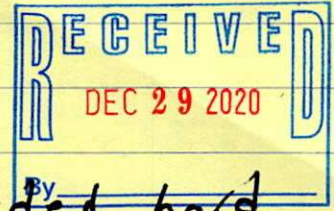


17 ~~August~~ December
2020



- Dear Planning Director Rolf
- As required, please find included ~~hard~~ copies of my comments regarding Appeal AP-20-001 of Extension EXT 20-005
- I have also provided paper copies of all attachments referenced in my comments that were not previously submitted to your office by the applicant or did not originate in your office.
- Given that your office is already in possession of the documents I have cited as Attachments #'s 1, 2, 3, & 5 I can find no relevance to providing you with copies of documents that originated in your office or were submitted to your office by the applicant

Sincerely,

Michael Graybill

63940 Fossil Point Road
Coos Bay OR 97420

Exhibit 25
Date: 12/30/20

Comments of Michael Graybill Regarding

Coos County File Number: Appeal AP-20-001 of Extension EXT-20-005

Submitted via email on 17 December 2020

Introduction

On February 12, 2010, the Coos County planning office confirmed receipt of a conditional use permit application from the Pacific Connector Pipeline L.P. (henceforth the applicant, PCGP or Pacific Connector) (see MRG Attachment #1 PCGP initial application 12 February 2010). PCGP's "Narrative in support of Consolidated Land Use Applications" submitted to the County on 14 April 2010 sought authorization to construct 49.72-mile-long segment of the Pacific Connector pipeline and related facilities in Coos County (see PDF Page 5 in MRG Attachment #2 PCGP Narrative submitted 14 April 2010). On September 8, 2010, the Coos County Board of Commissioners adopted and signed Final Order No. 10-08-045PL approving the applicant's request for a conditional use permit. The proposed work described in the original application and the orders as approved, appealed, and amended are the subject of my comments and to my understanding are also the subject of Coos County appeal AP-20-001 of Extension EXT-20-005 (See MRG Attachment #3 Notice of Public Hearings on Appeal).

The comments that follow are my own and have been submitted for consideration by the hearings body during the hearing to be held by Coos County on 18 December 2020 regarding the appeal of the applicant's most recent request for an extension of the Conditional Use Permit authorization period granted by Coos County. The evidence provided in the comments that follow should compel Coos County to deny Pacific Connector Pipeline Company's request for yet another extension of the authorization period of the land use approvals initially granted by Coos County Final order 10-08-045PL plus any subsequent actions by the County related to the proposed work described in the aforementioned initial application.

Coos County should deny the applicant's extension request for the following reasons:

1. The "reasons" given by the applicant as justification for its request to extend the approval period of the Conditional Use Permit granted by Coos County fail to satisfy the requirements of ORS 215.416 (2) a. iii.

a. A key stipulation of the Conditional Use authorization granted by Coos County placed a requirement on the applicant to obtain all state and federal approvals necessary to initiate pipeline construction during the approval period. The applicant failed to apply for all the requisite permits during the initial approval period and has also failed to take action to apply for and secure requisite permits during multiple subsequent extension periods that have followed the initial authorization. The applicant has been granted a running series of extensions by Coos County up to and including the present extension request. In the present extension request, the applicant's stated "reasons" that prevented the applicant from beginning or continuing development during the fifth extension period granted under Coos County approved in response to EXT-20-001 were essentially the same as the reasons given during prior extension requests.

The Coos County planning staff report for this hearing

(<http://www.co.coos.or.us/Portals/0/Planning/2020/Appeal/AP-20-001/AP-20-001Staffreport.pdf?ver=2020-11-24-180400-110> pg.1) describes the reason for the applicant's current extension request as follows:

"The applicant stated the reason for the extension was for additional time to obtain necessary state and federal permits for the interstate natural gas pipeline that is the subject of this County approval. These state and federal permits are prerequisites to construction of the pipeline".

It should be beyond dispute that submission of a permit application is an action necessary to initiate an action by a regulatory agency, and the submission of an application is an essential first step needed to initiate agency review, and possible issuance of a requested permit. The record of actions taken by PCGP to submit applications needed to obtain all necessary state and federal approvals as required in the Conditional Use Permit demonstrates that the applicant has failed to even apply for certain state and federal permits necessary to initiate construction. Given the facts that Coos County has already granted the applicant nearly 10 years to apply for, and secure all state and federal permits, and also given the fact that during this extensive time period, the applicant has failed to take steps that would demonstrate the applicant's intent to secure permits for the work covered by the authorization granted, the "reasons" provided in the current extension request must be reasonably considered to misrepresent the applicant's resolve to secure the requisite permits during the initial approval period, or during any of the time that has elapsed during subsequent extensions of the approval period. The applicant is simply sitting on this conditional use permit authorization, even with multiple actions to extend the authorization period by the county. The evidence, including actions taken by the applicant and the failure of the applicant to undertake necessary action indicates that even though the county has granted the applicant a period of nearly 10 years to initiate and undertake the work approved by the county, the applicant has failed to even apply for the relevant permits stipulated in the Conditional Use authorization granted by Coos County.

The Coos County planning staff report for this hearing

(<http://www.co.coos.or.us/Portals/0/Planning/2020/Appeal/AP-20-001/AP-20-001Staffreport.pdf?ver=2020-11-24-180400-110> pg.1) characterizes the reason for the applicant's current extension request as follows:

"The applicant stated the reason for the extension was for additional time to obtain necessary state and federal permits for the interstate natural gas pipeline that is the subject of this County approval. These state and federal permits are prerequisites to construction of the pipeline".

The initial Conditional Use Authorization granted by the Board of Commissioners was approved over 10 years ago (See Final Order No. 10-08-045PL adopted and signed by the Board of Commissioners on September 8, 2010). The applicant has had 10 years to apply for the prerequisite state and federal permits referenced in the conditional use order granted by Coos County. The applicant has failed to even apply for several permits from the state and federal agencies that are necessary prerequisites to construction of the pipeline. Conversely, during the current authorized extension period granted by the county, the applicant has actually taken action to withdraw a previously submitted state permit

application that *is* an essential prerequisite to construction of the pipeline that is the subject of this extension request (See MRG Attachment #4 DSL withdrawal letter dated 23 January 2020).

The applicant has repeatedly failed to provide evidence that it is pursuing, or intends to pursue, all the prerequisite permits from state and federal agencies required for construction of the pipeline that is the subject of this extension request. A more reasonable interpretation of the applicant's inaction during the decade following approval by Coos County is that instead of pursuing all the requisite authorizations, the applicant has put plans for the project on hold and is simply seeking authorization from the County and other jurisdictions to repeatedly extend any of the authorizations that it has secured thus far until such time that the applicant chooses to revive any effort to pursue the project, and secure any additional state and federal permits that are prerequisites to construction of the pipeline. The applicant is requesting an extension without demonstrating a reason sufficient to satisfy the requirements of ORS 215.416 (2) a. iii.

Because the applicant has failed to provide evidence that it applied for or is actively working to secure all of the appropriate state and federal permits during the initial approval period or any of the subsequent extensions of the initial Conditional Use approval periods, the "reasons" cited for the extension request fail to satisfy the requisite qualifying criteria of ORS 215.416 (2) a. iii. Coos county should deny the applicant's request for because the applicant has failed to meet this statutory qualifying criterion for an extension.

2. ORS 215.416 (2) a. iv. states as follows:

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

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." (emphasis added)

An assertion by the applicant, or a finding by Coos County, that applicant is pursuing all the prerequisite authorizations from state and federal agencies and is likely to secure those authorizations within the extension period being sought from the county is unsupported by the evidence. The applicant has failed to provide evidence to demonstrate that, in the ten-year period leading up to the current extension request, it has even initiated attempts to secure all the necessary state and federal permits. I have personally made inquiries to the Oregon Department of Environmental Quality (DEQ) and the Oregon Department of State Lands (DSL) and those agencies have confirmed that as of the beginning of December 2020, the applicant has no active permit applications on file with any Oregon state agency even though multiple permits are required from these and other state agencies as prerequisites to the construction of the pipeline. DSL and DEQ have confirmed that in some cases, they have yet to receive applications from the Jordan Cove or PCGP for authorizations administered by those agencies and that are required before construction of a project can commence.

In fact, during the most recent approval period, the applicant took action to *withdraw* a permit it had previously submitted to the Oregon Department of State lands. (See Department of State Lands Permit 60697 received 07 November 2018). The intentional withdrawal of its pending permit application from

further review by DSL is an action that was within the control of the applicant. the applicant's action to withdraw a permit application erodes the defensibility of a finding by the county that "the reasons the applicant was unable to begin or continue development during the approval period" were "for reasons for which the applicant was not responsible" The application for a state removal fill permit was withdrawn by an action of the applicant on January 24, 2020

<https://www.oregon.gov/dsl/Documents/DSLwithdrawalletter1-23-20.pdf>. Withdrawal of an application is an action directly under the control of the applicant and represents an action taken by the applicant responsible for the delay. During the months of the current approval period granted by Coos County that followed the applicant's action to withdraw this requisite state permit, the applicant failed to resubmit a DSL fill and removal permit application. PGCP has no active application is pending with DSL or any other state agency as of this writing.

Coos County has, through multiple prior extensions of the approval period, provided over ten years for this applicant to apply for and secure all the requisite suite of state and federal authorizations. Yet this applicant has failed to even apply for more than one of the requisite state or federal permits required for pipeline construction during that period. A conclusion or a finding by the county "that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible" as stated in ORS 215.416 (2.) a. vii. is not supported by the facts or the actions that were and were not taken by the applicant during the current approval period. The evidence supports a finding that the applicant has not applied for all the requisite permits in the 10 year period that the county has granted for the applicant to do so. Instead, the facts related to the sustained inaction of the applicant to apply for one or more of the permits required for construction of the pipeline as well as the actions of the applicant to withdrawal other permits under review are actions that are directly within the control of the applicant. It is reasonable for Coos County to use this evidence to support a finding that actions taken by the applicant as well as the applicant's failure to take actions that *are* under its control are central reasons why the applicant has not secured the requisite permits and why the applicant has requested yet another extension of the permit period granted by Coos County.

Submission of a permit application to a regulatory agency is a triggering action that must be initiated by any applicant seeking authorization from a state or federal agency. Submission of a permit application is an action under the control of the applicant. Even though the County has given this applicant 10 years to apply for permits needed to initiate construction of the pipeline that is the subject of this extension request, this applicant has not done so. The applicant's assertion or a finding that the applicant's failure to apply for requisite permits during the approval period cannot reasonably be characterized as a reason "for which the applicant was not responsible". Such a finding is simply not supported by the facts. It is misrepresentation or mistruth to find that applicant's withdrawal of a pending permit application or its failure to apply for state and federal permits necessary to initiate construction of the pipeline are reasons for which the applicant was not responsible.

Because the applicant has failed to provide evidence that it has initiated or intends to secure all appropriate state and federal permits as required by the authorization granted by the county during the requested approval period and, because the applicant's failure to apply for a requisite permit during the current approval period cannot be classified as a reason for which the applicant was not responsible,

Coos County cannot find that the applicants "reasons" satisfy the requisite qualifying criteria for granting an extension of the applicant's approval period under ORS 215.416 (2) a. iv. Coos County should deny the applicant's request for the reason that the applicant has failed to meet the qualifying criteria for an extension under ORS 215.416 (2) a. iv. .

3. The decision to grant an extension of the approval period of a Conditional Use Permit is discretionary. Coos County should find that the applicant's failure to act during previous extensions of the permit approval have exceeded the reasonable time granted to the applicant and action to grant yet another extension request from the applicant is no longer defensible or justifiable or likely to result in the construction of a pipeline during the allotted time period of the extension request. The county should exercise the discretion granted under ORS 215.416 subsection (2) and deny the applicants request for an extension.

In the time that has elapsed since the applicant's initial request was filed in 2010, the applicant has demonstrated a longstanding record of inaction. The applicant has not acted in good faith even though the County has provided multiple opportunities for the applicant to initiate actions leading to the construction of the pipeline.

Coos County has stated that ORS 215.416 (2) a. is the applicable statute related to the applicants request for an extension. The above cited statute states as follows:

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

I have provided evidence herein that the applicant's extension request cannot be granted because neither the applicant or the county can demonstrate that the qualifying criteria of ORS 215.416 (2) a. iii and iv have been met. However, even if the county finds that all four of the criteria outlined under ORS 215,416 (2) a. have been met, the decision to grant or deny an extension request is still subject to the discretion of the granting authority. Inclusion of the term "may" in subsection (2) of ORS 215.416 is a clear indication that an action to extend the approval period is not a requirement even in cases where the relevant statutory approval criteria have been satisfied. In this case, the applicant has had multiple occasions to take the actions needed to initiate the work authorized by Coos County, but the evidence clearly demonstrates that the applicant has failed to initiate multiple actions needed in order to undertake the work. Further evidence supports a finding that the applicant has no intention to undertake the work as described in the Conditional Use Authorization that is the subject of this hearing.

Because the applicant has repeatedly failed to initiate actions needed to authorize construction of the pipeline and because the county has previously granted multiple extensions of the applicant's approval period during which time the applicant has repeatedly failed to initiate the actions that are clearly needed to be taken in order to begin pipeline construction, Coos County should exercise the discretion given under ORS 215,416 (2) a. and deny the extension request on the grounds that the applicant has failed to initiate required actions during prior extensions of the approval period and has failed to provide evidence to suggest that if yet another extension is granted, the outcome will be any different than any of the other previously granted extensions. This applicant has been granted ample opportunity and time to apply for all the authorizations necessary to carry out the actions authorized by Coos County

under this permit. The accumulated evidence points to the fact that the applicant was premature in submitting a Conditional Use Permit application to Coos County. The record that has accrued during the extended time period granted to the applicant by the county is evidence that applicant is simply stringing the County along and has no intention to build the pipeline as described in the authorization that is the subject of this extension request. Circumstances under the control of the applicant have not changed and now represent nearly a decade of failure to apply for other permits required to initiate construction of the pipeline. The county has bent over backwards to accommodate the wishes of this applicant by issuing numerous extensions. At some point the county should recognize that the available evidence indicates the applicant has had no plan to secure the permits needed to build the pipeline as proposed in the Conditional Use Permit application it submitted in 2010. Instead, the accumulated evidence supports a finding that the applicant is simply attempting to bankroll and sustain whatever legacy of authorizations it has accumulated to date while work on the project has been suspended.

4. Actions by the applicant subsequent to the authorization granted to the applicant by Coos County have demonstrated that the scope of the project that is subject to this extension request has materially changed since the applicant secured initial authorization from the county. The requested extension, if granted, will conditionally authorize a pipeline route that has been supplanted by other routes that traverse other planning units of the county. Aspects of the work described in this Conditional Use Permit granted by Coos County do not appear to be within the scope of the applicant's current plans for the project.

PCGP has never expressed an interest in securing authorization for more than a single pipeline as part of the Jordan Cove Energy Project. Yet the applicant has sought conditional use authorization from the county for not less than three proposed pipeline routes (See page 4 MRG attachment #5 concurrent Land Use application for Pacific Connector Gas Pipeline Early Works Alignment -3.67 miles dated 21 November 2018). If the applicant succeeds in securing all the requisite permits and authorization and the Jordan Cove Energy Project is built only one pipeline following one route will be built. Yet the applicant has sought authorization for more than one pipeline route assuring that several of the routes authorized by the county will not be used.

A mounting body of evidence indicates that the applicant no longer intends to construct portions of the pipeline route crossing the Haynes inlet as described and approved in the current conditional use permit that is the subject of this extension request.

An approximately five-mile-long segment of the pipeline route that is the subject of the present request to extend the approval period proposes a pipeline construction and right of way alignment that crosses a portion of Haynes Inlet in the Coos Estuary. In the 10-year period following being granted a Conditional Use Authorization to construct a pipeline that involves installing the pipeline by trenching across Haynes Inlet, the applicant has never sought nor is it presently seeking any state or federal permit authorizations to install a pipeline across Haynes inlet as requested by the applicant and granted by the Board of the Commissioners. It is notable that during that same 10-year period of inaction by the applicant to pursue permits to construct the Haynes Inlet pipeline alignment, the applicant has instead proposed and applied for multiple city, county, state, and federal authorizations to install a pipeline

crossing under the Coos Estuary via a route entirely different than the Haynes inlet estuary crossing route that is the subject of this permit extension request.

Page 4 of the attachment #5 cited in the previous paragraph includes the following statement from PCGP in its 2018 conditional use permit application to Coos County:

"D. Reason for Alternate Alignment; Summary of Pipeline Installation Methods.

... "Applicant has determined that realigning the Pipeline to avoid crossing Haynes Inlet and utilizing horizontal directional drilling ("HDD") (as opposed to trenching) as a means for crossing Coos Bay will have fewer impacts to the environment than the previously proposed alignment. Accordingly, Applicant's 2017 FERC certificate application identifies this HDD realignment, including the County portion of the Early Works Alignment. The alignment included in this application is consistent with that FERC submittal, which is still pending as of the date of this Application."

The above cited statement by the applicant to Coos County provides strong evidence that the applicant's current intention is to pursue construction of a pipeline route other than the Haynes Inlet pipeline route. If PCGP had an actual intent to carry out its responsibility under the terms of Conditional Use authorization granted by the county that is the subject of this hearing/extension request it is reasonable to expect that applicant should have submitted requests to FERC for authorization to route the pipeline across Haynes Inlet as part of its certificate application to that agency. The applicant has not done so. Instead, the applicant has acted to secure permission from county and state and federal agencies to build a pipeline that follows a route that no longer crosses Haynes Inlet. (See MRG Attachment #6 deviation maps 2015 vs 2017 routes filed by PCGP to FERC September 2017)

Further evidence that the applicant has failed to demonstrate any intent to use the authorization granted by the county to construct a pipeline crossing Haynes Inlet are actions by the applicant to apply for and secure a conditional use authorization from the City of North Bend to construct a pipeline within the administrative boundaries of that city (See MRG attachment #7 Final order authorizing construction of a pipeline within the city of North Bend issued 20 May 2019)

It is of note that the pipeline route that is the subject of the extension request presently before the County does not traverse the municipal boundaries of the city of North Bend. If the intent of the applicant is to construct the Haynes Inlet pipeline crossing route that is the subject of this hearing, there would be no reason for the applicant to secure an authorization to construct a pipeline within the city limits of the City of North Bend because the pipeline route that is the subject of this extension request does not cross the municipal boundary of that city. The action by the applicant to apply for and secure authorization to route a pipeline through the City of North Bend does nothing to support a conclusion by the county that the applicant intends to exercise the authority granted by the county to build a pipeline along the route that is the subject of this extension request. Conversely, or perhaps perversely, the actions taken by PCGP to secure authorization for a pipeline route other than that described in the extension request provides evidence that the intentions of the applicant have changed and those changed intentions no longer include plans to install a pipeline the route of which crosses Haynes Inlet.

The actions by PCGP have all been initiated during the extended period granted to the applicant to carry out its responsibilities to secure all necessary state and federal permits for pipeline construction in the approved route. There is no evidence that the applicant has taken any action to secure permits to construct a pipeline across Haynes Inlet.

Actions taken by the applicant subsequent to securing authorization to build the pipeline as proposed in the initial Conditional Use Permit application reviewed, approved, and amended by Coos County support a finding by the county that the applicant's planned pipeline route and the zoning districts to be impacted by the route which traverses Haynes Inlet is no longer the route being pursued by the applicant. The pipeline route described in the original application submitted to Coos County differs from the route that the applicant is pursuing with other permitting authorities. The County is aware of this as it has received and acted on the route that the applicant is actively seeking permit authority to construct. The County is also aware of the actions of the applicant to secure permits covering the portion of the Coos County Estuary Management Plan that falls within the county and the administrative boundaries of the City of North Bend that are covered by the estuary management plan administered by Coos County.

Actions taken by the applicant subsequent to the authorizations provided by Coos County for the route that includes Haynes inlet (the current request), provide substantial evidence that the applicant no longer intends to install a pipeline across Haynes Inlet as described in the application and approved by Coos County.

Thus, it is reasonable to conclude the county is being asked to extend, yet again, an authorization for a project, the scope of which has changed substantially since the project that is the subject of this extension request was described by the applicant and approved by the county. The applicant has provided no evidence of an intention to construct the Haynes inlet estuary crossing pipeline route during the ten years it has been granted to provide such evidence. Instead, PCGP has actually acted otherwise, demonstrating an intent to build a pipeline across the estuary via a route other than the Haynes Inlet crossing route previously approved by the county.

The actions by the county to approve and repeatedly extend the applicant's authorization to build a pipeline route including a five-mile-long alignment segment that crosses properties and habitats in the vicinity of Haynes inlet has not been without potentially undesirable consequences for the landowners and natural and cultural resources along this route. Yet, over the course of the ten-year period that followed the initial application to the county, the applicant has taken no demonstrable action that might support a finding by the county that the applicant actually intends to install a pipeline along the approved route that is the subject of this extension request. Instead, during that same time period, the applicant has applied for state and federal permits to construct a pipeline having a route that crosses the estuary at a location other than Haynes Inlet.

There appears to be little or no justification to further extend an authorization to conduct work in a portion of the estuary that lacks any indication that it represents the true and actual intent the applicant. The applicant has provided direct evidence to the county (See attachment #5 reference above) stating that the Haynes inlet crossing is no longer a priority for the applicant. Before finding that

another extension request should be granted, the county should make findings based on evidence that the value of extending the approval period yet again outweighs the open ended and likely unnecessary stress to landowners along the pipeline route. The county should find that the stresses, costs, and uncertainties imposed upon landowners along portions of the Kentuck slough pipeline alignment route have been supplanted by another, more desirable route that is now being more actively pursued by the applicant. The county should further find that based on the mounting body of evidence further extending the Conditional Use Authorization period for a permit construct a pipeline across Haynes inlet is highly unlikely to result in the actual construction of the pipeline along that route.

The county should use the discretion of authority granted under ORS 215-416 (2.) a. to deny the requested extension. The applicant has demonstrated, both through actions it has taken and through inaction, that it has shelved its intent to construct a pipeline that includes a Haynes inlet crossing. Extension of the permit yet another time is no longer justified. The county should use this evidence to terminate the authorization it has granted and repeatedly extended.

January 23, 2020

Ms. Vicki Walker
Director, Department of State Lands
77 Summer St, NE
Suite 100
Salem, Oregon 97301

Subject: Withdrawal of Removal/Fill application – 60697-RF

Dear Director Walker:

Pursuant to OAR 141-085 Jordan Cove Energy Project, LP and Pacific Connector Gas Pipeline L.P. are hereby withdrawing the removal fill application filed with the Department of State Lands ("DSL" or the "Department") on November 3, 2017 (60697 -RF) effective January 24, 2020.

We understand that by withdrawing the application we are forfeiting the application fee submitted to the Department.

We appreciate the effort the Department has expended in reviewing our application to date. Should you have any questions or require further information, please let me know.

Regards,



Natalie Eades
Manager, Environment & Regulatory
Jordan Cove Project

MRG Attachment # 4: DSL withdrawal letter
File # AP-20-001 dated 23 January 2020
OF File # EXT-20-005

MRG Attachment #6

File # AP-20-001 of File # EXT-20-005

17 December 2020



**Pacific
Connector**
GAS PIPELINE


Pacific Connector Gas Pipeline, LP

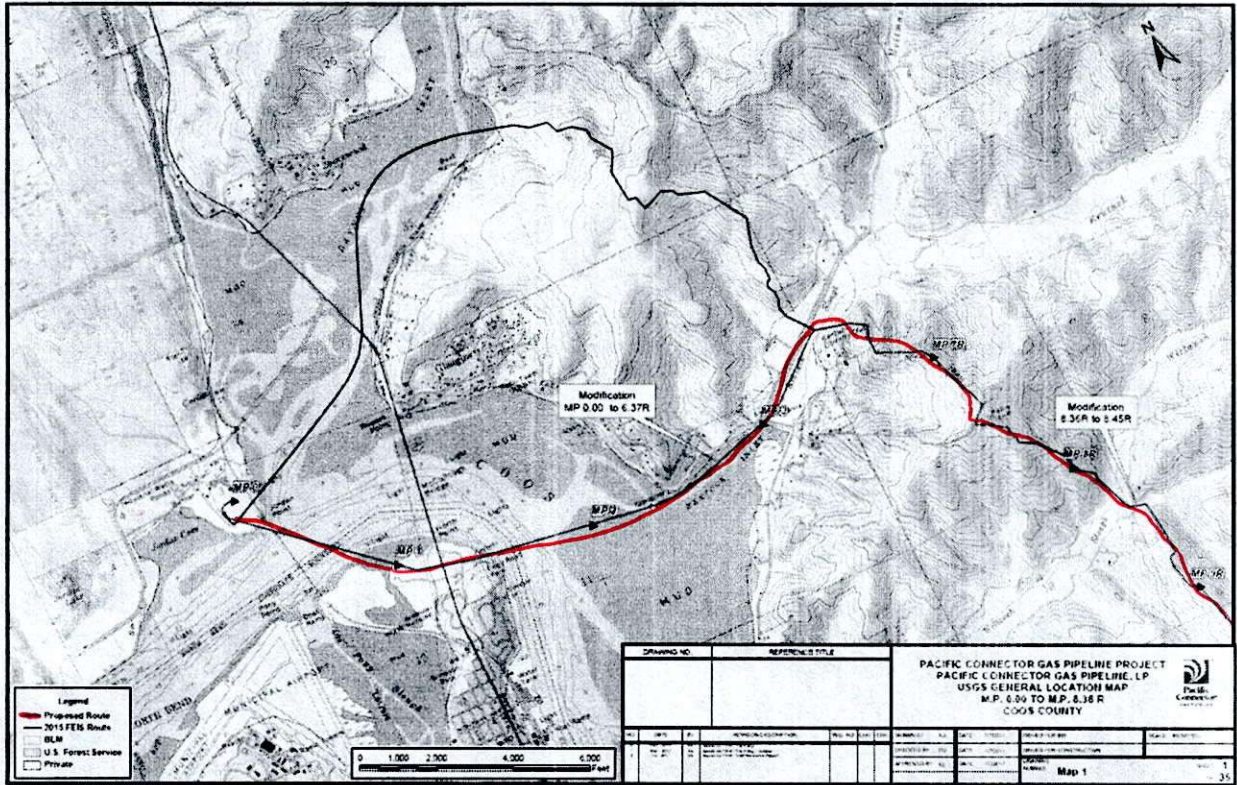
Deviation Maps (2015 vs. 2017 routes)

Pacific Connector Gas Pipeline Project

September 2017

Page 1 of 2

DRAWING NO.		REFERENCE TITLE		PACIFIC CONNECTOR GAS PIPELINE PROJECT PACIFIC CONNECTOR GAS PIPELINE, LP USGS GENERAL LOCATION MAP M.P. 0.00 TO M.P. 8.38 R COOS COUNTY									
NO.	DATE	BY	REVISION DESCRIPTION	W.C. NO.	CHK.	CHK.	DRAWN BY	K.L.	DATE	7/7/2017	ISSUED FOR B.I.D.	SCALE	AS NOTED
1	7/7/2017	EE	Issue for PERM Pre-Drilling				CHECKED BY	DO	DATE	7/7/2017	ISSUED FOR CONSTRUCTION		
2	10/17/2017	EE	Issue for PERM Pre-Drilling Update				APPROVED BY	EE	DATE	7/7/2017			
			Issue for PERM Data Resource Report										
DRAWING NUMBER Map 1											SHEET 1 OF 35		



MRG Attachment # 7
 File # AP-20-001 of
 File # EXT-20-005



BEFORE THE NORTH BEND PLANNING COMMISSION
 STATE OF OREGON, CITY OF NORTH BEND

IN THE MATTER OF PLANNING COMMISSION CASE FILE NOS. FP 2-18 AND CBE 3-18 LOCATED ON PROPERTY KNOWN AS THE NORTH POINT AREA [MAP NO. 25S-13W-10 TAX LOTS 100, 800, AND 1000], THE CITY OF NORTH BEND PLANNING COMMISSION FINDS THE FOLLOWING:)
)
) ORDER
)
)

1. The Planning Commission held a properly noticed public hearing on this matter on March 18, 2019;
2. The Planning Commission asked the City Planner to present a staff report and a proposed final order with findings and recommendations;
3. At the public hearing evidence was presented and the public was given an opportunity to comment;
4. The Planning Commission closed the public hearing and left the record open to allow for the submittal of additional argument, evidence, and testimony;
5. At the Planning Commission's regular scheduled meeting on May 20, 2019, the Commission considered the record and conducted final deliberations on the matter; whereafter,
6. The Commission found that the application proposal, with conditions in all other respects complied substantially with the criteria for approval in Sections 10.12.050 and 18.60.040 and in Chapters 18.04, 18.44, 18.48, 18.88, and 18.92 of the North Bend City Code.

The North Bend Planning Commission approves consolidated land use permits for development in the Floodplain and Coos Bay Estuary (FP 2-18/CBE 3-18) with the following conditions of approval:

CONDITIONS OF APPROVAL:

1. Applicant shall prior to commencing development submit construction plans for the gas pipeline project to the City Building Department.
2. Applicant shall submit pre- and post- elevations taken along the applicable course of "development" that are certified by a professional engineer; this submittal(s) shall be to the City Planning Department for the record.
3. Applicant shall obtain and maintain compliance with all other necessary federal, state, and local permits required for the gas pipeline project; applicant shall provide copy of all required permits to the City Planning Department prior to start of development.
4. Applicant shall uphold and comply with the referenced Memorandum of Agreement between: Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline, J.P. and The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians including attachments, and any amendments thereto.

Handwritten notes in the top right corner of the page, including a circled number '5' and several lines of illegible text.

5. Applicant shall submit to the City Planning and Building Departments a copy of the final Erosion Control and Revegetation Plan approved for this gas pipeline project and shall maintain compliance with this plan.
6. Applicant shall install a concrete pad over the pipeline as described in Memorandum from Jimmy Bernabe, PCGP Project Manager, dated April 17, 2019 (see, Exhibit 13 of Attachment X) so as to not preclude future development possibilities as those are contemplated in the North Point Area Master Plan; applicant shall submit to the City Public Works Department copy of the final certified as-built plans and specifications including but not limited to design loading and section details for the concrete pad.

IT IS HEREBY ORDERED THAT the North Bend Planning Commission approves with conditions the requested floodplain development and estuary permits to allow a subsurface interstate natural gas pipeline use based on the information presented in the Application including additional argument, evidence, and testimony presented during the open record period and in the Staff Report and Findings of Fact below:

In the following, any text quoted directly from City code appears in *italics*; staff findings appear in regular typeface.

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CHAPTER 18.44 NBCC HEAVY INDUSTRIAL ZONE M-H

NBCC 18.44.010 USES PERMITTED OUTHRIGHT.

In an M-H zone, the following uses and their accessory uses are permitted outright:

- (1) *A use permitted outright in an M-L zone.*

FINDINGS: The proposal is to locate a gas pipeline in the M-H Zone. A use permitted outright in the M-L Zone is permitted outright in the M-H Zone. Uses permitted outright in the M-L Zone include "utility operations and facilities". Utility operations and facilities use is not defined in NBCC. A reasonable definition of the proposed use is provided in the Coos Bay Estuary Management Plan wherein a gas line is defined as a low-intensity utility. Because the proposed use is reasonably defined as a utility and because utility operations and facilities is an allowed use in the M-H Zone, the proposed subsurface interstate natural gas pipeline is a use allowed outright in the M-H Zone. The 1. The applicant proposes a condition of approval requiring that the applicant file a construction plan with the City before commencing development; staff finds this to be in favor of the City. As condition of approval applicant shall submit to the City Building Department construction plans for the pipeline project prior to commencing development. The criterion set forth in NBCC 18.44.010 is met subject to applicant's submittal of construction plans for the pipeline project to the City Building Department prior to commencing development.

CHAPTER 18.48 NBCC FLOODPLAIN ZONE F-P

NBCC 18.48.040 DEVELOPMENT PERMITS.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established by this chapter. The permit shall be for all structures including manufactured homes and for all development including fill and other activities described in the definitions of this chapter. Application for a development permit shall be made on forms furnished by the Planning Department and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, and drainage facilities. Specifically, the following information is required:

- (1) *Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;*
- (2) *Elevation in relation to mean sea level of flood proofing in any structure;*
- (3) *Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in NBCC 18.48.090; and*
- (4) *Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.*

FINDINGS: The proposal is to locate a gas pipeline in the Floodplain Zone F-P, identified as Special Flood Hazard Area (SFHA) by the Federal Emergency Management Agency (FEMA) on the following effective Flood Insurance Rate Maps (FIRM) for North Bend, Map Nos. 41011C0186E revised March 17, 2014 and 41011C0187F revised December 7, 2018. All development in this zone must obtain a floodplain development permit. Pursuant to NBCC 18.48.020(9), "(d)development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard. Because the proposal involves, at a minimum, excavation and grading, it is considered "development" for purposes of Chapter 18.48 NBCC and is subject to the standards set forth therein. This application is for floodplain development approval and is supported with a certified analysis of the floodplain requirements completed by a professional engineer. As condition of approval, the applicant shall submit to the City Planning Department pre- and post-elevations that are taken along the applicable course of "development" and certified by a professional engineer. The criterion set forth in NBCC 18.48.040 is met subject to applicant's submittal of pre- and post-elevations taken along the applicable course of "development" and certified by a professional

engineer; this submittal(s) shall be to the City Planning Department for the record.

NBCC 18.48.050 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR.

The city planner shall administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. Duties shall include, but not be limited to:

- (1) Make interpretations, where needed, as to location of the boundaries of the areas of special flood hazards.
- (2) Review all development permits to determine that the permit requirements and conditions of this chapter have been satisfied.
- (3) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
- (4) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of NBCC 18.48.130(1) are met.
- (5) Notify adjacent communities, the Department of Land Conservation and Development and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration as required in NBCC 18.48.050(6).
- (6) Notify FEMA within six months of project completion when an applicant had obtained a Conditional Letter of Map Revision (CLOMR) from FEMA, or when development altered a watercourse, modified floodplain boundaries, or modified base flood elevations. This notification shall be provided as a Letter of Map Revision (LOMR). (a) The property owner shall be responsible for preparing technical data to support the LOMR application and paying any processing or application fees to FEMA. (b) The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgment Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable state and federal laws.
- (7) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (8) Obtain and record the actual elevation in relation to mean sea level of the lowest floor including basements and below-grade crawlspaces of all new or substantially improved structures, and whether or not the structure contains a basement.
- (9) For all new or substantially improved flood proofed structures where base flood elevation data is provided through the FIS and FIRM: (a) Verify and record the actual elevation in relation to mean sea level; and (b) Maintain the flood proofing certifications required in NBCC 18.48.040(3).
- (10) Maintain for public inspection all records pertaining to the provisions of this chapter.

FINDINGS: The proposal is to locate a gas pipeline in the Floodplain Zone F-P, identified as Special Flood Hazard Area (SFHA) by the Federal Emergency Management Agency (FEMA). This project will not alter or relocate a watercourse and does not involve any structure for which elevations must be obtained; albeit, elevations are required for other "development" activities. Prior to granting or denying a floodplain development permit in accordance with Chapter 18.48 NBCC, the City must determine whether or not the proposed development is located in the floodway and, also, ensure that all necessary federal, state, and local permits have been obtained from which prior approval is required. The gas pipeline will not be located in a designated floodway. As condition of approval, the applicant must show that all other required permits have been obtained. The criterion set forth in NBCC 18.48.050 is met subject to issuance of all other necessary federal, state, and local permits required for the gas pipeline; the applicant shall provide copy of all required permits to the City Planning Department prior to start of development.

NBCC 18.48.060 GENERAL STANDARDS AND PROVISIONS.

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

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;

and, soil should be compacted to the surface in developable areas, consistent with likely use; and, that the applicant verify what form(s) of testing is required to verify pipe status and in what situations would additional testing be anticipated. Applicant is strongly encouraged to consider implementing these recommendations.

CONCLUSION: The applicant must submit additional supplemental information to verify final compliance with floodplain, erosion control, and construction and maintenance standards. Applicant is strongly encouraged to consider implementing those recommendations made by staff related to construction and maintenance standards and community recreational and pedestrian use on-site. Otherwise, the applicant has addressed all requirements for approval.

This approval shall become final 12 days from the date this decision and supporting findings of fact are signed by the Chair of the North Bend Planning Commission, below. A Planning Commission decision may be appealed to the City Council within 12 days after the final order has been signed and mailed. An appeal of the City Council decision must be submitted to the Land Use Board of Appeals within 21 days of the City Council decision becoming final.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.

This conditional use permit shall be void after 12 months from the date the decision was final unless the conditional use has been implemented or a building permit has been issued and substantial construction has taken place, except as otherwise provided for in NBCC 18.92.040.

Diana Schab
Diana Schab, Planning Commission Chair

May 20, 2019
Date

ATTEST

Chelsea Schnabel
Chelsea Schnabel, City Planner

May 20, 2019
Date

Notice of activities authorized within an approved wetland conservation plan shall be provided to the Division within five days following local approval.

Failure of the city to provide notice as required by this section will not invalidate city approval.

FINDINGS: The gas pipeline development project involves earthwork activities partially within State defined wetland areas; the project requires land use permits for development in the floodplain and in the estuary. The applicant and owner is aware that the development requires other state and federal permits. Specifically related to wetlands, in DSL Wetlands Delineation 2013-0193, which identifies wetlands on the site. The Division of State Lands (DSL) was notified of these complete land use applications on February 22nd, 2019. DSL has not provided any comments as March 8th, 2019. Applicant is currently coordinating with both state and federal agencies, including DSL, on required permitting; and, applicant is herein further made aware of the presence of wetlands and the need for state and federal permits. The proposal complies with NBCC 18.92.090.

NORTH POINT AREA MASTER PLAN

Introduction

The North Point Area Master Plan (NPAMP) provides a framework for the long-term development of the North Point District, located in North Bend, Oregon. The district represents a large segment of Coos County's undeveloped industrial land and is a prime interior coastal location with the potential for different types of development. This plan considers freight, pedestrian and bicycle access and circulation, development potential and the community vision for the area. The vision was developed through a combination of public engagement and technical analysis, which guided decisions about the type, location and scale of development. Conservation of natural resources also played an important role in the plan's development. (pp 1)

FINDINGS: The NPAMP is a long-range planning document initiated in response to a previous Jordan Cove Energy Project proposal and the result of public input; it is incorporated in the City of North Bend Parks and Recreation Master Plan and in the City of North Bend Transportation System Plan. The NPAMP envisions mixed-use industrial/commercial development with intensive focus on recreational use and pedestrian access and mobility over, across, and around the North Point area. It is important that this project not preclude nor make more difficult future development and recreational use of the North Point area. A permanent 50-foot wide easement centered over the gas pipeline may preclude development or vehicular or pedestrian use over its course. During the open record period, the applicant provided that most safety and security concerns regarding future development of the area would be effectively alleviated with the installation of a 6-inch thick concrete pad of pre-determined width, placed one foot below natural grade and centered over the pipeline. As condition of approval, the applicant shall install a concrete pad over the pipeline as described in Memorandum from Jimmy Bernabe, PCCGP Project Manager, dated April 17, 2019 (see, Exhibit 13 of Attachment X) so as to not preclude future development possibilities as those are contemplated in the North Point Area Master Plan; applicant shall submit to the City Public Works Department copy of the final certified as-built plans and specifications including but not limited to design loading and section details for the concrete pad. Applicant is strongly encouraged to promote community recreational and pedestrian use of the North Point area and should consider the possibility of designating area over the course of the permanent 50-foot easement, or at another more appropriate location on-site, for recreational and pedestrian use.

OUTSIDE AGENCY REQUIREMENT(S) NOT OTHERWISE ADDRESSED

The City Public Works Department recommends: a 5-foot (60-inch) trench depth of cover whenever practical because that depth will facilitate any future installation of utilities at depths of 30-inches to 48-inches as-is typical for development; and, consideration of longer lasting dust control treatments, other than water, such as fabrics or surfactants, due to the constant elevated afternoon wind velocities at this location, and further consider the seed mix and streambank stabilization mitigation methods proposed;

- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (3) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
- (4) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

FINDINGS: The proposal is to locate a gas pipeline in the Floodplain Zone F-P, identified as Special Flood Hazard Area (SFHA). During the open record period, the applicant submitted a report by GeoEngineers that addresses floodplain standards set forth in NBCC 18.48.060. See, Attachment X, Exhibit 7. The report finds that only sections 1 through 3 are applicable in this case, and that sections 4 through 7 are not applicable. Based on the information provided in the application, staff concurs. The report reiterates that the pipeline, made of corrosion protected steel, will be installed below grade with a minimum cover of 3 to 5 feet; and, where the pipeline is installed by conventional trench excavation, the pipeline trench will be backfilled to match existing grades and returned to preconstruction condition. Furthermore, the report provides that pipeline buoyancy, in locations of free or high water table, will be mitigated based on site-specific conditions using a variety of the following methods as determined by the applicant: increased pipe wall thickness, increased pipeline cover depth, concrete weight coating, set-on concrete weights, bolt on weights, articulating concrete mattresses, bag set on weights, or screw anchors. Lateral movement and flood damage will be mitigated by the following techniques: cover depth, additional pipe wall thickness, concrete coating, or screw anchors. Typical practice in streams and rivers is to install pipe at or below the expected scour depth for the design life of the project and/or install reinforced concrete coating as a measure to protect against buoyancy and abrasion. These pipeline installation methods and mitigation measures will avoid and/or minimize flotation, collapse, or lateral movement hazards and flood damage. Because the pipeline will be constructed of flood resistant materials and because construction techniques will be implemented that prevent movement of the pipeline and minimize flood damage, the proposal complies with the general standards and provisions for development in the floodplain. The criterion set forth in NBCC 18.48.060 is met.

NBCC 18.48.090 NONRESIDENTIAL CONSTRUCTION.

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

- (1) Be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the city planner and building official;
- (4) Nonresidential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as described in NBCC 18.48.080(2);
- (5) Applicants flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level. Buildings flood proofed to the base flood level will be rated as one foot

(6) For flood proofed nonresidential buildings, applicants shall supply: (a) A Maintenance Plan for the entire structure to include but not limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all inlets, gates, windows, or components designed to provide flood proofing protection to the structure; all seals or gaskets for inlets, gates, windows, or components; and, the location of all inlets, gates, windows, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure; and (b) An Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.

FINDINGS: The proposal is to locate a gas pipeline in the Floodplain Zone F-1, identified as Special Flood Hazard Area (SFHA). For purposes of floodplain management, the pipeline is not a structure as defined in NBCC 18.48.02(27) because it is not "a walled and roofed building, including a gas or liquid storage tank, that is permanently above ground..." nor is it "a manufactured home." The criterion set forth in NBCC 18.48.090 is not applicable in this case.

NBCC 18.48.140 ZONES WITH BASE FLOOD ELEVATIONS BUT NO REGULATORY FLOODWAY.

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

FINDINGS: The proposal is to locate a gas pipeline in the Floodplain Zone F-1, identified as Special Flood Hazard Area (SFHA). The gas pipeline will be located below surface grade, which is not considered "development," for purposes of floodplain regulation; however, grading of the surface will occur, which is "development" regulated in the floodplain. The applicant submitted a report from GeoEngineers completed by a registered professional engineer that provides the proposal will not result in any increase of the BFE at any point within the community because the pipeline will be installed below grade, whereas the grade will be returned to pre-existing conditions, and because no permanent structures will be placed above existing grade. See, Attachment X, Exhibit 7. The criterion set forth in NBCC 18.48.140 is met.

CHAPTER 18.88 NBCC COOS BAY ESTUARY MANAGEMENT PLAN

NBCC 18.88.030 PERMITS.

In addition to the requirements of this title for the issuance of use permits, such permits shall be issued for uses and activities within the Coos Bay estuary coastal shoreline boundary only after compliance with the following procedures:

- (1) Applications for use permits shall be filed with the North Bend planning director and shall include a description of the proposed use and a site plan, drawn to scale, showing the dimensions and arrangement of the proposed use. The planning director may request additional information as may be necessary to review and act upon the application, and the director shall provide the applicant with a decision based on criteria in the plan and supported by written findings within 15 days after the filing of the application or after the receipt of all requested information.
- (2) Uses and activities designated in the plan as "A" may be allowed subject to administrative review by the planning director for compliance with management objectives and general conditions.
- (3) Uses and activities designated in the plan as "B" may be allowed by the planning director subject to compliance with management objectives, general conditions and any special conditions provided in the plan for such use.
- (4) Uses or activities which will not comply with the Coos Bay estuary management plan except under specific conditions or limitations may be permitted by the planning director subject to such conditions and limitations.

FINDINGS: The proposal is to locate a gas pipeline across land regulated by Coos Bay Estuary

NBCC 18.60.040 NOTICES

At least 20 days' notice of a hearing shall be mailed to the applicant and the owners of record of property on the most recent property tax assessment roll located within 100 feet of the property which is the subject of the notice. The notice shall explain the nature of the application and the proposed use or uses which would be authorized; list the applicable criteria from the code and plan that apply to the application; set forth the street address or other easily understood geographical reference to the property; state the date, time and location of the hearing; state that a failure to raise an issue at the hearing in person or by letter or to provide sufficient specificity to afford an opportunity to respond to an issue precludes appeal on that issue; include the name of the city representative to contact and the telephone number where additional information may be obtained; state that a copy of the application, all documents and evidence relied on by the applicant and applicable criteria are available for inspection at no cost and copies will be provided at reasonable rates; and include a general explanation of the requirements for submission of testimony and the procedure for conduct of the hearing.

FINDINGS: Notice of a public hearing before Planning Commission is required to be mailed to the owners of affected property within 100 feet of the subject property at least 20 days prior to the scheduled public hearing. The scheduled public hearing on this matter is March 18, 2019. The applicant submitted NBCC 18.60.040, was mailed to those affected owners and interested parties on February 22, 2019. The proposal complies with NBCC 18.60.040.

NBCC 18.92.080 LIMITATION AND CONSOLIDATION OF PROCEEDINGS.

Whenever an application is made for a permit provided in this title or any related ordinance of the city of North Bend which is required for a development project, then the applicant may elect to have any and all permits from the city processed at one time, and procedures may be consolidated as permitted by Oregon law and city ordinances. All discretionary land use applications or combination of discretionary land use applications shall be processed and final action taken by the city, including appeals provided in city ordinances, within 120 days after the applications are deemed complete.

FINDINGS: The gas pipeline development project requires land use permits for development in the floodplain and in the estuary. The applicant has elected to have these two permits consolidated. The applications were deemed complete on February 22, 2019 and shall both be processed with final action taken by the City, including appeals, on or before June 22, 2019. The proposal complies with NBCC 18.92.080 when final action is taken on FP 2-18 and CBE 3-18 within 120-days of when the application was deemed complete or when the applicant makes a written request to the City for extension.

NBCC 18.92.090 WETLAND NOTIFICATION PROCEDURES.

(1) The city shall provide notice to the Division of State Lands, the applicant and the owner of record within five working days of the acceptance of any complete application for any of the following activities that are wholly or partially within areas identified as wetlands on the State-Wide Wetlands Inventory: (c) Other development permits and approvals that allow physical alteration of the land including excavation and grading, including permits for removal or fill, or both, or development in floodplains and floodways;

(2) The city may approve an activity described in this section only when a notice statement has been received from the Division of State Lands indicating one of the following: (a) Issuance of a required permit under ORS 196.600 to 196.905 by the Division of State Lands prior to any physical alteration within the wetlands; (b) Notice from the Division of State Lands that no permit is required; (c) Notice from the Division of State Lands that no permit is required and specific proposals to remove, fill or alter the wetlands are submitted. If the Division of State Lands fails to respond to any notice provided within 30 days of notice, the city approval may be issued with written notice to the applicant and owner of record that the proposed action may require state or federal permits. The city may issue local approval for parcels identified as or including wetlands on the State-Wide Wetlands Inventory upon providing to the applicant and the owner of record of the affected parcel a written notice of the possible presence of wetlands and the potential need for state and federal permits and providing the Division of State Lands with a copy of the notification.

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

c. It is important to ensure that development in sensitive beach and dune areas is compatible with, or can be made compatible with, the fragile and hazardous conditions common to beach and dune areas.

III. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977 (see Section 3. Definitions for "development"). Criteria for review of all shore and beachfront protective structures shall provide that:

a. Visual impacts are minimized;

b. Necessary access to the beach is maintained;

c. Negative impacts on adjacent property are minimized; and

d. Long-term or recurring costs to the public are avoided.

IV. Local government shall cooperate with state and federal agencies in regulating the following actions in beach and dune areas by sending notification of Administrative Conditional Use decision:

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

b. The exposure of stable and conditionally stable areas to erosion,

c. Construction of shore structures which modify current or wave patterns leading to beach erosion, and

d. Any other development actions with potential adverse impacts.

FINDINGS: Policy No. 30 applies in CBEMP Units 47-UW and 48-CS. Because the gas pipeline does not cross any areas identified on the Special Considerations Map as "Beach and Dune Areas with Limited Development Suitability" nor does it involve protective beachfront structures, Sections I., II., III., and IV. of this policy do not apply. The proposal is consistent with CBEMP Policy No. 30.

#31 Reserved

FINDINGS: Policy No. 31 applies in CBEMP Units 47-UW and 48-CS; it does not include any provisions for consideration. The proposal is consistent with CBEMP Policy No. 31.

ADDITIONAL STANDARDS CONSIDERED

NBCC 10.12.050 PURPOSE. (ARTICLE II. TRANSPORTATION IMPACT STUDY)

If a proposed development will generate 500 or more daily trip ends, then a transportation impact study (TIS) shall be required. The TIS shall be prepared by a qualified transportation engineer to determine access, circulation and other transportation requirements. The scope of a TIS shall be established by the city engineer. Projects that generate less than 500 daily trip ends may also be required to provide traffic analysis when, in the opinion of the city engineer, a capacity problem and/or safety concern is caused and/or is adversely impacted by the development. The city engineer, at his/her discretion, shall determine the scope of this special analysis. Trip ends shall be defined by the Institute of Transportation Engineers (ITE), Trip Generation Manual, 6th Edition (or subsequent document updates), or trip generation studies of comparable uses prepared by an engineer and approved by the city engineer. Trip ends are trips that either begin or end at the proposed use.

FINDINGS: When a proposed development will generate more than 500 daily trip ends, a Transportation Impact Study (TIS) is required. The application addresses traffic impacts in a technical memorandum regarding the transportation analysis of PCGP activities in North Bend. See, Attachment A, Exhibit 9. Traffic associated with the gas pipeline is expected to occur during construction and post-installation as needed for maintenance. In this memorandum, professional traffic engineers find that the pipeline construction activities can expect to generate no more than 140 trip ends per day and that ongoing pipeline operations can expect to generate no more than one (1) trip end per day. Because the proposed development is expected to generate less than 500 daily trip ends, a TIS is not required. The proposal is consistent with the standards set forth in NBCC 10.12.050.

Management Plan Units 48-CA, 48-CS, 47-UW, and 47-DA. Coos Bay Estuary (CBE) permit review and approval is required to verify compliance with those uses and activities allowed in the respective management units. This application intends to verify compliance with the standards set forth for each of the relevant estuary management units. The criterion set forth in NBCC 18.88.030 is met subject to the standards set forth for Coos Bay Estuary Management Plan Units 48-CA, 48-CS, 47-UW, and 47-DA, addressed below.

UPPER BAY

AQUATIC SEGMENT 47

MANAGEMENT CLASSIFICATION: DA

MANAGEMENT OBJECTIVE:

This aquatic segment shall be managed to allow continuation of and expansion of shallow-draft vessel use and development.

USES:

9. Utilities a. Low-intensity A(allowed)

FINDINGS: The gas pipeline is defined as a low-intensity utility use, which is an allowed use in CBEMP Unit 47-DA. The pipeline segment located in CBEMP Unit 47-DA will be constructed and installed using the HDD method, which will be drilled underneath the estuary; therefore, this segment will not affect the waters of the estuary nor the continuation of and expansion of shallow-draft vessel use and development. The criterion set forth in CBEMP Unit 47-DA is met.

UPPER BAY- NORTH BEND

SHORELAND SEGMENT 47

MANAGEMENT CLASSIFICATION: UW

MANAGEMENT OBJECTIVE:

The immediate shoreline of this segment shall be managed to encourage continuance of water-dependent uses such as the existing off-loading of rock materials barged to the site with non-water-dependent uses only allowed, as per Policy #16a. The immediate shoreline is especially suited to accommodate shallow-draft vessels such as barges, so the shoreline shall be managed so as to not preclude such development. However, the remainder of the site has only marginal suitability for water-dependent development, and hence non-water-dependent related uses shall be allowed back from the immediate shoreline when findings are developed which document that such proposed use would not preclude or interfere with water-dependent development on the immediate shoreline.

USES:

15. Utilities a. Low-intensity A(allowed)

GENERAL CONDITIONS

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

2. All permitted uses in dune areas shall be consistent with the requirements of Policies #30 and #31.

3. All uses shall be consistent with Policy #16, regarding protection of areas "especially suited for water-dependent uses."

FINDINGS: The gas pipeline is defined as a low-intensity utility use, which is an allowed use in CBEMP Unit 47-UW. The gas pipeline segment located in CBEMP Unit 47-UW will be located below ground, accompanied by a permanent 50-foot wide right-of-way easement above-ground centered over the pipeline as installed. The 50-foot wide above-ground right-of-way easement is nominal land area in comparison to the existing available land area in CBEMP Unit 47-UW. Neither the below ground pipeline nor above-ground 50-foot wide easement will preclude or interfere with water-dependent uses along the immediate

shoreline; therefore, this segment will not affect the waters of the estuary nor preclude any development dependent upon it. The criterion set forth in CBEMP Unit 47-UW is met subject to compliance with Policy No. 16, addressed below in the Policies section.

**UPPER BAY
AQUATIC SEGMENT 48
MANAGEMENT CLASSIFICATION: CA**

MANAGEMENT OBJECTIVE:

This segment shall be managed so as to conserve the aquatic resources of the area.

USES:

9. Utilities a. Low-intensity A(Allowed)

FINDINGS: The gas pipeline is defined as a low-intensity utility use, which is an allowed use in CBEMP Unit 48-CA. CBEMP Unit 48-CA requires conservation of the aquatic resources of the area; it does not, otherwise, prohibit use. The gas pipeline segment located in CBEMP Unit 48-CA will be drilled using the HDD method under the estuary waters, which leads to protection and conservation of the aquatic resources of the area. The criterion set forth in CBEMP Unit 48-CA is met.

**UPPER BAY - NORTH BEND
SHORELAND SEGMENT 48
MANAGEMENT CLASSIFICATION: CS**

MANAGEMENT OBJECTIVE:

This shore land segment shall be managed to provide open space, and enhance recreational and aesthetic uses, while protecting scenic and riparian values, natural and cultural resources, and economic resources to maintain diverse environmental, economic and social values of the region. This shoreland segment shall also be managed to allow the necessary dredging and fill for construction of a bridge over the lagoon so that the portion of the North Point property that lies west of the lagoon can gain road access from the east side, consistent with the management objective of the adjacent 48A-(C)A management unit, and to be consistent with the adopted M-H zoning of the two dredged material disposal areas at North Point.

USES

17. Utilities a. Low-intensity A(Allowed)

GENERAL CONDITIONS

The following conditions apply to all permitted uses and activities:

1. Invenoried resources requiring mandatory protection in this segment shall be protected, as required by Policies #17 and #18.
2. All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation.
3. All permitted uses in dune areas shall be consistent with the requirements of Policies #30 and #31.

FINDINGS: The gas pipeline is defined as a low-intensity utility use, which is an allowed use in CBEMP Unit 48-CS. The gas pipeline segment located in CBEMP Unit 48-CS will be drilled using the HDD method under the estuary waters, which leads to the preservation of the existing open space including recreational and aesthetic uses. Scenic and riparian values are not implicated because the gas pipeline will be located underground. The permanent 50-foot wide right-of-way easement limits development of the land above-ground, but the limitation is nominal in comparison to existing available shoreline area; the shoreline area regulated by CBEMP Unit 48-CS remains an economic resource to the City. Natural and

estuary, subject to other policies concerning structural and nonstructural stabilization measures.

This strategy shall be implemented by Oregon Department of Transportation (ODOT) and local government where erosion threatens roads. Otherwise, individual landowners in cooperation with the Oregon International Port of Coos Bay and Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands and Oregon Department of Fish & Wildlife shall be responsible for bank protection.

This strategy recognizes that the banks of the estuary, particularly the Coos and Millicoma Rivers are susceptible to erosion and has threatened valuable farmland, roads, and other structures.

FINDINGS: Policy No. 23 applies in CBEMP Unit 48-CS. Riparian vegetation and streambank stabilization is encouraged in CBEMP Unit 48-CS; the individual land owner in cooperation with the Port of Coos Bay, Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands, and Oregon Department of Fish and Wildlife is responsible for implementation. The applicant provides an Erosion Control and Revegetation Plan, the goal of which is to identify and specify the Best Management Practices to utilize for soil and water quality protection, developed using Federal Energy Regulatory Commission procedures and the recommendations of the U.S.D.A. Forest Service, Bureau of Land Management, and Natural Resource Conservation Service. See, Attachment A, Exhibit 8. This plan is subject to further updates during the current National Environmental Protection Agency process. As condition of approval, the applicant shall submit to the City a copy of the final Erosion Control and Revegetation Plan approved for this project and shall maintain compliance with this plan. The proposal complies with CBEMP Policy No. 23 subject to condition that applicant submit to the City Planning and Building Departments a copy of the final Erosion Control and Revegetation Plan approved for this gas pipeline project and shall maintain compliance with this plan.

#27 Floodplain Protection within Coastal Shorelands

The respective flood regulations of local government set forth requirements for uses and activities in identified flood areas; these shall be recognized as implementing ordinances of this Plan. This strategy recognizes the potential for property damage that could result from flooding of the estuary.

FINDINGS: Policy No. 27 applies in CBEMP 47-UW. Flood regulations are provided in Chapter 18.48 NBCC, wherein a floodplain development permit is required for "development" as defined in that chapter. This proposal includes a review for compliance with the City's local floodplain regulations. **The proposal complies with CBEMP Policy No. 27.**

#30 Restricting Actions in Beach and Dune Areas with "Limited Development Suitability" and Special Consideration for Sensitive Beach and Dune Resources (moved from Policy #31)

I. Coos County shall permit development within areas designated as "Beach and Dune Areas with Limited Development Suitability" on the Coos Bay Estuary Special Considerations Map only upon the establishment of findings that shall include at least:

- a. The type of use proposed and the adverse effects it might have on the site and adjacent areas;
- b. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
- c. Methods for protecting the surrounding area from any adverse effects of the development; and
- d. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use; and
- e. Whether drawdown of groundwater would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of saltwater into water supplies.

Implementation shall occur through an administrative conditional use process which shall include submission of a site investigation report by the developer that addresses the five considerations above.

II. This policy recognizes that:

- a. The Special Considerations Map category of "Beach and Dune Areas with Limited Development Suitability" includes all dune forms except older stabilized dunes, active foredunes, conditionally stabilized foredunes that are subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) subject to ocean flooding;

preponderance of evidence whether the development project may be allowed to proceed, subject to any modifications deemed necessary by the governing body to protect the cultural, historical, and archaeological values of the site.

IV. Through the "overlay concept" of this policy and the Special Considerations Map, unless an exception has been taken, no uses other than propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation shall be allowed unless such uses are consistent with the protection of the cultural, historical and archaeological values or unless appropriate measures have been taken to protect the historic and archaeological values of the site.

This strategy recognizes that protection of cultural, historical, and archaeological sites is not only a community's social responsibility; it is also legally required by ORS 97.745. It also recognizes that cultural, historical, and archaeological sites are non-renewable cultural resources.

FINDINGS: Policy No. 18 applies in CBEMP 48-CS. The gas pipeline will not adversely affect inventoried resources. There is only one inventoried resource (CS-24 on the Shoreland Values Map) located within the area of the proposed alignment. The applicant retained the professional archaeologists and researchers at Historical Research Associates, Inc. ("HRA") to survey the area where CS-24 is mapped to determine whether the pipeline would impact this resource. After conducting site-specific research, reviewing historical documentation, and conducting and analyzing subsurface probes and cores, HRA found no evidence of either CS-24 or a reported village/burial area mapped by the State Historic Preservation Office within the proposed alignment. Accordingly, HRA concluded that these resources were not located within the project area and the pipeline would not have adverse impacts to the resources. HRA also concluded, based upon available information and the best professional judgment of its professionals, that no modifications were necessary to the pipeline to protect the cultural, historical, and archaeological values of CS-24, the reported village/burial site, or any other known cultural resources. Due to the sensitive nature of the cultural resources involved, HRA's full report is confidential and cannot be disclosed in this proceeding. HRA has prepared a summary of its methodology and findings, which is included in Exhibit 6 of Attachment A. The applicant has entered a Memorandum of Agreement ("MOA") with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians ("Tribes") to implement Policy No. 18. A copy of the MOA is included in Exhibit 7 of Attachment A. The MOA incorporates a Cultural Resources Protection Agreement entered between Applicant and the Tribes ("CRPA"). The CRPA provides a process for the exchange of project related information, confidentiality requirements, commitments to mitigation, monitoring agreements, agreements for the treatment of unanticipated discovery of cultural resources, site access agreements, and cost recovery agreements. The CRPA, in turn, incorporates an Unanticipated Discovery Plan ("UDP"), which provides procedures in the event of an unanticipated discovery of historic properties, archaeological objects, archaeological sites or human remains, funerary objects, sacred items, and items of cultural patrimony, during the construction and operation of the Pipeline. The CRPA and UDP are included as exhibits to the MOA in Exhibit 7 of Attachment A. In the MOA, the applicant and the Tribes agreed that the CRPA and the UDP constituted appropriate measures under CBEMP Policy No. 18 that would protect the cultural, historical, and archaeological values of the sites along the pipeline alignment. The applicant is willing to accept a condition of City approval requiring that the proposal complies with the MOA and its attachments. The proposal complies with CBEMP Policy No. 18 subject to compliance with the referenced Memorandum of Agreement between: Jordan Cove Energy Project L.P., Pacific Connector Gas Pipeline, L.P. and The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians including attachments, and any amendments thereto.

#23 Riparian Vegetation and Streambank Protection

I. Local government shall strive to maintain riparian vegetation within the shorelands of the estuary and, when appropriate, restore or enhance it, as consistent with water-dependent uses. Local government shall also encourage use of tax incentives to encourage maintenance of riparian vegetation, pursuant to ORS 308.792 - 308.803.

Appropriate provisions for riparian vegetation are set forth in the CCZLDO Section 4.5.180 (OR 92-05-009PL).

II. Local government shall encourage streambank stabilization for the purpose of controlling streambank erosion along the

cultural resources are addressed in the application. See Attachment A, Exhibits 5 through 7. The criterion set forth in CBEMP Unit 48-CS is met subject to compliance with Policy Nos. 17, 18, 23, 30, and 31, addressed below in the Policies section.

COOS BAY ESTUARY MANAGEMENT PLAN - POLICIES

#16 Protection of Sites Suitable for Water-Dependent Uses and Special Allowance for new NonWater-Dependent Uses in "Urban Water-Dependent (UW) Units"

Local government shall protect shorelands in the following areas that are suitable for water-dependent uses for water-dependent commercial, recreational, and industrial uses.

- Urban or urbanizable areas;
- Rural areas built upon or irrevocably committed to non-resource use; and
- Any unincorporated community subject to OAR Chapter 660, Division 022 (Unincorporated Communities).

This strategy is implemented through the Estuary Plan, which provides for water-dependent uses within areas that are designated as Urban Water-Dependent (UW) management units.

I. Minimum acreage. The minimum amount of shorelands to be protected shall be equivalent to the following combination of factors:

- Acreage of estuarine shorelands that are currently being used for water-dependent uses; and
- Acreage of estuarine shorelands that at any time were used for water-dependent uses and still possess structures or facilities that provide or provided water-dependent uses with access to the adjacent coastal water body. Examples of such structures or facilities include wharves, piers, docks, mooring piling, boat ramps, water intake or discharge structures, and navigational aids.

II. Suitability. The shoreland area within the estuary designated to provide the minimum amount of protected shorelands shall be suitable for water-dependent uses. At a minimum, such water-dependent shoreland areas shall possess, or be capable of possessing, structures or facilities that provide water-dependent uses with physical access to the adjacent coastal water body. The designation of such areas shall comply with applicable Statewide Planning Goals.

III. Permissible Non-Water-Dependent Uses. Unless otherwise allowed through an Exception, new non-water-dependent uses which may be permitted in "Urban Water-dependent (UW)" management units are a temporary use which involves minimal capital investment and no permanent structures or a use in conjunction with and incidental and subordinate to a water-dependent use. Such new non-water-dependent uses may be allowed only if the following findings are made prior to permitting such uses:

1. Temporary use involving minimal capital investment and no permanent structures:

- The proposed use or activity is temporary in nature (such as storage, etc.); and
- The proposed use would not pre-empt the ultimate use of the property for water-dependent uses; and
- The site is committed to long-term water-dependent use or development by the landowner.

2. Use in conjunction with and incidental and subordinate to a water-dependent use:

- Such non-water-dependent uses shall be constructed at the same time as or after the water-dependent use of the site is established and must be carried out together with the water-dependent use.
- The ratio of the square footage of ground-level indoor floor space plus outdoor acreage distributed between the non-water-dependent uses and the water-dependent uses at the site shall not exceed one to three (non-water-dependent to water-dependent).
- Such non-water-dependent uses shall not interfere with the conduct of the water-dependent use.

This policy shall be implemented through provisions in ordinance measures that require an administrative conditional use application be filed and approved and the above findings be made prior to the establishing of the proposed uses or activities.

FINDINGS: Policy No. 16 applies in CBEMP Unit 47-UW, which allows two (2) types of non-water-dependent uses: 1. Temporary uses involving minimal capital investment and no permanent structures; and, 2. Uses in conjunction with and incidental and subordinate to a water-dependent use. The gas pipeline is a non-water-dependent use incidental and subordinate to the water-dependent uses that comprise the Jordan Cove gas processing, liquefaction, and export facilities that will be located on the North Spit. A use is "water-dependent" if it "can be carried out only on, in or adjacent to water areas

because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water." See definition in Statewide Planning Goals. The Jordan Cove facilities require deep-draft water access in order to ship a product to market via large marine vessels. They involve water-borne transportation and terminal and transfer facilities. Therefore, they satisfy the definition of "water-dependent." The pipeline is in conjunction with and incidental to the Jordan Cove facilities because the pipeline supplies the natural gas that Jordan Cove will process, liquefy, and export at the facilities. In fact, the pipeline is the sole direct gas supplier to the facilities. Further, most, if not all, of the gas transported by the pipeline will be supplied to the Jordan Cove facilities. Thus, the pipeline will be operated in conjunction with and incidental to the Jordan Cove facilities. The pipeline is consistent with Section III.2.a. of this policy because it will be constructed and carried out contemporaneous with the Jordan Cove facilities. Section III.2.b. is not applicable because it assumes both non-water-dependent and associated water-dependent uses exist on the same site in CBEMP Unit 47-UW, when, in this case, only a segment of the non-water-dependent pipeline use is located in CBEMP Unit 47-UW and the associated water-dependent Jordan Cove facilities use is located outside of CBEMP 47-UW. The pipeline is consistent with Section III.2.c. of this policy because the non-water-dependent pipeline use facilitates the water-dependent Jordan Cove facilities use. **The proposal complies with CBEMP Policy No. 16.**

#16a Minimum Protected Acreage Required for County Estuarine Shorelands

Local government shall protect the minimum for water-dependent use, at least the minimum acreage determined necessary under the standards of Statewide Planning Goal #17, for the protection of sites suitable for water-dependent uses and special allowance for new non-water-dependent uses in urban water-dependent units.

• As of January 1, 2000, there were 1,440.5 acres of Coos Bay Estuary shoreland planned and zoned for water-dependent use in the unincorporated portions of Coos County.

• 496.52 acres have been determined to be the minimum amount of acreage required to be protected for water-dependent use within the estuary shoreland units of the unincorporated portions of the Coos Bay Estuary.

Any request to rezone shoreland designated for water-dependent use within the unincorporated portions of the Coos Bay Estuary will require a demonstration by the applicant that at least the minimum acreage amount of 496.52 acres will remain designated for water-dependent use.

This policy shall be implemented through provisions in ordinance measures that require the above findings be made at the time an application for rezoning is approved.

FINDINGS: Policy No. 16a applies in CBEMP Unit 47-UW. Because the gas pipeline will be located underground and, excepting a 50-foot wide area reserved for easement purposes, does not preclude use of the shoreline, the proposal does not prohibit water-dependent uses or special allowance for non-water-dependent uses. There is not a rezone of the existing CBEMP zoning designations as part of the proposal. Therefore, the minimum acreage required for County estuarine shorelands is protected. **The proposal complies with CBEMP Policy No. 16a.**

#17 Protection of "Major Marshes" and "Significant Wildlife Habitat" in Coastal Shorelands

Local governments shall protect from development major marshes and significant wildlife habitat, coastal headlands, and exceptional aesthetic resources located within the Coos Bay Coastal Shorelands Boundary, except where exceptions allow otherwise.

I. Local government shall protect:

- a. "Major marshes" to include areas identified in the Goal #17, "Linkage Matrix", and the Shoreland Values Inventory map; and
- b. "Significant wildlife habitats" to include those areas identified on the "Shoreland Values Inventory" map; and
- c. "Coastal headlands"; and
- d. "Exceptional aesthetic resources" where the quality is primarily derived from or related to the association with coastal water areas.

II. This strategy shall be implemented through:

- a. Plan designations and use and activity matrices set forth elsewhere in this Plan that limit uses in these special areas to

those that are consistent with protection of natural values; and

- b. Through use of the Special Considerations Map that identified such special areas and restricts uses and activities therein to uses that are consistent with the protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation; and
- c. Contacting Oregon Department of Fish and Wildlife for review and comment on the proposed development within the area of the Sb or Sc bird sites.

This strategy recognizes that special protective consideration must be given to key resources in coastal shorelands over and above the protection afforded such resources elsewhere in this Plan.

FINDINGS: Policy No. 17 applies in CBEMP Unit 48-CS. The gas pipeline does not cross through any major marshes, significant wildlife habitats, or coastal headlands nor does it cross exceptional aesthetic resources as identified on Coos County's Shoreland Values Inventory Map. **The proposal complies with CBEMP Policy No. 17.**

#18 Protection of Historical, Cultural and Archaeological Sites

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

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

II. The development proposal, when submitted, shall include a Site Plan Application, showing, at a minimum, all areas proposed for excavation, clearing, and construction. Within three (3) working days of receipt of the development proposal, the local government shall notify the Coquille Indian Tribe and Coos, Siuslaw, Lower Umpqua Tribe(s) in writing, together with a copy of the Site Plan Application. The Tribe(s) shall have the right to submit a written statement to the local government within thirty (30) days of receipt of such notification, stating whether the project as proposed would protect the cultural, historical, and archaeological values of the site or, if not, whether the project could be modified by appropriate measures to protect those values.

"Appropriate measures" may include, but shall not be limited to the following:

- a. Retaining the prehistoric and/or historic structure in situ or moving it intact to another site; or
- b. Paving over the site without disturbance of any human remains or cultural objects upon the written consent of the Tribe(s); or
- c. Clustering development so as to avoid disturbing the site; or
- d. Setting the site aside for non-impacting activities, such as storage; or
- e. If permitted pursuant to the substantive and procedural requirements of ORS 97.750, contracting with a qualified archaeologist to excavate the site and remove any cultural objects and human remains, reinterring the human remains at the developer's expense; or
- f. Using civil means to ensure adequate protection of the resources, such as acquisition of easements, public dedications, or transfer of title.

If a previously unknown or unrecorded archaeological site is encountered in the development process, the above measures shall still apply. Land development activities which violate the intent of this strategy shall be subject to penalties prescribed in ORS 97.990.

III. Upon receipt of the statement by the Tribe(s), or upon expiration of the Tribe(s) thirty day response period, the local government shall conduct an administrative review of the Site Plan Application and shall:

- a. Approve the development proposal if no adverse impacts have been identified, as long as consistent with other portions of this plan, or
- b. Approve the development proposal subject to appropriate measures agreed upon by the landowner and the Tribe(s), as well as any additional measures deemed necessary by the local government to protect the cultural, historical, and archaeological values of the site.

If the property owner and the Tribe(s) cannot agree on the appropriate measures, then the governing body shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by