODFW has been reviewing the GIS files provided by the PCGP consultant for pipeline permanent and temporary impacts to freshwater wetland habitats. The specific impact acreages by type of wetland and ODFW Habitat Category have not been incorporated into the Compensatory Wetland Mitigation Plan, nor has the plan been assessed for its consistency with the ODFW Fish and Habitat Mitigation Policy. ODFW acknowledges that permanent impacts will result in a limited quantity of permanent impacts (0.91) acres. However,

ODFW has substantive concern with temporal loss of function for the 112.19 acres of freshwater wetland that will be heavily damaged and then addressed through revegetation measures outlined in the applicant's Erosion Control and Revegetation Plan. It is ODFW's opinion that recovery of the functions and values in many of these freshwater wetland habitats will likely require 5 to 7 years, which is beyond DSL's 24-month definition of 'temporary' and is deserving of additional compensatory mitigation to address temporal loss of habitat for fish and wildlife.

- In-water Blasting Plan has not been coordinated with ODFW.
- Impacts to fish habitat, spawing areas in intermittent or perennial stream crossings and rearing habitat implications related to pipeline impacts.
- Impacts to tribal fishing, eelgrass beds, collection of first foods, potential historical fish weirs and other archeological issues, and long standing uses of the north spit and Coos Bay.
- Constuction of an LNG Terminal in an area likely subject to a Cascadia subduction earthquake event and resulting tsunami.
- Independent utility, JCEP funding the Port's Channel Modification project.
- NRI dredging to enable LNG vessels to navigagte at higher wind speeds is a safety issue.
- Long term maintenance dredging needs not being adequately addressed.
- Impacts to wells, municipal drinking sources.
- ODEQ's denial of the 401 water quality certification in May 2019. No reasonable assurance that the construction and operation of the project will comply with applicable State of Oregon water quality standards.
- Turbidity impacts to aquatic environments.
- 303d listed streams crossed by the pipeline, how will the water quality not be made worse?
- Contaminents related to dredging impacts and potential issues along some of the pipeline route.
- Loss of property values and livability near the pipeline.
- ODFW concerns for aquatic habitat function associated with horizontal directional drilling (HDD) risks. Primary risks are frac-out and subsequent drilling fluid 'mud' reaching the water column, drill bore site erosion and mobilization through precipitation, and drill bore hole impacts to pasture wetlands and stream adjacent habitats. ODFW recommended monetary bonds be retained at all the HDD sites on this project to cover mitigation costs
- Coos Bay East HDD feasibility anaysis presented with minimial information, frac outs would damage the aquatic environment and are not adequately analyzed. HDD contingency plan is inadequate to protect aquatic resources as proposed.
- HDD feasibility anaylsis for Coos Bay East was incomplete, adverse impacts to special aquatic sites expected without installing a casing on the Kentuck side of the alignment. The purpose of the casing is to surround and isolate the first 70 feet of the bore entrance hole down to competent material. The feasibility report states that further analysis is required yet not completed to

assure that the casing installation is possible to protect against inadvertent release of drilling fluids during the HDD process and pipline installation.

- HDD fracout risk at the proposed Rogue River HDD is not adequately addressed and the HDD contingency plan is inadequate to protect critical aquatic resources at that location. This reach of the Rogue River where the pipeline would cross is just downstream of Trail Creek, and provides critical spawning habitat for endemic Rogue Basin spring Chinook.
- Geotechnical/Engineering concerns over liquefaction at the LNG Terminal Site.
- Geotechnical/Engineering concerns over stability of the APCO Dredged Material Disposal Site containment berms and potential for aquatic impacts to adjacent mudflats and eelgrass beds.
- Federal Aviation Administration (FAA) presumed hazards determinations not addressed by the applicant.
- LNG storage tank sizing-changing height to meet FAA requirements, changing dimensions would change the diameter and federal safety requirements.
- Temporary impacts not sufficient for mitigation along the pipeline route.
- Out of watershed mitigation for conversion impacts not appropriate.
- Impacts from noise, dust, diesel exhaust during construction.
- Increasing the risk of wildfires.
- Landslides, steep slopes, erosion concerns.
- Improper facility siting, not following SIGTTO standards.

f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations;

Commented [ME4]: Commerce, navigation, fishing and recreation.

Existing Public Uses: The proposed fill and removal to construct the Jordan Cove Energy Project will impact existing public uses in and around Coos Bay. Those public uses in Coos Bay are commercial navigation, commercial and recreational fishing, tribal subsistence fishing and public recreation.

Conformance with plan and regulations: Jordan Cove states that the area where the proposed removal-fill activities are to take place is currently zoned for industrial uses or designated as available for water-dependent industrial uses under the Coos Bay Estuary Management Plan (CBEMP). Limited areas require a Post Acknowledged Plan Amendement (PAPA). Current land use compatibility statements have not been received as promised by Jordan Cove for the City of Coos Bay, City of North Bend or Coos County. Existing land use to the west is henderson marsh wetland complex. Land use to the north is BLM dunes recreational area, to the east is Roseburg Chip Facility (wood products export) industrial uses. To the south is open waters of the Coos Bay estuary underlain by State owned submerged lands. Current uses are navigation, fishing, and recreation.

[redacted]

[redacted]

g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion;

The Applicant has not provided the Department with all applicable land use compatibility statements as required.

[redacted]

h) Whether the proposed fill or removal is for stream-bank protection; and

The proposed fill or removal is not for stream-bank protection.

i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800

The Department of State Lands (DSL) requested the Oregon Department of Fish and Wildlife (ODFW) provides the following update on its ongoing technical review of the Jordan Cove Energy Project removal-fill application (DSL Application # APP0060697). These comments follow up on ODFW's original impact assessment provided as formal comment to DSL on February 3, 2019, as well as the multiple meetings and electronic correspondence between Jordan Cove LNG (the applicant), DSL, and ODFW that have occurred over the previous year.

In summary, there are some components of the Jordan Cove Energy Project removal-fill application that still do not meet the criteria and/or standards of ODFW statute and rule. Those components include:

- Fish Passage Authorizations (ORS 509.580 through .910 and OAR 635 Division 412)
- In-Water Blasting Permits (ORS 509.140)

- Avoidance, Minimization, and Mitigation of Impacts to Fish and Wildlife (ORS 496.012, ORS 496.171-182, OAR 635-415-0000 to -0025), particularly as it relates to:
- In-Water Work Windows
- Horizontal Directional Drilling
- Estuarine impacts associated with dredging and construction of the terminal
- Eelgrass mitigation plans
- Kentuck mitigation plans
- Pipeline Wetland/Waterway Mitigation.

Over the last year, the applicant has provided ODFW with several technical memoranda, maps, GIS data, and electronic correspondences that improve upon the original removal-fill application. At this time, it is difficult for ODFW to provide an updated comprehensive review when the most current information has only been provided in a piece-meal fashion. ODFW has requested that these various documents be integrated into a revised Compensatory Wetland Mitigation Plan, or perhaps organized into a few more specific topical plans (eelgrass mitigation, Kentuck Slough mitigation plan, stream/riparian restoration and mitigation plan, etc.) to help facilitate this review and to ensure the public and interested stakeholders are aware of this new information. It is ODFW's understanding that the applicant is actively preparing updated plans for the public record.

Horizontal Directional Drilling

ODFW continues to have concerns for aquatic habitat function associated with horizontal directional drilling (HDD) risks. The primary risks for aquatic habitats associated with HDD are considered to be: 1) frac-out and subsequent drilling fluid "mud" delivery to the water column; 2) drill bore site soil rutting/denigration and mobilization through precipitation to the waterway; 3) drill bore site impacts to pasture wetlands and stream-adjacent habitats.

HDD frac-outs are difficult to predict but can have significant impacts to local fish and wildlife populations depending on the time of year in which they occur. HDD risks to stream habitat function are primarily linked to the potential for frac-out, upland disturbance of soils with subsequent delivery of sediment to streams, and spills of fuels/hydraulic fluids. Release of drilling fluid ("mud") into waterways can result in heavy sediment plumes that potentially can result in embedment of spawning gravels, direct short-term reduction in the ability of fishes to pursue food items due to poor visibility, and direct impacts to gill filaments.

To address this risk, ODFW recommends that monetary bonds be retained at all the HDD sites on this project to cover mitigation costs associated with a frac-out event and the resulting fish/wildlife losses and habitat damages. The ODFW Fish and Wildlife Habitat Mitigation Policy states "the Department may recommend or require the posting of a bond, or other financial instrument acceptable to the Department, to cover the cost

of mitigation actions based on the nature, extent, and duration of the impact and/or the risk of the mitigation plan not achieving mitigation goals" (OAR 635-415-0020(6)).

HDD in Coos Bay:

In a meeting between the applicant and ODFW on January 3, 2020, the applicant noted that they will be revising the Coos Bay HDD plan to include: 1) that there will not be a need for dredging of equipment access channels to the drill bore site; 2) that the language will be adjusted in the HDD plan for the dual HDD with tie-in option. This revised written plan is necessary for ODFW to determine if the plan will sufficiently address concerns.

In the applicant's HDD plans, ODFW notes a limited number of geotech borings along the two-mile HDD line under Coos Bay. ODFW remains concerned that the frac-out risk may not have been adequately analyzed. This concern needs to be resolved prior to ODFW having enough information to determine if the proposed crossing strategy is considered a "reliable" method under OAR 635-415.

ODFW and the applicant are currently in discussions concerning the In-water work window (IWWW) timing for the Coos Bay HDD. ODFW recommends the standard October 1 to February 15 IWWW for drilling. In addition, ODFW has strongly encouraged the applicant to construct the preparatory bore site pads during drier months and to include access construction with rock base to prevent site rutting and sediment transport during wetter months. ODFW needs resolution of Coos Bay HDD construction timing prior to full assessment of the ability to meet the standards of the ODFW Fish and Wildlife Habitat Mitigation Policy.

Rogue River HDD Crossing:

ODFW is highly concerned with the potential for frac-out risk at the Rogue River HDD site. The project engineering/design plans identify the pipeline crossing for the Rogue River is at milepost 122.6. The geotech survey indicates the pipe will be 56ft below the surface of the lowest thalweg location of the Rogue River, which may provide substantive overburden protection. However, a release of drilling fluid through the riverine and streambank portions of the 4,200+ft HDD would deliver drilling fluids directly to active Rogue River flow.

This reach of the Rogue River is just downstream from Trail Creek and provides critical spawning habitat for endemic Rogue Basin spring Chinook (Oncorhynchus tshawytscha). Construction of William Jess Dam/Lost Creek Reservoir reduced the amount of spawning habitat available for spring Chinook salmon on the Rogue River. Spring Chinook spawning habitat is now limited to approximately 30 miles of the river just downstream of a barrier dam at Cole Rivers Fish Hatchery. Spring fed Big Butte Creek is the only tributary of the Rogue that is used by spawning spring Chinook on an annual basis. Because of dam construction, habitat volume is considered a limiting

factor for the population in the Rogue Spring Chinook Salmon Conservation Plan (ODFW 2007).

Surveys conducted by ODFW during 2016-2018 found that, unlike some other rivers on the west coast, the Rogue spring Chinook population maintains a strong component of fish that are homozygous for the allele(s) that determine spring migration. Introgression with fall chinook genetic material is limited. Therefore, despite the limited habitat volume described above, the Rogue River maintains a genetically healthy population of spring Chinook. This knowledge has further increased the need to protect the ecological function of habitat that remains for this important population. A mistake here could have profound consequences.

HDD risks to stream habitat function are primarily linked to the potential for frac-out, upland disturbance of soils with subsequent delivery of sediment to streams, and spills of fuels/hydraulic fluids. Various versions of PCGP design plans have reported that HDD at this location can be done with low risk. ODFW acknowledges reading that assessment from the applicant but considers the recently submitted contingency plan (implemented if a frac-out were to take place) to be inadequate to address the risk of frac-out for spring Chinook in the Rogue River.

Avoidance, Minimization, and Mitigation of Fish and Wildlife Impacts

This section outlines the remaining resource issues associated with the removal-fill application for which the applicant has not fully demonstrated its ability to avoid, minimize, and mitigate its impacts to fish and wildlife and their habitats in accordance with the state's Wildlife Policy, the Food Fish Management Policy, and the ODFW Fish and Wildlife Habitat Mitigation Policy.

Dredging Impacts to the Coos Estuary Tidal Basin:

The JCEP will include dredging and removal of unconsolidated sediment from the intertidal and subtidal zones of the Coos estuary, and the removal of sediment will have substantial impacts to aquatic habitats and species. Direct impacts to estuarine habitats associated with removal of sediment from the navigation channel (NRI Areas 1-4), construction of the vessel slip, access channel, temporary material barge berth, the material offloading facility, and rock pile apron are expected to be long-lasting and substantial. In particular, the estuarine portion of the Jordan Cove LNG Facilities would include direct impacts to about 37 ac of estuarine habitat, including 2 ac of eelgrass habitat, 13 ac of intertidal unvegetated habitat, 4 ac of shallow subtidal habitat, and 18 ac of deep subtidal habitat. The JCEP also includes extensive dredging and excavation of four submerged areas of the sub-tidal zone in Coos Bay (total 40 ac) along the Federal Navigational Channel and vessel access route to improve navigation reliability for the LNG carriers.

Unconsolidated soft-sediment habitat is widespread in the Coos estuary tidal basin where it occurs extensively throughout the intertidal zone and sub-tidal zone along the

bottoms, sides, and margins of primary and secondary tidal channels (Cortright et al., 1987; Rumrill, 2003). Soft-sediment habitats provide a series of diverse, productive, and dynamic ecological functions in the estuary, including provision of habitat and forage areas for invertebrates, fish, birds, and marine mammals, as well as serving as an important source of detritus. Soft-sediments also play an important role in the microbial and biogeochemical transformations of organic materials and nutrient cycling, and they typically serve as a sink or reservoir for the deposition of water-borne particles. Diverse communities of motile, epifaunal, and infaunal invertebrates inhabit the soft-sediments, and the communities of crabs, shrimp, amphipods, polychaete worms, copepods, hydroids, anemones, clams, and other invertebrates are specifically adapted to survive, feed, grow, and reproduce themselves in the unconsolidated sediments (Simenstad 1983; Emmett et al., 2000). Microbial activity and deposition of organic matter associated with fine-grained sediments together support a complex food web that includes multiple resident (infaunal, epifaunal, motile) and transitory (seasonal, migratory) species.

Mixed communities of shellfish, such as Dungeness crab, red rock crab, bay shrimp, gaper clams, butter clams, littleneck clams, softshell clams, cockles, and many other species are year-round residents of the intertidal and sub-tidal areas of the Coos estuary. Some of these shellfish are motile (i.e., crabs and shrimp) and periodically move to different locations or migrate through the intertidal and sub-tidal zones, while others are stationary (i.e., bivalves) and remain largely in place over the duration of their adult lives. The mixed communities of living bivalves and the beds of their non-living shells (e.g., shell rubble or shell hash) are particularly important because they function to stabilize unconsolidated sediments and provide heterogeneous habitat for numerous species of adult and juvenile fishes, crabs, shrimp, amphipods, worms, and other estuarine organisms. Moreover, filter-feeding by dense populations of living clams can sometimes play an important role in the removal of phytoplankton and smaller particulate materials, thereby decreasing turbidity and increasing light penetration through the estuarine water column. Consequently, maintenance of suitable soft-sediment habitat is essential for survival of the moderately long-lived (life-span 10-15 years or longer) gaper, butter, and cockle clams, particularly in the sub-tidal zone. When soft-sediment habitat is chronically disturbed and altered by dredging of the subtidal zone, there may be a permanent loss and impact to benthic invertebrate populations and a decline in the biodiversity of benthic communities. Loss of some or all of these sub-tidal populations of bay clams has implications for both the ecological functioning of sub-tidal habitats and the ability of the bay clams to serve as broodstock to support the recreational and commercial shellfish fisheries in Coos Bay (D'Andrea 2012).
It is expected that dredging and removal of the soft-sediments will likely have substantial and immediate local impacts on the sub-tidal populations of benthic invertebrates and shellfish, such as gaper clams, butter clams, and cockles. This may include the physical removal of the clams and their surrounding sediments, as well as a disruption of the mixed ecological communities of shellfish, mobile and infaunal invertebrates, and fish that make use of the sub-tidal habitats. The application states that dredging would directly remove benthic organisms (e.g., worms, clams, benthic shrimp, starfish, and vegetation) from the bay bottom within the access channel and

navigation channel modifications. Mobile organisms such as crabs, many shrimp, and fish could move away from the region during the process, although some will be entrained during dredging so that direct mortally or injury could occur.

JCEP acknowledges that dredging, removal, and disturbance of the soft-sediment habitats will directly remove benthic organisms from the bay bottom and estimate that recovery would occur in about one year for benthic resources particularly in the area of navigation channel modifications. The JCEP estimate of the rapid rate of community recovery is problematic, however, because the technical references cited to support the JCEP estimate are drawn from earlier investigations of dredging impacts that generally used a group small-bodied, rapidly-growing invertebrates (including amphipods, polychaete worms, small bivalves, etc. that have life-spans on the scale of months to a few years) as the focal species to provide metrics for the estimates of species and habitat recovery. These small opportunistic species are not representative of the large-bodied, long-lived bay clams that typically exhibit episodic recruitment and have life-spans on the scale of 10-20 years in the Oregon estuaries. Moreover, large-scale dredging modifications that include subsequent maintenance dredging every 5-10 years may not provide the opportunity for bay clams and other shellfish to recruit successfully and fully re-colonize after the repeated disturbance events. It is also likely that benthic food resources may also be impaired or lost for other estuarine species (i.e., forage fish, salmonids, crab) as a result of dredging actions. Consequently, dredging activities that significantly disturb and/or remove the mixed communities of long-lived bay clams from soft-sediment habitat in the sub-tidal zones of Coos Bay are expected to have longer-term impacts that extend well beyond a time period of many years.

The JCEP also includes dredging of four submerged areas (NRI Areas 1-4; removing about 700,000 cubic yards of material) that are located adjacent to the existing federally-authorized Coos Bay Navigation Channel. In particular, the JCEP will include dredging of four submerged areas that directly abut the current boundary of the Navigation Channel between RM 2 to RM 7. These dredging activities will modify and alter the physical morphology of the Navigation Channel by widening four turns to allow for more efficient transit of LNG carriers.

It is likely that dredging of the four submerged areas (NRI Areas 1-4) will have indirect impacts to side slopes and soft sediment habitats located adjacent and in close proximity to the dredged areas. For example, the JCEP will include significant dredging and removal of unconsolidated sediment from NRI Area 2 (RM 4.5), NRI Area 3 (RM 6), and NRI Area 4 (RM 7), coupled with erosion of sediment from the adjacent subtidal and intertidal areas. Technical review by the U.S. Army Corps of Engineers indicates that the banks of the dredged areas are intended to be stable, and that side slope equilibration may occur over about a 6-year period. Loss of sediment from these immediately adjacent areas, however, will likely be substantial (i.e., loss of 1-2 ft (30-60 cm) in depth over the first 3 years). Loss of the upper 30-60 cm of sediment from the side slopes located adjacent to the NRI dredged areas during the equilibration process is certainly not insignificant and may result in further impacts and loss of eelgrass, infaunal invertebrates, and degradation of the habitat for shellfish and fish. Loss of the

upper 30-60 cm of sediment from the side slope of NRI Area 4 is particularly alarming, because this side slope is located in the immediate vicinity of the important eelgrass donor bed and eelgrass reference bed identified as essential components of the proposed JCEP eelgrass mitigation activities. Potential loss or disturbance of the eelgrass donor bed and eelgrass reference area in the vicinity of NRI Area 4 puts the proposed JCEP eelgrass mitigation plan in jeopardy. The JCEP Eelgrass Mitigation Plan does not adequately address the potential for loss of sediment adjacent to NRI Areas 2-4 and does not give adequate consideration to loss or disturbance of the important eelgrass donor bed and reference bed located adjacent to NRI Area 4.

Construction of the Marine Terminal – Indirect Effects to Eelgrass Beds:

The JCEP project includes dredging and construction of a new access channel to connect the JCEP LNG Terminal to the Federal Navigation Channel at about RM 7.3. The access channel will be about 700 feet in length, and about 2,200 feet wide at confluence with the Navigation Channel, and about 780 feet wide at the Terminal. The access channel would be approximately 45 feet deep and would cover about 22 acres below the highest measured tide elevation of 10.3 feet (NAVD88). The proposed JCEP dredging activities will permanently destroy about 2 ac of established native eelgrass located in the intertidal and shallow subtidal zones of the Project area. Dredging in the intertidal and shallow subtidal zones within the JCEP area is expected to have significant deleterious effects on native eelgrass habitats and the species found therein. In addition to the direct removal of eelgrass at the JCEP dredging sites, it is likely that dredging operations carried out to implement the JCEP may also result in indirect impacts to adjacent eelgrass beds located in the vicinity of the JCEP area. For example, nearby eelgrass beds will likely experience periods of increased turbidity, sedimentation, and attenuated light levels resulting from dredging during construction and during subsequent periods of maintenance dredging. In this regard, the indirect effects of the JCEP to adjacent eelgrass beds have not been adequately addressed by the JCEP Comprehensive Wetland Mitigation Plan.

Eelgrass Mitigation Plan:

In order to offset the loss of 2 ac of eelgrass the JCEP includes a proposed eelgrass mitigation plan that relies on the "best case scenario" for full success by creating 6 ac of eelgrass (3:1 ratio) within a 9 ac site in the intertidal zone near the impact area. ODFW has noted several potential problematic issues associated with the proposed JCEP eelgrass mitigation plan that have not been fully considered and addressed by the applicant.

ODFW is concerned that the excavated JCEP mitigation basin may refill with sediment, and that the rate of sedimentation may not be conducive to survival, growth, and propagation of the planted eelgrass plants. For example, Mills and Fonseca (2003) conducted a series of field experiments to determine the susceptibility of eelgrass (Zostera marina) to burial by estuarine sediments. Results from the study demonstrate that eelgrass plants experience an increased likelihood of mortality and decreased

productivity under burial conditions, and that the threshold level of burial tolerance for Z. marina is extremely low. Burial of eelgrass to depths as low as 25% of the aboveground plant height (4 cm) substantially increase mortality of eelgrass, causing death of >75% of the plants. Moreover, the probability of eelgrass mortality reached 100% for burial depths of 50% (8 cm) to 75% (12 cm) of plant height, depending on the types of sediment (e.g., sand, silt, combined) in which the plants were buried. These empirical observations indicate that eelgrass can only tolerate rapid sedimentation events that cover less than half of its photosynthetic surfaces, and that small levels of rapid sedimentation are detrimental to survival of Z. marina.

Earlier research (Thom et al. 2018) has shown that eelgrass beds are typically limited by the availability of proper substrata, light, heat stress, and desiccation. Survival of the transplanted eelgrass within the excavated JCEP eelgrass mitigation site will be dependent upon several ecological factors, including characteristics of the excavated sediment, sedimentation rate, erosion, light availability, nutrient availability, grazing upon seeds, seedlings, and blades, and a suite of inherent physical factors (i.e., current velocities, wind fetch, slope, depth, seawater temperature, air temperature, humidity, desiccation, etc.). The proposed mitigation actions for eelgrass should be designed to retain the full array of ecosystem services provided by eelgrass beds in the JCEP area, and to achieve no-net loss of eelgrass over the entire lifespan of the JCEP operation in Coos Bay. In this regard, the planned mitigation activities should follow established in-kind, in-proximity standards established by the state of Oregon and require long-term monitoring and remedial replanting of eelgrass as needed to compensate for losses that may occur over the entire lifespan of the Project.

The applicant proposes to remove existing eelgrass in the Project area and to offset the loss of eelgrass habitat by excavation of an eelgrass mitigation area coupled with replanting of eelgrass taken from a nearby donor bed. The applicant proposes to monitor the effectiveness of the replanting effort for a period of only five years. It is important to note that failure of eelgrass replanting efforts is common in the Pacific northwest region (Thom et al., 2008), and that five years is an insufficiently short time period to adequately evaluate long-term mitigation success.

The applicant does not demonstrate that serious consideration has been given to avoidance of impacts to eelgrass beds. In a December 11, 2019 meeting with DSL, ODFW, and the US Army Corps of Engineers, the applicant reviewed a draft alternatives analysis that considered alternative sites for eelgrass transplant. ODFW has raised additional alternatives to the applicant since that meeting. However, a more thorough alternatives analysis has not been provided nor has the Compensatory Wetland Mitigation Plan been updated to include the December 2019 analysis. ODFW recommends a more detailed analysis of eelgrass mitigation sites that characterize the location, species composition, and abundance of the eelgrass and other submerged aquatic vegetation at the alternative sites and provide a more detailed rationale for rejection of the alternative sites and acceptance of the proposed site. The existing JCEP Mitigation Plan is incomplete because it does not provide a full description of the steps that were taken to avoid adverse impacts to existing eelgrass beds in Coos Bay.

Earlier attempts to mitigate for the damage or loss of eelgrass beds have met with limited success in Pacific Northwest estuaries. For example, Thom et al. (2008) conducted a review of 14 eelgrass mitigation and transplant projects. They concluded that it is sometimes possible to restore eelgrass under favorable site conditions and when the reason for the initial loss of eelgrass is understood and corrected. The authors also noted, however, that eelgrass restoration science is hampered by knowledge gaps, which reduce restoration success. The underlying mechanisms for recent eelgrass loss in the Pacific Northwest region are not obvious, which suggests that the scientific understanding of eelgrass biology and ecosystem conditions is currently inadequate to fully support environmental management actions (Thom et al. 2008).

Local complexities in hydrologic flow regimes are known to affect potential for success in eelgrass restoration efforts. These local complexities include considerations of the following:

- Habitat conditions created through excavation or filling are often ephemeral and subject to subsequent deposition/erosion that results in movement of conditions outside of the range of preferred variability for eelgrass.
- Flow regimes including severity of wave action and current speed contribute to the potential success of a site for eelgrass establishment and growth. Sites that are created through excavation or fill are an artificial modification of conditions that have formed through the geomorphological features that drive flow regimes. Factors such as water depth reflect deposition/erosion rates from water transported sediments. Excavation or filling to a specific elevation is attempting to alter the natural elevation conditions in relation to hydrologic conditions for many sites that might serve as potential mitigation. Consequently, the potential for success is limited for projects that modify water depth/elevation of the substrates for creating conditions appropriate for eelgrass mitigation unless the site chosen has substrate elevation that has been artificially created from previous disturbance or the conditions are dominated by factors other than hydrology.
- Use of eelgrass sites immediately adjacent to or within the mitigation area for obtaining plants/shoots results in impacts to these locations, potentially weakening the vigor of eelgrass at these locations, which is counter to goals.
- Excavation of locations adjacent to existing eelgrass beds can result in hydrologic changes such as erosion of surrounding substrates resulting in impacts to currently productive stands.
- The monitoring plan should be amended to include more robust methods such as diver or low tide visual count surveys with established known planting densities at time-0 and subsequent measurable surveys with quantifiable methods.
- Due to the potential for minimal success the eelgrass mitigation ratio is likely insufficient to offset impacts at the JCEP project impact location.

For all the reasons listed in the discussion above, ODFW recommends the eelgrass mitigation strategies be re-evaluated to favor avoidance.

Unresolved Issues related to Sedimentation, Hydrodynamic Connection of the Eelgrass Mitigation Site, Adaptive Management Plan, and Proposed Mitigation Ratio:

The applicant has generated several new technical reports and documents related to JCEP's development of a Compensatory Wetland Mitigation Plan and an Eelgrass Mitigation Site to offset impacts to eelgrass habitat from the construction and operation of the JCEP LNG terminal. The proposed project components include re-contouring of an existing un-vegetated sandbar located near the end of the airport runway to create an area of optimal eelgrass habitat, and then transplanting eelgrass from an adjacent donor site into the mitigation area.

ODFW has identified several issues regarding eelgrass impacts and mitigation raised by the proposed JCEP, including characterization of permanent and transitory impacts to existing eelgrass, and shortcomings inherent in the proposed Eelgrass Mitigation Plan. The most recent (2018) JCEP eelgrass surveys indicate that construction of the Access Channel and Rock Apron will result in displacement of 2.26 acres of eelgrass. This estimate is consistent with the JCEP application which identifies "anticipated impacts to at least 2.3 acres of eelgrass habitat in the Coos Bay estuary from the Jordan Cove LNG Project" but inconsistent with the FERC FEIS which identified impacts to only 2 ac of eelgrass.

The JCEP Project description identifies permanent removal of eelgrass associated with dredging and excavation of the access channel that will be constructed to provide ship access to the LNG terminal. Eelgrass beds that currently inhabit the intertidal and subtidal zones in the area of the proposed access channel will be dug up, salvaged and relocated into the intertidal zone at the Jordan Cove Embayment site.

It is not clear why eelgrass plants that currently inhabit the intertidal and subtidal zones (+2.0 to -10.0 ft MLLW) at the access channel site will be transplanted only into the intertidal zone at an elevation of +1.3 and -2.0 ft MLLW. The eelgrass plants salvaged from the intertidal zone will occupy a similar tidal elevation at the transplant site, whereas eelgrass plants that occupy the subtidal zone (where they are constantly submerged) will be placed into a new environment characterized by periodic exposure to air and desiccation. The proposed mismatch in tidal elevation between eelgrass plants harvested from the access channel site (intertidal and subtidal) and the Jordan Cove transplant site (intertidal only) provides evidence that the transplants may face a high likelihood for failure.

The JCEP Project Description proposes to excavate an existing sandy shoal located near the end of the North Bend airport runway to serve as an Eelgrass Mitigation Site. Specifically, the JCEP proposal is to "reduce and re-contour a 9.34-acre area of the intertidal shoal down to an average depth of 1.0 to -2.0 ft NAVD 88 (-0.28 to -1.28 ft

MLLW) to create 6.78 acres of optimal eelgrass habitat." The existing sandy shoal currently has an elevation in the intertidal zone that reaches about +2.7 ft MLLW, so the excavation will reduce the tidal elevation by about 1.7 to 4.7 ft and remove about 0.04 million cubic yards (MCY) of the shoal material to create the shallow tidal basin that will serve as the mitigation area. The proposal is to re-contour the shoal material and create 6.78 acres of "Optimal Eelgrass Habitat" at a tidal elevation of -0.28 to -1.28 ft MLLW. The rationale for designation of the narrow tidal range of -0.28 to -1.28 ft MLLW as optimal eelgrass habitat is poorly developed. More specifically, Thom et al. (2003) shows that eelgrass clearly occupies a more extended tidal range of +3.0 to -1.6 ft MLLW in Coos Bay. The rationale provided by JCEP for designation of only a portion of the tidal elevation range as "optimal" for eelgrass at the proposed mitigation site is not clear.

The JCEP project description states that "an evaluation of both eelgrass distribution and depth indicates that the principal limiting factor for eelgrass in the general vicinity of the Eelgrass Mitigation Site is elevation." However, JCEP fails to point out that eelgrass can (and does) currently exist in Coos Bay at sites that have a tidal elevation of +2.7 ft MLLW, and that eelgrass is largely missing from the sandy shoal habitat at this tidal elevation at the proposed Eelgrass Mitigation Site. Earlier research (Thom et al. 2018) has shown that eelgrass beds are typically limited by the availability of proper substrata, light, heat stress, and desiccation. The virtual absence of eelgrass currently at the proposed Eelgrass Mitigation Site is likely due to a combination of ecological factors other than simply tidal elevation.

The JCEP includes excavation of about 0.04 million cubic yards (MCY) of the shoal material to create a shallow circular tidal basin that will retain estuarine water and serve as the primary site for eelgrass mitigation activities. Concern has been repeatedly raised about the likelihood for poor water quality conditions (including low dissolved oxygen concentrations and elevated temperature) and trapping of decaying drift algae and other organic materials within the shallow excavated basin. JCEP does not provide any technical analysis nor rationale for the shape of the shallow excavated tidal basin, nor any explanation about the time frame that is expected for the newly excavated basin to re-fill with sediments. It will be beneficial for the excavated mitigation basin to include channels that have a substantial hydrodynamic connection to the primary tidal channel in an effort to enhance tidal flushing and help ensure adequate water quality conditions to support eelgrass, invertebrates, and fish within the excavated basin.

The proposed eelgrass mitigation site should be designed to include a functional hydrodynamic connection to the primary tidal channel. The supplementary technical report generated by JCEP (Section 3.2.2; page 18) indicates that "the proposed grading boundary of the Site may be re-contoured from the current design to allow drainage from the Site so it does not become a shallow bowl that retains water at minus low tides." However, the proposed short channel (excavated at -1.3 ft MLLW) that extends to deeper water is not clearly identified, and further clarification is needed to illustrate the expected directional pathways for water, sediment, and debris to enter and exit the excavated mitigation basin during flood and ebb tides. It is not clear at this point where

the short channel will be located, and whether the short channel will persist over time at the project site. Bathymetry maps should be revised and updated for the proposed JCEP Eelgrass Mitigation Site to include the "short channel" at -1.3 ft MLLW to make a hydrodynamic connection to adjacent channels to improve flushing of the excavated shallow basin.

ODFW is concerned that the excavated JCEP mitigation basin may refill with sediment, and that the rate of sedimentation may not be conducive to survival, growth, and propagation of the planted eelgrass plants. For example, Mills and Fonseca (2003) conducted a series of field experiments to determine the susceptibility of eelgrass (Zostera marina) to burial by estuarine sediments. Results from the study demonstrate that eelgrass plants experience an increased likelihood of mortality and decreased productivity under burial conditions, and that the threshold level of burial tolerance for Z. marina is extremely low. Burial of eelgrass to depths as low as 25% of the aboveground plant height (4 cm) substantially increase mortality of eelgrass, causing death of >75% of the plants. Moreover, the probability of eelgrass mortality reached 100% for burial depths of 50% (8 cm) to 75% (12 cm) of plant height, depending on the types of sediment (e.g., sand, silt, combined) in which the plants were buried. These empirical observations indicate that eelgrass can only tolerate rapid sedimentation events that cover less than half of its photosynthetic surfaces, and that small levels of rapid sedimentation are detrimental to survival of Z. marina.

The methods proposed by the applicant to detect sedimentation within the excavated mitigation basin have a coarse depth resolution of + 4 inches (10 cm). These proposed methods are insufficient to detect the finer-scale measurement of local sedimentation (i.e., 2-4 cm) that can result in damage and loss of eelgrass plants.

Existing sediments at the sandy shoal that is proposed for excavation at the Eelgrass Mitigation Site currently consist of medium to coarse sand, and the site is characterized by wind chop during high tides. The JCEP includes excavation of about 0.04 million cubic yards (MCY) of the intertidal shoal material down to an average depth of -0.28 to -1.28 ft MLLW to create the 6.78 ac shallow tidal basin. The project description, however, does not include a detailed description or characterization of the underlying sediments that will be exposed by the dredging and excavation work. The characteristics of the underlying sediment are important, because these underlying sediments will provide the foundation for transplanted eelgrass plants. It is likely that the characteristics of the underlying sediment differ substantially from the surface sediment, and that the underlying sediment may be compacted and anaerobic with relatively little interstitial space for the establishment of eelgrass roots/rhizomes and the movement of water. These expected characteristics of the underlying sediment are not conducive to survival and growth of the transplanted eelgrass. The project description points out that the dredging work and excavation will occur about 1-year before transplants of eelgrass from a donor area, and it is expected that the excavated tidal basin will naturally receive transported sediment from the greater Coos estuary. Moreover, the expected rate of sediment accretion is not identified by the JCEP Project Description, nor the time frame when the excavated tidal basin is expected to fill with transported sediment. Further

technical analysis is required to characterize the underlying sediments and to identify the rate of sediment accretion that is expected within the excavated eelgrass mitigation site.

The JCEP should include establishment of a series of experimental test plots to determine the likelihood of success for eelgrass plants transplanted into the excavated Eelgrass Mitigation Site. These replicated test plots should be constructed in a manner that mimics the excavated elevations within the proposed shallow tidal basin and should also be carried out in a manner to evaluate the success/failure of the proposed transplant techniques. The test plots should be established 1-2 years in advance of the excavation and dredging activities and should be evaluated on a quarterly basis to determine standard metrics for the survival, growth, cluster coalescence, and seed production by the eelgrass plants. For example, Thom et al. (2018) recently used test plantings as one of several criteria to evaluate the likelihood for success at numerous potential eelgrass restoration sites in Puget Sound. Results and information derived from the test plots indicated that fine-scale data are needed to improve the predictive capability of proposed restoration, enhancement, and mitigation activities. The technical approach outlined by Thom et al. (2018) provides a clear roadmap and analytical process to identify and evaluate potential eelgrass mitigation sites and increase the overall likelihood for project success.

The JCEP monitoring activities and adaptive management plan make progress toward identification of contingencies that may be encountered if the transplanted eelgrass fails to become established or fails to grow and expand as expected over the timeframe for the Project. The adaptive management plan, however, has not yet identified a series of quantitative thresholds or metrics for sedimentation rates that will be used to trigger corrective or remedial adaptive management actions (such as re-planting, re-dredging, or abandonment of the excavated site). In addition, JCEP has not yet identified a suitable alternate site located elsewhere in Coos Bay that can be used for the mitigation work if the primary eelgrass mitigation basin becomes unworkable.

ODFW recognizes that the ODSL mitigation ratio must be at 1.5:1 for creation of a new eelgrass bed at the proposed JCEP eelgrass mitigation site. However, the transplanting of eelgrass proposed by JCEP only achieves a mitigation ratio of 1:1, which is insufficient to meet ODSL standards. The Applicant predicts that the transplanted eelgrass will survive, grow, and expand over a period of five years to fill out the excavated basin in order to achieve the required mitigation ratio of 1.5:1. The expectation by JCEP for the transplanted eelgrass to flourish has a great deal of uncertainty, and optimism by the applicant should not be considered as a guarantee to meet DSL's required mitigation ratio.

ODFW recommends that the applicant increase the spatial extent of eelgrass transplants to achieve the mitigation ratio of 1.5:1 at the initiation of the planting (time-zero) rather proceed with the expectation that the required ration will be met after a period of five years. The Applicant will not meet the ODSL mitigation policy standards unless the transplant activities begin with a ratio of 1.5:1.

Kentuck Slough Mitigation Plan:

ODFW has requested, but has not yet received, a long-term management plan for the Kentuck mitigation site, including:

- Long-term protection and stewardship strategies to ensure the mitigation site will be durable for the life of the project's impacts
- Long-term water management strategies for the Kentuck Creek water control structure.

Without this information, ODFW does not consider the Compensatory Wetland Mitigation Plan complete, in accordance with the ODFW Fish and Wildlife Habitat Mitigation Policy.

The applicant has verbally committed to redesigning the Kentuck mitigation elevation plan to develop additional acreage that will be below elevation +5.5 NAVDD88 (the elevation threshold for saltmarsh development) on the site. This will offset loss of Category-2 Algae/Mud/Sand habitats that will be dredged and regraded at the eelgrass mitigation site south of the North Bend Airport runway. The exact acreage (6.81 acres + slope area) of grading/dredging at the eelgrass location has of yet not been finalized. ODFW will need updated Kentuck mitigation design plans and a complete eelgrass site dredging/grading plan in order to determine if the loss of the Category-2 Algae/Mud/Sand will be offset. ODFW recommends that the applicant include this information in a revised Compensatory Wetland Mitigation Plan.

The Kentuck site is slated for disposal of 300,000 cubic-yards of dredge spoils from development of the JCEP access channel. ODFW will need to understand where fill proposed to be disposed of at Kentuck will be relocated in order to allow the Kentuck grading plan to produce the additional acres below elevation +5.5ft. There will also be a need to update the grading and erosion control plans for both the eelgrass mitigation site and Kentuck Mitigation site, which may have additional or different impacts to fish and wildlife.

Pipeline Mitigation, Generally:

ODFW has reviewed the applicant's Comprehensive Mitigation Plan (submitted to the FERC Docket in September 2019; also see the FERC FEIS Sections 2.1.4 and 2.1.5), the proposed mitigation for permanent impacts to streams and riparian habitats impacted by the pipeline. ODFW does not find the proposed mitigation meets the Fish and Wildlife Habitat Mitigation Policy's goal of no net loss of fish and wildlife habitat. Also, the mitigation actions are almost entirely on U.S. Forest Service (USFS) and Bureau of Land Management (BLM) lands even though impacts will also occur on private lands. While ownership is not necessarily a requirement in the ODFW Fish and Wildlife Habitat Mitigation Policy, having mitigation be in-kind and in-proximity to the impacts are standards of the policy.

For a fuller discussion of ODFW's concerns, please see ODFW's recent Protest of the BLM Proposed RMP Amendments (DOI-BLM-ORWA-M000-2017-0007-EIS) dated December 20, 2019 and Protest of the USFS Proposed Forest Plan Amendments (#28132) to the Umpqua, Rogue River-Siskiyou, and Fremont-Winema National Forests dated January 6, 2020. Both of these protests have been provided as attachments to this letter, for your reference.

Since the project's inception, ODFW has recommended the applicant crosswalk the federal land compensatory mitigation plans with the standards in the ODFW mitigation policy to ultimately ensure that fish and wildlife impacts are avoided, minimized, and mitigated across all land ownerships (see ODFW's comments on page 80 of Oregon State Agency Comments on FERC's Draft Environmental Impact Statement for Docket Nos. CP-17-494-000 and CP17-495-000 dated July 3, 2019). As of the date of this letter, this crosswalk has not been included in the FEIS or in the DSL removal-fill application. Therefore, ODFW does not have the information it needs to ensure the project's impacts will be offset to the standards of its Fish and Wildlife Habitat Mitigation Policy.

Freshwater wetland impacts:

ODFW has been reviewing the GIS files provided by the PCGP consultant for pipeline permanent and temporary impacts to freshwater wetland habitats. The specific impact acreages by type of wetland and ODFW Habitat Category have not been incorporated into the Compensatory Wetland Mitigation Plan, nor has the plan been assessed for its consistency with the ODFW Fish and Habitat Mitigation Policy. ODFW acknowledges that permanent impacts will result in a limited quantity of permanent impacts (0.91) acres. However, ODFW has substantive concern with temporal loss of function for the 112.19 acres of freshwater wetland that will be heavily damaged and then addressed through revegetation measures outlined in the applicant's Erosion Control and Revegetation Plan. It is ODFW's opinion that recovery of the functions and values in many of these freshwater wetland habitats will likely require 5 to 7 years, which is beyond DSL's 24-month definition of 'temporary' and is deserving of additional compensatory mitigation to address temporal loss of habitat for fish and wildlife.

Stream/riparian impacts:

The pipeline will cross 155 perennial streams. The pipeline right-of-way will impact a 75-foot wide corridor through riparian habitats. The excavation of the trench to install the 36" pipe will result in direct stream channel impacts at least 20 feet in width and bank to bank. A number of these stream locations are Essential Salmonid Habitat. Stream habitats often require several years post-disturbance for the channel bed, banks, and upslope to stabilize and recover at least minimal function. Normally in stream channel restoration projects, a minimum of three to five years is often needed moderate function recovery. It is ODFW's understanding that the applicant is developing Stream Function Assessment Method (SFAM) information for stream crossings. However, ODFW has not

yet received this information and therefore cannot determine whether or how this information might affect mitigation plans.

ODFW has noted that the PCGP applicant has not developed a plan to address:

- The temporal loss of function to aquatic habitats and associated riparian forest (see ODFW Protest of BLM and USFS Plan Amendments, cited above and attached to this letter).
- Consistency with the habitat categories and mitigation standards of the ODFW Fish and Wildlife Habitat Mitigation Policy,
- SFAM evaluations for each crossing and how that might change compensatory mitigation,
- Large Woody Debris that adequately offsets impacts. The PCGP Large Woody Debris Plan (included in the September 2019 Comprehensive Mitigation Plan) documented that up to four pieces of LWD will be placed where streams are rebuilt after trenching and installation of the 36" pipe. This is considered inadequate for restorative uplift to replace lost function (see ODFW protest of the BLM RMPA).
- Specific mitigation proposals previously submitted by ODFW. There were several mitigation proposals submitted in 2015 by ODFW local and headquarters staff that specifically address offsetting impacts of the Project to stream and riparian habitats. These were resubmitted in the July 3, 2019 State of Oregon Comments on the 2019 FERC DEIS.

Department Determinations.

a) Had independent utility;

The Port has proposed a long-term project to improve the Port's facilities and allow larger vessels to utilize the Port's facilities. It will also allow the Port to expand its capabilities and attract new business to the area. However, the Port's channel expansion project is not required for the LNG Terminal JCEP proposes to construct and operate. Furthermore, the independent utility of the Project is acknowledged by the U.S. Coast Guard (USCG) letter of authorization, dated November 7, 2018, which supports the Applicants' position that the Project does not require further Port modification or expansion

b) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990; and

c) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

From: Tonia Moro [mailto:tonia@toniamoro.com]
Sent: Friday, December 18, 2020 2:17 PM
To: Planning Department; Jill Rolfe
Subject: FW: Materials for the record in AP 20-01

This Message originated outside your organization.

Jill,

I attach a corrected Hearing Memo which fixes the formatting errors in the previously submitted Memorandum. Please present this Hearing Memo instead of the prior one with the exhibits previously sent to the Hearings Officer. Thank you.

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BEFORE THE COOS COUNTY HEARINGS OFFICER

In the matter of the appeal of Planning Director's approval of Pacific Connector Gas Pipeline's application for a seventh extension of permit HBCU 10-01 (Final Decision and Order 10-08-045PL) in Ext-20-005.	AP-20-01 (Original Alignment)

This memorandum is submitted on behalf of Citizens for Renewables, Rogue Climate and the appellants Natalie Ranker and Kathy Dodds (collectively referred to as "appellant-opponents").

Appellant-opponents request a continuation of these proceedings to allow additional opportunity to present additional evidence, arguments and testimony regarding the application. See ORS 197.763(6). Because of the Christmas and New Year holidays, appellant-opponents ask that you exercise your discretion to keep the record open for such purpose until January 8, 2020. PCGP has asked the county to provide hearing procedures applicable to land use decisions and those would include the extension provisions of ORS 197.763. However, the time limitations of ORS 215.427 do not apply to this application so there is no limitation on when the county's final decision is adopted. It is notable and relevant to the exercise of your discretion that over 158 days elapsed between the time PCGP filed its application and the county issued a staff report. And over 70 days has elapsed since the first notice of appeal was filed. Thus, it is clear that there is no urgency or time limitation and the exercise of your discretion should not limit interested parties to giving up time during the holidays to exercise their statutory opportunity to fully present their case.

Appellant-opponents also request preliminary relief before the record is closed. The first request is that the county take judicial notice of all relevant ordinances and final decisions and orders adopted by the Board of Commissioners (BOC) as may be referenced by participants in these proceedings. The second is that given the issues discussed below, appellant-opponents move for a determination that the application is not complete and remand the decision back to the county. To proceed, allowing PCGP to attempt to address these issues during an open record period will improperly impact the opponents ability to present their arguments.

Relevant Factual Background

Evolution of the Relevant Criteria

In 2018 the County amended LDO 5.2.600 to make it easier for PCGP to get it extensions. See Exhibit 101(excerpt of Ord.18-09-009PL). In 2019, the County applied that amended criteria to PCGP's 2019 extension application. See Exhibit 102 (excerpt from Decision quoting the criteria). In 2019, the county also amended LDO 5.2.600 to respond to a legislative change that allowed only a five year term for residential permits. See Exhibit 103 (excerpt from Ord. 19-12-011). Because the amendment involved only the subsection applicable to residential permits, the 2019 amendment is not relevant here. As understood from a review of the county's docket, there were no other amendments to LDO 5.2.600, to date.

Yet, the LDO published as the current code and as stated in the staff report do not reflect the LDO that was adopted in 2018. The code published on the county's web page states:

> 2c. Additional one-year extensions may be authorized where the applicable criterial for the original decision have not changed, ***unless otherwise permitted by the local government.***

(Emphasis added). But that is not what was adopted by the BOC.

Evolution of the Pipeline and its Permitting

The relevant permit was approved September 8, 2010, Final Decision and Order No 10-08-045PL ("original route decision'). The findings rely heavily on the 2010 Final Environmental Impact Statement issued by FERC which anticipated that PCGP would obtain other state and federal permits. Original Route Decision pp. 22-24, 32-33, 62, 71-72, 75, 77-78, 80, 86, 87, 90, 112, 105-109, 108, 121, 125, 126, 143, 144, 145. And the original route decision requires PCGP to obtain key state and federal permits as a condition precedent and in order to satisfy relevant criteria:

> **Conditions**:
>
> A.1.14. All necessary federal, state and local permits must be obtained prior to commencement of construction, including any required NPDES 1200-c permits. Prior to the commencement of construction activities, Pacific Connector shall provide the County with a copy of the "Notice to Proceed" issued by FERC. [See Letter from Mark Whitlow, dated June 24, 2010, at p. 52.]
>
> B.1.7. The authorized work in Haynes Inlet shall be conducted in compliance with the required U.S. Almy Corps of Engineers Section 404 Permit and OR DEQ's 401 Water Quality Certification and 402 NPDES permits, which will mandate turbidity standards, monitoring requirements, and reporting procedures.

Original route decision pp. 150, 152.

Criteria satisfied by requirement to obtain permits:

In addition to the foregoing, the above-referenced Ellis Report provides the following testimony regarding compliance with the 7-D management objectives: As outlined above, zone 7-D will be used as a temporary construction yard. Construction in the 7-D zone would be required to comply with a DEQ 1200-C Construction Stonnwater Permit, which includes requirements for erosion control plans.

Original route decision p. 51

b. Findings satisfying" the impact minimizaiion criterion of Policy #5 are made for actions involving dredge, fill or other significant temporary reduction or degradation of estuarine values.

This criterion bas been satisfied by the applicant's record submittals consisting of the letters from Randy Miller of Pacific Connector dated May 17, 2010 (describing how the application is consistent with all applicable aquatic management unit purpose statements) and of June 9, 2010 (identifying the state and federal environmental permits required for the aquatic portions of the project and the relationship with applicable CBEMP standards, and providing his professional opinion that it is feasible for Pacific Connector to obtain the necessary state and federal permits). Specifically, Randy Miller's June 9, 2010 letter describes the need for the PCGP project to obtain permits from the Oregon Department of State Lands (DSL) acting under the Oregon Removal-Fill Law (ORS 196. 800 et seq.) and the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). By cross reference, CBEMP Policy #5 (Estuarine Fill and Removal), at Section l.d contains the relevant criterion that: "adverse impacts are minimized". Mr. Miller's letter, at pages 3-4, specifically states that: "The Corps will also evaluate the proposal under the 404(b)(1) Guidelines (Guidelines) whlch require, among other things, a stringent evaluation of alternative, impact avoidance and mitigation"(emphasis added). Further, the Corps cannot issue a permit under Section 404 without issuance of a water quality certificate by the Oregon Department of Environmental Quality (DEQ) under Section 401 of the CWA. Mr. Miller's letter also points out that the project will require a pennit from the DEQ for a certification under Section 401 of the CWA and for a 1200-C (NPDES) permit under Section 402 of the CWA.

In summary, compliance with CBEMP Policy #5.l.d will be satisfied by the issuance of Pacific Connector's required permits from the Corps, DSL and DEQ, the review criteria of which are coincidental with the approval criteria of Policy #5 as outlined above, thereby being consistent with the review criterion of Policy

#5a.II.b.

Original route decision pp. 58-59. See also page 77 ("Any inwater work would comply with turbidity standards as administered under the DEQ Section 401 Clean Water Act certification program").

Yet, the pipeline alignment subject to this permit since 2010 is not the alignment approved by FERC in March 2020. See composite Exhibit 104. The alignment approved by FERC does not cross Hayes Inlet to reach the North Spit; it crosses the Bay starting at Kentuck Slough. See Ordinance No. 19-01-002PL ("HDD alternative route decision"). The HDD alternative route decision also requires PCGP to obtain state permits:

> 4. Applicant shall obtain and comply with any and all necessary state and federal permits associated with the proposed improvements, including required permits from USACE, DSL, and DEQ, among others.

HDD alternative route decision p. 160. And it also relies upon PCGP's requirement to obtain state permits to satisfy applicable criteria (compliance with management directive for the 7-d zone for instance) and was dependent upon the state consenting to PCGP's application to the county because the proposal would require and there was pending PCGP's proprietary application to use state lands for its pipeline. See HDD alternative route decision pp. 16, 85, 86, 159.

And further yet, there are numerous landowners that are subject to this permit that are not on that FERC approved alingnment, including, among others, Mr. and Mrs. Blomquists who are participating in this proceeding. Those landowners are and will continue to be subject to moral and legal obligation to disclose this permit as a governmental designation affecting their property in sales proceedings if the extension is granted. See ORS 105.464.

Evolution of PCGP's Attempt to Obtain State Permits

DEQ denied PCGP's 401 permit in May 2019. See attached composite Exhibit 105 p. 1-4. PCGP has not reapplied. Instead, despite its representations to the county that it would obtain the 401 permit from the state, PCGP is now invoking the law and litigating against the state to avoid getting the 401 permit from the state. Exhibit 105 p. 77-80.

In January 2020, PCGP withdrew its application for a state fill and removal permit from the Division of State Lands (DSL) and for the authority to obtain proprietary rights to use state land for its projects. See attached Exhibit 106. Prior to the withdrawl, the state had prepared a draft denial response to the permit and PCGP has not reapplied. See attached Ex. 107.

In February 2020, the Department of Land Conservation and Development Commission (DLCD) denied PCGP's Coastal Zone Management Act (CZMA) certification. See Ex. 105.

PCGP further argued to FERC that FERC still had authority to issue a FERC permit regardless of the state's denial because PCGP could avoid obtaining the state's certification if PCGP could obtain an override from the Department of Commerce. Ex. 105 p. 63. PCGP has not reapplied and instead on March 19, 2020, PCGP invoked the law to avoid obtaining the state's certification that the project complies with the CZMA seeking the override. See Exhibit 105 p. 68.

Yet PCGP's application states:

> Further, the delay in obtaining FERC approval of an alignment for the Pipeline has caused other agencies to also delay their review and decision on Pipeline-related permits. The Pipeline is a complex project that requires dozens of major federal, state, and local permits, approvals, and consultations needed before Applicant and the developer of the related Jordan Cove Energy Project can begin construction. See permit list in Exhibit 6 hereto.

Application narrative p. 4. Exhibit 6 includes the DEQ 401 permit, the DLCD CZMA certification and the DLS fill and removal and proprietary permits.

Evolution of the Relevant Substantive Criteria for Extension

In 2015 the county amended its code and adopted LDO 5.11.100 to 5.11.300 (Geologic Hazards).Comprehensive Plan Vol 1, Part 1, 5.11 & Part 2, 3.9 Natural Hazard Maps, amended by County File AM-15-03 and County File AM-15-04 (Ord. 15-05-005PL, dated July 30, 2015, which had a delayed effective date of July 30, 2016 and was again delayed until July 30, 2017).

In 2017 the county amended its code and adopted LDO 4.11.125, (Special Development Considerations); LDO 5.11.300(1)(Geologic Assessments), County File AM 16-01 (Ord. 17-04-004PL) dated May 2, 2017, effective July 31, 2017.

In 2018, the county adopted amendments to its code in Ord 18-09-009PL which adopted among other things, subsections 7 and 8 of LDO 4.11.252 (purportedly unintentionally omitted from the ordinance adopting the last update) and which are not published in the codification accessible on line.

In 2019, the county adopted amendments to its code in Ord 19-12-010PL (December 18, 2019) which revised LDO 5.11 and adopted LDO 4.11.150 -155, edited other sections of chapter 4.11 and appears to have adopted what also does not appear to be published in the on-line code: 1) chapter 3.9 adopting a flood hazard study; 2) section 3.9.200 regarding criteria related to landslides and earthquakes and landslide and earthquake reports; 3) section 3.9.300 regarding tsunamis; 4) 3.9.400 regarding tsunami evacuation facilities plan; 5) section 3.9.500 regarding erosion; 6) 3.9.700 regarding wildfire. It also vacated the legacy clause excluding hazards review for prior approved permits. And, the provisions, or many of them, apply to "new development" or "other development" including excavation; not merely "structures."

Relevant Timeline of Events

4.2.19	Start of the 2019-6th-extension period approved in File No. Ap 19-004
5.6.19	Department of Environmental Quality (DEQ) Denied PCGP' 401 Permit.
12.18.19	County Adopts Code Amendments pursuant to Ord 19-12-010 Adopting Hazard and revoked the legacy vesting for extended permits clause
1.24.20	DSL permits withdrawn per correspondence from JCEP (via acknowledgment correspondence from DSL)
2.19.20	DLCD's objection to CZMA certification
2.24.20	JCEP Letter to FERC saying arguing that FERC can issue without DLCD CZMA certification
3.19.20	NOAA Dept of Commerce - PCGP Notice of CZMA objection override appeal
3.30.20	PCGP's Application to county for 7th, the 2020, extension filed
4.2.20	End of 2019 Extension
9.4.20	Staff Report Issued on the 7th extension application
9.24.20	Corrected Notice of Decision published granting the 7th extension

Argument

The Decision Should be Reversed and Remanded to the Planning Department for it to Apply the Correct Criteria

Appellant-opponents have demonstrated that the county has not adopted a version of LDO 5.2.600 as quoted in the staff report. See the discussion above and exhibits 101-103. Staff should be required to apply the criteria adopted by the BOC.

The Decision should be Reversed Because it fails to identify an appropriate basis for finding that PCGP has stated reasons that prevented it from beginning development and it fails to identify an appropriate basis for finding that PCGP was unable to begin development for reasons PCGP was not responsible

PCGP application states that it requires state permits identified in Exhibit 6 and that

"delay in obtaining FERC approval" caused delay in getting those permits. But as the evidence submitted herewith and discussed above makes clear, PCGP no longer intends to obtain those state permits. PCGP is litigating against the State of Oregon to avoid the state's authority to regulate PCGP's use of and impacts to the waters, shorelines and coast of Oregon. The county must demand that PCGP cease making misrepresentations about its intent to obtain the state permits, its intent to avoid impacts to Coos Bay and its coastal range watersheds, its intent to satisfy policy 5 of the CBEMP and its intent to be a good neighbor to the citizens of Coos County and the State.

The staff decision's finding that PCGP was prevented from developing "is that [PCGP] required additional state and federal permitting to be completed" is irrational as it relates to the reference to state permits and the mistake would not have been made, perhaps, if PCGP had not misrepresented its position regarding the state permits.

Moreover, the 2018 adopted criteria specifically states that it is prima facia evidence of a valid reason for an extension if an applicant demonstrates it "has requested other permits." Exhibit 101. This means that if the applicant has not requested other permits that fact is evidence that it is not attempting to satisfy the conditions of approval and is causing the reason for the delay. The county's attempt to now avoid this policy because PCGP has no intention of obtaining those permits is legal error and again demonstrates the county's pattern and practice of ignoring the law to benefit PCGP.

The staff decision is correct, however, when it says the state permits are necessary to comply with the county's imposed conditions of approval: "[Obtaining additional state and federal permitting] is necessary to comply with the conditions of approval placed on the application by the County and to comply with federal law." Staff Report p.3. And this is why it the county must stop extending this permit. The conditions stated above require PCGP to obtain permits from the state. Given the record, the conditions leave no room for PCGP to force/persuade the county to approve a legal override for a state permit. There is no way PCGP will satisfy the condition and thus, extending the permit is futile.

Moreover, extending the permit continues the harm the permit imposes on all landowners, because it is futile; but also, in particular, it harms those landowners not on the FERC approved route. Appellate-opponents are community organizations that have and continue to devote resource to amplify the voices of the impacted landowners and like the Blomquists, they demand that the decision be remanded back to staff to exclude from the extended validity of this permit all landowners not on the FERC approved route. Failure to do so will continue to damage their ability to fully enjoy every stick in the bundle of their real property rights.

The Relevant Criteria has Changed and the Criteria Does not Provide Discretion to the County to ignore that.

Despite the staff decision's attempted alteration of the relevant criteria to suggest that the county has discretion to ignore changes in applicable criteria, the criteria does not allow that. It

is clearly intended to disallow extensions when, if a new application was filed at the time of the permit extension request, the substantive criteria applicable to such new application would be different (and at least more exacting) than when the application was filed.

If the application for PCGP's original alignment was filed today, the hazard zone requirements the county has adopted since 2015 would apply because the legacy clause has been revoked. The October 2018 amendment would require an analysis and flood plain permit; it states, in part:

> SECTION 4.11.252 SPECIFIC STANDARDS
> This was overlooked and unintentionally omitted from the ordinance in the last floodplain update.
> (7) Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, road and driveway maintenance, landscaping, gardening and similar uses which are excluded from definition because it is the County's determination that such uses a affect potential water surface elevations or increase the level of insurable damages.
> Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:
>
> a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or,
> b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway

Moreover, even the 2019 amendment imposes susbstantive conditions that require a denial of the extension, including these, among others:

> *b. Landslides and Earthquakes*
> *Landslides: Coos County shall promote protection to life and property in areas potentially subject to landslides. New development or substantial improvements proposed in such areas shall be subject to geologic assessment review in accordance with section 4.11.150. Potential landslide areas subject to geologic assessment review shall include all lands partially or completely within "very high" landslide susceptibility areas as mapped in DOGAMI Open File Report 0-16-02, "Landslide susceptibility map of Oregon."*

f. Wildfires: Coos County shall promote protection of ***life and*** property from risks associated with wildfires. ***New development or substantial improvements shall, at a minimum, meet the following standards, on parcels designated or partially designated as "High" or "Moderate" risk on the Oregon Department of Forestry 2013 Fire Threat Index Map for Coos County or as designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map:*** ...

LDO 4.11.132.

1. Except for activities identified in Subsection 2 of this section, as exempt, any new development or substantial improvement in an area subject to the provisions of this section shall require a Geologic Assessment Review.

2. The following development activities are exempt from the requirement for a Geologic Assessment Review:

***

b. An excavation and/or fill which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

* * *

C. DEVELOPMENT STANDARDS FOR USES SUBJECT TO GEOLOGIC ASSESSMENT REVIEW

In addition to the conditions, requirements and limitations imposed by a required engineering geologic report, all uses subject to a geologic assessment review shall conform to the following requirements:

1. Historical, Cultural, and Archaeological Resources: All activities and uses subject to Geologic Assessment Reviews proposed for areas of historical, cultural, or archaeologically sensitive areas, as identified on the Coos County Comprehensive Plan Map, shall require consultation with the appropriate local Tribe prior to the commencement of any and all ground disturbing activity. Proof of this consultation shal l be provided as a part of application submission.

LDO 4.11.155. Clearly the applicable criteria for the underlying decision has changed.

While LDO 5.2.600 attempts to avoid the application of natural hazard safeguards (which remains an astounding policy - putting PCGP's interest over the safety of the community), by stating that amendments to areas subject to natural hazards "do not void the original authorization [because] they do not determine if a use can or cannot be sited ...," this exemption must be interpreted and applied consistently with the state rule it impelements, OAR 660-033-0140. Not only does this provision directly contradict the rule, it directly contradicts LDO 5.2.600.2.c which states that additional extensions are authorized only when the applicable criteria has not changed. That subsection says nothing about "voiding a permit" it says

extensions are not allowed. Moreover, the purported exemption conflicts with the text and context of the LDO as there are numerous hazard provisions which state that a permit may be denied if the criteria is not met.

Section 4.11.214 states:

> **SECTION 4.11.214 METHODS OF REDUCING FLOOD LOSSES**
> In order to accomplish its purposes, this ordinance includes methods and provisions for:
> 1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

See also Section LDO 4.11.252.7 set out above and LDO 4.11.155.A.1. In addition, there are numerous uses that are prohibited in tsunami zones also making the exemption patently and facially invalid. See LDO 4.11.270. So alternatively, to be consistent with the rule and the LUDO, the purported exemption could only apply to new criteria which could in no way be grounds for a discretionary denial or substantially change the project.

Finally, the exemption does not apply to historical and cultural requirements of the newly enacted LDO 4.11.155 because it only applied to "natural hazards."

For these reasons the extension should be denied. Alternatively, and at minimum, the decision should be remanded for the planning director to identify the criteria that has changed and make legal conclusions about why the criteria could not be the basis for a discretionary denial or substantially change the project.

Finally, given these issues, appellant-opponents move for a preliminary determination that the application is not complete and remand the decision back to the county. To proceed, allowing PCGP to attempt to address these issues during an open record period will improperly impact the opponents ability to present their arguments.

Conclusion

For the above stated reasons, the director's grant of the permit extension should be reversed and the extension denied. Alternatively, the matter should be returned to the planning director for further proceedings.

/s/ Tonia Moro
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