Crystal Orr

From: Tonia Moro [tonia@toniamoro.com]
Sent: Thursday, January 7, 2021 3:31 PM
To: Planning Department
Subject: AP 20-01 Open Record Submittals
Attachments: We found suspicious links; Appellants_First_Open-record_Submittal.pdf; Ex 108 ORD 18-09-009PL with attachments.pdf

This Message originated outside your organization.

Greetings,

Please file the attached additional submittals submitted on behalf of Appellant-opponents. They include a memorandum and Exhibits 108-115 and will be sent via several emails over the next several minutes. Please let me know if you have any question. I have not yet but will soon send the hard copies of exhibits 101-107.

Thank you.

Tonia L. Moro
Attorney at Law PC

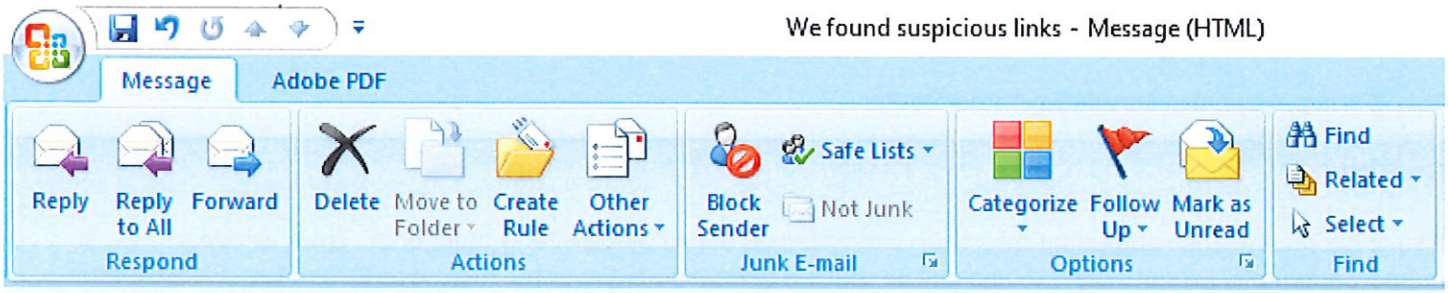
19 S. Orange Street
Medford Oregon 97501
541 973 2063

Exhibit 29
Date: 1/7/21

Crystal Orr

From: Crystal Orr
Sent: Thursday, January 7, 2021 3:36 PM
To: Tonia Moro; Planning Department
Subject: RE: AP 20-01 Open Record Submittals
Attachments: image001.png

We cannot open this



Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

From: postmaster@co.coos.or.us
To: Planning Department
Cc:
Subject: We found suspicious links

We found suspicious links in these files

They've been blocked for your protection. Please contact your administrator if you this is an error.

Files
Ex 109 Ordinance 19-12-010PL_red..pdf (8.5 MB)

Message Details

From
"tonia moro" <tonia@toniamoro.com>

Subject
AP 20-01 Open Record Submittals

Sent
Thu, 7 Jan 2021 15:31:07 -0800

Crystal Orr

From: Tonia Moro [tonia@toniamoro.com]
Sent: Thursday, January 7, 2021 3:36 PM
To: Planning Department
Subject: AP 20-01 Open Record Submittals
Attachments: Ex 111 B Oringinal Order HBCU 10-01.Part 2.red.pdf

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Attorney at Law PC

19 S. Orange Street
Medford Oregon 97501
541 973 2063

Crystal Orr

From: Tonia Moro [tonia@toniamoro.com]
Sent: Thursday, January 7, 2021 3:38 PM
To: Planning Department
Subject: AP 20-01 Open Record Submittals
Attachments: Ex 112 ORD-19-01-002-PL_Decision (HDD).pdf; Ex 113 Ord 15-05-005 Hazard signed ordinance.pdf; Ex 113 Ord 15-05-005 Hazard signed ordinance.pdf

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541 973 2063

Crystal Orr

From: Tonia Moro [tonia@toniamoro.com]
Sent: Thursday, January 7, 2021 3:39 PM
To: Planning Department
Subject: AP 20-01 Open Record Submittals
Attachments: Ex 114 AM-16-001 signed order.pdf; Exhibit 115 Attachment A Final Findings and Decision for Coos County File No EXT-18-03_AP-18-02-1.pdf

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Sent: Thursday, January 7, 2021 3:56 PM
To: Planning Department
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Attachments: Ex 109 Ordinance 19-12-010PL_red..pdf

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Medford Oregon 97501
541 973 2063

Crystal Orr

From: Crystal Orr
Sent: Thursday, January 7, 2021 4:32 PM
To: Tonia Moro; Planning Department
Subject: RE: AP 20-01 Open Record Submittals

Staff has received your testimony. Please provide a hard copy prior to the testimony deadline.

Crystal Orr

Planner I
Coos County Planning
225 N Adams, Coquille, OR 97423 (Physical address)
250 N Baxter Coquille, OR 97423 (Mailing Address
541-396-7770

From: Tonia Moro [mailto:tonia@toniamoro.com]
Sent: Thursday, January 7, 2021 3:56 PM
To: Planning Department
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Medford Oregon 97501
541 973 2063

Tonia L. Moro
Attorney at Law P.C.
19 S. Orange Street
Medford, Oregon 97501
541 973 2063
Tonia@ToniaMoro.com

BEFORE THE COOS COUNTY HEARINGS OFFICER

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

On behalf of Citizens for Renewables, Rogue Climate and the appellants Natalie Ranker and Kathy Dodds (collectively referred to as "appellant-opponents"), undersigned counsel submits the following documents and makes the following comments.

In appellant-opponent's hearing memorandum they requested the Hearings Officer issue a preliminary ruling agreeing to take official notice of the relevant County orders and decisions including those referenced in their hearing memorandum. Appellant-opponents renew that motion here. As a decision has not be rendered, however, appellant-opponents have assembled some of the orders and submit them electronically herewith and asks for a further ruling that waives any requirement that they submit a hard copy of such orders.

Exhibit 108 Ord.18-09-009PL

Exhibit 109 Ord. 19-12-011

Exhibit 110 Ord. 19-12-010

Exhibit 111 A & B Final Decision and Order No 10-08-045PL

Exhibit 112 Ordinance No. 19-01-002PL ("HDD alternative route decision")

Exhibit 113 Ord. 15-05-005PL (AM-15-04)

Exhibit 114 Ord. 17-04-004PL (AM 16-01)

Exhibit 115 Final Decision and Order 18-11-073

/s/ Tonia Moro
Tonia Moro
Attorney for Appellant-opponents

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

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

SECTION 1. TITLE

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

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

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

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

SECTION 4. FINDINGS

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

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

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

SECTION 6. SEVERANCE CLAUSE

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

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

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

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

SECTION 8. EMERGENCY CLAUSE

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

Dated this 2nd day of October

BOARD OF COMMISSIONERS

ATTEST

Jill Ralfe
Recording Secretary

absent
Chair

Approved as to form:

Nathaniel Johnson
Office of Legal Counsel

Vice Chair

Commissioner

First Reading: September 6, 2018

Second Reading: October 2, 2018

Effective Date: October 2, 2018

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

CHAPTER IV
BALANCE OF COUNTY ZONES, OVERLAYS & SPECIAL CONSIDERATION

ARTICLE 4.1 GENERAL INFORMATION

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

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

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

DEVELOPMENT: The act, process or result of developing.

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

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

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

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

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

Section 4.1.190 Uses not listed (moved to Article 5.14)

ARTICLE 4.2 – ZONING PURPOSE AND INTENT

The following are zoning designations that were approved by the Board of Commissioners and acknowledged by Land Conservation and Development as in compliance with all statewide planning goals. The zoning regulations that implement the Coos County Comprehensive Plan (Comprehensive Plan) are located in the implementing ordinance. This section sets out the purpose and intent of all Balance of County zones (all zones outside of the Coos Bay and Coquille Estuary) but the purpose and intent is not relevant criteria of any use, activity or development listed in the zoning tables. The purpose and intent should be a consideration when looking at zone changes and adding or removing uses, activities, development standards and/or criteria unless otherwise directed by state law to ensure consistency with the intent of the zone district.

4.2.100 RESIDENTIAL

Urban Residential (UR)

There are three Urban Residential (UR) zoning districts: Urban Residential-1 (UR-1); Urban Residential-2 (UR-2); and Urban Residential – Multi Family (UR-M). ~~**Purpose and Intent:**~~ ***The intent of the Urban Residential Districts is to include conventional, urban density housing (single family/multi-family) plus cluster housing and planned unit developments.***

The purpose of the "UR-1" district is to provide for urban residential areas that are exclusively limited to conventional single family dwellings. Detached conventional single family dwellings clustered in planned unit developments are consistent with the objectives of the "UR-1" district. This district shall only be used within Urban Growth Boundaries and Urban Unincorporated Community boundaries.

The purpose of the "UR-2" district is to provide for urban residential areas that are designed to accommodate single family dwellings, mobile homes and two family dwellings. Clustered planned unit developments, including multi-family dwellings, are consistent with the objectives of the "UR-2" district. The "UR-2" district shall only be used within Urban Growth Boundaries and Urban Unincorporated Community boundaries.

The purpose of the "UR-M" district is to provide for high density urban residential areas necessary to accommodate opportunities for the construction of multiple-family dwellings, primarily necessary to meet the needs of low and moderate income families. The "UR-M" district shall only be used within Urban Growth Boundaries and Urban Unincorporated Community boundaries.

Rural Residential (RR)

There are two RR zonings: Rural Residential-5 (RR-5) and Rural Residential-2 (RR-2). ~~The only difference is the density requirements found in the development and use standards.~~ ~~**Purpose and Intent:**~~ ***The intent of the Rural Residential Districts includes justified sites plus "committed" areas. The County's plan prescribes and allocates a finite number of rural dwelling/units/acreage. The zoning ordinance will specify permitted uses and minimum lot sizes.***

The purpose of the "RR-2" ***and "RR-5"*** district***s are*** ~~is~~ to provide for small ***to medium*** acreage dwelling sites outside of Urban Growth Boundaries, where a moderate intensity of land

development is appropriate, but where urban services and facilities may not be available or necessary.
The "RR-2" district provides for continued existence of rural family life and to provide a transition of densities between urban development and exclusive agricultural and forestry uses.

~~The purpose of the "RR-5" district is to provide for ***small to medium*** acreage dwelling sites outside of Urban Growth Boundaries (UGB), where a moderate intensity of land development is appropriate, but where urban services and facilities may not be available.~~ The "RR-5" district provides for the orderly development of rural land so as to encourage the continued existence of rural family life and to provide a transition of densities between urban development and exclusive agricultural or forestry uses.

4.2.200 MIXED COMMERCIAL-RESIDENTIAL

Controlled Development (CD)

~~**Purpose and Intent:**~~ ***The intent of the Controlled Development is to reserve areas that are experiencing or are projected to experience limited conversion of residential areas to commercial uses. Urban Growth Areas include Urban Growth Boundaries (UGB) and Urban Unincorporated Communities (UUC) that were developed to urban levels of development and could be included in an Urban Growth Boundary expansion in the future. This designation is applied to specific portions of the following Urban Growth Areas: Bandon, Charleston, Barview and Bunker Hill.***

There are two different controlled development zoning districts: Controlled Development-5 (CD-5) and Controlled Development-10 (CD-10).

The purpose of the "CD-5" ***and "CD-10"*** district is to recognize the scenic and unique quality of selected areas within Urban Growth Boundaries, to enhance and protect the unique "village atmosphere," to permit a mix of residential, commercial, and recreational uses and to exclude those uses which would be inconsistent with the purpose of this district, recognizing tourism as a major component of the County's economy.

~~The purpose of the "CD-10" district is to recognize the scenic and unique quality of selected areas within Urban Growth Boundaries, to enhance and protect the unique "village atmosphere," to permit a mix of residential, commercial, and recreational uses and to exclude those uses which would be inconsistent with the purpose of this district, recognizing tourism as a major component of the County's economy.~~ (The purpose statements for the CD zones were the same so staff combined into one)

Rural Center (RC)

~~**Purpose and Intent:**~~ ***The intent of the Rural Center Designation "committed" rural nodes is to provide residential, commercial, and public/semi-public uses.***

The purpose of ***the "RC"*** is to provide for the development of rural commercial, tourist commercial, residential and services facilities, necessities, convenience and supplies ancillary to nearby agricultural, forestry, recreational and rural residential uses and activities and to conserve energy by providing for needed commercial outlets in rural areas already "committed" as residential/commercial nodes.

New commercial uses that are consistent with the objectives of the "RC" district are those uses which are needed for the convenient shopping needs of the nearby rural population.

Only one Primary Use can exist, and any other use must be subordinate in size and nature. Pursuant to OAR-660-022-003 Commercial building or buildings in a rural unincorporated community shall not exceed 4,000 square feet of floor space.

4.2.300 COMMERCIAL AND INDUSTRIAL

Commercial (C-1)

~~**Purpose and Intent:**~~ ***The intent of the Commercial designation is primarily for urban growth areas, but it is also appropriate for application in rural areas where commercial uses are already established (i.e., "committed" to commercial development). Limited infilling is allowed.***

The purpose of the "C-1" district is:

1. To provide for needed commercial retail and service opportunities within urban growth Boundaries.
2. To recognize existing commercial uses outside Urban Growth Boundaries.

For the purpose of this ordinance small-scale, low impact commercial use is one which takes place in an urban unincorporated community in a building or buildings not exceeding 8,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 4, 000 square feet of floor space.

Only the following new Commercial Uses in unincorporated communities:

(a) Uses authorized under Oregon Statewide Planning Goals 3 and 4;
(b) Small-scale, low impact uses; and
(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.
OAR-660-022-0030(4)

Industrial (IND)

~~**Purpose and Intent:**~~ ***The intent of the Industrial designation applies to sites potentially needed for industrial development. Use of the designation is not restricted to urban growth areas.***

The purpose of the "IND" district is to provide an adequate land base necessary to meet industrial growth needs and to encourage diversification of the area's economy accordingly. The "IND" district may be located without respect to Urban Growth Boundaries, as consistent with the Comprehensive Plan. The "IND" designation is appropriate for industrial parcels that are needed for development ~~prior to the year 2000~~, as consistent with the Comprehensive Plan.

Airport Operations (AO)

The purpose ***and intent*** of the Airport Operation "AO" district is to recognize those areas devoted to or most suitable for immediate operational facilities necessary for commercial and non-

commercial aviation. It is also intended to provide areas for those activities directly supporting or dependent upon aircraft or air transportation when such activities, in order to function, require a location within or immediately adjacent to primary flight operations and passenger or cargo service facilities. In addition, the "AO" district is intended to provide areas for certain open space uses for airfield grounds maintenance and as a buffer to minimize potential dangers from, and conflicts with, the use of aircraft.

4.2.400 OPEN SPACE AND NATURAL RESOURCE ZONING DISTRICTS

Open Space and Natural Resource Districts are intended for especially sensitive areas where wildlife habitat or special scenic values have been identified or where natural hazards totally preclude any development.

Recreation (REC)

~~**Purpose and Intent:**~~ ***The intent of the Recreation District is to designated recreation areas.*** The purpose of the "REC" district is to accommodate recreational uses of areas with high recreational or open space value. The district applies solely to areas designated as "Recreation" in the Comprehensive Plan, which include state, county and other municipal parks, the Oregon Dunes National Recreation Area, as well as private lands currently developed as golf courses.

New recreational developments in this district shall be oriented to the open space nature of the land. The type and intensity of recreational developments in this district must be conditioned by environmental considerations set forth in the County's Coastal Shoreland/Dune Lands Comprehensive Plan policies where such developments are allowed in these coastal resource areas.

South Slough (SS)

~~**Purpose and Intent:**~~ The purpose of the "SS" district is to complement the primary management objectives and the primary scientific objectives of the South Slough National Estuarine Research Reserve (SNERR). This district is intended to maintain the integrity of the sanctuary by preserving the area for long-term scientific and educational use. This designation abuts the Coos Bay Estuary Management Plan (CBEMP). This zoning district has no development standards with the exception of road standards found in Chapter VII. Special Development considerations may apply.

Minor Estuary and Shorelands (MES)

~~**Purpose and Intent:**~~ The purpose of the "MES" district is to regulate uses within the inventoried minor estuaries and adjacent shorelands within unincorporated Coos County. The estuaries within the district are treated as "natural management units" per LCDC Goal 16. There are no hearings body applications or development standards with the exception of road standards found in Chapter VII.

4.2.500 RESOURCE ZONES

Forest (F)

~~**Purpose and Intent:**~~ ***These intent of the Forest District is to include all inventoried "forestlands" not otherwise found to be needed (excepted) for other uses.***

The purpose of the Forest zone is to conserve and protect forest land for forest uses. Some of the areas covered by the "F" zone are exclusive forest lands, while other areas include a combination of mixed farm and forest uses.

Forest Mixed Use (FMU)
The purpose of the Forest Mixed Farm-Forest Areas ("MU" areas) ***is to*** include land which is currently or potentially in farm-forest use. Typically such lands are those with soil, aspect, topographic features and present ground cover that are best suited to a combination of forest and grazing uses. The areas generally occupy land on the periphery of large corporate and agency holdings and tend to form a buffer between more remote uplands and populated valleys. In addition, these "mixed use" areas contain ownership of smaller size than in prime forest areas. Some are generally marginal in terms of forest productivity, such as areas close to the ocean.

If land is in a zone that allows both farm and forest uses, a dwelling may be sited based on the predominate use of the tract on January 1, 1993.

If a use is only allowed in the mixed use zone it will be explained in the text. Otherwise the uses listed are allowed in both the Forest and Forest Mixed Use zones.

Exclusive Farm Use (EFU)
~~**Purpose and Intent:**~~ ***These include all inventoried "agricultural lands" not otherwise found to be needed (excepted) for other uses.***

The purpose of the EFU district is to preserve the integrity and encourage the conservation of agricultural lands within Coos County and thereby comply with the provisions of ORS 215 and OAR 660. Division 33 to minimize conflicts between agricultural practices and non-farm uses by limiting any development to uses distinguished as dependent upon or accessory to supporting agricultural or forestry production and which qualify such farm lands for special tax relief pursuant to the provisions of Oregon Revised Statutes. This zone is also for the cultivation and marketing of specialty crops, horticultural crops and other intensive farm uses.

According to the Coos County Comprehensive Plan Exclusive Farm Use lands are inventoried as Agricultural Lands. The Main criterion for establishing the "Agricultural Lands Inventory" was land identified on the agricultural lands based on soils, Class I-IV soils or "other lands" suitable for agricultural use, with the following exceptions:

1. ***Committed rural residential areas and urban growth areas.***
2. ***Proposed rural residential areas as per the Exception to Goals #3 and #4.***
3. ***Proposed industrial/commercial sites.***
4. ***Existing recreation areas (e.g., golf courses) [Recreation designation]***
5. ***Isolated parcels of Class I-IV soils in upland areas, which are under, forest cover. (Forestlands designation).***
6. ***Narrow valley bottomlands where no agricultural activity is occurring anywhere in the vicinity [Forestlands designation].***

The secondary criterion for establishing the "Agricultural Lands Inventory" was the use of aerial photos used to identify additional areas without Class I-IV soils in current agricultural use which were not initially identified in the agricultural lands inventory from Assessor's Data. This situation typically occurs on benches, immediately above agricultural valleys, where grazing often takes place on non-class I-IV soils. However, if lands were zoned predominately forest it may have resulted in a Mixed Use Overlay.

4.2.600 BANDON DUNES RESORT (BDR)

~~**Purpose and Intent:**~~ ***The Bandon Dunes Resort designation is applied to an area located north of the City of Bandon for which an exception to applicable statewide planning goals to permit a destination resort has been adopted as an amendment to this Comprehensive Plan.***

The purpose of the Bandon Dunes Resort zone is to establish a zoning district to implement the adopted Bandon Coastal Dunelands Conservation, Resort and Recreation Development Master Plan, consistent with the adopted Bandon Coastal Dunelands Goal Exception Statement.

ARTICLE 4.3 – ZONING TABLES

SECTION 4.3.100 USES NOT LISTED *AND COMPLIANCE WITH OTHER SECTIONS:*

DEVELOPMENT, USES and ACTIVITIES may be further restricted by Definitions, Review Standards, Development and Siting Criteria or Special Development Considerations and Overlays. If a use is not listed then it is prohibited unless a similar use determination is made pursuant to Article 5.14 or it is found to exempt from review pursuant to Section 1.1.800 Exclusions from Permit Requirements.

No structure shall be erected, converted enlarged, reconstructed, replaced, or altered, nor shall any structure or use be changed, except in accordance with the provisions of the CCZLDO. Certain uses, activities, structures or developments have been excluded from requiring a permit which is under Section 1.1.800 of the CCZLDO.

ARTICLE 4.3 – BALANCE OF COUNTY ZONING TABLES

Special Development Considerations and Overlays Reference Table:

This table is just for reference, to find the criteria please refer to the section identified. This provides a guide for property developers in estimating potential costs and timelines when developing.

Abbreviations used in the tables to indicate the type of review process as explained below:

- **"P" is permitted but may require a request for comments which adds to a project timeline.**
- **"ACU" is an abbreviation for Administrative Conditional Use which is a Planning Directors decision that is appealable to the Planning Commission, Board of Commissioners or Hearings Officer.**
- **"HBCU" is an abbreviation for Hearing Body Conditional Use which is a Planning Commission review and the decision is appealable to the Board of Commissioners or Hearing Officer.**
- **Moratorium means that any proposed development is prohibited**

If there are no requirements or other requirements beyond the abbreviations they are identified in the type of review process.

TYPE OF CONSIDERATION OR OVERLAY	*ADDITIONAL REVIEW TYPE*	*Section*	*Type of Review*
Mineral & Aggregate	*If development is within 500 feet a of protected site requires an ACU*	*4.11.125.1*	*ACU*
Water Resources	*If Oregon State Water Resources Department (OSWRD), the Oregon State Environmental Quality Commission (EQC), or the Coos County Health Department has submitted compelling evidence to Coos County that water resources within that area would be irreversibly degraded by new consumptive withdrawal or by additional septic tank or other waste discharges. This would be done through a moratorium process.*	*4.11.125.2*	*Moratorium*
Historical, Cultural and Archaeological Resources, Natural Areas of Wilderness	*Historical –If alteration or modification of historical site is proposed an ACU is required. Staff shall refer to the Oregon State Historical Preservation Office data for details on locations of historical structures*	*4.11.125.3.a*	*P - Notice to SHPO (30 days)*
	Archaeological – Require a notice to the local tribes. They have 30 days to respond to the request. The owner/agent is responsible for the protection of the archaeological sites.	*4.11.125.3.b*	*P - Notice to Tribes (30 days)*
	Botanical: Zoning has been put into place to protect these sites and no further review is required.	*4.11.125.3.c*	*No Requirement*
	Geological Sites: No development on a inventoried geological site is allowed.	*4.11.125.3.d*	*Avoid mapped area*
Beaches and Dunes	*Suitable for most uses; few or no constraints, does not require an additional review*	*4.11.125.4.a*	*P - No Requirement*
	Limited Suitability; special measures required for most development - Requires an ACU	*4.11.125.4.b*	*ACU*
	Not Suitable - Prohibits residential, commercial or industrial developments.	*4.11.125.4.c*	*ACU (may prohibit development)*
Non-Estuarine Shoreland Boundary	*Coastal Shoreland Boundary - Requires a site plan review through an ACU process. The process will consider a priority of use and additional protections for beach erosion, coastal recreational area, water-dependent uses, riparian vegetation, fore dunes, head of tide, step bluffs over 50% slope, significant wetland wildlife habitats, wetlands under agricultural use, areas of exceptional aesthetic or scenic quality, coastal headland and headland erosion.*	*4.11.125.5*	*ACU – Site Plan Review Criteria*

Significant Wildlife Habitat	*Notice will be provided to Oregon Department of Fish and Wildlife requesting an opinion within 10 days as to whether the development is likely to produce significant and unacceptable impacts upon the resource, and what safeguards it would recommend to protect the resource. If ODFW's determines the development will impact the bird habitat a conditional use will be required by the applicant. If staff has the location of the specific wildlife habitat then the developer will be required to stay out of the mapped area. – 10 day notice requirement.*		*4.11.125.6*	*Notice to ODFW (10 days)*
Natural Hazards	*Flood – Development in Flood hazard area requires an application (Overlay)*		*4.11.125.7.a*	*Floodplain Application*
	Landslide Hazards – Residential will use (Landslide inventory – Existing Landslide adopted in 2015) Commercial and Industrial will use High Landslide probability (Land sliding Likely). Any other areas marked as Low and Moderate are in the level of acceptable risk and not regulated.		*4.11.125.7.b*	*ACU*
	Tsunamis (no additional review for residential structures)		*4.11.125.7.c*	*ACU*
	Earthquakes – Properties that contain active faults or high liquefaction potential as adopted on the 2015 hazard map.		*4.11.125.7.d*	*ACU*
	Erosion – Rivers to streams that have been inventoried in the erosion layer of the 2015 adopted 2015 hazard map has a 100 foot setback all other areas identified as erosion hazards will require a conditional use.		*4.11.125.7.e*	*100 foot setback or ACU*
	Wildfires – 2015 hazard maps adopted wildfire areas that will require additions fire siting standards and setbacks.		*4.11.125.7.f*	*Increased Setbacks*
Airport Surfaces Overlay	*Airport Surfaces may limit a use depending on the use*	*Bandon, Lakeside and Powers*	*4.11.300*	*Limit Uses – Height Restrictions and notice requirements*
		Southwest Regional (North Bend)	*4.11.400*	
Urban Growth Boundary (UGB)	*Urban Growth Boundaries require notice to the cities and may have additional development and use requirements. Unless a use is permitted outright or exempt for this regulation.*			*Notice and additional development/use standards*
Urban Unincorporated Communities	*Urban and Rural Unincorporated Community Boundaries have limits on structure sizes and potential uses.*			*Notice and limits on structure sizes*
Areas of Mutual Interest	*Areas of mutual interest are located outside of city's urban growth boundary but may have impacts on future planning. Notices of decisions are provided to areas of mutual interest and copies of zoning compliance letters. If there is a public hearing on the matter the city will receive notice but no notice is required prior to a compliance determination.*			*Notice of decisions and hearing notices but no request for comments on Compliance determinations.*
Wetland Notice requirements	*After the Department of State Lands has provided the county with a copy of the applicable portions of the Statewide Wetlands Inventory, the county shall provide notice to the department, the applicant and the owner of record, within five working days of the acceptance of any complete application for the following that are wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory. (ORS 215.418)*		*ORS 215.418*	*Notice Requirement – 30 Days for comments*

ORS 215.418 Approval of development on wetlands; notice.

(1) After the Department of State Lands has provided the county with a copy of the applicable portions of the Statewide Wetlands Inventory, the county shall provide notice to the department, the applicant and the owner of record, within five working days of the acceptance of any complete application for the following that are wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory:
(a) Subdivisions;
(b) Building permits for new structures;
(c) Other development permits and approvals that allow physical alteration of the land involving excavation and grading, including permits for removal or fill, or both, or development in floodplains and floodways;
(d) Conditional use permits and variances that involve physical alterations to the land or construction of new structures; and
(e) Planned unit development approvals.
(2) The provisions of subsection (1) of this section do not apply if a permit from the department has been issued for the proposed activity.
(3) Approval of any activity described in subsection (1) of this section shall include one of the following notice statements:
(a) Issuance of a permit under ORS 196.665 and 196.800 to 196.900 by the department required for the project before any physical alteration takes place within the wetlands;
(b) Notice from the department that no permit is required; or
(c) Notice from the department that no permit is required until specific proposals to remove, fill or alter the wetlands are submitted.
(4) If the department fails to respond to any notice provided under subsection (1) of this section within 30 days of notice, the county approval may be issued with written notice to the applicant and the owner of record that the proposed action may require state or federal permits.
(5) The county may issue local approval for parcels identified as or including wetlands on the Statewide 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 department with a copy of the notification of Comprehensive Plan map or zoning map amendments for specific properties.
(6) Notice of activities authorized within an approved wetland conservation plan shall be provided to the department within five days following local approval.
(7) Failure by the county to provide notice as required in this section will not invalidate county approval. [1989 c.837 §29; 1991 c.763 §24]

SECTION 4.3.200 ZONING TABLES FOR URBAN AND RURAL RESIDENTIAL, MIXED COMMERCIAL-RESIDENTIAL, COMMERCIAL, INDUSTRIAL, MINOR ESTUARY AND SOUTH SLOUGH

The table indicates the type of review process that is required. Remember that CU is an conditional use review and the letter prior explain what level of conditional use is required (A = administrative and H=Hearing)

As used in the zoning tables the following abbreviations are defined as:

- ***"P" permitted and requires no review from the Planning Department. No review is required but other agencies may have requirements.***
- ***"CD" compliance determination review (permitted with standards) with clear and objective standards (Staff review usually referred to as Type I process or ministerial action). These uses are subject to development standards in sections 4.3.22, 4.3.230 and notices requesting comments may be provided to other agencies as result. The process takes a minimum of 30 days to complete. Industrial zones may require additional review. All structures and uses shall meet the applicable Development and Siting Criteria or Special Development Considerations and Overlays for the zoning district in which the structure will be sited.***
- ***"ACU" Administrative Conditional Use (Planning Director's Decision usually referred to as a Type II Process)***
- ***"HBCU" Hearing Body Conditional Use (Planning Commission, Board of Commissioner or Hearings Officer Decision usually referred to as a Type III Process)***
- ***"PLA" Property Line Adjustments subject to standards found in Chapter 6.***
- ***"P", "SUB", "PUD" = Partition, Subdivision, Planned Unit Development that require Land Division Applications subject to standards found in Chapter 6.***
- ***The "Subject To" column identifies any specific provisions of Section 4.3.210 to which the use is subject.***
- ***"N" means the use is not allowed.***

The zoning table sets out Uses, Developments and Activities that may be listed in a zone and the type of review that is required within that zone. If there is a conflict between uses the more restrictive shall apply. Section 4.3.210 provides an explanation of the use category and the specific criteria that shall apply and if the use is identified as requiring a conditional use. Section 4.3.220 General Siting Standards apply to all regulated Uses, Developments, or Activities, but these are clear and objective standards that do not, in themselves, require a land use notice. Section 4.3.230 Specific Standards and Conditional Use Criteria list specific siting standards by zones along with any additional criteria that applied to a Use, Development or Activity that has been identified by the following table as requiring.

#	Use	Zones													Subject To
		UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
	Forest, Farm and Natural Resource Uses – This category includes uses for or associated with forestry, farming, open space and habitat management.														
1.	Accessory Farm or Forest Structures and Uses to existing use. Accessory farm structures shall meet the definition of ORS 455.315.	CD	CD	CD	CD	CD	N	CD	N	N	***N*** ~~(CD)~~	N	N	N	(1)
2.	Agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use. A person may not convert an agricultural building to another use. Must have five acres or more.	N	N	N	CD	CD	***N***	CD	N	N	~~CD~~ ***N***	N	N	N	(2)
3.	Agricultural Uses (farm) not for profit	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	(5)
4.	Agricultural Uses (Farm) for profit (In residential when allowed property must have five or more acres to have agricultural for profit ***to qualify for a farm or forest structure***)	N	N	N	~~CD~~ ***P***	~~CD~~ ***P***	N	N	***N***	***N***	***N***	***N***	***N***	***N***	(5)
5.	Commercial activities in conjunction with farm use, processing of farm crops including marijuana	N	N	N	***N***	***CD***	ACU	ACU	CD	CD	N	N	N	N	(15)

#	Use	Zones													Subject To
		UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
6.	Commercial seasonal product sale in conjunction with farm or forest. Seasonal product sale not to exceed forty-five (45) days. Subject to renewal.	N	N	N	CD	CD	CD	CD	CD	N	N	N	N	N	(20)
7.	Contaminated Soil/Land Farming	N	N	N	~~HBCU~~ ***N***	~~HBCU~~ ***N***	~~HBCU~~ ***N***	~~HBCU~~ ***N***	N	~~CD~~ ***P***	N	N	N	N	(23)
8.	Exploration only for geo-thermal energy, aggregate and other mineral or subsurface resource.	~~ACU~~	~~ACU~~	~~ACU~~	~~CD~~	~~CD~~	~~ACU~~	~~CD~~	~~N~~	ACU	~~N~~	~~N~~	~~N~~	~~N~~	(33)
	a. Geo-thermal	ACU	ACU	ACU	***CD***	CD	ACU	CD	***P***	***P***	***ACU***	***ACU***	***ACU***	***N***	
	b. Aggregate	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***P***	***P***	***ACU***	***N***	***N***	***N***	
	c. Subsurface Resource – Any Natural Resource located below the surface (underground).	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***P***	***P***	***ACU***	***N***	***N***	***N***	
	e. Other mineral- Any other natural resource not described above	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***P***	***P***	***ACU***	***N***	***N***	***N***	
9.	Forestry, including propagation, management or harvesting (Five acres or more or for profit) ***No Structures***	N	N	N	P	P	N	N	P	~~ACU~~ ***P***	***P***	~~CD~~ ***P***	~~CD~~ ***P***	~~CD~~ ***P***	(37)
10.	Forestry, including propagation, management or harvesting (less than five acres) ***No Structures***	N	N	N	P	P	N	N	P	P	P	P	P	N	(37)
11.	Forestry-Primary Processing of Forest Products (personal use not regulated)	N	N	N	HBCU	HBCU	N	N	CD	~~ACU~~ ***CD***	N	N	N	N	(38)
12.	Marijuana growth and production for profit (Personal growth AND use not regulated)	***N***	***N***	***N***	***N***	CD	N	CD	CD	ACU	N	N	N	N	(55)(a)(c)
13.	Mitigation/ Active Restoration	N	N	N	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(59)
14.	Passive Restoration ***(Permitted outright in state law)***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***(59)***
15.	Wildlife – Hunting and Fishing preserve (no structures)	N	N	N	HBCU	HBCU	N	HBCU	HBCU	N	N	CD	***P***	~~CD~~ ***P***	(36)
16.	Wildlife Habitat Management	***P*** ~~N~~	***P*** ~~N~~	***P*** ~~N~~	P	P	***P*** ~~N~~	P	***P*** ~~N~~	***P*** ~~N~~	***P*** ~~N~~	P	***P***	***P***	***(86)***
17.	Winery	N	N	N	ACU	ACU	N	ACU	N	N	N	N	N	N	(84)
	Residential Uses – This category is for uses and structure for human occupancy as living quarters														
18.	Accessory Uses and Structures to permitted residential	CD	CD	CD	CD	CD	CD	CD	CD	~~ACU~~ ***CD***	CD	CD	CD	CD	(1)
19.	***Accessory Dwelling Unit***	***CD***	***CD***	***CD***	***N***	***N***	***CD***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***(27)(a)***
20.	Dwelling-Duplex (Two Family Dwelling)	CD	CD	CD	CD	CD	CD	CD	N	N	N	N	N	N	(27)(b)
21.	Dwelling – Floating Home	N	CD	N	CD	CD	N	N	N	N	N	~~N~~ ***CD***	N	N	(27)(c)
22.	Dwelling – Guest House	ACU	ACU	ACU	ACU	ACU	ACU	ACU	N	N	N	N	N	N	(27)(d)

#	Use	Zones													Subject To
		UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
23.	***Dwelling – Long Term Rental (Existing Dwelling)***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***P***	***(27)***
24.	Dwelling –Historical Dwelling – Modification ***(see historical special development consideration)***	ACU	ACU	ACU	ACU	ACU	***ACU*** ~~HBCU~~	ACU	ACU	ACU	ACU	ACU	ACU	ACU	(27)(e)
25.	Dwelling –Manufactured Single Family (ORS 446.003)	CD	CD	CD	CD	CD	CD	CD	N	N	N	N	N	N	(27)(f)
26.	Dwelling – Mobile Single Family (ORS 446.003)	N	CD	CD	CD	CD	CD	CD	N	N	N	N	N	N	(27)(g)
27.	Dwelling – Multi Family (More than two units)	N	ACU	ACU	ACU	ACU	ACU	ACU	ACU	N	N	N	N	N	(27)(h)
28.	Dwelling - Replacement	CD	CD	CD	CD	CD	CD	CD	ACU	ACU	ACU	ACU	ACU	ACU	(27)(i)
29.	Dwellings – Residential Uses in Commercial	N	N	N	N	N	CD	ACU	CD	N	N	N	N	N	(27)(j)
30.	Dwelling- Single Family Conventional	CD	CD	CD	CD	CD	CD	CD	N	N	N	N	N	N	(27)(k)
31.	Dwelling – Single Family Dwelling in Recreational	N	N	N	N	N	N	N	N	N	N	ACU	N	N	(27)(l)
32.	Dwelling – Temporary														
	a. Temporary Dwelling During Construction	N	CD	CD	CD	CD	CD	CD	CD	~~ACU~~ **CD**	CD	CD	CD	N	(27)(m)(i)
	b. Hardship (Family/Medical)	CD	CD	CD	CD	CD	CD	CD	N	N	N	N	N	N	(27)(m)(ii)
	c. Recreational Vehicle Use – 1. Short Stay	N	N	N	CD	CD	CD	CD	N	N	N	N	N	N	(27)(m)(iii)(1)
	c. Recreational Vehicle Use – 2. Camping (outside of an approved RV Park)	N	N	N	N	N	N	N	N	N	N	~~***N***~~ ***CD***	N	N	(27)(m)(iii)(2)
	e. Watchman/caretaker	N	N	N	N	N	HBCU	CD	CD	~~ACU~~ ***CD***	CD	CD	CD	N	(27)(m)(iv)
33.	Manufactured/Mobile Home Park	N	HBCU	HBCU	HBCU	HBCU	***HBCU*** ~~N~~	HBCU	N	N	N	N	N	N	(61)
34.	Residential Planned Unit Development	ACU	ACU	ACU	ACU	ACU	HBCU	ACU	ACU	N	N	N	N	N	(74)
	Commercial Uses – This category includes uses or structures for sale of goods or services.														
35.	Accessory Uses and Structures to permitted commercial	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(1)
36.	Advertising	N	N	N	N	N	ACU	N	CD	CD	CD	N	N	N	(3)
37.	Aero Sales, Repair and Storage	N	N	N	N	N	ACU	N	CD	CD	CD	N	N	N	(4)
38.	Auto/Vehicle Rental	N	N	N	N	N	ACU	CD	CD	N	N	N	N	N	(9)(a)
39.	Auto/Vehicle Repair and Storage	N	N	N	N	N	ACU	CD	CD	ACU	N	N	N	N	(9)(b)

#	Use			Zones												Subject To
				UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
40.	Auto/Vehicle Sales			N	N	N	N	N	ACU	CD	CD	N	N	N	N	N	(9)(c)
41.	Bed and Breakfast ***(in existing dwelling)***			HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	ACU	N	N	N	N	N	(10)
42.	Call Centers			N	N	N	N	N	ACU	ACU	CD	CD	N	N	N	N	(11)
43.	Cemeteries			N	N	N	ACU	ACU	ACU	ACU	***HBCU***	N	N	N	N	N	(13)
44.	Commercial Offices			N	N	N	N	N	ACU	ACU	CD	N	N	N	N	N	(16)
45.	Community Services			N	N	N	N	N	ACU	ACU	CD	N	N	N	N	N	(19)
46.	Day Care Facility	a.	12 people or less	CD	CD	CD	CD	CD	CD	CD	ACU	N	N	N	N	N	(25)(a)
		b.	13 people or more	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	N	N	N	N	N	(25)(b)
47.	Dormitories to serve an Educational Facility			N	N	N	N	N	HBCU	ACU	ACU	N	N	N	ACU	N	(26)
48.	Eating and Drinking Establishments			N	N	N	N	N	ACU	HBCU	CD	N	CD	HBCU	N	N	(28)
49.	Financial Institutions			N	N	N	N	N	ACU	ACU	CD	N	N	N	N	N	(35)
50.	Golf Courses			HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	N	N	ACU	N	N	(40)
51.	Hotel/Motel			N	N	HBCU	N	N	HBCU	HBCU	CD	N	CD	HBCU	N	N	(44)
52.	Hospital and Long-term care facilities (convalescent/rest home)			N	N	N	HBCU	HBCU	HBCU	N	ACU	N	N	N	N	N	(45)
53.	Marijuana Retail Dispensary/Wholesale			N	N	N	N	N	CD	CD	CD	N	N	N	N	N	(55)
54.	Medical clinic, dental clinic, medical treatment centers or medical officers			N	N	N	N	N	HBCU	N	ACU	N	N	N	N	N	(56)
55.	Miniature/***Non-Regulated*** Golf Course			N	N	N	N	N	HBCU	N	ACU	N	N	N	N	N	(57)
56.	Mortuary or Funeral Home			N	N	N	N	N	HBCU	N	ACU	N	N	N	N	N	(62)
57.	Offices – Administrative and Corporate			N	N	N	N	N	CD	ACU	CD	CD	CD	N	N	N	(64)
58.	Personal Service Establishment - includes salon, spa, massage parlor, barber shop, ***and*** beauty shop.			N	N	N	N	N	ACU	HBCU	CD	N	N	N	N	N	(66)
59.	Race Track			N	N	N	N	N	N	N	N	N	N	HBCU	N	N	(68)
60.	Recreational Planned Unit Development			N	N	N	ACU	HBCU	HBCU	HBCU	HBCU	N	N	HBCU	N	N	(69)
61.	Recreational Vehicle Rental and Repair			N	N	N	N	N	HBCU	HBCU	CD	N	N	CD	N	N	(71)
62.	Residential Care Home/Facility located in an existing dwelling			P	P	P	P	P	P	P	P	P	P	P	P	P	(73)
63.	Retail Business			N	N	N	N	N	ACU	HBCU	CD	N	N	HBCU	N	N	(75)

#	Use	Zones													Subject To
		UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
64.	Vacation Rentals ***(in an existing dwelling)***	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	N	N	(87)
65.	Veterinary Clinic/Kennel/Animal Rescue	N	N	N	HBCU	HBCU	HBCU	HBCU	HBCU	N	N	N	N	N	(88)
	Industrial Uses – This category includes uses and structures for the manufacturing, processing and related development														
66.	Accessory Development to industrial uses	CD	CD	CD	CD	CD	CD	CD	N	CD	CD	CD	N	N	(1)
67.	Construction and Maintenance Contractor Business	N	N	N	N	N	ACU	HBCU	CD	CD	N	N	N	N	(22)
68.	Cottage Industry/home occupation (in an existing structure)	N	HBCU	N	ACU	ACU	ACU	ACU	ACU	ACU	N	N	N	N	(24)
69.	Heavy Truck and Equipment Uses	N	N	N	N	N	N	N	N	CD	CD	N	N	N	(39)
70.	Industrial Service Firms	N	N	N	N	N	HBCU	HBCU	HBCU	CD	ACU	N	N	N	(46)
71.	Industrial Trade School	N	N	N	N	N	HBCU	HBCU	HBCU	CD	HBCU	N	N	N	(47)
72.	Industrial Uses and Port Facilities	N	N	N	N	N	N	N	N	CD	N	N	N	N	(48)
73.	Information Services	HBCU	HBCU	HBCU	HBCU	HBCU	ACU	ACU	ACU	CD	CD	N	N	N	(49)
74.	Laundry, Dry Cleaning, and Carpet-Cleaning Plants	N	N	N	N	N	N	N	N	CD	N	N	N	N	(51)
75.	Manufacturing	N	N	N	N	N	N	N	CD	CD	CD	N	N	N	(53)
76.	Manufacturing onsite	N	N	N	N	N	N	N	CD	CD	CD	N	N	N	(54)
77.	Marijuana processing/wholesale	N	N	N	N	N	ACU	ACU	ACU	CD	N	N	N	N	(55)
78.	Miscellaneous Industrial Uses	N	N	N	N	N	HBCU	HBCU	ACU	CD	N	N	N	N	(60)
79.	Mining or Mineral Processing – geo-thermal, ***aggregate***, other mineral or subsurface resources	~~N~~	~~N~~	~~N~~	~~N~~	~~HBCU~~	~~N~~	~~HBCU~~	~~HBCU~~	~~HBCU~~	~~N~~	~~N~~	~~N~~	~~N~~	(58)
	a. ***Geo-thermal***	N	N	N	***HBCU***	HBCU	N	HBCU	HBCU	HBCU	N	N	N	N	
	b. ***Aggregate***	***N***	***N***	***N***	***N***	***N***	N	***N***	HBCU	HBCU	***HBCU***	N	N	N	
	c. ***Subsurface Resource – Any Natural Resource located below the surface (underground).***	***N***	***N***	***N***	***N***	***N***	N	***N***	HBCU	HBCU	***HBCU***	N	N	N	

#	Use			Zones												Subject To
				UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
	e.	***Other mineral- Any other natural resource not described above***		***N***	***N***	***N***	***N***	***N***	N	***N***	HBCU	HBCU	***HBCU***	N	N	N	
80.	Research Facilities and Laboratories			N	N	N	N	N	ACU	ACU	CD	CD	ACU	N	CD	N	(72)
81.	Storage Facility and Units including parking facilities			N	N	N	N	N	HBCU	HBCU	~~***N***~~ ***ACU***	CD	ACU	N	N	N	(79)
82.	Warehousing and Distribution			N	N	N	N	N	HBCU	HBCU	HBCU	CD	HBCU	N	N	N	(81)
83.	Wholesale Trade			N	N	N	N	N	HBCU	HBCU	HBCU	CD	N	N	N	N	(85)
	Transportation and Infrastructure Uses – This category includes all transportation and infrastructure uses, developments and structures.																
84.	Airport/Heliport (public or personal)			HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	N	N	(7)
85.	Asphalt/Concrete portable Plant (temporary)			HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	CD	CD	HBCU	N	N	(8)
86.	Shoreline Stabilization - Non-Structural			CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(77)
87.	Shoreline Stabilization - Structural			ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	(77)
88.	***Transportation facility (includes any physical facility that moves or assists in the movement of people or goods) maintenance, new and alterations. If a project is defined in the County Transportation Plan it is exempt for land use review and considered permitted outright. If it is not then the zoning table applies.***			***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	(80)
89.	Transportation Uses			CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(80)
90.	***Water Development – New***			***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***ACU***	***N***	(83)
91.	***Water Development – Maintenance, repair and replacement***			***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***N***	(83)
	Utility, Power Generation, Solid Waste Uses – This category includes all utilities, power generating and solid waste uses, development, activities, and structures																
92.	Accessory structures and uses to any approved use in this category			CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(1)
93.	Alternative Power Sources			CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	N	(6)
94.	Composting Facility			N	N	N	N	N	N	HBCU	HBCU	HBCU	N	N	N	N	(21)
95.	Utility Facility- Air and Water Navigation Aides			CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(76)(a)
96.	Utility Facility -Communication			ACU	ACU	ACU	ACU	ACU	CD	***ACU*** ~~HBCU~~	CD	ACU	CD	***ACU*** ~~HBCU~~	HBCU	N	(76)(b)
97.	Utility Facility – Generating Power	a.	For public sale	***HBCU***	***HBCU***	***HBCU***	HBCU	HBCU	HBCU	HBCU	HBCU	CD	HBCU	N	N	N	(76)(c)
		b.	Not for public sale	***ACU***	***ACU***	***ACU***	ACU	ACU	ACU	ACU	ACU	CD	ACU	N	N	N	(76)(d)

#	Use	Zones													Subject To
		UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
98.	Utility Facility - Service Lines in conjunction with a Utility Facility	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	N	(76)(e)
99.	Utility Facility - Sewer/water plant and/or pump stations	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	CD	CD	CD	N	N	N	(76)(g)
100.	Waste Related including Solid Waste Facilities	N	N	N	N	N	N	N	HBCU	HBCU	HBCU	N	N	N	(82)
	Emergency Services and Governmental Services – This category includes all emergency services, governmental services, structures and associated development.														
101.	Accessory uses and structures to Emergency Services and Governmental Services include storage caches and standby power generating equipment	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(1)
102.	Correctional Institution, Jail, Penal Farm (public and private)	N	N	N	N	N	HBCU	HBCU	HBCU	N	N	N	N	N	(30)
103.	Emergency preparedness centers	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	N	(30)
104.	Emergency Service Training Facility (includes firearms training)	N	N	N	N	N	CD	CD	CD	CD	CD	N	N	N	(30)
105.	Fire Stations/Ambulance Service Facility	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	N	N	(30)
106.	Government and public services and structures	N	N	N	N	N	CD	ACU	ACU	ACU	ACU	N	ACU	N	(30)
107.	Police Stations	N	N	N	N	N	CD	CD	CD	CD	CD	N	N	N	(30)
108.	Resilience Structure	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(30)
	High-Intensity Recreation and Community Services – This category includes developed recreation area and community faculties.														
109.	Accessory structures and uses subordinate to any primary recreational use.	CD	CD	CD	CD	C D	CD	CD	CD	CD	CD	CD	CD	CD	(1)
110.	An outdoor mass gathering of more than 3,000 persons that is expected to continue for more than 24 hours but less than 120 hours in any three-month period, as provided in ORS 433.735.	N	N	N	N	CD	CD	CD	CD	CD	N	CD	CD	N	(65)(a)
111.	Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month period is subject to review by a county planning commission under ORS 433.763.	N	N	N	N	N	HBCU	HBCU	HBCU	HBCU	N	HBCU	N	N	(65)(b)
112.	Churches/Place of worship	HBCU	HBCU	HBCU	HBCU	HBCU	ACU	ACU	HBCU	N	N	N	N	N	(12)
113.	Coastal Recreation and Water Oriented business	N	N	N	N	N	HBCU	HBCU	CD	HBCU	N	CD	HBCU	N	(14)
114.	Community center, grange or lodge	HBCU	HBCU	HBCU	HBCU	HBCU	ACU	ACU	N	N	N	HBCU	N	N	(19)
115.	Educational Services and Structures (public and private)	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	N	N	N	CD	N	(29)
116.	Entertainment	N	N	N	N	N	ACU	ACU	ACU	N	N	ACU	ACU	N	(32)
117.	Low-intensity recreational uses	P	P	P	P	P	P	P	P	P	P	P	P	P	(52)
118.	Private parks and campgrounds	N	N	N	N	N	HBCU	HBCU	HBCU	N	N	ACU	HBCU	N	(67)

#	Use	Zones												Subject To
		UR-1	UR-2	UR-M	RR-2	RR-5	CD	RC	C-1	IND	AO	REC	SS	MES	
119.	Public parks including State Parks allowed by OAR 660-034-0035 and open space	HBCU	HBCU	HBCU	HBCU	HBCU	ACU	ACU	HBCU	N	N	CD	CD	N	(67)
120.	Museums	N	N	N	HBCU	N	HBCU	HBCU	HBCU	N	N	ACU	ACU	N	(63)
121.	Recreational Vehicle Park	N	N	N	N	N	HBCU	HBCU	HBCU	N	N	ACU	N	N	(70)
122.	Trails - non-motorized recreational trails that are part of a land division as open space or identified as part of the Parks Master Plan.	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	(67)(n)
123.	Youth camps associated with church or education	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	HBCU	N	N	~~N~~ ***ACU***	ACU	N	(29)
	Miscellaneous uses and activities														
124.	Historical Structures – modifications and replacement	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	ACU	(43)
125.	Special Temporary uses	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	N	(78)
	LAND DIVISIONS, LEGAL PARCEL/LOT DETERMINATIONS AND PROPERTY LINE ADJUSTMENTS – The following application are subject to applicable standards found in Chapter VI and VII. Development standards for each zone establish the minimum parcel size for a land division.														
126.	Legally created parcel/lot determination	Lawfully created lots and parcels are subject to the standards and criteria of Article 6.1.													
127.	Land Divisions (Partitions, Subdivisions, Planned Unit Developments)	All land divisions are subject to Article 6.2, Chapter VII and the applicable development standards located within the zone district unless otherwise exempted within the zoning district or subject to an approved Measure 49 claim.													
128.	Property Line Adjustment	Property Line Adjustments are subject to Article 6.3, Chapter VII and applicable development standards of the primary zones. If the purpose of the property line adjustment is to correct an encroachment it is not a discretionary decision and is exempt from certain standards as explained within Section 6.3.125.3.													
129.	***Measure 49 Claims***	***See Article 5.13***													

SECTION 4.3.210 – CATEGORIES AND REVIEW STANDARDS

The following categories provide a definition and specific standards that will regulate the Development, Use or Activity identified in the table above.

(1) ACCESSORY STRUCTURES AND USES – Shall ***be*** subordinate to any authorized primary use ~~shall be permitted~~. Accessory structures shall meet the applicable Development and Siting Criteria or Special Development Considerations and Overlays for the zoning district in which the structure will be sited.

(2) AGRICULTURAL BUILDING AND ACCESSORY FARM STRUCTURES - Shall meet the definition of ORS 455.315. Structures shall meet the applicable Development and Siting Criteria or Special Development Considerations and Overlays for the zoning district in which the structure will be sited.

(3) ADVERTISING – ***This use includes billboards and signs that advertise on industrial or commercial business.***

(a) ***This use shall be allowed as a compliance determination as an accessory to an approved commercial or industrial use through a compliance determination; or***

(b) ***If this use is a PRIMARY USE and is allowed as a conditional use in the zoning table the use shall be compatible.***

(4) AERO SALES, REPAIR AND STORAGE - Aero sales, repair and storage, including retail commercial dependent upon air transportation, air cargo warehousing and distribution facilities, air operations facilities, aerial related offices, aero school, and aero clubs.

(5) AGRICULTURAL USES (FARM) AND BUILDINGS - Pursuant to ORS 215.203 Agricultural uses (farm) and buildings pursuant to ORS 215.203. ~~An~~ Agricultural Buildings may only be permitted on property ***or properties*** ~~or the Tract has to be of land at~~ ***that are equal to or greater than*** five (5) acres and meet the definition under Section 2.1.200. Accessory farm structures shall meet the definition of Chapter 2 for ACCESSORY and may be permitted subject to development standards unless other special development considerations or overlays further restrict structural development. Farm accessory structures shall not be used for commercial activity in conjunction with farm use which includes, but is not limited to, processing facilities which convert harvested agricultural crops from their natural state into new products.

(6) ALTERNATIVE POWER SOURCES – This category includes solar photovoltaic cell(s), wind energy geothermal and hydro-electric. ***This use is only regulated when a state agency permit is required.***

(a) Photovoltaic Cells for noncommercial use. The installation and use of a solar photovoltaic energy system or a solar thermal energy system shall be allowed if:

i. The installation of a solar energy system can be accomplished without increasing the footprint of the residential structure or the peak height of the portion of the roof on which the system is installed; and

ii. The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof (ORS 215.439)

iii. The solar energy system may be sited on the ground. Must comply with the same setback requirements listed in the development standards as the parent parcel.

(b) Wind energy for non-commercial use shall be allowed if:
   i. It is to support an approved use on the property;
   ii. It is not for commercial purposes;
   iii. The wind structure must not exceed 35 feet; and
   iv. It must comply with the same setback requirements listed in the development standard as the parent parcel.

(c) Geothermal and hydro-electric may be used to support an approved use if:
   i. It is not for commercial purposes;
   ii. Other agencies may require permits for the use of hydro-electric;
   iii. It must comply with the same setback requirements listed in the development standards as the parent parcel.

(7) AIRPORT/HELIPORT (Personal and Public)
(a) Public Airports need to be either located in the Airport Operations (AO) zone or show a need to be located in an area to serve the community.
(b) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Aeronautics Division.

(8) ASPHALT/CONCRETE PORTABLE PLANT - Permitted temporarily, not to exceed 30 days ***unless it is in conjunction with a specific County or State Road/Highway project and then it shall not be located longer than it takes to complete that specific project. If the County or State project is to last longer than 30 days they shall notify the Planning Department of the length of stay anticipated to complete the project.***

(9) AUTO/VEHICLE – This category includes service station, auto sales, auto repair, auto rental, off-road vehicle rental and/or tire sales, truck/heavy equipment sales, repair, service, and storage.
(a) AUTO/VEHICLE RENTAL – This category provides for rental of any type automobile, bus, truck/heavy equipment or off-road vehicle.
(b) AUTO/VEHICLE REPAIR AND STORAGE – Includes the repair and/or storage of automobile, buss, truck/heavy equipment or off-road vehicle.
(c) AUTO/VEHICLE SALES - Includes any sales ***of*** or related to products for automobile, bus, truck/heavy equipment or off-road vehicle.

(10) BED AND BREAKFAST - Any lawfully established dwelling may operate a Bed and Breakfast pursuant to the following:
(a) All "bed and breakfast facilities" shall be established within the primary residence.
(b) Breakfast shall be the only meal served to overnight paying guests.
(c) No cooking facilities shall be permitted in any rented room.

(d) The maximum number of rooms that may be rented shall not exceed four (4).
(e) Off-street parking shall be provided as follows:
    (i) Two spaces for the owner/occupant, plus 1 space for each additional bedroom.
    (ii) A plot plan shall be submitted, delineating:
        1. The property boundaries;
        2. Access to the property;
        3. Location of all structures on the subject property; and
        4. Required parking spaces.
    (iii) Not permitted outside an urban or rural unincorporated community.

(11) CALL CENTER – **A structure set up for employees designated for incoming and outgoing calls for services or goods. This category includes reservation centers, product and service support and telemarketing.**

(12) CHURCH OR PLACE OF WORSHIP – ***A place of worship is a specially designed structure or consecrated space where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious study. A building constructed or used for this purpose is sometimes called a house of worship.***

(13) CEMETERIES- ***This use requires a plat which is regulated in the land division section of Chapter VI.***

(14) COASTAL RECREATION/WATER ORIENTED BUSINESSES- Coastal Recreation uses occur in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities from swimming, scuba diving, boating, fishing, hunting, use of dune buggies; shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants. Water oriented means a use whose attraction to the public is enhanced by a view of or access to coastal waters**. This use shall only be located in offshore ocean waters, estuaries, and streams, along beaches and bluffs, or in adjacent shorelands. In the industrial zone the use must not pre-empt industrial lands for industrial use which can be done through temporary or phased planned development. In the IND zone this type of development shall not be the sole justification for a change in zoning district.**

(15) COMMERCIAL ACTIVITIES IN CONJUNCTION WITH A FARM USE – Commercial activities are limited to providing products and services essential to the practice of commercial agriculture; this does not include wineries which are regulated separately. A commercial activity in conjunction with farm use includes, but is not limited to, processing facilities which convert harvested agricultural crops from their natural state into new products, i.e., drying, freezing, canning, etc. In addition, the preparation and storage of a product which includes significant amounts of agricultural crops not raised by the operator of the storage facility shall also be considered a commercial activity. The storage, sale and application of farm chemicals used in conjunction with the growing of farm crops necessary to serve nearby farm uses shall also be considered a commercial activity subject to meeting the following standards:
(a) The facility shall be located on the farm operation that provides at least one-quarter of the farm crops processed at the facility.
(b) The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use, or devote

more than 10,000 square feet to the processing activities within another building supporting farm uses.

(c) A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. ***If a standard prohibits the siting of a processing facility it shall not apply.***

(d) The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(e) The chemicals shall be limited to those used in conjunction with the growing of farm crops; chemicals used only for other uses, such as forest uses, cannot be stored, sold or applied.

(16) COMMERCIAL OFFICE – This category includes professional services office[1], public service office and government office.

(17) COMMERCIAL PARKING LOTS/STRUCTURES- ***This use is an area or structure that is used for paid parking or storage of vehicles including recreational vehicles (storage only).***

(18) COMMERCIAL RETAIL – This category includes retail sales of any goods or services, except marijuana. ***In recreational zones the commercial retail shall be accessory to an approved recreational use.***

(19) COMMUNITY SERVICE – this category includes community center, grange, lodge hall, library, house of worship, mortuary or funeral home, school, dormitory, meeting and conference facility, research &education observation structure, public park, cemetery, and museums if directly associated with a historical event or site located on or near the subject property.

(20) COMMERCIAL SEASONAL PRODUCT SALES – this use shall be in conjunction with farm or forest use. Seasonal product sales for a time period not to exceed forty-five (45) days, subject to renewal. ***This use shall only be permitted on property or properties that are equal to or greater than five (5) acres and meet the definition under Section 2.1.200 for Farm or Forest Use.***

(21) COMPOSTING FACILITY – All composting operations that require a DEQ permit must comply with the following prior to submitting an application for land use approval for a composting facility:

(a) The potential applicant must participate in a pre-application conference. This pre-application conference must include all permitting agencies;

(b) The potential applicant must hold and participate in a community meeting in which the pre-application notes must be made available to the attendees. The community meeting must be completed within sixty (60) days of the pre-application conference. The community meeting is the responsibility of the applicant. The meeting shall be held within the geographic boundaries of the County and between the hours of 6:00 p.m. to 8:00 p.m. and any day of the week excluding Sunday and holidays. Notice of the meeting must be provided to owners of record, on the most recent property tax assessment roll, of real property located within one-half mile of the real property on which the proposed disposal site for composting would be located. Notice shall also be provided to neighborhood and community organizations recognized by the governing body of the county if a boundary of the organization is within one-half mile of the proposed disposal site for composting.

[1]Professional services include a range of different occupations which provide support to businesses of all sizes and in all sectors. People working in professional services provide specialist advice to their clients. This includes things like providing tax advice, supporting a company with accounting or providing business advice. The kinds of services provided mean that the professional services sector helps to improve productivity and growth across the economy.

The notice must be published and a copy provided to the local media for press release. The notice shall include a brief description of the proposed disposal site for composting, date, time and address of the location of the meeting place. At the public meeting the applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations;

(c) After the community meeting has been held a land use application may be submitted to the Planning Department. In order for the application to be deemed completed, evidence of a community meeting and notice of the community meeting shall accompany the land use application;

(d) The hearings body shall review the proposal based on the following criteria:
   i. This use must be found to be compatible with surrounding uses;
   ii. Shall have disposal plan;
   iii. Shall explain methods for obtaining materials including travel;
   iv. Show wastewater collection and treatment plan; and
   v. Show adequate parking plan.

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(22) CONSTRUCTION AND MAINTENANCE CONTRACTOR BUSINESS - This category includes places of business that contractors are engaged in construction and maintenance services.

(23) CONTAMINATED SOIL/LAND FARMING - Contaminated Soil Land Farming where the activity is situated less than 1000 feet from any rural-residential zone or urban growth boundary. The activity must be found to be compatible with surrounding uses or made compatible through the imposition of conditions. Contaminated Soil Land farming is permitted as a compliance determination review provided the activity is situated more than 1,000 feet from any rural-residential or urban growth boundary.

(24) COTTAGE INDUSTRY/HOME OCCUPATION - This use shall not employ more than five (5) full or part-time persons, interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located, or involve the retail sale of a product on the premises. An on-premise sign for purpose of advertising the cottage industry shall not exceed six (6) square feet of copy area. A home occupation shall comply with the following:

   (a) ~~Compatibility as explained in the opening statement.~~ ***This use shall comply with the compatibility standard found in Section 4.3.220.***

   (b) Coos County Planning Staff shall review a permit allowing a home occupation or cottage industry every twelve (12) months following the date the zoning compliance letter was issued and may continue the use if it continues to comply with the definition of cottage industry and/or home occupation. This is accomplished by a request from the applicant prior to the expiration of the prior zoning compliance letter. If the use has not changed and remains in compliance a zoning compliance letter from will be issued; and,

   (c) This use approval shall vest exclusively with the owner of the land at the time of approval. The cottage industry shall not be conveyed or otherwise transferred to a subsequent landowner without a new conditional use permit. A plot plan and parking/traffic plan shall be submitted, to address the following:
      i. The property boundaries;
      ii. Access to the property;
      iii. Location of all structures on the subject property;

iv. Required parking spaces; and,
v. A parking/traffic plan is required. All parking/traffic plans shall be reviewed by the Roadmaster to determine traffic safety.

(25) DAY CARE FACILITY -
(a) Twelve (12) or fewer people – ***This use is subject to compliance determination requirements of Article 5.10, and*** parking ***and access requirements of Chapter VII.***
(b) Thirteen (13) or more people – This use is subject to the following:
(i) ***This use shall comply with the compatibility standard found in Section 4.3.220; and***
(ii) ***Shall comply with parking/access requirements of Chapter VII.***

(26) DORMITORIES – This is to serve an education facility only and shall be hooked to public water and sewer.

(27) DWELLING - Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes. A dwelling shall consist of a kitchen, bathroom(s) and living space. Dwellings do not including a RV, tent, teepee, yurt, hotels, motels, vacation rentals or boarding houses. Types of Dwellings are listed below. Long term rentals are not regulated by this ordinance.

(a) ***ACCESSORY DWELLING UNIT – An Accessory Dwelling Unit (ADU) is defined as an interior, attached, or detached residential structure which is clearly accessory and incidental to that of a lawfully established single-family dwelling on the same lawfully created unit of land. For the purpose of this definition, interior means the ADU is located within a building that was not originally designed or used as an ADU. Attached means at least a portion of one wall or floor of the ADU is connected to a building. Detached means the ADU is not connected to any other building. A structure that qualifies as an apartment, duplex dwelling, multi-unit dwelling structure, an accessory building, or an accessory structure is not an ADU. In order to qualify for an accessory dwelling unit a primary dwelling shall have existed or been approved as of July 1, 2018. ADUs are subject to the following standards:***
(i) ***The ADU shall be located entirely inside the Urban Growth Boundary or Urban Unincorporated Community Boundary and is zoned for Urban Residential or Controlled Development;***
(ii) ***The ADU shall either be detached, attached, or located within the interior of a lawfully established single-family dwelling on a lawfully created unit of land and meet one of the following size requirements:***
1. ***On Properties served by water and sewer or meet the current one (1) acre density requirement for not having water and sewer, an ADU can be detached, attached or interior. The ADU shall not exceed 800 square feet of floor area, or 75 percent of the primary dwelling's floor area, whichever is smaller. However, Accessory Dwellings that result from the conversion of a level or floor (e.g., basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling exceeds 800 square feet.***
2. ***On Properties not served by water and sewer and less than one (1) acre, an ADU can be detached, attached or interior. The accessory dwelling unit shall***

not exceed 500 square feet, or 75% of the floor area of the primary dwelling whichever is less.

(iii) ***Calculation of size shall be made using the Coos County assessment square footage. If there is no data is available in the assessment records on the size of the existing dwelling unit available then applicant shall supply a sworn statement of compliance and plot plan showing the size of the primary dwelling. No primary dwelling shall be converted to an accessory dwelling unless the dwelling is a historic dwelling pursuant to subsection e (Historical Dwellings Modifications) of this section.***

(iv) ***All ADUs shall comply with Oregon Residential Specialty Code which may require modification to one or more existing structures. Any structure not constructed for permanent human occupancy shall not be used as accessory dwelling units. These structures include recreational vehicles, park models, yurts or any other similar design. Any legal accessory structure, not described in the prior sentence, may be converted to an ADU as long as the floor area requirements are met.***

(v) ***All development standards, with the exception of dwelling density and off street parking requirements to the extent they may conflict with allowance of an accessory dwelling, shall apply.***

(vi) ***The ADU shall not:***

1. ***be accessory to a temporary dwelling;***
2. ***be used as a short-term rental (vacation rentals). The applicant shall sign a covenant stating that the ADU cannot be used for a short-term rental and record it in the deed of records. This deed restriction shall apply until the property is annexed into the city or the restriction is otherwise removed.***

(b) DUPLEX - A structure that contains two primary dwelling units. The units shall share either a common building wall or a common floor/ceiling. The land underneath the units may or may not be divided into individual lots.

(c) FLOATING HOME – means a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat.

(d) GUEST HOUSE - An auxiliary residence shall be constructed on property when the following conditions are met:

(i) The parcel on which the guest house is placed contains ~~1.5~~ **two (2)** acres;

(ii) Only one guest house per ~~legal parcel~~ ***lawfully created unit of land***;

(iii) The guest house ~~is no more than 500 square feet in size or 30% of the total square footage of the primary dwelling~~ ***shall not exceed either 500 square feet in size or 75% of the total square footage of the primary dwelling, whichever is less, on properties that contains at least two (2) acres in size;***

(iv) The guest house ~~is no more than 500 square feet in size or 30% of the total square footage of the primary dwelling~~ ***shall not exceed either 800 square feet in size or 75% of the total square footage of the primary dwelling, whichever is less, on properties that are served by water and sewer or contains a minimum of (5) acres;***

(v) The guest house can be a manufactured structure (park model) or conventional built. ***Manufactured structures are prohibited in an Urban Residential-1 (UR-1) zone***;

(vi) Cannot be used as a rental unit;

(vii) Is attached to or within 100 feet of the main residence ***but no closer than seven (7) feet***; ~~and~~

(viii) Is served by the same domestic water system, sewage system and utility meters as the main residence, ***unless it is located in an area served by a public sewer system;***

(ix) ***Guest houses that existed prior to July 1, 2018 may be converted to an accessory dwelling unit if they comply with the standards. This will require a Compliance Determination review.***

(x) ***A deed covenant recorded with the county stating that this is a guest house that is not to be rented. If converted to another use the covenant will be removed.***

(e) HISTORICAL DWELLINGS MODIFICATIONS - Coos County shall permit the expansion, enlargement or other modification of identified historical structures or sites provided that such expansion, enlargement or other modification is consistent with the original historical character of the structure or site:

(i) Staff shall refer to the Oregon State Historical Preservation Office data for details on locations of historical structures.

(ii) This strategy shall be implemented by requiring Planning Director review of site/plot and architectural plans. The proposed project shall be consistent with the original historical character of the site and structure.

(iii) This strategy recognizes that enlargement, expansion or modification of historical structures is not inconsistent with Coos County's historic preservation goal. The Planning Director shall approve the alteration or modification if the proposal is found to be compatible with the character of the resource with respect to style, scale, texture and construction materials or it is found to enhance the historical value of the resource. Further, this strategy recognizes that the site and architectural modification may be necessary to preserve, protect or enhance the original historical character of the structure.

(iv) If there is evidence to show that the cost of repairs or restoration cost more than the value of the structure then the Planning Commission may authorize the structure to be removed and replaced with something of like value.

(v) ***Accessory Dwelling units may be allowed on properties with historical dwellings in all non resource zones that allow for single family dwellings. A historical dwelling maybe permitted as the accessory dwelling unit and a new primary single family dwelling shall be permitted. Accessory dwelling unit sizes and standards shall apply. If the new primary dwelling is proposed it shall be at least 25 percent larger than the historical dwelling to allow the historical dwelling to be considered accessory.***

(f) MANUFACTURED HOMES- ***structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction. In the urban zones this type of dwelling shall meet the requirements of ORS 197.307.***

~~The dwelling shall be multi-sectional and enclose a space of not less than 1,000 feet.~~

~~i. The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above the grade.~~

~~ii. The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.~~

(g) MOBILE HOMES - Structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962 and June 15, 1976. Mobile Homes and Residential Trailers are prohibited in the Urban Residential-1 Zone. Residential Trailers are further prohibited in all zoning districts.

(h) MULTI-FAMILY DWELLING- A structure contains three (3) or more dwelling units that share a common floor/ceiling with one (1) or more units. The units may also share common building walls. The land underneath the structure is not divided into separate lots. Multi-dwelling structures include structures commonly known as garden apartments, apartments, and condominiums. This type of dwelling shall be reviewed as a planned unit development unless it is located in the UR-M.

(i) REPLACEMENT DWELLING - alteration, restoration or replacement of a lawfully established dwelling that:
  (i) has intact exterior walls and roof structure;
  (ii) has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
  (iii) has interior wiring for interior lights;
  (iv) has a heating system; and
  (v) In the case of replacement, is removed, demolished or converted to an allowable non-residential use within three months of the completion of the replacement dwelling.

(j) RESIDENTIAL USE IN COMMERCIAL– this category includes second floor apartment(s) located above an approved Commercial Use, off site farm worker housing, apartment(s)if served by a public water and public sewer source and temporary dwellings used for up to two (2) years during construction.

(k) SINGLE FAMILY DWELLING- A single household unit. Construction is characterized by no common wall or ceiling with another unit, including a mobile home ***unless otherwise allowed by under this ordinance.***

(l) SINGLE FAMILY DWELLING IN RECREATIONAL ZONES - Single family dwelling: On land zoned "Recreation" and privately owned on January 1, 1993, one single family dwelling or mobile home may be established on contiguous lots or parcels under the same ownership on January 1, 1993, provided:
  (i) The dwelling will not interfere with or pre-empt future or existing recreational uses on adjacent or nearby Recreational zoned land.
  (ii) The dwelling is compatible with surrounding uses or could be made compatible with the imposition of conditions.
  (iii) No other dwellings exist on the contiguous lots or parcels under that ownership. Any land divisions to separate a dwelling established under this section must create a 5 acre parcel containing the dwelling. No other dwellings may be established on the remaining parcel. A land division must comply with Article 6.5 of the Ordinance [OR 92-11-018PL]

(m) TEMPORARY RESIDENCES OR STRUCTURES –

(i) DURING CONSTRUCTION - For the purpose of temporary habitation shall be permitted during the construction of a permitted or conditional permitted use. Such authorization shall not to exceed one (1) year, subject to renewal by authorization of the Planning Director or designee upon showing that such construction has not been completed and applicable development permits are valid.

(ii) HARDSHIP DWELLING (Family or Medical) - A manufactured dwelling or recreational vehicle under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished. A temporary residence approved under this section is not eligible for replacement. Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. Every two years the Planning Director shall review the permit authorizing such temporary hardship dwellings. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Oregon Department of Environmental Quality review and removal requirements also apply to such temporary hardship dwellings.

(iii) RECREATIONAL VEHICLES- Recreation Vehicles may be used as a dwelling under the following circumstances:

1. Short-term guest visits on a lot or parcel containing a dwelling. The stay shall not exceed 60 days in a calendar year. This is a permitted use that does not require review.
2. While camping of up to 45 days per calendar year. The camper shall own, **or be an immediate family member of,** the subject property ~~or is a member of the immediate family~~. ***No more than two RVs can occupy the site for this limited purpose***.

(iv) ***WATCHMAN/CARE TAKER DWELLING – Permitted on properties that have industrial, commercial or recreational uses to provide security but not on properties that already contain a single family dwelling. The dwelling shall be temporary and movable (RV or Manufactured Dwelling). The dwelling shall be only sited if there is an existing approved use and this use is serving as an accessory use.***

(28) EATING AND DRINKING ESTABLISHMENTS OR RESTAURANT FACILITIES – this category includes bakery, cafe, catering service facility, confectionery, delicatessen, food truck, tavern, lounge and coffee shop.

(a) ***This use shall comply with the compatibility standard found in Section 4.3.220;***
(b) ***Meet parking and access requirements of Chapter VII; and***
(c) ***Obtain any necessary health license.***

(29) EDUCATION FACILITIES – This category means an organization or institution that provides instruction such as schools, colleges, trade schools, research centers and libraries. Education facilities may include buildings, fixtures, and equipment necessary for the effective and efficient operation of the program of public or private education, classrooms, libraries, rooms and space for physical education, space for fine arts, restrooms, specialized laboratories, cafeterias, media

centers, building equipment, building fixtures, furnishings and related exterior facilities. Dormitories are a separate regulated use.

(30) EMERGENCY SERVICES – This category includes correctional institution, jail, penal farm, fire stations, police stations, emergency service training facilities (which may include firearms training), emergency preparedness centers, storage caches and standby power generating equipment for ESSENTIAL FACILITIES. ~~Show compatibility if a conditional use is required.~~ ***If a conditional use is required as indicated on the zoning table it shall comply with the compatibility standard found in Section 4.3.220.***

(31) ENERGY AND COMMUNICATION FACILITIES – This category includes communication facilities, low and high intensity utility facilities, service lines, geo-thermal energy, photovoltaic cells and wind turbines.

(32) ENTERTAINMENT – this category includes event venue, studio, theater, auditorium, stage, carnival site, circus, fairgrounds ***and zoos***.

(33) EXPLORATION ONLY FOR GEO-THERMAL ENERGY, AGGREGATE AND OTHER MINERAL OR SUBSURFACE RESOURCE. Exploration in Industrial and Commercial shall only be allowed outside of an Urban Unincorporated Community and Urban Growth Boundary. ***Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(2)(a) or (b).***

(34) RESERVED

(35) FINANCIAL INSTITUTIONS – ***This category includes*** banks, insurance agents, real estate, loan companies and brokers. ***If this use is located outside of an UGB it is required to shall comply with the compatibility standard found in Section 4.3.220.***

(36) HUNTING AND FISHING PRESERVE- Areas used exclusively for the hunting of game birds, game animals, or angling for game fish as permitted by State law.

(37) FORESTRY- Forestry including propagation, management or harvesting of a forest product. ***Log scaling and weigh stations are considered accessory to this use.***

(38) FOREST PRIMARY PROCESSING OF FOREST PRODUCTS - A facility for the primary processing of forest products, provided that such facility is not found to interfere seriously with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(39) HEAVY TRUCK AND HEAVY EQUIPMENT USE - This category includes retail sale of equipment, rental, storage, repair, and servicing of heavy trucks and equipment. A structure may be built to house any of these uses. This use is a compliance determination to ensure all development and use standards are met.

(40) GOLF COURS - A golf course means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A golf course for the purposes of ORS 215.283(2)(e) and this section means a nine or eighteen hole regulation golf course or a combination nine and eighteen hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes.

(b) A regulation 9 hole golf course is general characterized by a site of about 65 to 90 acres of land, has a playable distance of 2.500 to 3,600 yards, and a par of 32 to 36 strokes.

(c) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: parking, maintenance buildings, cart storage and repair, practice range or driving range, clubhouse, restrooms, lockers and showers, food and beverage service, pro shops, a practice or beginners course as a part of an 18 hole or larger golf course. Accessory uses to a golf course do not include: sporting facilities unrelated to golfing such as tennis courts, swimming pools, weight rooms, wholesale or retail operations oriented to the non-golfing public; or housing.

(d) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(e) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(f) Three -mile setback. For uses subject to this subsection:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

ii. Any enclosed structures or group of enclosed structures described in § 4.6.220(1)(k)(vii)(a) within a tract must be separated by at least one-half mile. For purposes of this Subsection, "tract" means a tract that is in existence as of June 17, 2010.

iii. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this ordinance.

(41) GOVERNMENT BUILDING – This use ~~is means~~ ***consists of*** a structure ***or structures*** that ~~is~~ shall house any governmental or quasi-governmental use.

(42) Left Blank intentionally.

(43) HISTORICAL STRUCTURES - Coos County shall permit the expansion, enlargement or other modification of identified historical structures or sites provided that such expansion, enlargement or other modification is consistent with the original historical character of the structure or site:

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

(44) HOTEL/MOTEL - This category includes hotel, motel ~~and~~ ***or*** guest cottage:

(a) The total units shall not exceed 35; and
(b) Shall be located in an Urban Growth Boundary or Urban Unincorporated Community ~~and must be~~ served by a public sewer system.

(45) HOSPITAL AND LONG-TERM CARE FACILITIES - (this does not include ***a*** residential home care facility ~~that takes place in a dwelling.~~) ***This use shall be served by public sewer and water.***

(46) INDUSTRIAL SERVICE FIRMS – Industrial service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. This use shall comply with all development and use standards.

(47) INDUSTRIAL TRADE SCHOOLS - This category includes training facilities whose primary purpose is to provide training to meet industrial needs. These facilities also may be referred to as technical schools, vocational schools, and career schools. Industrial trade schools provide training in such occupational skills as welding, operation and repair of industrial machinery, and truck driving.

(48) INDUSTRIAL USES AND PORT FACILITIES- Public or private use of land or structures for manufacturing, processing, port development, and energy generating facilities. Industrial and Port Facilities include large commercial and industrial docks. This use shall comply with development and use standards and any applicable special or development considerations.

(49) INFORMATION SERVICES - This category includes establishments engaged in producing and distributing information, providing the means to transmit or distribute these products, as well as data or communications, and processing data. Examples include publishing industries such as book, periodical, and software publishing, computer systems design, internet web search services, internet service providers, radio, television, motion picture, and recording studios, computer data storage services, optical scanning and imaging services, and financial transaction processing such as credit card transaction and payroll processing services. These businesses primarily serve other industries or deliver their products to the end user through means other than on-site pickup by the customer. Few general public customer visits per day are generated.

(50) LAND DIVISIONS (PARTITION/SUBDIVISION) -
- (a) Are not required to meet building size or diminish***ed*** mill site standards ~~to apply~~;
- (b) Each parcel or lot shall meet the minimum lot/parcel size and development standards unless it is a residual of resource (Farm or Forest) land division or a Planned Unit Development (PUD) (see regulations for PUD);
- (c) Must comply with the requirements of Chapter 6 for land divisions;
- (d) Notice will be sent as required by Chapter 5.0; and
- (e) Final Plat is a ministerial review.

(51) LAUNDRY, DRY CLEANING, AND CARPET-CLEANING PLANTS - These businesses primarily serve other industries or deliver their services to the end user through means other than on-site customer visits. Few general public customer visits per day are generated. **This use shall comply with all development and use standards.**

(52) LOW-INTENSITY RECREATION - Uses that do not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation.

(53) MANUFACTURING - This category includes establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or processing of components into new products, including the assembly of component parts. Manufacturing includes: alternative energy development, biosciences, food and beverage processing, software and electronics production, and processing or fabrication of products made from materials such as forestry products, metal, glass, rubber, plastic, resin, raw wood and paper.

(54) MANUFACTURING ***ONSITE- This category*** of a product for sale on site may be permitted if it is subordinate to a commercial retail operation. **This use shall comply with all development and use standards.**

(55) MARIJUANA - This category includes, sale, growing, production, processing, wholesaling of both medical and recreational marijuana and marijuana products. This may include a commercial kitchen that may require a health department license.

(a) MARIJUANA GROWTH- May be permitted notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land ~~designated~~ ***zoned*** ~~for~~ Exclusive Farm Use or ***allow*** for agricultural uses for profit:

(i) A new dwelling used in conjunction with a marijuana crop;

(ii) A farm stand, as described in ~~ORS 215.213 (1)(r) or~~ 215.283 (1)(o), used in conjunction with a marijuana crop; and

(iii) ***A commercial activity, as described in ~~ORS 215.213 (2)(c) or~~ 215.283 (2)(a), carried on in conjunction with a marijuana crop. This use is limited to marijuana production and not processing. Marijuana production standards shall apply as well as the standards in ORS 215.283(2)(a) for commercial activity in conjunction farm. Impacts to adjacent acceptable farm and forest practices shall be considered.***

(b) MARIJUANA PROCESSING - The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority. Shall comply with the following standards:

(i) ***Enclosed Buildings. Marijuana processing shall be located entirely within one or more completely enclosed buildings.***

(ii) ***Odor. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.***

1. ***The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon.***
2. ***The filtration system shall be maintained in working order and shall be in use.***

(iii) ***An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.***

(iv) ***Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.***

(v) ***Security Cameras. If used, security cameras shall be directed to record only the subject lot of record and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the OLCC or registration requirements of the OHA.***

(vi) ***Exceptions. Marijuana processing, pursuant to registration with the OHA, is not required to comply with the standards under marijuana processing.***

(c) MARIJUANA PRODUCTION - The manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the

Oregon Liquor Control Commission, or registered with the Oregon Health Authority and a "person designated to produce marijuana by a registry identification cardholder."

(i) ***Outdoor production means producing marijuana:***
   1. ***In an expanse of open or cleared ground; or***
   2. ***In a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources. A mature marijuana plant is a marijuana plant that is flowering.***
   3. ***Outdoor production is prohibited in Urban and Rural Residential Zoning Districts. Except when the property or properties within the same ownership are equal to or greater than five acres in the Rural Residential. Where permitted, outdoor production is subject to the same standards and criteria as indoor production, except where specifically noted.***

(ii) ***Fencing. The maximum height of any fencing on the subject tract shall be 10 feet. Fences, walls, or other barriers shall not be electrified, or use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.***

(iii) ***Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.***

(iv) ***Security Cameras. If used, security cameras shall be directed to record only the subject lot of record and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the OLCC or registration requirements of the OHA.***

(d) MARIJUANA RETAILING/MEDICAL MARIJUANA FACILITIES - The sale of marijuana items to a consumer, provided that the marijuana retailer is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority.

(i) The retail and dispensary facilities may not be located within a 1000 feet of: a public elementary or secondary school where attendance is compulsory under ORS 339 et seq; or a private or parochial elementary or secondary school, where children are taught as described in ORS 339.030(1)(a).

(ii) ***Notwithstanding ORS 475B.858 (3)(d), a medical marijuana dispensary may be located within 1,000 feet of a school if:***
   1. ***The medical marijuana dispensary is not located within 500 feet of:***
      a. ***A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or***
      b. ***A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and***
   2. ***The Oregon Liquor Control Commission determines that there is a physical or geographic barrier capable of preventing children from traversing to the premises of the medical marijuana dispensary.***
   3. **475B.870 Establishment of school after registration**. ***If a school described in ORS 475B.858 (3)(d) that has not previously been attended by children is established within 1,000 feet of a medical marijuana dispensary, the medical marijuana dispensary may remain at its current location unless the Oregon***

Health Authority revokes the registration of the medical marijuana dispensary.

(e) MARIJUANA WHOLESALING - The purchase of marijuana items for resale to a person other than a consumer, provided that the marijuana wholesaler is licensed by the Oregon Liquor Control Commission.

(56) MEDICAL CLINIC, DENTAL CLINIC MEDICAL TREATMENT CENTERS AND MEDICAL OFFICES - ~~This use must show compatibility with the surrounding properties or may be made compatible through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area.~~ ***This use shall comply with the compatibility standard found in Section 4.3.220.***

(57) MINIATURE GOLF COURSE/NON-REGULATED GOLF COURSES– is a golf course or golf course-like development that does not meet the definition of golf course, including but not limited to executive golf course, par 3 golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges.

(58) ***MINING OR MINERAL*** PROCESSING –This category includes geo-thermal, aggregate, other mineral or subsurface resources**. This may include stock piles.** ~~farm use pursuant to ORS 215.203, propagation, management, harvesting of forest products including sawmills, manufacture and storage of logs and lumber.~~

(a) For any mineral processing other than for aggregate the following applies:

(i) All drill holes shall be filled and capped according to the following standards, and bonds to secure performance of this obligation shall be required as follows:

1. The applicant shall provide the Coos County Watermaster with the location of each hole by township, range, section and driller's identification number of all holes drilled.
2. A plot plan showing these locations will be furnished to the Watermaster.
3. The applicant shall seal all test holes from the bottom within 2 feet of land surface with cement, native clay, betonies mixture (e.g., "Sure-Gel", Aqua Gel") of 9 pounds to 9-1/2 pounds of betonies per gallon of water.

ii. If artesian flows are encountered, the test hole will be:

1. Abandoned according to the following abandonment procedures: The flow of artesian exploration holes to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden or cast lead plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the exploration hole to land surface. Or
2. Developed for use of the artesian flow by a water well driller who is properly licensed and bonded by the State of Oregon.

iii. If unusual conditions occur at a test hole site and compliance to the above standards will not result in a satisfactorily abandoned hole, the driller shall request that special standards be prescribed by the Watermaster for the particular hole.

iv. The applicant shall notify the County Watermaster prior to the abandonment of all test holes, drill holes, exploration holes, etc. As used in this section the term 'abandonment' shall mean the act of filling any hole with the required sealing material.
v. In addition to complying with the procedures outlined above, the applicant shall post a surety bond in the amount of five thousand ($5,000.00) dollars for each hole drilled or a bond for fifty thousand ($50,000.00) dollars to cover all test holes. The surety bond shall be filed with the Board of Commissioners, and may be written by a surety company duly licensed by and authorized to do business in the State of Oregon. The release of such bond shall be conditioned upon the successful capping of all holes according to the procedure described above.
vi. Although it is recommended that the test hole be sealed prior to moving the drilling rig, in no case shall the drill hole be left open for more than five (5) days after the drilling rig is moved off the test hole without prior approval of the County's designated representative.

b. The applicant shall be required to construct a catch basin around each drilling site to retain any possible run-off.
c. Abandonment procedure:
i. At the discretion of the County's appointed representative (usually, the district Watermaster), this representative may require that the exploration hole abandonment not begin until he is present at the site.
ii. In the event that paragraph "i" above, is implemented, the County's appointed representative may, if he is unable to be present during abandonment, otherwise authorize abandonment. This authorization may be given verbally by telephone.
iii. The County's appointed representative may require that the exploration hole be abandoned with cement grout.

(59) MITIGATION/RESTORATION- ***Regulated by Department of State Lands and/or Corps of Engineers. This will be reviewed through a floodplain application process unless it is outside of a flood hazard area or otherwise indicated by the table.***

(a) MITIGATION- The creation, restoring, or enhancing of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS 196.830). In zones that allow for mitigation there shall be a hydraulic study to show that the changes will not impact flood events on adjacent properties.

(b) RESTORATION- Replacing or restoring original attributes or amenities such as natural biological productivity and aesthetic or cultural resources which have been diminished or lost by past alterations, activities or catastrophic events. Active restoration involves the use of specific remedial actions such as removing dikes or fills, installing water treatment facilities, or rebuilding or removing deteriorated urban waterfront areas. Passive Restoration is the use of natural processes, sequences or timing to bring about restoration after the removal of reduction of adverse stresses. In zones that allow for restoration there shall be a hydraulic study to show that the changes will not impact flood events on adjacent properties. Passive Restoration is a permitted use and does not require further review.

(60) MISCELLANEOUS INDUSTRIAL USES- This category includes wrecking and salvage of building materials, equipment, and vehicles, tire retreading and recapping; and bio-fuels, petroleum, coal, or other fuel storage, refining, reclaiming, distribution, and wholesale trade.

These businesses primarily serve other industries or deliver their products and services to the end user through means other than on-site customer visits.

(61) MOBILE/MANUFACTURED HOME PARKS – New and modified mobile/manufactured home parks shall meet the following criteria:

(a) Notwithstanding any other Ordinance provision, manufactured dwelling parks shall be subject to requirements set-forth in Oregon Administrative Rule (OAR) 918-600-005 through 918-600-0095, ORS Chapter 466, and "Rules and Regulations Governing the Construction and Statutory Operation of Travelers' Accommodation and Tourist Parks," adopted by the Oregon State Board of Health. However the provisions of this ordinance shall prevail where said provisions are more stringent than those imposed by state law, rules or regulations. ~~A ***mobile home or*** manufactured dwelling park shall be located on a lot or parcel which meets the minimum required to accommodate the density of the zoning district.~~

(b) ***In areas planned and zoned for residential (ORS 197.480) the following density shall apply in place of the parent parcel:***

(i) ***Property within Urban Growth Boundary or Urban Unincorporated Community served by public services (water and sewer) may have up to twelve (12) units per acre. The park shall contain a minimum of 1.5 acres (65340 square feet) to accommodate all facility needs.***

(ii) ***Property within Urban Growth Boundary or Urban Unincorporated Community served by public water only, the park may have up to six (6) units per acre. The park shall contain a minimum of 1.25 acres (54450 square feet) to accommodate all facility needs.***

(iii) ***Property within Urban Growth Boundary or Urban Unincorporated Community not served by public services (water and sewer) the park may have up to two (2) units per acre. The park shall contain a minimum of one (1) acre (43560 square feet) to accommodate all facility needs.***

(iv) ***One stick build residence may be allowed for the property owner or caretaker of the park.***

(c) A preliminary plan to be drawn as specified by OAR Division 600. The submitted plan shall include setbacks as required by the Oregon Manufactured Dwelling Standard In-Park Fire Separation Matrix (Table 903).

(d) The landscape shall be such to minimize soil erosion and lessen the visual impact. Every mobile home park shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planning along all boundaries of the park site abutting public roads or property lines that are common to other owners of property, except for points of ingress and egress. All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings;

(i) Any grade changes shall be in keeping with the general appearance of neighboring developed areas.

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

(iii) Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall be reasonably required to prevent their being incompatible with the existing or contemplated environment and the surrounding properties.

(e) Walls or fences shall be six feet in height except in the area of ingress and egress. This area shall be subject to Section 7.1.525. Evergreen planting shall not be less than five feet in height, and shall be maintained in a healthy living condition for the life of the mobile home park. All walls, fences and evergreen planting shall be approved by the Planning Commission.

(f) All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings. ***Open spaces may contain recreational facilities or facilities that accommodate the residences of the park. A minimum of 25% of the property shall be held in open space to accommodate facilities that will be used by all residence of the park. Facilities may consist of playgrounds, sanitation facilities, onsite laundry and community facility. Roads and parking spaces shall not be counted in the common area calculation.***

(g) A parking plan must be signed off by the Roadmaster. Regulation for parking can be found in Chapter VII.

(h) ***Recreational Vehicles (RV), as defined by ORS 446.003, may be used in a mobile or manufactured home park but only 25% of the overall park spaces may be dedicated to long term use of a RV's as dwellings. The RV's shall be connect to a sanitation system, water and electrical. The sites shall comply with all standards of this section.***

(i) ***When approval has been granted for the siting of a Mobile Home or Manufactured Dwelling Park, the developer shall be responsible for submitting an address application along with the applicable fee to the Planning Department. In addition, if determined necessary by the Planning Director, the developer shall submit a road name application along with the applicable fee. (OR 01-02-004PL 6/13/01)*** (this was omitted during the last text amendment)

(j) ***The plot plan for the Park shall provide for safe and sanitary accumulation, collection, transportation, storage and disposal, including resource recovery of wastes and solid wastes. Trash receptacles shall be provided for each dwelling site. The trash may be stored in an enclosed area until disposed of through a solid waste company or a hauled to a lawful transfer/landfill disposal site. Waste shall be removed from the site at least every 30 days. If the property owner chooses to haul the solid waste to a disposal facility receipts may be required to prove continued compliance with this subsection. Solid waste management shall not conflict with the requirements of Coos County Code Article Seven.***

(k) **ORS 197.490 Restriction on establishment of park:**

(i) ***Except as provided by ORS 446.105, a mobile home or manufactured dwelling park shall not be established on land, within an urban growth boundary, which is planned or zoned for commercial or industrial use.***

(ii) ***Notwithstanding the provisions of subsection (1) of this section, if no other access is available, access to a mobile home or manufactured dwelling park may be provided through a commercial or industrial zone***

(62) MORTUARY OR FUNERAL HOME- ***This use shall comply with the compatibility standard found in Section 4.3.220.*** ~~This use must show compatibility with the surrounding properties or may be made compatible through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or~~

~~disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area.~~

(63) MUSEUM- If located outside of an unincorporated community must be directly associated with an historical event or site located on or near the subject property.

(64) OFFICES- This category includes administrative and corporate offices ~~and call centers~~. These businesses primarily serve other industries or deliver their products and services to the end user through means other than on-site customer visits. This use shall be an accessory use to another industrial use or uses. Few general public customer visits per day are generated.

(65) ***OUTDOOR MASS GATHERINGS – OUTSIDE OF A RECREATIONAL AREA OR AN APPROVED PLACE OF BUSINESS IN WHICH HIGH OCCUPANCY IS ANTICIPATED.***

(a) ***Outdoor Mass Gathering (less than 120 hours within any three-month period) unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three-month period and which is held primarily in open spaces and not in any permanent structure.***

(i) ***Organizer includes any person who holds, stages or sponsors an outdoor mass gathering and the owner, lessee or possessor of the real property upon which the outdoor mass gathering is to take place.***

(ii) ***Permanent structure includes a stadium, an arena, an auditorium, a coliseum, a fairground or other similar established place for assemblies.***

(iii) ***Temporary structure includes tents, trailers, chemical toilet facilities and other structures customarily erected or sited for temporary use.***

(iv) ***An organizer may not hold an outdoor mass gathering or allow an outdoor mass gathering to be held on real property that the organizer owns, leases or possesses unless the governing body of the county in which the outdoor mass gathering is to take place issues the organizer a permit to hold the outdoor mass gathering.***

(v) ***A permit issued under this section does not entitle the organizer to make any permanent development to or on the real property. Any permanent development on the real property must be made in accordance with any applicable state or local land use law.***

(vi) ***Permits and process are governed by ORS 433.750 and ORS 433.755.***

(vii) ***This use is not appealable as a land use decision.***

(b) ***Outdoor Mass Gathering (more than 120 hours within any three-month period) Any gathering of more than 3,000 persons which continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces shall be allowed by a county planning commission if all of the following occur:***

(i) ***Organizer includes any person who holds, stages or sponsors an outdoor mass gathering and the owner, lessee or possessor of the real property upon which the outdoor mass gathering is to take place.***

(ii) ***Permanent structure includes a stadium, an arena, an auditorium, a coliseum, a fairground or other similar established places for assemblies.***

(iii) ***Temporary structure includes tents, trailers, chemical toilet facilities and other structures customarily erected or sited for temporary use.***

(iv) ***The organizer makes application for a permit to the county planning commission.***

(v) ***The applicant demonstrates to the county planning commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit set out in ORS 433.750 (Permit application).***

(vi) ***The county planning commission shall make findings that:***

1. Any permits required by the applicable land use regulations have been granted; and

2. The proposed gathering:

a. Is compatible with existing land uses; and

b. Does not materially alter the stability of the overall land use pattern of the area.

(vii) ***The provisions of ORS 433.755 (Additional information required before permit issued) apply to any gatherings reviewed or approved under this section.***

(viii) ***This use is appealable as a land use decision.***

(66) PERSONAL SERVICES- this category includes salon, spa, massage parlor ***or*** barber shop. ~~***or*** beauty shop~~. ~~and day care facility~~ In the CD and RC zones ***a conditional use is required to address the compatibility standard found in Section 4.3.220.*** ~~with the surrounding properties or may be made compatible through the imposition of conditions.~~

(67) PRIVATE PARKS, CAMPGROUNDS ***AND TRAILS -***

~~(a)Campgrounds in private parks shall only be those allowed by OAR 660-006-0025.~~

~~(b)Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.~~

(a) For the purpose of this section a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes:

(i) Is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground; ***or***

(ii) ***Located on properties with at least 80 acres and more than three miles from an Urban Growth Boundary as described in ORS 197.732.***

(b) ***Shall not exceed 15 campsites per acre. The park shall reserve 30% of the overall acreage for open space or 10 acres, whichever is smaller. The open space shall be known as the common area and may contain facilities (structural and nonstructural) designated to serve as accessory.*** ~~Shall not include intensively~~ Developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations may be located ***on exception land located in the common area as long as they meet the definition of accessory use.***

(c) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period. ***Registration shall be maintained to prove compliance with this requirement. No person shall receive mail at the site with the exception of the camp host, property owner, or watchman. The park may only have one camp host or care taker per 30 spaces. If an exception to Goal 11 has been taken to extend public services to the property or the property is served by public services (water and sewer) then ORS 197.493 prohibits placement or occupancy restriction, including any time limitation. Outside of an Urban Growth Boundary time limits may be applied.***

(d) Campsites may be occupied by a tent, travel trailer or recreational vehicle.

(e) ~~Separate sewer, water or electric service hookups shall not be provided to individual campsites to yurts allowed for by OAR 660-006-0025(4)(e)(C).~~ ***No public services (sewer and water) shall be provided to the individual site in the campground if it is located outside of an Urban***

Growth Boundary with the exception of electrical ***hookups. On site sanitation and water may be provided to the property owner's residence, caretaker or park host.***

(f) ~~Shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.~~

(g) A private campground may provide yurts for overnight camping.

(i) No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt.

(ii) The yurt shall be located on the ground or on a wood floor with no permanent foundation.

(iii) As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(h) ***If the exterior of a campground abuts a public road then screening shall be used. Landscaping and Design:***

(i) ***The landscape shall be such to minimize soil erosion and lessen the visual impact. Every park shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the park site abutting public roads or property lines that are common to other owners of property, except for points of ingress and egress. All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings;***

(ii) ***Any grade changes shall be in keeping with the general appearance of neighboring developed areas.***

(iii) ***The site shall be sloped to allow for proper surface drainage; however, surface waters shall not drain in a manner that would adversely affect neighboring properties, the public storm drainage system, or create environmental problems.***

(iv) ***Exposed storage areas, service areas, utility buildings and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings, or other screening methods as shall be reasonably required to prevent their being incompatible with the existing or contemplated environment and the surrounding properties.***

(i) Road and parking standards of Chapter VII shall apply.

(j) ***The plot plan for the RV Park shall provide for safe and sanitary accumulation, collection, transportation, storage and disposal, including resource recovery of wastes and solid wastes. Trash receptacles shall be provided at the minimum of one for every five spaces. The trash may be stored in an enclosed area until disposed of through a solid waste company or being hauled to a lawful transfer/landfill disposal site. Waste shall be removed from the site at least every 30 days. If the property owner chooses to haul the solid waste to a disposal facility receipts may be required to prove continued compliance with this subsection. Solid waste management shall not conflict with the requirements of Coos County Code Article Seven.***

(k) ***Sanitation facilities, including toilet, lavatory, and bathing facilities shall be required. The sanitary system shall comply with Oregon State Building Codes, Oregon Health Authority or any other health and safety regulatory agency. A water supply shall be provided to the sanitation facility and may be provided to each RV site but sewer shall not be provided to individual RV sites unless an exception is taken to Statewide Planning Goal 11 or the property is located within the Urban Growth Boundary. The camp host or caretaker may be hook to the sanitation system.***

(l) ***A dwelling may be constructed for the property owner, camp host or caretaker to reside. This shall not be a rental unit and shall not count as part of the 30% of open space required.***

(m) ***Fires will be permitted only in facilities which have been provided for such purposes or where open fires are allowed.***

(i) ***Fireplaces, fire pits, charcoal braziers, wood burning stoves or other cooking facilities shall be located, constructed, maintained and used to minimize fire hazard and smoke nuisance in the campground and the neighboring properties.***

(ii) ***Trees and other vegetation should be removed around area designated for fires or outdoor cooking to minimize fire hazards.***

(iii) ***Fire extinguishers shall be provided at the campground in areas that allow for ease access.***

(iv) ***Request for comments will be sent to the fire district in which the property is located within to allow for comments to ensure that fire danger is minimized.***

(v) ***Individual fires pits located at individual sites are prohibited in areas subject inventoried wildfire hazard.***

(n) ***Non-motorized recreational trails located on land owned or maintained by the federal government, the State of Oregon, an Oregon municipal corporation, or other Unit of Local Government, as that term is defined in ORS 190.003, but not including any public utility, for public use or any recreational activity identified in the recreational master plan portion of the Coos County Comprehensive Plan.***

(68) RACE TRACK- This use shall comply with all development and use standards. If a conditional use is required pursuant to the zoning table it ***shall comply with the compatibility standard found in Section 4.3.220.***

~~the use must demonstrate compatibility with the surrounding properties or may be made compatible through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area.~~

(69) RECREATIONAL PLANNED UNIT DEVELOPMENT-

a. The following criteria shall also be met prior to approval of an R-PUD:
   i. The area proposed as an R-PUD contains or is adjacent to a significant natural resource that has value for recreational purposes, such as an estuary, waterfall, lake, or dune formation.
   ii. That the location, design, and size are such that the development can be well integrated with its surroundings, and, in the case of a departure in character from surrounding land uses, that the location and design will reduce the impact of the development.
   iii. That the location, design, size, and land uses are such that traffic generated by the development can be accommodated safely and without congestion on existing or planned arterial or collector streets and will, in the case of commercial. Developments within the PUD, avoid as much as possible traversing local streets.
   iv. That the location, design, size, and land uses are such that the residents or establishments to be accommodated will be adequately served by existing facilities and services or by facilities and services which are planned for construction within a time period that is deemed reasonable.
   v. The proposed R-PUD is compatible with surrounding uses or may be made compatible to surrounding uses through the imposition of conditions.

vi. Where the proposed R-PUD is located within an urban unincorporated area, the proposed development shall be consistent with the requirements of OAR 660-02-0030. [OR 04-09-010PL 1/19/05]

b. Final Plat ~~is a ministerial~~ review ***is ministerial***.
c. Must comply with the requirements of Chapter VI for land divisions.
d. Notice will be sent as required by Article 5.0.

(70) RECREATIONAL VEHICLE PARK -

(a) Must be a lot, parcel or tract of land upon which two (2) or more recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreational or vacation purposes.
(b) The park shall contain recreational vehicle sites. Recreational vehicle sites are a plat of ground within the park designed to accommodate a recreational vehicle on a temporary basis.
(c) Shall include the submittal of a preliminary plot plan drawn as specified by OAR Division 650.
(d) Landscaping and Design:
  (i) The landscape shall be such to minimize soil erosion and lessen the visual impact. Every park shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planning along all boundaries of the park site abutting public roads or property lines that are common to other owners of property, except for points of ingress and egress. All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings;
  (ii) Any grade changes shall be in keeping with the general appearance of neighboring developed areas.
  (iii) ~~Special attention shall be given to proper~~ ***The site shall be sloped to allow for proper*** surface drainage ~~so that;~~ however, ~~removal of~~ surface waters ***shall not drain in a manner that*** ~~will not~~ ***would*** adversely affect neighboring properties, the public storm drainage system, or create environmental problems.
  (iv) Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall be reasonably required to prevent their being incompatible with the existing or contemplated environment and the surrounding properties.
(e) Walls or fences shall be six feet in height except in the area of ingress and egress. This area shall be subject to Section 7.1.525. Evergreen planting shall not be less than five feet in height, and shall be maintained in a healthy living condition for the life of the RV Park. All walls, fences and evergreen planting shall be approved by the Planning Commission.
(f) A parking plan must be signed off by the Roadmaster. Regulation for parking can be found in Chapter VII.
(g) ***The plot plan for the RV Park shall provide for safe and sanitary accumulation, collection, transportation, storage and disposal, including resource recovery of wastes and solid wastes. Trash receptacles shall be provided at the minimum of one for every five spaces. The trash may be stored in an enclosed area until disposed of through a solid waste company or a hauled to a lawful transfer/landfill disposal site. Waste shall be removed from the site at least every 30 days. If the property owner chooses to haul the solid waste to a disposal facility receipts may be required to prove continued compliance with this subsection. Solid waste management shall not conflict with the requirements of Coos County Code Article Seven.***
(h) ***RV Parks require a minimum of five acres and shall not exceed 15 campsites per acre. The density of the zoning district is replaced with the density requirement of this subsection.***

(i) ***RV Parks must reserve at least 30% of the total acreage for open space and common areas. Common areas may have sanitary facilities, open space, parking, roads, pathways, and recreational structures and facilities that serve the entire park.***

(j) ***RV Park pads shall not be closer than 15 feet to another vehicle or structures.***

(k) ***Sanitation facilities including toilet, lavatory, and bathing facilities shall be required. The sanitary system shall comply with Oregon State Building Codes, Oregon Health Authority or any other health and safety regulatory agency. A water supply shall be provided to the sanitation facility and may be provided to each RV site but sewer shall not be provided to individual RV sites unless an exception is taken to Statewide Planning Goal 11 or the property is located within the Urban Growth Boundary. The camp host or caretaker may be hook to the sanitation system.***

(l) ***RV Parks approved after January 1, 2019 shall not allow tenants to stay within the park more than 30 consecutive days within a six month period. Registration shall be maintained to prove compliance with this requirement. No person shall receive mail at the site with the exception of the camp host, property owner or watchman. The park may only have one camp host or care taker per 30 spaces. If an exception to Goal 11 to extend public services to the property or the property is served by public services (water and sewer) then ORS 197.493 prohibits placement or occupancy restriction including any time limitation. Outside of an Urban Growth Boundary time limits may be applied.***

(m) ***A dwelling may be constructed for the property owner, camp host or caretaker to reside. This shall not be a rental unit and shall not count as part of the 30% of open space required in subsection (h) above.***

(n) ***Fires will be permitted only in facilities which have been provided for such purposes or where open fires are allowed.***

- (i) ***Fireplaces, fire pits, charcoal braziers, wood burning stoves or other cooking facilities shall be located, constructed, maintained and used to minimize fire hazard and smoke nuisance in the campground and the neighboring properties.***
- (ii) ***Trees and other vegetation should be removed around area designated for fires or outdoor cooking to minimize fire hazards.***
- (iii) ***Fire extinguishers shall be proved at the camp in areas that allow for ease access.***
- (iv) ***Request for comments will be sent to the fire district in which the property is located within to allow for comments to ensure that fire danger is minimized.***
- (v) ***Individual fires pits located at the RV site areas prohibited in areas subject inventoried wildfire hazard.***

(71) RECREATIONAL VEHICLE RENTAL – This category includes any vehicles that can be used for recreational purposes. Sales may be incidental to the rental business. If a conditional use is required ***pursuant to the zoning table it shall comply with the compatibility standard found in Section 4.3.220.*** ~~the use shall show compatibility with the surrounding properties or may be made compatible through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area.~~

(72) RESEARCH FACILITIES AND LABORATORIES - This category includes product research and development, product design and testing, medical research, ***marijuana testing***, and medical laboratories. Medical laboratories in this category primarily serve other industries or deliver

their services to the end user through means other than on-site customer visits. Few general public customer visits per day are generated.

(73) RESIDENTIAL CARE HOME/FACILITY - Shall be allowed in any authorized dwelling.

(74) RESIDENTIAL PLANNED UNIT DEVELOPMENT - Maintenance Standards and Principles:

(a) Minimum Sized Area for Developments. A Planned Unit Development shall be of sufficient size to allow the objectives and standards of this Section to be met and shall, as a minimum, comply with the following:

(i) The minimum size for a tract of land to be developed as a Planned Unit Development (PUD) shall be not less than five (5) contiguous acres and of such configuration as to be conducive to a Planned Unit Development. Or

(ii) A Planned Unit Development application may be filed on a tract of land less than five (5) contiguous acres but no approval shall be given to such application unless Coos County determines, upon a showing by the applicant, that the minimum size required in paragraph "i" above should be waived if one or more of the following conditions exist:

1. Because of unusual physical features of the property or of the neighborhood in which it is located, a substantial deviation from the regulations otherwise applicable is necessary or appropriate in order to conserve a resource or amenity, such as aesthetic vegetation, etc.
2. The property or its neighborhood has historical character of economic importance to the community that could be protected by use of a Planned Unit Development.
3. The property is adjacent to property which has been officially approved, developed or redeveloped as a Planned Unit Development on the subject property can be effectively integrated with the existing PUD.
4. The property is determined to be an isolated problem area that has been bypassed in the course of development and for which a Planned Unit Development is determined to be the most feasible method of developing said area.

(b) ~~Must~~ ***Shall*** comply with the requirements of Chapter VI for land divisions.

(c) Notice will be sent as required by Article 5.0.

(d) Final Plat is a ministerial review.

(75) RETAIL BUSINESS (not including marijuana) - including antiques, art, bicycle shop, books sales/repair, building supply, carpet sales/services, clothing, drug store, dry goods, electronic sales/service, equipment rental, feed store, fertilizer bulk sales, florist, furniture store, garden supply/sales, gift, glass, grocery, hardware, hobby, leather goods, locksmith, meat cutting/sales (not including slaughter house or stockyard), music, nurseries, office supply, pet shop, photography, picture frame, pottery & ceramics shop, print shop, re-upholstery shop, sales of cabinet, sales/manufacturing myrtle wood products, secondhand, sporting goods, stationery, and variety. In the CD and RC zones this ***use shall comply with the compatibility standard found in Section 4.3.220.*** ~~compatibility with the surrounding properties or may be made compatible through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area.~~

(76) UTILITY FACILITIES – In zones in which utility facilities are listed as a conditional use in the zoning table, ***this use shall comply with the compatibility standard found in Section 4.3.220.*** ~~use has to show compatibility with the surrounding properties or may be made compatible~~

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

(a) UTILITY FACILITY-AIR AND WATER NAVIGATION AIDS: A facility or aid to determine position, course, distance traveled, or other facility to help navigate aircraft or waterborne vehicles.

(b) UTILITY FACILITY - COMMUNICATIONS: A facility for the reception, broadcast or distribution of audio and visual images, including but not limited to radio, television, and other communications.

(c) UTILITY FACILITY - INCLUDING POWER FOR PUBLIC SALE: A facility for the generation and distribution of a public or private service including but not limited to electricity, telephone, natural gas, water, sewage service, and other services providing for energy or communication needs; and may include the generation and distribution of power for public sale.

(d) UTILITY FACILITY - NOT INCLUDING POWER FOR PUBLIC SALE: A facility for the generation and distribution of a public or private service including but not limited to electricity, telephone, natural gas, water, sewage services, and other services providing for energy or communication needs; this use does not include the generation or distribution of power for public sale.

(e) UTILITY FACILITY - SERVICE LINES - A distribution line for supplying a utility service including but not limited to telephone, power, water, sewer, etc. ***Sewer lines are not permitted to be located outside of an urban unincorporated boundary or urban growth boundary unless as required to mitigate a public health hazard as described in Statewide Planning Goal 11 or as allowed by the Coos County Comprehensive Plan or other Coos County Zoning and Land Use Development Ordinance provisions.***

(f) UTILITY FACILITY - SEWER PLANT/PUMP STATION ***(Waste Water Treatment) -*** A facility engaged in a process to which sewage is subjected in order to remove or alter its objectionable constituents so as to render it less dangerous or offensive. the facilities may include but are not limited to reservoirs, mains, laterals, trunk lines, pumping equipment, and treatment facilities. ***Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or urban Unincorporated Community Boundaries to serve land outside those boundaries, unless an exception to Oregon Statewide Planning Goal 11 has been approved. New or extended system may be permitted without an exception only if it is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land. There is exception to this rule for onsite facilities to serve an industrial use when the property is considered a diminished or abandoned mill site pursuant to ORS 215.402 or 227.160.***

(g) UTILITY FACILITY - WATER PLANT/PUMP STATION- A facility which may include a system of reservoirs, channels, mains, and pumping and purification equipment by which a water supply is obtained and distributed.

(77) SHORELINE STABILIZATION – This category includes structural and nonstructural stabilization.

(a) Nonstructural: Permitted as a compliance determination unless otherwise restricted by a special development consideration or overlay.

(b) Structural: Shoreland structural stabilization is subject to Natural Hazards Policy 5.11 as explained in this subsection. Coos County shall promote protection of valued property from risks associated with critical stream bank and ocean front erosion through necessary erosion-control stabilization measures, preferring nonstructural solutions where practical. Coos County shall implement this strategy by making "Consistency Statements" required for state and federal permits (necessary for structural stream bank protection measures) that support structural protection measures when the applicant establishes that non-structure measures either are not feasible or inadequate to provide the necessary degree of protection. This strategy recognizes the risks and loss of property from unabated critical stream bank erosion, and also, that state and federal agencies regulate structural solutions. A flood elevation certificate is required for a stabilization which will occur in the identified flood hazard area.

(78) SPECIAL TEMPORARY USES AND THEIR ACCESSORY STRUCTURES - These uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts. Temporary uses may not be for more than one (1) year and the affected area must be restored to its previous condition.

(79) STORAGE FACILITIES AND UNITS – The category includes warehouse, mini-storage, parking lots or parking structures.

(80) TRANSPORTATION FACILITY AND USES - This category includes the transportation of cargo using motor vehicles or rail spurs and may include loading docks and parking of cargo transport vehicles. Examples include freight terminals, parcel delivery services, moving companies, and parking facilities for long-haul trucks. These uses often are associated with warehousing facilities. This category also includes parking, storage, repair, and servicing of fleet vehicles used for the transport of people. Examples include ambulance services, mass transit and school bus fleet facilities. This category also includes commercial motor vehicle fueling services, such as card lock fueling stations; however, motor vehicle fueling stations that cater to the general public are prohibited.

(81) WAREHOUSING AND DISTRIBUTION - This category includes establishments primarily engaged in operating warehousing and distribution facilities for general merchandise, refrigerated goods, and other products and materials that have been manufactured and generally are being stored in anticipation of delivery to the final customer. A range of logistical services may be provided, including labeling, packaging, price marking and ticketing, and transportation arrangement. Mini-storage facilities are not included in this category. **This use shall comply with all development and use standards.**

(82) WASTE RELATED - This includes uses ~~characterized by uses~~ that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods from the biological decomposing of organic material. Waste-Related uses also include uses that receive hazardous wastewater from others and are subject to the regulations of OAR 340-100-0110, Hazardous Waste Management,

rending plants, packing plants and tanneries. The use shall take place on industrial lands outside of the urban areas (UGB or UUC).

(83) WATER DEVELOPMENT - This category includes new and maintenance of dike(s) and tide gate(s), dredge material disposal, fill, mitigation and restoration. Dredge material disposal and fill may occur on the upland site near the water body.

(a) DAMS: A barrier built across a watercourse for impounding water.

(b) DOCKS AND MOORAGE: A pier or secured float or floats for boat tie-up or other water use, often associated with a residence or a group of residences, but not exceeding five (5) berths. Small commercial moorages (less than 5 berths) with minimal shoreside services and no solid breakwater are included in this category. However, docks in conjunction with industrial uses are included under the definition of "industrial". Float houses, which are used for boat storage, net-drying and similar purposes are also included in this category.

(c) DIKES: Structures designed and built to prevent inundation of a parcel of land by water. A dike is considered new when placed on an area which:(1) has previously never been diked, or (2) has previously been diked, but all or a substantial part of the area is subject to tidal inundation and tidal marsh has been re-established. Maintenance and repair refer to: (a) existing serviceable dikes (including those that allow some seasonal inundation), and (b) those that have been damaged by flooding, tidegate failure, etc., but where reversion to tidal marsh has not yet occurred, except in drainage ways.

(d) DREDGING: The removal of sediment or other material from a stream, river, estuary or other aquatic area: (1) Maintenance Dredging refers to dredging necessary to maintain functional depths in maintained channels, or adjacent to existing docks and related facilities; (2) New Dredging refers to deepening either an existing authorized navigation channel or deepening a natural channel, or to create a marina or other dock facilities, or to obtain fill for the North Bend Airport runway extension project; (3) Dredging to Maintain Dikes and Tidegates refers to dredging necessary to provide material for existing dikes and tidegates; (4) Minor dredging refers to small amounts of removal as necessary, for instance, for a boat ramp. Minor dredging may exceed 50 cubic yards, and therefore require a permit.

(e) DREDGED MATERIAL DISPOSAL[2]: The disposition of dredged material in aquatic or upland areas. Methods of disposal include, in-water disposal, beach and land disposal, and ocean disposal: (1) In-water Disposal is the disposition of dredged materials in a body of water; (2) Ocean Disposal is the disposition of dredged materials in the ocean; (3) Beach Disposal is the disposition of dredged materials in beachfront areas west of the foredunes; (4) Land disposal is the disposition of dredged materials landward of the line of non-aquatic vegetation, in "upland" areas.

(f) FILL: The placement by man of sand, sediment, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land. Except that "fill" does not

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[2] **§220.2 Definitions. (e) *Dumping* means a disposition of material:**

include solid waste disposal or site preparation for development of an allowed use which is not otherwise subject to the special wetland, sensitive habitat, archaeological, dune protection, or other special policies set forth in this Plan (solid waste disposal, and site preparation on shorelands, are not considered "fill"). "Minor Fill" is the placement of small amounts of material as necessary, for example, for a boat ramp or development of a similar scale. Minor fill may exceed 50 cubic yards and therefore require a permit.

(g) MARINA: Facilities, which provide moorage, launching, storage, supplies and a variety of services for recreational, commercial fishing and charter fishing vessels. Moorage facilities with 5 or less berths are excluded from this category.

(h) TIDE-GATE: A tide gate is a flap gate mounted on a culvert which runs through a dike or levee used to control tidal water.

(84) WINERIES -In the rural residential zones shall allow only the sale of:
(a) Wines produced in conjunction with the winery. and
(b) Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited services restaurant, as defined in ORS 624.010 (OR 04-1-002PL 6-30-04).

(85) WHOLESALE TRADE - This category includes establishments engaged in selling and distributing goods and services to retailers, to industrial business, commercial business, or professional business users or to other wholesalers, generally without transformation. Wholesalers sell goods and services to other businesses, not the general public.

(86) *WILDLIFE HABITAT MANAGEMENT* – ***Wildlife management is the "manipulation" of populations and habitat to achieve a goal. The goal is usually to increase populations but can also be to decrease or sustain them. This category may include research and observations of habitat or changes to the habitat to provide for sustainable population of a native habitat. If changes to habitat are occurring in the water, a no rise flood elevation certificate may be required, see Article 4.11.200 through 4.11.257 Flood Hazard. Management on private land is not mandatory unless otherwise required by the Coos County Comprehensive Plan, State Law or Federal Law. If the project is located on private owned property consent agreement is required. If this results in a habitat easement a mapped area and legal description shall be provided to the Coos County Planning Department.***

(87) VACATION RENTAL/SHORT TERM RENTAL - Subject to the following criteria:
(a) ~~Must~~ ***Shall*** be found to be compatible with the surrounding area.
(b) ~~Must~~ ***Shall*** be licensed by the Coos Health & Wellness (CHW) in accordance with ORS 446.310-350;
(c) ~~Must~~ ***Shall*** meet parking access, driveway and parking standards as identified in Chapter VII;
(d) ~~The rental~~ Shall not be conveyed or otherwise transferred to a subsequent landowner without a the new property owner submitting a Compliance Determination Application showing ***compliance with this section***; and
(e) ~~If vacation rentals existed prior to April 1, 2015 and had been permitted by CHW the use may continue provided a compliance determination has been submitted. If a license is not required pursuant to ORS 446.310-350 then the property owner shall present evidence to prove the vacation rental was lawfully sited prior to April 1, 2015. If a license was required and the~~

~~property owner failed to comply, the vacation rental will be considered unlawfully sited and a conditional use is required.~~ ***A deed restriction shall be recorded with the Coos County Clerk's Office acknowledging that this is an accessory use to the approved residential use. If located within Urban Growth Boundary further restrictions may be required based on comments from the City.***

(88) VETERINARY CLINIC/KENNEL/ANIMAL BOARDING/ANIMAL RESCUE - This use ***This use shall comply with the compatibility standard found in Section 4.3.220.*** ~~compatibility with the surrounding properties or may be made compatible through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where the proposed use is compatible with the existing surrounding uses, and not potential or future uses in the surround area.~~

4.3.220 ADDITIONAL CONDITIONAL USE REVIEW STANDARDS FOR USES, DEVELOPMENT AND ACTIVITIES LISTED IN TABLE 4.3.200

This section has specific criteria set by the zoning district for USES, ACTIVITIES and DEVELOPMENT:

(1) **Urban Residential (UR)** – The following conditional use review standards applies to all USES, ACTIVITIES and DEVELOPMENT in the UR zoning districts:

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

(b) Within the a City Urban Growth Boundary:

i. Signage – Within an Urban Growth Boundary

(c) All parks (Recreational or Residential) shall comply with the following design criteria:

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

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

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

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

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

(2) **Rural Residential (RR) –** The following conditional use review standards apply to all USES, ACTIVITIES and DEVELOPMENT in the RR zoning districts:

(a) Conditional Use Review Criteria - The following criteria only apply to conditional uses in the RR zoning districts:

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

ii. All parks (Recreational or Residential) shall comply with the following design criteria:

1. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads

or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;

2. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or use.
3. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the this zoning designation, screen plantings or other screening methods;
4. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and
5. Hours of operation may be required in areas predominantly surrounded by residential zones.

(3) **Controlled Development (CD) -** The following conditional use review standards apply to all USES, ACTIVITIES and DEVELOPMENT within the CD zoning district.

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

(b) Within the a City Urban Growth Boundary:

i. Signage –

(c) All parks (Recreational or Residential) shall comply with the following design criteria:

i. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;
ii. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or use.
iii. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the this zoning designation, screen plantings or other screening methods;
iv. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and
v. Hours of operation may be required in areas predominantly surrounded by residential zones.

(4) **Rural Center (RC) -** The following conditional use review standards apply to all USES, ACTIVITIES and DEVELOPMENT within the RC zoning district.

(a) COMPATIBILITY: The proposed USE, ACTIVITY OR DEVELOPMENT ***is required to demonstrate compatibility with the surrounding properties or compatibility may be made through the imposition of conditions. Compatibility means that the proposed use is capable of existing together with the surrounding uses without discord or disharmony. The test is where***

the proposed use is compatible with the existing surrounding uses and not potential or future uses in the surround area.

(b) All parks (Recreational or Residential) shall comply with the following design criteria:

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

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

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

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

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

(5) **Commercial (C-1)** - The following conditional use review standards apply to all USES, ACTIVITIES and DEVELOPMENT C-1 zoning district.

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

(b) Within the a City Urban Growth Boundary:

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

(c) All parks (Recreational or Residential) shall comply with the following design criteria:

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

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

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

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

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

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

(a) Industrial developments within an Unincorporated Community Boundary:

i. shall not occupy more than 8,000 square feet of floor space in any building or combination of buildings within an Urban Unincorporated Community Boundary; or

ii. shall not occupy more than 4,000 square feet of floor space in any building or combination of buildings in a Rural Unincorporated Community Boundary.

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

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

i. ~~Industrial Development, in buildings of any size or type, authorized pursuant to this section, may be sited the IND zone outside of an urban growth boundary of any city in the County, subject to the following~~:

ii. ~~Any Industrial Development otherwise authorized pursuant to this section shall be subject to the permit approval process for a conditional use in Chapter 5 of this ordinance unless~~

iii. ~~Industrial Development may not be sited within three (3) miles of the urban growth boundary of a city with a population of 20,000 individuals or more~~;

iv. ~~For any Industrial Development proposed to be sited within ten (10) miles of any incorporated city in the County, the County or its designee shall give notice in writing to the city at least 21 days prior to taking action;~~

v. ~~If a city objects to the authorization of the proposed Industrial Development within 21 days pursuant to the notice described in Paragraph 3, above, then the city and the County shall negotiate to establish reasonable and proportional conditions on the Industrial Development necessary to mitigate the concerns raised in the city's objection; provided however, that if the city and the County are unable to agree to such conditions within 30 days of the County receiving the city's objection, the matter shall be submitted to the public hearing process pursuant to this ordinance;~~

vi. ~~These uses in IND are a land use decision and subject to administrative review;'~~

vii. ~~Industrial Development and Use located within an urban growth boundary or more than ten (10) miles of any city, on land planned and zoned for Industrial Use as of January 1, 2004, will be reviewed as a compliance determination pursuant to Article 5.10 of this ordinance.~~

i. Location: A qualifying site must be located outside of a city Urban Growth Boundary (UGB), and may not be closer than three (3) miles from a UGB of a city containing a population of 20,000 or more.

ii. Building Size: Subject to building permit approval process; there shall be no limitation on the size or type of industrial buildings authorized.

iii. Sewer Facilities: Subject to DEQ approval, on-site sewer facilities may be allowed to serve authorized industrial development on qualifying lands, but shall be limited in size to meet only the needs of the authorized industrial use.

iv. Other uses not permitted: On qualifying lands, retail, commercial and non-accessory residential development is prohibited.

v. Notice to cities: At least 21 days prior to taking action, notice of pending industrial development (including sewer facilities serving the development) under this section shall be sent to any city within an urban growth boundary within ten (10) miles of the subject site. If the city objects to the pending development, the city and the County

shall negotiate to establish conditions of approval, or changes in the development to mitigate concerns raised by the city. If the city requests conditions of approval a notice of decision will be sent to allow an opportunity for a public hearing.

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

- ***i. On property outside of an Urban Growth Boundary. An "abandoned or diminished mill site" is a former or current wood products mill site that was closed after January 1, 1980, or has been operating at less than 25% of capacity since January 1, 2003, and contains, or contained, permanent buildings used in the production or manufacturing of wood products. The County shall identify and determine the boundaries of abandoned or diminished mill sites (the boundary may only include those areas that were improved for the processing or manufacturing of wood products).***
- ***ii. Location: The site must be located outside of a city UGB.***
- ***iii. Building Size: Subject to the building permit approval process; there shall be no limitations on the size or type of industrial buildings authorized for lands that qualify under this section.***
- ***iv. Sewer facilities: Subject to DEQ approval, on-site sewer facilities, or the extension of sewer facilities from a city UGB or County urban unincorporated area, may be allowed to serve authorized industrial development on qualifying lands, but shall be limited in size to meet only needs of the authorized industrial use. The presence of the sewer facilities may not be used to justify an exception to statewide land use planning goals protecting agricultural lands or forestlands or relating to urbanization.***
- ***v. The governing body of a county or its designee shall determine the boundary of an abandoned or diminished mill site. For an abandoned or diminished mill site that is rezoned for industrial use under this section, land within the boundary of the mill site may include only those areas that were improved for the processing or manufacturing of wood products.***
- ***vi. A permit may be approved on an abandoned or diminished mill site as defined in ORS 215.402 or 227.160 for industrial development and accessory uses subordinate to such development on the mill site. The governing body or its designee may not approve a permit for retail, commercial or residential development on the mill site.***
- ***vii. For land that on June 10, 2003, is zoned under statewide land use planning goals protecting agricultural lands or forestlands and that is rezoned for industrial, the governing body of the county or its designee may not later rezone the land for retail, commercial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.***

~~Notwithstanding the foregoing, Industrial Development may be sited on an abandoned or diminished industrial mill site, as defined in ORS 197.719, that was engaged in the processing or manufacturing of wood products, provided the uses will be located only on the portion of the mill site zoned IND. Any Industrial Development listed in §4.4.210 that will be sited on an abandoned or diminished mill site~~

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

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

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

ii. Within the a City Urban Growth Boundary:

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

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

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

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

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

e) Electronic displays or readerboards are prohibited.

f) Manually changed readerboards are prohibited except the following:

i. Gas station price signs;

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

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

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

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

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

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

j) No single sign shall exceed forty eight (48) square feet in size.

k) Except as otherwise allowed in this chapter, all signs shall comply with the building setback requirements.

l) No sign projecting from a structure or mounted on a pole shall be less than eight feet above the ground at its lowest point.

m) No freestanding signs shall be permitted in the public right-of-way, except as otherwise specifically allowed in this Chapter.

n) Signs attached to a building and projecting into a public right-of-way shall require a temporary right-of-way permit approved by County Road Department or ODOT depending on the type of road.

o) No sign, or portion thereof, shall be so placed as to obstruct any fire escape or human exit from any portion of a building.

p) The total exterior sign area for a building shall not be affected by the number of businesses located in the building. The building owner is ultimately responsible for allocating this allowed area to the businesses located therein and for insuring compliance of sign area limitations in the case of multiple businesses being located on a property.

q) Nuisances or Hazardous Conditions prohibited:

i. The illumination of signs shall be designed to eliminate negative impacts on surrounding right-of-way and properties.

ii. No sign or light source shall create a distraction, hazard, or nuisance.

iii. Signs shall not be used at a location or in a manner so as to be confused with, or construed to be, traffic control devices.

iv. All signs shall be securely fastened to their supporting surface or structure.

r) An eating and drinking establishment may attach to a window a menu, identical to those distributed to customers. Such a menu will not be used in the calculation of total sign area allowed.

s) Incidental signs displayed strictly for a direction, safety, or the convenience of the public, including but not limited to signs that identify restrooms, public telephones, parking area entrances, and exits are allowed. Individual signs in this category shall not exceed two square feet in area, and shall not be considered in calculating the total sign area allowed.

iii. Design Standards:

1. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other ~~suitable~~ screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned ~~for~~ residential, except for points of ingress and egress;
2. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent ***Urban*** Residential, ***Rural Residential or Controlled Development*** district ~~or use~~.
3. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the this zoning designation, screen plantings or other screening methods;
4. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and
5. Hours of operation may be required in areas predominantly surrounded by residential zones.

(7) **Recreation (REC), South Slough (SS) and Minor Estuary and Shoreland (MES)** – The following conditional use review standards applies to all USES, ACTIVITIES and DEVELOPMENT within the REC, SS and MES zoning districts.

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

(b) All parks (Recreational or Residential) shall comply with the following design criteria:
   i. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;
   ii. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or use.
   iii. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the this zoning designation, screen plantings or other screening methods;
   iv. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and
   v. Hours of operation may be required in areas predominantly surrounded by residential zones.

(c) Any commercial use in conjunction with a recreational use shall be consistent with the following building size:
   i. No size limits inside urban growth boundary;
   ii. For ***building or*** buildings located within an Unincorporated Community Boundary as adopted by the Coos County Comprehensive Plan Volume 1 Part 2 § 5.5 the ***following square foot requirements*** apply:
      1. Urban Unincorporated Community ~~in a building or buildings~~ ***shall not exceed*** 8,000 square feet of floor space; or
      2. Rural Unincorporated Community ~~in a building or buildings~~ ***shall not exceed*** 4,000 square feet of floor space.

4.3.221 GENERAL SITING STANDARDS

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

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

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

(3) Limitation on uses of manufactured dwellings/structures for commercial purposes pursuant to ORS 466 et seq. Manufactured dwellings shall not be used for commercial purposes except:
   (a) Where use of the manufactured dwelling for commercial purposes is authorized by the Building Codes Agency.
   (b) Where used as a temporary sales office for manufactured structures; or
   (c) As part of an approved home occupation. [OR-92-07-012PL]

(4) New lots or parcels - Creation of lots or parcels, unless it meets the circumstances of § 5.6.130, shall meet the street frontage, lot width, lot depth and lot size. Minimum road frontage/lot width ***shall be met unless*** waived by the Planning Director in consultation with the County Surveyor and County Roadmaster due to creating an unsafe or irregular configuration:
   (a) Minimum Street frontage should be at least 30 feet; and
   (b) Minimum lot width and Minimum lot depth is 50 feet.

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

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

(6) Riparian -
   (a) Riparian vegetation setback within 50 feet of a estuarine wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps, shall be maintained except ~~that~~:
      i. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.
      ii. Riparian vegetation may be removed to provide direct access for a water-dependent use if it is a listed permitted within the zoning district;
      iii. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures;
      iv. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan;
      v. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways;
      vi. Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps; or
      vii. The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland, stream, lake, or river than the existing structure

and said addition or alteration ~~represents~~ ***is*** not more than 100% of the size of the existing structure's "footprint".

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

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

(7) Setbacks:

(a) All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from the right-of-way line, whichever is greater. This setback may be greater under specific zoning siting requirements.

(b) Firebreak Setback - New or replacement dwellings on lots, parcels or tracts abutting the "Forest" zone shall establish and maintain a firebreak, for a distance of at least 30 feet in all directions. Vegetation within this firebreak may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.

4.3.230 ADDITIONAL SITING STANDARDS

This section has specific siting standards and criteria set by the zoning district for USES, ACTIVITIES and DEVELOPMENT:

(1) **Urban Residential (UR)** – The following siting standards apply to all USES, ACTIVITIES and DEVELOPMENT in the UR zoning districts:

(a) Minimum Lot size:

i. The following minimum lot sizes shall apply:

3. Site having neither public water or public sewer – one acre.
4. Sites having public water, but no public sewer – 8000 square feet.
5. Sites having both public water and public sewer – 5000 square feet, except a two family duplex which requires 8000 square feet.
6. Dwelling unit density shall not exceed one unit per minimum lot size, except each additional attached dwelling unit requires 1200 additional square feet above the minimum lot size.

(b) Setbacks:

i. Front Setback: 20 feet.

ii. Side and Rear Set-Back: The side and rear setback shall be a minimum of 5 feet unless the side or rear yard is adjacent to a street or road (corner lot) the minimum setback shall be 15 feet from that street or road.

iii. Setback exception – Front yard setback requirements of this Ordinance shall not apply in any residential district where the average depth of existing front yards on developed lots within the same zoning district block, but no further than 250 feet from the exterior side lot lines of the lot and fronting on the same side of the street as such lot, is less than the minimum required front yard building setback. In such cases the front yard setback requirement on any such lot shall not be less than the average existing front yard building setback.

(c) Building Height - Maximum Building height is 35 feet. However, spires, towers, domes, steeples, flag poles, antennae, chimneys, solar collectors, smokestacks, ventilators or other similar objects may be erected above the prescribed height limitations, provided no usable floor.

(d) Density or Size limits -

i. Dwelling density shall be no more than one dwelling per lawfully created parcel unless otherwise provided for by this ordinance.

ii. If lawfully created parcels are less than one acre in size and not served by a public sewer then Department of Environmental Quality, State Building Codes and Oregon Department of Water Resources should be consulted by the developer prior to seeking a land use authorization to construct a dwelling as there may be development limitations.

(2) **Rural Residential (RR) –** The following siting standards apply to all USES, ACTIVITIES and DEVELOPMENT in the RR zoning districts:

(a) Minimum Lot/Parcel Size:

i. 5 acres in the RR-5 district

ii. 2 acres in the RR-2 district

iii. Exception to minimum lot sizes in Rural Residential:

1. Smaller parcels may be permitted in an approved residential planned unit development, provided the allowable density of the parent parcel is not exceeded.
2. Any lawfully created parcel or lot created prior to January 1, 1986 that is equal to or greater than one acre. Multiple parcels or lots may be combined to equal one acre but then a restriction shall be placed on the deed and parcels and/or lots shall be combined into one tax lot.
3. Any lawfully created parcel or lot created prior to January 1, 1986 that does not equal one acre including the combination of parcels or lots shall be subject to a conditional use to address compatibility with the adjacent properties and must show how the property can support all elements of the proposed development including sanitation and water.
4. Creation of parcels less than the minimum lot size of the zoning district shall be permitted provided the following circumstances exist:
    a) The subject property is not zoned for resource use;
    b) An existing dwelling (lawfully established ~~or grandfathered~~, but not for temporary purposes) ***was*** sited prior to January 1, 1986***, and*** will remain sited on each proposed parcel; and
    c) A land division is submitted and approved by Coos County pursuant to the current standards ***with the exception on the minimum parcels size***.

(b) Setbacks – No additional setback requirements.

(c) Building Height – No additional Requirements.

(d) Density or Size limits -

i. Dwelling density shall be no more than one dwelling per lawfully created parcel unless otherwise provided for by this ordinance.
ii. If lawfully created parcels are less than one acre in size and not served by a public sewer then Department of Environmental Quality, State Building Codes and Oregon Department of Water Resources should be consulted by the developer prior to seeking a land use authorization to construct a dwelling as there may be development limitations.

(3) **Controlled Development (CD) -** The following siting standards apply to all USES, ACTIVITIES and DEVELOPMENT within the CD zoning district.

(a) Minimum Lot size:

(1) The following Controlled Development-5 minimum lot sizes shall apply:

1. Sites having both public water and public sewer cannot be less than 5,000 square feet.
2. Sites not having both public water and public sewer cannot be less than one (1) acre.
3. Dwelling unit density shall not exceed one (1) unit per minimum lot size, except each additional attached dwelling unit requires 1200 additional square feet above the minimum lot size.

(2) The following Controlled Development-10 minimum lot sizes shall apply:

4. Site not having both public water and public sewer cannot be less than one (1) acre.

5. Sites having both public water and public sewer cannot be less than 10,000 square feet.
6. Dwelling unit density shall not exceed one (1) unit per minimum lot size, except each additional attached dwelling unit requires 1200 additional square feet above the minimum lot size. (OR-00-05-014PL)

(b) Density or Size limits -

i. Dwelling density shall be no more than one dwelling per lawfully created parcel unless otherwise provided for by this ordinance.

ii. If lawfully created parcels are less than one acre in size and not served by a public sewer then Department of Environmental Quality, State Building Codes and Oregon Department of Water Resources should be consulted by the developer prior to seeking a land use authorization to construct a dwelling as there may be development limitations.

(c) Setbacks:

i. Front Setback: 20 feet.

ii. Side and Rear Set-Back: The side and rear setback shall be a minimum of 5 feet unless the side or rear yard is adjacent to a street or road (corner lot) the minimum setback shall be 15 feet from that street or road.

iii. Setback exception – Front yard setback requirements of this Ordinance shall not apply in any residential district where the average depth of existing front yards on developed lots within the same zoning district block, but no further than 250 feet from the exterior side lot lines of the lot and fronting on the same side of the street as such lot, is less than the minimum required front yard building setback. In such cases the front yard setback requirement on any such lot shall not be less than the average existing front yard building setback.

(d) Building Height - Maximum Building height is 35 feet. However, spires, towers, domes, steeples, flag poles, antennae, chimneys, solar collectors, smokestacks, ventilators or other similar objects may be erected above the prescribed height limitations, provided no usable floor.

(4) **Rural Center (RC) -** The following siting standards apply to all USES, ACTIVITIES and DEVELOPMENT within the RC zoning district.

(a) Minimum lot size - The minimum parcel/lot size in RC zoning district is one acre.

(b) Density or Size limits -

i. Dwelling density shall be no more than one dwelling per lawfully created parcel unless otherwise provided for by this ordinance.

ii. If lawfully created parcels are less than one acre in size and not served by a public sewer then Department of Environmental Quality, State Building Codes and Oregon Department of Water Resources should be consulted by the developer prior to seeking a land use authorization to construct a dwelling as there may be development limitations.

(c) Setbacks – No additional setback requirements.

(d) Building Height – No additional Requirements.

(5) **Commercial (C-1)** - The following siting standards apply to all USES, ACTIVITIES and DEVELOPMENT C-1 zoning district.

(a) Minimum lot/parcel size – None but general dimension requirements apply.

(b) Setback - Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts.

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

(d) Density or Size limits - Commercial structures shall be small-scale, low impact commercial use and be subject to the following building size limits:

i. No size limits inside urban growth boundary;
ii. For ***building or*** buildings located within an Unincorporated Community Boundary as adopted by the Coos County Comprehensive Plan Volume 1 Part 2 § 5.5 the ***following square foot requirements*** apply:
    1. Urban Unincorporated Community ~~in a building or buildings~~ ***shall not exceed*** 8,000 square feet of floor space; or
    2. Rural Unincorporated Community ~~in a building or buildings~~ ***shall not exceed*** 4,000 square feet of floor space.

(e) Design Standards:

i. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;
ii. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or use.
iii. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the this zoning designation, screen plantings or other screening methods;
iv. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and
v. Hours of operation may be required in areas predominantly surrounded by residential zones.

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

(a) Minimum lot/parcel size –

vi. No minimum lots size standard for this zone.
vii. Minimum street frontage and minimum lot width is 20 feet.

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

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

(d) Building Density or Size limits –
i. For ***building or*** buildings located within an Unincorporated Community Boundary as adopted by the Coos County Comprehensive Plan Volume 1 Part 2 § 5.5 the ***following square foot requirements*** apply:
1. Urban Unincorporated Community ~~in a building or buildings~~ ***shall not exceed*** 60,000 square feet of floor space; or
2. Rural Unincorporated Community ~~in a building or buildings~~ ***shall not exceed*** 40,000 square feet of floor space.
3. ~~The size limitation referenced above does not apply to abandoned or diminished industrial mill site, as defined in ORS 197.719~~.

(e) Design Standards:
i. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other ~~suitable~~ screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;
ii. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent ***Rural R***esidential, ***Urban Residential or Controlled Development Zoning*** districts ~~or use~~.
iii. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to the setbacks of the this zoning designation, screen plantings or other screening methods;
iv. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and

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

(7) **Recreation (REC), South Slough (SS) and Minor Estuary and Shoreland (MES)** –

(a) Minimum lot/parcel size – There are no required minimum lot/parcel sizes.

(b) Setback - There are no required setbacks.

(c) Building Height – There are no building height requirements.

(d) Building Density or Size limits – There are no building or size limits.

ARTICLE ~~4.10~~ 4.5 BANDON DUNES RESORT ZONE (BDR)

SECTIONS:

~~SECTION 4.10.010 – PURPOSE~~ ~~- The purpose of the Bandon Dunes Resort zone is to establish a zoning district to implement the adopted Bandon Coastal Dunelands Conservation, Resort and Recreation Development Master Plan, consistent with the adopted Bandon Coastal Dunelands Goal Exception Statement.~~
Moved To Article 4.2 – Zoning Purpose and Intent

(ALL SECTIONS WILL CHANGED TO 4.5.XXX)

SECTION ~~4.10.~~4.5.100~~015~~ APPLICABILITY

(1) The provisions of this article shall apply solely to the area to which the Bandon Dunes Resort Master Plan applies and for which the Bandon Dunes Resort Exception Statement, adopted as part of the Coos County Comprehensive Plan, approves exceptions to certain provisions of Statewide Planning Goals 3, 4, 11 and 14.

(2) Where applied, the BDR zone shall be the primary zone and, except as specifically stated in this article, shall constitute the sole source of standards for approval of final development plans for any phase or element of the Bandon Dunes Destination Resort, together with all facilities, services, uses and activities related to such resort development. Use of property in the BDR zone requires approval of a final development plan, except that uses permitted outright under Section 4.8.200.A-D, F, H-N and P-S of the Forest zone are permitted prior to final development plan approval.

SECTION ~~4.10.~~4.5.110~~020~~ DEFINITIONS

(1) "Developed recreational facilities" means improvements constructed for the purpose of recreation and may include but are not limited to golf courses, driving ranges, gyms, game rooms, tennis courts, playing fields, interpretive centers, nature trails, wildlife observation shelters, swimming pools and areas, boat and canoe facilities, ski trails, and bicycle trails.

(2) "Element" means a recreational facility, resort facility, residential cluster, infrastructure facility, or other discrete component of a destination resort or a phase thereof.

(3) "Exception Statement" or "Bandon Dunes Resort Exception Statement", means the Bandon Coastal Dunelands Goal Exception Statement and Bandon Dunes Resort Expansion Goal Exception Statement, adopted as part of the Coos County Comprehensive Plan.

(4) "Goal 2 Destination Resort" means a development which meets the standards in Section ~~4.10.~~4.6.030 and for which a goal exception is required and has been approved through the Goal 2 exception process.

(5) "Master Plan" or "Bandon Dunes Resort Master Plan", means the Bandon Coastal Dunelands Conservation, Recreation and Resort Development Master Plan (1996), as modified by the Supplemental Conservation, Recreation and Resort Master Plan (June 2003), adopted as part of the Coos County Comprehensive Plan and identified therein as providing standards for development of the Bandon Dunes Destination Resort, including but not limited to service and facilities plans, boundaries, use restrictions, locational restrictions, financial commitments, and numerical limits.

(6) "Open space" means any land that is retained in a substantially natural condition, or is improved for outdoor recreational uses such as golf courses, playing fields, hiking or nature trails or equestrian or bicycle paths, or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, lands preserved for farm or forest use, required landscaped areas, and lands used as buffers. Open space does not include residential lots or yards, streets, or parking areas.

(7) "Overnight lodgings" means permanent, separately rentable accommodations which are not available for residential use. Overnight lodgings include hotel rooms, lodges, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(8) "Phase" means that part of a Goal 2 destination resort for which final development plan approval is sought pursuant to Section ~~4.10.060~~4.5.165Article 5.13~~ to 4.10.070~~4.5.1704.5.170.

(9) "Self-contained development" means a development for which community sewer and water facilities are provided onsite and are limited to meet the needs of the development or are provided by existing public sewer or water services as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" shall have developed recreational facilities provided onsite.

(10) "Site" means the portion of the tract that is within the boundaries of the goal exceptions adopted by the Exception Statement and to which the Master Plan applies.

(11) "Tract" means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract on which a Goal 2 destination resort is sited may include property that is not included in the destination resort if the property to be excluded adjoins the exterior boundary of the tract and constitutes less than 30 percent of the total tract.

(12) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facilities which are designed to provide mainly for the needs of resort visitors rather than area residents.

~~SECTION 4.10.0304.5.160 STANDARDS~~ MOVED AFTER TABLE

SECTION ~~4.10.~~4.5.120~~040~~ – USE SPECIFIC SUBZONES

(1) The BDR zone is divided into thirteen natural resource subzones (designated NR-1 through NR-13), four golf course/residential subzones (designated GR-1 through GR-4), four special residential subzones (designated SR-1 through SR-4), the Resort Village Center subzone (designated RVC), and three mixed use center subzones (designated MXC-1 through MXC-3), as identified on the BDR Use Subzones Map.

(2) All uses permitted in any subzone under ~~Sections 4.10.045 or 4.10.050~~in the use table shall be designed, sited and managed in accordance with applicable provisions of the Master Plan and the standards set out in Section ~~4.10.030~~4.5.1604.5.160. Uses not listed ~~in Sections 4.10.045 or 4.10.050~~in the use table are prohibited except as authorized by antidiscrimination laws. Additional restrictions on listed uses may be imposed by the Master Plan, homeowner association bylaws, and private covenants, conditions, and restrictions.

(3) Off-road recreational vehicle use is prohibited in all subzones, ~~except that bicycles may be used on designated bicycle paths, as allowed under Section 4.10.050 (1)(g), (2)(a), (3)(a), (4)(a) and (5)(a)~~unless otherwise specified by the use table.

(4) Residential development is limited to certain golf course/residential, special residential, Resort Village Center and mixed use center subzones, as indicated in ~~Section 4.10.050(2)(j-k), (3)(h-i), (4)(a) and (5)(a).~~the use tables However, the location and mix of residential development types may be varied within the overall numerical limits for each such subzone established by the Master Plan.

(5) Commercial uses are limited to those specifically listed in ~~Sections 4.10.045 and 4.10.050~~ the use table. Such uses must be internal to the resort and limited to types and levels of use necessary to meet the needs of residents of and visitors to the resort.

(6) Industrial uses of any kind are prohibited in all subzones.

~~SECTION 4.10..045 USES PERMITTED PRIOR TO APPROVAL OF FINAL DEVELOPMENT PLAN~~

~~Uses permitted outright under Section 4.8.200.1-4, 6, 8-14 and 16-19 shall be permitted in all BDR subzones until such land has received final development plan approval pursuant to this Article, unless specifically prohibited by the Master Plan.~~

SECTION ~~4.10.050~~4.5.125 – USES PERMITTED AND THE TYPE OF REVIEW REQUIRED ~~UNDER APPROVED FINAL DEVELOPMENT PLAN~~

~~The following uses *or activities* may be permitted in the BDR subzones identified in *along the top of the table* brackets following each listed use, pursuant to a final development plan approved under Sections 4.10.060~~4.5.165 ~~to 4.10.070~~4.5.170~~. If a particular *use or activity is not listed as permitted in a* subzone is not noted in brackets following the listed use, then use *or activity* is prohibited in that subzone, except as may be authorized by antidiscrimination laws~~.

The BDR zone is divided into thirteen natural resource subzones (designated NR-1 through NR-13), four golf course/residential subzones (designated GR-1 through GR-4), four special residential subzones (designated SR-1 through SR-4), the Resort Village Center subzone (designated RVC), and three mixed use center subzones (designated MXC-1 through MXC-3), as identified on the BDR Use Subzones Map.

AS USED IN TABLES

(1) ***"P" means the use is permitted. Any permitted use as described in the following table may be allowed if it is consistent with an approved Final Development Plan is permitted without further review unless a modification to a structure is need. Any use permitted in natural resource subzone that does not require a structure shall be allowed outright without a Final Development Plan or a Compliance Determination.***

(2) ***"CD" means the use is allowed subject to compliance determination review with clear and objective standards (Staff review or Type I process). Permitted uses and activities and their accessory buildings and uses are permitted subject to the general provisions set forth by this ordinance. If a use was approved but the location requires modification a Compliance Determination will be required to meet any request for comments and setback requirements. Any uses described in the NR zone are permitted outright and require no authorization from the Planning Department unless there is a structure required and then it will be reviewed as a Compliance Determination. This is indicated by the use table. Accessory uses shall be reviewed through a Compliance Determination and will not require a Final Development Plan.***

(3) ***"FDP" means it is subject to Final Development Plan (Planning Director's Decision or Type II Process) Final Development Plans are discretionary and require a Planning Director's Decision. The process for Final Development Plans including criteria is listed in Sections 4.5.170. As a conditional permitted use Final Development Plans are valid for the period set forth in Section 4.5.180.***

(4) ***"N" means a use is not permitted in that subzone unless it can meet one of the use exceptions located in Section 4.5.150***

(5) ***"**" after a use means subject to use exceptions in Section 4.5.150***

The table is set up by listing uses in the first column list the number of the uses, next is the name of the uses, next set of columns are the subzones. All development is subject to the general development standards. All development subject to a CD shall provide a plot plan and compliance determination form but will be processed in the same manner as Article 5.11. All Final Development Plans shall be processed as a conditional use Article 5.2 and meet the criteria of Sections 4.5.160 through 4.5.180.

#	USE	Bandon Dunes Resort Zone - Subzones																								
		NATURAL RESOURCE SUBZONES (NR)													GOLF COURSE/RESIDENTIAL SUBZONES (GR)				SPECIAL RESIDENTIAL SUBZONES (SR)				RESORT VILLAGE CENTER (RVC)	MIXED USE CENTER SUBZONES (MXC)		
		1	2	3	4	5	6	7	8	9	10	11	12	13	1	2	3	4	1	2	3	4	1	1	2	3
		A													B				C				D	E		
Natural Resource and Cultural Uses																										
1.	Open Space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
2.	Wildlife Observation Facilities	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD
3.	Fish and Wildlife Research & Rehabilitation Facilities, Habitat Mitigation, Restoration & Enhancement	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD
4.	Wetland & Plant Research & Rehabilitation Facilities, Habitat Mitigation, Restoration & Enhancement	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
5.	Nature Interpretive Centers & Educational Facilities	N	N	N	P	P	P	N	P	P	N	P	N	P	P	P	P	P	P	P	P	P	P	P	P	P
6.	Accepted Agricultural & Forestry Practices	N	P	P	P	P	P	P	P	P	P	P	P	N	P	P	P	P	P	P	P	P	P	P	P	P
7.	Launching, Docking, & Limited Storage Facilities for Non-Motorized Boats**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	P	N	N	N	P	P	P	N
8.	Fish Production & Sport Fishing **	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	P	N	N	N	P	P	P	N
9.	Native American Cultural Facilities, Art Studios, & Educational Facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P	P
10.	Museum, Botanical Garden, Observatory, Aquarium, College Field Station, or other Educational or Visitor-Oriented Facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N	P

#	USE	Bandon Dunes Resort Zone - Subzones																								
		NATURAL RESOURCE SUBZONES (NR)													GOLF COURSE/RESIDENTIAL SUBZONES (GR)				SPECIAL RESIDENTIAL SUBZONES (SR)				RESORT VILLAGE CENTER (RVC)	MIXED USE CENTER SUBZONES (MXC)		
		1	2	3	4	5	6	7	8	9	10	11	12	13	1	2	3	4	1	2	3	4	1	1	2	3
		A													B				C				D	E		
Residential Uses																										
11.	Accessory Structures / Uses – including storage for personal & household effects	N	N	N	N	N	N	N	N	N	N	N	N	N	CD	CD	CD	N	CD	CD	CD	CD	CD	CD	CD	N
12.	Employee Quarters/***Staff Housing***	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	N	N	N	N
13.	Dwelling – Single Family	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
14.	Dwelling – Townhouses	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
Commercial Uses																										
15.	Automated Teller Machines **	N	N	N	N	N	N	N	N	N	N	N	N	N	~~N~~ **P**	~~N~~ **P**	~~N~~ **P**	~~N~~ **P**	~~N~~ **P**	~~N~~ **P**	~~N~~ **P**	~~N~~ **P**	~~FDP~~ **P**	~~FDP~~ **P**	~~FDP~~ **P**	~~FDP~~ **P**
16.	Facilities Conference / Convention	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP
17.	Facilities Day Care / Pre-School	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP
18.	Facilities / Shops – Maintenance	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP
19.	Golf Course – Small-Foot Print**	N	N	FDP	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
20.	Golf Course	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
21.	Grocery (neighborhood)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N
22.	Home Occupations	N	N	N	N	N	N	N	N	N	N	N	N	N	***FDP***	***FDP***	***FDP***	N	***FDP***	***FDP***	***FDP***	***FDP***	N	FDP	FDP	N
23.	Hotels / Overnight Accommodations**	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
24.	Kennel – boarding	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N
25.	Pro Shops	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
26.	Related Services (Golf Course)	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
27.	Maintenance Support Facilities (Golf Course)	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
28.	Movie Theater	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N
29.	***Offices and Commissary to support Bandon Dunes Resort Facility***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***N***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	***FDP***	N
30.	Offices for ***independent*** businesses that serve the residents and visitors of the resort.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N
31.	Office – Home Offices	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	N
32.	Office – Real Estate	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	
33.	Personal Service Establishment – spas, and other facilities that provide personal health or grooming services such as includes barber shops, beauty salons, tanning salons, ***wellness center*** and massage studios.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	N
34.	Restaurants, Lounges, & Cafes	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP
35.	Specialty Retail Shops – includes drug / sundries, book, and craft stores, art galleries, gift and specialty food shops, and snack bar	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP
36.	Structures / Area – Equipment and Materials	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP
37.	Temporary / Seasonal – Fairs, Festivals, Charity Events, Resort Promotional Activities, and Filming	N	N	N	N	N	N	N	N	N	N	N	N	N	***P***	***P***	***P***	***P***	***P***	***P***	***P***	P	***P***	***P***	***P***	***P***
Transportation and Infrastructure Uses																										

#	USE	Bandon Dunes Resort Zone - Subzones																										
		NATURAL RESOURCE SUBZONES (NR)													GOLF COURSE/RESIDENTIAL SUBZONES (GR)				SPECIAL RESIDENTIAL SUBZONES (SR)				RESORT VILLAGE CENTER (RVC)	MIXED USE CENTER SUBZONES (MXC)		
		1	2	3	4	5	6	7	8	9	10	11	12	13	1	2	3	4	1	2	3	4	1	1	2	3
		A													B				C				D	E		
38.	Roads – Paved	N	N	N	N	N	P	N	P	P	N	P	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P
39.	Parking – Parking Plan Required	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP
40.	Paths – Golf Cart - Paved	N	N	FDP	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP
41.	Storage – Motor Vehicle	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP
42.	Facilities – necessary for utilities serving the resort	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD
43.	Recycling and Garbage Collection Facilities**	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	~~N~~ ***FDP***	FDP	FDP	FDP	FDP	FDP	FDP	FDP	~~N~~ ***FDP***
Emergency Services																												
44.	Facilities – Emergency Medical**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	N
45.	Facilities –necessary for public safety serving the resort	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD	CD
46.	Landing Site – Emergency Helicopter Transport**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	~~N~~ ***FDP***	N	N	N	N	FDP	FDP	FDP	FDP	N
Recreation and Community Services																												
47.	Bicycle Paths & Equestrian Trails	N	N	P	P	P	P	N	P	N	N	P	P	N	P	P	P	P	P	P	P	P	P	P	P	P	P
48.	Churches	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	N
49.	Clubhouses	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP	FDP
50.	Clubhouses, meeting rooms, libraries for resort residents.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N	
51.	Community Meeting Halls	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	N
52.	Educational Facility – Post Secondary – subjects and training related to resort management	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N	
53.	Entertainment Structures / Facilities – Concert Shells, Dance Pavilions, and Theaters (live performances)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	N	FDP	FDP	N	FDP	
54.	Equestrian Facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	FDP	
55.	Game Room	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	N
56.	Pedestrian Hiking Trails, Nature Trails, Walkways, Bridges, & Lookouts	P	N	P	P	P	P	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
57.	Physical Fitness Facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	N	N	N	N	N	FDP	FDP	FDP	FDP	N
58.	Playing Fields	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FPD	FDP	N	N	N	N	N	FDP	FDP	FDP	N
59.	Recreational Vehicle Park	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N	FDP	FDP	N	N	N	
60.	Recreational Facilities to support residential development	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	FDP	N	N	N	
61.	Restrooms – Public	N	N	N	N	N	N	N	N	N	N	N	N	N	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	***CD***	
62.	Swimming Pool – Indoor/Outdoor	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	FDP	FDP	FDP	N
63.	Tennis Courts	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	FDP	N	N	

SECTION 4.5.150 – BDR USE EXCEPTIONS

The following exceptions apply to the BDR zoning only:

(1) *One special purpose, small-footprint golf course as authorized by the 2010 and 2014 supplement to Bandon Dunes Resort Master Plan. One special-purpose, low-impact course south of Cut Creek with no clubhouse, no more than two golf service buildings totaling no more than 700 square feet in area, no more than 13 holes, and a total of no more than11 acres of turf for tees, fairways and greens.*

(2) *Within subzones GR-2 and SR-1 launching, docking and limited storage facilities for non-motorized boats shall be permitted on Fahy Lake.*

(3) *Within subzone GR-2 fish production and sports fishing shall be permitted in Round Lake and Fahy Lake.*

(4) *Within subzones GR-1, GR-2, and GR-3 overnight accommodations shall be permitted when in conjunction with golf course facilities.*

(5) *Within subzone SR-1 fish production and sports fishing shall be permitted in Fahy Lake.*

(6) *Emergency medical facilities not exceeding 500 square feet in the RVC.* ***Any temporary facility is permitted in any zone.***

(7) ***Landing Site for emergency purposes – emergency services may be provided in any zone but built landing pads are only allowed in the subzones designated in the table.***

(8) *Within subzone MXC-1 launching and limited storage facilities for non-motorized boats shall be permitted on Madrone Reservoir.*

(9) *Within subzone MXC-1 fish production and sports fishing shall be permitted in Madrone Reservoir.*

(10) *Facility shall be related to the history, culture, economy, or natural resources of the Northwest and the South Coast area.*

(11) ***Teller machines may be permitted when a permit for a structure is not required. If a structural permit is required this shall be reviewed as Compliance Determination to ensure it meets development and setback requirements.***

(12) ***Recycling and garbage collection facilities that are less than 400 square feet in size are permitted with a compliance determination. Areas designated for dumpsters and day to day garbage is permit outright.***

SECTION 4.5.130 ~~4.10.015~~ APPLICABILITY

1. The provisions of this article shall apply solely to the area to which the Bandon Dunes Resort Master Plan applies and for which the Bandon Dunes Resort Exception Statement, adopted as part of the Coos County Comprehensive Plan, approves exceptions to certain provisions of Statewide Planning Goals 3, 4, 11 and 14.

2. Where applied, the BDR zone shall be the primary zone and, except as specifically stated in this article, shall constitute the sole source of standards for approval of final development plans for any phase or element of the Bandon Dunes Destination Resort, together with all facilities, services, uses and activities related to such resort development. Use of property in the BDR zone requires approval of a final development plan, except that uses permitted outright under ~~Section 4.8.200.A-D, F, H-N and P-S~~ Article 4.4 of the Forest zone are permitted prior to final development plan approval.

SECTION 4.5.140 ~~4.10.020~~ – DEFINITIONS (No changes to language just new section number)

SECTION 4.5.150–ZONING COMPLIANCE LETTERS AND ***COMPLIANCE DETERMINATION REVIEWS FOR DEVELOPMENT WITHIN BANDON DUNES RESORT ZONING.***

1. Uses permitted - If a use is permitted by the use table or a final land use decision has been made a Zoning Compliance Letter (ZCL) may be issued at the request of the applicant or when necessary to obtain other agency permits.
2. Compliance Determination – when the use table requires a compliance determination one will be submitted for review.
   a. Staff will review the proposal to ensure development standards such as setbacks are met or if any other notices such are required to be obtained from other agencies.
   b. This process will take up to 30 days to complete. If additional applications are required staff will notify the application of the additional land use authorizations.
   c. Once the review is complete and no other land use authorizations are required a Zoning Compliance Letter will be issued.

SECTION ~~4.10.030~~ 4.5.160–STANDARDS

This section applies to all uses allowed in the BDR unless otherwise specified.

1. Accessory structures and uses subordinate to any authorized primary use shall be permitted.

2. Development shall be located on a tract that contains a site of at least 160 acres.

3. The site must have direct access onto a state or county roadway, as designated by the County or the Oregon Department of Transportation. Internal roads, streets, paths, and trails may be private.

4. Development shall include meeting rooms, restaurants with seating for at least 100 persons, and at least 150 separate rentable units of overnight lodging, oriented toward the needs of visitors rather than area residents. The rentable units may be phased in as follows:

   a. A total of 150 units of overnight lodgings shall be provided as follows:

      i. At least 75 units of overnight lodgings, not including any individually owned homes, lots or units, shall be constructed prior to the closure of sale of the initial individual lot or unit. "Individually owned" for purposes of this section shall mean fewer than four units of overnight lodgings in a single building or cluster of buildings and held under single ownership.

      ii. The remainder shall be provided as individually owned lots or units subject to deed restrictions limiting their use to use as overnight lodging units. Not more than two additional unrestricted dwelling units may be sold for each additional unit of restricted or permanent overnight lodgings provided.

      iii. Deed restrictions imposed under paragraphs a(i) and a(ii) of this subsection shall cease to exist upon the recording of an affidavit signed by the Planning Director certifying that 150 units of permanent overnight lodgings have been constructed.

   b. The number of units approved for residential sale shall not be more than two units for each unit of permanent overnight lodgings provided for under paragraph (a) of this subsection. Thus not more than 150 such lots may be approved for residential sale under paragraph (a)(i), and not more than two additional unrestricted dwelling units above 150 may be authorized for each additional unit of permanent or restricted overnight lodgings provided under paragraph (a)(ii).

5. All required developed recreational facilities, facilities intended to serve the entire development, and visitor-oriented accommodations shall be physically provided or guaranteed through surety bonding or equivalent financial assurances prior to closure of the sale of individual residential lots or units. If development is phased, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed or guaranteed through surety bonding or equivalent financial assurances prior to sales of individual residential lots or units in that phase. Only improvements described in Paragraph E that are required to meet the expenditure minimums described in Paragraph 5 are subject to this paragraph.

6. At least $7 million shall be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities. Spending required under this subsection is stated in 1993 dollars. The spending requirement shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

7. At least 50 percent of the site, as indicated on the Open Space Map included in the Master Plan, shall be dedicated as permanent open space. Open space areas shall be maintained as such in perpetuity through deed restrictions.

8. Development shall comply with the standards for rural roads set out in Chapter VII.

9. Riparian Corridor and Wetland Protection

    a. For the purposes of this section, the following definitions apply:

        i. "Fish habitat" means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

        ii. “Lawn” means an area planted with ornamental grass species, such as Kentucky bluegrass or perennial rye grass, which is maintained year-round with a vibrant green color through the use of fertilizers and irrigation, for the purpose of low-level recreational use, such as walking, picnicking, and casual sporting activities.

        ii. "Riparian area" is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

        vi. "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

        v. "Riparian corridor boundary" is an imaginary line that is a certain distance upland from the top bank, for example, as specified in paragraph (b) of this subsection.

        vi. "Stream" is a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

        vii. "Structure" is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components that are not customarily regulated through zoning ordinances.

        viii. "Top of bank" shall have the same meaning as "bankfull stage," which is defined as the stage or elevation at which water overflows the natural banks of streams or other

waters of this state and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the bankfull stage.

ix. "Water area" is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

x. “Wetland” is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

b. The riparian corridor boundary shall be:

i. 50 feet from the top of bank of Cut Creek, Fahy Creek, Whiskey Run Creek, and their tributaries;

ii. 50 feet from the upland edge of significant wetlands, as identified on the comprehensive plan Fish and Wildlife Habitat II special considerations map; and

iii. The Coastal Shorelands Boundary around Chrome, Round and Fahy Lakes, as identified in the Dunes and Non-Estuarine Coastal Shorelands section of the comprehensive plan, Volume I, Part 2, Section 3.8, as amended by Ordinance 96-03-003PL, Section 4, Exhibit A.

c. Permanent alteration of the area within the riparian corridor by grading or the placement of structures or impervious surfaces is prohibited, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

i. Streets, roads, and paths;

ii. Drainage facilities, utilities, and irrigation pumps;

iii. Water-related and water-dependent uses; and

iv. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

v. Placement of structures or impervious surfaces or grading within the riparian corridor where it is demonstrated that equal or better protection for identified riparian resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50% of the width of the riparian area measured from the upland edge of the corridor.

d. Lawns shall be prohibited within 50 feet of a wetland, stream or lake identified on the

comprehensive plan Coastal Shoreland and Fish and Wildlife Habitat inventory maps. Removal of vegetation within the riparian corridor is subject to the following controls:

i. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.

ii. Riparian vegetation may be removed where necessary for development of a water-dependent or water-related use.

iii. Riparian vegetation may be removed to facilitate stream or streambank projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFWS stream enhancement plan.

iv. Riparian vegetation may be removed in order to site or properly maintain resort utilities, paths and roads, provided that the vegetation removed is the minimum necessary to accomplish the purpose.

v. Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, etc.), provided that such vegetation removal is the minimum necessary to provide an access to the water to site or maintain irrigation pumps.

vi. Riparian vegetation may be removed to facilitate a wetland or riparian edge restoration project that will increase the overall quantity and quality of riparian vegetation at the project location.

vii. Non-native invasive species (e.g., scotch broom, gorse) may be removed from the riparian area and replaced with native tree, native shrub-scrub, and native grass species.

viii. Non-hydrophytic vegetation in a forested portion of a riparian corridor may be removed for the purpose of maintaining a healthy stand of trees and understory conditions, using accepted forest maintenance practices, restoring or enhancing wildlife habitat, or managing hazardous forest fire conditions.

ix. Woody debris may be removed from the riparian corridor where trees left as protective buffer strips along streams by prior logging operations have blown down and caused more woody debris to fall into the waterway than is desirable for healthy fish or wildlife habitat.

x. Invasive-noxious aquatic species, such as spike watermilfoil (Myriophyllum exalbescens), the existence and probable spread of which poses a serious problem for the waters of the State, may be removed from water areas within the riparian corridor.

xi. Protected riparian vegetation shall not be removed solely for the purpose of providing enhanced views of Chrome, Round or Fahys Lake.

e. Except as otherwise provided in the preceding paragraph, replacement vegetation planted in the riparian corridor shall consist of:

i. Native tree, shrub, herbaceous plant or grass species; or

ii. A mixture of native and non-native grasses where at least 50 percent of the mix is native Red Fescue grass.

f. Mapping Errors

i. Any claim of error in the mapping of significant wetlands and riparian corridor boundaries, as shown in the Bandon Dunes Resort Master Plan or comprehensive plan Fish and Wildlife Habitat II special considerations map, shall be submitted as part of an application for Final Development Plan approval or modification under Section ~~4.10.060~~4.5.165-.through ~~4.10.075~~4.5.175, or as part of an application for land division approval under Section ~~4.10.090~~4.5.190.

ii. A claim of error in the mapping of significant wetlands or riparian corridor boundaries shall include a map showing the proposed corrected boundary and a description of how the proposed corrected boundary was identified.

iii. A claim of error in the mapping of significant wetlands or riparian corridor boundaries shall be sustained, and the mapping of significant wetlands and riparian corridor boundaries, as shown in the Bandon Dunes Resort Master Plan or comprehensive plan Fish and Wildlife Habitat II special considerations map, shall be corrected, if the Approval Authority determines that the proposed boundary is consistent with paragraphs (a) and (b) of this subsection, and is supported by substantial evidence.

g. Hardship Variance

i. A request for a hardship variance to provisions in paragraphs (b) through (e) of this subsection shall be submitted as part of an application for Final Development Plan approval or modification under Section ~~4.10.060~~4.5.165 through ~~4.10.075~~4.5.175.

ii. A request for a hardship variance shall include identification of the provision or provisions in paragraphs b through e from which a variance is requested, a description of the extent and impacts of the variance requested, and an explanation of why the proposed variance satisfies the standards in paragraph iii below.

iii. The Approval Authority shall approve a request for a hardship variance if it determines that the criteria set out in Section 5.3.350(1) are satisfied.

10. Development within areas of "limited development suitability," and any beach access trail located in the "not suitable" area south of the Cut Creek delta, as shown on the comprehensive plan Development Potential within Ocean Shorelands and Dunes special considerations map, shall comply with CCZLDO Appendix 1, Policy 5.10, Plan Implementation Strategy (2), provided that compliance will be demonstrated through the final development plan approval process of Section ~~4.10.060~~4.5.165, rather than the administrative conditional use process.

11. The minimum setback from the exterior boundaries of the BDR zone for all development (including structures, roads and site-obscuring fences over three feet in height, but excepting existing buildings and uses, entry roadways, landscaping, utilities and signs) shall be:

    a. 100 feet for commercial development listed in Section 4.10.050 (4) and (5), including all associated parking areas;

    b. 100 feet for visitor-oriented accommodations other than single-family residences, including all associated parking areas;

    c. 50 feet for above-grade development other than that listed in paragraphs (a) and (b);

    d. 25 feet for internal roads;

    e. 50 feet for golf courses and playing fields except for the special purpose, low-impact golf course authorized in the NR-3 subzone; and

    f. 25 feet for jogging trails, nature trails and bike paths where they abut private developed lots, but no setback for where they abut public roads and public lands.

12. The minimum setback from the boundary of a non-BDR zoned parcel that is completely surrounded by the BDR zone, for all development (including structures, roads and site-obscuring fences over three feet in height, but excepting existing buildings and uses, entry roadways, landscaping, utilities and signs) shall be:

    a. 50 feet for above-grade structures, including all associated parking areas;

    b. 25 feet for internal roads;

    c. 50 feet for golf courses and playing fields; and

    d. 25 feet for jogging trails, nature trails and bike paths.

13. Eastern Boundary Woodland Buffer

a. A 100-foot wide woodland buffer along the eastern boundary of the BDR zone, extending from Whiskey Run Road to where the BDR zone boundary intersects the upper end of Fahy Lake, and from the South Bandon Dunes Drive resort entry point to where the BDR zone boundary intersects the southern shore of Fahy Lake, is established. Within this 100-foot buffer area, no development or other use (including structures, roads, fences, landscaping, vegetation removal, utilities or signs) shall occur, except for the following:

   i. Entry roadways, as shown on the Road Network Map in the Master Plan, or as required for access by emergency and resort maintenance vehicles;

   ii. Hiking trails;

   iii. Fences that are not visible from the exterior of the BDR zone boundary;

   iv. Underground utility lines serving the resort;

   v. Removal of invasive non-native vegetation and replacement with native species; and

   vi. Removal of excessive understory fuel build-up and construction and maintenance of fire roads, as appropriate for sound fire management practices.

b. Where the provisions of this section are more restrictive than the setback required by Section ~~4.10.0304~~.5.160 (10), the provisions of this section shall control.

SECTION ~~4.10.060 and 4.5.165~~ ~~4.5.165~~– FINAL DEVELOPMENT PLAN APPLICATION AND REVIEW PROCEDURE

A final development plan shall set forth, to the extent not previously addressed in the Master Plan or Exception Statement, and only to the extent applicable to the particular phase or element of the destination resort for which final approval is sought:

1. Illustrations and graphics to scale, identifying:

   a. The location and total number of acres to be developed in the current phase.

   b. The subject area and all land uses adjacent to the subject area.

   c. Types and location of proposed development and uses, including residential and commercial uses and landscaping.

   d. A general depiction of site characteristics, including:

      i. Existing topography;

ii. Water areas, including streams, lakes, ponds, County inventoried wetlands and Division of State Lands recognized wetlands;

iii. Vegetation types and locations;

iv. Areas of geologic instability; and

v. Beach and dune formations.

e. Proposed methods of access to the development, identifying the main vehicular circulation system within the resort and an indication of whether internal streets will be public or private.

f. Parking plan.

g. Major pedestrian and bicycle trail systems.

h. The location and number of acres proposed as open space, buffer area or common area. Areas proposed to be designated as "open space," "buffer area" or "common area" should be clearly illustrated and labeled as such.

i. Proposed recreational amenities and their approximate locations.

j. A water and sewer facilities plan for the phase consistent with the Master Plan and all other applicable regulations.

k. A drainage plan for the phase consistent with the Master Plan and all other applicable regulations.

2. A landscape/golf course management plan for the maintenance of landscaping around resort residential, commercial and recreational development and for the maintenance and operation of resort golf courses, including:

a. A detailed description of site and climatic conditions, evaluating how specific conditions will impact management strategies.

b. Identification of objectives and practices for mowing, pruning, irrigation and fertilization that are designed to control the rate, method and type of chemicals applied, reduce the total chemical loads, and reduce as much as possible the off-site transport of sediment, nutrients and pesticides.

c. Integrated Pest Management strategies for identification and monitoring of potential pest populations, determination of action thresholds for pest damage, evaluation of control options, education of personnel and evaluation of results.

d. A description of safety measures for storage, handling, disposal and record keeping of pesticides.

e. The details (locations, frequency of testing, analytes to be tested for) of a program to monitor the quality of the surface and groundwater at the resort site, including protocols for periodic reporting of the results of such tests to the County and other appropriate agencies.

f. The location, design and management practices for nursery and bedding areas to be used to produce or acclimatize landscaping plants, including a description of the surrounding areas and any measures needed to mitigate impacts on sensitive surrounding environments.

g. A description of measures to be used to reduce the danger of and combat forest fires, including the firebreaks for residential development required by Forest Lands Plan Implementation Strategy 3.

3. Further information as follows:

a. A description of any riparian vegetation to be removed within 50 feet of the upland edge of a wetland or top of bank of a stream identified on the comprehensive plan Fish and Wildlife Habitat II special considerations map, or within the Coastal Shorelands Boundary around Chrome, Round or Fahy Lake, as identified in the Dunes and Non-Estuarine Coastal Shorelands section of the comprehensive plan, Volume I, Part 2, Section 3.8, as amended by Ordinance 96-03-003PL, Section 4, Exhibit A, together with an explanation of why such removal is justified under Section ~~4.10.030~~ 4.5.160.H.

b. A description of measures planned to mitigate project impacts on wetlands identified in the Master Plan, together with an assessment of the impact of the development on wetlands, taking into account such mitigation measures.

c. Proposed covenants and deed restrictions to assure designated open space areas are maintained as open space in perpetuity and that occupants and property owners are required to comply with the approved landscape/golf course management plan.

d. If the final development plan covers areas designated as "Beach and Dune Areas with Limited Development Suitability" on the comprehensive plan Development Potential within Ocean Shorelands and Dunes special considerations map, a site investigation report by an engineering geologist which addresses the requirements of CCZLDO Appendix 1, Policy 5.10, Plan Implementation Strategy (2).

e. A description of the proposed method of providing all utility systems, including the preliminary or schematic location and sizing of the utility systems. Copies of these items shall also be provided to relevant utility or service providers.

f. If the final development plan includes overnight lodging units or recreational dwellings, the total number of such overnight lodging units or recreational dwellings allowed by the subject final development plan, and the cumulative total number of overnight lodging units and recreational dwellings allowed under previously approved final development plans.

g. A description of the proposed order and schedule for phasing (if any) of all development, including an explanation of when facilities will be provided and how they will be secured if not completed prior to the closure of sale of individual lots or units.

h. Proposed findings addressing how the destination resort final development plan approval standards of section ~~4.10.070~~ 4.5.170 are satisfied.

4.. Before submitting an application for final development plan review any phase or element of the destination resort, the applicant shall participate in a pre-application conference with the Planning Department to obtain general information, guidelines, procedural requirements, advisory opinions, and technical assistance for the project concept.

5. Following a pre-application conference, the applicant shall submit an application final development plan review by the Planning Director. One (1) electronic copy and two (2) hard copies of the final development plan on a Coos County Land Use Application shall be submitted to the Planning Department along with a filing fee set by the Board of County Commissioners to defray costs incidental to the review process.

6. Application for final development plan review shall be processed in accordance with Sections 5.0.200 (Application completeness (ORS 215.427)), 5.0.250 (Timetable for Final Decisions (ORS 215.427)), 5.0.300 (Findings Required (ORS 215.416(9)-(10), and application for final development plan review shall be deemed complete if it satisfies the requirements of this Section. ~~4.10.065~~ 4.5.165.

7. If the final development plan includes areas identified as wetlands on the Statewide Wetlands Inventory, as shown in Exhibit A to this Ordinance, the Planning Department shall submit a Wetland Land Use Notification Form to the Division of State Lands within five working days after acceptance of a complete application for final development plan review.

8. The Planning Director shall approve an application for final development plan review if the final development plan meets the approval standards of Section ~~4.10.070~~ 4.5.170. If significant interpretation or policy issues are raised by the final development plan application, the Planning Director may submit the application to the Planning Commission for its review pursuant to applicable provisions of Article 5.7 and the approval standards of Sections 4.5.160 and 4.5.170 ~~4.10.70~~.

9. The Approval Authority may impose conditions that are necessary to enable it to approve the final development plan under the approval standards of Section ~~4.10.070~~ 4.5.170.

10. The Approval Authority shall issue a final order setting out its decision on the application for final development plan review and shall give notice of that decision as provided in Section ~~5.6.500(4).~~ 5.0.900 Notice Requirements.

11. The decision of the Approval Authority may be appealed as provided in Article 5.8

~~SECTION 4.10.065 - FINAL DEVELOPMENT PLAN APPLICATION CONTENT~~

SECTION 4.5.170 ~~4.10.070~~ – FINAL DEVELOPMENT PLAN APPROVAL CRITERIA

The Approval Authority shall approve a final development plan for all or an element of a destination resort if it determines that all of the following criteria are met:

(1) The development is consistent with the Exception Statement.

(2) The development is consistent with the Master Plan, including the boundaries, locational restrictions, use restrictions, open space dedication requirements, wetland mitigation measures, management unit guidelines, service and facilities plans, financial commitment requirement, and numerical limits set forth therein.

(3) The development meets the standards established in Section ~~4.10.030~~ 4.4.5.160.

(4) The uses allowed under the final development plan comply with Sections 4.~~10.040~~ 4.5.160 and ~~4.10.050~~ 4.5.175.

(5) Accessory structures and uses subordinate to any authorized primary use shall be permitted.

SECTION ~~4.10.075~~ 4.5.175 – FINAL DEVELOPMENT PLAN MODIFICATION

(1) Following approval of a final development plan for any phase or element of the destination resort, the original applicant for final development plan approval, or its designee, may submit for review a proposed modified final development plan that addresses all changes or conditions required by the Approval Authority. ***This shall be done through a Compliance Determination.***

(2) The Approval Authority shall review an application for modification of a final development plan as provided in Section ~~4.10.060~~ 4.5.165, except as provided in subsection (3) of this section. The Approval Authority shall approve the requested modification if the final development plan as modified continues to conform to the Master Plan and Sections ~~4.10.030~~ 4.5.160, 4.10.040, and 4.10.050.

(3) If the Approval Authority finds that the modifications render the final development plan materially inconsistent with the Master Plan or Sections ~~4.10.030~~ 4.5.160, ~~4.10.040,~~ or ~~4.10.050~~ or as identified in the use tables of Article 4.5, the Approval Authority shall:

a. If practicable, impose such reasonable conditions and adjustments as necessary to bring the final development plan into compliance; or
b. If the inconsistency cannot be so resolved, the Approval Authority shall deny the application.

SECTION 4.5.180 ~~10.080~~ – EFFECT OF FINAL DEVELOPMENT PLAN APPROVAL

A final development plan approval shall, except as expressly specified therein, constitute the final land use decision for the subject phase or element and will authorize administrative issuance of further permits and approvals necessary to commence construction. Construction, site development and landscaping shall be carried out in accord with the approved final development plan ***unless otherwise allowed by this BDR Ordinance. Final Development Plans do not expire unless the property or portion of the property in which decision pertains to is rezoned and then will require a new plan to ensure standards and criteria are met.***

SECTION ~~4.10.090~~ 4.5.190 – LAND DIVISIONS

1. Purpose. This Section sets out the standards and procedures applicable to dividing smaller parcels or lots from the parent BDR zoned destination resort site. The purpose of this Section is to encourage development of the Bandon Dunes Destination Resort by providing for flexibility in the ownership and development of individual parcels or lots for residential, recreational or commercial purposes otherwise allowed by the Master Plan and Exception Statement. The intent of land divisions in the BDR zone is to promote a harmonious variety of residential and recreationally-related structures and uses, with emphasis placed on the relationships between buildings, uses, open space and natural resources, and the most efficient use of both natural and development resources, consistent with the Master Plan, rather than planning on a lot-by-lot or building-by-building basis.

2. Uses. The buildings and uses permitted on the smaller lots or parcels created from the parent destination resort site shall be governed by a final development plan approved pursuant to Sections ~~4.10.060~~4.5.160 ~~to 4.10.070~~.through 4.5.170.

3. Division Standards.

   a. Final Development Plans. Land proposed to be divided into smaller lots or parcels from the parent destination resort site must be the subject of a final development plan approved under Sections ~~4.10.060~~ 4.5.160 to 4.5.170 prior to or contemporaneously with land division approval.

   b. Coastal Shorelands Boundary. Land within the BDR zone cannot be divided such that land within the county Coastal Shorelands Boundary is placed within smaller lots or parcels divided from the parent destination resort site.

4. Development and Maintenance Standards.

a. Density. The division of land to create residential lots or parcels from the parent destination resort site shall not result in exceeding the density of residential development allowed by the Master Plan and Exception Statement.

b. Lot Area and Dimensional Standards. There are no required minimum lot sizes or setback requirements from interior property boundaries within the BDR zone. However, the Approval Authority may require that lots or parcels created from the parent destination resort site for a particular use be of a specified minimum size, or that development on such lots and parcels comply with specified interior setbacks, where the Approval Authority determines that such lot sizes or interior setback requirements are necessary to assure compatibility with existing or prospective adjacent uses, to protect natural resource conservation areas designated by the Master Plan or to otherwise achieve the objectives of the Master Plan.

c. Perimeter Setback Standards. If the Approval Authority determines that the setbacks from the exterior boundaries of the BDR zone required by Section ~~4.10.030~~ 4.5.160.10 and 11 do not provide adequate screening or privacy to properties adjacent to the BDR zone, the Approval Authority may require that:

   i. Structures located near the exterior boundaries are designed so as to protect the privacy and amenity of adjacent existing uses and/or

   ii. Permanent screening be established by appropriate structure or vegetation or both, along those portions of the exterior boundary requiring such screening to assure compatibility with adjacent existing or prospective uses.

d. Permanent Overnight Lodging. Within five years after the initial sale of a residential lot created under this section, the 150 permanent overnight lodging units required by Section ~~4.10.030~~ 4.5.160 (3)(a) must be constructed on the resort site.

e. Open Space. Lots or parcels divided from the parent destination resort site shall not include land designated by the Master Plan for future dedication as permanent open space, or land previously dedicated as permanent open space pursuant to a prior final development plan approval.

f. Maintenance of Developer-Owned or Common Facilities. Whenever any facilities, including streets or ways, are shown on the final plat as being held by the Developer or in common, the County shall require the recording of conditions and restrictions providing for the maintenance thereof. Where facilities are to be held in common, the County shall require that an association of owners or tenants be created as a non-profit corporation under the laws of the State of Oregon, and that such corporation shall adopt articles of incorporation and by-laws and adopt and impose a declaration of covenants and restrictions on such facilities to the satisfaction of the County. Said association shall be formed and continued for the purpose of maintaining such facilities, until such time as the responsibilities of maintaining such facilities are transferred to a special district or other

authorized entity. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessment levies to maintain said facilities for the purposes intended.

g. Dedication. The County may, as a condition of approval of the land division, require that portions of the lots or parcels be set aside, improved, conveyed or dedicated for the following uses:

i. Easements necessary to the orderly extension of public utilities.

ii. Streets and pedestrian ways necessary to development of the subject lots or parcels in accordance with the Master Plan.

5. Filing, Submittal and Review. The filing, submittal and review of a land division application in the BDR zone shall comply with Article 6.5, Sections 6.5.100 - 6.5.500, provided that in lieu of the approval standards set out in Section 6.5.300(4)(A) and (B), the following standards, as they exist at the time the land division application is filed, shall apply to approval of the tentative plan for a land division in the BDR zone:

a. Approval. If the Approval Authority approves an application, the Approval Authority shall adopt findings of fact which substantiate the following conclusions:

i. The tentative plan complies with the submittal requirements of Section 6.5.250.

ii. The tentative plan complies with the use limitations, division standards and development and maintenance standards of Section ~~4.10.090~~ 4.5.190 (2-4).

iii. The tentative plan complies with the Master Plan and Exception Statement.

b. Conditional Approval. The Approval Authority may impose special conditions upon the approval of a tentative plan when it is established that such conditions are necessary to protect health, safety or welfare or carry out the Master Plan. Conditions may include, but are not limited to the following:

i. Roadway and plat design modifications;

ii. Utility design modifications;

iii. Conditions deemed necessary to provide safeguards against documented geologic hazards;

iv. Conditions deemed necessary to implement section ~~4.10.090~~ 4.5.190(4)(d); and

v. Other conditions deemed necessary to implement the objectives of the Master Plan or Exception Statement.

The Approval Authority may establish a specific time limit for compliance with the conditions.

6. Wetlands Notification. If a tentative plan includes areas identified as wetlands on the Statewide Wetlands Inventory, as shown in Exhibit A to this Ordinance, the Planning Department shall submit a Wetland Land Use Notification Form to the Division of State Lands within five working days after acceptance of a complete application for tentative plan review.

[OR-03-04-004PL, June 18, 2003]

OVERLAY ZONE:

SECTION 4.11.200 Purpose:

Overlay zones may be super-imposed over the primary zoning district and will either add further requirements or replace certain requirements of the underlying zoning district. The requirements of an overlay zone are fully described in the text of the overlay zone designations. An overlay zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary Management Plans when the Estuary Policies directly reference this section.

OVERLAY ZONE: FLOODPLAIN

DESIGNATION: /FP

No changes to the following sections:

SECTION 4.11.211 AUTHORIZATION
SECTION 4.11.212 FINDINGS OF FACT
SECTION 4.11.213 STATEMENT OF PURPOSE
SECTION 4.11.214 METHODS OF REDUCING FLOOD LOSSES
SECTION 4.11.220 DEFINITIONS
SECTION 4.11.231 LANDS TO WHICH THIS OVERLAY ZONE APPLIES
SECTION 4.11.232 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD
SECTION 4.11.233 INTERPRETATION
SECTION 4.11.234 WARNING AND DISCLAIMER OF LIABILITY
SECTION 4.11.235 ESTABLISHMENT OF DEVELOPMENT PERMIT
SECTION 4.11.235 ESTABLISHMENT OF DEVELOPMENT PERMIT

1. Floodplain Application Required
   A floodplain application shall be submitted and approved before construction or regulated development begins within any area of special flood hazard established in Section 4.11.232. The permit shall be for all structures including manufactured homes, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS."
2. Application
   An application shall be made on the forms furnished by the Planning Department and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
   a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures which may be submitted by a registered surveyor;
   b. Elevation in relation to mean sea level of floodproofing in any structure;
   c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4.11.252; and
   d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development; ***and***

e. Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level, or NAVD 88, whichever is applicable, of the area in question including existing and proposed structures, fill, storage of materials, and drainage facilities. Applicants shall submit certification by an Oregon registered professional engineer or land surveyor of the site's ground elevation and whether or not the development is located in a flood hazard area. If so, the certification shall include which flood hazard area applies, the location of the floodway at the site, and the 100 year flood elevation at the site. A reference mark shall be set at the elevation of the 100 year flood at the site. The location, description, and elevation of the reference mark shall be included in the certification; and

f. Any other information required to make a determination.

SECTION 4.11.242 DESIGNATION OF THE LOCAL ADMINISTRATOR
SECTION 4.11.243 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR
SECTION 4.11.244 VARIANCE PROCEDURE
SECTION 4.11.251 GENERAL STANDARDS

Sections to be modified:
SECTION 4.11.252 SPECIFIC STANDARDS
This was overlooked and unintentionally omitted from the ordinance in the last floodplain update.

(7) ***Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, road and driveway maintenance, landscaping, gardening and similar uses which are excluded from definition because it is the County's determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.***

Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:

a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or,
b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.

(8) COMMUNITY OFFICIAL BASE FLOOD ELEVATION DETERMINATION REQUEST AND PROCEDURES:

The Coos County Planning Department shall sign a community official base flood elevation (BFE) confirmation received from a mortgage insurance company if:

a. The development is located outside of the mapped flood hazard area;
b. A Letter of Map Revision or Amendment has been approved by FEMA; or

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

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

SECTION 5.0.250 TIMETABLE FOR FINAL DECISIONS (ORS 215.427):

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

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

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES:

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

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

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

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

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

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

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

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

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

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

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

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

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

3. ~~Time frames for conditional uses and extensions are as follows:~~
   a. ~~All conditional uses within non-resource zones are valid four (4) years from the date of approval; and~~
   b. ~~All conditional uses for dwellings ***residential development*** within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval. For the purpose of this paragraph, "residential development" means:~~
      i. ~~Alteration, restoration or replacement of a dwelling,~~
      ii. ~~Non-farm dwellings,~~
      iii. ~~Owner of Record dwellings,~~
      iv. ~~160 acre and 200 acre non-contiguous forest dwellings,~~
      v. ~~Template dwellings, or~~
      vi. ~~Caretaker residence in forest zones.~~
   c. ~~All non-residential conditional uses within resource zones are valid (2) years from the date of approval.~~
   d. ~~For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective. ***Additional extensions may be applied for as long as they meet the criteria in this section.***~~
   e. ~~Additional extensions may be applied.~~
4. ~~Extensions are subject to notice as described in § 5.0.900(2) and appeal requirements of 5.8 for a Planning Director's decision.~~

SECTION 5.3.350 CRITERIA FOR APPROVAL OF VARIANCES:

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

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

ii. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply to other properties in the same zoning district; or
iii. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by the owners of other properties or classified in the same zoning district;

b. That the granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.

2. In addition to the criteria in (1) above, no application for a variance to the Airport Surfaces Floating Zone may be granted by the Planning Director unless the following additional finding is made: "the variance will not create a hazard to air navigation".

3. In lieu of the criteria in (1) above, an application for a variance to the /FP zone requirements shall comply with Section 4.6.227.

4. Variance regulations in CCZLDO Article 5.3 shall not apply to Sections 4.11.400 through 4.11.460, Chapter VII and Chapter VIII.

SECTION 5.3.360 EXPIRATION AND EXTENSION OF VARIANCES:
Variances are not subject to expiration dates.

~~Any Variance not initiated within the time frame set forth in subsection (3) *(5)* of this section may be granted a an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the variance approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.~~

~~1. Extensions on Farm and Forest Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:~~

~~a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.~~
~~b. Coos County may grant one extension period of up to 12 months if:~~

~~i. An applicant makes a written request for an extension of the development approval period;~~
~~ii. The request is submitted to the county prior to the expiration of the approval period;~~
~~iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and~~
~~iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.~~

c. ~~Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.~~
d. ~~If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.~~
e. ~~For the purposes of subsection (s) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter~~
f. ~~Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.~~

2. ~~Extensions on all non-resource zoned property shall be governed by the following.~~

a. ~~The Director shall grant an extension of up to two (2) years so long as the variance criteria have not changed under the current zoning regulations.~~
b. ~~If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the variance then that variance is deemed to be invalid and a new application is required.~~
c. ~~If an extension is granted, the variance will remain valid for the additional two years from the date of the original expiration.~~

3. ~~Time frames for variances and extensions as follows:~~

a. ~~All variances within non-resource zones are valid four (4) years from the date of approval; and~~
b. ~~All variances within resource zones are valid (2) years from the date of approval.~~
c. ~~For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.~~
d. ~~Additional extensions may be applied.~~

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

ARTICLE 5.10 COMPLIANCE DETERMINATIONS AND REVIEWS

SECTION 5.10.100 COMPLIANCE DETERMINATIONS:
SECTION 5.10.200 APPLICATION REQUIREMENTS:

SECTION 5.10.300 REVIEW FOR USES AND ACTIVITIES IN AN ESTUARY MANAGEMENT PLAN ZONE:

1. Compliance determinations will be reviewed for any permitted uses **not** subject to general conditions which require polices to be addressed. If the policies require a conditional use that process shall be followed.

2. If it is determined that other land use reviews are required, the planning staff will provide a letter explaining what applications and criteria are required to the applicant and the

application will be deemed incomplete until all submittal requirements have been met. Once all conditional use applications have been received the applicable land use process shall be followed as described in Article 5.0.

3. If a compliance determination application is received for a use or activity that is not listed, a denial will be issued unless § 4.1.190 Uses Not Listed applies.

4. If no other reviews are required ~~the compliance determination~~ and discretion was used to determine compliance the compliance determination decision will serve as the final land use decision. However, if the application simply requires a check-off of clear and objective development standards and no Administrative Conditional Use ***review*** ~~is~~ ***was*** required ~~and~~ a Zoning Compliance Letter will be issued and the Compliance Determination will not be characterized as a land use decision.

All new and replacement developments, with the exception of sewage disposal system permits, require a driveway permit and/or parking permit ~~prior~~ as part of this review unless one has been completed. Industrial and Commercial development will require a parking plan to be submitted as part of the compliance determination review. Parking plans will be reviewed by the County Roadmaster.

ARTICLE 5.12 LIMITED LAND USE NOTICES

ORS 197.360 ("Expedited land division" defined):

(1)(a) If the application for expedited land division is incomplete, the local government shall notify the applicant of exactly what information is missing within 21 days of receipt of the application and allow the applicant to submit the missing information. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.

(b)If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(2)The local government shall provide written notice of the receipt of the completed application for an expedited land division to any state agency, local government or special district responsible for providing public facilities or services to the development and to owners of property within 100 feet of the entire contiguous site for which the application is made. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375 (Appeal of decision on application for expedited land division), this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the site.

(3)The notice required under subsection (2) of this section shall:

(a)State:

(A)The deadline for submitting written comments;

(B)That issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and

(C)That issues must be raised with sufficient specificity to enable the local government to respond to the issue.

(b)Set forth, by commonly used citation, the applicable criteria for the decision.

(c)Set forth the street address or other easily understood geographical reference to the subject property.
(d)State the place, date and time that comments are due.
(e)State a time and place where copies of all evidence submitted by the applicant will be available for review.
(f)Include the name and telephone number of a local government contact person.
(g)Briefly summarize the local decision-making process for the expedited land division decision being made.

(4)After notice under subsections (2) and (3) of this section, the local government shall:
(a)Provide a 14-day period for submission of written comments prior to the decision.
(b)Make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of the local government's land use regulations. An approval may include conditions to ensure that the application meets the applicable land use regulations. For applications subject to this section, the local government:
(A)Shall not hold a hearing on the application; and
(B) Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination. The summary statement may be in any form reasonably intended to communicate the local government's basis for the determination.
(c)Provide notice of the decision to the applicant and to those who received notice under subsection (2) of this section within 63 days of the date of a completed application. The notice of decision shall include:
(A)The summary statement described in paragraph (b)(B) of this subsection; and
(B)An explanation of appeal rights under ORS 197.375 (Appeal of decision on application for expedited land division).

ARTICLE 5.13 MEASURE 49 CLAIMS AND PROCESS

Measure 49 modifies Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon's protections for farm and forest uses and the state's water resources. Measure 49 has two main parts: the first part concerns Measure 37 claims that were filed on or before June 28, 2007; the second part addresses new Measure 49 claims. The first part of Measure 49 replaces the two alternate remedies of Measure 37 (a waiver of land use regulations or the payment of compensation) with an approval for claimants to establish a specific, but limited, number of home sites. This home site approval is provided as a form of compensation for land use regulations imposed after owners acquired their properties. It is available only for claimants who filed Measure 37 claims on or before June 28, 2007. The second part of Measure 49 concerns the filing of new claims, which may be based on land use regulations enacted only after January 1, 2007. As with Measure 37, Measure 49 provides either compensation or waivers for new land use regulations. However, Measure 49 defines the category of land use regulations that are eligible for relief more narrowly, to include only those regulations that limit residential uses of property or that restrict farming or forest practices. In addition, under Measure 49, relief is provided only if the owner demonstrates that the new regulations have reduced the value of property. For claims based on regulation of residential uses, claimants are exempted from regulation only to the extent necessary to allow additional residential development of a value comparable to the value lost as a result of the regulation.

The first part of Measure 49 applies to all Measure 37 claims that were filed on or before June 28, 2007, whether those claims were approved or pending. If a claimant elects to seek relief under Measure 49, the state must undertake a supplemental review of the relevant Measure 37 claim(s). The supplemental review will verify claimant ownership of the property, when the claimant acquired the property and the number of home sites that the claimant could have developed when the property was acquired. At the end of the supplemental review, the claimant will receive an order indicating what the claimant is approved for in terms of additional land divisions and/or dwellings. What claimants are approved for depends on where the property is located, when the claimant acquired the property and what the claimant asked for under Measure 37.

Most Measure 37 claims were filed for property located in rural parts of the state—land outside any UGB and any city. Claims for property located entirely outside any UGB and any city are eligible for relief under two options: an Express option that may allow up to three home sites, and a Conditional option that may allow up to 10 home sites. The Conditional option is not available for property with certain special designations and requires proof that the value of the claimant's property was reduced. Under both options, however, the claimant must have had the right to develop the additional home sites when the property was acquired. Verifying what claimants could have done when they acquired their property is the main focus of the supplemental review under Measure 49.

A claimant with a Measure 37 waiver who has begun the development described in the waiver may proceed under Measure 37 if the use of the property complies with the waiver and the claimant has a common law vested right to complete and continue the use. In areas of the state outside a UGB, claimants must have waivers from both the local government and the state. Generally, claimants also will need to have received land use permits for their uses and to have at least begun construction of their uses, before they will have vested rights. Additional information concerning vested rights is contained in guidance from the state that is available on the DLCD website at http://www.oregon.gov/LCD/MEASURE49. Claims for non-residential uses filed under Measure 37 for property outside any UGB and any city may be amended to seek approval for residential uses under Measure 49. Other non-residential uses may continue only to the extent they are vested.

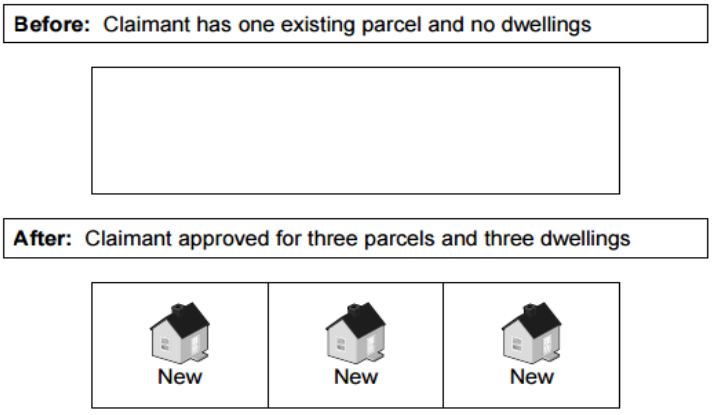
Measure 37 claims filed after June 28, 2007, are treated as new Measure 49 claims. Such claims are eligible for waivers or compensation under Measure 49 only if they are based on new land use regulations (those enacted after January 1, 2007) and only to the extent the claim demonstrates that the new regulation(s) has reduced the value of the property. New Measure 49 claims require proof that a regulation (those enacted after January 1, 2007) has reduced the value of your property. You have five years from the date the new regulation was enacted to file a new claim. Measure 49 requires public entities to compensate claimants for the effect of new land use regulations or to waive those regulations. However, the types of regulations that trigger claims are more limited under Measure 49. They include the following:

- ***State statutes that establish a minimum lot or parcel size;***

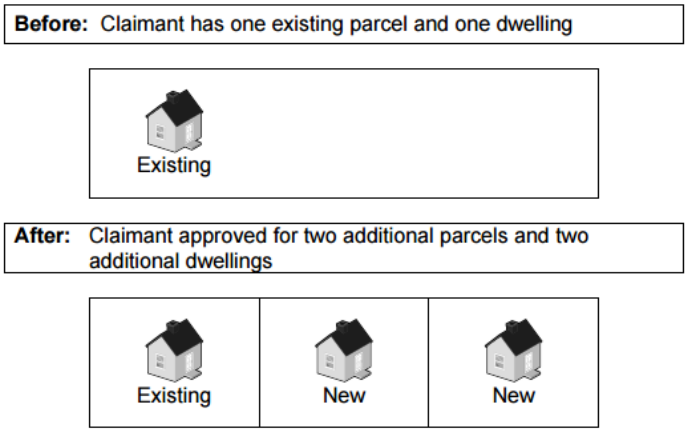
- ***State statutes in ORS chapter 215 that restrict the residential use of private real property;***
- ***Provisions in the Comprehensive Plans, zoning ordinances or land division ordinances that restrict the residential use of private real property "zoned for residential use" ;***
- ***Certain statutes and rules that restrict forest practices or farming practices; and***
- ***Statewide planning goals and administrative rules of the Land Conservation and Development Commission.***

Most common approved claims are referred to as the Express option. The number of lots, parcels or dwellings that may be approved under the Express option is limited to three. In addition, the number cannot exceed the number in the claimant's Measure 37 claim or waiver, if one was issued. If the property already contains one or more dwellings or more than one parcel, then neither the total number of dwellings nor parcels can exceed three. However, if a claimant's property already contains three or more parcels and three or more dwellings, the claimant may receive one more parcel and one more dwelling if the claimant otherwise qualifies under Measure 49. If a claimant's property already contains three parcels and has two or fewer dwellings, the claimant can receive only additional dwellings. The following diagrams illustrate some possibilities under the Express option.

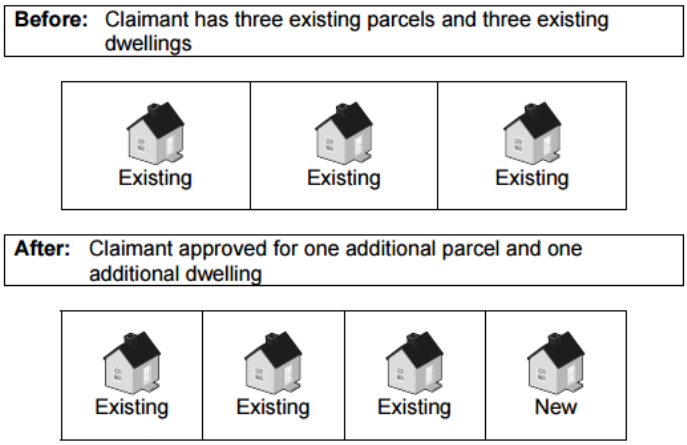
Express Option Example 1



Express Option Example 2



Express Option Example 3



SECTION 5.13.100 ONCE A CLAIM HAS BEEN RECEIVED

Once a claimant has received an approval under Measure 49, there is no time limit on when the claimant may carry out the development of the property. However, if the claimant sells the property, the claim will transfer but the purchaser only has ten (10) years to complete the development. The division of the property, and any dwellings, approved under Measure 49 are treated as permitted uses even if they would not otherwise be allowed under the zoning for the property.

The claimant will still need to apply for a subdivision or partition approval to divide the property, and for a building and development permit for any dwellings. Subdivisions, partitions and dwellings approved under Measure 49 must comply with all current applicable siting and development standards, except to the extent that the application of the development

standards would prohibit the use. (There is an exception to this exception, in that standards that are "reasonably necessary to protect public health or safety or carry out federal law" must be applied even if the effect would be to prohibit the use.) In addition, newly-created lots or parcels in an exclusive farm use (EFU), forest or mixed farm-forest zone may not exceed two acres, if located on land that is high-value farm- or forestland or in a ground water restricted area; or five acres otherwise. In addition, if the property is in an EFU, forest or mixed farm-forest zone, the new lots or parcels must be clustered "so as to maximize the suitability of the remnant lot or parcel for farm or forest use." A claimant with home site approvals on more than one property may cluster some or all of the dwellings, lots or parcels to which the claimant is entitled on one of the properties.

SECTION 5.13.110 PROCESS

The applicant is required to submit a tentative plan regarding development that is based on a Measure 49 claim. The plan will be provided to the Department of Land Conservation and Development (DLCD) for a 30 day comment period. Sometimes Measure 49 claims mistakenly have counted tax lots as parcels in the claims. Tax lots do not created legal parcels. Staff will review the property to determine if there are legal parcels established already or if they will be required to be divided to meet the intent of the Measure 49 claim. This will be done at the time the tentative plan is completed.

Once that has expired and as long as there are no negative comments regarding compliance with the Measure 49 claim form DLCD an applicant may applied for a partition. The minimum lots sizes and dimensions will be waived and replaced with the requirements of the waiver when creating applying for a partition.

If any other land use actions are taken on the property under current law to site a dwelling, establish legally created parcels or land division this will reduce the number of dwellings and parcels granted by the Measure 49 claim.

Measure 49 claims do exempt health and safety rules such as hazards and road standards established in Article 4.11 and Chapter VII. Land divisions are subject to standards set out in Article 6.2.

ARTICLE 5.14 SIMILAR USE DETERMINATIONS:

It is recognized that in the development of a Comprehensive Zoning and Land Development Ordinance, not all uses of land and water can be listed, nor can all future uses be anticipated. A "use" may have been inadvertently omitted from the list of those specified as permitted or conditional in each of the various districts designated. Ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this Ordinance.

SECTION 5.14.100 PROCESS FOR DETERMINING A SIMILAR USE:

1. The ~~classification of a new permitted or conditional~~ ***similar determination of a*** use may be approved by the Planning Director, or may be referred to the Board of Commissioners for consideration.

2. To classify ~~and add a new permitted or conditional use to the uses already listed within a zoning district without formal amendment to the text of this Ordinance~~, ***a similar use*** the Planning Director must find that the proposed use to be added is similar and not more obnoxious or detrimental to the public health, safety, and welfare as other uses listed in the respective zoning district.

3. Notice of any decision to classify a new use shall be published in a newspaper of general circulation at least ten (10) days prior to the effective date of the decision, and shall be subject to appeal pursuant to Article 5.8. Decisions to classify a new use may be appealed following the procedures of Article 5.8.

4. Any decision to classify a use pursuant to this section shall be entered in a registry available to the public setting forth:

    a. The street address or other easily understood geographic reference to the subject property;

    b. The date of the decision; and

    c. A description of the decision made.

5. New classified uses shall be subject to all other requirements of this Ordinance. ***This is a case-by-case basis and is subject to a conditional use review and will not change the list of uses for all properties within a zoning district.***

6. Any new use classified for an Exclusive Farm Use or Forest zone must comply with ORS 215 and requirements of applicable case law and administrative rules. [OR-92-07-012PL]

ARTICLE 6.1 LAWFULLY CREATED LOTS AND PARCELS

SECTION 6.1.100 WHAT IS NOT A LAWFULLY CREATED LOT OR PARCEL:

~~The following circumstances do not lawfully create lots or parcels:~~

~~*Tax lots do not create lawfully created lots or parcels. A tax lot is a unit of land used by the County Assessor's office to set a value for property taxation. Tax lot creation or modification often uses methods that do not meet legal lot standards. Also included in this category are individual tax account numbers or statements. A tax account is used for taxing purposes.*~~

~~*Units of land conveyed by deed or contract do not necessarily create a legal lot or parcel. Units of land created by this method define ownership and title, but do not necessarily mean it was lawfully created under the state and local land use laws in effect at the time it was completed.*~~

~~*Multiple ownership of a parcel shown as a percentage does not divide the property.*~~

~~*A lot or parcel created by a land division without final county approval is not a legal lot. A partition or subdivision, in which the developer failed to complete the process within the allotted timeline and failed to receive an extension, is void. A plat must have been recorded at the County Clerk's office within the allotted timeframe in order to be valid.*~~

~~*Roads held in fee simple created after 1990 do not divide property.*~~

A unit of land shall not be considered a separate parcel simply because the subject tract of land;

1. ***Is a unit of land created solely to establish a separate tax account;***
2. ***Includes properties that have divided interest;***
3. ***Lies in different counties;***
4. ***Lies in different sections or government lots;***
5. ***Lies in different land use or zoning designations; or***
6. ***Is dissected by a public or private road.***

SECTION 6.1.125 LAWFULLY CREATED LOTS OR PARCELS:

Lawfully created parcels or lots are acknowledged pursuant to one or the following:

1. ~~The unit of land was created by an approved and recorded partition or subdivision;~~
2. ~~A unit of land determined to be a legal lot or parcel though a prior county approval of a land use decision;~~
3. ~~The unit of land is recognized as a legal lot as the result of court decisions or LUBA final opinion; or~~
4. ~~The unit of land was created by deed instrument or land sales contract recorded prior to December 6, 1962, which was the date of the first official Coos County Subdivision~~

~~Ordinance. After 1962 there was a legal process adopted by Coos County for land divisions.~~

5. ~~The unit of land that was created by a lien foreclosure, foreclosure of a recorded contract of the sale of real property or the creation of cemetery lots;~~

6. ~~The unit of land was created by the claim of intervening state or federal ownership of navigable streams, meandered lakes or tidewaters;~~
7. ~~A dedication of a public road (held in fee simple) prior to 1990 may divide property in the following cases:~~

    a. ~~Between December 6, 1962 and January 1, 1989 (date the ordinance stopped acknowledging roads divide property) there were land division provisions adopted by Coos County. Staff will apply the provisions that were in place at that time the property was deeded to determine if the dedicated public road (held in fee simple) allowed for the road to divide the property; or~~
    b. ~~If a public dedicated road was held in fee simple prior to December 6, 1962 and the property was bisected by a public dedicated road held in fee simple then the properties were lawfully divided and will be recognized as lawfully created parcels; or~~

8. ~~The unit of land was created by a legal description in deeds or other instruments conveying real property prior to 1986. A deed may describe property as separate parcels but must have a beginning and ending point for each description within that deed.~~

"Lawfully established unit of land" means:

1. ***The unit of land was created:***
    a. ***Through an approved or pre-ordinance plat;***
    b. ***Through a prior land use decision including a final decision from a higher court. A higher court includes the Land Use Board of Appeals;***
    c. ***In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations at the time it was created.***
    d. ***By a public dedicated road that was held in fee simple creating an interviewing ownership prior to January 1, 1986;***
    e. ***By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations that prohibited the creation.***
    f. ***By the claim of intervening state or federal ownership of navigable streams, meandered lakes or tidewaters. "Navigable-for-title" or "title-navigable" means that ownership of the waterway, including its bed, was passed from the federal government to the state at statehood. If a waterway is navigable-for-title, then it also is generally open to public use for navigation, commerce, recreation, and fisheries.***
2. ***Creation of parcel previously approved but not acted upon (92.178).***

a. ***The governing body of a county may approve an application requesting formation of one parcel if the county issued a land use decision approving the parcel prior to January 1, 1994, and:***
b. ***A plat implementing the previous land use decision was not recorded; or***
c. ***A condition of approval of the previously approved land use decision requiring consolidation of adjacent lots or parcels was not satisfied by a previous owner of the land.***
d. ***An application under this section is not subject to ORS 215.780.***
e. ***Approval of an application under this section does not affect the legal status of land that is not the subject of the application.***

SECTION 6.1.150 APPLICATIONS ESTABLISHING LAWFULLY CREATED ~~LOTS OR PARCELS~~ Unit of land:

~~If a parcel or lot can be shown to exist pursuant to LDO Section 6.1.125 Subsections 1through 3 above, then an application and notice is not required. In the case of Subsections 4 through 8, an applicant shall submit evidence to show that the parcel(s) or lot(s) were lawfully created. A map showing the lawfully created parcel(s) or lot(s) shall be submitted with the application.~~

~~Staff will review the application based on the criteria in LDO Section 6.1.125; however, the applicant may provide case law to review if there is another applicable circumstance not provided in Section 6.1.125. If County Counsel is required to review information to determine legal status of a parcel or lot additional fees may be charged.~~

~~All notices will be provided in accordance with LDO Section 5.0.~~

An application to establish a lawfully created unit of land shall be submitted in the case of Section 6.1.125.1.d, e and f and Section 6.1.125.2. This is an administrative land use decision. If County Counsel is required to review information to determine legal status of the unit of land additional fees may be charged.

All notices will be provided in accordance with LDO Section 5.0.

Once it is determined that a lawfully created ~~lot or parcel~~ ***unit of land*** exists it shall be separated out on its own deed prior to any reconfiguration such as a property line adjustment. A copy of that deed needs to be provided to the Planning Department showing the process has been completed. If there are more than two lawfully created parcels (discrete parcels) found to exist a road may be required to provide access. The applicable road standards in Chapter VII will apply.

SECTION 6.2.600 PLANNED UNIT DEVELOPMENTS (PUD):
The provisions of this Article shall be known as the Planned Unit Development requirements and procedures. Its purpose is to set forth the objectives, principles, standards, and procedures to be used in developing a Planned Unit Development (PUD). The Planned Unit Development Article is designed to permit the flexibility needed to encourage the appropriate development of tracts of

land that are large enough to allow the use of individualized site planning. It is intended to provide flexibility in the application of certain regulations in a manner consistent with the general intent and provisions of the Comprehensive Plan for Coos County and this Ordinance, thereby promoting a harmonious variety of uses, the economy of shared services and facilities, compatibility of surrounding areas and the creation of attractive, healthful, efficient and stable environments for living, shopping, recreation, or working.

Planned Unit Development, for purposes of this Article, is described as: an optional approach to community development which allows modification of more or less rigid setback, lot size specifications, and land use provisions of Chapter IV (Zoning) of this Ordinance, and instead establishes broad standards and goals to be followed, thus enabling and encouraging flexibility of design and development. Often based on the concept of cluster planning, it allows single-family houses and multiple-family dwellings of varying sizes, and appropriate institutional, and commercial uses to be built in the same development, thus inviting considerable variety in both tract and building design and uses, the possible retention of natural settings or community recreational areas, and reduced street and utility installation cost. Although the density of the total area remains consistent with that of conventional development, emphasis is placed on the relationship between buildings, uses, and open space, and the most efficient use of both natural and development resources, rather than planning on a lot-by-lot or building-by-building basis. All PUD proposals shall comply with ORS 94 and meet platting requirements set forth in this Article. If the there are four or more dwelling units then the subdivision requirements apply.

SECTION 6.2.625 PUD OBJECTIVES:

Coos County's intent is to provide flexibility in the application of certain regulations in a manner consistent with the general intent and provisions of the Comprehensive Plan for Coos County, and this Ordinance, thereby promoting a harmonious variety of residential and mixed residential and recreationally-related structures and uses.

The general objectives of the Planned Unit Development are ***to***:

1. ~~To~~ Encourage innovations and variety in the development or re-use of communities in the County;

2. ~~To~~ Maximize choice in the type of environment available in Coos County;

3. ~~To~~ Encourage a more efficient use of land and of public services and facilities;

4. ~~To~~ Take advantage of and promote advances in technology, architectural design, and functional land use design;

5. ~~To~~ Provide for the enhancement and preservation of property with unique features (i.e. historical, topographical, and natural landscape).

6. ~~To~~ Simplify processing of development proposals for developers by providing for concurrent review of land use, subdivision, public improvements, and siting considerations;

7. ~~To~~ Enable special problem areas or sites in the County to be developed or improved, in particular where these areas or sites are characterized by special features of geography, topography, size, shape, or historical legal non-conformance;

8. ~~To~~ Provide an environment of stable character in harmony with surrounding development or use, or proposed development or use;

9. ~~To~~ Permit flexibility of design that will create desirable public and private common open spaces, a variety in type, design, and layout of buildings, and utilize to the best possible extent the potentials of individual sites;

10. ~~To~~ Assist in reducing the public service costs of development.

11. In addition Recreational Planned Unit Developments:
   - ***a. Encourage and provide for local recreational opportunities,***
   - ***b. Encourage and provide significant diversification of the local economy by increasing the attraction of tourists to the County.***
   - ***c. Provide incentives to stimulate the development of resort complexes; and***
   - ***d. Provide complementary protection of significant open space and natural resource areas.***

e. Provide flexibility needed to encourage the appropriate development of tracts of land that are large enough to allow the use of individualized site planning to fulfill an identified need for intense recreational opportunities. These may include tourist-oriented uses such as motels, restaurants, etc. All R-PUD proposals shall comply with ORS 94.

SECTION 6.2.650 PUD Uses:

The buildings and uses permitted in a Planned Unit Development shall be governed by the parent district, pertinent floating zones, and special considerations map restrictions. In addition to the uses permitted by the parent district, the following uses shall also be permitted:

1. Multiple-family dwelling
2. Two-family dwelling (Duplex)
3. Low intensity recreation
4. High intensity recreation
5. Recreational Planned Unit Developments shall contain at least 25% primary owner occupancy or long term rental dwellings (more than 30 days).
6. Retail and service establishments that provide a convenience designed to primarily serve the residents of the PUD with goods and services, and not intended to serve a larger trade or service area.
7. Accessory structures and uses to the extent necessary and normal to the uses permitted in this Section.

SECTION 6.2.675 Land Coverage for PUD:

1. In a ~~Residential~~ Planned Unit Development at least 40% of the gross land area, excluding existing and proposed parking and roads shall be devoted to open space and shall be designated as common property.
2. The overall density of a Planned Unit Development shall not exceed the density of the parent zoning district, floating zone, or special consideration restrictions.
3. The minimum lot area, width, depth, height and setback requirements of Chapter IV applicable to the zoning district in which the Planned Unit Development is proposed shall <u>not</u> dictate the strict guidelines for development within the Planned Unit Development and may therefore be waived. Individual buildings and accessory buildings, shall maintain the

required parent district's setback from all exterior plat boundary lines, so as to provide the minimum buffering deemed necessary to protect the integrity of adjacent properties.

4. When Coos County determines that topographical or other existing barriers, or the design of the Planned Unit Development, does not provide adequate screening or privacy necessary for properties adjacent to the Planned Unit Development, Coos County shall require that:

    a. structures located near the perimeter of a Planned Unit Development are designed and located so as to protect the privacy and amenity of adjacent existing uses; and/or
    b. a permanent screening be established either by appropriate structure or vegetation or both, along those portions of the site boundaries requiring such screening to assure compatibility with adjacent existing or prospective land uses.

5. The location, shape, size and character of required open space shall be consistent with the standards set forth below, and shall be maintained only for those uses so specified:

    a. Open space may be maintained for scenic, landscaping, outdoor recreational purposes, sound, solar availability or buffering;
    b. Open spaces shall be developed and improved to the extent that it will serve the purpose for which it is designated. Outdoor areas containing natural features, existing trees, and groundcover worthy of preservation may be left unimproved; and
    c. ~~Any buildings, structures, and improvements within the open space shall be appropriate to the uses which are authorized for the Open space and shall protect and enhance the integrity of the open space.~~ ***Open space shall be reserved for common facilities and open to the residents or occupants of the PUD.***
    d. ***In a Recreational PUD the Open Space Standards requires open space <u>not</u> be developed except for active and passive recreational activities, non-motorized vehicle or pedestrian trails, hazard control structures, and vegetative alteration such as golf courses and landscaped grounds. Clustering of intensive or build-up uses shall be encouraged to provide maximum retention of open space and to provide sufficient access to the recreational resource.***

6. Maintenance of Common Open Space and Facilities. Whenever any lands or facilities, including streets or ways, are shown on the final development plan as being held in common, Coos County shall require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, and that such corporation shall adopt articles of incorporation and by-laws and adopt and impose a declaration of covenants and restrictions on such common areas and facilities to the satisfaction of Coos County. Said association shall be formed and continued for the purpose of maintaining such common open space and facilities. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessment levies to maintain said areas and facilities for the purposes intended.

7. Dedication. Coos County may, as a condition of approval for any development, require that portions of the Planned Unit Development be set aside, improved, conveyed, or dedicated for the following uses:

   a. easements necessary to the orderly extension of public utilities;
   b. streets and pedestrian ways necessary to the proper development of either the Planned Unit Development and/or adjacent properties;
   c. recreational areas or open spaces suitable for the owners, residents, employees, or patrons of the Planned Unit Development of the general public.

8. Construction Standards. Except as expressly provided by this Article, the provisions of this Ordinance and all other County Ordinances and codes shall apply to and control all design and construction of improvements within a Planned Unit Development.

9. Perimeter Standards for Recreational Planned Unit. When Coos County determines that topographical or other existing barriers, or the design of the Recreational Planned Unit Development, does not provide adequate screening or privacy necessary for properties adjacent to the R-PUD, Coos County shall require that:

   a. Structures located near the perimeter of a R-PUD are designed and located so as to protect the privacy and amenity of adjacent existing uses; or
   b. Permanent screening be established either by appropriate structure or vegetation or both, along those portions of the site boundaries requiring such screening to assure compatibility with adjacent existing or prospective land uses.

SECTION 6.2.700 ~~Recreational Planned Unit Development:~~ Reserved

~~The purpose of the Article is to set forth the objectives, principals, standards and procedures to be used in developing a Recreation Planned Unit Development (R-PUD). The R-PUD Article is designed to permit the flexibility needed to encourage the appropriate development of tracts of land that are large enough to allow the use of individualized site planning to fulfill an identified need for intense recreational opportunities. It is intended to provide flexibility in the application of certain regulations in a manner consistent with the general intent and provisions of the Comprehensive Plan for Coos County, and this Ordinance, thereby promoting a harmonious variety of residential and recreationally-related structures and uses. These may include tourist-oriented uses such as motels, restaurants, etc. All R-PUD proposals shall comply with ORS 94.~~

SECTION 6.2.725 ~~Objectives of R-PUD:~~ Reserved

~~The general objectives of a Recreational Planned Unit Development are:~~

~~1. To encourage and provide for local recreational opportunities,~~

2. To encourage and provide significant diversification of the local economy by increasing the attraction of tourists to the County.

3. To provide incentives to stimulate the development of resort complexes; and

4. To provide complementary protection of significant open space and natural resource areas.

SECTION 6.2.750 R-PUD Uses: ***Reserved***

The buildings and uses permitted in a Recreational Planned Unit Development shall be governed by the parent district, pertinent floating zones and special considerations map restrictions. In addition to the uses permitted by the parent district, the following uses shall also be permitted:

1. Multiple-family dwellings;

2. Two-family dwellings (duplexes);

3. Low-intensity recreation facilities;

4. High-intensity recreation facilities;

5. Retail and service establishments not necessarily limited in scope to meet the needs of the R-PUD users; and

6. Accessory structures and uses to the extent necessary and normal to the uses permitted in this section.

SECTION 6.2.775 R-PUD Development and Maintenance Standards and Principals: ***Reserved***

In lieu of the property development standards of the primary zone, the following standards shall apply to an R-PUD.

1. Minimum Sized Area for Developments. Minimum size for a tract of land to be developed as a R-PUD shall not be less than eighty (80) contiguous acres unless located in an exception area.

2. Land Coverage. In a R-PUD at least forty 40% of the gross land area, excluding existing and proposed parking and roads, shall be devoted to open space.

3. Density.

a. Owner's Primary Dwelling Unit. The overall density for "owners' primary dwelling units" in a R-PUD shall not exceed the density permitted by the underlying zone or "special consideration" restrictions. For the purpose of an R-PUD, "owners' primary dwelling unit" shall be defined as providing year-round occupancy for a single-family owner-occupied unit.
b. Recreational Dwelling Unit. The overall numbers of permitted recreational dwelling units in a R-PUD shall not be less than the number of the "owners' primary dwelling units", nor shall the number of recreational dwelling units exceed the carrying capacity of the land, considering:

i. Individual septic feasibility approvals for each dwelling unit; or approved public or community sanitary system;
ii. Proof of an adequate supply of potable water pursuant to Sections 6.2.800(3)(o).

For the purpose of an R-PUD, "recreational dwelling unit" may be individually owned, and occupied year-round such as through time-sharing or other concepts, but shall be designed and generally used as "vacation homes" and "second homes" rather than as the owner's primary dwelling.

Example 1: Given 100 acres:
Permitted density: 1 density unit per 10 acres
Carrying capacity = 100 units
Owner's primary dwellings (OPDU) cannot exceed 10 units.
Recreational dwellings units (RDU) cannot exceed 100 minus (OPDU)

If the developer proposed 8 OPDU's he may also be permitted to construct not less than 8 or more than 92 RDU's.

Example 2: Given 100 acres:
Permitted density: 1 unit per 10 acres
Carrying Capacity = 12 units
OPDU cannot exceed 10 units.
RDU cannot exceed 12 minus (OPDU).

a. If the developer proposed 10 OPDU's he could not have any RDU because the allowed RDU's would be less than the number of OPDU's. (Carrying capacity minus OPDU = RDU. RDU greater than or equal to OPDU therefore 12 minus 10 = 2. 2 is less than 10; result is NO RDU's)
b. If the developer proposed 3 OPDU's he may be permitted to construct no less than 3 nor more than 9 RDU's. (Carrying capacity minus OPDU = RDU. RDU greater than or equal to OPDU therefore 12 minus 3 = 9. 9 is greater than 3; result is 9 RDU's)

~~Example 3 : Given 100 acres:~~
~~Permitted density = 1 unit per 10 acres~~
~~Carrying Capacity = 1 unit~~
~~Only one option exists: one OPDU.~~

4. ~~Lot Area and Dimensional Standards: The minimum lot area, width, depth, height and setback requirements listed in, Chapter IV applicable to the zoning district in which the Recreational Planned Unit Development is proposed may be waived. Individual buildings and accessory buildings shall maintain the required parent district's setback from all exterior plat boundary lines, so as to provide the minimum buffering deemed necessary to protect the integrity of adjacent properties.~~

5. ~~Perimeter Standards. When Coos County determines that topographical or other existing barriers, or the design of the Recreational Planned Unit Development, does not provide adequate screening or privacy necessary for properties adjacent to the R-PUD, Coos County shall require that:~~

    a. ~~structures located near the perimeter of a R-PUD are designed and located so as to protect the privacy and amenity of adjacent existing uses; or~~
    b. ~~permanent screening be established either by appropriate structure or vegetation or both, along those portions of the site boundaries requiring such screening to assure compatibility with adjacent existing or prospective land uses.~~

6. ~~Open Space Standards. The required open space shall not be developed except for active and passive recreational activities, non-motorized vehicle or pedestrian trails, hazard control structures, and vegetative alteration such as golf courses and landscaped grounds. Clustering of intensive or build-up uses shall be encouraged to provide maximum retention of open space and to provide sufficient access to the recreational resource.~~

7. ~~Maintenance of Common Open Space and Facilities. Whenever any lands or facilities, including streets or ways, are shown on the final development plan as being held in common, Coos County shall require that an association of owners or tenants be created into a non-profit corporation under the laws of the State of Oregon, and that such corporation shall adopt articles of incorporation and by-laws and adopt and impose a declaration of covenants and restrictions on such common areas and facilities to the satisfaction of Coos County. Said association shall be formed and continued for the purpose of maintaining such common open space and facilities. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessment levies to maintain said areas and facilities for the purpose intended.~~

8. ~~Dedication: Coos County may, as a condition of approval for any development, require that portions of the Recreational Planned Unit Development be set aside, improved, conveyed, or dedicated for the following uses:~~

~~a. easements necessary to the orderly extension of public utilities;~~
~~b. streets and pedestrian ways necessary to the proper development of either the Recreational Planned Unit Development and/or adjacent properties;~~
~~c. recreational areas or open spaces suitable for the owners, residents, employees, or patrons of the R-PUD or the general public.~~

~~9. Construction Standards: Except as expressly provided by this Article, the provisions of this Ordinance and all other County ordinances and codes shall apply to and control all design and construction of improvements within a R-PUD.~~

6.2.800 Final Plat Regulation and Requirements:

Action upon a final subdivision plat by the Director is a ministerial action and must be undertaken within thirty (30) days of receipt of the final plat. ***No final plat may be submitted for consideration and approval unless a tentative plan, and any required construction drawings for the proposed land division have been submitted previously and approved by the County pursuant to this Article.***

1. ~~Application for Final Subdivision and PUD Plat Approval~~

    1. Before expiration of the validity of the tentative plat approval, the applicant shall cause an Oregon registered professional land surveyor to survey the subdivision and to prepare a final plat, in conformance with the approved preliminary plan.

    2. The applicant shall initiate a request for final plat approval by filing with the Director a final plat, and other supporting documents as described in ***this*** Subsections ~~2 to 6 of this section,~~ and the appropriate fees as established by the Board.

    3. Construction Plans and Specifications:

        a) After approval of a tentative plan, and if the tentative plan includes the creation of access roadways, the applicant shall submit to the Planning Department five (5) copies of the following construction plans:

            1) Road or street profiles, cross-sections and drawings pursuant to Chapter VII. In lieu of cross-sections and profiles, the Roadmaster may field check the proposed road and if the subject topography does not warrant the requirement of cross-sections and profiles such requirements may be waived by the Roadmaster; and
            2) Applicable specifications for required utilities, road, streets, bike paths, parking and monumentation, provided the applicant intends to bond for said improvements.

        b) It shall be the responsibility of the County Road Department to review the drawings and submittals relevant to road or street and utility construction. The Road Department shall also be responsible for reviewing the specifications pertaining to

roads or streets and utilities pursuant to bonding.

It shall be the responsibility of the County Surveyor to review the drawings and submittals relevant to surveying. The Surveyor shall also be responsible for reviewing the specifications pertaining to surveying and monumentation pursuant to bonding.

The County Roadmaster and County Surveyor shall within twenty (20) days after receipt of the construction drawings return the completed approval form to the Planning Director. If all approval forms are positive, the Planning Director shall approve the construction drawings.

If any approval form is negative or with conditions, the applicant shall if necessary resubmit new construction drawings revised to correct any discrepancies. Upon approval of the construction drawings, the Planning Director shall within five (5) days of approval notify the applicant, County Roadmaster and County Surveyor.

c) Following approval of the construction drawings, the applicant may proceed with bounding or other security arrangements or construction of improvements and monumentation. Any construction of further site work shall be in conformance with the approved construction drawings and specifications. A sample bond can be found at the end of this Article for land divisions (Figure 6.2).

d) Before the final plat may be approved, the subdivider shall either:

1) Install required monumentation, improvements and repair existing streets and other public facilities damaged in construction of the subdivision or partition;
2) Execute and file with the County Surveyor or Roadmaster an agreement between the applicant and the County. Interior Monuments: If the corners of partition or subdivision are to be monumented on or before a specified date after the recording of the plat, a bond, surety, cash or other security deposit at the option of the Surveyor shall be furnished prior to the recording of the plat. The estimated cost of performing the work shall be prepared by the surveyor or engineer performing the work on the described plat and shall be approved by the County Surveyor. When the subdivider wishes to bond for improvements and post-monumentation of the plat, the following notes and calculations will be submitted with the plat in addition to those listed in Section 8.1.400 (Survey Calculations)
3) copies of all original field notes made in connection with the survey of the plat; or
4) calculation sheets for:
    a) bearings;
    b) bearings adjustments;
    c) traverse;
    d) traverse adjustment;

5) All other calculations made in connection with the survey of the subdivision.
6) Bonding for roads can be found in Chapter VII.

2. Final Plat Requirements.

~~i. The final plat shall be prepared in conformance with all provisions of §6.2.800.~~

i. Prior to submission for final approval, the final plat shall be signed by all persons who own land in the subdivision or partition and the mortgagees or by their authorized representatives or any titleholder. The plat shall bear the signature and seal of the registered professional land surveyor responsible for its preparation and certification that the plat has been correctly surveyed and properly monumented. All signatures must be in archival quality black ink.

ii. All plats shall be drawn using archival quality black ink, approved by the County Surveyor, on archival quality drafting material. One shall be 18 inches by 24 inches (Clerk's office) and one shall be 18 inches by 27 inches with the 3 inch extension on the left that is suitable for binding purposes (Surveyor's office). The quality of said drafting material and any other drafting particulars will be subject to the County Surveyor's approval. No diazo process may be used. No drafting shall come nearer any edge than one inch and no nearer the left or binding edge than four inches.

iii. The plat shall be drawn to a typical engineer scale (example 1" = 50'). Any deviation from this scale shall be allowed only with the approval of the County Surveyor.

3. ~~Information required in the Final Subdivision and PUD Plats shall include the final plat and supporting documents. Final plats shall otherwise comply with ORS 209.250.~~ ***Information Required in the Final Plat. The following information shall be included on the final plat or in the supporting documents, and the plat shall otherwise comply with ORS 209.250***

i. ***The final plat map shall be clearly titled as being a final:***
   a) ***partition plat;***
   b) ***subdivision plat; or***
   c) ***planned community.*** (numbers changed after this)

ii. ***For Subdivision or Planned Community (PUD) the plat shall be named and displayed on the plat***;

iii. North arrow, scale and date the plat was prepared;

iv. Legal description of the boundaries, area of the lots in acres, and the location of the subdivision by one-fourth section and Township and Range;

v. Names and addresses of the subdivider ***or partitioner***, owner, mortgagee, if any, and the person preparing the plat;

vi. Lot boundary lines and street right-of-way and center lines with dimensions to the nearest 1/100th of a foot, bearings or deflection angles, radii, arc, points of curvature, chord bearings and distances, and tangent bearings. Subdivision

boundaries, lot boundaries, and street bearings shall be shown to the nearest second with basis of bearings;

vii. Each street shall be named and shown. The plat shall also show the names and width of the portion of streets subject to an offer to sell, dedication or offer to dedicate, the width of any existing right-of-way, and the width on each side of the center line. For streets on curvature, curve data shall be based on the street center line. In addition the center line dimensions, the radius and central angle shall be indicated, length of curve, chord bearing and distance;

viii. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision must be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificate of dedication.

ix. Locations and widths of drainage channels, railroad rights-of-way, reserve strips at the end of stubbed streets or along the edge of partial width streets on the boundary of the subdivision;

x. ***Parcel or*** Lot numbers shall be consecutively starting with number "1";

xi. Zoning classification of the property within the subdivision or PUD;

xii. The course of all lines traced or established, giving the basis of bearing and the distance and course to a section corner, one-quarter corner, one-sixteenth corner, donation land claim corner in Township and Range, a ***parcel or*** lot corner of a recorded subdivision, a boundary corner of a PUD, or a parcel corner of a recorded partition;

xiii. Space for date and signature of the County officials, ***see declaration subsection***;

xiv. Any conditions specified by the Approving Authority upon granting preliminary approval;

xv. For urban development, proof that sewer service is available to each lot in the subdivision and installed according to the specifications of the sewer service provider;

xvi. All lots shall be served from an established public or private water system or private source with the water available at each lot prior to recording the plat. The water quality shall be in accordance with the requirements of the Oregon Health Division, the Oregon Water Resources Department, and the Oregon Department of Environmental Quality.

If this is not a serial partition then the Planning Director, Planning Commission or Board of Commissioners can waive this requirement. In the case of a waiver proof needs to be provided that water could be provided in the future. Acceptable information may be well logs for the area.

When the water supply is distributed through a community system the proposed method of assuring the continued maintenance of the water system shall be provided.

If a waiver is granted the following statement shall be shown on the plat:

a statement that no domestic water supply facility will be provided to the purchaser of any lot or parcel depicted in the proposed land division, even though a domestic water supply source may exist. This statement must be shown on the face of the final plat.

It is the responsibility of the applicant to deliver a copy of the statement to each prospective purchaser of a lot or parcel depicted in the land division pursuant to ORS 92.090(4)(c).

If the waiver is not being applied for then an applicant shall submit and comply with one of the following options:

i. A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system that water will be available to the lot line of each and every lot or parcel depicted in the proposed land division;

ii. Where the proposed source of water is by individual or community wells, proof of an adequate supply of potable water for all anticipated needs of the platted area shall be presented. Proof of an adequate supply of potable water may consist of:

    a. Test wells, must have at least one well per five lots or parcels, or, in the case of lots or parcels averaging less than two acres, one well per ten acres. The test wells shall produce at least 1,000 gallons per day for two consecutive days for each proposed single-family residential site; and
    b. A hydrology report documenting the availability of potable water by describing the average depth, yield and quality and by giving a general history of wells in the area.

iii. Where the proposed source of water is by a spring, creek, stream, pond, lake or other natural or man-made surface water impoundment, the following information shall be provided:

    a. Certificate of the water as potable by the County Health Department, appropriate state agency or by an approved private laboratory.
    b. Whether the source will be distributed through a community water system or through individual delivery systems;
    c. Whether water rights exist to the supply and, if so, the names of persons holding such rights and amounts allotted to each;
    d. The location of the sources of water supply;
    e. The year-round or seasonal nature of the water supply;
    f. Proof of an adequate water supply for all anticipated needs of the proposed development.

iv. Storage tanks can be used to serve individual lots or parcels if needed. The tank needs to be a minimum of 1200 gallons to serve one single family dwelling.

xvii. Provide written evidence that an on-site septic system(s) that is intended to remain in use after final approval was authorized by an approving authority; or, if written evidence is not available, provide a septic system evaluation (prepared by a professional qualified under ORS 700) that certifies the existing system(s) to be properly functioning and meets the requirements in OAR 340-071-0000. In any case, it must be shown that the existing septic system(s) is either located entirely on the same lot containing an existing dwelling, or that proper easements are provided to allow the continued use and maintenance of the system(s);

xviii. A copy of the covenants, if any, that will be placed on the subdivision, including the volume and page(s) of recording with Coos County;

xix. A copy of all documents relating to establishment and maintenance of private facilities, common areas and easements, including the volume and page(s) of recording with Coos County;

xx. A copy of all documents relating to additional requirements or restrictions required by the County as a condition of approval;

xxi. A certificate signed and acknowledged by all parties having any record title interest in the land consenting to the preparation and recording of the plat;

xxii. A certificate signed and acknowledged by all parties having any record title interest in the land dedicating all land intended for public use and common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan;

xxiii. A narrative per ORS 209.250(2);

xxiv. Planning Department file number;

xxv. If the property is wholly or partially within the boundaries of an irrigation district, drainage district, water control district, water improvement district, or district improvement company, then a certification from the district or company must be received by the County which states that the subdivision is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision to the fees and other charges of the district or company;

4. ~~Information Required in the Final Partition Plat. The following information shall be included on the final plat or in the supporting documents, and the plat shall otherwise comply with ORS 209.250:~~

~~i. Location of the parcel by one-fourth section, Township and Range;~~

~~ii. Names and addresses of the partitioner, owner, mortgagee, if any, and the registered professional land surveyor preparing the map;~~

~~iii. North arrow, scale, and date submitted;~~

~~iv. The names of any streets intersecting or within the parcels;~~

~~v. All easements provided for public services, utilities, or access must be shown on the face of the partition plat using bearings, distances and dimensions or a legal description and any limitations of the easements. If it is a preexisting easement or if the easement has been filed with the County Clerk prior to the final approval of the land partition, then the Recorder's number shall appear on the face of the partition plat;~~

~~vi. Zoning classification and Comprehensive Plan designation;~~

~~vii. The course of all lines traced or established, giving the basis of bearing and the distance and course to a section corner, one-quarter corner, one-sixteenth corner or Donation Land Claim corner in Township and Range, a lot corner of a recorded subdivision, a boundary corner of a condominium, or a parcel corner of a recorded partition;~~

~~viii. A surveyor's affidavit and written legal description of the boundary of all land contained in the land partition. Each parcel shall be identified with a parcel designation;~~

~~ix. Space for date and signatures of the following officials for the final partition plat:~~

~~a) Director;~~
~~b) County Surveyor; and~~
~~c) County Tax Collector/Assessor in accordance with ORS 92.095;~~

~~x. Narrative per ORS 209.250;~~

~~xi. Any additional information made a condition of approval of the tentative plan.~~

~~xii. When parcels are not required to be monumented or surveyed, a schematic diagram shall be included on the face of the final partition plat showing the exterior boundaries of all parcels and their relationship with the parcel(s) requiring monumentation and surveying;~~

~~xiii. Unsurveyed parcels shall have the term "unsurveyed" in bold letters adjacent to the parcel number; and~~

~~xiv. Planning Department file number.~~

4. Certificates The following certificates, which may be combined where appropriate, must be included on the final plat or on an additional sheet pursuant to this section.

a) If the plat contains the creation of a private road, the following statement shall be presented in the form of a certificate signed and acknowledged by all parties having any record title interest in the land being developed:

"As a condition of approval of this map/plat the undersigned hereby agrees that he/she will hold Coos County harmless from and indemnify the County for any liability for damage which may occur to the undersigned or his/her property or to any other persons or property whatsoever as a result of the undersigned's failure to build, improve or maintain roads in this proposed land division."

This certificate shall include a statement as to whether any roads depicted on the final subdivision or partition plat that provide access to the lots or parcels are public or

private and if the are publicly or privately maintained. If they are publicly or privately maintained, then the statement shall identify who is responsible for the maintenance.

IT IS SO AGREED THIS _____day of _____

DEVELOPER (Signature.)_____

b) A certificate with the signature and seal of the engineer or the surveyor responsible for the survey and final plat. The certificate shall state that the surveyor has correctly surveyed and marked with proper monuments the lands as represented, and has placed a proper monument indicating the initial point of beginning and has indicated the dimensions and kind of monuments and their location in accordance with ORS 92.060(1), and has accurately described the tract of land upon which the parcels or lots are laid out. (OR 00-05-014PL)

c) Acertificate with signature block for the County Road Department's approval that the partitioner or subdivider has complied with the following:

- ***a. all improvements have been installed in accordance with the requirements of these regulations; or***
- ***b. an agreement has been executed to ensure completion of the required improvements.***

a) A certificate with a signature block for the County Surveyor's approval, to-wit:

- ***a. The plat complies with the requirements for accuracy and completeness and that all monuments have been set pursuant to this Ordinance; or***
- ***b. An agreement has been executed as provided to ensure completion of the required monumentation.***

b) A certificate with a signature block for County Assessor's approval, to-wit:

- ***a. "all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed upon the tax roll which have become a lien upon the lot or parcel, have been paid or which will become a lien during the tax year have been paid."***
- ***b. A certificate with a signature block for the approval of the Planning Director indicating that the plat is in conformity with the requirements of this Ordinance.***

c) For all subdivision, and for partition plats with public dedication a certificate with a signature block for the Board of Commissioners indicating that:

- ***a. The Board determines that the plat is in conformity with the requirements of this Ordinance; and***
- ***b. The Board accepts any and all dedications as represented on the final plat.***
- ***c. If the plat contains the creation of a private road the following statement shall precede the Board of Commissioners signature certificate:***

"Coos County hereby gives notice to all developers, purchasers, potential purchasers and all third parties whatsoever that the County disclaims any liability whatsoever for any damage which may occur as a result of the failure of the developer to construct, improve or maintain roads in this proposed land division."

5. Survey Requirements for all final plats: (No Changes to this section)

6. Agreement for Improvements

   i. Before approval of the final ~~subdivision~~ plat, the applicant shall either install the improvements required by the preliminary plan approval and repair existing streets and other public facilities damaged in the development of the subdivision, or shall execute and file with the County an agreement between himself or herself and the County specifying the period within which required improvements and repairs will be completed. The agreement may provide for the construction of the required improvements in phases. The agreement shall provide that if work is not completed within the period specified, the County may complete the work and recover the full cost and expense thereof from the applicant;

   ii. An applicant may request an extension of time for completion of required improvements. Such request will be considered an application for ministerial action. Such extension shall be approved only if changed conditions for which the applicant is not responsible and has made it impossible to fulfill the agreement within the original time limit(s).

7. Performance Bond (No changes to this section)

8. Development Phasing: (No changes to this section)

9. Standards for Final Subdivision Plat Approval (No changes to this section)

10. Filing and Recording of Final Plat:

   i. After final plat approval, the applicant shall submit without delay the final plat for signatures of the following County officials, in the order listed:

      a) Director, on behalf of the Planning Department;
      b) Board of Commissioners if there any dedications;
      c) Assessor in accordance with the provisions of ORS 92.095; ~~and~~
      d) Surveyor, in accordance with the provisions of ORS 92.100; ***and***
      e) ***Coos County Roadmaster.***

ii. The final plat shall be recorded within thirty (30) days of the date received unless there are corrections needed;
iii. The original plat may not be corrected or changed after it is recorded with the County Clerk.

~~***SECTION 6.2.825 Required Declaration of Partition:***~~

~~After final approval of any partition plat creating unsurveyed partitioned parcels, the partitioner shall cause to be recorded in the County deed records a "Declaration of Partition" which shall be numbered as required under ORS 92.120(2) and shall include:~~

~~1. The declaration described in ORS 92.075(1) to (3);~~

~~2. A description of each parcel being created, prepared by a registered professional land surveyor together with the seal, signature, and address of the registered professional land surveyor;~~

~~3. Evidence of any approval required by this Ordinance;~~

~~4. The County Surveyor shall review the "Declaration of Partition" to determine that the "Declaration of Partition" complies with the provisions of this Section and other applicable laws and with the partition requirements established by this Ordinance. [OR-93-12-017PL 2/23/94]~~

ARTICLE 6.3 PROPERTY LINE ADJUSTMENTS

SECTION 6.3.125 PROCEDURE:

1. An application for a line adjustment or elimination shall be filed by the owners of all lots or parcels affected. The application shall be accompanied by an appropriate fee and contain the following information:

   a. Reason for the line adjustment;
   b. Vicinity map locating the proposed line adjustment or elimination in relation to adjacent subdivisions, partitions, other units of land and roadways;
   c. A plot plan showing the existing boundary lines of the lots or parcels affected by the line adjustment and the approximate location for the proposed adjustment line. The plot plan shall also show the approximate location of all structures within ten (10) feet of the proposed adjusted line;
   d.
   e. A current property report (less than 6 months old) indicating any taxes, assessment or other liens against the property, easements, restrictive covenants and rights-of-way, and ownerships of the property of the proposed development. A title report is acceptable. **The Director may waive any portion of this requirement if the**

property is large and does not have a lien holder.

f. A notice of application and decision will be provided to any and all lien holders of record for the property that will be affected by the proposed adjustment. Applicants should consult with any and all such lien holders prior to submittal of an application.

SECTION 6.3.175 MAPPING AND FILING REQUIREMENTS

1. Mapping and Monuments Required
   a. For any resulting lot or parcel ten acres or less, a survey map that complies with ORS 209.250 shall be prepared.
   b. ***The Coos County Surveyor reserves the right to require monumentation and mapping on parcels greater than ten acres in size.***

FINDINGS

The text amendments are a Legislative Action. However, the majority of the text amendments are a reformat of the current language and do not require findings to address statewide planning goals. Some of the changes are to reflect exact language from the ORS or OAR. There were multiple work sessions to review text amendments prior to the text amendments entering the formal public hearing process. There were two public hearings held with one Planning Commission and one Board of Commissioners review.

The only written testimony provided in the record was from Jody McCaffree, Individual/Executive Director Citizens for Renewable/Citizens Against LNG. Ms. Natalie Ranker endorsed Ms. McCaffree's testimony as Executive Director of Citizens for Renewable Energy. She stated that she failed to receive notice of the hearing and requested additional time. The Board found that adequate notice had been provided as consistent with Coos County Zoning and Land Development Ordinance (CCZLDO) Section 5.1.120 Procedure for Legislative Amendment.

Ms. McCaffree raised an issue with Section 4.5.150 Zoning Compliance Letters and Compliance Determination Reviews. She makes a statement that a "Zoning Compliance determination" should not be issued prior to Conditions of the Land Use Permit having been properly met or addressed. Ms. McCaffree did fail to understand this section only applies to Bandon Dunes and not to any other zoning district but she fails to explain why this argument should be considered. The regulation does not use the word "Zoning Compliance determination". Her letter then moves to Section 5.2.600 Expiration and Extensions of Conditional Uses. Her argument is that the OAR 660-033-014 does not use the word ministerial but uses the word "administrative" decision. There is no definition in the OAR regarding the definition of "administrative" but the wording that follows is read as the following, "is not a land use decision" and in the Coos County Zoning and Land Development Ordinance the term "ministerial" is used for uses that are not subject to ORS 197.015 as they are clear and objective standards and the term "administrative" refers to a discretionary review that is clearly a land use decision. To accommodate Ms. McCaffree's request the Board of Commissioners removed "ministerial" and

the new language reads as follows "Approval of an extension granted under this rule is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision." This still mirrors the requirements of OAR 660-033-0140 but the Board of Commissioners is not the correct body to interpret the OAR and cannot consider the legislative intent or if the law is consistent with the ORS. This argument is for a higher body to consider. In her oral testimony Ms. McCaffree argued that this is an extension is a permit. However, ORS 197 defines a "**Permit" as a discretionary approval of a proposed development of land under ORS 215.010.** Also noted OAR 660-033-0140 does not use the term "permit" to describe the extensions or extension process but uses the term "permit" to describe the original discretionary land use decision. Ms. McCaffree relies on facts from Wikipedia and not from actual law or an accepted resource. The other case she includes is *Smith v. Douglas County LUBA 89-013; CA A61219* which is a case that has nothing to do with extensions but does provide for guidance when the local county ordinance is not in compliance with a state law and how it should be corrected but in this case the County is adopting the OAR language into the land use ordinance and removed the language that Ms. McCaffree found to be incorrect. The Board of Commissioners agreed to disagree with Ms. McCaffree's interpretation of the relevant law on this point. The Coos County Board of Commissioners has no regulatory authority over state and federal laws or agencies despite the argument that Coos County is subject to the Coastal Zone Management Act. This act does require coastal consistence with enforceable polices but extensions are not enforceable policies. The enforceable policies were addressed through the original permit application (conditional use). Ms. McCaffree fails to understand how the land use system or that Coos County goes through a Post Acknowledgment Process for any revisions to ensure that enforceable policies are complied with. Ms. McCaffree has an issue with the statements made regarding the type of information the county has and will continue to accept for reasons which the applicant was not responsible for not implementing the permit.

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. Coos County has made a statement regarding reasonable reasons that have and will continue to be accepted. This is a statement that is true and accurate for Coos County. This is not worded in a way that prevents an appeal in the event the County has made a discretionary decision that is appealable under ORS 197.015.

The Coos County Comprehensive Plan and Implementing Ordinance have been acknowledged as being complaint with the enforceable polices of the Statewide Planning Goals. This text amendment is not revising any enforceable policies that require findings to statewide planning goals or federal law. Ms. McCaffree and others have request additional text amendments related to natural hazards which staff is working on in a separate process with Department of Land Conservation and Development and Department of Geology and Mineral Industry to ensure the risk and language are consistent with the requirements of the law.

Amendments were made in the meeting and the Board of Commissioners paused to allow the changes to be made reviewing the ordinance and signing the final document on October 2, 2018.

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

In The Matter of Amending language in the Coos County Comprehensive Plan Volume 1 Part II Section 3.9 Natural Hazards and the Implementing standards found in Coos County Zoning and Land Development Ordinance (CCZLDO) Article 4.11 Special Development Consideration. File Number AM-19-005	ORDINANCE NO.: 19-12-010PL

SECTION 1. TITLE

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

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

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

SECTION 4. FINDINGS

The Hearings Body reviewed this matter in accordance with Article 5.1 of the Coos County Zoning and Land Development Ordinance. The Board of Commissioners reviewed the matter on December 18, 2019 and suggested minor changes. The Board of Commissions recognizes the need to update the Natural Hazards Section Comprehensive Plan to include the newest information available along with the tsunami evacuation plan. The county staff worked with Meg Reed, DLCD Coastal Shores Specialist to put the plan and ordinance language together. The final language is found at Attachment "A" of this document. The process in Section 5.1.120 was followed. The Board of Commissioners made a motion to consider that the text amendments were appropriate through the local legislative process.

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

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

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the reaming portions of this ordinance; and it is herby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

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

SECTION 8. EMERGENCY CLAUSE

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

Dated this 18th day of December

ATTEST

Michelle Berglund
Recording Secretary

Approved as to form:

Nathaniel Johnson
Office of Legal Counsel

BOARD OF COMMISSIONERS

Chair

Vice Chair

Absent
Commissioner

First Reading: December 18, 2019

Effective Date: December 18, 2019

SECTION 4.11.125 Special Development Considerations:

The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed In the Balance of County zoning. The adopted plan maps and overlay maps have to be examined in order to determine how the inventory applies to the specific site.

4.11.126 Mineral &Aggregate Plan Implementation Strategies (Balance of County Policy 5.5)
4.11.127 Water Resources (Balance of County Policy 5.8)
4.11.128 Historical, Cultural and Archaeological Resources, Natural Areas and Wilderness (Balance of County Policy 5.7)
4.11.129 Beaches and Dunes (Policy 5.10)
4.11.130 Non-Estuarine Shoreland Boundary (Balance of County Policy 5.10)
4.11.131 Significant Wildlife Habitat (Balance of County Policy 5.6)

4.11.132 . Natural Hazards (Balance of County Policy 5.11)

~~The Natural Hazards Map~~ ***Coos County*** has inventoried the following ***natural*** hazards:

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

Purpose Statements:
Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include river and coastal flooding, landslides, liquefaction potential due to earthquakes, fault lines, tsunamis, river bank erosion, coastal erosion along shorelines and headlands, coastal erosion due to wind, and wildfires, including those areas affected by gorse.

This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property associated with new development

and substantial improvements. The determination of whether a property is located in one of the above referenced potentially hazardous areas shall be made by the reviewing body (Planning Director, Planning Commission, Board of Commissioners, or any designee based upon adopted inventory mapping). A specific site may not include the characteristics for which it is mapped. In these circumstances staff shall apply ~~§5.11.100.2.m~~ ***4.11.132.ii.2m.***

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

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

~~a. Landslides: Areas subject to landslides (mass movement) include active landslides, inactive landslides, earth flow and slump topography, and rockfall and debris flow terrain as identified on the 2015 Coos County Comprehensive Plan Hazards Map (mapped as the very high existing landslides).~~

~~Coos County shall permit the construction of new structures in an inventoried Landslide hazard area (earth flow/slump topography/rock fall/debris flow) through a conditional use process subject to a geological assessment review as set out in Article 5.11.~~

b. Landslides and Earthquakes

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

Earthquakes: Coos County shall promote protection of life and property in areas potentially subject to earthquake hazards. New development or substantial improvements in mapped areas identified as potentially subject to earthquake induced liquefaction shall be subject to a geologic assessment review as set out in this section. Such areas shall include lands subject to "very high" and "high" liquefaction identified in DOGAMI Open File Report O-13-06, "Ground motion, ground deformation, tsunami inundation, co-seismic subsidence, and damage potential maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes."

Coos County shall continue to support Oregon State Building Codes to enforce any structural requirements related to landslide and earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the geologic assessment report with the Zoning Compliance Letter.

c. Tsunamis: Coos County shall promote increased resilience to a potentially catastrophic Cascadia Subduction Zone (CSZ) tsunami through the establishment of a Tsunami Hazard Overlay Zone

(THO) in the Balance of County Zoning. See Sections 4.11.260-270 for the requirements of this overlay zone.

d. ~~Earthquakes: Areas subject to earthquakes include fault lines and liquefaction potential, as identified on the 2015 Coos County Comprehensive Plan Natural Hazards Map.~~

~~Coos County shall permit the construction of new structures in known areas potentially subject to earthquakes (fault line and liquefaction potential) through a conditional use process subject to a geologic assessment review as set out in Article 5.11. Coos County shall support Oregon State Building Codes to enforce any structural requirements related to earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the geologic assessment report at the time of review.~~ RESERVED

e. Erosion: Coos County shall promote protection of property from risks associated with shoreline, headland, and wind erosion~~/deposition~~ ***and deposition*** hazards.

Coos County shall promote protection of property from risks associated with bank erosion along rivers and streams through necessary erosion-control and stabilization measures, preferring non-structural solutions when practical.

Any proposed structural development within a wind erosion/deposition area, within 100 feet of a designated bank erosion area, or on a parcel subject to wave attack, including all oceanfront lots, will be subject to a geologic assessment review as set out in ***Section 4.11.150. There is a setback of 100 feet from any rivers or streams that have been inventoried in the erosion layer. If a variance is requested, a geologic assessment will be required.***

f. Wildfires: Coos County shall promote protection of ***life and*** property from risks associated with wildfires ~~and gorse fires by requiring all new dwellings, permanent structures, and replacement dwellings and structures~~. ***New development or substantial improvements shall, at a minimum, meet the following standards, on parcels designated or partially designated as "High" or "Moderate" risk on the Oregon Department of Forestry 2013 Fire Threat Index Map for Coos County or as designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map:*** ~~shall at a minimum, meet the following standards on every parcel designated or partially designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map:~~

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

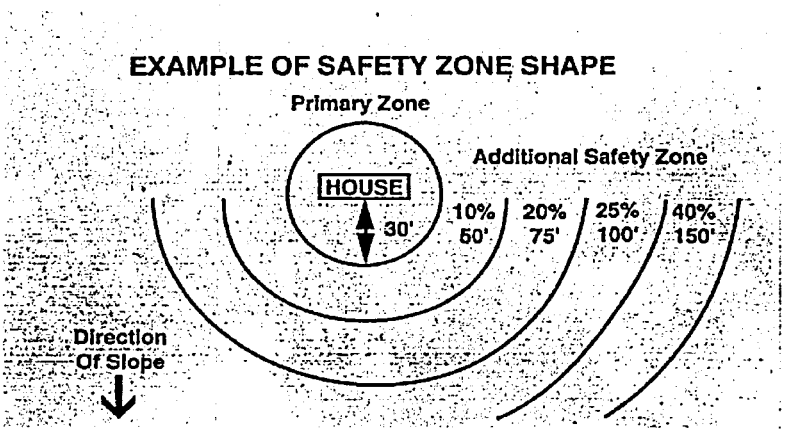
2. When it is determined that these standards are impractical, the Planning Director may authorize alternative forms of fire protection that shall comply with the following:
    a. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions, as established by credible documentation approved in writing by the Director;
    b. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons per dwelling or a stream that has a continuous year round flow of at least one cubic foot per second per dwelling;

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

3. Fire Siting Standards for New Dwellings:
   a. The property owner shall provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and sufficient ¾ inch garden hose to reach the perimeter of the primary fuel-free building setback.
   b. If another water supply (such as a swimming pool, pond, stream, or lake) is nearby, available, and suitable for fire protection, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

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

Table 1 – Minimum Primary Safety Zone



Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

e. All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.
f. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).
g. The structure shall not be sited on a slope of greater than 40 percent.
h. If the structure has a chimney or chimneys, each chimney shall have a spark arrester.
i. Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads, and driveways shall be constructed so as to provide adequate access for firefighting equipment. Confirmation shall be provided from the Coos County Road Department or local fire protection district that these standards have been met.

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

4.11.150 GEOLOGICAL HAZARDS SPECIAL DEVELOPMENT REVIEW STANDARDS

(NOTE TO READER THIS SECTION WAS MOVED FROM ARTICLE 5.11 WHICH WILL BE DELETED AND LEFT WITH A RESERVED ONCE APPROVAL IS GRANTED)

Applications for a geologic hazard review may be made concurrently with any other type of application required for the proposed use or activity. A review of the property must be conducted prior to any ground disturbance. All geologic hazard assessment reports shall include a description of the qualification of the licensed professional or professionals that prepared the assessment.

The applicant shall present a geologic hazard assessment report (geologic assessment) prepared by a qualified licensed professional competent in the practice of geosciences, at the applicant's expense, that identifies site specific geologic hazards, associated levels of risk, and the suitability of the site for the use and/or activity in view of such hazards. ***The geologic assessment shall include the required elements of this section and one of the following:***

a. A statement that the use and/or activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property resulting from the proposed use and/or activity;
b. A statement that there is an elevated risk posed to the subject property by geologic hazards that requires mitigation measures in order for the use and/or activity to be undertaken safely sited on the property; or
c. A certification that there are no ***high or very high*** geological hazards present on site. If such is certified by a licensed profession then an application is not required. Coos County is not liable for any type of certification that a geological hazard is not present on site.

4.11.155 GEOLOGICAL ASSESSMENT REVIEW

Geologic Assessment Review: The applicant(s) shall complete the following review to determine compliance with this section. This type of review requires a conditional use application and shall follow the administrative procedures for conditional uses found in Article 5 of the CCZLDO.

1. ***Except for activities identified in Subsection 2 of this section, as exempt, any new development or substantial improvement in an area subject to the provisions of this section shall require a Geologic Assessment Review.***

2. ***The following development activities are exempt from the requirement for a Geologic Assessment Review:***
    a. ***Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation and do not constitute substantial improvement as defined in Chapter II.***
    b. ***An excavation and/or fill which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;***
    c. ***Exploratory excavations under the direction of a certified engineering geologist or registered geotechnical engineer;***
    d. ***Construction of structures for which a building permit is not required;***
    e. ***Yard area vegetation maintenance and other vegetation removal on slopes less than 25%;***
    f. ***Forest operations subject to regulation under ORS 527 (the Oregon Forest Practices Act);***
    g. ***Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside of the previously disturbed area;***
    h. ***Maintenance and repair of utility lines, and the installation of individual utility service connections;***
    i. ***Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard;***
    j. ***Construction/erection of beachfront protective structures subject to regulation by the Oregon Parks and Recreation Department under OAR 736, Division 20; and***
    k. ***Any development or activity to be conducted on a site for which a certified engineering geologist has determined that there are no high or very high geologic hazards present. Coos County is not liable for any type of certification that a geologic hazard is not present on site.***

3. *Application, review and appeals for a Geologic Assessment Review shall be in accordance with the requirements for administrative conditional use review as set forth in Article 5.2. Applications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity. Geologic Assessment Review shall be completed prior to any ground disturbance.*

4. *All applications for Geologic Assessment Review shall be accompanied by an engineering geologic report prepared by a certified engineering geologist at the applicant's expense.*

A. *ENGINEERING GEOLOGIC REPORTS*

1. *Engineering geologic reports required pursuant to this section shall be prepared by a certified engineering geologist licensed in the State of Oregon. Such reports shall be prepared consistent with standard geologic practices and employing generally accepted scientific and engineering principles. The content of such reports shall be generally consistent with the applicable provisions of "Guideline for Preparing Engineering Geologic Reports," 2nd Edition, 5/30/2014, published by the Oregon Board of Geologist Examiners.*

2. *Properties abutting the ocean shore that are located in a mapped regulated hazard area shall include the following additional information :*
    a. *Site description:*
        i. *The geological history and stabilization measures of the site including any previous riprap or dune grading, erosion events, or exposed trees on the beach.*
        ii. *Topography, including elevations and slopes on the property itself.*
        iii. *Vegetation cover.*
        iv. *Subsurface materials – the nature of the rocks and soils.*
        v. *Conditions of the seaward front of the property, particularly for sites having a sea cliff.*
        vi. *Description of streams or other drainage that might influence erosion or locally reduce the level of the beach.*
        vii. *If the site is located on or adjacent to a estuarine water body or Coastal Lake including the Coastal Shoreland Boundary the following additional information shall be included:*
            1. *Presence of drift logs or other flotsam on or within the property.*
            2. *Proximity of nearby headlands that might block the longshore movement of beach sediments, thereby affecting the level of the beach in front of the property.*
            3. *Description of any shore protection structures that may exist on the property or on nearby properties.*
            4. *Presence of pathways or stairs from the property to the beach.*
            5. *Existing development including modification of soil or vegetation on the site, particularly any which might alter the resistance to wave attack.*
            6. *Average widths of the beach during the summer and winter.*
            7. *Median grain size of beach sediment.*
            8. *Average beach slopes during the summer and winter.*
            9. *Elevations above mean sea level of the beach at the seaward edge of the property during summer and winter.*
            10. *Presence of rip currents and rip embayments that can locally reduce the elevation of the fronting beach.*
            11. *Presence of rock outcrops and sea stacks, either offshore or within the beach zone.*

12. *Information regarding the depth of beach sand down to bedrock at the seaward edge of the property.*

b. *Analyses of Erosion and Flooding Potential on the site:*
   i. *Analysis of DOGAMI beach monitoring data for the site (if available,) all activities affecting shoreline erosion and possible mass wasting, including weathering processes, land sliding or slumping.*
   ii. *Calculation of wave run-up beyond mean water elevation that might result in erosion of the sea cliff or foredune (see Stockdon, 2006).*[1]
   iii. *Evaluation of frequency that erosion-inducing processes could occur, considering the most extreme potential conditions of unusually high water levels together with severe storm wave energy.*
   iv. *For areas subject to dune-backed shorelines, use an established geometric model to assess the potential distance of property erosion, and compare the results with direct evidence obtained during site visits, aerial photo analysis, or analysis of DOGAMI beach monitoring data.*
   v. *For bluff-backed shorelines, use a combination of published reports, such as DOGAMI bluff and dune hazard risk zone studies, aerial photo analysis, and fieldwork to assess the potential distance of property erosion.*
   vi. *Description of potential for sea level rise, estimated for local area by combining local tectonic subsidence or uplift with global rates of predicted sea level rise.*

c. *Determination of legal restrictions of shoreline protective structures (Goal 18 prohibition, local conditional use requirements, priority for non-structural erosion control methods).*

d. *Assessment of potential reactions to erosion events, addressing the need for future erosion control measures, building relocation, or building foundation and utility repairs.*

e. *The assessment should include recommendations:*
   i. *Use results from the above analyses to establish setbacks (beyond any minimums set by this section or the underlying zone), building techniques, or other mitigation measures to ensure an acceptable level of safety and compliance with all local requirements.*
   ii. *Recommend a foundation design, or designs, that render the proposed structures readily moveable.*
   iii. *Recommend a plan for preservation of vegetation and existing grade within the setback area, if appropriate.*
   iv. *Include consideration of a local variance process to reduce the building setback on the side of the property opposite the ocean, if this reduction helps to lessen the risk of erosion, bluff failure or other hazard.*
   v. *Recommend methods to control and direct water drainage away from the ocean (e.g. to an approved storm water system); or, if not possible, to direct water in such a way so as to not cause erosion or visual impacts.*

3. *Engineering geologic reports required by this section shall include a statement from the preparer of the report that all of the applicable content requirements of this subsection have*

[1] Stockdon, H. F., Holman, R. A., Howd, P. A. and Sallenger, A. H., 2006, Empirical parameterization of setup, swash, and runup: Coastal Engineering, 53, p 573-588.

been addressed or are not applicable to the review.

4. *Engineering geologic reports required by this section shall be valid for a period of five years from the date of preparation of such report. No extensions to this time line shall be granted.*

B. ***DECISIONS ON GEOLOGICAL ASSESSMENT REVIEWS***

A decision on a Geologic Assessment Review shall be based on the following standards:

1. *The engineering geologic report shall meet the content standards set forth in within this Section.*
2. *In approving a Geologic Assessment Review, the decision maker may impose any conditions which are necessary to ensure compliance with the provisions of this section or with any other applicable provisions of the Coos County Zoning and Land Development Ordinance.*
3. *In the event the decision maker determines that additional review of the engineering geologic report by an appropriately licensed and/or certified professional is necessary to determine compliance with this section, Coos County may retain the services of such a professional for this purpose. The applicant shall be responsible for all costs associated with the additional review. The results of that evaluation shall be considered in making a decision on the Geologic Assessment Review.*

C. ***DEVELOPMENT STANDARDS FOR USES SUBJECT TO GEOLOGIC ASSESSMENT REVIEW***

In addition to the conditions, requirements and limitations imposed by a required engineering geologic report, all uses subject to a geologic assessment review shall conform to the following requirements:

1. *Historical, Cultural, and Archaeological Resources: All activities and uses subject to Geologic Assessment Reviews proposed for areas of historical, cultural, or archaeologically sensitive areas, as identified on the Coos County Comprehensive Plan Map, shall require consultation with the appropriate local Tribe prior to the commencement of any and all ground disturbing activity. Proof of this consultation shall be provided as a part of application submission.*
2. *Hazard Disclosure Statement: All applications for new development or substantial improvements subject to Geologic Assessment Review shall provide a Hazard Disclosure Statement signed by the property owner that acknowledges:*
    a. *The property is subject to potential natural hazards and that development thereon is subject to risk of damage from such hazards;*
    b. *The property owner has commissioned an engineering geologic report for the subject property, a copy of which is on file with Coos County Planning Department, and that the property owner has reviewed the engineering geologic report and has thus been informed and is aware of the type and extent of hazards present and the risks associated with development on the subject property;*
    c. *The property owner accepts and assumes all risks of damage from natural hazards associated with the development of the subject property.*
3. *Mitigation measures: If on-site structural mitigation measures are required as a condition of approval, the applicant shall, prior to the issuance of a zoning compliance letter, record on the title to the subject property a notification that includes a description of the measures or improvements and that also specifies the obligation of the property owners to refrain from interfering with such measures or improvements and to maintain them.*
4. *Safest site requirement: All new structures shall be located within the area most suitable for development based on the least exposure to risk from hazards as determined by an engineering geologist as part of an engineering geologic report prepared in accordance with Section 4.11.150 through 4.11.155. Notwithstanding the provisions of the underlying zone, as necessary to comply with this requirement, any required yard or setback may be reduced by up to 50% without a variance.*

5. ***Certification of compliance: Permitted development shall comply with the recommendations in the required engineering geologic report. Certification of compliance shall be provided to the director by the applicant as follows:***
    a. ***Plan Review Compliance: Building, construction or other development plans shall be accompanied by a written statement from a certified engineering geologist stating that the plans comply with the recommendations contained in the engineering geologic report for the approved Geological Assessment Review.***
    b. ***Inspection Compliance: Upon the completion of any development activity for which the engineering geologic report recommends an inspection or observation by a certified engineering geologist, the applicant shall provide to the director a written statement from the certified engineering geologist indicating that the development activity has been completed in accordance with the applicable engineering geologic report recommendations.***
    c. ***Final Compliance: Upon completion of development requiring an engineering geologic report, the applicant shall submit to the director:***
        i. ***A written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures specified in the report have been satisfied; and,***
        ii. ***If mitigation measures incorporate engineering solutions designed by a licensed professional engineer, a written statement of compliance by the design engineer.***

OVERLAY ZONE:

- **SECTION 4.11.200 Purpose:**
- **OVERLAY ZONE: FLOODPLAIN**
- **DESIGNATION: /FP**
- **SECTION 4.11.211 AUTHORIZATION**
- **SECTION 4.11.212 FINDINGS OF FACT**
- **SECTION 4.11.214 METHODS OF REDUCING FLOOD LOSSES**
- **SECTION 4.11.220 DEFINITIONS**

SECTION 4.11.231 LANDS TO WHICH THIS OVERLAY ZONE APPLIES

- **SECTION 4.11.232 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**
- **SECTION 4.11.233 INTERPRETATION**

SECTION 4.11.235 ESTABLISHMENT OF DEVELOPMENT PERMIT

1. Application

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

a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures which may be submitted by a registered surveyor;
b. Elevation in relation to mean sea level of floodproofing in any structure;
c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4.11.252; and
d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
e. Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level, or NAVD 88, whichever is applicable, of the area in question including existing and proposed structures, fill, storage of materials, and drainage facilities. Applicants shall submit certification by an Oregon registered professional engineer or land surveyor of the site's ground elevation and whether or not the development is located in a flood hazard area. If so, the certification shall include which flood hazard area applies, the location of the floodway at the site, and the 100 year flood elevation at the site. A reference mark shall be set at the elevation of the 100 year flood at the site. The location, description, and elevation of the reference mark shall be included in the certification; and
f. Any other information required to ~~make a determination~~ ***to show compliance.***
g. Applications for variance, water course changes or staff determinations will be noticed with an opportunity to appeal in the same manner as a conditional use (see Chapter V). Non discretionary determination of compliance with the standards will be processed in the same manner as a Compliance Determination (see Article 5.10)

SECTION 4.11.242 DESIGNATION OF THE LOCAL ADMINISTRATOR

The Coos County Planning Director ***or designated staff*** is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions. The Floodplain Administer may delegate authority to implement these provisions.

- **SECTION 4.11.243 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**
- **SECTION 4.11.244 VARIANCE PROCEDURE**
- **SECTION 4.11.251 GENERAL STANDARDS**
- **SECTION 4.11.253 BEFORE REGULATORY FLOODWAY**
- **SECTION 4.11.254 FLOODWAY**
- **SECTION 4.11.255 STANDARDS FOR SHALLOW FLOODING AREAS (AO ZONES)**
- **SECTION 4.11.256 COASTAL HIGH HAZARD AREAS**
- **SECTION 4.11.257 CRITICAL FACILITY**

TSUNAMI HAZARD OVERLAY ZONE:

4.11.260 Tsunami Hazard Overlay Zone (Background)

The Tsunami Hazard Overlay zone is designed to serve as the principal implementation mechanism for land use measures addressing tsunami risk. As the name indicates, it is designed to be applied in the form of an overlay zone, i.e. in combination with underlying base zones. The boundaries of the overlay would correspond to the area of the jurisdiction subject to inundation from a local source tsunami indicated in § 4.11.265 below.

Oregon Statewide Planning Goal 7 envisions a process whereby new hazard inventory information generated by federal and state agencies is first reviewed by the Department of Land Conservation and Development (DLCD). DLCD then notifies the County of the new information, and the County has three years to respond to the information by evaluating the risk, obtaining citizen input, and adopting or amending implementation measures to address the risk. The County has not received notice from DLCD but has taken the proactive role in working with DLCD to address tsunami hazards.

This section of the ordinance places restrictions and limitations on certain categories of uses. These limitations apply primarily to uses which present a high potential for life safety risk, or to uses which provide an essential function during and after a disaster event. ORS 455, which is implemented through the state building code, currently prohibits certain facilities and structures in the tsunami inundation zone as defined by the Oregon Department of Geology and Mineral Industries as indicated in Section 4.11.265 below. The overlay incorporates the requirements that can be limited through the land use program. Nothing in this ordinance is meant to conflict with the State Building Code but will focus on integration of development and improvement of evacuation infrastructure into the land use and development review process.

Coos County does not house the building codes program and; therefore, Coos County lacks certain enforcement authority over the Oregon Structural Specialty Code as explained in OAR 632-005-0070 exemption responsibility. This section of the ordinance is not meant to obstruct the authority of the structural code.

These provisions establish requirements to incorporate appropriate evacuation measures and improvements in most new development, consistent with ~~an overall evacuation plan for the community. It is important to note that effectiveness of this component to the overlay is largely dependent up on the development and adoption of an Evacuation Route Plan~~ ***the Coos County's Tsunami Evacuation Facilities Improvement Plan***. Coos County Planning has worked with Coos County Emergency Management in planning for emergency preparedness and developing hazard mitigation plans.

The maps that will be used to implement this section of the Coos County Zoning and Land Development ordinance are the 2012 Tsunami Inundation Maps produced by Oregon Department of Geology and Mineral Industries. The maps will be printed and filed as part of the Coos County Comprehensive Plan.

The series of maps consists of a Small (S), Medium (M), Large (L), Extra Large (XL) and Extra-Extra Large (XXL), with the XXL indicating the worst case scenario. When a size is identified in the section it includes all smaller sizes. For an example if a facility is regulated ~~in~~ ***within*** an L tsunami inundation event then it includes all M and S tsunami inundation mapped areas.

4.11.265 Tsunami Hazard Overlay (THO) Zone (Definitions)

Definitions ~~those are~~ applicable to the tsunami hazard overlay zone

As used in ~~tsunami hazard overlay zone~~ ***Section 4.11.270***:

1. "Essential Facilities" means:
    a. Hospitals and other medical facilities having surgery and emergency treatment areas;
    b. Fire and police stations;
    c. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
    d. Emergency vehicle shelters and garages;
    e. Structures and equipment in emergency preparedness centers;
    f. Standby power generating equipment for essential facilities; and
    g. Structures and equipment in emergency preparedness centers.
2. "Hazardous facility" means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.
3. "Special occupancy structures" means:
    a. Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;
    b. Buildings with a capacity of greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;
    c. Buildings for colleges or adult education schools with a capacity of greater than 500 persons;
    d. Medical facilities with 50 or more resident, incapacitated persons not included subsection (a);
    e. Jails and detention facilities; and
    f. All structures and occupancies with a capacity of greater than 5,000 persons. (~~Note: The above definitions are taken from~~ *see* ORS 455.446)
4. "Substantial improvement" means any repair, reconstruction, or improvement of a structure which exceeds 50 percent of the real market value of the structure.
5. "Tsunami vertical evacuation structure" means a building or constructed earthen mound that is accessible to evacuees, has sufficient height to place evacuees above the level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to withstand the effects of tsunami waves.
6. "Tsunami Inundation Maps (TIMs)" means the map, or maps in the DOGAMI Tsunami Inundation Map (TIM) Series, published by the Oregon Department of Geology and Mineral Industries, which cover(s) the area within Coos County.

4.11.***2570*** Tsunami Hazard Overlay Zone ***(Purpose, Applicability and Uses)***

1. Purpose
   The purpose of the Tsunami Hazard Overlay Zone is to increase the resilience of the community to a local source (Cascadia Subduction Zone) tsunami by establishing standards, requirements, incentives, and other measures to be applied in the review and authorization of land use and development activities in areas subject to tsunami hazards. The standards established by this section are intended to limit, direct and encourage the development of land uses within areas subject to tsunami hazards in a manner that will:
    a. Reduce loss of life;
    b. Reduce damage to private and public property;
    c. Reduce social, emotional, and economic disruptions; and
    d. Increase the ability of the community to respond and recover.

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

2. Applicability of Tsunami Hazard Overlay Zone
   The Tsunami ~~Inundation~~ ***Hazard Overlay*** Zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary and Coquille Estuary Management Plans when the Estuary Policies directly reference this section. ***Areas of inundation depicted on the*** Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section ***as follows***:
   a. Except as provided in subsection (b), all lands identified as subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section.
   b. Lands within the area subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) that have a grade elevation, established by fill or other means, higher than the projected elevation of the XXL magnitude local source tsunami event are exempt from the requirements of this section. Grade elevations shall be established by an elevation survey performed by a Professional Land Surveyor licensed in Oregon.

3. Uses
   In the Tsunami Hazards Overlay Zone, except for the prohibited uses set forth in subsection ~~5~~ ***4***, all uses permitted pursuant to the provisions of the underlying zone map ***may*** be permitted, subject to the additional requirements and limitations of this section. ***The Tsunami Hazard Overlay Zone does not establish any new or additional review processes. Application of the standards and requirements of the Tsunami Hazard Overlay Zone is accomplished through the applicable review processes of the underlying zone.***

4. Prohibited Uses
   Unless authorized in accordance with subsection 4 ***5***, the following uses are prohibited in the specified portions of the Tsunami Hazard Overlay Zone:
   a. In areas identified as subject to inundation from the L magnitude local source tsunami events set forth on the TIM, the following uses are prohibited:
      i. Hospitals and other medical facilities having surgery and emergency treatments area***s*** ~~as~~;
      ii. Fire and police stations;
      iii. Hospital and other medical facilities having surgery and emergency treatment areas;
      ~~iv. Fire and police stations;~~
      v. Structures and equipment in government communication centers and other facilities required for emergency response;
      vi. Building***s*** with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or childcare centers;
      vii. Buildings for colleges or adult education schools with a capacity of greater than 500 persons; and

viii. Jails and detention facilities.

b. In areas identified as subject to inundation from the M magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:
   i. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
   ii. Emergency vehicle shelters and garages;
   iii. Structures and equipment in emergency preparedness centers;
   iv. Standby power generating equipment for essential facilities;
   v. Covered structures whose primary occupancy is public assembly with a capacity of greater than 300 persons;
   vi. Medical facilities with 50 or more resident, ~~in capacitated~~ ***incapacitated*** patients;
   vii. Manufactured home parks, of a density exceeding 10 units per acre; and
   viii. Hotels or motels with more than 50 units.

c. Notwithstanding the provisions of Article 5.6 of the Coos County Zoning and Land Development Ordinance, the requirements of this subsection shall not have the effect of rendering any lawfully established use or structure nonconforming. The Tsunami Hazard Overlay is, in general, not intended to apply to or regulate existing uses or development.

5. Use Exceptions
A use listed in subsection (4) of this section ~~maybe~~ ***may be*** permitted upon authorization of a Use Exception in accordance with the following requirements:
   a. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.
   b. Fire or police stations ~~maybe~~ ***may be*** permitted upon findings that there is a need for a strategic location.
   c. Other uses prohibited by subsection (4) of this section may be permitted upon the following findings:
      i. There are no reasonable, lower-risk alternative sites available for the proposed use;
      ii. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized;
      iii. The buildings will be designed and constructed in accordance with the Oregon Structural ***Specialty*** Code to minimize the risk of structural failure during the design earthquake and tsunami event; and
      iv. Developers of new essential facilities, hazardous facilities, ~~and~~ major structures, ***and special occupancy structures that are located in an identified tsunami inundation zone, as*** described in ~~subsection (1)(a)(E), (b) and (c) of ORS 455.447 and new special occupancy structures described in subsection (1)(c)(A), (D) and (F) of ORS 455.447that are located in an identified tsunami inundation zone shall consult with the State Department of Geology and Mineral Industries for assistance in determining the impact of possible tsunamis on the proposed development and for assistance in preparing methods to mitigate risk at the site of a potential tsunami. Consultation shall take place prior to submittal of design plans to the building official for final approval. The process for construction of certain facilities and structures in tsunami inundation zones including establishment of zones, rules and exceptions are set out in~~ ORS 455.446. The provision of ORS 455.446 does not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas.

Decisions made under ORS 455.446 are not land use decisions.

Applications, reviews, decisions and appeals for Use Exceptions authorized by this subsection with the exclusion of subsections iii and iv shall be in accordance with the requirements for an administrative conditional use procedure as set forth in Article 5.2 – Conditional Uses.

6. ***Evacuation Route Improvement Requirements.***
Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management, which are consistent with and conform to the adopted Tsunami Evacuation Facilities Improvement Plan. Such measures may include:
    a. ***On-site improvements:***
        i. ***Improvements necessary to ensure adequate pedestrian access from the development site to evacuation routes designated in the Tsunami Evacuation Facilities Improvement Plan in all weather and lighting conditions.***
        ii. ***Frontage improvements to designate evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.***
        iii. ***Where identified in the Tsunami Evacuation Facilities Improvement Plan as the only practicable means of evacuation, tsunami evacuation structure(s) of sufficient capacity to accommodate the evacuation needs of the proposed development.***
    b. ***Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site, where such improvements are identified in the Tsunami Evacuation Facilities Improvement Plan. Such improvements shall be proportional to the evacuation needs created by the proposed development.***
    c. ***Evacuation route signage consistent with the standards set forth in the Tsunami Evacuation Facilities Improvement Plan. Such signage shall be adequate to provide necessary evacuation information consistent with the proposed use of the site.***
    d. ***Evacuation route improvements and measures required by this subsection may include the following:***
        i. ***Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions;***
        ii. ***Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake; and***
        iii. ***Such other improvements and measures identified in the Tsunami Evacuation Facilities Improvement Plan. See Volume I, Part 2 Section 3.9. 400 of the Coos County Comprehensive Plan***

7. Tsunami Evacuation Structures
    a. All tsunami evacuation structures shall be of sufficient height to place evacuees above the level of inundation for the XXL local source tsunami event.
    b. Tsunami evacuation structures are not subject to the building height limitations of this chapter.

8. Flexible Development Option
    a. The purpose of the Flexible Development Option is to provide incentives for, and to encourage and promote, site planning and development within the Tsunami Hazard Overlay Zone that results in lower risk exposure to tsunami hazard than would otherwise be achieved through the conventional application of the requirements of this chapter. The Flexible Development Option is intended to:
        i. Allow for and encourage development designs that incorporate enhanced evacuation measures, appropriate building siting and design, and other features that reduce the risks to life and property from tsunami hazard; and
        ii. Permit greater flexibility in the siting of buildings and other physical improvements and in the creation of new lots and parcels in order to allow the full realization of permitted development while reducing risks to life and property from tsunami hazard.
    b. The Flexible Development Option may be applied to the development of any lot, parcel, or tract of land that is wholly or partially within the Tsunami Hazard Overlay Zone.
    c. The Flexible Development Option may include any uses permitted outright or conditionally in any zone, except for those uses prohibited pursuant to subsection ~~5~~ ***4*** of this section.
    d. Overall residential density shall be as set forth in the underlying ~~one~~ ***zone*** or zones. Density shall be computed based on total gross land area of the subject property, excluding street right-of-way.
    e. Yards, setbacks, lot area, lot width and depth, lot coverage, building height and similar dimensional requirements may be reduced, adjusted or otherwise modified as necessary to achieve the design objectives of the development and fulfill the purposes of this section.
    f. Applications, review, decisions, and appeals for the Flexible Development Option shall be in accordance with the requirements for an administrative conditional use procedure as set forth in Article 5 of the Coos County Zoning and Land Development Ordinance.
    g. Approval of an application for a Flexible Development Option shall be based on findings that the following criteria are satisfied:
        i. The applicable requirements of sub-paragraphs ***(b)*** and ***(d)*** of this subsection are met; and
        ii. The development will provide tsunami hazard mitigation and/ or other risk reduction measures at a level greater than would otherwise be provided under conventional land development procedures. Such measures may include, but are not limited to:
            1. Providing evacuation measures, improvements, evacuation way finding techniques and signage;
            2. Providing tsunami evacuation structure(s) which are accessible and provide capacity for evacuees from off-site;
            3. Incorporating building designs or techniques which exceed minimum structural specialty code requirements in a manner that increases the capacity of structures to withstand the forces of a local source tsunami; and
            4. Concentrating or clustering development in lower risk portions or areas of the subject property, and limiting or avoiding development in higher risk areas.

3.9 NATURAL HAZARDS

Introduction

Coos County has inventoried the following natural hazards:

- **Flood Hazards**
  - **Riverine flooding**
  - **Coastal flooding**
- **Landslides and Earthquakes**
  - **Landslide Susceptibility**
  - **Liquefaction potential**
  - **Fault lines**
- **Tsunamis**
- **Erosion**
  - **Riverine streambank erosion**
  - **Coastal**
    - **Shoreline and headlands**
    - **Wind**
- **Wildfire**

Purpose Statements:
Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include river and coastal flooding, landslides, liquefaction potential due to earthquakes, fault lines, tsunamis, river bank erosion, coastal erosion along shorelines and headlands, coastal erosion due to wind, and wildfires, including those areas affected by gorse.

This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property associated with new development and substantial improvements. The determination of whether a property is located in one of the above referenced potentially hazardous areas shall be made by the reviewing body (Planning Director, Planning Commission, Board of Commissioners, or any designee based upon adopted inventory mapping). A specific site may not include the characteristics for which it is mapped.

Goal Requirements
The Statewide Planning Goals require that the comprehensive plan provide protection of life and property from natural disasters and hazards. Specifically, Goal 7 requires that:

> Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards.

Goal 17 (Coastal Shorelands) requires that programs be developed to "reduce the hazard to human life and property...resulting from the use and enjoyment of Oregon's coastal shorelands." The goal also requires that land use plans, implementing actions, and permit reviews "include consideration of...the geologic and hydrologic hazards associated with coastal shorelands."

Goal 18 (Beaches and Dunes) requires the reduction of "the hazard to human life and property from natural or man-induced actions" associated with beach and dune areas.

SECTION 3.9.100 FLOOD HAZARDS

The following section is the flood hazard study completed for Coos County.

NOTICE TO FLOOD INSURANCE STUDY USERS

Communities participating in the National Flood Insurance Program have established repositories of flood hazard data for floodplain management and flood insurance purposes. This Flood Insurance Study (FIS) report may not contain all data available within the Community Map Repository. Please contact the Community Map Repository for any additional data. The Federal Emergency Management Agency (FEMA) may revise any republish part or all of this FIS report at any time. In addition, FEMA may revise par of this FIS report by the Letter of Map Revision process, which does not involve republication or redistribution of the FIS report. Therefore, users should consult with the community officials and check the Community Map Repository to obtain the most current FIS report components.

Initial Countywide FIS Effective Date: September 25, 2019
Revised County wide FIS Dates: March 17, 2014 and December 7, 2018

December 7, 2018 Volume I

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Exhibit 2 – Flood Insurance Rate Map Index
Flood Insurance Rate Map

SECTION 3.9.200 LANDSLIDES AND EARTHQUAKES

Landslides: New development or substantial improvements proposed in such areas shall be subject to geologic assessment review in accordance with this section. Potential landslide areas subject to geologic assessment review shall include all lands partially or completely within "very high" landslide susceptibility areas as mapped in DOGAMI Open File Report O-16-02, "Landslide susceptibility map of Oregon."

Earthquakes: New development or substantial improvements in mapped areas identified as potentially subject to earthquake induced liquefaction shall be subject to a geologic assessment review as set out in this section. Such areas shall include lands subject to "very high" and "high" liquefaction identified in DOGAMI Open File Report O-13-06, "Ground motion, ground deformation, tsunami inundation, co-seismic subsidence, and damage potential maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes."

In the past earthquakes have not been addressed in the mapping as most of those experienced in the county originate on the Mendocino Fault off the northern Californian coast. Earthquakes originating there in 1922, 1923, and 1954 caused no damage here, though buildings swayed and sleepers were awakened in 1922 and shaking was observed in 1954. The potential for damage from earthquakes is greater in the Coos Bay area and southern part of the county, and damage is more likely to be a result of liquefaction and landslides than of faulting. Structural design incorporating seismic considerations is a good response to earthquake potential in all parts of the county. This is especially critical in the Coos Bay/North Bend area because of the greater instability of the older stabilized dunes, former marshes, and fills material that much of the development occurs on. High occupancy and critical use facilities such as schools and hospitals should be located in areas of solid ground conditions.

LANDSLIDE REPORT

State of Oregon
Oregon Department of Geology and Mineral Industries
Brad Avy, State Geologist

OPEN-FILE REPORT O-16-02

LANDSLIDE SUSCEPTIBILITY OVERVIEW MAP OF OREGON

By
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2016

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EARTHQUAKE REPORT

Coos County has relied on the following report to inventory potential earthquake hazards.

State of Oregon
Oregon Department of Geology and Mineral Industries
Vicki S. McConnell, State Geologist

OPEN-FILE REPORT O-13-06

GROUND MOTION, GROUND DEFORMATION, TSUNAMI INUNDATION, COSEISMIC SUBSIDENCE, AND DAMAGE POTENTIAL MAPS FOR THE 2012 OREGON RESILIENCE PLAN FOR CASCADIA SUBDUCTION ZONE EARTHQUAKES

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2013

NOTICE

Disclaimer: The Oregon Department of Geology and Mineral Industries is publishing this map because the subject matter is consistent with the mission of the Department. The map is not intended to be used for site specific planning. It may be used as a general guide for emergency response planning. Maps in this publication depict landslide hazard areas on the basis of limited data as described further in the text. **The maps cannot serve as a substitute for site-specific investigations by qualified practitioners. Site-specific data may give results that differ from those shown on the maps.**

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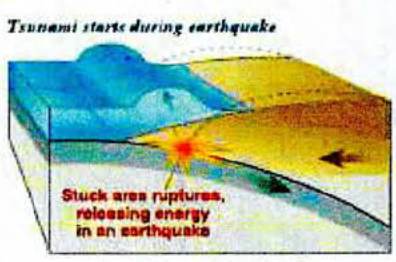
SECTION 3.9.300 TSUNAMIS

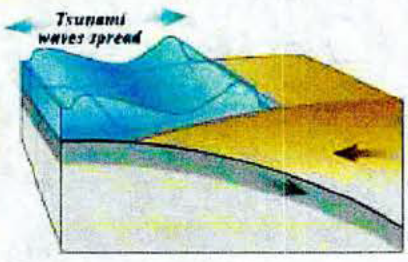
A tsunami is a series of ocean waves most often generated by disturbances of the sea floor during shallow, undersea earthquakes. Less commonly, landslides and volcanic eruptions can also trigger these wave events. Although infrequent in occurrence, tsunamis are the most dangerous natural hazard affecting the Oregon Coast. In the deep water of the open ocean, tsunami waves can travel at speeds up to 800 km (500 miles) per hour and are imperceptible to ships because the wave height is typically less than a few feet.

However, as a tsunami approaches the coast it slows dramatically and its height may multiply by a factor of 10 or more, having catastrophic consequences to people living at the coast. As a result, people on the beach, in low-lying areas of the coast, and near estuary mouths or tidal flats face the greatest danger from tsunamis.



During an Earthquake

An earthquake along a subduction zone happens when the leading edge of the overriding plate breaks free and springs seaward, raising the sea floor and the water above it. This uplift starts a tsunami. Meanwhile, the bulge behind the leading edge collapses, thinning the plate and lowering coastal areas.



Minutes Later

Part of the tsunami races toward nearby land, growing taller as it comes in to shore. Another part heads across the ocean toward distant shores.

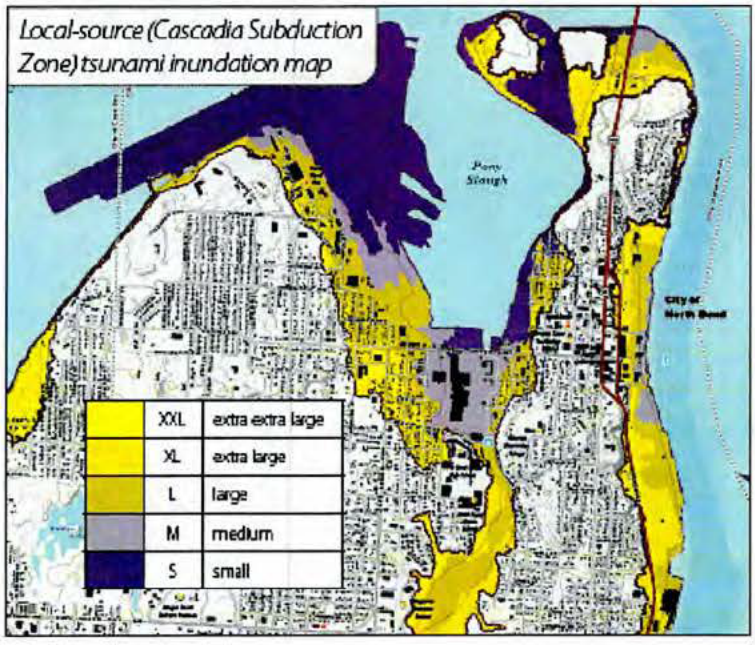
The Oregon coast is a part of the tectonically active Pacific Ring of Fire, posing the risk for both locally and distantly generated tsunamis. The close proximity of the Cascadia Subduction Zone, a 960-km-long (600 mile) earthquake fault zone that sits off the Pacific Northwest coast has the potential to generate earthquakes of magnitude 9.0 or greater. Following the earthquake will be a destructive tsunami, which will reach the coast in 10-20 minutes making the local event the most dangerous type of tsunami for Oregon.

A distant tsunami produced by an earthquake far from Oregon will take 4 or more hours to travel cross the Pacific Ocean, usually allowing time for an official warning and evacuation, if necessary. A distant tsunami will be smaller in size and much less destructive, but it can still be very dangerous.

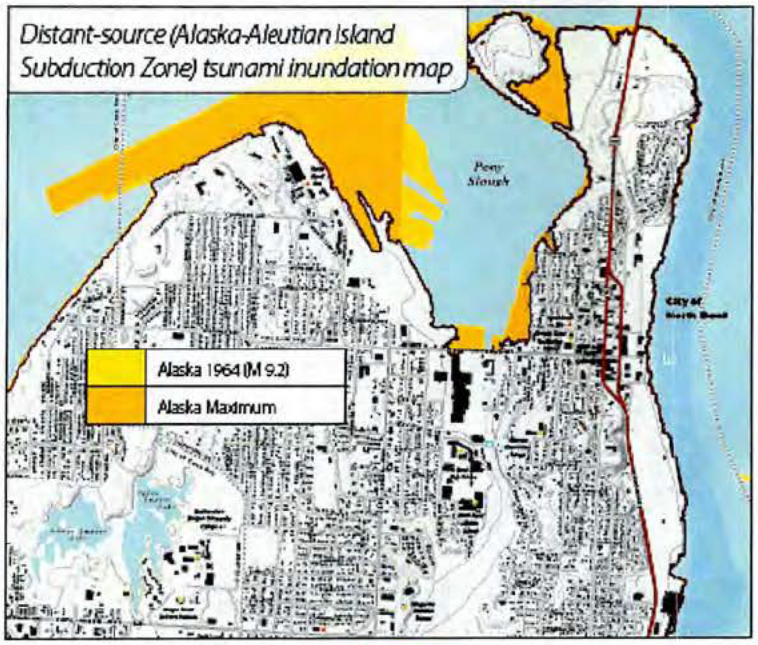
The Oregon Department of Geology and Mineral Industries (DOGAMI) has been identifying and mapping the tsunami inundation hazard along the Oregon coast since 1994. In Oregon, DOGAMI manages the National Tsunami Hazard Mitigation Program, which has been administered by the National Oceanic and Atmospheric Administration (NOAA) since 1995. DOGAMI's work is designed to help cities, counties, and other sites in coastal areas reduce the potential for disastrous tsunami-related consequences by understanding and mitigating this geologic hazard. Using federal funding awarded by NOAA, DOGAMI has developed a new generation of tsunami inundation maps to help residents and visitors along the entire Oregon coast prepare for the next Cascadia Subduction Zone (CSZ) earthquake and tsunami.

TIM series inundation maps incorporate all the best tsunami science that is available today, including recent publications by colleagues studying the Cascadia Subduction Zone, updated computer simulation models using high-resolution lidar topographic data, and knowledge gained from the 2004 Sumatra, 2010 Chile, and 2011 Tōhoku earthquakes and tsunamis.

Each publication includes two plates: one showing local-source (Cascadia Subduction Zone) and one showing distant-source (Alaska-Aleutian Subduction Zone) tsunami inundation scenarios.



TIM Plate 1 displays five scenarios, labeled as "T-shirt sizes" (S, M, L, XL, and XXL), of the impact of Cascadia Subduction Zone tsunamis that reflect the full range of what was experienced in the past and will be encountered in the future. The geologic record shows that the amount of time that has passed since the last great Cascadia earthquake (312 years since January 26, 1700) is not a reliable indicator of the size of the next one, so the size ranges are intended to fully bracket what might happen next.



TIM Plate 2 shows tsunami inundation scenarios for two distant-source tsunamis that were modeled and originate in Alaska. These distant tsunamis are not nearly as dangerous as the local ones, as Oregonians will have several hours instead of only minutes to evacuate and the tsunamis themselves are much smaller. For these reasons DOGAMI's focus is on the big Cascadia events. If the ground shakes for an extended period of time, don't wait for more warning, evacuate to high ground as fast as possible.

maximum local source (yellow) ⇩⇩ maximum distant source (orange)

Combine the maximum tsunami scenario from each map ...

After the inundation maps have been created, the tsunami inundation zones derived from the Cascadia XXL tsunami scenario (yellow area, top figure, left) and the hypothetical maximum Alaska tsunami (orange area, middle figure, left) are put together on one map to create a **tsunami evacuation map**. Green on the evacuation map shows typically higher elevation areas that lie outside the zones prone to tsunami hazard. The purpose of the evacuation map is to help people identify safe evacuation routes, as developed by local emergency authorities.

All tsunami evacuation maps

TIM maps include a wealth of information, including projected tsunami wave height time series charts and a measurement of the exposure each community has to the various tsunami scenarios: we count the number of buildings that are inundated by each scenario.

The public, planners, emergency managers and first responders, elected officials, and other local decision makers can use these detailed and innovative map products to mitigate risk and to reduce the loss of life and property.

Coos County has continued to work to reduce the risk in the tsunami areas. This effort has been done through zoning ordinance and developing an evacuation facilities plan. The other effort has been through

the Coos County Hazard Mitigation Plan that Emergency Management updates and implements. Coos County Planning will continue to participate and consult with the Coos County office of Emergency Management to ensure the risks are reduced.

SECTION 3.9.400 TSUNAMI EVACUATION FACILITIES IMPROVEMENT PLAN

Tsunami Evacuation Facilities Improvement Plan (TEFIP)

For the coastal unincorporated communities of Coos County, Oregon

September 2019

TSUNAMI EVACUATION FACILITIES IMPROVEMENT PLAN (TEFIP) FOR THE COASTAL UNINCORPORATED COMMUNITIES OF COOS COUNTY, OREGON
First Edition, September 2019

Plan Development

This plan was developed by the Coos County Planning Department with help from the Coos County Emergency Management Division and the Oregon Department of Land Conservation and Development. Input was received from the Port of Coos Bay, Coos County Roads Department, Oregon Department of Transportation, Oregon Parks and Recreation Department, the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, the Coquille Indian Tribe, South Slough Estuarine Research Reserve, and the Charleston Fire Department.

Funding

Financial assistance for this plan was provided in part by the Coastal Zone Management Act of 1972, as amended, administered by the Office for Coastal Management, National Oceanic and Atmospheric Administration, and the Oregon Coastal Management Program, Department of Land Conservation and Development. Federal Grant No. NA15NOS4190118. Financial assistance was also provided in part by a grant from the Federal Emergency Management Agency RiskMAP Program, no. EMS-2016-CA-2008.

Figures

All figures in this document were created by the Oregon Department of Geology and Mineral Industries (DOGAMI). Open-File Report O-19-07, Tsunami evacuation analysis of communities surrounding the Coos Bay Estuary: Building community resilience on the Oregon coast, by Laura L. S. Gabel, Fletcher E. O'Brien, John M. Bauer, and Jonathan C. Allan; 60 p. report.
Additional information can be found at www.oregontsunami.org. For more information about the tsunami evacuation analysis completed by DOGAMI, please contact their Coastal Field Office:
Oregon Department of Geology and Mineral Industries
Newport (Coastal) Field Office
P.O. Box 1033, 313 SW 2nd, Suite D
Newport, OR 97365
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Please call before visiting to check staff availability.

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1. INTRODUCTION

1.1 General

Coastal unincorporated areas of Coos County, OR are vulnerable to the effects of a local Cascadia Subduction Zone (CSZ) earthquake and tsunami event. In addition to the potentially catastrophic damage caused by the earthquake event itself, the resultant tsunami will inundate portions of the community and a risk-based and community-specific approach to evacuation will be critical to save lives. This Tsunami Evacuation Facilities Improvement Plan (TEFIP) is a comprehensive look at existing and potential evacuation routes and needed improvements for these coastal communities, and includes identified facility and infrastructure improvement projects and potential financing strategies. **This TEFIP is essential to the implementation of evacuation route development and improvement in conjunction with the land use review and approval process, established through Coos County's Tsunami Hazard Overlay Zone (*Article 4.11.260-270*).** The cities of Coos Bay and North Bend also have tsunami risk but are not included in this plan because they are not within the jurisdiction of the Coos County Planning Department.

The Oregon Department of Geology and Mineral Industries (DOGAMI) has been identifying and mapping the tsunami inundation hazard along the Oregon coast since 1994. DOGAMI developed a series of tsunami inundation maps in 2013 to help residents and visitors along the entire Oregon coast prepare for the next CSZ earthquake and tsunami, called the Tsunami Inundation Maps (TIMs). The TIMs display five scenarios, labeled as "T-shirt sizes" (S, M, L, XL, and XXL), showing the impact of Cascadia Subduction Zone tsunamis that reflect the full range of possible inundation. The geologic record shows that the amount of time that has passed since the last great Cascadia earthquake (in January 26, 1700) is not a reliable indicator of the size of the next one, so the size ranges are intended to be inclusive of the range of scenarios that a community might expect during a CSZ event.

1.2 Limitations and Constraints

Because life safety risk is present in all areas potentially subject to inundation during a tsunami event, the XXL tsunami scenario is used for evacuation facility planning, so that all areas with the **XXL scenario** can be effectively evacuated. This local tsunami is generated by a high magnitude earthquake just off the Oregon Coast and thus the inundation area is much larger than for a distant tsunami event. Also, unlike a distant tsunami that can be predicted several hours prior to its arrival (4 or more hours), this local CSZ tsunami can strike the coast within 15 – 20 minutes after the earthquake.

For the purposes of this plan, tsunami evacuation means the immediate movement of people from the tsunami inundation zone to high ground or safety following a CSZ earthquake. Comprehensive disaster planning for a CSZ earthquake and tsunami event requires a phased and scalable approach to planning and coordination; immediate evacuation for the purposes of life safety is only one (albeit a very important) phase. This TEFIP does not include planning for earthquake shaking damage mitigation or post-event disaster response and recovery. Other entities at the local, state, and federal level continue to prepare for those additional phases.

1.3 Definitions

Horizontal evacuation is the preferred response for tsunami evacuation, which is the movement of people to high ground and/or inland away from tsunami waters. In some locations, high ground may not exist, or tsunamis triggered by a local event may not allow sufficient time for communities to evacuate low-lying areas. Where horizontal evacuation out of the tsunami inundation zone is neither possible nor practical, a potential solution is **vertical evacuation**[1] into the upper levels of structures designed to resist the effects of an earthquake as well as a tsunami. A **vertical evacuation structure** is a building or earthen mound that has sufficient height to elevate evacuees above the level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to resist the expected earthquake shaking and the loading due to tsunami waves.

This TEFIP identifies and discusses **tsunami evacuation facilities**, which are defined as places, amenities, infrastructure, or equipment that can be used to assist in tsunami evacuation (horizontally or vertically). Tsunami evacuation facilities generally include (but are not limited to): roads, trails, wayfinding elements (signs, kiosks, trail markers), supply caches, assembly areas, bridges, and vertical evacuation structures. Evacuation improvements for a community may also include education and outreach activities.

1.4 Whole Community

Every person who lives, works, or visits Coos County (including access and functional needs populations) shares responsibility for minimizing tsunami risks and vulnerabilities. These individual responsibilities include tsunami awareness, knowledge of appropriate protective actions, and preparations for personal and family safety. Knowledgeable residents and visitors who are prepared to take care of themselves and their families and to assist neighbors in the early phases of a tsunami event can make a significant contribution towards survival and community resiliency.

The development of this TEFIP involved a range of stakeholders including the public, scientific community, local government, and community-based organizations.

1.5 Coordination with the Tsunami Hazard Overlay Zone (Article 4.11.260-270)

Coos County has adopted land use regulations addressing tsunami risk for certain types of new development and substantial improvements. These regulations are implemented through the Tsunami Hazard Overlay Zone, Article 4.11.260-270 of the Balance of County. Except single family dwellings on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone (everything within the XXL tsunami scenario) are required to incorporate evacuation measures and improvements which are consistent with and conform to this adopted Tsunami Evacuation Facilities Improvement Plan.
For purposes of compliance with this TEFIP and the THOZ, applicants should review the entire plan, particularly the following sections as they relate to the proposed development and related evacuation improvements:

[1] Applied Technology Council. April 2012. FEMA Guidelines for Design of Structures for Vertical Evacuation from Tsunamis, Second Edition. Federal Emergency Management Agency, National Oceanic and Atmospheric Administration.

- **Section 3: Evacuation Facility Assessments and Recommendations** – this section is organized into four discrete geographic areas. Review the subsection applicable to the proposed project location for evacuation routes and identified improvement projects.
- **Section 4: Implementation Resources for Evacuation Projects** – this section describes resources related to different types of evacuation improvements. In particular, the *Oregon Tsunami Evacuation Wayfinding Guidance* (Version 05-13-2019) developed by the Oregon Office of Emergency Management and the Department of Geology and Mineral Industries should be reviewed for compliance with evacuation signage standards.
- **Section 5: Education, Outreach, and Training** – this section describes resources related to education, outreach, and training materials and activities for tsunami evacuation. If an applicant is proposing evacuation improvements related to this topic, this section should be consulted for consistency.
- **Appendices A-D as needed.**

2. TSUNAMI RISK AND VULNERABILITY ASSESSMENT

2.1 Hazard Identification

The hazard being addressed by this TEFIP is a tsunami event that results in the need for community evacuation. A tsunami impacting the County would be the result of an earthquake from one of two categories:

- **Local Tsunami:** Generated by an earthquake immediately offshore of the Oregon Coast (e.g. a Cascadia Subduction Zone earthquake) and would result in a tsunami to come onshore within 15-20 minutes following the earthquake.
- **Distant Tsunami:** Generated by a distant earthquake (e.g. large event occurring off a distant coastline such as Japan or Alaska) and would result in a tsunami to come onshore 4 hours or more following an earthquake on another continent.

A local earthquake resulting in a tsunami is likely to generate additional hazards that may further hinder an individual's ability to evacuate and may increase the time needed to evacuate. Such examples include:

- **Damage to buildings:** Severe shaking, especially in areas of poor soils, will damage buildings, making it difficult to evacuate. Homes built before 1974 may not be tied to foundations and can shift off foundations. Unreinforced masonry buildings and under-reinforced concrete buildings will be severely damaged or collapse. Furnishings and equipment not securely fastened can cause injuries.
- **Damage to infrastructure:** Severe shaking and areas of poor soils will result in infrastructure failures. Infrastructure systems that may cause barriers to evacuation are water, wastewater, and stormwater facilities, liquid fuel and natural gas tanks and lines, electrical systems, bridges, embankments and roads. Shaking damage may result in fallen electrical lines, damaged gas lines, tank and pipeline failures and leaks, bridge failures, as well as physical interruptions in the surface transportation system due to slope failures and ground failures.
- **Landslides:** Landslides and ground movement may present added barriers to evacuation resulting in blocked roads, bridges, and walking trails.
- **Fires:** Fires from damaged electrical lines or propane may result in injuries that hinder an individual's ability to evacuate.
- **Liquefaction:** Similar to landslides, liquefied soils may result in unstable, damaged roads, bridges, and walking trails that present added barriers to an individual's ability to evacuate, especially those who experience access and functional needs.
- **Vehicular accidents and traffic jams:** Individuals may attempt to evacuate in personal vehicles en masse and push their vehicles to cover unusual terrain either due to damaged infrastructure or an attempt to bypass typical infrastructure to save time. This may result in accidents and traffic jams that prevent individuals from reaching higher ground.
  NOTE: Vehicle evacuation is NOT recommended following a local CSZ event!*

2.2 Mapping

Mapping produced by the Oregon Department of Geology and Mineral Industries (DOGAMI) is the primary source of information for the identification of areas subject to tsunami inundation. DOGAMI has produced a number of map products depicting tsunami inundation for the county,

including the Tsunami Inundation Maps (TIMs), Tsunami Evacuation Brochures, and more recently, the "Beat the Wave" (BTW) maps. These map products are referenced throughout this plan and identify areas within Coos County that are subject to potential life safety risk and that need to be evacuated during a local CSZ tsunami event.

2.2.1 Tsunami Inundation Maps

The TIM series depicts the projected tsunami inundation zone from five different magnitude seismic and tsunami events: small, medium, large, extra-large, or extra extra-large (S, M, L, XL, XXL). These different modeled events are associated with differing levels of risk in terms of the relative likelihood of tsunami inundation (Appendix A). These maps are referenced in Chapter IV Balance of County Zones, Overlays & Special Consideration Section 4.11.260 Tsunami Hazard Overlay Zone. The purple zones on these maps show the small and medium earthquake and tsunami events, while the three shades of yellow indicate the large through extra extra-large events.

See http://www.oregongeology.org/tsuclearinghouse/pubs-inumaps.htm for more information.

2.2.2 Tsunami Evacuation Brochures

The Tsunami Evacuation Brochures are public products designed to direct visitors and residents away from low-lying areas in the event of a tsunami. They depict three color zones: orange for the largest expected distant tsunami; yellow for the largest expected local tsunami; and green for safety (or high ground).

See http://nvs.nanoos.org/TsunamiEvac and www.oregontsunami.org for more information.

2.2.3 Beat the Wave Maps

DOGAMI has also completed BTW tsunami evacuation modeling for the unincorporated areas of Charleston, Barview, and the North Spit, which provides additional detail on estimated evacuation clearance times and evacuation needs. The results of this mapping have been used in this plan to identify evacuation deficiencies, as well as potential evacuation improvements. These maps will be discussed in greater detail in Section 3. See Appendix B for examples of the Beat the Wave map products referenced in this plan. *The final report, once published, will be available on www.oregontsunami.org as an Open File Report.*

2.3 Populations at Risk

The purpose of this section is to determine the overall numbers of people and identify, to the extent possible, access and functional needs populations that are within the tsunami inundation zone areas and thus in harm's way. The goal is to estimate how many people will need to be evacuated, and to identify the characteristics and locations of populations that may have specific additional needs or requirements for evacuation.

Overall, the coastal unincorporated communities of Coos County have a low vulnerability to tsunami risk. There are few critical and essential facilities in the tsunami inundation zone and most areas within the zone have nearby access to high ground. However, there are access and functional

needs populations within the tsunami zones that are addressed in this plan, in order to better support their evacuation success.

2.3.1 Demographics

According to Portland State University's Population Research Center, 25,000 people live in unincorporated Coos County (which also includes non-coastal areas)[2]. These areas are forecasted to stay around the same population or decrease over the next fifty years.

A report developed by the Department of Human Services (2017)[3] compiled information on the characteristics and economic and health indicators of each county in Oregon. The following information was compiled for Coos County and may have relevance when considering tsunami evacuation improvements (NOTE: data is for the whole county):

- Poverty rate: 17.8% (statewide rate of 16.2%)
- Unemployment rate: 9.2% (statewide rate of 7.0%)
- Rate of homeownership: 56% (excludes renters)
- Persons with a self-reported disability: 22.9%
- Persons in poverty: 18.3%; Persons under age 18 in poverty: 25.2%
- Households with retirement income: 28.4%
- Households with social security income: 46.4%
- Major employment sectors: Trade, transportation, utilities, education, health, and government

In addition, the Charleston/Barview area is considered a poverty hotspot (geographic concentration of poor residents). The poverty rate for this area is 31% (encompassing approximately 2,654 people and 1,165 households). Approximately 25% of the population in Charleston and Barview has a disability.

2.3.2 Population Estimates

Tsunami evacuation is of greatest concern to populations residing or working within the inundation zone. The following table illustrates the estimated populations and facilities within the LARGE and XXL inundation zone[4]. While some of these numbers are based on the LARGE tsunami event, **everyone within the XXL tsunami hazard zone should evacuate after an earthquake for life safety purposes.**

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[2] PSU Oregon Population Forecast Program. 2018. Preliminary Coordinated Forecasts for Coos County, its Urban Growth Boundaries (UGBs), and the Area Outside UGBs.

[3] Office of Business Intelligence & the Office of Forecasting, Research, and Analysis (DHS/OHA). 2017. DHS County Quick Facts. URL: www.oregon.gov/DHS/ABOUTDHS/DataDocuments/County-QuickFacts-2017.pdf.

[4] Wood, NJ, Jones, J, Spielman, S, and Schmidtlein, MC. 2015. Community clusters of tsunami vulnerability in the US Pacific Northwest. Proceedings of the National Academy of Sciences of the United States of America: 112 (17): 5354–5359.

Population or Asset	#'s in the L tsunami zone	#'s in XXL tsunami zone[5]
Residents	1,605	3,385
Residents 65 and older	395	861
Employees	152	1,309
Employers	No data	116
Public Venues	3	No data
Dependent-Care Facilities	1	No data
Community Businesses	8	No data

Because population estimates are based on census data, only resident populations are reflected and not transient populations.

2.3.3 Access and Functional Needs Populations

Access and Functional Needs populations (also referred to as vulnerable populations and special needs populations) are members of the community who experience physical, mental, or medical care needs and who may require assistance before, during, and after an emergency incident after exhausting their usual resources and support network. In the case of evacuations, examples of individuals who have access and functional needs that may make evacuation challenging include, but are not limited to:

- Individuals who experience mobility challenges (e.g. physical disabilities, elderly, children)
- Individuals who are blind or have low vision
- Individuals with limited-English proficiency
- Individuals who are deaf or hard of hearing
- Individuals who have been injured during the earthquake

Tsunami evacuation requires the ability to move from the inundation zone to high ground (or safety) in a timely matter. Due to this short onset time, individuals who experience access and functional needs may lack the resources to travel such distances.

2.3.4 Using Key Locations as a Proxy

Specific information about where or how many access and functional needs individuals would need assistance in an evacuation is not available; however, by identifying key locations that can be used as a proxy for access and functional needs, we can extrapolate where those individuals may be in a CSZ event. In the event of an update more information needs to be obtained regarding tourist facilities, childcare facilities, youth organizations and other meeting facilities that have the ability to high volumes of population to gather.

[5] Gabel, LS, Bauer, JB, O'Brien, FE, Bauer, JM, and Allan, JC. 2019. OFR O-19-07, *Tsunami evacuation analysis of communities surrounding the Coos Bay Estuary: Building community resilience on the Oregon coast.*

2.3.5 Housing

According to the 2015 Oregon Natural Hazard Mitigation Plan[6], 78.5% of the housing stock in Coos County was built pre-1990, before seismic building standards were put into place. This could have implications for sheltering needs after a Cascadia earthquake and tsunami event, meaning more people could be displaced following an event beyond those in the tsunami inundation zone due to extensive earthquake damage in the community.

2.3.6 Community Sheltering

The following facilities are outside of the XXL tsunami inundation zone and may be used for community sheltering after a CSZ event:

Table 3: Potential Community Shelters

Several facilities were named during the process (Future Coos Head Conference Center, Coquille Tribes Maintenance Building and Former Charleston School Site but the capacity and other factors were not completed through this study and should be considered in an updated revision.

2.4 Conclusions

Tsunami vulnerability for Coos County is relatively low. The coastal areas of the county have: a) relatively low numbers of residents, employees, and customer-heavy businesses in the tsunami hazard zone; and b) those that occupy the zone will likely have enough time to reach high ground before the first tsunami wave (see Section 3 for more information). However, of those people that are in the tsunami hazard zone, there is a relatively high percentage of residents over 65 years old, persons in poverty, and persons with mobility challenges. Additionally, the coastal areas of Coos County experience high numbers of visitors and tourists, who are unfamiliar with the landscape and tsunami hazards. These groups may need additional assistance in evacuating effectively.

Additionally, successful evacuations are not guaranteed in these communities, because individuals still need to understand the threat, recognize signs of imminent waves, and take self-protective action. Education efforts that recognize demographic differences (e.g. age, living situation, and resident vs. tourist) may be the best course of action for these communities. Specifically, evacuation improvement efforts focused on communicating to and supporting visitors and populations over 65 years would be the most beneficial strategies for these communities.

[6] State Interagency Hazard Mitigation Team. 2015. Oregon Natural Hazards Mitigation Plan.

3. EVACUATION FACILITY ASSESSMENTS AND RECOMMENDATIONS

The process of evaluating existing evacuation facilities and identifying prioritized improvement recommendations involved three phases:

- **Existing Facility Assessments:** The planning team engaged in a desktop analysis of existing evacuation routes and facilities to determine gaps. This was followed up by a review by the relevant experts from the communities to ensure all existing facilities had been accounted for.
- **Identification of needed improvements:** A meeting with community stakeholders served to assess gaps in existing facilities to determine locations requiring improvements. This meeting, informed by DOGAMI's Beat the Wave modeling results, led to an initial list of potential improvement projects that underwent comparison and scrutiny to ensure project need and feasibility.
- **Prioritization of needed improvements:** Following the identification of needed improvements, the planning team reviewed the list of proposed projects and prioritized them (high, medium, low) based upon the project's perceived effectiveness and feasibility (measured by capacity, administrative control, and political considerations). This resulted in the prioritized project alternatives identified in the following sections.

Considering Co-Benefits

The most cost-effective and successful projects generate benefits outside of their intended purpose. For example, a tsunami evacuation route sign provides lifesaving guidance following an earthquake, but it also increases overall hazard awareness and personal preparedness before an earthquake. The sections that follow highlight recommended evacuation improvement projects throughout the coastal areas of the County. In addition, the recommendations also identify co-benefits created through the implementation of each project, which may support the identification of additional partners and funding opportunities. The co-benefits identified in this plan are as follows:

- Hazard Awareness and Education
- Personal Preparedness
- Health and Wellness
- Transportation Effectiveness
- Asset Protection
- Economic Development
- Environmental Protection

3.1 North Spit

3.1.1 Community Overview

For this plan, the North Spit is defined as the area from the northern edge of Horsfall Lake south to the southern-most tip of the spit at the north jetty of the Coos Bay estuary. It is bounded on the east by the Coos Bay estuary and on the west by the Pacific Ocean. The area consists mostly of open sand dunes, forested islands, wetlands, and a few developed areas. There are only a few access roads across the spit and the area is primarily used (and zoned) for recreation or industry.

Recreational Uses:

A significant portion of land on the North Spit is federally owned and managed (Bureau of Land Management and the Siuslaw National Forest) and open to recreational uses, including: hiking, horseback riding, sand driving, boating, and fishing. There are three campgrounds along Horsfall Beach Road (two public and one private), and a few Off-Highway Vehicle (OHV) staging areas and day-use parking lots.

Industrial Uses:

Several areas along the eastern shoreline of the North Spit are owned and managed by the International Port of Coos Bay and are utilized as industrial sites by private companies. Currently, there are about 170 employees on the North Spit, working at a few different industrial sites.

3.1.2 Existing Evacuation Facilities Analysis

Tsunami Wave Arrival Time

The first tsunami wave arrives at the western edge of the North Spit between 14 and 16 minutes. The wave crosses the North Spit fairly uniformly, coming across the spit as one wave. It gets to the eastern shore of the southern portion of the spit (near DB Western and Southport Lumber) between 20 and 24 minutes. Bluebill campground gets inundated by 20 to 24 minutes; Roseburg Forest Products is inundated by 24 to 26 minutes; and the eastern edge of the northern portion of the spit is completely inundated by 26 to 30 minutes.

See Appendix B for wave arrival time maps.

Existing Evacuations Routes

Main evacuation routes in the area have been determined for the following locations (see Appendix C):

- For the Horsfall Beach area, the main evacuation route is along Horsfall Beach Road east towards the high dunes near Horsfall Campground.
- The high dunes along the central portion of Trans Pacific Lane serve as the nearest high ground for the industrial sites along Coos Bay estuary and the southern portions of the spit.

Evacuation Speeds

For locations within the central and eastern portions of the North Spit, walking speeds range from a slow walk to a fast walk. Areas along the beach and western portion of the spit reach much higher pedestrian speeds (jog, run, and sprint) because of their distance from high ground. The southern

end of the spit is especially challenging to evacuate with walking speeds of sprint (7-10 mph) and unlikely to survive (>10 mph) near South Dike Lane, DB Western, and Southport Lumber. There is a high dune near DB Western that is safe in a LARGE (L) tsunami scenario but would be overtopped by XL and XXL.

Critical Facilities

The North Spit area is primarily used recreationally and for industry. There are four companies with operations on the spit currently, with potential for growth in the future. While there are no critical facilities on the spit, there are potentially hazardous materials housed within the industrial complexes that will likely be damaged by an earthquake and tsunami event. Additionally, there could be substantial large debris created from the lumber yard. There is one main bridge (via Trans Pacific Lane) east across Coos Bay estuary connecting to Highway 101 (which is also a bridge) that will likely fail or incur significant damage after the earthquake and tsunami, leaving those on the North Spit isolated from other communities.

Conclusions

The people working or recreating in this area could become very isolated in a local earthquake and tsunami event. Additionally, evacuation speeds are quite high in some areas, especially further south on the spit or out on the open sandy beach areas. There is limited high ground and evacuation success could be severely limited under current evacuation conditions. If people have access to their ATV's when evacuation is necessary, they will be able to use those vehicles to more quickly access high ground over potentially challenging terrain. However, anyone on foot will have a much more difficult time evacuating on loose sand. Current signage for tsunami evacuation on the North Spit is sparse. There are currently no designated assembly areas. There is also potential for growth in the industrial sector of the North Spit and so evacuation facilities should anticipate the potential for increased numbers of workers and tourists for this area. Vertical evacuation structures, increased signage and education, and emergency caches are recommended for evacuation facility improvements to this area.

3.1.3 Evacuation Improvements Project Identification

WAYFINDING & EDUCATION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Evacuation route markers from beach access	High	BLM, County Emergency Management, Campground Managers, Public Works, Road Department	NTHMP (OEM/DOGAMI), FEMA HMA, BLM	Visitors/tourists
Entering/Leaving Signs	High	BLM, County Emergency Management, Campground Managers, Public Works, Road Department	NTHMP (OEM/DOGAMI), FEMA HMA, BLM	Visitors/tourists
Evacuation Training for	High	Industrial facilities, Port of Coos Bay, County	NTHMP, County Emergency	Employers and employees of

Employees		Emergency Management	Management, Industrial Facilities	industrial sites
Informational Kiosks	High	BLM, US Forest Service, Oregon State Parks, County Emergency Management, Campground Managers	NTHMP (OEM/DOGAMI), FEMA HMA, BLM	Visitors/tourists

Problem Statement: Limited existing signage and educational materials may present difficulty to residents and visitors in evacuating from the inundation zone.
Project Descriptions:

1. **Evacuation route markers along major tsunami evacuation routes starting from beach access points**: Individuals on the beach and other recreational sites on North Spit are challenged to get to high ground during a tsunami event, due to difficult terrain (loose sand) and unclear evacuation routes. There are existing numbered beach access point signs (large neon yellow signs) that could be tied into the tsunami evacuation system. From major beach access points on the North Spit, mark every quarter mile along major evacuation routes to lead people to high ground (safety destination). Major evacuation routes are Horsfall Beach Road and Trans Pacific Lane. Route markers could be small, blue, reflective signs (similar to hiking trail markers) leading the way to high ground. Once trail markers are installed, their description should be tied into the informational kiosks described above and other education efforts so that visitors know what the markings mean and what to do in an earthquake and tsunami event. Evacuation communities (Appendix C) show the flow of people on existing roads to high ground (safety destinations). This concept should be followed when installing tsunami evacuation route markers.
2. **Entering/leaving tsunami zone signs at high ground intersections along major evacuation routes**: Signs indicating the extent of the XXL tsunami inundation zone should be placed at high dune areas along Horsfall Beach Road and Trans Pacific Lane. See Appendix C (Beat the Wave maps) for locations of the intersection of tsunami zones and high ground (green dots). Entering signs should be placed on the side of the road where travel is moving into the tsunami zone. Leaving signs should be placed on the side of the road where travel is moving out of the tsunami zone. These signs help both to educate people of these zones before an event and to let them know when they've reached safety during an evacuation event.
3. **Evacuation training for all workers located on the North Spit**: Provide all employers and employees located on the North Spit with tsunami evacuation education and training to ensure everyone knows when and how to evacuate in the event of a local CSZ tsunami event. The County Emergency Management Division does presentations about preparing for a Cascadia subduction zone earthquake and tsunami to various audiences around the County regularly and should be able to provide this training for North Spit employees.
4. **Information kiosks at every major parking lot and campground entrance on the North Spit**: Create a centralized tsunami information platform for visitors. Develop informational kiosks at the following populated locations:

a. Parking lots at Horsfall Beach
b. Old Bark Road OHV Staging Area
c. Campgrounds: Bluebill, Horsfall, and Box Car Hill

Kiosk messaging should focus on tsunami education and evacuation for visitors and ATV riders. Include information that says "you are *x* number of minutes from high ground" and maps the route visitors should follow in the event of needed evacuation. Work with the property owner or manager of each site on the best design for a kiosk or to integrate with existing educational information.

CONSTRUCTION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Vertical Evacuation Structures for (2) Industrial Sites	Medium	Industrial Facilities, Port Of Coos Bay, County Emergency Management	FEMA HMA, Municipal Financing	Industry Employees, Visitors
Long Term Emergency Cache	High	Industrial Facilities, Port Of Coos Bay, County Emergency Management, Local Food Banks	FEMA HMA, Municipal Financing, Port of Coos Bay, Private Financing	Industry Employees, Visitors

Problem Statement: Two industrial sites on the North Spit are currently very far from high ground, presenting the potential for unsuccessful evacuation prior to the tsunami's arrival.
Project Descriptions:

1. **Vertical evacuation structure and emergency caches to serve DB Western and southern portion of North Spit:** Because of the high evacuation clearance times required for employees and visitors of the southern end of the North Spit to evacuate in a local tsunami event, a vertical evacuation structure constructed near DB Western would greatly enhance the evacuation success of this area (Appendix C). There is a high dune to the west of DB Western where such a structure could be constructed, since that dune is already of sufficient height to place people above the LARGE tsunami event. A vertical evacuation structure built here would be designed to place evacuees above the XXL tsunami event and would be potentially less intensive to build because of the advantage of the height of the high dune. No other tsunami evacuation improvements have been identified that could improve evacuation success for these communities. A trail or road to access the structure would also have to be designed and built as part of this project. Lastly, the vertical evacuation structure should contain an emergency cache as part of the overall project and design to aid the evacuees once they've reached safety.
2. **Vertical evacuation structure and emergency caches to serve Southport Lumber and surrounding area:** Because of the high evacuation clearance times required for employees and visitors of the southern end of the North Spit to evacuate in a local tsunami event, a vertical evacuation structure constructed near Southport Lumber would greatly enhance the evacuation success of this area (Appendix C). A vertical evacuation structure built here would be designed to place evacuees above the XXL tsunami event. No other tsunami evacuation improvements

have been identified that could improve evacuation success for these communities. A trail or road to access the structure would also have to be designed and built as part of this project. Lastly, the vertical evacuation structure should contain an emergency cache as part of the overall project and design to aid the evacuees once they've reached safety.

Considerations: A vertical evacuation refuge from tsunamis is a building or earthen mound that has sufficient height to elevate evacuees above the level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to resist the effects of tsunami waves. Vertical evacuation refuges can be stand-alone or part of a larger facility. They can be single-purpose refuge-only facilities, or multi-purpose facilities in regular use when not serving as a refuge. In concept, these options are applicable to new or existing structures, but it is generally more difficult to retrofit an existing structure than to build a new tsunami-resistant structure[7]. Loading and other criteria for the design of vertical evacuation structures are provided in Section 4.
NOTE: While building one vertical evacuation refuge would be more efficient and cost-effective than having to build two (one for each industrial facility), the stretch of landscape between Southport Lumber and DB Western is long, low in elevation, and of loose sandy material. A mid-way point would likely cost too much in terms of engineering and construction compared to locating such structures elsewhere (e.g. closer to one or the other industrial site). A more detailed geotechnical investigation would be required to make an ideal location determination for such a structure.

3. **Long term cache near Roseburg Forest Products:** A community cache would contain supplies to assist the population on the North Spit in surviving immediately after a CSZ tsunami event because this community is likely to be isolated from other communities in Coos County (due to bridge failures and geography). This emergency supply cache would be located in the high dunes near the industrial sites of Roseburg Forest Products and others, and provide shelter and supplies to anyone isolated on the North Spit for at least two weeks (Appendix C).
Considerations: Emergency caches are complex stores of emergency supplies. A community must think about: where to locate the cache; how many people it should serve and for how long; who are the potential users; what and how much of: food, water, shelter, first aid, sanitation, communication, mental health support; access to (and security of) the cache; incident command procedures; camp layout; ownership of the supplies; and a maintenance plan.

[7] Applied Technology Council. April 2012. FEMA Guidelines for Design of Structures for Vertical Evacuation from Tsunamis, Second Edition.

3.2 Barview

3.2.1 Community Overview

For this plan, Barview is defined as the area from Wisconsin Ave (border of Coos Bay City Limits) south to Giddings Boat Works and the bridge over South Slough. It is bounded on the west by the Coos Bay estuary. The area consists mostly of residential and small commercial development. While much of the residential areas are within the XXL tsunami inundation zone, high ground is immediately nearby as described below.

3.2.2 Existing Evacuation Facilities Analysis

Tsunami Wave Arrival Time

The first wave reaches the southern end of Barview in about 18 minutes. It reaches Cape Arago Highway in about 20 minutes and reaches the extent of inundation by about 26 minutes (up to 30 minutes in the Joe Ney Slough area).

See Appendix B for wave arrival time maps.

Existing Evacuations Routes & Speeds

Most evacuation routes in the area are west to east on existing streets. Evacuation speeds for the community range between a slow walk (0-1.4 mph) and fast walk (2.7-4.1 mph). See Appendix C for Beat the Wave pedestrian speed maps and evacuation communities.

Considerations: There are two reservoirs (4th Creek and Tarheel) in the tsunami inundation area and the reservoir dams may be prone to failure during an earthquake. Dam failure is unlikely to have negative impacts on evacuation success because those areas can be avoided by going on eastbound streets to the south or north of the respective dam. Also, the bridges over South Slough and Joe Ney Slough have not been earthquake retrofitted and will likely fail during an earthquake. The inability to use the bridges as an evacuation route does not impact evacuation speeds for the community in Barview because there is high ground on both sides of the bridges. However, the bridges are important for community connectivity (movement of people and supplies) post-event.

Critical Facilities

The majority of the structures in the tsunami inundation zone consist of residential development or small businesses, as well as some of the Coquille Indian Tribe reservation lands. Charleston Fire District does have one fire station in the Barview tsunami inundation zone. The Coquille Indian Tribal Police Department and the Charleston wastewater treatment facility are also in the inundation zone. No other critical or essential facilities are in the inundation zone.

Future development: A 200-lot RV park is under development in Barview, in the inundation zone. This area may be challenging to evacuate due to its proximity to the river; however, high ground is nearby (to the east) and accessible by foot.

Conclusions

While much of this community is within the XXL tsunami inundation zone, no evacuation routes identified through BTW prevent evacuation clearance, assuming a slow or fast walking speed.

However, additional demographic data indicates that a high percentage of this population is older and mobility-limited, which may make successful evacuation more challenging, especially if road conditions post-earthquake are not accessible to wheelchairs or other walking aid devices (e.g. scooters). Additionally, routes are not currently marked or lit for escape during the night or in poor weather conditions. Current signage for tsunami evacuation in Barview is sparse. There is one Assembly Area at the Baseball Field off Libby Lane. Adding additional assembly areas and signage is suggested.

3.2.3 Evacuation Improvements Project Identification

WAYFINDING & EDUCATION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Directional Evacuation Highway Signs	High	Oregon Department Of Transportation, County Roads Department, Public Works	NTHMP (OEM/DOGAMI), FEMA HMA	Residents and Visitors
Entering/Leaving Signs	High	Oregon Department Of Transportation, County Roads Department, Public Works	NTHMP (OEM/DOGAMI), FEMA HMA	Residents and Visitors
Assembly Area Designations	Medium	School Districts, Private Landowners, Coquille Indian Tribe, Confederated Tribes Of Coos, Lower Umpqua, And Siuslaw	County (in-kind)	Residents
Outreach with Schools	High	School districts, County Emergency Management	School Districts, County Emergency Management (In-Kind), OEM	Residents
Community-wide Evacuation Drills	High	School Districts, County Emergency Management, Police And Fire Districts, Public Health Organizations, CERT Or Other Emergency Response Volunteer Groups	County (in-kind)	Residents
Flood Insurance Outreach	Medium	County Emergency Management, DLCD, FEMA, insurance agents	FEMA HMA, OEM, DLCD grants	Residents

Problem Statement: Limited existing signage may present difficulty to residents and visitors in evacuating from the inundation zone.

Project Descriptions:

1. **Directional evacuation highway signs off Cape Arago Highway towards high ground:** Tsunami evacuation signs with a directional arrow should be placed along Cape Arago Highway in Barview at the intersections of east/west streets that continue to high ground. In Barview, much of the residential community is in the tsunami zone, but most of the east/west streets continue to high ground, making evacuation fairly straightforward. Signage will help to reinforce this evacuation flow to residents on a daily basis, as well as act as a wayfinding aid during tsunami evacuation. Evacuation communities (see Appendix C) show the flow of people on existing roads to high ground (safety destinations). This concept should be followed when installing new road signs.

2. **Entering/leaving tsunami zone signs at high ground intersections along major evacuation routes:** Signs indicating the extent of the XXL tsunami inundation zone should be placed along major evacuation routes in Barview. See maps in Appendix C for locations of the intersection of tsunami zones and high ground (green dots). Entering signs should be placed on the side of the road where travel is moving into the tsunami zone. Leaving signs should be placed on the side of the road where travel is moving out of the tsunami zone. These signs help both to educate people before an event and to let them know when they've reached safety during an evacuation event. Blue lines could be used in addition to or instead of signs, but must be easily visible and include public outreach and education about what they mean. OEM has more information about tsunami blue lines.

3. **Additional assembly area designations:** An assembly point is a location that has been designated by local authorities for residents and visitors to gather AFTER safely reaching their nearest high ground outside the tsunami zone. A person's nearest safety destination (high ground) may not be at an assembly area. Assembly areas are temporary meeting points to meet-up with others during the immediate aftermath of a disaster (12-24 hours later). Currently, there is one assembly area designated at the baseball field off Libby Lane. Additional assembly areas would allow residents to more readily access an area nearby. Identify appropriate sites for a temporary assembly area based on property ownership and accessibility.

4. **Outreach with area schools:** While no schools are in the tsunami zone, students may live in a tsunami zone. Outreach should be done at all the nearby schools to talk about tsunami hazards, evacuation routes, and the role of schools after a disaster (as assembly areas or long-term shelter facilities).

5. **Conduct community-wide evacuation drills:** It is important for residents who live in or near tsunami hazard zones to practice evacuating to high ground regularly so they are prepared for an actual evacuation event. The Oregon Office for Emergency Management (OEM) published a "Tsunami Evacuation Drill Guidebook" as a reference for planning community-wide tsunami evacuation drills, which can serve as a starting point for staging such drills in both Barview and Charleston, and any residential area in Coos County that is within the tsunami hazard zone. A neighborhood-by-neighborhood effort to instigate and carry-out evacuation drills might also be an effective tactic, where a smaller geographic area is targeted and works together to think about evacuation and post-event recovery. CERT (Community Emergency Response Teams) might be a good resource to tap for this kind of event.

6. **Flood insurance outreach for tsunami damage protection:** The National Flood Insurance Program (NFIP) flood insurance covers losses due to flooding, including after a tsunami. Conduct outreach efforts with property owners to encourage the purchase of flood insurance for properties within the tsunami hazard area (but outside of the special flood hazard area outlined in NFIP Flood Insurance Rate Maps). This insurance is offered at a much discounted rate compared to mandatory flood insurance and covers losses from tsunami damage. Contact FEMA NFIP staff for further information. This type of outreach can be done in every residential community in a tsunami hazard area.

CONSTRUCTION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Elevated Scooter Trail	High	County Emergency Management, Oregon Department Of Transportation, County Roads Department, Public Works	FEMA HMA, Municipal Financing, Port of Coos Bay, Private Financing	Industry Employees, Visitors
Supply Caches	Medium	County Emergency Management, School Districts, Local Food Banks	FEMA HMA, Municipal Financing, Private financing	Residents, Visitors

Problem Statement: A high percentage of residents in Barview are mobility-challenged and may have difficulty evacuating in a local tsunami event. Additionally, because of the high numbers of homes in the XXL tsunami scenario, many residents will be displaced after a tsunami event and will need supplies and shelter.

Project Descriptions:

1. **Elevated scooter trail (or similar improvement):** Although evacuation speeds for the Barview area range between a slow and fast walk, mobility is an issue for about a quarter of the population living there. Residents may need a centralized infrastructure improvement to withstand earthquake shaking and allow for scooter/wheelchair passage to high ground. This would be a major engineering project and require considerable capital investment. An engineering geologic report would have to be completed to locate the best road to build this improvement on or near, and an engineer to design a concept that might meet the need.
2. **Supply caches for Barview residents and visitors:** A community cache would contain supplies to assist the population in Barview in surviving immediately after a CSZ tsunami event. This community may initially be somewhat isolated from other communities in Coos County (due to transportation network failures). These emergency supply caches would be located in the eastern part of the community above the XXL tsunami zone, at designated areas. Two locations are suggested: at the baseball field off Libby Lane and at the end of Spaw Lane. Considerations: Emergency caches are complex stores of emergency supplies. A community must think about: where to locate the cache; how many people should it serve and for how long;

who are the potential users; what and how much of: food, water, shelter, first aid, sanitation, communication, mental health support; access to (and security of) the cache; incident command procedures; camp layout; ownership of the supplies; and a maintenance plan (rotation of supplies). It might be beneficial to coordinate with local food banks who could benefit from supplies when they need to be rotated, so nothing goes to waste. Additionally, when siting caches, public property would provide be the most ideal location, especially at an existing office building or heavily used area, so that the supplies could be monitored more easily by the relevant local, state, or federal authorities.

3.3 Charleston

3.3.1 Community Overview

For this plan, Charleston is defined as the area from the mouth of the Coos Bay estuary to Roosevelt Road. It is bounded on the east by the Coos Bay estuary. The area consists of the Oregon Institute for Marine Biology campus, the Charleston Marine Life Center, the Charleston Marina complex, US Coast Guard facilities, and several other small businesses and restaurants. While much of this community is within the XXL tsunami inundation zone, high ground is immediately nearby as described below.

3.3.2 Existing Evacuation Facilities Analysis

Tsunami Wave Arrival Time

The first wave reaches the northern part of Charleston in 16 to 18 minutes and reaches the Oregon Institute for Marine Biology campus by about 20 minutes. The extent of inundation of the first tsunami wave occurs by 24 to 26 minutes.

Existing Evacuations Routes and Speeds

Coos Head Loop is the main evacuation route for the northern part of the community and Cape Arago Highway is the main route for the southern part of the community (Kingfisher Road is the approximate split between evacuation communities). Coos Head Loop is a steep road; however, landslide risk appears to be low in this area. Evacuation speeds for this community range between a slow walk (0-1.4 mph) and fast walk (2.7-4.1 mph). See Appendix C for pedestrian evacuation speeds and evacuation communities.

Critical Facilities

Charleston Fire District has a fire station in the inundation zone (although it only houses equipment, no personnel). The Oregon Institute for Marine Biology campus, the Charleston Marina complex, and the Coast Guard Station are also in the inundation zone. The remaining structures are generally small businesses and light industrial facilities (including a boat fueling facility). The bridge over South Slough has not been earthquake retrofitted and will likely fail during an earthquake. The inability to use the bridge as an evacuation route does not impact evacuation speeds for the community in Charleston, but will impact community connectivity post-event.

Conclusions

While much of this community is within the XXL tsunami inundation zone, no evacuation routes identified through the BTW analysis prevent evacuation clearance, assuming a slow or fast walking speed. However, there is a high percentage of tourists and visitors in this area during certain times of the year, who may not be familiar with the tsunami hazard and evacuation routes. Also, routes are not currently well marked or lit for escape during the night or in poor weather conditions. Evacuation improvements targeted to tourist groups are recommended. Current signage for tsunami evacuation in Charleston is sparse. There are two designated Assembly Areas at Seven Devils Rd and Cape Arago Highway. Adding additional assembly areas (such as at the former Charleston school site) and evacuation signage may be warranted.

3.2.3 Evacuation Improvements Project Identification

WAYFINDING & EDUCATION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Directional Evacuation Route Signs	High	Oregon Department Of Transportation, County Roads Department, Public Works	NTHMP (OEM/DOGAMI), FEMA HMA	Residents and Visitors
Entering/Leaving Signs	High	Oregon Department Of Transportation, County Roads Department, Public Works	NTHMP (OEM/DOGAMI), FEMA HMA	Residents and Visitors
Visitor Education	Medium	School Districts, Private Landowners, Coquille Indian Tribe, Confederated Tribes Of Coos, Lower Umpqua, And Siuslaw	County (in-kind)	Residents
Community Outreach 5K	Medium	School districts, County Emergency Management	School Districts, County Emergency Management (In-Kind), OEM	Residents

Problem Statement: Limited existing signage may present difficulty to residents and visitors in evacuating from the inundation zone.

Project Descriptions:

1. **Directional evacuation highway signs off Cape Arago Highway and Boat Basin Road, towards high ground:** There are two major evacuation routes in Charleston: 1) Cape Arago Highway towards Seven Devils Road, and 2) Coos Head Loop. Tsunami evacuation signs with a directional arrow should be placed along Boat Basin Road and Cape Arago Highway, pointing in the direction of these two main evacuation routes. Increased signage in this area will help to reinforce the evacuation flow to residents, visitors, and businesses on a daily basis, as well as act as a wayfinding aid during tsunami evacuation. Evacuation communities (Appendix C) show the flow of people on existing roads to high ground (safety destinations). This concept should be followed when installing new road signs.
2. **Entering/leaving tsunami zone signs at high ground intersections along major evacuation routes:** Signs indicating the extent of the XXL tsunami inundation zone should be placed along the two major evacuation routes in Charleston. See Figure 17 for locations of the intersection of tsunami zones and high ground (green dots). Entering signs should be placed on the side of the road where travel is moving into the tsunami zone. Leaving signs should be placed on the side of the road where travel is moving out of the tsunami zone. These signs help

both to educate people of these zones on a daily basis and to let them know when they've reached safety during an evacuation event. Blue lines could be used in addition to or instead of signs, but must be easily visible and include public outreach and education about what they mean. OEM has more information and guidance about tsunami blue lines.

3. **Visitor Education:** Provide educational and evacuation information at the Charleston Marine Life Center and Charleston Welcome Center. This could include evacuation brochures and route maps, background information on the CSZ earthquake and tsunami hazard, and tips for becoming prepared (as a resident or as a visitor). Some of this information could be developed as an interpretive sign or informational kiosk, as well as to be handed out to visitors as brochures.
4. **Community Outreach Event – "Race the Wave 5k":** Similar to what has been done in Cannon Beach, the community could host a run/walk event that has participants race a tsunami evacuation route as a fun awareness event. An emergency preparedness fair could be incorporated at the event finish to answer questions and give tips on personal preparedness to participants in a fun learning environment. *See maps in Appendix C for potential race routes.*

CONSTRUCTION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Bridge Retrofit Over South Slough	Low	ODOT, County Public Works, Confederated Tribes Of The Coos, Lower Umpqua, And Siuslaw	FEMA HMA, Municipal Financing, ODOT, Federal Highway	Residents, Employees, Visitors
Pedestrian Bridge Construction	Low	ODOT, County Public Works, Confederated Tribes Of The Coos, Lower Umpqua, And Siuslaw	FEMA HMA, Municipal Financing, ODOT, Federal Highway	Residents, Employees, Visitors
Trail Improvements for Coos Head	Medium	County Public Works, Confederated Tribes Of The Coos, Lower Umpqua, And Siuslaw, Oregon State Parks	ODOT, Recreational Trail Grants	Residents, Employees, Visitors

Problem Statement: The highway bridge over South Slough is not earthquake or tsunami retrofitted and will likely fail in a CSZ event. While this bridge is not necessary for pedestrian evacuation according to the Beat the Wave analysis, it does serve an important purpose to the community for connectivity post-event.

Project Descriptions:

1. **Bridge retrofit of Cape Arago Highway Bridge over South Slough:** If this bridge needs improvements in the future, it may be beneficial to incorporate earthquake and tsunami retrofits into the bridge at that time. For example, it would be good to include the estimated wave height of tsunami waves at that location in order to ensure the bridge is high enough to survive the tsunami and be functional after a CSZ event. This project would be a major undertaking.

2. **Pedestrian/recreational bridge across South Slough**: Retrofitting a vehicle bridge may be too costly, but constructing a new pedestrian or multi-use pathway bridge may be more feasible and provide additional community benefits. Such a pathway could be developed alongside the existing bridge and be used as a walking/cycling pathway on a day-to-day basis to relieve congestion and provide safety for bikers and pedestrians. It can be incorporated into the County's Transportation System Plan and ongoing traffic planning for the Coos Head area. Construction of this type of bridge should incorporate both earthquake and tsunami design principles to be able to withstand both events. Additionally, the bridge would need to accommodate maritime traffic entering and leaving the slough (e.g. a draw bridge).
3. **Trail improvements along Coos Head Loop**: There is an existing pedestrian trail off Coos Head Loop. This trail could be improved for tsunami evacuation purposes. This could include adding lighting, signage, trail hardening, and vegetation maintenance. This pathway would serve to provide additional evacuation access from the Charleston area to high ground. Additionally, it could provide added community benefits by providing a recreational hiking trail and scenic overlook on a daily basis.

3.4 Outer Coast (South of Coos Bay Estuary)

3.3.1 Community Overview

For this plan, the Outer Coast is defined as the area from the south jetty of the Coos Bay estuary to Shore Acres State Park and includes Bastendorff Beach and Sunset Bay State Park and Campground. Cape Arago State Park was also included in the BTW modeling for this area, but is outside of the tsunami inundation zone so was left out of this analysis for evacuation purposes. This area includes two state parks, one county park, a campground, a golf course, an RV resort, and a few residential areas.

3.3.2 Existing Evacuation Facilities Analysis

Tsunami Wave Arrival Time

The first wave reaches the beaches here around 16 minutes. This whole outer coast area gets completely inundated quickly – in 18 to 20 minutes. The extent of inundation (to areas southwest of Cape Arago Highway) occurs by 22 to 24 minutes.

Existing Evacuations Routes and Speeds

The evacuation routes for this area vary. There are no critical or essential facilities in the inundation zone here. Evacuation speeds for these predominantly beach areas range between a slow walk (0-1.4 mph; near developed areas) to a sprint (6.8-10 mph; out on beaches) and even to "unlikely to survive" categories (>10 mph; in isolated areas). See Appendix C for pedestrian evacuation speeds and evacuation communities.

Challenging areas to evacuate include the beach at the south jetty; Bastendorff beach; the beach between Yoakam Point and Gregory Point; and some areas near Sunset Bay and Sunset Bay campground.

Critical Facilities

There are no critical facilities in this area.

Conclusions

Areas out on the beach and away from existing development or facilities will be hard to evacuate on foot and may prevent evacuation clearance. New or improved pedestrian evacuation trails may help some of these more remote areas evacuate more easily. Additionally, evacuation signs and route markers would help direct pedestrians in the right direction, as evacuation routes may not be intuitive and this area experiences high volumes of visitors. Current signage for tsunami evacuation along the Outer Coast is inadequate. There are no designated assembly areas. Adding assembly areas and signs is suggested.

3.2.3 Evacuation Improvements Project Identification

WAYFINDING & EDUCATION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries

Directional Evacuation Route Signs	High	County Emergency Management, Oregon Department Of Transportation, County Roads Department, Public Works, Oregon State Parks	NTHMP (OEM/DOGAMI), FEMA HMA, Recreational Funds	Tourists/Visitors
Entering/Leaving Signs	High	County Emergency Management, Oregon Department Of Transportation, County Roads Department, Public Works, Oregon State Parks	NTHMP (OEM/DOGAMI), FEMA HMA, Recreational Funds	Tourists/Visitors
Visitor Education	Medium	Chamber of Commerce, Travel Oregon (Oregon Coast Visitor's Association), Oregon Sea Grant, Oregon State Parks, Coos County Parks	Oregon State Parks, Coos County Parks, FEMA HMA	Tourists/Visitors

Problem Statement: Limited existing signage may present difficulty to residents and visitors in evacuating from the inundation zone.

Project Descriptions:

1. **Directional evacuation highway signs off Cape Arago Highway, towards high ground:** Tsunami evacuation signs with a directional arrow should be placed along Cape Arago Highway at intersections with major evacuation routes that continue to high ground. For areas south of the Coos Bay estuary south jetty, these intersections include: Ocean View Road, Coos Head Loop, Bastendorff Beach Road, Cottell Lane, and an unnamed road to a wastewater treatment facility off Cape Arago Highway. Signage will help to reinforce what roads go to high ground to residents, tourists, and visitors on a daily basis, as well as act as a wayfinding aid during tsunami evacuation. (NOTE: "You are Here" tsunami evacuation signs already exist at the main beach access points at Bastendorff Beach.)
2. **Entering/leaving tsunami zone signs at high ground intersections along major evacuation routes:** Signs indicating the extent of the XXL tsunami inundation zone should be placed along the major evacuation routes off Cape Arago Highway as noted above. See maps in Appendix C for locations of the intersection of tsunami zones and high ground (green dots). Entering signs should be placed on the side of the road where travel is moving into the tsunami zone. Leaving signs should be placed on the side of the road where travel is moving out of the tsunami zone. These signs help both to educate people of these zones on a daily basis and to let them know when they've reached safety during an evacuation event. Blue lines could be used in addition to or instead of signs, but must be easily visible and include public outreach and education about what they mean. OEM has more information about tsunami blue lines.
3. **Visitor Education:** Provide educational and evacuation information at every state and county park in this area: Bastendorff Beach, Sunset Bay State Park, Shore Acres State Park, and Cape

Arago State Park. This could include evacuation brochures and route maps, background information on the CSZ earthquake and tsunami hazard, and tips for becoming prepared (as a resident or as a visitor). Some of this information could be developed as an interpretive sign or informational kiosk, as well as to be handed out to visitors as brochures. Interpretive walks along tsunami evacuation routes could be integrated in ongoing park educational activities.

CONSTRUCTION

Project Name	Priority	Potential Project Partners	Potential Funding Sources	Project Beneficiaries
Pedestrian Trail Improvements	Medium	County Public Works, Confederated Tribes Of The Coos, Lower Umpqua, And Siuslaw, Oregon State Parks	ODOT, Recreational Trail Grants	Residents, Employees, Visitors

Problem Statement: Evacuation from the beach is very difficult in this area.
Project Descriptions:

1. **Pedestrian trail improvements:** Evacuation on the beach areas between Bastendorff Beach and Cape Arago Lighthouse is difficult. Adding additional pedestrian evacuation trails off Cape Arago Highway in key places could significantly help decrease pedestrian walking speeds for these areas (Appendix C.8). While locations have been suggested, an investigation into land ownership and easements would have to be conducted, as well as an engineering geologic review of sites to find the best locations to put new pedestrian trails. Additionally, the existing trail located behind Sunset Bay Campground could be more clearly signed and hardened as an official tsunami evacuation route.

4. IMPLEMENTATION RESOURCES AND EVACUATION PROJECTS

4.1 Design and Construction Standards

Below is a list of resources related to Evacuation Facility Design and Construction Standards, applicable for a variety of projects suggested in the sections above:

- Bicycle and Pedestrian Design:
  - Oregon Department of Transportation. 2011. Oregon Bicycle and Pedestrian Design Guide, 3rd Edition. Oregon Highway Design Manual Appendix L.
- Design requirements and ideas for wayfinding signage:
  - PUARL (Portland Urban Architecture Research Lab). 2014. "Up and Out" Oregon Tsunami Wayfinding Research Project: Final Project Report and Guidance Document.
  - PUARL (Portland Urban Architecture Research Lab). 2015. "Up and Out 2" Oregon Tsunami Wayfinding Research Project: A Study in Seaside and Warrenton.
  - DOGAMI. 2003. OFR-03-06 Tsunami Sign Placement Guidelines.
  - OEM & DOGAMI. Version 05-13-2019. Oregon Tsunami Evacuation Wayfinding Guidance.
- Vertical evacuation structures:
  - Applied Technology Council. April 2012. FEMA Guidelines for Design of Structures for Vertical Evacuation from Tsunamis, Second Edition. Federal Emergency Management Agency, National Oceanic and Atmospheric Administration.
  - Chock, G. 2016. Design for Tsunami Loads and Effects in the ASCE 7-16 Standard. Journal of Structural Engineering: 142 (11). (International Building Code standards)
  - Applied Technology Council. June 2009. Vertical Evacuation from Tsunamis: A Guide for Community Officials. Federal Emergency Management Agency, National Oceanic and Atmospheric Administration.

4.2 Tsunami Evacuation Wayfinding Signage

Any proposed tsunami evacuation wayfinding signage proposed for the unincorporated coastal areas of Coos County should conform to the publication: OEM & DOGAMI. Version 05-13-2019. *Oregon Tsunami Evacuation Wayfinding Guidance.*

A tsunami evacuation wayfinding system informs people what to do and when to do it. The system is designed to make the process clear and efficient before, during, and after a tsunami. Prime elements to include in wayfinding improvements:

- Awareness kiosks
- Tsunami hazard zone signs
- Tsunami evacuation route signs
- Zone thresholds (entering/leaving)
- Assembly areas

For different populations, such as people with disabilities and the many unprepared tourists during the summer season, special escape sequences and patterns provide innovative wayfinding solutions for tsunami evacuation. These populations include elderly, disabled, children, visitors in hotels, RV

park visitors, etc. The wayfinding system should include techniques to find safe ground in a limited period of time, potentially at night or in difficult weather conditions.

4.2.1 Sign Type Selection

Signage can be two-dimensional, but also can include technological/sensory signals (e.g. sound, light) – an important concept when considering access and functional needs populations. When selecting a sign as a part of a signage system, the following elements should be considered:

- Basic function of sign
- Signage technology applied
- Position in space, method of fixing
- Size in relation to reading distance
- Illumination
- Requirements for impaired users
- Level of vandal resistance

4.3 Financing Strategies

Cost estimates have not been developed for the tsunami evacuation improvement projects identified in this plan. Resources to help develop facility improvement cost estimates can be found at the following:

- American Association of Cost Engineers – requires membership or payment (https://web.aacei.org/resources)
- Whole Building Design Guide – Cost Estimating (http://www.wbdg.org/design/dd_costest.php)
- American Association of State Highway and Transportation Officials (AASHTO) – Practical Guide to Cost Estimating, requires membership or payment (https://bookstore.transportation.org/collection_detail.aspx?ID=122)
- FEMA Cost Estimating Format (https://www.fema.gov/public-assistance-cost-estimating-format-standard-operating-procedure)
- See **Appendix C** for municipal financing mechanisms, state and federal funding programs, and other grant and financing mechanisms to consider.

4.3.1 Questions to Ask

In identifying projects to move forward with, it's important to bear in mind the following questions:

- Do citizens consider this to be an important public issue that requires a public remedy?
- Who directly benefits from the design, construction, and operation of these assets?
- Who indirectly benefits from the presence of these assets when not needed for an emergency?
- Do citizens have a preference among the various options available to finance the infrastructure investment?
- Is the scale of the need within the means of the community to finance or is outside assistance necessary?
- Should different strategies be used to elicit funding from seasonal vs. year-round residents?

- Is needed infrastructure within the jurisdiction/control of the community, or is there a need to engage other units or levels of government?

The following tools are mostly likely to succeed for enhancing a community's evacuation route system[8]:

  - Using existing right-of-ways,
  - Negotiating/purchasing easements, and
  - Purchasing new right-of-ways.

In addition, the construction of evacuation facilities should consider the following:

- Determining the most effective location,
- Determining co-benefits to access additional funding streams, and
- Determining design and construction standards applicable to specific project.

[8] DLCD. 2018. Tsunami Land Use Guide, Chapter 5, Tip. URL: https://www.oregon.gov/LCD/OCMP/docs/Publications/TsunamiLandUseGuide_FINAL_062718.pdf

5. EDUCATION, OUTREACH, AND TRAINING

In tsunami areas, it is crucial to support an ongoing sustained tsunami public education program in order to ensure effective evacuation and save lives. This section presents guidance for creating pre-disaster education and outreach activities to educate the public about appropriate actions to take when natural signs (i.e. ground shaking) indicate a tsunami is imminent or when a tsunami warning message has been issued.

Residents, homeowners, business owners, and tourists alike benefit from educational activities that increase their awareness of local hazards. These educational activities can and should be combined with other, existing hazard education programs, such as earthquake preparedness, when possible.

5.1 News and Social Media

Traditional local media outlets (TV, radio, newspaper, etc.), public social media accounts, and other local websites (e.g. the Chamber of Commerce) should be utilized as appropriate to announce community training events and provide public service announcements (PSAs) regarding tsunami evacuation.

5.1.1 News Organizations

Developing a working relationship with local newspapers and radio is an effective mode of communicating with the public.

Recommended Action

- Work with local newspapers and radio stations to announce tsunami awareness events and provide community education information and resources. Local service providers include:
    - All local TV stations (KEZI, KCBY, KDCQ and any other stations available)
    - All Newspapers (The World newspaper, Bandon Western World newspaper, Coquille Valley Sentinel Newspaper, Myrtle Point Herald Newspaper and any other Newspaper that is available in the area)
    - All local radio Stations (KOOZ, K-Light-K-Dock,KYTT-FM, KSHR, BICOASTAL MEDIA and any other stations available in area).

Resources

- Tsunami Emergency Guidebook for Oregon Mass Media, Oregon Emergency Management, September 2007: http://www.oregongeology.org/tsuclearinghouse/resources/pdfs/OregonTsunamiMediaBinder_final_6_20_07.pdf

5.1.2 Social Media

Social media's role in emergency communication has grown over the past several years, not only as a major channel for broadcasting emergency information but also as a means of engaging and conversing with the public during all emergency mission phases (protection, preparedness, mitigate, response, and recovery).

Recommended Action

- Consistently incorporate tsunami education information into social media accounts, including the graphics used on tsunami evacuation signs. Social media accounts should be monitored to manage misinformation and rumor control.
- Develop working relationships with local bloggers and businesses to utilize their social media presence to retweet or copy posts so they reach a larger audience.

Resources

- FEMA Social Media and Emergency Preparedness Press Release - https://www.fema.gov/news-release/2018/04/16/social-media-and-emergency-preparedness
- FEMA Social Media in Emergency Management Training - https://training.fema.gov/is/courseoverview.aspx?code=IS-42
- The Department of Homeland Security's Innovative Uses of Social Media in Emergency Management: https://www.dhs.gov/sites/default/files/publications/Social-Media-EM_0913-508_0.pdf

5.1.3 Websites

Websites continue to play a large role in providing information and outreach activities to residents and tourists.

Recommended Action

- Include tsunami awareness information on County websites in a prominent location, and use the websites to announce tsunami-related community activities. Consider linking to relevant webpages from DOGAMI, DLCD, NOAA, etc., rather than recreating the information.
- Develop working relationships with local businesses and organizations to include a link back to the County's tsunami information to increase the website's reach.

5.2 Community Activities

Community activities are a vital part of public education and outreach. Below are some examples of community activities held by other coastal communities.

Recommended Action

- Hold at least one community-wide outreach or education activity annually.
- Provide educational and evacuation information at every state and county park.
- Develop community outreach materials such as the following to be distributed at community events:
    - Brochures containing zone and route information
    - Refrigerator magnets with preparedness information
    - Maps to be printed in phonebooks

5.2.1 Door-to-Door Education and Community-wide Evacuation Drills

The National Tsunami Hazard Mitigation Program studied which educational strategies work best for tsunami awareness in Seaside, Oregon (Connor 2005). Door-to-door outreach and evacuation drills were the most effective techniques according to polls for this study.

Recommended Action

- Develop Volunteer Educators who can go door-to-door to discuss tsunami awareness and safety with residents. These volunteers would be trained by the County and given brochures to hand out to residents.
- Conduct a community-wide tsunami evacuation drill.

Resources

- The Oregon Office for Emergency Management's Tsunami Evacuation Drill Guidebook: https://www.oregon.gov/oem/Documents/Tsunami_Evacuation_Drill_Guidebook.pdf

5.2.2 Run/Walk Event

Events like the Cannon Beach Race the Wave provide an opportunity to build awareness of tsunami routes. Participants in the annual 5K and 10K Race the Wave fun run/walk/roll start on the beach, follow a scenic tsunami evacuation route through the County, and reach the finish-line out of the tsunami inundation zone. A preparedness fair is held near the finish-line for all participants and includes food, games, and giveaways.

Recommended Action

- Host a run/walk event that has participants race a tsunami evacuation route as a fun awareness event.
- Hold a preparedness fair at the end of the race. See Section 6.2.3 for additional information on Preparedness Fairs.

Resources

- An example press release for the Cannon Beach event: https://www.fema.gov/news-release/2015/09/08/know-your-tsunami-evacuation-routes-race-wave-cannon-beach-or-sept-13
- Up and Out Oregon Tsunami Wayfinding Research Project Final Project Report & Guidance Document: https://www.oregon.gov/oem/Documents/Up_And_Out_Phase1.pdf

5.2.3 Preparedness Fairs/Booth

An emergency preparedness fair or a tsunami preparedness-focused booth at a community event can help educate community members and visitors about tsunami evacuation. A preparedness fair can feature many booths and activities. It can be held separately or combined with another event, such as a 5K run/walk.

Recommended Action

- Set up a booth about tsunami preparedness at local community events such as:

- Coos County Fair
- Local Festivals (Such as: Gay 90's, Harvest Festivals, Gorse Blossom Festival, Cranberry Festival, Blackberry Festival, Seafood Festival and Fun Festival)
- Home & Gardening Shows

Resources

- The American Red Cross and California Emergency Management Agency's Disaster Preparedness Event Toolkit: https://www.redcross.org/content/dam/redcross/atg/Chapters/Division_2_-_Media/Bay_Area/Bay_Area_-_PDFs/Preparedness_Event_Toolkit.pdf

5.2.4 Tsunami Quests

A Tsunami Quest is an educational activity for families and children to learn about tsunamis and tsunami evacuation routes in a clue-directed hunt format. The Oregon Sea Grant is already using Tsunami Quests in Clatsop, Lincoln, and Coos Counties to help residents and visitors prepare for a major earthquake and tsunami. The "hunt" culminates in discovery of a box that holds a guest book so participants can record their achievement at completing the Quest. The goal is to encourage people to explore these routes for fun, so that they will be familiar with them in the event of a tsunami.

Recommended Action

- Invite the Oregon Sea Grants Quest Coordinator to hold a workshop.
- Develop a map and a series of educational clues that, when followed, lead the walkers to higher ground.
- Engage elementary or middle school students to develop the clues as a class exercise.
- Consider incorporating geocaches with preparedness information.

Resources

- The 2017-18 Oregon Coast Quests Book: https://seagrant.oregonstate.edu/sgpubs/2017-18-oregon-coast-quests-book
- A video that describes the quest concept and how quests are used to teach coastal visitors and locals what to do in the event of a tsunami: https://youtu.be/TQvgSMiby7k.

5.3 Schools and Childcare Facilities

Empowering children with knowledge about tsunami hazards and evacuation routes can be an excellent motivator for families to become more aware and prepared. Tsunami education efforts can be incorporated into existing emergency exercises and trainings.

5.3.1 Child-Appropriate Trainings

Many materials are available online for teachers to use in educating children about tsunamis. The Tommy Tsunami Coloring Book from the National Tsunami Warning Center is one example.

Recommended Action

- Work with teachers to develop tsunami curriculum that is age appropriate.

Resources

- The Washington Military Department, Emergency Management Division's booklet "How the Smart Family Survived a Tsunami" for elementary children (K-6): https://www.mil.wa.gov/uploads/pdf/Publications/HowtheSmartFamilySurvivedaTsunami.pdf
- The Tommy Tsunami Coloring Book from the National Tsunami Warning Center: https://www.tsunami.noaa.gov/pdfs/tommy_tsunami_coloring_book.pdf
- San Diego County used an animated short film to educate kids about tsunamis: https://www.youtube.com/watch?v=UzR0Rt3i4kc
- NOAA's Tsunami Education website: https://www.tsunami.noaa.gov/education.html#kids

5.3.2 Parent/Guardian Trainings and Workshops

Children are not the only audience that can be reached through school activities—parents and guardians attend many events at schools, providing ample opportunities to reach them with the tsunami preparedness message.

Recommended Action

- Encourage schools to incorporate tsunami information into their Back-to-School nights or other gatherings where parents/guardians are present.

5.3.3 Evacuation Drills

Evacuation drills are effective in training students and children on what to do in the event of a tsunami.

Recommended Action

- Encourage schools and childcare facilities to conduct evacuation drills, in conjunction with their earthquake drills, in the mapped tsunami evacuation zone.

Resources

- The Oregon Office for Emergency Management's Tsunami Evacuation Drill Guidebook: https://www.oregon.gov/oem/Documents/Tsunami_Evacuation_Drill_Guidebook.pdf

5.4 Businesses

5.4.1 Business Workshops

Businesses in the hazard zones may be owned, staffed, or frequented by customers who, like visitors, live elsewhere and may not have been reached by the local outreach activities. Therefore, employers and their employees need tsunami evacuation education and training to ensure everyone knows when and how to evacuate in the event of a local earthquake and tsunami.

Recommended Action

- Work with the Chamber of Commerce to host regular training sessions for business owners, sharing information with them, so they, in turn, could return to their businesses and host in-house training.
- Develop Volunteer Educators to conduct in-house trainings at local businesses for staff.

Resources

- How to Prepare Your Business for the Next Tsunami (Hawaii specific, but useful information): http://tsunami.org/1about/pdfs/how_to_prepare_your_business_for_the_next_tsunami.pdf

5.4.2 Tsunami Quests for Businesses

Tsunami Quest activities are not just for families and children, they can be used by businesses to educate their employees about tsunami preparedness.

Recommended Action

- Encourage local businesses to utilize the Tsunami Quest activity (described above) as a "wellness event" for their employees. The activity may need to be adapted to be more appropriate for businesses.

Resources

- 2017-18 Oregon Coast Quests Book: https://seagrant.oregonstate.edu/sgpubs/2017-18-oregon-coast-quests-book
- A video that describes the quest concept and how quests are used to teach coastal visitors and locals what to do in the event of a tsunami: https://youtu.be/TQvgSMiby7k.
- Effective Emergency Preparedness Planning: Addressing the Needs of Employees with Disabilities: https://www.dol.gov/odep/pubs/fact/effective.htm

5.5 Visitors/Recreationists

Visitors and recreationists may spend a limited amount of time in tsunami prone communities, but they are still at risk. There are many ways to provide these temporary residents with some education about the possibility of a tsunami and what to do if one happens.

5.5.1 Education Materials

The brochures and other hand-outs developed for community activities can be used to educate visitors about what to do and why.

Recommended Action

- Place materials at the following locations:
    - Visitor centers
    - Information kiosks
    - Trail markers
    - Signs on beaches (particularly areas that are hard to evacuate from or in which the direction you need to evacuate to is not obvious)

Resources

- The Disaster Response Guidebook for Hotels and Motels on Washington's Coast, published by the Washington Military Department Emergency Management Division, includes information about a variety of disasters, including tsunamis: https://www.mil.wa.gov/uploads/pdf/emergency-management/haz_hotelmotel_guidebook.pdf
- FEMA Website tsunami page with information about recognizing the signs: https://www.ready.gov/tsunamis

If printing materials on this scale is prohibitive, consider developing a catchy phrase and website link that individuals can go to in order to download the files.

5.5.2 Hotels, Motels, and Bed and Breakfasts

Visitors staying overnight for the weekend or on an extended vacation may be unfamiliar with tsunamis. The hand-outs used for preparedness fairs and other events hold valuable information about tsunami evacuation that can be shared with temporary residents.

Recommended Action

- Provide tsunami evacuation literature to local hospitality businesses. Request that they be permanently displayed in the lobby or hotel rooms, informing tourists of evacuation routes and general earthquake/tsunami awareness.

Resources

- A glossy brochure is available in many languages from UNESCO, at: http://itic.ioc-unesco.org/index.php?option=com_content&view=article&id=1169&Itemid=2017
- Disaster Response Guidebook for Hotels and Motels on Washington's Coast: https://www.mil.wa.gov/uploads/pdf/emergency-management/haz_hotelmotel_guidebook.pdf

5.6 Access and Functional Needs

You will need unique means of warning your community's non-English speaking and deaf populations, and people with health or mobility issues may need to be transported out of the hazard area in a far-field event.

5.6.1 Mobility Challenges

Within mobility disabilities, there are several subcategories that should be taken into account when planning for tsunami evacuations including: wheelchair users, ambulatory mobility disabilities, respiratory issues, and young children.

Recommended Action

- Encourage residents to get to know their neighbors and whether they will need assistance evacuating.
- Encourage hospitals, doctors, and clinics to provide tsunami evacuation materials to their patients.
- Incorporate evacuation planning into CERT training.

Resources

- To Define, Locate, and Reach Special, Vulnerable, and At-risk Populations in an Emergency: This CDC workbook is intended to provide public health and emergency preparedness planners with better ways to communicate health and emergency information to at-risk individuals with access and functional needs for all-hazards events through step-by-step instructions, resources guides and templates. https://emergency.cdc.gov/workbook/pdf/ph_workbookfinal.pdf
- This guidance will introduce and connect you to available resources and inclusive strategies for integrating the access and functional needs of at-risk individuals into emergency preparedness, response, and recovery planning at all jurisdictional levels. https://www.phe.gov/Preparedness/planning/abc/Pages/afn-guidance.aspx
- Preparing for Disaster for People with Disabilities and other Special Needs. https://www.fema.gov/media-library/assets/documents/897

5.6.2 Vision Impairment

Individuals who experience partial or total vision loss, including night vision challenges, rely on their sense of touch and hearing to perceive their environment. After a CSZ event, when physical obstructions such as debris, road or sidewalk damage, and liquefaction changes the lay of the land, those who experience vision impairment may find it difficult to navigate to a location outside the tsunami zone without assistance.

Recommended Action

- Incorporate lighting and reflective material on evacuation signs.
- Produce community information in larger text options.

Resources

- American Council for the Blind: http://www.acb.org/large-print-guidelines
- American Foundation for the Blind: http://www.afb.org/info/reading-and-writing/making-print-more-readable/35

5.6.3 Limited-English Proficiency

Key to an individual's ability to evacuate is access to information. Individuals with limited English proficiency may require additional guidance in their native language.

Recommended Action

- Incorporate communication education materials into community events and websites in their native language.

Resources

- The U.S. Department of Justice's 2016 Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery: https://www.justice.gov/crt/file/885391/download
- https://www.hhs.gov/civil-rights/for-individuals/special-topics/emergency-preparedness/limited-english-proficiency/index.html

5.6.4 Deaf or Hard of Hearing

Individuals who are deaf or hard of hearing may not respond to verbal direction or hear warning sirens.

Recommended Action

- Work with organizations who provide services to those who are deaf or hard of hearing to recognize the signs of a possible Tsunami (ground shaking) and the necessity of evacuating immediately after the ground stop shaking.
- Encourage residents to get to know their neighbors and whether they will need non-verbal communication assistance.

Resources

- Emergency Preparedness for Individuals with Hearing Loss: A Family Guide, from the Vanderbilt Kennedy Center for Excellence in Developmental Disabilities: https://vkc.mc.vanderbilt.edu/assets/files/tipsheets/emprephearinglosstips.pdf
- The American Red Cross and NTID's Disaster Preparedness and the Deaf Community — For the Deaf, Hard of Hearing and Latened Deaf: http://www.cidrap.umn.edu/sites/default/files/public/php/332/332_brochure.pdf

5.7 Training and Exercises

Trainings and exercises are an excellent tool to help solidify provided educational materials into action.

Recommended Action

- Conduct yearly exercises with County staff to encourage awareness around their responsibilities during and after a Tsunami event.
- Conduct community exercises.
- Offer frequent trainings to local businesses and community organizations.

5.8 Measuring Success

Learning what the community's awareness is about tsunamis through community surveys is an informative way to help guide education efforts.

Recommended Action

- Distribute questionnaires bi-annually to measure the baseline of public awareness and preparedness and subsequent changes to determine program effectiveness and to revise efforts. Consider encouraging participation by utilizing a raffle prize related to emergency preparedness.

Resources

- A sample Community Tsunami Awareness Survey is available here: http://kejian1.cmatc.cn/vod/comet/emgmt/community/media/documents/survey.pdf.

5.9 Current Education & Outreach Efforts

Below is a short summary of current activities related to tsunami evacuation and preparedness happening in Coos County.

Port of Coos Bay – gives informational brochures to all boaters who come into the office. Does training with all their staff about tsunami hazards and evacuation routes. Has an emergency operations plan and updates/practices this regularly.

County Emergency Manager – gives outreach presentations about personal preparedness to any group that requests a presentation. This usually results in approximately 20 public events per year. The Emergency Manager is available to give presentations to schools groups, campgrounds, employees and businesses, and preparation fairs.

SECTION 3.9.500 EROSION

1.1 Critical Streambank Erosion

Streambank erosion (other than by flash flooding) occurs constantly on all rivers and streams in the Coos and Coquille drainage basins. Critical erosion causes a loss of land to streambank cave-ins and can initiate landslides on the adjacent uplands. Critical streambank erosion occurs most commonly along floodplains and at the base of river terraces or landslide deposits in the uplands. Valuable farmland is being lost from the floodplains in the Broadbent area, for example, and along Highway 42 several landslides are kept active by streambank erosion at their bases. The problem is naturally occurring and can be most effectively and most economically controlled by protection of bank vegetation and by careful planning, which can prevent the location of structures in areas threatened by this hazard. Careful engineering of roads is also necessary to prevent frequent need for expensive repairs. Riprap and other structural solutions are less preferred but may be useful or desirable for protection of existing roads or structures and land.

1.2 Coastal Erosion

Coastal erosion is a natural process that continually affects the Oregon coast. Erosion becomes a hazard when human development or public safety is threatened. Beaches, sand spits, dunes, and bluffs are constantly affected by waves, currents, tides, and storms, resulting in chronic erosion, landslides, and flooding. Changes may be gradual over a season or many years. Changes may also be drastic, occurring during the course of a single storm event. Erosion may be caused by large waves, storm surges, rip cell embayments, high winds, rain, runoff, flooding, or increased water levels and ocean conditions caused by periodic El Niños. Coastal dunes and bluffs comprised of uplifted marine terrace deposits are especially vulnerable to chronic and catastrophic erosion. Coastal erosion processes create special challenges for people living near the ocean, requiring thoughtful planning in order to minimize the potential dangers to life and property. Attempts to stabilize the shoreline or beach are often futile, because the forces that shape the coast are persistent and powerful.

1.3 Wind Erosion and Deposits

Wind erosion and deposits are essentially coastal processes locally and, together with wave action, contribute to our changing coastline. Areas subject to the effects of wind erosion and deposition are indicated in the mapping and include the sand dune areas inland from the Coos-Umpqua beach in the Oregon Dunes National Recreation Area, the Bandon spit on the Coquille River, and the New River area.

Blowing sand can be a nuisance to recreational users and a long-term hazard to structures located in the path of migrating dunes, which can move as much as 6 feet per year. This is a hazardous factor in local planning because of an abundant sand supply, persistent winds, and an absence of stabilizing vegetation. Identification and mapping of areas subject to wind erosion and deposition can aid in planning the optional location on development. Concern should also be shown for the impact of development on currently stabilized areas. [9]

Such development could open new deposits of loose sand causing problems on adjacent properties. Protecting existing vegetation and requiring revegetation as soon as possible when the plant cover must

[9] See "Dunes and Ocean and Lake Shorelands" (Section 3.8, this document) for a discussion of the hazards of development in dune areas. "Stabilized areas" refers both to recently stabilized dunes and older established dunes (DS, DC, and OSC; and ODS respectively on the sand dunes maps in the Background Document, pp. 15-11 through 15-13). Older stabilized dunes generally have well-developed soil profiles. Both types are vegetated, whereas active dune forms are not.

be disturbed are ways of reducing this hazard. Additional hazards of development in dune areas are covered in the section on dunes (Section 3.8).

Section 3.9.600 Other Coastal Erosion

1.1 Winds

Persistent winds are a feature of much of Coos County and are of particular importance as a potential hazard to the siting of mobile homes. Accordingly, the State Department of Commerce enforces siting and tie-down regulations that govern the placement of mobile homes.

1.2 High Groundwater and Ponding

High groundwater and ponding are most common in the coastal lowlands, marine terraces, inland floodplains, and some areas of Coos County's sand dunes. Uneven settling, flooding of basements, floatation of septic tanks, and septic system failure are common consequences of development in these areas. Potential for pollution of domestic water sources is also high. Since public health is at issue, encouraging development of public water and/or sewer systems where dense development already exists in such areas is desirable.

1.3 Shoreline Erosion and Deposition

Beach and headland erosion occur along the entire Coos County coastline. These hazards are addressed in greater detail in Section 3.8, "Dunes and Ocean and Lake Shorelands." Areas of beach erosion and deposition and coastal headland erosion rates are shown on the map accompanying that section.

Wave erosion poses a major hazard to coastal development. Wave energy is highest during winter months, and erosion is consequently greater then. Broad summer beaches become narrow and steep as vast amounts of sand are moved offshore. Development that appears to be a safe distance from the sea becomes threatened when a particularly powerful series of storms pound the coast, as in the winter of 1976-1977.

The pattern of erosion of upland areas by waves depends on the geology. Sheared or crumbly rock leads to earthflow and slumping with rapid rates of erosion. Development in such areas can be dangerous. Wave erosion of hard bedrock forms cliffs and erosion rates are slow (except along faults or joints); when significant erosion does occur, it is be the breaking off of large chunks of rock. Hazard, however, is slight and moderate setbacks are generally considered adequate protection. Removal of driftwood and rock debris from the bases of cliffs and areas where mass movement is occurring probably increases erosion rates significantly.

Sand is constantly being moved by wave and current action. Interruption of this movement can cause formation of new beaches, as at Bastendorff following jetty construction. This generally occurs at the expense of other areas – existing beaches may get smaller or disappear altogether and headland erosion may increase. Placement of large rocks (riprap) and construction of protective structures like seawalls (which are parallel to the coast) and groins (rigid structures which project outward from the shore), then, should be discouraged since they have a negative impact on the properties of others by typing up sand that would have been deposited elsewhere and in some instances by removing a source of beach sand. They may also increase future costs to the public; on the East Coast and in California increased threat to coastal developments have lead to a hue and cry for publicly-funded coastal protection projects, many of which seem to be fraught with unforeseen impacts. One means of dealing with beach erosion holds much promise: beach nourishment (supplying sand, generally from dredging projects or from well offshore) is

being tried by the Army Corps of Engineers in the Miama, Florida, area and elsewhere. The mining and removal of sand from beaches also increases erosion and should be carefully controlled.

SECTION 3.9.700 WILDFIRE

Fire poses a major hazard to development in forested areas of the county and especially to the residential development in brushy coastal areas such as the Bandon area where there are extensive stands of highly inflammable gorse and broom. The problem is often compounded by inadequate roads serving residential developments in forested areas.

Community Wildfire Protection Plans (CWPPs) have helped communities work together to achieve common goals and deal with often controversial issues. CWPPs have offered many valuable opportunities to communities, allowing them to identify local priorities for community protection and resource management. In addition to enhancing safety and reducing risk to human structures and watersheds, communities with CWPPs are also given priority for USFS and BLM funded hazardous fuels reduction projects as authorized under the Healthy Forest Restoration Act of 2003 (HFRA). In the end, CWPPs have helped communities better protect themselves for fire risk and better manage their forested landscape.

The collaborative efforts of foresters from the federal and state agencies, rural fire departments, private landowners, local government agencies, volunteer organizations, and concerned citizens who live in the wildland urban interface, have resulted in signed CWPPs in every county and many communities across Oregon.

Coos County developed a Community Wildfire Protection Plan through a partnership among the University of Oregon's Community Service Center, local wildfire planning experts, and a range of federal, state, and local stakeholders. The project is funded through federal Title III funds. The project utilized a four-phase planning process developed in part based on guidance contained in Preparing a Community Wildfire Protection Plan: A Handbook for Wildland-Urban Interface Communities (2004) and the Community Guide to Preparing and Implementing a Community Wildfire Protection Plan (2008). The CWPP is hereby adopted by reference in the Coos County Comprehensive Plan.

Gorse (*Ulex* europaeus) is a perennial, heavily armored evergreen shrub growing from 3 to over 10 feet tall. Gorse plants are shrubby with stout and erect spreading branches covered in terminal thorns frequently forming dense thickets. Clusters of yellow pea-like flowers can be found on the plant throughout the year but peak bloom occurs March through May. Seedpods are hairy ½ to ¾ inch long, and brown when ripe. Mature pods burst, scattering seeds for several feet. Gorse was introduced from Europe in the 1890's at Bandon as an ornamental and living fence. Worldwide, European settlers brought the plant with them to more than 15 countries or islands where it has escaped causing significant economic harm. Currently Oregon has at least 55,000 acres at some level of infestation.

This plant is highly flammable and the morning of Saturday, Sept. 26, 1936, was the reason the City of Bandon burnt to the ground. The first started as a small forest fire but bursts of flame became fueled by the gorse. The fire completely consumed the City of Bandon, population 1,800. At least 10 people were killed, and all but a handful of buildings burned to the ground. Coos County is working to make sure this fire hazard is reduced through vegetation management requirements.

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

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

SECTION 1. TITLE

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

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

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

SECTION 4. FINDINGS

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

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

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

▪ 4.6.130 New and Replacement Dwellings and Structures in Forest Zone – Updated language to reflect requirement in OAR 660-0060-0035.

▪ 4.6.140 Development and Siting Criteria – No changes

▪ 4.6.145 Land Division to Preserve Open Space Park – ORS 215.783

▪ 4.6.150 Exception to Minimum Lot or Parcel Sizes (ORS 215.785)

▪ 4.6.200 Exclusive Farm Use Table – Reformatted all uses in a table. Updated to reformat to follow OAR tables. Changes as follows:

- Cider Business – new use pursuant to new legislation
- Update to high-value farm requirements for dwellings
- Replacement Dwelling requirements updated in response to new legislation. Reduces the process.
- Changes to commercial farm processing facility – reduced process and standards
- Updated Marijuana square footage to be consistent with commercial farm processing facility standards.

▪ 4.6.210-4.6.240 – No changes to language but will be renumbered to for formatting changes.

o CCZLDO Section Chapter 5

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

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

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

SECTION 6. SEVERANCE CLAUSE

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

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

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

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

SECTION 8. EMERGENCY CLAUSE

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

Dated this 18th day of December

ATTEST

Michelle Berglund
Recording Secretary

Approved as to form:

Nathaniel Johnson
Office of Legal Counsel

BOARD OF COMMISSIONERS

John W Lumt
Chair

Vice Chair

Absent
Commissioner

First Reading: December 18, 2019

Effective Date: December 18, 2019

Section 4.3.225 General Siting Standards

(8) OUTDOOR STORAGE IN RESIDENTIAL ZONES (a) Boats and trailers, travel trailers, pick-up campers or coaches, motorized dwellings, and similar recreation equipment may be stored on a lot but not used as an accessory use; (b) Automotive vehicles or trailers of any kind or type without current license plates, where required, and which are not in mechanical working order, shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings; (c) One operating truck may be stored on the lot of a truck driver provided it is accessory to the main use of the property. Additional trucks shall not be allowed.

ARTICLE 4.6 – RESOURCE AND RECREATIONAL ZONING DISTRICTS

AS USED IN TABLES I and II.

(1) "P" means the use is permitted and requires no review from the Planning Department
(2) "CD" means the use is allowed subject to compliance determination review with clear and objective standards (Staff review or Type I process). Permitted uses and activities and their accessory buildings and uses are permitted subject to the general provisions set forth by this ordinance.
(3) "ACU" means it is subject to Administrative Conditional Use (Planning Director's Decision or Type II Process)
(4) "HBCU" means the use is a Hearing Body Conditional Use (Planning Commission Decision or Type III Process)
(5) "PLA" means Property Line Adjustments subject to chapter 6.
(6) "L" means Land Division is required (Partition, Subdivision, Planned Unit Development) subject to Chapter 6. These reviews are subject to notice requirements as an ACU, Type II Process.
(7) The "Subject To" column identifies any specific provisions of Section X.07 to which the use is subject.
(8) "N" means the use is not allowed.
(9) "TR" Type of Review
(10) "HV" means High Value Farm Land
(11) "All Other" Means lands considered not High Value Farm Land

SECTION 4.6.100 ~~DEVELOPMENT AND USE PERMITTED~~ ***FOREST AND FOREST MIXED USE – USE TABLES***

Table 1 identifies the uses and activities in the Forest (F) and Forest/Mixed Use (FMU) zone. The tables describe the use, type of review, applicable review standards. Development shall also comply with Section 4.6.140 Development and Siting Standards. All dwellings and structures are subject to the siting standards found in Section 4.6.130. Exceptions to minimum lot and parcel sizes for the purpose of land division may apply as set out in Section 4.6.145 Land Division for Open Space and Special Assessment, and Section 4.6.145 Exceptions to Minimum Parcel Size. Properties that are located in a Special Development Consideration and/or overlays shall comply with the applicable review process identified by that Special Development Consideration and/or overlay located in Article 4.11.

If a use specifically states Forest Mixed Use only it is not permitted in the Forest Zone. If land is in a zone that allows both farm and forest uses, a dwelling may be sited based on the predominate use of the tract on January 1, 1993.

660-006-0025 Uses Authorized in Forest Zones

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are: (a) Uses related to and in support of forest operations; (b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational

opportunities appropriate in a forest environment; (c) Locationally dependent uses, such as communication towers, mineral and aggregate resources, etc.; (d) Dwellings authorized by ORS 215.705 to 215.755; and (e) Other dwellings under prescribed conditions.

	USE	TR	Subject to
Forest, Farm and Natural Resource Uses			
(2) The following uses pursuant to the Forest Practices Act (ORS chapter 527) and Goal 4 shall be allowed in forest zones. For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.			
1.	Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance; harvesting of a forest tree species, application of chemicals, and disposal of slash	P	(2)(a)
2.	Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation.	P	2(b), (d)
3.	Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.	P	2(c), (d)
(3) The following uses may be allowed outright on forest lands:			
4.	Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources (wildlife management);	~~CD~~ (P)	(3)(a)
5.	Farm use as defined in ORS 215.203.	P	(3)(b)
6.	Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;	CD	(3)(c)
7.	Temporary portable facility for the primary processing of forest products.	CD	(3)(d)
8.	Exploration for mineral and aggregate resources as defined in ORS chapter 517;	P	(3)(e)
9.	Private hunting and fishing operations without any lodging accommodations;	P	(3)(f)
10.	Towers and fire stations for forest fire protection;	CD	(3)(g)
11.	Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.283(1);	P	(3)(h)
12.	Water intake facilities, canals and distribution lines for farm irrigation and ponds;	P	(3)(i)
13.	Caretaker residences for public parks and public fish hatcheries;	CD	(3)(j)
14.	Uninhabitable structures accessory to fish and wildlife enhancement;	CD	(3)(k)
15.	Temporary forest labor camps;	P	(3)(l)

	USE	TR	Subject to
16.	Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;	P	(3)(m)
17.	Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8;	P	(3)(n)
18.	Alteration, restoration or replacement of a lawfully established dwelling;	CD	(3)(o)
19.	An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division.	CD	(3)(p)
20.	Dump truck parking as provided in ORS 215.311not to exceed seven (7). ***Log trucking parking may be allowed not to exceed seven (7) trucks.***	P	(3)(q)
21.	Agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building to another use. (ORS 215.760)	CD	(3)(r)
(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:			
22.	(Commercial) Permanent facility for the primary processing of forest products;	ACU	(4)(a), (5)
23.	(Commercial) Permanent logging equipment repair and storage;	ACU	(4)(b), (5)
24.	Log scaling and weigh stations;	ACU	(4)(c), (5)
25.	Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;	ACU	(4)(d), (5)
26.	Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4;	ACU	(4)(e), (5)
27.	Public parks including only those uses specified under OAR 660-034-0035 or 660- 034-0040, whichever is applicable;	ACU	(4)(f), (5)
28.	Mining and processing of oil, gas, or other subsurface resources, as defined in ORS chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS chapter 517;	ACU	(4)(g), (5)
29.	Television, microwave and radio communication facilities and transmission towers;	ACU	(4)(h), (5)
30.	Fire stations for rural fire protection;	ACU	(4)(i), (5)

	USE		TR	Subject to
31.	Commercial utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;		ACU	(4)(j), (5)
32.	Aids to navigation and aviation;		ACU	(4)(k), (5)
33.	Water intake facilities, related treatment facilities, pumping stations, and distribution lines;		ACU	(4)(l), (5)
34.	Reservoirs and water impoundments;		ACU	(4)(m), (5)
35.	Firearms training facility;		ACU	(4)(n), (5)
36.	Cemeteries;		ACU	(4)(o), (5)
37.	Private seasonal accommodations for fee hunting operations may be allowed. This use requires the applicant to address Section 4.6.130 and Section 4.6.140;		ACU	(4)(p), (5)
38.	New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;		ACU	(4)(q), (5)
39.	Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;		ACU	(4)(r), (5)
40.	Home occupations as defined in ORS 215.448 (this includes cottage industries);		ACU	(4)(s), (5)
41.	Hardship Dwelling: A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship;		ACU	(4)(t), (5)
42.	Expansion of existing airports;		ACU	(4)(u), (5)
43.	Public road and highway projects as described in ORS 215.283(2)(q) through (s) and (3);		ACU	(4)(v), (5)
44.	*(2)(q)*	Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.	ACU	(4)(v)(A), (5)
45.	*(2)(r)*	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.	ACU	(4)(v)(B), (5)
46.	*(2)(s)*	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.	ACU	(4)(v)(C), (5)
47.	*(3)*	Roads, highways and other transportation facilities and improvements not allowed under prior subsections.	ACU	(4)(v)(D), (5)
48.	Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035;		ACU	(4)(w), (5)
49.	Forest management research and experimentation facilities as described by ORS 526.215 or where accessory to forest operations;		ACU	(4)(x), (5)

	USE	TR	Subject to
50.	An outdoor mass gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons that continue or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.	ACU	(4)(y), (5)
51.	Storage structures for emergency supplies	ACU	(4)(z), (5)
Uses not covered under 660-006-0025 but were adopted in the County Ordinance and listed in statute or rule.			
52.	Alternative energy for non commercial uses	CD	(7)(A)
53.	Marijuana Uses (***Commercial*** Growth, Processing and Production)	CD	(7)(B)
54.	Non-motorized recreational trails	ACU	(7)(C)(5)
55.	Structural Shoreland Stabilization	ACU	(7)(D)
56.	Water development (diking and drainage, tide-gates, mitigating and nonstructural shoreland stabilization.)	CD	(7)(E)
Other uses allowed in the Forest Mixed Use only			
57.	Churches and public or private schools	HBCU	(8)(A)(5)
58.	Cider business and accessory uses	ACU	(8)(B)
59.	Youth camps (OAR 660-006-0031)	HBCU	(8)(C)
60.	Wineries and accessory uses	ACU	(8)(D)
Dwellings authorized by ORS 215.705 to 215.755; and (e) Other dwellings under prescribed conditions.			
61.	Dwelling allowed in Forest Mixed Use only (Lot of Record)	ACU	(9)(A), (9)(VII)
62.	Large tract forestland dwelling (ORS 215.740)	ACU	(9)(B)(I), (9)(C)
63.	Template Dwelling (Alternative forestland dwellings ORS 215.750)	ACU	(9)(B)(II), (9)(C)
64.	Replacement Dwelling (Other forestland dwellings 215.755)	ACU	(9)(B)(III), (9)(C)
65.	Hardship Dwelling (Other forestland dwellings 215.755)	ACU	(9)(B)(IV), (9)(C)
66.	Caretaker residences for public parks and public fish hatcheries. (Other forestland dwellings 215.755)	ACU	(9)(B)(V), (9)(C)
67.	Temporary Dwellings (RV Use only allowed pursuant to this provision)	CD	(9)(B)(VI), (9)(C)
68.	***Additional Forest Dwelling***	***ACU***	***(9)(B)(VII), (9)(C)***

SECTION 4.6.110 ~~ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE~~ ***REVIEW STANDARDS***

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the

Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:

(a) Uses related to and in support of forest operations;
(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;
(c) Locationally-dependent uses, such as communication towers, mineral and aggregate resources, etc.
(d) Dwellings authorized by ORS 215.705 to 215.755; and
(e) Other dwellings under prescribed conditions.

(2) PERMITTED USES: The following uses pursuant to the Forest Practices Act (ORS chapter 527) and Goal 4 shall be allowed in forest zones:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;

(b) Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation;

(c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities; and

(d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(3) PERMITTED OR USES SUBJECT TO COMPLIANCE DETERMINATIONS: The following uses may be allowed outright on forest lands subject to the review identified in the use table for forest are listed as part of the use:

(a) WILDLIFE AND FISHERIES RESOURCES USES - Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;

(b) FARM USES - Farm use as defined in ORS 215.203;

(c) LOCAL DISTRIBUTION LINES - Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;

(d) PORTABLE FACILITY FOR THE PRIMARY PROCESSING - Temporary portable facility for the primary processing of forest products;

(e) EXPLORATION FOR MINERAL AND AGGREGATE - Exploration for mineral and aggregate resources as defined in ORS chapter 517;

(f) PRIVATE HUNTING AND FISHING OPERATIONS - Private hunting and fishing operations without any lodging accommodations;

(g) FIRE PROTECTION - Towers and fire stations for forest fire protection;

(h) WIDENING OF ROADS WITHIN EXISTING RIGHTS-OF-WAY - Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.283(1);

(i) WATER INTAKE FACILITIES - Water intake facilities, canals and distribution lines for farm irrigation and ponds;

(j) CARETAKER RESIDENCES - Caretaker residences for public parks and public fish hatcheries;

(k) FISH AND WILDLIFE STRUCTURES - Uninhabitable structures accessory to fish and wildlife enhancement;

(l) FOREST LABOR CAMPS - Temporary forest labor camps;

(m) EXPLORATION FOR AND PRODUCTION OF GEOTHERMAL, GAS, OIL, AND OTHER ASSOCIATED HYDROCARBONS - including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;

(n) DESTINATION RESORTS- reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8 (see county mapping for destination resorts);

(o) REPLACEMENT DWLLINGS - Alteration, restoration or replacement of a lawfully (if discretion is used to determine lawfully established will be reviewed as nonconforming use) established dwelling that:
(A) Has intact exterior walls and roof structures;
(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
(C) Has interior wiring for interior lights;
(D) Has a heating system; and
(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;

(p) MASS GATHERING FEWER THAN 3000 PERSONS -An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division;

(q) DUMP TRUCK PARKING - as provided in ORS 215.311; and

(r) AN AGRICULTURAL BUILDING - as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building authorized by this section to another use.

(4) CONDITIONAL USES - The following uses may be allowed on forest lands as a conditional use (see table for type of conditional use) subject to the review standards in section (5) of this rule:

(a) PRIMARY PROCESSING OF FOREST PRODUCTS - Permanent facility for the primary processing of forest products that is:
  (A) Located in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor areas; and
  (B) Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body;

(b) PERMANENT LOGGING EQUIPMENT REPAIR AND STORAGE;

(c) LOG SCALING AND WEIGH STATIONS- Not axillary to onsite forest practices;

(d) DISPOSAL SITE FOR SOLID WASTE - Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;

(e) PRIVATE PARKS AND CAMPGROUNDS-
  (A) Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.
  (B) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by paragraph (4)(e)(C) of this rule.
  (C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(f) PUBLIC PARKS - including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable;

(g) MINING AND PROCESSING OF OIL, GAS, OR OTHER SUBSURFACE RESOURCES - as defined in ORS chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS chapter 517;

(h) COMMUNICATION FACILITIES AND TRANSMISSION TOWERS - Television, microwave and radio communication facilities and transmission towers;

(i) FIRE STATIONS - for rural fire protection;

(j) COMMERCIAL UTILITY FACILITIES FOR THE PURPOSE OF GENERATING POWER - A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;

(k) AIDS TO NAVIGATION AND AVIATION;

(l) WATER INTAKE FACILITIES - related treatment facilities, pumping stations, and distribution lines;

(m) RESERVOIRS AND WATER IMPOUNDMENTS;

(n) FIREARMS TRAINING FACILITY - as provided in ORS 197.770(2);

(o) CEMETERIES;

(p) PRIVATE SEASONAL ACCOMMODATIONS FOR FEE HUNTING OPERATIONS - Private seasonal accommodations for fee hunting operations may be allowed subject to section (5) of this section, OAR 660-006-0029, and 660-006-0035 and the following requirements:
(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
(B) Only minor incidental and accessory retail sales are permitted;
(C) Accommodations are occupied temporarily for the purpose of hunting during either or both game bird or big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and
(D) A governing body may impose other appropriate conditions.

(q) NEW ELECTRIC TRANSMISSION LINES - New electric transmission lines with right of way widths ***including and*** up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;

(r) TEMPORARY ASPHALT AND CONCRETE BATCH PLANTS -Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;

(s) HOME OCCUPATIONS/COTTAGE INDUSTRY - Home occupations as defined in ORS 215.448;

(t) HARDSHIP DWELLING - A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.213

and 215.283. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this subsection is not eligible for replacement under subsection (3)(o) of this rule. Governing bodies every two years shall review the permit authorizing such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;

(u) EXPANSION OF EXISTING AIRPORTS.

(v) PUBLIC ROAD AND HIGHWAY PROJECTS – [described in 215.283(2)(q) through (s) and (3)]:
- (A) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
- (B) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
- (C) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
- (D) Roads, highways and other transportation facilities and improvements not allowed under subsections (A) through (C) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for forest mixed use subject to:
  - (i) Adoption of an exception to the goal related to agricultural lands and forest lands and to any other applicable goal with which the facility or improvement does not comply; or
  - (ii)ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(w) PRIVATE ACCOMMODATIONS FOR FISHING - occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the following requirements:
- (A) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
- (B) Only minor incidental and accessory retail sales are permitted;
- (C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;
- (D) Accommodations must be located within 1/4 mile of fish-bearing Class I waters; and
- (E) A governing body may impose other appropriate conditions.

(x) FOREST MANAGEMENT RESEARCH AND EXPERIMENTATION FACILITIES - as defined by ORS 526.215 or where accessory to forest operations; and

(y) MASS GATHERINGS ARE THOSE OF MORE THAN 3,000 - An outdoor mass gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons that continue or can reasonably be expected to

continue for more than 120 hours within any three-month period and any part of which is held in open spaces.

(z) STORAGE STRUCTURES FOR EMERGENCY SUPPLIES - to serve communities and households that are located in tsunami inundation zones, if:
(A) Areas within an urban growth boundary cannot reasonably accommodate the structures;
(B) The structures are located outside tsunami inundation zones and consistent with evacuation maps prepared by Department of Geology and Mineral Industries (DOGAMI) or the local jurisdiction;
(C) Sites where the structures could be co-located with an existing use approved under this section are given preference for consideration;
(D) The structures are of a number and size no greater than necessary to accommodate the anticipated emergency needs of the population to be served;
(E) The structures are managed by a local government entity for the single purpose of providing for the temporary emergency support needs of the public; and
(F) Written notification has been provided to the County Office of Emergency Management of the application for the storage structures.

(5) REVIEW CRITERIA FOR CONDITIONAL USES: A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:
(A) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
(B) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
(C) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.
(D) All uses must comply with applicable development standards and fires siting and safety standards.

(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.

(7) USES NOT COVERED UNDER 660-006-0025 but were adopted in the County Ordinance (may be allowed under statute or other rule):
(A) ALTERNATIVE POWER SOURCES – This category includes solar photovoltaic cell(s), wind energy geothermal and hydro-electric. ***This use is only regulated when a state agency permit is required.***
(a) Photovoltaic Cells for noncommercial use. The installation and use of a solar photovoltaic energy system or a solar thermal energy system shall be allowed if:
(i) The installation of a solar energy system can be accomplished without increasing the footprint of the residential structure or the peak height of the portion of the roof on which the system is installed; and
(ii) The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof (ORS 215.439)

(iii) The solar energy system may be sited on the ground. Must comply with the same setback requirements listed in the development standards as the parent parcel.

(b) Wind energy for non-commercial use shall be allowed if:
(i) It is to support an approved use on the property;
(ii) It is not for commercial purposes;
(iii) The wind structure must not exceed 35 feet; and
(iv) It must comply with the same setback requirements listed in the development standard as the parent parcel.

(c) Geothermal and hydro-electric may be used to support an approved use if:
(i) It is not for commercial purposes;
(ii) Other agencies may require permits for the use of hydro-electric;
(iii) It must comply with the same setback requirements listed in the development standards as the parent parcel.

(B) MARIJUANA: This category includes, sale, growing, production, processing, wholesaling of both medical and recreational marijuana and marijuana products. This may include a commercial kitchen that may require a health department license.

(a) MARIJUANA GROWTH may be permitted notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use or allow for agricultural uses for profit:
(i) A new dwelling used in conjunction with a marijuana crop;
(ii) A farm stand, as described in ~~ORS 215.213 (1)(r) or~~ 215.283 (1)(o), used in conjunction with a marijuana crop; and
(iii) A commercial activity, as described in 215.283 (2)(a), carried on in conjunction with a marijuana crop.

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

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

(C) NON-MOTORIZED RECREATIONAL TRAILS: Non-motorized recreational trails located on land owned or maintained by the federal government, the State of Oregon, an Oregon municipal corporation, or other Unit of Local Government, as that term is defined in ORS 190.003, but not including any public utility, for public use or any recreational activity identified in the recreational master plan portion of the Coos County Comprehensive Plan.

(D) STRUCTURAL SHORELAND STABILIZATION: Shoreland structural stabilization is subject to Natural Hazards Policy 5.11 as explained in this subsection. Coos County shall promote protection of valued property from risks associated with critical stream bank and ocean front

erosion through necessary erosion-control stabilization measures, preferring nonstructural solutions where practical. Coos County shall implement this strategy by making "Consistency Statements" required for State and Federal permits (necessary for structural stream bank protection measures) that support structural protection measures when the applicant establishes that non-structure measures either are not feasible or inadequate to provide the necessary degree of protection. This strategy recognizes the risks and loss of property from unabated critical stream bank erosion, and also, that state and federal agencies regulate structural solutions. A flood elevation certificate is required for a stabilization which will occur in the identified flood hazard area.

(E) WATER DEVELOPMENT (diking and drainage, tide-gates, mitigating and nonstructural shoreland stabilization.) – These are permitted uses subject to any applicable hazards or overlays.

(8) OTHER USES ALLOWED IN THE FOREST MIXED USE ONLY:

(A) CHURCHES AND PUBLIC OR PRIVATE SCHOOLS, including all buildings essential to the operation of a school, provided that all such places of assembly shall be consistent with the siting standards of OAR 660-33-130 found in Sections 4.6.130 and 4.6.140.

(B) CIDER BUSINESS AND ACCESSORY USES: A cider business as described in ORS 215.451 may be established as a permitted use on land zoned for exclusive farm use under 215.283 (1)(y) or on land zoned for mixed farm and forest use.

(C) WINERY AND ACCESSORY USES:

(i) A winery and accessory uses in conjunction with the 15 or 40 acre vineyard provisions and standards as set forth in ORS 215.452 and 215.237.

(ii) A winery and accessory uses in conjunction with the 80 acre tract provisions and standards as set forth in ORS 215.453

(iii) A restaurant in conjunction with a winery authorized under the 80 acre tract provisions and standards of ORS 215.453.

(D) YOUTH CAMPS: A person may establish a youth camp on land zoned for forest use or mixed farm and forest use, consistent with rules adopted by the Land Conservation and Development Commission found in OAR 660-006-0031:

(9) DWELLINGS AUTHORIZED BY ORS 215.705 TO 215.755; AND (E) OTHER DWELLINGS UNDER PRESCRIBED CONDITIONS.

(A) FOREST MIXED USE DWELLING ONLY: 215.705 Dwellings in farm or forest zone; criteria; transferability of application. The following dwellings may be authorized in Forest Mixed Use. If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with goals relating to both agriculture and forestry and may qualify as an exclusive farm use zone under this chapter, the county may apply the standards for siting a dwelling under either subsection (1)(d) of this section or ORS 215.720, 215.740 and 215.750 as appropriate for the predominant use of the tract on January 1, 1993:

(1) LOT OF RECORD DWELLING:

(2) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with goals relating to both agriculture and forestry and may qualify as an exclusive farm use zone under this chapter, the county may apply the standards for siting a

dwelling under either subsection (1)(d) of this section or ORS 215.720, 215.740 and 215.750 as appropriate for the predominant use of the tract on January 1, 1993.

(3) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any area where the county determines that approval of the dwelling would:
  (a) Exceed the facilities and service capabilities of the area;
  (b) Materially alter the stability of the overall land use pattern in the area; or
  (c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(4) For purposes of subsection (1)(a) of this section, "owner" includes the spouses in a marriage, son, daughter, parent, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, parent-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(5) When a local government approves an application for a single-family dwelling under the provisions of this section, the application may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision.

(6) A dwelling authorized under ORS 215.705 (Dwellings in farm or forest zone) may be allowed on land zoned for forest use under a goal protecting forestland only if:
  (a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall be maintained and either paved or surfaced with rock and shall not be:
    (A) A United States Bureau of Land Management road; or
    (B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.
  (b) Not applicable to Coos County
  (2) For purposes of this section, "commercial tree species" means trees recognized under rules adopted under ORS 527.715 for commercial production.
  (3) No dwelling other than those described in this section and ORS 215.740, 215.750 and 215.755 may be sited on land zoned for forest use under a land use planning goal protecting forestland. [1993 c.792 §4 (1),(4),(9); 1997 c.318 §4; 1997 c.732 §1; 2003 c.621 §102]

(B) DWELLING ON FOREST AND FOREST MIXED USE ZONES -

(I) LARGE TRACT FORESTLAND DWELLING – Other Forestland dwellings 215.740; Large tract forest dwellings; Criteria; rules:

(1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:
  (a) Not applicable to Coos County;
  (b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section.

(2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

(3)(a) An owner of tracts that are not contiguous but are in the same county or adjacent counties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres

or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under subsection (1) of this section.

(b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands.

(c) The Land Conservation and Development Commission shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section. [1993 c.792 §4(2),(3),(5)]

(II) TEMPLATE DWELLING - 215.750 Alternative forestland dwellings; criteria.

(1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels continue to exist on the other lots or parcels;

(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

(2) ***(Reserved)***

(3) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsection (1) or (2) of this section.

(4) A proposed dwelling under this section is not allowed:

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law.

(b) Unless it complies with the requirements of ORS 215.730.

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740 (3) for the other lots or parcels that make up the tract are met.

(d) If the tract on which the dwelling will be sited includes a dwelling.

(5) Except as described in subsection (6) of this section, if the tract under subsection (1) or (2) of this section abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(6)(a) If a tract 60 acres or larger described under subsection (1) or (2) of this section abuts a road or perennial stream, the measurement shall be made in accordance with subsection (5) of this section. However, one of the three required dwellings shall be on the same side of the road or stream as the tract and:

(A) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.

(b) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

(7) Notwithstanding subsection (4)(a) of this section, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in subsection (1), (2), (5) or (6) of this section, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle. [1993 c.792 §4(6),(7),(8); 1999 c.59 §58; 2005 c.289 §1]

(III) REPLACEMENT DWELLING - 215.755 other forestland dwellings; criteria. Subject to the approval of the governing body or its designee, the following dwellings may be established in any area zoned for forest use under a land use planning goal protecting forestland, provided that the requirements of the acknowledged comprehensive plan, land use regulations and other applicable provisions of law are met:

(1) (Replacement Dwelling) Alteration, restoration or replacement of a lawfully established dwelling that:

(a) Has intact exterior walls and roof structure;

(b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(c) Has interior wiring for interior lights;

(d) Has a heating system; and

(e) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of completion of the replacement dwelling.

(2 & 3) Hardship dwelling and caretaker dwelling covered under uses requiring a conditional use.

(IV) HARDSHIP DWELLING: A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. Every two years the Planning Director shall review the permit authorizing such temporary hardship dwellings. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Oregon Department of Environmental Quality review and removal requirements also apply to such temporary hardship dwellings.

(V) CARETAKER RESIDENCE FOR PUBLIC PARKS AND PUBLIC FISH HATCHERIES (OTHER FORESTLAND DWELLING 215.755):

(VI) TEMPORARY DWELLING (RECREATIONAL VEHICLES): - Recreation Vehicles may be used as a dwelling under the following circumstances:

(1) While camping of up to 45 days per calendar year. The camper shall own the subject property or is a member of the immediate family. ***No more than one RV's can occupy the site for this limited purpose.***
(2) No other use of RV shall be allowed.

(VII) Additional Forest Dwelling (Adopted pursuant to HB 2469 2019)
(1) As used in this section, "owner or a relative" means the owner of the lot or parcel, or a relative of the owner or the owner's spouse, including a child, parent, stepparent, grandchild, grandparent, step-grandparent, sibling, stepsibling, niece, nephew or first cousin of either.
(2) A county may approve a new single-family dwelling unit on a lot or parcel zoned for forest use provided:
(a) The new single-family dwelling unit will be on a lot or parcel no smaller than the minimum size allowed under ORS 215.780;
(b) The new single-family dwelling unit will be on a lot or parcel that contains exactly one existing single-family dwelling unit that was lawfully:
(A) In existence before November 4, 1993; or
(B) Approved under ORS 215.130 (6), 215.705, 215.720, 215.740, 215.750 or 215.755;
(c) The shortest distance between the new single-family dwelling unit and the existing single-family dwelling unit is no greater than 200 feet;
(d) The lot or parcel is within a rural fire protection district organized under ORS chapter 478;
(e) The new single-family dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation;
(f) As a condition of approval of the new single-family dwelling unit, in addition to the requirements of ORS 215.293, the property owner agrees to acknowledge and record in the deed records for the county in which the lot or parcel is located, one or more instruments containing irrevocable deed restrictions that:
(A) Prohibit the owner and the owner's successors from partitioning the property to separate the new single-family dwelling unit from the lot or parcel containing the existing single-family dwelling unit; and
(B) Require that the owner and the owner's successors manage the lot or parcel as a working forest under a written forest management plan, as defined in ORS 526.455, that is attached to the instrument;
(g) The existing single-family dwelling unit is occupied by the owner or a relative;
(h) The new single-family dwelling unit will be occupied by the owner or a relative; and
(i) The owner or a relative occupies the new single-family dwelling unit to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition or supervision of forest lots or parcels of the owner.
(3) If a new single-family dwelling unit is constructed under this section, a county may not allow the new or existing dwelling unit to be used for vacation occupancy as defined in ORS 90.100.

(C)ADDITIONAL CRITERIA FOR ALL DWELLINGS ALLOWED IN THE FOREST AND FOREST MIXED USE ZONES.
(1) A local government shall require as a condition of approval of a single-family dwelling allowed on lands zoned forestland:
(a) If the lot or parcel is more than 10 acres in western Oregon as defined in ORS 321.257, the property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.
(b) The dwelling meets the following requirements:
(A) The dwelling has a fire retardant roof.
(B) The dwelling will not be sited on a slope of greater than 40 percent.

(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.
(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.
(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.
(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.
(G) The owner provides and maintains primary fuel-free break and secondary break areas on land surrounding the dwelling that is owned or controlled by the owner.

(2)(a) If a governing body determines that meeting the requirement of subsection (1)(b)(D) of this section would be impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The applicant shall request and provide alternatives to be considered.

(b) If a water supply is required under this subsection, it shall be a swimming pool, pond, lake or similar body of water that at all times contains at least 4,000 gallons or a stream that has a minimum flow of at least one cubic foot per second. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment. [1993 c.792 §5; 1995 c.812 §6; 1997 c.293 §1; 2003 c.621 §103]

(10) Land Divisions – New Land Division Requirements in Agriculture/Forest Zones

(A) A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone. These standards are designed: To make new land divisions compatible with forest operations; to maintain the opportunity for economically efficient forest and agriculture practices; and to conserve values found on forest lands.

(B) New land divisions less than the parcel size established according to the requirements in section (A) of this rule may be approved for any of the following circumstances:

(i) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the land division created is the minimum size necessary for the use.

(ii) For the establishment of a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(1) The parcel established may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than 10 acres; and

(2) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(a) Meets the minimum land divisions standards of the zone; or

(b) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone;

(3) The minimum tract eligible under subsection (ii) of this section is 40 acres;

(a) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321; and

(b) The remainder of the tract does not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(4) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that result in a parcel that does not meet the minimum area requirements of section (A). Parcels created pursuant to this subsection:
  (a) Are not eligible for siting of a new dwelling;
  (b) May not serve as the justification for the siting of a future dwelling on other lots or parcels;
  (c) May not, as a result of the land division, be used to justify redesignation or rezoning of resource land; and
  (d) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:
    i. Facilitate an exchange of lands involving a governmental agency; or
    ii. Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.
  (e) To allow a division of a lot or parcel zoned for mixed farm and forest use if:
    i. At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
    ii. Each dwelling complies with the criteria for a replacement dwelling under ORS 215.283(1);
    iii. Except for one lot or parcel, each lot or parcel created under this section is between two and five acres in size;
    iv. At least one dwelling is located on each lot or parcel created under this section; and
    v. The landowner of a lot or parcel created under this section provides evidence that a restriction prohibiting the landowner and the land owner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide goal 4 (Forest Lands) or unless the land division is subsequently authorized by law or by a change in statewide goal 4 (Forest Land);
  (f) To allow a proposed division of land as provided in ORS 215.783.

(C) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed by OAR 660-006-0055(2)(d) and (4). The record shall be readily available to the public.

(D) A lot or parcel may not be divided under OAR 660-006-0055(2)(d) if an existing dwelling on the lot or parcel was approved under:

(i) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(ii) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under statewide goal 4 (Forest Lands).

(E) An applicant for the creation of a parcel pursuant to subsection (B)(ii) of this rule shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under section (B) of this rule.

(i) A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating

that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(ii) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this section. The record shall be readily available to the public.

(F) A landowner allowed a land division under section (2) of this rule shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

SECTION 4.6.130 ADDITIONAL CRITERIA FOR ALL ~~CONDITION USE REVIEW~~ *NEW AND REPLACEMENT DWELLINGS AND STRUCTURES IN FOREST*

~~All Conditional Use Applications (Administrative and Hearings Body) are subject to requirements that are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands as follows:~~

~~1. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.~~

~~2. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.~~

~~3. All uses must comply with applicable development standards and fires siting and safety standards.~~

~~4. A "Forest Management Covenant", which recognized the right of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules, shall be recorded in the deed records of the County prior to any final County approval for uses authorizing any type of residential use in the Forest and Forest Mixed Use zones. There may be other criteria listed that applies to individual uses.~~

~~5. The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones. Replacement dwellings may be sited in close proximity to the existing developed homesite. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. These criteria may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.~~

~~a. Dwellings and structures shall be sited on the parcel so that:~~

~~i. They have the least impact on nearby or adjoining forest or agricultural lands.~~

~~ii. The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.~~

~~iii. The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized. And~~

iv. The risks associated with wildfires are minimized.

b. The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules. For the purposed of this Section, evidence of a domestic water supply means:

i. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water.

ii. A water use permit issued by the Water Resources Department for the use described in the application. Or

iii. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the County upon completion of the well.

6. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

7. Approval of a dwelling shall be subject to the following additional requirements:

a. Approval of a dwelling requires the owner to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

b. The Planning Department shall notify the County Assessor of the above condition at the time the dwelling is approved.

c. If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The Assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report of where the survey report indicates that minimum stocking requirements have not been met.

d. Upon notification by the Assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, it will notify the owner and Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

~~e. The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.~~

The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements OAR 660-0060-0035 to identify the building site:

(1) Dwellings and structures shall be sited on the parcel so that:
- *(a) They have the least impact on nearby[1] or adjoining forest or agricultural lands;*
- *(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
- *(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*
- *(d) The risks associated with wildfire are minimized.*

(2) Siting criteria satisfying section (1) of this section may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR chapter 629). For purposes of this section, evidence of a domestic water supply means:
- *(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;*
- *(b) A water use permit issued by the Water Resources Department for the use described in the application; or*
- *(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.*

(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(5) Approval of a dwelling shall be subject to the following requirements:
- *(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet*

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[1] For the purpose of this section "Nearby" is defined as within the decision notification area as defined in Section 5.0.900(2) for farm zoned property.

Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules;

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(c) If the lot or parcel is more than 10 acres in western Oregon or more than 30 acres in eastern Oregon, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules;

(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If that department determines that the tract does not meet those requirements, that department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax; and

(e) The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

SECTION 4.6.140 DEVELOPMENT AND SITING CRITERIA - NO CHANGES TO THIS SECTION

SECTION 4.6.145 LAND DIVISION TO PRESERVE OPEN SPACE OR PARK; QUALIFICATION FOR SPECIAL ASSESSMENT (ORS 215.783).

(1) The governing body of a county or its designee may approve a proposed division by partition of land in a forest zone or a mixed farm and forest zone to create one new parcel if the proposed division of land is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels as provided in this section.

(2) A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

(a) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or

(b) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under ORS 215.705 to 215.750, based on the size and configuration of the parcel.

(3) Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

(a) Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and

(b) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

(4) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the county may approve the division. [2007 c.143 §2; 2015 c.104 §7]

SECTION 4.6.150 EXCEPTION TO MINIMUM LOT OR PARCEL SIZES (ORS 215.785)

(1) As used in this section, notwithstanding ORS 215.010, "parcel" has the meaning given that term in ORS 92.010.

(2) Notwithstanding the minimum lot or parcel size established under ORS 215.780 (1), when a portion of a lawfully established unit of land has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan and the portion of the lawfully established unit of land that remains outside the urban growth boundary and zoned for forest uses or mixed farm and forest uses is smaller than the minimum size established under ORS 215.780 (1), the governing body of a county, or its designee, may approve a proposed division by partition of the land, including the land that remains in a forest zone or a mixed farm and forest zone.

(3) The parcel created in the forest zone or mixed farm and forest zone must be partitioned along the urban growth boundary and:

(a) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.

(b) If the parcel does not contain a dwelling, the parcel:

(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(B) May not be considered in approving or denying an application for siting any other dwelling; and

(C) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.

(4) In approving a land division under this section, the governing body of the county or its designee shall require as a condition of approval that the owner of a parcel not containing a dwelling sign and record in the deed records for the county in which the parcel is located an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937. [2015 c.104 §3]

EXCLUSIVE FARM USE (EFU)

SECTION 4.6.200 ~~DEVELOPMENT AND USE PERMITTED:~~ EXCLUSIVE FARM USE – *USE TABLES*

Table II identifies the uses and activities in the Exclusive Farm Use (EFU) zone. The tables describe the use, type of review, applicable review standards and Section 4.6.210 Development and Siting Standards. Properties that are located in a Special Development Consideration and/or overlays shall comply with the applicable review process identified by that Special Development Consideration and/or overlay located in Article 4.11.

Table II identifies the uses and activities in the Exclusive Farm Use (EFU) zone

As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3). Agricultural Land does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

	Use	HV	All Other
215.203 Zoning ordinances establishing exclusive farm use zones; definitions. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan. The following uses are permitted in lands designated as agricultural lands (EFU) pursuant to OAR 660-033-0120.			
	FARM/FOREST RESOURCES AS LISTED	**HV**	**All Other**
1.	Agriculture/Farm use as defined ORS 215.203	P	P
2.	Other Buildings customarily provided in conjunction with farm use. (dwelling are not included)	CD	CD
3.	Propagation or harvesting of a forest product.	P	P
4.	A facility for the primary processing of forest products.	ACU (5) (6)	ACU (5) (6)
5.	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 or an establishment for the slaughter or processing of poultry pursuant to ORS 603.038.	ACU (28)	ACU (28)
	Natural Resources	**HV**	**All Other**
6.	Creation of, restoration of, or enhancement of wetlands.	P	P
7.	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.	ACU (5) (27)	ACU (5) (27)
8.	Diking, drainage, tide-gating, fill, mitigation, non-shoreland stabilization, dredge material disposal and restoration	CD	CD
	Residential	**HV**	**All Other**
	Dwelling customarily provided in conjunction with farm use as provided in OAR 660-033-0135.		

	Use	HV	All Other
9.	Large Tract Dwelling 160 acre minimum	N	ACU (1)(a),(1)(e), (5), (30)
10.	Income Dwelling Test ($80,000 HV and $40,000 All Other) - **Temporary statue applies in place of this provision from June 2019 to January 2, 2022. *See ORS 215.283 (HB 2573)***	ACU (1)(c),(1)(e) (5), (30)	ACU (1)(d), (1)(e), (5), (30)
11.	Dwelling in conjunction with a Dairy Farms	ACU (1)(g), (1)(e), (5), (30)	ACU (1)(g), (1)(e), (5), (30)
12.	Relocation of Farm Operation	ACU (1)(h), (5), (30)	ACU (1)(h), (5), (30)
	Other Dwellings		
13.	A relative farm help dwelling. (Relative Farm Help Dwelling)	ACU (5), (9), (30)	ACU (5), (9), (30)
14.	Accessory Farm Dwellings for year-round and seasonal farm workers.	ACU (5), (24), (30)	ACU (5), (24), (30)
15.	One single-family dwelling on a lawfully created lot or parcel. (Lot of Record)	ACU (5), (3), (30)	ACU (5), (3), (30)
16.	Hardship Dwelling - One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.	ACU (5), (10), (30)	ACU (5), (10), (30)
17.	Single-family residential dwelling, not provided in conjunction with farm use. (Nonfarm Dwelling)	ACU (4), (30)	ACU (4), (30)
18.	Residential home as defined in ORS 197.660, in existing dwellings.	ACU (5) (30)	ACU (5) (30)
19.	Room and board arrangements for a maximum of five unrelated persons in existing residences.	ACU (5) (30)	ACU (5) (30)
20.	Historical Dwellings and structures	ACU (12) (30)	ACU (12) (30)
21.	Alteration, restoration, or replacement of a lawfully established dwelling. (replaced within a year)	CD (8) (30)	CD (8) (30)
	Alteration, restoration, or replacement of a lawfully established dwelling. (DEFERRED REPLACEMENT)	ACU (8) (30)	ACU (8) (30)
	COMMERCIAL USES	**HV**	**All Other**
22.	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or 215.283(1)(r), but excluding activities in conjunction with a marijuana crop.	ACU (5)	ACU (5)

	Use	HV	All Other
23.	Home occupations (cottage industries) as provided in ORS 215.448.	ACU (5) (14)	ACU (5) (14)
24.	Dog training classes or testing trials.	CD (39)	CD (39)
25.	Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under ORS 215.283(1)(x).	ACU (5)	ACU (5)
26.	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.	ACU (5) (35)	ACU (5) (35)
27.	Destination resort which is approved consistent with the requirements of Goal 8.	*(18)(a)	HBCU (5)
28.	A winery as described in ORS 215.452 or 215.453, and 215.237.	CD	CD
29.	A restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year	ACU (5)	ACU (5)
30.	***A cider business as provided in ORS 215.451***	***P***	***P***
31.	Agri-tourism and other commercial events or activities that are related to and supportive of agriculture, as described in ORS 215.283(4).	ACU (5)	ACU (5)
32.	Farm stands.	CD (23)	CD (23)
33.	A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.	ACU (5)	ACU (5)
34.	Up to seven (7) log truck parking as provided in ORS 215.311.	P	P
35.	Marijuana Uses (Growth, Processing and Production)	CD (41)	CD (41)
	Mineral, Aggregate, Oil and Gas Uses	**HV**	**All Other**
36.	Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.	P	P
37.	Operations for the exploration for minerals as defined by ORS 517.750.	P	P

	Use	HV	All Other
38.	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted.	HBCU (5)	HBCU (5)
39.	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	HBCU (5)	HBCU (5)
40.	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.	HBCU (5) (15)	HBCU (5) (15)
41.	Processing of other mineral resources and other subsurface resources.	HBCU (5)	HBCU (5)
	Transportation Uses	**HV**	**All Other**
42.	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.	HBCU (5) (7)	HBCU (5) (7)
43.	Climbing and passing lanes within the right of way existing as of July 1, 1987. See also Section 7.4.100	P	P
44.	Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.	ACU (5)	ACU (5)
45.	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels. See also Section 7.4.100	P	P
46.	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels. See also Section 7.4.100	ACU (5)	ACU (5)
47.	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	CD	CD
48.	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways. See also Section 7.4.100 and 7.4.200	CD	CD
49.	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.	ACU (5)	ACU (5)
50.	Roads, highways and other transportation facilities, and improvements not otherwise allowed under OAR 660-033-0120.	ACU (13)	ACU (13)

	Use	HV	All Other
51.	Transportation improvements on rural lands allowed by OAR 660-012- 0065	ACU	ACU
	Utility/Solid Waste Disposal Facilities	**HV**	**All Other**
52.	Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.	HBCU (16)(a) or (16)(b)	HBCU (16)(a) or (16)(b)
53.	Transmission towers over 200 feet in height.	HBCU (5)	HBCU (5)
54.	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.	P	P
55.	Utility facility service lines.	CD (32)	CD (32)
56.	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.	HBCU (5) (17)	HBCU (5) (22)
57.	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.	ACU (5) (37)	ACU (5) (37)
58.	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.	ACU (5) (38)	ACU (5) (38)
59.	Disposal of solid waste for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation not on high value farmland.	ACU (18)(a)	HBCU (5)
60.	Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060.	ACU 18(a), 29(a)	HBCU (5) (29)(b)
	Parks/Public/Quasi-public Uses	**HV**	**All Other**
61.	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.	HBCU (2), (18)(a), (b),(c)	HBCU (5), (18)(b),(c)
62.	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.	ACU (2), (18)(a)	ACU (2)
63.	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.	ACU (2), (18)(a)	ACU (2), (5), (19)
64.	Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.	ACU (5), (31)	ACU (5), (31)
65.	Fire Service providing rural fire protection services	CD	CD

	Use	HV	All Other
66.	Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.	ACU (2), (5), (36)	ACU (2), (5), (36)
67.	Golf courses not on high-value farmland as defined in ORS 195.300. (new golf course prohibited on High Value)	HBCU (2), (18)(a) or (18)(d)	HBCU (2), (5), (20)
68.	Living history museum.	HBCU (2), (5), (21)	HBCU (2), (5), (21)
69.	Firearms training facility as provided in ORS 197.770.	ACU (2)	ACU (2)
70.	Filming onsite and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.	P	P
71.	Filming onsite and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.	ACU (5)	ACU (5)
72.	Model aircraft takeoff and landing site	CD (26)	CD (26)
73.	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.	ACU (5)	ACU (5)
74.	Operations for the extraction of bottling water.	ACU (5)	ACU (5)
75.	Land application of reclaimed water, agricultural or industrial process water or biosolids.	CD (11)	CD (11)
76.	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcementservices primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(1).	ACU (5)	ACU (5)
77.	Outdoor mass gathering of more than 3,000 persons that is expected to continue for more than 24 hours but less than 120 hours in any three-month period, as provided in ORS 433.735.	CD (33)	CD (33)
78.	Outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month period is subject to review by a county planning commission under ORS 433.763.	HBCU (34)	HBCU (34)

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses
The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law.

(1) **RESIDENTIAL AS PROVIDED FOR BY OAR 660-033-135.** On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if :

(a) LARGE TRACT DWELLINGS (160 ACRE). On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

(A) The parcel on which the dwelling will be located is at least 160 acres.
(B) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.
(C) The subject tract is currently employed for farm use.
(D) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.
(E) Except for a replacement dwelling, there is no other dwelling on the subject tract.

(b) Reserved – Not applicable to Coos County (OAR 660-033-0135[2])

(c) FARM INCOME STANDARDS (NON-HIGH VALUE). On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if the subject tract is currently employed for the farm use on which, in each of the last two years or three of the last five years, or in an average of three of the last five years, ***subject to the following:*** ~~the farm operator earned the lower of the following~~:
(A) ***The farm operator earned*** At least $40,000 in gross annual income from the sale of farm products; or
(B) ***The farm operator earned*** gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon; and
(C) Except for a replacement dwelling, there is no other dwelling on lands designated for exclusive farm use pursuant to ORS Chapter 215 owned by the farm or ranch operator or on the farm or ranch operation;
(D) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in paragraph (A); and
(E) n determining the gross income required by paragraph (A):
(F) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;
(G) Only gross income from land owned, not leased or rented, shall be counted; and
(H) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
(I) Farming of a marijuana crop, and the gross sales derived from selling a marijuana crop, may not be used to demonstrate compliance with the approval criteria for a primary farm dwelling.

(d) FARM INCOME STANDARDS (HIGH-VALUE).On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if the subject tract is currently employed for the farm use on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years; and
(A) Except for a replacement dwelling, there is no other dwelling on lands designated for exclusive farm use owned by the farm or ranch operator or on the farm or ranch operation; and
(B) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in paragraph (A) of this section;

1. In determining the gross income required by paragraph (A) of this section the following applies
   a. The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;
   b. Only gross income from land owned, not leased or rented, shall be counted; and
   c. Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
   d. Farming of a marijuana crop, and the gross sales derived from selling a marijuana crop, may not be used to demonstrate compliance with the approval criteria for a primary farm dwelling.

(e) ADDITIONAL REGULATIONS FOR FARM INCOME STANDARDS found in Subsections (b) and (c):

(A) noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties:

(B) For the purpose of subsections (c) or (d) of this section, noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements. Except for Hood River and Wasco counties and Jackson and Klamath counties, when a farm or ranch operation has lots or parcels in both "western" and "eastern" Oregon as defined by this division, lots or parcels in eastern or western Oregon may not be used to qualify a dwelling in the other part of the state.

(C) Prior to the final approval for a dwelling authorized by subsections (c) and (d) of this section that requires one or more contiguous or non contiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:

(D) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS chapter 215; and

(E) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

(F) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(G) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

(H) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section;

(I) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(f) Reserved – Not applicable to Coos County (OAR 660-033-135[6])

(g) DWELLING IN CONJUNCTION WITH A DAIRY FARM. A dwelling may be considered customarily provided in conjunction with a commercial dairy farm as defined by OAR 660-033-0135(8) if:

(A) The subject tract will be employed as a commercial dairy as defined by OAR 660-033-0135(8);

(B) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;

(C) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;

(D) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm;

(E) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

(F) The Oregon Department of Agriculture has approved the following:

1. A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
2. A Producer License for the sale of dairy products under ORS 621.072.

(G) As used in this section, the following definitions apply:

1. "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk; and
2. "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.

(h) RELOCATION OF FARM OPERATION. A dwelling may be considered customarily provided in conjunction with farm use if:

(A) Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable;

(B) The subject lot or parcel on which the dwelling will be located is:

1. Currently employed for the farm use, as defined in ORS 215.203, that produced in each of the last two years or three of the last five years, or in an

average of three of the last five years the gross farm income required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable; and

2. At least the size of the applicable minimum lot size under OAR 215.780;

(C) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;

(D) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(E) In determining the gross income required by subsections (B) of this section:

1. The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and
2. Only gross income from land owned, not leased or rented, shall be counted.
3. Farming of a marijuana crop, and the gross sales derived from selling a marijuana crop, may not be used to demonstrate compliance with the approval criteria for a primary farm dwelling.

(2) (a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3) LOT OF RECORD DWELLING ***(only one single family dwelling)***

(a) A dwelling may be approved on a pre-existing lot or parcel if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule; and

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

(ii) The dwelling will comply with the provisions of ORS 215.296(1); and

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d);

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "Flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) NON-FARM DWELLING - A single-family residential dwelling not provided in conjunction with farm use requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use: (subsection (a) and (b) only pertains to lands within Willamette Valley)

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling, including essential or accessory improvements or structures, is situated upon a lot or parcel, or, in the case of an existing lot or parcel, upon a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and

flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(5) APPROVAL CRITERIA Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(6) PRIMARY PROCESSING OF FOREST PRODUCTS - A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) PERSONAL USE AIRPORTS - A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities allowed under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be allowed subject to any applicable rules of the Oregon Department of Aviation.

(8) REPLACEMENT DWELLING - Dwelling that no longer meets replacement criteria as described in subsection (8)(a)(A)(i) through (iv) of this section. This determination meets the requirements for a land use decision and shall reviewed as an Administrative Conditional Use (ACU).

(a) A lawfully established dwelling may be altered, restored or replaced under 215.283(1)(p) if, when an application for a permit is submitted, the permitting authority finds to its satisfaction, based on substantial evidence that:

(A) The dwelling to be altered, restored or replaced has:

(i) Intact exterior walls and roof structure;

(ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(iii) Interior wiring for interior lights; and

(iv) A heating system; and

(v) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and

(vi) Any removal, destruction or demolition occurred on or after January 1, 1973;

(B) If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

(C) A dwelling not described in subsection (A) or (B) of this section was assessed as a dwelling for purposes of ad valorem taxation:

(i) For the previous five property tax years; or

(ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

(b) For replacement of a lawfully established dwelling under this section:

~~(B) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:~~

~~(i) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or~~

~~(ii) If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued.~~

~~(C) The replacement dwelling:~~

~~(i) May be sited on any part of the same lot or parcel.~~

~~(ii) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.~~

~~(D) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of this section and either 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling. A replacement dwelling~~

~~(B) The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from that time.~~

~~(C) Notwithstanding paragraph (B), if the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling was assessed as a dwelling until such time as the value of the dwelling was eliminated:~~

(i) The destruction (i.e by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or

(ii) The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.

(b) For replacement of a lawfully established dwelling under ORS 215.283(1)(p):

(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

(i) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

(ii) A deferred replacement permit allows construction of the replacement dwelling at any time. This use requires a conditional use and if the requested dwelling to be replaced is to be deferred is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued it shall be removed. If, the structure is salvable it may be converted to another approved used. However, the established dwelling is not converted, removed or demolished within three months after the deferred replacement permit is issued the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant; and

(iii) If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.

(B) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.

(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, chapter 462, Section 2 and either ORS 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

(D) The county planning director, or the director's designee, shall maintain a record of:

(i) The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and

(ii) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (b) of this section, including a copy of the deed restrictions filed under paragraph (B) of this subsection.

(c) A replacement dwelling under 215.283(1)(p) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(A) The siting standards of paragraph (B) of this subsection apply when a dwelling under ORS 215.283(1)(p) qualifies for replacement because the dwelling:

~~(i) Formerly had the features described in paragraph (a)(A) of this section;~~
~~(ii) Was removed from the tax roll as described in paragraph (C) of subsection (a); or~~
~~(iii) Had a permit that expired as described under paragraph (d)(C) of this section.~~
~~(B) The replacement dwelling must be sited on the same lot or parcel:~~
~~(i) If using all or part of the footprint of the replaced dwelling it may sited near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel regardless of the local setback requirements; and~~
~~(ii) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.~~
~~(C) Replacement dwellings that currently have the features described in paragraph (a)(A) of this subsection and that have been on the tax roll as described in paragraph (B) of subsection (a) may be sited on any part of the same lot or parcel.~~

~~(d) A replacement dwelling permit that is issued under ORS 215.283(1)(p):~~
~~(A) Is a land use decision as defined in ORS 197.015 where the dwelling to be replaced:~~
~~(B) Is not subject to the time to act limits of ORS 215.417; and~~
~~(C) If expired before January 1, 2014, shall be deemed to be valid and effective if, before January 1, 2015, the holder of the permit:~~
~~(i) Removes, demolishes or converts to an allowable nonresidential use the dwelling to be replaced; and~~
~~(ii) Causes to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.~~

(A) A lawfully established dwelling may be altered, restored or replaced under ORS 215.283 if the county determines that:

(i) The dwelling to be altered, restored or replaced has, or formerly had:

(1) Intact exterior walls and roof structure;
(2) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
(3) Interior wiring for interior lights; and
(4) A heating system; and

(ii)(1) If the dwelling was removed, destroyed or demolished:

(a) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and
(b) Any removal, destruction or demolition occurred on or after January 1, 1973;

(2) If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

(3) A dwelling not described in subparagraph (A)(i)(1) or (A)(i)(2) of this subsection was assessed as a dwelling for purposes of ad valorem taxation:
(i) For the previous five property tax years; or
(ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

(B) For deferred replacement of a lawfully established dwelling under this section:

(i) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

(a) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

(b) If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued.

(ii) The replacement dwelling:

(a) May be sited on any part of the same lot or parcel.

(b) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(iii) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of this section and either ORS 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

(iv) Notwithstanding subsection (B)(ii)(a) of this section, a replacement dwelling:

(a) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and

(b) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

(v) The county planning director, or the director's designee, shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under subsection (B) of this section, including a copy of the deed restrictions filed under subsection (B)(iii) of this section.

(vi) If an applicant is granted a deferred replacement permit under this section:

(a) The deferred replacement permit:

1. Does not expire but, notwithstanding subsection (B)(i)(1) of this section, the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and

2. May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(b) The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(9) Relative Farm Help Dwelling:

(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm.

A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.

(c) For the purpose of subsection (a), "relative" means a child, parent, stepparent, grandchild, grandparent, step-grandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse.

(d) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under 215.780, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(e) For the purpose of subsection (d), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

(10) Hardship Dwelling - A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) RECLAIMED WATER -Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under 468B.095, and with the requirements of 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, ***or the onsite treatment of septage prior to the land application of biosolids,*** for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed. ***For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.***

(12) HISTORICAL DWELLINGS - In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) ROADS, HIGHWAYS AND OTHER TRANSPORTATION FACILITIES, and improvements not otherwise allowed under this rule may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) HOME OCCUPATIONS/COTTAGE INDUSTRY - Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) PROCESSING AS DEFINED BY ORS 517.750 OF AGGREGATE INTO ASPHALT OR PORTLAND CEMENT. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16) A UTILITY FACILITY ESTABLISHED UNDER 215.283(1)(C)

(a) A utility facility established under 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:

(A) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(i) Technical and engineering feasibility;

(ii) The proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of available urban and nonresource lands;

(iv) Availability of existing rights of way;

(v) Public health and safety; and

(vi) Other requirements of state and federal agencies.

(B) Costs associated with any of the factors listed in paragraph (A) of this subsection may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this paragraph shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(F) In addition to the provisions of paragraphs (A) to (D) of this subsection, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of 660-011-0060.

(G) The provisions of paragraphs (A) to (D) of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(b) An associated transmission line is necessary for public service and shall be approved by the governing body of a county or its designee if an applicant for approval under ORS 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its designee that the associated transmission line meets either the requirements of paragraph (A) of this subsection or the requirements of paragraph (B) of this subsection.

(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

(B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:

(i) Technical and engineering feasibility;

(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

(C) As pertains to paragraph (B), the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm pratices or a significant increase in the cost of farm practices on the surrounding farmland.

(D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

(17) Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in

the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval.

(18) No new use is allowed under this provision.

(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, schools as formerly allowed pursuant to ORS 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(d) ***Subject to the requirements of section (5) and (20) of this rule, a golf course may be established on land determined to be high-value farmland as defined in ORS 195.300(10)(C) if the land:***

(i) Is not otherwise high-value farmland as defined in ORS 195.300(10);

(ii) Is surrounded on all sides by an approved golf course; and

(iii) Is west of U.S. Highway 101.

(19) CAMPGROUND

(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the

standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) GOLF COURSE - "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) LIVING HISTORY MUSEUM - "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval.

(23) FARM STAND - A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(e) A farm stand may not be used for the sale, or to promote the sale, of marijuana products or extracts.

(24) ACCESSORY FARM DWELLINGS - Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling;

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract;

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules;

(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the

Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in 215.278 and not the meaning in 315.163; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned the lower of the following:

(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(C) **Not applicable to Coos County;** or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in 660-033-0100.

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.

(f) Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for an accessory farm dwelling.

(25) RESERVED – (Not applicable to Coos County)

(26) TAKEOFF AND LANDING OF MODEL AIRCRAFT - Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) COMMERCIAL FARM PROCESSING FACILITY - A farm on which a processing facility is located must provide at least one-quarter of the farm crops processed at the facility. A farm may also be used for an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038*(2)*. ~~If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment.~~ ***A county may allow a facility for the processing of farm products as a permitted use under ORS 215.283 (1)(r) on land zoned for exclusive farm use, only if the facility:***

(a) Uses less than 10,000 square feet for its processing area and complies with all applicable siting standards; or

(b) Notwithstanding any applicable siting standard, uses less than 2,500 square feet for its processing area.

If a processing facility is providing at least one-quarter of the farm crops processed at the facility the county may not apply siting standards in a manner that prohibits the siting of a facility for the processing of farm products. A county may not approve any division of a lot or parcel that separates a processing facility or establishment from the farm operation on which it is located. This use does not apply to marijuana processing facilities.

(29) COMPOSTING OPERATIONS AND FACILITIES -

(a) (HIGH-VALUE) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) **(Non High-Value)** Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting operations that

are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract are allowed uses, while other composting operations are subject to the review standards of ORS 215.296. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
(a) A public right of way;
(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or
(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in 197.015(10) or subject to review under this division. Agri-tourism and other commercial events or activities may not be permitted as mass gatherings under 215.283(4).

(34) Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by a county planning commission under the provisions of ORS 433.763.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and
(b) Alteration, restoration or replacement of a use authorized in 215.283(2)(y) may be altered, restored or replaced pursuant to 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological

towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:
  (A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:
    (i) Technical and engineering feasibility;
    (ii) Availability of existing rights of way; and
    (iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under paragraph (B);
  (B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;
  (C) Costs associated with any of the factors listed in paragraph (A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;
  (D) The owner of a wind power generation facility approved under subsection (a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and
  (E) The criteria of subsection (b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:
  (A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;
  (B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or

remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of 660-033-0130(37)(b) shall apply to the entire project.

(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

(e) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;

(E) The project is not located on high-value farmland soils unless it can be demonstrated that:

(i) Non high-value farmland soils are not available on the subject tract;

(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and

(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.

(ii) When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(g) For arable lands, a photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Nonarable soils are not available on the subject tract;

(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;

(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10) unless an exception is taken pursuant to 197.732 and OAR chapter 660, division 4;

(C) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.

(ii) When at least 80 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are satisfied.

(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 320 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(C) No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;

(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;

(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource

or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(G) The provisions of paragraph (F) are repealed on January 1, 2022.

(i) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

(j) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

(k) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (f), (g) and (h) of this section.

(39) DOG TRAINING CLASSES OR TESTING TRIALS - Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2013, when:

(a) The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and

(b) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.

(40) YOUTH CAMP - A youth camp may be established on agricultural land under the requirements of this section. The purpose of this section is to allow for the establishment of youth camps that are generally self-contained and located on a lawfully established unit of land of suitable size and location to limit potential impacts on nearby land and to ensure compatibility with surrounding farm uses.

(a) Definitions: In addition to the definitions provided for this division in OAR 660-033-0020 and ORS 92.010, for purposes of this section the following definitions apply:

(A)"Low impact recreational facilities" means facilities that have a limited amount of permanent disturbance on the landscape and are likely to create no, or only minimal impacts on adjacent private lands. Low impact recreational facilities include, but are not limited to, open areas,

ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding areas, swimming pools and zip lines. Low impact recreational facilities are designed and developed in a manner consistent with the lawfully established unit of land's natural environment.

(B) "Youth camp" means a facility that is either owned or leased, and is operated by a state or local government or a nonprofit corporation as defined under ORS 65.001 and is established for the purpose of providing an outdoor recreational and educational experience primarily for the benefit of persons 21 years of age and younger. Youth camps do not include a juvenile detention center or juvenile detention facility or similar use.

(C) "Youth camp participants" means persons directly involved with providing or receiving youth camp services, including but not limited to, campers, group leaders, volunteers or youth camp staff.

(b) Location: A youth camp may be located only on a lawfully established unit of land suitable to ensure an outdoor experience in a private setting without dependence on the characteristics of adjacent and nearby public and private land. In determining the suitability of a lawfully established unit of land for a youth camp the county shall consider its size, topography, geographic features and other characteristics, the proposed number of overnight participants and the type and number of proposed facilities. A youth camp may be located only on a lawfully established unit of land that is:

(A) At least 1,000 acres;

(B) In eastern Oregon;

(C) Composed predominantly of class VI, VII or VIII soils;

(D) Not within an irrigation district;

(E) Not within three miles of an urban growth boundary;

(F) Not in conjunction with an existing golf course;

(G) Suitable for the provision of protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands and uses. Such buffers shall consist of natural vegetation, topographic or other natural features and shall be implemented through the requirement of setbacks from adjacent public and private lands, public roads, roads serving other ownerships and riparian areas. Setbacks from riparian areas shall be consistent with OAR 660-023-0090. Setbacks from adjacent public and private lands, public roads and roads serving other ownerships shall be 250 feet unless the county establishes on a case-by-case basis a different setback distance sufficient to:

(i) Prevent significant conflicts with commercial resource management practices;

(ii) Prevent a significant increase in safety hazards associated with vehicular traffic on public roads and roads serving other ownerships; and

(iii) Minimize conflicts with resource uses on nearby resource lands;

(H) At least 1320 feet from any other lawfully established unit of land containing a youth camp approved pursuant to this section; and

(I) Suitable to allow for youth camp development that will not interfere with the exercise of legally established water rights on nearby properties.

(c) Overnight Youth Camp Participants: The maximum number of overnight youth camp participants is 350 participants unless the county finds that a lower number of youth camp participants is necessary to avoid conflicts with surrounding uses based on consideration of the size, topography, geographic features and other characteristics of the lawfully established unit of land proposed for the youth camp. Notwithstanding the preceding sentence, a county may approve a youth camp for more than 350 overnight youth camp participants consistent with this subsection if resource lands not otherwise needed for the youth camp that are located in the same county or adjacent counties that are in addition to, or part of, the lawfully established unit of land approved for the youth camp are permanently protected by restrictive covenant as provided in subsection (d) and subject to the following provisions:

(A) For each 160 acres of agricultural lands predominantly composed of class I-V soils that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;

(B) For each 160 acres of wildlife habitat that is either included on an acknowledged inventory in the local comprehensive plan or identified with the assistance and support of Oregon Department of Fish and Wildlife, regardless of soil types and resource land designation that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;

(C) For each 160 acres of agricultural lands predominantly composed of class VI-VIII soils that are permanently protected from development, an additional 25 overnight youth camp participants may be allowed; or

(D) A youth camp may have 351 to 600 overnight youth camp participants when:

(i) The tract on which the youth camp will be located includes at least 1,920 acres; and

(ii) At least 920 acres is permanently protected from development. The county may require a larger area to be protected from development when it finds a larger area necessary to avoid conflicts with surrounding uses.

(E) Under no circumstances shall more than 600 overnight youth camp participants be allowed.

(d) The county shall require, as a condition of approval of an increased number of overnight youth camp participants authorized by paragraphs (c)(A), (B), (C) or (D) of this section requiring other lands to be permanently protected from development, that the land owner of the other lands to be protected sign and record in the deed records for the county or counties where such other lands are located a document that protects the lands as provided herein, which for purposes of this section shall be referred to as a restrictive covenant.

(A) A restrictive covenant shall be sufficient if it is in a form substantially the same as the form attached hereto as Exhibit B.

(B) The county condition of approval shall require that the land owner record a restrictive covenant under this subsection:

(i) Within 90 days of the final land use decision if there is no appeal, or

(ii) Within 90 days after an appellate judgment affirming the final land use decision on appeal.

(C) The restrictive covenant is irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the land subject to the restrictive covenant is located.

(D) Enforcement of the restrictive covenant may be undertaken by the department or by the county or counties where the land subject to the restrictive covenant is located.

(E) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the restrictive covenant required by this subsection.

(F) The county planning director shall maintain a copy of the restrictive covenant filed in the county deed records pursuant to this section and a map or other record depicting the tracts, or portions of tracts, subject to the restrictive covenant filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(e) In addition, the county may allow:

(A) Up to eight nights during the calendar year during which the number of overnight youth camp participants may exceed the total number of overnight youth camp participants allowed under subsection (c) of this section.

(B) Overnight stays at a youth camp for participants of adult programs that are intended primarily for individuals over 21 years of age, not including staff, for up to 30 days in any one calendar year.

(f) Facilities: A youth camp may provide only the facilities described in paragraphs (A) through (I) of this subsection:

(A) Low impact recreational facilities. Intensive developed facilities such as water parks and golf courses are not allowed;

(B) Cooking and eating facilities, provided they are within a building that accommodates youth camp activities but not in a building that includes sleeping quarters. Food services shall be limited to those provided in conjunction with the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants;

(C) Bathing and laundry facilities;

(D) Up to three camp activity buildings, not including a building for primary cooking and eating facilities.

(E) Sleeping quarters, including cabins, tents or other structures, for youth camp participants only, consistent with subsection (c) of this section. Sleeping quarters intended as overnight accommodations for persons not participating in activities allowed under this section or as individual rentals are not allowed. Sleeping quarters may include restroom facilities and, except for the caretaker's dwelling, may provide only one shower for every five beds. Sleeping quarters may not include kitchen facilities.

(F) Covered areas that are not fully enclosed for uses allowed in this section;

(G) Administrative, maintenance and storage buildings including permanent structures for administrative services, first aid, equipment and supply storage, and a gift shop available to youth camp participants but not open to the general public;

(H) An infirmary, which may provide sleeping quarters for medical care providers (e.g., a doctor, registered nurse, or emergency medical technician);

(I) A caretaker's residence, provided no other dwelling is on the lawfully established unit of land on which the youth camp is located.

(g) A campground as described in ORS 215.283(2)(c), OAR 660-033-0120, and section (19) of this rule may not be established in conjunction with a youth camp.

(h) Conditions of Approval: In approving a youth camp application, a county must include conditions of approval as necessary to achieve the requirements of this section.

(A) With the exception of trails, paths and ordinary farm and ranch practices not requiring land use approval, youth camp facilities shall be clustered on a single development envelope of no greater than 40 acres.

(B) A youth camp shall adhere to standards for the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and 358.905 to 358.961, as follows:

(i) If a particular area of the lawfully established unit of land proposed for the youth camp is proposed to be excavated, and if that area contains or is reasonably believed to contain resources protected by ORS 97.740 to 97.750 and 358.905 to 358.961, the application shall include evidence that there has been coordination among the appropriate Native American Tribe, the State Historic Preservation Office (SHPO) and a qualified archaeologist, as described in 390.235(6)(b).

(ii) The applicant shall obtain a permit required by ORS 390.235 before any excavation of an identified archeological site begins.

(iii) The applicant shall monitor construction during the ground disturbance phase(s) of development if such monitoring is recommended by SHPO or the appropriate Native American Tribe.

(C) A fire safety protection plan shall be adopted for each youth camp that includes the following:

(i) Fire prevention measures;

(ii) On site pre-suppression and suppression measures; and

(iii) The establishment and maintenance of fire-safe area(s) in which camp participants can gather in the event of a fire.

(D) A youth camp's on-site fire suppression capability shall at least include:
(i) A 1000 gallon mobile water supply that can reasonably serve all areas of the camp;
(ii) A 60 gallon-per-minute water pump and an adequate amount of hose and nozzles;
(iii) A sufficient number of firefighting hand tools; and
(iv) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.
(v) An equivalent level of fire suppression facilities may be determined by the governing body or its designate. The equivalent capability shall be based on the response time of the effective wildfire suppression agencies.

(E) The county shall require, as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, the operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting:
(i) a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;
(ii) future land divisions resulting in a lawfully established unit of land containing the youth camp that is smaller in size than required by the county for the original youth camp approval; and
(iii) development on the lawfully established unit of land that is not related to the youth camp and would require a land use decision as defined at ORS 197.015(10) unless the county's original approval of the camp is rescinded and the youth camp development is either removed or can remain, consistent with a county land use decision that is part of such rescission.

(F) Nothing in this rule relieves a county from complying with other requirements contained in the comprehensive plan or implementing land use regulations, such as the requirements addressing other resource values (e.g. resources identified in compliance with statewide planning Goal 5) that exist on agricultural lands.
(i) If a youth camp is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between youth camp development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts consistent with OAR chapter 660, divisions 16 and 23. If there is no program to protect the listed Goal 5 resource(s) included in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures in compliance with OAR chapter 660, division 23; and
(ii) If a proposed youth camp is located on lands where, after site specific consultation with a district state biologist, the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat, or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites, or pigeon springs), the applicant shall conduct a site-specific assessment of the land in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-

specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the youth camp facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the youth camp facility.

(iii) The commission shall consider the repeal of the provisions of subparagraph (ii) on or before January 1, 2022.

(i) Extension of Sewer to a Youth Camp. A Goal 11 exception to authorize the extension of a sewer system to serve a youth camp shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this section. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 11 shall not apply. Exceptions adopted pursuant to this section shall be deemed to fulfill the requirements for goal exceptions under ORS 197.732(1)(c) and Goal 2.

(A) A Goal 11 exception shall determine the general location for the proposed sewer extension and shall require that necessary infrastructure be no larger than necessary to accommodate the proposed youth camp.

(B) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Goal 2, Part II(c)(1) shall be found to be satisfied if the proposed sewer extension will serve a youth camp proposed for up to 600 youth camp participants.

(C) To address Goal 2, Part II(c)(2), the exception shall demonstrate that areas which do not require a new exception cannot reasonably accommodate the proposed sewer extension. Goal 2, Part II(c)(2) shall be found to be satisfied if the sewer system to be extended was in existence as of January 1, 1990 and is located outside of an urban growth boundary on lands for which an exception to Goal 3 has been taken.

(D) To address Goal 2, Part II(c)(3), the exception shall demonstrate that the long term environmental, economic, social, and energy consequences resulting from the proposed extension of sewer with measures to reduce the effect of adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the lawfully established unit of land proposed for the youth camp. Goal 2, Part II(c)(3) shall be found to be satisfied if the proposed sewer extension will serve a youth camp located on a tract of at least 1,000 acres.

(E) To address Goal 2, Part II(c)(4), the exception shall demonstrate that the proposed sewer extension is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Goal 2, Part II(c)(4) shall be found to be satisfied if the proposed sewer extension for a youth camp is conditioned to comply with section (5) of this rule.

(F) An exception taken pursuant to this section does not authorize extension of sewer beyond what is justified in the exception.

(j) Applicability: The provisions of this section shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3). A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this section, or that are necessary to ensure compliance with any standards or criteria in this section.

(41) MARIJUANA: This category includes, sale, growing, production, processing, wholesaling of both medical and recreational marijuana and marijuana products. This may include a commercial kitchen that may require a health department license.

(a) MARIJUANA GROWTH may be permitted notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use or allow for agricultural uses for profit:

(i) A new dwelling used in conjunction with a marijuana crop;

(ii) A farm stand, as described in ~~ORS 215.213 (1)(r) or~~ 215.283 (1)(o), used in conjunction with a marijuana crop; and

(iii) A commercial activity, as described in 215.283 (2)(a), carried on in conjunction with a marijuana crop.

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

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

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

SECTION 5.0.500 INCONSISTENT APPLICATIONS:

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

SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Coos County Planning Department
Coos County Courthouse Annex, Coquille, Oregon 97423
Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
Physical Address: 225 N. Adams, Coquille, Oregon

(541) 396-3121 Ext.210
FAX (541) 756-8630 / TDD (800) 735-2900

NOTICE OF ADOPTION
(CORRECTED)

September 14, 2010

Re: Coos County Planning Department File No. HBCU-10-01
Application submitted by Pacific Connector Gas Pipeline, Inc.
County Ordinance No. 10-08-045PL

On September 8, 2010, the Coos County Board of Commissioners adopted the above-referenced ordinance approving the application submitted by Pacific Connector Gas Pipeline, Inc. for the development of a 49.72-mile segment of an interstate natural gas pipeline in Coos County.

On September 9, 2010, the County Planning Department mailed the original Notice of Adoption. The subject line of that notice correctly identified the applicant as Pacific Connector Gas Pipeline, Inc.; however, the text of the notice included an incorrect statement that the application had been submitted by the Oregon International Port of Coos Bay. This Corrected Notice of Adoption is being sent only to clarify that the application was filed by Pacific Connector Gas Pipeline, Inc.

THIS CORRECTED NOTICE OF ADOPTION DOES NOT CHANGE THE APPEAL DEADLINE STATED IN THE ORIGINAL NOTICE OF ADOPTION. The ordinance may be appealed to the Land Use Board of Appeals (LUBA), pursuant to ORS 197.830 to 197.845, by filing a Notice of Intent to Appeal within 21 days of the date of adoption of the Ordinance. For more information, contact LUBA by telephone at 503-373-1265, or in writing at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301-2552.

If you have any questions pertaining to this notice or the adopted ordinance, please contact the Planning Department by telephone at (541) 396-3121 or 756-2020, extension 210, or visit the Planning Department at 225 North Adams Street, Coquille, Oregon, Monday through Friday, 8:00 AM - 5:00 PM (closed Noon - 1:00 PM).

COOS COUNTY PLANNING DEPARTMENT

Patty Evernden, Planning Director

c: Mark Whitlow, Perkins Coie
Rodney Gregory, PCGP
David Perry, DLCD (e-mailed and mailed)
Participants (see attached list)
Board of Commissioners (E-mail)
Planning Commission
File

Anita J. Coppock	830 25th St.	North Bend OR 97459		
Arrow Coyote,	Confederated Tribes of Lower	Umpqua and Siuslaw Indians	1245 Fulton Ave.	Coos Bay, OR 97420
Alexander Rich	The World News Paper	PO Box 1840	Coos Bay OR 97420	
Andrew Combs	15182 Sitkum Lane	Myrtle Point OR 97458		
Army Corps of Engineers	PO Box 604	North Bend OR 97459		
Camby Collier	PO Box 181	Coos Bay OR 97420		
Cascadia Wildlands	886 Raven Lane	Rosebrug OR 97471		
CB/NB Water Board	P. O. Box 539	Coos Bay, OR 97420		
Charlie Waterman	87518 Davis Creek Lane	Bandon OR 97411		
Curt Clay	PO Box 822	Coos Bay OR 97420		
Dan Nickell	87184 Stewart Lane	Bandon OR 97411		
Dana Gaab	PO Box 991	North Bend OR 97459		
Daniel Serres, FLOW	PO Box 2478	Grants Pass OR 97528		
David A. Gonzales	316 CALIFORNIA AVE	RENO NV 89509		
David Perry	Oregon Coastal Mgmt Program	810 SW Alder St, Ste B	Newport OR 97365	
Dee Willis, WBS Ranching LLC	60669 S. Sumner Road	Coos Bay OR 97420		
Dennis Schad	66087 North Bay Rd	North Bend OR 97459		
Department of Enviornmetnal Quality	381 N 2nd	Coos Bay OR 97420		
Department of Fish & Wildlife	PO Box 5003	Charleston OR 97420		
Department of Forestry	63612 Fifth Road	Coos Bay OR 97420		
Department of State Lands	775 Summer St. NE	Salem OR 97301		
Derrick Hindery, Ph.D.	345 Prince Lucien Campbell Hall	5206 University of Oregon	Eugene OR 97403-5206	
Don & Jonnie Farmer	13087 Sitkum LN	Myrtle Point OR 97458		
Don Wisely	97765 HWY 42	Coquille OR 97423		
Dora/Sitkum RFPD	C/O Bill Vaughn	56484 Miller Road	Myrtle Point OR 97458	
Dustin Clarke, Coos County Sheep Co.	97148 Stian Smith Road	Coos Bay OR 97420		
Edgar Maeyens JR. M.D. P.C.	375 Park Avenue, Suite 5	Coos Bay OR 97420		
Elizabeth Matteson	732 Gerguson Lane	Days Creek OR 97420		
Fairview RFPD	96775 Fairview Sumner Ln	Coquille OR 97423		
Francis Eatherington	886 Raven Lane	Rosebrug OR 97471		
Francis Quinn	425 Bandon Ave, SW	Bandon OR 97411		
FRED MESSERLE & SONS, INC.	94881 STOCK SLOUGH LN	COOS BAY OR 97420		
Geno Landrum	63281 Clover DR	Coos Bay OR 97420		
George Gant	PO Box 571	North Bend OR 97459		
Howard Crombie	Confederated Tribes of Lower	Umpqua and Siuslaw Indians	1245 Fulton Ave.	Coos Bay, OR 97420
Jake Robinson	94961 Stock Slough LN	Coos Bay OR 97420		
Jan Nakamoto Dilley	1223 Winsor Ave	North Bend OR 97459		
Jan Wilson, Staff Attorney	Western Environmental Law Center	1216 Lincoln St.	Eugene OR 97401	
Jaye Bell	62650 Fairveiw Road	Coquille OR 97423		
Jerry Phillips	1777 Kingwood	Coos Bay, OR 97420		
Joann Hansen	3420 Ash Street	North Bend OR 97459		
Jody McCaffree	PO Box 1113	North Bend OR 97459		

Joe Serres, FLOW	PO Box 2478	Grants Pass OR 97528		
John B. Jones, III & Julie Jones	89056 Whiskey Run LN	Bandon OR 97411		
John Craig Neikirk	94199 W. Heritage Hills LN	North Bend OR 97459		
Jon Souder	Coos Watershed	PO Box 5860	Charleston OR 97420	
Jonathan Mark Hanson	62890 Olive Barber Road	Coos Bay OR 97420		
Joseph L. Cortez	54065 Echo Valley Rd.	Myrtle Pont OR 97458		
Knute Nemeth	PO Box 5775	Charleston OR 97420		
Lilli Clausen	93488 Promise LN	Coos Bay OR 97420		
Lucinda DiNovo, Bay Area Chamber of Cor	145 Central Avenue	Coos Bay OR 97420		
Lydia Delgudo	555 Douglas SW	Bandon OR 97411		
Mark Ingersoll, Vice Chairman	Confederated Tribes of Lower	Umpqua and Siuslaw Indians	1245 Fulton Ave.	Coos Bay, OR 97420
MARK SHELDON	95204 STOCK SLOUGH LN	COOS BAY OR 97420		
Mary Geddry	340 N. Collier St.	Coquille OR 97423		
MCCAULEY, ROBERT H. & LINDA S.	94621 COOS-SUMNER LN	COOS BAY OR 97420		
METCALF, MARY C.	58327 FAIRVIEW RD	COQUILLE OR 97423		
MIKE WASHBURN	61829 OLD WAGON RD	COOS BAY OR 97420		
Mike Washburn	61829 Old Wagon Rd	Coos Bay OR 97420		
Millington RFPD	62866 Millington Frontage RD	Coos Bay OR 97420		
Monica Vaughan	2245 SE Brookly St.	Portland OR 97202		
Mr. & Mrs. Timothy Pearce	58746 Seven Devils Road	Bandon OR 97411		
MUENCHRATH, A. JOHN & MARY M.	62241 OLD SAWMILL RD	COOS BAY OR 97420		
National Marine Fisheries Services	1201 NE Loyd Blvd, Ste 1100	Portland OR 97232-2182		
Nicole Norris	Cultural Resource Program	Coquille Tribe	PO Box 783	North Bend OR 97459
North Bay RFPD	PO Box 664	North Bend OR 97459		
Oregon Department of Energy	625 Marion St. NE	Salem, OR 97301-3737		
Oregon International Port of Coos Bay	PO Box 1215	Coos Bay, OR 97420		
P.J. Keizer, JR	2300 N. 14th St.	Coos Bay OR 97420		
Rex Miller	PO Box 656	Coos Bay OR 97420		
Richard Knablin	555 Delaware	North Bend OR 97459		
Robert Fischer	PO Box 1985	Bandon OR 97411		
Ron Petock	PO Box 1452	North Bend OR 97459		
Ron Sadler	PO Box 411	North Bend OR 97459		
Ronnie Herne	62650 Fairveiw Road	Coquille OR 97423		
Rory Cox, California Program Director	Pacific Environment	251Kearny Street, 2nd Floor	Can Francisco, CA 94108	
South Slough Esturine Sanctuary Commiss	PO Box 5417	Charleston OR 97420		
State Water Resources Department	725 Summer Street NE, Suite A	Salem, OR 97301		
Steve Jones	91516 Dolezal Ln	Coos Bay OR 97420		
Sumner RFPD	60817 Selander Road	Coos Bay OR 97420		
Superintendent's Office	Coos Bay School District #9	P.O. Box 509	Coos Bay, OR 97420	
Timber Park RFPD	c/o Roger M French	95037 Timber Park LN	Coos Bay OR 97420	
Tina Choi	861 S 12TH ST	Coos Bay OR 97420		
Tom Guevara	Oregon Dept. Of Transportation	3500 NW Stewart Parkway, Ste. 1	Roseburg OR 97470	

U.S. Fish & Wildlife Services	911 NE 11th Ave. Ste. 1692	Portland OR 97232-4181		
William and Maryann Rohrer	93558 Hollow Stump LN	North Bend OR 97459		
William Wright	PO Box 1442	Coos Bay OR 97420		
WILLIAMS, VIRGIL D. & CAROL F.	58167 FAIRVIEW RD	COQUILLE OR 97423		
Harry & Holly Stamper	90692 Wilshire Lane	Charleston OR 97420		
Keith Comstock	93543 Pleasant Valley Lane	Myrtle Pont OR 97458		
Bruce Campbell	1158 26th St. #883	Santa Monica CA 90403		
James Brown	Crag Law Center	917 SW Oak Street #417	Portland OR 97205	
Diane Phillips	PO Box 179	Azalea OR 97410		
David H. Lohman	Huycke, O'Connor, Jarvis & Lohman	823 Alder Creek Dr.	Medford OR 97504	
Robin Hartman	1721 SE Main Street	Roseburg OR 97470		
Dennis Phillips	Coos County Alternatives to Growth	64638 Wygant Rd	Coos Bay OR 97420	
Citizens Against LNG	c/o Jody McCaffree	PO Box 1113	North Bend OR 97459	
Mark Whitlow	Perkins Coie LLP	1120 NW Couch St. 10th Floor	Portland OR 97209-4128	
Edge Environmental INC	ATTN: Carolyn Last	405 Urban Street, Suite 310	Lakewood CO 80228	
Pacific Connector Gas Pipeline, LP	ATTN: Rodney Gregory	22909 NE Redmond-Fall City Road	Redmond WA 98053	

CERTIFICATE OF MAILING/AFFIDAVIT OF MAILING

I hereby certify that on September 14, 2010, I deposited the attached CORRECTED NOTICE OF ADOPTION into the U.S. mail, in an envelope with first class postage affixed thereto to the parties listed out below.

Dated: September 14, 2010

Jill Ralfe

Anita J. Coppock	830 25th St.	North Bend OR 97459		
Arrow Coyote,	Confederated Tribes of Lower	Umpqua and Siuslaw Indians	1245 Fulton Ave.	Coos Bay, OR 97420
Alexander Rich	The World News Paper	PO Box 1840	Coos Bay OR 97420	
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FRED MESSERLE & SONS, INC.	94881 STOCK SLOUGH LN	COOS BAY OR 97420		
Geno Landrum	63281 Clover DR	Coos Bay OR 97420		
George Gant	PO Box 571	North Bend OR 97459		
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James Brown	Crag Law Center	917 SW Oak Street #417	Portland OR 97205	
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David H. Lohman	Huycke, O'Connor, Jarvis & Lohman	823 Alder Creek Dr.	Medford OR 97504	
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Mark Whitlow	Perkins Coie LLP	1120 NW Couch St. 10th Floor	Portland OR 97209-4128	
Edge Environmental INC	ATTN: Carolyn Last	405 Urban Street, Suite 310	Lakewood CO 80228	
Pacific Connector Gas Pipeline, LP	ATTN: Rodney Gregory	22909 NE Redmond-Fall City Road	Redmond WA 98053	

CERTIFICATE OF MAILING

I hereby certify that on September 9, 2010, I deposited the attached NOTICE OF ADOPTION into the U.S. mail, in an envelope with first class postage affixed thereto to the parties listed out below.

Dated: September 9, 2010

Jill Rolfe, Administrative Planner

COQUILLE, OR SEP 9 2010 USPS 97423-9998

UNITED STATES POSTAGE PITNEY BOWES $ 42.00 02 IP 0004500761 SEP 09 2010 MAILED FROM ZIPCODE 97423

Coos County Planning Department
Coos County Courthouse Annex, Coquille, Oregon 97423
Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
Physical Address: 225 N. Adams, Coquille, Oregon

(541) 396-3121 Ext.210
FAX (541) 756-8630 / TDD (800) 735-2900

NOTICE OF ADOPTION

September 9, 2010

Re: Coos County Planning Department File No. HBCU-10-01
Application submitted by Pacific Connector Gas Pipeline, Inc.
County Ordinance No. 10-08-045PL

On September 8, 2010, the Coos County Board of Commissioners adopted the above-referenced ordinance approving the applications submitted by the Oregon International Port of Coos Bay.

The adoption ordinance may be appealed to the Land Use Board of Appeals (LUBA), pursuant to ORS 197.830 to 197.845, by filing a Notice of Intent to Appeal within 21 days of the date of adoption of the Ordinance. For more information on this process, contact LUBA by telephone at 503-373-1265, or in writing at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301-2552.

If you have any questions pertaining to this notice or the adopted ordinance, please contact the Planning Department by telephone at (541) 396-3121 or 756-2020, extension 210, or visit the Planning Department at 225 North Adams Street, Coquille, Oregon, Monday through Friday, 8:00 AM - 5:00 PM (closed Noon - 1:00 PM).

COOS COUNTY PLANNING DEPARTMENT

Patty Evernden, Planning Director

c: Mark Whitlow, Perkins Coie
Rodney Gregory, PCGP
David Perry, DLCD (e-mailed and mailed)
Participants (see attached list)
Board of Commissioners (E-mail)
Planning Commission
File

Anita J. Coppock	830 25th St.	North Bend OR 97459		
Arrow Coyote,	Confederated Tribes of Lower	Umpqua and Siuslaw Indians	1245 Fulton Ave.	Coos Bay, OR 97420
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Army Corps of Engineers	PO Box 604	North Bend OR 97459		
Camby Collier	PO Box 181	Coos Bay OR 97420		
Cascadia Wildlands	886 Raven Lane	Rosebrug OR 97471		
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Charlie Waterman	87518 Davis Creek Lane	Bandon OR 97411		
Curt Clay	PO Box 822	Coos Bay OR 97420		
Dan Nickell	87184 Stewart Lane	Bandon OR 97411		
Dana Gaab	PO Box 991	North Bend OR 97459		
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David Perry	Oregon Coastal Mgmt Program	810 SW Alder St, Ste B	Newport OR 97365	
Dee Willis, WBS Ranching LLC	60669 S. Sumner Road	Coos Bay OR 97420		
Dennis Schad	66087 North Bay Rd	North Bend OR 97459		
Department of Enviornmetnal Quality	381 N 2nd	Coos Bay OR 97420		
Department of Fish & Wildlife	PO Box 5003	Charleston OR 97420		
Department of Forestry	63612 Fifth Road	Coos Bay OR 97420		
Department of State Lands	775 Summer St. NE	Salem OR 97301		
Derrick Hindery, Ph.D.	345 Prince Lucien Campbell Hall	5206 University of Oregon	Eugene OR 97403-5206	
Don & Jonnie Farmer	13087 Sitkum LN	Myrtle Point OR 97458		
Don Wisely	97765 HWY 42	Coquille OR 97423		
Dora/Sitkum RFPD	C/O Bill Vaughn	56484 Miller Road	Myrtle Point OR 97458	
Dustin Clarke, Coos County Sheep Co.	97148 Stian Smith Road	Coos Bay OR 97420		
Edgar Maeyens JR. M.D. P.C.	375 Park Avenue, Suite 5	Coos Bay OR 97420		
Elizabeth Matteson	732 Gerguson Lane	Days Creek OR 97420		
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Pacific Connector Gas Pipeline, LP	ATTN: Rodney Gregory	22909 NE Redmond-Fall City Roac	Redmond WA 98053

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF CONSOLIDATED CONDITIONAL USE APPLICATIONS HBCU-10-01 SUBMITTED BY PACIFIC CONNECTOR GAS PIPELINE	FINAL DECISION AND ORDER NO. 10-08-045PL

WHEREAS, on Pacific Connector Gas Pipeline filed consolidated permit applications to develop 49.72 miles of gas pipeline and associated facilities on property described in Exhibit "B" of this Order; and

WHEREAS, on March 2, 2010, pursuant to its authority under CCZLDO §5.0.600, the Board of Commissioners (Board) voted to: (1) call up the applications; and (2) appoint a Hearings Officer to conduct the initial public hearing for the applications and then make a recommendation to the Board. On April 5, 2010, the Board appointed Andrew H. Stamp to serve as the Hearings Officer.

WHEREAS, on May 20, 2010, Hearings Officer Stamp conducted a public hearing on this matter and at the conclusion of the hearing the record was held open for 21 days to accept additional written evidence to rebut evidence presented at the hearing, followed by a 7-day period for accepting surrebuttal testimony, followed by a 7-day period for the applicant to submit final written argument.

WHEREAS, on July 16, 2010, Hearings Officer Stamp issued his Analysis, Conclusions and Recommendations to the Board to approve the applications subject to the imposition of conditions.

WHEREAS, on August 3, 2010, at 1:30 p.m., the Board met to deliberate on the matter and made a tentative decision to accept the Hearings Officer's recommended approval subject to amended findings and conditions.

NOW, THEREFORE, the Board adopts the Findings of Fact; Conclusions of Law and Final Decision attached hereto labeled Exhibit "A" and incorporated into this order herein.

ADOPTED this 8th day of September 2010.

BOARD OF COMMISSIONERS

COMMISSIONER

COMMISSIONER

COMMISSIONER

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Office of Legal Counsel

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

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
COOS COUNTY, OREGON

FILE NO. HBCU-10-01
SEPTEMBER 8, 2010

TABLE OF CONTENTS

I. SUMMARY OF PROPOSAL AND PROCESS

A. Summary of Proposal.

This consolidated application is made by Pacific Connector Gas Pipeline Company, LP ("Pacific Connector" or "applicant") with respect to the Coos County segment of its proposed interstate natural gas pipeline known as the Pacific Connector Gas Pipeline ("PCGP" or "pipeline"). This is the fifth in a series of interrelated land use applications for the development of the Oregon International Port of Coos Bay's multi-berth Oregon Gateway Marine Terminal, a deep-draft moorage facility on the North Spit of Coos Bay, and Jordan Cove Energy Project's ("JCEP") associated Upland LNG Terminal. Both were previously approved by Coos County and have now received Federal Energy Regulatory Commission ("FERC") approval.[1]

The applicant seeks land use approval from Coos County ("County") for the 49.72-mile segment of the PCGP located within Coos County. The County alignment runs from JCEP's LNG Terminal upland from the Port's Marine Terminal to the alignment segment in adjacent Douglas County (mileposts [MPs] 0.00 to 45.70).

Pacific Connector has received authorization from FERC under Section 7c of the Natural Gas Act ("NGA") to construct, install, own, operate, and maintain an interstate natural gas pipeline, the PCGP, that will transport gasified natural gas from the Jordan Cove LNG terminal in Coos Bay to existing interstate natural gas transmission pipelines near Malin, Oregon and points in between. The 36-inch diameter pipeline will be a total of 234 miles and will provide natural gas to markets throughout the region.[2]

Within the applicable 49.72-mile segment of the PCGP that will be located within the County, the PCGP will cross through five Coos County zoning designations: Forest (F), Exclusive Farm Use (EFU), Rural Residential 2 (RR-2), Rural Residential 5 (RR-5), and Industrial (IND). Additionally, the PCGP will cross 14 Coos Bay Estuary Management Plan (CBEMP) zoning districts: Water Dependent Development Shorelands (6-WD), Development Shorelands (7-D, 19-D), Water Dependent Development Shorelands (8-WD), Conservation Aquatic (8CA, 20CA, 21CA), Natural Aquatic (13A-NA, 11-NA), Rural Shorelands (11-RS, 18-RS, 20-RS, 21-RS), and Development Aquatic (19B-DA) (see Tables 1 and 2).

Within the forest (F) zone, the pipeline use is characterized as a new gas distribution line with no greater than a 50 foot right of way. Within the agricultural (EFU) zone, the pipeline use

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[1] The County previously approved JCEP's LNG Terminal (Case File No. HBCU-07-03), the Port's Marine Terminal and Access Waterway (Case File No. HBCU-07-04) and the related Port applications for Sand Storage and Sorting Yard (Case File Nos. ACU-08-10 and CL-08-01) and Kentuck Mitigation Site (Case File Nos. AM-09-03/RZ-09-02/HBCU-09-01).

[2] The route mileposts no longer reflect the actual length of the PCGP because based on FERC's National Environmental Policy Act (NEPA) process, which resulted in a Final Environmental Impact Statement, Pacific Connector incorporated an alternative within Coos County into the original route. The environmental analysis was tied to the original mileposts, and the mileposts remain unchanged from the route filed with FERC in September 2007. Therefore, MP 11.36 R (revised) merges with the 2007-filed route at MP 7.67.

is characterized as a utility facility necessary for public service. Within the RR and IND zones, the pipeline use is characterized as a utility facility not including power for public sale. Finally, within the CBEMP, the pipeline use is characterized in the respective management units as a low-intensity utility.

The project consists of two distinct sets of components, the first permanent and the second temporary: (1) the pipeline itself, including its permanent 50-foot right-of-way, block valve assemblies, and two access roads; and (2) the temporary construction areas necessary to construct the pipeline. The pipeline consists of the 36 inch subsurface gas pipeline, four mainline block valves and associated facilities. The temporary construction areas (construction areas) include: the 95-foot temporary construction easement, temporary extra work areas, uncleared storage areas, two temporary access roads, and temporary construction storage yards. Environmental alignment sheets, which have been provided with the application as Exhibit 1, depict the pipeline alignment overlaid on a 2006 aerial photograph. The environmental alignment sheets provide land ownership and parcel information along the pipeline route. While the alignment sheets generally depict the FERC-authorized route, the applicant has stated that "there may be minor changes in the alignment within a given property boundary to accommodate a landowner request or to avoid specific construction obstacles." *See* Application Narrative, at p. 3.

As discussed above, Pacific Connector proposes the construction and operation of a 49.72-mile segment of the PCGP within the County. The pipeline would originate at milepost (MP) 0.0 at the Jordan Cove Receipt Meter Station located within the Jordan Cove LNG terminal site, on the North Spit of Coos Bay. The pipeline would extend east from the LNG terminal, passing through the Weyerhaeuser Linerboard site, and entering Haynes Inlet at about MP 1.7. The pipeline would be installed for about 2.4 miles in Coos Bay, exiting to the north of the Glasgow peninsula at about MP 4.1. It would then turn southeast to cross Kentuck Slough at about MP 6.3, and proceeding to Graveyard Point. The pipeline would cross under the Coos River at about MP 8.1 and then will cross Catching Slough at MP 11.11. Between about MPs 12.8 and 26.1, the pipeline would generally follow the existing Bonneville Power Administration (BPA) powerline. The pipeline would then proceed in a southeasterly direction and follow existing logging roads, where feasible. The pipeline would exit the County at MP 45.7. As noted, where feasible, the PCGP alignment is co-located with existing rights-of-ways and corridors to limit the areas of new disturbance.

As a result of the subsurface nature of the pipeline, the majority of the impacts from the pipeline will occur during the construction process. Generally throughout the project, Pacific Connector proposes to utilize a 95-foot wide temporary construction easement and associated temporary extra work areas and uncleared storage areas, with a 50-foot permanent right-of-way. The temporary construction easement configuration is required to accommodate the necessary clearing and grading activities to prepare for construction, temporarily store spoil materials for construction, and to provide a passing lane during construction for movement up and down the construction area. The temporary extra work areas and uncleared storage areas are needed because of site-specific characteristics of the construction easement. Pacific Connector has limited the width of the temporary construction easement and the size of the temporary extra work areas and uncleared storage areas to the greatest extent practicable.

There are two locations within the County where it will be necessary to create temporary access roads in order to construct a portion of the pipeline. These two temporary access roads will be located south of the Coos River in the 20RS zoning district, and will be restored to preconstruction conditions following completion of construction.

Pacific Connector will also need to create two permanent access roads providing access to the above-ground block valve facilities. These will be graveled private roads that are necessary for the operation and maintenance of the pipeline. Pacific Connector has located the final placement of the block valves adjacent to existing roads to minimize the need for creating new access roads and the length of the two new permanent access roads.

The pipeline is allowed as a hearings body conditional use within the EFU, RR-2, and RR-5 zones, an administrative conditional use within the F zone, and a use permitted outright in the IND zone. The pipeline is also allowed in the 15 zones that it crosses within the CBEMP as a permitted use, subject only to consistency with various general conditions.

B. Process

1. Summary

The review timeline for this application is as follows:

Feb. 12, 2010	Application submitted and accepted.
March 12, 2010	Application deemed incomplete.
April 19, 2010	Application deemed complete.
April 30, 2010	County mailed public notice.
May _13_, 2010	County Planning Department issued Staff Report.
May 20, 2010	Public Hearing before Hearings Officer
June 10, 2010	First Open Record Period Closed (rebuttal testimony only).
June 17, 2010	Second Open Record Period Closed (for surrebuttal testimony only
June 24, 2010	Applicant's Final Argument
July 8, 2010	County Planning Staff issued Supplemental Staff Report.
July 16, 2010	Hearings Officer's Recommendation.
Aug. 3, 2010	Deliberations and Decision by Board of Commissioners
September 8, 2010	Adoption of Final Decision by Board of Commissioners
September 25, 2010	150 Day Deadline.

2. Board Call-Up and Delegation to Hearings Officer

On March 2, 2010, pursuant to its authority under CCZLDO 5.0.600, the Board voted to: (1) call up the applications; and (2) appoint a Hearings Officer to conduct the initial public hearing for the applications and then make a recommendation to the Board. On April 5, 2010, the Board appointed Andrew Stamp to serve as the Hearings Officer.

3. Public Hearing and Open Record Periods

On May 20, 2010, Andrew H. Stamp, Hearings Officer, held a public hearing on this matter. At the commencement of the hearing, he stated he did not have any bias, conflicts of interest, or *ex parte* contacts to disclose. He asked whether anyone wanted to challenge his impartiality. One member of the public inquired who was paying for his services. Mr. Stamp responded, he was being paid directly by the County pursuant to a contract. Further questions ensued regarding whether the applicant was paying Mr. Stamp. Planning Director Patty Evernden clarified the Hearings Officer was under contract with the County and the applicant was reimbursing the County for the administrative cost of reviewing the application, including the expense of retaining the Hearings Officer. Mr. Stamp advised this was a typical arrangement for local jurisdictions. Ultimately, no one formally challenged the Hearings Officer's impartiality to conduct the hearing and issue a recommendation on the application.

Mr. Stamp read the required notices of ORS 197.763 into the record and gave detailed instructions regarding presentation of testimony. He then called for the staff report. The Planning Director summarized the proposed development and staff report. After this presentation, the applicant and its representatives presented testimony, and members of the public (some in favor, some in opposition, and some who were neutral) presented testimony. At the conclusion of public testimony, the applicant presented rebuttal testimony to respond to various questions and issues raised by the public. At the conclusion of all oral testimony, the Hearings Officer left the record open for 21 days for the submission of additional written evidence to address testimony presented at the hearing, followed by a 7-day period for surrebuttal testimony, and a final 7-day period for the applicant to submit its final written argument.

Several parties submitted additional arguments and evidence into the record during the open record period. On July 16, 2010, the Hearings Officer delivered his opinions and recommendations to the County Board of Commissioners in a document entitled *Coos County Hearings Officer Analysis, Conclusions, and Recommendations to the Coos County Board of Commissioners*. Therein, the Hearings Officer recommended the Board approve the application, subject to proposed conditions.

4. Board of Commissioners' Deliberations

On August 3, 2010, at 1:30 p.m., the Board convened a public meeting to discuss the Hearings Officer's recommendation and deliberate on the application Commissioners Kevin Stufflebean, Bob Main, and Nikki Whitty were present. The Board opted to act, pursuant to its authority under CCZLDO 5.0.600.C, to review only the evidence, data, and testimony submitted prior to the close of the record by the Hearings Officer. The Board did not accept new evidence or allow additional public comment. At the commencement of the meeting, Assistant County Counsel Oubonh White inquired whether any members of the Board had any conflicts of interest or *ex parte* communications to disclose since the time the applications were filed. Commissioner Whitty disclosed she had a short conversation with Will Wright at the fair. When she realized he wanted to discuss the applications, she responded the issues were part of this proceeding and ended the conversation. All three Commissioners disclosed they attended the May 20, 2010

public hearing on this matter to observe. No other disclosures were made. No member of the public challenged the *ex parte* disclosures or the participation of any member of the Board in this matter.

Commissioner Stufflebean then called for the staff presentation. The Planning Director summarized the proposal and process to date. At the conclusion of this presentation, the Board discussed the application and the Hearings Officer's recommendation. These discussions included various questions to and responses from Planning staff. At the conclusion of these discussions, Commissioner Whitty made a motion, seconded by Commissioner Main, to tentatively approve the applications based upon the evidence in the record and to direct staff to work with the applicant to prepare findings of fact, conclusions of law, and conditions of approval consistent with the Board's discussion, for the Board's consideration at a later date. The Board approved the motion, 3-0.

C. Record and Scope of Review

1. Record Before the Board

The record before the Board consisted of the *Coos County Hearings Officer Analysis, Conclusions, and Recommendations to the Coos County Board of Commissioners* for HBCU-10-01 dated July 16, 2010; the written and oral testimony presented by the applicant, including the application materials; the written and oral testimony presented by other parties to the Hearings Officer, except where such testimony was specifically rejected by the Hearings Officer at the hearing as irrelevant; the various staff reports prepared by County Planning Department dated May 13, 2010, July 8, 2010, and July 28, 2010; and the entire Planning Department file, which was physically before and not rejected by the Board.

2. Scope of Review

When addressing the criteria and considering evidence in the record, the Board used the standard of review required for land use decisions. The applicant must provide substantial evidence in the whole record to demonstrate that all approval standards are met. When evidence conflicted, the Board reviewed the entire record to see if the undermining evidence outweighed the applicant's evidence. In addition, where the ordinance provisions were ambiguous, the Board applied the *PGE v. BOLI* methodology, discussed *infra* and as modified by *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009), to arrive at what it finds to be the correct construction. In so doing, the Board attempted to rely, as much as possible, on past interpretations adopted by the Board, while still making sure that the interpretation is affirmable.

The Board believes that the conclusions made herein would be affirmed if appealed. The Board has fairly wide latitude under state law to draw its own conclusion about the evidence. In addition, with regard to issues of local code interpretation, state law establishes a very deferential standard of review, ORS 197.829(1). *Compare Clark v. Jackson County*, 313 Or 508 (1992); *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003); *Siporen v. Medford*, 231 Or App 585, 220 P3d 427 (2009), *rev allowed* 348 Or 19 (2010).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Process-Related Issues and Issues Related to Multiple Approval Standards.

1. The Opponents' "Alternative Route" Arguments Must Fail Because Only FERC has Jurisdiction to Regulate the Route of a Gas Pipeline or to Control Safety Standards Related to Gas Pipelines.

As the Board is aware, the Federal Energy Regulatory Commission ("FERC") is the lead federal agency that regulates the siting of interstate energy facilities. FERC is in the process of reviewing the proposed LNG terminal and associated pipeline facilities as part of its responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq. ("NEPA"). Many of the opponents have attempted to use this County proceeding as opportunity to collaterally attack the NEPA process, particularly with regard to the alternative "Blue Ridge Route." This is perhaps understandable, given that the jurisdictional relationship of the various regulatory agencies is complex, to say the least.

Nonetheless, the Board finds that any local land use process that would seek to determine the route of the pipeline or otherwise purport to take action inconsistent with FERC's determination in the "Certificate of Public Convenience and Necessity" would likely be preempted[3] by federal law. A discussion of this issue is included in Appendix A. For purposes of this application, however, the Board may only approve or deny the application that the applicant has submitted. The Board does not have the ability to propose major changes to the route, although minor detours (< 400 feet off centerline) are possible. In any event, the Board finds that there is no substantial evidence in the record to support any significant changes to the alignment that has been carefully analyzed and approved through the FERC process.

2. Landowner Consent.

There was considerable discussion concerning the applicant's ability to submit a land use application for a pipeline that will cross private property, when the landowner does not give consent to the application. The only applicable code section requiring landowner consent is

[3] The preemption doctrine is rooted in the Supremacy Clause of the Constitution, Article VI, clause 2, which states, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Preemption doctrine consists of four different types: (1) "express preemption," resulting from an express Congressional directive ousting state law (*Morales v. Trans World Airlines, Inc.*, 504 U.S.374, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992)); (2) "implied preemption," resulting from an inference that Congress intended to oust state law in order to achieve its objective (*Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)); (3) "conflict preemption," resulting from the operation of the Supremacy Clause when federal and state law actually conflict, even when Congress says nothing about it (*Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 143, 83 S.Ct. 1210, 1218, 10 L.Ed.2d 248 (1963)); and (4) "field preemption," resulting from a determination that Congress intended to remove an entire area from state regulatory authority (*Fidelity Fed. Savs. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153, 102 S.Ct. 3014, 3022, 73 L.Ed.2d 664 (1982)). *See Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n,* 461 U.S. 190, 203-04, 103 S.Ct. 1713, 1721-22, 75 L.Ed.2d 752 (1983). The present case involves express and field preemption.

CCZLDO §5.0.150.[4] The requirement that a property owner or contract purchaser sign the application is a mandatory prerequisite to a properly filed application. However, as discussed below, it is procedural requirement that can be deferred to a later stage in the approval process.

At the onset, the Board notes that other local governments' codes have adopted specific exceptions to the general requirement that an owner must sign the land use application. For example, in *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004), LUBA addressed a code provision that contained a specific exception to the signature requirement aimed at "[a]pplications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the Application."[5] *See also Kurihashi Partners v. City of Beaverton*, 46 Or LUBA 791 (2004) (noting similar provision contained in the City of Beaverton Code). However, the CCZLDO contains no similar type of exception.

In a sense, the owner signature requirement may be viewed as a "completeness" issue, insomuch as an application may not be "complete" until the required signatures are present. In this case, staff had already deemed the application complete. Staff defends its decision to accept

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[4] SECTION 5.0.150 is entitled "APPLICATION REQUIREMENTS" and provides, in relevant part:

> "(Article 5.6 of this ordinance Site Plan Review Requirements and Chapter 6 Land Divisions have additional submittal requirements)
>
> Applications for development or land use action shall be filed on forms prescribed by the County and shall include sufficient information and evidence necessary to demonstrate compliance with the applicable criteria and standards of this Ordinance and be accompanied by the appropriate fee. An application shall not be considered to have been filed until all application fees have been paid. All applications shall include the following:
>
> Applications shall be submitted by the property owner or a purchaser under a recorded land sale contract. "Property owner" means the owner of record, including a contract purchaser. The application shall include the signature of all owners of the property. A legal representative may sign on behalf of an owner upon providing evidence of formal legal authority to sign. * * * * . (Emphasis Added).

[5] Deschutes County Code ("DCC") 22.08.010 provides, in relevant part:

> "A. For the purposes of DCC 22.08.010, the term 'property owners' shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
> "B. Applications for development or land use actions shall:
> "1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
> "C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):
> "1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the Application[.]"

the applications, despite the lack of an owner's signature, based on precedent set in earlier cases. As stated in the Supplemental Staff Report dated June 10, 2010:

> The County treated the PCGP consolidated applications in the same manner as the County's prior pipeline applications (2002 and 2003) which were also submitted without owner signatures. The County determined the LDO's application signature provision was not intended to address applications for linear utility facilities involving numerous ownerships where the utility company has the right of condemnation and where obtaining all of the property owner signatures would be virtually impossible.
>
> At that time, the Board of Commissioners decided not to require the utility provider to initiate condemnation litigation against its citizens within the proposed pipeline alignment in order to submit a land use application.
>
> The prior approvals reflect the County's interpretation of its code to accept land use applications for pipelines in Coos County without the signatures of all landowners, as long as the applicant has condemnation authority and a condition is imposed that the land use approval would not take effect until the applicant acquires the necessary property. The precedent created in the prior County decisions was followed in this application.
>
> The County's interpretation is supported by the language in the code. LDO Section 5.0.150 addresses requirements for an application submittal. The first paragraph requires an application to be submitted on forms provided by the county and that the submitted application must be accompanied by the appropriate fee. This paragraph specifically states that "An application shall not be considered to have been filed until all application fees have been paid."
>
> It is the County's position that the signature requirement in the second paragraph is merely procedural rather than jurisdictional. The language in the first paragraph expressly creates a jurisdictional requirement: "An application shall not be considered to have been filed until all application fees have been paid." This same requirement is not applicable to the signature provisions of this Section. Therefore, the signature requirement is procedural, while the fee payment requirement is jurisdictional.
>
> Processing the consolidated applications without the property owners' signatures will not be prejudicial to the rights of any of the property owners if the applications are approved subject to a

> condition that the approvals shall not become effective until PCGP acquires the interest in the subject properties necessary to precede with the project. This is essentially the same condition that the county used to approve its own pipeline application in 2002.

Supplemental Staff Report dated June 10, 2010, at p. 1-2.

For its part, the applicant does not argue that it is a "property owner" within the meaning of the Code. Rather, the applicant appears to be arguing, in part, that it does not need to obtain the consent of the property owner because it has a statutory power of condemnation.

The applicant cites ORS 772.510(3) and 15 USC § 717 in support of this argument. ORS 772.510 provides:

> 772.510. Pipeline companies, right of entry and condemnation
>
> (1) Any pipeline company[6] that is a common carrier[7] and that is regulated as to its rates or practices[8] by the United States or any agency thereof, may enter in the manner provided by ORS 35.220 upon lands within this state outside the boundaries of incorporated cities.[9]
>
> (2) This right may be exercised for the purpose of examining, surveying and locating a route for any pipeline, but it shall not be done so as to create unnecessary damage.

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[6] Under ORS 772.505(2), the term "pipeline company" includes "any corporation, partnership or limited partnership, transporting, selling or distributing fluids, including petroleum products, or natural gases and those organized for constructing, laying, maintaining or operating pipelines, which are engaged, or which propose to engage in, the transportation of such fluids or natural gases."

Determining whether an interstate natural pipeline company has proven to be a more difficult question than anticipated. The Hearings Officer requested briefing on the issue, but no party directly responded. Since interstate gas companies derive eminent domain authority from the federal Natural Gas Act (specifically 15 U.S.C. 717f(h), it may not matter whether similar authority is granted under state law. In any event, it does appear that interstate natural gas pipelines are common carriers due to the passage of FERC Order No. 636. A concise history of the subject is set forth in *General Motors Corp. v. Tracy*, 519 U.S. 278, 283-4, 117 S. Ct. 811 (1997). *See also United Distribution Companies v. F.E.R.C.*, 170 P.U.R.4th 425, 88 F.3d 1105, 1123 (D.C. Cir. 1996) ("In Order No. 436, the Commission began the transition toward removing pipelines from the gas-sales business and confining them to a more limited role as gas transporters. * * * In effect, the Commission for the first time imposed the duties of common carriers upon interstate pipelines.").

[8] The term "practices" is very broad, and therefore there can be little doubt that the "practices" of Pacific Connector Gas Pipeline LP are regulated by a federal agency.

[9] In looking at the maps provided by the applicant, it appears that no part of the proposed gas pipeline traverses a city located in Coos County. Presumably, if the pipeline did traverse a City boundary, that City would be the land use approval authority for that portion of the pipeline.

> (3) These pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their pipeline company purposes, by proceedings for condemnation as prescribed by ORS chapter 35. (Second Emphasis added).

It seems that federal law may provide additional statutory authority for the use of eminent domain in this case. 15 U.S.C. 717(f)(2)(h) provides:

> (h) Right of eminent domain for construction of pipelines, etc.
>
> When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided,* That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. (Underlined emphasis added).

Based on ORS 772.510(3) and 15 U.S.C. 717f, it appears that Pacific Connector does have the right of condemnation. The initial question is whether that right of condemnation itself provides an implicit exception to the Code's definition of "property owner." It does not.

The Board has reviewed the hearings officer's decision in the Pipeline Solutions Case (County File No. HBCU-02-04). In that case, the applicants argued that "[i]n cases such as this, where the application is for a public utility[,] an applicant, as a County with eminent domain powers, the applicant need not obtain signatures or consents from the property owners before obtaining land use permits."[10] The opponents cited CCZLDO §5.2.200 as an approval criterion requiring consent of property owners. The hearings officer found that CCZLDO §5.2.200 was a "procedural requirement" and not an approval criterion.

[10] The hearings officer in that case did not say whether the applicant provided authority to support that assertion.

The hearings officer in HBCU-02-04 went on to find the following:

> It would be reasonable for Coos County to have accepted the Application as complete without the consent of all affected property owners following the rationale of *Schrock Farms vs. Linn County.* The Application is for a public utility and the Applicant is Coos County, which has eminent domain powers. Therefore written consent would not be necessary from the affected property owners before filing this Application.

See Hearings Officer Decision, HBCU-02-04, at p. 4. The hearings officer in that prior case seemed to rely on *Schrock Farms Inc. v Linn County*, 31 Or LUBA 57 (1996) for his ruling.

In *Schrock Farms,* ODOT was the applicant for a PAPA. The Code allowed only property owners to file an application for a PAPA. The petitioner argued that ODOT was not a "property owner" within the meaning of the code. ODOT argued that it was a property owner *because it had initiated condemnation proceedings on the subject property* prior to the application being deemed complete on April 6, 1994. Petitioners countered that the condemnation proceedings had been dismissed by the Court on October 31, 1994, and therefore ODOT was no longer a property owner. LUBA disagreed with the petitioner regarding the legal import of the dismissal, noting that the "dismissal became effective after the application was deemed complete." Thus, LUBA apparently viewed the completeness date as having legal relevance to the issue.

Schrock Farms does not stand for the broader proposition that any entity with condemnation authority automatically has "property owner" status simply by virtue of a statutory grant of condemnation authority such as ORS 772.510(3). For this reason, *Schrock Farms* is not direct authority for this case, since no condemnation proceedings had been filed by the time the application was deemed complete back in April of 2010. However, as discussed in more detail below, *Schrock Farms* does suggest that one possible method for a common carrier pipeline company to gain "property owner" status is to do exactly what ODOT did in that case: initiate condemnation proceedings on the subject properties.

Staff and the applicant both state that most of the requirements set forth in CCZLDO §5.0.150 are not "jurisdictional" despite being worded in a mandatory fashion. Their argument is that some requirements may be merely "procedural" in nature, as opposed to being "jurisdictional." In this manner, a jurisdictional requirement is one that must be completed or met at the time the application is submitted. In that event, the County cannot process the application unless the requirement is completed. On the other hand, under their analysis, a procedural act – even one worded in mandatory terms – is one that may be met at some future point in time. For its part, Western Environmental Law Center ("WELC") states that the procedural versus jurisdiction issue is a "difference without distinction." *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1.

The applicant cites *Simonson v. Marion County*, 21 Or LUBA 313 (1991). In *Simonson*, LUBA addressed whether the county hearings officer correctly rejected an application because it had not been signed by the "legal owner" at the time it was filed. LUBA reversed the hearings officer, holding that:

> "A zoning ordinance requirement may be jurisdictional, in the sense that failure to comply with the requirement may not be waived by the local government or cured by later performance of the requirement. *McKay Creek Valley Assoc. v. Washington County*, 16 Or LUBA 690, 692-93 (1988); *Beaverton v. Washington County*, 7 Or LUBA 121, 127 (1983). However, the code language must clearly express that the requirement is jurisdictional. *See Rustrum v. Clackamas County*, 16 Or LUBA 369, 372 (1988); *Beaverton v. Washington County, supra.*"

In *Simonson*, the "agent" of the landowner filed the land use application in Marion County on May 2, 1990. The application was defective when submitted because it did not meet the requirement that the property owner submit in writing a document that confirms that the agent is "duly authorized" to submit the application on the owner's behalf. The applicant cured that defect on August 14, 1990 by submitting the required documentation. The County held its first hearing on the application on September 12, 1990, but ultimately denied the application on the basis that, on the day the application was submitted, the application did not contain the required documentation from the owner. LUBA held that this was in error, because the applicant had eventually submitted the required letter, and the requirement was not jurisdictional. Thus, *Simonson* makes clear that the application *could* be accepted and processed before compliance with the signature requirement is established. Had the issue been "jurisdictional," the application could not have accepted and processed.

The case of *Base Enterprises, Inc. v. Clackamas County*, 38 Or LUBA 614 (2000) also discusses the distinction between jurisdictional requirements and non-jurisdictional requirements, as follows:

> According to petitioner the requirement at ZDO 1301.03(A) that the application be submitted by "the owner, contract purchaser, option holder, or agent of the owner, of the property in question" is a jurisdictional requirement.
>
> * * * * *.
>
> Petitioner assumes, but does not establish, that the ZDO 1301.03(A) limitation on persons who may submit an application for an administrative action is a "jurisdictional" requirement. It may be that if ZDO 1301.03(A) expressly stated that its limitations are "jurisdictional" we would be required to treat it as a jurisdictional requirement. *See Breivogel v. Washington County*, 114 Or App 55, 58-59, 834 P2d 473 (1992) (county code made signature on local appeal

> document a jurisdictional requirement). However, unlike the code language at issue in *Breivogel*, ZDO 1301.03(A) does not state that its limitations on who may submit an application are "jurisdictional." ZDO 1301.03(A) does not state that the county lacks authority to consider an application for an administrative action that is submitted by someone who does not prove he or she is among the persons listed in ZDO 1301.03(A).
>
> The first hearings officer presumably could have terminated his review, and determined that the first application should be dismissed, once he determined that Zamani was not among those authorized to submit the application under ZDO 1301.03(A). However, that does not mean the hearings officer was legally compelled to do so. We do not agree with petitioner that the county lacked jurisdiction to deny the first application or that it erred by denying the second application because it is substantially similar to the first application.

Similarly, in *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994), LUBA held that where a local code provision does not explicitly state that the elements of a complete development application are "jurisdictional" (specifically, a signature requirement), the local government's interpretation of the code provision as imposing a "procedural" requirements must be affirmed under ORS 197.829.

Thus, *Simonson, Base Enterprises, BCT Partnership* and similar cases[11] make clear that application signature requirements are not "jurisdictional" unless the code specifically makes them so. Simply because the signature requirement is worded in mandatory terms does not make the requirement "jurisdictional." Rather, to be jurisdictional, the Code must state something along the lines that "the county lacks authority to consider an application for an administrative action that is submitted by someone meeting the definition of owner." Under *BCT Partnership, Womble,* and *Bridges,* an application submittal requirement that is not jurisdictional is "procedural" in nature. Once it has been determined that an application submittal requirement is procedural, then an opponent challenging compliance with the requirement must demonstrate prejudice to his or her substantial rights. *See generally Burdhardt v.City of Molalla*, 25 Or LUBA 43, 51 (1993).

In the present case, the signature requirement under CCZLDO 5.0.150 is not presented as a jurisdictional element of an application. Although it does state a requirement that the application shall be signed by all property owners, it does not expressly make such signatures a jurisdictional requirement, and therefore it must be treated as procedural under the case law discussed above.

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[11] *See also Womble v. Wasco County*, 54 Or LUBA 68 (2007) (petitioner failed to provide basis for reversal or remand when, although land use application was not authorized by the property owners under local code, petitioner did not establish that the code requirements in question were "jurisdictional" in nature); *Bridges v. City of Salem*, 19 Or LUBA 373 (1990) (same).

This conclusion is directly support by the text and context of the CCZLDO itself. As staff notes, CCZLDO 5.0.150 also includes the following statement, which clearly creates the type of "jurisdictional" requirement contemplated in the LUBA cases cited above: "An application shall not be considered to have been filed until all application fees have been paid." Thus, the County has expressly created a jurisdictional requirement that an application cannot be considered without payment of the fee. However, there is no similar jurisdictional language associated with the property owner signature requirement.

However, just because something is not jurisdictional does not mean that it is not a mandatory requirement that can simply be ignored. WELC correctly asserts that the County cannot "waive" the requirement even if it is procedural. *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1. In this regard, the case of *Baker v. Washington County*, 46 Or LUBA 591 (2004) is instructive. In *Baker*, the intervenors were applicants seeking to partition their property into two parcels. Intervenor took access to the parcels via a driveway easement that crosses the petitioner's land. Petitioners objected to the use of the easement for access for the two parcels, arguing that, as the underlying fee owners of the easement, Washington County Community Development Code (CDC) 203-1.1 required that the petitioners sign the application. In this regard, the code provision at issue stated:

> CDC 203.1.1. "Type I, II and III development actions may be initiated only by: Application by *all the owners* of the subject property, or any person authorized in writing to act as agent of the owners or contract purchasers. (Emphasis added).

The code did not make the signature a "jurisdictional" defect. Nonetheless, LUBA held that the County erred in concluding that the disputed application could be processed without petitioners' joining in the application, because the petitioners are "owners" of the property within the meaning of the code.

As if this were not complicated enough, *Caster v. City of Silverton*, 54 Or LUBA 441 (2007) throws another wrinkle into the mix. Pacific Connector argues, the County cannot deny the application for failure to obtain signatures of all owners, on account of the fact that staff issued a completeness letter. The applicant states:

> The signature requirement goes to completeness, not approvability or jurisdiction, and the county may not deem an application complete and then subsequently deny the application based upon noncompliance with a procedural factor that goes to the completeness of the applications. In *Caster v. City of Silverton*, 54 Or LUBA 441 (2007), the applicant failed to provide information requested by the city for completeness under ORS 227.178(2). LUBA held that the city could not deem an application complete but then subsequently deny the application based on noncompliance with a factor that goes to completeness of the applications:

> "Finally, even if petitioner in this case failed to provide the notice required by ORS 227.178(2)(b), the city elected to proceed with review of the permit application rather than treat the permit application as void under ORS 227.178(4). In that circumstance, the city may not thereafter simply cite an alleged failure on petitioner's part to provide requested information as a basis for denying a permit application. Having elected to proceed with the application notwithstanding petitioner's failure or refusal to provide the requested information, the city owes petitioner at least some explanation for why it believes petitioner's evidentiary submittal falls short of demonstrating the proposal complies with the relevant approval criteria." *Caster*, 54 Or LUBA at 451-52.

See Applicant's Final Argument dated June 24, 2010, at p. 2. However, the last sentence of the above-cited quote demonstrates that LUBA's point is rather nuanced. What LUBA is saying is that once a completeness letter is issued, the application cannot be denied due to a failure to provide the requested information. Rather, to the extent the local government wishes to deny the applicant, it may then only do so on the basis that the lack of the requested information causes there to be insufficient evidence to meet the requirements set forth in applicable approval standards. The Board finds that CCZLDO §5.0.150 is a mandatory approval standard because it could form the basis of denial of the application. *See Baker, supra.*

Notwithstanding the various cases in the field, the Board agrees with the applicant that "[i]t does not make practical sense for Pacific Connector to condemn the property required for construction of the pipeline until the necessary final approvals from the county and FERC have been obtained and any appeals are exhausted." *See* Applicant's Final Argument dated June 24, 2010, at p. 2.

Because the defect is not jurisdictional, it does not appear that the County is required to reject or deny the application, and the Board does not read *Baker* to establish an absolute rule to the contrary. *Compare Bridges .City of Salem*, 19 Or LUBA 373 (1990) (failure to provide proof of agency until after the application is filed does not warrant denial of application, where petitioners were not able to show prejudice). Rather, the County has some flexibility to allow the applicant to submit the required documentation at a later date. In this regard, *Simonson* is instructive:

> Where a local government imposes standards that must be met to obtain approval of permits, the local government must find that those standards are met before granting approval. If the permit applicant fails to demonstrate that applicable approval standards are met, the local government must deny the application. Of course, a local government also may, in an appropriate circumstance, impose conditions and rely on those conditions in determining that the application, as conditioned, meets the applicable approval

> standards. *Lousignont v. Union County, supra; Sigurdson v. Marion County*, 9 Or LUBA 163, 170 (1983); *Margulis v. City of Portland, supra.*

Continuing in a footnote, LUBA stated:

> In *Holland v. Lane County*, 16 Or LUBA 583, 596 (1988), we explained that a local government may be able to defer a determination of compliance with a discretionary approval standard to a later stage of the development process, where the code does not prohibit such deferral and the requisite notice and public hearing or notice and opportunity for an appeal is provided. *Compare Storey v. City of Stayton*, 15 Or LUBA 165, 184 (1986); *Spalding v. Josephine County*, 14 Or LUBA 143, 147 (1985).

Id. at 325, n 11. Before a condition can be imposed, the County has to make a determination of feasibility. The concept of "feasibility" findings is well established in Oregon. In *Meyer v. City of Portland*, 67 Or App 274, 280 n.3, 678 P2d 741 (1984), the Court of Appeals explained that the required finding of "feasibility" for the first stage approval requires "more than feasibility from a technical engineering perspective." *Id.* at 280, n3. The Court explained that "[i]t means that substantial evidence supports findings that solutions to certain problems * * * posed by a project are possible, likely and reasonably certain to succeed." *Id.* A feasibility finding that is equivocal or wavering is not sufficient. *Griffith v. City of Corvallis*, 16 Or LUBA 64 (1987); *Doughterty v. Tillamook County*, 12 Or LUBA 20, 31 (1984).[12]

The core goal of a typical two-stage approval process is to give the applicant certainty over the more discretionary, big picture issues, while allowing the resolution of more technical, *non-discretionary* issues to be deferred to a later stage in an approval process. Often, these non-discretionary issues are expensive and time consuming to resolve, and therefore it makes practical sense to get the "big-picture" discretionary issues out of the way first. The risk, of course, is that the decision-maker will improperly allow the applicant to defer discretionary decision-making to a later stage in the approval process where the public has no opportunity to participate. The local government can avoid this problem by agreeing to hold further public hearings on the deferred issue in the future. *Turner v. Washington County*, 8 Or LUBA 234 (1983); *Rhyne v. Multnomah County*, 23 Or LUBA 442 (2000); *Stockwell v. Benton County*, 38 Or LUBA 621, 629 (2000).

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[12] Provided this required "feasibility" determination is made when first stage approval is granted, precise solutions for problems posed by a land use decision and other detail technical matters may "be worked out between the applicant and city's experts during the second stage approval process for the final plan." *Id.* at 282 n.6. Resolution of precise solutions and technical matters and final approval of the subdivision need not include public hearings. *Id. See also Golf Holding Co. v. McEachron*, 39 Or App 675, 593 P2d 1202, *rev den*, 287 Or 477 (1979); *Meyer v. City of Portland*, 7 Or LUBA 184, 196 (1983), *aff'd*, 67 Or App 274, 687 P2d 741 (1984); *Rhyne v. Multnomah County*, 23 Or LUBA 42, 46-47 (1992).

LUBA recognized in *Schrock Farms* that initiation of a condemnation proceeding was sufficient to qualify an entity as an "owner" for purposes of a local code provision requiring a land use application be submitted by an owner of the property. In this case, the Board concludes the applicant has condemnation powers pursuant to ORS 772.510(3) and 15 USC § 717, at least to the extent that the FERC Certificate is not rescinded on appeal or via a reconsideration process. Therefore, the Board finds it is *feasible* for Pacific Connector to become a property owner for purposes of the signature requirement through the initiation of condemnation proceedings, and Pacific Connector may become an 'owner' for application purposes before actually obtaining the final judgment in the condemnation proceedings in the individual properties at issue. The Board also finds that it is feasible for Pacific Connector to obtain signatures of affected property owners indicating their consent to the application, either through negotiations with individual property owners or through the condemnation process.

WELC takes issue with this conclusion, and states that "there is no currently valid [FERC] authorization of condemnation power available to the applicant to exercise, let alone upon which to rely to evade the landowner consent requirements." *See* Letter from WELC Staff attorney Jan Wilson, dated June 8, 2010, at p. 2. The applicant responds to this argument as follows:

> Western Environmental Law Center (WELC) and other opponents argue that the FERC Order dated December 17, 2009 approving the project is not currently effective due to a subsequent Order Granting Rehearing for Further Reconsideration dated February 16, 2010. Therefore, opponents claim, Pacific Connector has no current authorization of condemnation authority and the FEIS is not currently valid. WELC goes to some length to quote from the Natural Gas Act, but chooses to ignore the provisions of the Act that require "stays" of FERC Orders, and require that "the filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section [appeal to U.S. Court of Appeals] shall not, unless specifically ordered by the court, operate as a stay of the Commission's order." 15 USC § 717r(c).
>
> The FERC Order is still effective upon request for rehearing, and is still effective upon appeal to the Ninth Circuit Court of Appeals, unless a stay of that Order is obtained by opponents. In other words, a FERC Order is similar to a local land use decision in Oregon, which remains effective upon appeal unless and until a stay is obtained from LUBA.
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> The issuance by FERC of the "Order Granting Rehearing for Further Consideration" dated February 16, 2010 does not stay the effectiveness of the Order. In fact, as explained in the attached excerpt from the American Bar Association's "FERC Basic

Practice Series" * * *, such orders are commonly issued by FERC as a "tolling" mechanism, which allows the Commission to avoid the otherwise strict deadline for ruling on rehearing requests. As explained by the ABA materials:

> "Because the Commission rarely has time to issue an order on rehearing within 30 days after receiving requests for rehearing, it usually issues 'tolling' orders, granting the request for rehearing solely for purposes of further consideration. The effect of these tolling orders is to avoid the automatic denial that results from Commission inaction. FERC them proceeds to issue the real order on rehearing at its own pace."

In the absence of a stay, the FERC Order dated December 17, 2009 is still valid and effective. Attached as Exhibit 2 to this letter is the relevant portion of an Order on Rehearing issued by FERC in January 2003, denying requests for rehearing of its original September 2002 order issuing a Certificate of Public Convenience and Necessity to Islander East (authorizing construction of the Islander East pipeline).

The discussion of the request for the stay begins at paragraph 20. The Connecticut Attorney General's request for stay was based partly on Islander East's announced intention to utilize eminent domain authority granted by the original order to access certain properties on its authorized right of way (¶ 21, see also ¶ 24). Islander East responded by asserting that "it needs the September 19 order to obtain access to the few remaining properties where access has been denied so that it can complete the surveys and reports." (¶ 27-28).

Paragraphs 31 et seq. set forth the standards the Commission applies when determining whether to grant a stay. In this case it found that the Connecticut AG had not shown irreparable injury, while granting a stay might harm Islander East:

> "easement agreements negotiations and condemnation proceedings are lengthy procedures. One of the reasons the Commission issued the September 19 order was to give Islander East sufficient time to conduct preconstruction activities, including acquiring the necessary easements. Staying Islander East's right to eminent domain while it resolves preconstruction environmental conditions would needlessly delay the project." (¶ 34).

> The attached FERC Order makes clear that (a) the original order conveys the right of eminent domain (b) which, absent a stay explicitly granted by the Commission, is not affected by the rehearing (or appeal) process.

See letter from Mark Whitlow, dated June 17, 2010. WELC disagrees with the applicant's legal conclusions, but does little to press its case. *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1. The Board concludes the original FERC order conveys the right of eminent domain when no stay of such order was obtained or explicitly granted by FERC.

WELC raises another issue in its letter dated June 8, 2010. It notes that CCZLDO §5.0.150 requires "*all* owners of the property" to sign the application. *See* Letter from WELC Staff attorney Jan Wilson, dated June 8, 2010, at p. 2, n2. In this regard, the code is worded in a manner similar to the provision at issue in *Baker v. Washington County,* 46 Or LUBA 591 (2004). WELC argues that even if Pacific Connector condemns an easement, that it will still have to obtain the signature of the owner of the fee interest due to the use of the phrase "all of the owners of property." The Board finds that it is feasible for Pacific Connector to obtain signatures of affected property owners indicating their consent to the application, either through negotiations with individual property owners or through the condemnation process and resulting court order condemning the necessary property.[13] As discussed elsewhere in these findings, the Board also finds that the property owner signature requirement is an element of local procedure that was not intended to apply to this type of application, and could be preempted by federal law, which does not contemplate that a property owner whose property interests are subject to condemnation pursuant to FERC order would still need to sign a consent form.

The County can ensure there will be no prejudice to the rights of any affected property owner through the imposition of a condition of approval requiring the applicant to acquire an ownership interest in the property and/or to obtain signed consents from property owners prior to the actual construction of the pipeline. The Board further finds the act of verifying the signatures will be ministerial in nature, because ownership can be verified without exercising discretionary decision-making.[14] County staff can simply verify the signatures received for a certain property against the County's ownership records for that property. The records will either match or not; there will not be a need or opportunity to exercise judgment in this process. As a result, the County will not need to conduct an additional quasi-judicial land use hearing to verify ownership.

In summary, the Board adopts the interpretation and legislative history of CCZLDO §5.0.150 contained in the Supplemental Staff Report dated June 10, 2010. Because the property

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[13] These alternative findings are effectuated by the Board through the adoption of two alternative versions of Condition 20 regarding landowner consent. The first condition 20(a) allows that a court order condemning property for the pipeline could also convey the corresponding consent of the property owners or otherwise obviate the need for their signatures. In the alternative, if that condition is deemed invalid or insufficient on appeal, the Board finds that alternative condition 20(b) ensures compliance with CCZLDO 4.0.150.

[14] A determination is discretionary if it "requires the application of judgment or some form of evaluation." *Buckman Community Ass'n v. City of Portland,* 168 Or App 243, 245 n1 (2000). A standard that is subjective, discretionary, or requires factual, legal, or policy judgment is also not clear and objective. *Hiebenthal v. Polk County*, 41 Or LUBA 316 (2002).

owner signature requirement is procedural rather than jurisdictional and it is feasible for the applicant to initiate condemnation proceedings in the future; the County may approve this application subject to a condition requiring that the land use approval will not take effect until the applicant acquires an ownership interest in the necessary property and/or acquires the signed consent of the property owners.

One final note is worth mentioning. WELC states that "even if the condition of approval requiring landowner consent somewhere down the road" is added to the decision, the landowners will still be prejudiced because "it puts an immediate cloud over the property, such that selling it becomes difficult and burdensome." *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1. Regardless of whether a condition of approval is added or the land use application is denied, this land use process will not cause *further* damage beyond what is going to occur as a result of the FERC process. In other words, the real battle is at FERC and this application is a mere sideshow. If the opponents somehow convince FERC to rescind the Certificate, or if they successfully overturn the FERC Certificate at the Ninth Circuit, then this land use approval is worthless to the applicant. On the other hand, if the FERC Certificate is ultimately affirmed, then whatever ill-effects stem from the "cloud" created by a condition of approval mandated here will be indistinguishable from the "cloud" created by the FERC Certificate itself.[15]

3. Potential for Mega Disasters (Tsunamis, Earthquakes, etc).

One common theme throughout much of the testimony stems from the concern that a gas pipeline would create secondary problems such as explosions and fire if the County is hit by a tsunami or earthquake. Since there are any number of Code criteria under which this concern could potentially be relevant, and because the conclusion is the same no matter the specific criterion at issue, the issue is addressed here.

As an initial matter, the Board finds that tsunamis are not much of an issue considering the pipe will be a thicker grade of steel and it will buried in 5-8 feet of sediment and encased in four inches of concrete. Although it is not clear whether a natural gas pipeline is one of the types of facilities regulated in a tsunami zone under ORS 445.447,[16] the FEIS makes clear that the risk

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[15] WELC further states that the condition of approval would "in effect, * * * authorize a taking of the landowner's rights to freely transfer their property." *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1. As an initial matter, the irony of having an environmental group raising a pro-property rights "takings" argument is duly noted. But regardless of that hypocrisy, there is no "taking" caused by a pipeline because there will still be economically viable uses of the landowner's property. As Measure 37 claimants know all too well, a taking only occurs is there is a virtual wipeout of all economically viable uses of the land. Moreover, planning a future condemnation alone is not enough to constitute a taking for condemnation blight. *Clarke v. Port of Portland*, 23 Or App 730, 543 P2d 1099 (1975). Regardless, protection of property value is not an approval standard for this case. Therefore, the opponent's comments on this issue provide no basis for denial. *Tucker v. Douglas County*, 28 Or LUBA 134 (1994); *Sunburst II Homeowners Assn v. City of West Linn*, 17 Or LUBA 401 (1989).

[16] **ORS 455.447 Regulation of certain structures vulnerable to earthquakes and tsunamis; rules.** (1) As used in this section, unless the context requires otherwise:
(a) "Essential facility" means:
(A) Hospitals and other medical facilities having surgery and emergency treatment areas;

of a tsunami has been studied and planned for. *See* FEIS 5.1.1, at p. 5-2. The applicant's geo-technical engineers studied the potential effect of a "design tsunami event," which is apparently a 565 year return period. *See* Geologic Hazard's Report dated October 30, 2009, by Geo-Engineers at p. 26-27. The modeled event predicted three feet of temporary scouring. Since the pipe will be buried at a depth of five feet, no harm is anticipated to occur to the pipe as a result of a design tsunami event. The opponents have not presented credible evidence that suggests that

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(B) Fire and police stations;

(C) Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(D) Emergency vehicle shelters and garages;

(E) Structures and equipment in emergency-preparedness centers;

(F) Standby power generating equipment for essential facilities; and

(G) Structures and equipment in government communication centers and other facilities required for emergency response.

(b) "Hazardous facility" means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.

(c) "Major structure" means a building over six stories in height with an aggregate floor area of 60,000 square feet or more, every building over 10 stories in height and parking structures as determined by Department of Consumer and Business Services rule.

(d) "Seismic hazard" means a geologic condition that is a potential danger to life and property that includes but is not limited to earthquake, landslide, liquefaction, tsunami inundation, fault displacement, and subsidence.

(e) "Special occupancy structure" means:

(A) Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;

(B) Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;

(C) Buildings for colleges or adult education schools with a capacity greater than 500 persons;

(D) Medical facilities with 50 or more resident, incapacitated patients not included in subparagraphs (A) to (C) of this paragraph;

(E) Jails and detention facilities; and

(F) All structures and occupancies with a capacity greater than 5,000 persons.

(2) The Department of Consumer and Business Services shall consult with the Seismic Safety Policy Advisory Commission and the State Department of Geology and Mineral Industries prior to adopting rules. Thereafter, the Department of Consumer and Business Services may adopt rules as set forth in ORS 183.325 to 183.410 to amend the state building code to:

(a) Require new building sites for essential facilities, hazardous facilities, major structures and special occupancy structures to be evaluated on a site specific basis for vulnerability to seismic geologic hazards.

(b) Require a program for the installation of strong motions accelerographs in or near selected major buildings.

(c) Provide for the review of geologic and engineering reports for seismic design of new buildings of large size, high occupancy or critical use.

(d) Provide for filing of noninterpretive seismic data from site evaluation in a manner accessible to the public.

(3) For the purpose of defraying the cost of applying the regulations in subsection (2) of this section, there is hereby imposed a surcharge in the amount of one percent of the total fees collected under the structural and mechanical specialty codes for essential facilities, hazardous facilities, major structures and special occupancy structures, which fees shall be retained by the jurisdiction enforcing the particular specialty code as provided in ORS 455.150 or enforcing a building inspection program under ORS 455.148.

(4) Developers of new essential facilities, hazardous facilities and major structures described in subsection (1)(a)(E), (b) and (c) of this section and new special occupancy structures described in subsection (1)(e)(A), (D) and (F) of this section that are located in an identified tsunami inundation zone shall consult with the State Department of Geology and Mineral Industries for assistance in determining the impact of possible tsunamis on the proposed development and for assistance in preparing methods to mitigate risk at the site of a potential tsunami. Consultation shall take place prior to submittal of design plans to the building official for final approval. [1991 c.956 §12; 1995 c.79 §229; 1995 c.617 §1; 2001 c.573 §12] (Emphasis added).

the measures proposed in the FEIS would be insufficient to prevent the pipe from getting scoured out by a tsunami. In any event, the Board has already granted land use approval for the LNG terminal, which presumably would be at much greater risk in a tsunami event.

Moreover, if a tsunami that has the power to uproot a steel pipe buried in five to eight feet of sediment[17] and encased in four inches of concrete hits Coos Bay, then Keith Comstock is correct when he states that the "LNG facility will be the least of your worries."

FLOW claims that Pacific Connector "*failed to provide adequate information regarding the geologic hazards for the pipeline*" and cites the State of Oregon's comments to the FERC FEIS. Attached to the State of Oregon's comment letter are the DOGAMI comments and recommendations made to the project's Draft EIS (Attachment 1, page 3) recommending additional work to be completed and included in the Final EIS. Pacific Connector responded to questions and comments raised by DOGAMI in the updates noted in the FEIS.

Also, FLOW incorrectly attributes comments made by DOGAMI in Section 4.1.2.3 to Pacific Connector. In fact, Section 4.1.2 of both the FERC DEIS and FERC FEIS are specific to the geo-hazard analysis of the Jordan Cove LNG Terminal. Geo-hazard evaluations and recommendations for the Pacific Connector Gas Pipeline are found in Section 4.1.3 in both documents.

Pacific Connector evaluates, analyzes and mitigates the effects of earth movement potential in all phases of the project: pipeline routing, detailed engineering design, facility construction, and ongoing operations and monitoring of the in-service pipeline facilities. As part of the Coos County public record, Pacific Connector submitted the *Coos County Geologic Hazards Report* prepared by GeoEngineers for Pacific Connector. This report is an excerpt from the 2007 FERC Certificate application and provides the geotechnical and geohazard information along the pipeline route within Coos County. The report constitutes substantial evidence, and there is no scientifically-based evidence to the contrary.

The issue of earthquakes has also been considered. Earthquakes have the ability to impact the pipeline by causing earth movement and thus displacing the pipeline from its original location. This displacement can be caused from crossing an earthquake fault or secondary impacts from an earthquake such as liquefaction, lateral spreading, or landslides. In addition to earth movement, river and stream scour potential was analyzed at each river crossing within the report.

Regarding earthquakes, Section 3.3 Seismic Settings (of the GeoEngineers report), states *"Geologic maps of the project area show the many faults that cross the pipeline alignment or that are located in proximity to the pipeline corridor (Walker and MacLeod, 1991). With the exception of the Klamath Falls area, these mapped surface faults are not considered active and are not believed to be capable of renewed movement of earthquake generation (United States Geological Survey [USGS], 2002 interactive fault website).*

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[17] The top of the pipe will be covered by 5 feet of sediment. *See* FEIS at p. 2-98.

Regarding the other forms of earth movement that may cause displacement to the pipeline, Pacific Connector chose avoidance as the mitigation priority when routing the pipeline. Appendix A and Appendix B in the *Coos County Geologic Hazards Report* identify the locations along the pipeline alignment where a geohazard exists, what risk level the hazard presents to the pipeline, and if mitigation measures will be required at those locations (where avoidance was not possible). Pacific Connector will further analyze all locations where mitigation measures were recommended by GeoEngineers to engineer the best type of mitigation to protect the public, the environment, and the integrity of the system. In addition, FERC Environmental Condition #14 requires Jordan Cove and Pacific Connector to hire a board of third-party consultants to review and approve both projects' final design as it relates specifically to their geotechnical evaluation and mitigation measures.

Next, the issue of landslide risks in riparian reserves is considered. FLOW asserts that the pipeline will increase the risk of landslides due to the removal of vegetation on steep slopes. Pacific Connector has included in its FERC application, and federal and state water quality permit applications, an Erosion Control and Revegetation Plan (ECRP) which outlines the Best Management Practices (BMPs) the project will use for temporary and permanent erosion control along the project right-of-way to prevent land movement. The ECRP is attached under the tab labeled "Erosion Plan" as an exhibit to the Applicant's May 12, 2010 Pre-Hearing Evidentiary Submittal. The ECRP has been reviewed by various federal and state agencies (including the Forest Service and BLM) during the FERC pre-filing process, the FERC Certificate application process, and the Plan of Development process, and their review comments have been incorporated into the plan. The noted temporary and permanent BMPs have been approved by these agencies for use on private and federal lands. Mitigation measures specific to steep slope construction are discussed in Section 11.0 and the related appendices in the Pacific Connector ECRP. In summary these measures include:

- routing the pipeline to ensure safety and integrity of the pipeline;
- identifying adequate work areas to safely construct the pipeline;
- utilizing appropriate construction techniques to minimize disturbance and to provide a safe working plane during construction (i.e., two-tone construction; see Drawing 3430.34-X-0019 in Attachment C to Welling letter dated June 17, 2010);
- Spoil storage during trench operations on steep slopes (greater than the angle of repose) will be completed using appropriate BMPs to minimize loss of material outside the construction right-of-way and temporary extra work areas. Examples of BMPs that may be used include the use of temporary cribbing to store material on the slope or temporarily end-hauling the material to a stable upslope area and then hauling and replacing the material during backfilling;
- optimizing construction during the dry season, as much as practicable;

- utilizing temporary erosion control measures during construction (i.e., slope breakers/waterbars);
- installing trench breakers in the pipeline trench to minimize groundwater flow down the trench which can cause in-trench erosion;
- backfilling the trench according to Pacific Connector's construction specifications;
- restoring the right-of-way promptly to approximate original contours or to stable contours after pipe installation and backfilling;
- installing properly designed and spaced permanent waterbars;
- revegetating the slope with appropriate and quickly germinating seed mixtures;
- providing effective ground cover from redistributing slash materials, mulching, or installing erosion control fabric on slopes, as necessary; and
- monitoring and maintaining right-of-way as necessary to ensure stability.

The Board finds that these BMPs are adequate to address the risk of landslides.

4. Riparian vegetation removal and the "public utility" exemption.

Generally, the CCZLDO requires that riparian vegetation must be maintained within 50 feet of certain waterbodies. However, applicable code provisions in the EFU, Forest, Rural Residential and CBEMP zoning districts include the following exemption: "Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-way."

WELC and other opponents assert that the PCGP is not a "public utility" to which this exemption can be applied. However, the pipeline falls within the CCZLDO definition of a "low-intensity utility facility," which is described as including gas lines for "public service." CCZLDO §2.1.200. The pipeline also falls within the ORS 757.005(1)(a)(A) definition of a "public utility," which includes "[a]ny corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power...."

Contrary to the unsupported assertions of several opponents, the term "public utility" referenced in the analogous provision of ORS 215.213(1)(d) is not concerned with whether the utility is owned by a public or private entity but whether the facility is so impressed with a public interest that it comes within the field of public regulation. 42 Or Att'y Gen 77 (1981) (cited in *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 773 P2d 779 (1989)).

Notwithstanding the applicability of this exemption, in circumstances where riparian vegetation must be removed for construction of the pipeline, Pacific Connector is proposing to restore riparian vegetation within 25 feet of the impacted waterbody. Pacific Connector has stated that it will comply with all FERC requirements regarding waterbody crossings, and has provided a detailed Erosion Control and Revegetation Plan (ECRP) that was developed using FERC's Upland Erosion Control, Revegetation, and Maintenance Plan and FERC's Wetland and Waterbody Construction and Mitigation Procedures. The applicant's ECRP and the two referenced FERC documents were submitted into the record as part of the applicant's submittal dated May 12, 2010.

Section 10.12 of the ECRP includes detailed information regarding planting of native shrubs and trees in wetland and riparian areas to mitigate impacts from construction, and provides that "in riparian areas, shrubs and trees will be planted across the right-of-way for a width of 25 feet from the waterbody banks." ECRP pages 38-39.

WELC also contends the applicant has not established that any necessary removal of riparian vegetation will be "the minimum necessary," as required within riparian areas in the Rural Residential and CBEMP zones. In response to these concerns, during the second open record period the applicant provided correspondence from Randy Miller of Pacific Connector dated June 17, 2010, which identifies measures that have been taken by the applicant in designing the project in order to minimize impacts to riparian vegetation, including the following:

- Construction impacts to riparian areas have been minimized to the extent possible through routing efforts to ensure a safe, stable alignment for long-term pipeline integrity. Through these efforts, the alignment follows ridgelines and watershed boundaries in many areas, significantly minimizing waterbody and riparian crossings.
- Construction work area limits have been minimized and work area setbacks from waterbodies and wetlands provided where feasible based on topographic and engineering constraints.
- Construction schedules across waterbodies have been planned to coincide with ODFW recommended in-stream work windows and the low-flow periods, unless an unknown occurrence of northern spotted owls or marbled murrelets arise which create a conflict in seasonal restrictions between species. Should such a conflict arise, Pacific Connector would work with federal and state wildlife agencies to determine the appropriate construction schedule.
- Streambeds will be restored to their preconstruction contours, elevations and grade and streambanks will be restored to their approximate original contour or to a stable configuration to ensure stability and to restore floodplains. These measures will ensure that streamflow characteristics and floodplain functions are restored.
- Streambeds will be reclaimed with replacement of existing spawning substrate.
- After construction is complete, large woody debris will be placed in streams or banks depending upon the size of the stream, its pre-construction condition relative to the presence or absence of trees and other site specific factors.

- All riparian areas will be restored and revegetated including trees and shrubs where appropriate and in accordance with the federal and state permit conditions.
- Coniferous and shrub vegetation will be re-established within affected riparian areas for a distance of 25 feet on each side of intermittent and perennial waterbodies, or to the limit of the existing riparian vegetation.
- The pipeline maintenance corridor has been narrowed to the minimum necessary and to comply with DOT maintenance requirements.
- Erosion control will be implemented as described in the project's Erosion Control and Revegetation Plan (ECRP) through implementation of extensive BMPs as required by federal, state, and local permits. The ECRP includes BMPs for construction and post-construction; it provides environmental controls for waterbody and wetland crossings, spill management, hydrostatic testing, and trench dewatering. Restoration procedures include recontouring, soil compaction and scarification, seedbed preparation, seed mixes, fertilization, noxious weed control, and maintenance.

As explained in the June 17, 2010 correspondence from Randy Miller, and in the above-cited provisions of the ECRP, the applicant has exceeded any applicable County standards regarding protection of riparian vegetation. The applicant has demonstrated that the amount of riparian vegetation that will be removed will be the minimum necessary, and that vegetation will be replanted in any event. WELC does not explain what additional measures could be taken, or otherwise provide evidence that refutes Mr. Miller's testimony. For this reason, the Board rejects WELC's arguments regarding this issue. Nevertheless, to ensure compliance with the applicant's representations, the Board imposes Condition of Approval A.18 to read as follows:

> "Riparian vegetation removal shall be the minimum necessary for construction and maintenance of the pipeline, and shall comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction. The applicant shall restore riparian vegetation 25 feet from the streambanks on either side of waterbodies on private lands where riparian vegetation existed prior to construction, consistent with the applicant's ECRP."

The Board finds that the applicant's proposed condition (Condition of Approval B.3) is redundant with Condition of Approval A.18 and should be deleted and identified as "Intentionally deleted."

5. Coordination with Native American Tribes (CCZLDO §3.2.700)

The applicable county requirements governing archaeological resources are CBEMP Policy #18 and CCZLDO §3.2.700, which directly implements Policy #18. Representatives from the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians testified that the following Code provision was applicable to this case:

SECTION 3.2.700. Process for Tribe(s) Review and Response of Proposed Development within Acknowledged Archaeological Sites. Properties which have been determined to have an "archaeological site" location must comply with the following steps prior to issuance of a "Zoning Compliance Letter" for building and/or septic permits.
1. The County Planning Department shall make initial contact with the Tribe(s) for determination of an archaeological site(s). The following information shall be provided by the property owner/agent:
a. plot plan showing exact location of excavation, clearing, and development, and where the access to the property is located; and
b. township, range, section and tax lot(s) numbers; and
c. specific directions to the property.
2. The Planning Department will forward the above information including a request for response to the appropriate tribe(s).
3. The Tribe(s) will review the proposal and respond in writing within 30 days to the Planning Department with a copy to the property owner/agent.
4. It is the responsibility of the property owner/agent to contact the Planning Department in order to proceed in obtaining a "Zoning Compliance Letter" (ZCL) or to obtain further instruction on other issues pertaining to their request.[OR-00-05-014PL]

By its express terms, CCZLDO §3.2.700 only applies if the proposed land use will occur on lands determined to be an "archaeological site" location. The County has generally mapped "cultural areas" consistent with Statewide Planning Goal 5, but the specific location of Native American cultural sites is not provided in the Goal 5 maps for security reasons. Nonetheless, the reference in Section 3.2.700 to acknowledged "archaeological site" locations is a reference to these Goal 5 maps. The generalized Goal 5 Element map makes clear that portions of the proposed pipeline will travel through lands that are identified as "Areas of Archaeological Concern" in the Coos County Comprehensive Plan. Therefore, the route chosen by the applicant triggers CCZLDO §3.2.700 review, although, as discussed below, the timing of that review is an issue.

The correct application of CCZLDO §3.2.700 and CEBMP Policy #18[18] was one of the issues addressed by LUBA in the appeal of the Jordan Cove LNG terminal, *Southern Oregon*

[18] Policy #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

Pipeline Information Project v. Coos County, 57 Or LUBA 44, 2008. In that case, LUBA held that Policy #18 is only triggered upon the applicant's submittal of a "site plan application" that identifies "all areas proposed for excavation, clearing or construction." The County's requirements for coordination and consultation with the tribes do not begin under Policy #18 until such an application has been submitted. At that point, the tribes have 30 days to submit a written statement regarding any objections to the specific development proposal, and if the tribes and the applicant cannot agree on appropriate protective measures, the county must hold a public hearing to resolve the dispute.

In its review of the LNG terminal on remand from LUBA, the Board of Commissioners adopted the following interpretation of Policy #18 and CCZLDO §3.2.700:

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 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.

"LUBA's remand regarding archaeological resources issues under Policy #18 is based upon a lack of clarity regarding whether LDO 3.2.700 implements Policy #18. As explained in more detail below, the Board finds that the 'Site Plan Application' requirement contemplated by Policy #18 is intended by the county to be implemented through the submittal of a 'plot plan' under LDO 3.2.700 at the time the applicant requests a zoning compliance (verification) letter under LDO 3.1.200 for the issuance of building permits by the State of Oregon Building Codes Division. In its final opinion LUBA stated:

> 'We leave open the possibility that the county might interpret LDO 3.2.700 to fully implement CBEMP Policy #18 because all development subject to CBEMP Policy #18 will require a zoning compliance letter and the decision making required by Paragraph III of CBEMP Policy #18, including any required 'administrative review' and 'quasi-judicial hearing' will occur under LDO 3.2.700(4). But any attempt to defer the quasi-judicial hearing and necessary decision making that may be required to resolve disputes between the tribes and the applicant to a point in time after the conditional use approval is granted, must ensure that the required decision making and quasi-judicial hearing will be provided later before the proposed development can commence.'

"Consistent with the above-quoted portion of LUBA's decision, the Board of Commissioners finds that LDO 3.2.700 provides the county's intended process for the tribe(s) review of proposed development in order to fully implement Policy #18. Although the plan policy and code provision do not expressly cross-reference each other, the stated purpose of LDO 3.2.700 is to provide a 'Process for Tribe(s) Review and Response of Proposed Development within Acknowledged Archaeological Sites,' and Policy #18 is also designed to protect such sites. Like Policy #18, LDO 3.2.700 provides the Tribes a 30-day review period within which to review a development proposal and respond in writing.

"Significantly, LDO 3.2.700 makes clear that the time for compliance with applicable requirements regarding protection of archaeological resources is at any time before a 'zoning compliance letter' is requested for purposes of obtaining building permits, not at the time of conditional use permit approval. Under LDO 3.2.700, this is accomplished through the applicant's submittal of a 'plot plan showing exact location of excavation, clearing, and development.' The time for application of the Policy #18 and LDO 3.2.700 requirements is prior to obtaining a zoning compliance

> letter and building permit under LDO 3.1.200 (LDO 3.2.700 refers to a 'zoning compliance letter,' which the Board finds is the equivalent of a 'zoning verification letter' as described under LDO 3.1.200).
>
> "Therefore, the Board finds that the 'Site Plan Application' contemplated by Policy #18 is the 'plot plan' contemplated under LDO 3.2.700, which expressly implements the policy. JCEP must comply with the specific coordination and administrative hearing requirements of Policy #18 prior to obtaining a zoning compliance (verification) letter as required for issuance of building permits under LDO 3.1.200, rather than as part of its conditional use permit approval. The administrative review and hearing required under Policy #18 will occur at the time a 'plot plan' and related information are submitted for obtaining the necessary zoning compliance letter.

In this case, the Supplemental Staff Report provides:

> The consultations, surveys, and reports undertaken by the applicant regarding compliance with state and federal law governing cultural and archaeological resources are explained in Section 4.10 of the FEIS. As described in Sections 4.10.1.3 and 4.10.2.3 of that document, Pacific Connector has surveyed the pipeline route, and has prepared a Cultural Resources Survey Report identifying locations of archaeological sites along the route, and filed that report with both FERC and the State Historic Preservation Officer (SHPO), as required under state and federal law. However, according to staff, the report is not included in the record because under state and federal law, the contents of the report cannot be made available for public review in order to protect specific cultural sites that may be of interest to artifact hunters. This confidentiality requirement is also recognized in CBEMP Policy #18, which provides that the county "shall refrain from widespread dissemination of site-specific information about identified archaeological sites."

See Supplemental Staff Report dated July 8, 2010, at p. 1.

CCZLDO §3.2.700 sets forth a process that is, by its express terms, applicable only "prior to issuance of a 'Zoning Compliance Letter' for building and/or septic permits." In this case, a zoning compliance letter will be required prior to obtaining a building permit from State Building Codes in order to construct and connect the pipeline to the meter station at the LNG terminal. At that point, the notice required under Policy #18 must be provided to the tribes, who will be entitled to submit comments and concerns regarding resource sites along the entire pipeline route. Other state agencies may also require county sign-off on a land use compatibility

statement. The planning department will ask for comment from the appropriate tribe (Coquille or Confederated) consistent with CCZLDO §3.2.700 prior to issuance of a zoning compliance letter or sign-off on a land use compatibility statement.

Given this backdrop, the concerns of the Tribes can be addressed. The Cultural Resources Protection Coordinator for the Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, Ms. Arrow Coyote, wrote a letter dated June 10, 2010 in which she states the following:

> Section 3.2.700 would fail to protect the County's cultural resources if it were limited only to cases where a permit was being issued under the Oregon Building Codes Agency regulations. Too many ground disturbing activities would not be covered including roads, underground cables and pipelines. The placement of Section 3.2.700 in provisions involving use and the context of the section itself strongly suggest that the intent of the County was to protect its cultural resources, and those of the tribes, when any ground disturbing activity occurs that requires County approval.

The CCZLDO language is unambiguous and only applies to "building and/or septic permits." While it may be true that certain other ground-disturbing activities do not trigger CCZLDO §3.2.700, it is not within the Board's authority to rewrite the CCZLDO as part of this application process. However, the concern may be overstated, because, as quoted above, staff advises that building permits will be required for the pipeline's connection to the meter station itself. The Board agrees that this is the case. In any event, the Tribes are afforded what are perhaps even stronger protections under the FERC condition of approval No. 17, discussed below.

With regard to CBEMP Policy #18, the Board's Remand Order sets forth a workable solution for implementation of that policy. In a June 6, 2010 letter, the Hearings Officer stated that "[a]t this point, I am inclined to agree with the applicant that compliance [with CBEMP Policy #18 and CCZLDO §3.2.700] can be met with a condition of approval." The Hearings Officer further stated that "I would be interested in hearing from the Tribes whether they have any reason to believe that a condition of approval would not be sufficient to address their concerns." The Tribes responded to the Hearings Officer's request in a letter dated June 10, 2010. In that letter, Ms. Coyote expresses a generalized concern that CEBMP Policy 18 may not have any force once a CUP is issued. However, given the condition of approval proposed by the applicant, see *infra*, the Board finds that CBEMP Policy 18 and CCZLDO §3.2.700 will continue to have full force.

In her June 10, 2010 letter, Ms. Coyote explains that in the FEIS, FERC staff recommended certain conditions of approval related to cultural resources. *See* FEIS 4.10-21 and 5-32. These conditions were adopted, in somewhat modified form, in the Dec. 17, 2009 FERC Order. *See* FERC Order at p. 72-73. FERC's Condition 17 provides as follows:

Jordan Cove and Pacific Connector shall not begin construction and/or use any of their respective proposed facilities, including related ancillary areas for staging, storage, temporary work areas, and new or to-be-improved access roads until:

a. Jordan Cove and Pacific Connector each file with the Secretary remaining cultural resource survey reports and requested revisions, necessary site evaluation reports, and required avoidance/treatment plans;
b. Jordan Cove and Pacific Connector each file with the Secretary comments on the reports and plans from [SHPO], appropriate land management agencies, and interested Indian tribes;
c. The [ACHP] has been afforded an opportunity to comment, and a Memorandum of Agreement has been executed; and
d. The Commission staff reviews and the Director of Office of Energy Projects (OEP) approves the cultural resource reports and plans, and notifies Jordan Cove and Pacific Connector in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed".

Thus, this condition requires certain action to be taken prior to construction of the proposed pipeline. Ms. Coyote faults Pacific Connector for not completing the tasks set forth in the condition, as follows:

These deficiencies are specifically as follows:

1. Re-routing of the pipeline in the Fairview Area to avoid two known sites 35CS225 and 35CS226 that will be impacted by the pipeline (FEIS 4.10-9).

2. Failure of draft unanticipated discovery plan to correctly identify state law process, address monitoring of ground disturbing activities adequately, or identify the role of the Confederated Tribes, and no requirement that the Project make use of the State-Tribal Inadvertent Discovery Plan.

3. Although the cultural resource surveys in the Haynes Inlet have been conducted, Pacific Connector has not provided with [sic] the Confederated Tribes with a rerouting plan to avoid the newly discovered archaeological sites.

4. Lack of cultural resources surveys and testing at the crossings at Kentuck and Willanch Sloughs.

5. Further archaeological investigation including trenching below the dredge fill at Graveyard Point.

6. Lack of a report of the archaeological investigation of the new upland route above Coos Bay.

7. The lack of an MOA outlining future consultation responsibilities or any other aspect of cultural resource protection.

While it is understandable that the tribes may be concerned that their issues could get lost in the shuffle, so to speak, it seems premature to criticize the applicant at this point in time for any failures to comply with FERC Condition 17. The applicant is a long way away from starting construction, and it seems that most, if not all, of the issues germane to CBEMP Policy #18 will get worked out as a part of the process of satisfying FERC Condition 17. By making FERC's condition a requirement for this approval, the County can assume a supervisory role as well.

In her letter dated June 10, 2010, Jody McCaffree states the following:

> Since dredging by Pacific Connector Gas Pipeline could impact unknown burial sites among other Archeological impacts that may yet be discovered in the area of the proposed pipeline route, it is the duty of the Hearings Officer and Commissioners to deny this permit application until the issues and concerns of the Tribe have all been resolved.

Id. at p. 29. However, given the Board's prior interpretation, Ms. McCaffree's suggested resolution makes no sense. As interpreted by the Board, CBEMP Policy #18 and CCZLDO §3.2.700 set forth processes that are to be undertaken *after* CUP approval is obtained. The Board finds that it is feasible for the applicant to fulfill the FERC conditions and to undertake the analysis required by CBEMP Policy #18 and CCZLDO §3.2.700. While it may be that this analysis will lead to further revisions and modifications to the route and/or other aspects of the proposal, that is a factual matter that will develop with time.

In any event, the applicant proposed a condition of approval on this issue which is essentially the same as the condition on this issue added to the LNG terminal approval. Staff proposed a condition of approval on this issue as well. The Hearings Officer recommended approving the applications, subject to both the applicant-proposed and staff-proposed conditions. The Board reviewed the Hearings Officer's recommendation and discovered minor variations between the language of the applicant-proposed and staff-proposed conditions. Prior to the deliberations in this matter, County staff submitted a staff report recommending that the Board accept the applicant's condition and delete the staff condition. At the deliberations in this matter, the Planning Director further advised the Board that the staff-proposed condition should be tweaked to reflect that the applicant would not be required to obtain approval of septic permits or a plot plan for the pipeline. Accordingly, the Board strikes the staff-proposed condition on this subject and instead adopts the applicant's proposed condition of approval as Condition of Approval B.24 to read as follows:

Historical, Cultural and Archaeological.

At least 90 days prior to issuance of a zoning compliance letter under CCZLDO Section 3.1.200, the County Planning Department shall make initial contact with the affected Tribe(s) regarding the determination of whether any archaeological sites exist within the CBEMP areas proposed for development, consistent with the provisions of CCZLDO Section 3.2.700. Once the Tribe(s) have commented or failed to timely comment under the provisions of CCZLDO Section 3.2.700, the County shall take one of the following actions: (1) if no adverse impacts to cultural, historical or archaeological resources have been identified, the County may approve and issue the requested zoning compliance letter and related development proposal; (2) if the Tribe(s) and the applicant reach agreement regarding the measures needed to protect the identified resources, the development can be approved with any additional measures the County believes are necessary to protect those resources; or (3) if the County finds that there will be adverse impacts to identified CBEMP Policy #18 resources on the site and the applicant and the Tribe(s) have not reached agreement regarding protection of such resources, then the County Board of Commissioners shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by 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. For purposes of this condition, the public hearing shall be subject to the provisions of Section 5.8.200 of the CCZLDO with the Board of Commissioners serving as the Hearings Body.

The Board finds that imposing this condition of approval addresses the opponents' concerns.

B. Multiple Approval Standards Related to Specific Zones

1. Rural Residential RR-2 and RR-5 Zones.

The staff report notes that the proposed pipeline crosses a total of approximately 0.37 of a mile of private property zoned Rural Residential - 5 (RR-5), and approximately 0.10 of a mile of private property zoned Residential Rural - 2 (RR-2). According to the applicant, the pipeline crosses five RR-5 zoned areas from MPs 10.15 to 10.25, 11.94 to12.04, 12.47 to 12.49, 14.22 to14.28, and 22.59 to 22.71. From MPs 4.17 to 4.22 and 10.12 to 10.15, the pipeline crosses property zoned RR-2. All of the RR-5 and RR-2 zoned lands crossed are private.

The applicable code provision is CCZLDO §4.2.900 (7), which provides as follows:

SECTION 4.2.900.7 – The use must be found compatible with surrounding uses or may be made compatible through the imposition of conditions.

The County has interpreted this standard to mean that the proposed use "is capable of existing together with surrounding uses without discord or disharmony." That formulation was upheld as falling within the permissible range of interpretations under ORS 197.829(1). *Clark v. Coos County*, 53 Or LUBA 325 (2007). In *Clark*, LUBA also upheld the County's conclusion that the "compatibility" requirement of CCZLDO 4.2.900(7) only applies to *existing* uses, and not to future or potential uses or additions to residential property. *Id.* at 330.

Compatibility standards of this sort are extremely subjective in nature. *Corbett/ Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601, 617 (1993); *Knight v. City of Eugene*, 41 Or LUBA 279 (2002). As LUBA has noted, "[i]ndividual perceptions may widely diverge about whether a proposed development will be compatible with the existing setting or the type and scale of development envisioned in planning documents. The term is flexible and, therefore, an imperfect standard for judging the acceptability of proposed development" *See Marineau v. City of Bandon*, 15 Or LUBA 375 (1987).

Given the deferential scope of review LUBA and the Courts apply to a governing body's code interpretations under ORS 197.829(1); *Church v. Grant County*, 187 Or App 518, 525, 69 P3d 759 (2003) and *Siporen v. Medford*, 231 Or App 585, 220 P3d 427 (2009), *rev allowed* 348 Or 19 (2010), the Board has a fairly wide degree of latitude on this issue. However, LUBA has cautioned, in a pre-*Clark* case, that it is not proper to, in effect, balance the need for the land use against the potential harm to surrounding uses. *See Vincent v. Benton County*, 5 Or LUBA 266 (1982). Whether that holding survives *Clark* and ORS 197.829(1) is unclear, but in all likelihood, it does not.

Nonetheless, by defining the proposed use as a "conditional use" in the zone, there has already been a legislative determination that gas pipelines are not *per se* incompatible with rural residential uses. Were that not the case, then gas pipeline uses would be considered to be a prohibited use in the zone. Thus, the issue becomes whether the proposed pipeline creates specific incompatibility issues with the uses that currently exist in the surrounding areas.

The term "surrounding uses" is not defined in the CCZLDO. No party attempts to assert that analysis of any particular geographical area is required. The applicant seems to have attempted to define the "surrounding area" via its maps and aerial photographs. The applicant's analysis focuses on all structures within 100 feet of edge of the corridor, the temporary work areas and uncleared storage areas. The Board finds that the applicant's maps and aerial photos included with the June 17, 2010 letter from Mr. Gregory are adequate to define the "surrounding area," and accepts the 100 foot limit as acceptably defining the limit of possible impacts.

WELC and other opponents argue that the pipeline should not be allowed in the Rural Residential zones because the applicant has failed to identify nearby uses with sufficient specificity, and therefore the county cannot make the "compatibility" determination required

under CCZLDO 4.2.900(7). *See* Letter from WELC staff attorney Jan Wilson, dated June 8, 2010 at p. 7.[19] Also, WELC contends that the applicant has not provided sufficient detail regarding mitigation measures that would be employed to ensure compatibility with rural residential uses. *See* Letter from WELC staff attorney Jan Wilson, dated June 8, 2010, at p. 7.

As the applicant notes, WELC does not present any evidence of its own suggesting that a particular segment of pipe is not compatible with an existing use in the rural residential zones. Rather, WELC's focus seems to be on the argument that the applicant's evidence is *per se* insufficient to meet its threshold burden of proof, even in the absence of any evidence to the contrary. In this regard, WELC is correct that the applicant has the burden of proof to

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[19] The June 10, 2010 letter from WELC states:

> "The application narrative says that the surrounding uses include "residential uses, pasture land, and forest operations." This list is too vague as to which uses are where and how close to the pipeline and what, exactly, is being done on the property. For example, a "residential use" could include a backyard children's play area or garden beds or a residential septic field – all things that may be impacted in a variety of ways. Without knowing what uses – specifically – are on each of the specific properties, it is impossible for the hearings body to make the required finding of "compatibility."
>
> Further, the applicant makes general assertions of minimization and mitigation, without detailing what would be done where, so that those things can be incorporated into the conditions of approval, as required by CCZLDO 4.2.900(7). What does the applicant mean when it says that it would engage in "appropriate" measures to protect homes and structures during pipeline construction and that it would restore disturbed areas "as closely as possible" to preconstruction condition? For example, where the pipeline crosses pasture land, would gates be installed in existing pasture fence, or would fences be moved, or would livestock (or pets) be merely excluded from the pipeline right-of-way (presumably with appropriate monetary compensation for the loss of pasture land)? By quoting Condition 43 of the FERC order, does the applicant mean to request that the same condition of approval be incorporated into the county's decision and also to assert that the condition is adequate to make the pipeline compatible with surrounding uses? By including the Groundwater Supply Monitoring and Mitigation Plan, which itself is vague about exactly what wells, springs, and seeps are near the proposed pipeline route, does the applicant mean to have those determinations made part of the conditions of approval?
>
> Under recent and current Oregon law, as interpreted by LUBA and the Court of Appeals, where an approval criteria specifically requires a finding – such as the requirement of a finding of compatibility with surrounding uses, in this case – the decision can not merely defer and delay determination of the relevant finding until the applicant gets around to providing the factual data necessary to make the finding. Instead, in order to defer a finding such as the "compatibility" finding required here, the county must find (a) that it is feasible for the applicant to satisfy the criteria and (b) that the later process, where the finding is actually made, offers the same level of public review and participation as the original proceeding. In this case, the applicant has not provided the data necessary to make a "compatibility" finding, has not even provided enough data to make it possible to determine that satisfying the compatibility requirement is even feasible, and has made no suggestion about any future process that would allow that determination to be made with the same level of public participation as this current process.
>
> Thus, lacking adequate information to make the required finding, the county should deny the application."

demonstrate compliance with an approval criterion, but as discussed, below, the applicant has met its burden.

WELC states that a "residential use could include a backyard children's play area or garden beds or a residential septic field – all things that may be impacted in a variety of ways," but then does not describe any of those alleged ways. It is not intuitive to the Board how an underground pipe in normal operation 50 to a 100 feet away from a "backyard children's play area" or a "septic drainfield" could impact those uses. The only obvious potential impact would be those resulting from a leak or an explosion, which is discussed below. Nonetheless, with regard to septic drain fields, the FERC conditions require the applicant to file a plan with the Secretary "outlining measures that should be implemented to mitigate pipeline construction impacts on domestic water supply systems and septic systems." *See* FERC Condition No. 43. The Hearings Officer found that it is feasible for the applicant to demonstrate compliance and recommended that the FERC condition be applied here. The Board agrees and adopts Condition of Approval A.8 to read as follows:

> "To protect residences and structures, evidence of compliance with FERC's Certificate Order, Condition #43 must be provided prior to issuance of zoning clearance."

The April 14, 2010 application narrative, at pages 22-23, provides a description of why the pipeline is compatible with surrounding rural residential uses. Notably, as a sub-surface facility, the pipeline creates no real "compatibility" issues other than (1) temporary disturbances during construction, and (2) restricting the landowner from building new structures on top of the pipeline right-of-way.

The applicant has provided detailed information regarding compatibility and mitigation measures with existing residential uses in correspondence from Rodney Gregory and Derrick Welling on Williams Pipeline letterhead, dated May 11, 2010. The May 11, 2010 correspondence also provided two pages of detailed information regarding location of the pipeline in relation to existing residential structures, and also identified measures that will be taken to minimize and mitigate impacts on residential uses. *See* Williams Pipeline May 11, 2010 letter at p. 18-9.

Therein the applicant stated:

> Within RR-5 zoned lands near MP 14.25, there are two residences within 100 feet of the construction area. There are also several structures within RR-5 zoned lands within 100 feet of the construction area. Within RR-2 zoned lands, there are no residences within 100 feet of the construction area; however, there are several structures located within 100 feet of the construction area. The structures are shown on the Environmental Alignment Sheets provided in Exhibit 1 to the application narrative.
>
> Pacific Connector will undertake specific measures to ensure safety and mitigate impacts on residential uses and structures,

including the following: (1) installation of orange safety fence between the construction right-of-way and the residence; (2) avoiding removal of trees and landscaping wherever possible; (3) restoring all lawn areas and landscaping within the construction right-of-way consistent with the requirements of FERC's upland plan; (4) maintaining access to residences at all times during construction; (5) providing alternative sewer facilities if septic systems are disturbed during construction, including repairing and restoring such systems if necessary.

Consistent with the above, the principal method for mitigating impacts to existing residential areas will be to ensure that the construction proceeds quickly through such areas (thus minimizing exposure to nuisance effects, such as noise and dust) and limiting the hours of operations that high-decibel noise levels can be conducted. Landowners will be notified prior to construction and access and traffic flows will be maintained during construction activities, particularly for emergency vehicles. Pacific Connector has developed and will implement Landowner Complaint Resolution Procedures.

Dust minimization techniques such as watering will be used on-site and all litter and debris will be removed daily from the construction site. Pacific Connector will comply with all local noise ordinances. Pacific Connector does not currently plan to work on Sundays. However, certain activities, such as waterbody crossing construction and hydrotesting, may require a 24-hour work schedule. Pacific Connector will attempt to schedule activities during normal working hours.

After project construction, landowners affected by the project will have use of the right-of-way, provided it does not interfere with the easement rights granted to Pacific Connector for construction and operation of the pipeline system.

Mature trees, vegetation screens and landscaping will be preserved to the extent possible while ensuring the safe operation of construction equipment. Landowners will be compensated for removal of trees. Immediately after backfilling the trench and weather permitting, all lawn areas and landscaping within the construction work area will be restored. Permanent structures will not be permitted on the permanent right-of-way, including houses, tool sheds, garages, poles, guy wires, catch basins, swimming pools, trailers, leaching fields, septic tanks, or any other objects not easily removed; nor in general is grading or removal of cover allowed without Pacific Connector's involvement. Pacific

> Connector will compensate landowners for damage to homes if the damage is caused by pipeline construction. Depending on the specific circumstances, Pacific Connector may choose to relocate residents during construction activities. Arrangements will be determined through negotiations between the landowner and Pacific Connector's Land Representative prior to construction.
>
> Within 50 feet of a residence, the edge of the construction work area will be fenced for a distance of 100 feet on either side to ensure that construction equipment and materials, including the spoil pile, remain within the construction work area. Fencing will be maintained, at a minimum, throughout the open trench phases of pipeline installation. Where feasible, Pacific Connector has reduced the construction right-of-way near residences and placed temporary work areas as far as practicable from the residences. Pacific Connector will also limit the period of time the trench remains open prior to backfilling.

WELC does not specifically take issue with these findings.

Regarding WELC's argument concerning lack of sufficient information about nearby uses, it is not clear what additional information WELC believes is necessary to make the necessary determination about compatibility. The applicant has identified the specific locations of all residential structures on the alignment sheets attached to the April 14, 2010 application narrative as Exhibit 1. The applicant also provided correspondence dated June 17, 2010 from Rodney Gregory of Pacific Connector (attached as Exhibit 8 to the applicant's June 17, 2010 record submittal), providing further information regarding the compatibility issue and enclosing the following additional materials:

1. A table that identifies all structures located within 100 feet of the proposed pipeline corridor, or any TEWA or UCSA. Properties are identified by milepost, ownership, zoning, land use type, and the distance of each structure on the property from the corridor, TEWA or UCSA.

2. Close-up version of the aerial photo alignment sheets for the properties identified in the above-referenced table, showing all structures within 100 feet of any portion of the project and identifying their precise distance from the project.

The Board reviewed the information in the application, as set forth above, and concludes that this information constitutes substantial evidence that an underground natural gas pipeline is capable of existing together with surrounding rural residential zone uses without discord or disharmony. Once built, the pipeline itself will be underground and will not create noise, dust, vibration, or other impacts. The use will only generate traffic during inspections and periodic maintenance. The pipeline will not impair views or obstruct access to solar energy. The pipeline will not be a visual blight. The 30 foot corridor will remain clear of trees, shrubs, and similar vegetation, but that is not far removed from what happens when roads are built, and there is no suggestion that road are incompatible with rural residential uses. As discussed elsewhere, there is some potential

that the corridor will be used by off-road vehicles, but that possibility will be minimized with the appropriate condition of approval.

The only potential impacts are construction related, and *all* construction creates some temporary impacts – regardless of the proposed use under consideration. A review of LUBA case law reveals that compatibility analysis typically does not focus on temporary construction-related impacts of that sort. However, even to the extent that the criterion is focused on those types of temporary construction impacts, the code allows uses that might be incompatible to be "made compatible through the imposition of conditions." CCZDO 4.2.900(7) As the testimony of the applicant makes clear, it is feasible for a pipeline to be constructed in a manner that is compatible with neighboring residences, and the FERC conditions will ensure compatibility during construction.

The biggest potential compatibility concern stems from the property shown on Drawing No,. 3430.33-X-9007. (MP 13.8 to MP 14.4). On the drawing (aerial photograph), that property is listed as the "Ketchum residence," but the table accompanying Mr. Gregory's June 17, 2010 letter shows the property as being owned by "Robert G. Scoville." In any event, that property has two residential structures[20] that are 2.5 feet and 5.7 feet from the edge of the construction easement, and even that is somewhat misleading since it appears that the easement was reduced in width at that location to avoid those structures. The FERC condition of approval appears to provide a remedy for this particular landowner, as it requires "evidence of landowner concurrence if the construction work area and fencing would be located within 10 feet of a residence." Presumably, this consent requirement gives the landowner a high degree of negotiation leverage in the event the applicant does go this route. The applicant has testified that it has latitude under FERC's Order to make minor adjustments to the route of the pipeline. The Hearings Officer recommended a condition of approval requiring the pipeline to be rerouted to avoid the residence shown on Drawing No. 3430.33-X-9007. (MP 13.8 to MP 14.4).

The Board finds that the Hearings Officer's recommended condition may have misstated the name of the landowner as well as the direction the pipeline would need to be relocated in order to minimize impacts to the residence in question. Moreover, the Board finds the recommended condition may actually reduce the applicant's flexibility to respond to the landowner's concerns. Finally, the Board finds that the proposed condition is too narrow in scope and should apply to all landowners along the pipeline alignment. Accordingly, the Board modifies and adopts the condition as Condition of Approval A.4 to read as follows:

> "The pipeline will be rerouted, where feasible, in order to avoid impacts to the property identified on Drawing No. 3430.33-X-9007. (MP 13.8 to MP 14.4). If requested, the applicant shall work with affected property owners within the pipeline's alignment to make 'minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands' pursuant to FERC Order Condition #6 in order to avoid or minimize impacts to structures or the owner's use of the property."

[20] From the aerial photographs, the structures appear to a dwelling and a detached garage.

In looking at the remainder of the aerial photographs and maps, it appears that there is sufficient distance between the actual location of the pipeline and nearby residences to ensure co-existence without "discord or disharmony."

There is quite a bit of evidence in the record suggesting that gas pipelines occasionally explode, causing destruction to property and occasionally even injury and death to humans. *See* Exhibit N to the June 17, 2010 letter from Jody McCaffree, Executive Director of Citizens Against LNG. For example, a natural gas pipe explosion in Carlsbad, New Mexico killed eleven people on August 19, 2000. *Id.* The argument advanced by the opponents seems to be that any utilityhas the potential to cause death and injury is *per se* incompatible with rural residential uses. However, the Board has already determined that the proposed use is a conditional use in the zone, and therefore this type of "*per se*" incompatibility argument is a collateral attack on the legislative enactment of the code.

Moreover, it is difficult to rely on anecdotal evidence as a basis to conclude incompatibility. For example, most of the incidents cited by opponents involve older pipes with deferred maintenance issues. *See* Exhibit N to the June 17, 2010 letter from Jody McCaffree, Executive Director of Citizens Against LNG. The applicant has testified that the newer designed pipes have more built-in safety features and use better materials, and are less likely to have the same type of maintenance issues as experienced with older pipes. As a decision-maker in a land use hearing, one cannot simply speculate that the applicant will fail to maintain his equipment or that it will not follow federal safety and inspection requirements, particularly based on anecdotal evidence of past events, often associated with unrelated actors. *See Champion v. City of Portland*, 28 Or LUBA 618 (1995) ("Illegal acts, such as those alleged by petitioner, might provide the basis for a code enforcement proceeding. However, petitioner fails to show that the alleged illegal activity by the applicants is relevant to any legal standard applicable to the approvals granted by the city in the decision challenged in this appeal."); *Canfield v. Lane County*, 16 Or LUBA 951, 961 (1988) ("Petitioner's view that the conditions will be violated is speculation . We do not believe the county is obliged to assume future violations of the condition.").

Moreover, even if one assumes that a future accident will happen, it does not follow that occasional loss of life and property damage from accidents necessarily means that the gas pipeline utility use is not compatible with residential use. Obviously, if an explosion occurred, it would cause "discord or disharmony." However, the evidence in the record shows that the potential for an explosion at any one particular location is statistically very low, perhaps akin to the odds of a person getting hit by lightning. For example, the publication entitled "Out of Sight Out of Mind No More" was published in 2000, and documents less than 200 oil and gas pipeline deaths over the period from 1984-1999. *See* Exhibit N to the June 17, 2010 letter from Jody McCaffree, Executive Director of Citizens Against LNG. The Board finds that the small potential for an accidental explosion does not form a basis to conclude that the pipeline is not "compatible" with any particular surrounding use.

Finally, the Board finds that the risk of an accident caused by the pipeline is no greater than the risk of any other life-threatening accident, such as an electrical house fire, electrocution,

a tree fall, etc. We live in a modern society that demands certain conveniences, such as running water, electricity, natural gas, and automobiles. It is simply not possible to completely avoid the risk of death or injury to humans resulting from the provision of such systems. The allowance of automobile use, for example, is virtually guaranteed to kill tens of thousands of Americans every year, despite laws that demand reasonable and safe operation of these automobiles, and vigorous enforcement of such laws. And yet, despite the carnage caused by cars, is there any question that cars are "compatible" with residential areas, rural or otherwise? Is there any movement to bar cars on the grounds that human life will be saved? No, of course not. Similarly, all Americans take on a certain degree of risk of harm or death by having gas and electricity in their homes, and yet electrical and gas appliances and furnaces are still considered to be "compatible" with residential uses. Indeed, they are necessary for modern residential use. The bottom line is the risk of harm to life and property here is miniscule, and is far outweighed by the benefits to society. Therefore, public utility uses such as gas pipelines are compatible with residential uses despite the incidental risks associated therewith.

In closing on this issue, the application narrative also notes the following condition of approval being required by FERC that will ensure future compatibility with residential property:

> "43. Prior to pipeline construction, Pacific Connector shall file with the Secretary, for the review and written approval of the Director of OEP:
>
> a. The results of a civil survey of the entire pipeline route that identifies all residences and commercial structures within 50 feet of the construction right-of-way;
> b. A plan outlining measures that should be implemented to mitigate pipeline construction impacts on domestic water supply systems and septic systems; and
> c. For any residence closer than 25 feet to the construction work area, a site-specific plan that includes:
> (1) A description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and a dimensioned site plan that shows:
> (i) the location of the residence in relation to the pipeline;
> (ii) the edge of the construction work area;
> (iii) the edge of the new permanent right-of-way; and
> (iv) other nearby residences, structures, roads, or waterbodies.
> (2) A description of how Pacific Connector would ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
> (3) Evidence of landowner concurrence if the construction work area and fencing would be located within 10 feet of a residence."

The Hearings Officer recommended that the County impose a substantively identical condition. The Board agrees and adopts Condition of Approval A.8 for this purpose.

Testimony presented at the hearing, expressed concern about the possibility that the gas

pipeline will affect shallow rural wells and water supplies. It is not readily apparent or intuitive that a natural gas pipeline will have any effect on water supplies. Without more focused testimony and supporting evidence, the Hearings Officer did not give speculative testimony such as this any credence.[21] The Board sees no reason to do so either. As discussed above, FERC Condition 43 addresses this issue.

2. Industrial Zone (IND)

The proposed pipeline will cross approximately 0.07 mile of IND zoned property adjacent to Jordan Cove. According to staff, the site was previously impacted by industrial use (Weyerhaeuser yard).

The applicant has requested a consistency determination of the permitted nature of the use in the IND zone.

CCZLDO §4.1.100 sets forth the purposes of the Industrial (IND) zone:

> The purpose of the "IND" district is to provide an adequate land base necessary to meet industrial growth needs and to encourage diversification of the area's economy accordingly. The "IND" district may be located without respect to Urban Growth Boundaries, as consistent with the Comprehensive Plan. The "IND" designation is appropriate for industrial parcels that are needed for development prior to the year 2000, as consistent with the Comprehensive Plan.

CCZLDO §4.6.610 states that a "site plan review" is required for *all* uses in the IND zone. The term "use" is defined in a manner that includes "facilities." The term "utility" is defined in a manner that encompasses "facilities." Therefore, a utility is a "use." However, a "utility facility not including power for public sale" is a permitted use pursuant to Section 4.2.600 and Table 4.2-e. The Board finds that the proposed gas pipeline is a "utility facility- not including power for public sale" within the meaning of CCZLDO §2.1.200, and that it is an outright permitted use in the IND zone.

Staff states that "the pipeline will be located beneath the surface of the site and is a necessary component of the previously approved LNG facility." Therefore, staff asserts that further site plan review is not necessary.

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[21] The hearings officer is mindful of the fact that lay-person testimony can, under the right set of facts, undermine contradictory expert testimony. *See Johns v. City of Lincoln City*, 35 Or LUBA 421, 428 (1999); *Johns v. City of Lincoln City*, 37 Or LUBA 1 (1999). However, under this set of facts, no reasonable decision-maker would accept the vague and unsubstantiated opinions of lay persons that the pipeline will harm wells, particularly when the applicant's experts concluded that no such harm will result. To constitute substantial evidence sufficient to overcome such expert testimony, the opponents would need to support their conclusions and opinions with *some sort of* actual collaborating evidence or facts, and not just rely on an unsubstantiated, self-serving opinions.

WELC and Jody McCaffree take issue with the staff report's conclusions. In a letter dated June 8, 2010, WELC's staff attorney states:

> CCZLDO §4.4.610 requires site plan review for "all" uses in the Industrial (IND) zoning district. Development proposed for the IND zones includes not only the pipeline itself but also temporary construction areas. The applicant has not applied for site plan review for these development activities, and thus the pipeline cannot be approved in the IND zones until the site plan review is completed. A condition of approval may be an appropriate way to ensure compliance with the code requirement for site plan review.

The applicant responds to these assertions in its letter dated June 24, 2010, as follows:

> [R]equiring a site plan review for a subsurface pipeline crossing of a portion of the Industrial zone would be inappropriate for several reasons. First, Section 5.6.400 indicates that the related development standards are intended to address a traditional "development of a site and building plans," which is obviously not implicated by the installation of a subsurface gas pipeline. Further, the standards of the section largely apply to structures and other types of above-surface improvements, which also cannot be applied to a subsurface pipeline. As discussed above in Section 5 of this letter, the pipeline is not a "structure" under the county code definition. Finally, the applicant submits that the only relevant standard in Article 5.6 is the Threshold Standard in Section 5.6.5003 [sic] which provides, in pertinent part, that "The Planning Director, at his discretion, may waive part or all of the site plan requirements including fees, if, in the Director's judgment, the proposed development is *de minimis* in extent to the existing development." This section allows the county discretion to find that the provisions of Article 5.6 are inapplicable because they were not intended to address a subsurface gas pipeline.

WELC is correct that the CCZLDO would typically require a site plan review for this site prior to development. Specifically, CCZLDO §5.6.300 states that "[w]ithin any zone designation requiring a site plan review, *no building permit or verification letter shall be issued for the* erection or *construction of a permitted* or conditional *use until* the plans, drawings, sketches and other documents required under Section 5.6.500 have been approved by the Planning Director in conformity with the criteria specified in Section 5.6.400."(emphasis added). Notwithstanding this general requirement, CCZLDO §5.6.500(3) authorizes the Planning Director to waive the site plan requirement. This provision states: "The Planning Director, at [her] discretion, may waive part or all of the site plan requirements including fees, if, in the Director's judgement [*sic*], the proposed development is diminimous [*sic*] in extent to the existing development."

The Hearings Officer found that nothing would be accomplished by requiring a "site plan

review" of an underground gas pipeline across an old Weyerhaeuser yard. Further, the Board finds that the development standards of CCZLDO §5.6.400 are intended to apply to structures and other types of above-surface improvements, and are not applicable to subsurface pipelines and their ancillary facilities, including temporary construction areas. Further, as conditioned, any adverse effects caused by the construction and operation of the pipeline on existing development will be fully mitigated. Accordingly, the pipeline will necessarily be *de minimis* in nature to existing development in this zoning district. The Board finds that the authority delegated by the Board to the Director under CCZLDO §5.6.500(3) also necessarily applies to the Board. The Board finds that the site plan requirements of this section are not applicable to the pipeline and its ancillary facilities, including temporary construction areas.

3. Coos Bay Estuary Management Plan (CBEMP)

The PCGP will cross through 15 CBEMP zoning districts. Compliance with the standards and policies applicable in those districts is addressed in the following documents submitted by the applicant in this proceeding:

- The application narrative dated April 14, 2010, at pages 26-50;
- Correspondence dated May 17, 2010 from Randy Miller of Pacific Connector, specifically addressing compliance with standards in CBEMP aquatic districts;
- Correspondence dated June 9, 2010 from Robert Ellis, Ph.D., of Ellis Ecological Services (the "Ellis Report"), and correspondence from Robert Ellis dated June 17, 2010, also addressing concerns about project impacts in CBEMP aquatic districts; and
- Correspondence dated June 17, 2010 from Derrick Welling of Pacific Connector, addressing compliance with standards for upland CBEMP districts.

CCZLDO Section 4.5.100.

Some opponents raised CCZLDO 4.5.100 as a potentially applicable approval standard. It is a purpose statement stating general objectives, not an approval criterion. *Standard Insurance Co. v. Washington County*, 16 Or LUBA 30, 34 (1987) (descriptions of characteristics of a zoning district are not approval criteria); *Bennett v. City of Dallas*, 17 Or LUBA 456, *aff'd*, 96 Or App 645 (1989); *Slotter v.City of Eugene*, 18 Or LUBA 135, 137 (1989); *Beck v. City of Tillamook*, 18 Or LUBA 587 (1990) (Purpose statement stating general objectives only is not an approval criterion. Section 4.5.150 How to Use This Article). This Section contains specific language that implements the CBEMP. The main purpose is to clearly stipulate where, and under what circumstances, development may occur.

CCZLDO Section 4.5.150.

Section 4.5.150(5)(a) states that the Management Objective provides general policy guidance regarding the uses that are, or may be allowed in the district. Section 4.5.150(5)(b)

states that to determine whether and under what circumstances a use is allowable certain symbols denote whether the use is permitted or allowed subject to conditional use review. The symbol "P" means the use or activity is permitted outright subject only to the management objective. The symbol "G" indicates the use may be allowed subject to "General Conditions" which provide a convenient cross-reference to applicable CBEMP Policies.

As discussed elsewhere in this decision, the proposed natural gas pipeline is considered to be a "low-intensity" utility facility under the Code. Low-intensity utilities are listed as "P-G" in all of the CBEMP zones where the pipeline will be located, which are identified and discussed below. Also, for each of the CBEMP zones, the applicable "General Conditions" are identified. The applicable CBEMP Policies are addressed separately in this decision.

a. 6-Water-Dependent Development Shorelands (6-WD):

The 6-WD zoning district is a former industrial log yard, which will be the site of the Jordan Cove LNG terminal. The upland LNG terminal and all of its associated facilities and accessory uses, including the first segment of the pipeline, were approved in the 6-WD district as part of the Coos County Board of Commissioners decision dated December 5, 2007, and subsequent decision on remand from LUBA on August 21, 2009.[22]

> *Section 4.5.275 Management Objective: This district shall be managed so as to protect the shoreline for water-dependent uses in support of the water-related and non-dependent, nonrelated industrial use of the area further inland. To assure that the district shoreline is protected for water-dependent uses while still allowing non-water-dependent uses of the inland portion of the property (outside of the Coastal Shoreland Boundary), any new proposed use of the property must be found by the Board of County Commissioners (or their designee) to be located in such a manner that it does not inhibit or preclude water-dependent uses of the shoreline. Further, use of wetlands in the district must be consistent with state and federal wetland permit requirements.*

Section 4.5.276(A)(15)(a) lists the use as permitted subject to CBEMP Policies 14, 17, 18, 23, 27, 30, 49, 50, and 51.

Citizens Against LNG makes the following comments regarding this site:

> The proposed Pacific Connector pipeline route will cut through prime Industrial waterfront shoreline property making the property limited for future development. No structures can be built over the pipeline or in the easement areas. The Port has expressed concerns about this,[23] which was noted in the recent Pacific Connector

[22] On December 5, 2007, the Coos County Board of Commissioners adopted Order No. 07-11-289PL approving County File No. HBCU-07-04 regarding JCEP's proposed LNG import terminal as a water-dependent industrial and port facility, with the import terminal described in the decision to consist of upland facilities for LNG importation, processing, energy generation and transshipment into the interstate gas pipeline.

[23] Pacific Connector Clean Water Joint Permit - Appendix I - Wetland Mitigation PCGP - page 4:

> 401/404-permit application to Army Corps, DEQ and DSL. (See Exhibit P) The pipeline will also impact the shoreline area of Jordan Cove itself; impacting resource and development areas there as well. Impacts to protected Wetlands and Archeological sites noted on Coos Counties *Shoreland Values Requiring Mandatory Protection* Map will also occur in Jordan Cove, clearly violating the zoning requirements in this district. (See Exhibit B) Alternative Pipeline Routes that would have gone towards the North first instead of going directly East along the shoreline of the Coos Bay Estuary were never considered or analyzed by the Pacific Connector as indicated by their map of alternative routes. (See Exhibit A-1) This would have not only avoided impacts to future water dependant industrial development in this area, but also would not have been so impacting to the estuary. By using this more northerly route, most of the Pacific Connector right of way west of I-5 would cross property owned by Weyerhaeuser Corporation – which has supported the LNG development and would benefit from the sale of its North Spit property. The more northerly route would also avoid impacts to Rural Residential and EFU lands in Coos County. (See Exhibit A-1 & A-2)

See letter from Jody McCaffree, dated June 190, 2010, at p. 6. These type of "alternative route" are within the province of FERC, not the County. Nonetheless, the applicant responds as follows:

> [I]nstallation of the pipeline as a component of the approved LNG terminal will cause only temporary disturbance within the 6-WD zoning district. Pacific Connector has coordinated with Weyerhaeuser and Roseburg Forest Products to ensure that the pipeline location would not impede their existing or planned, future water-dependent uses or non-water-dependent uses or non-dependent, nonrelated industrial uses of the area further inland. Pacific Connector will obtain a 50-foot permanent right-of-way for the pipeline from landowners, and permanently engineered structures will not be allowed within the permanent right-of-way. However, once the pipeline is constructed and in operation, most water-dependent uses may proceed as they did prior to the pipeline

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"....The WC-1A-2A alignment modification on the north spit between approximately MPs 0.9 and 2.4 basically follows the original land route. Pacific Connector consulted with Clausen Oysters as well as the Port of Coos Bay about the modification to the WC-1A route variation. Although the WC-1A-2A is superior compared to WC-1A in avoiding direct effects to the oyster beds, Clausen Oysters have expressed concerns with the potential construction/ turbidity impacts of this route variation including WC-1A when compared to Pacific Connector's Proposed Route in the Bay that was filed in the FERC Certificate application. The Port of Coos Bay also indicated that WC-1A-2A would cross more areas that are within the Port's future development plans than the original WC-1A route.

installation. Furthermore, the beginning location of the pipeline is determined by the location of the LNG Terminal, which was approved by Coos County as an accessory component to the primary water-dependent port and industrial use. Pacific Connector has applied for state and federal wetland permits and will comply with all state and federal requirements.

Given both the coordination that has occurred between the applicant and Weyerhaeuser, and the distinct lack of objection from Weyerhaeuser in this proceeding, the Board finds that the proposed pipeline is not inconsistent with the management objective of the 6-WD zone.

The management objective is met.

b. 7-Development Shorelands (7-D)

The pipeline crosses the 7-D zoning district from MPs 0.97 R to 1.15 R and from MPs 1.22 R to 1.65 R. This section is privately owned by Weyerhaeuser Company. Section 4.5.286(A)(15)(a) lists the use as permitted subject to CBEMP Policies 14, 17, 18, 23, 27, 49, 50, and 5.

Pacific Connector would utilize the Roseburg Dock and the Weyerhaeuser Cove pipe storage and contractor yards during construction, which are partially zoned 7D. As described above, Roseburg Dock is a former industrial log yard, and the Weyerhaeuser Cove area is an old industrial site, half of which is paved.

Section 4.5.285 Management Objective: This shoreland district, which borders a natural aquatic area, shall be managed for industrial use. Continuation of and expansion of existing nonwater-dependent/non-water-related industrial uses shall be allowed provided that this use does not adversely impact Natural Aquatic District #7. In addition, development shall not conflict with state and federal requirements for the wetlands located in the northwest portion of this district.

Installation of the pipeline is consistent with the objective to manage the area for industrial use. The pipeline will be constructed using a stove pipe technique along the existing dirt service road on the Weyerhaeuser property that runs east-west just north of the Jordan Cove. This technique is being proposed to install the pipeline within the existing footprint of the road in order to avoid a known Point Reyes bird's-beak plant community, designated as a State Endangered Species, that borders the Jordan Cove shoreline as well as surveyed archeological sites located along the north and west shores of the Jordan Cove. The service road and all temporary extra work areas (TEWAs) would be reclaimed following installation of the pipeline within this district. Neither construction of the pipeline nor the permanent right-of-way will cross the 7-D district; therefore, there will be no direct impacts to 7-NA. To avoid indirect impacts, Pacific Connector will implement the ECRP throughout construction and restoration, which details the best management practices that will be installed to contain all project disturbance within the FERC-certificated boundaries (i.e., the construction right-of-way and TEWAs). Where the southern boundary of TEWA 1.19-N is adjacent to 7-NA, Pacific

Connector will install silt fencing to ensure that there is no off-site sedimentation or impact to 7-NA. Pacific Connector has applied for the necessary state and federal wetland permits and will comply with all state and federal requirements (see response to Policy #17 for consistency with significant wildlife habitat requirements).

In addition to the foregoing, the above-referenced Ellis Report provides the following testimony regarding compliance with the 7-D management objectives:

> "As outlined above, zone 7-D will be used as a temporary construction yard. Construction in the 7-D zone would be required to comply with a DEQ 1200-C Construction Stormwater Permit, which includes requirements for erosion control plans. The erosion control plans will be completed and submitted prior to initiation of construction and will include specifics on erosion control measures and BMPs to be implemented during construction. These protective measures could include the installation of silt fences, mulch blankets, slope breakers, straw wattles or other erosion controls. BMPs and other protective measures will preclude adverse impacts to the adjacent zone 7-NA aquatic unit, as required under the management objectives." Ellis Report, page 17.

The applicant asserts that, as a result of this information. "the first [*sic* third] condition of approval proposed by staff in the May 13, 2010 staff report is no longer necessary." That condition states "The applicant's plan to protect the 7-NA district from adverse impacts due to the temporary construction phase of the pipeline shall be provided to the Planning Department. The Board agrees.

Citizens Against LNG makes the following comments regarding a neighboring site which is zoned 7-NA:

> Applicant hasn't shown there will be no adverse effect on management unit 7-NA, where the Management Objective is, "*to protect natural resources.*" PCGP states they are submitting a plan to the Planning Dept in the future (SR Cond. 3), but this is not sufficient. In order to analyze this project properly we need to be able to see how they plan to protect this management unit. Stormwater and watershed runoff along with impacts from the pipeline easement and dredging being so near the shoreline in this area are highly likely to cause degradation to the waterway in management unit 7-NA. In addition, cumulative impacts from pipeline dredging of other estuarine water areas will filter down to this management unit. Habitat species and marine life degradation will occur and this clearly violates the management object of unit 7–D and 7-NA. This Zoning District has a noted Wetland on the West end of Jordan Cove that will also be impacted by the

pipeline-dredging proposal, making the project clearly not in zoning compliance. (See Exhibit B).

See letter from Jodi McCaffree, dated June 190, 2010, at p. 7. However, the applicant does not propose to build within the 7-NA zoned property, and therefore criteria in the 7-NA zone are not applicable here. Protection to neighboring area will be accomplished via the various federal CWA permits that the applicant will be required to obtain.

c. 8-Water-Dependent Development Shorelands (8-WD)

The pipeline crosses the 8-WD zoning district from MPs 1.65 R to 1.70 R. This section is privately owned by Weyerhaeuser Company. Section 4.5.371(15)(a) lists the use as permitted subject to CBEMP Policies 14, 17, 18, 23, 27, 49, 50 and 51. Pacific Connector proposes to utilize Weyerhaeuser Cove for pipe storage and as a contractor yard during construction (also designated as TEWAs 1.19-W/1.24-W), which is partially zoned 8-WD. The Weyerhaeuser Cove area is an old industrial site, half of which is paved.

Section 4.5.370 Management Objective: This shoreland district shall be managed to allow the continuation of and expansion of aquaculture, along with the development of a boat ramp and limited tie-up facilities, to permit public access to the Estuary.

Upon completion of construction, the Weyerhaeuser Cove yard will be reclaimed to pre-construction conditions, allowing pre-construction activities to continue unhindered. Pacific Connector will obtain a 50-foot permanent right-of-way for the pipeline. The development of the boat ramp and limited tie-up facilities would not be impeded as long as the boat ramp is not proposed within the 50-foot right-of-way. The pipeline will be buried and will not interfere with public access to the Estuary.

As the applicant notes, aquaculture is defined in the county code as "[r]aising, feeding, planting, and harvesting fish and shellfish, and associated facilities necessary for such use." The use of this upland district for the continuation and expansion of aquaculture should not be impacted during construction (*i.e.*, utilization of the Weyerhaeuser Cove yard) and will not be impacted once the pipeline is installed. Aquaculture can continue post-construction as it did pre-construction. Additional responses regarding potential construction-related impacts on aquaculture and other natural resources in the CBEMP aquatic districts are addressed elsewhere in this decision.

d. 8-Conservation Aquatic (8-CA)

The pipeline crosses a small portion of the 8-CA zoning district between mileposts 1.70 R and 1.78 R (see environmental alignment sheets attached as Exhibit 1 to April 14, 2010 application narrative). The 8-CA district includes upland and tideland areas east of the Southern Pacific Railroad right-of-way and the adjacent Weyerhaeuser industrial site. Section 4.5.376(9)(a) lists the use as permitted subject to CBEMP Policies 17 and 18.

Pacific Connector will utilize portions of the Weyerhaeuser Cove yard as a temporary construction and storage area, but not the submerged and submersible tideland areas located within the 8-CA zoning district. The only impact on tideland areas will be the installation of the pipeline itself.

> *Section 4.5.375 Management Objective: This district, because of its sheltered condition and location near productive aquatic resource areas, shall be managed for development of low intensity recreational facilities. The uses shall be limited by the small size of the area and the natural depths of the channel. The low-intensity recreational facilities must be located in such a manner that conflicts will not arise with the existing aquaculture use, which is also a permitted use.*

The management objective for the 8-CA zone is to manage the land "*for development of low intensity recreational facilities.*" However, low-intensity utility facilities are a permitted use in the zone, subject to the aforementioned CBEMP policies. Thus, there is clear legislative intent indicating that low-intensity utility facilities will not undermine the management objectives of the zone, at least to the extent that CBEMP policies are satisfied. The Board rejects the general tenor of arguments made by opponents suggesting that (1) only recreational use are allowed, and (2) a pipeline is *per se* incompatible with the management objective.

The applicant states that upon completion of construction, the Weyerhaeuser Cove yard will be reclaimed to pre-construction conditions, allowing pre-construction activities to continue unhindered. Following installation, the pipeline will be buried and will not affect any boating or other low intensity recreational facilities or aquaculture uses. Impacts during construction will be temporary. As defined by Section 2.1.200, aquaculture is, "[r]aising, feeding, planting, and harvesting fish and shellfish, and associated facilities necessary for such use."

For additional descriptions of the project work within the estuary and measures that will be taken to minimize and mitigate impacts on estuarine habitat, see the discussion below regarding the 11-NA zoning district and the "Estuarine Wetland Mitigation Plan, PCGP Project, Coos Bay Estuary," report prepared by Ellis Ecological Services dated March 2009, which is attached to the applicant's May 17, 2010, submittal.

In their letter dated June 8, 2010, WELC asserts the following:

> The proposed project impacts the 8-CA site where the pipeline crosses the tideland area and where the Weyerhaeuser Cove yard will be used for construction staging and storage. The specific management objective there includes protection of the "existing aquaculture use." Neither the original application nor the supplemental materials are clear on the nature of the "existing aquaculture" or how it would be protected. The applicant says merely, "After the pipeline is installed, aquaculture can continue as it did pre-construction." Given the sensitivity of fish and shellfish to the turbidity and dredging likely to accompany the construction and installation of the pipeline, it seems more details are necessary

> in order for the county to make the determination that the pipeline will, indeed, be consistent with the resource capabilities and management unit purposes and objectives.

In response, the applicant submitted the Ellis Report. This extensive analysis contained therein provides the following expert testimony regarding compliance with the 8-CA management objectives:

> "the impacts of the project to the zoning district will be short-term, primarily limited to the period of construction, with some lasting impacts to small patches of eelgrass. The eelgrass is expected to recover within three years or less and will be replanted at densities higher than are present currently. Following construction, the zone will be recontoured to preconstruction conditions, and there will be no lasting impacts to boating, clamming or other low-intensity recreational uses. Furthermore, effects to aquaculture (specifically oyster growing) should likewise be short-term, as discussed above." Ellis Report, pages 17-18.

The Board finds that a proposed pipeline is not considered to be a "recreational facility" for which conflicts with aquaculture must be limited under this management objective. Had the drafters envisioned a different reading of the Code, it seems unlikely that it would have made low-intensity utility facilities a permitted use in the zone. Nonetheless, the applicant notes that the long-term continuation and expansion of aquaculture should not be impacted during construction and the pipeline will have no impacts once it is installed. After the pipeline is installed, aquaculture can continue as it did pre-construction. Additional responses regarding potential construction-related impacts on aquaculture and other natural resources in the CBEMP aquatic districts are addressed elsewhere in this decision.

e. 11-Natural Aquatic (11-NA)

The pipeline crosses the 11-NA zoning district from mileposts 2.70 R to 4.12. This is a tideland area located at the north end of Haynes Inlet. Section 4.5.406(9)(a) lists the use as permitted subject to CBEMP Policies 17 and 18.

> *Section 4.5.405 Management Objective: This extensive intertidal/marsh district, which provides habitat for a wide variety of fish and wildlife species shall be managed to protect[24] its resource productivity. The opening in the Highway 101 Causeway is a designated mitigation site ("low" priority).*

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[24] LUBA provided extensive analysis of what the term "protect" means in the context of Goal 16 in *Columbia Riverkeeper v. Clatsop County*, __ Or LUBA __ (LUBA No. 2009-100, April 12, 2010):

> The definition of "protect" contains stringent language: "save or shield from loss, destruction, or injury." "Save" has many definitions, including "1:f: to preserve or guard from injury, destruction or loss." *Webster's Third New International Dictionary* 2019 (1981). "Shield" is defined as "to protect with or

Citizens Against LNG makes the following comments regarding this zone:

> However, to install the pipeline in either district, PCGP would need to engage in the ACTIVITY of wet open cut method, which would fall under the definition of dredging. In both zoning districts 11-NA and 13A-NA, any new dredging is a prohibited activity. So, although a "low-intensity utility" may be a permitted USE in zoning districts 11-NA and 13A-NA, any kind of new dredging is an impermissible ACTIVITY in zoning districts 11-NA and 13A-NA. PCGP must not only explain in what sense its pipeline is a low-intensity utility; it must also find some means other than the wet open cut dredging method for laying its pipeline in order to be permissible within zoning districts 11-NA and 13A-NA.

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as if with a shield." *Id.* at 2094.

Context for interpreting the goal definition of "protect" is provided by considering its use within the text of Goal 16. The goal itself provides that its purpose is:

> "To recognize *and protect* the unique environmental, economic, and social values of each estuary and associated wetlands; and
> "To *protect*, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries." (Emphases added.)

* * * * *.

Although we agree with the county that the Goal definition of "protect" does not require that estuarine resources identified for protection be completely or absolutely protected from any "loss, destruction, or injury" whatsoever, the county has made a planning decision under the CCCP policies at issue that implement Goal 16 and the scheme set forth in the second paragraph of Goal 16, quoted above, to "protect" as opposed to a decision to "maintain," "develop," or "restore" traditional fishing areas and endangered or threatened species habitat. Having made that "protect" planning decision, the local program to protect those estuarine resources must not allow "loss, destruction, or injury" beyond a *de minimis* level. Thus, the development that is to be allowed by the disputed rezone is not consistent with the Goal definition of "protect" unless the measures proposed in seeking to rezone the property are sufficient to reduce harm to such a degree that there is at most a *de minimis* or insignificant impact on the resources that those policies require to be protected. (Emphasis added).

In this case, the management objective of the 11-NA zone is to "*protect its resource productivity.*" Thus, the County has also made the "protect" determination in its Comprehensive Plan and Zoning Code for the 11-NA zone.

See letter from Jody McCaffree, dated June 10, 2010, at p. 8. As discussed elsewhere, the applicant does not have to "explain in what sense its pipeline is a low-intensity utility" because the Code makes it such as a matter of law. With regard to the contention that dredging is not an allowed activity in the 11NA and 13A-NA zones, the following definition from CCZLDO 2.1.200 applies:

> DREDGING: The removal of sediment or other material from a stream, river, estuary or other aquatic area: (1) Maintenance Dredging refers to dredging necessary to maintain functional depths in maintained channels, or adjacent to existing docks and related facilities; (2) New Dredging refers to deepening either an existing authorized navigation channel or deepening a natural channel, or to create a marina or other dock facilities, or to obtain fill for the North Bend Airport runway extension project; (3) Dredging to Maintain Dikes and Tidegates refers to dredging necessary to provide material for existing dikes and tidegates; (4) Minor dredging refers to small amounts of removal as necessary, for instance, for a boat ramp. Minor dredging may exceed 50 cubic yards, and therefore require a permit.

The applicant is not proposing "new dredging" because it is not proposing to deepen the channel. In fact, it is not at all clear that the applicant is dredging at all, since that definition requires the "removal of sediment or other material from the estuary." The applicant is not proposing to remove any sediment from the water. Nonetheless, to the extent that the applicant's activities constitute dredging within the meaning of the code, the type of dredging will be "incidental dredging necessary for installation" of a pipeline. *See* Statewide Planning Goal 16. In this regard, CBEMP Policy 2, entitled "General Schedule of Permitted Uses and General Use Priorities." provides as follows:

> MANAGEMENT UNIT: NATURAL
>
> B. Uses and Activities listed below MAY be allowed in Natural Management Units when it is established that such are consistent with the resource capabilities of the area and the purpose of the management units (LCDC Goal #16) (pursuant to "Linkage" and "Goal Exception" findings in this Plan) but also subject to special conditions and other policies set forth elsewhere in this Plan.
>
> * * * * *
>
> 9. <u>Pipelines, cables and utility crossings, including incidental dredging necessary for their installation.</u>

Thus, incidental dredging for pipeline installation is permitted in the 11-NA and 13-NA zones, if the applicant can demonstrate that pipelines are consistent with (1) the resource capabilities of the area, and, (2) the purpose of the management units. This two-part test mirrors the requirement set forth in Statewide Planning Goal 16.

CBEMP Policy #4 provides the test for determining whether that two-part test is met:

> *"a determination of consistency with resource capability and the purpose of the management unit shall be based on the following:*
>
> *i. a description of resources identified in the plan inventory;*
>
> *ii. an evaluation of impacts on those resources by the proposed use (see Impact Assessment procedure, below);*
>
> *iii. a determination of whether the proposed use or activity is consistent with the resource capabilities of the area, or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education."*[25] (Underlined emphasis added.

Before addressing that test, however, the Board addresses two contentions related to the above analysis. In her letter dated June 10, 2010, Jody McCaffree contends that portions of the PCGP project will constitute "temporary alterations" subject to CBEMP Policy #5a. This contention is not persuasive for the reasons set forth below.

First, CBEMP Policy #2 implements Statewide Planning Goal 16 and provides a general schedule of permitted uses and general use priorities in the aquatic areas of the estuary. The policy divides the aquatic areas into the three management units described in Goal 16, namely those of Natural, Conservation and Development. Each management unit, at Section B., describes the uses and activities that may be allowed, subject to different required findings, in each of the separate management units. Ms. McCaffree is correct that the list of uses for the Natural management unit in Section B of Policy #2 includes "temporary alterations." However, that list also includes "pipelines, cables, and utility crossings, including incidental dredging necessary for their installation," which more closely describes the PCGP project. The fact that the applicable use category already contemplates incidental dredging activities associated with the installation of "pipelines" indicates that any temporary impacts associated with the use are already contemplated as part of the allowed "pipeline" use designation. Under such circumstances, it would be redundant for the county to separately consider "temporary alterations" associated with the PCGP. Therefore, the Board finds that the PCGP does not include any "temporary alterations."

Second, the Statewide Planning Goals define what constitutes a "temporary alteration," as follows:

> **TEMPORARY ALTERATION.** Dredging, filling, or another estuarine alteration occurring over a specified short period of time

[25] The underlined portion of CBEMP Policy 4, quoted above, is a word-for-word copy of the standard set forth in the GOAL 16 rule, as amended on Oct. 11, 1984 by LCDC.

which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include: (1) alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance), (2) alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations, and (3) minor structures (such as blinds) necessary for research and educational observation.

The PCGP project does not fall within any of the listed categories.

Third, the pipeline use, including incidental dredging necessary for its installation, is also allowed in both the Conservation and Development management units "without special assessment of the resource capabilities of the area." However, as explained above, because the specific definition of pipeline, with incidental dredging necessary for its installation, is a more specific use category than that of "temporary alternations," the pipeline use is not deemed to be a temporary alteration which would, as such, require compliance with Policy #5a. Accordingly, the Board finds that CBEMP Policy #5a is inapplicable.

However, in the alternative, the Board finds that Policy #5a is satisfied in this case based upon the analysis and reference to record submittals discussed below, in conjunction with the following review criteria set out in Section II of Policy #5a, as follows:

a. *The temporary alteration is consistent with the resource capabilities of the area (see Policy #4).*

This criterion is satisfied by the Ellis Report submitted by the applicant, as mentioned elsewhere in this decision.

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

This criterion has been satisfied by the applicant's record submittals consisting of the letters from Randy Miller of Pacific Connector dated May 17, 2010 (describing how the application is consistent with all applicable aquatic management unit purpose statements) and of June 9, 2010 (identifying the state and federal environmental permits required for the aquatic portions of the project and the relationship with applicable CBEMP standards, and providing his professional opinion that it is feasible for Pacific Connector to obtain the necessary state and federal permits). Specifically, Randy Miller's June 9, 2010 letter describes the need for the PCGP project to obtain permits from the Oregon Department of State Lands (DSL) acting under the Oregon Removal-Fill Law (ORS 196. 800 et seq.) and the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). By cross reference, CBEMP Policy #5 (Estuarine Fill and Removal), at Section I.d contains the

relevant criterion that: "adverse impacts are minimized". Mr. Miller's letter, at pages 3-4, specifically states that: "The Corps will also evaluate the proposal under the 404(b)(1) Guidelines (Guidelines) which require, among other things, a stringent evaluation of alternative, impact avoidance and *mitigation*"(emphasis added). Further, the Corps cannot issue a permit under Section 404 without issuance of a water quality certificate by the Oregon Department of Environmental Quality (DEQ) under Section 401 of the CWA. Mr. Miller's letter also points out that the project will require a permit from the DEQ for a certification under Section 401 of the CWA and for a 1200-C (NPDES) permit under Section 402 of the CWA.

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

> c. *The affected area is restored to its previous condition by removal of the fill or other structures, or by filling of dredged areas (passive restoration may be used for dredge areas, if this is shown to be effective).*

This criterion is satisfied through the evidence provided in the applicant's record submittals contained in the Ellis Report (see page 3 describing the incidental trenching and backfilling construction techniques proposed for pipeline installation which constitute the "removal of the fill" or the "filling of dredged areas") and the letter of June 4, 2010 from Randy Miller, Staff Environmental Scientist for Pacific Connector Gas Pipeline (see pages 3-4 describing the wet open cut crossing method to be used within Haynes Inlet). This criterion is satisfied.

> d. *The maximum duration of the temporary alteration is three years, subject to annual permit renewal, and restoration measures are undertaken at the completion of the project within the life of the permit.*

This criterion is also satisfied by the evidence submitted in the letters from Robert Ellis and Randy Miller above described, which describe the related construction activities that will take less than 3 years. *See also* April 30, 2010 letter from Mark Whitlow to Patty Evernden (describing the tentative construction schedule and indicating that the pipe installation would occur in year two and the project restoration would occur in year three).

A second contention is raised by WELC in its letter dated June 8, 2010. WELC's argument is a bit difficult to follow, due to the nature of the subject matter, so it is set forth verbatim:

> In its application and again in its May 17, 2010 supplemental submittal letter, Pacific Connector references the Coos Bay Estuary Management Plan (CBEMP) Policy 2, which explains that there are, in fact, three estuarine management units within the CBEMP area: Natural, Conservation, and Development. Within

> Policy 2, certain uses for each management unit are allowed "without special assessment of the resource capabilities," subject to specific conditions for each particular zoning designation. (The zoning designation indicates the type of management unit – for example, the C in zone 8-CA (Conservation Aquatic) indicates that it's a Conservation management unit, whereas the N in 13-NA (Natural Aquatic) indicates that it's a Natural management unit.)
>
> The applicant asserts that Policy 2 says that pipelines "may be allowed in all three types of management units," and that does not, in fact, seem to be the case. Section B.9 under the Natural management unit listing in Policy 2 does list pipelines, and Section B.4 under the Development management unit listing includes "all activities allowed in Natural and Conservation units." But pipelines are not within the list for the Conservation management unit in Policy 2. Thus, in those zones within the Conservation management unit, the analysis of the resource capabilities and the purpose of the management unit – which ensures compliance with not merely the local plan (CBEMP) but also statewide Goal 16 and the federal Coastal Zone Management Act - cannot be so cursory.

WELC does appear to be correct that the "pipeline" category found at "Natural Management Unit" ("NMU") B9 and in Development Management Unit ("DMU") B4 is not specifically mentioned under the list of allowed uses under the Conservation Management Unit ("CMU"). However, WELC misreads the import of that omission.

CBEMP Policy #2 is intended to implement Statewide Planning Goal 16. Goal 16 makes clear that "[p]ermissible uses in conservation zones shall be all uses listed in (1) above except temporary alterations." *See* Statewide Planning Goal 16, at p. 3 (under "Management Units" Section (2): Conservation). According to DLCD staff, pipelines are an "allowed use or activity" in the CMU. See "A Citizen's Guide to the Oregon Coastal Management Program," DLCD, March 1997, at p. 19 (Table entitled "Permitted Uses in Estuary Management Uses"). Conversely, pipelines are subject to resource capability review in the NMU and DMU. Id.

There is no indication that Coos County intended to apply CBEMP Policy #2 in a more strict manner than Goal 16. Admittedly, CBEMP Policy #2 CMU (A(1) creates an ambiguity because of the use of the phrase "all uses permitted *outright.*" WELC reads that phrase "permitted outright" as being a reference to only the nine uses set forth at NMU A (1)-(9). That is perhaps understandable, since the NMU A(1)-(9) uses are those that do not require a "special assessment of the resource capabilities in the area." One might be tempted to say that the NAU A(1)-(9) uses are permitted "outright" and the NMU B(1)-(10) uses are permitted "conditionally" (*i.e.* requiring a special assessment). However, the same sentence in CMU A(1) goes on to say "(except for 'temporary alterations.')." There would be no need to list that specific exception if the intent had been to only include the nine NMU (A)(1)-(9) uses in the first place. One first level maxim to be considered under *PGE v. BOLI* is that that courts will give effect to all sections of a statute, in order to produce a harmonious whole. ORS 174.010; *Lane County v.*

LCDC, 325 Or 569, 578, 942 P2d 278 (1997). *See also Davis v. Wasco IED*, 286 Or 261, 267, 593 P2d 1152 (1979); *Tatum v. Clackamas County*, 19 Or App 770, 775, 529 P2d 393 (1974); *Plotkin v. Washington County*, 36 Or LUBA 378 (1996); *Walz v. Polk County*, 31 Or LUBA 363 (1996); *Fechtig v. City of Albany*, 31 Or LUBA 410 (1996) (Ordinance). Courts will try to avoid a construction that makes a word or phrase a redundancy. *Phelps and Nelson,* 122 Or. App. 410, 415, 857 P.2d 900 (1993) (courts generally avoid giving statutes construction that render some portions redundant). *Cornier v. Paul Tulacz, DVM PC,* 176 Or. App. 245, 249, 30 P.3d 1210 (2001) ("[W]e 'presume that the legislature did not intend to enact a meaningless statute' " (*EQC v. City of Coos Bay,* 171 Or. App. 106, 110, 14 P.3d 649 (2000) ("We are required, if possible, to avoid construing statutes in a way that renders any provision meaningless.").

Moreover, there would be no apparent policy reason for allowing pipelines in NMU's but not allow them in the more permissive CMU. Therefore, given that Goal 16 allows pipelines in conservation areas, the Board interprets CBEMP Policy #2 CMU A(1) to be consistent with, and not more strict than, Goal 16, by interpreting the phrase "all uses permitted outright in Natural Management Unit (except for 'temporary alterations.')" to include the NMU B (1)-(10) uses such as "pipelines, cables, and utility crossings, including incidental dredging necessary for their installation."

Turning back to the two-part test, the applicant submitted the Ellis Report, which provided a determination of consistency with resource capability and the purposes of the management units utilizing the three-part analysis articulated above in Policy #4. Page 17 of that Ellis Report includes the determination of consistency which finds, in pertinent part, that "[a]ll resources will be able to assimilate the pipeline and its effects, and will continue to function in a manner protective of significant wildlife habitats, natural biological productivity and values for scientific research and education."

In *Oregon Shores Conservation Coalition v. Curry County and Tidewater Contractors, Inc.,* LUBA affirmed a county's analysis under locally adopted "Resource Capacity test" criteria.[26] Analysis of those criteria led to the following conclusion: "Habitat disturbance will ultimately be temporary as the site will be restored following mining operations in a manner that must satisfy both ODFW and DOGAMI requirements. *Oregon Shores Conservation Coalition v. Curry County and Tidewater Contractors, Inc.*, __ Or LUBA __ (LUBA No. 2009-128, March

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[26] Curry County's code, at CCZO 7.040(14)(a), contains test for evaluating a proposed uses consistency with the resource capabilities of the area which was similar to the test set forth at CBEMP 4:

> (a). Resource Capability Test. Certain uses in estuarine areas require findings of consistency with the resource capabilities of the area.
>
> "(1) A determination of consistency with resource capability shall be based on:
>
> "(a) Identification of all resources existing at the site and factors relating to the resource capabilities of the area.
>
> "(b) Evaluation of impacts on those resources by the proposed use.
>
> "(c) Determination of whether any or all of the identified resources can continue to achieve the purpose of the management unit if the use is approved.
>
> "(2) In determining the consistency of a proposed use or activity with the resource capabilities of the area, the county shall utilize information from federal or state resource agencies regarding any regulated activities in estuarine areas."

12, 2010). Once reclaimed, the property should provide the types of vegetative cover and promote the same animal species it supports now." *Id.* Stated in the words of the *Columbia Riverkeeper case,* the question presented in whether the incidental dredging associated with pipeline installation has "at most a *de minimis* or insignificant impact on the resources." *Columbia Riverkeeper v. Clatsop County*, __ Or LUBA __ (LUBA No. 2009-100, April 12, 2010). Those appear to be different formulations of essentially the same test.

In its final argument letter dated June 24, 2010, the applicant concludes that the installation of the pipeline will have no permanent impacts but admits that construction activities will result in some temporary impacts:

> The applicant states that following construction, the buried pipeline will not impact the intertidal/marsh district. Potential impacts during construction have been analyzed as part of the FERC NEPA process and are provided in the Section 4.5.2.3 of the Final Environmental Impact Statement (FEIS). Impacts to threatened and endangered species have also been analyzed and provided to FERC in a draft Biological Assessment (BA) that was provided to the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) for consultation. USFWS and NMFS transmitted comments to FERC that have led to a revised BA that is pending transmittal to those agencies.
>
> Following construction of the pipeline, Pacific Connector is proposing on-site wetland restoration for estuarine habitats impacted by construction of the pipeline through the Haynes Inlet of Coos Bay which also includes the intertidal/marsh district. Although the construction area across Haynes Inlet does not intercept high density eelgrass beds, all low and medium density eelgrass beds will be replanted at high density levels. The incremental gain to high density levels will provide sufficient compensation for the short-term loss of eelgrass caused by the PCGP construction.
>
> The pipeline route would temporarily impact mitigation site M-8(b) (Highway 101 Causeway) during construction. Construction of the natural gas pipeline within Haynes Inlet would involve burying approximately 2.5 miles of 36-inch diameter steel pipe. The steel pipe would be covered with a 4-inch layer of concrete and installed a minimum of five feet (measured from the top of the pipe) below the substrate surface. The burial depth was established based on the predicted maximum scour depth and to comply with 49 CFR 192.327. Construction would involve excavating an in-water trench, storing excavated material for backfill to the side of the trench, installing the pipe, backfilling the trench and re-grading. Trenching would be conducted with a barge-mounted bucket dredge where water depth allows. In shallow areas along the alignment, marsh excavators, which

are capable of trenching in shallow water, would be used. During the ebb tide, marsh excavators utilize tracks around pontoons to allow excavation in both "wet" and "dry" terrain. The pipeline would be laid using a "pipe push" method. During the portions of the alignment installed using the "pipe push" method, the lay barge would remain stationary and the pipe sections would be pushed and floated out from the barge into the pre-dredged ditch as they are completed, using pre-designed floats.

Following is a summary of preliminary work procedures, BMPs, and protective measures that will be implemented during construction to minimize short-term and long-term impacts to water resources, biological resources and the surrounding environment:

1. Work will be conducted in compliance with the comprehensive plan, zoning requirements and other local, state and federal regulations pertaining to the project.
2. The contractor shall develop a turbidity monitoring and management plan (TMMP) that describes measures to reduce turbidity impacts resulting from dredging and backfill operations to ensure compliance with federal and state water quality standards.
3. Where water depths allow, the dredge bucket will be kept below the water surface while placing excavated soil along the trench in order to minimize turbidity.
4. The pipeline trench will be backfilled as quickly as possible after the pipeline is installed to minimize the distribution of excavated spoil from tidal influence.
5. Turbidity will be monitored in accordance with the 401 Water Quality Certification (WQC) requirements during dredging and backfilling operations by the environmental inspector. If turbidity levels exceed established tolerances, then the procedures outlined in the 401 WQC will be followed.
6. Turbidity curtains may be deployed, as practicable, in certain areas to protect sensitive resources such as oyster and eelgrass beds. Implementation of turbidity curtains is limited by local site conditions including flow velocities. Use and location of turbidity curtains will be determined during final design or as approved by the environmental inspector.
7. Construction will be scheduled to reduce impacts to sensitive resources and will be in accordance with the recommended in-water work window established by ODFW.
8. Work below mean higher high water (MHHW) will be conducted during the recommended in-water work window established by ODFW and approved by USFWS and NMFS.

The recommended in-water period for Coos Bay is October 1 through February 15.

9. Construction impacts will be confined to the minimum area necessary to complete the project.
10. When practicable, fueling and maintenance of equipment will occur more than 150 feet from the nearest wetland, ditch or flowing or standing water. (Fueling large compressors, cranes and generators 150 feet away may not be practicable.)
11. The contractor shall prepare a Spill Prevention Control and Countermeasure (SPCC) Plan prior to commencing work (available upon request).
12. All equipment used for construction activities will be cleaned and inspected prior to arriving at the project site to ensure no potentially hazardous materials are exposed, no leaks are present and the equipment is functioning properly.
13. The contractor shall perform daily inspection of construction equipment to ensure there are no leaks of hydraulic fluids, fuel, lubricants or other petroleum products.
14. Biological monitoring will be conducted as required by state and federal permit conditions.
15. A work plan will be prepared and submitted to the appropriate agencies prior to construction.
16. A site restoration plan will be prepared and submitted to the appropriate local, state and federal agencies prior to construction.

For additional descriptions of the project work within the estuary and measures that will be taken to minimize and mitigate impacts on estuarine habitat, see the "Estuarine Wetland Mitigation Plan, PCGP Project, Coos Bay Estuary," report prepared by Ellis Ecological Services dated March 2009, which is attached to the applicant's May 17, 2010 submittal as Exhibit 1.

In addition to the foregoing, the June 9, 2010 letter report submitted by Robert Ellis, Ph.D., of Ellis Ecological Services provides the following testimony regarding compliance with the 11-NA management objectives:

"As discussed throughout this Impact Assessment, the installation of the pipeline will impact fish and wildlife habitat within this zoning district. However, as discussed, the impacts will be short-term and primarily limited to the period of construction. Following a brief recovery period (months in the case of benthic invertebrate recolonization to a few years for eelgrass restoration), the pipeline will not interfere with this zoning district's resource productivity." Ellis Report, page 18.

The applicant's expert witness, Robert Ellis, Ph.D., of Ellis Ecological Services conducted extensive analysis of the potential environmental impacts of the pipeline construction. The result of that effort is discussed in the Ellis Report, which sets forth the Resources Capacity Analysis envisioned by CBEMP Policy #4, including a description of all resources existing at the site, an impact assessment, and a determination of consistency relating to the resource capabilities of the area. The Board has read the Ellis Report in detail and has determined the report constitutes substantial evidence confirming that impacts will be temporary and insignificant. There is no expert evidence in the record to the contrary. The Board adopts the Ellis Report as additional findings in support of the application as if it was fully set forth herein.

f. 11-Rural Shorelands (11-RS)

The pipeline crosses the 11-RS zoning district from MPs 4.12 R to 4.17 R. In this segment, the pipeline exits Haynes Inlet and crosses a rural area that is dominated by trees. Section 4.5.401(15)(a) lists the use as permitted subject to CBEMP Policies 17, 18, 23, 38, 34, 14, 49, 50 and 51. Other than the pipeline and the construction easement itself, there are no other accessory project components within zoning district 11-RS.

> *SECTION 4.5.400 Management Objective: This district shall be managed so as to continue its rural low-intensity character and uses that have limited (if any) association with the aquatic district. This district includes three designated mitigation sites (M-12, M-13 and M-22). However, only Site M-22 shall be protected from pre-emptive uses. Other sites are "low" priority, and need not be protected. (See Policy #22).*

Following installation, the buried pipeline will not affect the rural low-intensity character of the district nor the uses that have limited (if any) association with the aquatic district. All disturbed areas will be recontoured and revegetated in a manner consistent with the ECRP, and those areas that were forested prior to construction will be reforested except for the 30-foot maintained corridor centered over the pipe. The PCGP does not impact mitigation sites M-12, M-13, or M-22.

g. 13A-Natural Aquatic (13A-NA)

The pipeline crosses the 13A-NA zoning district from mileposts 1.78 R to 2.70 R. The pipeline crosses the Haynes Inlet in this zone. Section 4.5.426(9)(a) lists the use as permitted subject to CBEMP Policies 17 and 18.

> *Section 4.5.425 Management Objective: This district shall be managed to allow the continuance of shallow-draft navigation while protecting the productivity and natural character of the aquatic area. The openings in the two road dikes are designated mitigation sites [M-5(a) and (b), "low" priority]. Maintenance, and repair of bridge crossing support structures shall be allowed. However, future replacement of the railroad bridge will require Exception findings.*

Construction of the 2.80-mile route across Haynes Inlet that includes district 13A-NA will occur within the ODFW-recommended in-water work timing window from October 1 of Year One construction through February 15 of Year Two. ODFW has recommended the in-water work timing window in Coos Bay be delayed to October 15 to minimize impacts to a fall Chinook fishery. The applicant proposed a condition of approval requiring fill and removal activities in Coos Bay be conducted between October 1 and February 15 unless otherwise modified by ODFW. The Board finds that this condition properly recognizes ODFW's jurisdiction in this field and modifies and adopts the condition as Condition of Approval B.6 to read as follows:

> "Fill and removal activities in Coos Bay shall be conducted between October 1 and February 15, unless otherwise modified or agreed to by the Oregon Department of Fish and Wildlife."

Following construction of the pipeline, Pacific Connector is proposing on-site wetland restoration for estuarine habitats impacted by construction of the pipeline through the Haynes Inlet of Coos Bay which also includes district 13A-NA. Although the construction area across Haynes Inlet does not intercept high density eelgrass beds, all low and medium density eelgrass beds will be replanted at high density levels. The incremental gain to high density levels will provide sufficient compensation for the short-term loss of eelgrass caused by the PCGP construction. Additionally, the pipeline will be buried five feet below the bottom of the Inlet and will not affect shallow-draft navigation or the natural character of the aquatic area. The project does not impact mitigation sites M-5(a) or (b) and will not affect the bridges.

For additional descriptions of the project work within the estuary and measures that will be taken to minimize and mitigate impacts on estuarine habitat, see the response above regarding the 11-NA zoning district and the "Estuarine Wetland Mitigation Plan, PCGP Project, Coos Bay Estuary," report prepared by Ellis Ecological Services dated March 2009, which is attached to the applicant's May 17, 2010 submittal as Exhibit 1.

In addition to the foregoing, the Ellis Report provides the following testimony regarding compliance with the 13A-NA management objectives:

> "Although there may be some temporary disruption of navigation during pipeline construction as discussed above, the pipeline will be buried five feet below current grade and will have no lasting effect on shallow-draft navigation. Affected low and medium density eelgrass beds in the zone will be replanted at high densities and are expected to recover quickly." Ellis Report, page 18.

The management objective is met, for the reasons stated both in the Ellis Report and the findings propose for the 11-NA zone, *supra*.

h. 18-Rural Shorelands (18-RS)

The pipeline crosses the 18-RS zoning district from MPs 10.74 R to 11.10 R. In this segment, the PCGP alignment is located within a vacant pasture area and crosses East Bay Drive. Other than the pipeline and the construction easement itself, there are no other accessory project components within zoning district 18-RS. Section 4.5.481(15)(a) lists the use as permitted subject to CBEMP Policies 14, 17, 18, 20, 22, 23, 27, 28, 34, 49, 50 and 51.

> *SECTION Management Objective 4.5.480: This district shall be managed to allow continued use as pasture-grazing but shall also be managed to allow dredged material disposal or mitigation. This district contains two designated mitigation sites, U-12 and U-16(a) ("high" priority). It also contains designated dredged material disposal site 30(b). The development of the disposal site would preclude mitigation use, and vice versa. Use of this site for dredged material disposal is the higher priority because of the scarcity of suitable sites (see Policies #20 and #22).*

Construction of the pipeline would temporarily impact this area. Following construction, the district could be used as pasture-grazing unimpeded by the pipeline. In agricultural areas, the pipeline will be installed with 5 feet of cover, to allow farming activities to continue safely over the pipeline. The area will be revegetated to preconstruction conditions; therefore, grazing could continue unhindered. Furthermore, the pipeline would not preclude use of the site for dredged material disposal; nor would the pipeline preclude mitigation development of the site (see discussion of CBEMP Policies #20 and #22 for more detail).

The management objective is met.

i. 19-Development Shorelands (19-D)

The pipeline crosses the 19-D zoning district from MP 11.10 R to MP 8.10. In this segment, the pipeline crosses a large, undeveloped privately owned parcel. In addition to the pipeline and construction easement itself, accessory uses within this segment of the alignment include a permanent access road at MP 7.70 and block valve #2 at MP 7.70. Section 4.5.536(15)(a) lists the use as permitted subject to CBEMP Policies14, 17, 18, 27, 49, 50 and 51.

> *SECTION 4.5.535 Management Objective: This district is a large parcel (152 acres) of filled, undeveloped property in a single ownership bordering on a maintained shallow-draft channel. While the site is presently suitable for pastureland, the Plan anticipates that these characteristics will make it an important water-dependent/water-related industrial site in the future. To protect the site for futures industrial development, the Plan designates it "D" (Development). According to staff, the parcel's large site and the limitation on water access from only the Coos River shoreland makes it unlikely that the entire site can be utilized for only water-dependent/water-related uses.*
>
> *Therefore, to assure that non-water-dependent/non-water-related uses that which to locate on the site do not limit or preclude water-dependent uses of the shoreland, development must be consistent with a site plan that accomplishes this goal and is approved by the Coos County Board of Commissioners or their designee.*

At page 20 of her June 10, 2010 letter, Ms. McCaffree states that the management objective for zoning district 19-D requires consistency with a site plan for the future development of the zoning district.[27]

The applicant notes that during construction, pipeline installation will temporarily impact this large parcel, which is owned by Weyerhaeuser. A site plan has not yet been developed by the landowner for future development of the site. However, following construction, the buried pipeline will be compatible with future industrial development. The only restriction will be the development of permanently engineered aboveground structures within the 50-foot permanent right-of-way. Pacific Connector states that they have consulted with Weyerhaeuser regarding the pipeline alignment, and there was no indication from Weyerhaeuser that the PCGP will impact future development plans. The accessory access road follows an existing pasture two-track road and would provide access to block valve assembly #2 for maintenance and operation purposes. The access road would be 25 feet wide and 154 feet long, and would be graveled. Block valve assembly #2 would be located within the 50-foot permanent right-of-way and would occupy a 50x50-foot area enclosed by a 7-foot high safety fence.

The Board finds that following construction, the buried pipeline will be compatible with future industrial development. The proposed access road follows an existing pasture two-track road. A review of Alignment Sheet 008 (Exhibit 1 to the application narrative of April 14, 2010), reveals that the alignment of the pipeline within the 19-D zoning district avoids the river frontage portions of the district except for the area of crossing, thus assuring that the pipeline will not interfere with future water-dependent or water-related uses or developments. The last sentence in paragraph 1 of the management objective set out in Section 4.535 indicates that the parcel's large size and the limitation of water access from only the Coos River shoreland makes it unlikely that the entire site can be utilized for only water-dependent/water-related uses. Otherwise stated, the management objective recognizes that the portions of the district most available for future water-dependent/water-related uses are the portions of the district along the water frontage, which will not be areas of the 19-D zoning district used for the proposed pipeline crossing. Accordingly, the Board finds that the pipeline crossing will not limit or preclude water-dependent uses of the 19-D shoreland.

The management objective is met.

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[27] Ms. McCaffree testifies as follows:

> Where is the required site plan? Proposal includes permanent road. Applicant must demonstrate road won't limit or preclude future water-dependent uses or impact important archeological sites that may be found in this zoning district. This zoning district, also known as Graveyard Point, is subject to policy's 14, 17, and 18, among others. Coos County's, *"Shoreline Values Requiring Mandatory Protection"* map shows the pipeline will be in violation of policy 18 due to it impacting an important and vital Archeological Site on Graveyard Point. (See Exhibit D) PCGP's application should be denied due to this issue and in any event would not be in line with Coos County's zoning management objectives and policies for this area that require both, *"Protection of "Major Marshes" and "Significant Wildlife Habitat" in Coastal Shorelands, and Protection of Historical, Cultural and Archaeological Sites."*

j. 19B-Development Aquatic (19B-DA)

A portion of the pipeline and related construction areas will be located in the 19B-DA zoning district. This area is on the north bank of the Coos River. Section 4.5.541(9)(a) lists the use as permitted subject to CBEMP Policies 17 and 18.

> *CCZLDO Section 4.5.540 Management Objective: This development aquatic district shall be managed primarily to maintain use of the channel for access to future upland development adjacent to Christianson Ranch.*

The pipeline will be installed beneath the bottom of Coos River and will allow use of the channel for access to future upland development of any adjacent properties.

CCZLDO Section 4.5.541 Uses Activities and Special Conditions

The pipeline is permitted, subject to general conditions, as a low intensity utility in the 19B-DA district. The 19B-DA General Condition states that inventoried resources requiring mandatory protection in the district are subject to Policies #17 and #18. As addressed under the CBEMP Policy section below, the PCGP is consistent with each of those policies.

The management objective is met.

k. 20-Rural Shorelands (20-RS)

The pipeline crosses the 20-RS zoning district from MPs 8.22 to 8.39. This segment of the pipeline is located on the south bank of the Coos River. Section 4.5.546(15)(a) lists the use as permitted subject to CBEMP Policies 14, 17, 18, 22, 23, 27, 28, 34, 49, 50 and 51.

> *Section 4.5.545 Management Objective: This district shall be managed for rural uses along with recreational access. Enhancement of riparian vegetation for water quality, bankline stabilization, and wildlife habitat shall be encouraged, particularly for purposes of salmonids protection. This district contains two designated mitigation sites, U17(a) and (b), "medium" priority, which shall be protected as required by Policy #22.*

The project will not impact mitigation sites, U-17(a) and (b). Once installed, the pipeline will not prohibit rural uses or recreational access. Additionally as discussed above, the temporary access road areas within the 20-RS district will be returned to their previous condition following construction. In this area on the south side of the Coos River, the area is pastureland and may continue be used as pastureland following construction. A 1,750-foot HDD is the crossing method for the Coos River. This crossing method will avoid impacts to the river its banks, and riparian vegetation and will provide the maximum protection to wildlife habitat within and adjacent to the river.

The only risk to this zone is a possibility of a frac-out from the HDD bore. This issue is discussed in the section addressing the 20-CA zone. For the reasons set forth therein, the Board

finds that it is feasible to conduct HDD boring operations in an environmentally safe manner if the applicant follows the BMPs it has proposed to FERC, including those set forth in the HDD Contingency Plan.

The management objective is met.

l. 20-Conservation Aquatic (20-CA)

The pipeline crosses the 20-CA zoning district from mileposts 8.12 to 8.22. The 20-CA district is aligned with the Coos River. Section 4.5.551(9)(a) lists the use as permitted subject to CBEMP Policies 17 and 18.

> *Section 4.5.550 Management Objective: This aquatic district shall be managed to allow log transport while protecting fish habitat. Log storage shall be allowed in areas of this district which are near shoreland log sorting areas at Allegany, Shoreland District 20C, and Dellwood, Shoreland District 20D, as well as in areas for which valid log storage and handling leases exist from the Division of State Lands.*

Pacific Connector states that it will use a horizontal directional drilling (HDD) method to install the pipeline below the Coos River. Using this crossing method, the PCGP will be installed approximately 57 feet beneath the bottom of the Coos River and will not impact log transport and will not impact fish habitat.

The HDD method involves boring under a feature and pulling the pipeline into place through the borehole that has been reamed to accommodate the diameter of the pipeline. This procedure involves three main phases: pilot hole drilling, subsequent reaming passes, and pipe pullback. These phases are explained in detail in correspondence from Randy Miller of Pacific Connector dated May 17, 2010. Upon successful HDD completion, impacts to aquatic species, sensitive resources and water quality can be avoided. Additional details on the HDD process are included in Section 2.4.2 of the FEIS.

In addition to the foregoing, the Ellis Report provides the following additional testimony regarding compliance with the 20-CA management objectives:

> "As discussed above, this zoning district will be traversed using HDD methodology, which should have no affect on either fish habitat or log storage." Ellis Report, page 18.

WELC states the following in a letter dated June 8, 2010:

> The proposed project impacts the 20-CA site where the pipeline crosses the Coos River. The management objective for this site is to "allow log transport while protecting fish habitat." For this crossing, the applicant would use "horizontal directional drilling" (HDD), as described in the supplemental letter and the FERC environmental impact statement. The applicant gives the

> assurance that, "[u]pon successful HDD completion, impacts to aquatic species, sensitive resources and water quality can be avoided." However, as was abundantly documented in the FERC process, *un*successful HDD, including "frac-outs," can be devastating to aquatic species, sensitive resources and water quality. [*See* FEIS p 2-97, 4.3-50-51, 4.5-101-102]. We all know that the risks of environmental disasters – even when extremely low in probability – can result in unacceptable consequences. Given the very real risk of unsuccessful HDD occurring in at least one point among the many waterbody crossings proposed for the pipeline route, the applicant should be required to minimize the waterbody crossings where possible and document that the crossing point chosen is one that would have a relatively lower magnitude of harm to protected resources should the crossing go awry. The applicant should also be required to detail exactly how frac-outs and other drilling mishaps would be handled to minimize the potential environmental damage.

This last point is well taken, and, according to FERC, the HDD Contingency Plan addresses these issues. Both the Ellis Report and the discussion of the HDD Contingency Plan contained in the FEIS constitute substantial evidence.

In her June 10, 2010 letter, Jody McCaffree states:

> Application says "construction will use appropriate measures to minimize impacts; all impacts will be mitigated." Applicant must describe potential impacts on fish habitat; construction and mitigation measures. Pacific Connector is proposing to use the Horizontal Directional Drilling (HDD) method for the crossing of the Coos River (MP 8.18). The HDD method involves boring under the Coos River and pulling the pipeline into place through the borehole that has been reamed to accommodate the diameter of the pipeline. This procedure involves three main phases, pilot hole drilling, subsequent reaming passes, and pipe pullback. HDD typically is used for the crossing of major waterbodies (greater than 100 feet wide). Williams who will be responsible for constructing the PCGP has a HDD failure rate since 2000 of 2 of 6 involving 36' pipelines. Failure rates result in what is known as frac-outs where drilling muds are released into the waterbody. Frac-outs occurred with the 12-inch pipeline and the impacts to vital marine life and habitat were significant. Photos of the stream damage caused by the 12-inch line can be seen in Exhibit U. Potential releases of drilling fluid bentonite clay can wear down fish gills and impair fish vision making difficulty and predation easy (ODFW quote). As shown in the testimony above, the

impacts on fish habitat should this occur would be difficult or impossible to mitigate.

As discussed by FERC, FEIS p 2-97, 4.5-101-102, the risk of frac-outs from a properly-supervised HDD method bore are low, particularly if PCGP "locate[s] the HDD entry and exist points a good distance away from the backs of the waterbody." *Id.* at p. 4.5-102. .

The management objective is met.

m. 21-Rural Shorelands (21-RS)

The pipeline crosses the 21-RS zoning district from MPs 10.97 to 11.11 and MPs 11.14 to 11.32. The segments of the PCGP Project within the 21-RS district are located on the east and west banks of Catching Slough. Section 4.5.596(15)(a) lists the use as permitted subject CBEMP Policies 14, 17, 18, 22, 23, 27, 28, 34, 49, 50 and 51.

> *SECTION 4.5.595 Management Objective: This shoreland district of generally diked farm land shall be managed to maintain the present low-intensity, rural character and uses in a manner compatible with protection of the aquatic resources. An existing heron rookery located in the district shall be preserved by protecting those trees in the rookery which are used by the birds. This district contains a number of designated mitigation sites. The following are "high" or "medium" priority, and must be protected as required by Policy #22: U-28, U-29(b), U-30(b), U-32(a)and (b), U-33, U-34(c) and (d). The following are "low" priority sites, and received no special protections: U-21(b), U-22, U-23, U-24, U-26, U-27, U-29(a), U-32(c) and U-34(a) and (b).*

Upon completion of installation, the pipeline will not affect the present low-intensity, rural character and uses in the area because the pre-construction uses will be allowed to continue following construction both across and adjacent to the right-of-way. As detailed in the 21-CA narrative section below Catching Slough will be crossed using a conventional bore, protecting the diked waterbody. Pursuant to the County Shoreland Values map, the heron rookery is located where Catching Slough enters Coos Bay, which is several miles north of where the pipeline crosses Catching Slough. Nonetheless, between MPs 10.97 and 11.32, the pipeline will be installed in pasture lands, and there will be no tree removal required for that segment of pipeline construction. Therefore any trees used as bird habitat near that segment of the route will be protected. The pipeline will cross the northeastern edge of designated mitigation site U-22 and will cross the middle of designated mitigation site U-24. Both designated mitigation sites are "low" priority sites and, as stated above, receive no special protections. Furthermore, as discussed below this segment of the pipeline satisfies the requirements of Policy #22.

The management objective is met.

n. 21-Conservation Aquatic (21-CA)

The proposed pipeline crosses the 21-CA zoning district from MPs 11.11 to 11.14. This segment of the pipeline will cross Catching Slough. Section 4.5.601(9)(a) lists the use as permitted subject to CBEMP Policies 17 and 18.

> *Section 4.5.600. Management Objective: This aquatic district shall be managed to allow rural upland uses while protecting aquatic resources. Dredging for routine repair/maintenance of dikes shall only be permitted if no alternative upland source of suitable fill material is reasonably available and/or land access is not possible.*

According to the applicant, the upland areas will be returned to their previous condition in compliance with the ECRP. Therefore, the rural upland uses on the surrounding pasture lands will be able to continue once construction is complete.

Pacific Connector proposes to use a conventional bore method to install the pipeline below Catching Slough. The bore method is intended to provide additional protection to aquatic resources within the Slough. The specific type of bore that will be utilized for crossing Catching Slough will be determined during the design phase of the project and depends primarily on construction characteristics and the type of soils present.

According to the applicant, a conventional bore requires bore pits (launching and receiving) on either side of the feature being bored (*i.e.*, waterbody, road, railroad, etc.). The depth of the bore pits is dependent on the required pipeline depth and the construction equipment placed in the bore pits, and the bore pits are sized to allow for the necessary equipment and workers. The equipment, depending on the type of conventional bore, is lowered into the pit. Because conventional boring does not limit water migrating into the bore, an important factor in the design of launching and receiving pits is groundwater control. According to the applicant, dewatering systems using deep wells or well points are frequently used, and trench boxes or sheet piling are often used to support the pit walls and to temporarily cut off groundwater inflows.

In addition to the foregoing, the Ellis Report provides the following additional testimony regarding compliance with the 21-CA management objectives:

> "As stated above, adjacent rural uses will be temporarily impacted by pipeline construction. However these areas will be returned to pre-construction conditions following installation of the pipeline. Because Catching Slough will be bored under for pipeline installation, BMPs and other avoidance measures should protect all aquatic resources." Ellis Report, page 19.

WELC discusses this issue in their June 8, 2010 letter from attorney Jan Wilson:

> The proposed project impacts the 21-CA site where the pipeline is bored under Catching Slough. The management objective for that area is to allow rural upland uses while protecting aquatic resources. The applicant proposes to use "conventional" boring methods, including dewatering, to install the pipeline under the

> slough. The supplemental letter indicates that many of the details for this crossing are yet to be worked out, and thus the county may not yet be able to make the feasibility determination required to satisfy this approval criterion. It is not clear, for example, how the dewatering might affect the aquatic resources, both in the short and long term.

WELC's testimony is again focused on the argument that the applicant has not put forth enough evidence to meet it prima facie burden of proof. This is simply not a very effective tactic, given that the applicant's experts have listed the BMPs that they will use to avoid harm to aquatic resources, and have opined that those resources will be adequately protected. *See* ECRP. WELC opines that 'it is not clear * * * how the dewatering might affect the aquatic resources, both in the short and long term." However, this criticism seems rather vague and uninformed, particularly given the fact that the ECRP addresses the BMPs that will be employed to prevent sediment laden water from being reintroduced directly into water-bodies during de-watering operations. *See* ECRP at p. 23. In any event, the "technical details" of how the crossing will occur are engineering and scientific matters that can worked out at a later date.

The management objective is met.

o. 36-Urban Water-Dependent (36-UW)

This site is known as the Georgia Pacific-Coos Bay site. The property contains an active sawmill and lumber yard and it is located within zoning district 36-UW. Section 4.5.691(15)(a) lists the use as permitted subject to CBEMP Policies 16, 17, 18, 23, 27, 49, 50 and 51. Pacific Connector would utilize the Georgia Pacific-Coos Bay site as an accessory pipe storage and contractor yard temporarily during construction.

> *SECTION 4.5.690 Management Objective: This shoreland district, which includes a mix of water-dependent and non-water-dependent industrial uses and an area bordering the 35-foot channel which is "suitable for water-dependent use", shall allow only water-dependent uses along the deep-draft channel, except as allowed by Policy #16. In the remainder of the district, existing uses shall be permitted to continue and expand.*

The temporary storage of pipe and equipment and temporary addition of mobile office trailers during construction will be similar to the existing operations associated with the active sawmill and lumber yard, and as stated in the objective, "existing uses shall be permitted to continue and expand."

The management objective is met.

p. Other Estuary and Bay Related Concerns

i. Impact to Oyster Beds from Turbidity resulting from Wet Crossing Construction or "Open Cutting" Techniques.

Ms. Lilli Clausen entered a letter into the record dated May 13, 2010 and testified verbally, expressing concern that the pipeline construction activity in Haynes Inlet will silt up and kill her oyster beds. The Board's task in evaluating this letter is made more difficult because the letter does not state exactly where their oyster beds are in relation to the proposed pipe. Nonetheless, the map Ms. Clausen submitted seems to suggest that her oyster beds are very close to the proposed pipe location. Ms. Clausen does not submit any scientific expert testimony to support her contentions, which is highly problematic.

The Board has read the materials provided by the applicant which address this issue, including:

- letter from Mr. Randy Miller dated May 17, 2010
- the Ellis Report.[28]
- Excerpts from the FEIS entitled "Wildlife and Aquatic Resources", at p. 4.5-93.
- Environmental Condition No. 24 in the FEIS.

The applicant states that the contractor will develop a turbidity monitoring and management plan ("TMMP") "to ensure compliance with federal and state water quality standards." *See* Miller letter dated May 17, 2010, at p. 5. In the June 6, 2010, letter, the Hearings Officer requested more information regarding the specific numeric water quality standards that are at issue and more information to demonstrate that the specific BMPs proposed in the TMMP will make it feasible to comply with the applicable regulations and protect the oyster beds. In addition, requested additional information verifying that the specific standards set forth in state and federal law are sufficient to ensure that oyster beds are protected under conditions similar to what the applicant will be facing in Haynes Inlet.

The applicant also stated that "turbidity will be monitored in accordance with the 401

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[28] In its June 16, 2010 letter, WELC purports to "object" to the applicant's submittal of the Ellis Report, complaining that that the opponents were not provided enough time to review and comment on the report. As the applicant notes, however, "the Ellis Report was prepared and submitted in direct response to concerns and questions raised at the public hearing; the Ellis Report contains precisely the type of surrebuttal evidence that is intended to be provided during the second open record period established by the hearings officer."

The applicant is also correct that "the opponents have had plenty of time to gather and provide their *own* evidence regarding alleged impacts on aquatic species and habitat, but have apparently chosen not to do so." As the applicant points out, there is no rule that says opponents may only comment on evidence submitted by an applicant; rather, they are obviously free to create their own evidentiary record and force the decision-maker to make a determination regarding whose evidence is more "substantial." Had WELC elected to submit its own evidence at the close of the open record period, the applicant would have been similarly limited to a seven-day response period.

Finally, the Board notes that any party had a right to file a written request to submit new evidence to respond to that surrebuttal evidence submitted during the second period (and raise "new issues" related to that evidence). ORS 197.763(6)(c) & (7). The type of evidence accepted under this provision is limited: it has to be evidence and argument that "respond[s] to new evidence submitted during the period the record was left open." *See* ORS 197.763(6)(c). Thus, the requested open-record period is an evidentially round, but limited to additional surrebuttal evidence: the parties can only raise "new issues" that relate to the rebuttal evidence, etc, raised during the first open-record period. No party availed themselves of that opportunity.

Water Quality Certification (WQC) requirements during dredging and backfilling operations by the environmental inspector." The applicant goes on to state that "[i]f turbidity levels exceed established tolerances, then procedures outlined in the 401 WQC will be followed." Although that statement may be reasonable and true, it really does not communicate much information to a lay person, and does not provide enough information to make a feasibility finding. The Hearings Officer requested more detailed information concerning the specific WQC requirements, as well as information regarding the "environmental inspector."

In response to these issues, the applicant submitted the Ellis Report, which provides a detailed analysis of the following:

(a) the type and extent of alterations in the aquatic zoning districts that will result from trenching, pipeline construction, installation and backfill (pages 4-6);

(b) types of resources that would be affected within those zoning districts, including vegetation, invertebrates, fish and wildlife (pages 6-10);

(c) expected extent of impacts of construction activities on those resources (pages 11-16); and

(d) methods that could be employed to avoid or minimize adverse impacts (page 16).

The relevant conclusions of the Ellis Report regarding potential impacts on aquatic resources are quoted and/or summarized as follows:

- Plants (eelgrass) – "Therefore, light limitation and direct sedimentation on eelgrass beds is expected to be localized and only result in minor short-term effects on local patches of eelgrass beds proximate to the construction area. Outside of the immediate area, turbidity should not represent an additional indirect source of impact to eelgrass habitats or dependent aquatic species. Thus, the pipeline installation should not affect the ability of the eelgrass beds to function in a manner to protect significant wildlife habitats, natural biological productivity and values for scientific research and education." Ellis Report, page 11.

- Invertebrates – "Following construction, recovery of the benthic community is expected to be rapid, particularly the epibenthic community that provides the majority of the food resources for fish. In a previous study, benthic communities on mud substrates in Coos Bay that were disturbed by dredging activities recovered to pre-dredging levels in four weeks (Newell et al. 1998). It is anticipated that some of the longer lived organisms such as clams and large polychaetes will require up to a year or more to fully recover pre-construction densities." Ellis Report, page 12.

- Fish – The October to February inwater work period will not coincide with the presence of protected sturgeon or salmonids, with the exception of migrating coho salmon adults in the fall. Primary impacts would be due to turbidity, but fish would likely avoid active work areas and would be expected to move to less turbid waters. "The elevated suspended sediment conditions would be short-term during pipeline installation and

would not be continuous at any one location. This would reduce the chances of continuous elevated exposure for any fish that may remain in a localized area." Ellis Report, page 13.

- Oyster Beds – "Four companies lease lands within the bay that they seed with juvenile oysters (spat) and later harvest. Some beds are present in Haynes Inlet near the pipeline corridor. However, all oyster growing areas have been avoided by re-routing the proposed pipeline. Hazardous spills or burial of spat by increased sedimentation have the potential to impact survival and production of these oysters. * * * Adverse effects would be restricted to the short-term period of active construction as sedimentation and erosion control plans would attempt to limit elevated turbidity and suspended sediment near known rearing areas. Any inwater work would comply with turbidity standards as administered under the DEQ Section 401 Clean Water Act certification program.

  " * * * Because oyster beds often occur near the mouths of sediment-laden rivers, oysters are quite tolerant of high suspended sediment loads (Wilbur et al. 2005). Although deep burial can cause mortality, Dunnington (1968) reported that oysters buried 1.25 cm or less could 'usually clear their bills of sediment if the water was warm enough for active pumping.' It is highly unlikely that dredging near the oyster beds will cause sediment deposition significant enough to cause mortality. PCGP is currently in consultation with oyster growers (discussed below) on potential remedies should oyster production be negatively affected." Ellis Report, page 15.

The Ellis Report goes on to describe turbidity monitoring requirements and potential impact minimization practices that could be required in the event that field-testing confirms turbidity standards are being exceeded. In addition, additional safeguards will be provided by virtue of the fact that the applicant will need to obtain permits under the Clean Water Act. Finally, the consultation requirement will provide additional safeguards.

The evidence provided by the applicant constitutes substantial evidence. This is particularly true given that the scientific analysis provided by the applicant has not been rebutted by the opponents. The term "substantial evidence" means "evidence that a reasonable person could accept as adequate to support a conclusion." *Constant Velocity Corp v. City of Aurora*, 136 Or App 81, 901 P2d 258 (1995); *Younger v. City of Portland*, 305 Or 346, 357, 752 P2d 262 (1988). "A finding lacks substantial evidence when the record contains credible evidence weighing overwhelmingly in favor of one finding and the agency finds another without giving a persuasive explanation." *Canvasser Services, Inc v. Employment Dept.*, 163 Or App 270, 274, 987 P2d 652 (1999). In this case, the applicant has met its burden of proof. Given the record, to rule against the applicant on this issue would be reversible error. In this regard, there was a complete failure by the opponents to submit credible scientific expert testimony of their own.

ii. Sediment Quality in Coos Bay

More than one opponent testified that the bay is full of hazardous waste that is currently buried in layers of sediment, and that dredging in these areas will cause these substances to be re-introduced into the aquatic environment. The FEIS confirms this may be true. *See* Page 4.5-93 ("Wildlife and Aquatic Resources"). With regard to impacts to fish, the FEIS addresses the

effects of these chemicals on salmon and other fish and concludes that there will be long-term impacts. In the absence of the scientific evidence to the contrary discussed below, the Board would accept the FERC findings in the FEIS as constituting substantial evidence.

The FEIS also states that "suspended sediment may adversely affect filter feeding commercially and recreationally important clams and oysters near the pipeline route in the bay where most of the sediment would be suspended." FERC FEIS at p. 4.5-94. In the Hearings Officer's June 6, 2010 letter to the parties, he opined that "[t]he FEIS goes on to conclude, rather unconvincingly, that '[a]dverse effects would be restricted to the short-term period of active construction as sedimentation and erosion control plans would attempt to limit elevated turbidity and suspended sediment near known rearing areas.'" *Id.* In that same letter, the Hearings Officer stated that "[w]hat concerns me is that there is no *evidence* to conclude that short term exposure to construction-related turbidity is not significant in filter feeding organisms. Common sense suggests that filter-feeding organisms will ingest the toxic compounds, making them inedible or, at the very least, undesirable. The applicant needs to do more to address this issue."

The applicant addresses this issue in its June 24, 2010 final argument, as follows:

> First, as noted in the FEIS, there are no known hazardous waste sites in the area of Coos Bay that would be crossed by the pipeline. FEIS page 4.5-93. In the absence of any contrary evidence provided by opponents regarding the actual presence of contaminated sediments along the route of the pipeline through the bay, the applicant submits that the hearings officer could adopt approval findings based on this evidence alone. However, the FEIS does go on to state that historically there has been boat painting in the general area of Coos Bay that could have resulted in deposits of toxic compounds, and that there is evidence regarding the presence of tributylin in Catching Slough. FEIS page 4.5-93.
>
> In response to these concerns, the applicant submitted a letter from Staff Environmental Scientist Randy Miller dated June 4, 2010. That letter notes that "[t]he proposed pipeline work in Haynes Inlet requires confirmation that the sediment that will be excavated is of sufficient quality that water quality impacts will not occur as a result of chemical constituent concentrations in the sediment." The letter goes on to explain in detail the steps that have been taken by Pacific Connector, and what will be required in the future regarding evaluation of sediment quality.
>
> Pacific Connector has prepared a Level 1 Sediment Quality Assessment that was submitted to the Corps and to the Project Review Group (PRG) for review. The PRG responded in a letter dated December 3, 2009 recommending that Pacific Connector undertake the following steps: (1) preparation of a Sediment Analysis Protocol (SAP) in accordance with the established

Sediment Evaluation Framework (SEF) used for waters of the Pacific Northwest; (2) division of the project area into three dredged material management units; (3) collection of nine sediment cores along the proposed alignment within Haynes Inlet; and (4) physical/chemical analysis of the sediment samples.

Following the recommendations of the PRG, Pacific Connector prepared a January 2010 SAP (copy attached to the letter from Randy Miller), which has been approved by the Corps and the PRG. The purpose of the SAP is to assess whether chemicals of concern are present in sediment in the Haynes Inlet portion of the project area (mileposts 1.7 to 4.1). Chemicals of concern and screening levels established by the SEF are listed on Table 1 of the SAP.

The June 4, 2010 letter from Randy Miller notes that prior sediment testing near the project area indicates that contaminants of concern are not present in the project area at concentrations of concern: "The Coos Bay area studies indicate that there is no reason to believe that chemical contaminants are present in the project area at concentrations greater than SEF screening levels." Miller letter, page 2. Should the sampling to be undertaken by Pacific Connector observe any chemical constituents at concentrations higher than the SEF standards, Pacific Connector will work with the Corps, DEQ, NMFS and the USFWS to apply appropriate mitigation measures or revised construction methods to ensure that no adverse water quality impacts will result from pipeline construction.

The applicant has also submitted a letter dated June 17, 2010 from Robert Ellis, Ph.D., of Ellis Ecological Services (Exhibit 9 to applicant's June 17, 2010 submittal), which responds to concerns stated during the first open record period regarding what steps the applicant will take to evaluate risk posed by contaminated sediments, and the framework that will be applied in order to assess potential risks, including bioaccumulation concerns.

The SAP establishes the methods for sampling and analysis of sediment within the planned pipeline route in order to satisfy the recommendations of the PRG and to ensure that water quality impacts will not occur as a result of sediment contamination. It would be appropriate for the county to impose a condition of approval requiring the applicant to undertake the sampling and analysis set forth in the SAP in order to ensure that there will be no adverse water quality impacts from digging the trench for the pipeline across Haynes Inlet.

The Board finds that information contained in the June 4, 2010 letter from Mr. Miller, the June 17, 2010 letter from Mr. Ellis, and the SAP constitutes substantial evidence regarding the specific pipeline impacts sufficient to rebut the general conclusions of the FEIS and to respond to concerns expressed by opponents. As quoted above, the applicant proposed the Board impose a condition of approval requiring the applicant to undertake the Sediment Analysis Protocol ("SAP") during dredging operations. The Board finds it is important for the applicant to complete the sampling and analysis of the SAP. However based upon staff recommendation, the timing of these steps should be accelerated in order to identify and address issues as soon as possible. Accordingly, the Board adopts Condition of Approval B.19 to read as follows:

> "Prior to construction, the applicant shall be required to undertake the sampling and analysis set forth in the Sediment Analysis Protocol (SAP) in order to ensure that there will be no adverse water quality impacts from digging the trench for the pipeline across Haynes Inlet."

Given these extensive avoidance, minimization and mitigation measures proposed by the applicant, and subject to this condition, the Board concludes that any impacts to resources will be temporary and *de minimis*. *Oregon Shores Conservation Coalition v. Curry County and Tidewater Contractors, Inc.*, __ Or LUBA __ (LUBA No. 2009-100, March 10, 2010).

g. Forest Zone (F) (CCZLDO Article 4.8)

CCZLDO §4.8.300(F)

The proposed pipeline will cross approximately 39.47 miles of Forest-zoned lands within the County (*see* Tables 1 and 2 in the application narrative). Of the 39.47 miles, 10.76 miles are on BLM-managed lands, while the remaining segments are located on privately owned lands. The Environmental Alignment Sheets in Exhibit 1 to the application narrative provide the landowner and zoning information with the parcel data overlaying aerial photography.

The majority of the pipeline route through the County is located on Forest-zoned lands. As shown on Table 1 in the application narrative, the pipeline would cross Forest-zoned lands between the following mileposts: 4.22 to 6.25, 6.44 to 8.28, 8.54 to 10.42, 8.95 to 9.06, 9.10 to 10.12, 10.52 to 10.97, 11.32 to 11.94, 12.04 to 12.47, 12.49 to 14.22, 14.28 to 15.69, 15.73 to 15.89, 15.95 to 19.24, 20.05 to 21.81, 21.87 to 22.59, 23.06 to 29.52, 30.15 to 45.70.

The applicant must demonstrate compliance with CCZLDO §4.8.300(F), which is a codification of OAR 660-006-0025(4)(q). This administrative rule allows the following conditional uses in forest zones:

> "New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (*e.g.*,

gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width." OAR 660-006-025(4)(q).[29]

Opponents argue that the proposed pipeline use is a gas 'transmission line," which they assert is not allowed in the Forest zone due to CCZLDO §4.8.300(F). *See* Letter from Jan Wilson dated June 8, 2010, at p. 5. They argue that only gas "distribution" lines are allowed, and a distribution line is one that distributes gas to homes in the County. The opponents seek to differentiate the proposed Pacific Connector pipeline on the grounds that it does not "distribute" gas to residents or businesses within the County, but is instead one that "transmits" gas to California and other locales.[30]

The applicant responds to this argument as follows:

> Several opponents have argued that the PCGP is a "transmission" gas pipeline rather than a "distribution" line, and that the pipeline is therefore not allowed under the applicable Goal 4 rule,
>
> The language in [OAR 660-006-0025(4)(q)] expressly and unambiguously defines all new utility lines as "distribution" lines, with the exception of new electric lines, which are identified as "transmission" lines. For purposes of this state rule, and the corresponding county code provision, there is no such thing as a natural gas "transmission" line. While the opponents may disagree with the appropriateness of this characterization, the text of the rule is not ambiguous and cannot be changed by the hearings officer.
>
> The opponents' argument is based on the fact that the PCGP is described in other materials and in FERC documents as an interstate natural gas "transmission" facility. The opponents' argument

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[29] Identical language is included in CCZLDO § 4.8.300(F) regarding conditional uses in the county Forest zone.

[30] In their letter dated June 8, 2010, WELC states as follows:

> Because the provision mentions "electrical transmission lines" separately from "distribution lines," which, by the given list of examples, include more than just electrical lines, it is not clear that *non*-electrical *transmission* lines are allowed under the provision. The definitions section of the county code makes no distinction between transmission lines and distribution lines, though it does define utility "service lines" to include "distribution lines" for both electrical and non-electrical utility services. In any event, the applicant has the burden of showing how the proposed natural gas pipeline, which seems to be merely transmitting natural gas through the county (from the proposed LNG import facility to the main north-south interstate pipeline that transmits natural gas though multiple western states between the Canadian and Mexican borders), rather than distributing it to any Coos County users, falls within the defined administrative conditional use.

assumes that the PCGP's classification by FERC must also be consistent with its classification under OAR 660-006-0025(4)(q) and CCZLDO § 4.3.800(F). Following this assumption, opponents argue that interstate natural gas pipelines are prohibited in forest zones because the rules only allow "transmission" lines for electricity. Opponents argue that the PCGP is not a distribution line under their interpretation and therefore is not allowed in forest zones as a conditional use.

It is important to clarify the interpretive issue before the county and the proper scope of analysis. The interpretive issue is limited to the classification of the PCGP under the county's forest zone. The county's forest zone provisions allowing new distribution lines were adopted to implement OAR 660-006-0025(4)(q) and, therefore, must be interpreted consistently with the Goal 4 rules. *Cotter v. Clackamas County*, 36 Or LUBA 172 (1999). Accordingly, the focus of the analysis is on the Goal 4 rule rather than the local code language. *Id.*

Because the issue before the county is the classification of the PCGP under *Goal 4*, the county should not consider FERC's classification of the PCGP under *federal law*. Stated simply, the county's land use review and FERC's review of the PCGP are two separate processes, each applying a different set of definitions and standards. In its review process, FERC does not consider or determine the classification of the PCGP under Goal 4 or the county forest zone. Similarly, the county's land use review process does not involve any definitions or review criteria established by FERC or federal law. FERC's classification of the PCGP, which forms the bulk of the opponents' analysis, has no bearing on the on the classification of the PCGP under Goal 4.

Under the Goal 4 rule, the classification of the PCGP is a question of statutory construction, which must be reviewed under the analysis established in *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993). The first level analyzes the text and context of the provision. The second level considers legislative history that is offered by the parties, even if the text and context of the provision do not present an ambiguity. *State v. Gaines*, 340 Or 160, 171-72 (2009). "However, the extent of the court's consideration of that history, and the evaluative weight that the court gives it, is for the court to determine." *Id.* The third level of analysis, maxims of statutory construction, is only considered if the text, context, and legislative history do not answer the interpretive question. *Id.* Under the Goal 4 rule, the classification of the PCGP is a question of statutory construction, which must be reviewed under the

analysis established in *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993). The first level analyzes the text and context of the provision. The second level considers legislative history that is offered by the parties, even if the text and context of the provision do not present an ambiguity. *State v. Gaines*, 340 Or 160, 171-72 (2009). "However, the extent of the court's consideration of that history, and the evaluative weight that the court gives it, is for the court to determine." *Id.* The third level of analysis, maxims of statutory construction, is only considered if the text, context, and legislative history do not answer the interpretive question. *Id.*

a. The text and context of the Goal 4 rule establish that the PCGP is a "new distribution line" under OAR 660-0006-0025(4)(q).

OAR 660-006-0025 includes a long list of uses and activities that are either allowed outright or as conditional uses in rural forest zones. Two of those uses are relevant to the classification of the PCGP. OAR 660-006-0025(3)(c) allows "Local distribution lines (*e.g.*, electric, telephone, natural gas) and accessory equipment" as outright permitted uses.[31] OAR 660-006-0025(4)(q) allows, as conditional uses: "New electric transmission lines with right-of-way widths of up' to 100 feet as specified in ORS 772.210. New distribution lines (*e.g.*, gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width."

The text of OAR 660-006-0025 reflects that separate classification schemes are used for electrical and non-electrical lines. For purposes of Goal 4, electrical lines are classified as either local distribution lines (allowed outright) or transmission lines (allowed as a conditional use with up to 100 feet of right-of-way). Non-electrical lines are classified as either local distribution lines (allowed outright) or new distribution lines (allowed as a conditional use with up to 50 feet of right-of-way). Nothing in the text of Goal 4 identifies either non-local electrical distribution lines or non-electrical transmission lines as a separate classification.[32] Instead, all non-local non-electrical lines are classified as new distribution lines. Such lines are allowed as conditional uses with up to 50 feet of right-of-way.

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[31] Identical language is included in CCZLDO § 4.8.200(H) regarding uses permitted outright in the county Forest zone.

[32] When LCDC amended the Goal 4 rules in 1992, "electrical" was deleted from the listed types of distribution lines in OAR 660-006.0025(4)(q) because non-local electrical lines became separately classified as transmission lines.

The opponents interpret Goal 4 to require the same classification schemes for both electrical and non-electrical lines – *i.e.* transmission and distribution lines. The distinction, opponents argue, is that a gas distribution line must be designed to provide local utility customers with supplies of gas. However, this interpretation ignores the fact that OAR 660-006-0025(3)(c) and CCZLDO § 4.8.200(H) specifically allow local distribution lines as a use permitted outright. Consequently, OAR 660-006-0025(4)(q) must be interpreted to allow distribution lines that serve more than just local customers. *See* ORS 174.010 (statutes must be construed to give effect to all provisions). Further, Goal 4 does not identify any non-electrical lines (e.g. telephone, oil, and fiber optic cable) as transmission lines. Under the opponents' interpretation, all non-electrical lines, even telephone phone lines, that are not restricted to local service would be prohibited in the Forest zone. The text of Goal 4 does not support this interpretation.

The statutory context of the Goal 4 rule confirms that the PCGP is properly classified as a new distribution line. The Goal 4 utility line classification scheme is derived from ORS Chapter 772, which establishes the amount of right-of-way that can be condemned for various types of utility lines. ORS Chapter 772 makes clear that "transmission" is a classification used only for electrical lines and electrical utilities.[33] No other type of utility line (*e.g.* gas, oil, geothermal, telephone, fiber optic cable) is classified as a "transmission" line under ORS Chapter 772, including utility lines that might be classified as a transmission line under federal law. Consequently, all non-electrical utility lines, including the PCGP, are properly classified as distribution lines for purposes of the Goal 4 rule.

The opponents' classification scheme erroneously ignores ORS Chapter 772 and, instead, focuses on the classification of the PCGP under other laws and FERC documents. As explained above, this interpretation loses sight of the fact that the proper analysis is whether the PCGP is a distribution line under Goal 4, not FERC's rules or some other source of law. Neither Goal 4 nor ORS Chapter 772 implements either federal law or Williams' classification scheme. Therefore, federal law does not provide context for interpreting Goal 4. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997).

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[33] In fact, when the Goal 4 rule was adopted, nothing in Oregon law classified gas lines as "transmission lines."

The purpose statements in Goal 4 and the Goal 4 rule also provide context for interpreting the term "new distribution lines."[34] The purpose of Goal 4 and the Goal 4 rule is to conserve and protect lands for timber production. Goal 4 and the Goal 4 rule recognize that five general types of uses may be allowed in forest zones, subject to the standards in Goal 4 and the Goal 4 rule. OAR 660-006-0025(1). New distribution lines are part of the general category of locationally dependent uses allowed by Goal 4. However, the "distribution" label is not what is important for ensuring that these lines are consistent with the purpose of Goal 4. Instead, these lines are made consistent with the purpose of Goal 4 through the 50 foot permanent right-of-way standard in OAR 660-006-0025(4)(q) and the conditional use criteria in OAR 660-006-0025(5). The opponents' labeling distinction between "distribution" and "transmission" lines does not further the purpose of Goal 4 and the Goal 4 rule. In fact, if opponents' arguments were correct, it would be impossible to site an interstate gas pipeline across Forest-zoned land in Oregon.

In short, the Goal 4 rule classifies all gas lines as either local distribution lines or distribution lines. Goal 4 does not recognize a separate classification for gas transmission lines because there is no similar classification under ORS Chapter 772 or any Oregon statute that could serve as relevant context. Therefore, under Goal 4 and CCZLDO 4.8.300(F), the PCGP is a distribution line and is allowed as a conditional use with up to 50 feet of right-of-way width.

b. The legislative history of the Goal 4 rule confirms that the PCGP is properly classified as a distribution line.

The legislative history of the Goal 4 rule confirms that the classification scheme for utility lines was developed based on the classification scheme in ORS Chapter 772, which does not identify gas transmission lines as a separate classification. OAR 660-006-0025 was first adopted by LCDC in 1990 and classified all types of utility lines, including electrical lines, as either local distribution lines or distribution lines. All distribution lines were allowed as conditional uses with up to 50 feet of right-of-way. In 1992, LCDC amended the rule to allow "new electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210" and deleted the reference to "electrical" under distribution lines. The apparent reason for this revision was to make the Goal 4 rules consistent with ORS Chapter 772, which

[34] General purpose statements are not approval criteria for a land use decisions. However, purpose statements can provide context for a statutory or regulatory interpretations.

> recognized electric transmission lines as a separate classification and provided for additional right-of-way condemnation authority for such lines. No amendment was necessary for other types of utility lines because ORS Chapter 772 did not classify any other types of lines as transmission lines. Consequently, LCDC's decision to amend the Goal 4 rules to recognize electrical transmission lines does not reflect an intent to classify, and thereby prohibit, any other type of utility line as a transmission line.

See Final Argument, Letter from Mark Whitlow dated June 24, 2010, at p. 5-9.

The opponents appear to be correct that the gas pipeline industry distinguishes between gas transmission lines and gas distribution lines. *See generally*, William A. Mogel and John P. Gregg, *Appropriateness of Imposing Common Carrier Status on Interstate Natural Gas Pipelines*, ENERGY LAW JOURNAL, Vol. 4.2, page 155, 157 (1983).[35] In the industry, it is apparently understood that interstate gas pipelines are generally used for the "transmission" of natural gas. *Id.* FERC seems to adopt this distinction as well, as the discussion in the FEIS makes clear.

However, the applicant is correct that there is no indication in Statewide Planning Goal 4 or OAR 660-006-0025(4)(q) that LCDC purposefully intended to use the federal vernacular, and there is no indication that LCDC sought to purposefully exclude interstate gas "transmission" pipelines from Forest zones. As the applicant notes, neither the FERC classification or other federal law is necessarily "context" for interpreting DLCD's administrative rule, because there is simply no evidence to suggest that OAR 660-006-0025(4)(q) implements federal law or was enacted with federal law in mind.

OAR 660-006-0025(4)(q) specifically lists "gas" amongst a list of examples of "distribution lines." Because the rule creates a separate category for "local" gas distribution lines, the only logical inference is that all other gas lines (*i.e.* "non-local gas lines) are a conditional use. By using the term "transmission" lines for electrical lines, the rule is intending to recognize the vernacular used in the state statute. *See* ORS Chapter 772.

The legislative history is also telling because there is really no discussion regarding gas "transmission" lines. If DLCD were making a purposeful decision to exclude interstate gas transmission lines from Forest zones, one would think that such a monumental decision would have generated more debate and attention. Such debate and discussion would be reflected in the legislative history. However, the tenor of the legislative history is much more in line with "housekeeping" changes, and not major shifts in policy.

Moreover, as the Hearings Officer's discussion on preemption makes clear, it is doubtful that DLCD would have the authority to exclude interstate gas transmission lines from the Forest

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[35] "There are three major segments of the natural gas industry: production, transmission, and distribution. Essentially, interstate natural gas pipeline companies act as middlemen, buying natural gas from producers at the wellhead, transporting it, and reselling it directly to large end-users or to local distribution companies, which in turn resell it for a variety of end users."

zone in any event. This is particularly true for parts of the state not subject to the CZMA. Along those same lines, the opponents' argument also seems to conflict with the apparent purpose behind ORS 215.275(6), which, as stated elsewhere herein, appears to be a legislative recognition of federal preemption on the issue of interstate gas pipelines in Farm zones.

The Board concludes that the interstate gas pipeline proposed here is a "distribution line" within the meaning of OAR 660-006-0025(4)(q). In any event, the Board further concludes that even if the application is proposing an interstate gas "transmission" line, and even if CCZLDO §4.8.300(F) and OAR 660-006-0025(4)(q) could be read to bar such gas transmission lines in a Forest zone, those laws would be preempted by federal statute. The Board adopts herein the applicant's argument, as set forth above, as additional findings.

50 Foot Right of Way Corridor and Temporary Right of Way.

Another issue stemming from CCZLDO §4.8.300(F) and OAR 660-006-0025(4)(q) concerns the fact that the applicant is proposing a temporary construction corridor that exceeds 50 feet. As quoted above, CCZLDO §4.8.300(F) and OAR 660-006-0025(4)(q) allow "new distribution lines (*e.g.*, gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width." The applicant has testified that the permanent right-of-way for the PCGP will not exceed 50 feet at any point along the pipeline route. As reflected in the FEIS, Pacific Connector originally proposed a right-of-way with varying widths depending upon the underlying land ownership. However, as explained in the applicant's letter dated June 17, 2010, Pacific Connector has adjusted the project right-of-way width to a consistent 50 foot width in response to public comments from FERC and other agencies.

Several opponents argue that the proposed pipeline exceeds the "50-foot right-of-way" requirement because an additional 45-foot temporary construction easement is required during construction of the pipeline. WELC makes the opponent's argument in their letter dated June 8, 2010:

> [I]t is clear that [OAR 660-006-0025(4)(q)] allows for the wider 100-foot right-of-ways only for electrical lines. The non-electrical lines – even if properly characterized as "distribution" lines – are limited to those that can be fit into a 50-foot right-of-way. The provision makes no distinction between "temporary" and "permanent" rights-of-way, and the applicant's attempt to squeeze an unallowed 95-foot right-of-way into the 50-foot right-of-way limit is a blatant attempt to establish an unpermitted use. It is not clear why it would take more than 50 feet of right-of-way to install a three-foot diameter pipe, but, in any event, the county code has clearly determined that, in Forest zones, the maximum linear clearing width that would not significantly interfere with primary forest operations and forest habitat values is 50 feet. The applicant's proposal for a pipeline that ostensibly requires a 95-foot right-of-way – during construction or anytime – is not allowed in the Forest zones.

> The state statutes are to the same effect. ORS 772.210(3)[36] gives gas public utilities condemnation rights "not exceeding 50 feet in width," and specifically note that the 50-foot limit is intended to accommodate all the right-of-way necessary for "constructing, laying, maintaining and operating" the pipeline and "including necessary equipment." There is absolutely no provision in the law for a "temporary" construction easement wider than the 50-foot right-of-way limit.

The applicant responds as follows:

> However, [the opponents'] interpretation is not supported by the text and is inconsistent with a recent decision by the Oregon Energy Facility Siting Council (EFSC). As noted above, the language used in the county code to describe the use category comes directly from the Goal 4 implementing regulation. OAR 660-006-0025(4)(q) provides that gas distribution lines are permitted on forest lands within a 50-foot right-of-way. The

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[36] ORS 772.210. Construction of service facilities, right of entry and condemnation of lands:

(1) Any public utility, electrical cooperative association or transmission company may:

(a) Enter upon lands within this state in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefore) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities. If the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, any public utility or transmission company organized for the purpose of building, maintaining and operating a line of poles and wires for the transmission of electricity for lighting or power purposes may condemn such trees for a width not exceeding 300 feet, as may be necessary or convenient for such purpose.

(2) Notwithstanding subsection (1) of this section, any public utility, electrical cooperative association or transmission company may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefore) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, such public utility or transmission company may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) Notwithstanding subsection (1) of this section, a water or ***gas public utility*** may condemn such lands, not exceeding 50 feet in width, as may be necessary or convenient for purposes of ***constructing***, laying, maintaining and operating its lines, including necessary equipment therefore. (Emphasis Added).

(4) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. (Emphasis Added).

> language does not suggest intent by DLCD to limit anything other than the permanent right-of-way corridor.
>
> As noted in my June 17, 2010 correspondence, the EFSC Final Order approving the COB Energy Facility supports the interpretation that the 50-foot width limitation included in OAR 660-006-0025(4)(q) is intended to include only the permanent, operational right-of-way, and not temporary construction areas. In that case, the pipeline crossed through a Klamath County forest zone that applied the OAR 660-006-0025(4)(q) use category. The findings in that decision indicate that construction would require a 120-foot wide corridor along a segment of the pipeline located within a forest zone.[37] Despite a 120-foot construction corridor through the forest zone, EFSC approved the natural gas pipeline as a new distribution line with a right-of-way of 50 feet or less in width, and applied the following condition, "[t]he certificate holder shall limit the width of the *permanent/operations* easement for the natural gas pipeline to no more than fifty feet on lands zoned FR" (emphasis added).
>
> Pacific Connector has proposed conditions of approval designed to ensure (a) that the permanent right-of-way is no wider than 50 feet, and (b) that all temporary construction areas will be restored to their preconstruction condition.

See Applicant's final Argument, at 9-10.

The Klamath County case provides some authority that the standard practice with regard to this issue is to consider temporary construction easements to be separate and distinct from "right of way" as that term is used in the above-cited administrative rule. The case of *Friends of Parrett Mountain v. Northwest Natural Gas Co.*, 336 Or. 93, 79 P.3d 869 (2003) provides similar insight as to the standard practice. In *Friends of Parrett Mountain.* the Oregon Supreme Court noted the following facts pertaining to an intrastate natural gas pipeline authorized by the Oregon Energy Facility Siting Council:

> The certificate authorizes Northwest Natural to construct its pipeline within an approximately 62-mile long, 200-foot wide corridor designed around 10 significant "constraint points." Inside that corridor, Northwest Natural will build the pipeline within an 80-foot wide, temporary construction easement. Upon completion of the project, the width of the easement will be reduced to 40 feet and become permanent. (Emphasis added).

[37] The findings addressing the forest zone review criteria state that "[d]ue to local topography (side slopes), construction of this segment of the pipeline would require 120-foot-wide corridor." Final Order, COB Energy Facility, at 334.

The parties to the *Parrett Mountain* case did not raise the "temporary construction easement" issue to the Supreme Court, so the case cannot be viewed as formal precedent on that issue. Nonetheless, it provides further indication that EFSC does not consider the temporary easement to be "right-of-way" within the meaning of the statute.

WELC's argument assumes that the 45-foot wide "temporary" portion of the easement area is "right-of-way." Indeed, the FEIS refers to this area as the "95 foot wide construction right-of-way." On the other hand, Figure 2.3-1 of the FEIS, page 2-64, makes it fairly obvious that it is not physically possible to build a pipeline within 50 feet of ROW. As the Board has previously noted, state law is generally preempted to the extent it is inconsistent with FERC authorizations. Therefore, the Board rejects the contention that the application must be denied because it proposed a greater right-of-way than may be contemplated by OAR 660-006-0025(4)(q).

WELC also cites ORS 772.210(3), which states that "a water or gas public utility may condemn such lands, not exceeding 50 feet in width, as may be necessary or convenient for purposes of *constructing*, laying, maintaining and operating its lines, including necessary equipment therefore." It does not appear that the applicant is relying on ORS 772.210(3) as the source of its condemnation authority. Rather, the applicant relies on ORS 772.510(3), which provides that "[t]hese pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, *in such width as is reasonably necessary to accomplish their pipeline company purposes,* by proceedings for condemnation as prescribed by ORS chapter 35." This statute appears to allow the pipeline company to condemn pretty much whatever it reasonably needs in terms of right-of-way.

Applying the *PGE v. BOLI* methodology, the text of OAR 660-006-0025(4)(q) could be read to support WELC's position. But a legal standard such as this cannot be read in a vacuum. *State v. Stoneman,* 323 Or 536, 546, 920 P2d 535 (1996).[38] The context of a statute or statutory scheme can sometimes reveal an ambiguity in a particular phrase that, standing alone, appears to have a clear meaning. *Southwood Homeowners Ass'n v. City Council of Philomath,* 106 Or.App. 21, 806 P.2d 162 (1991) (citing *Dennehy v. City of Portland,* 87 Or.App. 33, 40, 740 P.2d 806 (1987).

For the reasons explained elsewhere in this decision, the statutory context, including ORS 215.275 and ORS 772.210(3), supports PCGP, and tilts the balance in favor of the applicant's

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[38] In *Stoneman,* the Oregon Supreme Court stated:

> It is true that, when viewed in isolation, ORS 163.680 (1987) appears to have contained a content-based proscription on expressive material. It forbade commerce in certain forms of expression--films, videotapes, and the like in terms of their content--"sexually explicit conduct by a child under 18 years of age." But a statute cannot be read in a vacuum. An examination of the *context* of a statute, as well as of its wording, is necessary to an understanding of the policy that the legislative choice embodies. *See PGE v. Bureau of Labor and Industries,* 317 Or. 606, 610-11, 859 P.2d 1143 (1993) (first level of interpretation of statute involves examining both text and context). A closer look at the provision under examination here, within its statutory context, reveals a different focus. (Emphasis added).

interpretation. Thus, the Board finds that the 45-foot temporary easement area is not "right-of-way" within the meaning of OAR 660-006-0025(4)(q), or in the alternative, that OAR 660-006-0025(4)(q) is inconsistent with both ORS 772.510(3) and federal law and therefore is preempted and without legal force on that issue.

SECTION 4.8.400.

CCZLDO §4.8.400 is entitled "Review Criteria for Conditional Uses in Section 4.8.300," and provides as follows:

> *– A use authorized by Section 4.8.300 ... may be allowed provided the following requirements are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.*
>
> *A. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and*

As the applicant correctly notes, there are several important limitations on this standard. First, it is important to note that this criterion relates to *significant* impacts on farming and forest practices and *significant* cost increases. The applicant is not required to demonstrate that there will be no impacts on farming or forest practices, or even that all impacts that may force a change or increase costs have been eliminated through mitigation or conditions of approval. *See Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382, 390 (2007).

Secondly, LUBA has affirmed the County's determination that CCZLDO 4.8.400 is limited in its scope and does not require the extensive analysis applied under the similarly-worded provisions of ORS 215.296(1). *Comden v. Coos County*, 56 Or LUBA 214 (2008). For example, LUBA held that the required analysis under CCZLDO 4.8.400 need not include any of the following: (1) identification of a particular geographic area of analysis, (2) an "exhaustive *pro forma* description of all farm and forest practices on nearby lands," or (3) consideration of farming practices not intended to generate a profit. *Id.* Furthermore, since this code section does not implement ORS 215.296(1), LUBA rejected attempts to rely on cases interpreting the statute to argue that the code standard was not satisfied. *Id.*

i. Accepted Forest Practices.

Mr. Jake Robinson of Yankee Creek Forestry testified at the May 20, 2010 hearing and submitted a letter dated June 7, 2010. Mr. Fred Messerle of Messerle and Sons also testified and submitted letters dated May 2, 2010 and June 10, 2010. Since the issues raised in these letters overlap, they are considered together.

Mr. Robinson and Mr. Messerle state that the pipeline will force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands. In support of that conclusion, they raise the following issues:

- The limited number of hard crossings across the pipeline easement will increase costs, because it changes the way an entire stand of trees is harvested.
- 95 foot wide easement will fragment timber stands, making them more difficult o log efficiently,
- The "hard edge" will cause tree blow downs, because trees that were previously sheltered from wind will now be fully exposed,
- Corridor will promote trespass, both in terms of vehicles and pedestrians. Additional human traffic will cause an increased risk of damage to trees via disease (including Port Orchard Cedar root rot and Douglas Fir root rot), fire, and vandalism,
- Increased vector for noxious weeds,
- Increased vector for fire,
- Trees on the edge of the easement will be of poor quality because they have more exposure to sunlight and, as a result, grow more limbs, and they will be on a different growth cycle as compared to neighboring trees,
- Pipeline reduces the ability to fight fire because it impedes access to forest via bulldozers and making it more difficult to create "cat lines."
- Reduced ability to use land for conservation easements, etc.
- Increased costs associated with monitoring the construction of the pipeline,

The Board finds Mr. Robinson and Mr. Messerle to be credible expert witnesses and is sympathetic to the concerns they raise. The applicant's expert, Mr. Dallas Hemphill, has 45 years of experience in the forest industry and also is a credible expert witness. In effect, this case presents a "battle of experts," and the Board has the difficult task of choosing to agree with one side over the other. In this case, the Board agrees with the evidence provided by the applicant. The following factors influence this conclusion:

First, it seems that many of the concerns raised are of a type that would be true no matter what kind of pipeline was proposed. For example, in every case where a pipeline traverses forest lands in Oregon, the resulting corridor will result in a new forest edge, and that edge will experience some degree of blow downs due to previously-sheltered trees receiving increased exposure to wind. Despite these types of foreseeable impacts, there has already been a legislative determination, both at the state and county level, that pipelines are an allowed use in the Forest zone. Therefore, it cannot be assumed that standard practices associated with pipeline construction and operation will automatically, in every case, force a significant change in, or significantly increase the cost of, accepted forest practices on forest lands. Otherwise, pipeline uses would have simply been prohibited in Forest zones. Here, the opponents have not asserted that there is something particular about their land or County forest land in general that causes the

pipeline to have anything beyond the typical expected impacts. Their testimony is simply too generalized to be persuasive.

Second, and perhaps more importantly, all of the increased costs can form the basis of an increased just compensation award. In the Hearings Officer's letter dated June 6, 2010, he requested that the parties discuss the applicability or inapplicability of ORS 772.210(4), which addresses the issue of what costs factor into the just compensation analysis:

> ORS 772.210(4) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. (Emphasis Added).

Although the Hearings Officer questioned the applicability of this statutory section, the applicant appeared to accept the compensation rules set forth in ORS 772.210(4). *See* Report dated June 17, 2010 from Consultant Forester Dallas Hemphill, ACF, CF, PE, titled "Forest Practices and Economic Issues Related to Proposed Pacific Connector Gas Pipeline" at p. 3 ("This policy with respect to damages may be interpreted in the specific context of forestry to mean that whatever incremental costs and value losses can be identified and demonstrated to result from the granting of the pipeline easement will be reflected in the company's appraisal of damages payable to the owner. Therefore, the landowner should not experience any uncompensated logging or access costs.")

The Hearings Officer found it significant that the landowner would be compensated for both the value of the land taken and the value of the timber removed. The Hearings Officer further understood Mr. Hemphill's testimony to mean that the landowner would be compensated for the timber as if it was already of a mature size ready for harvest. The Hearings Officer deemed this requirement important, since he determined that a stand of 20 year trees probably has little to no *current* value. On the basis of this reasoning, the Hearings Officer determined that the applicant presented substantial evidence that the pipeline would not significantly increase the cost of forestry operations. To ensure compliance with this standard, the Hearings Officer proposed a condition of approval.

Although the Board disagrees with the Hearings Officer's conclusion that a stand of 20-year trees has no current value, the Board otherwise concurs with the Hearings Officer's conclusion on this issue. The Board further finds the condition should be modified to provide compensation for loss of product value due to blow-downs and to apply to all timberlands not only those that are commercial in nature. Accordingly, the Board adopts the modified condition as Condition A.5 to read as follows:

> "The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber, diminution in value

> to remaining timber caused by increased harvesting costs, and loss of product value due to blow-downs. Whatever incremental costs and value losses to timber lands can be identified and demonstrated to result from the granting of the pipeline easement will be reflected in the company's appraisal of damages payable to the owner. Therefore, the landowner should not experience any uncompensated logging or access costs. [*See ORS 772.210(4) and Report entitled Forest Practices and Economic Issues related to Proposed Pacific Connector Gas Pipeline, by Dallas C. Hemphill, ACF, CF, PE., dated June 17, 2010, at p. 5.*]"

Subject to the unrelated modification discussed in more detail below, the Board adopts this condition as Condition of Approval A.5.

In its final argument, Pacific Connector acknowledges that the PCGP will have limited effects on accepted forest practices[39] on the forest lands in the vicinity of the pipeline right-of-way. *See* Applicant's final Argument. However, the Board finds that those limited impacts will not force a *significant* change in the accepted forest practices in the vicinity of the pipeline. Nor will those limited impacts significantly increase the cost of accepted forest practices. As explained in the application narrative, accepted forest practices in the vicinity of the pipeline corridor include timber production and harvesting, hauling harvested timber, logging road construction and maintenance, application of chemicals, and disposal of slash.

The pipeline project will have effects on the timbered areas located in the Forest zone both during and after construction in the form of the cleared corridor. As discussed in the application narrative, the pipeline must maintain a 30 foot cleared corridor directly over the pipeline for safety purposes. However, the remaining 20 feet of permanent right-of-way, as well as the temporary construction areas will be replanted in a manner consistent with Pacific Connector's Erosion Control and Revegetation Plan (ECRP). The permanent removal of a 30-foot strip of trees within the Forest zone will not force a significant change to the surrounding forest practices.

Several opponents argue that the cleared 30 foot strip itself is a significant change. However, as discussed above, if any tree removal required for the footprint of the conditional use itself could be interpreted as forcing a significant change, no use with a permanent tree removal footprint could ever be approved as a conditional use in a Forest zone. The Board finds that is clearly not the intent of this review criterion. Instead the relevant analysis is whether the use contained within that footprint or impact area will force a significant change on forest practices adjacent to the impact area for the use itself.

The PCGP will also have temporary effects on adjacent forest lands and forest practices during construction. The landowner will be unable to conduct accepted forest practices within

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[39] The term "forest practices" is defined by the Oregon Forest Practices Act as "any operation conducted on or pertaining to forestland, including but not limited to (a) reforestation of forest land; (b) road construction and maintenance; (c) harvesting of forest tree species; (d) application of chemicals; and (e) disposal of slash." ORS 527.620(5).

the temporary construction easement and work areas during pipeline construction. However, all temporary construction areas and all but 30 feet of the 50-foot right-of-way will be replanted and restored in manner consistent with the final ECRP. Once the restoration occurs, the landowner will be able to continue accepted forest practices in those areas. The Hearings Officer proposed a condition of approval to this effect. The Board agrees that the applicant should replant timberlands; however, the Board finds that the landowner is not required to continue engaging in forest practices in those areas. Accordingly, the Board modifies and adopts the condition as Condition of Approval A.20 to read as follows:

> "Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas that were forested prior to construction have been replanted, consistent with the requirements of this approval, the FERC Order, and the applicant's ECRP."

Further, the Board finds that the applicant-proposed Condition of Approval B.3 is redundant with Conditions of Approval A.20 regarding forestlands and A.21 regarding farmlands. Accordingly, the Board deletes Condition of Approval B.3 and identifies it as "Intentionally deleted."

Finally, the pipeline will have limited effects on accepted forest practices once construction is complete. Public comments raised concerns related to the following potential effects on forest practices adjacent to the pipeline: future pipeline crossings, location of heavy forestry equipment, fragmentation of parcels owned by smaller private timber operators, spread of invasive species, and off-highway vehicle use. These issues are addressed in detail in the following documents, which are adopted herein as findings:

- The application narrative dated April 14, 2010, at pages 15-17;
- Correspondence dated May 11, 2010 from Rodney Gregory of Pacific Connector, at pages 10-13;
- Correspondence dated June 8, 2010 from Rodney Gregory of Pacific Connector, at pages 1-4 (Exhibit 10 to the applicant's submittal dated June 9, 2010);
- Correspondence dated June 17, 2010 from Mark Whitlow of Perkins Coie LLP, at pages 3-6;
- Report dated June 17, 2010 from Consultant Forester Dallas Hemphill, ACF, CF, PE, titled "Forest Practices and Economic Issues Related to Proposed Pacific Connector Gas Pipeline" (attached as Exhibit 3 to the applicant's submittal dated June 17, 2010).

In his report dated June 17, 2010, Mr. Hemphill analyzed the specific size and location of each individual tract that would be impacted by the pipeline, and the potential impacts to forestry operations that could be caused by access restrictions, pipeline crossing restrictions, reduction in the amount of harvestable timber, and fragmentation of specific tracts.

Mr. Robinson's comments are based on the premise that "most of" the impacted forest lands within the County are private, non-industrial timber lands, whose owners do not have the land-base to absorb the increased costs of timber operations. Robinson letter, page 3. However, in his response Mr. Hemphill reviewed the specific list of forestry tracts that will be traversed by the pipeline and determined that, out of 39 miles of forest-zoned land, only approximately 9.4 miles of the pipeline would cross property owned and operated by small "non-industrial" private forest operators.

Mr. Messerle states that the pipeline will encourage trespassing, which will potentially increase the possibility of introducing diseases to trees, including two different types of root fungi. Mr. Hemphill responds with the following testimony:

> Port Orford Cedar root rot is already widespread throughout the second-growth areas of southwest Oregon. Laminated root rot is also naturally widely distributed throughout western Oregon. It is not transmitted by soil on traffic, but "...is only known to spread by root contact between infected trees or infected stumps and susceptible trees." (Thies, W. and R. Sturrock, 1995: *Laminated Root Rot in Western North America*, USDA Forest Service Res. Bull. PNW-GTR-349, Portland.) Therefore the pipeline cannot be expected to accelerate the infestation of either pathogen.

Unfortunately, the Thies / Sturrock report was not included in the record, so the truth of the assertion cannot be verified. Nonetheless, the mere citation to authority indicates confidence in the assertion and itself provides a micron of weight which tips the scales in favor of the applicant regarding a substantial evidence finding.

With regard to the allegation that the pipeline will encourage trespassing, Mr. Hemphill rebuts those assertions as well:

> Trespass is an issue throughout western Oregon timberlands. The additional opportunity provided by the pipeline and its access routes would however be only slightly incremental to the problem. The pipeline operator will install robust traffic controls (gates, etc.) that private landowners are often unwilling or unable to afford, thus likely mitigating the problem. Consequently, there should be a negligible increase in human-caused fires, which in any case are often a result of logging and forestry activities. Similarly, there should not be a significant rise in vandalism and other unauthorized activities.

Mr. Hemphill also adequately rebuts, the "hard edge" problem, as follows:

> This can be an issue on all forest edges, including those cutting lines and road rights-of way created by the landowner itself. The proposed vegetation

management strategy on the easement will serve to limit windfall potential. Vegetation will be controlled only on the central 30 feet of the easement, over the pipeline. Outside this area, on the remainder of the easement natural regeneration can be expected to occur, or the landowner may choose to plant. The 30- foot cleared area is narrow enough—about the same as a road right-of-way—that the trees crowns will soon close in (as Mr. Messerle points out in his submission) sufficiently that windfall should not be a significant issue.

Mr. Robinson and Mr. Messerle both assert that the 30 foot strips that will be re-grown will nonetheless produce trees of poor quality due to excessive limbs. Mr. Hemphill fully rebuts this concern with the following testimony:

> As the landowner will be compensated for the loss of land and original timber on the easement, any timber that he may subsequently be able to produce in the two strips is therefore a bonus, at no cost to the landowner. It can be retained until the landowner's adjacent timber is mature and then logged concurrently; in this sense, the strips on the construction easement do not constitute unmanageable fragments. Limby trees are produced on forest edges, but in this case the edge trees will have grown on land for which the landowner has already been compensated for the land and original timber. As a result, the landowner's trees on the edge of the 95-foot construction easement will not have this edge effect. None of the more valuable 1-3P grade logs are ever produced in a second growth stand.

In response to the argument that the pipeline will hamper firefighting efforts, Mr. Hemphill states:

> Any outbreak of fire would be reported to the pipeline operator concurrently with the landowner. The pipeline operator would be an integral part of the response team. The only time this process would delay fire response would be where the fire was caused by logging or forestry activity...Areas too steep to be accessible by excavator will be hand-slashed on a similar schedule.

Mr. Hemphill further testified that the applicant will conduct routine vegetation maintenance clearing on the 30-foot strip every three to five years and that in the interim, the vegetation will attain only "small dimensions." Staff originally proposed a condition of approval requiring that the pipeline operator mow this vegetation every three to five years; however, the Board finds that it is important to provide the applicant flexibility to identify and implement the most beneficial and cost-effective technique to maintain this vegetation. Accordingly, the Board modifies and adopts this condition as Condition of Approval A.23, which reads as follows:

> "The pipeline operator will conduct routine vegetation maintenance clearing on the 30-foot strip every 3-5 years. [*See Report entitled Forest Practices and Economic Issues related to*

Proposed Pacific Connector Gas Pipeline, by Dallas C. Hemphill, ACF, CF, PE, dated June 17, 2010, at p. 5]"

To summarize on the issue of impact to forest practices, Mr. Hemphill concludes that the incremental increased costs to these timber operators generally amounts to a range of 1-2% of total production costs, which is certainly not an amount that could be described as a "significant" increase in the cost of forestry operations. Second, perhaps more importantly, and as required by Condition of Approval A.5, all of these costs will be included as part of the compensation paid to landowners by the pipeline operator, and therefore such costs will not be borne by the landowners. Therefore, there will be no *actual* increase in costs to the landowners of forestry operations.

Thus, to the extent there are *any* increased costs due to operational changes in the forest practices occurring around the pipeline right-of-way, those costs will be considered in the monetary compensation package paid by Pacific Connector to the landowner. Thus, the Board finds that there will be no significant increase in costs of forest practices to the landowners along the pipeline route.

ii. Accepted Farming Practices.

As explained in the application narrative, and in more detail in correspondence dated May 11, 2010 from Rodney Gregory of Pacific Connector (at pages 6-10), the proposed pipeline will not force a significant change in or significantly increase the costs of accepted farm practices, even on those lands that the pipeline directly crosses.

As described in Pacific Connector's prior submittals, the PCGP will have short-term impacts on farming practices within the temporary construction areas and permanent right-of-way during construction activities. Specifically, farming practices within the right-of-way and the temporary construction areas will be interrupted during construction. However, those short-term construction impacts will not cause a significant change in farming practices because of their temporary nature and because farming practices will be able to continue on lands directly adjacent to the temporary construction areas. Furthermore, Pacific Connector must compensate the landowner not only for the permanent right-of-way, but also for any demonstrated loss in crop production within the temporary construction areas. Consequently, the pipeline will not result in any increased cost in farming practices for the landowner, much less a significant increase in cost.

Following construction, adjacent farming practices, including crop lands and grazing pastures may resume within the temporary construction areas as well as over the permanent right-of-way itself. As explained in Rodney Gregory's correspondence dated May 11, 2010, in EFU areas Pacific Connector will install the pipeline five feet below the surface in agricultural areas to make certain that farming equipment may cross through the right-of-way without impacting the structural integrity of the pipeline. Pacific Connector will undertake many other steps as described in Mr. Gregory's May 11, 2010 letter and in the ECRP that are specifically designed to ensure that impacts on agricultural uses will be minimized.

Except as discussed below, the opponents did not rebut the applicant's evidence or otherwise present substantial evidence of their own explaining how the applicant's proposed efforts to minimize the impacts of the pipeline would be inadequate or ineffective. Therefore, the Board finds that the application satisfies this standard as to accepted farming practices.

The opponents raised two issues – application of herbicides along the pipeline route and potential impacts to groundwater supplies – that, while not specifically directed at this criterion, could be considered impacts on surrounding lands devoted to farm use. Therefore, the Board addresses these issues under this approval criterion below.

(1) Use of herbicides in pipeline corridor

Ms. Jody McCaffree of Citizens Against LNG questioned the applicant's herbicide application policy. Although Ms. McCaffree did not connect her concerns to any applicable approval standards, the applicant presented rebuttal on the record to clarify the applicable herbicide application policy.

As stated on the record, as a general practice during pipeline operations, herbicides will not be used to control vegetation as a means to maintain the permanent 30-foot cleared corridor centered over the pipeline. As set forth in Section 12.6 of the ECRP, where weed control is necessary, the applicant will employ hand and mechanical methods (pulling, mowing, disking, etc.) to prevent the spread of potential weed infestations. However, spot treatments with appropriate herbicides will be conducted where applicable depending on the specific weed and site-specific conditions using integrated weed management principles. The applicant will not use aerial herbicide applications. Spot herbicide treatment would only be utilized when it could be effective (*i.e.*, where plant phenology and effective herbicide treatment windows coincide) prior to and post construction. Any herbicide treatment would be conducted by a licensed applicator using herbicides labeled for the targeted species and registered for the use. The applicant will not utilize herbicides on any right-of-way without landowner consent/approval and will obtain all required permits from the local jurisdictions/authorities.

As detailed in Section 12.6 of the ECRP, in order to prevent impacts to sensitive areas and habitats, herbicides would not be applied during precipitation events or when precipitation is expected within 24 hours or as specified on the label. Herbicides will not be used within 100 feet of a wetland or waterbody, unless allowed by the appropriate agency. To ensure sensitive species/habitats are not adversely impacted, the biological surveys will map any sensitive species proposed and/or listed under the Endangered Species Act, survey and manage species, and federally (BLM and Forest Service) sensitive species. If noxious weed infestations occur in the vicinity of sensitive sites, the proper treatment buffers will be applied to avoid potential adverse impacts to non-targeted species. In these areas site-specific control will be designed (*e.g.* application rate and method, timing, wind speed and direction, nozzle type and size, buffers, etc.) to mitigate the potential for adverse disturbance and/or contaminant exposure.

Thus, the applicant will not apply herbicides to the entire right-of-way to control noxious weeds, but rather spot treatments of herbicides may be used in select areas as summarized above. Ms. McCaffree seems to recommend County oversight of the applicant's herbicide application, if any, within the pipeline corridor. In response to these specific concerns about

herbicide application, the applicant proposed, the Hearings Officer recommended, and the Board adopts a condition of approval requiring the applicant to use weed control and monitoring methods consistent with the Weed Control and Monitoring sections of the final ECRP. The Board further finds that consequences to landowners may potentially be significant if the applicant engages in aerial application of pesticides. Thus, the Board finds that it is appropriate to memorialize the applicant's representation that there will be no such application of pesticides, in Condition of Approval B.5.

(2) Groundwater impacts

Various opponents expressed concern that the pipeline would adversely impact groundwater supplies. Substantial evidence in the record refutes this contention. First, the risk of impacts to the water supply is limited, as there are no public groundwater supply wells or springs within 400 feet of the proposed construction disturbance according to the State Department of Environmental Quality public water supply database. Second, Condition 43.b of the FERC Order attached to the applicant's correspondence dated May 12, 2010 requires the applicant to prepare a Groundwater Supply Monitoring and Mitigation Plan ("Groundwater Plan") to identify, assess, and monitor groundwater supplies; to prevent impacts to groundwater resources; and to mitigate unavoidable impacts. The applicant has prepared the Groundwater Plan pursuant to this condition, which is included as Exhibit 3 to the April 14, 2010 application narrative. The components of the Groundwater Plan are further summarized in the June 3, 2010 letter from Jared Ellsworth, P.E. of Pacific Connector Gas Pipeline, which is attached as Exhibit 7 to the applicant's submittal dated June 9, 2010.

During the deliberations in this matter, the Board expressed concerns whether the Groundwater Plan would adequately protect area groundwater supplies. Specifically, the Board expressed concern that installation and operation of the pipeline could adversely affect water supply to private wells and/or the supply of water from private wells to homes. The Board finds that compliance with the Groundwater Plan will prevent these occurrences for the following reasons. For example, the applicant will contact landowners within 200 feet of the right-of-way prior to construction requesting their cooperation in identifying groundwater wells, springs, or seeps that could potentially be impacted by the project. The applicant will request permission to take field measurements for baseline water quality and yield as well as for the following parameters: temperature, pH, turbidity, and specific conductance. Samples will be analyzed in a laboratory for TPH, fecal coliform, and nitrate. The applicant will also conduct post-construction sampling if requested by the landowner or in disputed situations to determine the effects of construction, if any, on both the yield and quality of the groundwater supply. Moreover, the applicant will engage in various measures to prevent impacts to groundwater resources, including compliance with: (1) a Spill Prevention, Containment, and Countermeasures Plan to prevent the inadvertent release of fuels, solvents, or lubricants used during construction; and (2) blasting plans to minimize impacts to groundwater resources from blasting activities. Finally, the applicant will implement required mitigation measures on a site-specific basis to remedy any adverse impacts on the yield or quality of water supplies. Such mitigation measures may include ensuring a temporary supply of water and, if necessary, replacing permanent water supply.

The Board also finds there is not substantial evidence in the record as to why or how the Groundwater Plan is inadequate, incomplete, or otherwise ineffective. The Board finds that the Groundwater Plan will be sufficient to ensure the pipeline will not adversely impact groundwater supplies or any farm practices that rely thereon.

In sum and for the reasons stated above, the proposed pipeline will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices.

Finally, the Board addresses the proposed conditions of approval requiring compliance with the Groundwater Plan. First, the Board finds that the staff and applicant have proposed nearly identical conditions on this issue. Accordingly, the Board intentionally deletes the applicant's proposed condition (Condition of Approval B.22). Further, in order to ensure compliance with all aspects of the Groundwater Plan, the Board adopts the staff-proposed condition (Condition of Approval A.2) as modified to read as follows:

> "To minimize impacts to wells and groundwater, the applicant must comply with the Groundwater Supply Monitoring and Mitigation Plan approved by the federal Office of Energy Projects within FERC, including without limitation, provisions requiring: (a) subject to landowner consent, testing and sampling groundwater supply wells for both yield and water quality; and (b) as needed, implementing site-specific measures to mitigate adverse impacts on the yield or quality of groundwater supply."

The PCGP will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

The opponents further contended that the proposed pipeline will significantly increase fire hazard, fire suppression costs, and risks to fire suppression personnel. The Board denies these contentions, because the applicant has offered substantial evidence in support of the conclusion that these increases will not occur. Pursuant to CCZLDO 4.8.400, the second standard for conditional use review in the forest zone is:

> *"The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel."*[40]

(i) Fire hazard

The proposed pipeline will not significantly increase fire hazard. The pipeline will be subject to exacting safety requirements that will significantly minimize the risk of a fire caused by the pipeline itself. Specifically, the pipeline and all associated facilities will be designed and maintained to conform with or exceed US Department of Transportation (DOT) requirements found in Title 49 Code of Federal Regulations (CFR), Part 192 *Transportation of Natural and*

[40] The wording for this criterion is taken directly from the Goal 4 rule at OAR 660-006-025(5).

Other Gas by Pipeline: Minimum Safety Standards; 18 CFR § 380.15, *Site and Maintenance Requirements*; and other applicable federal and state regulations.

Comments to the Hearings Officer suggested that FERC had not adequately addressed pipeline safety and fire issues. While not directly relevant to the County's approval criteria, it is important to clarify that the Federal Department of Transportation rather than FERC is responsible for ensuring pipeline safety, while the Pipeline Hazardous Materials Safety Administration Office of Pipeline Safety administers the national regulatory program to ensure the safe transportation of natural gas by pipeline. While FERC is not the agency responsible for pipeline safety, the Reliability and Safety Section of the FEIS does include a pipeline facilities discussion at Section 4.12.10. That section describes the DOT safety responsibilities, as well as the specific safety standards the pipeline must comply with in greater detail.

(1) Fire fuel in pipeline corridor

Several comments raised concerns about fire fuel within the 30-foot cleared corridor created by slash or vegetation that would grow along the right-of-way between maintenance clearings. First, based upon its vegetation maintenance and distribution practices, the applicant does not anticipate increased risk from potentially hazardous fuels, which is assumed to imply woody debris or biomasses distributed on the right-of-way after clean-up and reclamation. As explained in more detail in correspondence from Rodney Gregory dated June 9, 2010, as part of the FERC review process, the applicant worked in conjunction with the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) to develop a standardized set of fuel loading specifications for BLM and private lands, and separate specifications for USFS lands. These fuel loading specifications are set forth in Section 10.2 of the ECRP and are developed specifically for the PCGP project based on the amount of woody material expected to be encountered during construction. During right-of-way clean-up and reclamation, slash materials will be spread across the right-of-way at a rate that does not exceed these fuel load specifications. The fuel loading standards will also apply to slash materials that may be generated during periodic right-of-way maintenance activities that will likely occur about every five years along the pipeline.

On National Forest Lands the maximum amount of slash that would be scattered across the right-of-way will be 12 tons per acre, which would be distributed over the following fuel loading size classes:

Fuel Loading by Size Class	
Size Class (Diameter)	Tons/Acre
0-1/4"	< 1
1/4– 3"	4-8
3-8"	7-12
Maximum	12

On BLM lands the fuel load specifications are:

Fuel Loading by Size Class	
Size Class (Diameter)	Tons/Acre
0-1/4"	< 1 [1]
1/4 -8"	5-8 [1]
>8"	10-15
[1] Adapted from USFS Fuel Loading Standards	

These measures will significantly reduce the risk of fires associated with vegetation remaining in the cleared corridors. In order to ensure that fuel loading measures are consistent across the entire corridor, the applicant would accept a condition of approval requiring the BLM loading standards on private lands. On federal lands, at the discretion of the BLM and USFS, the applicant will remove larger slash pieces (more than eight inches in diameter) from the project area and deck them in designated storage sites, or at road crossings. This material will be made available to the public through the various agencies' firewood programs.

Second, the cleared corridor will have less heavy timber that burns with higher intensities once ignited, and will have a greater percentage of lighter fuels according to the fuel loading specifications designed specifically for the proposed pipeline. While the lighter fuels spread within the project corridor may burn somewhat faster than timbered fuels, the lighter fuels are much easier to suppress, burn at a lower intensity, and react more quickly to changes in humidity and moisture. Additionally, the clear-cut corridor will provide fire suppression personnel with an opportunity to utilize the lighter fuels as a control and access point should a fire start in a forest that includes the pipeline corridor.

Finally, revegetation and maintenance of the corridor, as described in the ECRP, will reduce the risk of fires rather than increase the risk. The applicant has consulted with the Natural Resources Conservation Service ("NRCS") and land management agencies to develop seed mixtures appropriate for the corridor, including seed mixtures (described in Table 10.9-1 of the ECRP) for revegetation of private lands. The seed mixtures emphasize native plants adapted to the site conditions. During right-of-way negotiations, private landowners may request other seed mixtures, and the mixtures specified through those negotiations will be documented in landowner right-of-way agreements. The ECRP describes how the applicant will control noxious weeds, reseed the corridor, and monitor to promote successful revegetation.

In upland areas, vegetation within the permanent easement will be periodically maintained by mowing, cutting and trimming either by mechanical or hand methods. The permanent easement will be maintained in a condition where trees or shrubs greater than six feet tall will be controlled (cut or trimmed) within 15 feet either side of the centerline (for a total of 30 cleared feet). This will limit the overall fuel load within the corridor while discouraging the growth of "ladder fuels" that otherwise could allow fire to reach the lower limbs of mature trees. Routine vegetation maintenance clearing shall not be done more frequently than every three years. However, to facilitate periodic corrosion and leak surveys, a corridor not exceeding 10 feet in width centered on the pipeline may be maintained annually in an herbaceous state. In no

case will routine vegetation maintenance clearing occur between April 15 and August 1 of any year.

Outside of this 30-foot corridor, mature trees will be allowed to re-establish. Allowing mature trees to re-establish will promote cooling and shading of the 30-foot corridor, which also reduces fire potential.

(2) ATV / OHV Use in Pipeline Corridor

Based on *Utsey v. Coos County*, 38 Or LUBA 516 (2000), it is clear that ATVs / OHVs can be the type of activity that causes a significant impact on forestry, due to the increased risk of fire from sparks generated in the engines of these vehicles. The Board understands that the applicant proposes to work with landowners on a case-by-case basis to reduce ATV / OHV impacts via the use of dirt and rock berms, log barriers, signs, and locked gates, etc. *See also* Report dated June 17, 2010 from Consultant Forester Dallas Hemphill, ACF, CF, PE, titled "Forest Practices and Economic Issues Related to Proposed Pacific Connector Gas Pipeline" at p. 4. The Board agrees with the testimony of the opponents that fences placed in key locations (*i.e.* where access to the pipeline would otherwise be easy) would be an effective means to discourage ATV / OHV use. The Board has proposed a condition of approval requiring the applicant to work with landowners in an effort to provide impediments to access to ATVs and OHVs.

(2) Pipeline Corridor as a Conduit for Fire

Multiple opponents argued that the corridor itself would act as a conduit for fire. No scientific evidence or other clear foundation was presented to support the theory. Substantial evidence does not exist to support a conclusion if the only supporting evidence "consists of an opinion whose foundation is unclear or which is inconsistent with the information on which it is based." *1000 Friends of Oregon v. LCDC*, 83 Or App 278, 286, 731 P2d 457 (1987), *aff'd in part, rev'd in part on other grounds*, 305 Or 384, 752 P2d 271 (1988).

The applicant admits that the cleared corridor will have less heavy timber that burns with higher intensities once ignited, and will have a greater percentage of lighter fuels according to the fuel loading specifications designed specifically for the proposed pipeline. However, no evidence of that leading to a conduit effect is in the record. Mr. Hemphill downplays the concern in his report dated June 17, 2010 due to the fact that the corridor will be mowed every three to five years, as needed. *See* "Forest Practices and Economic Issues Related to Proposed Pacific Connector Gas Pipeline," at p.5.

The Board notes that this issue was briefed extensively in the Douglas County case, and the County agreed with the applicant's position on that issue. *See* Douglas County Planning Commission Findings of Fact and Decision, at p. 63-5.

(ii) Fire suppression costs and personnel

At the hearing, there was considerable discussion regarding the potential for a forest fire caused by a ruptured gas pipeline. The Hearings Officer agreed with the applicant that such a risk is remote. However, if it did occur it has the potential to be a huge problem, and this type of

event is probably the most likely emergency response scenario in the rural area. The Hearings Officer previously expressed concerns about the capability of small rural fire departments, which are often manned by volunteers, to combat fires in remote areas of the County. *See* letter dated June 6, 2010.

The applicant discussed these issues in its May 11, 2010 submittal. *See* Letter from Rodney Gregory and Derrick Welling dated May 11, 2010, at p. 14-17. The applicant also discussed the fact that there will be personal on call 24 hours a day that can coordinate an immediate response to situations as they develop. *See also* Reliability and Safety Report dated March 2010, at p. 8. The applicant's "Reliability and Safety Report" dated March 2010 stated that various actions will be taken in the future, such as training and meetings with emergency responders. *Id.* The report also stated that "Williams Pacific Operator will use adequate local or contract resources to support the pipeline and facilities if an emergency occurs."

The applicant also addressed the issue in its final argument dated June 24, 2010, as follows:

> For the reasons set forth above and in the applicant's prior submittals, the fire risk associated with the pipeline is low. Therefore, the pipeline will not significantly increase risks to fire suppression personnel, nor will it significantly increase fire suppression costs. The presence of the pipeline will require coordination between the applicant and local fire personnel. In order to comply with federal safety regulations, the applicant must coordinate with local emergency response groups prior to commencing pipeline operations. As detailed in Section 4.12.10 of the FEIS, the applicant will meet with local responders, including fire departments, to review plans and communicate specifics about the pipeline. If requested, the applicant will also participate in any emergency simulation exercises and provide feedback to the emergency responders.
>
> While there will be some additional cost to local fire suppression organizations in order to participate in the coordination efforts, the majority of the education and coordination costs will be borne by the applicant and the costs to local department will not be significant. Furthermore, those efforts will in turn reduce the risk to fire suppression personnel that respond to a fire in the vicinity of the pipeline. As detailed in the Reliability and Safety Report, which is attached as Exhibit 7 to the applicant's May 11, 2010 submittal:
>
> "1.6.1 Emergency Response Capabilities
>
> "Williams Pacific Operator will maintain 24-hour emergency response capabilities, including an emergency-only phone number,

which accepts collect charges. The number will be included in informational mail-outs, posted on all pipeline markers, and provided to local emergency agencies in the vicinity of the pipeline and compressor station.

"In addition, Williams Pacific Operator will develop emergency response plans for its entire system. Operations personnel will attend training for emergency response procedures and plans prior to commencing pipeline operations. Williams Pacific Operator will meet with local emergency responder groups (fire departments, police departments, and other public officials) to review plans and will work with these groups to communicate the specifics about the pipeline facilities in the area and the need for emergency response. Williams Pacific Operator will also meet periodically with the groups to review the plans and revise them when necessary. If requested by local public emergency response personnel, Williams Pacific Operator will participate in any operator-simulated emergency exercises and post-exercise critiques. Williams Pacific Operator will use adequate local or contract resources to support the pipeline and facilities if an emergency occurs."

Friends of Living Oregon Waters (FLOW) contends that the application should be denied because the applicant has not yet obtained authorization for use of water that might be needed during construction of the pipeline for fire suppression purposes. First, FLOW does not identify any applicable approval criteria that it believes would authorize the hearings officer to deny the application due to a failure to prove that it can obtain water for fire-fighting purposes a year or more in advance.

Second, this issue is addressed in the letter from Derrick Welling of Pacific Connector (attached as Exhibit 5 to the applicant's June 17, 2010 submittal), which explains that necessary water for fire suppression and other activities will be obtained in accordance with the required federal and state permitting requirements, and that all water withdrawals will meet or exceed all permitting requirements. The applicant will comply with all federal and state requirements during the fire season that mandate the amount of water required on the right-of-way for adequate fire suppression during timber removal and construction activities.

The opponents contend that FERC has not adequately addressed pipeline safety and fire issues, and they have questioned the lack of an emergency response plan in the FEIS. As explained above, the federal DOT rather than FERC is responsible for ensuring pipeline safety, and there is no formal federal requirement to include an emergency response plan at this stage of

the proposal or as part of the FEIS. However, in order to respond to the comments on this issue, the applicant has provided an example of the type of Public Safety Response Manual that will be provided, which was attached as Exhibit 8 to the applicant's submittal dated May 11, 2010. Further, the applicant has provided some information regarding Emergency Response Capabilities in the Reliability and Safety Report, which was attached as Exhibit 7 to the applicant's May 11, 2010 submittal.

It appears that fire protection personnel in the County should already be receiving some training in incident response to natural gas pipeline fires, due to the approval of the 2002 12" pipeline. In that application, the applicant promised to train fire personnel on specific methods for responding to natural gas pipeline fires. The applicant here has also proposed to conduct additional training at the applicant's expense.

The Board finds that it is reasonable to conclude that the pipeline will not significantly increase risks to fire suppression personnel or significantly increase fire suppression costs. After all, a pipeline is expected - on a statistical basis - to have an expected incident rate of one per every 280 years, and one injury can be expected every 1001 years. *See* Hearings Officer Decision, File No. HBCU-02-04, at p. 43. It stands to reason that if no incidents occur, then the cost of responding will necessarily not increase.

Moreover, there was significant expert testimony introduced in the Pipeline Solutions, Inc. case, File No. HBCU-02-04, from first responders that have pipelines located in their district. *See* Hearings Officer Decision, File No. HBCU-02-04, at p. 43. Those first responders were unanimously of the opinion that the cost to their department was little or nothing. The hearings officer in that case found such evidence to be "particularly persuasive." Although this case involved a 36" pipeline instead of a 12" pipeline, the Board does not find that to be a significant difference. While the applicant in *this* case did not provide much in the way of similar testimony, the hearings officer's findings in HBCU-02-04 are themselves substantial evidence that can be relied on to form a conclusion in this case as well. Such evidence might not be afforded as much weight, and could have been overcome by current testimony from first responders expressing negative implications associated with the proposed pipeline, but no testimony of this type was received into evidence. Therefore, the Board finds that substantial evidence exists in the record to support a conclusion in the applicant's favor on this issue.

Specifically, the Board finds that the applicant's evidence is sufficient to support a finding that the standard is either satisfied or that feasible solutions to identified problems exist, and that a condition of approval can be imposed to ensure compliance. *Rhyne v. Multnomah County*, 23 Or LUBA 442,447-48 (1992). As noted in the Reliability and Safety Report, an emergency response plan has not yet been developed for the pipeline. The *sample* report demonstrates the feasibility of creating a similar report for this facility, however. The applicant has proposed a condition of approval requiring submittal of a County pipeline-specific Public Safety Response Manual ("PSRM") to the County prior to construction, and the Hearings Officer recommended imposing this condition. Staff proposed that the condition be modified to require the applicant provide the PSRM prior to commencing operations. The Board agrees that the applicant should provide a PSRM; however, the Board finds that staff's proposal may not provide sufficient time for the applicant to distribute the PSRM and coordinate with area emergency

response personnel. Accordingly, the Board modifies and adopts the condition as Condition of Approval B.19 to read as follows:

> "At least six (6) months' prior to delivery of any gas to the Jordan Cove Energy Project LNG import terminal, the applicant shall: (1) submit a project-specific Public Safety Response Manual to the County, and (2) in order to comply with federal safety regulations, coordinate with local emergency response groups. As detailed in Section 4.12.10 of the FEIS, Pacific Connector will meet with local responders, including fire departments, to review plans and communicate specifics about the pipeline. If requested, Pacific Connector will also participate in any emergency simulation exercises and provide feed-back to the emergency responders."

For these reasons, the Board finds that the proposed pipeline will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel.

Section 4.8.600, Section 4.8.700 and Section 4.8.750

At the hearing, the parties presented different views regarding the applicability of CCZLDO Sections 4.8.600, 4.8.700 and 4.8.750. Section 4.8.400 provides as follows:

> SECTION 4.8.400. Review Criteria for Conditional Uses in Section 4.8.300 and Section 4.8.350.
>
> A use authorized by Section 4.8.300 and Section 4.8.350 may be allowed provided the following requirements are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.
>
> A. The proposed use will not force a significant change in , or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; and
>
> B. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
>
> C. All *uses*[41] must comply with Section 4.8.600, Section 4.8.700 and Section 4.8.750. (Emphasis added).

By their own terms, however, Section 4.8.600, Section 4.8.700 and Section 4.8.750 only

[41] The term "use" is defined as follows: "USE: The end to which a land or water area is ultimately employed. A use often involves the placement of structures or facilities for industry, commerce, habitation, or recreation."

appear to apply to "dwellings" and "structures." There is a significant ambiguity in the CCZLDO regarding whether a utility is a "structure" as that term is defined in the CCZLDO. The Board resolves this ambiguity and, for the reasons stated below, interprets the CCZLDO to find that a "utility" is not a "structure" for purposes of these applications.

Mark Sheldon and others argue that the proposed pipeline is a "structure" within the meaning of the CCZLDO. His comments cite a CCZLDO definition of "structure" as follows: "Anything constructed or installed or portable, the use of which is required [*sic*?] a location on a parcel of land." He cites "Section 2.1.200" as the source of this quote. However, that is an outdated definition. The current definition in the CCZLDO is as follows:

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

As stated by staff on the record, the County amended the definition of "structure" on September 8, 2009, through adoption of Ordinance 09-07-003PL. This was one of several legislative CCZLDO amendments initiated in response to Federal Emergency Management Agency ("FEMA") updates. The amendments were necessary in order for the County to continue in the National Flood Insurance Program. As further stated by staff on the record, the current definition of "structure" was taken from the model ordinance provided by DLCD.

The Board must construe the various provisions of the CCZLDO. When construing a statute, the court will first look directly at the text of the statute itself. *See Whipple v. Howser*, 291 Or 475, 635 P2d 782 (1981) (citing *Greyhound Corp. v. Mount Hood Stages, Inc.*, 437 US 322, 330, 98 S Ct 2370, 2375 (1978)). Emphasizing the need to look first to the language of the statute, the *Whipple* court stated:

> "The cardinal rule for the construction of a statute is to ascertain from the language thereof the intent of the law makers as to what the purpose was to be served, or what the objective was designed to be attained."

Whipple, 291 Or at 479 (citing *Swift & Co. and Armour & Cove, Co. v. Peterson,* 192 Or 97, 233 P2d 216 (1951). *See also State of Oregon v. Buck,* 200 Or 87, 92, 262 P2d 495 (1953). The *Whipple* court also cited to *State ex rel. Cox v. Wilson*, 277 Or 747, 562 P2d 172 (1977), in which the court stated:

> "There is, of course, no more persuasive evidence of the purpose of a statute then the words by which the legislature undertook to give impression to its wishes."

There the text of CCZLDO §2.1.200 seems to be clear and unambiguous. The plain text of this definition excludes a subsurface pipeline from being considered a "structure" under the CCZLDO.

However, one factor that complicates the analysis is, as Mr. Sheldon notes, the CCZLDO defines the term "utility" as "public service *structures* * * *." CCZLDO 2.1.200. The meaning of a seemingly unambiguous code provision can be clouded by contextual provisions in the same legislative scheme: "It is true that the context of a statute or statutory scheme can sometimes reveal an ambiguity in a particular phrase that, standing alone, appears to have a clear meaning. *Southwood Homeowners Ass'n v. City Council of Philomath*, 106 Or.App. 21, 806 P.2d 162 (1991) (citing *Dennehy v. City of Portland,* 87 Or.App. 33, 40, 740 P.2d 806 (1987).

One commonly employed first–level maxim of statutory construction is that in the absence of some indication of contrary intent, it is likely that a term is intended to have the same meaning throughout a legislative enactment. *Knapp v. City of North Bend*, 304 Or 34, 41, 741 P2d 505 (1987); *State v. Holloway*, 138 Or App 260, 267-68, 908 P2d 324 (1995)(The fact that a regulatory document uses a term consistently throughout the document strongly suggests that the drafters intended the same meaning in the provision in dispute); *Kahn v. Pony Express Courier Corp.*, 173 Or App 127, 141, 20 P3d 837, *rev. den.* 332 Or 518, 32 P3d 898 (2001). Thus, when determining the meaning of a term within a legislative enactment, it is sometimes possible to look to other examples of the use of that term in the same legislative enactment, in order to gather insight as to the overall intended meaning of the term. However, this interpretative maxim often applies with less force where, as here, the legislative enactment is a patchwork of amendments made over time, because the likelihood that the subsequent amendments have made changes using terms and phrases that are not in keeping with the original terms increases.

In addition, when a word used in a zoning ordinance is defined, the definition as set forth in the definition section usually controls over a generalized dictionary definition. However, that is not always the case. In fact, CCZLDO §2.1.100 recognizes that a word used in the ordinance will usually have the meaning as defined in CCZLDO §2.1.200 but provides an exception when "it is plainly evident that a different meaning is intended."

In this case, the Board finds that it is plainly evident that the definition of the term "utility" should not be interpreted in connection with the definition of "structure." Indeed, the use of the defined term "structure" in the definition of "utility" is not very intuitive, given that "structures" are defined as being something that is a "walled or roofed building." Otherwise, the suggestion would be that, in addition to being public service" related a "utility" must be either a building or a gas or liquid storage tank. The question is whether the CCZLDO, as written, evinces a purposeful intent to use the term "structure" in a consistent manner throughout the CCZLDO. It does not.

In this case, the context provided within the definition of "utility" suggests that the term "structure" is being used there in a more broad sense (and consistent with the *earlier* CCZLDO definition). For example, among the list of "utilities" are water, sewer, and gas lines, which are typically routed underground and do not constitute "structures" within the meaning of the new definition. If the Board interprets the CCZLDO such that the term "utility" only includes "structures" that meet the new definition of that term, (*i.e.* a "walled and roofed building including a gas or liquid storage tank that is principally above ground"), then the interpretation would effectively bar all underground utilities. Furthermore, it would effectively require that

each utility had to be a "building." The Board finds that this construction of the CCZLDO is not consistent with legislative intent.

Thus, it is apparent that this inconsistency results from the recent code update process, as there was a failure to cross-check the code to see how the new definition of "structure" affects provisions such as the definition of "utility." Take, as an example of this failure, the language of CCZLDO 4.8.750(B): "all buildings or structures except for fences shall be set back...." This code provision assumes that a fence is a structure; otherwise, there would be no reason to express the "exception." But a fence is clearly not a "walled and roofed building including a gas or liquid storage tank that is principally above ground."

The Board concludes that the CCZLDO contains internal inconsistencies between the formal definition of the term "structure" and the usage of that term throughout the CCZLDO. The applicant discusses the inconsistency as follows:

> Nonetheless, this inconsistency does not override the obvious intent of the drafters to exclude subsurface pipelines from the definition of a "structure" when that definition was recently adopted in 2009. As explained by staff in the supplemental staff report, the Coos County Board of Commissioners adopted the new definition of "structure" on September 8, 2009 as part of a series of code amendments related to flood damage prevention under FEMA requirements. The county adopted the language provided in the "Oregon Model Flood Damage Prevention Ordinance," which was provided by DLCD to local governments to ensure compliance for purposes of participation in the National Flood Insurance Program. The hearings officer appears to be correct that the county's adoption of the model ordinance did not include a cross-check of other uses of the term "structure" in the county code for consistency. However, the ambiguity created by inconsistent use of the defined term in a separate definition does not override the clear intent of the drafters to only apply the term "structure" to walled and roofed buildings.

See letter from Mark Whitlow to Patty Evernden dated June 24, 2010, at p. 11. The Board agrees, and finds that the Code uses the term "structure" differently and inconsistently throughout the CCZLDO. This does not appear to be purposeful, but rather, as discussed above, results from the 2009 amendments to the definition of the term "structure." Therefore, although the CCZLDO definition of "utility" expressly *presumes* that utilities are "structures," the term "structure" in that context means something along the lines of "anything constructed or installed, the use of which requires a location on a parcel of land."

Therefore, based upon this legislative history the Board construes these provisions of the CCZLDO together and interprets the CCZLDO such that the term "structure" as used in Section 4.8.600, Section 4.8.700 and Section 4.8.750 is defined as set forth in the definition section of the CCZLDO, whereas the term "structure" as set forth in the definition of "Utility" means

"[a]nything constructed or installed or portable, the use of which requires a location on a parcel of land."

In addition, the Board finds that the reference to the term "use" at Section 4.8.400(C) does not broaden the applicability of Section 4.8.600, Section 4.8.700 and Section 4.8.750 to include "uses" that are not "structures." Depending upon whether one relies on the definition of "structure" or the definition of "utility," different conclusions arise. The Hearings Officer noted that Section 4.8.600 appears to be a direct codification of OAR 660-006-0029 and 4.8.700 is a direct codification of OAR 660-006-0035. As such, the Hearings Officer found that these provisions of the CCZLDO cannot be interpreted in a manner that is less restrictive than state law. The state administrative rules use the terms "dwellings" and "structures" but do not appear to define the terms. The Hearings Officer did not find any obvious applicable references in state law defining the term "structure." Therefore, the Hearings Officer concluded that state law leaves the task of defining the term to the local governments tasked with implementing OAR Chapter 660, division 6. The Board adopts by reference the Hearings Officer's findings regarding the relationship between state law and these provisions of the CCZLDO.

Regardless of the issue created by the term "use" in Section 4.8.400(C), the question remains whether an underground utility is a "structure." As stated above, the Board finds that Section 4.8.600, Section 4.8.700 and Section 4.8.750 only apply to structures as that term is used in CCZLDO 2.1.200, notwithstanding the definition of the term "utility." In the alternative, the Board has prepared findings set forth below that assume, *arguendo,* that utilities are "structures," and, as a result, CCZLDO 4.8.600, 4.8.700 and 4.8.750 are applicable. As demonstrated below, the analysis under those sections is somewhat awkward when applied to a gas pipeline, but ultimately the applications can satisfy those standards.

CCZLDO §4.8.600

The application narrative dated April 14, 2010 explains how the proposed pipeline will meet the siting standards at CCZLDO §4.8.600, .700, and .750. The Board adopts that portion of the April 14, 2010 application as findings as if fully set forth herein. CCZLDO §4.8.600 is a direct codification of OAR 660-006-0029(1). The administrative rule provides as follows:

> (1) Dwellings and structures shall be sited on the parcel so that:
>
> (a) They have the least impact on nearby or adjoining forest or agricultural lands;
>
> (b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
>
> (c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
>
> (d) The risks associated with wildfire are minimized.

The intended purpose of OAR 660-006-0029(1) is clarified by OAR 660-006-0029(2):

> (2) Siting criteria satisfying section (1) of this rule may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

As an initial matter, OAR 660-006-0029(2) makes clear that OAR 660-006-0029(1) and CCZLDO §4.8.600(A) were not intended to apply to linear features such as gas pipelines. Setbacks and clustering are not consistent with linear features such as gas pipelines. While it is possible to site pipelines "close to existing roads," the applicant has already taken that step.[42] In addition, CCZLDO §4.8.600(A) starts with the premise that one can "site" a structure on a particular property in a location that minimizes the impacts and harms that such a structure will cause on neighboring forest and farm lands, forest operations, etc, as compared to other locations on the site. That type of analysis is really not well-suited towards determining the best location for a linear pipeline feature. With a linear feature such as a pipeline, it is safe to say that, as a general rule, the route that causes the least impact is generally going to be the shortest, most direct route. The applicant certainly has proposed the shortest *feasible* route, and therefore has likely met the intent of this provision. In addition, the applicant testified that it has some latitude under the FERC Order to make site-specific locational adjustments to the general alignment approved by FERC in order to accommodate landowner's preferences. The Board finds that site-specific concerns of that nature are best addressed as part of that process and adopts Condition of Approval A.4 to ensure compliance.

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[42] In its May 11, 2010 submittal, the applicant states:

> Finally, where practicable, the alignment of the PCGP Project utilized existing rights-of-way and pipeline and powerline corridors while providing a safe distance between these existing utilities. A table identifying specific areas where the PCGP is co-located with existing right-of-way and corridors is attached as Exhibit 2 to this letter. While the alignment of the pipeline parallels existing roads and railroads in a number of areas, routing the pipeline entirely within existing right-of-way was not feasible. For example, many existing transportation easements were avoided because of the negative impact to traffic flow during construction. Additionally, many roads are located in valleys or drainage bottoms adjacent to streams where it is not feasible to install a large-diameter, steel pipeline due to large construction area requirements, confining topographic conditions, and waterbodies running parallel to the alignment. Many forest roads are located on steep side slopes where it is impractical to route the pipeline because of constructability/stability requirements and concern with the long-term safety and integrity of the pipeline. To ensure the pipeline is installed properly within consolidated (non-filled) materials and to provide the necessary equipment space, construction on steep side slopes requires significantly more construction areas to accommodate the necessary cuts or excavations. Long-term safety and the potential for third-party damage to the pipeline must be considered. Finally, future road expansions or improvement projects may require the pipeline to be relocated where it has been constructed within road easements, which may create unforeseen environmental, landowner, and system impacts.

Subsections (B) of CCZLDO §4.8.600 requires the applicant to provide evidence that "the domestic water supply" is from a source authorized by law. The Board finds that this section is context supporting the conclusion that an underground utility is not a "structure" within the meaning of the definition of structure in CCZLDO §2.1.200. But even if that is not the case, CCZLDO §4.8.600(B) only applies to uses that require or propose domestic water usage. Obviously, a gas pipeline has no use for a domestic water supply.

Subsection (C) and (D) of CCZLDO §4.8.600 only apply if the use includes a "dwelling," and therefore are not implicated here.

CCZLDO §4.8.700 (Fire Siting Safety Standards).

CCZLDO §4.8.700 contains certain requirements that apply only to dwellings or structures that have a roof. Moreover, the CCZLDO also gives the Planning Director the ability to "authorize alternative forms of fire protection when it is determined that these standards are impracticable." In this case, the applicant proposes a 30 foot cleared corridor, centered on the pipe. *See* Application Narrative, at p. 13. The Board determines that demanding additional primary and secondary firebreaks under CCZLDO §4.8.700 (A)(1) & (3) are not practicable because they are not needed and they conflict with the objectives sought to be achieved by other CCZLDO criteria. Similarly, the garden hose requirement in CCZLDO §4.8.700 (A)(2) is also impracticable. CCZLDO §4.8.700 (B), (C), (D), (E), (F) and (H) are clearly inapplicable. CCZLDO §4.8.700 (G) would be applicable assuming utilities are structures, but should be easily met via a condition of approval. The Board amends Condition of Approval B.17 to ensure compliance with this standard.

CCZLDO §4.8.750 (Development Standards).

CCZLDO §4.8.750 contains development standards for "development" and "structures." The minimum lot size provisions and setback provisions do not apply to linear utility features that must, by their very nature, traverse property lines of all sizes. That is because there is no set of facts under which those criteria could be met. If the County had intended to prohibit linear utility features entirely, it would not have made them administrative conditional uses in the Forest zone. Indeed, these CCZLDO standards are further evidence that utilities are not meant to be considered "structures" within the meaning of CCZLDO 2.1.200. Further, CCZLDO §4.8.750 (C) through (I) do not appear to contain any substantive requirements applicable here.

Jody McCaffree contends that the proposed permanent access road to block valve #4 is not allowed in the Forest zone under Goal 4. OAR 660-006-0025(3) identifies uses that are consistent with Goal 4 and allowed outright on forest lands. Private access roads are not specifically enumerated as an allowed use under this rule. Nevertheless, the Board finds that the access road is a use permitted outright in conjunction with the pipeline.

First, the County's definition of "road" in CCZLDO 2.1.200 indicates that roads are not to be construed as a "use" *per se*, but as a "public or private way created or intended to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land." Further, the definition of road "does not include a private way that is created or intended to provide ingress or

egress to such land in conjunction with the use of such land exclusively for forestry, mining, or agricultural purposes."

When the principal use is allowed in the zone, that right carries with it all associated uses which are normally essential, auxiliary and incidental thereto, (as opposed to those uses which are mere non-essential accessory uses). For example, an applicant for a McDonald's restaurant does not have to seek separate approval of an "office" in order to have a room in the structure dedicated to administrative functions. It is understood that all restaurants have an office where administrative matters are attended to, and land use approval for a "restaurant" inherently and automatically includes an incidental administrative office to support that restaurant use (but not for other unrelated commercial functions).

As relevant here, LUBA has held that unenumerated uses that are necessary and accessory to an enumerated forest use are permitted "because they are, in effect, part of uses expressly authorized by Goal 4." *Lamb v. Lane County*, 7 Or LUBA 137, 143 (1983). OAR 660-006-0025(3)(c) allows a pipeline use outright as a "[l]ocal distribution lines (*e.g.*, electric, telephone, natural gas) and accessory equipment." Similarly, OAR 660-006-0025(4)(q) allows new gas distribution lines as a conditional use. As the applicant explains on page four of the application narrative dated April 14, 2010, the proposed road is "necessary for the operation and maintenance of the pipeline." Without this road, the applicant will be unable to access the block valve, which is a necessary component of the pipeline, and ensures that the applicant can operate the pipeline in a safe manner. In this way, the access road is "necessary and accessory" to, and thus effectively a part of, the pipeline use. Therefore, under *Lamb*, the access road is permitted under Goal 4.

Finally, accepting Ms. McCaffree's interpretation of OAR 660, Division 6 runs counter to legislative intent, as it at least curtails, and in many cases effectively nullifies, the use rights granted under the rule. If the Board were to agree that access roads in conjunction with one of the enumerated uses are not allowed, it would effectively preclude development of many of the allowed uses on forest lands that cannot otherwise exist in the absence of developing an access road. For example, many farm uses, private hunting and fishing operations, and caretaker residences — all permitted outright on forest lands under OAR 660-006-0025(3) — could be inaccessible and therefore effectively undevelopable under Ms. McCaffree's interpretation of the rule. Similarly, conditional uses such as cemeteries and firearms training facilities could not exist without road access; neither could any of the dwellings allowed under OAR 660-006-0027. These listed uses all contemplate being able to provide at least a private road for access. There is no evidence that LCDC intended for such a harsh construction of the rule. The Board rejects Ms. McCaffree's contention.

r. Exclusive Farm Zone (EFU) (CCZLDO Article 4.9)

CCZLDO §4.9.450 Additional Hearings Body Conditional Uses and Review Criteria.

The applicant notes that the proposed pipeline will cross approximately 3.72 miles of property in Coos County zoned Exclusive Farm Use (EFU), all of which is privately owned. The

3.72 miles of EFU-zoned parcels are interspersed throughout the length of the pipeline within Coos County. The Board concludes that the pipeline is consistent with the requirements of ORS Chapter 215, OAR 660, Division 33, and the applicable approval criteria of the CCZLDO.

CCZLZO §4.9.450 is more or less a direct codification of ORS 215.283(1)(c).[43] CCZLZO §4.9.450 provides:

> The following uses and their accessory uses may be allowed as hearings body conditional uses in the "Exclusive Farm Use" zone and "Mixed Use" overlay subject to the corresponding review standard and development requirements in Sections 4.9.600[44] and 4.9.700.[45]
>
> * * * * * *.
>
> C. Utility facilities necessary for public service.... A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.

In this regard, it is perhaps worthwhile to note that a "utility facility" necessary for public service is a use that is allowed "outright" under ORS 215.283(1). *See Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995) ("legislature intended that the uses delineated in ORS 215.213(1) be uses 'as of right,' which may not be subjected to additional local criteria").

Under state law, utility facilities sited on EFU lands are subject to ORS 197.275, as well as the administrative rules adopted by LCDC.[46] ORS 215.275 provides:

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[43] ORS 215.283(1) provides, in relevant part:

> (1) The following uses may be established in any area zoned for exclusive farm use: * * * *.
>
> (c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

[44] CCZLDO 4.9.600 Siting Standards for Dwellings and Structures in the EFU Zone.

[45] CCZLDO 4.9.700 Development Standards for dwellings and structures (CCZLDO 2.1.200 defines "Structure: Walled and roofed building includes a gas or liquid storage tank that is principally above ground." The proposed pipeline is not a "structure" under this definition and therefore the siting standards do not apply.

[46] OAR 660-033-0130(16) provides as follows:

> (16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that

215.275 Utility facilities necessary for public service; criteria; rules; mitigating impact of facility. (1) A utility facility established under ORS 215.213 (1)(c) or 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c) or 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

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reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
(A) Technical and engineering feasibility;
(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
(C) Lack of available urban and nonresource lands;
(D) Availability of existing rights of way;
(E) Public health and safety; and
(F) Other requirements of state and federal agencies.
(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.
(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.
(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.
(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(c) Lack of available urban and nonresource lands;
(d) Availability of existing rights of way;
(e) Public health and safety; and
(f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 (1)(c) or 215.283 (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c) or 215.283 (1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. (Emphasis added).

The exception in Subsection 6 states that subsections 2-5 do not apply to "interstate natural gas pipelines." This appears to be a legislative recognition of federal preemption on the issue of route selection for interstate gas pipelines.

The negative inference created by the stated exceptions to subsections 2 through 5 is that an applicant for an interstate natural gas pipeline is technically supposed to be subject to ORS 215.275(1). This subsection contains the requirement that the applicant to show that the proposed facility "is necessary for public service." According to subsection 2, the "necessary for public service" requirement is met if the applicant demonstrates that "the facility must be sited in an exclusive farm use zone in order to provide the service." Of course, given that the determination of whether something is "necessary" is dependent on analysis which is set forth in subsections 2 through 5, it remains unclear exactly what an applicant proposing a natural gas pipeline is

required to do to demonstrate that its facility is "necessary." LCDC seems have recognized this in their administrative rule implementing ORS 215.275, as they exempt FERC-regulated pipelines from the "necessary for public service" test. *See* OAR 660-033000139(16).[47] Given the nature of ORS 215.275(2)-(5), the Board concludes that ORS 215.275(1) contains no substantive standards applicable to interstate natural gas pipelines, but even if it did, those requirements would be preempted by federal law.

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[47] OAR 660-033-0130 (16) provides:

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. (Emphasis added).

WELC addresses this criterion by arguing that "[r]eams of testimony submitted to [FERC] explained how the * * * pipeline is not at all necessary in order for natural gas to be provided to US residents." *See* Letter from WELC staff attorney Jan Wilson dated June 8, 2010, at p. 5. Ms. Wilson goes on to state that California and other states will not need natural gas, and that "the threat of this pipeline being used to bring domestic natural gas * * * to a coastal terminal is very real." *Id.* Frankly, the Board fails to understand why, from a land use perspective, it matters which direction the gas is traveling, or why exporting gas is a "threat." To the contrary, it seems that if the United States is to be faulted, it is because it fails to export enough goods to other countries. Nonetheless, if "reams of testimony" were submitted to FERC, then it seems proper that FERC decide the issue. There is no County zoning code provision that requires the County to make that decision.

At the hearing, the applicant agreed to a condition of approval limiting the use of the pipeline to import use. Regardless, case law makes clear that the issue of whether new gas pipelines are "needed" is not relevant to any approval standard contained in ORS 215.275 or CCZLZO §4.9.450. *Sprint PCS v. Washington County*, 186 Or.App. 470, 63 P.3d 1261 (2003); *Dayton Prairie Water Ass'n v. Yamhill County*, 170 Or.App. 6, 11 P.3d 671 (2000).

The applicant addresses the issue as follows:

> The PCGP is an interstate natural gas pipeline that has been authorized by and is subject to regulation by FERC under Section 7c of the NGA under which a Certificate of Public Convenience and Necessity has been issued to Pacific Connector to construct, install, own, operate, and maintain the PCGP. The PCGP is a utility facility under CCZLDO Section 4.9.450.C.
>
> Due to its linear nature and the points of connection it must make from the JCEP LNG Terminal site on the North Spit over the 49.72 miles to the interstate pipeline connection near Malin, Oregon, it is necessary for some segments of the pipeline to be situated in agricultural land in satisfaction of this review criterion and the companion criterion of ORS 215.275(1). ORS 215.275(6) exempts interstate natural gas pipelines from the provisions of ORS 215.275(2)-(5) and OAR 660-33-0130 has a similar exemption.
>
> The PCGP is a locationally dependent linear facility that must cross exclusive farm use land in order to provide natural gas service between the Jordan Cove terminal and the existing pipeline system. In order to achieve the project purpose, the pipeline must start at the Jordan Cove terminal and exit Coos County on the county's eastern boundary to eventually connect to the existing pipeline near Malin, Oregon. Given the large expanses of EFU-zoned lands scattered throughout the rural portions of Coos County, even if avoidance of EFU lands were the only

> consideration in the pipeline alignment, it would not possible for the pipeline to avoid all EFU zoned lands and maintain a reasonably direct route through Coos County. Therefore, the PCGP must be sited in the Coos County EFU zone in order to provide the planned natural gas service. Under the existing alignment, the impacts to EFU-zoned land is limited, amounting to only 3.72 miles of the total of 49.72 miles crossed within Coos County. Therefore, while not eliminated, impacts to EFU lands were minimized during the alignment selection process. The alignment selection process is discussed in detail in Section 3.4 of the FEIS.

Staff commented on the need issue as follows:

> The pipeline will travel from the North Spit to the Douglas county line for a distance of approximately 50 miles. The pipeline route will travel through 3.72 miles of EFU land. The applicant states that it would not be possible to avoid all EFU zoned lands and maintain a reasonably direct route, and has provided a detailed description of the alternative route analysis that was undertaken as part of the FERC review and approval process in its correspondence dated May 11, 2010, as well as the pipeline location alternatives analysis in Section 3.4 of the FEIS, which is included in the applicant's May 12, 2010 submittal. Given the need to cross most of the county to achieve the project purpose, and the large expanses of EFU land throughout rural portions of the county, there appears to be a need to site the pipeline on agricultural land in order to provide the utility facility service.

In its May 11, 2010 submittal, the applicant states:

> Third, as discussed above, the pipeline is a locationally dependent linear facility that must cross EFU land in order to achieve a reasonably direct route. In order to achieve the project purpose, the pipeline must start at the Jordan Cove LNG terminal and exit Coos County on the county's eastern boundary in order to eventually connect to the existing pipelines near Roseburg, Medford and Malin, Oregon.[48] Given the number and configuration of EFU-zoned lands in the rural portions of Coos County, it is not possible for the pipeline to avoid all EFU zoned lands and maintain a reasonably direct route through Coos County.

The Board agrees with the applicant and staff for the reasons stated above, and frankly finds

[48] The location of the Jordan Cove LNG terminal itself was selected as the result of a separate alternatives analysis approved by FERC.

assertions to the contrary to be frivolous. It seems rather obvious that it would not be possible to build a pipeline from one end of Coos County to the other without traversing any EFU land. To the extent that it could be accomplished, the route would be highly circuitous, and the need to traverse difficult forested terrain would far outweigh any benefit to EFU lands. In any event, the County has no ability to determine that an interstate gas pipeline is not needed or that alternative routes are feasible. As discussed earlier, those issues are within the sole province of FERC to decide.

Various opponents raised the issue that the proposed pipeline is not an "interstate pipe line" for purposes of ORS 215.275(6) because the segment of pipeline being proposed under consideration does not cross state lines. *See e.g.,* Letter from WELC staff Attorney Jan Wilson dated June 8, 2010, at p. 6.

The applicant responds as follows:

> WELC and other opponents continue to argue that the PCGP is not an "interstate" gas pipeline under ORS 215.276(6) because it is only located within the State of Oregon. Although the pipeline itself is only physically located within Oregon, it will transport liquefied natural gas from the FERC-approved LNG import terminal on the North Spit of Coos Bay *into* the interstate pipeline system, and that gas will then be sold in interstate commerce. The PCGP is therefore an interstate natural gas pipeline subject to federal jurisdiction and regulation by FERC. There would be no FERC jurisdiction over this project if it were not an interstate gas pipeline. During the first open record period, Pacific Connector submitted relevant portions of the Natural Gas Act, which explains that the basis for FERC jurisdiction over this project is the fact that it is an interstate pipeline because the pipeline will allow for the "transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." 15 USC § 717(b).[49] Further, that section excludes from

[49] 15 U.S.C. 717(a)-(c) provides as follows:

> (a) Necessity of regulation in public interest
>
> As disclosed in reports of the Federal Trade Commission made pursuant to S.Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.
>
> (b) Transactions to which provisions of chapter applicable

> FERC jurisdiction only those truly "intrastate" projects where the natural gas is received "within or at the boundary of a State if all the natural gas so received is ultimately consumed within such state." 15 USC § 717(c). Because the PCGP will transport natural gas into interstate commerce through the interstate pipeline system, it is an "interstate natural gas pipeline" within the meaning of FERC statutes and rules and ORS 215.275(6).

See Final Argument letter from Mark Whitlow dated June 24, 2010, at p. 23. The applicant is correct for the reasons stated above. The term "interstate" in ORS 215.275(6) refers to any segment of a gas pipeline that is interconnected with other segments in a manner that allows gas to flow in interstate commerce. Therefore, the fact that this particular segment of pipeline is located entirely within Oregon does not mean that it is not an "interstate" gas pipeline. *See* NGA, 15 USC § 717(b), and Section 1671(8) of the Natural Gas Pipeline Safety Act of 1968. As the applicants pointed out, the fact that FERC believes that it has jurisdiction over the project is perhaps the most telling evidence that the opponent's argument is plainly wrong.

4. **CBEMP Policies – Appendix 3 Volume II**

a. Plan Policy #14 General Policy on Uses within Rural Coastal Shorelands.

I. Coos County shall manage its rural areas within the "Coos Bay Coastal Shorelands Boundary" by allowing only the following uses in rural shoreland areas, as prescribed in the management units of this Plan, except for areas where mandatory protection is prescribed by LCDC Goal #17 and CBEMP Policies #17 and #18:

> The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> (c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence
>
> The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

e. Water-dependent commercial and industrial uses, water-related uses, and other uses only upon a finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in rural areas built upon or irrevocably committed to nonresource use.

g. Any other uses, including non-farm uses and non-forest uses, provided that the Board of Commissioners or its designee determines that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas. In addition, the above uses shall only be permitted upon a finding that such uses do not otherwise conflict with the resource preservation and protection policies established elsewhere in this Plan.

This strategy recognizes (1) that Coos County's rural shorelands are a valuable resource and accordingly merit special consideration, and (2) that LCDC Goal #17 places strict limitations on land divisions within coastal shorelands. This strategy further recognizes that rural uses "a through "g" above, are allowed because of need and consistency findings documented in the "factual base" that supports this Plan.

Staff states that this plan policy applies to 6-WD, [50] 7-D, 8-WD, 11-RS, 18-RS, 19-D, 20-RS and 21-RS. The pipeline is a permitted use in each of these CBEMP zoning districts. Staff asserts that the "pipeline is a necessary component of the approved marine terminal and LNG facility which are water-dependent uses and must be located in these CBEMP shoreland zones." Therefore, the proposal is consistent with this plan policy.

Jody McCaffree's letter of June 10, 2010, disagrees with staff, and asserts that the applications are deficient with respect to CBEMP Policy #14. As the applicant notes, Ms. McCaffree is incorrect for several reasons:

Policy #14 was previously interpreted and applied by the Board of County Commissioners in both the application of Jordan Cove Energy Project, L.P. (Coos County Department File No. #HBCU-07-04, Coos County Order No. 07-11-289PL) and in the application of the Oregon International Port of Coos Bay (Coos County Planning Department File No. #HBCU-07-03, Coos County Order No. 07-12-309PL). Copies of both decisions are included in the documents submitted into the record by the applicant at the public hearing on May 20, 2010. Those decisions provide written findings showing compliance with Policy #14, partially through Board findings from the Board's findings from the adoption of the Coos County Comprehensive Plan (see findings from HBCU-07-03 below). Regarding the Board's decision approving JCEP's LNG terminal application, the Policy #14 finding appears at page 13 and states:

> "The proposed LNG terminal is an industrial and port facility that is water-dependent and consistent with the uses allowed in the 6-WD zoning district. The proposed use satisfies a need that cannot be accommodated on uplands or shorelands in urban and

[50] PCGP and its associated facilities were approved under JCEP's prior LNG Terminal application.

> urbanizable areas or in other rural areas built upon or irrevocably committed to non-resource use. The Board relies upon and adopts the conclusions of the hearings officer regarding consistency with Policy #14. The applicant has provided evidence sufficient to establish that [the] proposed site on the North Spit is the only site available below the railroad bridge with sufficient size and the necessary water-dependent characteristics for the proposed facility, including access to one of the only three deep-draft navigation channels in the State of Oregon."

Regarding the Board's decision approving the Port's Oregon Gateway Marine Terminal application, the Policy #14 findings appear at page 20 and provide:

> "The Board finds that the proposed water-dependent use satisfies a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in other rural areas built upon or irrevocably committed to non-resource use. This fact was recognized in the inventories and factual base portion of the Coos County Comprehensive Plan (CCCP) at Volume II, Part 2, Section 5-82. (See North Spit Industrial Needs under Section 5.8.3 of the CCCP). Background reports produced to support CCCP Volume II, Part 2, generally concluded that large vacant acreages of industrial land with deep-draft channel frontage are in short supply. Further, as documented in the applicant's Description of Alternative Sites and Project Designs contained in its August 24, 2007 Revised Application, the North Spit is the only site available with sufficient size and the necessary water-dependent characteristics suitable for future land needs for import and transshipment, with related processing facilities for energy resources and cargo handling, and for marine cargo bound to the West Coast and international ports."

Accordingly, the County previously determined that compliance with Policy #14 was established during the legislative adoption of the County's comprehensive plan with respect to the designation of portions of the North Spit, including zoning district 6-WD, as a rural area appropriate for water-dependent industrial development. In addition, the alternatives analysis required under Policy #14 has been accomplished in several descending layers of analysis for, variously, no action or postponed action, system alternatives, LNG terminal site alternatives, LNG terminal layout alternatives, dredging and dredge material disposal alternatives, and pipeline route alternatives, all of which are described with great specificity in Section 3.0 (Alternatives) at pages 3-1 through 3-119 of the FEIS.

Under Policy #14, the PCGP would be considered a necessary component of the primary industrial and port facilities use, at least in zoning district 6-WD, where the pipeline segment situated within the boundaries of JCEP's LNG terminal is connected to the LNG terminal meter station at MP00.00, and where other LNG terminal components were described in the decision

approving the LNG terminal as "associated facilities" (also see utilization of that term in ORS 215.275(6)). The pipeline would otherwise be described as an "other use" in Policy #14 I.e. As an "other use", the PCGP would be reviewed in each CBEMP zoning district as a low-intensity utility. In either event, Policy #14 I.e requires "a finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be accommodated on uplands or shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use," a finding that was already made by the Board in the prior decisions approving JCEP's LNG terminal and, again, approving the Port's Oregon Gateway Marine Terminal. It is appropriate for the Board to make similar findings in this case for the reasons set out below.

As stated in the application narrative, the pipeline must originate at the Jordan Cove LNG terminal which has been permitted by the County as above described. As also provided in several sections of the applicant's narrative, the pipeline route has undergone extensive analysis. The proposed route has been determined by FERC through the NEPA process, as described in the FEIS. The alternative analysis appears at Section 3.0 of the FEIS, and the pipeline alternative analysis is contained in Section 3.4. Based on the alternative analyses and the FERC-determined route, the pipeline must cross these zoning districts. However, following construction, the subsurface pipeline will not be an impediment to the uses associated with the County's rural shoreland areas. Protection for specific resources in those areas are provided in the applicant's responses to Policies #17, #18 and #22 in the applicant's narrative.

In summary, the Board finds that the pipeline, as a necessary component of the approved industrial and port facilities use (the LNG terminal), and/or as a Policy #14 "other use," being the low-intensity utility use identified in the CBEMP zoning districts, satisfies a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use. Specifically, the various alternative analyses above described conclude that the proposed LNG terminal and its associated facilities (as necessary components of the approved industrial and port facilities use, including the first segment of the pipeline connected to the LNG terminal), and the resulting pipeline alignment extending to the east across upland zoning districts 6-WD, 7-D and 8-WD, are uses that satisfy a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.

This plan policy is met.

b. Plan Policy #16 Protection of Site Suitable for Water-Dependent Uses and Special Allowance for new Non-Water-Dependent Uses in "Urban Water-Dependent (UW) units."

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

a. Urban or urbanizable areas;
b. Rural areas built upon or irrevocably committed to non-resource use; and

c. *Any unincorporated community subject to OAR Chapter 660, Division 022 (Unincorporated Communities).*

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

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

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

The only UW zoning applicable to this project is located near Coos Bay which is the site of the Georgia Pacific sawmill and lumber yard. The location is an active sawmill and lumber yard and it is located within zoning district 36-UW. The applicant proposes to establish a contractor yard and location to store pipe on the property. The temporary use will not impact the existing operation or permanently remove any acreage from water-dependent use. Therefore, the proposal is consistent with this plan policy.

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.

As noted above, Pacific Connector would temporarily utilize a portion of the commercial area as a pipe storage yard. The temporary use will have no impact on future water-dependent uses at the site or the designation of water-dependent shoreland areas or the suitability of the shoreland areas to accommodate water-dependent uses.

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

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

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

Pacific Connector would temporarily utilize the Georgia Pacific-Coos Bay site as a pipe storage and contractor yard during construction. The location is an active sawmill and lumber yard, owned by Georgia Pacific, and it is located within zoning district 36-UW. Use of a portion of the industrial site as a pipe storage and contractor yard will be temporary in nature (i.e., only during construction) and will not require the development of permanent structures. Further, the temporary use of the existing lumber yard will not pre-empt the ultimate use of the property for water-dependent uses because Pacific Connector will not use the site following construction.

This plan policy is met.

c. Plan Policy #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.*

As discussed in detail below, the PCGP crosses near two wetlands identified as significant wildlife habitats. Based on Coos County's maps, the PCGP does not cross identified major marshes, coastal headlands, or exceptional aesthetic resources.

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, which 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.*

c. *Contacting Oregon Department of Fish and Wildlife for review and comment on the proposed development within the area of the 5b or 5c bird sites.*

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

This policy applies to CBEMP zones 6-WD, 7-D, 8-WD, 8-CA, 13A-NA, 11A-NA, 11-RS, 18-RS, 19-D, 19B-DA, 20-CA, 20-RS, 21-RS, 21-CA, and 36-UW.

Policy #17 applies to inventoried resources requiring mandatory protection within each of the CBEMP zoning districts. As noted above, the PCGP alignment is near two wetlands identified as significant wildlife habitats on the CBEMP Shoreland Values Map. The first wetland is located at MP 1. According to Pacific Connector's wetland delineation, there is not currently a wetland located within the mapped area. The current wetland location is east and north of the mapped location. The second wetland is located at approximately MP 4.1.

LUBA discussed CBEMP Plan Policy 17 in its decision in *Southern Oregon Pipeline Information Project, Inc. v. Coos County*, 57 Or LUBA 44 (2008):

> "CBEMP 17 requires that '[l]ocal governments protect from development major marshes and significant wildlife habitat.' If CBEMP Policy 17 stopped there, SOPIP's argument might have merit. But CBEMP Policy 17(II) goes further and expressly explains *how* this mandate to protect certain coastal resources is implemented. CBEMP Policy 17(II)(a) explains that the CBEMP 'limit[s] uses *in these special areas* to those that are consistent with protection of natural values.' (Emphasis added.) CBEMP Policy 17(II)(b) provides that CBEMP Policy 17 is implemented by 'the Special Considerations Map, that identified special areas and restricts uses and activities *therein* to uses that are consistent with the protection of natural values.' (Emphasis added.). CBEMP Policy 17(II)(b) goes on to list some uses that are consistent with those values. With regard to bird sites, CBEMP Policy 17(II)(c) provides that CBEMP Policy 17 is implemented by contacting the Oregon Department of Fish and Wildlife so that it may 'comment on the proposed development *within the area of the 5b or 5c bird sites*.' There is simply nothing in the text of CBEMP Policy 17 that suggests it is to be implemented by limiting uses on properties that adjoin or are located near inventoried major marshes or significant

wildlife habitat to avoid possible impacts on such marshes and habitat." *SOPIP I*, slip op at 8-9 (emphases in original).

As mentioned above, the County's Shoreland Values inventory map notes that there are two inventoried freshwater wetlands along the pipeline route. The applicant is proposing to bore to avoid the first wetland, which is located at MP 1 in the 6-WD zone. The pipeline will cross to the south of the second wetland, which is located near MP 4.1. There are no other inventoried sites requiring protection.

The opponents do not provide any substantial evidence to suggest that these avoidance techniques are insufficient to protect these sites and the resources contained therein.

This plan policy is met.

d. Plan Policy #18 Protection of Historical, Cultural and Archaeological Sites

This Plan Policy applies to CBEMP zones 6-WD, 7-D, 8-WD, 8-CA, 13A-NA, 11-NA, 11-RS, 18-RS, 19-D, 19B-DA, 20-CA, 20-RS, 21-RS, 21-CA, and 36-UW.

The applicant is conducting a cultural resources survey for the project as required under state and federal law. Prior to issuance of a zoning compliance (verification) letter under Section 3.1.200 in order to obtain development permits, Policy #18 requires the applicant to submit a "plot plan" under Section 3.2.700, which then triggers the requirement to coordinate with the Tribe to allow for comments when the development is in an inventoried area of cultural concern. The Tribe has 30 days to comment and suggest protection measures. Policy #18 allows for a hearing process should the Tribe and the developer not agree on the appropriate protection measures. In the prior land use approvals related to the LNG project, the Board of Commissioners imposed a condition to ensure compliance with this Plan Policy. The applicant suggests the same condition be imposed for this application. The Board finds that imposition of the condition is consistent with prior approvals and will ensure compliance with this Plan Policy.

This plan policy is met.

e. Plan Policy #20 Dredged Material Disposal Sites

Local government shall support the stockpiling and disposal of dredged materials on sites specifically designated in Plan Provisions, Volume II, Part 1, Section 6, Table 6.1, and also shown on the "Special Considerations Map". Ocean disposal is currently the primary disposal method chosen by those who need disposal sites. The dredge material disposal designated sites on the list provided on Table 6.1, has decreased because the ocean has become the primary disposal method, the in-land DMD sites have diminished and those which have remained on the DMD list are sites which may be utilized in the future and not be cost-prohibitive. Consistent with the "Use/Activity" matrices, designated disposal sites shall be managed so as to prevent new uses and activities which could prevent the sites' ultimate use for dredge material disposal. A designated site may otherwise only be released for some other use upon a finding that a suitable substitute upland site or ocean dumping is available to provide for that need. Sites may

only be released through a Plan Amendment. Upland dredged material disposal shall be permitted elsewhere (consistent with the "Use/Activity" matrices) as needed for new dredging (when permitted), maintenance dredging of existing functional facilities, minor navigational improvements or drainage improvements, provided riparian vegetation and fresh-water wetlands are not affected. For any in-water (including intertidal or subtidal estuarine areas) disposal permit requests, this strategy shall be implemented by the preparation of findings by local government consistent with Policy #5 (Estuarine Fill and Removal) and Policy #20c (Intertidal Dredged Material Disposal). Where a site is not designated for dredged material disposal, but is used for the disposal of dredged material, the amount of material disposed shall be considered as a capacity credit toward the total identified dredged material disposal capacity requirement.

I. This policy shall be implemented by:

a. Designating "Selected Dredge Material Disposal Sites" on the "Special Considerations Map"; and

Within CBEMP zoning district 18-RS, the PCGP will cross DMD 30(b).

b. Implementing an administrative review process (to preclude preemptory uses) that allows uses otherwise permitted by this Plan but proposed within an area designated as a "Selected DMD" site only upon satisfying all of the following criteria:

1. The proposed use will not entail substantial structural or capital improvements (such as roads, permanent buildings and non-temporary water and sewer connections); and

The PCGP will be buried under the 30(b) dredge disposal site and will not entail substantial structural or capital improvements such as roads, permanent buildings and non-temporary water and sewer connections. As discussed above, the PCGP is not a "structure" as that term is defined in CCZLDO Section 2.1.200, and there are no above-ground components within the 30(d) dredge disposal site. Nor is the PCGP a capital improvement to the property which would preclude future use of the site for dredge disposal. The only impacts on future development will be the prohibition of structural improvements within the right-of-way, which is entirely consistent with the stated purpose of Policy #20, preclusion of preemptory uses.

2. The proposed use must not require any major alteration of the site that would affect drainage or reduce the usable volume of the site (such as extensive site grading/excavation or elevation from fill); and

Following installation of the PCGP, the site will be restored as closely as possible to its pre-construction contours, reestablishing existing drainage patterns. Following construction, dredge material could still be stored over the PCGP in consultation with Pacific Connector, thereby preserving the usable volume of the site.

3. The proposed use must not require site changes that would prevent the expeditious conversion of the site to estuarine habitat.

The PCGP would not require site changes that would prevent the expeditious conversion of the site to estuarine habitat.

c. Local government's review of and comment on applicable state and federal waterway permit applications for dike/tidegate and drainage ditch actions.

The PCGP will not include dike/tidegate or drainage ditch actions. Therefore, this provision is not applicable.

II. This strategy recognizes that sites designated in the Comprehensive Plan reflect the following key environmental considerations required by LCDC Goal #16:

a. Disposal of dredged material in upland or ocean waters was given general preference in the overall site selection process;

b. Disposal of dredged material in estuary waters is permitted in this Plan only when such disposal is consistent with state and federal law;

c. Selected DMD sites must be protected from preemptory uses.

As discussed above, the PCGP does not involve disposal of dredged material but will allow for dredged material disposal on site 30(b) and will, therefore, not be a preemptory use.

This plan policy is met.

f. Plan Policy #22 Mitigation Sites: Protection Against Preemptory Uses

I. This policy shall be implemented by:

a. Designating "high" and "medium" priority mitigation sites on the Special Considerations Map; and

According to Coos County's maps, the PCGP would cross the following mitigation sites:

Designated Mitigation Site	Priority	Approximate MP	CBEMP Zoning District
M-8(b) [1]	Low	2.70 R	11-NA
U-12 [2]	High	10.90 R	18-RS
U-16(a) [2]	High	11.10 R	18-RS
U-22	Low	10.10	21-RS
U-24	Low	10.97	21-RS

[1] This mitigation site is associated with the Hwy 101 Causeway.
[2] PCGP will also cross CBEMP dredged Material Disposal Site 30(b), which is in the same location as mitigation site U-12 and just to the north of mitigation site U-16(a). The PCGP installation will be a temporary disturbance to this dredged material disposal site. According to the Management Objectives of 18-RS, the dredge disposal is considered a higher priority than mitigation for this area. CCZLDO Section 4.5.480 Management Objective provides, "The development of the disposal site would preclude mitigation use, and vice versa. Use of this site for dredged material disposal is the higher priority because of the scarcity of suitable sites (see Policies #20 and #22)."

b. Implementing an administrative review process that allows uses otherwise permitted by this Plan but proposed within an area designated as a "high" or "medium" priority mitigation site only upon satisfying the following criteria:

Of the 5 designated mitigation areas crossed by the PCGP, 2 are high priority (U-12 and U-16(a)). However, the designated dredge disposal site (30(b)) is the higher priority in this area (see responses to Policy #20 above).

1. The proposed use must not entail substantial structural or capital improvements (such as roads, permanent buildings or non-temporary water and sewer connections); and

The PCGP will be buried within the 30(b) dredge disposal site and will not entail substantial structural or capital improvements such as roads, permanent buildings and non-temporary water and sewer connections. As discussed above, the PCGP is not a "structure" as that term is defined in CCZLDO Section 2.1.200. The PCGP will simply cross the property beneath the surface. The only impacts on future development will be the prohibition of structural improvements within the right-of-way, which is entirely consistent with the stated purpose of Policy #20, preclusion of preemptory uses.

2. The proposed use must not require any major alteration of the site that would affect drainage or reduce the usable volume of the site (such as extensive site grading/excavation or elevation from fill); and

Following installation of the PCGP, the site will be restored as closely as possible to its pre-construction contours, reestablishing existing drainage patterns. Following construction, mitigation could still occur over the PCGP in consultation with Pacific Connector, thereby preserving the usable volume of the site for mitigation purposes.

3. The proposed use must not require site changes that would prevent the expeditious conversion of the site to estuarine habitat; or

The PCGP would not require site changes that would prevent the expeditious conversion of the site to estuarine habitat.

CBEMP 18-RS contains two "high" priority mitigation sites (U-12 and U-16). U-12 is also the site of Dredge Material Disposal Site 30b. The 18-RS Management Objective states that the higher priority is the DMD site.

The presence of the pipeline would not impact the potential for conversion of the site for estuarine habitat.

This plan policy is met.

g. Plan Policy #23 Riparian Vegetation and Streambank Protection

Plan Policy 23 states

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

This strategy shall be implemented by Oregon Department of Transportation (ODOT) and local government where erosion threatens roads. Otherwise, individual landowners in cooperation with the Oregon International Port of Coos Bay, and Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands and Oregon Department of Fish & 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 have threatened valuable farm land, roads and other structures.

The zoning districts through which the PCGP crosses requiring compliance with Policy #23 are 6-WD,[51] 7-D, 8-WD, 11-RS, 18-RS, 20-RS, 21-RS, and 36-UW (Georgia Pacific Yard).

Various opponents raised CBEMP Plan Policy 23 as a basis for denial. The Board has reviewed Plan Policy 23 and finds that this policy does not create a mandatory approval standard applicable to a quasi-judicial land use process. Rather, the policy is framed in aspirational, hortatory, and non-mandatory language. *Compare Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990) (comprehensive plan policies that "encourage" certain development objectives are not mandatory approval standards); *Bennett v. City of Dallas*, 96 Or App 645, 773 P2d 1340 (1989).

However, Plan Policy 23 states that "appropriate provisions for riparian vegetation are set forth in the CCZLDO Section 4.5.180." Although it is far from clear that the phrase "appropriate provisions for riparian vegetation" is intended to make CCZLDO §4.5.180 an approval standard, the parties all seem to treat it as such.[52]

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[51] As explained above, the PCGP and its associated facilities were approved under JCEP's prior LNG Terminal application.

[52] For example, the applicant states in its application narrative:

CCZLDO §4.5.180 is entitled "Riparian Protection Standards in the Coos Bay Estuary Management Plan." This standard requires riparian vegetation protection within 50-feet of an inventoried wetland, lake, or river with the following exception:

> *(e) Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways, provided that the vegetation to be removed is the minimum necessary to accomplish the purpose...*

Staff notes that the pipeline is a "public utility" project, and therefore is not subject to the 50-foot riparian vegetation protection. Riparian vegetation may be removed in order to site the pipeline pursuant to the exemption cited above, so long as it is the "minimum necessary to accomplish the purpose."

Staff also notes that the applicant must comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction, and will restore riparian vegetation 25 feet from the streambanks on either side of waterbodies on private lands where riparian vegetation existed prior to construction, consistent with the ECRP.

The Board has already discussed the public utility exception elsewhere in this decision. As discussed herein, the Board finds that opponents are incorrect when they argue that the public utility exception does not apply.

In addition, subsection II does not apply to this case. While Pacific Connector will restore areas disturbed during construction to their pre-construction condition, the PCGP does not include independent permanent streambank stabilization projects. Staff recommended a condition of approval requiring the applicant to contact the Planning Department to determine the appropriate review for any part of the project involving riprap. In light of the fact that the applicant is not specifically proposing any permanent riprap or stream stabilization as part of the PCGP project and that jurisdiction over such activities may lie with a state or federal agency, the Board modifies and adopts the condition as Condition of Approval A.13 to read as follows:

As indicated under subsection I, this policy is implemented through the requirements of CCZLDO Section 4.5.180, Riparian Protection Standards in the Coos Bay Estuary Management Plan. Section 4.5.180 generally requires that riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland Fish and Wildlife habitat inventory maps, shall be maintained. However, the standard provides the following exception, "[r]iparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways, provided that the vegetation to be removed is the minimum necessary to accomplish the purpose." The PCGP qualifies as a public utility, and is therefore exempt from the 50-foot riparian vegetation maintenance requirements of CCZLDO Section 4.5.180 provided the vegetation removal is the minimum necessary for the PCGP installation. However, Pacific Connector has designed the project to minimize impacts to riparian vegetation as much as possible.

"Should any part of the project involve permanent structural streambank stabilization (i.e. riprap), the applicant must contact the Planning Department for a determination of the appropriate review, if any."

This plan policy is not an applicable approval criterion.

h. Plan Policy #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.

This Plan Policy applies to CBEMP 6-WD, 7-D, 8-WD, 18-RS, 19-D, 21-RS and 36-UW, and is implemented by the Floodplain Overlay Zone provisions of CCZLDO Article 4.6. While the pipeline is not specifically addressed under the development options of Section 4.6.230, certain proposed activities are identified as "other development" requiring a floodplain review.

The applicant addresses this policy by showing compliance with the provisions of Article 4.6. The County has indicated that the Flood Insurance Rate Map (FIRM) is consistent with the Federal Emergency Management Agency's (FEMA) flood hazard map for the County. As in the applicant's narrative, the PCGP is consistent with the applicable floodplain approval criteria for all areas identified on the FEMA flood hazard map/FIRM as a designated flood area. The FEMA maps identify the 100-year floodplain, which is typically a larger area than the floodplain[53] and floodway[54] areas defined in the Floodplain Overlay standards. In order to be as conservative as possible, the applicant has designed the PCGP so that any portion of the PCGP that crosses an area identified on the FEMA 100-year floodplain map satisfies the more stringent floodway standards.

As a further means to ensure compliance with this policy, staff recommended a condition of approval requiring floodplain certification for "other development" occurring in a FEMA flood hazard area. The Board adopts the staff recommendation in Condition of Approval A.15, subject to an amendment to cross-reference the applicable section of the CCZLDO. As amended, Condition of Approval A.15 reads as follows: "Floodplain certification is required for 'other

[53] "Floodplain" is defined by the CCZLDO as "the area adjoining a stream, tidal estuary or coast that is subject to periodic inundation from flooding."

[54] "Floodway" is defined by the CCZLDO as "the normal stream channel and that adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations." Pursuant to CCZLDO Sections 4.6.205 and 4.6.270 "floodways" are identified as special flood hazard areas in a Federal Insurance Administration report entitled "Flood Insurance Study for Coos County, Oregon and Incorporated Areas" and accompanying maps.

development' as provided in CCZLDO 4.6.230 occurring in a FEMA flood hazard area. The applicant must coordinate with the County Planning Department."

CCZLDO SECTION 4.6.210. Permitted Uses.

In a district in which the /FP zone is combined, those uses permitted by the underlying district are permitted outright in the /FP FLOATING ZONE, subject to the provisions of this article.

CCZLDO SECTION 4.6.215. Conditional Uses.

In a district with which the /FP is combined, those uses subject to the provisions of Article 5.2 (Conditional Uses) may be permitted in the /FP FLOATING ZONE, subject to the provisions of this article.

As detailed above, the PCGP is permitted either outright or conditionally in each of the base zones that it crosses. As described in this section of the narrative, it also satisfies each of the applicable Floodplain Overlay standards. Therefore, it is also a permitted use in the Floodplain Overlay zone.

CCZLDO SECTION 4.6.230. Procedural Requirements for Development within Special Flood Hazard Areas.

The following procedure and application requirements shall pertain to the following types of development:

4. Other Development. "Other development" includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, road and driveway maintenance, landscaping, gardening and similar uses which are excluded from definition because it is the County's determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.

Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:

A natural gas pipeline is not included in the specified list of "other development." However, because the PCGP construction process will involve the removal and replacement of soil and recontouring activities that are similar to the listed development activities, the following demonstrates that the PCGP is consistent with the "other development" standards.

a. result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or,

b. result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.

The PCGP will be installed below existing grades and no permanent structures will be placed above existing grades within the FEMA 100-year floodplain. In addition, at the completion of the PCGP installation, all construction areas will be restored to their pre-construction grade and condition. Flood plain compliance will be verified prior to construction and the issuance of a zoning compliance letter.

CCZLDO SECTION 4.6.235. Sites within Special Flood Hazard Areas.

1. If a proposed building site is in a special flood hazard area, all new construction and substantial improvements (including placement of prefabricated buildings and mobile homes), otherwise permitted by this Ordinance, shall:

All new construction associated with the PCGP satisfies the following special flood hazard area criteria.

a. be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques);

Installation methods and mitigation measures will avoid and/or minimize flotation, collapse, or lateral movement hazards and flood damage.

b. be constructed with materials and utility equipment resistant to flood damage;

The entire PCGP will be constructed with corrosion-protected steel pipe. Where deemed necessary, the PCGP will be installed with a reinforced concrete coating to protect against abrasion and flood damage.

c. be constructed by methods and practices that minimize flood damage; and

The PCGP will be constructed by methods and practices that minimize flood damage.

d. 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.

The subsurface PCGP does not include electrical, heating, ventilation, plumbing, or air conditioning components. Therefore, this criterion is not applicable.

This plan policy is met.

i. Plan Policy #28 Recognition of LCDC Goal #3 (Agricultural Lands) Requirements for Rural Lands within the Coastal Shorelands Boundary

Unless otherwise allowed through an Exception, Coos County shall manage all rural lands designated within the Coastal Shorelands Boundary as being suitable for "Exclusive Farm Use" (EFU) designation consistent with the "Agricultural Use Requirements" of ORS 215. Allowed uses are listed in Appendix 1, of the Zoning and Land Development Ordinance.

This policy shall be implemented by using the Special Considerations Map (Policy #3) to identify EFU suitable areas, and to abide by the prescriptive use and activity requirements of ORS 215 in lieu of other management alternatives otherwise allowed for properties within the "EFU-overlay" set forth on the Special Considerations Map, and except where otherwise allowed by exceptions for needed housing and industrial sites.

The "EFU" zoned land within the Coastal Shorelands Boundary shall be designated as "Other Aggregate Sites" inventories by this Plan pursuant to ORS 215.298(2). These sites shall be inventoried as "1B" resources in accordance with OAR 660-16-000(5)(b). Coos County will re-evaluate these inventoried sites pursuant to the requirements of said rule at, or before, County's periodic review of the Comprehensive Plan (OR 92-08-013PL 10/28/92).

This policy applies to CBEMP zones 18-RS, 20-RS and 21-RS. These CBEMP zones list the pipeline as a permitted use.

This policy is implemented by using the Special Considerations Map to identify EFU suitable areas. Certain property along the PCGP alignment is designated as "Agricultural Lands". As described in detail in the EFU section of the narrative, the PCGP is allowed as a utility facility necessary for public service under the agricultural provisions of ORS 215.283(d) and ORS 215.275(6). Therefore, the PCGP is consistent with the Policy #28 requirements for mapped Agricultural Lands.

In addition to referencing ORS Chapter 215, the Policy states that allowed uses are listed in Appendix 1 of the CCZLDO. However, Appendix 1 is entitled "CCCP" and does not apply within the CBEMP boundaries and does not provide a list of uses permitted within agricultural zones. Therefore, the applicant is correct that it appears that the reference is intended to be to Appendix 4, Agricultural Land Use, which does describe uses allowed within exclusive farm use zones.

Subsection 1 of Appendix 4 states, "Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213." ORS 215.213 describes uses permitted in exclusive farm use zones. ORS 215.213(1)(c) permits the following use allowed outright in any area zoned for exclusive farm use: "utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.

A utility facility necessary for public service may be established as provided in ORS 215.275."[55] As discussed in the EFU zone section of this narrative, the PCGP is a utility facility necessary for public service pursuant to ORS 215.275. Therefore, the PCGP is also an allowed use in those areas identified as Agricultural Lands on the CBEMP Special Considerations Map.

EFU uses will be impacted during the construction phase of the project. The applicant anticipates that construction (including restoration) will be complete in approximately 3 years. Farm use within the temporary 95-foot will be able to resume post-construction. Compliance with state and county land use requirements regarding agricultural lands is addressed in the EFU section of this staff report.

This plan policy is met.

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

This plan policy is applicable to CBEMP zone 7-D. However, according to staff, there are no beach or dune areas within zoning district 7-D, and therefore the policy does not apply.

k. Plan Policy #34 Recognition of LCDC Goal #4 (Forest Lands) Requirements for Forest Lands within the Coastal Shorelands Boundary

This policy applies to CBEMP zones 11-RS, 18-RS, 20-RS, and 21-RS and addresses forest operations in areas of coastal shorelands. There are no identified forest lands in these CBEMP zones, therefore, the policy does not apply.

l. Plan Policy #49 Rural Residential Public Services

This policy applies to CBEMP zones 6-WD, 7-D, 8-WD, 11-RS, 18-RS, 19-D, 20-RS, 21-RS, and 36-UW and addresses acceptable services for rural residential development. This policy does not apply to the proposal.

m. Plan Policy #50 Rural Public Services

Coos County shall consider on-site wells and springs as the appropriate level of water service for farm and forest parcels in unincorporated areas and on-site DEQ-approved sewage disposal facilities as the appropriate sanitation method for such parcels, except as specifically provided otherwise by Public Facilities and Services Plan Policies #49, and #51. Further, Coos County shall consider the following facilities and services appropriate for all rural parcels: fire districts, school districts, road districts, telephone lines, electrical and gas lines, and similar, low-intensity facilities and services traditionally enjoyed by rural property owners. This strategy

[55] The County is not a marginal lands county, so the provisions of ORS 215.213 do not apply. The parallel provisions of Oregon law applicable to marginal lands counties (set forth in ORS 215.283) do apply. ORS 215.283(1)(c) is identical to ORS 215.213(1)(c).

recognizes that LCDC Goal #11 requires the County to limit rural facilities and services

This policy applies to CBEMP zones 6-WD, 7-D, 8-WD, 11-RS, 18-RS, 19-D, 20-RS, 21-RS and 36-UW and addresses acceptable rural serves. Staff states that "[t]his policy does not apply to the proposal."

Various opponents cited CBEMP Plan Policy 50 as a reason for denial. Plan Policy 50 states that "Coos County shall consider the following facilities and services appropriate for all rural parcels: * * * electrical and gas lines, and similar, low-intensity facilities and services traditionally enjoyed by rural property owners."

Mark Sheldon wrote comments suggesting that a gas pipeline should be considered a "high-intensity" utility facility. CCZDO 2.1.200 defines the term "utility" as follows:

> UTILITIES: Public service structures which fall into two categories:
> 1. low-intensity facilities consist of communication facilities (including power and telephone lines), sewer, water and gas lines, and
> 2. high-intensity facilities, which consist of storm water and treated waste water outfalls (including industrial waste water).
>
> Note: in shoreland units this category also includes sewage treatment plants, electrical substations and similar public service structures. However, these structures are defined as "fill for non-water-dependent/related uses" in aquatic areas. (Emphasis Added).

The code resolves the issue in a manner that is unambiguous and conclusive against Mr. Sheldon's argument. Given the recognition that gas lines are a "low-intensity" facility, Plan Policy 50 does not assist the opponents in any way.

This plan policy is met.

n. Plan Policy #51Public Services Extension.

I. Coos County shall permit the extension of existing public sewer and water systems to areas outside urban growth boundaries (UGBs) and unincorporated community boundaries (UCB's) or the establishment of new water systems outside UGB's and UCB's where such service is solely for:

This policy applies to CBEMP zones 6-WD, 7-D, 8-WD, 11-RS, 18-RS, 19-D, 20-RS, 21-RS and 36-UW and addresses extension of water and sewer outside of UGBs when necessary for certain development including industrial and exception land development. This policy does not apply to the proposal.

PCGP has received authorization from FERC to construct, install, own, operate and maintain the proposed interstate natural gas pipeline, consistent with applicable state and federal laws and permitting requirements. The county has previously reviewed and approved a series of related applications including a marine terminal and upland LNG facility prior to this matter.

The subsurface pipeline will not impact access to the Estuary. Most impacts from the pipeline will be temporary, and will occur during construction and maintenance of the pipeline. The applicant will work with state and federal agencies on an appropriate plan to mitigate such impacts.

Protection measures will be required as well as mitigation. The applicant will work with state and federal regulators to obtain all necessary permits, which is coordinated with the county through consistency requirements.

C. Miscellaneous Concerns.

1. Evidence of Past Misdeeds by Various Unrelated Pipeline Companies.

The opponents have submitted voluminous testimony discussing past environmental damage done by pipeline companies. For example, Ms. McCaffree also brought to the Hearings Officer's attention the Shell Oil Sakhalin Island LNG project in Russia. As her testimony and accompanying evidence seem to indicate, a large amount of environmental damage occurred with that project. The opponents also bought up the Mas Tec issue as well. As the Board is well aware, Mas Tec Inc. did a horrible job of complying with its permit requirements, and caused extensive environmental damage. Judge Hogan found that there was plenty of fault to go around in that case, and stated that "lack of government oversight" was a factor. Undoubtedly the County has learned valuable lessons from that experience.

The apparent goal of the opponent's testimony is to create doubt whether PCGP can conduct its construction activities as promised. As discussed above, however, this type of testimony can seldom form a basis for a denial, since it necessarily requires the decision-maker to speculate about future events. The decision-maker cannot simply assume that the applicant will fail to live up to its promises. To do so would be mere speculation. *Gann v. City of Portland,* 12 Or LUBA 1, 6 (1984).

In a land use process such as this, the primary goal is to determine if it is feasible for the applicant to meet applicable approval standards. Often, the applicant accomplishes this by demonstrating that he or she has a plan, and that the plan is reasonable and likely to succeed. The issuance of a land use permit cannot, in and of itself, guarantee full compliance with applicable laws. Rather, ensuring full compliance with applicable laws requires leadership from the applicant's management team and vigorous oversight from the various government agencies as well as watchdog groups.

2. Difficulty of Getting Homeowner's Insurance within 900 feet of Pipeline.

Mr. David Gonzales and Ms. Jody McCaffree testified that it would be difficult or impossible for a landowner to obtain homeowner's insurance within 900 feet of a pipeline. Although this could be a potentially important factor, the opponents surprisingly submitted no evidence to substantiate the claim. An assertion of this sort without supporting evidence or documentation is not very useful because it does not constitute substantial evidence. Substantial evidence does not exist to support a conclusion if the only supporting evidence "consists of an opinion whose foundation is unclear or which is inconsistent with the information on which it is based." *1000 Friends of Oregon v. LCDC*, 83 Or App 278, 286, 731 P2d 457 (1987), *aff'd in part, rev'd in part on other grounds*, 305 Or 384, 752 P2d 271 (1988).

3. Hearing is Premature Due to Unresolved Issues related to BLM, the FEIS and Requests pending Before FERC.

Many opponents stated that they believed that this process should be put on hold until other regulatory processes are fully completed. The County is required to process a permit within 150 days of when it is deemed complete. ORS 215.427. In addition, the Board is not aware of any approval standard that requires this process to be held up pending favorable results in related but separate process. As was discussed at the hearing, however, this approval is not very useful to the applicant if it cannot obtain all of the other required authorizations. It makes sense that the applicant seeks to complete the various applications concurrently, given the length of time it takes to complete each process. In any event, FERC will not issue a Notice to Proceed until all of its conditions are satisfied. Accordingly, the Board adopts a condition of approval to ensure that no construction occurs until the Notice to Proceed is issued.

4. Bentonite as a Carcinogen.

Anita Coppock testified that various construction techniques used by the applicant involve the use of bentonite, which the person identified as a carcinogen. Bentonite is a clay that originates from weathered volcanic ash. *See* FEIS. It is a widely used substance for drilling due to its unique properties. It is sometimes used in the wine industry as a clarifying agent. It is also used for various medical and health-related purposes. It may be dangerous for the user to breath bentonite dust in a pure, out-of-the-bag form, but that is not an issue once it is mixed with water and released into the environment. In short, it is simply not believable that bentonite is a carcinogen, and the Board has not been made aware of any evidence in the record to support the notion that it is dangerous to human health in anything other than as mentioned above.

Unsupported statements are mere conclusions, and do not constitute evidence. For example, in *Palmer v. Lane County*, 29 Or LUBA 436 (1995), LUBA held that on a statement in a land use application that "a total of 500,000 to 600,000 yards of rock appears to be available at this site depending upon the unexposed rock formations" does not constitute "evidence" because there was no support for the statement. *Id.* at 441. Similarly, in *DLCD v. Curry County*, 31 Or LUBA (1996) LUBA disapproved a finding stating that "[t]here can be no conflict with nearby permitted users on nearby lands." LUBA described the finding as "simply a conclusion" that fails to explain why such conflicts will not occur. Here, there is no evidence, scientific or otherwise, to back up the concern that bentonite is a carcinogen.

5. School Kids Won't Go to School Due to Construction Impacts on Traffic.

One person testified that children will not go to school because of the fact that construction will alter traffic patterns and close roads, etc. The Board is skeptical of this argument for a number of reasons. First, it does not seem to relate to any approval criterion. Secondly, this appears to be a traffic *management* issue that should be addressed by the public works department prior to and during construction. If properly managed, the Board finds that construction activities associated with the pipeline will not cause significant and widespread disruptions to the transportation infrastructure. Even if problems occurred in the past, the solution is better management, not denying development that otherwise satisfies applicable approval criteria.

6. Use of Eminent Domain for "Public Use" Requires a Public Need or a Public Benefit.

Many opponents asserted the belief that eminent domain should not be used unless there is a local "need" for the project or a "benefit" to the community. For example, Ms. McCaffree dedicates eight pages of what appears to be well-researched argument pertaining to the lack of "need" for the pipeline in her final submittal. *See e.g.,* McCaffree Letter dated June 10, 2010, at p. 39-46. However, whatever the merits to these types of arguments, "need" is simply not an approval criterion for this decision. *Compare Hale v. City of Beaverton,* 21 Or LUBA 249 (1991) (Public need is not an approval criterion) *with Ruef v. City of Stayton,* 7 Or LUBA 219 (1983) (Code standard required that a "public need" for a project be established). Although "public need" became a common code standard after the landmark *Fasano case,* it is no longer a generally applicable criterion in quasi-judicial land use proceedings. *Neuberger v. City of Portland,* 288 Or 155, 170, 603 P2d 771 (1979).

Even to the extent that "need" could be considered to be a legal requirement, Section 1.3 of the FEIS provides a detailed explanation of the overall need for the PCGP project, and that analysis is hereby incorporated by reference herein. Furthermore, the applicant has obtained a "Certificate of Public Convenience and Necessity," which establishes the particular need for the facility. In addition, since the pipeline is expected to transport natural gas in interstate commerce, any local zoning ordinance requiring the pipeline to serve a "need" by local customers, rather than the concerns of interstate commerce, is a clear violation of the Commerce Clause. The fact that Oregon law provides for eminent domain proceedings for interstate natural gas pipelines is evidence that Oregon as a state, considers interstate natural gas pipelines to be important and necessary and to serve an important need. Moreover, the precise need for taking individual properties for the public purpose of siting a natural gas pipeline must be successfully demonstrated in each case or the proposed condemnation would not be allowed.

7. State and federal permitting.

Several public comments suggested that the county should require compliance with the Endangered Species Act, the Coastal Zone Management Act[56], the Clean Water Act, and the Clean Air Act. Generally speaking, those issues are outside of Coos County's jurisdiction for purposes of this land use application.

A detailed discussion of the complex and comprehensive state and federal permitting regime for this project is included in the correspondence from Staff Environmental Scientist Randy Miller of Pacific Connector dated June 9, 2010. A list of all state and federal permits, approvals and consultations is attached as Exhibit 5 to the letter on Williams Pipeline letterhead dated May 11, 2010. Also, Section 1.5 of the FEIS details the myriad permits and approvals required for the PCGP and the associated permitting governmental authorities.

For example, it is FERC's responsibility to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. It is the responsibility of these agencies to protect threatened and endangered species (*i.e.*, northern spotted owl, marbled murrelet, coho salmon, etc.). Additionally, Pacific Connector must submit a certification application to the Oregon Department of Land Conservation and Development and receive certification that the PCGP complies with Oregon's Coastal Management Program. DLCD must in turn consult with other state and local agencies to confirm consistency. Pacific Connector must also apply for and obtain permits under the Clean Water Act (Sections 404, 401, and 402) from the U.S. Army Corps of Engineers and the Oregon Department of Environmental Quality. These permits will regulate activities within and near all waterbodies and wetlands potentially impacted by the PCGP. These permits will include the appropriate TMDL restrictions.

Section 1.5 of the FEIS also details the public process and agency coordination that has occurred to-date in the development of the FEIS. Unless Pacific Connector receives all of the applicable federal permits and approvals FERC will not issue a "Notice to Proceed." Pacific Connector has stated that it would accept a condition that requires the applicant to provide proof of the Notice to Proceed prior to beginning construction, and the Hearings Officer recommended that such a condition be imposed. The Board hereby imposes the recommended condition as Condition of Approval A.14.

8. Federal Forestry Standards

Cascadia Wildlands and other opponents argue that the pipeline will violate requirements of the Northwest Forest Plan on BLM lands, and that the FEIS improperly bases its conclusions

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[56] Ms. McCaffree argues that the federal Coastal Zone Management Act of 1972 needs to be "considered and evaluated in with this Permit Application." *See* McCaffree Letter dated June 10, 2010, at p. 2. However, Ms. McCaffree never makes any effort to explain how she believes the Act applies to this application, or how the application violates the Act. She does not even cite any particular section of the Act which she believes applies. Under these circumstances, her arguments are not developed well enough to provide a decision-maker with fair notice as to what issues she intended to raise. Any issue related to the Coastal Zone Management Act of 1972 is waived.

regarding environmental impacts on a BLM management plan called the Western Oregon Plan Revision (WOPR), which was been withdrawn by the Department of the Interior in 2009.

Cascadia Wildlands and other opponents correctly point out that the FEIS incorporates the WOPR, and further that the WOPR was withdrawn after issuance of the FEIS and is no longer being used by the Bureau of Land Management (BLM). It is also true that the PCGP alignment crosses federal lands managed by BLM within Coos County.[57] However, the opponents fail to explain how the provisions of the Northwest Forest Plan or the WOPR withdrawal relate to the land use approval criteria applicable to the application currently pending before the county. In fact, these issues are completely irrelevant to the county's applicable criteria under the CCZLDO. The substantive portions of the FEIS affected by the WOPR withdrawal are limited to Sections 4.6.1.2 (Threatened and Endangered Species/Birds) and 4.7.4.2 (Federal Land Use Plans and Land Allocations). Pacific Connector has not referenced either of these sections of the FEIS in support of the current land use application. Furthermore, the FEIS correctly evaluated the project within the regulatory framework that was in force at the time the FEIS was issued. Therefore, the WOPR withdrawal has no impact on this land use application, nor does it invalidate the evidence Pacific Connector has relied upon to demonstrate compliance with the applicable approval criteria.

9. TEWAs, UCSAs and Hydrostatic Testing

Cascadia Wildlands submitted comments arguing that the applicant has failed to sufficiently identify the size and location of Temporary Extra Work Areas (TEWAs) and Uncleared Storage Areas (UCSAs), which are areas that will be used temporarily for construction of the pipeline. Cascadia Wildlands also asserts that the applicant has failed to fully describe and analyze the hydrostatic testing procedures for the pipeline.

Cascadia Wildlands has not attempted to tie these arguments to any applicable County approval criteria, and has alleged no basis on which their arguments (if true) would necessitate denial by the Board. Nonetheless, detailed information regarding these issues was provided in correspondence from the applicant dated June 17, 2010, at pages 10-14.

D. Additional Issues Discussed During Board Deliberations

1. Condition of Approval A.1

The Hearings Officer recommended that the Board adopt the following condition as Condition of Approval A.1:

> "All promises and recommendations made by the applicant and its consultants during the course of this proceeding for the purpose of demonstrating compliance with approval standards and performance measures shall be binding on the applicant and shall

[57] However, as noted in Pacific Connector's original application narrative, local governments in Oregon do not have direct land use permitting authority over projects located on lands owned and controlled by the federal government. Furthermore, federal lands are excluded from the CZMA boundary definition under both state and federal law.

> constitute a condition of approval for this permit, whether or not that promise or recommendation is specifically set forth herein as numbered condition of approval below. [*See Central Oregon Landwatch v. Deschutes County (Taylor)*, 53 Or LUBA 290 (2007)]"

This condition would essentially make binding all promises and recommendations made by the applicant and its consultants during the application process. County Planning and Legal staff advised that as written, this condition would be troublesome for the County to enforce and administer. They recommended that the Board strike this condition as being too broad. The Board agrees with staff and finds that imposing the remaining conditions of approval hereinbelow incorporate the written representations and promises made by the applicant and ensure that the applicant will implement the project consistent with applicable approval criteria and related performance measures. The Board deletes Condition A.1 and identifies it as "Intentionally deleted" in the conditions below.

2. Condition of Approval A.7

The Hearings Officer recommended that the Board adopt the following condition as Condition of Approval A.1:

> The applicant's plans to protect the 7-NA district from adverse impacts due to the temporary construction phase of the pipeline shall be provided to the Planning Department.

Staff recommended that this condition be deleted. The Board concurs. The applicant addressed this issue in its final argument letter at page 28 by demonstrating that there would be no direct impact to lands located in the CBEMP 7-NA zoning district and that indirect impacts would be avoided through implementation of the mandatory ECRP. Based upon this substantial evidence, the Board deletes this condition and notes it as "Intentionally deleted" in the conditions below.

3. Construction Impacts to County Roads

At the Board deliberations in this matter, Commissioner Stufflebean expressed concern that, although Condition of Approval A.12 requires the applicant to identify construction impacts to County roads, the condition does not ensure that the applicant will address any such impacts in a timely manner. The Board finds that this is an issue of public concern. To ensure that the applicant addresses any impacts to County roads in a timely manner, the Board finds that it is appropriate to require that the applicant file an irrevocable letter of credit or similar instrument with the County. The Board further finds that the letter of credit or similar instrument should remain in place for a five-year period in order to address any impacts identified through that time period. Consistent with CCZLDO 6.5.400 regarding public improvements for new developments, the letter of credit should be in the amount of 120% of the estimated cost of the improvements. Accordingly, the Board modifies Condition of Approval A.12 to add the following two sentences:

"Prior to issuance of a zoning compliance letter for the project, the applicant shall file a bond, surety, irrevocable letter of credit, cash or other security deposit agreement in the amount of 120% of the estimated cost of necessary improvements to bring County road facilities impacted by pipeline construction back to current or better condition. After five (5) years, the security shall either be forfeited to the County if the applicant does not complete required improvements or be refunded to the applicant if applicant has completed required improvements or there are no improvements to complete."

The Board finds that this modified condition addresses this issue.

III. CONCLUSION

For the above stated reasons, and after consideration of the applicable law and all argument and evidence in the record, the Board finds that the applicant has met its burden of proof to demonstrate that the applications satisfy all applicable approval standards and criteria, or that those standards or criteria can be satisfied through the imposition of conditions of approval. Accordingly, the Board hereby approves the application, subject to the following conditions of approval, which are authorized by Section 5.2.800 of the CCZLDO:

A. Staff Proposed Conditions Of Approval

1. Intentionally deleted.

2. To minimize impacts to wells and groundwater, the applicant must comply with the Groundwater Supply Monitoring and Mitigation Plan approved by the federal Office of Energy Projects within FERC, including without limitation, provisions requiring: (a) subject to landowner consent, testing and sampling groundwater supply wells for both yield and water quality; and (b) as needed, implementing site-specific measures to mitigate adverse impacts on the yield or quality of groundwater supply.

3. The facility will be designed, constructed, operated and maintained in accordance with U. S. Department of Transportation requirements.

4. The pipeline will be rerouted, where feasible, in order to avoid impacts to the property identified on Drawing No. 3430.33-X-9007. (MP 13.8 to MP 14.4). If requested, the applicant shall work with affected property owners within the pipeline's alignment to make "minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands" pursuant to FERC Order Condition #6 in order to avoid or minimize impacts to structures or the owner's use of the property."

5. The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages

for destruction of forest growth, premature cutting of timber, diminution in value to remaining timber caused by increased harvesting costs, and loss of product value due to blow-downs. Whatever incremental costs and value losses to timber lands can be identified and demonstrated to result from the granting of the pipeline easement will be reflected in the company's appraisal of damages payable to the owner. Therefore, the landowner should not experience any uncompensated logging or access costs. [*See ORS 772.210(4) and Report entitled Forest Practices and Economic Issues related to Proposed Pacific Connector Gas Pipeline, by Dallas C. Hemphill, ACF, CF, PE., dated June 17, 2010, at p. 5.*]

6. Pacific Connector shall not begin construction and/or use its proposed facilities, including related ancillary areas for staging, storage, temporary work areas, and new or to-be-improved access roads until:

   Pacific Connector files with the Secretary remaining cultural resource survey reports and requested revisions, necessary site evaluation reports, and required avoidance/treatment plans;

   Pacific Connector file with the Secretary comments on the reports and plans from [SHPO], appropriate land management agencies, and interested Indian tribes; The [ACHP] has been afforded an opportunity to comment, and a Memorandum of Agreement has been executed; and

   The Commission staff reviews and the Director of OEP approves the cultural resource reports and plans, and notifies Jordan Cove and Pacific Connector in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed."

1. Pre-Construction

7. Intentionally deleted.

8. To protect residences and structures, evidence of compliance with FERC's Certificate Order, Condition #43 must be provided prior to issuance of zoning clearance.

9. Coos River Highway is part of the State Highway system, under the authority and control of the Oregon Transportation Commission. Evidence that the applicant has the appropriate state authorization to cross Coos River Highway shall be provided to the Planning Department prior to zoning clearance authorizing construction activity.

10. Temporary closure of any county facility shall be coordinated with the County Roadmaster. Evidence of Roadmaster approval and coordination of any detour(s) shall be provided to the County Planning Department.

11. Each county facility crossing will require a utility permit from the County Road Department. Construction plan showing pullouts and permits for work within the right-of-way for monitoring sites will also require Roadmaster approval.

12. An analysis of construction impacts shall be provided to the County Roadmaster, which will include a pavement analysis. The analysis must identify the current condition of County facilities and include a determination of the project's impact to the system and the steps that will be necessary to bring back to current or better condition. Prior to issuance of a zoning compliance letter for the project, the applicant shall file a bond, surety, irrevocable letter of credit, cash or other security deposit agreement in the amount of 120% of the estimated cost of necessary improvements to bring County road facilities impacted by pipeline construction back to current or better condition. After five (5) years, the security shall either be forfeited to the County if the applicant does not complete required improvements or be refunded to the applicant if applicant has completed required improvements or there are no improvements to complete.

13. Should any part of the project involve permanent structural streambank stabilization (*i.e.* riprap), the applicant must contact the Planning Department for a determination of the appropriate review, if any.

14. All necessary federal, state and local permits must be obtained prior to commencement of construction, including any required NPDES 1200-c permits. Prior to the commencement of construction activities, Pacific Connector shall provide the County with a copy of the "Notice to Proceed" issued by FERC. [*See Letter from Mark Whitlow, dated June 24, 2010, at p. 52.*]

15. Floodplain certification is required for "other development" as provided in CCZLDO 4.6.230 occurring in a FEMA flood hazard area. The applicant must coordinate with the County Planning Department.

16. Intentionally deleted.

17. The pipeline operator shall maintain an emergency response plan in compliance with 49 CFR 192.615.

2. Construction

18. Riparian vegetation removal shall be the minimum necessary for construction and maintenance of the pipeline, and shall comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction. The applicant shall restore riparian vegetation 25 feet from the streambanks on either side of waterbodies on private lands where riparian vegetation existed prior to construction, consistent with the applicant's ECRP.

19. Prior to construction, the applicant shall be required to undertake the sampling and analysis set forth in the Sediment Analysis Protocol (SAP) in order to ensure that there will be no adverse water quality impacts from digging the trench for the pipeline across Haynes Inlet.

3. Post-Construction

20. Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas that were forested prior to construction have been replanted, consistent with the requirements of this approval, the FERC Order, and the applicant's ECRP.

21. Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas have been replanted, re-vegetated and restored to their pre-construction agricultural use, consistent with the requirements of this approval, the FERC Order, and the applicant's ECRP.

22. In order to minimize cost to forestry operations, the applicant agrees to accept requests from persons conducting commercial logging operations seeking permission to cross the pipeline at locations not pre-determined to be "hard crossing" locations. Permission shall be granted for a reasonable number of requests unless the proposed crossing locations cannot be accommodated due to technical or engineering feasibility-related reasons. Where feasible, the pipeline operator will design for off-highway loading at crossings, in order to permit the haulage of heavy equipment. If technically feasible, persons conducting commercial logging operations shall, upon written request, be allowed to access small isolated stands of timber by swinging logs over the pipeline with a shovel parked stationary over the pipeline, subject to the requirement that, if determined by the applicant to be necessary, the use of a mat or pad is used to protect the pipe. The pipeline operator will determine the need for additional fill or a structure at each proposed hard, and shall either install the crossing at its expense or reimburse the timber operator / landowner for the actual reasonable cost of installing the crossing. [*See Report entitled Forest Practices and Economic Issues related to Proposed Pacific Connector Gas Pipeline, by Dallas C. Hemphill, ACF, CF, PE., dated June 17, 2010, at p. 1.*]

23. The pipeline operator will conduct routine vegetation maintenance clearing on the 30-foot strip every 3-5 years. [*See Report entitled Forest Practices and Economic Issues related to Proposed Pacific Connector Gas Pipeline, by Dallas C. Hemphill, ACF, CF, PE., dated June 17, 2010, at p. 5.]*

24. In order to discourage ATV / OHV use of the pipeline corridor, the applicant shall work with landowners on a case-by-case basis to reduce ATV / OHV impacts via the use of dirt and rock berms, log barriers, fences, signs, and locked gates, and similar means. Such barriers placed in key locations (i.e. in locations where access to the pipeline would otherwise be convenient for the public) would be an effective means to deter ATV / OHV use.

B. Applicant's Proposed Conditions Of Approval

1. Environmental

1. Intentionally deleted.

2. Intentionally deleted.

3. Intentionally deleted.

4. The applicant shall submit a final version of the Noxious Weed Plan to the county prior to construction in order to address concerns raised regarding invasive species in farm and forest lands.

5. The applicant shall employ weed control and monitoring methods consistent with the Weed Control and Monitoring sections of the ECRP. The applicant shall not use aerial herbicide applications.

6. Fill and removal activities in Coos Bay shall be conducted between October 1 and February 15, unless otherwise modified or agreed to by the Oregon Department of Fish and Wildlife.

7. The authorized work in Haynes Inlet shall be conducted in compliance with the required U.S. Army Corps of Engineers Section 404 Permit and OR DEQ's 401 Water Quality Certification and 402 NPDES permits, which will mandate turbidity standards, monitoring requirements, and reporting procedures.

8. Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint or other deleterious waste materials shall not be allowed to enter waters of the state. No wood treated with leachable preservatives shall be placed in the waterway. Machinery refueling is to occur off-site or in a confined designated area to prevent spillage into waters of the state. Project-related spills into water of the state or onto land with a potential to enter waters of the state shall be reported to the Oregon Emergency Response System at 800-452-0311.

9. For dredging activity conducted by clamshell bucket, activity shall be positioned from a floating crane or top-of-bank position. In the closed position, the bucket shall be sealed so as to minimize sediment re-suspension.

10. If any archaeological resources and/or artifacts are uncovered during excavation, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted (phone: 503-986-0674).

11. When listed species are present, the permit holder must comply with the federal Endangered Species Act. If previously unknown listed species are encountered during the project, the permit holder shall contact the appropriate agency as soon as possible.

12. The permittee shall immediately report any fish that are observed to be entrained by operations in Coos Bay to the OR Department of Fish and Wildlife (ODFW) at (541) 888-5515.

13. Pacific Connector will comply with all federal and state requirements during the fire season that mandate the amount of water required on the right-of-way for adequate fire suppression during timber removal and construction activities.

2. Safety

14. The pipeline operator shall maintain an emergency response plan in compliance with 49 CFR 192.615.

15. The pipeline operator shall conduct public education in compliance with 49 CFR 192.616 to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the gas pipeline operator. Such public education shall include a "call before you dig" component.

16. The pipeline operator shall comply with any and all other applicable regulations pertaining to natural gas pipeline safety, regardless of whether such regulations are specifically listed in these conditions.

17. The pipeline operator shall provide annual training opportunities to emergency response personnel, including fire personnel, associated with local fire departments and districts that may be involved in an emergency response to an incident on the Pacific Connector pipeline. The pipeline operator shall ensure that any public roads, bridges, private roads and driveways constructed in conjunction with the project provide adequate access for fire fighting equipment to access the pipeline and its ancillary facilities.

18. The pipeline operator shall respond to inquiries from the public regarding the location of the pipeline (i.e., so called "locate requests").

19. At least six (6) months' prior to delivery of any gas to the Jordan Cove Energy Project LNG import terminal, the applicant shall: (1) submit a project-specific Public Safety Response Manual to the County, and (2) in order to comply with federal safety regulations, coordinate with local emergency response groups. As detailed in Section 4.12.10 of the FEIS, Pacific Connector will meet with local responders, including fire departments, to review plans and communicate specifics about the pipeline. If requested, Pacific Connector will also participate in any emergency simulation exercises and provide feed-back to the emergency responders.

3. Landowner

20. (a) This approval shall not become effective as to any affected property until the Applicant has acquired ownership of an easement or other interest in the property necessary for construction of the pipeline, and obtains either: (i) the signature of all owners of the property consenting to the application, or (ii) an order of a court in condemnation of the property interest required for the pipeline that operates to obviate the need for consent of owners of property other than the applicant. In the alternative, should this condition 20(a) be deemed insufficient on appeal to satisfy applicable code requirements, the applicant shall instead be subject to the alternative condition 20(b) immediately below.

20. (b) In the alternative to the above condition 20(a), in the event that condition 20(a) is deemed invalid on appeal, this approval shall not become effective as to any affected property until the applicant has acquired an ownership interest in the property and the signatures of all owners of the property consenting to the land use application for development of the pipeline, unless the signature requirement of CCZLDO 5.0.150 is preempted or otherwise invalid under another provision of law including without limitation federal statutes, regulations, or the United States Constitution.

21. The permanent pipeline right-of-way shall be no wider than 50 feet.

22. Intentionally deleted.

23. The applicant shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the utility facility.

4. Historical, Cultural and Archaeological

24. At least 90 days prior to issuance of a zoning compliance letter under CCZLDO Section 3.1.200, the County Planning Department shall make initial contact with the affected Tribe(s) regarding the determination of whether any archaeological sites exist within the area proposed for development, consistent with the provisions of CCZLDO Section 3.2.700. Once the Tribe(s) have commented or failed to timely comment under the provisions of CCZLDO Section 3.2.700, the County shall take one of the following actions: (1) if no adverse impacts to cultural, historical or archaeological resources have been identified, the County may approve and issue the requested zoning compliance letter and related development proposal; (2) if the Tribe(s) and the applicant reach agreement regarding the measures needed to protect the identified resources, the development can be approved with any additional measures the County believes are necessary to protect those resources; or (3) if the County finds that there will be adverse impacts to identified CBEMP Policy #18 resources on the site and the applicant and the Tribe(s) have not reached agreement regarding protection of such resources, then the County Board of Commissioners shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by 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. For purposes of this condition, the public hearing shall be subject to the provisions of Section 5.8.200 of the CCZLDO with the Board of Commissioners serving as the Hearings Body.

5. Miscellaneous

25. The conditional use permits approved by this decision shall not be used for the export of liquefied natural gas.

Approved this 8th day of September, 2010.

Appendix A. Discussion of Federal Preemption Issues.

The proposed pipeline is authorized pursuant to Section 7 of the Natural Gas Act. ("The Natural Gas Act" or "NGA"), 15 U.S.C. §§ 717 *et seq.* Section 7 of the NGA authorizes the FERC to issue "certificate[s] of public convenience and necessity" for the construction and operation of natural gas facilities for the transportation of gas in "interstate commerce." The standard for evaluating an application for a certificate of public convenience and necessity is stringent: the FERC must find that the proposed project is "necessary or desirable in the public interest." To find that an action is necessary or desirable, the FERC must determine that the applicant is willing and able to satisfy a panoply of requirements enumerated in section 7, and that the action "is or will be required by the present or future public convenience and necessity." This higher standard is consistent with the extraordinary power of eminent domain that accompanies a certificate of public convenience and necessity.

The Supreme Court has held that the Natural Gas Act "confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale." *Schneidewind v. ANR Pipeline Co.,* 485 U.S. 293, 108 S.Ct. 1145, 1151, 99 L.Ed.2d 316 (1988). This creates an issue of whether state or local laws that conflict with FERC approvals are preempted by federal law.

Zoning laws are an exercise of the state's police power. Generally speaking, a state's exercise of its police power is subject to the rule that such power cannot place "a substantial burden on interstate commerce. *Southern Pacific Co. v. State of Arizona*, 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1915 (1945)." Courts have generally found attempts by state and local governments to stop federally authorized gas pipelines on zoning grounds to constitute a substantial and impermissible burden on interstate commerce *New York State Natural Gas Corp. v. Town of Elma*, 182 F.Supp. 1, 6 (W.D.N.Y.1960) (Operation of town zoning ordinance and building code so as to prevent natural gas company operating, in interstate commerce, a federally authorized pipeline, from construction of measuring and regulating station in connection with line at location which was reasonably necessary to accomplish purposes required was unconstitutional as an undue burden on interstate commerce); *Transcontinental Gas Pipe Line Corp. v. Milltown*, 93 F. Supp. 287, 295 (E.D. N.J. 1950). (Zoning authority was unreasonable, arbitrary and without foundation when it prevented interstate pipeline from going through the town.). *Kern River Gas Transmission Co. v. Clark County*, 757 F.Supp. 1110 (D.Nev.,1990); *FERC v. Public Service Commission,* 513 F.Supp. 653 (D.N.D.1981) (state regulation of pipeline route preempted). Some courts have even held that, in light of the federal grant of certificates of convenience and necessity and of the Congressional authorization for use of the eminent domain power to the party pipeline companies, state regulation could not thwart construction of necessary gas pipeline facilities. *See Transcontinental Gas PipeLine Corp. v. Hackensack Meadowlands Development Comm.,* 464 F.2d 1358 (3rd Cir.1972), *cert. denied* 409 U.S. 1118, 93 S.Ct. 909, 34 L.Ed.2d 701 (1973); *National Fuel Gas Supply Corp. v. Public Service Comm'n of State of N.Y.*, 109 P.U.R.4th 383, 894 F.2d 571 (C.A.2 N.Y.,1990).

Unlike the pipeline facility, which is authorized under Section 7 of the NGA, the proposed Jordan Cove LNG terminal itself is authorized pursuant to Section 3 of the Act. *See e.g., AES Sparrows Point LNG, LLC v. Smith*, 470 F.Supp.2d 586 (D.Md.,2007); *AES Sparrow*

Point LNG, LLC v. Smith, 527 F.3d 120 (DC Md. 2008); (LNG Terminals); Subject to the exceptions discussed below, FERC has exclusive authority under Section 3 of the Natural Gas Act to authorize the siting of LNG terminals.[58] That authorization is conditioned on the applicant's satisfaction of other statutory requirements for various aspects of the project. For example, FERC requires a party seeking to construct an LNG terminal to first obtain authorization from FERC. 15 U.S.C. § 717b(a). In order to do so, applicants must comply with the NGA's requirements as well as complete FERC's extensive pre-filing process. *See* 18 C.F.R. § 157.21. FERC must then consult with the appropriate state agency on numerous state and local issues. *See* 15 U.S.C. § 717b-1(b). *See also generally* Jacob Dweck, David Wochner, & Michael Brooks, *Liquefied Natural Gas (LNG) Litigation after the Energy Policy Act of 2005: State Powers in LNG Terminal Siting,* 27 ENERGY L.J. 473 (2006) (describing the history of conflict between federal and state authorities over the siting of LNG terminals).

However, as mentioned above, FERC's authority over LNG terminals is not absolute. The NGA contains a "savings clause" that provides that "nothing in the [NGA] affects the rights of States under" the Coastal Zone Management Act ("CZMA") and [the Clean Water Act and the Clean Air Act].[59] 15 U.S.C. § 717b(d). Although the exception created by the Savings Clause seems to only apply to Certificates issued pursuant to Section 7 of the Act, it does reflect provisions of the CZMA that apply to Certificates issued under Section 7 of the NGA as well.

Thus, the federal preemption issue in this case is complicated by the fact that much of the County is subject to the CZMA and the Oregon Coastal Management Program (OCMP). The CZMA act states: "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs." 16 U.S.C. § 1456(c)(1). *See also* 15 CFR § 930.34 *et seq. Weaver's Cove Energy, LLC v. Rhode Island Coastal Resources Management Council*, 589 F.3d 458 (D.C. R.I. 2009).

The U.S. Congress passed the federal CZMA in 1972 to address competing uses and resource impacts occurring in the nation's coastal areas. The Act included several incentives to encourage coastal states to develop coastal management programs. One incentive was a legal authority called "federal consistency" that was granted to coastal states with federally approved coastal management programs. As relevant here, the federal consistency provisions of the CZMA require that any federal action occurring in or outside of Oregon's coastal zone which affects coastal land or water uses or natural resources must be consistent with the Oregon Coastal Management Program. 16 U.S.C. § 1456(c)(3)(A). The federal consistency requirement is a

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[58] "[FERC] shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." 15 U.S.C. § 717b(e)(1). The pipeline, however, is apparently not part of a terminal.

[59] Under Section 401 of the Clean Water Act, a certification of compliance with the state's water quality standards is required from DEQ for any activity that may result in a discharge into navigable waters. If the 401 certification is denied, the LNG facility cannot be constructed. Similar permits are required from the U.S. Army Corps of Engineers and DEQ for discharge of dredged and fill material. Section 502 of the Clean Air Act, a permit is required for any person to operate a source of air pollution, as detailed in the Act.

rather unique concept in that state programs for coastal management cannot *generally* be preempted by federal law.

Nonetheless, the exact degree of regulatory power the CZMA exclusion gives the state is somewhat unclear. As mentioned above, under Section 307(c) of the Coastal Zone Management Act, an applicant must certify that the proposed activity in a designated coastal zone complies with the enforceable policies of the affected state's coastal zone management program. This applies to all Federal permits and authorizations, including FERC and the U.S. Army Corps of Engineers. If the state does not concur[60] with the certification, FERC approval to construct may not generally be granted. Having said that, the State's CZMA role is very limited. The Commission's only responsibility under the CZMA is to withhold construction authorization for a project until the state finds that the project is consistent with the state's NOAA-approved coastal zone management plan. In addition, there is also an appeals process established with the CZMA. On appeal, the Secretary of Commerce may determine that there are overriding national security interests that justify approval of the project over the state's objection.[61]

It is unlikely that the applicant in this case would ever have to resort to an appeal to the Secretary, however, since the OCMP does not appear to prohibit the proposed use in any event. Oregon's Coastal Management Program recognizes that water-dependant activities (such as LNG terminals) require priority consideration, and has set up management zones in areas that are suitable for such water-dependant uses. The proposed Jordan Cove LNG terminal is located in an area which the Comprehensive Plan deems suitable for such use. A pipeline itself is generally not a water-dependant use. However, in this case there is no feasible alternative that avoids a significant water crossing in the Coastal Zone.

Another key factor to consider is that Oregon's Coastal Management Program does not have an "alternatives analysis" requirement for evaluating the route of an interstate natural gas pipeline, unless an exception to a Goal is required. The OCMP is implemented via the Statewide Planning Goals (specifically Goals 16-19), which, in turn, have been adopted into the County's Comprehensive Plan. In this regard, the OCMP states:

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[60] DLCD is the state of Oregon's designated coastal management agency and is responsible for reviewing projects for consistency with the OCMP and issuing coastal management decisions. DLCD's reviews involve consultation with local governments, state agencies, federal agencies, and other interested parties in determining project consistency with the OCMP. DLCD's federal consistency decisions are called "coastal concurrences" [approvals] and "coastal objections" [denials]. Objections can be based on an inconsistency with coastal program policies or a lack of sufficient information to determine consistency. In the event of a formal DLCD objection, federal permits, licenses and financial assistance grants cannot be issued, and direct federal activities cannot proceed unless compliance with the OCMP is specifically prohibited by other federal law.

[61] Under Section 307(c)(3)(A), the CZMA provides that the Secretary must override a state's objection to a proposed project that requires a federal license or permit if the project is "necessary in the interest of national security." 16 U.S.C. § 1456(c)(3)(A). A project is not "necessary in the interest of national security" unless a "national security interest would be significantly impaired were the activity not permitted to go forward as proposed." 15 C.F.R. § 930.122.

> Coastal comprehensive plans have been especially considerate of the national needs for new facilities for energy development, fisheries, development, recreation, ports, and transportation. Major deep and shallow draft ports have identified shoreland areas for new port facilities to support energy resource transshipment, development of new fish processing facilities and areas for expanded marinas.

Even in the event that a pipeline would violate a comprehensive plan standard, the applicant could pursue an exception to a Statewide Planning Goal. As mentioned above, that process would trigger an alternatives analysis.

In addition to other considerations, Congress has also expressly pre-empted a state or local government's ability to regulate issues related to the safety of pipelines. The Natural Gas Pipeline Safety Act of 1968 originally directed the Secretary of Transportation to establish minimum federal safety standards for the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities used for the transportation of gas. The Act's text,[62] its legislative history,[63] administration implementation,[64]

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[62] For example, 49 U.S.C. Chapter 601 sets out federal safety standards for gas pipelines. 49 U.S.C. § 60104(c) states: "Preemption: A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

Prior to 1994, there were two Acts controlling the area of interstate pipeline safety - the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA). The NGPSA and the HLPSA were combined and recodified without substantial change at 49 U.S.C. §§ 60101 to 60125 in 1994. *See* P.L. 103-272, 108 Stat. 1371 (July 5, 1994). The two similar provisions from each Act pertaining to preemption were consolidated into what is now 49 U.S.C. § 60104(c). Compare 49 U.S.C. § 60104(c) with 49 U.S.C. § 1672(a)(1) (NGPSA) and 49 U.S.C. § 2002(d) (HLPSA). Title 49 U.S.C. 1672(b) (1972) originally provided for the establishment of minimum federal safety standards for the transportation of gas. The section concluded:

> 'Any State agency . . . may not adopt or continue in force after the minimum Federal safety standards referred to in this subsection become effective any such standard applicable to interstate transmission facilities.'

[63] 'The relationship of Federal-State regulatory authority created by this bill differs as between local pipelines and interstate transmission lines. In the latter area, the lines of a single transmission company may traverse a number of States and uniformity of regulation is a desirable objective. For this reason, section 3 provides for a Federal preemption in the case of interstate transmission lines.' H.R.Rep.No.1390, 90th Cong., 2d Sess. (1968); 3 U.S.Code Cong. & Admin.News, 90th Cong., 2d Sess. pp. 3223, 3241 (1968).

[64] In 1973, the Secretary of Transportation reported to Congress that the Department of Transportation through its Office of Pipeline Safety exercised exclusive authority for safety regulation of interstate gas transmission lines. *See* Federal-State Relations in Gas Pipeline Safety 3, 7, 10 (1973).

and judicial interpretation,[65] attest to federal preemption of the field of safety with respect to the establishment and enforcement of standards regulating the interstate transmission of gas by pipeline. *ANR Pipeline Co. v. Iowa State Commerce Commission,* 828 F.2d 465, 470 (8th Cir.1987) (Iowa may not impose its own safety standards on facilities). The constitutional basis of preemption is the commerce clause,[66] and the supremacy clause.[67]

In addition, FERC has ruled that state agencies could not use state law to "prohibit or unreasonably delay the construction or operation of [LNG] facilities approved by this Commission." *Weaver's Cove Energy, LLC,* 112 F.E.R.C. ¶61070, at ¶ 61,546, *on rehearing*, 114 F.E.R.C. ¶61058, at 61185-6.

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[65] 'The 'Natural Gas Pipeline Safety Act of 1968' . . . has entered the field of 'design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities.' . . . As applied to interstate transmission pipelines, the Safety Act must prevail over and pre-empt any state (law).' *United Gas Pipeline Co. v. Terrebonne Parish Police Jury*, 319 F.Supp. 1138, 1139 (E.D.La. (1970), *aff'd* 445 F.2d 301 (5th Cir. 1971). *See also generally Northern Border Pipeline Co. v. Jackson County,* 512 F.Supp. 1261 (D.Minn.198 l) (Natural Gas Pipeline Safety Act of 1968 barred a condition on a construction permit requiring that the gas line be buried a minimum of six feet); *Williams Pipe Line Co. v. City of Mounds View*, 651 F Supp 551 (1987).

[66] U.S.Const., art. I, 8.

[67] U.S.Const., art VI.

Map TRS #	Account # (s)	Landowner	Zoning
25S 13W 0 200	3102.00	WEYERHAEUSER NR COMPANY	6-WD
25S 13W 4 101	3097.03	WEYERHAEUSER NR COMPANY	6-WD
25S 13W 4 300	3101.00/3101.90	ROSEBURG FOREST PRODUCTS CO.	6-WD
25S 13W 4 400	3098.01	WEYERHAEUSER NR COMPANY	6-WD
25S 13W 4 100	3097.02/3097.00	WEYERHAEUSER NR COMPANY	6-WD, IND, 7-D
25S 13W 3 200	3096 / 3096.90	WEYERHAEUSER NR COMPANY	7-D, 8-WD, 8-CA
25S 13W 4 500	3098.00	OREGON INT'L PORT OF CB	8-CA, 13A-NA, 11-NA, 11-RS
24S 13W 36B 700	1899.9 / 1899.00	THOMPSON, DONALD J. & CAROL L.	11-RS, RR-2, F
24S 13W 36B 1101	1899.9 / 1899.00	BLOMQUIST, HAL D. & DONNA J.	RR-2, F
24S 13W 36B 1100	1897.00	WEYERHAEUSER COMPANY	F
24S 13W 36B 100	1897.01/1897.91	BLOMQUIST, HAL D. & DONNA J.	F
24S 13W 36 100	1896.00	WEYERHAEUSER COMPANY	F
24S 13W 36 200	1903.00	WEYERHAEUSER COMPANY	F
25S 13W 1 100	3034.00	WEYERHAEUSER COMPANY	F
25S 13W 1D 200	3034.91/3034.01	POWERS, JOHN W.; & POWERS, SHAWNEE	F
25S 13W 1D 100	3046.9 / 3046.00	GARY E. SMITH TRUST	EFU, F
25S 12W 6C 100	2587.00/2587.90	GERTRUDE E. WICKETT TRUST; ETAL CULP, JOANNE E., TRUSTEE TRUST A-CREDIT SHELTER TRUST	EFU, F
25S 12W 6C 601	2587.11	LONE ROCK TIMBERLAND CO.	F
25S 12W 7 500	2605.00	LONE ROCK TIMBERLAND CO.	F
25S 12W 7 400	2587.09	LONE ROCK TIMBERLAND CO.	F
25S 12W 7 1300	2604.00	LONE ROCK TIMBERLAND CO.	F
25S 12W 7 1301	2604.01/ 2604.91	LONE ROCK TIMBERLAND CO.	F
25S 12W 7 1301	13110.02	SPRINT NEXTEL CORP	
25S 12W 7 1301	13982.01	US CELLULAR NW OPERATIONS (154	
25S 12W 7 1301 A02	2604.02	U.S.A. FEDERAL AVIATION ADM	
25S 12W 7 2400	2609.01	SWEET, STEVEN H.	F
25S 12W 18 300	2748.01	SWEET, STEVEN H.	F
25S 12W 18 200	2746.93/2746.03	SWEET, STEVEN H.	F, EFU
25S 12W 17 300	2734.04	SWEET, STEVEN H.	EFU
25S 12W 17 400	2734.02/2734.92	RUTHERFORD, MONTE R.	EFU
25S 12W 17 600	2734 / 2734.90	SHAW, JACKIE L., L/E SHAW, JACKIE; & SHAW, BELINDA	EFU
25S 12W 17 700	2734.01 /2734.91	EDWARDS, WILLIAM R.	EFU
25S 12W 17 900	2736.00	LONE ROCK TIMBERLAND CO.	F, EFU
25S 12W 17 1000	2737.00	WEYERHAEUSER COMPANY	F
25S 12W 20 100	2767.00	WEYERHAEUSER COMPANY	F
25S 12W 29 1100	2887.00/2887.90	FISHER, DONALD & LAURA R.	F, EFU
25S 12W 30 501	2915.06	BRUNSCHMID, MARJORIE A.; ETAL BRUNSCHMID, JAMES V. BRUNSCHMID, YOSHIKO	EFU, 18-RS
25S 12W 30 600	2918.00/2918.90	DEMERS, GREGORY M	18-RS
25S 12W 30D 1501	2918.71	AGRI PACIFIC RESOURCES, INC.	18-RS
25S 12W 30D 508	2919.05	KRONSTEINER, KAY A.; ETAL	18-RS
25S 12W 30 700	2923.00	WEYERHAEUSER COMPANY	19-D
25S 12W 31 100	2931.00	WEYERHAEUSER COMPANY	19-D
25S 12W 32B 300	2984.00	WEYERHAEUSER COMPANY	19-D, 19B-DA, 20-CA

Map TRS #	Account # (s)	Landowner	Zoning
25S 12W 32B 600	2982.00	FRED MESSERLE & SONS, INC.	20-RS
25S 12W 32 100	2981.02/2981.90	FRED MESSERLE & SONS, INC.	20-RS, EFU
25S 12W 32 400	2989.03	FRED MESSERLE & SONS, INC.	EFU, F
26S 12W 5 200	4637.90	FRED MESSERLE & SONS, INC.	F
25S 12W 32 300	2987.00/2987.90	MCCARTHY, LOUIS M.; ETAL MCCARTHY, BETTY J. MCCARTHY, WILLIAM H.	F
26S 12W 5 300	4638.01/4638.91	SOLOMON JOINT LIVING TRUST	F
26S 12W 8B 100	4684.01/4684.91	PRUGH, MICHAEL; ETAL PRUGH, DEBRA A. REED, DENISE	F, RR-2
26S 12W 8 900	4682.00	HILL, JEFFREY L.	RR-5
26S 12W 8 1000	4683.02	HILL, JEFFREY L. & GIDGETTE N.	RR-5
26S 12W 8 1100	4683.01/4683.91	RODE, ALVIN & LOU ANN L/E	RR-5, EFU, F
		C/O HILL, JEFFREY L.	
26S 12W 8 500	4679.90	SHELDON, MARK & MELODY	RR-5
26S 12W 8B 1400	4688.00/4688.95	WHEEKER, LARRY & SHIRLEY	F
26S 12W 8 1102	4683.04/4683.94	HILL, JEFFREY L. & GIDGETTE N.	F
26S 12W 8B 1500	4688.01/4688.91	MCGINNIS, MICHAEL L.	F
26S 12W 8 1601	4689.02	GUNNELL FAMILY TRUST GUNNELL, GARY A. & BARBARA E., TRSTE	F
26S 12W 8 1700	4667.90/4667.00	PAUL J. WOYTUS FAMILY TRUST WOYTUS, PAUL J. & YVONNE A., TRSTES	F, 21-RS
26S 12W 7 700	4673.00/4673.90	FRED MESSERLE & SONS, INC.	21-CA, 21-RS, F
26S 12W 18A 100	4760.01/4760.91	WRIGHT LOVING TRUST WRIGHT, W.J. & DOREEN, TRUSTEES	F
26S 12W 18A 200	4762.91/4762.01	WASHBURN, PAUL M. & EURA M.	RR-5
26S 12W 18A 201	4762.13	MCGRIFF, DAVID L. & EMILY J.	RR-5
26S 12W 18B 1900	4766.00	DAVENPORT, JAMES R. & ARCHINA J.	RR-5
26S 12W 18B 1700	4766.92/4766.02	LOVELL, NOVA D. & ELLEN M.	F
26S 12W 18C 103	4767.04	MUENCHRATH, A. JOHN & MARY M.	F
26S 12W 18C 300	4769.21	MAEYENS, EDGAR JR., & MELODY M.	RR-5
26S 12W 18C 200	4768.00	ROSEBURG RESOURCES CO.	F
26S 12W 19 200	4771.01	ROSEBURG RESOURCES CO.	F
26S 12W 19 300	4772.00	RIVER BEND RESOURCES CO.	F
26S 12W 30 100	4951.00/4951.90	MCCAULEY, ROBERT H. & LINDA S.	F
26S 12W 30 600	4951.22	SCOVILLE, ROBERT G.	RR-5
26S 12W 30 1000	4953.00/4953.90	KETCHUM, JIMMIE R. & CAROLYN E.	F
26S 12W 30A 500	4950.01	LONE ROCK TIMBERLAND CO.	F
26S 12W 30 1200	4956.00	MENASHA FOREST PRODUCTS CORPORATION	F
26S 12W 30 1400	4957.00	FRED MESSERLE & SONS, INC.	F
26S 12W 31A 100	4958.00	FOORD, RONALD L. & MOLLY A.	F
26S 12W 32 400	4967.00	FRED MESSERLE & SONS, INC.	F
26S 12W 32 500	4968.00/4698.90	WILLIS, DEE A.	EFU, F
26S 12W 31 700	4963.00	PLUM CREEK TIMBERLANDS, L.P.	F
26S 12W 31 900	4964.00	MANLEY, WARREN	F
27S 12W 6 100	6526.01	LONE ROCK TIMBERLAND CO.	F
27S 12W 6 200	6526.90/6526.00	STALCUP, STEVEN & CAROLE	F
27S 12W 6 300	6527.00	MENASHA FOREST PRODUCTS CORPORATION	F
27S 12W 5 100	6521.00	U.S.A. (C.B.W.R.G.L.)	F
27S 12W 0 (8) 1700	6534.00	ROSEBURG RESOURCES CO.	F

Map TRS #	Account # (s)	Landowner	Zoning
27S 12W 0 (8)1600	6536.01	PACIFICORP NORMAN K. ROSS, PROP TAX MNGR	F
27S 12W 0 (8) 1500	6533.00	MENASHA FOREST PRODUCTS CORPORATION	F
27S 12W 0 2500	6588.00	U.S.A. (C.B.W.R.G.L.)	F
27S 12W 0 (16) 2400	6584.00	COOS COUNTY SHEEP CO.	F, EFU
27S 12W 0 (15) 2300	6580.00	U.S.A. (C.B.W.R.G.L.)	F
27S 12W 22 100	6616.00	COOS COUNTY SHEEP CO.	F
27S 12W 23 200	6625.00	U.S.A. (C.B.W.R.G.L.)	F
27S 12W 23 100	6624.00	COOS COUNTY SHEEP CO.	EFU, F
27S 12W 23 300	6627.00/6627.90	HEL BENTREE FARM, INC.	F
27S 12W 24C 1500	6656.94/6656.04	BREUER, JOHN D., III & KARA L.;ETAL BREUER, JOHN D., II & JOANNE W.	F
27S 12W 24C 1600	6661.00	WILLIAMS, VIRGIL D. & CAROL	RR-5
27S 12W 24C 1200	6659.00	METCALF, JAMES I. & MARY C.	RR-5
27S 12W 24C 1700	6659.04/6659.94	WILLIAMS, VIRGIL D. & CAROL F.	EFU
27S 12W 25 200	6667.90/6667.00	SCHLATTER, MARY L. YATES, CHARLES & JOHANNA	EFU
27S 12W 24C 1800	6662.05	DALTON, RODNEY A. WILLIAMS, VIRGIL D. & CAROL F.	EFU
27S 12W 24C 2100	6662.04/6662.94	TED L. FIFE FAMILY TRUST FIFE, TED L., TRUSTEE	EFU
27S 12W 25 201	6667.01 / 6667.91	FISHER, DONALD L. & SHIRLEY J.	F
27S 12W 25 203	6667.03/6667.93	OTTERBACH, DAVE & PATRICIA L. HAZEN, WALTER E. & WENDY A.	F
27S 12W 25 100	6666.00	U.S.A. (C.B.W.R.G.L.)	F
27S 11W 0 (30) 1500	6416.00	MENASHA FOREST PRODUCTS CORPORATION	F
27S 11W 0 1400	6356.00	U.S.A. (C.B.W.R.G.L.)	F
27S 11W 0 (29) 1700	6412.00	U.S.A. (C.B.W.R.G.L.)	F
27S 11W 32 1000	6428.00	PLUM CREEK TIMBERLANDS, L.P.	F
27S 11W 32 800	6426.00	MENASHA FOREST PRODUCTS CORPORATION	F
27S 11W 32 1300	6431.00	MENASHA FOREST PRODUCTS CORPORATION	F
28S 11W 5 100	8151.00	U.S.A. (C.B.W.R.G.L.)	F
28S 11W 5 200	8152.00	WINDLINX FAMILY TRUST WINDLINX, RUSSELL K & DIANA, TRSTES	F
28S 11W 4 600	8138.00/8138.90	MOORE MILL & LUMBER CO.	F
28S 11W 4 800	8148.00	MENASHA FOREST PRODUCTS CORPORATION	F
28S 11W 0 (9) 400	8179.90	U.S.A. (C.B.W.R.G.L.)	F
28S 11W 10 1000	8185.00	PLUM CREEK TIMBERLANDS, L.P.	F
28S 11W 10 900	8186.00	LONE ROCK TIMBERLAND CO.	F
28S 11W 10 901	8186.01	DORA CEMETERY ASSN.	F
28S 11W 10 1300	8189.00/8189.90	GARRETT, CYNTHIA A.	F, EFU
28S 11W 10 1400	8191.00/8191.90	LAIRD TIMBERLANDS, LLC	EFU
28S 11W 15 100	8224.01	LAIRD TIMBERLANDS, LLC	EFU, F
28S 11W 0 (14) 500	8219.00	MOORE MILL & LUMBER CO.	EFU, F
28S 11W 0 700	8217.00	PLUM CREEK TIMBERLANDS, L.P.	F
28S 11W 13 900	8213.00	U.S.A. (C.B.W.R.G.L.)	F
28S 11W 24 100	8278.00	PLUM CREEK TIMBERLANDS, L.P.	F
28S 11W 0 (25) 1900	8284.00	ROSEBURG RESOURCES CO.	F
28S 10W 0 (19) 3500	8028.00	ROSEBURG RESOURCES CO.	F

Map TRS #	Account # (s)	Landowner	Zoning
28S 10W 0 (19) 3400	8025.00	U.S.A. (C.B.W.R.G.L.)	F
28S 10W 0 (19) 3600	8030.00	LONE ROCK TIMBERLAND CO.	F
28S 10W 0 (30) 3300	8031.00	PLUM CREEK TIMBERLANDS, L.P.	F
28S 10W 0 (19) 3800	8084.00	PLUM CREEK TIMBERLANDS, L.P.	F
28S 10W 0 (29) 4100	8080.00	U.S.A. (C.B.W.R.G.L.)	F
28S 10W 0 (28) 4200	8072.00	U.S.A. (O & C)	F
28S 10W 0 (27) 4600	8066.00	U.S.A. (C.B.W.R.G.L.)	F
28S 10W 0 4500	8068.00	LONE ROCK TIMBERLAND CO.	F
28S 10W 0 (26) 5000	8063.00	TRI-W GROUP LIMITED PARTNERSHIP	F
28S 10W 0 (26) 4900	8064.00	PLUM CREEK TIMBERLANDS, L.P.	F
28S 10W 0 (26) 4800	8065.00	TRI-W GROUP LIMITED PARTNERSHIP	F
28S 10W 0 (35) 5600	8113.00	U.S.A. (C.B.W.R.G.L.)	F
28S 10W 0 (36) 5500	8119.00	TRI-W GROUP LIMITED PARTNERSHIP	F
28S 10W 0 (36) 5200	8118.00	TRI-W GROUP LIMITED PARTNERSHIP	F
28S 09W 0 (31) 3500	7869.00	U.S.A. (C,B.W,R.G.L.)	F
29S 09W 0 (6) 300	10558.00	PLUM CREEK TIMBERLANDS, L.P.	F
29S 09W 0 (5) 200	10554.00	U.S.A. (C.B.W.R.G.L.)	F
29S 09W 0 (8) 500	10567.00	LONE ROCK TIMBERLAND CO.	F
29S 09W 0 (8) 600	10566.00	PLUM CREEK TIMBERLANDS, L.P.	F
29S 09W 0 (9) 700	10570.00	U.S.A. (C.B.W.R.G.L.)	F
25S 13W 4 300	3101.00 / 3101.90	ROSEBURG FOREST PRODUCTS CO.	CBEMP
25S 13W 3 200	3096.00 / 3096.90	WEYERHAEUSER NR COMPANY	IND & CBEMP
28S 12W 7 101	8464.05	HW3, LLC	Q-IND
28S 12W 7C 1000	8463.01	HW3, LLC	CREMP & CREMP IND
28S 12W 7C 900	8463.91	HW3, LLC	CREMP & CREMP IND
28S 12W 18B 1500	8463.00 / 8463.90	LBA CONTRACT CUTTING, INC. @ ARRIOLA, BRIAN	CREMP & CREMP IND
27S 12W 26D 1200	6693.01	YATES, SPENCER C. & TRULY R.	EFU
28S 13W 01DB 300	8794.01	CITY OF COQUILLE	CITY
28S 13W 01DB 309	8794.11	CITY OF COQUILLE	CITY
28S 13W 01DB 310	8794.12	CITY OF COQUILLE	CITY
25S 13W 35 400	3952.00	GEORGIA-PACIFIC WEST, INC.	CBEMP
25S 13W 36 1000	4004.00	GEORGIA-PACIFIC WEST, INC.	CBEMP

NOTE: U.S.A = BLM

BOARD OF COMMISSIONERS
MINUTES OF MEETING
AUGUST 3, 2010
FILE NUMBER HBCU-10-01
PACIFIC CONNECTOR GAS PIPELINE (PCGP)

STAFF PRESENT: Kevin Stufflebean, Chairman; Nikki Whitty, Commissioner; Robert "Bob" Main, Commissioner; Oubonh White, Assistant County Counsel; Patty Evernden, Planning Director; Jill Rolfe, Administrative Planner

OTHERS PRESENT: See Sign-in Sheet

Chair Stufflebean stated that this meeting of the Coos County Board of Commissioners (Board) is hereby called to order at 1:30 p.m. on Tuesday, August 3, 2010, in the Owen Building, Coos County Courthouse Annex in the City of Coquille, Oregon. The matter before the Board today is deliberation of Pacific Connector Gas Pipeline's (PCGP) consolidated applications with respect to the Coos County segment of the proposed interstate natural gas pipeline. He asked that Counsel review all procedures.

Counsel White stated that the Board will need to declare any potential or actual conflicts of interest. Conflicts of interest are governed by ORS 244.120 a potential conflict of interest is defined as any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated. An actual conflict of interest is defined as any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated. Any and all Board members must declare that conflict of interest prior to taking any action on the matter under review. Any and all Board members must publicly announce the nature of the actual conflict and refrain from participating in any discussion or vote on the issue; however, if the vote is necessary to meet a requirement for a minimum number of votes to take official action on the issue, the commissioner may not participate in the discussion on the issue, but may vote on the issue.

Counsel White asked if the Board had any potential or actual conflict of interest that needed to be declared.

The Board members all responded that they did not have a potential or actual conflict of interest.

Counsel White stated it was also the time for the Board to declare any ex-parte contacts. Pursuant to ORS 215.422 and 197.835(12) a member of the decision-making body receiving the contact must publicly announce the substance of the ex parte contact at the hearing where action will be considered or taken on the subject to which the communication is related; and place the substance of the contact in the record of the case. If contact is not related to the issue to be considered or decided by the Board then it is not the proper subject of a challenge.

Counsel White asked if any member needed to declare any ex parte contacts.

Commissioner Whitty declared that at the Coos County Fair she had a short conversation with Will Wright and that conversation was concerning two conditions that he wanted to have added and she only responded to him that those conditions had already been included in the proposed findings but she could not discus them or any other matter related to the application. That was the end of that conversation.

Commissioner Main declared that years ago prior to any application for the pipeline he was involved in a conversation regarding a well in the Fairview area.

Chair Stufflebean declared that since the application was submitted he attended a public hearing but that is the only ex-parte contact that he has had.

Commissioners Whitty and Main also stated that they attended the public hearing with the Hearing Officer.

Counsel White asked if anyone wished to challenge the Board's disclosed ex-parte contacts.

There were no challenges.

Counsel White reminded everyone that the record is closed and there will be no new testimony or evidence. This hearing is for deliberations for the Board on the recommendation presented by the Hearings Officer. The discussion is public and she asked the audience to indicate if they cannot hear someone to please raise their hands and adjustments will be made to accommodate. Please advise that should any discussion, debate or questions become disruptive and the Board is not able to appropriately deliberate then you shall be asked very kindly to leave.

Chair Stufflebean reminded and emphasized to the public that the Board members were not allowed to engage in any conversations or clarification from any member of the public other than staff. He then reiterated that if someone cannot hear please raise their hand and adjustments will be made.

Commissioner Whitty noted they may have to pause for the TV crew to change tapes but they would let the Board know.

Director Evernden stated that she would provide some background. On April 30, 2010, notice of the hearing was provided by mail and posting. The staff report was provided on May 13, 2010. This is a consolidated application for a 49.72 segment of the pacific connector gas pipeline. The record has been forwarded to the Board along with the Hearings Officer's recommendations. On July 28, 2010, she sent a staff report and in that report staff recommends that the Board accept and adopt the Hearings Officers recommendations with some modification.

Commissioner Whitty asked if the Board wanted to go through the each of their comments from beginning.

Chair Stufflebean replied that was what he would propose. He asked the Commissioners if there were any other questions for Director Evernden at this time. There were none. He requested that Commissioner Main start the process and asked that the Commissioners refer to the page numbers so everyone can keep up.

Commissioner Main stated he was concerned about the ground water statement found on page 99 of the Hearings Officer's report and Exhibit 3 of the applicant's narrative concerning the statement that there are **no public** groundwater supply wells or springs within 400 feet of the proposed construction disturbance according to the State Department of Environmental Quality public water supply database. This means they will not be surveying private wells or streams or wells that supply multiple parties. He stated that it seemed like the applicant does not have to deal with people prior to construction. He gave an example of a well out in Fairview where the well is on one side of the pipeline and there are about three houses on the other side that would be cut off.

Chair Stufflebean requested clarification on where this well that is being cut off is in the record.

Commissioner Main replied that it was not in the record but it bothered him that it was not being considered because there will be impacts to all the wells regardless of whether or not they are public. He did agree with the Hearings Officer that the pipeline only needs a 50 ft width. He commented that he agreed with the people who testified that the Blue Ridge Route would have less impact on farm and forest. Also there would be one water crossing instead of five. Also, he agreed with Messerle and Sons that crossing through the forest will have more of impact due to blow downs on the merchantable timber. He commented that there should be compensation for blow downs.

Commissioner Main stated that there was not enough discussion concerning fire suppression and the impact on the volunteer rural fire departments. He stated that there was an agreement by PCGP with respect to no aerial spraying of herbicides and he wanted to add that as a condition. He commented that he had wanted to impose fines or penalties due to past companies going bankrupt or becoming negligent but the ordinance precluding him from including it as a condition of approval. He commented that he understood that the county needs job. Also, he understood that FERC is the one who gets to decided where the pipeline goes which is a great concern of his. He then got up and approached the map of the pipeline route and asked staff why mile posts 9, 10 and 11 were repeated and there are two different sections. He thought that was confusing and threw everything off.

Director Evernden replied that she was not sure but would find out prior to the end of discussion.

Commissioner Whitty stated that she had some changes to typos.

Director Evernden replied that this was not a final draft but the final draft will be prepared after a decision is made and then it will be brought before the Board for final adoption.

Commissioner Whitty stated that she was on Page 28 of the Hearings Officer's recommendation (page 2 of staff report) and condition number one staff had concerns about because it was broadly written.

Director Evernden explained that condition number one was bothersome from an enforcement point. It would be better to write out in the conditions exactly what is expected. Staff has tried to do that in the July 28, 2010, staff report that was forwarded with the Hearings Officer's recommendation.

Commissioner Whitty moved to page 65 and stated through out this document there were several references to Robert Ellis' letter or the Robert Ellis report and for consistency purposes she would like to make sure it is referred to the same way each time.

Director Evernden acknowledged that she would make sure that happened.

Commissioner Whitty stated on Page 96 of the Hearings Officer's recommendation where he talks about Mr. Himphill's testimony he understood that testimony to mean that the land owner will be compensated for timber as if it were already a mature size and ready for harvest.

Director Evernden asked if she wanted that to be a condition.

Counsel White cautioned the Board that any damages or that can be recouped by the owners is left for negation by the applicant and each individual property owner. Therefore, the Board needs to be careful on conditions that are too specific that would limit any one land owner from receiving compensation.

Commissioner Whitty replied that she wanted to make sure the reimbursement for the tress was at a mature value.

Commissioner Main was concerned about the last sentence in that paragraph that read "This seems important, since, for example, a stand of 20 year trees probably has little to no current value." He disagreed with that statement because they may have value and he thought it should be removed or reworded.

Commissioner Whitty agreed with Commissioner Main.

Counsel White said that could be noted for the final draft because the Board does not have to adopt all of the findings.

Commissioner Whitty stated on page 145, condition number 7 staff has suggested removing this language.

Director Evernden explained that the applicant had addressed this in the final argument by addressing impacts to the 7-NA and that indirect impacts would be avoided through the implementation of the Erosion Control and Revegetation Plan throughout construction and restoration.

Commissioner Whitty stated those were the only items she had to go over.

Chair Stufflebean stated in looking through the entire document there are a lot of issues in which he agreed with Commissioner Main such as the Blue Ridge Route, blow down compensation, fire suppression; however, when you look at the big picture of what this process is and what the Board is allowed to do he agreed with Hearing Officer's analogy that this is a side show because ultimately FERC sets the rules. Realistically the Board has no control over where the route goes regardless of whether we agree or not. One of the issues that he found troublesome concerned the aquatic resources. The problem is we only received testimony from Lilly Clausen but there is no scientific information submitted into the record to allow the Board to realistically address her concerns. The other issues he is concerned about include crossing and impacts to the county roads and making sure that all impacts are addressed post construction.

Chair Stufflebean asked if the Board would like to move on to a motion of whether or not to accept the Hearings Officer's recommendation.

Commissioner Whitty wanted to go through Director Evernden's suggestions found in the July 28, 2010 staff report.

There was discussion from the Board on how to proceed. Chair Stufflebean requested that Director Evernden go over her suggested changes.

Director Evernden stated that first suggested changed that she had was on Pages 77-79 first paragraph under the Sediment Quality in Coos Bay.

"More than one opponent testified that the bay is full of hazardous waste that is currently buried in layers of sediment, and that dredging in these areas will cause these substances to be re-introduced into the aquatic environment. The FEIS confirms this may ~~to~~ be true. See Page 4.5-93 ("Wildlife and Aquatic Resources"). With regard to impact to fish, the FEIS addresses the ~~a~~effects of these chemicals on Salmon and other fish, and concludes that there will be long-term impacts. In the absence of the scientific evidence to the contrary discussed below, the hearings officer would accepts the FERC findings in the FEIS as constituting substantial evidence.

* **

The information contained in the June 4, 2010 letter from Mr. Miller, the June 17, 2010 letter from Mr. Ellis, and the SAP constitutes substantial evidence regarding the specific pipeline impacts sufficient to rebut the general conclusions of the FEIS and to respond to the concerns expressed by opponents."

Commissioner Whitty stated that she was fine with the change but there was a typo after the word "would" it should be "accept" not "accepts" or remove the word "would" and leave "accepts".

Director Evernden replied that she would make that change. She said the next change is found on page 142 of the *Hearings Officer's Recommendation*, and it should reference FERC's issuance of the "Certificate of Public Convenience and Necessity" as a basis for establishing that there is a demonstrated need for the pipeline. Therefore, the second paragraph on page 142 should be supplemented to read as follows:

"Even to the extent that 'need' could be considered to be a legal requirement, Section 1.3 of the FEIS provides a detailed explanation of the overall need for the PCGP project, and that analysis is hereby incorporated by reference herein. Furthermore, the applicant has obtained a 'Certificate of Public Convenience and Necessity,' which establishes the particular need for the facility. In addition, since the pipeline is expected to transport natural gas in interstate commerce, any local zoning ordinance requiring the pipeline to serve a 'need' by local customers, rather than the concerns of interstate commerce, is a clear violation of the Commerce Clause. The fact that Oregon law provides for eminent domain proceedings for interstate natural gas pipelines is evidence that Oregon as a state, considers interstate natural gas pipelines to be important and necessary and to serve an important need. Moreover, the precise need for taking individual properties for the public purpose of siting a natural gas pipeline must be successfully demonstrated in each case or the proposed condemnation will not be allowed."

Director Evernden stated that Section 5.2.800 of the LDO authorizes reasonable conditions of approval. Staff suggested the imposition of 16 conditions in the May 13, 2010 staff report, which the Hearings Officer included in the recommendation along with some additional conditions that he recommends and those suggested by the applicant. In all there are a total of 48 suggested conditions. She stated that she had talked with County Counsel regarding the conditions and suggested condition #1 [page 144] requires all promises and recommendations made by the applicant and its consultants during the course of this proceeding in order to demonstrate compliance shall be binding. Staff and counsel have believe this is too broadly written. Specific conditions in response to promises and recommendations given by the applicant have been included in the suggested conditions. As written this condition would be troublesome in an administration and enforcement perspective. Proposed condition #1 should be deleted as each specific concern and suggested condition has been included to be specific.

Director Evernden stated the next condition that the Hearings officer suggests that needs to be modified is proposed condition #4 [page 144] which would require the applicant to reroute the pipeline to the east of the residence identified as the Scoville residence. The applicant may make minor adjustments where appropriate in negotiations with affected property owners according to FERC Order Condition #6 in order

to minimize impacts to structures within the approved alignment corridor. Condition #4 should be revised as follows: "If requested, the applicant shall work with affected property owners within the pipeline's alignment to make "minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands" and this language will apply to all property owners not just Scoville's property.

Chair Stufflebean asked if they could still leave condition #4 but add the suggested language to it.

Commissioner Main replied that the language "if requested" could be removed.

Counsel White cautioned the Board that recommendation is very specific to the one property and we need to make sure that everyone along the route has the option of working with the applicants to limit the effects that the pipeline would have on each individual property. She preferred the broader language to cover everyone.

Chair Stufflebean replied that he liked that language that was suggested but he thought it would be better as an addition instead of a replacement.

Commissioner Whitty suggested adding the language as an additional condition.

Chair Stufflebean agreed with that.

Counsel White asked if the Board wanted to leave the language of "re-route to the east" because it was specific and may prohibit movement in a different direction if needed.

There was discussion amongst the Board and Counsel on how to word that condition. They decided to say re-route but take out the direction.

Counsel White read the wording as "the pipeline to be re-routed in relation to the Scoville residence in order to avoid impacts." This will remove the direction.

Director Evernden commented that the property owner may not be Scoville so it is possible to refer to the drawing.

Counsel White stated that she still preferred Staff's recommendation because it is a broader condition.

Director Evernden stated that it should be left to be worked out among the parties but she will work on that to come up with something that works for everyone.

Chair Stufflebean requested Director Evernden to move on through her report.

Director Evernden stated that the next change was in condition #6 [page 148] under Applicant's proposed conditions, revise by adding the words "or agreed to" following the words "unless otherwise modified" in line 2 of the condition then. The condition would read "Fill and removal activities shall be conducted between October 1 and February 15, unless otherwise modified or agreed to by the Oregon Department of Fish and Wildlife."

She said that condition #7 has already been reviewed so she moved on to condition #13 [page 146] which should be revised as follows: "Should any part of the project involve *permanent* structural stream bank stabilization (i.e., rip wrap), the applicant must contact the Planning Department for a determination of the appropriate review [take out the period, put comma] *if any*. Also, on page 146 condition #15 should be revised as follows: "Flood plain certification is required for "other development" as provided in CCZLDO Section 4.6.230occurring in a FEMA flood hazard area. The applicant must coordinate with the County Planning Department." On page 147 condition #19 should have the introductory clause revised as follows: "~~During dredging operations~~ Prior to construction, the applicant shall be required to undertake the sampling and analysis set fourth in the Sediment Analysis Protocol (SAP) in order to ensure that there will be no adverse water quality impacts from digging the trench for the pipeline across Haynes Inlet." She moved on to condition # 20 on page 147 and it should be revised as follows: "Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas that were forested prior to construction have been replanted ~~and restored to timber production~~, consistent

with the requirements of this approval, the FERC Order, and the applicant's erosion control and Revegetation plan."

Commissioner Whitty asked if that change was because some property owners may not want timber replanted.

Director Evernden replied that was correct. She continued on the next change found on page 149 and it should be revised to read "The applicant shall submit a project-specific Public Safety Response Manual to County prior to ~~construction~~ operations."

Commissioner Whitty questioned what was meant by operations.

Director Evernden explained that meant actual operation of the facility.

Commissioner Whitty replied that to her it meant prior to the facility bringing any product in.

There was discussion on when the Public Safety Response Manual should be submitted. The Board decided to change the language to read "six months prior to operations."

Commissioner Whitty requested that the Board make a definition for the word operation so that it was clear. The Board agreed that "operation" meant prior to the deliverance of the gas to the LNG facility.

Director Evernden moved on the next issue. There are some conditions that have the same or similar language or subject so staff recommends removing the redundant conditions. The first ones are found in conditions #2 and #45 concerning compliance with Groundwater Supply Monitoring and Mitigation Plan.

Commissioner Whitty asked if that would be where they could strengthen the language to deal with Commissioner Main's concern with the wells. She stated that she thought they had to do a base line study for the wells.

Director Evernden responded yes.

Commissioner Whitty stated they have to establish a baseline for the wells so the property owners have something they can tell if they are being affected.

Director Evernden commented that also gives the property owner a chance to work with PCGP on any concerns and possible mitigation.

Commissioner Main stated it still was a great concern that the pipeline is going by these homes and possible disruption or desstruction of these peoples water source.

Director Evernden replied unfortunately there was no specific information on any certain well brought forward in the record.

Commissioner Whitty stated if there is a baseline test done and something goes wrong then the property owners have proof.

Commissioner Main stated in this specific case the well would be cut off because the house is on one side and the well would be on the other side of the pipe at this place in Fairveiw.

Director Evernden cautioned that the information that Commissioner Main was referencing was not in the record.

Counsel White asked if there was general language that needed to be added to Groundwater Saftey Plan to cover that concern or what is the concern that has not been covered.

Commissioner Main replied he did not know but he was concerned about these wells that will be potentially destroyed and property owners not having the resources to fight with the large company. Maybe there should be some language that says these things will be settled prior to the pipeline to ensure that these property owners have adequate water by either drilling new wells or trucking the water in and storing it.

Director Evernden replied that was covered in the mitigation plan.

Commissioner Main asked if the pipeline was going to be built simultaneously with LNG facility.

Director Evernden stated she did not have that knowledge.

Commissioner Main stated that a condition should be a year prior to construction of the pipe all water issues would have to worked out.

Counsel White stated that was covered in the Groundwater Mitigation Plan so if there is language in that plan that needs to be changed, added to or clarified she asked that Commissioner Main be specific so the changes were made correctly.

Commissioner Main suggested that language be added to where Commissioner Whitty was talking about prior to operations. It would be required that all groundwater mitigation would be completed one year prior to operations.

Counsel White stated that she believed that it would be prior to one year because the pipe has to be in the ground.

Commissioner Whitty suggested that the applicants provide the property owner a copy of the baseline report done on their wells prior to the installation of the pipe and then there would be monitoring required.

Chair Stufflebean stated there are two different issues. There is the problem with having a well on one side of the pipe and not being allowed to have a pipe cross the LNG pipeline and the other one is a well going dry due to siting of the LNG pipeline.

Commissioner Main replied that was correct. He stated there are several wells that are not documented.

There was discussion about how to add language.

Director Evernden stated that she could work on some language.

Counsel White asked for clarification. The current condition that was being looked at was that the applicant must comply with the Groundwater Supply Monitoring and Mitigation Plan and then she asked if the Board wanted an additional condition, modify this condition, or work with the applicant to revise language to the plan.

Chair Stufflebean stated that he liked the language that Commissioner Main used that the applicant would have to replace like with like. He instructed staff to work on language.

Director Evernden agreed and said she would work on that. She moved on the next two conditions that needed to be addressed. Conditions # 16 found on page 146 and #24 on page 150 are not worded exactly the same but both deal with coordination with the tribe. Condition #24 deletes the limitation of issuance of clearance for building/septic, which is appropriate. Also, under condition #24, the limitation of areas with the CBEMP. Then delete the redundant statement that read "once plot plan submitted" to "once Tribes comment". Therefore, condition #24 will remain with changes and condition #16 deleted.

Director Evernden stated the next conditions that were redundant were conditions # 18 found on page 146 and # 3 found on page 148. They both address riparian vegetation removal and she suggested removing condition #3.

She moved on to the next set of condition which were #20 and #21 found on page 147 addressing restoration of farm and forest land and condition # 2 on page 148. She stated it was up to the Board if they wanted to leave all of them delete part of them or reword.

Commissioner Whitty stated she wanted to go back to the timber production. She said that she wanted to change the language to "successfully replanted" and then leave it up to the property owner to decide what should be replanted. So, it could read the forested areas shall be successfully replanted with the ground cover that the property owner chooses.

There was discussion on how to re-word this condition. It was decided that the language should read something to the effect of forested areas shall be successfully replanted with the ground cover that the property owner chooses.

Director Evernden stated the last change was on condition # 23 and it should be revised to read as follows: "The pipeline operator will ~~mow vegetation~~ conduct routine vegetation maintenance clearing on the 30-foot strip every 3-5 years."

Director Evernden commented that the Hearings Officer provided a thorough analysis of the complex issues surrounding this matter. He did a really good job of providing a legally defensible decision.

She said Staff recommends the Board accept the recommendation with the changes discussed in the meeting and identified in the report where applicable. If the Board approves the application based on the Hearings Officer's recommendation and the Board's deliberation, Staff recommends the Board direct the applicant to work with staff in the preparation of the findings of fact for the Board's adoption. Also, Staff suggests the conditions be reformatted or consecutively numbered for easier reference.

Chair Stufflebean suggested one more change page 146 on condition #12 we need to add that a irrevocable letter of interest will be required for a five year period of time upon completion of the line to address any damages as a result of the siting of the pipeline.

Commissioner Main suggested that there be language to address blow downs within so many feet of the hard edge or leading edge of stand of timber as a direct result of the removal of trees for the right-of-way. There needs to be some type of compensation language.

Chair Stuffelbean said there could be a condition that they pay the market value of the trees as if they were mature trees.

There was discussion about blow downs and possible compensation. Counsel did caution about putting a specific formula or conditions that would limit any type of compensation. She sent the Commissioners to page 144, condition # 5 of the Hearings Officer's recommendation.

Commissioner Whitty read the condition and then stated they could add a coma and add the words "blow down".

There was further discussion about the wording of that condition. The Board decided to go with Commissioner Whitty's suggested language as well as remove the word commercial and just have it read timberlands.

There was discussion about fire insurance but there was no proof provided that the pipeline would raise or exclude a homeowner from purchase.

Commissioner Main asked if there was discussion about settlement sampling in the bay.

Commissioner Whitty explained where and what that information was.

Commissioner Main replied then it would be mitigated through the Army Corps process.

Chair Stufflebean replied that was correct.

Chair Stufflebean stated the next step was to decide if the Board wanted to accept the Hearings Officer's conclusions and recommendations as amended.

Commissioner Whitty moved to accept the Hearings Officers conclusions and recommendations as amended. Motion dies for lack of second.

Commissioner Main explained that he could not accept decision because the mile posts were incorrect throwing the entire project off.

Director Evernden explained that she could get information on why the mile post were duplicated but that is not an issue to deny on it has to be based on the relevant criteria. The information about the mile post is in the record.

Commissioner Main asked Director Evernden to read from the record the explanation of why the mile posts were duplicated.

Director Evernden read from the record that the route and mile post does no longer reflect the actual length of the Pacific Connector Gas Pipeline because based on FERC's National Environmental Policy Act (NEPA) process resulted in a final environmental impact statement, which is in the record, PCGP incorporated an alternative route into the original route and the environmental analysis was tied to the original mile post and; therefore, the original post remain unchanged from the route filed with FERC in September 2007. Therefore, mile post 11.36 merges with the mile post filed in September 2007 at mile post 7.67.

Chair Stufflebean stated if Board chooses not to accept the Hearings officer's recommendation then the County is required by law to adopt findings to address why they do not accept the recommendations and conclusions.

Commissioner Main stated in that vein we will see when it gets appealed.

Counsel White explained that if the Board chooses to deny this application that staff will have to work within the zoning ordinance to draft findings that deny the application. Then when it is appealed you find out how defensible those findings are.

Chair Stufflebean explained as a member of the Board of Commissioners it is our responsibility to adopt findings either for or against we don't get to not adopt some type of findings and this is at the direction of state law. It appears that all the Board members have added findings and conditions that seem to lead toward approval. If any Board member has any findings or recommendations that are different from the ones that have been proposed at this time he asked that they be put on the record. Hearing none he asked for another motion.

Commissioner Whitty moved to accept the Hearings Officers conclusions and recommendations as amended. Commissioner Main seconded the motion but commented he did not like it.

Chair Stufflebean re-read the motion and asked if there was any discussion. Hearing none he called for the vote. The motion passed unanimously.

Commissioner Main moved to direct staff to bring the final findings document to the Board for adoption. Chair Stufflebean second the motion. The motion passed unanimously.

Commissioner Whitty asked when the final draft would be ready for review.

Director Evernden replied that it has to be done by September 25, 2010. After the draft is agreed upon it will go before the Board in a regular scheduled meeting.

Chair Stufflebean adjourned the meeting at 2:44 p.m.

Minutes Submitted by,

Jill Rolfe, Administrative Planner and Recording Secretary

Commissioner's approval for submission to the Board

SIGN IN SHEET

Board of Commissioners
Date: August 3, 2010

PLEASE PRINT LEGIBLY

PLEASE PRINT YOUR NAME	PLEASE PRINT YOUR MAILING ADDRESS
Rodney Gregory	Auburn, WA
RANDY Miller	SALT LAKE City, UT
Derrick Welling	SALT LAKE CITY, UT.
GAIL ELBER	THE WORLD NEWSPAPER
MARVIN SMCOT	PCGP MEDFORD, OR.
Mary Gregory	RRU
Mark Whitlow	Portland, OR
Seth King	Portland, OR
Carolyn Last	Denver, CO
David RANDALL	PCGP, MEDFORD, OR.
Andy Jackson	CCSD
Bob & Carol Fischer	POB 1985 Bandon 97411
REX OWINGS	3512 BRITT AVE. MEDFORD, OR 97501
Timothy J. Pearce	58746 Seven Devils Rd Bandon 97411
Steve Pickering	3170 N 24TH ST Coos Bay 97420
Ken Messefe	94271 Pios Sound Lane Coos Bay 97420
Jody McCoffree	PO Box 1113 North Bend, OR 97459
William L. Rokack	99558 Hollow Stump LN. North Bend, OR 97459

SIGN IN SHEET

Board of Commissioners
Date: August 3, 2010

PLEASE PRINT LEGIBLY

PLEASE PRINT YOUR NAME	PLEASE PRINT YOUR MAILING ADDRESS
Larry VanElsberg	94114 Airport Ridge Ln. N.B. OR 97459
Julie Jones	89056 Whiskey Run Lane Bandon OR 97411
JACK JONES	"
CAROL SANDERS	664 S. EMPIRE CB 97420
Kathy Wall	POBox 1215 CB, OR 97420
Jan Cartright	61 E 1st St. Coquille 97423
Gene Hemdrum	63281 Clover Dr. Lubby, OR 97420

July 28, 2010

TO: Board of Commissioners

FROM: Patty Evernden, Planning Director

RE: HEARINGS OFFICER RECOMMENDATION FOR APPLICATION HBCU-10-01 SUBMITTED BY PCGP

The Hearings Officer has recommended that the Board approve the proposal with the imposition of reasonable conditions.

Mr. Stamp has provided a detailed explanation of the process and the scope of the review used in developing his recommendations. As the Hearings Officer points out it is your option whether you accept the recommendations or modify or overturn his interpretations. If the Board overturns the Hearings Officers recommendations, your decision must be in writing, based upon the identified criteria and include a statement of the findings of fact and conclusions related to the criteria relied upon in rendering the decision.

In addition to the specific criteria for the applicable zoning districts, the Hearings Officer addressed issues raised concerning alternative routes, land owner consent, hazards, riparian vegetation and tribal coordination.

If the Board adopts the Hearings Officer's recommendation, staff has some suggested changes:

1. Pages 77-79 first paragraph under the Sediment Quality in Coos Bay

> "More than one opponent testified that the bay is full of hazardous waste that is currently buried in layers of sediment, and that dredging in these areas will cause these substances to be re-introduced into the aquatic environment. The FEIS confirms this may ~~to~~ be true. *See* Page 4.5-93 ("Wildlife and Aquatic Resources"). With regard to impact to fish, the FEIS addresses the ~~a~~effects of these chemicals on Salmon and other fish, and concludes that there will be long-term impacts. In the absence of the scientific evidence to the contrary discussed below, the hearings officer would accepts the FERC findings in the FEIS as constituting substantial evidence.
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> * * * *
>
> The information contained in the June 4, 2010 letter from Mr. Miller, the June 17, 2010 letter from Mr. Ellis, and the SAP constitutes substantial evidence regarding the specific pipeline impacts sufficient to rebut the general conclusions of the FEIS and to respond to the concerns expressed by opponents."

2. Item 6 on page 142 of the *Hearings Officer's Recommendation*, should reference FERC's issuance of the "Certificate of Public Convenience and Necessity" as a basis for establishing that there is a demonstrated need for the pipeline. Therefore, the second paragraph on page 142 should be supplemented to read as follows:

> "Even to the extent that 'need' could be considered to be a legal requirement, Section 1.3 of the FEIS provides a detailed explanation of the overall need for the PCGP project, and that analysis is hereby incorporated by reference herein. Furthermore, the applicant has obtained a 'Certificate of Public Convenience and Necessity,' which establishes the particular need for the facility. In addition, since the pipeline is expected to transport natural gas in interstate commerce, any local zoning ordinance requiring the pipeline to serve a 'need' by local customers, rather than the concerns of interstate commerce, is a clear violation of the Commerce Clause. The fact that Oregon law provides for eminent domain proceedings for interstate natural gas pipelines is evidence that Oregon as a state, considers interstate natural gas pipelines to be important and necessary and to serve an important need. Moreover, the precise need for taking individual properties for the public purpose of siting a natural gas pipeline must be successfully demonstrated in each case or the proposed condemnation will not be allowed."

Section 5.2.800 of the Zoning and Land development Code authorizes reasonable conditions of approval. Staff suggested the imposition of 16 conditions in the May 13, 2010 staff report, which the Hearings Officer included in the recommendation along with some additional conditions that he recommends and those suggested by the applicant. In all there are a total of 48 suggested conditions.

1. Suggested condition #1 [page 144] essentially states that all promises/recommendations made by the applicant and its consultants to demonstrate compliance are binding. Staff and counsel have discussed and believe this is too broadly written. Specific conditions in response to promises and recommendations given by the applicant have been included in the suggested conditions. As written this condition would be troublesome in an administration and enforcement perspective. Proposed condition #1 should be deleted.

2. The Hearings officer suggests proposed condition #4 [page 144] which would require the applicant to reroute the pipeline to the east of the residence identified as the Scoville residence. The applicant may make minor adjustments where appropriate in negotiations with affected property owners according to FERC Order Condition #6 in order to minimize impacts to structures within the approved alignment corridor. Condition #4 should be revised as follows:

"If requested, the applicant shall work with affected property owners within the pipeline's alignment to make "minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands" pursuant to FERC Order Condition #6 in order to avoid or minimize impacts to structures or the owner's use of the property."

3. Condition #6 [page 148] under Applicant's proposed conditions, revise by adding the words "or agreed to" following the words "unless otherwise modified" in line 2 of the condition.

   "Fill and removal activities in Coos Bay shall be conducted between October 1 and February 15, unless otherwise modified *or agreed to* by the Oregon Department of Fish and Wildlife."

4. Condition #7 [page 145] suggested by staff has been deleted as the matter was addressed by the applicant in their final argument. Specifically, the applicant demonstrated that there would be no direct impacts to CBEMP 7-NA and that indirect impacts would be avoided through the implementation of the Erosion Control and Revegetation Plan (ECRP) throughout construction and restoration [June 24, 2010 PCGP – Final Argument page 28].

   ~~The applicant's plan to protect the 7-NA district from adverse impacts due to the temporary construction phase of the pipeline shall be provided to the Planning Department.~~

5. Condition #13 [page 146] should be revised as follows:

   "Should any part of the project involve *permanent* structural stream bank stabilization (i.e., riprap), the applicant must contact the Planning Department for a determination of the appropriate review, *if any*."

6. Condition #15 [page 146] should be revised as follows:

   "Flood plain certification is required for "other development" *as provided in CCZLDO Section 4.6.230* occurring in a FEMA flood hazard area. The applicant must coordinate with the County Planning Department."

7. Construction Condition #19 [page 147] revise the introductory clause as follows:

   "~~During dredging operations~~ *Prior to construction*, the applicant shall be required to undertake the sampling and analysis set forth in the Sediment Analysis Protocol (SAP) in order to ensure that there will be no adverse water quality impacts from digging the trench for the pipeline across Haynes Inlet."

8. Condition 20 [page 147] should be revised as follows:

   "Evidence shall be provided to demonstrate that all temporary construction and staging areas have been abandoned and that those areas that were forested prior to construction have been replanted ~~and restored to timber production~~, consistent with the requirements of this approval, the FERC Order, and the applicant's erosion control and revegetation plan."

9. Applicant's proposed conditions of approval #19 [page 149] revise the first sentence to read:

   "The applicant shall submit a project-specific Public Safety Response Manual to the County prior to ~~construction~~ *operations*."

10. Conditions #2 [page 144] and #22 [page 149] both address compliance with the Groundwater Supply Monitoring and Mitigation Plan. These are worded the same and one should be deleted.

11. Conditions #16 [page 146] and #24 [page 150] both address coordination with the Tribe(s). There are some differences in the wording: the deleted language is the wording in Condition #24.

    "At least 90 days prior to the issuance of a zoning compliance letter ~~for building and/or septic permits~~ under CCZLDO 3.1.200, the County Planning Department shall make initial contact with the Tribe(s) regarding the determination of whether any archaeological sites exist within the area for proposed development, consistent with the provisions of CCZLDO 3.2.700. Once ~~the applicant's plot plan has been submitted and~~ the Tribe(s) have commented or failed to timely comment under the provisions of CCZLDO 3.2.700, the County shall take one of the following actions: (1) if no adverse impacts to cultural, historical or archaeological resources on the site have been identified, the County may approve and issue the requested zoning compliance letter and related development proposal; (2) if the Tribe(s) and the applicant reach agreement regarding the measures needed to protect the identified resources, the development can be approved with any additional measures the County believes are necessary to protect those resources; or (3) if the County finds that there will be adverse impacts to identified CBEMP Policy #18 resources on the site and the applicant and the Tribe(s) have not reached agreement regarding protection of such resources, then the County Board of Commissioners shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by 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 archeological values of the site. For purposes of this condition, the public hearing shall be subject to the provisions of Section 5.8.200 of the CCZLDO with the Board of Commissioners serving as the hearings Body."

12. #18 [page 146] and #3 [page 148] both address riparian vegetation removal. These have the same meaning and staff suggests deleting #3 and retaining #18.

13. #20 and #21 [page 147] address restoration of farm and forest land and #2 [page 148]. I have a suggested change on Condition #20 above. Please review and advise if you want any changes.

14. #23 [page 147] revise as follows:

    "The pipeline operator will ~~mow vegetation~~ *conduct routine vegetation maintenance clearing* on the 30-foot strip every 3-5 years."

The Hearings Officer provided a thorough analysis of the complex issues surrounding this matter. Staff recommends the Board accept the recommendation with the changes identified in this report.

If the Board approves the application based on the Hearings Officer's recommendation and the Board's deliberation, staff recommends the Board direct the applicant to work with staff in the preparation of the findings of fact for Board adoption. Also, staff suggests the conditions be reformatted or consecutively numbered for easier reference.

The hearing is scheduled for August 3, 2010, at 1:30 pm. Because of the complexity, staff would appreciate it if you would provide me with any questions you may have prior to the deliberation hearing.

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

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
COOS COUNTY, OREGON

FILE NO. HBCU-10-01
JULY 16, 2010

ANDREW H. STAMP, P.C.
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I. Summary of Proposal and Process

A. Summary of Proposal.

This consolidated application is made by Pacific Connector Gas Pipeline Company, LP ("Pacific Connector" or "applicant") with respect to the Coos County segment of its proposed interstate natural gas pipeline known as the Pacific Connector Gas Pipeline (PCGP or "pipeline"). This is the fifth in a series of interrelated land use applications for the development of the Oregon International Port of Coos Bay's multi-berth Oregon Gateway Marine Terminal, a deep-draft moorage facility on the North Spit of Coos Bay, and Jordan Cove Energy Project's (JCEP) associated Upland LNG Terminal. Both were previously approved by Coos County and have now received Federal Energy Regulatory Commission (FERC) approval.[1]

The applicant seeks land use approval from Coos County for the 49.72-mile segment of the PCGP located within Coos County. The Coos County alignment runs from JCEP's LNG Terminal upland from the Port's Marine Terminal to the alignment segment in adjacent Douglas County (mileposts [MPs] 0.00 to 45.70).

Pacific Connector has received authorization from FERC under Section 7c of the Natural Gas Act (NGA) to construct, install, own, operate, and maintain an interstate natural gas pipeline, the PCGP, that will transport gasified natural gas from the Jordan Cove LNG terminal in Coos Bay to existing interstate natural gas transmission pipelines near Malin, Oregon and points in between. The 36-inch diameter pipeline will be a total of 234 miles and will provide natural gas to markets throughout the region.[2]

Within the applicable 49.72-mile segment of the PCGP that will be located within Coos County, the PCGP will cross through five Coos County zoning designations: Forest (F), Exclusive Farm Use (EFU), Rural Residential 2 (RR-2), Rural Residential 5 (RR-5), and Industrial (IND). Additionally, the PCGP will cross 14 Coos Bay Estuary Management Plan (CBEMP) zoning districts: Water Dependent Development Shorelands (6-WD), Development Shorelands (7-D, 19-D), Water Dependent Development Shorelands (8-WD), Conservation Aquatic (8CA, 20CA, 21CA), Natural Aquatic (13A-NA, 11-NA), Rural Shorelands (11-RS, 18-RS, 20-RS, 21-RS), and Development Aquatic (19B-DA) (see Tables 1 and 2).

Within the forest (F) zone, the pipeline use is characterized as a new gas distribution line with no greater than a 50 foot right of way. Within the agricultural (EFU) zone, the pipeline use

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[1] The County previously approved JCEP's LNG Terminal (Case File No. HBCU-07-03), the Port's Marine Terminal and Access Waterway (Case File No. HBCU-07-04) and the related Port applications for Sand Storage and Sorting Yard (Case File Nos. ACU-08-10 and CL-08-01) and Kentuck Mitigation Site (Case File Nos. AM-09-03/RZ-09-02/HBCU-09-01).

[2] The route mileposts no longer reflect the actual length of the PCGP because based on FERC's National Environmental Policy Act (NEPA) process, which resulted in a Final Environmental Impact Statement, Pacific Connector incorporated an alternative within Coos County into the original route. The environmental analysis was tied to the original mileposts, and the mileposts remain unchanged from the route filed with FERC in September 2007. Therefore, MP 11.36 R (revised) merges with the 2007-filed route at MP 7.67.

is characterized as a utility facility necessary for public service. Within the RR and IND zones, the pipeline use is characterized as a utility facility not including power for public sale. Finally, within the CBEMP, the pipeline use is characterized in the respective management units as a low-intensity utility.

The project consists of two distinct sets of components, the first permanent and the second temporary: (1) the pipeline itself, including its permanent 50-foot right-of-way, block valve assemblies, and two access roads; and (2) the temporary construction areas necessary to construct the pipeline. The pipeline consists of the 36 inch subsurface gas pipeline, four mainline block valves and associated facilities. The temporary construction areas (construction areas) include: the 95-foot temporary construction easement, temporary extra work areas, uncleared storage areas, two temporary access roads, and temporary construction storage yards. Environmental alignment sheets, which have been provided with the application as Exhibit 1, depict the pipeline alignment overlaid on a 2006 aerial photograph. The environmental alignment sheets provide land ownership and parcel information along the pipeline route. While the alignment sheets generally depict the FERC-authorized route, the applicant has stated that "there may be minor changes in the alignment within a given property boundary to accommodate a landowner request or to avoid specific construction obstacles." *See* Application Narrative, at p. 3.

As discussed above, Pacific Connector proposes the construction and operation of a 49.72-mile segment of the PCGP within Coos County. The pipeline would originate at milepost (MP) 0.0 at the Jordan Cove Receipt Meter Station located within the Jordan Cove LNG terminal site, on the North Spit of Coos Bay. The pipeline would extend east from the LNG terminal, passing through the Weyerhaeuser Linerboard site, and entering Haynes Inlet at about MP 1.7. The pipeline would be installed for about 2.4 miles in Coos Bay, exiting to the north of the Glasgow peninsula at about MP 4.1. It would then turn southeast to cross Kentuck Slough at about MP 6.3, and proceeding to Graveyard Point. The pipeline would cross under the Coos River at about MP 8.1 and then will cross Catching Slough at MP 11.11. Between about MPs 12.8 and 26.1, the pipeline would generally follow the existing Bonneville Power Administration (BPA) powerline. The pipeline would then proceed in a southeasterly direction and follow existing logging roads, where feasible. The pipeline would exit Coos County at MP 45.7. As noted, where feasible, the PCGP alignment is co-located with existing rights-of-ways and corridors to limit the areas of new disturbance.

As a result of the subsurface nature of the pipeline, the majority of the impacts from the pipeline will occur during the construction process. Generally throughout the project, Pacific Connector proposes to utilize a 95-foot wide temporary construction easement and associated temporary extra work areas and uncleared storage areas, with a 50-foot permanent right-of-way. The temporary construction easement configuration is required to accommodate the necessary clearing and grading activities to prepare for construction, temporarily store spoil materials for construction, and to provide a passing lane during construction for movement up and down the construction area. The temporary extra work areas and uncleared storage areas are needed because of site-specific characteristics of the construction easement. Pacific Connector has limited the width of the temporary construction easement and the size of the temporary extra work areas and uncleared storage areas to the greatest extent practicable.

There are two locations within Coos County where it will be necessary to create temporary access roads in order to construct a portion of the pipeline. These two temporary access roads will be located south of the Coos River in the 20RS zoning district, and will be restored to preconstruction conditions following completion of construction.

Pacific Connector will also need to create two permanent access roads providing access to the above-ground block valve facilities. These will be graveled private roads that are necessary for the operation and maintenance of the pipeline. Pacific Connector has located the final placement of the block valves adjacent to existing roads to minimize the need for creating new access roads and the length of the two new permanent access roads.

The pipeline is allowed as a hearings body conditional use within the EFU, RR-2, and RR-5 zones, an administrative conditional use within the F zone, and a use permitted outright in the IND zone. The pipeline is also allowed in the 15 zones that it crosses within the CBEMP as a permitted use, subject only to consistency with various general conditions.

B. Process

The review timeline for this application is as follows:

Feb. 12, 2010	Application submitted and accepted.
March 12, 2010	Application deemed incomplete.
April 19, 2010	Application deemed complete.
May 20, 2010	Public Hearing
June 10, 2010	First Open Record Period Closed (rebuttal testimony only).
June 17, 2010	Second Open Record Period Closed (for surrebuttal testimony only
June 24, 2010	Applicant's Final Argument
July 14, 2010	Hearings Officer's Recommendation.
Aug. 3, 2010	Deliberations and Decision by Board of Commissioners
September 25, 2010	150 Day Deadline.

C. Scope of Review

When addressing the criteria and considering evidence, the hearings officer used the standard of review required for land use decisions. The applicant must provide substantial evidence in the whole record to demonstrate that all approval standards are met. When evidence conflicted, the hearings officer reviewed the entire record to see if the undermining evidence outweighed the applicant's evidence. In addition, where the ordinance provisions were ambiguous, the hearings officer applied the *PGE v. BOLI* methodology, discussed *infra,* to arrive at what he believes to be the correct construction. In so doing, the hearings officer attempted to rely, as much as possible, on past interpretation adopted by the Board, while still making sure that the interpretation was affirmable.

The hearings officer believes that the conclusions made herein would be affirmed if appealed. However, the Board of Commissioners does not have to accept the conclusions of the hearings officer. The Board has the authority to: (1) re-weigh the evidence, and (2) modify or overturn my interpretations and reach a different conclusion regarding the interpretation. There

are other conclusions that could be drawn from the evidence, as well as other plausible interpretations that could be adopted by the Board. The Board has fairly wide latitude under state law to draw its own conclusion about the evidence. In addition, with regard to issues of local Code interpretation, state law establishes a very deferential standard of review, ORS 197.829(1), although the precise contours of that standard seems to be a bit of flux at the moment. *Compare Clark v. Jackson County*, 313 Or 508 (1992); *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003); *Siporen v. Medford*, 231 Or App 585, 220 P3d 427 (2009), *rev allowed* 348 Or 19 (2010). The only area where the Board would not receive any deference is where it interprets code language that is based on and implements state law. Understandably, in such situations LUBA and the courts do not give the governing body deference as the intended meaning of the local code provision. In this narrative, the hearings officer attempted to note the instances where the interpretation is ultimately an issue of state law (for which the Board's interpretation would receive no deference).

II. Legal Analysis

A. Process-Related Issues and Issues Related to Multiple Approval Standards.

1. The Opponent's "Alternative Route" Arguments Must Fail Because Only FERC has Jurisdiction to Regulate the Route of a Gas Pipeline or to Control Safety Standards Related to Gas Pipelines.

As the Board is aware, the Federal Energy Regulatory Commission ("FERC") is the lead federal agency that regulates the siting of interstate energy facilities. FERC is in the process of reviewing the proposed LNG terminal and associated pipeline facilities as part of its responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq. ("NEPA"). Many of the opponents have attempted to use this proceeding as opportunity to take another bite at the NEPA process, particularly with regard to the alternative "Blue Ridge Route." This is perhaps understandable, given that the jurisdictional relationship of the various regulatory agencies is complex, to say the least.

Nonetheless, it must be stated at this juncture that any local land use process that would seek to determine the route of the pipeline or otherwise purport to take action inconsistent with FERC's determination in the "Certificate of Public Convenience and Necessity" would likely be preempted[3] by federal law. A discussion of this issue is warranted, but given the complexity of the issue and the fact that it is somewhat of a tangential issue, that discussion is included as an appendix. For purposes of this application, however, the Board may only approve or deny the application that the applicant has presented to you. The Board does not have the ability to propose major changes to the route, although minor detours (< 400 feet off centerline) are possible, according to the applicant.

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[3] The preemption doctrine is rooted in the Supremacy Clause of the Constitution, Article VI, clause 2, which states, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Preemption doctrine consists of four different types: (1) "express preemption," resulting from an express Congressional directive ousting state law (*Morales v. Trans World Airlines, Inc.*, 504 U.S.374, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992)); (2) "implied preemption," resulting from an inference that Congress intended to oust state law in order to achieve its objective (*Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)); (3) "conflict preemption," resulting from the operation of the Supremacy Clause when federal and state law actually conflict, even when Congress says nothing about it (*Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 143, 83 S.Ct. 1210, 1218, 10 L.Ed.2d 248 (1963)); and (4) "field preemption," resulting from a determination that Congress intended to remove an entire area from state regulatory authority (*Fidelity Fed. Savs. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153, 102 S.Ct. 3014, 3022, 73 L.Ed.2d 664 (1982)). *See Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n,* 461 U.S. 190, 203-04, 103 S.Ct. 1713, 1721-22, 75 L.Ed.2d 752 (1983); *see generally* Burt Neuborn, An Overview of Preemption (Fed.Jud.Center, Feb. 9, 1993). The present case involves express and field preemption.

2. Landowner Consent.

There was considerable discussion concerning the applicant's ability to submit a land use application for a pipeline that will cross private property, when the landowner does not give consent to the applicant. The only applicable code section requiring landowner consent is CCZLDO §5.0.150.[4] The requirement that a property owner or contract purchaser sign the applicant is a mandatory prerequisite to a properly filed application. However, as discussed below, it is procedural requirement that can be deferred to a later stage in the approval process.

At the onset, the hearings officer notes that other local government's codes have adopted specific exceptions to the general requirement that an owner must sign the land use application. For example, in *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004), LUBA address a code provision that contained a specific exception to the signature requirement aimed at "Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the Application."[5] *See also Kurihashi Partners v. City of Beaverton*, 46 Or LUBA 791 (2004) (noting similar provision contained in the City of Beaverton Code). However, the Coos County Code contains no similar type of exception.

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[4] SECTION 5.0.150 is entitled "APPLICATION REQUIREMENTS" and provides, in relevant part:

> "(Article 5.6 of this ordinance Site Plan Review Requirements and Chapter 6 Land Divisions have additional submittal requirements)
>
> Applications for development or land use action shall be filed on forms prescribed by the County and shall include sufficient information and evidence necessary to demonstrate compliance with the applicable criteria and standards of this Ordinance and be accompanied by the appropriate fee. An application shall not be considered to have been filed until all application fees have been paid. All applications shall include the following:
>
> Applications shall be submitted by the property owner or a purchaser under a recorded land sale contract. "Property owner" means the owner of record, including a contract purchaser. The application shall include the signature of all owners of the property. A legal representative may sign on behalf of an owner upon providing evidence of formal legal authority to sign. * * * *. (Emphasis Added).

[5] Deschutes County Code ("DCC") 22.08.010 provides, in relevant part:

> "A. For the purposes of DCC 22.08.010, the term 'property owners' shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.
> "B. Applications for development or land use actions shall:
> "1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
> "C. The following applications are not subject to the ownership requirement set forth in DCC 22.08.010(B)(1):
> "1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the Application[.]"

In a sense, the owner signature requirement may be viewed as a "completeness" issue, insomuch as an application may not be "complete" until the required signatures are present. In this case, Staff had already deemed the application complete. Staff defends its decision to accept the application despite the lack of an owner's signature based on precedent set in earlier cases:

> The County treated the PCGP consolidated applications in the same manner as the County's prior pipeline applications (2002 and 2003) which were also submitted without owner signatures. The County determined the LDO's application signature provision was not intended to address applications for linear utility facilities involving numerous ownerships where the utility company has the right of condemnation and where obtaining all of the property owner signatures would be virtually impossible.
>
> At that time, the Board of Commissioners decided not to require the utility provider to initiate condemnation litigation against its citizens within the proposed pipeline alignment in order to submit a land use application.
>
> The prior approvals reflect the County's interpretation of its code to accept land use applications for pipelines in Coos County without the signatures of all landowners, as long as the applicant has condemnation authority and a condition is imposed that the land use approval would not take effect until the applicant acquires the necessary property. The precedent created in the prior County decisions was followed in this application.
>
> The County's interpretation is supported by the language in the code. LDO Section 5.0.150 addresses requirements for an application submittal. The first paragraph requires an application to be submitted on forms provided by the county and that the submitted application must be accompanied by the appropriate fee. This paragraph specifically states that "An application shall not be considered to have been filed until all application fees have been paid."
>
> It is the County's position that the signature requirement in the second paragraph is merely procedural rather than jurisdictional. The language in the first paragraph expressly creates a jurisdictional requirement: "An application shall not be considered to have been filed until all application fees have been paid." This same requirement is not applicable to the signature provisions of this Section. Therefore, the signature requirement is procedural, while the fee payment requirement is jurisdictional. Processing the consolidated applications without the property owners' signatures will not be prejudicial to the rights of any of the

> property owners if the applications are approved subject to a condition that the approvals shall not become effective until PCGP acquires the interest in the subject properties necessary to precede with the project. This is essentially the same condition that the county used to approve its own pipeline application in 2002.

See Supplemental Staff Report dated June 10, 2010, at p. 1-2.

For its part, the applicant does not argue that it is a "property owner" within the meaning of the Code. Rather, the applicant appears to be arguing that it does not need to obtain the consent of the property owner because it has a statutory power of condemnation.

The applicant cites ORS 772.510(3) and 15 USC § 717 in support of this argument. ORS 772.510 provides:

> 772.510. Pipeline companies, right of entry and condemnation
>
> (1) Any pipeline company[6] that is a common carrier[7] and that is regulated as to its rates or practices[8] by the United States or any

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[6] Under ORS 772.505(2), the term "pipeline company" includes "any corporation, partnership or limited partnership, transporting, selling or distributing fluids, including petroleum products, or natural gases and those organized for constructing, laying, maintaining or operating pipelines, which are engaged, or which propose to engage in, the transportation of such fluids or natural gases."

[7] Determining whether an interstate natural pipeline company has proven to be a more difficult question than anticipated. The hearings officer requested briefing on the issue, but no party responded. Since interstate gas companies derive eminent domain authority from the federal Natural Gas Act, it may not matter whether similar authority is granted under state law. In any event, although the limited research the hearings officer conducted left some doubt regarding the issue, it does appear that interstate natural gas pipelines are common carriers due to the passage of FERC Order No. 636. In *General Motors Corp. v. Tracy*, 519 U.S. 278, 283-4, 117 S. Ct. 811 (1997), the U.S. Supreme Court set forth a concise history of the subject, as follows:

> Traditionally, the industry was divisible into three relatively distinct segments: producers, interstate pipelines, and LDC's. This market structure was possible largely because the Natural Gas Act of 1938 (NGA), 52 Stat. 821, 15 U.S.C. § 717 *et seq.*, failed to require interstate pipelines to offer transportation services to third parties wishing to ship gas. As a result, "interstate pipelines [were able] to use their monopoly power over gas transportation to create and maintain monopsony power in the market for the purchase of gas at the wellhead and monopoly power in the market for the sale of gas to LDCs." Pierce, The Evolution of Natural Gas Regulatory Policy, 10 Nat. Resources & Env't 53, 53-54 (Summer 1995) (hereinafter Pierce). For the most part, then, producers sold their gas to the pipelines, which resold it to utilities, which in turn provided local distribution to consumers. See, *e.g., Associated Gas Distributors v. FERC,* 824 F.2d 981, 993 (C.A.D.C.1987), cert. denied, 485 U.S. 1006, 108 S.Ct. 1468, 99 L.Ed.2d 698 (1988); Mogel & Gregg, Appropriateness of Imposing Common Carrier Status on Interstate Natural Gas Pipelines, 4 Energy L.J. 155, 157 (1983).
>
> Congress took a first step toward increasing competition in the natural gas market by enacting the Natural Gas Policy Act of 1978, 92 Stat. 3350, 15 U.S.C.

agency thereof, may enter in the manner provided by ORS 35.220[9] upon lands within this state outside the boundaries of incorporated cities.[10]

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§ 3301 *et seq.*, which was designed to phase out regulation of wellhead prices charged by producers of natural gas, and to "promote gas transportation by interstate and intrastate pipelines" for third parties. 57 Fed.Reg. 13271 (1992). Pipelines were reluctant to provide common carriage, however, when doing so would displace their own sales, see *Associated Gas Distributors v. FERC, supra,* at 993, and in 1985, the Federal Energy Regulatory Commission (FERC) took the further step of promulgating Order No. 436, which contained an "open access" rule providing incentives for pipelines to offer gas transportation services, see 50 Fed.Reg. 42408. In 1992, this evolution culminated in FERC's Order No. 636, which required all interstate pipelines to "unbundle" their transportation services from their own natural gas sales and to provide common carriage services to buyers from other sources that wished to ship gas. *See* 57 Fed.Reg. 13267.

See also United Distribution Companies v. F.E.R.C., 170 P.U.R.4th 425, 88 F.3d 1105, 1123 (D.C. Cir. 1996) ("In Order No. 436, the Commission began the transition toward removing pipelines from the gas-sales business and confining them to a more limited role as gas transporters. Under a new Part 284 of its regulations, the Commission conditioned receipt of a blanket certificate for firm transportation of third-party gas on the pipeline's acceptance of non-discrimination requirements guaranteeing equal access for all customers to the new service. Order No. 436, ¶ 30,665, at 31,497-518. In effect, the Commission for the first time imposed the duties of common carriers upon interstate pipelines.").

[8] The term "practices" is very broad, and therefore there can be little doubt that the "practices" of Pacific Connector Gas Pipeline LP are regulated by a federal agency.

[9] ORS 35.220 provides as follows:

35.220. Actions allowed on real property subject to condemnation by the condemner

(1) Subject to the requirements of this section, a condemner may enter upon, examine, survey, conduct tests upon and take samples from any real property that is subject to condemnation by the condemner. A condemner may not enter upon any land under the provisions of this section without first attempting to provide actual notice to the owner or occupant of the property. If the condemner has not provided actual notice, written notice must be posted in a conspicuous place where the notice is most likely to be seen. The posted notice must give the condemner's name, address and telephone number and the purpose of the entry. A condemner may conduct tests upon or take samples from real property only with the consent of the owner or pursuant to an order entered under subsection (2) of this section. All testing and sampling must be done in conformity with applicable laws and regulations. Testing and sampling results shall be provided to the owner upon request.

(2) If the owner of property objects to examination or survey of the property under this section, or does not consent to the terms and conditions for testing or sampling of the property, the condemner may file a petition with the court seeking an order providing for entry upon the property and allowing such examination, survey, testing or sampling as may be requested by the condemner. The court may enter an order establishing reasonable terms and conditions for entry and for any examination, survey, testing or sampling of the property requested by the condemner. Reasonable compensation for damage or interference under subsection (3) of this section may be established in the proceeding either before or after entry is made upon the property by the condemner.

(2) This right may be exercised for the purpose of examining, surveying and locating a route for any pipeline,[11] but it shall not be done so as to create unnecessary damage.

(3) These pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their pipeline company purposes, by proceedings for condemnation as prescribed by ORS chapter 35. (Second Emphasis added).

It seems that federal law may provide additional statutory authority for the use of eminent domain in this case. 15 U.S.C. 717(f)(2)(h) provides:

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or

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(3) An owner is entitled to reasonable compensation for:

(a) Any physical damage caused to the property by the entry upon or examination, survey, testing or sampling of the property, including any damage attributable to the diffusion of hazardous substances found on the property; and

(b) Any substantial interference with the property's possession or use caused by the entry upon or examination, survey, testing or sampling of the property.

(4) If a condemner is required to pay compensation to an owner in a proceeding under subsection (2) of this section, and the condemner thereafter seeks condemnation of the same property, the owner is not entitled to any payment of compensation in the condemnation action that would result in the owner receiving a second recovery for the same damage or interference.

(5) Nothing in this section affects any liability under any other provision of law that a condemner may have to an owner or occupant of property by reason of entry upon or examination, survey, testing or sampling of property.

[10] In looking at the maps provided by the applicant, it appears that no part of the proposed gas pipeline traverses a city located in Coos County. Presumably, if the pipeline did traverse a City boundary, that City would be the land use approval authority for that portion of the pipeline.

[11] Under ORS 772.505(1), the term "Pipeline" includes "pipes, lines, natural gas mains or lines and their appurtenances, including but not limited to pumps and pumping stations, used in transporting or distributing fluids, including petroleum and petroleum products or natural gases."

> pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided,* That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000. (Underlined emphasis added).

Based on ORS 772.510(3) and 15 U.S.C. 717f, it does appear that Pacific Connector does have the right of condemnation. The question is whether that right of condemnation provides an implicit exception to the Code's definition of "property owner." It does not.

I reviewed the hearings officer's decision in the Pipeline Solutions Case (County File No. HBCU-02-04). In that case, the applicants had argued that "[i]n cases such as this, where the application is for a public utility[,] an applicant, as a County with eminent domain powers, the applicant need not obtain signatures or consents from the property owners before obtaining land use permits."[12] The opponents cited CCZLDO §5.2.200 as an approval criterion requiring consent of property owners. That provision apparently does not exist anymore, or perhaps it has been renumbered. In any event, the hearings officer found, without explanation or citation, that CCZLDO §5.2.200 was a "procedural requirement" and not an approval criterion.

The hearings officer in HBCU-02-04 went on to find the following:

> It would be reasonable for Coos County to have accepted the Application as complete without the consent of all affected property owners following the rationale of *Schrock Farms vs. Linn County.* The Application is for a public utility and the Applicant is Coos County, which has eminent domain powers. Therefore written consent would not be necessary from the affected property owners before filing this Application.

See Hearings Officer Decision, HBCU-02-04, at p. 4. The hearings officer never really explained how he makes the logical leap of faith from (1) saying that the county has eminent domain powers to (2) his conclusion that it does not therefore require the consent of affected landowners to submit a land use application concerning the landowner's property. The hearings officer seemed to rely on *Schrock Farms Inc. v Linn County*, 31 Or LUBA 57 (1996) for his ruling.

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[12] The hearings officer in that case did not say whether the applicant provided authority to support that assertion.

Schrock Farms Inc. was not correctly applied by the hearings officer in HBCU-02-04.[13] In *Schrock Farms,* ODOT was the applicant for a PAPA. The Code allowed only property owners to file an application for a PAPA. The petitioner argued that ODOT was not a "property owner" within the meaning of the code. ODOT argued that it was a property owner *because it had initiated condemnation proceedings on the subject property* prior to the application being deemed complete on April 6, 1994. Petitioners countered that the condemnation proceedings had been dismissed by the Court on October 31, 1994, and therefore ODOT was no longer a property owner. LUBA disagreed with the petitioner regarding the legal import of the dismissal, noting that the "dismissal became effective after the application was deemed complete." Thus, LUBA apparently viewed the completeness date as having legal relevance to the issue.

Schrock Farms does not stand for the broader proposition that any entity with condemnation authority automatically has "property owner" status simply by virtue of a statutory grant of condemnation authority such as ORS 772.510(3). For this reason, *Schrock Farms* is not direct authority for this case, since no condemnation proceedings had been filed by the time the application was deemed complete back in April of 2010. However, as discussed in more detail below, *Schrock Farms* does suggest that one possible method for a common carrier pipeline company to gain "property owner" status is to do exactly what ODOT did in that case: initiate condemnation proceedings on the subject properties.

Staff and the applicant both state that most of the requirements set forth in CCZLDO §5.0.150 are not "jurisdictional" despite being worded in a mandatory fashion. Their argument is that some requirements may be mere "procedural" in nature, as opposed to being "jurisdictional." In this manner, a jurisdictional requirement is one that must be completed or met at the time the application is submitted. In that event, the County cannot process the application unless the requirement is completed. On the other hand, under their analysis, a procedural act – even one worded in mandatory terms - is one that may be met at some future point in time. For its part, Western Environmental Law Center ("WELC") states that the procedural versus jurisdiction issue is a "difference without distinction." *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1.

The applicant cites *Simonson v. Marion County*, 21 Or LUBA 313 (1991). In *Simonson*, LUBA addressed whether the county hearings officer correctly rejected an application because it had not been signed by the "legal owner" at the time it was filed. LUBA reversed the hearings officer, holding that:

> "A zoning ordinance requirement may be jurisdictional, in the sense that failure to comply with the requirement may not be waived by the local government or cured by later performance of the requirement. *McKay Creek Valley Assoc. v. Washington County*, 16 Or LUBA 690, 692-93 (1988); *Beaverton v. Washington County*, 7 Or LUBA 121, 127 (1983). However, the code language must clearly express that the requirement is

[13] Given the complexity of the issue, it is understandable that there would be different opinions on the topic. I do seek to not fault the hearings officer or the County for their course of action it took in HBCU-02-04.

jurisdictional. *See Rustrum v. Clackamas County*, 16 Or LUBA 369, 372 (1988); *Beaverton v. Washington County, supra*."

In *Simonson*, the "agent" of the landowner filed the land use application in Marion County on May 2, 1990. The application was defective when submitted because it did not meet the requirement that the property owner submit in writing a document that confirms that the agent is "duly authorized" to submit the application on the owner's behalf. The applicant cured that defect on August 14, 1990 by submitting the required documentation: The County held its first hearing on the application on September 12, 1990, but ultimately denied the application on the basis that, on the day the application was submitted, the application did not contain the required documentation from the owner. LUBA held that this was in error, because the applicant had eventually submitted the required letter, and the requirement was not jurisdictional. Thus, *Simonson* makes clear that the application *could* be accepted and processed before compliance with the signature requirement is established. Had the issue been "jurisdictional," the application could not have accepted and processed.

The case of *Base Enterprises, Inc. v. Clackamas County*, 38 Or LUBA 614 (2000) also discusses the distinction between jurisdictional requirements and non-jurisdictional requirements, as follows:

> According to petitioner the requirement at ZDO 1301.03(A) that the application be submitted by "the owner, contract purchaser, option holder, or agent of the owner, of the property in question" is a jurisdictional requirement.
>
> * * * * *.
>
> Petitioner assumes, but does not establish, that the ZDO 1301.03(A) limitation on persons who may submit an application for an administrative action is a "jurisdictional" requirement. It may be that if ZDO 1301.03(A) expressly stated that its limitations are "jurisdictional" we would be required to treat it as a jurisdictional requirement. *See Breivogel v. Washington County*, 114 Or App 55, 58-59, 834 P2d 473 (1992) (county code made signature on local appeal document a jurisdictional requirement). However, unlike the code language at issue in *Breivogel*, ZDO 1301.03(A) does not state that its limitations on who may submit an application are "jurisdictional." ZDO 1301.03(A) does not state that the county lacks authority to consider an application for an administrative action that is submitted by someone who does not prove he or she is among the persons listed in ZDO 1301.03(A).
>
> The first hearings officer presumably could have terminated his review, and determined that the first application should be dismissed, once he determined that Zamani was not among those authorized to submit the application under ZDO 1301.03(A). However, that does not mean the hearings officer

> was legally compelled to do so. We do not agree with petitioner that the county lacked jurisdiction to deny the first application or that it erred by denying the second application because it is substantially similar to the first application.

Similarly, in *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994), LUBA held that where a local code provision does not explicitly state that the elements of a complete development application are "jurisdictional" (specifically, a signature requirement), the local government's interpretation of the code provision as imposing a "procedural" requirements must be affirmed under ORS 197.829.

Thus, *Simonson, Base Enterprises, BCT Partnership* and similar cases[14] make clear that application signature requirements are not "jurisdictional" unless the code specifically makes then so. Simply because the signature requirement is worded in mandatory terms does not make the requirement "jurisdictional." Rather, to be jurisdictional, the Code must state something along the lines that "the county lacks authority to consider an application for an administrative action that is submitted by someone meeting the definition of owner." Under *BCT Partnership, Womble,* and *Bridges,* an application submittal requirement that is not jurisdictional is "procedural" in nature. Once it has been determined that an application submittal requirement is procedural, then an opponent challenging compliance with the requirement must demonstrate prejudice to his or her substantial rights. *See generally Burdhardt v. City of Molalla*, 25 Or LUBA 43, 51 (1993).[15]

In the present case, the signature requirement under CCZLDO 5.0.150 not presented as a jurisdictional element of an application. Although it does state a requirement that the application shall be signed by all property owners, it does not expressly make such signatures a jurisdictional requirement, and therefore it must be treated as procedural under the case law discussed above.

This conclusion is directly support by the text and context of the code itself. As staff notes, CCZLDO 5.0.150 also includes the following statement, which clearly creates the type of "jurisdictional" requirement contemplated in the LUBA cases cited above: "An application shall not be considered to have been filed until all application fees have been paid." Thus, the county has expressly created a jurisdictional requirement that an application cannot be considered without payment of the fee. However, there is no similar jurisdictional language associated with the property owner signature requirement.

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[14] *See also Womble v. Wasco County*, 54 Or LUBA 68 (2007) (petitioner failed to provide basis for reversal or remand when, although land use application was not authorized by the property owners under local code, petitioner did not establish that the code requirements in question were "jurisdictional" in nature); *Bridges v. City of Salem*, 19 Or LUBA 373 (1990) (same).

[15] The purpose of CCZLDO 5.0.150 is to ensure that the current property owner or the purchaser of property that is the subject of a development application knows about and agrees with the application. *Compare Womble v. Wasco County*, 54 Or LUBA 68 (2007). In this case, it seems obvious that the opponents who raised this issue do not "agree" with the application. Furthermore, it seems like an understatement to say that landowners would be prejudiced by the approval of an application for a pipeline that traverses their land, at least in the absence of having been provided just compensation.

However, just because something is not jurisdictional does not mean that it is not a mandatory requirement that can simply be ignored. WELC correctly asserts that the County cannot "waive" the requirement even if it is procedural. *See* Letter from WELC staff attorney Jan Wilson dated June 16, 2010, at p. 1. In this regard, the case of *Baker v. Washington County*, 46 Or LUBA 591 (2004) is instructive. In *Baker*, the intervenors were applicants seeking to partition their property into two parcels. Intervenor took access to the parcels via a driveway easement that crosses the petitioner's land. Petitioners objected to the use of the easement for access for the two parcels, arguing that, as the underlying fee owners of the easement, Washington County Community Development Code (CDC) 203-1.1 required that the petitioners sign the application. In this regard, the code provision at issue stated:

> CDC 203.1.1. "Type I, II and III development actions may be initiated only by: Application by *all the owners* of the subject property, or any person authorized in writing to act as agent of the owners or contract purchasers. (Emphasis added).

The code did not make the signature a "jurisdictional" defect. Nonetheless, LUBA held that the County erred in concluding that the disputed application could be processed without petitioners' joining in the application, because the petitioners are "owners" of the property within the meaning of the code.

As if this were not complicated enough, *Caster v. City of Silverton*, 54 Or LUBA 441 (2007) throws another wrinkle into the mix. Pacific Connector argues that that the County cannot deny the application for failure to obtain signatures of all owners, on account of the fact that staff issued a completeness letter. The applicant states:

> The signature requirement goes to completeness, not approvability or jurisdiction, and the county may not deem an application complete and then subsequently deny the application based upon noncompliance with a procedural factor that goes to the completeness of the applications. In *Caster v. City of Silverton*, 54 Or LUBA 441 (2007), the applicant failed to provide information requested by the city for completeness under ORS 227.178(2). LUBA held that the city could not deem an application complete but then subsequently deny the application based on noncompliance with a factor that goes to completeness of the applications:
>
> > "Finally, even if petitioner in this case failed to provide the notice required by ORS 227.178(2)(b), the city elected to proceed with review of the permit application rather than treat the permit application as void under ORS 227.178(4). In that circumstance, the city may not thereafter simply cite an alleged failure on petitioner's part to provide requested information as a basis for denying a permit application. Having elected to proceed with the application notwithstanding petitioner's failure or refusal to provide the

> requested information, the city owes petitioner at least some explanation for why it believes petitioner's evidentiary submittal falls short of demonstrating the proposal complies with the relevant approval criteria." *Caster*, 54 Or LUBA at 451-52.

See Applicant's Final Argument dated June 24, 2010, at p. 2. However, the last sentence of the above-cited quote demonstrates that LUBA's point is rather nuanced. What LUBA is saying is that once a completeness letter is issued, the application cannot be denied due to a failure to provide the requested information. Rather, to the extent the local government wishes to deny the applicant, it may then only do so on the basis that the lack of the requested information causes there to be insufficient evidence to meet the requirements set forth in applicable approval standards. Although the issue is not without doubt, the hearings officer believes that CCZLDO §5.0.150 is a mandatory approval standard because it could form the basis of denial of the application, *See Baker, supra.*

Thus, viewing case such as *Simonson, Base Enterprises,* and *Baker* together, it does appear that the County would be on solid footing to deny Pacific Connector's application, notwithstanding *Caster.* However, the hearings officer believes that the denial approach is not in anybody's best interest, since it appears to accomplish nothing other than to delay the process. In this regard, the hearings officer agrees with the applicant that "[i]t does not make practical sense for Pacific Connector to condemn the property required for construction of the pipeline until the necessary final approvals from the county and FERC have been obtained and any appeals are exhausted." *See* Applicant's Final Argument dated June 24, 2010, at p. 2.

Because the defect is not jurisdictional, it does not appear that the County is required to reject or deny the application, and the hearings officer does not read *Baker* to establish an absolute rule to the contrary. *Compare Bridges .City of Salem*, 19 Or LUBA 373 (1990) (failure to provide proof of agency until after the application is filed does not warrant denial of application, where petitioners were not able to show prejudice). Rather, it appears that another approach is preferable: The County has some flexibility to allow the applicant to submit the required documentation at some later date. In this regard, *Simonson* is instructive:

> Where a local government imposes standards that must be met to obtain approval of permits, the local government must find that those standards are met before granting approval. If the permit applicant fails to demonstrate that applicable approval standards are met, the local government must deny the application. Of course, a local government also may, in an appropriate circumstance, impose conditions and rely on those conditions in determining that the application, as conditioned, meets the applicable approval standards. *Lousignont v. Union County, supra; Sigurdson v. Marion County*, 9 Or LUBA 163, 170 (1983); *Margulis v. City of Portland, supra.*

Continuing in a footnote, LUBA stated:

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

IN THE MATTER OF AMENDING THE COOS BAY ESTUARY MANAGEMENT PLAN TEXT TO ALLOW SUBSURFACE LOW-INTENSITY UTILITIES IN THE DDNC-DA MANAGEMENT UNIT AND APPOVAL A CONDITIONAL USE AND FLOODPLAIN PERMITTO AUTHORIZE A PIPELINE AND ASSOCIATED IMPROVEMENTS AS DESCRIBED IN ATTACHMENT "A".	ORDINANCE NO.: 19-01-002PL

SECTION 1. TITLE

This Ordinance shall be known as the "Coos County Ordinance No. 19-01-002PL". Further known as ordinance amending the Coos Bay Estuary Management Plan text to allow subsurface low-intensity utilities in the DDNC-DA CBEMP management unit and approve of a conditional use and floodplain permit to authorize pipeline and associated improvements as described in Attachment "A".

SECTION 2. AUTHORITY

This ordinance is adopted pursuant to ORS Chapter 215, including but not limited to ORS 215.060, ORS 215.050 and ORS 215.223.

SECTION 3. PURPOSE

This ordinance amends Coos County Comprehensive Plan Volume II Coos Bay Estuary Management Plan ("CBEMP"), Part 1 and the County Zoning and Land Development Ordinance to allow for low-intensity utilities in the DDNC-DA Coos Bay Estuary Management Unit. The applicant applied for the following: (1) Text amendment to allow subsurface low-intensity utilities in the DDNC-DA CBEMP management unit; (2) Conditional use permit to authorize the Pipeline in the Forest zoning district; (3) Compliance determinations for the Pipeline in the Exclusive Farm Use, Industrial, 7-D, 7-NA, 13A-NA, DDNC-DA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD and 15-RS, where the it is permitted, subject to compliance

with conditions; and (4) Floodplain development permit to permit grading and installation of a Pipeline in a Special Flood Hazard Area in the Balance of County

SECTION 4. FINDINGS

The Board of Commissioners appointed a hearings officer to conduct the evidentiary hearing in this matter. The public hearing was held on February 22, 2019 and the record was closed. The Board finds any testimony received after the deadline was rejected. A deliberation hearing in the matter set for December 4, 2019.

At the December 4, 2019 hearing on the matter, the Board of Commissioner opened the meeting and declared any conflicts of interest, bias, *ex pate* contacts as required for decision makers. The hearing was opened to any challenges as consistent with ORS 244.120 and the general provisions of ORS Chapter 244. After the procedural matters relate to conflicts of interest, bias and ex part contacts was resolved the Board of Commissioners moved forward with review of the matter including all of the documents in the record and deliberated toward a tentative decision. The Board of Commissioners reached a tentative decision that the Criteria had been met with the conditions proposed by the hearing officer and staff's suggested amendments to the recommendation.

The approval was tentative to allow staff to convert the findings to final document for signatures.

SECTION 5. ADOPTION OF AMENDMENTS TO THE COOS BAY ESTUARY MANAGEMENT PLAN AND IMPLEMENTING ORDINANCE

The documents attached hereto as Attachment "A", attached hereto and hereby adopted as portions of the Coos Bay Estuary Management Plan, an element of the Coos County Comprehensive Plan, and necessary amendment to the implementing ordinance shall be made.

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this ordinance; and it is hereby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

Coos County Ordinances 82-8-016L, 84-4-012L, 86-01-001L, 86-01-002L, 99-10-008PL and 14-09-011PL are repealed to the extent that they are in conflict with this ordinance.

SECTION 8. EMERGENCY CLAUSE

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

Dated December 18, 2019

ATTEST

Bobbi Brooks
Recording Secretary

BOARD OF COMMISSIONERS

Chair

Approved as to form:

Office of Legal Counsel

Vice Chair

absent
Commissioner

First Reading: December 4, 2019

Second Reading: December 18, 2019

Effective Date: December 18, 2019

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

PACIFIC CONNECTOR GAS PIPELINE COMPANY, LP
"EARLY WORKS ALIGNMENT" PIPELINE PROPOSAL
COOS COUNTY, OREGON

COUNTY FILE NO.
(HBCU-18-002 / AM-18-010)
DECEMBER 18, 2019

Early Works Pipeline ProposalHBCU-18-002 / AM-18-010

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IV. Conclusion & Conditions of Approval

I. Introduction.

A. Summary of Proposal – "Early Works Alignment" Pipeline Route

Pacific Connector Gas Pipeline Company, LP ("Applicant" or "PCGP") proposes to develop approximately 3.67 miles of the Pacific Connector Gas pipeline ("pipeline") within Coos County ("County"). This alternative pipeline alignment has been labeled the "Early Works Alignment." This alignment is proposed to be located on land zoned Industrial, Exclusive Farm Use, and Forest zoning districts, as well as lands located in the Coos Bay Estuary Management Plan ("CBEMP") management units 7-D, 7-NA, 13A-NA, DDNC-DA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS.

The Applicant's request includes the following applications (together, "Application"):

- PAPA / Text amendment to allow subsurface low-intensity utilities in the DDNC-DA CBEMP management unit includes changes to both the Plan and Ordinance;
- Conditional use permit to authorize the pipeline in the Forest zoning district;
- Compliance determinations for the pipeline in the Exclusive Farm Use, Industrial, 7-D, 7-NA, 13A-NA, DDNC-DA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS, where the it is permitted, subject to compliance with conditions; and
- Floodplain development permit to permit grading and installation of a pipeline in a Special Flood Hazard Area in the Balance of County.

The proposed pipeline is a 36-inch diameter interstate natural gas pipeline that extends approximately 229 miles from an existing hub where regional pipelines intersect in Malin, Oregon to the (proposed) Jordan Cove gas liquefaction facility and related terminal on the North Spit in the County. In order to install and operate the pipeline, the Applicant must obtain a certificate of convenience and necessity from the Federal Energy Regulatory Commission ("FERC"). FERC's jurisdiction generally preempts application of local zoning provisions to the pipeline. However, in the Coastal Zone, the Applicant must obtain both federal and local approval to site the pipeline.

The proposed alternative alignment is approximately 3.67 miles long. It begins with Milepost 0.0, which is the meter station at the Jordan Cove Energy Project campus on the North Spit. The application describes the Early Works Alignment as traveling south beneath Coos Bay and into the City of North Bend at approximately Milepost 0.66. After that, the Early Works Alignment continues to the east, again beneath Coos Bay, before exiting the City of North Bend and re-entering the unincorporated area of the County at Milepost 1.58. Next, the pipeline exits the estuary in approximately the Kentuck Slough area. The Early Works Alignment then generally turns to the southeast along approximately the same route as the County-approved PCGP pipeline. The Applicant has provided a table starting on page 2 of the application which describes the location and zoning districts that the proposed pipeline will cross. This crosses into the City of North Bend as well, but that is not part of this application (the applicant has filed a separate application with the City of North Bend). The Applicant has provided detailed maps in their exhibits.

The construction of the pipeline will require acquisition of temporary construction right-of-way, temporary extra-work areas ("TEWAs"), and permanent easement as described the applicant's narrative on pages 3-4. The permanent easement for the pipeline is 50 feet wide centered over the pipe as installed. The Applicant states that it is negotiating terms for the permanent easements with the appropriate landowners.

The Applicant previously obtained a County conditional use permit ("CUP") for an alignment of the pipeline that crosses Haynes Inlet (County File No. HBCU-10-01/REM-11-01) as well as two alternate alignments: Brunschmid/Stock Slough alignment (County File No. HBCU-13-04) and Blue Ridge alignment (County File No. HBCU-13-06). Those permits are still valid and in effect. The current request does not propose to amend any of those permits. Rather, the Applicant seeks approval of a third alternate alignment of the pipeline.

The Applicant explains 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. While Applicant utilizes the HDD method to place the pipeline underneath the estuary in Coos Bay, Applicant will utilize trenching to locate the pipeline in the upland areas of the Early Works Alignment. The Applicant has provided a detailed summary of the HDD and open trench starting on page 5 of the application narrative.

The Applicant is proposing to change low intensity subsurface utilities to an allowable use within the Coos Bay Estuary Management Deep Draft Navigation Channel (DDNC-DA) which is a development aquatic management unit. The changes proposed are consistent with the Statewide Planning Goal.

1. Location, Zoning, and Ownership of Parcels Along the Alignment.

The Early Works Alignment crosses the following zoning districts:

Coos County Zoning Designations and Management Units Crossed by the Pipeline

Start MP	End MP	Mileage	Zoning Designation/ Management Unit
0.00	0.13	0.13	Industrial
0.13	.014	0.01	7-D
0.14	.016	0.02	Industrial
0.16	0.17	0.01	7-D
0.17	0.27	0.10	Industrial

0.27	0.28	0.10	7-D
0.28	0.37	.09	7-NA
0.37	0.58	.21	13A-NA
0.58	0.66	.08	DDNC-DA
---	---	---	City of North Bend
1.58	1.63	0.05	DDNC-DA
1.63	1.75	0.12	45A-CA
1.75	2.18	.43	15-NA
2.18	2.84	.66	13B-NA
2.84	2.89	.05	14.DA
2.89	2.93	.04	14-WD
2.93	3.01	.08	14.DA
3.01	3.02	.01	15-NA
3.02	3.21	0.19	15-RS
3.21	6.50	3.29	EFU
6.5	7.33	0.83	F

A map of the Early Works Alignment, including applicable zoning, is included in Application Exhibit 2a. A map of the access roads along the Early Works Alignment is included in Application Exhibit 2b.

The Early Works Alignment crosses nineteen (19) parcels owned by various agencies, entities, and individuals. None of these parcels are in residential use or are located in residential neighborhoods. A list of the affected parcels and owners is included in Application Exhibit 3a. A map of the parcels along the Early Works Alignment is included in Application Exhibit 3b. A copy of the County Assessor's report, tax lot map, and vesting deed for each parcel is included in Application Exhibit 4a. the Applicant has also obtained signed consent from each of the affected owners authorizing submittal of the Application to the County. Copies of these consents are included in Application Exhibit 4b.

2. Project Work Areas.

Construction of the pipeline will require acquisition of temporary construction right-of-way, temporary extra-work areas ("TEWAs"), and permanent easement as follows:

PCGP proposes to utilize a standard 95-foot wide temporary construction right-of-way with a 50-foot wide permanent right-of-way. The temporary construction right-of-way is required to accommodate the necessary clearing and grading activities to prepare for construction, temporarily store spoil materials for construction, and to provide a passing lane for movement up and down the construction area. Eliminating the passing lane by narrowing the construction area width would significantly restrict traffic flow and disrupt the safety and progress of constructing the pipeline. The proposed 95-foot temporary construction right-of-way will accommodate many of the necessary cuts and spoil storage area requirements along the proposed alignment, thereby reducing the number of additional TEWAs that will be required to safely construct the pipeline and will minimize the total overall project footprint. Typically, large diameter pipeline projects (i.e., 30-inch diameter or greater) utilize at least a 100-foot or wider temporary construction right-of-way. For example, the 7 1/2-mile, 42-inch diameter Rockies Express pipeline (West) Project utilized a 125-foot wide construction right-of-way to construct the project across the Rocky Mountains and Plains States.

As noted above, in addition to the 95-foot wide temporary construction right-of-way, site-specific characteristics of the area make it necessary to obtain TEWAs. Environmental alignment sheets illustrating the Early Works Alignment, the location of the construction right-of-way, and TEWAs is included in Exhibit 5. The permanent easement for the pipeline is 50 feet wide centered over the pipe as installed. The Applicant states that it is negotiating terms for the permanent easements with landowners.

3. Applicant's Reason for Seeking the "Early Works" Alternate Alignment.

Applicant previously obtained a CUP for an alignment of the pipeline that crosses Haynes Inlet (County File No. HBCU-10-01/REM-11-01) as well as two alternate alignments: Brunschmid/Stock Slough alignment (County File No. HBCU13-04) and Blue Ridge alignment (County File No. HBCU-13-06). Those permits are still valid and in effect.

The 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.

While the Applicant utilizes the HDD method to place the pipeline underneath the estuary in Coos Bay, the Applicant will utilize trenching to locate the pipeline in the upland areas of the Early Works Alignment.

B. Scope of Review.

When addressing the criteria and considering evidence, the Board of Commissioners ("Board") used the standard of review required for land use decisions. The Applicant has the burden to provide substantial evidence, supported by the record, to demonstrate that all approval standards are met.

In addition, where the ordinance provisions were ambiguous, the Board applied the *PGE v. BOLI* methodology to arrive at what it believes to be the correct construction of the statute. *State v. Gaines,* 346 Or 160, 171–172, 206 P3d 1042 (2009). In so doing, the Board attempted to rely, as much as possible, on past interpretation adopted by the Board, while still making sure that the interpretation would be affirmed if appealed.

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

> *197.829 Board to affirm certain local government interpretations.*
>
> *(1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:*
>
> *(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;*
>
> *(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;*
>
> *(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or*
>
> *(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.*

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

One important exception to this principle occurs when the local code provision implements state law: LUBA and the courts are not required to give deference to a local government's interpretation of state law, or to code interpretations if the code standard at issue implements or mimics state law. *Oregon Shores Cons. Coalition v. Coos County*, 51 Or LUBA

500, 519 (2006).[1] Interpretations of any local code provisions which implement Statewide Planning Goals, as an example, will be reviewed by LUBA to ensure that they are consistent with the language, policy, and purpose of the Goals. ORS 197.829(1)(d).

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

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

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

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

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

[2]Perhaps the most important limitations in this area is set forth in the case of *Holland v. Cannon Beach*, 154 Or App 450, 962 P2d 701 (1998). Under *Holland*, a County cannot conclude that a code standard or plan policy is inapplicable in an initial phase of a case, and then change its mind when the case comes back from LUBA on other issues.
In *Holland*, petitioner's subdivision application was denied by the city council on the basis that it did not comply with

Finally, it is important to note that LUBA has stated that there may be circumstances where a change in long-standing interpretations may require notice and an opportunity for comment. *Wicks v. City of Reedsport*, 29 Or LUBA 8, 19 (1995); *Heceta Water Dist. v. Lane County*, 24 Or LUBA 402, 419 (1993); *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630, 638-9 (1999).

In summary, it is *possible* for the Board to change the manner in which it interpreted its code in past decisions pertaining the LNG terminal. To be clear, however, the Board does not intend to make any interpretational changes at this time.

F. Application Timeline.

November 21, 2018	Application Submitted.
February 14, 2019	Floodplain Application Submitted.
February 15, 2019	Staff Report.
February 22, 2019	Public hearing.
April 14, 2019	First Open Record Period.
May 3, 2019	Second Open Record Period (Original date).
May 24, 2019	Second Open Record Period (Extended date).
June 7, 2019	Final Argument.
November 21, 2019	Hearings Officer Decision.
December 4, 2019	Board Deliberations and Tentative Decision.
December 18, 2019	Board Final Decision.

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

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

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

II. Procedural Issues.

a. Objection to "Document Dumps."

Opponents Oregon Shores Conservation Coalition and Jody McCaffree objected to the applicant submitting large quantities of evidence into the record during the open record period. OSCC frames its objection as a violation of Statewide Planning Goal 1. OSCC writes:

> "The Applicant then submitted nearly 3,000 pages of additional material during the first open record period, which closed on Fri. Apr. 12, 2019.2 These materials were uploaded to the Coos County Planning Department's Application site late in the day of Tues. Apr. 30, 2019, a mere two days prior to the close of the second open record period on Fri. May 3, 2019. These materials appear relevant and required to demonstrate compliance with the aforementioned criteria, and they should have been submitted with the original application to allow for meaningful public review and response. Instead, the Applicant has undercut the public's role in the review process, leaving a narrow window of time and limited opportunity to respond to an extreme volume of supplemental materials.
>
> Oregon Statewide Planning Goal 1 ("Goal 1") upholds the rights of the public to be involved in and have their voices heard on matters of land use that will impact their communities. The proposed pipeline will likely have significant impacts on the safety, economy, and future of the Coos Bay region. The Applicant's approach is inconsistent with Goal 1 and the intent of the law to allow for meaningful public participation. Oregon Shores believes that the County should not allow the Application to proceed in this way, but instead ask the Applicant to withdraw its application and resubmit with a complete package of initial materials sufficient to evaluate the Early Works proposal for compliance with all relevant criteria at the outset."

OSCC Letter dated May 3, 2019 at p. 2, Exhibit 18. Ms. McCaffree raised a similar objection:

> "By these comments being placed into the on-line record so late in the process it has not given citizens the chance to fully review Pacific Connector's 2,568 pages leaving us at a severe disadvantage since most of our substantive comments were placed on-line on March 15, 2019. In addition, many of these submittals in with Pacific Connector's April 12, 2019 filing have dates far earlier than the date Pacific Connector filed their original application with the County on November 21, 2018, thus proving the original application that was filed by them was incomplete. Pacific Connector's original application was only 508 pages.

> If all these documents were so critical to this land use proceeding, why were they not filed in with their initial application? Why did the County Planning wait until April 30th sometime after 2:36 p.m. to upload them into the on-line record available for us citizens to review? How was the County Planning able to produce accurate and complete findings without this information being made available to them early on in the process, particularly with respect to all this HDD data? At this late date in the process we have no ability to obtain our own experts who would be able to counter inaccurate information that may have been provided by the Applicant.
> Once again we citizens are being severely disadvantaged in this process and the intent of Statewide Planning Goal 1is not being adhered to:"

McCaffree letter dated May 3, 2019, at p. 1,Exhibit 20.

The Board sympathizes with the difficulties inherent in dealing with such a large record. There is no LUBA case law, however, that suggests a large volume of evidentiary submissions by an applicant can arise to a Goal One violation if an opponent has trouble responding to it within a statutorily legitimate timeline. Goal One does not apply directly to the local land use hearings process, so if the opponents believe that they have a meaningful objection, they should specify what local Coos County procedural rule it believes was violated.

Second, one of the reasons the Applicant in this case submitted such voluminous evidence is because of opponents like McCaffree and the OSCC, who constantly fault the applicant for failing to submit sufficiently "robust" data, studies, information, and another evidence into the Record (*see, for example*, the OSCC letter dated May 3, 2019, Exhibit 18, pages 3,5,6,7,9, etc.). It seems somewhat inconsistent for Ms. McCaffree and OSCC to repeatedly assert the application should be denied for insufficient evidence. and then complain that the Applicant submits too much evidence.

The Applicant effectively responded to Opponents' Goal 1 argument in its Final Argument:

> "Multiple Opponents contend that PCGP's evidentiary submittals during the first and second open record periods violated Goal 1 and/or CCZLDO 5.0.150. Opponents contend that CCZLDO 5.0.150 required that PCGP provide its open record submittals with its initial application because the evidence therein is necessary for PCGP to meet its burden to show that the pipeline complies with applicable approval criteria. Opponents also contend that the timing of PCGP's open record submittals was too late to allow Opponents to seriously review and comment on them before the deadline for public comment. Opponents are wrong on both points.
> First, Opponents misinterpret CCZLDO 5.0.150. Opponents are correct that it requires that development applications "include

sufficient information and evidence necessary to demonstrate compliance with the applicable criteria and standards of [the CCZLDO]," and that "the burden of proof in showing that an application complies with all applicable criteria and standards lies with the applicant." But CCZLDO 5.0.150 does not require that an application *as initially submitted* include all information ultimately necessary to demonstrate compliance with approval criteria. Such a limitation would violate state law, which allows the submission of new written evidence by applicants and opponents during open record periods. *See* ORS 197.763(6). It would render the public review and comment period an irrelevancy. Nothing in the text of CCZLDO 5.0.150 undermines or contradicts the right of Opponents or supporters of an application to submit new written evidence during open record periods, or an applicant's right to submit new written evidence in response to what Opponents submit.

Second, because the County has an acknowledged comprehensive plan and land use regulation, Goal 1 does not directly apply to the whole Application but rather only the Text Amendment. *See e.g., Friends of Neabeck Hill v. City of Philomath*, 139 Or App 39, 46 (1996) ("local governments whose plans and regulations are not acknowledged must make land use decisions that comply with the goals but, after acknowledgement, land use decisions made under acknowledged plans and regulations need only comply with the acknowledged local legislation"). The Text Amendment complies with the CCZLDO and Oregon statutes (i.e., ORS 197.763 and ORS 215.416) that implement Goal 1 by requiring the public review and comment process that is now unfolding. PCGP and the County have complied with all applicable CCZLDO and Oregon statutory provisions that establish the process for public review and comment on the Application. Opponents have not cited any applicable law or regulation that PCGP violated with its open record period submittals.

Third, the hearings officer granted Opponents' request for an extension of the second open record period by several weeks to facilitate their review and response to the Application. Further, the hearings officer did not grant that extension until after PCGP had already submitted its second open record period submittal (which is its final evidentiary submittal; thus, effectively, the hearings officer's extension granted a third open record period to the Opponents. Under these circumstances, there is simply no basis to conclude that the proceeding prejudiced the Opponents.
The County should deny Opponents' contentions on this issue."

Exhibit 24, at pp 13-14. The applicant is correct on all points. The hearing was held open for a unusually-long amount of time precisely to cure any potential problems that might have been

created by large document dumps. The Board finds that the Opponents' complaints have no merit.

b. Citation to Websites.

Some opponents' record submissions attempt to incorporate materials found on the Internet simply by referencing website addresses or URLs ("universal resource locators"). However, web-based materials are not part of the "record" when a party simply references a website address but does not submit the actual content in its record filings. LUBA has often cautioned that to merely refer to a document does not make the contents of that document part of the record in the proceeding. *See, e.g., Mannenbach v. City of Dallas*, 24 Or LUBA 618, 619 (1992) (simply referring to documents in testimony does not place such documents before the local decision maker.).

Web-based content is neither fixed nor permanent; rather, the content of a website can be changed or deleted without any notice. It is possible that web-based material could change, or be deleted, prior to consideration by you, or after you make your recommendation to the Board of Commissioners. Similarly, a party attempting to rebut website content based on a website address would have no certainty that the web-based content to which they are responding is the same content the other party intended to reference.

Furthermore, allowing parties to incorporate website materials by reference would frustrate administrative and judicial review of land use decisions. ORS 197.835(2)(a) provides that review of a land use decision by the Land Use Board of Appeals "shall be confined to the record." Nothing in the CCCP or CCZLDO, or in the statutes governing land use proceedings, makes web content that is not printed or downloaded and physically submitted to the decision maker a part of the legal "record." Without a fixed and permanent record, the Board and LUBA will not be able to ascertain reliably the evidence that has been submitted by the parties.

For these reasons, the Board made no effort to view links to websites listed by the parties. If a party only supported an asserted factual point with a link to the evidence intended to provide the foundation for that asserted fact, the Board did not necessarily accept that point as being supported by substantial evidence. In contrast, however, the Board did look at cases cited by the parties, and would have looked at legal reference materials that were referenced in support of *legal* points, had those been offered. All attachments are exhibits were duly scrutinized for information and evidence related to the approval criteria.

c. The Pending FERC Process Is Not Required to Precede the Local Land Use Processes.

Opponents contend that the County cannot legally approve the Application while the FERC is still considering the pipeline under the National Environmental Policy Act of 1969, 42 USC § 4321. Opponents are incorrect.

No approval criterion or other standard requires the County to abstain from processing the Application pending completion of related but separate federal, state, or local processes.

Moreover, the County's considering this Application does not prejudice FERC's jurisdiction because federal law forbids PCGP from beginning construction or operation of the pipeline until FERC has issued final approval.

Finally, the County has repeatedly denied Opponents' contention in the past, and they do not offer any additional explanation or authority to justify having the County reverse course and sustain the contention in this case.

The Board denies Opponents' contention.

d. The Application includes signed consent of all owners of the affected property.

Opponents contend that PCGP's Application fails to comply with CCZLDO §5.0.150.1, which requires that the Application "include the signature of all owners of the property" or a signature of a "legal representative" on behalf of an owner "upon providing evidence of formal legal authority to sign." *See, e.g.,* Jody McCaffree letter dated May 3, 2019, Exhibit 20 at p. 7.

Opponents are incorrect. PCGP has submitted into the record the property owner consents to the Application required by CCZLDO §5.0.150.1. *See* Application Exhibit 4b.

In *Van Dyke v. Yamhill County*, __Or LUBA __ (LUBA No. 2018-061, Dec. 20, 2018), the petitioners made a similar argument, alleging the applicant did not own fee title to the parcel at issue. The LUBA rejected this assignment of error, holding that – even if true – such an argument did not provide an adequate legal basis for reversal or remand:

> "While the county requires the landowner or authorized agent to sign the land use application form, the undisputed fact that the applicant owns the deed to the subject property is sufficient, without more, to authorize the county to proceed on the application. *The applicant is not required to file and win a quiet title action in circuit court as a condition precedent to filing the application, simply because another party disputes the applicant's title under a legal theory that can be resolved only in circuit court.* In such circumstances, neither the county nor LUBA is in a position to resolve the legal dispute over whether the applicant/deed owner's title is good. For that reason, the county is also not obligated to adopt findings resolving the title dispute. In circumstances where consent or lack of ownership has a bearing on an approval criteria, for example where proposed development relies upon a third-party easement to establish access required by code, we have held that the decision-maker may be required to impose conditions to ensure that the required easement or consent is obtained prior to construction. *See, e.g., Culligan v. Washington County*, 57 Or LUBA 395 (2008) (where subdivision relies on private easement for access but the scope of easement is disputed, the decision maker can approve the application with conditions that ensure that the dispute is resolved prior to construction).

> However, *ownership of the subject property is not an approval criterion in the present case and has no bearing, as far as petitioners have established, on any approval criteria. We have never held that the applicant has the obligation to quiet title in the subject property where some doubt is raised during the proceedings below as to the legality of that title*, or that the decision-maker is obliged to adopt findings addressing the likelihood that the applicant will prevail in a quiet title action, and we decline to so hold now. Petitioners' arguments under this assignment of error do not provide a basis for reversal or remand." (*Id* at 30-31; italic emphasis supplied).

Given this LUBA ruling, and the persuasive, substantial evidence presented by the Applicant, the Board finds the Applicant has made a sufficient showing of proof of landowner consent for the purposes of CCZLDO 5.0.150.1 and this land use application.

Relatedly, Opponents contend that Michael Dado lacks authority to consent to the Application on behalf of the County. Opponents are wrong. Mr. Dado is the duly elected County Surveyor. Further, the Board finds that Mr. Dado is a sworn land agent and has legal authority to give the County's consent as part of the record for this proceeding. Other than contending the Mr. Dado lacks authority to consent, opponents do not present any evidence to support their contention. Even to the extent he lacks such authority, the Board hereby consents to the filing of the Application as it relates to County-owned properties.

For these reasons, the Board denies Opponents' contention.

e. CCZLDO §5.0.500 does not cause this Application to void the pre-existing approvals for PCGP's alternate pipeline alignments.

Opponents contend that CCZLDO §5.0.500 causes this Application to void the pre-existing approvals for PCGP's alternate pipeline alignments.

CCZLDO §5.0.500 establishes that "submission of any application for a land use or land division under this Ordinance which is inconsistent with any previously submitted pending application shall constitute an automatic revocation of the previous pending application to the extent of the inconsistency." But PCGP's previously approved pipeline alignments are not "pending applications." Additionally, the previous approvals were for substantially different land use applications (*i.e.* a different pipeline route). Therefore, PCGP's submission of the current Application does not trigger CCZLDO §5.0.500.

f. Ex Parte Contacts and Bias

At the December 4, 2019 Board deliberation hearing, Board members were provided an opportunity to disclose any *ex parte* contacts as described in ORS 215.422 and 197.835(12), conflicts of interest as described in ORS 244.120, and any actual bias regarding the application. *1000 Friends of Oregon v. Wasco County Court,* 304 Or 76, 747 P2d 39 (1987). Board members made disclosures of *ex parte* contacts, including Commissioner Sweet disclosing his attendance at

a 2014 civic luncheon at which elements of the broader Jordan Cove Energy Project ("JCEP") and PCGP project were discussed.

The Board provided an opportunity for members of the public to respond to the disclosures and/or challenge the impartiality of any Board member. Jody McCaffree was not present but she submitted written materials. The Board understood these materials to constitute her contention that Commissioners were biased and should not participate in the deliberations or decision for the Application. The Board finds that most of these allegations were previously raised and rejected by the Board in the original 2016 decision for the JCEP LNG terminal. Opponents then raised these issues on appeal to LUBA:

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

Oregon Shores Conservation Coalition v. Coos County, 76 Or LUBA 346, 369-370 (2017). After discussing the high bar for disqualifying bias in local land use proceedings, LUBA denied McCaffree's assignment of error and concluded that then-Chair Sweet was not actually biased:

> "We disagree with McCaffree that Chair Sweet's April 11, 2016 letter, or his public statements, demonstrate that Chair Sweet was incapable of determining the merits of the land use application based on the evidence and arguments presented.
>
> * * * *
>
> "As far as McCaffree has established, Chair Sweet's statements of support of the LNG terminal represent no more than the general appreciation of the benefits of local economic development that is common among local government officials. Those statements fall far short of demonstrating that Chair Sweet was not able to make a decision on the land use application based on the evidence and arguments of the parties."

Oregon Shores Conservation Coalition, 76 Or LUBA at 370-71. The Court of Appeals affirmed LUBA's decision on this issue. *Oregon Shores Conservation Coalition v. Coos County*, 291 Or App 251, 416 P3d 1110 (2018). The Supreme Court denied review on this issue. *Oregon Shores Conservation Coalition v. Coos County*, 363 Or 481, 291 Or App 251 (2018). The Board finds that Ms. McCaffree has not explained why a different outcome is warranted in the present case.

The Board finds that the written materials submitted by Ms. McCaffree do not demonstrate actual bias or improper ex parte communications:

Agreement between Pacific Connector and County: The Board denies the contention that the Board members were biased due to a 2007 agreement between the Applicant and the County pursuant to which the Applicant pays the County $25,000 a month. Ms. McCaffree did not adequately explain the terms of the agreement, how they were related to the specific matter pending before the Board, or how the existence of the agreement would cause any of the Board members to prejudge the application. As a result, the Board finds that the facts alleged by Ms. McCaffree are not sufficient to establish disqualifying actual bias by any Board members.

Reports of JCEP Funding for County Sheriff's Office: For three reasons, the Board denies the contention that the Board members were biased due to funding by JCEP for the County Sheriff's Office. First, challengers have not adequately explained how the existence of this funding would cause any Board members to prejudge the application (which is not related to funding of the Sheriff's Office), and they have not identified any "statements, pledges or commitments" from any Board members that the existence of the funding has caused them to prejudge the application. Second, the Sheriff's Office funding is not contingent upon approval of the application. Third, the funding is from JCEP, which is a distinct entity from the Applicant in this case. Therefore, the challengers have not demonstrated that any Board member demonstrated "actual bias" due to this funding.

Letter from Commissioner Sweet to FERC: The Board denies Ms. McCaffree's contention that Commissioner Sweet was biased due to a letter he wrote to FERC in support of the project in April 2016. Ms. McCaffree did not adequately explain the content of the letter, or how it related to the specific matter pending before the Board. Additionally, the Board finds that, even if the facts alleged by Ms. McCaffree are correct and Commissioner Sweet did express general support for the project in the letter to FERC, the requests pending before FERC are not of the same nature as the application at issue in this proceeding. In other words, the letter does not demonstrate that Commissioner Sweet has prejudged the specific applications pending before the County or that he is unable to objectively apply the County's approval criteria to the application. Finally, as noted above, the Board finds that LUBA, the Court of Appeals, and the Supreme Court all previously concluded that the statements in question simply reflected a generalized support for economic development in the community. As a result, the Board finds that the facts alleged by Ms. McCaffree are not sufficient to establish disqualifying actual bias by Commissioner Sweet.

Statements Made by Commissioners in 2014 and 2015: The Board denies the contention that Commissioners Sweet and Cribbins were biased due to statements they made to the media about the project in 2014 and 2015. The facts alleged by the challengers are not supported by substantial evidence because they did not provide enough details about the statements such as their substance, their timing, or their context, or how they demonstrate prejudgment by the Board members. Further, the Board finds that all of these statements appear to predate the filing of the applications and thus they could not relate to the specific matter pending before the Board. Finally, the Board notes that LUBA, the Court of Appeals, and the Supreme Court all previously concluded that the statements in question simply reflected a generalized support for economic development in the community. The Board finds that the facts alleged by the challengers are not sufficient to establish disqualifying actual bias by any Board members.

Private Meetings Between Pacific Connector and Board Members: The Board denies Ms. McCaffree's contention that Board members were biased due to their attendance at private

meetings with Pacific Connector. The facts alleged by Ms. McCaffree are not supported by substantial evidence because she did not provide any details about the meetings such as when and where they occurred, what was discussed, how they related to the matter pending before the Board, or how they would cause the Board members to prejudge the Application. As a result, the Board finds that Ms. McCaffree has not alleged facts sufficient to establish disqualifying actual bias arising from the alleged meetings.

Trip to Colorado: The Board denies the contention that Commissioner Sweet's trip to Colorado in September 2018 caused him to be actually biased in the matter. The record reflects that, on the trip, Commissioner Sweet learned more about the natural gas market and met with elected officials. Ms. McCaffree did not present any evidence that tied the trip to JCEP or the specific matter pending before the Board. Ms. McCaffree also did not identify with specificity why the existence of the trip caused Commissioner Sweet to be biased.

Campaign Contribution by JCEP to Commissioner Sweet: The Board denies the contention that a cash contribution by JCEP to Commissioner Sweet's campaign caused him to be biased. Commissioner Sweet acknowledged the campaign contribution on the record. The challengers did not explain why this disclosure was inadequate or what bearing the existence of the contribution has on the ability of Commissioner Sweet to render an unbiased decision. Under similar circumstances, LUBA rejected a bias claim. *Crook v. Curry County*, 38 Or LUBA 677, 690 n 17 (2000) (mere existence of campaign contribution by a party to a decision-maker does not cause the decision-maker to be biased).

Finally, before taking final action to approve these findings, each of the Board members stated that he/she had not prejudged the Application and that he/she could evaluate the testimony and evidence in the record and make a decision based upon whether the testimony and evidence demonstrates compliance with applicable criteria. For these reasons, the Board denies the bias and *ex parte* challenges in this case.

No other challenges were made, and Board members participated in the deliberations and the decision.

III. Applicable Approval Criteria

A. Application 1: Text Amendment.

The Applicant proposes a text amendment to CCZLDO §3.2.202 to Allow "Subsurface Low Intensity Utilities" in the DDNC-DA estuary zone. They are not currently allowed in that zone, which would prevent the Applicant from siting its pipeline through the DDNC-DA zone.

The County has an acknowledged comprehensive plan (the CCCP) and land use regulations (the CCZLDO). Therefore, the Goals do not generally apply to the second and third Applications. However, because the first Application includes a proposal to amend the text of the CCZLDO --specifically, to amend the text of the DDNC-DA zone to allow subsurface utilities -- the Goals directly apply to that portion of the Application *but only to that portion of it.*[3]Many of the opponents miss this nuance and repeatedly assume that the Goals apply to the portion of the Application that requests approval of the pipeline. The Board denies all Opponents' contentions that rely on this mistaken assumption.

Additions shown in Red Bold and Italic and deletions shown with strikethrough

- **Coos County Comprehensive Plan Vol. II, Park 1, Section 5**

LOWER BAY/UPPER BAY

MANAGEMENT CLASSIFICATION - DA	**AQUATIC UNIT Deep-Draft Navigation Channel (37' authorized draft)**

Project Description: The entrance and lower bay section includes a federally authorized project extending from the Entrance Bar at the outer (western) extremity of the jetties to the railroad bridge at Bay Mile 9.0 north of Pony Slough. The project specifies a 47-foot deep channel with "suitable" width across the Entrance Bar, a 37-foot deep by 300-foot wide channel to the railroad bridge, a Buoy Storage area between Sitka Dock and Pigeon Point (not part of federal project), and north of Empire at Bay Mile 6.0, and at Anchorage Basin southwest of Roseburg Lumber Company at Bay Mile 7.5. In-bay disposal sites are located off of Coos Head ("G") and North Bend Airport ("D"). Two other in-bay disposal sites at Bay Miles 4 and 5 are included in this unit.

The upper bay section includes a federally authorized project from the railroad bridge (Mile 9.0) to Isthmus Slough at Bunker Hill (Mile 15.0). The federal project involves a navigation channel 37-feet deep by 300 to 400-feet wide, and Turning Basins at North Bend (Mile 12.0) and Coalbank Slough (Mile 14.5).

Management Objective: This unit shall be regularly maintained to authorized depths as the deep-draft navigation channel. Conflicting uses and activities are not permitted.

A. Uses

[3]The Goals do not directly apply to land use applications in jurisdictions that have acknowledged comprehensive plans and land use regulations. *See e.g., Friends of Neabeck Hill v. City of Philomath,* 139 Or App 39, 46 (1996) ("local governments whose plans and regulations are not acknowledged must make land use decisions that comply with the goals but, after acknowledgement, land use decisions made under acknowledged plans and regulations need only comply with the acknowledged local legislation"). But the Goals *do* directly apply to applications to *amend* acknowledged comprehensive plans and land use regulations.

1.	*Aquaculture*	*N*
2.	*Commercial*	*N*
3.	*Docks*	*N*
4.	*Industrial & Port Facilities*	*N*
5.	*Log Dump/Sort/Storage (in-water)*	*N*
6.	*Marinas*	*N*
7.	*Mining/Mineral Extraction*	*N*
8.	*Recreation facilities*	
	a. *Low-intensity*	*N*
	b. *High-intensity*	*N*
9.	*Utilities*	
	a. *Low-intensity (Subsurface)*	~~*N A*~~
	b. *High-intensity*	*N*
10.	*Bridge Crossing Support Structures and dredging necessary for installation*	*A*
11.	*Bridge crossings*	*A*

GENERAL CONDITIONS (the following conditions applies to ALL uses and activities):

1. *Inventoried resources requiring mandatory protection in this unit shall be protected, and is subject to Policies #17 and #18.*

- *Coos County Zoning and Land Development Ordinance Chapter III*

GENERAL LOCATION:	*LOWER BAY/UPPER BAY*
ZONING DESIGNATION:	*DDNC-DA*
ZONING DISTRICT:	*Deep-Draft Navigation Channel (37' authorized draft)*
SPECIFIC BOUNDARIES:	*The authorized 37' deep-draft navigation channel plus subtidal areas historically used for in-water DMD.*

SECTION 3.2.201. Management Objective:

This district shall be regularly maintained to authorized depths as the deep-draft navigation channel. Conflicting uses and activities are not permitted.

SECTION 3.2.202. Uses, Activities and Special conditions.

Table DDNC-DA sets forth the uses and activities which are permitted, which may be permitted as conditional uses, or which are prohibited in this zoning district. Table DDNC-DA also sets forth special conditions which may restrict certain uses or activities, or modify the manner in which certain uses or activities may occur. Reference to "policy numbers" refers to Policies set forth in the Coos Bay Estuary Management Plan.

A.	*Uses*		
	1.	*Aquaculture*	*N*
	2.	*Commercial*	*N*
	3.	*Docks*	*N*
	4.	*Industrial & Port Facilities*	*N*
	5.	*Log Dump/Sort/Storage (in-water)*	*N*
	6.	*Marinas*	*N*
	7.	*Mining/Mineral Extraction*	*N*
	8.	*Recreation facilities*	
		a. Low-intensity	*N*
		b. High-intensity	*N*
	9.	*Utilities*	
		a. Low-intensity (Subsurface)	*~~N~~ P-G*
		b. High-intensity	*N*
	10.	*Bridge Crossing Support Structures and dredging necessary for installation*	*P-G*
	11.	*Bridge crossings*	*P-G*

GENERAL CONDITIONS (the following conditions applies to ALL uses and activities):

1. Inventoried resources requiring mandatory protection in this unit shall be protected, and is subject to Policies #17 and #18.

Board Findings: The Applicant seeks to amend the text of the DDNC-DA zone. Staff thought it was more consistent to add the term "subsurface" in the manner shown above. However, after staff reviewed the language proposed by the Applicant in more detail, taking into consideration the other "Development Aquatic" zones and navigational channels, Staff determined that the best route is to add a limitation to "9a," such that the low intensity use is limited "subsurface" utilities. As an example of where the CBEMP is already structured in this manner, the CSDNC-DA district (*i.e.* Charleston Shallow-Draft Navigation Channel) provides for low-intensity utilities only permitted if designed so as not to interfere with navigation. This would require the additional of a special condition (i.e. add the "S" after the (P-S, G)). As modified, Special Condition 9A will read as follows:

SPECIAL CONDITIONS:

Uses:

9a. Low-intensity utilities are only permitted if they are installed sufficiently below the surface of the estuary, so not to interfere with navigation, maintenance dredging, or new dredging for purposes of deepening the channel.

The management objective of the DDNC-DA district is to maintain the area as the designated deep-draft navigation channel, including prohibiting conflicting uses. CCZLDO §3.2.201. The proposed *subsurface* low-intensity utility is consistent with this objective because it would be located below the ground (i.e. below the water / ground interface) and thus not located within the spatial area of the Deep Draft Navigation Channel utilized by vessels.

Opponents contend that both the Text Amendment and the pipeline fail to comply with the management objective of the DDNC-DA zone, which requires that the zone is "maintained to authorized depths as the deep-draft navigation channel" and prohibits conflicting uses. OSCC contends that "underground and sub-bay floor pipelines have the potential to pose navigational constraints for vessels passing over them in deep-draft channels" and that "navigation channels may require maintenance dredging." *See* Exhibit 3, at p. 21. OSCC's arguments provide no basis for denial of the application. Nonetheless, the Board adopts a slight rewording of the special condition, as shown above, to address the concern.

These issues do not render the Text Amendment or the pipeline inconsistent with the management objective of the DDNC-DA zone. Subsurface low-intensity utilities, including pipelines, do not innately conflict with shipping in the navigation channel. The Towing Safety Advisory Commission report that Opponents submitted into the record concludes that certain best management practices, including minimum burial depths and regular assessment of buried utilities, mitigate the risks that subsurface utilities pose to shipping in navigation channels. The same is true for maintenance dredging. Utilities buried deeper than the minimum required depth of the navigation channel will not obstruct necessary maintenance dredging. The County may impose these best management practices as conditions of approval when it authorizes subsurface low-intensity utilities (including the pipeline) in the DDNC-DA zone.

Opponents also contend that the pipeline is inconsistent with the management objective of the DDNC-DA zone because:(1) vibrations from HDD may impact oysters, and (2) HDD drilling fluid may impact salinity levels and cause harmful turbidity plumes in the estuary. Opponents' claims are completely unrelated to the management objective of the DDNC-DA zone, which has nothing to do with oysters, salinity levels, or turbidity plumes in the estuary. To the extent that there are any oysters in the channel, they are expendable and not protected. The zone's management objective simply prohibits uses that conflict with shipping navigation.

1. SECTION 5.1.100.

An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners.

Board Findings: This Application seeks a legislative text amendment of CCZLDO§3.2.202 to authorize "subsurface low-intensity utilities" in the DDNC-DA estuary zone. PCGP acknowledges that the amendment is within the Board's authority.

2. **SECTION 5.1.110.**

Coos County shall consider the appropriateness of legislative plan text and map amendment proposals upon:

3. The submission of formal request made by either: ***b. An application filed by a citizen or organization, accompanied by a prescribed filing fee. If a Measure 56 notice is required the applicant shall be responsible for the payment of all cost associated with that service.

Board Findings: PCGP qualifies to file a CCZLDO text amendment pursuant to CCZLDO §5.1.110.3.b. A "citizen" is defined in CCZLDO §2.1.200 as follows:

> *CITIZEN: Any individual who resides or owns property, within the planning area; any public or private entity or association within the planning area, including corporations, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens.*

PCGP is a partnership within the planning area. Therefore, PCGP is a "citizen" and has the authority to initiate the text amendment. PCGP has submitted the required application form and fee. The application was properly initiated. Measure 56 notice is not required in this case.

3. **SECTION 5.1.115.**

SECTION 5.1.115 ALTERATION OF A RECOMMENDED AMENDMENT BY THE PLANNING DIRECTOR: The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

Board Findings: PCGP acknowledges that the Planning Director may recommend an alteration of a proposed amendment; however, suggestions were provided in regards to the proposal.

4. **SECTION 5.1.120.**

The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223). Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615.

Board Findings: Coos County will follow applicable procedures set forth in the Code. The Applicant states that it will follow requirements set forth in the Code.

5. **SECTION 5.1.125.**

The Director may correct this ordinance or the Comprehensive Plan without prior notice or hearing, so long as the correction does not alter the sense, meaning, effect, or substance of any adopted ordinance.

Board Findings: This provision is not applicable.

6. **SECTION 5.1.130**

NEED FOR STUDIES: The Board of Commissioners, Hearings Body, or Citizen Advisory Committee may direct the Planning Director to make such studies as are necessary to determine the need for amending the text of the Plan and/or this Ordinance. When the amendment is initiated by application, such studies, justification and documentation are a burden of the initiator.

Board Findings: When the amendment is initiated by the Board of Commissioners, a Hearings Body or the Citizen Advisory Committee, those bodies have the option of directing the Planning Direct to "make studies necessary to determine the need for amending the test of the plan or ordinance." No study is required, however; it is strictly optional.

In this case, the applicant has initiated the PAPA by submitting an application. The Application and its supporting document constitute the "study" required by this code section.

PCGP seeks an amendment to allow subsurface low-intensity utilities in the DDNC-DA zoning district. The need for the amendment is that the Deep Draft Navigation Channel runs through the middle of the entire estuary and currently prohibits any utility line crossings, which effectively forecloses making any utility connections across Coos Bay. This restriction may frustrate the ability to provide public services to the community and may limit economic development of the North Spit, which is an area designated for water-dependent industrial development.

Further, these utilities would be limited to utilities that are "low-intensity" in nature, which, as practical matter, means utilities such as oil, gas, water and sewer pipes that are installed with HDD technology. Such utilities would still be subject to compliance with general conditions, including review for consistency with CBEMP Policies 17 and 18. This is considered a low impact use and there may be other utilities already sited under the navigation channel that was in existence prior the adoption this current plan. The extension of utilities complies is consistent with planning for industrial uses on the North Spit.

Some opponents contend that CCZLDO §5.1.130 requires "studies" to demonstrate the necessity of amending the DDNC-DA zone to allow subsurface utilities. *See e,g.,* Jody McCaffree letter dated March 15, 2019 at p. 6, Exhibit 8. The full text of CCZLDO§5.1.130 belies

Opponents' interpretation. The provision is non-mandatory. It says the County *may* require studies. It does not *require* the County (or an applicant) to prepare or submit any studies.

OSCC also contends that studies are necessary because the Application does not support its claim that prohibiting utility line crossings in the DDNC-DA "may frustrate the ability to provide public services to the community and may limit economic development of the North Spit, which is an area designated for water-dependent industrial development." *See* OSCC Letter dated April 12, 2019., at p. 7, Exhibit 11. The Board agrees with the Applicant that "[s]tudies are not necessary to prove common sense matters. OSCC lowers its credibility by arguing to the contrary. The DDNC-DA zone cuts directly through Coos Bay, effectively severing the North Spit from the Cities of North Bend and Coos Bay. Currently, the zone prohibits utilities, and there is effectively a dead zone in the middle of the bay through which utilities cannot pass. This creates an unnecessary inefficiency No "evidence" is necessary to demonstrate the obvious fact that this dead zone frustrates the ability of developers and of the local governments of the surrounding area to provide cross-bay utility connections.

Regardless, CCZLDO §5.1.130 leaves the decision to the County whether studies are necessary. The County has not determined here that studies are necessary to determine that there is a need for the text amendment. Rather, the Staff Report recommends approval of the Application. *See* Staff Report at 54. For these reasons, the Board denies Opponents' contentions.

7. Compliance with Statewide Planning Goals

The proposed text amendment must comply with the Oregon Statewide Planning Goals ("Goals"). ORS 197.175(2)(a); *1000 Friends of Oregon v. LCDC*, 301 Or 447, 724 P2d 268 (1986). To achieve this, the County's decision must explain why the text amendment is consistent with the Goals. Alternatively, if a Goal is not applicable, the County must adopt findings explaining why the Goal is not applicable. *Davenport v. City of Tigard*, 22 Or LUBA 577, 586 (1992). The responses below provide findings explaining why the text amendment complies with the Goals, or alternatively, why the Goals are not applicable to the text amendment.

a. Goal 1: Citizen Involvement.

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Board Findings: Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in all phases of the planning process. The County has adopted such a program for text amendments, and it is incorporated within the CCZLDO and has been acknowledged by LCDC. Among other things, the County's program requires notice to citizens, agencies, neighbors, and other interested parties followed by a public hearing before the County makes a decision on the text amendment. These procedures will provide ample opportunity for citizen involvement in all phases of this text amendment.

The Board agrees with the Applicant's suggestion that the County should find that, upon compliance with the County's notice and hearing procedures, the County has reviewed the text

amendment in a manner consistent with Goal 1. *See Wade v. Lane County*, 20 Or LUBA 369, 376 (1990) (Goal 1 is satisfied as long as the local government follows its acknowledged citizen involvement program).

b. Goal 2: Land Use Planning.

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Board Findings: Goal 2 requires establishing a land use planning process and policy framework as a basis for all land use decisions and requires an adequate factual base for all land use decisions. In the present case, the provisions of the CCZLDO and the ORS establish the land use planning process and policy framework for considering the text amendment. Further, the enclosed materials, including this narrative and the enclosed exhibits, demonstrate that the text amendment satisfies all applicable approval criteria. As such, there is an adequate factual base for the County's decision.

Additionally, Goal 2 requires that the County coordinate its review and decision on the text amendment with appropriate government agencies. In its review of the text amendment, the County has provided notice and an opportunity to comment to affected government agencies, including nearby cities and the State Departments of Land Conservation and Development and Transportation.

The text amendment is consistent with Goal 2.

c. Goal 3: Agricultural Lands.

To maintain and preserve agricultural lands.

Board Findings: Goal 3 concerns agricultural lands. None of the CBEMP Districts include agricultural lands. Therefore, Goal 3 does not apply to the text amendment.

d. Goal 4: Forest Lands.

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Board Findings: Goal 4 protects forest lands. The DDNC-DA district does not include forest land. Therefore, Goal 4 does not apply to the text amendment.

e. Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.

To protect natural resources and conserve scenic and historic areas and open spaces.

Board Findings: Goal 5 protects certain types of inventoried resources. The DDNC-DA district does not cross Goal 5 inventoried natural resources. Therefore, Goal 5 does not apply to the text amendment.

f. Goal 6: Air, Water and Land Resources Quality.

To maintain and improve the quality of the air, water and land resources of the state.

Board Findings: Goal 6 is directed at "waste and process discharges from future development," as opposed to existing site conditions. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

At the post acknowledgment plan amendment stage, a local government only need show it is reasonable to expect that applicable state and federal environmental quality standards can be met in order to show compliance with Statewide Planning Goal 6 (Air, Water and Land Resources Quality). *Graser-Lindsey v. City of Oregon City,* 74 Or LUBA 488 (2016); *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016). Before a local government is obligated to consider whether a land use regulation amendment implicates its obligations under Goal 6 to ensure that the amendment will not lead to violation of air quality standards, there must be at least some minimal basis for suspecting that the land use regulation amendment will have impacts on air quality that would threaten to violate air quality standards. *Home Builders Association v. City of Eugene,* 59 Or LUBA 116 (2009).Goal 6 does not require the local government to demonstrate its decision will not cause any adverse environmental impact on individual properties. Salem Golf Club v. City of Salem, 28 Or LUBA 561 (1995).

In this case, there is a reasonable expectation that a low intensity utility use will also be able to comply with the state and federal environmental quality standards that it must satisfy to be built. A low intensity utility is enclosed in a pipe and has no exposure to air or water. Therefore, the text amendment does not create any discharges into the air or water. *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014).

Any proposed low-intensity utility in the DDNC-DA management unit will, at the time it is proposed, be subject to review for compliance with applicable County environmental protections and development standards that have been previously deemed consistent with Goal 6. The proposed text amendment does not alter those environmental protections and development standards. Therefore, the text amendment is consistent with Goal 6.

Opponents contend that the Application fails to comply with Goal 6 because it does not explain how waste and process-related discharges associated with HDD technology will impact the water quality of Coos Bay. In response, the Applicant correctly notes that the Statewide Planning Goals directly apply *only* to the Text Amendment. The Goals do not directly apply to the pipeline or to HDD technology, which is merely the method PCGP proposes to construct it.

As the Application explains, the Text Amendment does not create any discharges. Allowing low-intensity utilities in the DDNC-DA zone does no more than allow a use that is already widely allowed in CBEMP zones. Therefore, the Text Amendment does not risk waste and process related discharges any more than the existing authorization of low-intensity utilities in myriad other CBEMP zones. In fact, since the Text Amendment would authorize only subsurface "low-intensity utilities," a limitation found in no other CBEMP zone, it would in theory protect the estuary from low-intensity-utility-associated waste and process related discharges to a greater extent than any other zone. Finally, the CCCP and CCZLDO include CBEMP policies and other approval criteria with which any subsurface low-intensity utility in the DDNC-DA zone, prior to approval, would have to comply. These include standards that would lower the risk of waste and process-related discharges.

Further, the pipeline and HDD are consistent with Goal 6, even though Goal 6 does not apply to them. Section II.C of the Final Argument summarizes how PCGP's open record submissions demonstrate the safety and efficiency of HDD technology, including that inadvertent releases of HDD drilling fluid--a waste and process related discharge--are unlikely and that PCGP has a plan in place to contain them. Further, PCGP submitted into the record a Hydrostatic Test Plan, Corrosion Control Plan, and a Reliability and Safety Report that demonstrate that the pipeline's design is safe and not prone to leaks. The HDD Feasibility Report, HDD Fluid Plan, Hydrostatic Test Plan, Corrosion Control Plan, and the Reliability and Safety Report, are together more than sufficient to demonstrate that HDD and the pipeline are unlikely to cause waste and process related discharges, and thus that both are consistent with Goal 6.

g. Goal 7: Areas Subject to Natural Hazards.

To protect people and property from natural hazards.

Board Findings: Goal 7 requires local governments to identify and plan for natural hazard areas and coordinate their natural hazard plans and programs with state agencies. Goal 7 requires local governments to evaluate risks from natural hazards and to avoid or prohibit development in areas "where the risk to public safety cannot be mitigated." *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008) (County may reasonably conclude that wildfire risk from destination resorts will be mitigated by the fire siting standards that apply to destination resorts under the county's zoning ordinance). In this case, there is no reason to believe that adding low intensity subsurface utilities into the DDNC-DA district will create hazards that cannot be mitigated.

Coos County has a natural hazard inventory and has made provisions for consideration, through the CCZLDO, of natural hazards during the land use planning process. The text amendment complies with the CCZLDO's natural hazard provisions, which implement the County's approved comprehensive plan. Any new uses or activities will comply with the hazards program; therefore, the text amendment consistent with Goal 7.

OSCC contends that the Application fails to comply with Goal 7 for two reasons. First, OSCC argues that the Application does not show that the pipeline complies with the approval criteria of the Floodplain Overlay zone. *See* OSCC letter dated February 22, 2019, at p. 24.

Second, OSCC contends that Goal 7 requires that the County apply its Natural Hazards map to the CBEMP zones. *Id.*

The Applicant repeatedly and correctly explains that the Goals directly apply only to the Text Amendment. Nonetheless, the Applicant also explains how the pipeline complies with all applicable approval criteria of the Floodplain Overlay Zone.

With respect to the Natural Hazards Overlays, CCZLDO §1.5.600 explains that the County's overlay zones, including natural hazard overlays, are "incorporated into the site-specific zoning" in the CBEMP zones. Thus, to comply with natural hazards provisions in the CBEMP zones, an applicant need only comply with the specific approval criteria of that zone. The Application does that. Opponents do not explain how the Application fails to comply with the applicable approval criteria of any CBEMP zone.

h. Goal 8: Recreational Needs.

To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Board Findings: Goal 8 states that it is intended "[t]o satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts." This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expedited siting of destination resorts. Goal 8 does not mandate that comprehensive plan prohibit utilities which might impact popular recreation areas. *Compare Home Builders Assoc. v. City of Eugene*, 52 Or LUBA 341 (2006) (Goal 8 does not mandate that comprehensive plans include a list of park, open space and recreation facilities that will be constructed during the planning period or include an estimate of the costs of such facilities). Goal 8 does not apply to the text amendment because it does not affect inventoried recreational needs or facilities.

Opponents contend that the Application fails to comply with Goal 8 because it wrongly concludes that Goal 8 does not apply. Opponents contend that the estuary is critically important to the recreational needs and interests of the County's citizens and visitors, including for recreational fishing, crabbing, shellfishing and boating. *See* OSCC letter dated April 9, 2019, at p. 8. Like so many of its other arguments, OSCC's argument concerning Goal 8 is both speculative and not sufficiently developed to enable review.

The Statewide Planning Goals directly apply only to the Text Amendment. Goal 8 does not apply to the pipeline. The Text Amendment merely allows subsurface low-intensity utilities in the DDNC-DA zone, which is the federal navigation channel. The Application reasonably concludes that allowing subsurface low-intensity utilities in the navigation channel will not have a significant adverse effect (and will likely have no effect at all) on the County's inventoried recreational needs or facilities. The Staff Report agrees. *See* Staff Report at 8.

Moreover, although Goal 8 does not directly apply to the pipeline, the pipeline is nonetheless consistent with it. Within Coos Bay, the pipeline is "subsurface," which is to say that it will be located below the bottom of the estuary. The DEIS concludes that "[b]ased on the proposed construction, mitigation, and operation procedures the [pipeline] would not significantly affect recreation resources or areas." *See* Record Exhibit 16, Exhibit 9 at p. 835. As Section II.C. of the Final Argument explains, PCGP's memorandum from Trevor Hoyles concludes that "vibration levels associated with HDD methods are not typically of a magnitude that can be felt at the ground surface." The memorandum further explains that "much of the proposed HDD path is situated at depths greater than 100 feet, which reduces the potential for vibrations to be detected by humans or wildlife." PCGP's memorandum from Edge Environmental, Inc. explains that "all HDD operations would occur within the estuarine substrate and there would be no sounds generated through the water column."

Finally, PCGP submitted into the record extensive evidence demonstrating that the pipeline's design is safe and durable and that it is unlikely to leak (which might affect recreation in the bay). This evidence includes a Hydrostatic Test Plan, a Corrosion Control Plan, a Reliability and Safety Report, the HDD Feasibility Report, and the HDD Fluid Plan. The Hydrostatic Test Plan explains that PCGP, in compliance with federal regulations, will "strength test (or hydrostatic test) the pipeline system (in sections) after it has been lowered into the pipe trench and backfilled," the purpose of which test is to "verify the manufacturing and construction integrity of the pipeline before placing it in service to flow natural gas." *See* Exhibit 16, Exhibit 1 at 3. If testing results in a leak or break, the pipeline "will be repaired and retested to ensure the required specifications are achieved." *Id.* The Corrosion Control Plan explains the methods PCGP will implement to "protect [the pipeline] system from external, internal, and atmospheric corrosion" in accordance with federal regulations. *See* Record Exhibit 16, Exhibit 2 at 3. The Reliability and Safety Report explains how the pipeline is designed to operate reliably and safely. *See* Exhibit 16, Exhibit 5. And the HDD Fluid Plan describes PCGP's plan to reduce the risk of inadvertent releases of HDD drilling fluid during the use of HDD to install the pipeline, as well as its plan to contain the same if they occur. Together, all this evidence demonstrates that PCGP has taken precautions to reduce, to the greatest possible extent, the risk of an accident or pipeline failure that could jeopardize the public's ability to recreate in the County. Opponents do not provide any evidence or contention to rebut the evidence submitted by the Applicant.

i. Goal 9: Economic Development.

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Board Findings: The text amendment complies with Goal 9 as explained by the application and is consistent with the County's comprehensive plan. The North Spit Waterfront plan and industrial lands addressed in both the Balance of County and the CBEMP are vital to economic growth in Coos County. The allowances of certain utilities will facility the growth envisioned and increase economic opportunities to the future and current development.

Opponents contend that the Application fails to comply with Goal 9 because the Application does not substantiate its claim that constructing and operating the pipeline will be an economic boon to the citizens of the County. Opponents contend there is evidence that the

pipeline will adversely impact the Dungeness Crab fishery and lucrative commercial oyster production and other aquaculture, as well as other important economic opportunities in the County. *See* OSCC letter dated February 22, 2019, at p. 24. Exhibit 3.

The Statewide Planning Goals directly apply only to the Text Amendment. Goal 9 does not apply to the pipeline. Opponents provide no evidence to establish that amending the text of the DDNC-DA zone to allow in it subsurface low-intensity utilities is inconsistent with Goal 9, which goal aims to provide economic opportunities in the state. In fact, the Application contends that the Text Amendment promotes Goal 9 because it would allow cross-bay utility connections that may help economically develop the North Spit. Moreover, because the Text Amendment allows only subsurface low-intensity utilities, it would not interfere with shipping commerce in the navigation channel. The Staff Report agrees with both conclusions. *See* Staff Report at 6.

Although Goal 9 does not apply to the pipeline, the pipeline is consistent with Goal 9 nonetheless. Opponents' contentions to the contrary are cursory and unsupported. They fail to specifically describe any evidence that the pipeline will adversely impact crabs, oysters, aquaculture, or other economic opportunities. PCGP has submitted into the record extensive evidence that the pipeline is safe and that leaks and other accidents that could adversely impact crabs, oysters, aquaculture, and other economic opportunities are unlikely, and also that the pipeline is unlikely to significantly adversely impact the environment, which evidence includes the Hydrostatic Test Plan, the Corrosion Control Plan, the Reliability and Safety Report, and the DEIS. Opponents do not submit any evidence at all, much less evidence sufficient to contradict the large quantity of evidence that PCGP has adduced that establishes that neither the pipeline nor HDD is likely to have significant adverse impacts on commercial industries in the estuary, including crabs, oysters, aquaculture, or other economic opportunities.

j. Goal 10: Housing.

To provide for the housing needs of the citizens of the state.

Board Findings: Goal 10 is not applicable to the text amendment. This will not change the housing element of the comprehensive plan.

k. Goal 11: Public Facilities and Services.

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Board Findings: Goal 11 requires that local governments adopt public facilities plans to serve areas within urban growth boundaries containing a population of more than 2,500 persons. The applicant explains, correctly, that Goal 11's implementing rules require that each local government adopt a public facilities plan to serve areas within urban growth boundaries containing a population of more than 2,500 persons. Goal 11 also limits the extension of public services outside of urban growth boundaries when the purpose for doing so is to stimulate urban development outside of urban growth boundaries.

Various Opponents contend that the Application fails to comply with Goal 11. They argue that although the Application claims that the pipeline is a utility, the pipeline is not accounted for in the County's public facilities plan. *See* OSCC letter dated April 9, 2019, at p. 9. This argument starts from an incorrect legal premise: that a utility facility must be included in a public facility plan before it can be approved. OSCC does not cite to any particular provision in Goal 11 or its implementing rule that states this requirement, and the Board is not aware of any such requirement. Even if Goal 11 did have such a requirement, the Goals do not directly apply to the pipeline. The Goals apply only to the Text Amendment. OSCC does not explain why Goal 11 would prohibit the County from amending the text of the DDNC-DA zone to allow subsurface utilities. As the Applicant points out, Opponents do not explain how Goal 11's public facilities plan requirement is relevant to allowing subsurface low-intensity utilities in the navigation channel. There is no logical relationship between the two and therefore there is no inconsistency between them either. Even if Goal 11 applied to the pipeline, it does not require that the County's public facilities plan account for every specific utility. Opponents do not cite any language in Goal 11 or its interpretive case law that establishes such a requirement.

OSCC points out that the proposed text amendment applies to land located outside of the City of North Bend and City of Coos Bay urban growth boundary. *See* OSCC letter dated April 9, 2019, at p. 9. As a result, OSCC argues that the Applicant does not explain "how the construction of this 'utility' is consistent or appropriate for the rural lands where it will be sited." *Id.* The Board does not understand the argument. It is difficult to imagine how a pipeline could be "inconsistent" or "inappropriate" for "the rural lands where it will be sited." It is impossible to site an interstate pipeline without traversing rural lands. If the suggestion is that Oregon law somehow prohibits interstate gas pipelines on rural lands, that argument is not well-developed enough to enable review.

OSCC argues that the Applicant has not attempted to explain how it would meet Goal 11's Planning Guideline 2, which states that "[p]ublic facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses." Goal 11 defines the phrase "Rural Facilities and Services" as follows: "* * * facilities and services suitable and appropriate solely for the needs of rural lands." An interstate gas pipeline does not fall within that definition, and therefore fall within the ambit of Planning Guideline 2. Moreover, Statewide Planning Goal "guidelines" are simply suggested approaches that local governments may use in achieving compliance with the goals; they are not requirements with which local governments must comply. ORS 197.015(9); Goal 2, Part III. *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).This fact also disposes of OSCC's argument that the applicant does not explained how it meets the guideline that "[a]ll utility lines and facilities should be located on or adjacent to existing public or private rights-of-way to avoid dividing existing farm units.

But both the Text Amendment and the pipeline comply with Goal 11, nonetheless. The text amendment will allow limited extension of low-intensity utility lines in the DDNC-DA management unit; however, no urban development is permitted in this location. Therefore, the text amendment will not stimulate urban development in the DDNC-DA management unit. The fact is the zoning regulations in place provide for limits that would prevent this use from stimulating urban development.

Goal 11 also forbids the County from providing urban-intensive public facilities and services in rural areas. As the Application explains, the Text Amendment does not run afoul of this rule. The Text Amendment allows subsurface low-intensity utilities in a zone that is entirely in the water, where urban development is not permissible nor even possible. Moreover, the pipeline does not "support urban uses." The pipeline's purpose is to supply natural gas to the LNG Terminal Facility that JCEP has proposed in a separate application. That facility and its components are industrial uses and industrial uses are appropriate outside urban growth boundaries.

I. Goal 12: Transportation.

To provide and encourage a safe, convenient and economic transportation system.

Board Findings: The text amendment does not involve or affect transportation. The proposed amendment would permit low-intensity utilities in the Deep Draft Navigation Channel; however, they will only be located below ground. In fact, as opponent OSCC notes, the pipe will be located more than the 100 - 150 feet below the water/ ground interface in the location of the channel. *See* Exhibit 10 (Sub-Exhibit showing cross sections of HDD bore depth in relation to ground surface). As a result, they would not interfere with navigation in the channel. This text amendment will not be inconsistent with Goal 12 or the comprehensive plan.

Opponents claim that the Application fails to comply with Goal 12 because the pipeline could endanger shipping in the navigation channel. Opponents contend that subsurface pipelines pose a risk to shipping. *See* OSCC letter dated February 22, 2019, at p. 24. Exhibit 3. See also McCaffree letter dated March 15, 2019. Exhibit 10. In support of their contention, Opponents submitted a report from the Towing Safety Advisory Commission entitled "Recommendations for Evaluating Placement of Structures Adjacent to or Within the Navigable Channel." *See* Oregon Shores Conservation Coalition Open Record Submission, Exhibit 11 at p. 44. The report concludes that utility infrastructure in navigation channels does pose some risk to shipping and "should not be permitted ... unless [it is] perpendicular to the navigable channel and buried safely to avoid any chance of anchor strike or snag." *Id.* at 48. The report ultimately recommends best management practices to reduce the risks to shipping of utility infrastructure in navigation channels. *Id.* at 51. Those practices include minimum safe burial depths and assessing pipelines/cable/utility burials at regular intervals, including bottom surveys of navigable channels on a periodic and episodic basis following environmental events.

The Towing Safety Advisory Commission report does not support the conclusion that the Text Amendment is inconsistent with Goal 12. The Towing Safety Advisory Commission is referring to a much different scenario than what is proposed here. In some cases, communications cables are simply laid down on the ocean floor or in the channel of a riverine system. Here, the pipeline will be installed far below the water/ground interface. In most areas, it will be more than 150 feet below the surface. No reasonable decisionmaker would conclude that a vessel traveling through the Bay will lower its anchor and that anchor will somehow travel so deep through the sediment at the bottom of the Bay that it will snag on the pipeline. Thus, Opponents' concern is not only implausible, it is frivolous to the point that it lowers the credibility of the commenter. For these reasons, the Board finds either that Goal 12 is not applicable to the Text Amendment, or to the extent it is applicable, the Text Amendment is consistent with it.

m. Goal 13: Energy Conservation.

To conserve energy.

Board Findings: Neither LUBA nor the courts have ever given Goal 13 any regulatory effect, and it is unclear what, if anything, Goal 13 requires. Nonetheless, the text amendment will facilitate energy conservation by allowing underground low-intensity utilities to locate in the Deep Draft Navigation Channel, which will provide for more direct routing of utility lines and delivery of utility services than can occur under existing conditions. The Board finds that this text amendment is consistent with Goal 13.

Opponents contend that the application fails to comply with Goal 13 because it does not support its claim that a more direct routing of utility lines and delivery of utility services across Coos Bay will facilitate energy conservation.

As the application explains, the Text Amendment will allow utility connections directly across Coos Bay. Because the DDNC-DA zone prohibits low-intensity utilities, it is currently impossible to make such direct connections. It is a matter of simple logic that allowing direct cross-bay connections through an area that currently prohibits them will facilitate more efficient use (and thus conservation) of energy resources. No evidence is necessary to support this conclusion and Opponents provide none to contradict it. This is especially true given that, even if the Text Amendment did not *promote* Goal 13's purpose of conserving energy, it clearly does not *contradict* that goal, and Opponents make no contention to that effect.

n. Goal 14: Urbanization.

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Board Findings: The Board finds that Goal 14 is not implicated by the text amendment.

Opponents contend the Application fails to comply with Goal 14 because it does not support its claim that the Text Amendment will promote a more livable community, particularly because subsurface natural gas pipelines pose risks to people and property.

The Application reasons that the Text Amendment will promote a more livable community because it will allow direct routing of utility lines and delivery services across Coos Bay. This is a matter of simple logic. No evidence is necessary to support this claim, particularly because, even if allowing subsurface low-intensity utilities in the DDNC-DA zone did not *promote* more livable communities, it certainly would not *contradict* that purpose. Further, the Text Amendment would not allow urban development outside an urban growth boundary, which Goal 14 prohibits.

For the reasons explained above, Goal 14 does not apply to the pipeline. Nonetheless, the pipeline is consistent with Goal 14 to the extent it may be applicable. That subsurface gas

pipelines pose some innate safety risks (leaks, explosions) does not render the Text Amendment inconsistent with Goal 14. Nor does it render the pipeline inconsistent with Goal 14. Virtually all urban development within urban growth boundaries incorporates utilities, including gas pipelines, and many utilities pose latent dangers (explosion, leak, etc.). If such latent dangers rendered utilities inconsistent with Goal 14, urban development--even within urban growth boundaries--would by default be inconsistent with the Goal whose purpose is to facilitate it. That notion is absurd.

o. Goal 15: Willamette River Greenway.

Board Findings: Goal 15 is not applicable to the text amendment.

p. Goal 16: Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Board Findings: Goal 16 requires that local governments divide all estuaries into, at a minimum, Natural, Conservation, and Development management units. The CBEMP complies with Goal 16 by creating and maintaining three "Aquatic Management Units" including the baseline Natural, Conservation, and Development management units that Goal 16 requires. The DDNC-DA zone is a "development aquatic" management unit. Goal 16 allows in development management units "pipelines, cables, and utility crossings, including incidental dredging necessary for their installation," where such uses are "consistent with the purposes of" the development management unit and "adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring dredge or fill."

The text amendment that this application seeks would allow underground low-intensity utilities. This allowance is consistent with the purposes of the Goal 16 development management unit because the subsurface location does not interfere with the use of development management units for navigation and water-dependent uses. Also, this is consistent with other uses in the development aquatic zones and navigational channels as discussed earlier in this report. Therefore, the text amendment that this Application seeks is consistent with Goal 16.

Opponents contend the Application fails to comply with Goal 16 because it does not support its claim that the pipeline does not interfere with the use of development management units for navigation and water-dependent uses.

As explained above, Goal 16 applies to the Text Amendment but not to the pipeline. The Application explains that Goal 16 allows in development management units, of which the DDNC-DA zone is one, "pipelines, cables, and utility crossings, including incidental dredging necessary for their installation," provided such uses are "consistent with the purposes of" the development management unit and "adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not

requiring dredge or fill." The Text Amendment would allow in the DDNC-DA zone subsurface low-intensity utilities, which is consistent with Goal 16's authorization of "pipelines, cables, and utility crossings" in development management units. For the reasons explained in Section II.D.3.a. of this contention, subsurface utilities would not interfere with the purpose of the DDNC-DA zone, which is deep-draft shipping navigation.

q. Goal 17: Coastal Shorelands.

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

Board Findings: Goal 17 regulates coastal shorelands. The DDNC-DA district does not include any designated coastal shorelands. Therefore, the Board finds that the Applicant is correct that this goal does not apply.

OSCC claims that the Application fails to comply with Goal 17 because the Text Amendment could have serious impacts on coastal shorelands on the estuary side of the North Spit. *See* OSCC letter dated April 9, 2019, at p. 9.

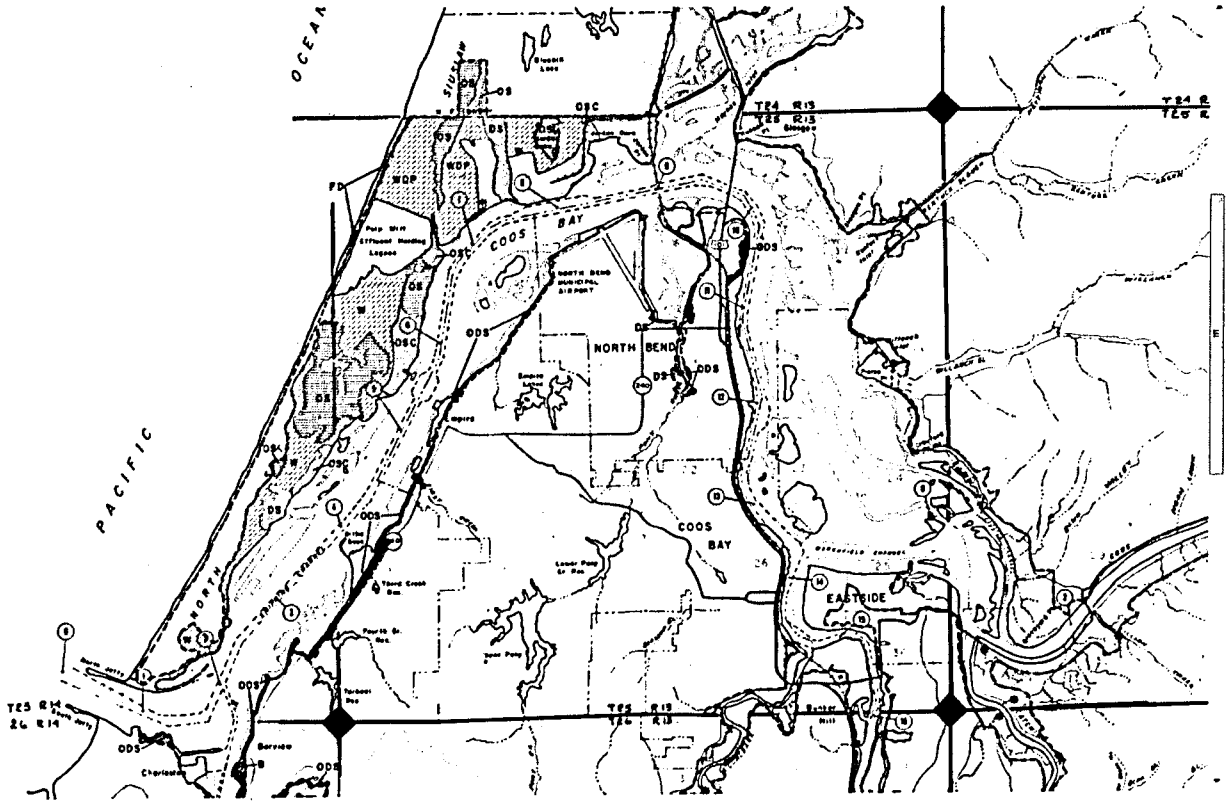
The Text Amendment allows subsurface utilities in the DDNC-DA zone, which is a Goal 16 management unit. There are no coastal shorelands in the DDNC-DA zone. The Text Amendment does not change the fact that any utility in a coastal shoreland zone subject to Goal 17 must show compliance with the requirements of its zone-site, which implement Goal 17. Opponents do not explain what serious impacts they postulate that allowing subsurface low-intensity utilities in the DDNC-DA zone could have on Goal 17 coastal shorelands. PCGP correctly points out that it "cannot give a serious response to the cursory, vague, and unsupported allegations of Opponents." Neither can the Board. OSCC's argument is not sufficiently developed to enable review.

r. Goal 18: Beaches and Dunes.

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Board Findings: Goal 18 concerns beaches and dunes. This is an aquatic management unit that is not subject to Goal 18.

Coos Bay Estuary Management Plan Inventory Map 16 Beaches and Dunes



Opponents contend the Application fails to comply with Goal 18 because, the Coos Bay dune sheet is nearby and so the Application should demonstrate consistency with Goal 18. However, the Opponents fail to explain how an aquatic unit falls under the Goal 18 requirements especially because the Coos Bay Estuary Management Plan has an acknowledged Goal 18 policy and inventory. *See* inventory map. There is no evidence showing that this policy or inventory map is required to be amended.

The Text Amendment allows subsurface utilities in the DDNC-DA zone, a Goal 16 management unit. It does not affect beaches and dunes. That there may be nearby dunes does not change the fact that the DDNC-DA zone does not include any. Opponents do not provide evidence or contention to explain their concern that subsurface utilities in an estuary zone that does not include land implicates Goal 18 beaches and dunes.

s. Goal 19: Ocean Resources.

To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

Board Findings: Goal 19 calls for the conservation of ocean resources. It is not applicable to this text amendment.

E. Application 2: Pipeline (Utility Facility/Low Intensity Utility Facility)

Before addressing the approval criteria for this second application, some general objections raised by opponents should be addressed.

Attorney Tonia Moro argues that the applicant and staff "willy nilly[4] re-characterize" the pipeline to fit whatever the zone requires, despite the some of the characterizations are mutually exclusive. *See* Letter from Tonia Moro dated February 22, 2019 at p. 3. Exhibit 1. She goes on to state that "[t]he rule of law should apply; the applicant must decide what it is." Ms. Moro does not cite any authority for this alleged "rule of law," nor is any authority readily found. The Applicant responds to this argument as follows:

> Opponents contend that the Application's assignment to the pipeline of different use classifications in different zones creates an inconsistency. Opponents are wrong. Each of the County's zones has its own set of listed uses. There is no legal or logical reason that a development proposal cannot qualify as more than one kind of use. If there was such a requirement, it would be difficult or impossible to permit a multi-zone development proposal. If a development proposal satisfies the definition of a certain use then it qualifies as that type of use, regardless whether it also qualifies as another type of use.

Final Argument, at p. 9-10. The Applicant is correct. The various land use "categories" by which a gas line can be approved can be summarized in the chart below:

Industrial	"Utility Facility- Service Lines" is a permitted use subject to standards. Also qualifies as a "Utility Facility – Including power for public sale."
EFU	Gas lines are a "utility facility necessary for public service," which is an outright permitted use. Interstate gas lines are exempt from state and local zoning regulation.
Forest	Gas lines are considered "distribution lines," and divided into two types: "local distribution lines"(a permitted use) and "distribution lines" (an "administrative conditional use."
7-D	Utility, Low Intensity – Permitted use
7-NA	Utility, Low Intensity – Permitted use
13A-NA	Utility, Low Intensity – Permitted use
13B-NA	Utility, Low Intensity – Permitted use
45A-CA	Utility, Low Intensity – Permitted use
14-WD	Utility, Low Intensity – Permitted use
15-RS	Utility, Low Intensity – Permitted use
15-NA	Utility, Low Intensity – Permitted use
14-DA	Utility, Low Intensity – Permitted use
DDNC-DA	Not allowed before text Amendment; permitted as a low intensity utility (subsurface) after text amendment.

[4]Various dictionaries define the term "willy nilly" as "without direction or planning; haphazardly."

It is entirely possible that a pipeline will quality as a permitted or conditional use in many different zones under different labels. Some of the applicable standards derive from state law, while other standards are of local origin. Since these standards were developed at different times by different persons for different purposes, it is not surprising that they use different terms to describe the same thing.

In his 13 March 2019 letter, Mr. Michael Graybill states:

> "My analysis of the Early Works Alignment land use permit application materials has lead me to conclude that the Coos Bay Estuary Management Plan, the Coos County Land use development ordinances, and the various relevant policies guiding the implementation of these plans were never developed to address the scale, the nature of the activities, or the potential land use impacts associated with the construction, installation, operation, and decommissioning of a large diameter high pressure natural gas transmission pipeline as proposed by the applicant."

See Graybill Letter dated March 13, 2019 at p.1,Exhibit 10. Basically, the argument is that the zoning code was written prior to the time that HDD technology was in general use, and therefore, such technology should not be allowed. This line of argument is rejected because it could have a host of unintended consequences. For example, solar panels were not in general usage when most zoning codes were written, and there is no reason why solar panels should be banned merely on account of the fact that they are not mentioned in a zoning code written years ago.

Moreover, as the Applicant correctly notes, Mr. Graybill's statement reflects a fundamental misunderstanding of the role of zoning ordinances. The zoning code address and control the *uses* of land. They do not generally regulate construction techniques or building materials. As an example, if a single-family house is allowed on a piece of property, the method used to construct that house is typically not regulated by the zoning code. It would be controlled by the building code (specifically, the 2017 Oregon Residential Specialty Code).

Mr. Graybill seems to be overthinking the code when he writes the following:

> The applicant has clearly and repeatedly stated that a gas transmission pipeline is necessary in order to supply gas to the proposed processing facility. The Planning department staff report also refers to the PCGP as a gas transmission line. I have been unable to determine if the land use evaluation associated with the pipeline should be treated as an integral component part of the LNG export facility collectively referred to as the "Jordan Cove Energy Project" or as an accessory element of the gas processing facility or as separate, stand-alone "unit" as defined in the CCLUDO? I believe that each one of the above-mentioned illustrative examples serve to demonstrate that the manner in which the relationship between the pipeline and the other elements

> of the JCEP is characterized influences the manner in which the proposed use or activities associated with the pipeline will be treated by the code or how it should be evaluated.

See Graybill Letter dated March 13, 2019 at p. 5. Exhibit 10. For land use / zoning purposes, the pipeline is generally considered to a separate, stand-alone use, although in some ways it is a necessary component of the LNG Terminal. It is not an accessory use to the LNG terminal. It is considered a "utility facility." Mr. Graybill also states:

> It is difficult for me to determine how to define aspects of the uses and activities included in the permit application because if I consider the pipeline as a component of its associated JCEP gas liquefaction and LNG export facility, it would require the pipeline to be to be evaluated as part of a "structure" because the liquefaction facility has built elements that include roofs and walls. If, on the other hand, the pipeline is considered as a free-standing unit in and of itself, it is not possible to characterize it as a "structure" because the pipeline in and of itself does not have a roof or walls.

See Graybill Letter dated March 13, 2019 at p. 5. Exhibit 10. Generally speaking, an underground pipeline is not a "structure" as that term is defined in the CBEMP("Structure: Walled and roofed building including a gas or liquid storage tank that is principally above ground."). A pipeline may have associated facilities that are structures.

> In order to support a land use determination, the county must first rule on how the work elements and activities included in the applicant's proposal shall be considered in relation to the larger overall project's purpose. On one hand, Coos county could evaluate the uses and activities associated with the proposed work as if it were an integral and inseparable component of the gas processing and export terminal facility that will be built to receive the gas delivered by the pipeline. On the other hand, Coos County could opt to narrowly consider only the land use implications of a high-pressure gas transmission Pipeline and the activities associated with its construction, use, maintenance and decommissioning.

See Graybill Letter dated March 13, 2019 at p. 5. Exhibit 10. The Board disagrees that "the county must first rule on how the work elements and activities included in the applicant's proposal shall be considered in relation to the larger overall project's purpose." Mr. Graybill cites no authority for this proposition of law, and none is facially apparent. Mr. Graybill concedes that "Coos County could opt to narrowly consider only the land use implications of a high-pressure gas transmission Pipeline and the activities associated with its construction, use, maintenance and decommissioning." This generally seems correct, although there are not any County zoning regulations that address the "decommissioning" of a pipeline. Furthermore, the County's zoning code does not comprehensively regulate the "construction" or "maintenance" of a pipeline. This is

because Congress has expressly pre-empted a state or local government's ability to regulate issues related to the safety of pipelines. The Natural Gas Pipeline Safety Act of 1968 originally directed the Secretary of Transportation to establish minimum federal safety standards for the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities used for the transportation of gas. The Act's text,[5] its legislative history,[6] administration implementation,[7] and judicial interpretation,[8] attest to federal preemption of the field of safety with respect to the establishment and enforcement of standards regulating the interstate transmission of gas by pipeline. *ANR Pipeline Co. v. Iowa State Commerce Commission,* 828 F.2d 465, 470 (8th Cir.1987) (Iowa may not impose its own safety standards on facilities).

Mr. Graybill concludes his discussion with the following assertion of fact and law:

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[5] For example, 49 U.S.C. Chapter 601 sets out federal safety standards for gas pipelines. 49 U.S.C. § 60104(c) states: "Preemption: A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

Prior to 1994, there were two Acts controlling the area of interstate pipeline safety - the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA). The NGPSA and the HLPSA were combined and recodified without substantial change at 49 U.S.C. §§ 60101 to 60125 in 1994. *See* P.L. 103-272, 108 Stat. 1371 (July 5, 1994). The two similar provisions from each Act pertaining to preemption were consolidated into what is now 49 U.S.C. § 60104(c). Compare 49 U.S.C. § 60104(c) with 49 U.S.C. § 1672(a)(1) (NGPSA) and 49 U.S.C. § 2002(d) (HLPSA). Title 49 U.S.C. 1672(b) (1972) originally provided for the establishment of minimum federal safety standards for the transportation of gas. The section concluded:

> 'Any State agency . . . may not adopt or continue in force after the minimum Federal safety standards referred to in this subsection become effective any such standard applicable to interstate transmission facilities.'

[6] "The relationship of Federal-State regulatory authority created by this bill differs as between local pipelines and interstate transmission lines. In the latter area, the lines of a single transmission company may traverse a number of States and uniformity of regulation is a desirable objective. For this reason, section 3 provides for a Federal preemption in the case of interstate transmission lines.' H.R.Rep.No.1390, 90th Cong., 2d Sess. (1968); 3 U.S. Code Cong. & Admin. News, 90th Cong., 2d Sess. pp. 3223, 3241 (1968).

[7] In 1973, the Secretary of Transportation reported to Congress that the Department of Transportation through its Office of Pipeline Safety exercised exclusive authority for safety regulation of interstate gas transmission lines. *See* Federal-State Relations in Gas Pipeline Safety 3, 7, 10 (1973).

[8] "The 'Natural Gas Pipeline Safety Act of 1968' . . . has entered the field of 'design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities.' . . . As applied to interstate transmission pipelines, the Safety Act must prevail over and pre-empt any state (law).' *United Gas Pipeline Co. v. Terrebonne Parish Police Jury*, 319 F.Supp. 1138, 1139 (E.D.La. (1970), *aff'd* 445 F.2d 301 (5th Cir. 1971). *See also generally Northern Border Pipeline Co. v. Jackson County,* 512 F.Supp. 1261 (D.Minn.1981) (Natural Gas Pipeline Safety Act of 1968 barred a condition on a construction permit requiring that the gas line be buried a minimum of six feet); *Williams Pipe Line Co. v. City of Mounds View*, 651 F Supp 551 (1987).

> It is my contention that the only use or purpose of the pipeline is to supply feed stock to the Jordan Cove gas processing terminal and the only purpose of the Jordan Cove terminal is to receive and process gas from the pipeline. My analysis has led me to conclude that the gas processing facility, its associated LNG ship terminal and the PCGP pipeline are inseparable, interconnected, and interdependent uses. The land use implications and authorizations should be evaluated accordingly.

See Graybill Letter dated March 13, 2019 at pp. 5-6. Exhibit 10. The Board disagrees. The Applicant sought separate land use applications for the pipeline and the LNG terminal, and the County has issued separate approvals. There is nothing in the code that prohibits such an approach.

Mr. Graybill argues that the pipeline is a hazardous facility. *See* Graybill Letter dated March 13, 2019 at p. 12. Exhibit 10. His argument is premised on the idea that the pipeline is an integral part of the LNG Terminal, which in some ways it is. Nonetheless, Mr. Graybill admits that a pipeline is not a structure in and of itself, but it should be treated as a structure because it is attached to a structure (*i.e.* the LNG Terminal). Though creative, the argument fails. The CCZLDO defines the term "hazardous facility" as follows: "hazardous facility shall mean a structure or structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released." There is simply no textual or contextual support for the idea that the drafters of the CCCP or CCZLDO intended to treat utility lines as a hazardous facility. Nor has the county historically treated them in this manner.

1. **Balance of County.**

   a. **Exclusive Farm Use Zone.**

CCZLDO §4.6.200(1)(q) allows "utility facilities" as a permitted use, as follows:

> ***Section 4.6.200 Development and Use Permitted: The following uses and their accessory uses are permitted outright in the Exclusive Farm Use zone and the Forest/Mixed Use overlays subject to applicable siting and development standards set forth in Sections 4.6.240. Accessory structures and uses subordinate to any authorized primary use shall be permitted unless otherwise exempted by this ordinance.***
>
> ***1. Non-residential Uses***
> *****
>
> ***q. Utility facility including service lines for the generation of power not for public sale.***

Similarly, CCZLDO §4.6.220(1)(f)(iii)also allows "utility facilities" as a conditional use, as follows:

> ***Section 4.6.220 Hearings Body Conditional Development and Use: The following uses and their accessory uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards in the "Exclusive Farm Use" zone and "Mixed Use" overlay subject to the applicable requirements in § 4.6.230 and applicable siting and development requirements in § 4.6.240.***
>
> ***1. Non-Residential Uses***
> *****.
>
> ***f. Utilities***
>
> ***iii. Utility facilities necessary for public service, except for the purpose of generating power for public use by sale and transmission towers over 200 feet in height. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided. An associated transmission line may be allowed if it is necessary for public service and meets the following:***

These code provisions implement ORS 215.283, which states:

ORS 215.283 - Uses Permitted in Exclusive Farm Use Zones in Nonmarginal Lands Counties

(1) The following uses may be established in any area zoned for exclusive farm use:

* * * * *

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial utility facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.

(A)ORS 215.275 (Utility facilities necessary for public service); or
(B)If the utility facility is an associated transmission line, as defined in ORS 215.274(Associated transmission lines necessary for public service) and 469.300(Definitions).

Board Findings: The Early Works Alignment will cross approximately 0.48 miles of properties zoned Exclusive Farm Use (EFU). CCZLDO §4.6.220(1)(f)(iii) is more or less a direct codification of ORS 215.283(1)(c).

The Applicant chooses to address the statute due to the fact that there may be a conflict with the Coos County Zoning and Land Development Ordinance and the applicable requirements of ORS Chapter 215 and OAR 660, Division 33. The statute permits "utility facilities" use as an allowed "outright," and further exempts interstate gas pipelines from regulation in the EFU zone. ORS 215.275(6); OAR 660-033-0130(16)(f).[9]

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[9]OAR 660-033-0130(16) provides as follows:

> (16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
> (A) Technical and engineering feasibility;
> (B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
> (C) Lack of available urban and nonresource lands;
> (D) Availability of existing rights of way;
> (E) Public health and safety; and
> (F) Other requirements of state and federal agencies.
> * * * * *
> (f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

With regard to the first of these two reasons, the Applicant correctly notes that state law treats certain qualifying "utility facilities" as a permitted use in the EFU zone. In its Final Decision and Order, County File No. 10-01-045PL ("2010 Order"), the County cited to *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995) for the proposition that the "legislature intended that the uses delineated in ORS 215.213(1) be uses 'as of right,' which may not be subjected to additional local criteria").*See also WKN Chopin, LLC v. Umatilla Electric Cooperative*, 66 Or LUBA 1 (2012) (citing ORS 215.276(1)(c) and noting that "[a] transmission line is a type of 'utility facility,' bringing it within the list of "sub 1" uses subject to *Brentmar,* even though it does not directly provide service to the public). The applicant is correct this interpretation is consistent with the County's findings for other alignments as staff cited to in this paragraph. Furthermore, the 2010 Order covered why the pipeline is an interstate pipeline that will distribute natural gas.

With regard to the second of these two reasons, ORS 215.275(6) states that subsections 2-5 do not apply to "interstate natural gas pipelines." ORS 215.275 provides:

> ***215.275 Utility facilities necessary for public service; criteria; rules; mitigating impact of facility. (1) A utility facility established under ORS 215.213 (1)(c) or 215.283 (1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.***
> ***(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c) or 215.283 (1)(c) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:***
> ***(a) Technical and engineering feasibility;***
> ***(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;***
> ***(c) Lack of available urban and nonresource lands;***
> ***(d) Availability of existing rights of way;***
> ***(e) Public health and safety; and***
> ***(f) Other requirements of state or federal agencies.***
> ***(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.***

(4) The owner of a utility facility approved under ORS 215.213 (1)(c) or 215.283 (1)(c) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c) or 215.283 (1)(c) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.
(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission. (Emphasis added).

In its 2010 Order, the County found that this is a legislative recognition of federal preemption on the issue of route selection for interstate gas pipelines. *See* Final Decision and Order, County File No. 10-01-045PL.

In the 2010 Order, the Board noted that a potential negative inference is created by the stated exceptions to subsections 2 through 5: by omitting subsection (1) within the exception, one might infer that an applicant for an interstate natural gas pipeline is technically supposed to be subject to ORS 215.275(1). However, that inference seems to be unwarranted. Subsection 1 of ORS 215.275 contains the requirement that the applicant to show that the proposed facility "is necessary for public service." According to subsection 2, the "necessary for public service" requirement is met if the applicant demonstrates that "the facility must be sited in an exclusive farm use zone in order to provide the service." Of course, given that the determination of whether something is "necessary" is dependent on analysis which is set forth in subsections 2 through 5, it remains unclear exactly what an applicant proposing a natural gas pipeline is required to do to demonstrate that its facility is "necessary." LCDC seems have recognized this in their administrative rule implementing ORS 215.275, as they exempt FERC-regulated pipelines from the "necessary for public service" test. See OAR 660-033-0130(16)(f). Given the nature of ORS 215.275(2)-(5), the Board concludes that ORS 215.275(1) contains no substantive standards applicable to interstate natural gas pipelines, but even if it did, those requirements would be preempted by federal law. *See* Final Decision and Order, County File No. 10-01-045PL. *See also McCaffree v. Coos County,* 70 Or LUBA 15, 21-22 (2014), *aff'd without opinion*, 267 Or App 424, 341 P3d 252 (2015).

In its staff report, Staff correctly finds that the pipeline is a locationally-dependent linear facility that must cross EFU land in order to achieve a reasonably direct route. In order to achieve the project purpose, the pipeline must start at the Jordan Cove LNG shipping export terminal and exit Coos County on the county's eastern boundary in order to eventually connect to the existing

pipelines near Roseburg, Medford and Malin, Oregon.[10] Given the number and configuration of EFU zoned lands in the rural portions of Coos County, it is not possible for the pipeline to avoid all EFU zoned lands and maintain a reasonably direct route through Coos County. The applicant is working through the Federal Process which requires and Environmental Impact Study. The early works Application is intended to consider an "alternative route" that will minimize the impacts to Haynes Inlet. The Applicant has described that the only reasonable path to do so requires a southward initial leg followed by a turn to the east. The Applicant further states that there is limited option for exiting Coos Bay and these constraints require the pipeline to cross a small area of EFU zoning.

The pipeline is permitted in the County's EFU zone as a "utility facility necessary for public service." ORS 215.283. The pipeline is a "utility" that transmits natural gas for distribution to third-party end users, thus providing a "public service." In Final Decision and Order No. 14-01-006PL, at p. 16, the County held that the pipeline provides natural gas to serve the "public" even if it does not serve the American "public"). ORS 215.275(1), which regulates utility facilities necessary for public service, explains that a utility facility is "necessary for public service" "if the facility must be sited in an exclusive farm use zone in order to provide the service." The Application explains that the only reasonable route for the pipeline to provide natural gas to the LNG Terminal Facility requires that it cross the County's EFU zone. Therefore, the pipeline is a "utility facility necessary for public service." The vast majority of the PCGP gas pipeline will transport natural gas to facilitate delivery to customers overseas. For this reason, the proposal falls within a direct, simple, and straightforward reading of the definition of "low-intensity utilities." But even if all of the gas were bound for overseas markets, the pipe would still be a "utility" within the meaning of the CBEMP definition. Additionally, Coos County has approved multiple alignments for the pipeline and in each case when a CBEMP zone is crossed, Coos County has interpreted the CBEMP in a manner that an interstate gas pipeline is a "low-intensity utility." *See, e.g.*, Coos County Board of Commissioners Final Decision and Order Nos. 10-08-045PL and 14-01-007PL, which PCGP submitted into the record for this matter.

In this case, the Board adopts a consistent view: that an interstate gas transmission pipeline is a "utility" within the meaning of the CBEMP and the Coos County Zoning Code. The Comprehensive Plan defines the term "utility" as follows:

> ***Public service structures which fall into two categories:***
>
> ***(1) Low-intensity facilities consist of communications facilities (including power and telephone lines), sewer, water, and gas lines, and***
>
> ***(2), High-intensity facilities consist of storm water and treated waste water outfalls (including industrial waste water).***
>
> ***Note: in shoreland units this category also includes sewage treatment plants, electrical substations and similar public service structures.***

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[10] The location of the Jordan Cove LNG terminal itself was selected as the result of a separate alternatives analysis approved by FERC.

However, these structures are defined as "fill for non-water-dependent/related uses" in aquatic areas.

CBEMP, Vol II, Part 1, Sec. 3.2. *See also* CCZLDO §2.1.200. In the CBEMP, the term "low-intensity utilities" is expressly defined to include "gas lines." The applicant clearly proposes to transport a "gas" via a "line." The word "line" in this context means "pipe." *See* Webster's Third New International Dictionary, Unabridged ed. (2002), at p. 1314. That is the beginning, and end, of the inquiry.

Opponents disagree. Ms. Jody McCaffree argues that the utility must be a "structure" and further argues that the applicant admits that the pipeline is not a "structure." To rule in Ms. McCaffree's favor would require the Board to conclude that underground sewer, water, and gas pipes of any kind are not allowed in the county. The Board finds that the term "public service structure" is not intended to use any definition of structure that makes a distinction between above-ground and below ground facilities. CCCP Vol 2, part 1 defines the term "structure' as "anything constructed or installed or portable, the use of which requires a location on the ground." The Board further finds that a pipeline may be a structure for some purposes but not for others.

Ms. McCaffree also argues that CCZLDO §2.1.200 only applies to facilities owned by the public. This is not correct. In a related context, LUBA and the courts have held that the term "public utility" referenced in ORS 215.283(1)(c) is not concerned with whether the utility is owned by a public or private entity but whether the facility is so impressed with a public interest that it comes within the field of public regulation. *See e.g.,* 42 Or Att'y Gen 77 (1981) (cited in *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 773 P2d 779 (1989)).

Ms. McCaffree also seizes on the "note" in the definition of utility and argues that a gas line is defined as "fill for non-water-dependent/related uses" in aquatic areas. *See* Exhibit 8 at p. 9 However, the last sentence only addresses "sewage treatment plants, electrical substations and similar public service structures." The Applicant does not propose any of those things. The "note" she refers to simply recognizes that "sewage treatment plants" and "electrical substations" are a type of utility, but they are only allowed in "shoreland units" and not in aquatic units. Of course, that is not much of a limitation, since it would defy logic to seek to site either of these types of utilities in an "aquatic unit" (i.e. in the estuary). In any event, a gas pipeline can easily be factually differentiated from a "sewage treatment plant," an "electrical substation," and "similar public service structures" simply on the basis that, unlike the other listed uses, it is a below-ground utility. Therefore, it is not considered to be "fill" for non-water-dependent/related uses in aquatic areas. The Board notes that the CBEMP has a specific definition for "fill," and even other opponents such as Mr. Mike Graybill concede that HDD bores do not fall within that definition.

Attorney Tonia Moro contends that the pipeline is not a "utility facility necessary for public service" because "it is not necessary to site the pipeline in exclusive farm or forest use zones to provide the [public] service" and because "no service is provided." *See* Moro letter dated February 22, 20109, at 3-4. Exhibit 1. To support this contention, Ms. Moro cites OAR 660-033-0130(16)(a), which requires that "to demonstrate that a utility facility is necessary, an applicant must ... show that reasonable alternatives have been considered and that the facility must be sited

in an exclusive farm use zone due to one or more of the following factors," which factors include "technical and engineering feasibility[.]" All three of these arguments fail.

First, Ms. Moro does not provide any evidence that it would be possible to route the pipeline from the terminal to the Douglas County line without crossing an EFU zone. The Board finds that it would be inconceivable, since every valley floor in Coos County contains some EFU zoned land. In the absence of a more well-developed and well supported argument, the Board finds that it is necessary to site the pipeline in exclusive farm use zone to connect the LNG terminal with the Malin Hub.

Second, Ms. Moro is incorrect that the pipeline does not provide a service. It does provide a service, as explained in Section II(A)(1) of the Applicant's Final Argument. The Pipeline is a "utility" that transmits natural gas for distribution to third-party end users, thus providing a "public service." The Pipeline provides natural gas to serve the "public" even if it does not serve the American "public".

Third, Ms. Moro completely overlooks the fact that OAR 660-033-0130(16)(a) does not apply to FERC-regulated interstate natural gas pipelines. As noted above, OAR 660-033-0130(16)(f) establishes that "the provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission."

To support her argument that a pipeline is not a permitted use under ORS 215.283, Ms. Moro cites to *Lane County v. LCDC*, 325 Or 569, 942 P2d 278 (1997) and *Keith v. Washington County*, 66 Or LUBA 80 (2012). The Board reviewed those two cases and did not find them to be even remotely relevant to answering the questions at hand. Ms. Moro does nothing to explain why these cases are relevant, nor does she adequately develop her argument in any meaningful way.

Ms. Moro and other opponents argue that the Application proposes a transmission line, and not a distribution line. *See, e.g.,* Moro Letter dated February 22, 20019 at p. 3-4 Exhibit 1; Graybill letter dated March 13, 2019, at p. 8. Exhibit 10. This argument was previously raised and rejected by LUBA. *See McCaffree v. Coos County,* 70 Or LUBA 15, 21-22 (2014), *aff'd without opinion*, 267 Or App 424, 341 P3d 252 (2015). In that case, the opponents argued, as they do here, that the proposed pipeline could not fit the definition of a utility because it was not intended to "distribute LNG to the domestic public." *Id.* at 25. LUBA agreed with Coos County that nothing in the applicable law depended "on the identity of the end user." *Id.*

Despite LUBA's decision in *McCaffree v. Coos County, supra,* some opponents continue to contend that the PCGP pipeline is not a "low-intensity utility" because it acts as more of a "transmission line" rather than a "distribution line." Opponents' contention to the contrary inserts words into the definition that are not otherwise present in contravention of ORS 174.010.

Ms. Moro cites to ORS 469.300 in support of her argument that the pipeline is a transmission line. Chapter 469 pertains to the jurisdiction and regulation of energy facilities by the Energy Facility Siting Council ("EFSC"). ORS 469.320(2) states that "A site certificate is not required for: * * * (b) Construction or expansion of any interstate natural gas pipeline or

associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency." For this reason, ORS Chapter 469 does not apply.

Ms. Moro cites to ORS 215.274, which regulates "associated transmission lines." This statute uses the same definition of "Associated transmission lines" as set forth in ORS 469.300(3), which "means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid." Ms. Moro does not explain why she thinks this statute is relevant here, nor it is obvious after reading the statute. Once again, Ms. Moro does nothing to explain why these statutes are relevant, nor does she adequately develop her argument in any meaningful way.

For the above reasons, the Board denies Opponents' contentions and conclude the pipeline is a "utility facility necessary for public service" in the EFU zone.

Opponent Michael Graybill argues that the proposed work in the EFU zone will have permanent and temporary impacts to wetlands. *See* Graybill letter dated March 13, 2019, at p. 18. Exhibit 10. Mr. Graybill points out that the Applicant is proposing to create temporary work areas for the HDD bore in this area. The Board does not see that Mr. Graybill's testimony related to any specific approval criterion. He suggests that there exists "provisions of the code designed to provide for the protection and conservation of wetland resources," but never explains which "provisions" he is referring to. In the absence of a more focused and developed argument, the Board finds that Mr. Graybill's argument provides no basis for denial.

Mr. Graybill also argues that the "applicant proposes to use * * * farmland to temporarily store spoil materials for construction," and requests that the County evaluate the code to confirm that this use/activity is permissible * **. *See* Graybill letter dated March 13, 2019, at p. 18. Exhibit 10. Mr. Graybill misunderstands how the code operates. The code allows a utility facility in the EFU zone. That authorization necessarily includes any and all construction techniques and ancillary operations that are necessary to accomplish the installation of that utility use. As an analogy, if a code allows residential use in a zone, then that authorization also allows any associated tree cutting, crane usage, bulldozing, excavation, storage of excavation spoils, wheelbarrow use, hammering, saw cutting, waste material collection and storage, lunch eating, break taking, and any other activity typically associated building a residential home. This case is no different. If the applicant needs to temporarily store spoil materials for construction, then the zoning code is not an impediment to that activity.

Mr. Graybill also argues that the HDD bore may require certain specialized construction equipment, and that such equipment that should be evaluated to see if "it requires activities such as pile driving or will interfere with other uses of the site." *See* Graybill letter dated March 13, 2019 at p. 19. This argument fails for the same reason as the previous one.

Mr. Graybill notes that the "EFU code includes provisions limiting the duration that certain types of vehicles can be parked property bearing this designation." *See* Graybill letter dated March 13, 2019 at p. 19. Mr. Graybill does not explain what provision is referring to, not

does he use operative language from any code provision. This issue is not raised sufficiently to provide fair notice to the decisionmaker.

b. Forest Zone.

The Early Works Alignment will cross approximately 0.90 miles of properties zoned Forest ("F"). The Early Works Alignment complies with the applicable approval criteria in the F zone, as follows.

1. CCZLDO 4.6.110.

CCZLDO 4.6.110 - Administrative Conditional Development and Use: The uses and their accessory uses listed in this section may be permitted as an administrative conditional use subject to applicable development standards for Forest and Forest Mixed Use zone and the following criteria:

1. Non-Residential Uses

* * * * * *

(h) New electrical transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal) with rights-of way 50 feet or less in width.

Board Findings: The Early Works Alignment is a "new * * * gas line" with a permanent right-of-way width of 50 feet. The County has previously classified and approved the pipeline as a gas "distribution line" in the F zone. *See* Final Decision and Order, County File No. 10-08-045PL at p. 80. Based upon the analysis in the 2010 Order and the information provided by the applicant, the Early Works Alignment and its associated facilities are permitted as an administrative conditional use within the County's Forest zone. CCZLDO §4.6.110.1.h. This conclusion is discussed in more detail below.

The Opponents contend the pipeline is a "transmission line" and not a distribution line. *See e.g.*, Letter from Michael Graybill dated March 13, 2019, at pp. 8-11. The Opponents contend that the pipeline is too wide and too highly pressurized to qualify as a distribution line and that under gas industry standards the pipeline would qualify as a transmission and not a distribution line. The Opponents also argue that larger gas lines are referred to as "transmission lines" in the oil and gas industry. The Board cannot agree with the Opponents on this issue.

As an initial matter, it does not matter that interstate gas pipelines are generally known in the industry as transmission lines. Nor does it matter that PCGP's FERC materials describe the pipeline as an interstate natural gas "transmission" facility. The issue here is the County's interpretation of CCZLDO 4.6.110.1.h and OAR 660-006-0025(4)(q). The County must interpret these provisions in accordance with the Goal 4 rules. *Cotter v. Clackamas County*, 36 Or LUBA 172 (1999). For purposes of this proceeding, it is irrelevant how federal law and FERC regulations classify the pipeline. The County's land use review and FERC's review of the pipeline are two separate processes. Each applies a different set of definitions and standards. In applying federal definitions and standards, FERC does not consider how Goal 4 and state and local law characterize the pipeline. And the County must not consider federal law in applying to the pipeline the definitions and standards of state and local law.

Unlike the manner in which Oregon statutes address uses allowed in EFU zones, Oregon statutes do not contain a similar "list" of allowed uses for Forest zones. LCDC used its delegated authority to fill that void, however. OAR 660-006-0025 is the LCDC administrative rule that sets forth the list of uses that are allowed conditionally and "by right" in the Forest zone. As relevant here, it provides as follows:

> *(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:*
> * * * * *.
>
> *(c) Locationally dependent uses, such as communication towers, mineral and aggregate resources, etc;*
>
> *(3) The following uses may be allowed outright on forest lands:*
> * * * * *.
>
> *(c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;*
>
> *(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:*
>
> * * * * * *.
>
> *(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width * * *. (Emphasis added).*

Thus, OAR 660-006-0025(3)(c) allows certain small-scale pipeline uses outright as a "[l]ocal distribution lines (*e.g.*, electric, telephone, natural gas) and accessory equipment." In contrast, OAR 660-006-0025(4)(q) allows "[n]ew distribution lines (*e.g.*, gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width" as a conditional use. OAR 660-006-0025(4)(q) specifically lists 'gas' amongst a list of examples of "distribution lines." OAR 660-006-0025(4)(q) expressly and unambiguously defines all new utility lines as "distribution" lines, with the exception of new electric lines, which are identified as "transmission" lines. Because the rule creates a separate category for "local" gas distribution lines, the only logical inference is that all other gas lines (*i.e.* "non-local gas lines") are a conditional use. For purposes of this state rule, and the corresponding county code provision, there is no such thing as a natural gas "transmission" line.

The LCDC rule uses the term "transmission" lines when describing large scale electrical lines. OAR 660-006-0025(4)(q). In this regard, the rule appears to recognize the vernacular used in the state statute addressing electricity. *See* ORS Chapter 772. *Cyrus v. Deschutes County*, 46 Or LUBA 703, 705 n1 (2004) ("The parties advise us that a transmission line transmits electricity from one station or substation to another, while a distribution line is an entirely separate line that distributes electricity to individual properties."). Various Opponents to the project have previously argued that LCDC's failure to provide for "gas transmission lines" created a negative implication that such large-scale gas pipelines are not allowed.

It is true that LCDC uses the words "distribution lines" instead of "transmission lines" when describing gas pipelines. OAR 660-006-0025(4)(q). However, this appears to be unintentional, and the Board stated in previous cases that LCDC used the term "distribution line" in a manner that is synonymous with "transmission line," as that term is used in ORS 215.275 and 215.276. Had LCDC intended to distinguish between two types of gas "distribution" pipe uses and third category of gas "transmission" pipeline uses, then it is likely that such a policy would have been set forth with express language. By only specifying two categories of gas pipelines, the intent appears to be that *all* gas pipelines were intended to fit within those two categories of distribution lines.

Furthermore, there is no indication in Statewide Planning Goal 4 or OAR 660-006-0025(4)(q) that LCDC purposefully intended to use the federal or the industry vernacular for gas lines. Also, there is no indication that LCDC sought to purposefully exclude interstate gas "transmission" pipelines from Forest zones when it drafted OAR 660-006-0025. Neither the FERC classification or other federal law is necessarily "context" for interpreting DLCD's administrative rule, because there is simply no evidence to suggest that OAR 660-006-0025(4)(q) implements federal law or was enacted with federal law in mind.

If anything, the only express discussion of large-scale interstate gas pipelines in the LCDC administrative rules is set forth in the rules regulating uses in EFU zones. OAR 660-033-0130(16). As mentioned above, OAR 660-033-0130(16) states that FERC-regulated gas pipelines are exempt from the "necessary for public service" test applicable to other utility facilities seeking to locate in EFU zones. LCDC's "hands off" approach to gas pipelines in EFU zones was apparently a response to the passage of ORS 215.275(1)-(6) in 1999. *See* Chapter 816 Oregon Laws 1999 (HB 2865). It would make little sense to create a highly permissive environment for gas pipelines in EFU zones but then somehow prohibit them in Forest zones. This is particularly true since as a practical matter, it is not possible to construct gas pipelines for any significant distance in Oregon without routing them through a Forest zone.

The legislative history of OAR 660-006-0025(4)(q) is also telling because there is really no discussion regarding gas "transmission" lines. If LCDC were making a purposeful decision to exclude interstate gas transmission lines from Forest zones, one would think that such a monumental decision would have generated more debate and attention. Such debate and discussion would be reflected in the legislative history. However, the tenor of the legislative history is much more in line with "housekeeping" changes, as opposed to a major shift in public policy.

In prior Coos County cases related to the overall JCEP/PCGP project, the Board pointed

out that ORS 215.276 contains language which, on initial glance, tends to further confuse the "transmission" line vs. "distribution" line issue. ORS 215.276 is a little-known provision added to ORS Chapter 215 in 2009. *See* 2009 Or Laws Ch 854 (HB 3153). The statute provides as follows:

> *215.276 Required consultation for transmission lines to be located on high-value farmland. (1) As used in this section:*
> *(a) "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.*
> *(b) "High-value farmland" has the meaning given that term in ORS 195.300.*
> *(c) "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.*
> *(2) If the criteria described in ORS 215.275 for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult.*
> *(3) The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. [2009 c.854 §1]*
> (Underline emphasis added).

The definition of "transmission line" in ORS 215.276 could be read in conjunction with a negative inference concerning the allowance of gas "distribution lines" in OAR 660-006-0025(4)(q). The argument is that since gas "distribution lines" are allowed in Forest zones, and since the various statutes and rules – when read together – seem to differentiate between "transmission lines" and "distribution lines" (and specifically allow electrical transmission lines), that gas transmission lines are, by negative inference, not allowed in Forest zones.

However, that line of reasoning is a flawed attempt at statutory interpretation. As an initial matter, any negative inference that can be gleaned from OAR 660-006-0025(4)(q) is tenuous at best. The recent OSB publication entitled "Interpreting Oregon Statutes" by Steve Johansen, Hon. Jack Landau, and Anne Villella ed. OSB CLE (2009) contains a lengthy but highly relevant discussion of the use of negative inferences in statutory construction analysis, as follows:

Expressio unius est exclusio alterius, another common-law aid to the construction of statutes, "hold[s] that to express or include one thing implies the exclusion of the other, or of the

alternative." Black's Law Dictionary 620 (Bryan A. Garner ed., 8th ed 2004). The rule may also be stated as *inclusio unius est exclusio alterius. Waddill v. Anchor Hocking, Inc.*, 330 Or 376, 382, 8 P3d 200 (2000); *Fisher Broadcasting v. Department of Revenue,* 321 Or 341, 353, 898 P2d 1333 (1995).

By way of example, saying that citizens are entitled to vote implies that noncitizens are not entitled to vote. Black's Law Dictionary, *supra,* at 620. Including one group impliedly excludes the other. However, saying that citizens may vote does not expressly say anything about the rights of noncitizens; it simply assumes the negative of the first statement about citizens.

However, both the Court of Appeals and the Supreme Court have repeatedly warned the bench and bar that the maxim "is to be applied with caution and merely as an auxiliary rule to determine the legislative intention." *Cabell v. Cottage Grove,* 170 Or 256, 281, 130 P2d 1013 (1943).

Although *expressio unius* is consistent with ORS 174.010, and the legislature's directive to the courts "not to insert what has been omitted or omit what has been inserted," which the court regularly relies on (*see* §§2.32, 5.3), the court rarely relies on the maxim. In fact, the supreme court has only looked to the rule as an aid to construction once in the last eight years. *See Waddill,* 330 Or at 382.

Expressio unius applies only in limited circumstances. "Before the maxim *expressio unius est exclusio alterius* can be instructive as to what a statute *excludes,* one must first *identify what it includes.*" *Carlson v. Benton County,* 154 Or App 62, 67, 961 P2d 248 (1998) (emphasis added). And, because *expressio unius* is a rule of inference, it gives way to stronger evidence of legislative intent. *Cabell,* 170 Or at 281. Thus, lawyers should limit use of this maxim, and consider its application cautiously:

The maxim "expressio unius est exclusio alterius" is not of universal, but of limited, use and application. It is an aid to construction, not a rule of law. It is not conclusive, is applicable only under certain conditions, is subject to exceptions, may not be used to create an ambiguity, and requires great caution in its application . . . It may not be used to defeat or override clear and contrary evidence of legislative intent.
73 Am Jur2dStatutes, §130 (2007).

Judge Posner has pointed out another weakness: "The canon *expressio unius est exclusio alterius* is . . . based on the assumption of legislative omniscience, because it would make sense only if all omissions in legislative drafting were deliberate." Richard A. Posner, The Federal Courts: Crisis and Reform 282 (1985). Judge Posner went on to say "[a]lthough this canon seemed dead for a while, it has been resurrected by the Supreme Court . . . Its recent disparagement by a unanimous Court [in *Herman & MacLean v. Huddleston,* 459 US 375, 386 n 23, 103 S Ct 683, 690 n 23 (1983)] puts its future in some doubt but more likely confirms that judicial use of canons of construction is opportunistic." Posner, *supra.*

The discussion quoted above has relevance here, and the assumption that OAR 660-006-0025(4)(q) contains a negative inference related to gas "transmission lines" is faulty for a number of reasons.

First, the Board considers the analytical rule which states that "one must first *identify what [the statute] includes*" "[b]efore the maxim *expressio unius est exclusio alterius* can be instructive as to what a statute *excludes.*" Here, the rule itself only creates two classes of gas lines, "local gas distribution lines" under subsection 3(c), and non-local "distribution lines" under subsection 4(Q). To assume that LCDC not only understood that there exists a third possible category of gas pipelines known as "gas transmission lines," but also that LCDC intended to prohibit such transmission lines seems to be highly speculative at best. This is particularly true since the statutes and administrative rules were written at a time when the exportation of North American natural gas was not even technologically or economically feasible

Secondly, even if we assume that a mythical third category of "non-local distribution line" does exist, it is hard to envision what features this third category of pipeline would have that distinguish it from a "transmission line." In fact, the term would appear to be an oxymoron if it is interpreted to *mean anything other* than a "transmission line" as defined in ORS 215.276(1)(c). As a practical matter, there is really no way to create three categories of gas pipelines: any individual pipe will either provide local service (in which case it is a local distribution line), or it does not (in which case it will meet the definition of "transmission line" in ORS 215.276(1)(c). If we are to believe that OAR 660-006-0025(4)(q) establishes some sort of third category of intermediate non-local distribution line that serves a different function from either the "transmission lines" as defined in ORS 215.276(1)(c) and "local" lines as defined in subsection 3(c), it is certainly not obvious what function such a "distribution line" would serve. Stated another way, gas lines either serve local users (in which they fall under OAR 660-006-0025(3)(c), or they don't (in which case there are transmission lines under ORS 215.276.) In light of this fact, the term "distribution line" as used in OAR 660-006-0025(4)(q) must mean the same thing as "transmission line" as that term is defined in ORS 215.276(1)(c).

Additionally, the easy explanation why electrical "transmission" lines are called out separately in OAR 660-006-0025(4)(q) from other types of gas and water "distribution lines" is simply to recognize that the large scale overhead electrical lines need a wider 100 foot easement (as compared to the 50 foot easement allowed for gas, water, and similar pipelines, which do not need as high ground clearance).

Finally, the legislative history[11] of ORS 215.276 conclusively resolves any question about

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[11]The 1993 case *PGE v. BOLI* established a strict, three-step methodology whereby legislative history could not be considered if an analysis of the text and context resolved any ambiguity. This rigid hierarchy proved somewhat unpopular with legislators, and in 2001, the Oregon Legislature passed 2001 Or Laws Ch. 438 (HB 3677) in an effort to modify *PGE v. BOLI.* It amended ORS 174.020 to state, among other things, the following new language:

> (1)(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute.
>
> * * * * *.
>
> (3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.

whether the definition of "transmission line" in ORS 215.276(1)(c) meaning and intent. ORS 215.276 was enacted in the 2009 legislative session. *See* House Bill 3153 (2009). On its face, the law applies only to EFU land, and was intended to provide requirements for "transmission line" installers to consult with owners of farmland during the siting process.

Although the initial version of the bill was controversial, the final "Dash-11" amendments proved to be rather low-key and non-controversial. Northwest Natural Gas, Portland General Electric, League of Oregon Cities, Oregon Rural Electrical Cooperative Association, 1000 Friends of Oregon, and the Oregon Farm Bureau all testified at various public hearings in favor of the bill, as amended. At no point in the proceedings did any member of the legislature or any commenter opine that the effect of the bill was to prohibit the siting of interstate gas transmission pipelines on Forest land. In particular, Northwest Natural Gas, who owns and operates a large number of "transmission lines," would obviously not have testified in favor of a bill had the intent been to effectively make all gas pipelines that do not provide local service a prohibited use in the Forest zone.

Opponents' interpretation--that the pipeline is not a distribution line because distribution lines only serve local customers--renders both OAR 660-006-0025(3)(c) and CCZLDO 4.6.100.1.h redundant. Since those provision explicitly allow *local* gas distribution lines, the "new distribution lines" that both OAR 660-006-0025(4)(q) and CCZLDO 4.6.110.1.h authorize must include more than just gas lines that serve local customers. Insofar as is possible, courts must interpret separate statutes and rules so as to give effect to both. *See* ORS 174.010 (statutes must be construed to give effect to all provisions); *see also Rogue Valley Medical Center v. McClearen*, 152 Or App 239, 245 (1998). Opponents' interpretation does not do this. A better interpretation, and the interpretation the County has adopted, is that the "new distribution lines" that OAR 660-006-0025(4)(q) and CCZLDO 4.6.110.1.h authorize, include non-local gas lines like the pipeline.

It is consistent with the purpose statements of Goal 4 and the Goal 4 rules to interpret the term "new distribution lines" in CCZLDO 4.6.110.1.h and OAR 660-006-0025(4)(q) to include

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It is this 2001 legislative enactment that led the Supreme Court to modify how the *PGE v. BOLI* test is formulated. *See State v. Gaines*, 346 Or 160, 171–172, 206 P3d 1042 (2009). Viewed in this light, *Gaines* is not so much a wholesale repudiation of *PGE v. BOLI*, but rather it is a judicial recognition of the fact that 2001 OR Laws Ch. 438 causes the first and second steps of the three-step *PGE v. BOLI* methodology to be effectively compressed into one "first" step.

ORS 174.020 and, by extension, *Gaines*, now permit a party to submit legislative history to a court, and the court may analyze and give consideration to that legislative history. As stated by the Supreme Court in *Gaines*:

> But, contrary to this court's pronouncement in *PGE*, we no longer will require an ambiguity in the text of a statute as a necessary predicate to the second step -- consideration of pertinent legislative history that a party may proffer. Instead, a party is free to proffer legislative history to the court, and the court will consult it after examining text and context, even if the court does not perceive an ambiguity in the statute's text, where that legislative history appears useful to the court's analysis.

the pipeline.[12] The purpose of Goal 4 and the Goal 4 rules is to conserve and protect forest land for timber production. A pipeline's function--transmission or distribution--is not relevant to determining consistency with this purpose. But the 50-foot permanent right-of-way standard in CCZLDO 4.6.110.1.h and OAR 660-006-0025(4)(q), and the conditional use approval criteria in OAR 660-006-0025(5) (and the County's conditional use criteria), are directly relevant to protecting and conserving forest land for timber production. The pipeline complies with the latter, and thus protects and conserves forest land for timber production, regardless of its function.

As mentioned above, the above-mentioned legal analysis was appealed by certain project opponents to LUBA in 2014. *See McCaffree v. Coos County,* 70 Or LUBA 15, 21-22 (2014), *aff'd without opinion*, 267 Or App 424, 341 P3d 252 (2015). LUBA affirmed the county's finding that an interstate gas pipeline was a utility and a "distribution line" within the meaning of ORS 215.275 and 215.276(1)(c). LUBA stated:

> We disagree with petitioner that the pipeline is not allowed as a conditional use in the Forest zone. Petitioners cite and rely on ORS 215.276(1)(c) to argue that the pipeline is no longer a "new [gas] distribution line[]" because it will not distribute LNG to the domestic public. Petitioners argue, then, that the pipeline is a gas transmission line. ORS 215.276(1)(c) defines "transmission line" "[a]s used in this section [ORS Chapter 215]" as "a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users." The definition of "transmission line" for purposes of the Exclusive Farm Use statute is inapposite for purposes of determining whether, under the Goal 4 rule that regulates uses in the Forest zone, the pipeline is a "new distribution line."

Id.

There is nothing in the text of OAR 660-006-0025(4)(q) that suggests that LCDC was concerned with the direction that gas (or oil or geothermal resources for that matter) flows when in the pipeline, or that LCDC intended to allow or prohibit lines that carry gas, oil, geothermal, telephone, fiber optic cable depending on the identity of the end user or the direction that the resources flow when in the lines. Simply because LNG is no longer prohibited from flowing from the pipeline into the terminal does not mean that the pipeline is something other than a "new distribution line * * *."

Second, even if the pipeline could be characterized as a gas transmission line in some circumstances, that the Goal 4 rule allows new electric transmission lines but does not specifically allow new gas transmission lines is not conclusive. Rather, when the Goal 4 rule was first adopted

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[12] Purpose statements are not typically approval criteria for land use decisions, but they can provide context when interpreting rules and statutes.

in 1990, the rule classified all types of utility lines, including electric lines, as either "local distribution lines" or "distribution lines." The rule was amended in 1992 to allow "new electric transmission lines * * *" with larger right-of-way widths (100 feet) than the other types of utility lines are allowed (50 feet), consistent with ORS 772.210's specification of a 100 foot right-of-way for electrical transmission lines. The rule's history does not reflect an intent on the part of LCDC to prohibit lines that could be, under some circumstances, characterized as transmission lines. Rather, the rule's text reflects that for purposes of conditional uses that are allowed in the Forest zone, all non-electrical lines with rights-of-way of up to 50 feet in width are classified as "new distribution lines."

In light of the aforementioned discussion, Coos County correctly ruled that the interstate gas transmission pipeline falls within the meaning of a "distribution line" as that term is used in OAR 660-006-0025(4)(q). *See also* Final Decision and Order, County File No. 10-08-045PL at p. 86. LUBA rejecting the idea that an interstate gas pipeline serving and LNG export facility is a transmission line and not distribution line utility.

Opponents contend that ORS 215.276(1)(c) supports the conclusion that the pipeline is a transmission line. That provision defines "transmission line" as "a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users." But Opponents ignore ORS 215.276(1)(c), which limits this definition to ORS 215.276 alone. ORS 215.276(1)(c) does not apply to OAR 660-006-0025(4)(q) (or CCZLDO 4.6.110.1.h), which are the provisions at issue here.

Therefore, for the reasons set forth above, the Board finds that the pipeline is allowed as an administrative conditional use within the F zone.

2. CCZLDO 4.6.130 - Additional Criteria for All Administrative and Hearings Body Application Review.

All Conditional Use Applications (Administrative and Hearings Body) are subject to requirements that are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands as follows:

1. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

Board Findings: The County has previously determined, and LUBA has agreed, that this criterion does not require Applicant to identify a particular area of geographic analysis, exhaustively describe all farm and forest practices on nearby lands, or consider non-profit practices. *See* Final Decision and Order, County File No. 10-08-045PL at 91; *see also Comden v. Coos County*, 56 Or LUBA 214 (2008).

The Applicant provided the following statements for why the county can conclude that the pipeline will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands:

"First, the pipeline will have limited effects on forest land during and after construction in the form of a cleared corridor. The pipeline will be mostly subsurface to avoid surface impacts to forestry. Additionally, as stated, the pipeline will cross less than one mile of land in the F district. Further, consistent with its Erosion Control and Revegetation Plan (included in Exhibit 6), Applicant will replant forest vegetation that it fells for construction purposes. In fact, after construction, Applicant will reforest all but 3.54 acres of F district land (a 30-foot corridor within the 50-foot right-of-way) disturbed during construction. Landowners will be unable to conduct accepted forest practices during construction of the pipeline but will be able to continue when construction is completed and Applicant has restored felled vegetation.

Likewise, the pipeline will not force a significant change in or significantly increase the cost of accepted farm practices on agriculture or forest land in the F district. The pipeline's subsurface nature will also ensure that farming equipment can cross the right-of-way without impacting the pipeline's structural integrity. Construction of the pipeline will temporarily interrupt farming practices in the right-of-way and in temporary work areas but those short-term impacts will not cause a significant change in accepted farming practices because of their temporary nature and because farming practices will be able to continue on lands directly adjacent to the temporary construction areas. Following construction of the pipeline, adjacent farming practices, including crop lands and grazing pastures, may resume in all affected areas.

The pipeline will not force a significant increase in the cost of accepted farm or forest practices on lands devoted to farm or forest use for the above reasons, and also because PCGP will compensate landowners for the permanent right-of-way and for any demonstrated loss in crop production in temporary construction areas."

See Application Narrative, at pp. 9-10. The Board agrees with the statements set forth above, and adopts them as findings. This is consistent with the finding in the 2010 Order.

OSCC takes issue with the Application's conclusions, as follows:

The Applicant must demonstrate that the proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands. * * *. Information included within the Concurrent Applications suggests the disruption to farming practices may not be as temporary in nature as the Applicant suggests. Exhibit 6 of the PCGP's Early Works Alignment Proposal contains a construction

> schedule indicating that construction activities in the Forest Use zone could disrupt accepted farming practices in the Forest zone for at least two years. Additionally, PCGP provides insufficient detail about the process it means to implement in order to compensate local landowners for "any demonstrated loss in crop production." Even when PCGP fully elucidates such a compensation plan, local landowners will have to bear the cost of any such production losses until such time the Applicant verifies their claims. PCGP provides insufficient estimates of how long it may take to process crop loss claims. For these reasons, the Applicant fails to demonstrate that its proposed Early Works Alignment will not force a significant change in, or a significantly increase the cost of, accepted farm or forest practice

See OSCC letter dated February 22, 2019, at p. 7. Exhibit 3. In response to OSCC's objections, the Applicant wrote the following in its Final Argument:

> "Opponents contend that the Application fails to comply with CCZLDO 4.6.130.1 because a pipeline construction schedule that PCGP provided with the Application suggests that construction could disrupt farming/forestry practices in the Forest zone for up to two years. Opponents suggest a two-year construction window during which farming interruptions may occur is a significant change in farming or forest practices in violation of CCZLDO 4.6.130.1. Opponents also contend that the Application fails to explain how PCGP would compensate local landowners for loss in crop production so as to avoid a significant increase in the cost of accepting farming or forest practices during construction of the pipeline, which cost increase would violate CCZLDO 4.6.130.1. Neither of Opponents' contentions is compelling.
> LUBA has determined that the predecessor to CCZLDO 4.6.130.1 (CCZLDO 4.8.400) did not implement ORS 215.296(1), which is a state statute imposing similar limitations on uses in farm zones. LUBA held that the predecessor code provision did not require as extensive an analysis of farm/forest impacts as does ORS 215.296(1). Specifically, the provision did not require that PCGP: (1) identify a particular geographic area of analysis; (2) exhaustively describe all farm and forest practices on nearby lands; or (3) consider farming practices not intended to generate a profit. *See Comden v. Coos County*, 56 Or LUBA 214 (2008). The same analysis applies to CCZLDO 4.6.130.1, which does not require this extensive analysis. For the following reasons, CCZLDO 4.6.130.1 does not force a significant change in accepted farm or forest practices or significantly increase the cost of the same."

Final Argument dated June 7, 2019, at pp 46-50. Exhibit 24.

The temporary impacts to the County's Forest zone that constructing the pipeline will cause will not cause "significant changes" in accepted farm or forest practices.

With respect to forest practices in the zone, the Application explains that the pipeline will cross less than a mile of land in the Forest zone, will be mostly subsurface, and that its effects will be limited to a cleared corridor. Consistent with the Erosion Control and Revegetation Plan("ECRP") that PCGP provided as Exhibit 6 to the Application, PCGP will replant forest vegetation that it fells for construction purposes, including all but 3.54 acres of Forest-zoned land that construction will disturb. Although construction of the pipeline, which could take up to two years, will interrupt accepted forest practices, such practices will continue as normal when construction concludes and PCGP restores felled vegetation. With respect to farming practices in the zone, the Application explains that constructing the pipeline will *temporarily* interrupt farm practices and then *only in the pipeline's right-of-way and in temporary work areas.* Farming will resume as normal when construction finishes. These temporary and minimal impacts on farming and forestry practices in the forest zones are not significant changes in accepted farming and forest practices. The law does not require that PCGP demonstrate that the pipeline will have *no* impacts on farm and forest practices or even to mitigate all impacts and cost increases. *See Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382, 390 (2007).

Moreover, unavoidable construction-related interruptions in farming and forestry, and the costs landowners incur from the same, cannot logically be the kind of significant changes in accepted farm and forest practices or significantly increased costs of the same, that CCZLDO §4.6.130.1 forbids. Both CCZLDO §4.6.110.1.h and OAR 660-006-0025(4)(q) expressly allow "new distribution lines (e.g., gas, oil, geothermal) with rights-of-way 50 feet or less in width" as conditional uses in the Forest zone. The pipeline is such a "new distribution line." If construction-related interruptions in forestry, and cost increases from the same, that are incidental to and unavoidable when constructing a use that both CCZLDO 4.6.110.1.h and OAR 660-006-0025(4)(q) expressly allow, are the kind of "significant changes" and cost increases in farming/forest practices that CCZLDO 4.6.130.1 forbids, then CCZLDO 4.6.130.1 entirely swallows CCZLDO 4.6.110.1.h and OAR 660-006-0025(4)(q). This interpretation would violate state law, which mandates that the County allow "new distribution lines" in Forest zones. It also reads unnecessary disharmony and redundancy into both the County's code and state law. The better, and lawful, interpretation of CCZLDO 4.6.130.1 is that it forbids only significant changes in accepted farm and forest practices, and significant cost increases of the same, that are *not intrinsic* to a use that state law and/or the County's code allows. The County agreed with this interpretation when it approved a different alignment of the pipeline:

> "[I]t seems that many of the concerns raised are of a type that would be true no matter what kind of pipeline was proposed ... Despite these types of foreseeable impacts, there has already been a legislative determination, both at the state and county level, that pipelines are an allowed use in the Forest zone. Therefore, it cannot be assumed that standard practices associated with pipeline construction and operation will automatically, in every case, force a significant change in, or significantly increase the cost of, accepted forest practices on forest lands. Otherwise, pipeline uses would have simply been prohibited in Forest zones. Here, the

> opponents have not asserted that there is something particular about their land or Coos County forest land in general that causes the pipeline to have anything beyond the typical expected impacts. Their testimony is simply too generalized to be persuasive."

See Coos County Board of Commissioners Final Decision and Order Nos. 10-08-045PL at 92.

Nor does the pipeline's construction window's length violate CCZLDO §4.6.130.1. The ECRP explains that PCGP chose for the pipeline a two-year construction window in the Forest zone because "[d]ividing construction into two years is a [best management practice] that will minimize the area required for construction and winter/rainy season (i.e., November 1 to April 30) construction, which will significantly reduce impacts." *See* Application, Exhibit 6 at p. 8. Choosing an extended construction window because it minimizes farm and forest impacts cannot be the basis for a conclusion that the pipeline violates CCZLDO §4.6.130.1.

Because the construction-related costs that landowners will incur in the form of lost crop production are unavoidable, these costs do not implicate CCZLDO §4.6.130.1. Thus, that provision does not obligate PCGP to compensate landowners for such costs, much less provide information about how it will do so.[13] Nonetheless, the Application explains that PCGP will compensate landowners for any construction-related loss in crop production they can demonstrate. PCGP's open record submittals supplemented this commitment with a letter from its land manager ("Compensation Letter"), John Stevenson, that explains PCGP's plan for compensating landowners for crop and/or timber loss that the pipeline's construction may cause. The Compensation Letter explains that "PCGP strives to be a good neighbor and a responsible grantee under all easements" and that its practice is "to compensate landowners for crop loss caused by pipeline construction at a rate of 500% x the average annual crop yield per acre x the number of acres disturbed." *See* Exhibit 16, Exhibit 6 at p. 1. PCGP selected 500% as the metric because "it is anticipated that the crop yield disturbances may last up to six years before PCGP fully restores the land[.]" *Id.* The Compensation Letter further explains that "PCGP calculates crop loss rates on a per acre value, based upon average yields, as determined by evaluating US Department of Agriculture rates and area patterns," and that "PCGP compensates landowners for the estimated loss at the time the landowner signs its easement agreement granting PCGP rights to utilize the property (so well before any actual disturbance and actual crop loss has occurred); however, if additional losses are incurred during construction, PCGP will pay the landowner for these additional losses at the time they are incurred." *Id.* Finally, the Compensation Letter explains that the "crop loss payments are in addition to the general consideration PCGP pays to acquire the 50-foot permanent easement rights and any additional compensation for temporary construction easement rights." *Id.*"

The Board finds this argument persuasive, and thus denies Opponents' contention and concludes that the Application complies with CCZLDO §4.6.130.1.

Mr. Graybill argues that the "berm / levee" the applicant allegedly proposes to construct on EFU and Rural Shoreland zoned land will impede tractors that wish to cross that area, thereby

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[13] The exception is that PCGP must compensate landowners for permanent loss of right-of-way.

"significantly impacting" farm operations. *See* Graybill letter dated March 13, 2019, at p. 20. Exhibit 10. There are numerous problems with this argument. First, the "significant impact" standard applies to uses proposed in the forest zone, and Mr. Graybill notes that the berm / levee he is complaining about will be located in the EFU zone. Second, Mr. Graybill does not explain which "farms" in the area cross this area presently, and given the maps in the record, it seems clear that such farms only exist in his imagination. Third, even this were not be considered an impact, it would not be a significant one, given that there does not appear to be any need for tractors to cross this area in any event, and alternative routes exist. Finally, as stated above, the "berm" or "levee" is not proposed as part of the Application and is not being approved in this decision. Therefore, impacts associated with the "berm" or "levee" are outside the scope of this proceeding.

2. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

Board Findings: The applicant has addressed the fire hazards as follows:

> "The pipeline will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel. The pipeline will be designed and maintained to conform with or exceed U.S. Department of Transportation requirements in Title 49 Code of Federal Regulations ("CFR"), Part 192 Transportation of Natural and Other Gas by pipeline: Minimum Safety Standards; 18 CFR § 380.15, Site and Maintenance Requirements; and other applicable federal and state regulations. Additionally, Applicant will comply with its Fire Prevention and Suppression Plan, which requires employee training, prohibitions on smoking and burning, having extinguishers available, compliance with BLM standards, and coordination with local emergency responders. A copy of this plan is in Exhibit 7. The fire risk to the pipeline is low, which means that the risk that the pipeline poses to fire suppression personnel, and to increased fire hazard and suppression cost, is also low."

See Application Narrative at p. 10. The Board imposes a condition of approval requiring compliance with these provisions to ensure that the fire hazards are addressed as planned.

Opponents contend the Application fails to show that the pipeline complies with CCZLDO §4.6.130.2 because publicly available data suggests that pipelines are unsafe. *See* OSCC letter dated February 22, 2019, at p. 8. However, OSCC provides no evidence to back up that claim, and instead cites to evidentiary materials in a footnote. This is an impermissible way to include evidence in the record – the materials must be physically placed into the record. Given that OSCC does not provide any evidence to support its claim, the Board considers it no further. Nonetheless, it is highly doubtful that such evidence would have been persuasive in event, given the fact that there are hundreds of thousands of miles of gas pipelines in the United States.

OSCC also argues that although the Applicant claims that the pipeline will comply with

federal and state regulations and an internally developed fire prevention and suppression plan,[14] the Application does not support its conclusion that the pipeline will not significantly increase fire hazards, fire suppression costs, or risks to fire suppression personnel. *See* OSCC letter dated February 22, 2019, at p. 8. Exhibit 3. *See also* Graybill letter dated March 13, 2019, at p. 20 (advancing argument that despite federal standards, gas pipelines routinely fail and cause large explosions and fires). The biggest problem with this sort of generic "pipelines are dangerous and routinely fail" line of argument is that pipelines are permitted in farm and forest zones despite the fact that they are dangerous and occasionally fail. The evidence would really need to support a conclusion that this particular pipeline is a bad fit at this particular location, either because the uses that surround it are inherently incompatible for some reason, or because there is something unique about this pipeline that creates an unusually high risk at some given location. However, the Opponents are essentially asking the Board to find that any gas pipeline is a prohibited use, but doing so under the guise of applying the CCZLDO §4.6.130.2 standard. That is not how ORS 215.296 and CCZLDO §4.6.130.2 were intended to operate.

Mr. Graybill does make a more site-specific argument by arguing that the pipe's proposed location in the Kentuck wetland creates a higher risk of fire in the event of an earthquake. Mr. Graybill points out that these sedimentary soils are "most vulnerable to seismically induced soil liquefaction failures." Mr. Graybill makes an analogy to the 1989 Loma Priesta earthquake in San Francisco. There are number of problems with this analogy. First, unlike the older wood and brick structures that did not fare well in the San Francisco earthquake, the pipeline is designed with steel that contains an inherent flexibility. *See* Seismic Hazard Evaluation dated June 28, 2018, GeoEngineers, Exhibit 16, Sub-Exhibit 4 at p. 35. This same flexibility allows the pipeline to be installed via HDD boring, and serves the pipe well in the event of an earthquake. *Id.* at p. 36 ("The conditions required to create such tight bends are uncommon, even in landslides and lateral spreads, which comports with the very low frequency of welded steel pipeline failures observed after major earthquakes."). The physics that cause buildings to fail in an earthquake are quite different in nature. Furthermore, the San Francisco example does not provide substantial evidence relevant here, because there is no evidence that the depth and properties of the soft sediment are similar. *Id.* at 38 ("The Kentuck Slough area has fine grained, plastic soils that are not susceptible to liquefaction. The exist side of the Coos Bay East HDD alignment has a low risk of liquefaction and lateral spreading.").

Furthermore, Mr. Graybill's second argument, that there is no evidence that the pipeline could survive an extreme earthquake causing 1 to 10 meters of vertical shift in the earth, is also it is not persuasive. The design earthquake would be the fourth largest since 1900. Neither ORS 215.296(1) nor CCZLDO §4.6.130.2 were intended to address any greater type of catastrophic event, and it is unlikely that any pipeline would survive a greater quake, given that pipeline thickness is not a large determiner of resistance to shear or failure. Ironically, persons living in

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[14]The Application explains that PCGP will design and maintain the pipeline to meet or exceed federal and state safety regulations, including the natural gas pipeline safety standards of 49 CFR 192 (Transportation of Natural and Other Gas by pipeline: Minimum Safety Standards); the site and maintenance standards at 18 CFR 380.15; and other regulations. The pipeline will also comply with the Fire Prevention and Suppression Plan that PCGP submitted as Exhibit 7 to the Application. The Fire Prevention and Suppression Plan explains that it "ensure[s] that fire prevention and suppression techniques are carried out in accordance with federal, state and local regulations." *See* Application, Exhibit 7 at p. 4.

Coos Bay would be unlikely to survive such an event described by Mr. Graybill, so it really does not matter what would happen to the pipeline. The Board finds the entire argument to be pretextual and not genuine, given that nobody that is truly concerned about earthquakes and tsunamis would reside in the lower portions of Coos Bay.

PCGP also submitted into the record a Reliability and Safety Report that explains the pipeline's safe and durable design. Exhibit 16, Sub-Exhibit 5. Moreover, the DEIS concludes that the pipeline "would be constructed in compliance with the USDOT pipeline standards (as published in 49 CFR Parts 190-199; Part 192 of 49 CFR)" and that "[b]ased on the implementation of the required [best management practices] and adherence to USDOT standards, the [pipeline] would not significantly affect public safety." *See* Exhibit 16, Sub-Exhibit 9, at p. 1059. Considering its commitments to abide federal and state safety regulations, the Fire Prevention and Suppression Plan, the Reliability and Safety Report, and the DEIS, PCGP has submitted more than enough evidence to support the Application's conclusion that "[t]he fire risk to the pipeline is low, which means that the risk that the pipeline poses to fire suppression personnel, and to increased fire hazard and suppression cost, is also low." This is particularly true that the evidence submitted by the Application was largely unrebutted.

For the above reasons, the Board denies Opponents' contentions, and instead concludes that the pipeline complies with CCZLDO §4.6.130.2.

3. All uses must comply with applicable development standards and fire siting and safety standards.

Board Findings: This provision is addressed in CCZLDO Section 4.6.140 portion of the decision.

4. A "Forest Management Covenant", which recognized the right of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules, shall be recorded in the deed records of the County prior to any final County approval for uses authorizing any type of residential use in the Forest and Forest Mixed Use zones. There may be other criteria listed that applies to individual uses.

Board Findings: The Application does not propose a residential use in either the Forest or Forest Mixed Use zones. Therefore, this provision is not applicable to the Application.

5. The following siting criteria shall apply to all dwellings, including replacement dwellings, and structures in the Forest and Forest Mixed Use zones. Replacement dwellings may be sited in close proximity to the existing developed homesite. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. These criteria may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

Board Findings: The pipeline is neither a "dwelling" nor a "structure" within the meaning that the CCZLDO gives those terms. The County has previously determined that the pipeline is not a "structure" within the meaning of CCZLDO 2.1200's specific definition of that term. The pipeline is a subsurface natural gas pipeline. Therefore, this criterion does not apply to the Early

Works Alignment.

6. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Board Findings: As discussed above, the pipeline is a subsurface natural gas pipeline, not a dwelling. This criterion is not applicable.

7. Approval of a dwelling shall be subject to the following additional requirements:

- ***a. Approval of a dwelling requires the owner to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.***
- ***b. The Planning Department shall notify the County Assessor of the above condition at the time the dwelling is approved.***
- ***c. If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The Assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.***
- ***d. Upon notification by the Assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, it will notify the owner and Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.***
- ***e. The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.***

Board Findings: As discussed above, the pipeline is a subsurface natural gas pipeline, not a dwelling. This criterion is not applicable.

3. CCZLDO 4.6.140 - Development and Siting Criteria

This section contains all of the development standards for uses (unless otherwise excepted out by a use review) and all of the siting standards for development.

1. Minimum Lot Size for the creation of new parcels shall be at least 80 acres. Minimum lot size will not affect approval for development unless specified in use. The size of the parcel will not prohibit development as long as it was lawfully created or otherwise required to be a certain size in order to qualify for a use.

Board Findings: The pipeline will not create a new parcel nor change the size of any existing parcel. Therefore, this criterion does not apply to the Early Works Alignment.

2. Setbacks: All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from any right-of-way line, whichever is greater.
3. Fences, Hedges and Walls: No requirement, except for vision clearance provisions in Section 7.1.525.
4. Off-Street Parking and Loading: See Chapter VII.

Board Findings: These criteria do not apply to the Early Works Alignment. The pipeline is a linear, underground utility facility that crosses several property lines rather than a building or above-ground structure. Consequently, the setback standard is not applicable to the pipeline. The pipeline does not qualify as a hedge, fence or wall, and therefore the standard for fences, hedges and walls does not apply to the pipeline or its necessary components. The off-street parking and loading standards are not applicable to the pipeline.

5. Minimizing Impacts: In order to minimize the impact of dwellings in forest lands, all applicants requesting a single family dwelling shall acknowledge and file in the deed record of Coos County, a Forest Management Covenant. The Forest Management Covenant shall be filed prior to any final County approval for a single family dwelling.

Board Findings: The pipeline is an interstate natural gas pipeline. The Applicant is not requesting a dwelling. Therefore, this criterion does not apply to the Early Works Alignment.

6. Riparian Vegetation Protection. Riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained except that:

a. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the trees;
b. Riparian vegetation may be removed to provide direct access for a water dependent use if it is a listed permitted within the zoning district;
c. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures;
d. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil& Water Conservation District, or USFS stream enhancement plan;
e. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways;
f. Riparian vegetation may be removed in conjunction with existing agricultural

operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps; or

g. The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland, stream, lake, or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure's "footprint".

h. Riparian removal within the Coastal Shoreland Boundary will require a conditional use. See Special Development Considerations Coastal Shoreland Boundary.

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

Board Findings: The pipeline is a public utility project as explained in this report. Therefore, in accordance with subsection e. of the above criteria, the Early Works Alignment is an exception to the 50-foot riparian protection vegetation zone, and riparian vegetation may be removed in order to site the pipeline pursuant to the exemption cited above. Nonetheless, the Early Works Alignment will comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction.

7. All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards. The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the applicant is outside the rural fire protection district, the applicant shall provide evidence that they have contacted the Coos Forest Protective Association of the proposed development.

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a dwelling or structure within the meaning of the CCZLDO. Therefore, this criterion does not apply to the Early Works Alignment.

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

a. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

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

c. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use; and

d. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting

equipment during fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

Board Findings: These fire protection criteria are not applicable to a subsurface gas pipeline like the pipeline. Therefore, these criteria do not apply to the Early Works Alignment.

9. Fire Siting Standards for New Dwellings:

a. The property owner shall provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and sufficient ¾ inch garden hose to reach the perimeter of the primary fuel-free building setback.
b. If another water supply (such as a swimming pool, pond, stream, or lake) is nearby, available, and suitable for fire protection, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

Board Findings: The pipeline is not a new dwelling. Therefore, these standards do not apply to the Early Works Alignment.

10. Firebreak:

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

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a structure or dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

11. All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a structure within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

12. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).

Board Findings: This fire protection criterion does not apply to the pipeline, which is a subsurface gas pipeline. Therefore, this criterion does not apply to the Early Works Alignment.

13. The dwelling shall not be sited on a slope of greater than 40 percent.

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

14. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

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

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early Works Alignment.

16. Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment.

Board Findings: Although Applicant will utilize existing roads as access roads to the pipeline, this Application does not propose to construct any new permanent public road, bridge, private road, or driveway. Applicant may construct temporary access roads during the construction phase. If Applicant does so, such temporary access roads will comply with this criterion. Therefore, this criterion does not apply to the Early Works Alignment.

17. Access to new dwellings shall meet road and driveway standards in Chapter VII.

Board Findings: As discussed above, the pipeline is an interstate natural gas pipeline, not a dwelling within the meaning of the CCZLDO. Therefore, these criteria do not apply to the Early

Works Alignment.

4. CCZLDO Section 4.8.700 Fire Siting Safety Standards

All new dwellings and permanent structures and replacement dwellings and structures shall, at a minimum, meet the following standards.

Board Findings: As discussed above, the pipeline is neither a structure nor a dwelling. Therefore, the fire siting and safety standards of this Section are not applicable to this application.

c. Industrial Zoning District

The Early Works Alignment will cross approximately 0.26 miles of properties zoned Industrial.

1. CCZLDO 4.3.200& 4.3.210.

SECTION 4.3.200 ZONING TABLES FOR URBAN AND RURAL RESIDENTIAL, MIXED COMMERCIAL-RESIDENTIAL, COMMERCIAL, INDUSTRIAL, MINOR ESTUARY AND SOUTH SLOUGH

* * * *

As used in the zoning tables the following abbreviations are defined as:

"CD" compliance determination review (permitted with standards) with clear and objective standards. (Staff review usually referred to as Type I process or ministerial action.) These uses are subject to development standards in sections 4.3.225, 4.3.230 and notices requesting comments may be provided to other agencies as a result. The process takes a minimum of 30 days to complete. Industrial zones may require additional review. All structures and uses shall meet the applicable Development and Siting Criteria or Special Development Considerations and Overlays for the zoning district in which the structure will be sited.

* * * *

98. Utility Facility - Service Lines in conjunction with a Utility Facility IND - CD

SECTION 4.3.210 - CATEGORIES AND REVIEW STANDARDS

The following categories provide a definition and specific standards that will regulate the Development, Use or Activity identified in the table above.

* * * *

(76) UTILITY FACILITIES - In zones in which utility facilities are listed as a conditional use in the zoning table, this use shall comply with the compatibility standard found in Section 4.3.220.

(c) UTILITY FACILITY - INCLUDING POWER FOR PUBLIC SALE: A facility for the generation and distribution of a public or private service including but not limited to electricity, telephone, natural gas, water, sewage service, and other services providing for energy or communication needs; and may include the generation and distribution of power for public sale.

(d) UTILITY FACILITY - NOT INCLUDING POWER FOR PUBLIC SALE: A facility for the generation and distribution of a public or private service including but not limited to electricity, telephone, natural gas, water, sewage services, and other services providing for energy or communication needs; this use does not include the generation or distribution of

power for public sale

(e) UTILITY FACILITY - SERVICE LINES - A distribution line for supplying a utility service including but not limited to telephone, power, water, sewer, etc. Sewer lines are not permitted to be located outside of an urban unincorporated boundary or urban growth boundary unless as required to mitigate a public health hazard as described in Statewide Planning Goal 11 or as allowed by the Coos County Comprehensive Plan or other Coos County Zoning and Land Use Development Ordinance provisions.

Board Findings: In 2010, the County determined that the import gas pipeline was property classified as a "Utility Facility- not including power for public sale." *See* Final Decision and Order No. 10-08-045PL, at p. 45-6. In this case, the pipeline is an export facility, with some gas being made available for sale to the public. The Board finds that the pipeline qualifies as a "Utility Facility- including power for public sale."

CCZLDO §4.3.210 permits in the County's Industrial zone a "utility facility - service line in conjunction with a utility facility," subject to a determination of compliance with applicable standards. CCZLDO §4.3.210.76.e explains that utility facility "service lines" are "distribution line[s] for supplying a utility service" including but not limited to telephone, power, water, sewer, etc." The pipeline is a utility line that transports natural gas supply for distribution to end users. It therefore qualifies as a "utility facility - service line in conjunction with a utility facility" in the Industrial zone.

The Applicant believes that the pipeline is correctly classified as a "Utility Facility - Service Lines" in the Industrial zone because it is a utility line that is transporting natural gas supply for its distribution to end users. The pipeline does not involve locating sewer lines outside of an urban unincorporated boundary or urban growth boundary. As explained below, the pipeline complies with applicable standards. Therefore, the Board agrees that the pipeline is permitted in the Industrial zone.

Opponents disagree. They contend that the pipeline is not a "distribution line" and is therefore not a "service line," per CCZLDO §4.3.210.76.e.'s definition of the same. But the pipeline is properly characterized as a distribution line, as explained elsewhere in this decision.

Opponents also contend that the pipeline is not a utility facility "service line" because ORS 215.283(1)(u) defines the same as lines that "end at the point where the utility service is received by the customer" and that is not true of the pipeline. ORS 215.283 is not applicable to the County's Industrial zone. That statute concerns exclusive farm use land. CCZLDO §4.3.210.76.e defines "utility facility - service line" for purposes of the County's Industrial zone. That definition does not require that the line "end at the point where the utility service is received by the customer."

Finally, Opponents contend that the pipeline is not like the services that CCZLDO §4.3.210.76.e lists, which services include "telephone, power, water, sewer." But CCZLDO §4.3.210.76.e is not an exclusive list. It explicitly says "including *but not limited to* ..." Further, there is nothing in the plain language of this definition that indicates that gas lines are excluded from the definition.

Therefore, the Board denies Opponents' contention and concludes that the pipeline is a "utility facility - service line" in the Industrial zone.

2. Section 4.3.225 General Siting Standards.

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

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

Board Findings: The pipeline is an interstate natural gas pipeline. The Applicant is not requesting approval for a dwelling. Therefore, this standard does not apply to siting the pipeline in the Industrial zone.

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

Board Findings: The pipeline is an interstate natural gas pipeline. The Applicant is not planning to install any fences, hedges, or walls around the pipeline. Therefore, this standard does not apply to siting the pipeline in the Industrial zone.

(3) Limitation on uses of manufactured dwellings/structures for commercial purposes pursuant to ORS 466 et seq. Manufactured dwellings shall not be used for commercial purposes except:
(a) Where use of the manufactured dwelling for commercial purposes is authorized by the Building Codes Agency.
(b) Where used as a temporary sales office for manufactured structures; or
(c) As part of an approved home occupation.

Board Findings: The proposal does not utilize manufactured dwellings for commercial purposes. Therefore, this standard does not apply to siting the pipeline in the Industrial zone.

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

(a) Minimum Street frontage should be at least 30 feet; and

(b) Minimum lot width and Minimum lot depth is 50 feet.

Minimum parcel/lot size cannot be waived or varied unless otherwise provided by a specific

zoning regulation. Tax lot creation and consolidations do not change the legally created status of a lot or parcel.

Board Findings: The Applicant is not creating any new lots or parcels in conjunction with developing the pipeline. Therefore, this standard does not apply to the pipeline.

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

Board Findings: The Applicant will maintain access to the pipeline via the access roads identified in the application. *See* Application Exhibit 4. Parking and loading standards will not apply to the pipeline.

(6) Riparian Vegetation Setback.

Board Findings: The riparian vegetation setback does not apply when siting public utilities.

(7) Right-of-Way Setbacks.

(a) All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from the right-of-way line, whichever is greater. This setback may be greater under specific zoning siting requirements.

Board Findings: Consistent with previous County decisions, the pipeline is an interstate natural gas pipeline, not a "structure" within the meaning of the CCZLDO. Therefore, this setback standard is not applicable to the pipeline.

(b) Firebreak Setback - New or replacement dwellings on lots, parcels or tracts abutting the "Forest" zone shall establish and maintain a firebreak, for a distance of at least 30 feet in all directions. Vegetation within this firebreak may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.

Board Findings: The pipeline is an interstate natural gas pipeline, not a new or replacement dwelling. Therefore, this firebreak setback is not applicable to the pipeline.

3. **Section 4.3.230 Additional Siting Standards.**

SECTION 4.3.230 ADDITIONAL SITING STANDARDS

This section has specific siting standards and criteria set by the zoning district for USES, ACTIVITIES and DEVELOPMENT:

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

(a) Minimum lot/parcel size –

i. No minimum lots size standard for this zone.

ii. Minimum street frontage and minimum lot width is 20 feet.

Board Findings: Applicant is not proposing to create or modify any lots. This standard is not applicable to the pipeline.

(b) Setback -

i. Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts.

ii. Setback exception – Front yard setback requirements of this Ordinance shall not apply in any residential district where the average depth of existing front yards on developed lots within the same zoning district block, but no further than 250 feet from the exterior side lot lines of the lot and fronting on the same side of the street as such lot, is less than the minimum required front yard building setback. In such cases the front yard setback requirement on any such lot shall not be less than the average existing front yard building setback.

Board Findings: The pipeline is a linear, underground utility facility that crosses several properties. It is not a building or above-ground structure. Consequently, the setback standard is not applicable to the pipeline.

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

Board Findings: The portion of the Early Works Alignment in the Industrial zone does not abut a residential or controlled development zone. Furthermore, the pipeline is an underground facility. This standard is not applicable.

(d) Building Density or Size limits –

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

1. Urban Unincorporated Community shall not exceed 60,000 square feet of floor space; or

2. Rural Unincorporated Community shall not exceed 40,000 square feet of floor space.

Board Findings: The portion of the Early Works Alignment located in the Industrial zone is not within an Unincorporated Community Boundary. This standard is not applicable to the pipeline.

(e) Design Standards:

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

Board Findings: The pipeline will generally be located below the surface and is not located on a single property which is what this standard applies. This standard is not applicable to the pipeline.

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

Board Findings: The pipeline will not involve any illuminated public or private parking areas. Therefore, this standard is not applicable to the pipeline.

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

Board Findings: The pipeline will not involve any exposed storage areas, service areas, utility buildings, or similar accessory areas.

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

Board Findings: The pipeline will not typically have on-site workers or visitors and will not involve activities that generate a need for trash receptacles or trash service. This standard is not applicable to the pipeline.

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

Board Findings: Staff found no reason to impose hours of operation to this request, and the Board agrees.

2. Coos Bay Estuary Management Units.

The Early Works Alignment crosses ten (10) Coos Bay Estuary Management Plan ("CBEMP") districts, including 7-Development (7-D), 7-Natural Aquatic (7-NA), 13A-Natural Aquatic (13A-NA), Deep-Draft Navigation Channel (DDNC-DA), 45A-Conservation Aquatic (45A-CA), 15-Natural Aquatic (15-NA), 13B-Natural Aquatic (13B-NA), 14-Development Aquatic (14-DA), 14-Water Dependent (14-WD) and 15-Rural Shorelands (15-RS). Each of the CBEMP management units requires compliance with specified CBEMP Policies. As discussed below, the pipeline complies with each of the applicable CBEMP Policies.

Table 4.5 - CBEMP Development Standards

Board Findings: The CBEMP purpose statement explains that the land development standards of Table 3.2 govern all development within the Coos Bay Estuary Shoreland Districts. CCZLDO §3.2.100As discussed in detail in the other zones above, the pipeline is a subsurface gas pipeline that will not alter any lot configurations and does not constitute a structure subject to height restrictions, building setbacks, or parking requirements. Consequently, the standards included in Table 3.2 are not applicable to the Early Works Alignment.

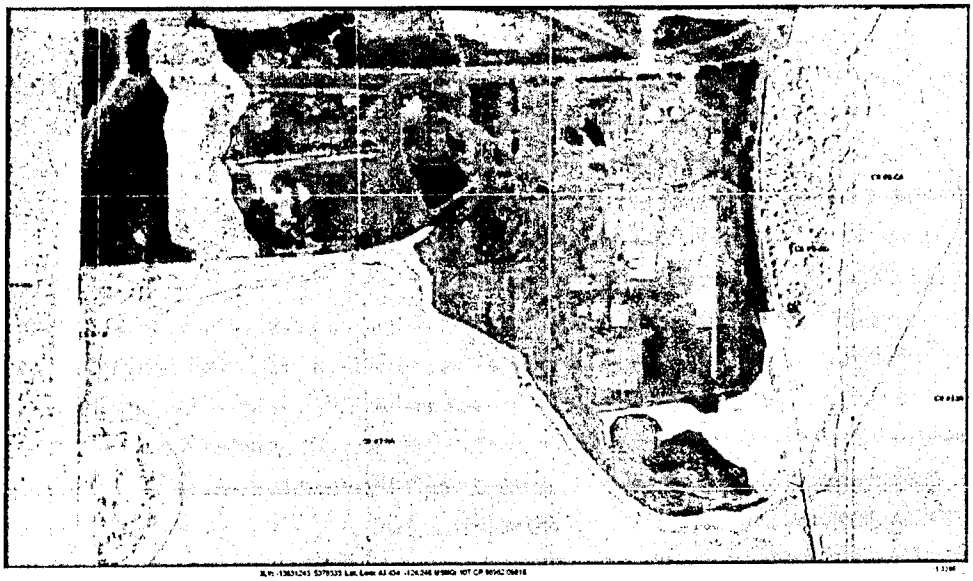
CCZLDO 3.2.175 - Site-Specific Zoning Districts (CBEMP)

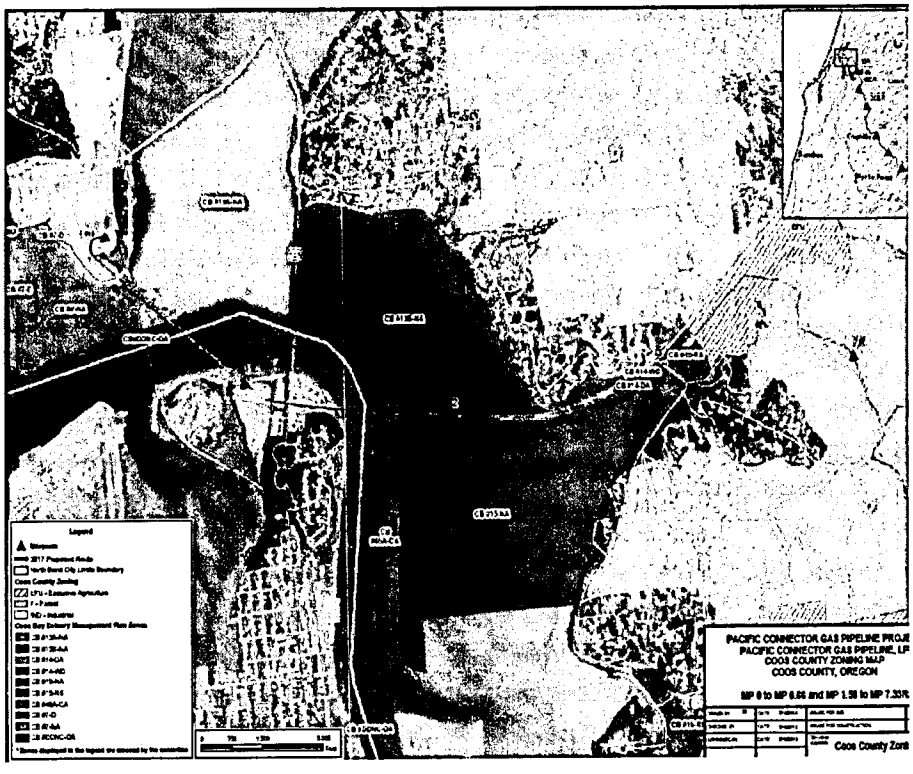
This Ordinance shall divide the lands affected by the Coos Bay Estuary Management Plan into specific zoning districts as identified in Sections 3.2.200. The following zoning districts delineate the appropriate requirements which shall apply to all lands within the individual districts. A detailed "Uses and Activities" table follows the "Management Objectives" statement presented for each respective aquatic and shoreland district. The tables describe specific uses and activities deemed appropriate and inappropriate for each district. The Use and Activity tables for each district are subordinate to the "Management Objective" for the respective districts in that allowed uses and activities must be consistent with the respective districts' "Management Objective" statements.

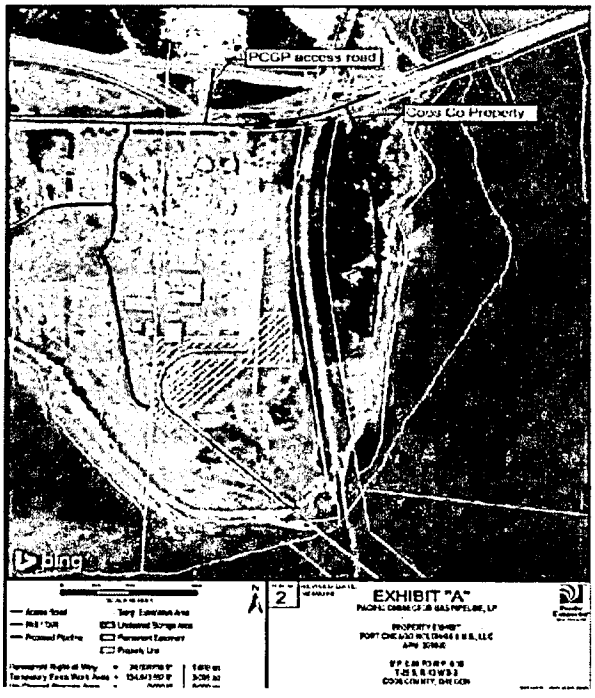
Board Findings: As this section explains, development in a CBEMP management unit must comply both with the use chart and the management objective of that management unit. This section of the narrative explains how the Early Works Alignment complies with these requirements.

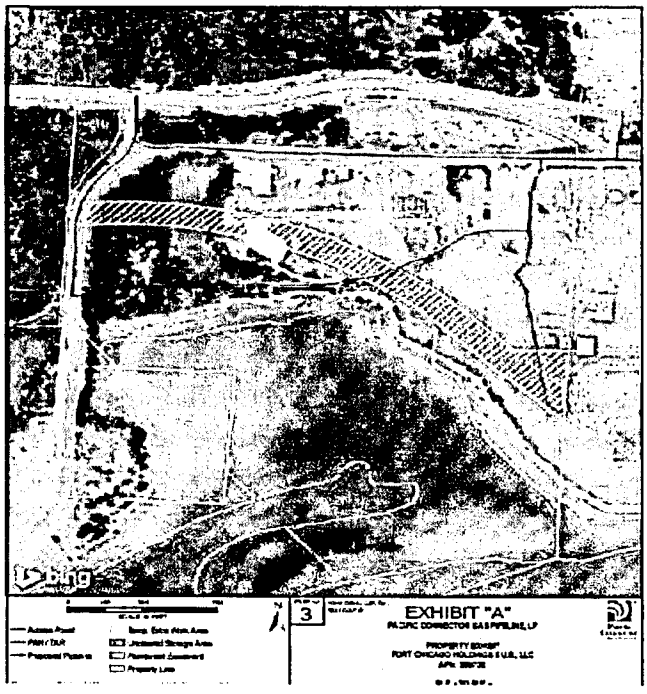
a. 7-D district.

In three segments, the Early Works Alignment crosses approximately .03 miles of the 7-D zoning district.




PACIFIC CONNECTOR GAS PIPELINE PROJE
PACIFIC CONNECTOR GAS PIPELINE, LP
COOS COUNTY ZONING MAP
COOS COUNTY, OREGON


PCGP access road
Coos Co Property
EXHIBIT "A"
2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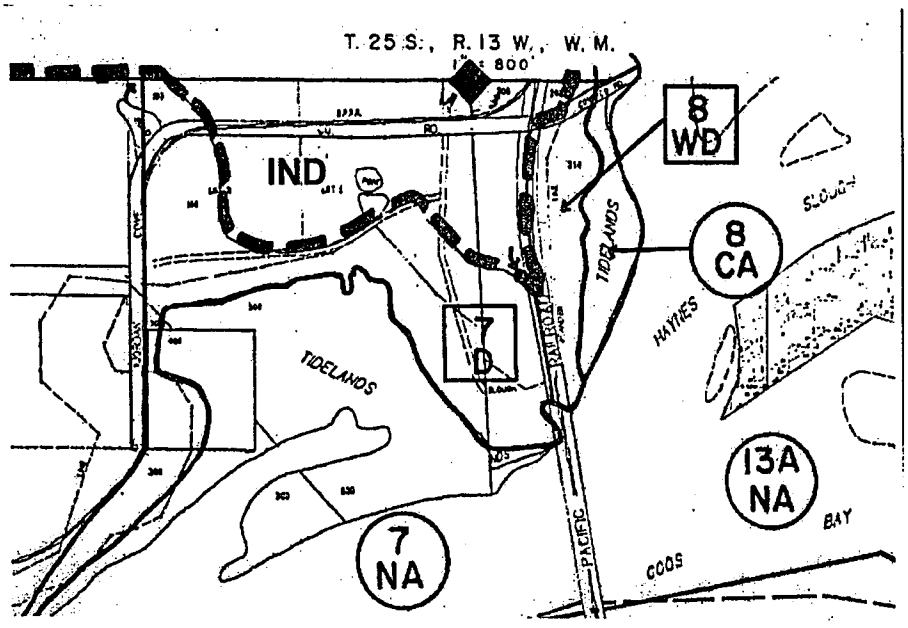
T. 25 S., R. 13 W., W. M.
IND
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TIDELANDS
HAYNES
SLOUGH
PACIFIC
COOS
BAY

Board Findings: Although the pipeline is part of a "utility facility," which has been established as an Water Dependent Industrial Use, the only new proposed development set forth in this application is the pipeline itself.

The management objective of the 7-D District requires the County to manage the zone for industrial use and allows the continuation of and expansion of existing non-water-dependent/non-water-related industrial uses if they do not impact the 7-NA zone. Thus, the management objective requires the consideration of any impacts to the neighboring aquatic (7-NA) District. The zone's management objective also prohibits uses that conflict with state and federal requirements for the wetlands in the northwest portion of the district.

The pipeline will be drilled under the bay using HDD technology. The drilling will occur on the shoreland as described on page 5 of the Applicant's narrative. The HDD Feasibility Report does not list any high risk of inadvertent returns for the westside crossing. *See* Exhibit 16, Sub-Exhibit 11, at p. 14-7. Therefore, the pipeline is not anticipated to cause adverse impacts in the 7-NA District. The proposal will not cause conflict with the state and federal requirements for the wetlands located in the northwest portion of this district. As conditioned in this decision, the applicant will obtain aany necessary stated and federal permits. Therefore, the Early Works Alignment complies with the 7-D district's management objective.

Opponents contend that the pipeline fails to comply with the management objective of the 7-D zone. *See* OSCC Letter dated February 22, 2019, at pp. 9-10. Exhibit 3. They argue that the pipeline is an industrial use because it is associated with an industrial use (the LNG Terminal Facility that JCEP proposes in a separate application) and therefore the pipeline is not allowed if it will have adverse impacts on the 7-NA zone. *Id.* Opponents contend the Application does not support its claim that the pipeline will not impact the 7-NA zone. *Id.*

The 7-D zone's management objective generally allows utility uses such as the pipeline. Conversely, it prohibits "continuation of and expansion of existing non-water-dependent/non-water-related industrial uses" that would adversely impact the 7-NA zone. The pipeline is not a "continuation of and expansion of existing non-water-dependent/non-water-related industrial uses." Neither the LNG Terminal Facility nor the pipeline yet exist in any form. Therefore, the pipeline is neither a "continuation of" nor an "expansion" of those uses. It is a new use.

Moreover, the purpose of the pipeline is for use as a utility line, in order to transport the Natural Gas to the LNG Terminal so it can be prepared for shipment. The purpose of the LNG Terminal is to liquefy the gas and export it via the water. Both uses are thus water-dependent and water-related. Because the pipeline is not a continuation of or an expansion of an existing use, and because it is water-dependent and water-related, the management objective of the 7-D zone does not require that PCGP show that the pipeline will not adversely impact the 7-NA zone.

PCGP has submitted into the record extensive evidence demonstrating the pipeline's safety and durability, which in turn demonstrates that the pipeline will not adversely impact the 7-NA zone. This evidence includes the Hydrostatic Test Plan, Corrosion Control Plan, and the Safety and Reliability Report. *See* Exhibit 16.

Although HDD technology is not the "use" for which this Application seeks

authorization, it is a construction technique that enables a specific use still subject to the management objective of the 7-D zone. Section III.B(4) of this decision discusses the HDD Fluid Plan and HDD Feasibility Report, which demonstrate both that there is a low risk of inadvertent releases of HDD drilling fluids that could harm the estuary (including the 7-NA zone) and that PCGP has a plan to contain such releases should they occur. Section II.C of the Application also discusses the DEIS, which concludes that the pipeline is not likely to significantly adversely affect the environment, which would include the 7-NA zone. *See* Exhibit 16, Exhibit 9, at p. 1091-92. The Board finds that the applicant's evidence constitutes substantial evidence, and that such expert testimony is more credible than any evidence to the contrary.

Opponents also contend that the Application does not support its claim that the pipeline will not impact the wetlands in the northwest portion of the 7-D zone. *See* OSCC Letter dated February 22, 2019, at p. 10. Their argument pertaining to the wetlands located in the northwest portion of the 7-D zone is not sufficiently development and is unsupported by the facts contained in the record.

Furthermore, OSCC misunderstands the management objective. The management objective does not prohibit interference with the wetlands. Rather, it states that development "shall not conflict *with state and federal requirements* for the wetlands * * * ." Stated another way, development is not allowed to interfere with whatever the state and federal government has determined must occur, if anything, with regard to that particular wetland. The Opponents do not explain what state and/or federal requirements the pipeline infringes upon with respect to these wetlands. The Board suspects that the wetland in question is *likely* part of the Henderson Marsh Mitigation Plan, although the record is unclear on this point.

According to the Applicant's narrative and maps, the pipeline itself does not cross the wetlands located in the northwest portion of the 7-D zone. However, those maps do show the wetland being used as a part of the TEWA for the HDD bore installation. To address the wetland issue, the Board imposes a condition of approval requiring Applicant to obtain necessary state and federal permits, which would include wetland impact permits.

CCZLDO 3.2.286 - Uses, Activities and Special Conditions

A. Uses:

15. Utilities

a. Low-intensity P-G

Board Findings: The pipeline qualifies as a "low-intensity utility" in the 7-D, 7-NA, 13A-NA, DDNC-DA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS zones. Coos County Zoning and Land Development Ordinance ("CCZLDO") 2.1.200 defines "low-intensity utility" as:

> *"UTILITIES: Public service structures which fall into two categories: (1) Low-intensity facilities consist of communication facilities (including power and telephone lines), sewer, water, and gas lines * * *."*

The pipeline is a "public service structure" because it provides natural gas, a service, to the public. The pipeline is a "low-intensity facility" because such facilities "consist of ... gas lines" and the pipeline is a gas line. Thus, the pipeline is a "low-intensity utility." The Staff Report agrees that the pipeline is a "low-intensity utility." *See* Staff Report at p. 29. Additionally, the County has previously approved multiple alignments for the pipeline and determined that the pipeline is a "low-intensity utility" in Coos Bay Estuary Management Plan ("CBEMP") zones. *See, e.g.,* Coos County Board of Commissioners Final Decision and Order Nos. 10-08-045PL at p. 48, and 14-01-007PL, *See* Final Decision and Order, County File No. 10-08-045PL.

For multiple reasons, Opponents disagree that the pipeline is a "low-intensity utility." They advance many arguments, but none hit the mark.

First, multiple Opponents contend that the pipeline is not "low-intensity" because it is too large and too pressurized. They argue that the CBEMP definition does not contemplate a pipeline as big in diameter or as highly pressurized as the proposed pipeline. *See, e.g.,* Graybill letter dated March 13, 2019, at p. 6-8. Exhibit 10. Mr. Graybill concludes that "[i]t is unreasonable and incorrect to characterize [the] scale of the industrial facticity that will be supplied by the PGCP as "low intensity.'" *Id.* at p. 7. However, the Application in front the Board is for a pipeline, not an industrial facility. There is no sustainable interpretation of the CBEMP that involves classifying the pipeline as an "industrial facility," especially when the term "utility" includes "gas lines." Mr. Graybill and the other Opponents who are advancing this argument are is simply overthinking the code. Furthermore, there is simply no textual or contextual support for this contention in the plain text of the CBEMP. As the court of appeals has noted, when it comes to zoning codes, "it is easy to get fooled by common sense." *Dierking v. Clackamas County*, 170 Or App 683, 13 P3d 1018 (2000). The Board is not allowed to "use common sense" in a manner that effectively rewrites the zoning code. ORS 174.010.

As the applicant notes, the capacity and pressurization of the pipeline are irrelevant to determine whether it is a "low-intensity utility." Under the definition set forth at CCZLDO §2.1.200, a "low-intensity utility" is a "public service structure" that delivers certain kinds of utility service--i.e. sewer, water, and gas. Neither the diameter nor the pressurization of a utility line is a factor in determining whether it is "low-intensity." If Opponents' contention were correct—that "low-intensity" lines are merely thinner and less pressurized - then presumably "high-intensity utilities" would be wider and more pressurized lines and facilities that deliver the same services (*i.e.*, gas, water). But that is not the case. CCZLDO §2.1.200 defines "high-intensity utilities" to include "storm water and treated waste water outfalls," which are utilities that provide a different *kind* of service, as opposed to being "wider" or "more pressurized" service than a low intensity utility. The reason outfalls are high-intensity utilities is because they release treated or untreated water into the estuary which has a higher possibility of impacts to the aquatic resources. Thus, Opponents' contention is inconsistent with CCZLDO §2.1.200.[15]

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[15]If the opponents' contention (*i.e.* that a line must be smaller in size in order to be "low-intensity") was correct, then presumably the definition of "high-intensity utility" would allow facilities and lines delivering the same facilities and services, only larger in diameter or capacity. However, that is not the case. Instead, "high-intensity utilities" consist of "storm water and treated waste-water outfalls," which are not types of "low-intensity utilities." CBEMP, Vol. II, Part I, Sec. 3.2. Given the examples provided, the distinction between a "low intensity utility" and a

Second, although Opponents contend that the pipeline is not a "low-intensity utility" because it is more akin to a transmission line than a distribution line, that contention fails because the definition of "low-intensity utility" does not require that a utility be a "distribution" line or preclude it from being a "transmission" line. Opponents' contention to the contrary inserts words into the definition that are not otherwise present in contravention of ORS 174.010, which governs interpretation of statutes and ordinances.

Third, Opponents contend that the pipeline is not a "low-intensity utility" because it is not providing a "public service" Opponents are mistaken. The pipeline will deliver gas to the LNG Terminal Facility, which will process and deliver it to third parties. This is a public service to those third parties. That they may not live in the County or even in the State does not mean they are not members of the "public." *See, e.g.,* Coos County Findings for HBCU 13-04 at p. 7 "[T]he hearings officer believes that it is legally incorrect to interpret the term 'utility' to require either local service or domestic service to the U.S. population.". In fact, Opponents' interpretation of the CBEMP is likely inconsistent with federal law, including the commerce clause of the U.S. Constitution.

In this case, in order to qualify as a "low-intensity utility," a utility must only deliver a specific type of service: "communication facilities (including power and telephone lines), sewer, water, or gas lines." No party argues that the pipeline is not a gas line. Furthermore, nothing in the definition limits the diameter, capacity, or purpose of the utility so long as the pipe provide one of the identified services (in this case, "gas"). *Compare Tilla-Bay Farms v. Tillamook,* __ Or LUBA __ (LUBA No. 2018-115, March 14, 2019) (rejecting argument that "[t]he county has legislatively recognized that there are differences between Electrical Distribution Lines and Power Transmission Lines based on scale, voltage and potential impact to public safety and farm and forest uses," noting that the petitioners did not challenge the finding that "the county specifically found that electrical distribution and transmission lines are physically and functionally identical.").

Fourth, Opponents also contend that the pipeline is not a "public service structure" because it is not a "structure" within the meaning of CCZLDO 2.1.200's definition of the latter term, which is "walled and roofed building including a gas or liquid storage tank that is principally above ground." Opponents note that the Application repeatedly concludes the pipeline is not a "structure" with respect to certain approval criteria, including approval criteria of the County's Floodplain Overlay zone. They contend that the Application cannot simultaneously claim that the pipeline is a "structure" to classify it as a "low-intensity utility" and that it is not a "structure" to avoid certain approval criteria.

Opponents misunderstand the law. The pipeline is a "public service structure" (per CCZLDO 2.1.200's definition of "utilities") but it is not a "structure" per CCZLDO §2.1.200's general definition of that term (*i.e.*, "walled and roofed building ..."). This is no contradiction.

"high intensity utility" appears to be based on whether the system at issue is enclosed or where it is open to the atmosphere, not on the size of the service. For example, water, sewer, and gas lines are all transported via a pipe, and are therefore contained, whereas storm water and wastewater outfalls are not necessarily contained in pipes and therefore have greater potential for environmental impacts.

The County's code makes clear that CCZLDO §2.1.200's general definitions of terms do not apply if "it is plainly evident from context that a different meaning is intended." *See* CCZLDO §2.1.100. It is plainly evident from context that the phrase "public service structure" in the definition of "low-intensity utility" does not incorporate CCZLDO §2.1.200's general definition of "structure." If it did, the result would be absurd: a "public service structure" would be a "public service walled and roofed building ..." and consequently only a walled and roofed building could qualify as a "low-intensity utility." The definition of "low-intensity utility" would be internally inconsistent because that definition explicitly includes "sewer, water, and gas lines," which are not walled and roofed buildings. Thus, it is clear from context that CCZLDO §2.1.200's use of the phrase "public service structure" (in its definition of "utilities") does not incorporate its general definition of "structure." The only plausible interpretation is that CCZLDO §2.1.200's use of the term "public service structure" incorporates the CBEMP's--not the CCZLDO's--definition of "structure," which is "[a]nything constructed or installed or portable, the use of which requires a location on a parcel of land." The pipeline obviously satisfies this definition. This interpretation is consistent with the County's previous interpretation of the term "structure" in the definition of "low-intensity utility."

For the above reasons, the Board denies Opponents' contentions, and instead finds that the pipeline is permitted as a "low-intensity utility" in the CBEMP zones it crosses.

Ms. Jody McCaffree argues that the Applicant is proposing to conduct "fill" activity in the 7-D zone. *See* Exhibit 8 at p. 20-22. While it is true that the applicant is proposing to conduct fill in the 7-D zone, that is part of a different project (*i.e.* the LNG Terminal), and the fill proposed in the 7-D District is expressly allowed in any event.

GENERAL CONDITIONS (the following condition applies to all uses and activities):

1. ***Uses in this district are only permitted as stated in Policy #14 "General Policy on Uses within Rural Coastal Shorelands". Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this policy.***
2. ***Inventoried resources requiring mandatory protection in this unit district are subject to Policies #17 and #18.***
3. ***All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation.***
4. ***All permitted uses shall be consistent with the respective flood regulations of local governments as required in Policy #27.***
5. ***All permitted uses in dune areas shall be consistent with the requirements of Policy #30.***
6. ***In rural areas (outside of UGBs) utilities, public facilities, and services shall only be provided subject to Policies #49, #50, and #51.***

Board Findings: The applicable CBEMP Policies are 14, 17, 18, 23, 27, 30, 49, 50, and 51. These are addressed under the policy section of this report.

b. 7-NA District.

The Early Works Alignment crosses approximately .08 miles of the 7-NA CBEMP management unit.

CCZLDO 3.2.290 - Management Objective
This aquatic district shall be managed to protect natural resources. Maintenance, replacement and repair of bridge crossing support structures shall be allowed.

Board Findings: Opponents contend the pipeline fails to comply with the management objective of the 7-NA zone. Opponents contend that both the pipeline and HDD are serious threats to natural resources in the zone.

The Applicant states that "the Application does not seek authorization for HDD and HDD is not subject to approval criteria." The Board disagrees with the Applicant on both of these points.

Nonetheless, both the pipeline and HDD satisfy the management objective of the 7-NA zone. PCGP has submitted into the record extensive evidence demonstrating that neither HDD nor the pipeline will adversely impact natural resources there. The DEIS concludes that the pipeline would not significantly impact wildlife and aquatic resources. *See* Record Exhibit 16, Exhibit 9 at 1091-92. PCGP has also submitted a Hydrostatic Test Plan, Corrosion Control Plan, and Safety and Reliability Report, which evidence demonstrates that the pipeline is safe and durable and that it is unlikely to leak or have other accidents that could jeopardize natural resources in the 7-NA zone. Section II.C. of this contention discusses the HDD Fluid Plan and HDD Feasibility Report, which demonstrate both that there is a low risk of inadvertent releases of HDD drilling fluids that could harm natural resources in the 7-NA zone and that PCGP has a plan to contain such releases should they occur.

Opponents have submitted no rebuttal evidence to suggest that the pipeline or HDD is a significant threat to the protection natural resources in the 7-NA zone. The Board finds that the applicant's evidence constitutes substantial evidence, and that such expert testimony is more credible than any evidence to the contrary.

Under the Goal 16 construct, the "natural" management units allow the least amount of development as compared to conservation and development management units. This is evidenced by the terminology associated with the units. Natural units generally require "preservation" and "protection," whereas conservation units generally require that resources therein be "conserved." The management objective of the 7-NA district reflects this vernacular.

The Statewide Planning Goals and the CBEMP defines the term "protect" as follows: "save or shield from loss, destruction, or injury or for future intended use." The Statewide Planning Goals and the CBEMP also define the term "preserve," which means "[T]o save from change or loss and reserve for a special purpose." The term "aquatic" means "[o]f or pertaining to water." The term "resources" is not defined, but the Board assigns it a general and broad definition, including estuarine species, habitats, biological productivity and water quality.

Based on these definitions, the Board interprets the management objective to require the management of the 7-NA District in such a manner that saves and shields the district from

change, loss, destruction, or injury, and for future intended use, and reserves the 7-NA district for a special purpose.

LUBA discussed what is required to "protect" aquatic resources in its final opinion remanding the Original Pipeline alignment:

> Petitioners also argue that the obligation to 'protect' aquatic resources requires reducing harm to such a degree that there is at most a *de minimis* or insignificant impact on aquatic resources, including both commercial oyster beds and Olympia oysters, under the reasoning in *Columbia Riverkeeper v. Clatsop County*, [61] Or LUBA [96] (April 12, 2010), *aff'd* 238 Or App 439, 243 P3d 82 (2010), and that measures that simply reduce or mitigate impacts on estuarine resources are not sufficient to 'protect' those resources, for purposes of local comprehensive plan provisions that implement Statewide Planning Goal 16 (Estuarine Resources).
>
> Turning to the last argument first, intervenor argues that the county did not attempt to rely on measures that simply reduce or mitigate impacts, as was the case in *Columbia Riverkeeper*, but instead found, based on substantial evidence, that the impacts will be 'temporary and insignificant' and thus estuarine resources will be 'protected.' We agree with intervenor that the county did not misunderstand its obligation to 'protect' estuarine resources, and that findings that impacts will be 'temporary and insignificant' are focused on the correct legal standard for purposes of the comprehensive plan management district language that implements Goal 16.

Citizens Against LNG vs. Coos County, 63 Or LUBA 162(2011). The case of *Columbia Riverkeeper v. Clatsop County*, 60 Or LUBA 454 (2010), *aff'd*, 238 Or App 439, 243 P3d 82 (2010) also provides extensive guidance:

> The county's interpretation of the meaning of "protect" appears to conclude that protection of specific resources can be accomplished through use of some measures that either reduce harm to general estuarine values or attempt to reduce harm to the specified resources. However, we do not see much of a distinction between the county's interpretation of "protect" as defined in the dictionary, which in *Bradwood I* we found improperly imported the concepts of "attempts" to protect or an "intent" to protect into the definition, and the county's interpretation of the Goal definition of "protect" in the present appeal as satisfied through measures that merely reduce harm.
>
> The definition of "protect" contains stringent language: "save or shield from loss, destruction, or injury * * *." "Save" has many

definitions, including "**1:f**: to preserve or guard from injury, destruction or loss." *Webster's Third New International Dictionary* 2019 (1981). "Shield" is defined as "to protect with or as if with a shield." *Id.* at 2094.

Context for interpreting the goal definition of "protect" is provided by considering its use within the text of Goal 16. The goal itself provides that its purpose is:

> "To recognize *and protect* the unique environmental, economic, and social values of each estuary and associated wetlands; and
>
> "To *protect*, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries." (Emphases added.)

Goal 16 requires protection of the environmental, economic, and social values, diversity and benefits of estuaries, and allows estuarine development and restoration only "where appropriate." The goal sets out a hierarchy of priorities for management and use of estuarine resources, placing in first priority "[u]ses which maintain the integrity of the estuarine ecosystem." Within the remaining text of Goal 16, the word "protect" appears almost exclusively in the Goal text describing the "natural management unit" designation. That designation is the most protective classification of Goal 16 resources, and includes "areas * * * designated to assure the *protection* of significant fish and wildlife habitats * * *." The natural management unit allows uses and activities that allow the resources of the estuary to "continue to function in a manner to *protect* significant wildlife habitats, natural biological productivity, and values for scientific research and education." Thus, the most protective classification in Goal 16, the natural management unit designation, allows only activities that are sufficient to protect the identified resources.

The Goal language describing the other designations also provides context for the meaning of "protect." The description of the "conservation management unit," which is the current management designation of the subject property, does not include the word "protect." 7 The description of the "development management unit," the proposed designation of the property, also does not use the word "protect." Taken together, the uses of the word "protect" within Goal 16 itself indicate that the definition is not equivocal in requiring that identified resources are "saved" or "shielded" from more than *de minimis* damaging impacts.

> Although we agree with the county that the Goal definition of "protect" does not require that estuarine resources identified for protection be completely or absolutely protected from any "loss, destruction, or injury" whatsoever, the county has made a planning decision under the CCCP policies at issue that implement Goal 16 and the scheme set forth in the second paragraph of Goal 16, quoted above, to "protect" as opposed to a decision to "maintain," "develop," or "restore" traditional fishing areas and endangered or threatened species habitat. Having made that "protect" planning decision, the local program to protect those estuarine resources must not allow "loss, destruction, or injury" beyond a *de minimis* level. Thus, the development that is to be allowed by the disputed rezone is not consistent with the Goal definition of "protect" unless the measures proposed in seeking to rezone the property are sufficient to reduce harm to such a degree that there is at most a *de minimis* or insignificant impact on the resources that those policies require to be protected.

As LUBA notes, only a *de minimis* level of "loss, destruction, or injury" is allowed in natural management units. Thus, LUBA agrees that even the terms "protect" and "preserve" cannot be interpreted to be "no impact" or "no development" zones. After all, the 7-NA zone permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO §2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Because the drafters determined that the utility use was allowed in the natural aquatic zone, and that determination was acknowledged, the Board cannot simply conclude that utilities are not permitted because the construction methods will create impacts.

However, even the terms "protect" and "preserve" cannot be interpreted to be "no impact" or "no development" zones. After all, the 7-NA zone permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO §2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas.

In LUBA describes the degree of allowable impact as being "de-minimus, but even that term seems subjective.

In the so-called "Oyster Remand" case, the Board asked the parties to research Oregon case law to see if there is any useful guidance which would tend to give meaning to the phrase "*de minimis*." The Board attempted in that case to conduct some independent research on the issue as well. Neither the Board nor any other party was able to come up with any research that was particularly enlightening.

The phrase "*de minimis*" is defined as follows in Black's Law Dictionary, Sixth Edition:

> *"De minimis non curat lex.* The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles. Provision is made under certain criminal statutes for dismissing offenses which are "de minimis." *See, e.g.,* Model Penal Code §2.12."

The opponent's attorney in that case, Ms. Corrine Sherton, cited to the Meriam Webster's On-Line Dictionary, which defines "*de minimis*" as "lacking significance or importance: so minor as to merit disregard. Along those same lines, the term "insignificance" is defined as "not worth considering, unimportant." Unfortunately, all of these are value-laden definitions that provide little in the way of concrete guidance.

Ms. Sherton also pointed out that "temporary" impacts cannot be presumed, as a matter of law, to be "insignificant." *See Hashem v. City of Portland*, 34 Or LUBA 629, 632 (1998). The key to making sure this bore is successful is to ensure that the construction techniques and methods are done in a manner that only creates *de-minimis* impacts. Such techniques are feasible in this case.

In this case, the pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 7-NA district, the Applicant will utilize HDD construction techniques for the pipeline to minimize construction impacts to natural resources. The Board finds that the applicant's evidence concerning HDD technology constitutes substantial evidence, and that such expert testimony is more credible than any evidence to the contrary. Therefore, the Early Works Alignment satisfies the 7-NA zone's management objective.

CCZLDO 3.2.291 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
a. Low-intensity P-G

Board Findings: As discussed elsewhere in this decision, the pipeline is a "low-intensity utility." The 7-NA district permits the Early Works Alignment subject to general conditions.

Ms. Jody McCaffree argues that the Applicant is proposing to conduct "dredge" activity in the 7-NA zone. *See* Exhibit 8 at p. 20-22. However, in presenting her evidence, Ms. McCaffree is confusing the pipeline project with the LNG Terminal project. In this regard, she even cites to the record of the LNG terminal case. *Id.* at p. 21. Besides, the use of HDD technology is an alternative to an open trench cut, and does not involve dredging activity as defined by the code.

GENERAL CONDITION (the following condition applies to all uses and activities):

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

Board Findings: CBEMP Policies #17 and #18 apply to this portion of the request. These are

addressed under the policy section of this report.

c. 13A-NA district.

The Early Works Alignment crosses approximately 0.21 miles of the 13A-NA CBEMP management unit.

CCZLDO 3.2.425 - Management Objective

This district shall be managed to allow the continuance of shallow-draft navigation while protecting the productivity and natural character of the aquatic area. The openings in the two road dikes are designated mitigation sites [M-5(a) and (b), "low" priority]. Maintenance, and repair of bridge crossing support structures shall be allowed. However, future replacement of the railroad bridge will require Exception findings.

Board Findings: The pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 13A-NA district, Applicant will utilize HDD construction techniques for the pipeline to minimize construction impacts to natural resources. Construction and operation of the pipeline will not affect the continuance of shallow-draft navigation in, or the natural character and aquatic area of, the 13A-NA district. The pipeline will not affect the M-5(a) and (b) mitigation sites. Therefore, the Early Works Alignment satisfies the management objective of the 13A-NA district.

Opponents contend the pipeline fails to comply with the management objective of the 15-NA zone, which requires protection of the zone's natural resource productivity. Opponents contend that the Application fails to support its claim that the pipeline will not affect the same. Opponents also contend that existing evidence suggests gas pipeline construction and operation may adversely impact the same.

Opponents do not submit evidence or contention that establishes that the pipeline will harm the natural resource productivity of the 15-NA zone. As explained repeatedly throughout this contention, PCGP has met its burden to prove that the pipeline will not have such impacts by submitting into the record extensive evidence that demonstrate that fact. This evidence includes the DEIS, the Hydrostatic Test Plan, the Corrosion Control Plan, the Safety and Reliability Report, the HDD Fluid Plan, the HDD Feasibility Report, and memoranda from engineers. Exhibit 16. Opponents have not submitted evidence to rebut PCGP's extensive evidence.

CCZLDO 3.2.426 - Uses, Activities and Special Conditions
A. Uses:

9. Utilities
a. Low-intensity P-G

Board Findings: The 13A-NA district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO 2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-

intensity utility" and the 13A-NA district permits the Early Works Alignment subject to general conditions, as follows.

GENERAL CONDITION (the following condition applies to all uses and activities):

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

Board Findings: CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the policy section of this report.

d. DDNC-DA district.

In two segments, the Early Works Alignment crosses approximately 0.13 miles of the DDNC-DA CBEMP management unit, which currently prohibits the pipeline. Therefore, this Application requests a text amendment to CCZLDO 3.2.202 to allow "subsurface low-intensity utilities," subject to general conditions, in the DDNC-DA zone. The amendment is covered in the first part of this report. Upon adoption of this amendment, the pipeline will be permitted in the DDNC-DA CBEMP management unit, subject to general conditions as follows.

In all other Development Aquatic Management Units Low-Intensity is listed uses in all other Development Aquatic and this would be consistent with the change of use. It is appropriate to limit this to subsurface given the purpose of the segment as it is for navigation. The other segments require that general Policies #17 and #18 apply. The county may consider adopting a Special Condition Policy #31 to make this "subsurface." This would not change the Board's finding that the provisions under DDNC-DA can be met.

GENERAL CONDITIONS (the following conditions apply to ALL uses and activities):

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

Board Findings: CBEMP Policies #17 and #18 apply to this use. These are addressed under the section of this decision addressing the CBEMP Policies.

e. 45A-CA district.

The Early Works Alignment crosses approximately 0.12 miles of the 45A-CA CBEMP management unit.

CCZLDO 3.2.525 - Management Objective

This district will be managed to protect the natural resources of the subtidal area adjacent to the channel, and to provide necessary navigational facilities and permit log storage. A temporary pipeline for dredged material disposal activities shall be allowed across this district. Outfall shall go directly to the main navigation channel.

Board Findings: The management objective of the 45A-CA zone requires protection of the natural resources of the subtidal area adjacent to the channel and provision of necessary navigational facilities and log storage. To accomplish that objective, the pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 45A-CA district, the Applicant will utilize HDD construction techniques for the pipeline to minimize construction impacts to natural resources. The pipeline will not adversely affect the natural resources of the subtidal area adjacent to the channel or the continued provision of necessary navigational facilities and log storage in the 45A-CA district. Therefore, the Early Works Alignment satisfies the 45A-CA district's management objective.

Opponents contend the pipeline fails to comply with the management objective of the 45A-CA zone, and that the Application fails to support its claim that the pipeline complies with these requirements. *See* OSCC Letter dated February 22, 2019, at p. 16. Exhibit 3.

Opponents do not submit evidence or contention that establishes that the pipeline will harm the natural resources of the subtidal area adjacent to the channel or the provision of necessary navigational facilities and log storage. The pipeline does not take navigation facilities or log storage out of commission and so does not affect the management objective's purpose of providing the same. Moreover, as explained repeatedly throughout this contention, PCGP has met its burden to prove that the pipeline will not significantly harm the productivity of natural resources in the estuary by submitting into the record extensive evidence that demonstrate that fact. This evidence includes the DEIS, the Hydrostatic Test Plan, the Corrosion Control Plan, the Safety and Reliability Report, the HDD Fluid Plan, the HDD Feasibility Report, and memoranda from engineers. Exhibit 16. Opponents have not submitted evidence to rebut PCGP's extensive evidence. The Board finds that the applicant's evidence constitutes substantial evidence, and that such expert testimony is more credible than any evidence to the contrary.

CCZLDO 3.2.526 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities

a. Low-intensity P-G

Board Findings: The 45A-CA district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO 2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-intensity utility" and the 45A-CA district permits the Early Works Alignment subject to general conditions, as follows.

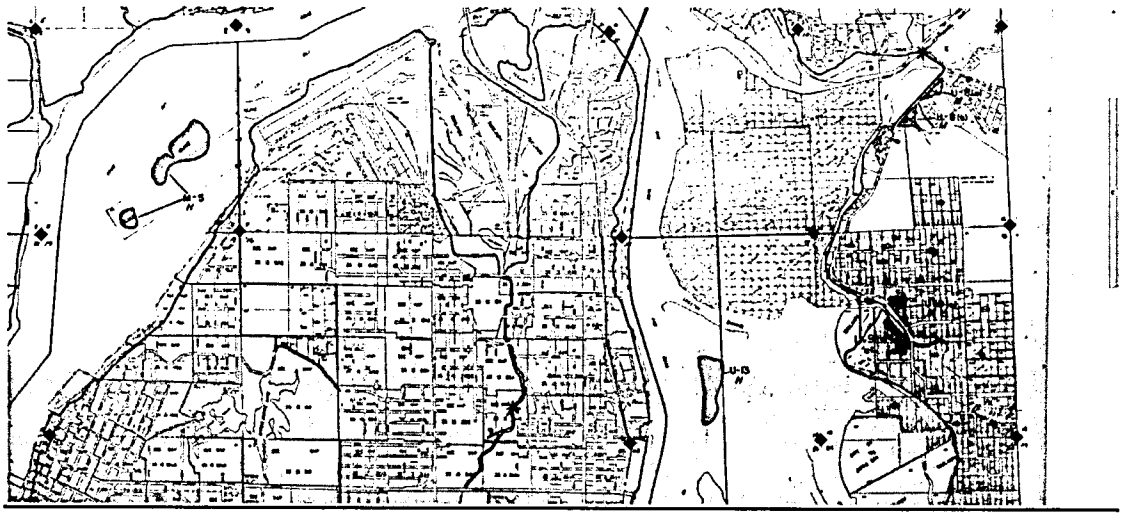
GENERAL CONDITIONS

1. ***All uses and activities: Inventoried resources requiring mandatory protection are subject to Policies #17 and #18.***

Board Findings: CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the "CBEMP Policies" section of this report.

f. 15-NA district.

In two segments, the Early Works Alignment crosses approximately 0.43 miles of the 15-NA CBEMP management unit.



CCZLDO 3.2.455 - Management Objective

This natural aquatic district shall be managed to protect its natural resource productivity. The district also contains a designated mitigation site (U-9c), which shall be protected from preemptive uses as a "medium" priority site (see Policy #22).

Board Findings: The management objective of the 15-NA zone requires protection of the zone's natural resource productivity. The pipeline will not affect the natural resource productivity of the 15-NA district or the district's mitigation sites. The use will not be located near the U-9c. Therefore, the Early Works Alignment satisfies the 15-NA district's management objective.

Opponents contend the pipeline fails to comply with the management objective of the 15-NA zone. *See* OSCC Letter dated February 22, 2019, at pp. 15-16. Exhibit 3. OSCC argues that existing evidence suggests gas pipeline construction and operation may adversely impact on crabs and crab fisheries:

> Like the 13B-NA zoning district, 15-NA contains near-shore and estuarine nursery habitats vital to the life cycles of commercially valuable fisheries, such as the Dungeness crab. Existing data suggests that natural gas pipeline construction and operational activities may impose serious adverse impacts on critical estuarine nursery habitat and commercially valuable fisheries in Coos Bay.

Id. OSCC further contend that the Application fails to support its claim that the pipeline will not affect the aquatic resources in this district.

With the exception of the Yamada study, which the Board has rejected as being too vague to constitute substantial evidence, neither OSCC or any other Opponents submit evidence that establishes that the pipeline will harm the natural resource productivity of the 15-NA zone. In contrast, PCGP has met its burden to prove that the pipeline will not have such impacts by submitting into the record extensive evidence showing that there will be no impact to the aquatic districts This evidence includes the DEIS, the Hydrostatic Test Plan, the Corrosion Control Plan, the Safety and Reliability Report, the HDD Fluid Plan, the HDD Feasibility Report, and memoranda from engineers. Opponents have not submitted sufficient evidence to rebut or outweigh PCGP's extensive evidence.

CCZLDO 3.2.456 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
a. Low-intensity P-G

Board Findings: The 15-NA district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO 2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-intensity utility" and the 15-NA district permits the Early Works Alignment subject to general conditions, as follows.

GENERAL CONDITIONS:

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

Board Findings: CBEMP Policies #17 and #18 apply to this use. These are addressed under the policy section of this report.

g. 13B-NA district.

The Early Works Alignment crosses approximately 0.67 miles of the 13B-NA CBEMP management unit.

CCZLDO 3.2.435 - Management Objective

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

Board Findings: The pipeline will be buried under the Bay to avoid impacts to natural resources during its operation. Further, in the 13B-NA district, the Applicant will utilize HDD construction techniques for the pipeline to minimize construction impacts to natural resources. The pipeline will not adversely affect the productivity of the extensive tideflats and subtidal beds in the aquatic area of the 13B-NA district. Therefore, the Early Works Alignment satisfies the 13B-NA district's management objective.

OSCC points out that the 13B-NA district provides important habitat for aquatic species:

> The tideflats and subtidal beds the Applicant references provide crucial nursery habitat to the Dungeness crab, and juvenile Dungeness crabs are particularly abundant in the nearshore areas of 13B-NA. The Dungeness crab fishery is consistently the most valuable single species commercial fishery in Oregon, and a substantial economic driver in the Coos Bay region. Without providing more data specifically addressing the potential adverse impacts its proposed use of HDD technology will impose on vital estuarine nursery habitat, PCGP cannot demonstrate compliance with the management objective of 13B-NA. Note that Oregon Shores' analysis in Part IV.C. of this comment (regarding the use of HDD technology and buried pipelines) is also applicable to 13B-NA. (Footnotes omitted).

See OSCC Letter dated February 22, 2019, at p. 12. Exhibit 3. The Board addresses issues surrounding HDD technology in Section III(B)(4)of this Decision.

In their letter dated June 1, 2019, OSCC writes the following:

> The Applicant has previously proposed alternative construction methods for the eastern section of the Pipeline before state and federal agencies, neither of which have been verified as feasible based on geological testing. The "dual" drilling option would rely on a shared tie-in workspace located in a tidal flat area south of Glasgow Point. The Application fails to disclose this approach to the County. Similarly, the Application does not acknowledge or

> explain any of the potential impacts from the workspace located in a tidal flat within the Coos Bay estuary. The tie-in location appears to be an approximately two-acre site located within the 13B-NA CBEMP district. The Management Objective of this district requires the area to be managed "so as to protect the productivity of the extensive tideflats and subtidal beds in the aquatic area." However, the Application states simply that the Pipeline will be buried in this zone and summarily concludes that the Pipeline will not adversely affect the productivity of the extensive tideflats and subtidal beds in the aquatic area of the 13B-NA district. Given the proposed tie-in approach in this location, the application is inadequate to demonstrate compliance with the 13BNA district's Management Objective. Furthermore, the Applicant has failed to explain how the construction of the tie-in would qualify as a "low intensity" utility allowed in the zone and complying with Policies #17 and #18. Absent data on the dual drilling option and an analysis of its impacts on 13B-NA CBEMP estuarine zone, the County cannot approve the Concurrent Application requests.

Exhibit 11, at p. 4. The applicant responds as follows:

> Opponents contend the Application fails to comply with the management objective of the 13B-NA zone, which requires protecting the productivity of the zone's extensive tideflats and subtidal beds. Opponents contend the Application fails to support its claim that the Pipeline will not harm the productivity of the same.
>
> As explained repeatedly throughout this [application], PCGP has submitted into the record extensive evidence demonstrating that neither the Pipeline nor HDD will have significant adverse impacts on natural resources, including the productivity and natural character of the aquatic area of the 13A-NA zone. This evidence includes the DEIS, the Hydrostatic Test Plan, the Corrosion Control Plan, the Safety and Reliability Report, the HDD Fluid Plan, the HDD Feasibility Report, and memoranda from engineers. Opponents have not submitted evidence to rebut PCGP's extensive evidence.

Exhibit 24, at p. 43. Further, OSCC notes that the applicant submitted "proposed alternative construction methods for the eastern section of the Pipeline before state and federal agencies." The maps submitted by OSCC show a "Temporary HDD entry workspace" in the middle of the estuary. The Application does not propose such as temporary work area. The record suggests that this may have been part of an alternative plan submitted to FERC and/or Oregon state agencies. Because it is not part of the current plan submitted to the County as part of this application, it is not an issue that the Board must consider, and it is not a project element that is approved in this decision.

CCZLDO 3.2.436 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
a. Low-intensity P-G

Board Findings: The 13B-NA district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO 2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-intensity utility" and the 13B-NA district permits the Early Works Alignment subject to general conditions, as follows.

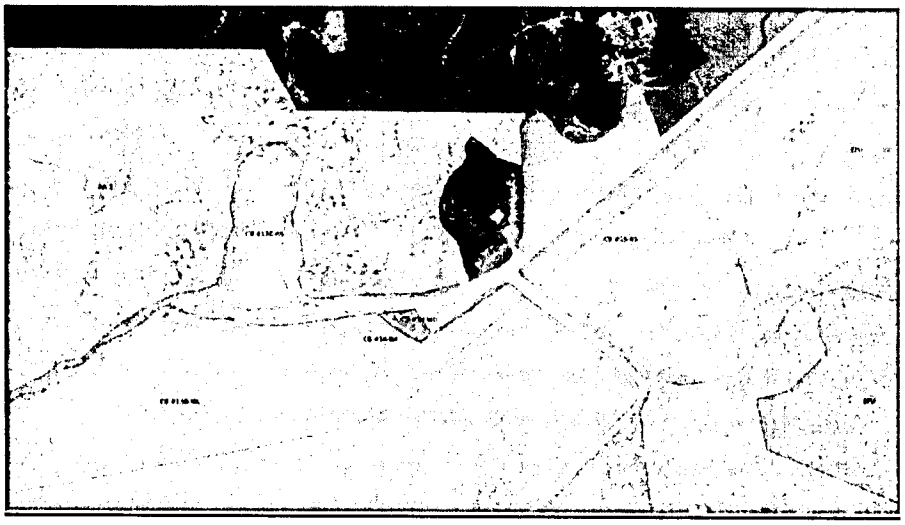
GENERAL CONDITION (the following condition applies to all uses and activities):

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

Board Findings: CBEMP Policies #17 and #18 apply to this portion of the request. These are addressed under the policy section of this report.

h. 14-DA district.

In two segments, the Early Works Alignment crosses approximately 0.12 miles of the 14-DA CBEMP management unit.



CCZLDO 3.2.445 - Management Objective

This area shall be managed to allow access to the natural Kentuck Channel for the purposes

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

Board Findings: The management objective of the 14-DA zone requires that the County manage the zone to allow access to the natural Kentuck Channel for transporting jetty stone quarried in the uplands above the district and for filling of the small bermed aquatic area at the western end of the existing fill to provide space for rock loading. In her staff report, the Planning Director shaded the area in on the map in which the "bermed area" was referenced in the management unit. According to staff, the shipping transportation described in the management unit is not occurring at this time. Staff states that the planned fill, which was intended to fully create the upland area within the berm, was never completed.

The proposed pipeline construction and operation will not interfere with access to the natural Kentuck Channel for the purposes of transporting jetty stone quarried in the uplands above the district. Additionally, it will not preclude filling of the small bermed aquatic area at the western end of the existing fill to provide additional space for rock loading. Therefore, the Early Works Alignment satisfies the 14-DA district's management objective.

OSCC argues the pipeline fails to comply with the management objective of the 14-DA zone. *See* OSCC Letter dated February 22, 2019, at pp. 13-14. However, OSCC offers no evidence of their own, but rather makes the generic argument that the Application fails to support its claim that the pipeline complies with these requirements. This is not a very effective line of attack in light of the fact that the pipeline is proposed to be located under the ground. Nothing about the pipeline, either its location or physical character, suggests it will significantly interfere with the use of the 14-DA zone to allow access to the natural Kentuck Channel for transporting jetty stone quarried in the uplands above the district and for filling of the small bermed aquatic area at the western end of the existing fill to provide space for rock loading. Opponents cannot merely say that PCGP has failed to provide evidence to support a claim that is based on a simple logical observation. Opponents do not provide evidence or contention to support the suggestion that the pipeline will interfere with the purposes of the 14-DA zone.

CCZLDO 3.2.446 - Uses, Activities and Special Conditions

A. Uses:

9. Utilities
a. Low-intensity P-G

Board Findings: The 14-DA district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO 2.1.230 defines "low-

intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-intensity utility" and the 14-DA district permits the Early Works Alignment subject to general conditions, as follows.

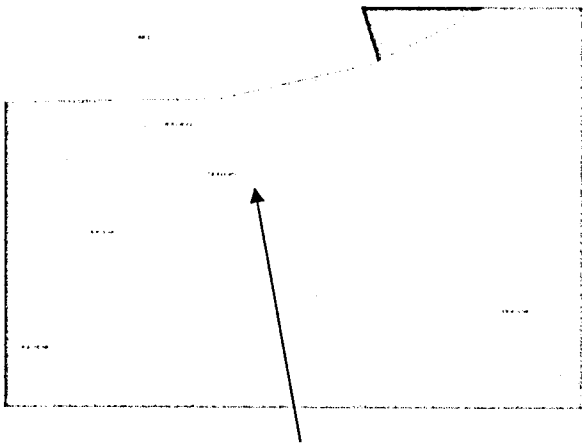
GENERAL CONDITIONS:

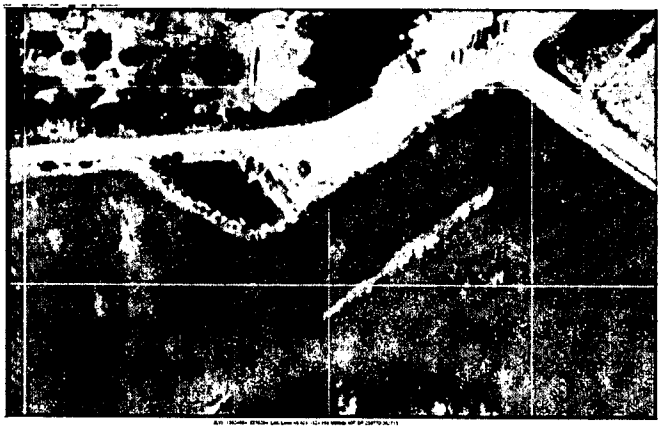
1. All uses and activities: Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.

Board Findings: CBEMP Policies #17 and #18 apply to this use. These are addressed under the section of this decision addressing the CBEMP Policies.

i. 14-WD district.

The Early Works Alignment crosses approximately 0.04 miles of the 14-WD CBEMP management unit. The 14-WD is shown below as a small upland area abutting the road.





CCZLDO 3.2.440 - Management Objective

This shoreland district is in close proximity to a natural channel and shall be managed as a barge loading site; in addition, recreation and access for recreation shall be allowed.

Board Findings: The management objective of the 14-WD zone requires that the County manage the zone as a barge loading site and for recreation access. According to staff, the 14-WD has not yet been developed with a barge loading site, and has not been improved to serve any type of recreational use.

The applicant states that the pipeline will be located underground, and will not affect use of management of the 14-WD district as a barge loading site nor recreation access in the 14-WD district. Looking at the plans, it does not appear that there will even be any construction-related impacts on this zone. Therefore, the Early Works Alignment complies with the 14-WD district's management objective.

Opponents contend the pipeline fails to comply with the management objective of the 14-WD zone. *See* OSCC Letter dated February 22, 2019, at p. 13. Exhibit 3. Opponents claim that the Application fails to support its claim that the pipeline will not interfere with barge loading, recreation, and access for recreation. However, nothing about the pipeline, either its location or physical character, suggests it will significantly interfere with the use of the 14-WD zone as a barge loading site and for recreation access. Opponents cannot merely say that PCGP has failed to provide evidence to support a claim that is based on a simple logical observation. Opponents do not provide evidence or contention to support the suggestion that the pipeline will interfere with barge loading or recreation access in the 14-WD zone.

CCZLDO 3.2.441 - Uses, Activities and Special Conditions

A. Uses:

15. Utilities
a. Low-intensity P-G

Board Findings: The 14-WD district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO 2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-intensity utility" and the 14-WD district permits the Early Works Alignment subject to general conditions, as follows.

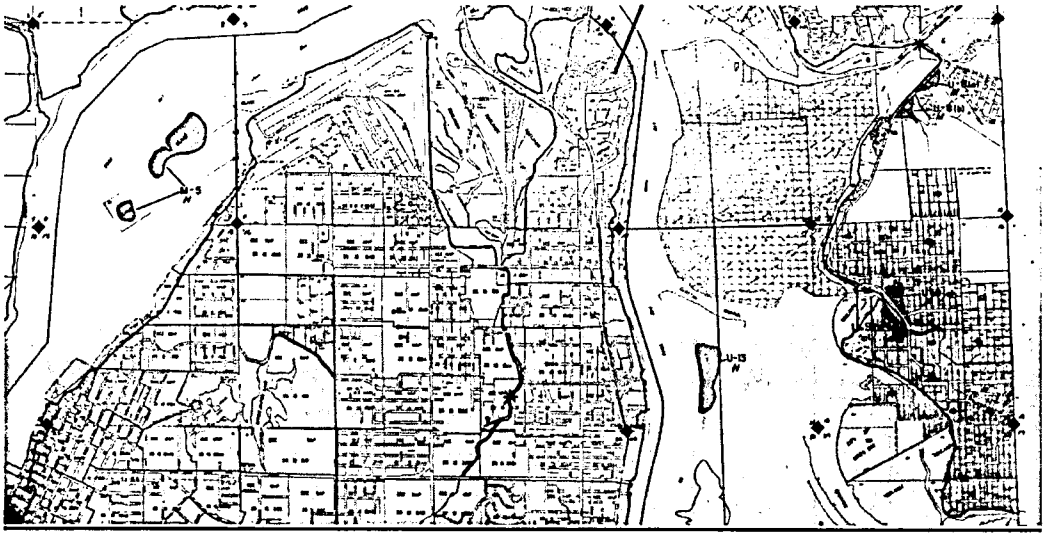
GENERAL CONDITIONS:

1. ***Uses in this district are only permitted as stated in Policy #14, "General Policy on Uses within Rural Coastal Shorelands". Except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this Policy.***
2. ***All permitted uses shall be consistent with the respective flood regulations of local governments as required in Policy #27.***
3. ***In rural areas (outside of UGBs) utilities, public facilities and services shall only be provided subject to Policies #49, #50, and #51.***
4. ***All uses and activities: Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.***

Board Findings: CBEMP Policies #14, 17, 18, 27, 49, 50, and 51 are required to be addressed. These are addressed under the policy section of this report.

j. 15-RSdistrict.

The Early Works Alignment will cross approximately 0.20 miles of the 15-RS CBEMP management unit.



CCZLDO 3.2.450 - Management Objective

> ***This district shall be managed to maintain the present character of and uses in the area, which include low-intensity rural development having minimal association with the adjacent aquatic area. The district contains three designated mitigation sites: U-8(a) and U-9(a) shall be protected for pre-emptive uses as "medium" priority sites (see Policy #22).***

Board Findings: The management objective of the 15-RS zone requires maintenance of the present character of, and uses in, the area, including low-intensity rural development having minimal association with the adjacent aquatic area, and also protection of the zone's three mitigation sites.

The pipeline will not change the present character of uses in the 15-RS district, including low-intensity rural development having minimal association with the adjacent aquatic area, nor will the pipeline affect the mitigation sites in the 15-RS district. The mitigation site is not within the project area. Therefore, the Early Works Alignment satisfies the 15-RS district's management objective.

Opponents claim the pipeline fails to comply with the management objective of the 15-RS zone. *See* OSCC Letter dated February 22, 2019, at pp. 14-15. Exhibit 3. Opponents contend the Application fails to support its claim that the pipeline complies with these requirements. Opponents also contend that the pipeline could have the same disruptive impacts in the 15-RS zone that the opponents' claims it could have in the Forest zone.

The Application explains that the pipeline will not change the character of or uses in the 15-RS zone. Nothing about the pipeline, either its location or physical character, suggests it will interfere with low-intensity rural development having minimal association with the adjacent aquatic area. Opponents cannot merely say that PCGP has failed to provide evidence to support a claim that is based on a simple logical observation. Opponents do not provide evidence or contention to support the suggestion that the pipeline will interfere with the purposes of the 15-RS zone.

Moreover, the approval criteria of the County's Forest zone and the 15-RS zone are different. Opponents' vague suggestion that the disruptive impacts of the pipeline in the Forest zone that the Application discusses may also occur in the 15-RS zone is unsupported and unrelated to any approval criteria of the 15-RS zone.

CCZLDO 3.2.451 - Uses, Activities and Special Conditions

A. Uses:

15. Utilities
a. Low-intensity P-G

Board Findings: The 15-RS district permits "low-intensity" utilities subject to general conditions, addressed below. The pipeline is a "low-intensity utility." CCZLDO §2.1.230 defines "low-intensity utility" as a "public service structure" that includes "gas lines." The pipeline is a gas line that will serve the public by providing natural gas. Therefore, the pipeline is a "low-intensity utility" and the 15-RS district permits the Early Works Alignment subject to general conditions, as follows.

Opponent Michael Graybill argues that "the applicant has also proposed to construct a large linear earth structure on the existing diked tidal wetlands." *See* Graybill Letter dated March 13, 2019, at p. 17. Exhibit 10. Mr. Graybill does not explain the evidentiary basis for his assertion that the Applicant plans on building this structure. The Board reads the Application Narrative dated November 21, 2018, and does not see a reference to such a dike or levee structure. Based on the context, the Board surmises that Mr. Graybill is referencing something that the Applicant has proposed in a DSL permit and/or a separate County application for the project.

GENERAL CONDITIONS (the following conditions apply to all uses and activities):

1. ***Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.***
2. ***All permitted uses and activities shall be consistent with Policy #23 requiring protection of riparian vegetation. The following conditions apply to all permitted uses.***
3. ***Where "agricultural lands" or "forest lands" occur within this district, as identified in the "Special Considerations Map", uses in these areas shall be limited to those permitted in Policies #28 and #34.***
4. ***Uses in this district are only permitted as stated in Policy #14, "General Policy on Uses Within Rural Coastal Shorelands"; except as permitted outright, or where findings are made in this Plan, uses are only allowed subject to the findings in this Policy.***
5. ***All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.***
6. ***On designated mitigation/restoration sites, all uses/activities shall only be permitted subject to the conditions in Policy #22.***

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

Board Findings: CBEMP Policies #14, 17, 18, 22, 23, 27, 28, 34, 49, #50, and #51 are applicable. These are addressed under the policy section of this report.

3. CBEMP Policies.

a. Policy #14 General Policy on Uses within Rural Coastal Shorelands.

I. Coos County shall manage its rural areas within the "Coos Bay Coastal Shorelands Boundary" by allowing only the following uses in rural shoreland areas, as prescribed in the management units of this Plan, except for areas where mandatory protection is prescribed by LCDC Goal #17 and CBEM#17 and #18:

- ***a. Farm uses as provided in ORS 215.203;***
- ***b. Propagation and harvesting of forest products;***
- ***c. Private and public water-dependent recreation developments;***
- ***d. Aquaculture;***
- ***e. Water-dependent commercial and industrial uses, water-related uses, and other uses only upon a finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in rural areas built upon or irrevocably committed to nonresource use;***
- ***f. Single-family residences on lots, parcels, or units of land existing on January 1, 1977, when it is established that:***
  1. ***The dwelling is in conjunction with a permitted farm or forest use, or***
  2. ***The dwelling is in a documented "committed" area, or***
  3. ***The dwelling has been justified through a goal exception; and***
  4. ***Such uses do not conflict with the resource preservation and protection policies established elsewhere in this Plan;***
- ***g. Any other uses, including non-farm uses and non-forest uses, provided that the Board of Commissioners or its designee determines that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas. In addition, the above uses shall only be permitted upon a finding that such uses do not otherwise conflict with the resource preservation and protection policies established elsewhere in this Plan.***

This strategy recognizes (1) that Coos County's rural shorelands are a valuable resource and accordingly merit special consideration, and (2) that LCDC Goal #17 places strict limitations on land divisions within coastal shorelands. This strategy further recognizes that rural uses "a through "g" above, are allowed because of need and consistency findings documented in the "factual base" that supports this Plan.

Board Findings: CBEMP Policy #14 applies to rural shorelands, The Applicant correctly identifies the fact that general conditions of the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of CBEMP Policy #14. The pipeline is a permitted use in each of these CBEMP districts. The pipeline is a necessary component of the approved marine terminal

and LNG facility, which the Board has previously found are water-dependent and must be located in CBEMP shoreland zones.

The Applicant states that the pipeline would be considered a necessary component of the primary industrial and port facilities use. Alternatively, the pipeline would be described as an "other use" in CBEMP Policy #14.I.e. As an "other use," the pipeline would be reviewed in each CBEMP district as a low-intensity utility. In either event, CBEMP Policy #14.I.e requires a "finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be accommodated on uplands or shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use," a finding that was already made by the Board in the prior decisions approving the Port's marine terminal and JCEP's upland terminal. Staff agrees with this analysis.

The pipeline must run from Malin to the JCEP LNG terminal, which is located on the North Spit in CBEMP shoreland districts. Given the long distance between these two points and the rural nature of the County, it is not possible to connect these two points with a linear facility like the pipeline while remaining wholly within urban or urbanizable areas and/or rural exception areas. Further, the pipeline serves the need of facilitating use of the JCEP and Port terminals. The route is ultimately chosen through the Federal permitting process given the environmental assessment and other criteria. This limits the applicant's ability to locate the pipeline within urban/urbanizable area or rural exception area. Therefore, the Board finds that the Applicant has addressed, and is in compliance, with this policy.

In the decision that approved the original pipeline alignment, the County determined the following:

> Policy #14 was previously interpreted and applied by the Board of County Commissioners in both the application of Jordan Cove Energy Project, L.P. (Coos County Department File No. #HBCU-07-04, Coos County Order No. 07-11-289PL) and in the application of the Oregon International Port of Coos Bay (Coos County Planning Department File No. #HBCU-07-03, Coos County Order No. 07-12-309PL). Copies of both decisions are included in the documents submitted into the record by the applicant at the public hearing on May 20, 2010. Those decisions provide written findings showing compliance with Policy #14, partially through Board findings from the Board of Commissioner's findings from the adoption of the Coos County Comprehensive Plan (see findings from HBCU-07-03 below). Regarding the Board's decision approving JCEP's LNG terminal application, the Policy #14 finding appears at page 13 and states:
>
> > "The proposed LNG terminal is an industrial and port facility that is water-dependent and consistent with the uses allowed in the 6-WD zoning district. The proposed use satisfies a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in other rural

areas built upon or irrevocably committed to non-resource use. The Board relies upon and adopts the conclusions of the hearings officer regarding consistency with Policy #14. The applicant has provided evidence sufficient to establish that [the] proposed site on the North Spit is the only site available below the railroad bridge with sufficient size and the necessary water-dependent characteristics for the proposed facility, including access to one of the only three deep-draft navigation channels in the State of Oregon."

Regarding the Board's decision approving the Port's Oregon Gateway Marine Terminal application, the Policy #14 findings appear at page 20 and provide:

"The Board finds that the proposed water-dependent use satisfies a need that cannot be accommodated on uplands or shorelands in urban and urbanizable areas or in other rural areas built upon or irrevocably committed to non-resource use. This fact was recognized in the inventories and factual base portion of the Coos County Comprehensive Plan (CCCP) at Volume II, Part 2, Section 5-82. (See North Spit Industrial Needs under Section 5.8.3 of the CCCP). Background reports produced to support CCCP Volume II, Part 2, generally concluded that large vacant acreages of industrial land with deep-draft channel frontage are in short supply. Further, as documented in the applicant's Description of Alternative Sites and Project Designs contained in its August 24, 2007 Revised Application, the North Spit is the only site available with sufficient size and the necessary water-dependent characteristics suitable for future land needs for import and transshipment, with related processing facilities for energy resources and cargo handling, and for marine cargo bound to the West Coast and international ports."

Accordingly, the county previously determined that compliance with Policy #14 was established during the legislative adoption of the county's comprehensive plan with respect to the designation of portions of the North Spit, including zoning district 6-WD, as a rural area appropriate for water-dependent industrial development. In addition, the alternatives analysis required under Policy #14 has been accomplished in several descending layers of analysis for, variously, no action or postponed action, system alternatives, LNG terminal site alternatives, LNG terminal layout alternatives, dredging and dredge material disposal alternatives, and pipeline route alternatives, all of which are described with great specificity

in Section 3.0 (Alternatives) at pages 3-1 through 3-119 of the FEIS.

Under Policy #14, the PCGP would be considered a necessary component of the primary industrial and port facilities use, at least in zoning district 6-WD, where the pipeline segment situated within the boundaries of JCEP's LNG terminal is connected to the LNG terminal meter station at MP00.00, and where other LNG terminal components were described in the decision approving the LNG terminal as "associated facilities" (also see utilization of that term in ORS 215.275(6)). The pipeline would otherwise be described as an "other use" in Policy #14 I.e. As an "other use", the PCGP would be reviewed in each CBEMP zoning district as a low-intensity utility. In either event, Policy #14 I.e requires "a finding by the Board of Commissioners or its designee that such uses satisfy a need which cannot be accommodated on uplands or shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use," a finding that was already made by the Board of Commissioners in the prior decisions approving JCEP's LNG terminal and, again, approving the Port's Oregon Gateway Marine Terminal. It is appropriate for the Board to make similar findings in this case for the reasons set out below.

The Board sees no reason to deviate from these findings at this time.

Ms. McCaffree contends that the Application fails to show that the pipeline complies with CBEMP Policy #14.I.e. because it fails to show that the pipeline satisfies a need that cannot be accommodated in uplands or shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use. *See* Letter from Jody McCaffree dated March 15, 2019, at p. 23. Exhibit 8. In response, the Application explains that Policy #14.I.e. allows the pipeline as both (1) a water-dependent use because it is a necessary component of the LNG Terminal Facility, which itself is a water-dependent use; and (2) as an "other use." In this regard, the Application notes that the pipeline is permitted in all the zones it crosses.

With respect to CBEMP Policy #14's "need" requirement, that need has already been determined, as explained above. That determination cannot be collaterally attacked here. But even if that were not the case, the Application correctly explains that the pipeline satisfies the "need" of supplying natural gas to the LNG Terminal Facility, thereby facilitating its use, and that due to the pipeline's substantial length from Malin, Oregon to the North Spit in Coos Bay, it is impossible for PCGP to site it exclusively in uplands or shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.

The Staff Report agrees with PCGP's analysis regarding Policy #14. The Staff Report explains that "The pipeline is a necessary component of the approved marine terminal and LNG facility, which the [County] has previously found are water-dependent and must be located in CBEMP shoreland zones." *See* Staff Report at p. 39. The Staff Report further explains:

> "The pipeline must run from Malin to the JCEP LNG terminal, which is located on the North Spit in CBEMP shoreland districts. Given the long distance between these two points and the rural nature of the County, it is not possible to connect these two points with a linear facility like the pipeline while remaining wholly within urban or urbanizable areas and/or rural exception areas. Further, the pipeline serves the need of facilitating use of the JCEP and Port terminals. The route is ultimately chosen through the Federal permitting process given the environmental assessment and other criteria. This limits the applicant's ability to locate the pipeline within urban/urbanizable area or rural exception area. Therefore, staff agrees with the applicant that this policy has been addressed."

Id. Opponents do not provide evidence or argument that rebuts the Application or the Staff Report.

Ms. McCaffree also argues that CBEMP Policy #14 "clearly links CBEMP Policy #14 to CBEMP Policy #5." The Board finds that CBEMP Policy #14.I.e. does not create a "link" to CBEMP Policy #5. Policy #5 applies to dredging & fill, and when the drafters to make Policy #5 an approval standard for any particular use or activity, the drafters expressly did so via a "special condition" for the management unit in question.

The Board also understands Ms. McCaffree to argue that the pipeline is an "other use" as that term is used CBEMP Policy #14.I.g. However, the Applicant does not seek to qualify the pipeline as an "other use" under CBEMP Policy #14.I.g.

OSCC argues that the LNG terminal has not been approved by FERC and State of Oregon. *See* OSCC Letter dated February 22, 2019, at pp. 17. The Board does not read anything in Policy #14 that requires the prior approval of FERC or any state agency.

b. Policy #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 5b or 5c bird sites.***

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

Board Findings: Policy #17 requires that the County protect *inventoried* major marshes, significant wildlife habitats, coastal headlands, and exceptional aesthetic resources. LUBA discussed CBEMP Plan Policy #17 in its decision in *Southern Oregon Pipeline Information Project, Inc. v. Coos County*, 57 Or LUBA 44 (2008):

> "CBEMP 17 requires that '[l]ocal governments protect from development major marshes and significant wildlife habitat.' If CBEMP Policy 17 stopped there, SOPIP's argument might have merit. But CBEMP Policy 17(II) goes further and expressly explains *how* this mandate to protect certain coastal resources is implemented. CBEMP Policy 17(II)(a) explains that the CBEMP 'limit[s] uses *in these special areas* to those that are consistent with protection of natural values.' (Emphasis added.) CBEMP Policy 17(II)(b) provides that CBEMP Policy 17 is implemented by 'the Special Considerations Map, that identified special areas and restricts uses and activities *therein* to uses that are consistent with the protection of natural values.' (Emphasis added.). CBEMP Policy 17(II)(b) goes on to list some uses that are consistent with those values. With regard to bird sites, CBEMP Policy 17(II)(c) provides that CBEMP Policy 17 is implemented by contacting the Oregon Department of Fish and Wildlife so that it may 'comment on the proposed development *within the area of the 5b or 5c bird sites*.' There is simply nothing in the text of CBEMP Policy 17 that suggests it is to be implemented by limiting uses on properties that adjoin or are located near inventoried major marshes or significant wildlife habitat to avoid possible impacts on such marshes and habitat." (emphases in original).

SOPIP I, slip op at 8-9

The Board agrees with the Applicant that the County must find that any inventoried

resources in the 7-D, 7-NA, 13A-NA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS CBEMP management units, and subject to adoption of the text amendment, in the DDNC-DA district, are protected. However, the Application explains that the pipeline does not cross any major marshes, significant wildlife habitats, coastal headlands or exceptional aesthetic resources inventoried and/or mapped by the County. The Staff Report agrees. *See* Staff Report at 40. Opponents provide no evidence to contradict the Application or finding of compliance contained in the Staff Report.

The Board independently reviewed the County's Shoreland Values Inventory Map, and concludes that the Early Works Alignment does not cross through any Major Marshes, Significant Wildlife Habitats, or Coastal Headlands. The Early Works Alignment also does not cross exceptional aesthetic resources as identified on the County's maps. Because there are no inventoried resources, CBEMP Policy #17 is not applicable to the Early Works Alignment. There have been no comments received from ODFW or Department of State Lands in regard to this policy. Therefore, this policy has been addressed.

Opponent Jody McCaffree contends the Application fails to show that the pipeline complies with CBEMP Policy #17. *See* McCaffree Letter dated April 12, 2019, at p. 18-19. Her argument is focused on dredging, and not well developed. Certainly, it does not explain how the Application's response to Policy #17 is deficient. In fact, her testimony merely highlights the fact that even after 12 or more years being involved in these issues, Ms. McCaffree does not have even the slightest understanding of how CBEMP Plan Policy #17 works.

c. Policy #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 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.

Board Findings: This policy is applicable to management units 7-D, 7-NA, 13A-NA, 45A-CA, 15-NA, 13B-NA, 14-DA, 14-WD, and 15-RS, and subject to adoption of the text amendment, in the DDNC-DA district. There is only one inventoried resource site (CS-26 on the Shoreland Values Map) located within the area of the Early Works Alignment. According to the Coos County Comprehensive Plan (CCCP) this is a Historic Site identified[16]. The Applicant has retained the professional archaeologists and researchers at Historical Research Associates, Inc. ("HRA") to survey the area where site has been mapped and referenced by the CCCP to determine whether the pipeline would impact this resource site. The Applicant has explained based on the study there is no evidence to confirm the location of the protected site. Accordingly, HRA concluded that the resource was not located within the project area and the pipeline would not have adverse impacts to the resource. HRA also concluded, based upon available information, that no modifications were necessary to the pipeline to protect the cultural, historical, and archaeological values of the historical site. Due to the sensitive nature of the cultural resources involved, HRA's full report is confidential and cannot be disclosed in this proceeding. HRA has prepared a summary of its methodology and findings, which is included in Applicant's Exhibit 8.

The Applicant has entered a Memorandum of Agreement ("MOA") with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians ("Tribes") to implement Policy #18. A copy of the MOA is included in Application, Sub-Exhibit 9. 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 Application Sub-Exhibit 9. In the MOA, Applicant and the Tribes agreed that the CRPA and the UDP constituted appropriate measures under CBEMP Policy #18 that would protect the cultural, historical, and archaeological values of the sites along the Early Works Alignment. The Applicant stated it is willing to accept a condition of County approval of the pipeline requiring compliance with the MOA and its attachments.

The Applicant states the following in its Final Argument:

> "Opponents contend the Application fails to show that the pipeline complies with CBEMP Policy #18.
>
> The Application explains that the pipeline protects the only nearby inventoried resource that is subject to Policy #18 (CS-26 on the County's Shoreland Values Inventory Map). PCGP's

[16] Camp Castaway: No trace remains of the beach site on the North Spit where the first European settlers made landfall in 1852, during a storm, and set up camp.

archaeological consultant, Historical Research Associates, analyzed CS-26 and concluded that the pipeline does not cross or adversely impact CS-26. The Application further explains that PCGP has entered a Memorandum of Agreement ("MOA") and Cultural Resource Protection Agreement ("CRPA") with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians ("CTCLS"). The Application includes a copy of the MOA. The Application explains how the MOA, if it is adopted as a condition of approval, will ensure that the pipeline complies with Policy #18 and will protect cultural, historical and archaeological values. The CTCLS agree with PCGP that incorporating the MOA and CRPA as a condition of approval for the pipeline will ensure compliance with Policy #18. *See* Exhibit 13 at 2-3."

Exhibit 24, pp. 24-25.

The Tribes submitted a letter stating they "do not take a position 'for' or 'against' the Proposal. Instead, the Tribe seeks to ensure that any permits issued for the JCEP LNG terminal and natural gas pipeline comply with all laws applicable to the Project, including proper consideration and protection of cultural and natural resources." See April 12, 2019 letter from Margaret Corvi, Cultural & Natural Resources Director, Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians, Exhibit 13, p. 1. The MOA and attached CRPA seem more than adequate to ensure the protection of these cultural resources.

The Board finds that the applicant has addressed CBEMP Policy #18, and imposes a Condition of Approval requiring compliance with the terms of the MOA and its attachments (40 pages total, found at Application Sub-Exhibit 9).

d. Policy #22 Mitigation Sites: Protection Against Pre-emptory Uses

Consistent with permitted uses and activities:

- ***"High Priority" designated mitigation sites shall be protected from any new uses or activities which could pre-empt their ultimate use for this purpose.***

- ***"Medium Priority" designated mitigation sites shall also be protected from uses which would pre-empt their ultimate use for this purpose.***

However, repair of existing dikes or tidegates and improvement of existing drainage ditches is permitted, with the understanding that the permitting authority (Division of State Lands) overrides the provisions of Policy #38. Wetland restoration actions, designed to answer specific research questions about wetland mitigation and/or restoration processes and techniques, may be permitted upon approval by Division of State Lands and as prescribed by the uses and activities table in this Plan.

- ***"Low Priority" designated mitigated sites are not permanently protected by the Plan. They are intended to be a supplementary inventory of potential sites that could be used at***

the initiative of the landowner. Pre-emptory uses shall be allowed on these sites, otherwise consistent with uses and activities permitted by the Plan. Any change in priority rating shall require a Plan Amendment.

Except as provided above for research of wetland restoration and mitigation processes and techniques, repair of existing dikes, tidegates and improvement of existing drainage ditches, "high" and "medium" priority mitigation sites shall be protected from uses and activities which would pre-empt their ultimate use for mitigation.

I. This policy shall be implemented by:

a. Designating "high" and "medium" priority mitigation sites on the Special Considerations Map; and

b. Implementing an administrative review process that allows uses otherwise permitted by this Plan but proposed within an area designated as a "high" or "medium" priority mitigation site only upon satisfying the following criteria:

1. The proposed use must not entail substantial structural or capital improvements (such as roads, permanent buildings or nontemporary water and sewer connections); and

2. The proposed use must not require any major alteration of the site that would affect drainage or reduce the usable volume of the site (such as extensive site grading/excavation or elevation from fill); and

3. The proposed use must not require site changes that would prevent the expeditious conversion of the site to estuarine habitat; or

4. For proposed wetland restoration research projects in "medium" priority mitigation sites the following must be submitted:

i. A written approval of the project, from Division of State Lands, and

ii. A description of the proposed research, resource enhancement, and benefits expected to result from the restoration research project.

c. Local government's review and comment on state and federal waterway permit applications for dike/tidegate and drainage ditch actions.

This policy recognizes that potential mitigation sites must be protected from pre-emptory uses. However, "low priority" sites are not necessarily appropriate for mitigation use and are furthermore in plentiful supply. It further recognizes that future availability of "medium priority" sites will not be will not be pre-empted by repair of existing dikes, tidegates and drainage ditches, or otherwise allowed by this policy. This insures the continuation of agricultural production until such time as sites may be required for mitigation. This policy also recognizes that research activities designed to gain further understanding of wetland restoration and mitigation processes and techniques are needed. The consideration of "medium priority" mitigation sites for this purpose will facilitate future identification and successful use of mitigation sites (OR 95-11-010PL 1/24/96).

Board Findings: The Applicant states that CBEMP Policy #22 is potentially applicable to the pipeline in the 15-RS CBEMP management unit. However, according to County maps, the Early Works Alignment would not cross any designated mitigation sites in the 15-RS estuarine zone. Therefore, Policy #22 does not apply to the Early Works Alignment and staff agreed after

reviewing the map of the area.

Opponents contend that the Application fails to show that the pipeline complies with CBEMP Policy #22 because it does not make clear whether the pipeline crosses a designated mitigation site in the 15-RS zone.

Although the Application notes that Policy #22 is "potentially applicable to the pipeline in the 15-RS" zone, it goes on to explain that "according to County maps, the [pipeline] would not cross any designated mitigation sites in the 15-RS estuarine zone" and that, therefore, "Policy #22 does not apply to the [pipeline]." Opponents do not explain why they believe the Application's conclusion is wrong. The Board finds that the opponents' contention is cursory and unsupported by substantial evidence.

e. Policy #23 Riparian Vegetation and Streambank Protection

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

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

Board Findings: The general conditions of the 7-D and 15-RS CBEMP management units require consideration of CBEMP Policy #23. Paragraph I of Policy # 23 requires that local government "shall strive to maintain riparian vegetation within the shorelands of the estuary," "restore or enhance it" when appropriate, and "shall encourage use of tax incentives to encourage maintenance of riparian vegetation." Paragraph I of Policy #23 imposes obligations only on the "local government," not on land use applicants like JCEP.[17]

In a prior proceeding, the Board reviewed Plan Policy #23 and found that the policy does not create a mandatory approval standard applicable to a quasi-judicial land use process. Rather, the policy is framed in aspirational, hortatory, and non-mandatory language. *Compare Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990) (Comprehensive plan policies that "encourage" certain development objectives are not mandatory approval standards); *Bennett v. City of Dallas*, 96 Or App 645, 773 P2d 1340 (1989). Phrases such as "strive to" and "encourage use of" are aspirational in nature, and are not mandatory approval standards.

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[17]Policy #23 does not impose binding obligations or approval criteria on the Application. The policy requires that the County *strive* to achieve and *encourage* certain results. This is not mandatory language and therefore it does not *require* that the County or PCGP take any action. Although Policy #23 explains that "appropriate provisions for riparian vegetation are set forth in the CCZLDO Section 3.2.180," this language does not say that Policy #23 requires compliance with CCZLDO 3.2.180–indeed, Policy #23 says that CCZLDO 3.2.180 contains "appropriate" (not mandatory) "provisions for riparian vegetation." Reading this language in the context of Policy #23's aspirational commands that the County "strive to maintain riparian vegetation," "encourage use of tax incentives to encourage maintenance of riparian vegetation," and "encourage streambank stabilization," it is clear that the relationship between CCZLDO 3.2.180 and Policy #23 is that the former contains the standards for riparian vegetation that the latter requires the County to *strive* to implement and to *encourage*. But Policy #23 does not require that the Application comply with CCZLDO 3.2.180.

CBEMP Policy #23 is purportedly implemented through the requirements of CCZLDO §4.5.180, Riparian Protection Standards in the Coos Bay Estuary Management Plan. However, CCZLDO §4.5.180 no longer exists. It was replaced with Section 3.2.180 but appears not to have been updated in this section when the CBEMP was removed from Chapter IV and inserted into Chapter III. In any event, the former CCZLDO §4.5.180 mirrors the applicable riparian standard in Section 3.2.180, generally required that riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland Fish and Wildlife habitat inventory maps, shall be maintained. The standard also provided the following exception, "[r]iparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways, provided that the vegetation to be removed is the minimum necessary to accomplish the purpose." The pipeline qualifies as a "public utility" and would therefore have been exempt from the 50-foot riparian vegetation maintenance requirements of the former CCZLDO §4.5.180 provided the vegetation removal is the minimum necessary for the pipeline installation.

The Applicant has designed the project to minimize impacts to riparian vegetation as much as possible. The applicant has provided unrefuted substantial evidence of its plans to engage in streambank stabilization and preserve riparian vegetation along the pipeline route. Exhibit 16, Sub-Exhibits 8 & 9 (passim). Therefore, the Board finds the Early Works Alignment complies with Policy #23.

II. Local government shall encourage streambank stabilization for the purpose of controlling streambank erosion along the estuary, subject to other policies concerning structural and non-structural stabilization measures.

This strategy shall be implemented by Oregon Department of Transportation (ODOT) and local government where erosion threatens roads. Otherwise, individual landowners in cooperation with the Oregon International Port of Coos Bay, and Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands and Oregon Department of Fish & 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 have threatened valuable farm land, roads and other structures. *(Emphasis added).*

Board Findings: This policy only mandates the strategy for erosion that threatens road otherwise the intent is to recognize erosion and the susceptibility of erosion n valuable farmland, road and structures. Therefore, the Applicant is correct in their analysis that this policy is not a binding approval criterion for the pipeline. However, the Applicant state that it will comply with the Erosion Control and Re-vegetation Plan set forth in Application Exhibit 6. This will minimize and mitigate for any streambank erosion associated with the pipeline in these two districts. Therefore, this policy has been addressed.

Opponents contend that the Application fails to show that the pipeline complies with CBEMP Policy #23. *See* OSCC Letter dated February 22, 2019, at p. 18. OSCC asserts that streambank stabilization for the purpose of controlling erosion along the estuary is a binding criterion for the pipeline. *Id.* OSCC does not develop this argument beyond the asserted

conclusion, other than to state that Section 3.3. of Vol. 2, Part 1 of the CCCP states that all policies are mandatory. However, a policy can be mandatory but not be applicable to any given application. The applicability of Plan Policies generally depends on whether the base zone standards for that particular district link to the specific policy at issue. Second, there is no way for an applicant like JCEP to show compliance with a policy that requires the local government to "strive" for and "encourage" certain outcomes.

Nonetheless, to the extent that Policy #23 imposes mandatory approval criteria via its link to CCZLDO §3.2.180, the scope of its "mandate" is unclear. At most, Policy #23 merely states that "individual landowners * * * shall be responsible for riparian protection." If that is an approval standard, it is one with a very low threshold for compliance. Furthermore, CCZLDO §3.2.180 generally requires protection of riparian vegetation within 50 feet of an estuarine wetland, stream, lake or river, as identified on the County's Coastal Shoreland and Fish and Wildlife Habitat inventory maps. But CCZLDO §3.2.180.1 contains two exceptions that encompass the pipeline. First, "[r]iparian vegetation may be removed to provide direct access for a water-dependent use," and second, "[r]iparian vegetation may be removed in order to site or properly maintain public utilities and road rights-of-way, provided that the vegetation removed is the minimum necessary to accomplish the purpose."

Applicant specifically discusses "streambank stabilization" and the measures it will take to ensure it, such as installing "erosion control fabric, such as jute or excelsior" to stabilize the streambanks. *See* Biological Assessment, Exhibit 16, Sub-Exhibit 8, at p. 117 of 1074. The opponents offer no serious or focused criticism of the applicant's plan. Thus, the applicant engages in the streambank stabilization mentioned in Policy #23.

As the Application explains, the pipeline qualifies as a public utility within the meaning of the CCZLDO and is for that reason exempt from CCZLDO §3.2.180's general prohibition on the removal of riparian vegetation within 50 feet of an estuarine wetland, stream, lake or river.

Opponents do not explain how Policy #23's aspirational language produces mandatory obligations. They also fail to explain why the pipeline does not qualify for the CCZLDO 3.2.180.1 exemptions described above.

f. Policy #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.

Board Findings: The general conditions in the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of CBEMP Policy #27.

This policy does not create any independent, affirmative obligations. Rather, CBEMP Policy #27 requires Coos County and the respective cities subject to the CBEMP to adopt

implementing ordinances setting forth requirements for uses and activities in identified flood areas. Stated another way, it directs the local government to adopt floodplain regulations, which then serve as approval criteria for development. Policy #27 is satisfied through compliance with the implementing floodplain ordinance in the former CCZLDO Article 4.6, the Floodplain Overlay zone. The Floodplain Overlay zone is currently CCZLDO §4.11. The applicant addresses this policy by showing compliance with the provisions of Article 4.11.The Applicant describes how the pipeline satisfies the applicable floodplain standards in both within and outside the CBEMP districts.

Opponents contend the Application fails to show that the pipeline complies with CBEMP Policy #27 and other criteria of the Floodplain Overlay zone. Specifically, Opponents contend the Application fails to show that the pipeline complies with CCZLDO §§4.11.231, 4.11.232, 4.11.235, 4.11.243, 4.11.251 or 4.11.257.

The Application, combined with PCGP's open record submittals, demonstrates that the pipeline complies with the applicable approval criteria of the Floodplain Overlay zone. CCZLDO §4.11.231-.235 simply establish the applicability of the overlay and require a floodplain development application, which PCGP submitted on February 14, 2019. CCZLDO 4.11.243 does not impose approval criteria on the Application.

CCZLDO §4.11.251 contains various approval criteria of the Floodplain Overlay zone. CCZLDO §4.11.251.1-6 do not apply to the pipeline, which is not "new construction" or a "substantial improvement" as defined by CCZLDO §4.11.220, the definitions of both of which are limited to "structures." The pipeline is not a "structure" within the meaning of CCZLDO §2.1.200. Since CCZLDO §4.11.220 does not contain its own definition of "structure," the general CCZLDO §2.1.200 definition applies, which is "walled and roofed building ... that is principally above ground." The pipeline is not a walled and roofed building principally above ground.

CCZLDO §4.11.251.7 applies to the pipeline. Because the pipeline is not located in a floodway but is rather in a designated floodplain outside of a designated floodway, PCGP must submit a licensed engineer's certification that the pipeline will not result in a cumulative increase of more than one foot during the occurrence of the base flood discharge. PCGP included that certification with its open record submittals in the form of a memorandum from GeoEngineers "Floodplain Memo". *See* Record Exhibit 16, Exhibit 7 at 3. The Floodplain Memo concludes that "[t]he proposed PCGP pipeline construction meets the requirements of [CCZLDO §4.11.251.7] because: (a) the proposed pipeline construction will not increase flood levels during the base flood discharge; and (b) will not result in a cumulative increase of more than 1 foot during the occurrence of the base flood discharge[.]" *Id.*

Moreover, although it is not required to do so, because CCZLDO §4.11.251.1-2 apply only to "structures," the Floodplain Memo also addresses the approval criteria of these provisions, explaining that:

> "The steel pipeline will be installed below grade with a minimum cover of 3 to 5 feet. 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 PCGP: 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. The pipeline will be constructed with corrosion-protected steel pipe. With the implementation of these construction techniques, the pipeline will be constructed with materials and utility equipment resistant to flood damage and with methods and practices that minimize flood damage."

Id.

CCZLDO §4.11.257 establishes approval criteria for a "critical facility," which CCZLDO §4.11.220.9 defines as "a facility in which a slight chance of flooding might be too great," including but not limited to "schools; nursing homes; hospitals; police, fire, and emergency response installations and installations; and installations which produce, use, or store hazardous materials or hazardous waste." The pipeline is not a "critical facility." A slight chance of flooding is not "too great" for the pipeline because it is designed to withstand damage in case of flooding, as discussed above and in PCGP's Hydrostatic Test Plan. The pipeline also does not use, produce, or store natural gas (and natural gas is not a "hazardous material" of the kind that CCZLDO §4.11.220.9 contemplates). The pipeline simply *transports* natural gas, which is produced naturally in the ground, for use and storage elsewhere.

Moreover, CCZLDO §4.11.257 does not forbid critical facilities in the special flood hazard area, but rather requires, "to the extent practicable," that they be located outside the special flood hazard area and permits them there "if no feasible alternative site is available." It is not possible to build the pipeline entirely outside the special flood hazard area. The pipeline must transport natural gas to the North Spit for shipping export. There is simply no way to route the pipeline through Coos Bay, which is necessary to reach the North Spit, without crossing a special flood hazard area.

g. Policy #28Recognition of LCDC Goal #3 (Agricultural Lands) Requirements for Rural Lands Within the Coastal Shorelands Boundary

Unless otherwise allowed through an Exception, Coos County shall manage all rural lands designated within the Coastal Shorelands Boundary as being suitable for "Exclusive Farm Use" (EFU) of ORS 215. Allowed uses are listed in Appendix 1, of the Zoning and Land Development Ordinance.

This policy shall be implemented by using the Special Considerations Map (Policy #3) to identify EFU suitable areas and to abide by the prescriptive use and activity requirements of ORS 215 in lieu of other management alternatives otherwise allowed for properties within the "EFU-overlay" set forth on the Special Considerations Map and, except where otherwise allowed by exceptions, for needed housing and industrial sites.

The "EFU" zoned land within the Coastal Shorelands Boundary shall be designated as "Other Aggregate Sites" inventories by this Plan pursuant to ORS 215.298(2). These sites shall be inventoried as "1B" resources in accordance with OAR 660-16-000(5)(b). Coos County will re-evaluate these inventoried sites pursuant to the requirements of said rule at, or before, County's periodic review of the Comprehensive Plan. (OR 92-08-013PL 10/28/92).

Board Findings: The general conditions in the 15-RS CBEMP management unit require consideration of CBEMP Policy #28. Staff has reviewed this policy and to the extent that some of the 15-RS may be identified as agricultural lands the Applicant has addressed the pipelines as subject to ORS 215. There are no mandatory criteria that the Applicant needs to address. The Applicant has addressed the applicability of the policy and again it has been addressed.

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

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;*

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), The exposure of stable and conditionally stable areas to erosion,*

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

c. *Any other development actions with potential adverse impacts.*

Board Findings: A general condition in the 7-D CBEMP management unit requires consideration of CBEMP Policy #30. However, as far as the Board can ascertain, there are no beach or dune areas within the 7-D district, and therefore the policy does not apply.

Paragraph I of CBEMP Policy #30 does not apply to the Early Works Alignment. The Application explains that although Policy #30 is an approval criterion applicable to the pipeline in

the County's 7-D zone, the pipeline does not cross or impact any area that the County's map designates as a Beach and Dune Area with Limited Development Suitability and therefore Policy #30 does not apply to the pipeline.[18]

Paragraph II of CBEMP Policy #30 does not create affirmative obligations for development in the 7-D district, and so does not apply to the Early Works Alignment

Paragraph III does not apply because the Early Works Alignment does not include protective beachfront structures.

Paragraph IV does not apply to the Early Works Alignment because it does not include any of the enumerated forms of adverse impact. The Early Works Alignment will be constructed in the 7-D district a manner that avoids adverse development impacts on the resources in those areas.

Opponents contend that the Application fails to demonstrate that the pipeline complies with CBEMP Policy #30. *See* OSCC Letter dated May 3, 2019, at p. 13. Exhibit 18. Opponents contend that the westernmost terminus of the proposed conceptual string alignment and temporary extra work area is located within an area designated as a Beach and Dune Area with Limited Development Suitability. To support this claim, Opponents cite to a map in PCGP's open record submittal. *See* Record Exhibit 16, Exhibit 11 at p. 23. The Opponents are simply wrong on the facts. The western terminus of the proposed conceptual string alignment and temporary extra work area depicted by the map that Opponents cite is not within a Beach and Dune Area with Limited Development Suitability that applicable County map identifies. Opponents may be relying on the Coos County Zoning Atlas, which does depict the western terminus as a "limited suitability" area. But that map does not apply to the pipeline. Policy #30 explicitly says that the operative map is the "Coos Bay Estuary Special Considerations Map," which map does not depict the western terminus as a Beach and Dune Area with Limited Development Suitability.

i. Policy #34 - Recognition of LCDC Goal #4 (Forest Lands) Requirements for Forest Lands within the Coastal Shorelands Boundary.

Unless otherwise allowed through an Exception, Coos County shall manage all rural lands designated on the Special Considerations Map as "Forest Lands" within the Coastal Shorelands Boundary consistent with the "Forest Uses" requirements of LCDC Goal #4. Allowed uses are listed in Appendix 3 of the Zoning and Land Development Ordinance.

Where the County's Comprehensive Plan identified major marshes, significant wildlife habitat and riparian vegetation on coastal shorelands subject to forest operations governed by the Forest Practices Act, the Forest Practice program and rules of the Department of Forestry shall be carried out in such a manner as to protect and maintain

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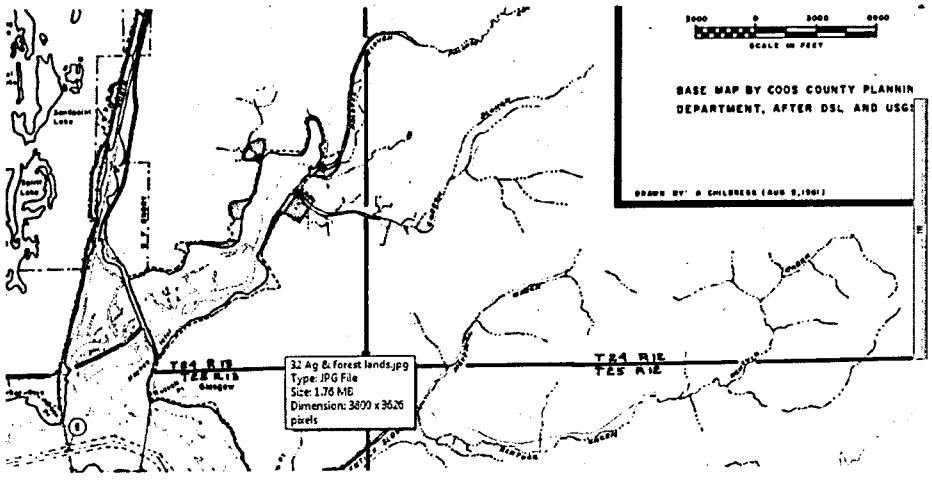
[18] Paragraph I of Policy #30 is limited to "areas designated as 'Beach and Dune Areas with Limited Development Suitability' on the Coos Bay Estuary Special Considerations Map. Paragraphs II-IV of Policy #30 do not apply to the pipeline for the reasons that the Application explains. Opponents do not challenge this conclusion and so this contention does not address those provisions.

the special shoreland values of the major marshes, significant wildlife habitat areas, and forest uses especially for natural shorelands and riparian vegetation.

This policy shall be implemented by using the Special Considerations Map (Policy #3) to identify "Forest Lands", and to abide by the prescriptive use and activity requirements of LCDC Goal #4 in lieu of other management alternatives otherwise allowed for properties within the "Forest Lands-Overlay" set forth on the Special Considerations Map, and except where otherwise allowed by Exception for needed housing and industrial sites.

This policy recognizes that the requirements of LCDC Goal #4 are equal and not subordinate to other management requirements of this Plan for "Forest Lands" located within the Coastal Shorelands Boundary.



Board Findings: A general condition in the 15-RS CBEMP management unit requires consideration of CBEMP Policy #34. This requirement requires a review of the Agricultural and Forest Lands Map to find the overlay areas as shown above. Therefore, Policy #34 is not applicable.

j. Policy #49 Rural Residential Public Services.

Coos County shall provide opportunities to its citizens for a rural residential living experience, where the minimum rural public services necessary to support such development are defined as police (sheriff) protection, public education (but not necessarily a rural facility), and fire protection (either through membership in a rural fire protection district or through appropriate on-site fire precaution measures for each dwelling).

Implementation shall be based on the procedures outlined in the County's Rural Housing State Goal Exception.

I. This strategy is based on the recognition:
a. That physical and financial problems associated with public services in Coos

Bay and North Bend present severe constraints to the systems' ability to provide urban level services, and

b. That rural housing is an appropriate and needed means for meeting housing needs of Coos County's citizens.

Board Findings: General conditions in the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of Policy #49, #50 and #51. The pipeline is not in need of rural residential public services. Therefore, these policies are not applicable to the pipeline.

k. Policy #50 Rural Public Services.

Coos County shall consider on-site wells and springs as the appropriate level of water service for farm and forest parcels in unincorporated areas and on-site DEQ-approved sewage disposal facilities as the appropriate sanitation method for such parcels, except as specifically provided otherwise by Public Facilities and Services Plan Policies #49, and #51. Further, Coos County shall consider the following facilities and services appropriate for all rural parcels: fire districts, school districts, road districts, telephone lines, electrical and gas lines, and similar, low-intensity facilities and services traditionally enjoyed by rural property owners.

This strategy recognizes that LCDC Goal #11 requires the County to limit rural facilities and services.

Board Findings: General conditions in the 7-D, 14-WD, and 15-RS CBEMP management units require consideration of Policy #49, #50 and #51. The pipeline is not in need of rural residential public services. Therefore, these policies are not applicable to the pipeline.

l. Policy #51 Public Services Extension.

I. Coos County shall permit the extension of existing public sewer and water systems to areas outside urban growth boundaries (UGBs) where such service provision is solely for:
- *a. development of designated industrial sites;*
- *b. development of "recreational" planned unit developments (PUD's);*
- *c. curing documented health hazards;*
- *d. providing domestic water to an approved exception for a rural residential area.*

II. This strategy shall be implemented by requiring:
- *a. that those requesting service extensions pay for the costs of such extension; and*
- *b. that the services and facilities be extended solely for the purposes expressed above, and not for the purpose (expressed or implied) of justifying further expansion into other rural areas; and*
- *c. that the service provider is capable of extending services; and*
- *d. prohibiting hook-ups to sewer and water lines that pass through resource lands as allowed by "I, a through d" above; except, that hook-ups shall be allowed for uses covered under "II, a through d" above.*

Board Findings: General conditions in the 7-D, 14-WD, and 15-RS CBEMP management units

require consideration of Policy #49, #50 and #51. The pipeline is not in need of rural residential public services. Therefore, these policies are not applicable to the pipeline.

Jody McCaffree argues that CBEMP Policy #48 applies to this application. *See* Jody McCaffree letter dated March 15, 2019, at p. 22. Exhibit 8. Jody McCaffree argues that "the applicant must provide a geotechnical report that demonstrates [that the LNG Terminal] may safely be constructed and operate in the natural hazard zone. *Id.*

Ms. McCaffree failed to cite any approval criterion that makes CBEMP Policy # 48 apply to the pipeline. Nonetheless, as discussed above, PCGP submitted into the record the HDD Feasibility Report, which includes analyses of soil character for installing the pipeline. Further, PCGP submitted a Coos Bay Crossing Seismic Hazard Evaluation, prepared by engineers, that concludes that none of the potential liquefaction-induced strain on the pipeline will exceed its design standard. *See* Exhibit 16, Sub-Exhibit 4 at p. 2. This material constitutes substantial, expert-prepared evidence that addresses the soil-based concerns that Ms. McCaffree raised. Ms. McCaffree, by contrast, provided no evidence or legal basis for her claims.

4. Issues Surrounding HDD Technology and Techniques

a. Summary of HDD.

The applicant proposes to use the Horizontal Directional Drilling ("HDD") pipe installation method in the CBEMP management units to reduce the potential for environmental harm. The applicant describes HDD in its application narrative, at pp. 5-6, as follows:

The HDD method of placing the pipeline involves drilling under a feature and pulling the pipeline into place through the drillhole that has been reamed to accommodate the diameter of the pipeline. This procedure involves three main phases described below:

Phase 1 - Pilot Hole: The pilot hole establishes the ultimate position of the installed pipeline. For this operation, an initial hole is drilled from the entry point to the exit point on the opposite side of the crossing. The head of the pilot drill string contains a pivot joint to provide directional control of the drill string. By altering or steering the drill head, the operator can control the direction as the drill progresses. Thus, the pilot hole can be directed downward at an angle until the proper depth is achieved, then turned and directed horizontally for the required distance, and finally angled upward to the surface. Tracking and steering of the HDD drill head is generally guided using a two-wire system. The system consists of two insulated wires (approximately 0.25-inch in diameter) that are laid on the ground and are charged with an electrical current. A magnetometer accelerometer probe located behind the drill bit detects the electric current to triangulate the drill bit position for steering. As the pilot drill string is advanced, additional sections of drill pipe are added at the drill rig located at the entry point. High-pressure jetting of drilling fluid at the drill head and, in harder soil formations, rotation of the drill bit, facilitates advancement of the drill string. The drilling fluid (mud) is typically a non-toxic bentonite clay mixed with fresh water to make a slurry. Once the pilot hole exits in an acceptable location, the reaming operation is initiated.

Phase 2 - Reaming: During the reaming phase, a reaming head is attached to the drill pipe and pulled back through the pilot hole to enlarge it. Several reaming passes may be made with incrementally larger reaming heads to enlarge the hole to approximately 1.5 times the diameter of the pipeline. Various reaming heads can be utilized, depending on the substrate encountered. High-pressure drilling fluid is jetted through the reaming head to float out drill cuttings and debris, to cool the drilling head, and to provide a cake wall to stabilize the hole. Once the drill hole is enlarged to the proper diameter, the pipe is pulled back through the reamed hole.

Phase 3 - Pullback: The last step to complete a successful installation is the pullback of the prefabricated product pipe into the enlarged hole. The pullback process is the most critical step of the HDD process. A reinforced pullhead is welded to the leading end of the product pipe and to a swivel connected to the end of the drill pipe. The swivel is placed between the drill rig and the product pipe to reduce torsion and prevent rotation from being passed to the product pipe During pullback, the pre-tested carrier pipe pull section is supported with a combination of roller stands and/or pipe handling equipment to direct the product pipe into the hole at the correct angle, reduce tension during pullback, and prevent the product pipe from being damaged. After the product pipe is in place, the installed crossing is inspected with an inline caliper tool (optional), tie-in welds on each side of the crossing are completed, and the crossing is hydrostatically tested along with the pipeline.

b. Open Cut Trenching.

For the portion of the Early Works Alignment that will be placed via trenching (*i.e.* on land, through the Industrial, Forest, and Exclusive Farm Use zones), the applicant states that the trench work will be completed as follows:

The depth of the trench will be sufficient to provide a minimum depth of cover over the pipeline of 30 inches in normal soil, 18 inches in consolidated rock, and 48-60 inches in agricultural lands. Applicant will strive to exceed the minimum U.S. Department of Transportation standards in 49 CFR Part 192 where feasible and will achieve 36 inches of cover with normal soils and up to 24 inches of cover in consolidated rock areas.

After trenching is completed, the pipe sections will be strung along the trench, bent to fit the contour of the trench bottom, aligned, welded together, and placed on temporary supports along the edge of the trench. All welds will be visually inspected, tested, and repaired, if necessary. After final inspection, the pipe assembly will then be lowered into the trench by side-boom tractors and excavators.

The trench will then be backfilled using a backfilling machine or bladed equipment.

c. Legal Issues Pertaining to HDD Boring.

1. Generalized Concerns.

A number of opponents expressed their safety concerns and general dislike of the Horizontal Directional Drilling ("HDD") pipe installation method. At the outset, the Board was very surprised to see the opponents' negative reaction to the HDD bore concept, given that the

alternative approved by Coos County in 2010 and 2012 (*i.e.* open cut trenching in Hayes Inlet) would have relatively more, albeit temporary, effects on the aquatic environment. One would think that project opponents would at least be giving PCGP some credit for re-evaluating their plans in order to provide greater protections to the environment.

To be fair, the opponents are generally fearful of the HDD and its potential to harm the estuary due to the fact that HDD technology is somewhat new and evolving. Heightening this fear, Coos County residents had a very bad and inexcusable experience with the Coos County natural gas pipeline installation project that was botched by Mastec, Inc. *See* McCaffree letter dated May 24, 2019, at p. 3. Exhibit 23, Sub-Exhibit G, Sub-Exhibit H. The Board believes that it would be arbitrary and capricious to decide this case on the basis of the Mastec experience, unless a record was developed that demonstrated lasting environmental damage from a previous HDD bore of similar size and scope done under similar environmental conditions. *Compare Islander East Pipeline Co., LLC v. Connecticut Dept. of Environmental Protection*, 482 F3d 79, 100-4 (2d Cir. 2006) (Court faulted the agency for, among other things, relying on negative past experiences with construction projects in the Long Island Sound without considering subsequent advances in pipeline construction technology.). *Contrast Islander East Pipeline Co., LLC v. McCarthy*, 525 F3d 141 (2d Cir. 2008), *rev den.*, (2009) (permissible for state to look at the previous long term environmental damage done by a previous pipeline constructed in the same waters using the same technology).

Many of the opponents' concerns go far beyond the scope of these proceedings. If an applicant satisfies the legal standard and a use is allowed in a zone, the applicant's chosen method for building that use is generally outside the scope of the land use hearing. To use an analogy, if an applicant meets the legal criteria to build a house, or a bridge, the particular construction method used to build that house or bridge is immaterial from a zoning standpoint. As a general matter, and in the case at hand, zoning laws do not govern construction methods.

Nonetheless, as noted elsewhere in this decision, the management objectives of the various natural management units and conservation management units traversed by the pipeline require the County to "manage" those units in a manner that either "protects" and "preserves" or "conserves" the aquatic resources. Approved development must be consistent with these management objectives. For this reason, the Board does not agree with the Applicant that HDD boring is an issue that requires no discussion. Though unlikely, it is possible that if the HDD boring is not successful, it could have significant impacts on the resources in the estuary. Having said that, as discussed in more detail below, the Board does not believe that the risk posed by HDD is great enough to warrant the conclusion that the management objectives are violated by the proposed HDD bore being proposed here.

The primary concern about HDD boring is the potential for frac-outs. A "frac-out" is the unintentional return of drilling fluids to the surface during HDD operations. A frac-out occurs in one of two situations (1) when the down hole mud pressure exceeds the overburden pressure (i.e. shallow or loose sections of the bore), or (2) the fluid finds a preferential seepage pathway (such as fault lines and fractures, infrastructure or loose material). Whether an HDD bore can be done without major frac-outs depends, in large part, on the skill and diligence of the contractor. Jody McCaffree submitted two newspaper articles that discuss the problems that occurred when Mastec tried to conduct HDD boring operations in Douglas and Coos County in 2004. *See* Exhibit 23.

Those problems are not evidence that HDD cannot be done successfully; rather, they are proof that BMPs need to be rigorously adhered to and enforced. Moreover, as reflected by the fact that Applicant's engineers have deemed the HDD crossings feasible now whereas, several years ago, the previous pipeline developer apparently did not, HDD technology has come a long way since 2004, and there will undoubtedly be operators that have 15 years more experience than they did in 2004.

One insightful commenter, Mr. Michael Graybill, argues that HDD boring is "simply not addressed by the plan because this technology was not in common practice at the time these plans and ordinances were developed in Coos County" and that the CCZLDO and CBEMP "lack explicit references to and guidance related to the installation of a high-pressure gas transmission pipeline deep below the surface of the estuary." *See* Graybill letter dated March 13, 2019, at p. 1. The Board agrees with this observation, as far as it goes. However, Mr. Graybill then uses that as the premise for an untenable contention. He states:

> "Chapter 3 of the Coos County Land Use Development Ordinance (hereinafter CCLUDO or the code) addresses "Estuary Zones". SECTION 3.1.400 is entitled "prohibited uses" which states the following:
>
> *PROHIBITED USES: Unless an exception is specifically listed in the Ordinance, any use not listed or specifically identified as not permitted are prohibited.*
>
> I contend that multiple activities and uses included in the early works application that are the subject of this review and analysis are not specifically listed in the CCLUDO. Accordingly, the hearings officer and the planning office should classify these action[s] as prohibited."

See Graybill letter dated March 13, 2019, pp. 1-2. Exhibit 10. This argument quickly falls part under scrutiny. The only "use" proposed by the Applicant is a "utility." The CBEMP allows "Low Intensity Utilities" (such as the proposed pipeline) in every estuary zone except the DDNC-DA District. Any reasonable construction technique associated with the installation of a utility is also permitted. There is one relevant estuary zone (DDNC-DA) that does not currently allow "Subsurface Low Intensity Utilities," and this is undoubtedly due to the fact that they drafters did not contemplate the use of HDD technology. The Applicant proposes a text amendment to that DDNC-DA estuary zone to permit such utilities.

As mentioned above, if a "use" is permitted in the CBEMP District in question, then the construction techniques associated with that use are also anticipated. In this regard, the HDD boring technology is a construction technique, not a "use." This reasoning was the primary determining factor which convinced the County that the Applicant should be allowed to conduct an open-cut trench in Hayes Inlet. Thus, assuming that Mr. Graybill is correct that HDD boring was not contemplated in the early 1980s, then the only other alternative for installing utilities is open-cut trenching. The Board strongly suspects that Mr. Graybill and other opponents would agree that HDD boring, on balance, is less environmentally impactful

than an open trench cut.

Many Opponents argue that HDD boring is an "activity" as defined by the CBEMP. The parties correctly point out that the CBEMP regulates "uses" and "activities." In the CBEMP, an "activity" is "[a]ny action taken either in conjunction with a use or to make a use possible. Activities do not in and of themselves result in a specific use. * * * *." CBEMP Vol II, Part 1, Section 3.2. The definition continues and identifies specific examples of activities such as dredging, piling, and fill. *Id.*

HDD is not an activity that any CBEMP zone lists or regulates, although it arguably satisfies CCZLDO §2.1.200's the first sentence of the definition of "activity." This is due to the fact that HDD boring does not meet the second sentence of the term "activity." HDD does, in and of itself, result in a specific "use:" a utility. Stated another way, the HDD method of installing the pipeline is not an "activity" because, contrary to the CBEMP definition, it "result[s] in a specific use," which is the pipeline.

As explained at pages 4-5 of the Application narrative, the HDD installation process consists of three phases (pilot hole, reaming, and pullback) that, together, result in the placement of a pipeline that is ready for operation. As the explanation in the narrative demonstrates, the HDD installation is not merely a site-preparation activity like dredging or fill. Rather, it is a construction method that results in the use.

CCZLDO §3.1.400 explains that "[u]nless an exception is specifically listed in the [CCZLDO], any *use* not listed or specifically identified as not permitted are (sic) prohibited." (Emphasis added). Thus, this "not-listed-not-allowed" limitation applies only to *uses*, although the CBEMP zones regulate *uses and activities*. The inference is that the code simply does not regulate activities that it does not specifically list (the omission makes sense for activities like HDD, which are purely incidental to a listed use, and are thus analogous to any other construction method that An applicant uses to construct or install a use). Therefore, the Board finds that the HDD installation method is not an "activity" within the meaning of the CBEMP.

Opponents contend the HDD technology is not safe, not feasible, and that it endangers the estuary and its wildlife. Except as noted below, opponents' contentions do not provide a basis for denying the application.

First accomplished in the 1970's, HDD is not a new technology. Although mistakes were common in the early years, the proficiency at which it can be accomplished is getting better every year. OSCC and many other opponents point out that when PGCP submitted its pipeline application roughly a decade ago, it stated that a "wet open cut" trenching method was the only practical way to accomplish the pipeline installation. *See* OSCC letter dated June 1, 2019, Exhibit 11, at p. 5. However, the Board gleans from the record as a whole an inference: that HDD bore technology has advanced considerably in the intervening nine or ten years, particularly with regard to the feasibility of longer bores. Exhibit 16, Sub-Exhibit 11.

PCGP has submitted into the record extensive substantial evidence demonstrating that HDD is safe, feasible, and unlikely to have significant adverse impacts on the estuary or its wildlife. This evidence includes:

- Exhibit 16, Sub-Exhibit 1 - Hydrostatic Test Plan dated October 2018: This plan describes the process PCGP will follow to strength test the pipeline after it has been installed to verify the pipeline's integrity before it is placed into service to flow natural gas;
- Exhibit 16, Sub-Exhibit 2 - Corrosion Control Plan dated January 2018: This plan describes the methods and materials PCGP will implement to protect the pipeline from external, internal, and atmospheric corrosion as required by 49 CFR Part 192;
- Exhibit 16, Sub-Exhibit 3 - Drilling Fluid Contingency Plan for Horizontal Directional Drilling Operations dated September 2017: This plan explains how PCGP will, through its design and operations, implement measures to prevent and contain inadvertent releases of drilling fluid during the Horizontal Directional Drilling ("HDD") installation of the pipeline;
- Exhibit 16, Sub-Exhibit 4 - Coos Bay Crossing Seismic Hazard Evaluation prepared by GeoEngineers, Inc. and Atlas Geotechnical dated June 2018: This report includes a site-specific liquefaction hazard evaluation for the Coos Bay Crossing segment of the pipeline and concludes that none of the potential liquefaction-induced strain on the pipeline will exceed the pipeline's design standard;
- Exhibit 16, Sub-Exhibit 5 - Resource Report No. 11 (Reliability and Safety) dated September 2017: This report was submitted to the Federal Energy Regulatory Commission and explains how the design, construction, and operation of the pipeline will comply with federal safety standards, will prevent incidents and failures, and will protect the public;
- Exhibit 16, Sub-Exhibit 6 - Letter Addressing Landowner Compensation Practices from John Stevenson, PCGP Land Manager, dated April 12, 2019: This letter explains PCGP's practices for compensating landowners for crop and/or timber loss caused by pipeline construction disturbance;
- Exhibit 16, Sub-Exhibit 7 - Letter Addressing Coos County Floodplain Standards prepared by GeoEngineers, Inc. dated April 12, 2019: This letter, which was prepared by PCGP's licensed engineer, evaluates whether the County portions of the Early Works segment will comply with the County's newly adopted floodplain standards and maps. The letter concludes that the project will comply with these standards.
- Exhibit 16, Sub-Exhibit 8 - Biological Assessment and Essential Fish Habitat Assessment revised September 2018: This report identifies the extent of effects on endangered or threatened species (including species regulated under a federal fisheries management plan) and their critical habitat and recommends measures that would avoid, reduce, or mitigate such impacts.
- Exhibit 16, Sub-Exhibit 9 - Draft Environmental Impact Statement issued by the Federal Energy Regulatory Commission dated March 2019: This report assesses the potential environmental effects of the construction and operation of the pipeline in accordance with the requirements of the National Environmental Policy Act. It recommends that the proposed alignment of the pipeline included in the Applications be incorporated into the final route.
- Exhibit 16, Sub-Exhibit 10 - Memorandum prepared by GeoEngineers, Inc. dated April 12, 2019: This memorandum addresses the concern raised about vibration impacts associated with the HDD installation and operation.
- Exhibit 16, Sub-Exhibit 11 - Revised Horizontal Directional Drilling Feasibility Evaluations for East and West Coos Bay from Geo-Engineers, Inc. dated April 12, 2019: This exhibit consists of feasibility reports for the two HDD segments of the pipeline under

Coos Bay.

Some of the best evidence in the record comes in the form of an engineering report entitled "Revised Horizontal Directional Drilling Feasibility Evaluations for East and West Coos Bay" ("HDD Feasibility Report," Exhibit 16, Sub-Exhibit 11). The HDD Feasibility Report explains that it is both safe and feasible to use HDD to install the pipeline beneath and across Coos Bay. Exhibit 16, Sub-Exhibit 11. The report is a 162-page technical analysis of the feasibility of using HDD to install the pipeline that covers both the pipeline's west (5,137 feet) and east (8,972 feet) bay crossings. *See* Exhibit 16, Sub-Exhibit 11 at 6, 73. The report explains that PCGP explored subsurface conditions for the west bay crossing with two borings (CBW-1 and CBW-2) up to 151.5 feet below ground surface and by reviewing a number of exploratory borings that PCGP previously completed in Coos Bay to investigate alternative pipeline alignments. *Id.* at 6. PCGP explored subsurface conditions for the east bay crossing with three borings (CBE-3, CBE-4A, and CBE-5) up to 235.5 feet below ground surface and by reviewing borings previously completed by others. For both crossings, the report lists primary feasibility considerations and concludes that HDD is technically feasible to install the pipeline. *Id.* at 6, 73.

Moreover, the report employs a hydraulic fracture and drilling fluid release model that demonstrates that "the risks of drilling fluid surface release are generally low within Coos Bay." *Id.* at 73. There is a "high risk" of hydraulic failure and release "while drilling the pilot hole westward within the very soft silt and loose silty sand" at the east end of the east bay crossing. *Id.* To mitigate the risk posed by such soft and loose soil, the HDD Feasibility Report explains that a "large-diameter casing with a centralizer casing will likely need to be installed at the east side entry[.]" *Id.* at 74.

The HDD Feasibility Report concludes that it is not likely feasible to install 700 foot of casing using conventional methods, but that Direct Pipe™ technology may be feasible. The DEIS states the following about Direct Pipe ™ Technology:

> [Direct Pipe] technology is a trenchless construction method that can be used to install pipelines underneath rivers or roads without surface impacts. It is a combination of a micro-tunneling process and HDD. DPs are completed using an articulated, steerable micro-tunnel boring machine (MTBM) mounted on the leading end of the pipe or casing. Bentonite slurry is used to increase lubrication and advance the MTBM. The pipeline is pre-fabricated and welded in sections to the back of subsequent sections as the MTBM advances.

Exhibit 16, Sub-Exhibit 9, at p. 134.

The Applicant also includes a contingency plan ("HDD Fluid Contingency Plan," Exhibit 16, Sub-Exhibit 3) that PCGP prepared in order to address what remedial actions would be taken in the event of an inadvertent release of drilling fluid and resulting sedimentation and turbidity. The HDD Fluid Contingency Plan explains that "in the event [HDD] drilling fluid is released into a waterbody, drilling fluid will enter the waterway causing short term, temporary water quality impacts downstream of the project area including sedimentation and turbidity," which impacts

can adversely affect the estuary, including by impacting fish. *See* Record Exhibit 16, Sub-Exhibit 3 at 8.

The HDD Fluid Contingency Plan also explains that "the potential for releases of drilling fluid can be reduced through proper HDD design." *Id.* at 4. Accordingly, the plan explains that PCGP evaluated the HDD crossings that it proposes for the pipeline for "workspace, construction access and topographic relief," for "drilling feasibility and to select an optimal drill path that passes through the most competent and desirable subsurface strata with the least potential for hydraulic fracture and surface release of drilling fluid," and to "calculate the safety factor against hydraulic fracture along the entire drill path." *Id.* at 5. The plan further explains the "operational elements" PCGP plans to implement that, "if executed properly, significantly reduce the potential for inadvertent [release of HDD fluid]," which elements include "maintaining adequate pump volumes," "monitoring and maintaining ideal drilling fluid properties," and "maintaining appropriate penetration rates to maintain proper drilling fluid circulation." *Id.*

Furthermore, the plan explains that the highest potential for inadvertent releases of HDD fluid is at the entry and exit locations of the HDD crossing, which locations have dry land segments where fluid releases are easily detected and contained. *Id.* at 6. To isolate and contain releases at these locations, PCGP may erect berms around drill sites and use earthmoving equipment (backhoes, bulldozers). *Id.* The HDD contractor will immediately act to correct any detected fluid release. *Id.*

With respect to the potential of aquatic releases of drilling fluid, the Applicant notes that HDD fluid is non-toxic and primarily composed of water and bentonite clay. *Id.* at 7. If there is a release in high energy environments in Coos Bay, the currents would spread and dilute the HDD fluid. In a low-energy environment, HDD fluid would settle on the bay floor, where PCGP can contain and remove it. *Id.* In either case, the Board finds the effects on the environment would be temporary and insignificant.

The HDD Fluid Plan outlines the countermeasures PCGP would take in the event of a release. PCGP or the HDD contractor would temporarily stop drilling to formulate a response plan, assess the cause of the hydraulic fracture and fluid release, and then implement procedures to control the factors causing the same. *Id.* Although specific countermeasures will be site and problem specific, corrective measures may include: (1) increasing drilling fluid viscosity to seal the location of release; (2) incorporating "lost circulation materials" into the hole and pumping them down into it to seal the fractured zone; (3) installing a steel casing that will be a temporary conduit for drilling fluids to flow while opening the remaining section of the hole to a diameter acceptable for receiving the proposed pipeline sections; (4) and installing a grout mixture into the drilled hole to seal the fractured zone. *Id.* at 8.

The HDD Feasibility Report and HDD Fluid Plan are together more than sufficient to demonstrate that it is feasible to use HDD to install the pipeline and a generally low risk of hydraulic fracture and inadvertent release of HDD fluid while doing so. The HDD Feasibility Report and HDD Fluid Plan also explain the methods PCGP will employ to minimize that risk and/or to contain sedimentation and turbidity if they occur.

The Opponents are given to asserting broad allegations of potential environmental harm,

with little to no evidentiary basis whatsoever. OSCC states that "[r]eleases of bentonite clay are known to be detrimental to oxygen levels in water, and have [the] potential to harm commercially important species such as salmon, Dungeness crabs, and oysters." *See* OSCC letter dated February 22, 2019, at p. 5, Exhibit 3. OSCC provides little evidence to substantiate its claim. Similarly, Opponent Jody McCaffree states:

> "Coos Bay consists of about 14,000 acres of varied intertidal and subtidal substrate habitat conditions including algae beds, eelgrass sites, marshlands, and mostly unconsolidated substrate. The upper Coos Bay estuarine habitat contains important rearing habitat supplied by estuarine wetlands, algae, and eelgrass beds, which are important conditions for estuarine fish and migratory salmon, as well as commercial oyster beds and other marine habitat including a variety of birds.
>
> Estuaries are the most important and dynamic habitat type known on earth; where fresh and saline waters mix, creating natural resource biomass far exceeding all others. Recent signs show improvement or biological recuperation of the Coos Bay estuary. Notwithstanding this important healing process, *the LNG (Jordan Cove facility and Pacific Connector pipeline) development would reverse this biological recovery and cause irreplaceable and irretrievable ecosystem change."*(italic emphasis in original)

See McCaffree letter dated February 22 letter at p. 6. Exhibit 4. In support of these assertion, both Ms. McCaffree and OSCC submitted a brief paper entitled "Impact of Jordan Cove LNG Terminal construction on the Nursery Habitat of the Dungeness crab" by ecologist Sylvia Yamada Ph.D dated January 14, 2019 (Exhibit 4, Sub-Exhibit 2).

The Yamada study states that the crabs were "consistently abundant" from 2002 through 2014 in trap sites set near the proposed Jordan Cove Energy Project. That location, however, is far from most of the Early Works Alignment, and not directly relevant to the land use applications under consider by the County.

Dr. Yamada's letter further states that:

> "...estuaries are important nursery habitat for Dungeness crabs. These need to be kept in mind when a trench is dug in Haynes Inlet, the Trans-Pacific Parkway is to be expanded and an upland area is cut out to create a berth for ocean-going vessels. Not only will the turbidity during the construction phase be of concern to the ecological community, the ongoing dredging to maintain the berth and shipping channels will continue to be a disturbance to the ecosystem. It will result in habitat loss for native species, including the valuable Dungeness crab. In one study between 45 and 85% of the Dungeness crabs died during a simulated dredging operation (Chang and Levings, 1978)." (Exhibit 4, Sub-Exhibit 2, page 1)

This conclusion is unhelpful to the opponents in several ways. First, the opponents state that the small amount of potential disruption caused by the pipeline's HDD installation will have seriously detrimental effects on the marine habitat, decimating the crab, fish and oysters that live nearby. Yet all the evidence offered by the opponents show these marine populations thriving even after the US Army Corps of Engineers (USACE) has deepened the channel and undergone years of annual maintenance dredging. The existing Coos Bay Shipping Channel undergoes annual maintenance dredging which removes up to 2,100,000 cubic yards of sand and gravel every year, with no apparent serious adverse environmental effects, judging on the evidence in the record. The County's own Comprehensive Plan records show an average of 635,167 cubic yards dredged from Coos Bay in the years 1958 to 1970. *See* Coos County Comprehensive Plan Vol. II, Part 2, Section 4, page 13.

The opponents assert that the pipeline's HDD drilling will harm the ecosystem, while massive nearby ship canal dredging *every year* seems to have caused no significant harm at all. The conclusion seems inescapable: the opponents' allegations of environmental catastrophe are speculative, wildly exaggerated, and simply wrong. The Opponents make various other claims about the serious potential harm to Coos Bay flora and fauna they fear will be caused by drilling for the pipeline. These speculative assertions overlook one very important fact: the proposed HDD drilling, in the grand scheme of things, is quite minor. ODOT drilled, dug, deposited a massive quantity of rock material into Coos Bay as part of the 1998 Haynes Inlet Slough Bridge Project on Highway 101 (approved as Coos County Ordinance 98-07-006PL, September 30, 1998). The Board takes official notice of this ordinance. The Opponents do not explain how the *vastly* larger amount of annual USACE maintenance drilling and massive fill associated with the 1998 bridge replacement project seemed to have no serious long-term effects on crab, fish, eelgrass and oysters. It does not seem reasonable to assume that the comparatively small, underground pipeline will irrevocably damage that same marine population. These facts provide the substantial evidence that the local wildlife (both flora and fauna) has remarkable regenerative power and is unlikely to be substantially harmed in the long-term by the Applicant's current proposal.

Another problem with Dr. Yamada's paper is that she offers only very vague and nebulous statements; no firm conclusions can be drawn from them. Phrases like turbidity "*will be of concern to* the ecological community" or "*could* impact the important Oregon Dungeness fishery" are far too indeterminate to be considered substantial evidence, which is what the law requires. This phraseology is essentially meaningless.

Furthermore, the foundation for Dr. Yamada's conclusions are very weak as well. She cites to a forty-year old "simulated dredging" study that apparently showed some partial Dungeness crab habitat loss, somewhere at some unknown time, but without knowing more about this study no comparison may be drawn with the current land use applications at issue. Certainly, the Yamada study does not undermine the strength of the applicant's case. Indeed, there is no evidence that the Early Works alignment sites contain any eelgrass or Dungeness crab habitat at all. Nor does Ms. Yamada cite to any of the relevant Coos County approval criteria that might to relate to Dungeness crabs. For these reasons, the Board attaches little or no weight to the Yamada testimony.

The Board finds that the Applicant will use various methods to minimize the effects on water turbidity within the bay. The Applicant submitted hundreds of pages of scientific evidence on the topics of safety, maintenance, and mitigation.

By way of contrast, the Opponents have submitted no engineering reports, nor have they attempted to refute the Applicant's submissions with scientific expert testimony. PCGP, on the other hand, submitted extensive substantial evidence regarding the effects of HDD on estuarine wildlife, including on oysters, crabs, and salmon. PCGP submitted a memorandum from an engineer, Trevor Hoyles, that responds to the claim that "HDD vibration will cause wildlife disturbances, release toxic chemicals, and cause subsidence." *See* Record Exhibit 16, Sub-Exhibit 10. The memorandum explains that "HDD operations involve successive passes with rotary drilling methods to create a hole through which the carrier pipe is installed" and that "the hole is not created using percussion or impact methods" and as a result "vibration levels associated with HDD methods are not typically of a magnitude that can be felt at the ground surface." *Id.* The memorandum further explains that "much of the proposed HDD path is situated at depths greater than 100 feet, which reduces the potential for vibrations to be detected by humans or wildlife." *Id.* The memorandum thus concludes that there is little to no risk of vibration detectable by wildlife in the estuary.

With respect to noise, PCGP has submitted into the record a memorandum from Edge Environmental, Inc. that explains that "all HDD operations would occur within the estuarine substrate and there would be no sounds generated through the water column." *See* Exhibit 21, Sub-Exhibit 1 at 3. The memorandum further explains that "HDD operations would not be 'audible' to oysters (or mussels) through vibrations transmitted through the substrate." *Id.* Ultimately, the memorandum concludes that the possibility that oysters would hear noise or detect vibrations from HDD "appears unlikely and insignificant in that any effect to oysters could not be detected or meaningfully measured." *Id.* The Biological Assessment and Essential Fish Habitat Assessment ("Biological Assessment") that PCGP submitted into the record further explains that although "construction noise levels from HDD ... activities would exceed the FERC limit of 55 dBA Ldn (the levels predicted for HDD operations in Coos Bay West and East are 53.2 to 65.1 dBA and 43.8 to 61.8 dBA, respectively) ... PCGP has proposed mitigation measures that would be used during construction, which if implemented would result in predicted noise levels below acceptable limits." *See* Record Exhibit 16, Sub-Exhibit 8, at p. 124.

The record also includes the Draft Environmental Impact Statement of the Federal Energy Regulatory Commission ("DEIS"). The DEIS notes that PCGP has "detailed [HDD] crossing plans [for Coos Bay] and has contingency plans in place should [an inadvertent release of HDD fluid occur]." *Id.* at 473. The DEIS explains that PCGP "has [best management practices] and plans in place to control runoff of any potential hazardous material found at all Project areas including TEWAs, pipe storage sites, hydrostatic test discharge sites, and right-of-way clearing area," which procedures "are intended to prevent unacceptable quantities of material (sediment, toxic substances, oils, concrete water) from entering surface waters." *Id.* at 283. The DEIS further explains that "contribution of turbidity or sediment from other crossing methods, including DP, bore, and HDD, would be unlikely" because "DPs and bores would go under waterbodies" and "inadvertent release of [HDD fluid] would have minor, short-term adverse effects on resources in estuarine channels[.]" *Id.* at 294. Although the PCGP passes "via HDD under commercial Pacific oyster designated areas ... [creating] some risk for oysters should [inadvertent release of HDD

fluid] occur," "oyster habitat is not common in the bay because most bottom areas consist of sand and fines." *Id.* at 457. Additionally, the DEIS notes that PCGP has an HDD Fluid Plan with contingencies for inadvertent releases that would minimize the impact of the same. *Id.* at 457-8. Ultimately, the DEIS concludes that "the Project *would not significantly impact wildlife and aquatic resources*." *Id.* at 1091 (italic emphasis added). The DEIS also concludes that "concerning state-listed [endangered] species and other species of concern ... the Project *would not significantly affect these species*." *Id.* at 1092.

Opponents take issue with the HDD Feasibility Report. They contend that although the report concludes HDD is technically feasible it does not conclude HDD is practically or logically feasible *See, e.g.* May 3, 2019 OSCC letter, Exhibit 18, pp. 7-8. Opponents note the report's limitations, including, for instance, its recommendations for further study of the Direct Pipe technology; that the report itself acknowledges that sampling cannot provide a complete and accurate view of subsurface conditions for the entire site; that the report does not address environmental or anthropogenic impacts; and that the report's conclusions are ultimately preliminary.

Opponents' criticisms of the HDD Feasibility Report are mostly without merit. They do not explain the distinction they postulate between the technical feasibility of HDD and what they call its "practical" or "logical" feasibility. The HDD Feasibility Report concludes, based on sampling from and scientific analysis of the actual site, that HDD is feasible to install the pipeline where PCGP proposes to do so. The Opponents vastly overstate both the risk of hydraulic fracture and drilling surface release and the resulting damage that would occur therefrom. The applicant's HDD engineering firm, Geo-Engineers, does conclude that there is a high risk of hydraulic fracture and drilling surface release within approximately 520 feet of the east side entry point. This is not a shocking conclusion, given that the bore would need to run through relatively young unconsolidated sand deposits.

The only area where the report does not completely address feasibility is with regard to how the 700 ft long casing will be installed near the entrance to the eastern bore. That issue can be addressed in a separate land use proceeding, as discussed in more detail below.

Beyond that, however, the OSCC seem to think that to demonstrate "practical" and "logical" feasibility, the report must test the whole length of the HDD proposal through Coos Bay and that it is flawed for not doing so. The Applicant correctly states that this "is an absurd, unrealistic, and unnecessary standard, particularly because, as explained above, Opponents fail to cite any approval criteria that require the herculean effort by PCGP to demonstrate the feasibility of HDD that Opponents demand." Opponents have also failed to submit any evidence of their own that HDD is not feasible--they simply contend that PCGP's own extensive submissions are insufficient, raising the question what amount of information Opponents *would* find sufficient.

The basis for most of Opponents' objections is a single page of Appendix D of the 162-page HDD Feasibility Report. Appendix D explains the "limitations and guidelines for use" of the report. *See* Exhibit 16, Sub-Exhibit 11 at p. 63-64. Appendix D explains that the report (1) is based on the conditions of the site at the time the report was prepared; that (2) the report's interpretations of subsurface conditions are based on field observations from widely spaced sampling locations at the site, and that "actual subsurface conditions may differ, sometimes

significantly, from the opinions presented in this report" such that the authors of the report cannot warranty the actual subsurface conditions; and that (3) for these reasons, the report's recommendations "are preliminary and should not be considered final." Opponents claim these disclaimers render the report unreliable. But Opponents miss the forest for the trees. These are standard disclaimers in technical reports. Their purpose is simply to clarify that unknown and unknowable variables do exist. But such disclaimers do not change the report's conclusion that it is technically feasible to install the pipeline beneath Coos Bay in the manner and location that PCGP proposes. Opponents do not provide any evidence to rebut this conclusion.

Opponents also contend that the HDD Feasibility Report is incomplete because it does not test the environmental and anthropogenic impacts of HDD. This is false. The report concludes that the risk of inadvertent releases of HDD drill fluid is generally low, except in the east side entry location, where the report calls for the installation of a 58 inch diameter casing. The HDD Fluid Plan, discussed in Section II.C., elaborates on this analysis with PCGP's plan to limit the adverse environmental impacts of such releases, in the unlikely event they occur. And the DEIS, as Section II.C. also explains, concludes that HDD is unlikely to significantly adversely affect the environment.

Even so, in situations where the local government has adopted approval criteria that demand that certain engineering matters be addressed, the issue for land use decision makers is one of determining the "feasibility" of compliance with the approval criterion. In *Meyer v. City of Portland*, 67 Or App 274, 280 n.3, 678 P2d 741 (1984), the Court of Appeals addressed a code criterion that required that the proposed use not be detrimental to the public health, safety, peace, or safety. In that case, the city's geotechnical engineer recognized that the site is located in an area of severe landslide potential, which could affect public safety. The engineer reviewed the geotechnical report and concluded that construction was feasible on certain portions of the site. The city engineer recommended conditions requiring additional geotechnical studies to verify that each individual lot can be safely developed. This second stage review would occur as part of the final plat (a process not open to the public).

Both LUBA and the Court of Appeals approved of this approach. The court explained that if, during the course of a first stage "land use" process, an approval standard requires discussion of a particular issue, the required finding of "feasibility" requires "more than feasibility from a technical engineering perspective." The court explained:

> "It means that substantial evidence supports findings that solutions to certain problems (*i.e.*, land slide potential) posed by a project are possible, likely and reasonably certain to succeed."

Provided this required "feasibility" determination is made when first stage approval is granted, precise solutions for problems posed by a subdivision and other detail technical matters may "be worked out between the applicant and city's experts during the second stage approval process for the final plan."[19] *Id.* at 282 n.6. An applicant is not required to "supply immediate and

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[19] Examples of matters that have been found to be appropriately delegated to technical staff and/or engineering for review prior to final plat approval include:

detailed solutions to each and every potential problem." *Meyer v. City of Portland*, 7 Or LUBA 184, 196 (1983), *aff'd*, 67 Or App 274, 687 P2d 741 (1984). Resolution of precise solutions and technical matters and final approval of the subdivision need not include public hearings. *Id. See also Golf Holding Co. v. McEachron*, 39 Or App 675, 593 P2d 1202, *rev den*, 287 Or 477 (1979); *Meyer v. City of Portland*, 7 Or LUBA 184, 196 (1983), *aff'd*, 67 Or App 274, 687 P2d 741 (1984); *Rhyne v. Multnomah County*, 23 Or LUBA 42, 46-47 (1992).

As mentioned above, a finding of initial feasibility of a project (or any aspect thereof) is sufficient if the experts have concluded that solutions to the problem encountered are possible and likely. *Id.* at 196. A feasibility finding that is equivocal or wavering is not sufficient. *Griffith v. City of Corvallis*, 16 Or LUBA 64 (1987); *Doughterty v. Tillamook County*, 12 Or LUBA 20, 31 (1984). For example, in *Kenton Neighborhood Ass'n v. City of Portland*, 17 Or LUBA 784, 805 (1990), the Board held:

> "We note that absent some evidence in the record suggesting a condition cannot be met or that the city questioned the feasibility of a condition, we do not believe that the city is required to specifically find, in its decision, that each condition it imposes is feasible. *See Doughterty v. Tillamook County*, 12 Or LUBA 20, 31 (1984). Petitioner does not point to any evidence in the record challenging the feasibility of the conditions or suggesting that the city did not believe that the conditions were feasible. In these circumstances, we assume the conditions the city imposed to meet the applicable approval standards were considered by the city to be feasible requirements, without a specific city finding to that effect."

17 Or LUBA at 805, n. 11. In some cases, the local government can defer decision by agreeing to

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- Final grading and terracing. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).
- Adequate sewage and storm drainage. *Kenton Neighborhood Ass'n v. City of Portland*, 17 Or LUBA 784, 805 (1990); *Meyer v. City of Portland*, 7 Or LUBA 184, 196 (1983), *aff'd*, 67 Or App 274, 687 P2d 741 (1984). *But see*, *Bauer v. City of Portland*, 38 Or LUBA 715 (2000) (noting that in some cases the final approval of such plans may involve discretion and therefore may be subject to public processes); *Highland Condominium Ass'n*, v. City of Eugene, 37 Or LUBA 13 (1999); *Stephens v. Clackamas County*, 8 Or LUBA 172 (1983).
- Access and sight distance issues. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994); *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).
- Sidewalks and warning lights required to be designed to city engineer standards. *Lee v. City of Portland*, 3 Or LUBA 31 (1981), *aff'd*, 57 Or App 798 (1982).
- Design and construction issues such as landscaping plans, sign locations, design of drive-in facilities, utility plans, and typical architectural elevations, *Griffith v. City of Corvallis*, 16 Or LUBA 64 (1987).
- Obtaining subsurface water without harming neighboring wells. *Just v. Linn County*, 32 Or LUBA 325, 330 (1997).
- Geotechnical reports. *Neighbors for Livability v. City of Beaverton*, 40 Or LUBA 52 (2001), *aff'd* 178 Or App 185, 35 P3d 1122 (2001); *Meyer v. City of Portland*, 7 Or LUBA 184, 196 (1983), *aff'd*, 67 Or App 274, 687 P2d 741 (1984). *Compare Bartels v. City of Portland*, 20 Or LUBA 303, 310 (1990).
- Requiring monitoring and mitigation of environmental hazards during construction. *Neighbors for Livability v. City of Beaverton*, 40 Or LUBA 52 (2001), *aff'd* 178 Or App 185, 35 P3d 1122 (2001).
- Building orientation and setbacks. *Selmer v. City of Portland*, 16 Or LUBA 320, 348-50 (1987).

hold further public hearings in the future. *Citizens Against LNG, Inc v. Coos County*, 63 Or LUBA 162 (2011); *Turner v. Washington County*, 8 Or LUBA 234 (1983); *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

In summary, the Board agrees with the Applicant that the HDD boring is technically feasible. Exhibit 16, Sub-Exhibit 11, at p. 86. The Board finds that substantial evidence supports findings that solutions to certain problems such as inadvertent returns or frac-outs posed by the HDD boring aspect of the project are possible, likely and reasonably certain to succeed. The Applicant has stated that it will be necessary to use a casing at the east end of the bore, where frac-outs are more likely to occur. Geo-Engineers states that it is likely that the Direct Pipe technology will need to be used in this location with a large diameter casing and a centralizer casing to center pilot hole tooling within the large diameter casing. The Board imposes a condition of approval requiring PCGP to follow the recommendations in the HDD Feasibility Reports. Additional studies will be needed to determine the precise way to engineer a casing to prevent or reduce the possibility of inadvertent returns or frac-outs. Precise solutions for these problems and the related technical matters may be worked out between the applicant and county's experts, during the construction approval process.

3. Effects of Inadvertent HDD Fluid Returns.

Opponents contend HDD technology will adversely impact (1) estuarine wildlife include ng oysters, crabs, and salmon; (2) salinity levels in the estuary; and (3) cause sedimentation and turbidity.

PCGP has submitted into the record extensive evidence that demonstrates that HDD will not significantly adversely impact oysters, crabs, salmon, salinity levels in the estuary, or cause significant sedimentation or turbidity that may have adverse impacts. Section II.C. summarizes some of that evidence, including memoranda from engineers concluding that noise and vibrations from HDD will not significantly adversely affect wildlife in the estuary, and the DEIS, which concludes that the pipeline (including HDD) is unlikely to have significant adverse effects on the environment. With respect to salinity levels, PCGP has submitted into the record a memorandum from Edge Environmental that explains that HDD will not adversely affect salinity levels in the estuary. *See* Record Exhibit 21, Exhibit 2.

Opponents fail to submit any evidence to rebut these conclusions. They rely on cursory and unsupported claims that PCGP's submissions are inadequate. The County should deny Opponents' contentions.

Opponents contend that the Application is deficient because it contains information gaps regarding the use of HDD to install the pipeline. Among other things, Opponents contend the Application fails to explain:

(1) why the pilot-hole intersect method is the preferred tie-in-method and why this method is different from single and dual HDD options;
(2) that if PCGP proposes to use the single HDD method, what alternative measures it would use should it discover that the underlying geology does not consist of competent bedrock at the bottom tangent elevation depth;

(3) that if PCGP proposes to use the dual HDD method, how the shared tie-in-workspace in the tidal flat area south of Glasgow Point will be isolated from open water during HDD installation and what methods PCGP will use to avoid inadvertent returns in the inter tidal environment near entry points where drilling pressures exceed shear strength and pressure from overburden soils;
(4) what is the proposed final depth below the surface of the installation at the tie-in location;
(5) what measures, if any, PCGP proposes to ensure the pipeline remains buried for the life of the project;
(6) what is the scope of open-water activities such as inter-tidal dredging for barge access to the shared tie-in workspace;
(7) what procedures PCGP will employ to avoid, minimize or mitigate the effects of this option on water quality;
(8) how PCGP will incorporate "Direct Pipe" technology in its use of HDD;
(9) how PCGP will use open trenching to install the pipeline should HDD prove infeasible;
(10) why two bay crossings with HDD is less harmful to the estuary than one open-trench crossing; and
(11) how during HDD operations PCGP will incorporate a drilling fluid recycling system and high-pressure drilling fluid pump on the exit side of the crossing and what the HDD Feasibility Report means when it refers to an east-side drilling fluid returns pit, the digging, dewatering, and management of which could have serious potential impacts on the estuary.

PCGP has provided extensive evidence about HDD technology. With regard to the eleven (11) contentions raised above, the Board finds as follows:

(1) the Applicant only proposes to the use the "pilot-hole intersect method." There is no approval criterion that requires the Applicant to explain why it is the "preferred tie-in-method." Nor is there any criterion that requires the Applicant to prove why and how this method is different from alternative options such as a single and dual HDD options. The Applicant may be required to provide such analysis to FERC, but this illustrates why and how the roles of the federal agencies are different than the role of the County.
(2) PCGP is not required to explain what alternative measures it would use should it discover that the underlying geology does not consist of competent bedrock at the bottom tangent elevation depth. There is simply no approval criterion which demands such analysis.
(3) PCGP has not submitted an application proposing the "dual HDD method," and therefore it does not need to explain how the shared tie-in-workspace in the tidal flat area south of Glasgow Point will be isolated from open water during HDD installation and what methods PCGP will use to avoid inadvertent returns in the inter tidal environment near entry points where drilling pressures exceed shear strength and pressure from overburden soils.
(4) PGCP does not need to explain what is the proposed final depth below the surface of the installation at the tie-in location. PCGP has not submitted an application proposing the "dual HDD method," but even if it had done so, there is simply no approval criterion which demands such analysis.
(5) PCGP does not need to explain what measures it proposes to ensure the pipeline

remains buried for the life of the project. Again, these concerns go far beyond any legitimate zoning matters.

(6) PCGP has not submitted an application proposing the "dual HDD method," and therefore it does not need to explain what is the scope of open-water activities such as inter-tidal dredging for barge access to the shared tie-in workspace;

(7) PCGP has explained what procedures it will employ to avoid, minimize or mitigate the effects of this option on water quality. See "HDD Fluid Contingency Plan," Exhibit 16, Sub-Exhibit 3.

(8) PCGP states that it may incorporate "Direct Pipe" technology in its use of HDD, however, further study is needed to determine the feasibility of this approach. This is discussed elsewhere in this decision.

(9) PCGP does not need to explain how it will use open trenching to install the pipeline should HDD prove infeasible. A new land use application would be required because this application only approves HDD bore technology.

(10) No approval criterion requires PGCP to explain why two bay crossings with HDD is less harmful to the estuary than one open-trench crossing. It is difficult to conceive how HDD boring could be more harmful to the estuary than an open-trench crossing.

(11) No approval criterion requires PGCP to explain how, during HDD operations, PCGP will incorporate a drilling fluid recycling system and high-pressure drilling fluid pump on the exit side of the crossing. Nothing requires the applicant to explain to opponents what the HDD Feasibility Report means when it refers to an east-side drilling fluid returns pit. OSCC asserts that "the digging, dewatering, and management of [east-side drilling fluid returns pit] could have serious potential impacts on the estuary. However, OSCC does expound on what those impacts could be, and no such impacts are obvious on the face of the HDD feasibility report.

As the Applicant points out, the Opponents fail to provide anything that rebuts the substantial scientific evidence PCGP has provided. They simply claim, without a legal basis, that what PCGP has provided is insufficient. Therefore, the Board concludes that Opponents' endless demands for more information about HDD that is unrelated to applicable approval criteria is irrelevant to its evaluation of the Application.

Several Opponents raised the issue of how PCGP plans to dispose of the cuttings that its HDD operations produce. *See, e.g.* Natalie Ranker March 15, 2019 letter, Exhibit 5, at p.1; Jan Dilley March 14, 2019 letter, Exhibit 9. Although no approval criterion requires PCGP to provide this information (and Opponents did not cite any such criterion), PCGP nonetheless submitted into the record a memorandum one part of which addresses this point. That memorandum explains that "in accordance with applicable federal and state law, PCGP will characterize and properly manage all soil, cuttings and other materials generated from the HDD installation activities" and will not dispose of them at the APCO site, "where unrelated dredge material disposal is proposed to occur or at the wetland mitigation/restoration sites (e.g., Kentuck, eelgrass mitigation site) proposed by Jordan Cove Energy Project L.P." *See* Record Exhibit 21, Sub-Exhibit 2 at p. 2.

OSCC contends the Hydrostatic Test Plan that PCGP submitted into the record at Exhibit 16, Sub-Exhibit 1 is deficient. This is familiar and predictable method of attack for OSCC. In fact, experience shows that it is virtually guaranteed that OSCC will respond to anything that the

Applicant submits with this instinctive and reflective refrain. This is an extremely ineffective and counterproductive tactic, because it lowers OSCC's credibility in the eyes of the decisionmaker. By crying wolf at every turn, OSCC potentially dilutes the strength of any legitimate argument they might have by camouflaging it with mountains of undeveloped and unsupported throw-away arguments.

In any event, in this case OSCC argues that Application does not provide enough information regarding: (1) the locations of discharge of hydrostatic testing water for the County; and (2) important site-specific characteristics such as anticipated flow, geology, gradient, sensitive environmental conditions, slope stability at dewatering discharge points or other environmental factors that may influence the design and implementation. OSCC does not relate its argument to any approval criterion.

As the Applicant points out, no approval criteria applicable to the Application requires that PCGP provide the information OSCC believes is missing from the Hydrostatic Test Plan. It is not even clear what information OSCC seeks under item (2) above. Regardless, PCGP is not obligated to simply provide OSCC with whatever information they demand. PCGP is obligated only to provide information that pertains to the Application's compliance with applicable approval criteria. OSCC fails to identify any approval criteria that requires PCGP to provide the above information in addition to the Hydrostatic Test Plan, which PCGP has already submitted into the record. OSCC do not even contend that the information they claim is missing from the Hydrostatic Test Plan renders it unreliable.

Opponents contend that the pipeline fails to protect abalone populations in "southern Oregon." *See* McCaffree letter dated p. 33. PCGP addressed this contention by submitting into the record a memorandum from Edge Environmental, Inc. that explains that although "[v]ery little is known about the [abalone] species' presence along the Oregon coast," "the Oregon coast appears to be a natural gap in the species range [of pink abalone] between California and Washington" and that "Pink, green, and pinto abalone would not be affected by the [pipeline]." *See* Exhibit 21, Sub-Exhibit 1 at p. 1.

OSCC states that the memorandum from Edge Environmental does not contain "sufficient supporting analysis." *See* OSCC letter dated May 24, 2019, at p. 4 Exhibit 23. Given that Edge Environmental concludes that no abalone species are known to exist in Coos Bay and there is no evidence to the contrary in the record, it is difficult to comprehend how much more analysis would be required. This is especially true since Jody McCaffree submitted the 1979 Natural Resources of Coos Bay Estuary (aka the "raccoon report"), which is substantial evidence that no abalone exists in Coos Bay. It appears the level of proof that OSCC seeks is much greater than what is required by Oregon Law. In any event, neither OSCC nor any opponent submitted any evidence of their own to challenge Edge Environmental's scientific findings. Instead of thinking critically and focusing on real issues, OSCC seems content to lower its credibility by reflexively criticizing anything and everything submitted by the Applicant, regardless of merit. OSCC sounds like a broken record, and the Board finds the abalone-related objections can be dismissed.

F. Application 3: Floodplain Overlay Permit.

OVERLAY ZONES AND SPECIAL DEVELOPMENT CONSIDERATIONS

SECTION 4.11.125 - Special Development Considerations.

The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed in the Balance of County zoning. The adopted maps and overlays have to be examined in order to determine how the inventory applies to the specific site.

* * * *

3. Historical, Cultural and Archaeological Resources, Natural Areas and Wilderness (Balance of County Policy 5.7)
The Historical/Archeological maps have inventoried the following:

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

* * * *

b. Areas of Archaeological Concern: Coos County shall continue to refrain from widespread dissemination of site-specific inventory information concerning identified archaeological sites. Rather, Coos County shall manage development in these areas so as to preserve their value as archaeological resources.

i. This strategy shall be implemented by requiring development proposals to be accompanied by documentation that the proposed project would not adversely impact the historical and archaeological values of the project's site. "Sufficient documentation" shall be a letter from a qualified archaeologist/historian and/or a duly authorized representative of a local Indian tribe(s).

ii. Properties which have been determined to have an "archaeological site" location must comply with the following steps prior to issuance of a "Zoning compliance Letter" for building and/or septic permits.

1) The County Planning Department shall make initial contact with the Tribe(s) for determination of an archaeological site(s). The following information shall be provided by the property owner/agent:

a) Plot plan showing exact location of excavation, clearing, and development, and where the access to the property is located;
b) Township, range, section and tax lot(s) numbers; and

c) Specific directions to the property.

2) The Planning Department will forward the above information including a request for response to the appropriate tribe(s).
3) The Tribe(s) will review the proposal and respond in writing within 30 days to the Planning Department with a copy to the property owner/agent.
4) It is the responsibility of the property owner/agent to contact the Planning Department in order to proceed in obtaining a "Zoning Compliance Letter" (ZCL) or to obtain further instruction on other issues pertaining to their request.

iii. In cases where adverse impacts have been identified, then development shall only proceed if appropriate measures are taken to preserve the archaeological value of the site. "Appropriate measures" are deemed to be those, which do not compromise the integrity of remains, such as:

1) Paving over the sites;

2) Incorporating cluster-type housing design to avoid the sensitive areas; or

3) Contracting with a qualified archaeologist to remove and re-inter the cultural remains or burial(s) at the developer's expense. If an archaeological site is encountered in the process of development, which previously had been unknown to exist, then, these three appropriate measures shall still apply. Land development activities found to violate the intent of this strategy shall be subject to penalties prescribed by ORS 97.745 (Source: Coos Bay Plan).

iv. This strategy is based on the recognition that preservation of such archaeologically sensitive areas is not only a community's social responsibility but is also a legal responsibility pursuant to Goal #5 and ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable, cultural resources (Source: Coos Bay Plan).

Board Findings: The County has not inventoried any archaeological sites within the "Balance of County" segment of the pipeline. Further, the MOA discussed in response to CBEMP Policy #18 is limited to instances when CBEMP Policy #18 is applicable, and it does not apply to the Balance of County. Nevertheless, the CRPA and the UDP attached to the MOA, which the Applicant included in the record at Application Exhibit 9. This will apply to the "Balance of County" Sections of the code and establish procedures for coordination between Applicant and the Tribes in the event of an unanticipated discovery of archaeological resources.

The Applicant states that it is willing to accept a condition of approval requiring compliance with the CRPA and UDP. For these reasons, and subject to the proposed condition, the pipeline satisfies this special consideration with the condition that Applicant follow the MOA.

4. Beaches and Dunes (Policy 5.10)

The Beaches and Dunes map has inventoried the following:

- *Beaches and Dunes*
  - *Suitable for most uses; few or no constraints (Does not require a review)*
  - *Limited Suitability; special measures required for most development*
  - *Not Suitable for Residential, commercial or Industrial Structures*

Purpose Statement:

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

Board Findings: As noted above, the Early Works Alignment does not cross any areas the County maps designate as beach and dune areas with limited development suitability or that are unsuitable for development. Therefore, this criterion does not apply to the Early Works Alignment.

7. Natural Hazards (Balance of County Policy 5.11)

The Natural Hazards map has inventoried the following hazards:

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

* * * *

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

1. Floodplain Overlay Zone

CCZLDO 4.11.231 - Lands to Which [The Floodplain Overlay Zone] Applies
This Ordinance shall apply to all areas of special flood hazards within the jurisdiction of Coos County that have been identified on the Flood Insurance Maps dated March 17, 2014 as described in Section 4.11.232.

Board Findings: The Early Works Alignment of the pipeline will be installed below existing grades, and no permanent structures will be placed above existing grades within the FEMA 100-year floodplain. In addition, at the completion of the pipeline installation, all construction areas will be restored to their pre-construction grade and condition. Floodplain compliance will be verified prior to construction and the issuance of a zoning compliance letter. Therefore, except where noted below, the provisions of the Floodplain Overlay zone do not apply to the Early Works Alignment.

CCZLDO 4.11.251 - General Floodplain Permit Approval Standards

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

* * * *

7. Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, roads and driveway maintenance, landscaping, gardening and similar uses which are excluded from the definition because it is the County's determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.

Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:

a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or
b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.

Board Findings: In the "Balance of County," the pipeline is located in the designated 100-year floodplain, which is a type of special flood hazard area, near Kentuck Slough. The pipeline is not located in a designated floodway. The pipeline will be located below-grade. However, the Applicant will undertake "grading," which is a type of "other development," in order to install the pipeline. Therefore, this provision is applicable, and Applicant must obtain the County's review and authorization of a floodplain application before the "other development" may occur. Applicant will submit the licensed engineer's certification that the "other development" will not result in a cumulative increase of more than one foot during the occurrence of the base flood discharge, as required by subsection b. of this section. It is reasonable and likely that such

engineering report can be successfully obtained, because grading that occurs in a large basin is highly unlikely to raise the flood level during a base flood discharge. Once the report is filed it is reasonable to find the proposal complies with the requirements of the flood hazard overlay.

SECTION 4.11.257 - Critical Facility.

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

Board Findings: This provision only applies to "critical facilities" as defined in CCZLDO §4.11.220.9. The Board finds that the pipeline is not a "critical facility" because I t is not designed to produce, use, or store hazardous materials, and because it will be designed to withstand a 500-year flood event. Therefore, the pipeline does not meet the definition in CCZLDO §4.11.220.9.

Alternatively, even assuming that the pipeline is a "critical facility;" it is not feasible for Applicant to devise a route for the pipeline that does not cross the Special Flood Hazard Area near the Kentuck Slough given the need for the Early Works Alignment both to avoid Haynes Inlet and to connect with the existing approved pipeline alignment. The pipeline does not have floors because it is a gas pipeline. Then Applicant has designed the pipeline to ensure to the greatest possible extent that gas will not leak or be released into floodwaters or elsewhere. To the extent this provision is applicable, it is satisfied.

SECTION 4.11.125.7(b).

b. Landslides: Areas subject to landslides (mass movement) include active landslides, inactive landslides, earth flow and slump topography, and rockfall and debris flow terrain as identified on the 2015 Coos County Comprehensive Plan Hazards Map (mapped as the very high-existing landslides).

Coos County shall permit the construction of new structures in an inventoried Landslide hazard area (earth flow/slump topography/rock fall/debris flow) through a conditional use process subject to a geological assessment review as set out in Article 5.11.

Board Findings: Although portions of the Early Works Alignment pass through landslide areas inventoried in the County's Hazards Map, the pipeline is not a "structure" within the meaning of CCZLDO §2.1.200 because it is a subsurface natural gas pipeline and not a "walled and roofed building ... that is principally above ground." Therefore, the landslide hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment.

SECTION 4.11.125.7(c).

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

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

* * * *

2. Applicability of Tsunami Hazard Overlay Zone

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

- ***a. Except as provided in subsection (b), all lands identified as subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section.***
- ***b. Lands within the area subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) that have a grade elevation, established by fill or other means, higher than the projected elevation of the XXL magnitude local source tsunami event are exempt from the requirements of this section. Grade elevations shall be established by an elevation survey performed by a Professional Land Surveyor licensed in Oregon.***

Board Findings: Segments of the Early Works Alignment are located in the balance of County; however, all permanent improvements associated with the Early Works Alignment will be located below grade. Therefore, they will not be subject to inundation from a tsunami. The Tsunami Hazard Overlay Zone is not applicable to the pipeline.

SECTION 4.11.125.7(d).

d. Earthquakes: Areas subject to earthquakes include fault lines and liquefaction potential, as identified on the 2015 Coos County Comprehensive Plan Natural Hazards Map.

Coos County shall permit the construction of new structures in known areas potentially subject to earthquakes (fault line and liquefaction potential) through a conditional use process subject to a geologic assessment review as set out in Article 5.11. Coos County shall support Oregon State Building Codes to enforce any structural requirements related to earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the

geologic assessment report at the time of review.

Board Findings: Although portions of the Early Works Alignment pass through areas of liquefaction potential as identified by the County's Natural Hazards Map, the pipeline is not a "structure" within the meaning of CCZLDO §2.1.200 because it is a subsurface natural gas pipeline and not a "walled and roofed building ... that is principally above ground." Therefore, the landslide hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment. This development consideration is only applicable outside of the estuary. The Board finds the applicant has addressed this criterion.

SECTION 4.11.125.7(e).

e. Erosion: Coos County shall promote protection of property from risks associated with shoreline, headland, and wind erosion/deposition erosion hazards.

Coos County shall promote protection of property from risks associated with bank erosion along rivers and streams through necessary erosion-control and stabilization measures, preferring non-structural solutions when practical.

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

Board Findings: The Early Works Alignment does not cross any area identified as a shoreline, headland, or wind erosion/deposition erosion hazard on the County's Natural Hazards Map. Therefore, the erosion hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment.

SECTION 4.11.125.7(f).

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

* * * *

Board Findings: The pipeline is not a "dwelling, permanent structure, or replacement dwelling or structure." The pipeline is a subsurface natural gas pipeline and not a dwelling. Furthermore, the pipeline is not a "structure" within the meaning of the CCZLDO because it is not a "walled and roofed building ... that is principally above ground." Therefore, the wildfire hazard provisions of Balance of County Policy 5.11 do not apply to the Early Works Alignment.

G. Miscellaneous Issues Raised by Opponents

a. The Public Trust Doctrine

Opponent Jody McCaffree, in her May 34, 2019 letter (Exhibit 20, p. 8) wrote:

> "In addition to demonstrating consent and delegated agency from any deeded land owner(s) (including the state or any of its agencies), the applicant must also submit a permit from the State Land Board (Division of State Lands) or other suitable authority resolving the question of the public benefit of the project by the state to meet criteria of 5.0.150. This is because any alienated interest does not sever the state's *jus publicum* interest in the property."

The Applicant does not address the Public Trust Doctrine in its final argument. Exhibit 24. Nonetheless, the Board finds that there is no public trust doctrine violation in this case.

Public trust rights with respect to submerged lands and navigable waters is rooted in the principle that "navigable waterways are a valuable and essential resource and as such all people have an interest in maintaining them for commerce, fishing, and recreation." *Brusco Towboat v. State Land Bd.*, 30 Or App 509, 526 (1977). *See also Chernaik v. Brown*, 295 Or App 584, 593, 436 P3d 26 (2019), *rev granted*, 364 Or 849, 442 P3d 1119 (2019). "The doctrine is founded upon the necessity of preserving to the public the use of navigable water from private interruption and encroachment." *Illinois Cent. R. Co. v. State of Illinois*, 146 US 387, 436 (1892). Quoting Professor Michael C. Blumm, "Since the 1860s, the Oregon Supreme Court has consistently ruled in favor of public rights in waterways, based on language in the Oregon Statehood Act declaring navigable waters to be a public highways that would remain "forever free," not monopolized by private owners."

In this case, there is no assertion that the Applicant is seeking to monopolize public trust lands. The use of HDD bore technology is one method that can be used to specifically avoid any PTD issues.

b. Technical Questions Posed by the Tribes

In a letter dated April 12, 2019, the Confederated Tribes raised a number a technical concerns. *See* April 12, 2019 letter from Margaret Corvi, Cultural & Natural Resources Director, Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians, Exhibit 13, p. 4-5. The Jordan Cove LNG Project Engineer, Jimmy Bernabe, answered each of these questions in turn, with considerable specificity. Exhibit 21, Sub-Exhibit 2, pp. 1-2. The Tribes' questions are set forth below in italics, followed my Mr. Bernabe's answer, taken from Exhibit 13:

a. How large and deep are the starting pits?

In Appendix G.2 HDD Feasibility Analyses of Resource Report 2 Water Use and Quality submitted as part of the September 2017 FERC filing, drilling fluid containment pits will

be excavated, based on site-specific requirements, adjacent to the entry and exit points typically measuring up to approximately 10-ft x 20-ft x 6-ft in depth.

b. Will placement occur only in the upland areas?

Yes, the entry/exit pads are located on upland areas (i.e. not within the Coos Bay Estuary).

c. How large are pilot bores?

The proposed pilot hole bit diameter for both HDDs is currently 12.5-in with a 6.6-in drill pipe diameter.

d. Is it possible for the boring drill or reamers or the pipe during installation to get stuck and if so how is this handled? Abandonment?

In Appendix I.2 HDD Failure Modes of Resource Report 2 Water Use and Quality submitted as part of the September 2017 FERC filing, Section 2.0 Failure Modes identifies various causes of drill bit/pipe becoming obstructed during construction operations. Mitigative options to bypass any of these obstructions can range from mechanical equipment replacements, modification of drilling fluid parameters, to drill path alignment adjustments. Section 3.6 describes the proposed hole abandonment process.

e. The application states the drill would be directionally guided by two insulated wires laid on the ground but how does that work over the estuary crossing?

For the Coos Bay crossings, the few hundred feet on either end of each crossing that are not below water will have a "wireline" coil setup on the ground surface (ParaTrack or similar), typically surveyed in along centerline and looped back at a predetermined offset from the centerline to complete the circuit (offset distance will typically be the maximum depth of the drill within that section of coil). Survey of the coil on each site should take a day and will usually be completed prior to the HDD rig arriving or during set up. The Bottom Hole Assembly will have both a standard wireline downhole steering tool that tracks its position in relation to the surveyed ParaTrack coil, as well as a gyroscopic steering tool, which does not utilize any surface coil but operates on calculating positions based on the earth's rotation. For the first "on-land" portion on each side of each drill, the ParaTrack and gyroscopic steering readings will be recorded and used to ensure the data is in alignment between both tools before proceeding into the underwater section which will be steered entirely with the gyroscopic tools.

f. What is the depth of the pullback? What are the potential impacts to fish weirs in the intertidal zone?

The total minimum depths of the installed HDD pipeline sections for the West and East Coos Bay crossings from the ground surface entry points will be approximately 110-ft and 200-ft, respectively. As a result, the pipeline distances within intertidal areas will

range from approximately 110-ft to 200-ft in depth below the bottom of the bay. PCGP and CTCLUSI have both stated on the record that the Memorandum of Agreement (MOA), including the Cultural Resources Protection Agreement (CRPA) and Unanticipated Discoveries Plan (UDP), they have entered are appropriate measures to protect cultural and archaeological resources. PCGP and CTCLUSI have proposed a condition of approval requiring compliance with the MOA, including the CRPA and UDP, which will address protection of such resources in the intertidal zone.

g. Is the in-water work window applicable to this work?

As no HDD construction activities are proposed within the Coos Bay Estuary, the in-water work window will not apply.

h. Is there any restriction on water use (such as fishing or canoeing) during the construction period in the area of the bay along the pipeline route if it is going "under" the bay?

There are no restrictions on water use during or, as a result of, the HDD construction activities associated with both Coos Bay crossings."

The Board has reproduced Mr. Bernabe's responses in full, as it answers many questions common to several opponents, as well demonstrates the Applicant's commitment to fully and fairly responding to community concerns in a timely manner.

c. CCZLDO §4.3.230.6(e)(v) does not apply to the pipeline.

Opponents contend that the Application fails to comply with CCZLDO §4.3.230(6)(e)(v). This provision provides as follows:

> ***(6) Industrial (IND) and Airport Operations (AO) - The following siting standards apply to all USES, activities and development within the IND and AO zoning districts.***
> *****.
> ***(e) Design Standards:***
> *****.
> ***v. Hours of operation may be required in areas predominantly surrounded by residential zones.***

CCZLDO §4.3.230.6(e)(v) applies only to "uses""activities, and "development" occurring in the Industrial zone. The standard uses the term "may," which is a permissive and not mandatory. It is difficult to comprehend why the County would want to place hours of operation on a pipeline. Therefore, the Board rejects the invitation to apply CCZLDO §4.3.230(6)(e)(v) to the pipeline.

d. The DEQ's denial of a water quality certification for the Pacific Connector pipeline does not demonstrate that *this* Application fails to comply with applicable approval criteria.

Opponents contend that DEQ's recent decision to deny the pipeline a Section 401 water quality certification is directly relevant to whether the pipeline complies with the management objectives of the CBEMP zones it crosses. Specifically, Opponents highlight five findings of DEQ that they claim support the conclusion that the pipeline fails to comply with the management objectives of those zones:

> "1. JCEP has not demonstrated that the proposed pipeline construction, access road construction and maintenance, and pipeline right-of-way activities would employ the highest and best treatment to control pollution."
>
> "2. JCEP has not demonstrated that the proposed pipeline construction, access road construction and maintenance, and pipeline right-of-way activities would avoid or mitigate detrimental changes in habitat structure and function, flow and resident biological communities."
>
> "3. DEQ determines that the proposed pipeline and associated work areas and roadways are likely to violate Oregon's water quality standard for temperature, particularly in areas that are not currently meeting numeric standards."
>
> "4. Absent [additional information identifying potential hazardous waste and cleanup sites within the project area], violations of toxicity water quality standards are likely, and DEQ concludes there is no reasonable assurance that the proposed [pipeline construction] activities would be conducted in a manner that would not violate the Toxic Substances water quality standard."
>
> "5. JCEP's proposed [pipeline construction] activities do not employ the highest and best treatment to control turbid discharges by failing to (a) Demonstrate the deployment of effective BMPs during pipeline construction and operation, (b) Demonstrate the use of effective BMPs during road maintenance, and (c) Provide a site-specific waterbody crossing and restoration plans to minimize turbid discharges and restore stream form and function supporting water quality."

See Exhibit 22, at p. 7.

The DEQ's findings are not interchangeable with findings in this land use proceeding. DEQ evaluated the pipeline in the context of a different proceeding, with different evidence, and against an entirely different set of approval standards. DEQ's findings note that:

> "Section 401(a) of the Clean Water Act, 33 U.S.C. § 1341(a), requires an applicant for "a Federal license or permit to conduct

> any activity which may result in a discharge into the navigable waters" to provide the federal licensing or permitting agency a certification from the relevant state that the discharge would comply with applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of the Clean Water Act."

See Exhibit 22, at p. 14. Although Opponents vaguely and cursorily suggest that DEQ's findings are relevant to the pipeline's compliance with the management objectives of the CBEMP zones it crosses, they do not explain how that is the case. The "CBEMP Policies" section of this decision explains how the pipeline complies with the management objectives of the zones it crosses, including by reference to the evidence PCGP has submitted into the record that demonstrates the same. Opponents do not specifically discuss this evidence or explain how the DEQ's findings, in the context of an entirely different set of approval standards, is interchangeable with findings regarding the specific management objectives of the CBEMP zones that the pipeline crosses. Opponents seem to want someone else to do their work for them. That is, they seem to hope that if they simply put the DEQ denial into the record, it will speak for itself--or someone else will explain how--why the denial demonstrates that the Application fails to comply with applicable approval criteria. Opponents' contention is too vague and cursory to override the substantial evidence PCGP has provided to the contrary.

Moreover, the selections that Opponents cite from the DEQ decision do not specifically pertain to the portion of the pipeline that is the subject of this Application or to the estuarine locations in which PCGP proposes to install those portions of the pipeline. DEQ's findings are generalized to the *entire* Pacific Connector pipeline Project but the entirety of that project is not subject to this Application. Only the Early Works Alignment of the pipeline is subject to this Application. Thus, DEQ's findings apply different approval standards and are not targeted to the specific portion of the Pacific Connector pipeline that is the subject of this Application. Opponents fail to explain how the DEQ findings show that the pipeline fails to comply with approval criteria applicable to *this* Application and to the Early Works Alignment of the pipeline.

e. CCZLDO 1.1.200.

Jody McCaffree argues that the application must comply with CCZLDO 1.1.200(2). *See* Letter dated March 15, 2019, at p. 7. Exhibit 8. According to Ms. McCaffree, this code provision requires the County to find that the application is "in the public's best interest" and that "it promote[s] and protect[s] the convenience and general welfare of the citizens of Coos County. However, CCZLDO 1.1.200(2) is a general purpose statement for the zoning code and states general objectives only. It does not purport to apply as an independent approval standard to any specific land use application. *Bennett v. City of Dallas*, 17 Or LUBA 450, 456, *aff'd* 96 Or App 645 (1989); *Stotter v. City of Eugene*, 18 Or LUBA 135, 157 (1989).

f. ORS 196.805.

In her letter dated March 15, 2019, opponent McCaffree asserts that the applications violate ORS 196.805. Exhibit 8at p. 7. ORS 196.805 states:

ORS 196.805 Policy

(1) The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in this state, including not only water and materials for domestic, agricultural and industrial use but also habitats and spawning areas for fish, avenues for transportation and sites for commerce and public recreation, are vital to the economy and well-being of this state and its people. Unregulated removal of material from the beds and banks of the waters of this state may create hazards to the health, safety and welfare of the people of this state. Unregulated filling in the waters of this state for any purpose, may result in interfering with or injuring public navigation, fishery and recreational uses of the waters. In order to provide for the best possible use of the water resources of this state, it is desirable to centralize authority in the Director of the Department of State Lands, and implement control of the removal of material from the beds and banks or filling of the waters of this state.

(2) The director shall take into consideration all beneficial uses of water including streambank protection when administering fill and removal statutes.

(3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of property under ORS 196.600 (Definitions for ORS 196.600 to 196.655) to 196.905 (Applicability) without due process of law.

First, this statute is a statement of policy, not applicable land use approval criteria. Second, the applicant is not proposing "unregulated filling" or "removal of material from the beds and banks of the waters of this state" – its activities shall be highly regulated, and permits will be required.

Ms. McCaffree also cited ORS 196.805 for the proposition that unregulated fill and removal may harm the environment. *See* McCaffree letter of March 15, 2019, Exhibit 8 at p.7. ORS 196.805 establishes the general policy of Oregon's statutory scheme for state removal and fill permits. It is not an approval criterion for JCEP's applications. In any event, the Applicant does not propose to engage in any "unregulated" activity. All of the Applicant's activity shall be heavily regulated and will require the appropriate permits and oversight.

IV. Conclusion and Conditions of Approval.

Based upon the evidence and explanation in this decision, the Board finds that the Application satisfies all applicable approval criteria and is hereby approved, subject to compliance with the following conditions of approval:

1. Applicant shall comply with terms and conditions of the referenced Memorandum of Agreement between the Jordan Cove Energy Project L.P., Pacific Gas Connector Pipeline, L.P., and the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians including attachments, and any amendments thereto. If any archaeological resources and/or artifacts are uncovered during excavation, all construction activity shall immediately cease within the distance provided for in the Unanticipated Discovery Plan attached to and incorporated into the Memorandum of Agreement. The State Historic Preservation Office shall be contacted (phone: 503-986-0674).

2. The Applicant shall follow the recommendations set forth in the HDD Feasibility Report, including using casings at both ends of the HDD bore to ensure that the risk of inadvertent returns in minimized.

3. The pipeline shall be designed and maintained to conform with or exceed U.S. Department of Transportation requirements in Title 49 Code of Federal Regulations ("CFR"), Part 192 Transportation of Natural and Other Gas by pipeline: Minimum Safety Standards; 18 CFR § 380.15, Site and Maintenance Requirements; and other applicable federal and state regulations. Additionally, the Applicant shall comply with its Fire Prevention and Suppression Plan, which requires employee training, prohibitions on smoking and burning, having extinguishers available, compliance with BLM standards, and coordination with local emergency responders.

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

5. Applicant shall submit to the County Planning Department a copy of the Final Erosion Control and Revegetation Plan approved for the gas pipeline project, and shall maintain compliance with the plan.

6. The Applicant shall follow the recommendations set forth in the HDD Feasibility Report, including using casings at both ends of the HDD bore to ensure that the risk of inadvertent returns is minimized.

7. Upon construction of the pipeline, the pipeline operator will submit post-construction as-built elevations to the County Planning Director.

8. The pipeline operator shall maintain an emergency response plan in compliance with 49 CFR 192.615.

9. When listed species are present, the permit holder must comply with the federal

Endangered Species Act. If previously unknown listed species are encountered during the project, the permit holder shall contact the appropriate agency as soon as possible.

10. The pipeline operator shall conduct public education in compliance with 49 CFR 192.616 to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the gas pipeline operator. Such public education shall include a "call before you dig" component.

11. The pipeline operator shall comply with any and all other applicable regulations pertaining to natural gas pipeline safety, regardless of whether such regulations are specifically listed in these conditions.

12. The pipeline operator shall provide annual training opportunities to emergency response personnel, including fire personnel, associated with local fire departments and districts that may be involved in an emergency response to an incident on the Pacific Connector pipeline.

13. The pipeline operator shall respond to inquiries from the public regarding the location of the pipeline (i.e., so called "locate requests").

14. The applicant shall submit a project-specific Public Safety Response Manual to the County prior to construction. In order to comply with federal safety regulations, Pacific Connector must coordinate with local emergency response groups prior to commencing pipeline operations. Pacific Connector will meet with local responders, including fire departments, to review plans and communicate specifics about the pipeline. If requested, Pacific Connector will also participate in any emergency simulation exercises and provide feed-back to the emergency responders.

15. The permanent pipeline right-of-way shall be no wider than 50 feet.

16. The applicant shall be responsible for restoring, as nearly as possible, to its former condition, any land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair, or reconstruction of this utility facility.

17. Riparian vegetation removal shall be the minimum necessary for construction and maintenance of the pipeline and shall comply with all FERC requirements for wetland and waterbody protection and mitigation both during and after construction. The applicant shall restore riparian vegetation 25 feet from the streambanks on either side of waterbodies on private lands where riparian vegetation existed prior to construction, consistent with the applicant's ECRP.

18. Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint or other deleterious waste materials shall not be allowed to enter waters of the state. No wood treated with leachable preservatives shall be placed in the waterway. Machinery refueling is to occur off-site or in a confined designated area to prevent spillage into waters of the state. Project-related spills into waters of the state or onto

land with a potential to enter waters of the state shall be reported to the Oregon Emergency Response System at 800-452-0311.

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

In The Matter of Adopting replacement language for the Coos County Comprehensive Plan (CCCP) Volume I Part 1 §5.11 Natural Hazards and Part 2 § 3.9 Natural Hazards and replacing the Balance of County Portions of the Natural Hazards Maps.	ORDINANCE No.: 15-05-005PL

SECTION 1. TITLE

This Ordinance shall be known as the "Coos County Ordinance No. 15-05-005PL".

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend the Coos County Comprehensive Plan Volume 1, Part 1 § 5.11 and Part 2 § 3.9 Natural Hazards, which contains comprehensive plan provisions for all unincorporated areas of Coos County outside of the Coos Bay Estuary Management Plan and the Coquille River Estuary Management Plan. This ordinance amends Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L which adopted Volume I of the Coos County Comprehensive Plan;

SECTION 4. FINDINGS

The Board of Commissioners of Coos County finds that the adoption of this ordinance is a land use decision which must be made in accordance with the requirements of Oregon Statewide Planning Goal 7: Areas Subject to Natural Hazards ("Goal 7"). Goal 7 requires local governments to inventory information on natural hazards and this was completed when the Comprehensive Plan was adopted and acknowledged in 1985. However, an update to Goal 7 adopted in 2001 revised the language; this update brings the Comprehensive Plan into compliance with current Goal 7 language.

The hazards have been reorganized to match Goal 7 as follows: Flood Hazards, Landslides, Earthquakes and Related Hazards, Tsunamis, Erosion, and Wildfires.

The Flood Hazards section language was updated but the mapping was completed through a prior amendment and the implementing ordinance has been in place since March 2014. The updates to the language include information on ocean flooding. Sources for the updates include National Oceanic and Atmospheric Administration (NOAA) and Federal Emergency Management Agency (FEMA).

The methodology for landslides was based on ORS 195.250-195.275 which is required to be followed by Goal 7. The source for the update includes the Department of Geology and Mineral Industries (DOGAMI).

Tsunami information was gathered and from the University of Oregon, DOGAMI, NOAA and U.S. Geological Survey. The tsunami map information was obtained from DOGAMI.

Erosion information for river and stream banks was determined by using aerial photographs from 1999 to 2013 to view areas of significant change over the time period. Staff also used on the ground information provided by Oregon Department of Fish and Wildlife (ODFW) to confirm the areas of erosion. There was mapping data used from United States Geological Survey (USGS) in this project to determine areas at risk of coastal erosion.

Wildfire information was obtained from Oregon Department of Forestry (ODF). In 2004 ODF completed a study titled "Communities at Risk" which was an assessment indicating overall risk of loss due to wildfire based on four criteria: risk (likelihood of fire occurring), hazard (resistance to control once a fire starts), protection capability, and value. This information was used to update this § 3.9 of Volume 1, Part II of the CCCP. At the request of Citizen Advisory and the Planning Commission the gorse was expanded and map information for gorse was included.

This ordinance complies with the requirements of the Statewide Planning Goal 7.

SECTION 5. AMENDMENT TO THE COOS COUNTY COMPREHENSIVE PLAN

Exhibit "A", attached hereto and incorporated herein by this reference, is adopted as amendment to Ordinances 85-03-005L, 84-5-016L and 82-12-022L, Volume I, Part 1 and Part 2 of the Coos County Comprehensive Plan. This Ordinance shall not become effective until July 30, 2016.

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the reaming portions of this ordinance; and it is herby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

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

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Dated this 30th day of July, 2015.

BOARD OF COMMISSIONERS

ATTEST

Recording Secretary

Robert "Bob" Main
Chair

Approved as to form:

Office of Legal Counsel

Vice Chair

Commissioner

First Reading: June 16, 2015

Second Reading: July 15, 2015

Effective Date: July 30, 2016

Volume I Part I § 5.11

1. ***General Policies:***

Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include: ~~stream and ocean flooding, wind hazards, wind erosion and disposition, *critical streambank erosion, coastal erosion and deposition, mass movement (earthflow and slump topography), earthquakes, and weak foundation soils~~. ***Flood Hazards, Landslides, Earthquakes, Tsunamis, Erosion, Wildfires, Winds, High Groundwater and Flash Flooding.***

This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property.

This strategy recognizes that it is Coos County's responsibility: (1) to inform its citizens of potential risks associated with development in known hazard areas; (2) to provide appropriate safeguards to minimize such potential risks; ***(3) Coordinate with emergency service provides when developing new natural hazard plans; (4) Raise public awareness of natural hazards; (5) Support research or studies on natural hazard issues and solutions; (5) continue to coordinate with emergency management in the updates of the Coos County Natural Hazards Mitigation Plan and ensure consistency with the Coos County Comprehensive Plan; and (6) Cooperate and coordinate with stakeholders to ensure natural hazards policies are being met.***

2. ***Flood Hazards***

Coos County shall continue to participate in the National Flood Insurance Program ~~(Public Law 90-448)~~, recognizing that participation in this program substantially insures the health and safety of County residents and allows property owners to benefit from subsidized insurance rates. Further, this strategy also recognizes that failure to participate in this program would prohibit affected property owners from receiving construction and permanent mortgage loans by federally insured lending institutions.

~~2a~~ The areas of special flood hazard, identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Coos County" dated March 17, 2014, with accompanying Flood Insurance Rate Maps ***(FIRM)*** and Flood Boundary Floodway Maps is hereby adopted by reference and declared to be a part of the Coos County Comprehensive Plan Inventory.

~~3.~~ Coos County shall comply with the requirements of the Federal Insurance Administration Regulation ~~1910.3(b)~~. This strategy recognizes that the above-identified safeguards are appropriate to minimize adverse life and property risks.

3. Erosion

Coos County shall promote protection of valued property from risks associated with critical streambank and ocean front erosion through necessary erosion-control stabilization measures, preferring non-structural solutions where practicable. Coos County shall implement this strategy by making "Consistency Statements" required for State and Federal permits (necessary for structural streambank protection measures) that support structural protection measures when the applicant establishes that non-structural

measures either are not feasible or inadequate to provide the necessary degree of protection. This strategy recognizes the risks and loss of property from unabated critical streambank erosion, and also that state and federal agencies regulate structural solutions. ***Coos County shall work with other local agencies in developing projects that help prevent or repair bank erosion. Development should be designed to minimize alteration of natural land forms in areas subject to slope instability, drainage issues or erosion. This may include additional setback requirements.***

4. Coos County shall permit the construction of new structures in known areas potentially subject to ~~mass movement (earth flow/slump topography/rock fall/debris flow)~~ ***Landslides*** only:

i. if dwellings are otherwise allowed by this Comprehensive Plan; and

ii. After the property owner or developer files with the, Planning Department a report certified by a qualified geologist or civil engineer stipulating –

a) his/her professional qualifications to perform foundation engineering and soils analyses

b) that a dwelling can or cannot be safely constructed at the proposed site, and whether any special structural or siting measures should be imposed to safeguard the proposed building from unreasonable risk of damage to life or property.

This strategy recognizes the County is responsible for identifying potential hazard areas. Coos County shall implement its share of this strategy through implementing ordinance provisions, while at the same time supporting the state building code program. This strategy recognizes that the above-identified safeguards are appropriate to minimize adverse life and property risks associated with seismic hazards and that the State Building Codes Divisions is statutorily responsible for implementing this policy through its building permit process.

6. ~~Coos County shall work with State Building Codes to The State of Oregon Department of Commerce Building Codes Division (pursuant to the authority vested in it by Section 2905 of the State Structural Specialty Code) shall require an engineered foundation or other appropriate safeguard deemed necessary to protect life and property in areas of weak foundation soils. This strategy recognizes that it is the responsibility of the State of Oregon Department of Commerce Building Codes Division to determine, based on field investigations, whether safeguards are necessary to minimize potential risks. The general level of detail used in mapping areas of known weak foundation soils is not of sufficient scale to mandate specific safeguards prior to a field investigation by the Building Codes Division.~~

5. Earthquakes and Tsunamis:

To protect life, minimize damage and facilitate rapid recovery from a local source Cascadia Subduction Zone earthquake and tsunami, the County will:

- ***i. Support tsunami preparedness and related resilience efforts.***
- ***ii. Take reasonable measures to protect life and property to the fullest extent feasible, from the impact of a local source Cascadia tsunami.***

iii. *Use the adopted Oregon Department of Geology and Mineral Industries (DOGAMI) Tsunami Inundation Maps applicable to County to develop tsunami hazard resiliency measures.*

iv. *Adopt a Tsunami Hazard Overlay Zone for identified tsunami hazard areas to implement land use measures addressing tsunami risk.*

v. *Consider potential land subsidence projections to plan for post Cascadia event earthquake and tsunami redevelopment.*

vi. *Require a tsunami hazard acknowledgement and disclosure statement for new development in tsunami hazard areas.*

vii. *Identify and secure the use of appropriate land above a tsunami inundation zone for temporary housing, business and community functions post event.*

viii. *Encourage housing, tourism, and government facilities be sited above tsunami inundation areas.*

6.Wildfires

Coos County shall address wildfire danger, particularly in the wild land/urban interface. A larger defensible space in areas that have been identified as being at risk of wildfires will be created as part of development standards. Coos County will work with fire protection agencies and support the providing improved fire protection service while supporting forest management practices that recues severe wildfire hazards.

7. Other Hazards

i. ***Wind***
Coos County shall support the policy of State Building Codes Division requiring new mobile home sitings to be secured to the ground, recognizing that "tied-downs" are appropriate safeguard against Coos County's wind hazards. (Note to Board this was moved from 5)

ii. ***High Groundwater and Ponding***
Public health is at issue with high groundwater and ponding; therefore, Coos County shall encouraging development of public water and/or sewer systems where dense development already exists in such areas is desirable.

iii. ***Flash Flooding***
Hazard to people and property can be minimized by restriction of development in these areas and by protection of vegetation in steep watersheds. Proper engineering of roads is also recommended. (Note to Board this was moved from 5)

3.9 NATURAL HAZARDS **(PROPOSED CHANGES)**

Introduction

Areas subject to natural hazards in Coos County have been identified ***and mapped using the County's GIS system. Each hazard is represented by a layer in the GIS database. A paper map will be printed and recorded in the Coos County Clerk's office as an attachment to the adopted plan amendment.*** ~~in a series of seven maps at a scale of 1" = 2 miles, and include areas of~~ ***The hazard layers include:***

~~1. Flood hazard~~

~~2. Flash flooding~~

~~3. Critical stream bank erosion~~

~~4. Wind erosion/deposition~~

~~5. Earthflow and slump topography~~

~~6. Rockfall and debris flow terrain~~

1. ***Flood Hazard***
    a. ***Riverine flooding***
    b. ***Coastal flooding***

2. ***Landslides***

3. ***Earthquakes***
    a. ***Liquefaction potential***
    b. ***Fault lines***

4. ***Tsunamis***

5. ***Erosion***
    a. ***Riverine streambank erosion***
    b. ***Coastal***
        i. ***Shoreline and headlands***
        ii. ***Wind***

6. ***Wildfires***

~~These all considered to be geologic hazards. Other natural hazards that have not been mapped but should be considered in land use decisions include:~~

~~1. Earthquakes~~

~~2. Fire~~

~~1. Winds~~

~~2. High groundwater and ponding~~

~~*3. Flash flooding*~~

~~4. Shoreline erosion and deposition~~

~~Flood hazard area mapping is based on a preliminary determination by the U.S. Department of Housing & Urban Development in conjunction with the National Flood Insurance Program. The mapping of other geologic hazards is based on Environmental Geology of Western Coos and Douglas Counties by the State Department of Geology and Mineral Industries.~~

These maps showing hazard areas were compiled using a variety of sources. Each hazard description below includes a summary of where the data was sourced from and the methodology used to create the maps.

~~It is apparent that most~~ ***Most*** of the naturally occurring hazards of Coos County can be attributed to excess water, landform or soil structure, or a combination of these characteristics. ~~Man aggravates these conditions in many ways by utilizing poor construction practices and altering the vegetative cover that~~ ***Human activity may affect*** ~~restrains~~ the occurrences of adverse impacts ***both positively and negatively.***

Goal Requirements

The Statewide Planning Goals require that the comprehensive plan provide protection of life and property from natural disasters and hazards. Specifically, Goal 7 requires that:

> ~~Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards.~~
>
> ***"local governments…adopt comprehensive plans (inventories, policies, and implementing measures) to reduce risk to people and property from natural hazards."***

Goal 17 (Coastal Shorelands) requires that programs be developed to "reduce the hazard to human life and property…resulting from the use and enjoyment of Oregon's coastal shorelands." The goal also requires that land use plans, implementing actions, and permit reviews "include consideration of…the geologic and hydrologic hazards associated with coastal shorelands."

Goal 18 (Beaches and Dunes) requires the reduction of "the hazard to human life and property from natural or man-induced actions" associated with beach and dune areas. ***This goal further requires that "Inventories shall be conducted [that] describe the…hazards… of the beach and dune areas[.]"***

Flooding

In 1968, the federal government established the National Flood Insurance Program. Administered by the Federal Emergency Management Agency, an agency of the Department of Homeland Security, ~~Department of Housing and Urban Development (HUD),~~ ***the program is designed to reduce annual flood losses through more careful planning and to provide property owners with affordable insurance protection. In 1973, the Congress passed the Flood Disaster Protection Act which makes flood insurance mandatory as a condition of receiving any mortgage loan, grant, or other funding that is in any way federally connected to buy, build, or improve property located in a*** ~~HUD identified flood prone area~~ ***FEMA-identified Special Flood Hazard Area. This included direct financing from a federal agency (FHA, VA, FmHa, EDA, EPA, etc.), or conventional mortgages from banks and savings and loan institutions that are regulated or insured by the Federal government.***

Completion of a more detailed survey of special flood hazard areas and floodway was originally completed in 1983 and revised in 2014. This survey is titled "Flood Insurance Study – Coos County, Oregon" and is accompanied with Flood Insurance Rate Maps and Flood Boundary-Floodway maps.

This Flood Insurance Study investigates the existence and severity of flood hazards in Coos County, Oregon, and aids in the administration of the National Flood Insurance Act of 1973. This study ~~will be~~ *has been used to convert Coos County to the regular program of flood insurance offered by the Federal Emergency Management Agency (FEMA). All areas subject to flood hazards have been identified, mapped, and adopted as part of the Coos County Zoning and Land Development Ordinance as a result of this study, including both riverine and coastal flooding.*

Before an individual can purchase flood insurance, the jurisdiction in which he or she lives must become eligible for the program. Currently the county and ~~*six of eight*~~ *all seven of the incorporated areas in the county have achieved eligibility. On-going eligibility requirements include notifying the Federal Insurance Administration when boundaries are changed through annexation, maintaining records of flood-proofing and information on elevation of lower floors of new and substantially improved structures in the flood hazard areas, and submitting an annual report. Eligibility is suspended if a community fails to adequately enforce or repeal its floodplain management regulations, which must meet certain standards.*

The general requirements for floodplain management regulations are that they must be legally enforceable and applied uniformly. The community must also provide that the regulations meeting the minimum criteria listed below take precedence over any less restrictive conflicting local laws, ordinances, or codes. The community must also ensure that its comprehensive plan is consistent with the objectives listed below.

At a minimum the floodplain management regulations must:

1. *Require building permits for all proposed construction or other development in the community;*

2. *Require review of all permits to assure that sites are reasonably free from flooding.*

For development in flood-prone areas, the regulations must also require:

1. *Proper anchoring of structures;*

2. *The use of construction materials and methods that will minimize flood damage;*

3. *Adequate drainage for new subdivisions;*

4. *The location and design of new or replacement utility systems to prevent flood loss or pollution;*

5. *Including base flood elevation data in all subdivision proposals and other proposals for new development greater than 50 lots or 5 acres;*

~~Stream~~*Riverine Flooding*

~~Stream~~ ***Riverine*** flooding is the temporary inundation of low-lying areas by water overflowing the banks of a stream or river during periods of high flow volume. Locally, this condition results from heavy rainfall

on ~~hilly~~ terrain that does not absorb water quickly. It is often aggravated by concurrent ocean flooding. Urbanization can further compound stream flooding because it ~~decreases~~ ***increases*** runoff and ***requires storm drainage systems to handle flows beyond their design***. ~~poorly designed storm drainage systems are incapable of offsetting this loss of natural infiltration.~~

Flooding can damage structures through the effects of current action, ~~stranding~~ ***standing*** water erosion, and siltation. It inflicts losses on agricultural lands by scouring topsoil, eroding stream banks, silting croplands, and killing livestock. It can threaten citizens by isolating dwellings, damaging property, disrupting transportation, and polluting or diverting water supplies.

The areas subject to inundation by large floods are ~~termed~~ ***called*** floodplains. Floodways are the channels that convey fast-moving water during flood periods. That area which is outside the floodway but is subject to periodic flooding is called the floodway fringe. On the lower reaches of rivers such as the Coos and Coquille, where the gradient is low and there are natural levees, the floodway fringe and the floodplain are almost the same. [1]

In Coos County, almost all lowlands adjacent to rivers, streams, sloughs, ***lakes*** and bays are subject to ***flooding.*** ~~hazard and~~ ***Land uses in these areas includes agricultural, residential, commercial and industrial uses.*** Many areas are inundated several times yearly. One year in three, for instance, the water discharge of one of the three forks of the Coquille River alone exceeds the bankfull capacity at Bear and Lampa Creeks. This capacity is exceeded ***nearly*** every year by the combined flow of any two of the three forks. As a result, the river banks in the lower reaches of the Coquille are overtopped about three times a year on the average, according to the U.S. Army Corps of Engineers. Downstream from the City of Coquille, siltation in the channel has raised most of the river bottom above the level of the surrounding lowlands, which creates drainage problems after floods.

~~Land use in the floodplains of Coos County is generally agricultural with some rural residential and commercial/industrial uses use. For example, log Log storage occurs along Isthmus Slough. There and there are millponds and log decks here and in some areas of the Coquille floodplain. The seasonally flooded areas of the Coquille Valley are also important feeding and resting areas for migrating wildfowl. While most of the incorporated areas are on river or marine terraces and uplands, portions are susceptible to flooding.~~ ***FEMA encourages developers to relocate from Special Flood Hazard Areas to areas less likely to be subjected to loss of life and property. When development in Special Flood Hazard Areas is unavoidable, action should be taken to mitigate the possibility and magnitude of loss to the greatest extent possible.***

~~In 1968, the federal government established the National Flood Insurance Program. Administered by the Department of Housing and Urban Development (HUD), the program is designed to reduce annual flood losses through more careful planning and to provide property owners with affordable insurance protection. In 1973, the Congress passed the Flood Disaster Protection Act which makes flood insurance mandatory as a condition of receiving any mortgage loan, grant, or other funding that is in any way federally connected to buy, build, or improve property located in a HUD-identified flood-prone area This included direct financing from a federal agency (FHA, VA, FmHa, EDA, EPA, etc.), conventional mortgages from banks and savings and loan institutions that are regulated or insured by the Federal government.~~

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[1] ~~John Beaulieu and Paul Hughes, Environmental Geology of Western Coos and Douglas Counties (DOGAMI, 1975), p. 59.~~
Beaulieu, John, and Paul Hughes. Environmental Geology of Western Coos and Douglas Counties. DOGAMI, 1975.

~~Before an individual can purchase flood insurance, the jurisdiction in which he or she lives must become eligible for the program. Currently the county and six of eight of the incorporated areas in the county have achieved eligibility. On-going eligibility requirements include notifying the Federal Insurance Administration when boundaries are changed through annexation, maintaining records of flood-proofing and information on elevation of lower floors of new and substantially improved structures in the flood hazard areas, and submitting an annual report. Eligibility is suspended if a community fails to adequately enforce or repeal its floodplain management regulations, which must meet certain standards.~~

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~~For development in flood-prone areas, the regulations must also require:~~

~~1. Proper anchoring of structures;~~

~~2. The use of construction materials and methods that will minimize flood damage;~~

~~3. Adequate drainage for new subdivisions;~~

~~4. The location and design of new or replacement utility systems to prevent flood loss or pollution;~~

~~5. Including base flood elevation data in all subdivision proposals and other proposals for new development greater than 50 lots or 5 acres;~~

~~Completion of a more detailed survey of special flood hazard areas and floodway was completed in 1983. This survey is titled "Flood Insurance Study Coos County, Oregon" and is accompanied with Flood Insurance Rate maps and Flood Boundary Floodway maps.~~

~~This Flood Insurance Study investigates the existence and severity of flood hazards in Coos County, Oregon, and aids in the administration of the National Flood Insurance Act of 1973. This study will be used to convert Coos County to the regular program of flood insurance by the Federal Emergency Management Agency (FEMA).~~

Ocean Flooding

Ocean flooding is the saltwater inundation of low-lying areas by tidal action, storm surge, ***rising ocean levels,*** or tsunamis. ***Tsunamis are discussed in greater detail under their own hazard category, but tidal action, storm surge, and rising ocean levels are discussed below.***

According to the National Oceanic and Atmospheric Administration (NOAA), the highest ~~predicted~~ ***recorded*** tide ***to date in Coos County was on January 26, 1983 in Charleston and*** ~~is~~ ***was*** approximately

~~6~~ *7* feet above mean sea level *according to the station datum in Charleston.*[2] ~~and is a~~ *Higher than expected tides can be a* factor in coastal ~~stream~~ *waterway* flooding ~~to~~ *as far as* the head of tidal influence. *In the Coos Bay Estuary, this can affect as far as the furthest tip of Isthmus Slough to the south and beyond the confluence of the East and West Forks of the Millicoma River beyond the unincorporated community of Allegany and the South Fork of Coos River to the east[3]. In the Coquille River Estuary, tidal influence extends over 35 miles up the Coquille River and beyond Myrtle Point[4], placing a large portion of the population in the Coquille Valley at risk.*

Storm surge ~~deseribes the~~ *is a flood or tsunami-like* rise ~~of~~ *in* sea level ~~by~~ *of* as much as 4-7 feet above prevailing tidal elevations. *These conditions are caused by* ~~because of~~ low barometric pressure, ~~and~~ wind, *and the rotation of the earth and are exacerbated by wave action and rainfall.[5] Communities and development along low coastal shorelands, such as Bandon, are especially at risk of damage from storm surge.*

A continual increase in global temperatures would add additional hazards to communities in low-lying areas. Overall warming of the ocean leads to the melting of icebergs and ice caps which, in turn, causes the overall sea level to rise. The Intergovernmental Panel on Climate Change (IPCC) stated in a 2014 report that the overall rate of sea level rise across the globe was 1.5-1.9 millimeters per year between 1901 and 2010 and 2.8-3.6 mm/yr between 1993 and 2010.[6] NOAA reports Charleston is expected to see an increase in sea level of 0.59 and 1.29 mm/yr,[7,8] which, while less than the global average, is not inconsequential. Low lying areas are particularly at risk of rising sea levels and can expect to see increased property damage, disrupted transportation networks on both land and sea, loss of low-lying agricultural lands, and loss of wildlife habitat.[9]

The impact of ~~high tide and storm surge~~ *ocean flooding hazards* in combination can be particularly destructive to development in coastal lowlands as well as contributing to inland stream flooding. ~~Identification of these areas can be a basis for making land use decisions.~~ *As a result, FEMA encourages developers to relocate from Special Flood Hazard Areas to areas less likely to be subject to loss of life and property. When development in Special Flood Hazard Areas is unavoidable, action should be taken to mitigate the possibility and magnitude of loss to the greatest extent possible.*

~~Tsunamis are waves generated at sea by seismic or submarine volcanic activity. The highest probable local tsunami would reach approximately 14 feet above mean sea level, though this height could conceivable by doubled through concurrence with particularly high tides and storm surge. Efficient local warning procedures can reduce the threat of injury and loss of life to recreational users of coastal beaches and coves.~~

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[2] "Datums for 9432780, Charleston OR." Datums - NOAA Tides & Currents. Accessed April 1, 2015. http://tidesandcurrents.noaa.gov/datums.html?id=9432780

[3] Coos County Comprehensive Plan. Vol. II. Coos County Planning Department, 1985.

[4] Coos County Comprehensive Plan. Vol. III. Coos County Planning Department, 1985.

[5] Harris, D. Lee. Characteristics of the Hurricane Storm Surge. U.S. Department of Commerce, 1963. 3-9.

[6] "Observed Changes and Their Causes." In Climate Change 2014 Synthesis Report, edited by Rajendra K. Pachauri and Leo Meyer, 42. Geneva: IPCC, 2014.

[7] "Mean Sea Level Trend - 9432780 Charleston, Oregon." Sea Level Trends. Accessed April 1, 2015. http://co-ops.nos.noaa.gov/sltrends/sltrends_station.shtml?stnid=9432780.

[8] "Extreme Water Levels - Charleston, OR - NOAA Tides & Currents." Extreme Water Levels - Charleston, OR - NOAA Tides & Currents. Accessed April 1, 2015. http://co-ops.nos.noaa.gov/est/est_station.shtml?stnid=9432780.

[9] "Sea Level Rise and Coastal Hazards." Sea Level Rise and Coastal Hazards | 2012 Washington State Integrated Climate Change Response Strategy | Climate Change | Washington State Department of Ecology | Preparing for a Changing Climate. Accessed April 1, 2015. http://www.ecy.wa.gov/climatechange/2012ccrs/coasts.htm.

~~Flash Flooding~~

~~Flash flooding can occur in the smaller upland stream channels in areas characterized by steep slopes exceeding 50% and having a vertical relief of 1000 feet or more.~~

~~Hazard to people and property can be minimized by restriction of development in these areas and by protection of vegetation in steep watersheds. Proper engineering of roads is also recommended.~~

Landslides ~~Mass Movement~~

~~*Mass movement is*~~ ***Landslides are the downslope movement of rock and soil. There are several types of landslides*** ~~*mass movement (often called "landslides"),*~~ ***depending upon the rate of movement and on the kind of material involved, ranging from rock falls (free falling or bouncing rocks, as happens in canyons) to flows (sliding materials behaves as or contains a liquid, such as mudflows or avalanches).*** ~~*These are described on the accompanying table.*~~

~~Mapping for this hazard exists only on the western portion of the County and a strip along the Powers highway; the eastern and southernmost portions of the County have not been mapped. Earthflow and slump topography are generally recognized by reduced slope relative to the rest of the slope, irregular draining, irregular topography (hummocky in the case of slump topography), bowed and tilted trees, or, usually, a combination of the above features. Rockfall and debris flow terrain is usually characterized by bedrock exposures in cliffs, by accumulations of rocky debris that are not covered by plants, and by gullied, elongated slurry like deposits of rock and soil in steep channels or on steep slopes.~~

~~*Mass movement*~~ ***Landslides*** ~~*can*~~ ***may be precipitated by the*** ~~*improper*~~ ***cutting or filling of terrain for road and other construction, removal of vegetation and root systems, increased moisture content in soils, the vibration of blasting or earthquakes, and streambank erosion.*** ~~*It is most commonly seen in the uplands and along sea cliffs.*~~ ***Occurrences of landslides exist across the entire county, with the majority being located in the southern half of the County.*** ~~*The rolling, grassy hills along the South Fork of the Coquille River are identified in the mapping as earthflow and slump topography, and this*~~ ***This is most evident in the frequent slides along the highway to Powers. Development in identified*** ~~*mass movement*~~ ***landslide hazard areas should be avoided or carefully controlled, because of the potential impacts on roads, structures, and pipelines.***

The Oregon Department of Geology and Mineral Industries (DOGAMI) has developed the Statewide Landslide Information Database of Oregon 3.0 (SLIDO) to catalog and describe landslides across the state of Oregon and, as a result, across Coos County. The SLIDO is a compilation of 347 studies from 1952 to 2012 showing areas that had previously suffered a landslide in an attempt to understand where future landslides may occur. The SLIDO database was trimmed from a state-wide layer to the boundaries of Coos County in order to create the map adopted by the County showing landslide hazards within its boundaries.

Earthquakes

~~*Earthquakes have not been addressed in the mapping as most of those experienced in the county originate on the Mendocino Fault off the northern Californian coast. Earthquakes originating there in 1922, 1923, and 1954 caused no damage here, though buildings swayed and sleepers were awakened in 1922 and shaking was observed in 1954.*~~

New maps available from DOGAMI indicate where earthquake-related hazards, such as liquefaction[10] and faulting, occur within Coos County. Due to its proximity to the geologically-active Cascadia subduction zone, the 2010 Coos County Natural Hazard Mitigation Plan rates Coos County as highly vulnerable to earthquake damage, meaning more than 10% of the County's assets are likely to be damaged or affected by an earthquake.[11]

The potential for damage from earthquakes is greater in the Coos Bay/Coos River ~~area~~, Bandon Dunes Resort, and Coquille River/Winter Lakes areas ~~southern part~~ of the county.~~, and~~ In these areas, damage is more likely to be a result of ~~liquification~~ liquefaction and landslides than of faulting. However, faults do exist in and around South Slough and south to the Coquille River and development along these fault lines should be avoided.

As part of DOGAMI Open-File Report O-13-06, "Ground Motion, Ground Deformation, Tsunami Inundation, Coseismic Subsidence, and Damage Potential Maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes," Ian Madin and William Burns created a liquefaction susceptibility map for all of Oregon based on the type of soil deposit in a general area. Soil types were based on the Oregon Geologic Data Compilation and SLIDO 2.0 and susceptibility was rated on a scale of 0-5 using the following definitions:

0	*None*
1	*Very Low*
2	*Low*
3	*Moderate*
4	*High*
5	*Very High*

The map adopted by the County inventories only those areas rated at "High" or "Very High" risk of liquefaction in Coos County. These areas represent the places most likely to suffer loss of life or property during an earthquake.

Structural design incorporating seismic considerations is a good response to earthquake potential in all parts of the county and is handled as part of the building permitting process overseen by the Oregon Department of Consumer and Business Services Building Codes Division. This is especially critical in the Coos Bay/North Bend area because of the greater instability of the older stabilized dunes, former marshes, and fill material that much of the cities' development occurs on. High occupancy and critical use facilities such as schools and hospitals should be located in areas of solid ground conditions.

Tsunamis

Tsunamis are larger than usual waves generated at sea by seismic or submarine volcanic activity. Tsunami heights can range from normal wave height to upwards of 60 feet, depending on the cause and coastal conditions at landfall, and can travel at speeds of hundreds of miles an hour. In the last 70 years, Coos County has seen tsunamis range from 0-10 feet[12], though it is expected that the tsunami

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[10] Liquefaction: "conversion of soil into a fluidlike mass during an earthquake or other seismic event" - "Liquefaction." Merriam-Webster. Accessed April 16, 2015. http://www.merriam-webster.com/dictionary/liquefaction.

[11] "Earthquake." In Coos County Multi-Jurisdictional Natural Hazards Mitigation Plan. University of Oregon's Community Service Center, 2010.

[12] "Tsunami." In Coos County Multi-Jurisdictional Natural Hazards Mitigation Plan. University of Oregon's Community Service Center, 2010.

generated by a local Cascadia Subduction Zone event will exceed this range. If a tsunami makes landfall during a time of hide tide and storm surge, the compounding effects of these conditions could result in a tsunami reaching unexpected heights. ~~the height could reach 30 feet or more. The highest probable local tsunami would reach approximately 14 feet above mean sea level, though this height could conceivable by doubled through concurrence with if it occurs at the same time as particularly high tides and storm surge.~~

The geologic record shows that the largest of these large Cascadia Subduction Zone earthquakes and accompanying tsunamis occur about every 500 years but range in frequency from 200 to 1,000 years.~~, plus or minus 200 years~~[13] The last such earthquake and tsunami occurred over 300 years ago, on the evening of January 26th, 1700[14]. This means that we are in the time window where a destructive Cascadia earthquake and tsunami could occur and the probability of that occurrence will continue to increase over time. This time, the stakes are much higher as the great earthquake and catastrophic tsunami could occur when tens of thousands of Oregonians and visitors are enjoying coastal beaches and towns. To address this substantially increasing risk within our community, the county is proactively addressing tsunami preparedness and mitigation within its land use program. Land use planning that addresses tsunami risk is an essential tool to help increase resilience to a potentially catastrophic tsunami event within Coos County.

The Department of Geology and Mineral Industries (DOGAMI) has mapped areas likely to be inundated during a tsunami caused by an earthquake in the Cascadia Subduction Zone ranging in size from "small (S)" to "extra extra large (XXL)". These Tsunami Inundation Maps (TIMs) provide essential information for defining tsunami risk along the Oregon Coast. According to the TIMs, the areas at highest risk are the low lying or sandy beaches along the coast, such as Old Town Bandon, Bullards Beach, and the North Spit, but also include areas up the Coos and Coquille Rivers as far as Allegany and Coquille. The areas around Lakeside and both North and South Ten Mile Lakes are also at risk. Coos County has adopted the portion of the XXL TIM applicable to Coos County as an element of the Plan and the implementing ordinance; however, this inundation map is not intended to be used or construed as the extent of tidal influence when determining the extent of the Coastal Shoreland Boundary.

Efficient local warning procedures can reduce the threat of injury and loss of life to recreational users of coastal beaches and coves. However, tsunami warning sirens and other warning procedures are not expected to be as effective for a tsunami generated by a local Cascadia Subduction Zone event and the only warning residents and visitors of Coos County may receive is severe ground shaking. It is therefore essential that community members and visitors be educated in the need to move to high ground as soon as prolonged ground shaking subsides. To prepare for and mitigate against loss and damage caused by tsunamis, Coos County is a current participant in NOAA's TsunamiReady program and has designated tsunami evacuation routes and sites to guide residents and visitors to safer areas in the event of an earthquake or tsunami.

Erosion

~~*Critical*~~ ***Riverine Bank*** ~~Streambank~~ *Erosion*

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[13] DOGAMI. "Tsunami Hazards in Oregon." Oregon Geology Fact Sheet. April 3, 2009. Accessed April 17, 2015. http://www.oregongeology.org/pubs/fs/tsunami-factsheet_onscreen.pdf.

[14] Atwater, Brian F., Musumi-Rokkaku Satoko, Satake Kenji, Tsuji Yoshinobu, Ueda Kazue, and David K. Yamaguchi. *The Orphan Tsunami of 1700—Japanese Clues to a Parent Earthquake in North America.* U.S. Geological Survey, 2005.

Streambank erosion (other than by flash flooding) occurs constantly on all rivers and streams in the Coos and Coquille drainage basins. Critical erosion causes a loss of land to streambank cave-ins and can initiate landslides on the adjacent uplands. Critical streambank erosion occurs most commonly along floodplains and at the base of river terraces or landslide deposits in the uplands. Valuable farmland is being lost from the floodplains in the Broadbent area, for example, and ~~along Highway 42~~ several landslides ***along Highway 42*** are kept active by streambank erosion at their bases.

~~The problem~~ ***Streambank erosion*** is naturally occurring and can be most effectively and most economically controlled by protection of bank vegetation and by careful planning, which can prevent the location of structures in areas threatened by this hazard. Careful engineering of roads is also necessary to prevent frequent need for expensive repairs. ~~Riprap and other~~ Structural solutions, ***such as riprap***, are less preferred ***than vegetative solutions*** but may be ~~useful or desirable~~ ***necessary*** for ***the*** protection of existing roads or structures and land.

The Coos County Planning Department has identified areas that appear prone to streambank erosion by comparing aerial photographs from 1999 with aerial photographs from 2013 and, in consultation with Oregon Department of Fish and Wildlife Staff, finding areas along river and streambanks that showed obvious erosion occurring, including increased exposure of substrate, reduction of vegetation coverage, and an increase in the width of the waterway.

Coastal Erosion ~~***Shoreline Erosion and Deposition***~~

Beach and headland erosion occurs along the entire Coos County coastline. These hazards are addressed in greater detail in Section 3.8, "Dunes and Ocean and Lake Shorelands." ~~*Areas of beach erosion and deposition and coastal headland erosion rates are shown on the map accompanying that section.*~~

Wave erosion poses a major hazard to coastal development. Wave energy is highest during winter months, and erosion is consequently greater then. Broad summer beaches become narrow and steep as vast amounts of sand are moved offshore. Development that appears to be a safe distance from the sea becomes threatened when a particularly powerful series of storms pound the coast, such as in the winter of 1976-1977.

The pattern of erosion of upland areas by waves depends on the geology. Sheared or crumbly rock leads to ~~***earthflow and slumping***~~ ***falling rocks and landslides with rapid rates of erosion. Development in such areas can be dangerous. Wave erosion of hard bedrock forms cliffs and erosion rates are slow (except along faults or joints); when significant erosion does occur, it occurs as*** ~~***is be***~~ ***the breaking off of large chunks of rock. Removal of driftwood and rock debris from the bases of cliffs and areas where mass movement is occurring probably increases erosion rates significantly.***

Sand is constantly being moved by wave and current action. Interruption of this movement can cause formation of new beaches, as at Bastendorff following jetty construction. This generally occurs at the expense of other areas – existing beaches may get smaller or disappear altogether and headland erosion may increase. Placement of large rocks (riprap) and construction of protective structures like seawalls (which are parallel to the coast) and groins (rigid structures which project outward from the shore), then, should be discouraged since they have a negative impact on the properties of others by tying up sand that would have been deposited elsewhere and in some instances by removing a source of beach sand. They may also increase future costs to the public; on the East Coast and in California increased threat to coastal developments have lead to a huge cry for publicly-funded coastal protection projects, many of which seem to be fraught with unforeseen impacts. One means of dealing with beach erosion holds much promise: beach nourishment (supplying sand, generally from dredging projects or

projects or from well offshore) is being tried by the Army Corps of Engineers in the Miama, Florida, area and elsewhere, although the high energy wave environment of the Oregon Coast and lack of sand supply presents obstacles to implementing the same measures locally. The mining and removal of sand from beaches also increases erosion ~~and should be carefully controlled.~~ Mining and removal of material from beach and dune areas is subject to Statewide Planning Goal 18 and may not be permitted.

The maps adopted by the County showing areas at risk of coastal erosion were completed by the US Geological Survey as part of a national study to determine a "coastal vulnerability index" detailing areas at risk due to sea level rise. The risk of coastal erosion was a component used to determine this overall index. The information portrayed in this map is precise only to a scale of approximately 5-10 kilometers (3-6 miles) and should not be used to determine hazard for specific locations. As more detailed information becomes available at a local level, the County will look at updating this section to account for future recommendations.

Wind Erosion and Deposits

Wind erosion and deposits are essentially coastal processes locally and, together with wave action, contribute to ~~our~~ *a* changing coastline. Areas subject to the effects of wind erosion and deposition are indicated in the mapping and include the sand dune areas inland from the Coos-Umpqua beach in the Oregon Dunes National Recreation Area, the Bandon spit on the Coquille River, and the New River area.

Blowing sand can be a nuisance to recreational users and a long-term hazard to structures located in the path of migrating dunes~~, which can move as much as 6 feet per year~~. This is a hazardous factor in local planning because of an abundant sand supply, persistent winds, and an absence of stabilizing vegetation. Identification and mapping of areas subject to wind erosion and deposition can aid in planning the optional location on development. Concern should also be shown for the impact of development on currently stabilized areas. [15]

Such development could open new deposits of loose sand causing problems on adjacent properties. Protecting existing vegetation and requiring revegetation as soon as possible when the plant cover must be disturbed are ways of reducing this hazard. Additional hazards of development in dune areas are covered in the section on dunes (Section 3.8).

~~Fire~~ *Wildfire*

Wildfires are defined as "unwanted, unplanned damaging fires in forests."[16] Wildfires are generally fed by an overabundance of fuel and dry, windy conditions and can be particularly damaging to communities that reside within the interface between forestlands and developed areas. Historically, wildfires in Coos County have ranged in size from approximately 180 acres to almost 300,000 acres in 1868 when most of the Elliott State Forest burned.[17] In southern Coos County, large populations of gorse and scotch broom increases risk to wildfires due to a naturally high content of oil.

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[15] See "Dunes and Ocean and Lake Shorelands" (Section 3.8, this document) for a discussion of the hazards of development in dune areas. "Stabilized areas" refers both to recently stabilized dunes and older established dunes (DS, DC, and OSC; and ODS respectively on the sand dunes maps in the Background Document, pp. 15-11 through 15-13). Older stabilized dunes generally have well-developed soil profiles. Both types are vegetated, whereas active dune forms are not.

[16] "Smokey Bear - The Science of Wildfires." Smokey Bear. Accessed April 1, 2015. http://www.smokeybear.com/wildfire-science.asp.

[17] "Wildfire." In Coos County Multi-Jurisdictional Natural Hazards Mitigation Plan. University of Oregon's Community Service Center, 2010.

In 2004, the Oregon Department of Forestry (ODF) completed a "Communities at Risk" assessment for the state of Oregon. In this assessment, four ratings were calculated: risk (the likelihood of a fire occurring), hazard (resistance to control once a fire starts, based on topography, fuel, and weather), protection capability (capacity and resources available to undertake fire prevention measures), and value (human and economic values).[18] The scores of these values were combined and used to determine an area's overall risk factor on a scale of 4-27 ("Total Score"), which is one part of the data being used to determine what areas are at a high risk of wildfire hazard in Coos County.

The second piece of data being used to determine wildfire risk in Coos County is an aerial survey of gorse in southern Coos County completed by ODF in 2014. ODF Invasive Species Specialists flew over Coos and Curry Counties in early 2014 and recorded the location and extent of blooming gorse and confirmed accuracy by reviewing a portion of the indicated areas on the ground.

Coos County already has measures in place to help protect against wildfires in forestlands and those areas immediately adjacent to forestlands by requiring new development create firebreak setbacks around proposed structures. The areas determined to be at high risk of wildfires in the Communities at Risk report generally fall within the forestlands and their interfaces with other zones; as a result, they are already partially protected. These measures can be further expanded to include those areas designated as at high risk of fire hazard by the Communities at Risk report or gorse aerial survey which are not already within the forestlands or forestland-interfaces.

~~Fire poses a major hazard to development in forested areas of the county and especially to the residential development in brushy coastal areas such as the Bandon area where there are extensive stands of highly inflammable gorse and broom. The problem is often compounded by inadequate roads serving residential developments in forested areas.~~

Other hazards

The following hazards are not included in Statewide Planning Goal 7 and are not currently a priority for making land use decisions in Coos County. However, at some point in the future, they may become a priority and are being included here in case that time ever does come.

~~Mass Movement~~

~~Mass movement is the downslope movement of rock and soil. There are several types of mass movement (often called "landslides"), depending upon the rate of movement and on the kind of material involved. These are described on the accompanying table.~~

~~Mapping for this hazard exists only on the western portion of the County and a strip along the Powers highway; the eastern and southernmost portions of the County have not been mapped. Earthflow and slump topography are generally recognized by reduced slope relative to the rest of the slope, irregular draining, irregular topography (hummocky in the case of slump topography), bowed and tilted trees, or, usually, a combination of the above features. Rockfall and debris flow terrain is usually characterized by bedrock exposures in cliffs, by accumulations of rocky debris that are not covered by plants, and by gullied, elongated slurry like deposits of rock and soil in steep channels or on steep slopes.~~

~~Mass movement can be precipitated by the improper cutting or filling of terrain for road and other construction, removal of vegetation and root systems, increased moisture content in soils, the vibration of~~

[18] Identifying and Assessment of Communities at Risk in Oregon. Oregon Department of Forestry, 2004.

~~blasting or earthquakes, and streambank erosion. It is most commonly seen in the uplands and along sea cliffs. The rolling, grassy hills along the South Fork of the Coquille River are identified in the mapping as earthflow and slump topography, and this is most evident in the frequent slides along the highway to Powers. Development in identified mass movement hazard areas should be avoided or carefully controlled, because of the potential impacts on roads, structures, and pipelines.~~

~~Earthquakes~~

~~Earthquakes have not been addressed in the mapping as most of those experienced in the county originate on the Mendocino Fault off the northern Californian coast. Earthquakes originating there in 1922, 1923, and 1954 caused no damage here, though buildings swayed and sleepers were awakened in 1922 and shaking was observed in 1954. The potential for damage from earthquakes is greater in the Coos Bay area and southern part of the county, and damage is more likely to be a result of liquification and landslides than of faulting. Structural design incorporating seismic considerations is a good response to earthquake potential in all parts of the county. This is especially critical in the Coos Bay/North Bend area because of the greater instability of the older stabilized dunes, former marshes, and fill material that much of the development occurs on. High occupancy and critical use facilities such as schools and hospitals should be located in areas of solid ground conditions.~~

~~Fire~~

~~Fire poses a major hazard to development in forested areas of the county and especially to the residential development in brushy coastal areas such as the Bandon area where there are extensive stands of highly inflammable gorse and broom. The problem is often compounded by inadequate roads serving residential developments in forested areas.~~

Winds

Persistent winds are a feature of much of Coos County and are of particular importance as a potential hazard to the siting of mobile homes. Accordingly, the State Department of Commerce enforces siting and tie-down regulations that govern the placement of mobile homes.

High Groundwater and Ponding

High groundwater and ponding are most common in the coastal lowlands, marine terraces, inland floodplains, and some areas of Coos County's sand dunes. Uneven settling, flooding of basements, floatation of septic tanks, and septic system failure are common consequences of development in these areas. Potential for pollution of domestic water sources is also high. Since public health is at issue, encouraging development of public water and/or sewer systems where dense development already exists in such areas is desirable.

~~Shoreline Erosion and Deposition~~

~~Beach and headland erosion occur along the entire Coos County coastline. These hazards are addressed in greater detail in Section 3.8, "Dunes and Ocean and Lake Shorelands." Areas of beach erosion and deposition and coastal headland erosion rates are shown on the map accompanying that section.~~

~~Wave erosion poses a major hazard to coastal development. Wave energy is highest during winter months, and erosion is consequently greater then. Broad summer beaches become narrow and steep as vast amounts of sand are moved offshore. Development that appears to be a safe distance from the sea~~

~~becomes threatened when a particularly powerful series of storms pound the coast, as in the winter of 1976-1977.~~

~~The pattern of erosion of upland areas by waves depends on the geology. Sheared or crumbly rock leads to earthflow and slumping with rapid rates of erosion. Development in such areas can be dangerous. Wave erosion of hard bedrock forms cliffs and erosion rates are slow (except along faults or joints); when significant erosion does occur, it is be the breaking off of large chunks of rock. Hazard, however, is slight and moderate setbacks are generally considered adequate protection. Removal of driftwood and rock debris from the bases of cliffs and areas where mass movement is occurring probably increases erosion rates significantly.~~

~~Sand is constantly being moved by wave and current action. Interruption of this movement can cause formation of new beaches, as at Bastendorff following jetty construction. This generally occurs at the expense of other areas -- existing beaches may get smaller or disappear altogether and headland erosion may increase. Placement of large rocks (riprap) and construction of protective structures like seawalls (which are parallel to the coast) and groins (rigid structures which project outward from the shore), then, should be discouraged since they have a negative impact on the properties of others by typing up sand that would have been deposited elsewhere and in some instances by removing a source of beach sand. They may also increase future costs to the public; on the East Coast and in California increased threat to coastal developments have lead to a hue and cry for publicly funded coastal protection projects, many of which seem to be fraught with unforeseen impacts. One means of dealing with beach erosion holds much promise: beach nourishment (supplying sand, generally from dredging projects or from well offshore) is being tried by the Army Corps of Engineers in the Miama, Florida, area and elsewhere. The mining and removal of sand from beaches also increases erosion and should be carefully controlled.~~

Flash Flooding

Flash flooding can occur in the smaller upland stream channels in areas characterized by steep slopes exceeding 50% and having a vertical relief of 1000 feet or more.

Hazard to people and property can be minimized by restriction of development in these areas and by protection of vegetation in steep watersheds. Proper engineering of roads is also recommended.

BOARD OF COMMISSIONERS

COOS COUNTY

STATE OF OREGON

In The Matter of Adopting language in the Coos County Zoning and Land Development Ordinance.	ORDINANCE No.: 17-04-004PL

SECTION 1. TITLE

This Ordinance shall be known as the "Coos County Ordinance No. 17-04-004PL".

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend the Coos County Zoning and Land Development Ordinance which will, in part, amend the natural hazard section to implement Ordinance No. 15-05-005PL (Volume 1, Part 1 § 5.11 and Part 2 § 3.9 Natural Hazards, which contains comprehensive plan provisions for all unincorporated areas of Coos County outside of the Coos Bay Estuary Management Plan and the Coquille River Estuary Management Plan). This ordinance will further modify Chapters 1, 2, 4, 5, 6 and 7 to address updates to Exclusions, Definitions, Industrial and Commercial Uses, Land Use Procedures, Lawfully Created Parcels, Property Line Adjustments, Road Standards. This ordinance amends Coos County Ordinances 85-03-005L, 84-5-016L and 82-12-022L which adopted Volume I of the Coos County Comprehensive Plan;

SECTION 4. FINDINGS

Chapter one modifications are included in this ordinance to allow for exclusions from permit requirements as part of Chapter I. The County found it necessary to define what type of activities would not be regulated through the Coos County Zoning and Land Development Ordinance for a clear interpretation.

Chapter II modifications and inclusions of new definitions to allow clear interpretation of terms used throughout the Coos County Zoning and Land Development Ordinance as well as the Coos County Comprehensive Plan.

Chapter IV modifications include changes to uses standards in Rural Residential to remove the requirements for an elevated review process when a lot or parcel is less than an acre as well as clarifications to the density requirements. Further changes to the Rural Residential zone include clarification of the use of

recreational vehicles and accessory structures. Changes to the Rural Center zone include the addition of commercial uses that are listed in Section 4.4.100 as this zone is a mixed residential commercial zone. Changes to the Commercial and Industrial zones were made to be consistent with what is allowed by statute and , notices requirements, and square footage requirements found in OAR 660-022-0030(4) and OAR 660-022-0030(10).

Chapter IV modifications also include, changes to the Coastal Shoreland Boundary to be consistent with the Coos County Comprehensive Plan and natural hazards as defined by Statewide Planning Goal 7. Statewide Planning Goal 7 requires local governments to inventory information on natural hazards and this was completed when the Comprehensive Plan was adopted and acknowledged in 1985. However, an update to Goal 7 adopted in 2001 revised the language; this update revises the Balance of County Implementation Ordinance to be consistent with the Balance of County Comprehensive Plan. The hazard language included updates to Flood Hazards, Landslides, Earthquakes, Tsunamis, Erosion and Wildfires. This was the second step in the hazards update. The first step was adoptions of maps and Comprehensive Plan Policies completed in Ordinance number 15-05-005PL. Staff is continually working with Department of Land Conservation and Development to update hazards and there will be additional changes that will incorporate both Coos County Estuary Management Plans.

The Board of Commissioners has adopted language to implement hazard review consistent with the applicable State Law and Statewide Planning Goal 7. All hazards were based on model codes provided by Department of Land Conservation and Development (DLCD) with modifications made through the public process. There were some changes required to address the fact that Coos County does not have authority to administer the building codes program. These issues came up through the Tsunami Hazard discussion. Oregon Statewide Planning Goal 7 envisions a process whereby new hazard inventory information generated by federal and state agencies is first reviewed by the DLCD. DLCD then notifies the County of the new information, and the County has three years to respond to the information by evaluating the risk, obtaining citizen input, and adopting or amending implementation measures to address the risk. The County has not received notice from DLCD but has taken the proactive role in working with DLCD to address tsunami hazards.

This section of the ordinance places restrictions and limitations on certain categories of uses. These limitations apply primarily to uses which present a high potential for life safety risk, or to uses which provide an essential function during and after a disaster event. ORS 455, which is implemented through the state building code, currently prohibits certain facilities and structures in the tsunami inundation zone as defined by the Oregon Department of Geology and Mineral Industries as indicated in Section 4.11.410. The overlay incorporates the

requirements that can be limited through the land use program. Nothing in this ordinance is meant to conflict with the State Building Code but will focus on integration of development and improvement of evacuation infrastructure into the land use and development review process.

Coos County does not house the building codes program and; therefore, Coos County lacks certain enforcement authority over the Oregon Structural Specialty Code as explained in OAR 632-005-0070 exemption responsibility. This section of the ordinance is not meant to obstruct the authority of the structural code.

These provisions establish requirements to incorporate appropriate evacuation measures and improvements in most new development, consistent with an overall evacuation plan for the community. It is important to note that effectiveness of this component to the overlay is largely dependent up on the development and adoption of an Evacuation Route Plan. Coos County Planning Department has worked with Coos County Emergency Management in planning for emergency preparedness and developing hazard mitigation plans.

The maps that will be used to implement this section of the Coos County Zoning and Land Development ordinance are the 2012 Tsunami Inundation Maps produced by Oregon Department of Geology and Mineral Industries. The maps will be printed and filed as part of the Coos County Comprehensive Plan. This will replace the map that was adopted as part of Ordinance 15-05-005PL.

The series of maps consists of a Small (S), Medium (M), Large (L), Extra Large (XL) and Extra-Extra Large (XXL), with the XXL indicating the worst case scenario. When a size is identified in the section it includes all smaller sizes. For an example if a facility is regulated in an L tsunami inundation event then it includes all M and S tsunami inundation mapped areas.

Chapter V modifications include updates to procedures and application requirements. The modifications include a new procedure for geologic assessment necessary for review of any geological hazards.

Chapter VI modifications include clarifications to lawfully created lots or parcels, new procedures for validation of a unit of land not lawfully established to be consistent with ORS 92, and clarifications to the property line adjustment procedures.

Chapter VII modifications include updates to bicycle and pedestrian circulation and trenching requirements for all new roads.

The Board also included changes to review processes for all zones that allow for vacation rentals that are permitted under a Hearings Body Conditional Use to reduce the level of review to an Administrative

Conditional Use and included Accessory Structures and Uses as a permitted use in subordinate to any authorized primary use in all Balance of County Zones.

SECTION 5. AMENDMENT TO THE COOS COUNTY ORDINANCE

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

SECTION 6. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity of the remaining portions of this ordinance; and it is hereby expressly declared that every other section, subsection, provision, clause or paragraph of this ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 7. REPEAL OF INCONSISTENT ORDINANCES

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

Dated this 2nd day of May 2017

BOARD OF COMMISSIONERS

ATTEST

Bobbi Brooks
Recording Secretary

Chair

Approved as to form:

Office of Legal Counsel

Vice Chair

absent
Commissioner

First Reading: June 2, 2016

Second Reading: May 2, 2017

Effective Date: July 31, 2017

SECTION 1.1.800 EXCLUSION FROM PERMIT REQUIREMENTS:

The following uses and activities are permitted in each zoning district but are excluded from the requirement of obtaining a compliance determination or conditional use. Exclusion from the permit requirement does not exempt the use and/or activity from otherwise complying with all applicable development standards and special development considerations.

1. ***Landscaping outside the floodplain and not involving a structure or parking lot;***
2. ***Any change or repair to a lawfully established building or other lawfully established structure that does not alter or expand the use thereof;***
3. ***Accessory structures containing a lawfully established use or building which meet the building permit exemption requirements of the Oregon Department of Consumer and Business Services (State Building Codes). Accessory structures must be subordinate in extent and use to the primary use.***
4. ***Farm use or uses that do not include new structures are exempt from all land use requirements and include the following:***
    a. ***Direct sale of farm crops as described in ORS 215.203 when a building permit is not required;***
    b. ***Fences, chutes, corrals and round pens;***
    c. ***Watering structures; and***
    d. ***Stand-alone feeders.***
5. ***Propagation or cutting of trees outside of a riparian area.***
6. ***Establishment, construction, maintenance, preservation or termination of improvements and facilities in a public right-of-way together with piping and culverting, accessory drainage systems such as catch basins, and necessary accessory structures and easements. Although, said facilities within a floodplain or hazard area shall obtain a development permit.***
7. ***The following structures if an accessory to a residential use as long as a building permit is not required:***
    a. ***Playground equipment and structures;***
    b. ***Stone or brick barbecues;***
    c. ***Clotheslines;***
    d. ***Tree houses, playhouses and storage sheds less than two hundred (200) square feet in area;***
    e. ***Arbors and trellises;***
    f. ***Domestic animal structures less than two hundred (200) square feet in area;***
    g. ***Basketball hoops, tetherball poles and other permanently mounted sports equipment;***
    h. ***Above-ground swimming pools, hot tubs and spas;***
    i. ***Temporary or portable sheds or carports.***
8. ***Dwellings used as long term rentals for residential purposes excluding vacation rentals, hotels, motels and group cottages. The rental will be for long term residential use extending for a period of more than 30 days with the intent to establish residency and be occupied for living purposes.***
9. ***The following excavations or fills, provided that no excavation or fill shall occur in the floodplain, hazard area or in an area specifically identified as a Goal 5 resource without first obtaining a development permit:***

a. Excavations below finish grade for basements and footings of a building, retaining wall or other structure authorized by a valid development or building permit;

b. Cemetery graves that comply with ORS 692, are not used for commercial purposes and has 10 or fewer interments;

c. Excavations for wells, tunnels or utilities;

d. Excavations or fills for public projects conducted by or under contract of the county;

e. Exploratory excavations affecting or disturbing areas less than six thousand (6000) square feet in size, under the direction of soil engineers or engineering geologists;

f. Accepted farm practices, as defined in ORS 215.203, such as preparation of land for cultivation;

g. Emergency or routine repairs or maintenance of a lawfully established communication tower or antenna; or

h. Fills associated with public transportation improvements within a public right of way.

10. Transportation improvements required to fulfill a condition of approval made in a final land use approval by the Planning Director, Planning Commission or Board of Commissioners, adopted after the effective date of this ordinance (Ordinance # and date). Conditions of approval shall be consistent with § 5.0.350.

SPECIFIC DEFINITIONS (TO BE INCLUDED IN § 2.1.200)

ACCESSORY USE: *A use, building or structure that is (1) customarily incidental and subordinate to the principal use, main building or structure, and (2) subordinate in extent, area and purpose to the principal use. A use that constitutes, in effect, conversion to a use not permitted in the district is not an accessory use.*

ARGUMENT: *Assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. Argument does not include facts.*

BURDEN OF PROOF: *Except as otherwise provided, the applicant shall bear the burden of proof that the proposal is in compliance with the applicable standards. In addition, evidence of mistake in adoption of the plan designation or development regulations or subsequent change in the affected area are relevant considerations. Unless specifically identified as jurisdictional, failure to comply with a provision of the Coos County Zoning and Land Development Ordinance shall invalidate an action only if it prejudices the substantial rights of the person alleging the error. Persons alleging procedural error shall have the burden of proof as to whether the error occurred and whether the error has prejudiced the person's substantial rights.*

EVIDENCE: *Facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.*

BED AND BREAKFAST: *Consistent with OAR 333-170-0000(2) a Bed and Breakfast is any establishment located in a structure designed for a single family residence and structures accessory thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, which:*

(a) Has three or more rooms for rent on a daily basis to the public;
(b) Offers a breakfast meal as part of the cost of the room;
(c) Serves one breakfast meal a day to guests, staff, and owners, only.

BREAKFAST MEAL: *Consistent with OAR 333-170-0000(3) a breakfast meal is the meal served to guests during the a.m. or morning hours each day.*

CHANGE IN USE. *A change in tenant or activity occupying a parcel of land, a premise or structure, which creates a change in vehicular trip generation activities, changes the parking classification as set forth in Article 7.5 Parking Standards.*

COMMERCIAL USES: *Privately-owned or operated facilities or places of business open to the public for sale of goods or services.*

DENSITY: *The intensity of residential land uses per acre, stated as the number ofdwelling units per gross acre. There shall be one dwelling per lawfully created parcel unless otherwise*

allowed by the Coos County Zoning and Land DevelopmentOrdinance or Comprehensive Plan.

DWELLING: Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.***A dwelling shall consist of a kitchen, bathroom(s) and living space. Dwellings do not including a RV, tent, teepee, yurt, hotels, motels, vacation rentals or boarding houses.***

DWELLING TYPES: Dwellings are separated into the following categories:

a. Single family dwelling: a single household unit of which construction is characterized by no common wall or ceiling with another unit, including a mobile home unless otherwise prohibited.

b. A multi-family dwelling structure contains three (3) or more dwelling units that share a common floor/ceiling with one (1) or more units. The units may also share common building walls. The land underneath the structure is not divided into separate lots. Multi-dwelling structures include structures commonly known as garden apartments, apartments, and condominiums.

c. A duplex is a structure that contains two primary dwelling units. The units shall share either a common building wall or a common floor/ceiling. The land underneath the units may or may not be divided into individual lots.

d. Replacement dwelling: alteration, restoration or replacement of a lawfully established dwelling that: (i) has intact exterior walls and roof structure; (ii) has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system; (iii) has interior wiring for interior lights; (iv) has a heating system; and (v) in the case of replacement, is removed, demolished or converted to an allowable non-residential use within three months of the completion of the replacement dwelling. [OR 93-12-017PL 2/23/94]

DWELLING UNIT: A single unit providing complete independent living facilities for one or more persons, including permanent provision for living, sleeping, eating, cooking and sanitation.

ESSENTIAL FACILITY: Essential facility shall mean:

a. ***Hospitals and other medical facilities having surgery and emergency treatment areas;***
b. ***Fire and police stations;***
c. ***Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;***
d. ***Emergency vehicle shelters and garages;***
e. ***Structures and equipment in emergency-preparedness centers;***
f. ***Standby power generating equipment for essential facilities; and***

g. ***Structures and equipment in government communication centers and other facilities required for emergency response***

HAZARDOUS FACILITY: Hazardous facility shall mean a structure or structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.

HOTEL/MOTEL OR GROUP COTTAGES: A property, however owned and including a condominium under ORS chapter 100, in which rooms or suites of rooms generally are rented as transient lodgings and not as principal residences. This use may consist of a building or group of buildings on the same lot, containing guest units with separate entrances and consisting of individual sleeping quarters detached or in connected rows, with or without cooking facilities.

INDUSTRIAL USE: The use of land and/or structures for the manufacturing or processing of primary, secondary, or recycled materials into a product, warehousing and associated trucking operations, wholesale trade, and related development.

PRINCIPAL OR PRIMARY USE: The primary use and chief purpose of land, buildings, or structures.

INDUSTRIAL DEVELOPMENT: Any development for the purpose of accommodating an Industrial Use, which also includes accessory uses subordinate to the industrial development, and on-site sewer facilities to serve such an industrial development.Commercial, retail, or residential development is not authorized in an area zoned IND.

REVIEWING AUTHORITY: The person or persons that are reviewing a land use matter. The Reviewing Authority may consist of the Planning Director, Planning Commission, Board of Commissioners, Hearings Officer or Special Hearings Officers.

SPECIAL OCCUPANCY STRUCTURE: Special occupancy structure shall mean:

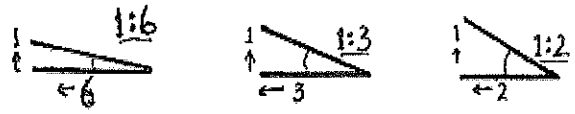
a. ***Covered structures whose primary occupancy is for public assembly with a capacity greater than 300 persons;***
b. ***Every public, private, or parochial school building including child care center;***
c. ***Buildings for colleges or adult education schools with a capacity greater than 500 persons;***
d. ***Medical facilities with 50 or more residents or patients;***
e. ***Jails and detention facilities; and***
f. ***All structures and occupancies with a capacity greater than 5,000 persons.***

SHORELINE: The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.

SHORELINE BOUNDARY FOR THE PACIFIC OCEAN:The shoreline of the Pacific Ocean in Coos County is defined by the actual vegetation line, which is the seaward limit of non-

aquatic vegetation. This visible line of continuous upland vegetation is the boundary between the beach and the upland. Seasonally, patches of vegetation may progress seaward of the actual vegetation line however, the actual vegetation line is typically visible as a continuous edge of upland vegetation. In certain cases, areas of geologic hazards may require that the shoreline be moved further landward to encompass the unique geologic hazards associated with the Pacific Ocean. For example, the vegetation line may be at the base of a steep hill or cliff that plunges down to the beach. In these cases, the cliff, or geologic hazard should supersede the vegetation line and would therefore be considered the shoreline. A botanist, engineer, or geologist may be needed to clearly define the shoreline of the Pacific Ocean.

SLOPE: means the ratio of vertical distance to horizontal distance on a surface, where a ratio of one vertical foot in change to two horizontal feet in change equals a 1:2 ratio. Example



SITE VISITS: Site visits to a subject property may be performed by any decision maker forinformational purposes in order to reach a decision, provided any of the information obtained during the site visit is disclosed and an opportunity to rebut is provided.

SMALL WIND ENERGY SYSTEM: means a wind energy conversion system consisting of a wind turbine, a support structure, and associated control or conversion electronics that has a rated capacity of not more than 10 kilowatts and that is intended to reduce on-site consumption of utility power.

SOLID WASTE: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste. The term does not include:

(a) Hazardous waste as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or

(c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, or improvement of an existing structure, the total cost of which exceeds 50 percent of the real market value of the structure. When applying this definition, the cumulative impact of all development work completed within the previous five (5) year period shall be considered.

START OF CONSTRUCTION:

(a) For a structure other than a mobile home, START OF CONSTRUCTION means the first placement of permanent material for the construction of the primary use on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For a structure without a basement or poured footings, the START OF CONSTRUCTION means the first permanent framing or assembly of the structure, or any part thereof, on its piling or foundation.

(b) For mobile homes not within a mobile home park or subdivision, START OF CONSTRUCTION means securing the mobile home at its permanent location by means of tiedowns or, in the case of a double-wide mobile home, its placement upon piers.

TEMPORARY OCCUPANT: any person that occupies any room or rooms for habitation for a continuous period not exceeding 30 days. This excludes any person who pays for lodging on a monthly basis.

TRACT: A unit of land that has not been partitioned or subdivided that is listed on the same deed of record or multiple contiguous (touching by more than one point) units of land within the same ownership.

Examples as follows:

OWNERS OF PROPERTY "A"	*OWNERS OF CONTIGUOUS PROPERTY "B"*	*DOES A SEPARATE TRACT, LOT OR PARCEL EXIST*
JOHN ADAM DOE	*JOHN DOE*	*NO*
J. ADAM DOE	*JOHN A. DOE*	*NO*
JOHN & MARY DOE	*J.A. & M.S. DOE*	*NO*
JOHN A. DOE	*MARY S. DOE*	*YES*
JOHN & MARY DOE	*M.S. DOE*	*YES*

TSUNAMI INUNDATION MAPS: Tsunami inundation maps shall mean the map, or maps, in the Oregon Department of Geology and Mineral Industries (DOGAMI) Tsunami Inundation Map (TIM) Series, adopted by the DOGAMI on [date], which covers the area within Coos County.

VACATION RENTALS:*A furnished apartment or house rented out on a temporary basis to tourists or guests as an alternative to a hotel/motel or group cottage.* The definition includes dwelling(s) or dwelling unit(s) for the purpose of being rented or occupied on a daily or weekly basis, or is available for use, rent, or occupancy on a daily or weekly basis, or is advertised, or listed by an agent, as available for use, rent, or occupancy on a daily or weekly basis and are

predominately rented out less than 30 days.

WETLANDS BOUNDARY: The land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water and in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.

WRECKING YARD: Any property used as a site for breaking up, dismantling, sorting, storing, distributing, trading, bartering, buying, or selling of any scrap, waste, or disposed material. This use includes automobile graveyards and scrap metal facilities. This use shall not include storage, repair, or dismantling of implements for husbandry.

CHAPTER IV
BALANCE OF COUNTY ZONES, OVERLAYS & SPECIAL CONSIDERATION

This chapter applies to all non-estuary zoning districts ***unless otherwise specified***. Article 2.1 has definitions listed that apply to this article. Chapter 5 contains all application process and procedures.

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SECTION 4.2.300 DEVELOPMENT AND USE STANDARDS FOR THE RR ZONES:

1. Development and use standards apply to all new development and creation of lots or parcels unless it meets the circumstances of § 5.6.130.
2. Minimum Lot Size:

    a. 5 acres in the RR-5 district.

    b. 2 acres in the RR-2 district.

    c. Exception to minimum lot sizes in Rural Residential:

        i. Smaller parcels may be permitted in an approved residential planned unit development, provided the allowable density of the parent parcel is not exceeded.
        ii. Creation of parcels less than the minimum lot size of the zoning district shall be permitted provided the following circumstances exist:

            1) The subject property is not zoned for resource use;

            2) An existing dwelling (lawfully or grandfathered, but not for temporary purposes) sited prior to January 1, 1986 will remain sited on each proposed parcel; ***and***

            3) A land division is submitted and approved by Coos County pursuant to the current standards~~; and~~.

~~4) If the development is proposed to be located on a lot or parcel or a combination of lots and parcels less than one acre then a conditional use will be required to address compatibility with the adjacent properties and it must be shown how the property can support all elements of the proposed development including sanitation and water.~~

3. Density Requirements:
   a. ***Dwelling density shall be no more than one dwelling per lawfully created parcel unless otherwise provided for by this ordinance.***

   b. ***If lawfully created parcels are less than one acre in size then Department of Environmental Quality, State Building Codes and Oregon Department of Water Resources shall be consulted by the developer prior to seeking a land use authorization to construct a dwelling as there may be development limitations.***

SECTION 4.2.200 DEVELOPMENT AND USES PERMITTED:

The following uses and their accessory uses are permitted outright in the RR zoning:

8. Residential:

   a. Single family dwelling.

   b. Family or medical hardship dwelling:

      The applicant must submit certification from a qualified physician or nurse practitioner stating what the hardship is and that the person requiring the hardship dwelling must live close to someone due to the nature of the hardship. The use is subject to the following conditions:

      i. The dwelling must be a mobile home, recreational vehicle, or existing building used temporarily during the medical hardship relating to the aged, infirmed, or persons incapable of maintaining a complete separate residence.

      ii. The temporary use shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If a public sanitary sewer system is used, such condition will not be required.

      iii. Within three months of the end of the hardship, the manufactured dwelling shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use.

iv. Every two years the Planning Director shall review the permit authorizing such temporary hardship dwellings. However, it is the applicant's responsibility to notify the Planning Director of the continuation of this use.

c. Temporary residence - Mobile home, travel trailer or recreational vehicle used as a dwelling temporarily during construction of a permitted structure. Temporary use not to exceed one (1) year, subject to renewal.

d. Two Family duplex may be permitted, provided the density of units do not exceed the allowable density of the zoning district.

e. Floating Home permitted in the Rural Residential zones that abut lakes. "Floating home" means a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat. This requires a permit from Department of State Lands.

f. Recreation Vehicles may be used as a dwelling under the following circumstances:

i. On a lot or parcel containing a dwelling: The stay shall not exceed 60 days in a calendar year.

ii. On a lot or parcel not containing a dwelling: The property owner(s) stay shall not exceed 45 days in a calendar year.

g. Accessory Structures shall be allowed outright on lots and parcels when a dwelling exists or a dwelling is proposed to be sited concurrently with the accessory structure. The accessory structure must be accessory to a permitted use. Accessory structures must meet the definition as listed in Section 2.1.200. An accessory structure may not be permitted without the establishment of a permitted primary use or structure.

RURAL CENTER (RC)

Purpose and Intent: Is to provide for the development of rural commercial, tourist commercial, residential and services facilities, necessities, convenience and supplies ancillary to nearby agricultural, forestry, recreational and rural residential uses and activities and to conserve energy by providing for needed commercial outlets in rural areas already "committed" as residential/commercial nodes.

New commercial uses that are consistent with the objectives of the "RC" district are those uses which are needed for the convenient shopping needs of the nearby rural population. ~~and are compatible, or can be made compatible, with surrounding properties.~~

Only one Primary Use can exist, and any other use must be subordinate in size and nature. Pursuant to OAR-660-022-003 Commercial building or buildings in a rural unincorporated community shall not exceed 4,000 square feet of floor space.

SECTION 4.3.200 DEVELOPMENT AND USE PERMITTED:

The following uses and their accessory uses are permitted outright through a compliance determination process:

1. ***Accessory structures and uses subordinate to any authorized primary use.***

2. Agricultural uses (farm) and buildings pursuant to ORS 215.203 Agricultural uses (farm) and buildings pursuant to ORS 215.203.***An*** Agricultural Building***s***may only be permitted on property or ***a*** Tract has to be at least***five***(5) acres and ~~has to~~ meet the definition under Section 2.1.200. ***This does not include marijuana which is listed as its own category.***

3. Commercial seasonal product sales in conjunction with farm or forest use. Seasonal product sales for a time period not to exceed forty-five (45) days, subject to renewal.

4. Passive Restoration.

5. Forestry including propagation, management or harvesting of a forest product.

6. Exploration only for geo-thermal energy, aggregate and other mineral or subsurface resource.

7. Low-Intensity Recreation uses that do not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation.

8. Fish and wildlife habitat management.

9. Residential.

    a. Single family dwelling.

    b. Temporary residence - Mobile home, travel trailer or recreational vehicle used as a dwelling temporarily during construction of a permitted structure. Temporary use not to exceed one (1) year, subject to renewal.

    c. Family or medical hardship dwelling. The applicant must submit a certification from a qualified physician or nurse practitioner stating what the hardship is and that the person requiring the hardship dwelling must live close to someone due to the nature of the hardship. The use is subject to the following conditions:

        i. The dwelling must be a mobile home, recreational vehicle, or existing building used temporarily during the medical hardship relating to the aged, infirmed, or persons incapable of maintaining a complete separate residence.

        ii. The temporary use shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to

accommodate the additional dwelling. If a public sanitary sewer system is used, such condition will not be required.

iii. Within three months of the end of the hardship, the manufactured dwelling shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use.

iv. Every two years the Planning Director shall review the permit authorizing such temporary hardship dwellings. However, it is the applicant's responsibility to notify the Planning Director of the continuation of this use.

d. ~~Two Family~~*A* duplexmay be permitted provided the density of units do not, exceed the allowable density of the zoning district.

e. Second floor apartment. This use is only permitted above an approved commercial or industrial use.

f. Recreation Vehicles may be used as a dwelling under the following circumstances:

i. Short-term guest visits on a lot or parcel containing a dwelling. The stay shall not exceed 60 days in a calendar year.

ii. While camping ~~of~~ up to 45 days per calendar year. The camper shall own the subject property or be a member of the immediate family of the subject property.

10. Residential care home/facility shall be allowed in any authorized dwelling.

11. Home occupation - The County shall review a permit allowing a home occupation every 12 months following the date the permit was issued and may continue the permit if the use continues to comply with the requirements of the use's definition.

12. Commercial Uses – ***All commercial uses that are listed in Section 4.4.100 are permitted in the RC zone subject to any applicable special development considerations or overlay zones.***

COMMERCIAL (C-1)

Purpose and Intent: The purpose of the "C-1" district is:

1. To provide for needed commercial retail and service opportunities within Urban Growth Boundaries.
2. To recognize existing commercial uses outside Urban Growth Boundaries.

Note: This language replace all the current commercial section in the ordinance.

For the purpose of this ordinance small-scale, low impact commercial use is one which takes place in an urban unincorporated community in a building or buildings not exceeding 8,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 4, 000 square feet of floor space.

Only the following new Commercial Uses in unincorporated communities:
(a) Uses authorized under Oregon Statewide Planning Goals 3 and 4;
(b) Small-scale, low impact uses; and
(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.
OAR-660-022-0030(4)

~~**SECTION 4.4.100 DEVELOPMENT AND USE PERMITTED:**~~

~~The following uses and their accessory uses are permitted outright in the Commercial zoning districts. Some of the permitted uses may have development standards that are required. Commercial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10).~~

1. ~~Commercial Offices:~~

    ~~a. Bank, loan companies, brokers.~~

    ~~b. Public Service office.~~

    ~~c. Government office.~~

2. ~~Commercial sales, shops and related services:~~

    ~~a. Advertising.~~

    ~~b. Antique.~~

    ~~c. Appliances.~~

    ~~d. Art.~~

    ~~e. Auction houses not including livestock.~~

    ~~f. Bicycles.~~

    ~~g. Books.~~

    ~~h. Carpet cleaning and sales.~~

~~i. Cleaning services and sales~~

~~j. Clothing.~~

~~k. Department store~~

~~l. Drug Store.~~

~~m. Dry goods, grocery.~~

~~n. Electronics.~~

~~o. Equipment.~~

~~p. Florist and nurseries.~~

~~q. Furniture.~~

~~r. Garden supply.~~

~~s. Hardware store.~~

~~t. Jewelry, gifts.~~

~~u. Leather.~~

~~v. Locksmith shop.~~

~~w. Meat cutting and sales (not including slaughter house or stockyard).~~

~~x. Mobile/manufactured home sales.~~

~~y. Music store.~~

~~z. Office supply.~~

~~aa. Pet shop.~~

~~bb. Pottery & ceramics shop.~~

~~cc. Print shop.~~

~~dd. Shoe store.~~

~~ee. Sporting goods store.~~

ff. Stationery.

gg. Toy store.

hh. Variety store.

3. Community Services:

   a. Community center/grange or lodge hall are not allowed outside an unincorporated community.

   b. House of worship.

   c. Mortuary or funeral home.

   d. Museum, if directly associated with an historical event or site located on or near the subject property.

4. Communication structure and utility service lines.

5. Cottage industries are defined as home occupations that are operated by a resident of the subject property, occupying a detached accessory building. Cottage industries should not employ more than five (5) full or part time persons. Cottage industries must not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located. Cottage industries shall not involve the retail sale of a product on the premises. On premise sign advertising cottage industries shall not exceed six (6) square feet of copy area. A home occupation shall comply with the following:

   a. Compatibility as explained in the opening statement.

   b. Coos County shall review a permit allowing a home occupation or cottage industry every 12 months following the date the zoning compliance letter was issued and may continue the use if it continues to comply with the definition of cottage industry and/or home occupation.

   c. A cottage industry approval shall vest exclusively with the owner of the land at the time of approval. The cottage industry shall not be conveyed or otherwise transferred to a subsequent landowner without a new conditional use permit. A plot plan and parking/traffic plan shall be submitted, to address the following:

      i. The property boundaries.

      ii. Access to the property.

      iii. Location of all structures on the subject property.

iv. Required parking spaces.

v. The parking/traffic plan shall show required parking and traffic flow. All parking/traffic plans shall be reviewed by the Roadmaster to determine traffic safety.

d. The industrial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(11).

6. Dikes including, new construction, maintenance, drainage and tide gating, dredge material disposal, fill and mitigation.

7. Emergency services/Medical Services:

a. Fire station.

b. Ambulance service.

c. Hospital.

d. Sanitarium.

e. Rest or convalescent home.

f. Medical/dental clinic and office.

8. Manufacturing, sales and services including:

a. Cabinet/myrtlewood products.

b. Cold storage/ice plant.

c. Glass blowing shop.

d. Re-upholstery shop.

e. Laundry's/launder-mat.

f. Millinery or dressmaking.

9. Personal Service:

a. Spas, massage parlors.

b. Barber & beauty shop.

c. Day care facility (13 or more persons).

10. Public Services are permitted including:

a. Schools.

b. Dormitories.

c. Research & education observation structure.

d. Sewer/water plant/pump station.

11. Residential:

a. Single Family Dwelling (conventional or mobile) shall only be permitted only if in conjunction with a permitted or conditionally permitted use.

b. Watchman/caretaker use is permitted only if in conjunction with a permitted or conditionally permitted use.

c. Second Floor apartment use is permitted only if in conjunction with a permitted or conditionally permitted use.

d. Temporary Dwelling are mobile homes, travel trailers or recreational vehicle used as a dwelling temporarily during construction of a permitted structure. Temporary use not to exceed one (1) year, subject to renewal.

12. Bed & Breakfast shall be subject to the following conditions:

a. All "bed and breakfast facilities" shall be established within the primary residence.

b. Breakfast shall be the only meal served to overnight paying guests.

c. No cooking facilities shall be permitted in any rented room.

d. The maximum number of rooms, which may be rented shall not exceed four (4).

e. Off-street parking shall be provided as follows:

i. Two spaces for the owner/occupant, plus 1 space for each additional bedroom.

ii. A site plan shall be submitted, delineating:

1) The property boundaries,

2) Access to the property,

3) Location of all structures on the subject property,

4) Required parking spaces.

f. Not permitted outside an urban or rural unincorporated community.

13. Hotels/Motels up to 35 units are allowed only if served by a community sewer system. New hotels and motels are not allowed outside an urban unincorporated community.

14. Residential Care Home/Facility shall be allowed in any authorized dwelling.

15. Restaurant facility. The following commercial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10). New commercial structures authorized outside a UCB or UGB shall not exceed 3,500 square feet of floor area:

a. Bakery.

b. Catering services.

c. Confectionery.

d. Delicatessens.

16. Shoreland stabilization, structural and nonstructural is permitted.

17. Library must be found compatible with surrounding uses or may be made compatible through the imposition of conditions.

18. Temporary Uses:

a. Asphalt/concrete portable plant shall be permitted for as a temporary use not to exceed 30 days.

b. Circus/carnival:

i. Circuses and carnivals may be permitted provided they have suitable on-site capacity for vehicular parking and sanitation facilities for a temporary period, not to exceed ten (10) days.

ii. Requires a letter of authorization from the Coos County Health Department.

iii. Requires a traffic/parking plan to be reviewed by the County Roadmaster. If access is off of a state facility then ODOT must issue an access permit.

19. Vehicle:

a. Automobile including sales, repair, rental, storage, commercial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10). New commercial structures authorized outside a UCB or UGB shall not exceed 3,500 square feet of floor area.

b. Truck/Heavy Equipment including sales, repair, rental, off-road vehicle rental, storage, commercial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10). New commercial structures authorized outside a UCB or UGB shall not exceed 3,500 square feet of floor area.

c. Parking lot/structure.

20. Photovoltaic Cells. The installation and use of a solar photovoltaic energy system or a solar thermal energy system shall be allowed if:

a. The installation of a solar energy system can be accomplished without increasing the footprint of the residential structure or the peak height of the portion of the roof on which the system is installed; and

b. The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof (ORS 215.439)

The solar energy system may be sited on the ground. Must comply with the same setback requirements listed in the development standards.

21. Growth/Production, Processing, Wholesaling, and Retail/Dispensary sale of recreational or medical marijuana shall be subject to the following:

a. The use shall be subject to the applicable development standards.

b. The use shall require a parking plan review.

c. Retail/Dispensary facilities may not be located, at the time of an application, within 1,000 feet of:

i. A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

SECTION 4.4.100 DEVELOPMENT AND USE PERMITTED *IN THE COMMERCIAL-1 (C-1) ZONE:*

Only the listed uses and/or activities are permitted; however, if there are special development considerations and overlays that apply additional review may be required. *The following* ***small scale, low impact uses and their accessory uses are permitted outright in the Commercial Zoning districts upon a compliance determination review:***

1. ***Accessory structure and subordinate use to any authorized Commercial Use;***
2. ***Alternative power source – this category includes solar photovoltaic cell(s) and wind energy. The power source supports your use and the excess may be feedback into the power grid, but the primary purpose must be for private use. Solar systems shall be mounted so that the plane of the system is parallel to the slope of the roof (ORS 215.439) or if sited on the ground must meet development requirements of Section 4.4.130. Wind systems shall not exceed 35 feet in height without a variance and shall comply with development requirements of Section 4.4.130;***
3. ***Commercial office – this category includes professional services office[1], public service office and government office;***
4. ***Commercial Retail – this category includes retail sales of any goods or services, except marijuana;***
5. ***Community Service – this category includes community center, grange, lodge hall, library, house of worship, mortuary or funeral home, school, dormitory, meeting and conference facility, research &education observation structure, public park, cemetery, and museums if directly associated with a historical event or site located on or near the subject property;***
6. ***Communications and Utilities – this category includes any communication structure, air traffic control structure, including traffic control aides, communication line(s), utility structure, utility line, water plant, sewer plant and pump station;***
7. ***Entertainment – this category includes event venue, studio, theater, auditorium, stage, carnival site, circus and fairgrounds;***
8. ***Emergency/Medical Service – this category includes fire station, ambulance service, hospital, sanitarium, rest or convalescent home, medical office and dental clinic;***
9. ***Hotel/Motel – this category includes hotel, motel and guest cottage; however, the total units shall not exceed 35, must be located in an urban growth boundary or urban unincorporated community and must be served by a public sewer system;***
10. ***Manufacturing of a product for sale on site may be permitted if it is subordinate to a commercial retail operation;***
11. ***Marijuana – this category includes growth, production, processing, wholesaling, retailing and dispensaries for the sale of recreational or medical marijuana. The retail and dispensary facilities may not be located within a 1000 feet of: a public elementary***

[1]**Professional services include a range of different occupations which provide support to businesses of all sizes and in all sectors. People working in professional services provide specialist advice to their clients. This includes things like providing tax advice, supporting a company with accounting or providing business advice. The kinds of services provided mean that the professional services sector helps to improve productivity and growth across the economy.**

or secondary school whereattendance is compulsory under ORS 339 et seq; or a private or parochial elementary or secondary school, where children are taught as described in ORS 339.030(1)(a);

12. *Personal services – this category includes salon, spa, massage parlor, barber shop, beauty shop and day care facility.*
13. *Restaurant facilities – this category includes bakery, cafe, catering service facility, confectionery, delicatessen, food truck, tavern, lounge and coffee shop;*
14. *Residential – this category includes second floor apartment(s) located above an approved Commercial Use, off site farm worker housing, apartment(s)if served by a public water and public sewer source and temporary dwellings used for up to two (2) years during construction. Residential care home/facility may be authorized in any approved dwelling;*
15. *Shoreline Stabilization – this category includes structural and nonstructural stabilization;*
16. *Vehicle – this category includes the sale of automobile and heavy equipment, repair including tire recapping, rental, fuel station and storage;*
17. *Water development – this category includes new and maintenance ofdike(s) and tide gate(s), dredge material disposal, fill, mitigation and water navigation aid(s). Dredge material disposal and fill may occur on the upland site near the water body.*

~~**SECTION 4.4.110 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE:**~~

~~The following uses and their accessory uses are permitted under an administrative conditional use permit procedure subject to applicable development standards for C-1 zoning. All conditional use development and uses may be permitted if the proposed use must be found compatible with surrounding uses or may be made compatible through the imposition of conditions applicable additional criteria will be listed out under the individual proposed uses with the exception of historical structures. All commercial uses shall be located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10).~~

~~1. Air & water navigation aids.~~

~~2. Commercial uses - New commercial structures authorized outside a UCB or UGB shall not exceed 3,500 square feet of floor area:~~

~~a. Building supplies.~~

~~b. Feed store.~~

~~c. Fertilizer bulk sales.~~

~~d. Mini-warehouse storage/Storage Warehouse.~~

e. Second hand store.

f. Truck/heavy equipment sales, repair, service, storage.

3. Cemetery.

4. Dams.

5. Day care facility (13 or more persons).

6. Entertainment/dancing theaters.

7. Exploration of geo-thermal energy, aggregate and other mineral or subsurface resources. The following conditions shall be included in any conditional use permit for exploration for subsurface mineral resource:

a. All drill holes shall be filled and capped according to the following standards, and bonds to secure performance of this obligation shall be required as follows:

i. The applicant shall provide the Coos County Watermaster with the location of each hole by township, range, section and driller's identification number of all holes drilled.

ii. A plot plan showing these locations will be furnished to the Watermaster.

iii. The applicant shall seal all test holes from the bottom within 2 feet of land surface with cement, native clay, bentonite mixture (e.g., "Sure-Gel", Aqua Gel") of 9 pounds to 9-1/2 pounds of bentonite per gallon of water.

iv. If artesian flows are encountered, the test hole will be:

1) Abandoned according to the following abandonment procedures: ABANDONMENT OF ARTESIAN EXPLORATION HOLES. The flow of artesian exploration holes to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden or cast lead plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the exploration hole to land surface. Or

2) Developed for use of the artesian flow by a water well driller who is properly licensed and bonded by the State of Oregon.

v. If unusual conditions occur at a test hole site and compliance to the above standards will not result in a satisfactorily abandoned hole, the driller shall

request that special standards be prescribed by the Watermaster for the particular hole.

vi. The applicant shall notify the County Watermaster prior to the abandonment of all test holes, drill holes, exploration holes, etc. As used in this section the term 'abandonment' shall mean the act of filling any hole with the required sealing material.

vii. In addition to complying with the procedures outlined above, the applicant shall post a surety bond in the amount of five thousand ($5,000.00) dollars for each hole drilled or a bond for fifty thousand ($50,000.00) dollars to cover all test holes. The surety bond shall be filed with the Board of Commissioners, and may be written by a surety company duly licensed by and authorized to do business in the State of Oregon. The release of such bond shall be conditioned upon the successful capping of all holes according to the procedure described above.

viii. Although it is recommended that the test hole be sealed prior to moving the drilling rig, in no case shall the drill hole be left open for more than five (5) days after the drilling rig is moved off the test hole without prior approval of the County's designated representative.

b. The applicant shall be required to construct a catch basin around each drilling site to retain any possible run-off.

c. Abandonment procedure:

i. At the discretion of the County's appointed representative (usually, the district Watermaster), this representative may require that the exploration hole abandonment not begin until he is present at the site.

ii. In the event that paragraph "i" above, is implemented, the County's appointed representative may, if he is unable to be present during abandonment, otherwise authorize abandonment. This authorization may be given verbally by telephone.

iii. The County's appointed representative may require that the exploration hole be abandoned with cement grout.

8. Land Divisions (Partition/Subdivision):

a. Each parcel or lot shall meet the minimum lot/parcel size and development standards unless it is a residual of resource (Farm or Forest) land division.

b. Must comply with the requirements of Chapter VI for land divisions.

~~c. Notice will be sent as required by Article 5.0.~~

~~d. Final Plat is a ministerial review.~~

~~9. Modification of historical structure shall meet the criteria found in Section 4.11.125(3)(a) as well as any applicable development standards of the zoning district.~~

SECTION 4.4.110 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE *IN THE COMMERCIAL-1 (C-1) ZONE*:

The following ***small scale low impact uses*** and their accessory uses are permitted under an administrative conditional use permit procedure subject to applicable development standards for C-1 zoning. All conditional use development and uses may be permitted if the proposed use is found to be compatible with surrounding uses or can be made compatible through the imposition of conditions. Applicable additional criteria will be listed out under the individual proposed uses with the exception of historical structures.

1. ***Existing dwellings – this section covers the conversion of an existing dwelling to either: Bed and Breakfast; Cottage Industries; and Vacation Rentals.***
    a. ***Bed and Breakfast: Any lawfully established dwelling may operate a Bed and Breakfast pursuant to the following:***
        i. ***All "bed and breakfast facilities" shall be established within the primary residence.***
        ii. ***Breakfast shall be the only meal served to overnight paying guests.***
        iii. ***No cooking facilities shall be permitted in any rented room.***
        iv. ***The maximum number of rooms that may be rented shall not exceed four (4).***
        v. ***Off-street parking shall be provided as follows:***
            1) ***Two spaces for the owner/occupant, plus 1 space for each additional bedroom.***
            2) ***A plot plan shall be submitted, delineating:***
                a) ***The property boundaries;***
                b) ***Access to the property;***
                c) ***Location of all structures on the subject property; and***
                d) ***Required parking spaces.***
        vi. ***Not permitted outside an urban or rural unincorporated community.***
    b. ***Cottage Industries/Home Occupations: This useshall not employ more than five (5) full or part-time persons, interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located, or involve the retail sale of a product on the premises. An on-premise sign for purpose of advertising the cottage industry shall not exceed six (6) square feet of copy area. A home occupation shall comply with the following:***

i. Compatibility as explained in the opening statement;

ii. Coos County Planning Staff shall review a permit allowing a home occupation or cottage industry every twelve (12) months following the date the zoning compliance letter was issued and may continue the use if it continues to comply with the definition of cottage industry and/or home occupation. This is accomplished by a request from the applicant prior to the expiration of the prior zoning compliance letter. If the use has not changed and remains in compliance a zoning compliance letter from will be issued; and,

iii. This use approval shall vest exclusively with the owner of the land at the time of approval. The cottage industry shall not be conveyed or otherwise transferred to a subsequent landowner without a new conditional use permit. A plot plan and parking/traffic plan shall be submitted, to address the following:

1) The property boundaries;

2) Access to the property;

3) Location of all structures on the subject property;

4) Required parking spaces; and,

5) A parking/traffic plan is required. All parking/traffic plans shall be reviewed by the Roadmaster to determine traffic safety.

c. Vacation rentals are subject to the following criteria:

i. Must be found to be compatible with the surrounding area;

ii. Must be licensed by the Coos Health & Wellness (CHW) in accordance with ORS 446.310-350;

iii. The rental shall not be conveyed or otherwise transferred to a subsequent landowner without a the new property owner submitting a compliance determination permit showing that this section can still be complied with;

iv. Must meet parking access, driveway and parking standards as identified in Chapter VII; and

v. If vacation rentals existed prior to April 1, 2015 and had been permitted by CHW the use may continue provided a compliance determination has been submitted. If a license is not required pursuant to ORS 446.310-350 then the property owner shall present evidence to prove the vacation rental was lawfully sited prior to April 1, 2015. If a license was required and the property owner failed to comply, the vacation rental will be considered unlawfully sited and a conditional use is required.

2. Land Divisions – this category includesa cemetery plat, public park, partition and subdivision. The following standards apply:

a. Each parcel or lot shall meet the minimum lot/parcel size and development standards unless it is a residual of resource (Farm or Forest) land division or

for a public park or cemetery;

b. Must comply with the requirements of CCZLDO Chapter VI for land divisions;

c. Notice will be sent as required by CCZLDO Article 5.0; and

d. Final Plat is a ministerial review.

3. Miniature golf course;

4. Tire recapping shop.

~~**SECTION 4.4.120 HEARINGS BODY CONDITIONAL DEVELOPMENT AND USE:**~~

~~The following uses and their accessory uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards for C-1 zoning. All conditional use development and uses may be permitted if the proposed use is found compatible with surrounding uses or may be made compatible through the imposition of conditions. Applicable additional criteria will be listed out under the individual proposed uses with the exception of historical structures. All commercial uses shall be located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10).~~

~~1. Aggregate mining is restricted to subsurface activity only.~~

~~2. Private Campgrounds and Parks.~~

~~a. Campgrounds in private parks shall only be those allowed by OAR 660-006-0025.~~

~~b. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.~~

~~c. For the purpose of this section a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.~~

~~d. Campsites may be occupied by a tent, travel trailer or recreational vehicle.~~

~~e. Separate sewer, water or electric service hookups shall not be provided to individual campsites except that electrical service may be provided to yurts allowed for by OAR 660-006-0025(4)(e)(C).~~

~~f. Campgrounds shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.~~

~~g. A private campground may provide yurts for overnight camping.~~

i. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt.

ii. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

iii. As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with on plumbing, sewage disposal hook-up or internal cooking appliance.

h. Landscaping and Design:

i. The landscape shall be such to minimize soil erosion and lessen the visual impact. Every campground or park shall provide an ornamental, sight obscuring fence, wall, evergreen or other suitable screening/planning along all boundaries of the park site abutting public roads or property lines that are common to other owners of property, except for points of ingress and egress. All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings;

ii. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.

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

iv. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall be reasonably required to prevent their being incompatible with the existing or contemplated environment and the surrounding properties.

i. Road and parking standards of Chapter VII shall apply.

3. Contaminated Soil/land farming.

4. Correctional institution, jail, penal farm.

5. Generation of Power for public sale.

6. Generation of power not for public sale.

7. Golf course.

8. High-intensity recreation.

9. Mining/mineral extraction, including dredging necessary for mineral extraction geo-thermal. Mining is restricted to subsurface activity only.

10. Race track.

11. Recreational vehicle park

a. Must be a lot, parcel or tract of land upon which two (2) or more recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreational or vacation purposes.

b. The park shall contain recreational vehicle sites. Recreational vehicle sites are a plat of ground within the park designed to accommodate a recreational vehicle on a temporary basis.

c. Shall include the submittal of a preliminary plot plan drawn as specified by OAR Division 650.

d. Landscaping and Design:

i. The landscape shall be such to minimize soil erosion and lessen the visual impact. Every park shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planning along all boundaries of the park site abutting public roads or property lines that are common to other owners of property, except for points of ingress and egress. All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings;

ii. Any grade changes shall be in keeping with the general appearance of neighboring developed areas.

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

iv. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall be reasonably required to prevent their being incompatible with the existing or contemplated environment and the surrounding properties.

e. Walls or fences shall be six feet in height except in the area of ingress and egress. This area shall be subject to Section 7.1.525. Evergreen planting shall not be less than five feet in height, and shall be maintained in a healthy living condition for

the life of the RV Park. All walls, fences and evergreen planting shall be approved by the Planning Commission.

f. All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings.

g. A parking plan must be signed off by the Roadmaster. Regulation for parking can be found in Chapter VII.

12. Single family dwelling (conventional & mobile).

13. Taverns, lounges, etc.

14. Tire recapping shop.

SECTION 4.4.130 DEVELOPMENT AND USE STANDARDS:

1. Development and use standards apply to all new development and creation of lots or parcels unless it meets the circumstances of § 5.6.130.

2. Minimum Lot size:

a. There is no minimum lots size standard for this zoning district.

b. The dimension requirements must be met.

3. Minimum Street frontage and minimum lot width is 20 feet.

4. Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts. Otherwise there are no setbacks.

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

6. Access and parking is regulated in Chapter VII.

7. Riparian Vegetation Protection. Riparian vegetation within 50 feet of a estuarine wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps, shall be maintained except that:

a. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.

b. Riparian vegetation may be removed to provide direct access for a water-dependent use.

c. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures.

d. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan.

e. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways. Or

f. Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps

g. The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland , stream, lake, or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure's "footprint".

h. Riparian removal within the Coastal Shoreland Boundary will require a conditional use. See Special Development Considerations Coastal Shoreland Boundary.

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

a. Where use of the manufactured dwelling for commercial purposes is authorized by the Building Codes Agency,

b. Where used as a temporary sales office for manufactured structures, or

c. As part of an approved home occupation. [OR-92-07-012PL]

SECTION 4.4.120 HEARINGS BODY CONDITIONAL DEVELOPMENT AND USE*FOR THE COMMERCIAL (C-1) ZONE:*

The following ***small scale low impact uses***and their accessory uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards for C-1 zoning. All conditional use development and uses may be permitted if the proposed use is found compatible with surrounding uses or may be made compatible through the imposition of conditions.

1. ***Composting facility – All composting operations that require a DEQ permit must comply with the following prior to submitting an application for land use approval for a composting facility:***
    a. ***The potential applicant must participate in a pre-application conference. This pre-application conference must include all permitting agencies;***
    b. ***The potential applicant must hold and participate in a community meeting in which the pre-application notes must be made available to the attendees. The community meeting must be completed within sixty (60) days of the pre-application conference. The community meeting is the responsibility of the applicant. The meeting shall be held within the geographic boundaries of the County and between the hours of 6:00 p.m. to 8:00 p.m. and any day of the week excluding Sunday and holidays. Notice of the meeting must be provided to owners of record, on the most recent property tax assessment roll, of real property located within one-half mile of the real property on which the proposed disposal site for composting would be located. Notice shall also be provided to neighborhood and community organizations recognized by the governing body of the county if a boundary of the organization is within one-half mile of the proposed disposal site for composting. The notice must be published and a copy provided to the local media for press release. The notice shall include a brief description of the proposed disposal site for composting, date, time and address of the location of the meeting place. At the public meeting the applicant shall provide information about the proposed disposal site for composting and proposed operations for composting and respond to questions about the site and operations;***
    c. ***After the community meeting has been held a land use application may be submitted to the Planning Department. In order for the application to be deemed completed, evidence of a community meeting and notice of the community meeting shall accompany the land use application;***
    d. ***The hearings body shall review the proposal based on the following criteria:***
        1. ***This use must be found to be compatible with surrounding uses;***
        2. ***Shall have disposal plan;***
        3. ***Shall explain methods for obtaining materials including travel;***
        4. ***Show wastewater collection and treatment plan; and***
        5. ***Show adequate parking plan.***

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2. ***Correctional institution, jail or penal farm. This use must be compatible and show a need cannot be accommodated in an incorporated area.***

3. ***Generation of Power for public sale.***

4. *High-Intensity recreational – this category includes golf course, race track, RECREATIONAL VEHICLE PARK, private park and campgrounds. Each one of these uses is subject to a landscaping and design plan listed in the development standards as well as the criteria listed in the categories below.*
    a. *Private Campgrounds and Parks are subject to the following criteria:*
        i. *Campgrounds in private parks shall only be those allowed by OAR 660-006-0025;*
        ii. *Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4;*
        iii. *For the purpose of this section, a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground;*
        iv. *Campsites may be occupied by a tent, travel trailer or recreational vehicle;*
        v. *A campground shall not have separate sewer, water or electric service hookups shall not be provided to individual campsites except that electrical service may be provided to yurts allowed for by OAR 660-006-0025(4)(e)(C).*
        vi. *All open areas or common areas shall be landscaped. Landscaping shall consist of lawns and/or ornamental plantings;*
        vii. *Campgrounds shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations; and,*
        viii. *A private campground may provide yurts for overnight camping:*
            1. *No more than one-third or a maximum of 10 campsites; whichever is smaller, may include a yurt;*
            2. *The yurt shall be located on the ground or on a wood floor with no permanent foundation; and*
            3. *As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.*
    b. *RECREATIONAL VEHICLE PARKS are subject to the following criteria:*
        i. *A RECREATIONAL VEHICLE PARK is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground;*
        ii. *A RECREATIONAL VEHICLE PARK may provide for tent sites but no more than one-third or a maximum of 10 sites can be dedicated to tent sites.*
        iii. *A RECREATIONAL VEHICLE PARKS may provide yurts for overnight camping:*
            1. *No more than one-third or a maximum of 10 campsites; whichever is smaller, may include a yurt;*

2. ***The yurt shall be located on the ground or on a wood floor with no permanent foundation; and***
3. ***As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.***

c. ***Golf course and race track:***

i. ***Shall be compatible with the surrounding properties; and***

ii. ***Shall meet parking access, driveway and parking standards as identified in Chapter VII.***

5. Exploration of geo-thermal energy, aggregate and other mineral or subsurface resources. The following conditions shall be included in any conditional use permit for exploration for subsurface mineral resource:

b. All drill holes shall be filled and capped according to the following standards, and bonds to secure performance of this obligation shall be required as follows:

ix. The applicant shall provide the Coos County Watermaster with the location of each hole by township, range, section and driller's identification number of all holes drilled.

x. A plot plan showing these locations will be furnished to the Watermaster.

xi. The applicant shall seal all test holes from the bottom within 2 feet of land surface with cement, native clay, bentonite mixture (e.g., "Sure-Gel", Aqua Gel") of 9 pounds to 9-1/2 pounds of bentonite per gallon of water.

xii. If artesian flows are encountered, the test hole will be:

1) Abandoned according to the following abandonment procedures: ABANDONMENT OF ARTESIAN EXPLORATION HOLES. The flow of artesian exploration holes to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden or cast lead plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the exploration hole to land surface. Or

2) Developed for use of the artesian flow by a water well driller who is properly licensed and bonded by the State of Oregon.

xiii. If unusual conditions occur at a test hole site and compliance to the above standards will not result in a satisfactorily abandoned hole, the driller shall request that special standards be prescribed by the Watermaster for the particular hole.

xiv. The applicant shall notify the County Watermaster prior to the abandonment of all test holes, drill holes, exploration holes, etc. As used in this section the term 'abandonment' shall mean the act of filling any hole with the required sealing material.

xv. In addition to complying with the procedures outlined above, the applicant shall post a surety bond in the amount of five thousand ($5,000.00) dollars for each hole drilled or a bond for fifty thousand ($50,000.00) dollars to cover all test holes. The surety bond shall be filed with the Board of Commissioners, and may be written by a surety company duly licensed by and authorized to do business in the State of Oregon. The release of such

bond shall be conditioned upon the successful capping of all holes according to the procedure described above.

xvi. Although it is recommended that the test hole be sealed prior to moving the drilling rig, in no case shall the drill hole be left open for more than five (5) days after the drilling rig is moved off the test hole without prior approval of the County's designated representative.

b. The applicant shall be required to construct a catch basin around each drilling site to retain any possible run-off.

c. Abandonment procedure:

iv. At the discretion of the County's appointed representative (usually, the district Watermaster), this representative may require that the exploration hole abandonment not begin until he is present at the site.

v. In the event that paragraph "i" above, is implemented, the County's appointed representative may, if he is unable to be present during abandonment, otherwise authorize abandonment. This authorization may be given verbally by telephone.

vi. The County's appointed representative may require that the exploration hole be abandoned with cement grout.

SECTION 4.4.130 DEVELOPMENT AND USE STANDARDS FOR THE C-1 ZONE:

1. Development and use standards apply to all new development and creation of lots or parcels unless it meets the circumstances of § 5.6.130.

2. Minimum Lot size:

   a. There is no minimum lots size standard for this zoning district.

   b. The dimension requirements must be met.

3. Minimum Street frontage and minimum lot width is 20 feet.

4. Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts. Otherwise there are no setbacks.

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

6. Access and parking is regulated in Chapter VII.

7. Riparian Vegetation Protection. Riparian vegetation within 50 feet of a estuarine wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps, shall be maintained except that:

    a. Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.

    b. Riparian vegetation may be removed to provide direct access for a water-dependent use.

    c. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures.

    d. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan.

    e. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways. Or

    f. Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps

    g. The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland , stream, lake, or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure's "footprint".

    h. Riparian removal within the Coastal Shoreland Boundary will require a conditional use. See Special Development Considerations Coastal Shoreland Boundary.

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

    a. Where use of the manufactured dwelling for commercial purposes is authorized by the Building Codes Agency,

    b. Where used as a temporary sales office for manufactured structures, or

    c. As part of an approved home occupation. [OR-92-07-012PL]

9. Development and use standards apply to all new development and creation of lots or parcels unless it meets the circumstances of § 5.6.130.

10. Minimum Lot ***andbuilding size:***
    a. There is no minimum lots size standard for this zoning district.
    b. The dimensional requirements shall be met for the parcel or lot size and setbacks.
    c. The structural size shall be consistent with OAR-660-022-0030(4).

11. Landscaping and design plan. This plan is only required for uses that specifically required them as part of the review process.
    a. The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planting along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;
    b. Lighting: Any lights provided to illuminate any public or private parking area shall be so arranged as to reflect the light away from any abutting or adjacent residential district or use.
    c. Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject tothe setbacks of the this zoning designation, screen plantings or other screening methods;
    d. Trash service shall be provided to the facility and the area for trash receptacle or receptacles shall be identified on the plot plan; and
    e. Hours of operation may be required in areas predominantly surrounded by residential zones.

Industrial (IND)

Purpose and Intent: The purpose of the "IND" district is to provide an adequate land base necessary to meet industrial growth needs and to encourage diversification of the area's economy accordingly. The "IND" district may be located without respect to Urban Growth Boundaries, as consistent with the Comprehensive Plan. The "IND" designation is appropriate for industrial parcels that are needed for development prior to the year 2000, as consistent with the Comprehensive Plan.

~~**SECTION 4.4.200 DEVELOPMENT AND USE PERMITTED:**~~

~~The following uses and their accessory uses are permitted outright in the IND zoning districts. All industrial uses shall be located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(11).~~

~~1. Aero sales, repair and storage including retail commercial dependent upon air transportation. Airport/Heliport, air cargo warehousing and distribution facilities, air operations facilities, aerial related offices, aero school, aircraft component manufacturing and assembly and aero clubs.~~

~~2. Aggregate mining, processing and storage.~~

3. Alcohol distilling (including wineries and breweries).

4. Asphalt/concrete portable and permanent plant.

5. Auction houses (general sales no livestock).

6. Assembly, manufacturing or packaging, processing, production, storage or treatment of products such as: bone, canvas, cellophane, chemicals, clay, cork, drugs, feather, felt, fiber, fur, glass, glue, hair, horn, leather, metal, paint, paper, plastic, shell, gems, tobacco, rubber, resources, toiletries, wine or wood.

7. Ball Park.

8. Blacksmith shop and foundry.

9. Boat and ship construction and repair.

10. Cabinet/myrtle wood products manufacturing.

11. Cold storage/ice plant.

12. Cottage industries are defined as home occupations that are operated by a resident of the subject property, occupying a detached accessory building. Cottage industries should not employ more than five (5) full or part-time persons. Cottage industries must not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located. Cottage industries shall not involve the retail sale of a product on the premises. On premise sign advertising cottage industries shall not exceed six (6) square feet of copy area. A home occupation shall comply with the following:

a. Compatibility as explained in the opening statement.

b. Coos County shall review a permit allowing a home occupation or cottage industry every 12 months following the date the zoning compliance letter was issued and may continue the use if it continues to comply with the definition of cottage industry and/or home occupation.

c. A cottage industry approval shall vest exclusively with the owner of the land at the time of approval. The cottage industry shall not be conveyed or otherwise transferred to a subsequent landowner without a new conditional use permit. A plot plan and parking/traffic plan shall be submitted, to address the following:

i. The property boundaries.

ii. Access to the property.

iii. Location of all structures on the subject property.

iv. Required parking spaces.

v. The parking/traffic plan shall show required parking and traffic flow. All parking/traffic plans shall be reviewed by the Roadmaster to determine traffic safety.

d. The industrial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(11).

13. Building supplies storage and sales.

14. Circus/carnival:

a. A circuses and carnivals may be permitted provided they have suitable on-site capacity for vehicular parking and sanitation facilities for a temporary period, not to exceed ten (10) days.

b. Requires a letter of authorization from the Coos County Health Department.

c. Requires a traffic/parking plan to be reviewed by the County Roadmaster. If access is off of a state facility, then ODOT must issue an access permit.

15. Contaminated Soil/land farming.

16. Dikes – new and maintenance.

17. Equipment/Vehicle:

a. Equipment rental.

b. Truck/heavy equipment sales, repair, service, storage.

c. Off-road vehicle rental.

d. Service station with convenience store.

e. Tire recapping shop.

f. Tire sales.

18. Fill including Dredge material disposal.

19. Farm Related uses:

a. Farm Buildings – Shall be permitted for uses listed in 215:203 only.

b. Farm use pursuant to ORS 215.203 for either profit or not for profit.

c. Feed store.

d. Fertilizer bulk sales.

20. Fire station.

21. Home Occupation. The County shall review a permit allowing a home occupation every 12 months following the date the permit was issued and may continue the permit if the use continues to comply with the requirements of the use's definition.

A home occupation is defined as businesses that are operated entirely within a dwelling by a member of the family residing in the dwelling. Home occupations shall not employ more than five (5) full or part-time persons. Examples of home occupations include but are not limited to: beauty shops; engravers; professional offices; etc.

Home occupations must not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located. Home occupations shall not involve the retail sale of a product on the premises. Home occupations shall not occupy more than 30% of the useable floor area of the dwelling, nor shall home occupations use any detached accessory building. On premise signs advertising home occupations shall not exceed six (6) square feet of copy area. [OR 04-12-013PL 2/09/05]

22. Junk yard/wrecking yard

23. Mining/mineral extraction, including dredging necessary for mineral extraction geo-thermal of other mineral or subsurface resource.

24. Mitigation.

25. Navigation aids – air and water.

26. Office building may be permitted only if in conjunction with a permitted or conditionally permitted use.

27. Parking lot/structure

28. Passive restoration.

29. Processing:

a. Geo-thermal.

b. Other Mineral or subsurface resources.

c. Farm use pursuant to ORS 215.203.

d. Propagation, management, harvesting of forest products including sawmills, manufacture and storage of logs and lumber.

30. Re-upholstery shop.

31. Residential – the following residential uses may be permitted only if in conjunction with a established permitted or conditionally permitted use:

a. Single family dwelling (conventional & mobile).

b. Watchman/Caretaker.

c. 2nd floor apartment.

d. Temporary dwelling may be permitted. A mobile home, travel trailer or recreational vehicle used as a dwelling temporarily during construction of a permitted structure. Duration not to exceed one (1) year, subject to renewal.

32. Shoreland stabilizations including structural and non-structural.

33. Storage:

a. Mini-warehouse storage.

b. Warehouse.

34. Utility facility:

a. Communication facilities.

b. Power facilities for public and private sale.

c. Service and utility lines.

d. Sewer/water plant/pump station.

35. High Intensity recreational uses that were approved as of October 2014 may be continued or be expanded. The expansion must comply with state requirements. However, this use is considered non-conforming and is subject to the standards in Article 5.6.

36. Photovoltaic Cells. The installation and use of a solar photovoltaic energy system or a solar thermal energy system shall be allowed if:

~~a. The installation of a solar energy system can be accomplished without increasing the footprint of the residential structure or the peak height of the portion of the roof on which the system is installed; and~~

~~b. The solar energy system would be mounted so that the plane of the system is parallel to the slope of the roof (ORS 215.439)~~

~~The solar energy system may be sited on the ground. Must comply with the same setback requirements listed in the development standards.~~

~~37. Growth/Production, Processing, and Wholesaling of recreational or medical marijuana shall be subject to the following:~~

~~a. The use shall be subject to the applicable development standards.~~

~~b. The use shall require a parking plan review.~~

Section 4.4.200

Industrial Development, in buildings of any size or type, authorized pursuant to this section, may be sited in the IND zone outside of an urban growth boundary of any city in the County, subject to the following:

1. ***Any Industrial Development otherwise authorized pursuant to this section shall be subject to the permit approval process for a conditional use in Chapter 5 of this ordinance;***
2. ***Industrial Development may not be sited within three (3) miles of the urban growth boundary of a city with a population of 20,000 individuals or more;***
3. ***For any Industrial Development proposed to be sited within ten (10) miles of any incorporated city in the County, the County or its designee shall give notice in writing to the city at least 21 days prior to taking action;***
4. ***If a city objects to the authorization of the proposed Industrial Development within 21 days pursuant to the notice described in Paragraph 3, above, then the city and the County shall negotiate to establish reasonable and proportional conditions on the Industrial Development necessary to mitigate the concerns raised in the city's objection; provided however, that if the city and the County are unable to agree to such conditions within 30 days of the County receiving the city's objection, the matter shall be submitted to the public hearing process pursuant to this ordinance;***
5. ***These uses in IND are a land use decision and subject to administrative review;***
6. ***Industrial Development and Use located within an urban growth boundary or more than ten (10) miles of any city, on land planned and zoned for Industrial Use as of January 1, 2004, will be reviewed as a compliance determination pursuant to Article 5.10 of this ordinance.***

Notwithstanding the foregoing, Industrial Development may be sited on an abandoned or diminished industrial mill site, as defined in ORS 197.719, that was engaged in the processing

or manufacturing of wood products, provided the uses will be located only on the portion of the mill site zoned IND. Any Industrial Development listed in §4.4.210 that will be sited on an abandoned or diminished mill site will be reviewed as a compliance determination and process in accordance with Article 5.10 of this ordinance.

~~**SECTION 4.4.210 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE:**~~

~~The following uses and their accessory uses are permitted under an administrative conditional use permit procedure subject to applicable development standards for the IND zone. All industrial uses shall be located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(11).~~

~~1. Exploration of geo-thermal energy, aggregate and other mineral or subsurface resources. The following conditions shall be included in any conditional use permit for exploration for subsurface mineral resource:~~

~~a. All drill holes shall be filled and capped according to the following standards, and bonds to secure performance of this obligation shall be required as follows:~~

~~i. The applicant shall provide the Coos County Watermaster with the location of each hole by township, range, section and driller's identification number of all holes drilled.~~

~~ii. A plot plan showing these locations will be furnished to the Watermaster.~~

~~iii. The applicant shall seal all test holes from the bottom within 2 feet of land surface with cement, native clay, bentonite mixture (e.g., "Sure-Gel", Aqua Gel") of 9 pounds to 9-1/2 pounds of bentonite per gallon of water.~~

~~iv. If artesian flows are encountered, the test hole will be:~~

~~1) Abandoned according to the following abandonment procedures:~~

~~ABANDONMENT OF ARTESIAN EXPLORATION HOLES.~~

~~The flow of artesian exploration holes to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden or cast lead plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the exploration hole to land surface. Or~~

~~2) Developed for use of the artesian flow by a water well driller who is properly licensed and bonded by the State of Oregon.~~

~~v. If unusual conditions occur at a test hole site and compliance to the above standards will not result in a satisfactorily abandoned hole, the driller shall~~

request that special standards be prescribed by the Watermaster for the particular hole.

vi. The applicant shall notify the County Watermaster prior to the abandonment of all test holes, drill holes, exploration holes, etc. As used in this section the term 'abandonment' shall mean the act of filling any hole with the required sealing material.

vii. In addition to complying with the procedures outlined above, the applicant shall post a surety bond in the amount of five thousand ($5,000.00) dollars for each hole drilled or a bond for fifty thousand ($50,000.00) dollars to cover all test holes. The surety bond shall be filed with the Board of Commissioners, and may be written by a surety company duly licensed by and authorized to do business in the State of Oregon. The release of such bond shall be conditioned upon the successful capping of all holes according to the procedure described above.

viii. Although it is recommended that the test hole be sealed prior to moving the drilling rig, in no case shall the drill hole be left open for more than five (5) days after the drilling rig is moved off the test hole without prior approval of the County's designated representative.

b. The applicant shall be required to construct a catch basin around each drilling site to retain any possible run-off.

c. Abandonment procedure:

i. At the discretion of the County's appointed representative (usually, the district Watermaster), this representative may require that the exploration hole abandonment not begin until he is present at the site.

ii. In the event that paragraph "i" above, is implemented, the County's appointed representative may, if he is unable to be present during abandonment, otherwise authorize abandonment. This authorization may be given verbally by telephone.

iii. The County's appointed representative may require that the exploration hole be abandoned with cement grout.

2. Dam(s) must be found compatible with surrounding uses or may be made compatible through the imposition of conditions.

3. Feed lot(s) must be found compatible with surrounding uses or may be made compatible through the imposition of conditions.

4. Land Divisions (Partition/Subdivision):

~~a. Each parcel or lot shall meet the minimum lot/parcel size and development standards unless it is a residual of resource (Farm or Forest) land division:~~

~~b. Must comply with the requirements of Chapter 6 for land divisions;~~

~~c. Notice will be sent as required by Chapter 5.0.;~~

~~a. Final Plat is a ministerial review.~~

~~5. Modification of historical structure shall meet the criteria found in Section 4.11.125(3)(a) as well as any applicable development standards of the zoning district.~~

~~6. Vehicle repair and sales must be found compatible with surrounding uses or may be made compatible through the imposition of conditions.~~

SECTION 4.4.210 DEVELOPMENT AND USE THE INDUSTRIAL (IND) ZONE:***The following development and uses are allowed subject to an administrative review unless otherwise specified in § 4.4.200 of this ordinance. All conditional uses are required to comply with all development standards:***

1. ***Accessory development and uses including structures;***
2. ***Alternative power sources – This category includes solar photovoltaic cell(s) and wind energy. Solar systems shall be mounted so that the plane of the system is parallel to the slope of the roof (ORS 215.439) or if sited on the ground must meet development requirements of Section 4.4.130. Wind systems shall not exceed 35 feet in height without a variance and shall comply with development requirements of Section 4.4.130;***
3. ***Construction and Maintenance Contractor Business- This category includes a place of business that contractors are engaged in construction and maintenance services;***
4. ***Emergency services – This category includes fire stations, police stations, emergency service training facilities (which may include firearms training), emergency preparedness centers, storage caches and standby power generating equipment for ESSENTIAL FACILITIES;***
5. ***Energy and Communication Facilities – This category includes communication facilities, low and high intensity utility facilities, service lines, geo-thermal energy, photovoltaic cells and wind turbines;***
6. ***Heavy Truck and Heavy Equipment Use - This category includes retail sale of equipment, rental, storage, repair, and servicing of heavy trucks and equipment. A structure may be built to house any of these uses;***
7. ***Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products;***
8. ***Industrial Trade Schools - This category includes training facilities whose primary purpose is to provide training to meet industrial needs. These facilities also may be referred to as technical schools, vocational schools, and career schools. Industrial***

trade schools provide training in such occupational skills as welding, operation and repair of industrial machinery, and truck driving;

9. *Industrial Uses and Port Facilities - Public or private use of land or structures for manufacturing, processing, port development, and energy generating facilities. Industrial and Port Facilities include large commercial and industrial docks;*
10. *Information Services - This category includes establishments engaged in producing and distributing information, providing the means to transmit or distribute these products, as well as data or communications, and processing data. Examples include publishing industries such as book, periodical, and software publishing, computer systems design, internet web search services, internet service providers, radio, television, motion picture, and recording studios, computer data storage services, optical scanning and imaging services, and financial transaction processing such as credit card transaction and payroll processing services. These businesses primarily serve other industries or deliver their products to the end user through means other than on-site pickup by the customer. Few general public customer visits per day are generated;*
11. *Land Divisions (Partition/Subdivision):*
    a. *Are not required to meet building size or diminish mill site standards to apply;*
    b. *Each parcel or lot shall meet the minimum lot/parcel size and development standards unless it is a residual of resource (Farm or Forest) land division;*
    c. *Must comply with the requirements of Chapter 6 for land divisions;*
    d. *Notice will be sent as required by Chapter 5.0.; and*
    e. *Final Plat is a ministerial review.*
12. *Laundry, Dry Cleaning, and Carpet-Cleaning Plants - These businesses primarily serve other industries or deliver their services to the end user through means other than on-site customer visits. Few general public customer visits per day are generated;*
13. *Manufacturing - This category includes establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or processing of components into new products, including the assembly of component parts. Manufacturing includes: alternative energy development, biosciences, food and beverage processing, software and electronics production, and processing or fabrication of products made from materials such as forestry products, metal, glass, rubber, plastic, resin, raw wood and paper;*

14. *Marijuana – This category includes growing, production, processing, wholesaling of both medical and recreational marijuana and marijuana products. This may include a commercial kitchen that may require a health department license;*
15. *Miscellaneous Industrial Uses - This category includes wrecking and salvage of building materials, equipment, and vehicles, tire retreading and recapping; and bio-fuels, petroleum, coal, or other fuel storage, refining, reclaiming, distribution, and wholesale trade. These businesses primarily serve other industries or deliver their products and services to the end user through means other than on-site customer visits;*
16. *New High Intensity Recreational Uses – This category includes uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation. These usesmay be permitted on public dedicated*

or government owned property upon finding that the property is no longer needed to meet an industrial land inventory need. The property must be located adjacent to a natural recreational feature such as a sand dune or water body;

17. *Offices - This category includes administrative and corporate offices and call centers. These businesses primarily serve other industries or deliver their products and services to the end user through means other than on-site customer visits. This use shall be an accessory use to another industrial use or uses. Few general public customer visits per day are generated;*
18. *Processing –This category includes geo-thermal, other mineral or subsurface resources, farm use pursuant to ORS 215.203, propagation, management, harvesting of forest products including sawmills, manufacture and storage of logs and lumber;*
19. *Research Facilities and Laboratories - This category includes product research and development, product design and testing, medical research, and medical laboratories. Medical laboratories in this category primarily serve other industries or deliver their services to the end user through means other than on-site customer visits. Few general public customer visits per day are generated;*
20. *Residential —Temporary Residences or Structures for the purpose of temporary habitation shall be permitted during the construction of a permitted or conditional permitted use. Such authorization shall not to exceed one (1) year, subject to renewal by authorization of the Planning Director or designee upon showing that such construction has not been completed and applicable development permits are valid;*

21. *Storage – The category includes warehouse, mini-storage, parking lots or parking structures;*

22. *Transportation Uses - This category includes the transportation of cargo using motor vehicles or rail spurs and may include loading docks and parking of cargo transport vehicles. Examples include freight terminals, parcel delivery services, moving companies, and parking facilities for long-haul trucks. These uses often are associated with warehousing facilities. This category also includes parking, storage, repair, and servicing of fleet vehicles used for the transport of people. Examples include ambulance services, mass transit and school bus fleet facilities. This category also includes commercial motor vehicle fueling services, such as cardlock fueling stations; however, motor vehicle fueling stations that cater to the general public are prohibited;*

23. *Warehousing and Distribution - This category includes establishments primarily engaged in operating warehousing and distribution facilities for general merchandise, refrigerated goods, and other products and materials that have been manufactured and generally are being stored in anticipation of delivery to the final customer. A range of logistical services may be provided, including labeling, packaging, price marking and ticketing, and transportation arrangement. Mini-storage facilities are not included in this category;*
24. *Wholesale Trade - This category includes establishments engaged in selling and distributing goods and services to retailers to industrial, commercial, or professional business users or to other wholesalers, generally without transformation. Wholesalers sell goods and services to other businesses, not the general public.*

~~**SECTION 4.4.220 HEARINGS BODY CONDITIONAL DEVELOPMENT AND USE:**~~

~~The following uses and their accessory uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards in the IND zone. All hearings body conditional uses must be found compatible with surrounding uses or may be made compatible through the imposition of conditions. All industrial uses shall be located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(11).~~

~~1. Solid waste disposal facility.~~

~~2. Tannery.~~

~~3. Solid waste landfill is only permitted outside of urban areas including UGB and UUC.~~

~~4. High intensity recreation.~~

~~5. Packing plant.~~

~~6. Race track.~~

~~7. Rendering plant.~~

~~8. Taxi/bus/truck rental.~~

~~9. Truck stop.~~

~~10. Slaughter house are only permitted outside of urban areas including UGB and UUC.~~

~~11. Service station with convenience store.~~

~~12. New High Intensity Recreational Uses may be permitted on public dedicated or government owned property upon finding that the property is no longer needed to meet an industrial land inventory need. The property must be located adjacent to a natural recreational feature such as a sand dune or water body.~~

Section 4.4.220 Hearings Body Conditional Development and Use for the Industrial (IND) Zone:
The following use and its accessory use or uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards in the IND zone.

Waste Related – this includes uses characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods from the biological decomposing of organic material. Waste-Related uses also include uses that receive hazardous wastewater from others and are subject to the regulations of OAR 340-100-0110, Hazardous Waste Management, rending plants packing plants and tanneries. The use shall meet the following criteria:

1. ***The use shall take place on industrial lands outside of the urban areas (UGB or UUC);***
2. ***The useshall be found compatible with surrounding uses or may be made compatible through the imposition of conditions; and***
3. ***Shall comply with the development standards.***

SECTION 4.4.230 DEVELOPMENT AND USE STANDARDS FOR THE INDUSTRIAL (IND) ZONE:

1. Development and use standards apply to all new development and creation of lots or parcels unless it meets the circumstances of § 5.6.130.
2. *Building size limits -*
    a. *For buildings located within an unincorporated community boundary as adopted by the Coos County Comprehensive Plan Volume 1 Part 2 § 5.5 the following applies:*
        i. *Urban unincorporated community in a building or buildings not exceeding 60,000 square feet of floor space; or*
        ii. *Rural unincorporated community in a building or buildings not exceeding 40,000 square feet of floor space.*
    b. *The size limitation reference in subsections(I) and (ii) above does not apply to abandoned or diminished industrial mill site, as defined in ORS 197.719.*

3. Minimum Lot size and ***dimension requirements for land divisions*** -
    a. There is no minimum lots size standard for this zone.
    b. The dimension requirements must be met.
    c. Minimum street frontage and minimum lot width is 20 feet.
4. ***Setbacks*** –
    a. Front setback is 20 feet.
    b. Front, side and rear setbacks are 5 feet from abutting properties that are zoned Controlled Development or residential zoning districts.

~~Setback exception – Front yard setback requirements of this Ordinance shall not apply in any residential district where the average depth of existing front yards on developed lots within the same zoning district block, but no further than 250 feet from the exterior side lot lines of the lot and fronting on the same side of the street as such lot, is less than the minimum required front yard building setback. In such cases the front yard setback requirement on any such lot shall not be less than the average existing front yard building setback.~~

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

6. Drives, Parking and Circulation - With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to the location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are in compliance with Chapter VII. This requires a parking/access plan sign off by the Roadmaster or his designee.
7. Riparian Vegetation Protection Setback - Riparian vegetation within 50 feet of a estuarine wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps, shall be maintained except that:
    a. Trees certified as posing an erosion or safety hazard***may be removed***. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.
    b. Riparian vegetation may be removed for a water-dependent use or in conjunction with a water-dependent use if such use is permitted within the zoning district;
    c. Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures;
    d. Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan;
    e. Riparian vegetation may be removed in order to site or properly maintain public utilities and road right-of-ways;
    f. Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps; or
    g. The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland, stream, lake, or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure's "footprint".
    h. Riparian removal within the Coastal Shoreland Boundary will require a conditional use. See Special Development Considerations Coastal Shoreland Boundary.
    i. The 50 foot measurement shall be taken from the closest point of the ordinary high water mark to the structure using a right angle from the ordinary high water mark.
8. ***Parking - All industrial development requires a parking and access sign-off from the Coos County Road Department based upon applicable development standards in this Ordinance. If access is off of a State Highway an access permit may be required from Oregon Department of Transportation.***
9. ***Landscaping and design plan - All conditional uses shall comply with this section.***

a. ***The landscape shall minimize soil erosion. The exterior portion of the property shall provide an ornamental, sight-obscuring fence, wall, evergreen or other suitable screening/planning along all boundaries of the site abutting public roads or property lines that are common to other owners of property that are zoned for residential, except for points of ingress and egress;***
b. ***Any lights provided to illuminate any public or private parking area shall be arranged to reflect the light away from any abutting or adjacent residential district or use;***
c. ***Exposed storage areas, service areas, utility buildings and structures and similar accessory areas and structures shall be subject to setbacks, screen plantings or other screening methods;***
d. ***Trash service shall be provided to the facility and the area for trash receptacle(s) shall be identified on the plot plan; and***
e. ***Hours of operation may be required in areas surrounded predominantly by residential zones.***

SECTION 4.11.125 Special Development Considerations:

1. Mineral &Aggregate Plan Implementation Strategies (Balance of County Policy 5.5)
2. Water Resources (Balance of County Policy 5.8)
3. Historical, Cultural and Archaeological Resources, Natural Areas and Wilderness (Balance of County Policy 5.7)
4. Beaches and Dunes (Policy 5.10)
5. Non-Estuarine Shoreland Boundary (Balance of County Policy 5.10)

The Coastal Shoreland Boundary map has inventoried the following:

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

Purpose Statement:
Protection of major marshes (wetlands), habitats, headlands, aesthetics, historical and archaeological sites: Coos County shall provide special protection to major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources, and historic and archaeological sites located within and included in adopted inventories the Coastal Shoreland Boundary of the ocean, coastal lakes and minor estuaries. This strategy shall be implemented through plan designations and ordinance measures that limit uses in these special areas as inventoried, to those uses that are consistent with protection of natural values, such as

propagation and selective harvesting of forest products, grazing, harvesting wild crops, and low intensity water-dependent recreation. This strategy recognizes that special protective consideration must be given to key resources in coastal shore lands over and above the protection afforded such resources elsewhere in this plan.

Coos County shall consider:

i. "Major marshes" to include certain extensive marshes associated with dune lakes in the Oregon Dunes National Recreation Area and wetlands associated with New River as identified in the Inventory text and maps, and on the Special Considerations Map;

ii. "Significant wildlife habitat" to include "sensitive big-game range", Snowy Plover nesting areas, Bald Eagle and Osprey nesting areas, Salmonid spawning and rearing areas, and wetlands;

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

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

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

a. Uses allowed within the Coastal Shoreland Boundary: This strategy recognizes that Coos County's rural shorelands are a valuable resource and accordingly merit special consideration.

i. Uses within the Coastal Shoreland Boundary: Coos County shall manage its rural areas within the "Coastal Shorelands Boundary" of the ocean, coastal lakes and minor estuaries through implementing ordinance measures that allow the following uses:

a) farm uses as provided in ORS 215 et seq;
b) propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;
c) private and public water dependent recreation developments;
d) aquaculture;
e) water-dependent commercial and industrial uses and water-related uses ***are allowed*** only upon finding by the Board of Commissioners that such uses satisfy a need, which cannot otherwise be accommodated on shorelands in urban and urbanizable areas;
f) single family residences on existing lots, parcels, or units of land when compatible with the objectives and implementation standards of the Coastal Shorelands goal, and as otherwise permitted by the underlying zone; or
g) any other uses, provided that the Board of Commissioners determines that such uses:
   a. Satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas;
   b. Are compatible with the objectives of Statewide Planning Goal #17 to protect riparian vegetation and wildlife habitat; ~~and~~

c. The "other" use complies with the implementation standard of the underlying zone designation; ***and***
d. In addition, the above uses shall only be permitted upon a finding that such uses do not otherwise conflict with the resource preservation and protection policies established elsewhere in this plan.

ii. A site plan and design reviewis only necessary when required in Coos County Comprehensive Plan Volume I Part 3 § 3.5: Structures associated with the above uses, with the exception of farm and forest uses, shall only be permitted after an Administrative Conditional Use Review or higher review addressing the criteria and requirements of this subsection below and upon a finding that such uses do not otherwise conflict with the Special Development Considerations and Overlay Zones found in this Ordinance.

a) Site Review and Approval Criteria.

Construction, site development and landscaping shall be carried out in substantial accord with the plans, drawings, sketches and other documents as approved.

Nothing in this subsection shall be construed to prevent ordinary repair, maintenance and replacement of any part of the building or landscaping which does not involve a substantial change from the purpose and objectives of this section. Proposed "substantial changes" shall be submitted to the Planning Director for approval.

All variances from the site development criteria which are deemed necessary by the applicant shall be requested pursuant to ARTICLE 5.3.

These standards are intended to provide a frame of reference for the applicant to the development of a site and building plans as well as a method of review. These standards shall not be regarded as inflexible requirements, nor do they advocate any particular architectural style, for they are intended to encourage creativity, invention and innovation. The following standards shall be utilized in reviewing the plans, drawings, sketches and other documents required under for this review:

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

2. <u>Structures</u>
- ***a. Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed buildings;***
- ***b. The achievement of such relationship may include the enclosure of space in conjunction with other existing buildings or other***

proposed buildings and the creation of focal points with respect to avenues of approach, terrain features or other buildings.

3. *Drives, Parking and Circulation*

With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to the location and number of access points, general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and must comply with the standards found in Chapter VII. The Roadmaster is responsible for determining compliance with this subsection.

4. *Surface Water Drainage*

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

5. *Utility Service*

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

b) *Application Submittal and Review Procedure.*

1. *Submission of Documents*

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

a. *A site plan, drawn to scale, shows the proposed layout of all structures and other improvements;*
b. *A landscape plan, drawn to scale, showing the location of existing trees proposed to be retained on the site, the location and design of landscaped areas, the varieties and sizes of trees and plant materials to be planted on the site, other pertinent landscape features, and irrigation systems required to maintain trees and plant materials;*
c. *Architectural drawings or sketches, drawn to scale, including floor plans, in sufficient detail to permit computation of yard requirements and showing all elevations of the proposed structures and other improvements as they will appear on completion of construction;*
d. *Specifications as to type, color and texture of exterior surfaces of proposed structures including reflective surfaces of solar collectors;*
e. *An application request which shall include:*
    1. *Name and address of applicant;*

2. ***Statement of applicant's legal interest in the property (owner, contract purchaser, lessee, renter, etc.) and a description of that interest, and in case the applicant is not the owner, verification of the owner's consent;***
3. ***Address and legal description of the property;***
4. ***Statement explaining the intended request;***
5. ***The required fee; and***
6. ***Any other materials or information as may be deemed necessary to assist in evaluation of the request. The request will be made prior to deeming the application complete. However, if this review is before the hearings body they may request for additional information to ensure compliance.***

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

6. Significant Wildlife Habitat (Balance of County Policy 5.6)
7. Natural Hazards (Balance of County Policy 5.11)

The Natural Hazards map has inventoried the following *hazards*:

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

Purpose Statements:
Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include ***river and coastal flooding, landslides, liquefaction potential***

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

This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property associated with new development. The determination of whether a property is located in one of the above referenced potentially hazardous areas shall be made by the reviewing body (Planning Director, Planning Commission, Board of Commissioners, or any designee based upon adopted inventory mapping). A specific site may not include the characteristics for which it is mapped. In these circumstances staff shall apply § 5.11.100.2.c.

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

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

b. *Landslides: Areas subject to landslides (mass movement) include active landslides, inactive landslides, earth flow and slump topography, and rockfall and debris flow terrain as identified on the 2015 Coos County Comprehensive Plan Hazards Map.*

   Coos County shall permit the construction of new structures in an inventoried Landslide hazard area(earth flow/slump topography/rock fall/debris flow)through a conditional use process subject to a geological assessment review as set out in Article 5.11.

c. *Tsunamis: Coos County shall promote increased resilience to a potentially catastrophic Cascadia Subduction Zone (CSZ) tsunami through the establishment of a Tsunami Hazard Overlay Zone (THO) in the Balance of County Zoning.See Sections 4.11.400-425 for the requirements of this overlay zone.*

d. *Earthquakes: Areas subject to earthquakes include fault lines and liquefaction potential, as identified on the 2015 Coos County Comprehensive Plan Natural Hazards Map.*

   Coos County shall permit the construction of new structures in known areas potentially subject to earthquakes (fault line and liquefaction potential) through a conditional use process subject to a geologic assessment review as set out in Article 5.11. Coos County shall support Oregon State Building Codes to enforce any structural requirements related to earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the geologic assessment report at the time of review.

e. *Erosion: Coos County shall promote protection of property from risks associated with*

shoreline, headland, and wind erosion/deposition erosion hazards.

Coos County shall promote protection of property from risks associated with bank erosion along rivers and streams through necessary erosion-control and stabilization measures, preferring non-structural solutions when practical.

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

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

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

2. *When it is determined that these standards are impractical the Planning Director may authorize alternative forms of fire protection that shall comply with the following:*
    a. *The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions, as established by credible documentation approved in writing by the Director;*
    b. *If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons per dwelling or a stream that has a continuous year round flow of at least one cubic foot per second per dwelling;*
    c. *The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use; and*
    d. *Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

3. *Fire Siting Standards for New Dwellings:*
    a. *The property owner shall provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and*

sufficient ¾ inch garden hose to reach the perimeter of the primary fuel-free building setback.

b. If another water supply (such as a swimming pool, pond, stream, or lake) is nearby, available, and suitable for fire protection, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

4. Firebreak:

a. *A firebreak shall be established and maintained around all structures, including decks, for a distance of at least 30 feet in all directions.*

b. *This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.*

c. *Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.*

d. *The owners of the dwelling shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding all structures that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by Oregon Department of Forestry and shall demonstrate compliance with Table 1.*

Table 1 – Minimum Primary Safety Zone

Slope	*Feet of Primary Safety Zone*	*Feet of Additional Primary Safety Zone Down Slope*
0%	*30*	*0*
10%	*30*	*50*
20%	*30*	*75*
25%	*30*	*100*
40%	*30*	*150*

a. All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.

b. If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).

c. *The structure shall not be sited on a slope of greater than 40 percent.*

d. *If the structure has a chimney or chimneys, each chimney shall have a spark arrester.*

e. *Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads, and driveways shall be constructed so as to provide adequate access for firefighting equipment. Confirmation shall be provided from the Coos County Road Department or local fire protection district that these standards have been met.*

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

OVERLAY ZONE:

SECTION 4.11.200 PURPOSE:
Overlay zones may be super-imposed over the primary zoning district and will either add further requirements or replace certain requirements of the underlying zoning district. The requirements of an overlay zone are fully described in the text of the overlay zone designations. **An overlay zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary and Coquille Estuary Management Plans when the Estuary Policies directly reference this section.**

~~**OVERLAY ZONE: FLOODPLAIN**~~

~~**DESIGNATION: /FP**~~

~~**SECTION 4.11.201 FLOODPLAIN:**~~

~~It is the purpose of this section of the ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designated:~~

~~1. To protect human life and health.~~

~~2. To minimize expenditure of public money and costly flood control projects.~~

~~3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.~~

~~4. To minimize prolonged business interruptions.~~

~~5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard.~~

~~6. To ensure that potential buyers are notified that property is in an area of special flood hazard. and~~

~~7. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.~~

~~**SECTION 4.11.202 WARNING AND DISCLAIMER OF LIABILITY:**~~

~~The degree of flood protection from this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of special flood hazards or uses permitted~~

within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Coos County, any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

SECTION 4.11.203 MANUFACTURED HOME AND MANUFACTURED HOME PARK OR SUBDIVISION WITHIN DESIGNATED FLOOD AREAS:

The following definitions shall only apply to those provisions and requirements contained within Sections 4.11.200 to 4.11.290, inclusive:

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, recreational vehicles, and other similar vehicles placed on site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, recreational vehicles, and other similar vehicles.

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

SECTION 4.11.205 INTERPRETATION:

In the interpretation and application of the Flood Hazard Overlay (/FP), all provisions shall be:

1. Considered as the minimum requirements. And

2. Deemed neither to limit nor to repeal any other powers granted under state statutes, including state building codes.

SECTION 4.11.207 DESIGNATION OF FLOOD AREAS:

1. The area of Coos County that is within a special flood hazard area identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Coos County, Oregon and Incorporated Areas", dated March 17, 2014, with accompanying Flood Insurance Map (FIRM) is hereby adopted by reference and declared to be part of this ordinance. The Flood Insurance Study and the FIRM are on file at the Coos County Planning Department.

2. Whenever sufficient data for a portion of a watercourse have been provided to permit the designation of a regulatory floodway, Coos County shall adopt boundaries for a regulatory floodway. The floodway shall be designed to carry the waters of a base flood without increasing water surface elevation at any point more than one foot above the established base flood elevation. The area of Coos County within an adopted regulatory floodway shall be subject to the additional requirements of this Ordinance for the prevention of flood damage.

3. When base flood elevation data has not been provided in accordance with # 1 above, Coos County shall require a property development applicant to obtain base flood elevation data. Coos County shall use this "other" data to administer this Ordinance. This data may be obtained from a Federal, State or other source, including the U.S. Army Corps of Engineers, Soil Conservation Service, or Engineers. In the absence of an up-to-date engineering study, local newspapers, Regional Planning Groups and informed local witnesses can be a source of historical flooding data. The Planning Director, Planning Commission or Board of Commissioners may exercise local judgment based on historical data.

4. The base contour maps (Flood Insurance Rate Maps and Flood Boundary – Floodway maps) showing areas of special flood hazard are not detailed enough to reflect all site conditions. Where the map information clearly does not reflect actual site conditions, the Planning Director, Hearings Body or Board of Commissioners may interpret the exact location of the special Flood Hazard Boundary and Floodway Boundary. This determination is subject to appeal subject to Article 5.8.

5. In the case of #3 or #4 above the information shall be made public so that applicants may use that information to dispute floodplain rates or proceed with a letter of map revision or letter of map amendment through FEMA.

SECTION 4.11.209 PERMITTED USES:

In a district in which the /FP zone is combined, those uses permitted by the underlying district are permitted outright in the /FP Overlay Zone, subject to the provisions of this article.

SECTION 4.11.211 CONDITIONAL USES:

In a district with which the /FP is combined, those uses subject to the provisions of Article 5.2 (Conditional Uses) may be permitted in the /FP Overlay Zone, subject to the provisions of this article.

SECTION 4.11.213 IDENTIFICATION OF FLOOD HAZARD ON VERIFICATION LETTER:

The verification letter pursuant to Section 1.3.200 issued by the Coos County Planning Department shall identify whether the parcel of land for which a building permit is required is within any area of Special Flood Hazard established by Section 4.6.205.

SECTION 4.11.215 FLOOD ELEVATION DATA:

For the purpose of determining applicable flood insurance risk premium rates Coos County shall:

1. Obtain, or require the applicant to furnish the following:

a. The elevation (in relation to mean sea level) of the lowest habitable floor (including basement and below-grade crawl spaces) of all new or substantially improved structures, and whether or not such structures contain a basement. The Base Floodplain Elevation (BFE) determination must be based on information from the FIS study and the FEMA maps.

b. If a structure is to be flood proofed, the elevation (in relation to mean sea level) to which the structure will be flood proofed shall be provided.

2. Maintaining flood proofing certifications for public inspections pertaining to provisions of the FP zone.

SECTION 4.11.217 PROCEDURAL REQUIREMENTS FOR DEVELOPMENT WITHIN SPECIAL FLOOD HAZARD AREAS:

The following procedure and application requirements shall pertain to the following types of development:

1. Structures: Prior to issuance of a Zoning Compliance Letter (also refer to as a verification or clearance letter) pursuant to Section 5.5.100, a proposal for construction of a new structure or substantial improvement of an existing structure within a Special Flood Hazard Area shall be submitted with an "APPLICATION FOR DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS."

As provided in this section, this application must provide a plan drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing and proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

a. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.

b. Elevation in relation to mean sea level of flood proofing in any structure.

c. Certification by a registered professional engineer or architect that the flood proofing methods for any non residential structure meet the flood proofing criteria.

d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development. No relocation or substantial alteration of a watercourse shall be permitted unless a detailed hydraulic analysis, certified by a Registered Professional Engineer, is provided which demonstrates that:

i. The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained.

ii. The area subject to inundation by the base flood discharge will not be increased. And

iii. The alteration or relocation will cause no measurable increase in base flood levels.

If the county determines that the application complies with zoning ordinance (including the FP overlay zone), the county issues a "conditional zoning compliance letter" which enables the applicant to obtain building permits from the State Building Codes Agency.

Upon completion of construction, the applicant must submit a "post-construction elevation certification/flood proofing certificate" (FEMA) to the Coos County Planning Department. The certification must be completed by surveyor or structural engineer. Upon verification of compliance with all requirements in the FP overlay zone, Coos County shall issue to the applicant a Flood Hazard Compliance Letter. The applicant shall present the flood hazard compliance letter to the State Building Codes Agency in order to obtain an occupancy permit or certificate of inspection.

2. Water Systems. Coos County recognizes the State Water Resources Department as the sole permit issuing agency pertaining to individual private wells supplying water to one or two residences except as may be established in new subdivisions or planned unit developments [see Section 4.11.225(3)].

3. Sanitary Sewage Systems. Prior to a new installation, replacement or repair of an on-site septic system, the applicant shall request from the county a "Zoning Clearance Letter" (zoning verification). Coos County shall recognize the Department of Environmental Quality installation, replacement, and repair standards as sufficient to avoid impairment to the system or contamination from the system during flooding.

4. Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, road and driveway maintenance, landscaping, gardening and similar uses which are excluded from definition because it is the County's determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.

Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:

a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway. or;

b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.

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

SECTION 4.11.219 SITES WITHIN SPECIAL FLOOD HAZARD AREAS:

1. If a proposed building site is in a special flood hazard area, all new construction and substantial improvements (including placement of prefabricated buildings and mobile homes), otherwise permitted by this Ordinance, shall:

   a. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

   b. Be constructed with materials and utility equipment resistant to flood damage.

   c. Be constructed by methods and practices that minimize flood damage. And

   d. 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.

2. All new construction and substantial improvements of residential structures shall have the lowest habitable floor (including basement and below-grade crawl spaces) elevated a minimum of one foot above the known base flood level. Fully enclosed areas below the lowest floor that are subject to flooding shall be prohibited. or, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

d. 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.

e. Accessory structures to a residential structure (e.g., sheds, detached garages) do not represent significant investments and therefore may be treated differently in regard to the application of flood plain management measures outside a delineated floodway. In lieu of the elevation standard above, accessory structures may be permitted provided:

i. Accessory structures shall not be used for human habitation.

ii. Accessory structures shall be designed to have low flood damage potential.

iii. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

iv. Accessory structures shall be firmly anchored to prevent flotation which may result in damage to other structures.

v. Service facilities such as electrical and heating equipment shall be elevated above the base flood elevation or flood proofed.

Construction under the provisions of (i) through (v) above will result in increased flood insurance premium rates, which may be prohibitive.

3. All new construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated one foot above the base flood elevation. or together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied.

d. Meet the same standards for space below the lowest floor as described in Section 4.6.235(2) if the structure is elevated but not flood proofed. And

e. 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.

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 (i.e. a building flood proofed to the base flood level will be rated as one foot below).

4. All new construction and substantial improvements of any agricultural structure shall either have the lowest floor, including basement, elevated one foot above the base flood elevation, meet the flood proofing requirements of (3) above, or together with attendant utility and sanitary facilities shall:

a. Have a low potential for structural flood damage.

b. Be designed and oriented to allow the free passage of floodwaters through the structure in a manner affording minimum flood damage.

c. Ensure that all electrical and mechanical equipment subject to floodwater damage and permanently affixed to the structure be elevated above the base flood elevation. And

d. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied.

Construction under the provisions of (a) through (d) above will result in increased flood insurance premium rates which may be prohibitive.

SECTION 4.11.221 MANUFACTURED HOMES:

All manufactured homes to be placed, or substantially improved, within zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation and installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to use of over the-top or frame ties to ground anchors (Reference FEMA "Manufactured Home Installation in

Flood Hazard Areas" guidebook for additional techniques.

SECTION 4.11.223 RECREATIONAL VEHICLES:

All recreational vehicles placed, within the A1-A30, AH, and AE zones shall be elevated on permanent foundation such that the lowest floor of the recreational vehicle is one foot above the base flood elevation and installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over the top or frames ties to ground anchors.

SECTION 4.11.225 REVIEW OF LAND SUBDIVISION APPLICATIONS:

Coos County shall be responsible for receiving applications and examining plans for land divisions. Coos County shall require certification by a registered civil engineer that land subdivision proposals shall be reasonably safe from flooding. If a subdivision proposal is in a special flood hazard area, the proposal and engineer's certification shall be reviewed to assure that:

1. The proposal is consistent with the need to minimize flood damage and to ensure that building sites will be reasonably safe from flooding [44CFR60.3(a)(3) and (4)]

2. Building lots shall have adequate buildable area outside of floodways.

3. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage.

4. Adequate drainage is provided to reduce exposure to flood hazards.

5. Base flood elevation data shall be generated and/or provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions greater than 50 lots or 5 acres, whichever is less [44 CFR 60.3 (a)(4) and (5).

6. All on-site waste disposal systems shall be located and constructed to avoid functional impairment or contamination during flooding.

SECTION 4.11.227 EVALUATION OF VARIANCE APPLICATIONS:

1. In lieu of the findings required by Article 5.3, an application for a variance to the standards of this overlay zone may be approved only if the following findings are made:

    a. materials which may be swept onto other lands would not pose a threat of undue danger or injury to others.

    b. the proposed development will not pose a danger to life or property due to flooding or erosion damage.

c. failure to grant the variance would result in exceptional hardship to the applicant.

d. granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense or create nuisances. And

e. the variance is the minimum necessary to afford relief.

2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

3. A variance for historic preservation may be granted without consideration of the factors set forth above for the reconstruction, rehabilitation or restoration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places, or as otherwise identified in the Coos County Comprehensive Plan.

4. Variance applications are subject to notice and appeal pursuant to §5.0.900(B).

SECTION 4.11.229 FLOODWAYS:

Located within special flood hazard areas established in Section 4.6.205 are areas designated as "floodways". Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Encroachment, including fill, new construction, substantial improvements and other developments shall be prohibited, unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article (Article 4.6).

3. Projects for stream habitat restoration may be permitted in the floodway provided:

a. The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023). And

b. A qualified professional (a Registered Professional Engineer, or staff of NRCS, the county, or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project. And

c. No structures would be impacted by any potential rise in flood elevation. And

d. An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

4. Manufactured dwellings may only be located in floodways only if the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public.

5. Manufactured dwellings are not permitted in the floodway[2], V[3] or VE[4] zones as of the date this ordinance is adopted. Even if there was some other type of dwelling permitted in the past it may only be replaced with a stick-built (conventional) dwelling only if the dwelling meets the following criteria:

   a. The replacement dwelling will not be a threat to life, health, property, or general welfare of the public. As required, it must be demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge.

   b. The replacement dwelling and any accessory building or structures (encroachments) shall have the finished floor elevated to a minimum of 18 inches (46 cm) above the BFE as defined on the FIRM.

   c. The replacement dwelling must be placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction (Oregon State Building Codes Division or other authority).

   d. The new dwelling and any accessory buildings or structures must not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties.

   e. The location of the replacement dwelling must be allowed by the Planning Department's LDO.

   f. Any other requirement deemed necessary by any authority having jurisdiction.

SECTION 4.11.231 ALTERATION OF WATER COURSES:

If a development application proposes a stream, creek or other water body relocation or

[2] The Floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increase in flood heights.
[3] Coastal flood zone with velocity hazard (wave action). no Base Flood Elevations determined.
[4] Coastal flood zone with velocity hazard (wave action). Base Flood Elevation determined

alteration, Coos County shall:

1. Notify affected cities and the State Coordinating Agency (Department of Land Conservation and Development – DLCD) and other appropriate state and federal agencies prior to any alteration or relocation of a water course, and shall submit evidence of such notification to the Federal Insurance Administration at the following address (or if the office moves, at any subsequent address):

Federal Insurance Administration
500 C Street SW
Washington, DC 20472

2. Require that maintenance is provided within the altered or relocated portion of said water course so that the flood carrying capacity is not diminished.

SECTION 4.11.233 SHALLOW FLOODING AREAS:

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

1. New construction and substantial improvements of residential structures and manufactured homes with AO zones shall have the lowest floor elevated at least one foot above the highest adjacent grade of the building site, plus the depth number specified on the FIRM or at least two feet if no depth number is specified.

2. New construction and substantial improvements of non-residential structures within AO zones shall either:

   a. Have the lowest floor elevated one foot above the highest adjacent grade of the building site plus the depth number specified on the FIRM or at least two feet if no depth number is specified. Or

   b. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in Section 4.6.219.

   c. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

d. Where hazardous velocities were noted on the FIRM, consideration shall be given to mitigating the effects of these velocities through proper construction techniques and methods.

SECTION 4.11.235 COASTAL HIGH HAZARD AREA:

Coastal high hazard areas (V zone) appear on FIRM's. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash. Therefore, the following provisions shall apply:

1. All buildings or structures shall be located landward of the reach of the mean high tide.

2. All new construction and substantial improvements of existing development or manufactured homes in zones V1-V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns so that:

   a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one foot or more above the base flood level. And

   b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval).

   A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (a) and (b) of this Section.

3. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1-30, VE, and V, and whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.

4. Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the community's FIRM, have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot (either by design or when so required by local or State codes) may

be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

a. breakaway wall collapse shall result from a water load less than that which would occur during the base flood. And

b. the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval).

5. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

6. Prohibit the use of fill for structural support of buildings.

7. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

8. All manufactured homes to be placed or substantially improved within Zones V1-30, V, and VE on the community's FIRM on sites inside of or outside of manufactured home park or subdivision. or in a new manufactured home park or subdivision. or in an expansion to an existing manufactured home park or subdivision. or in an existing manufacture home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood. must meet the standards of this section.

9. Recreational vehicles placed or sited within Zones V1-30, V, and VE on the community's FIRM either:

a. Be on the site for fewer than 180 consecutive days.

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions. Or

c. Meet the requirements of Sections 1 through 7 above.

SECTION 4.11.237 COORDINATION:

It is hereby acknowledged that state building codes contain certain provisions that apply to the design and construction of buildings and structures located in Areas of Special Flood Hazard. Therefore, the Flood Hazard Overlay Zone is intended to be administered and enforced in conjunction with the state building codes. If a permit applicant needs a local permit before obtaining permits from other agencies, the County may issue a permit on the condition that all

~~applicable local permits are or will be obtained.~~

~~**SECTION 4.11.239 RESTRICTIVENESS:**~~

~~Where the conditions imposed by a provision of the /FP zone are more restrictive or contrary to the primary zone, the provisions of the /FP zone shall govern.~~

OVERLAY ZONE: FLOODPLAIN

DESIGNATION: /FP

SECTION 4.11.211 AUTHORIZATION

The State of Oregon has been delegated the responsibility through local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, Coos County does ordain as follows:

SECTION 4.11.212 FINDINGS OF FACT

1. ***The flood hazard areas of Coos County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.***
2. ***These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.***

SECTION 4.11.213 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. ***To protect human life and health;***
2. ***To minimize expenditure of public money and costly flood control projects;***
3. ***To minimize the need for rescue and relief effects associated with flooding and generally undertaken at the expense of the general public;***
4. ***To minimize prolonged business interruptions;***
5. ***To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;***
6. ***To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;***
7. ***To ensure that potential buyers are notified that property is in an area of special flood hazard; and***

8. *To ensure that those who occupy areas of special flood hazard assume responsibility for their actions.*

SECTION 4.11.214 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

1. *Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;*
2. *Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;*
3. *Controlling the alteration of natural flood plans, stream channels, and natural protective barriers, which help accommodate or channel flood waters;*
4. *Controlling filling, grading, dredging, and other development which may increase flood damage;*
5. *Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas; and*
6. *Coordinating and supplementing the provisions of the state building code with local land use and development ordinances.*

SECTION 4.11.220 DEFINITIONS

Unless specifically defined below, words or phrases used in this Overlay Zone shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance the most reasonable application.

1. *"APPEAL" means a request for a review of the interpretation of any provision of this Overlay Zone or a request for a variance.*
2. *"AREA OF SHALLOW FLOODING" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evidence. AO is characterized as sheet flow and AH indicates ponding.*
3. *"AREA OF SPECIAL FLOOD HAZARD" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters "A" or "V".*
4. *"BASE FLOOD" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters "A" or "V".*
5. *"BASEMENT" means any area of the building having its floor subgrade (below ground level) on all sides.*
6. *"BELOW GRADE CRAWL SPACE" means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.*
7. *"BREAKAWAY WALL" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific*

lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

8. *"COASTAL HIGH HAZARD AREA" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area designated on the FIRM as Zone "V1-V30", "VE", or "V".*
9. *"CRITICAL FACILITY" means a facility in which a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools; nursing homes; hospitals; police, fire, and emergency response installations; and installations which produce, use, or store hazardous materials or hazardous waste.*
10. *"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.*
11. *"ELEVATED BUILDING" means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.*
12. *"FLOOD" or "FLOODING" means a general and temporary condition of partial or complete inundation or normally dry land areas from:*
    a. *The overflow of inland or tidal waters and/or*
    b. *The unusual and rapid accumulation of runoff of surface waters from any source.*
13. *"FLOODPLAIN ADMINISTRATOR" means thePlanning Staff member designated to administer the floodplain program.*
14. *"FLOOD INSURANCE RATE MAP (FIRM)" means the official map on which the Federal Insurance & Mitigation Administrationhas delineated both the areas of special flood hazards and the risk premium zones applicable to the community.*
15. *"FLOOD INSURANCE STUDY" means the official report provided by the Federal Insurance & Mitigation Administrationthat includes flood profiles, the Flood Boundary-Floodway Map, and the water elevation of the base flood.*
16. *"FLOODWAY" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.*
17. *"LOWEST FLOOR" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Overlay Zone, found at Section 4.11.232.*
18. *"HEARINGS BODY" means the body that will hear the appeal. This could be the Planning Commission or the Board of Commissioners.*
19. *"MANUFACTURED DWELLING" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured dwelling" does not include a "recreational vehicle."*

20. "MANUFACTURED HOME PARK OR SUBDIVISION" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

21. "NEW CONSTRUCTION" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

22. "RECREATIONAL VEHICLE" means a vehicle which is:

- *a. Built on a single chassis;*
- *b. 400 square feet or less when measured at the largest horizontal projection;*
- *c. Designed to be self-propelled or permanently towable by a light duty truck; and*
- *d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.*

23. "SUBSTANTIAL DAMAGE" means damage of any origin sustained by a structure whereby the cost of restoring the structure to the state it was in before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

24. "SUBSTANTIAL IMPROVEMENT" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- *a. Before the improvement or repair is started; or*
- *b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.*

The term does not, however, include either:

- *a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or*
- *b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.*

25. "VARIANCE" means a grant of relief from the requirements of this Ordinance which permits construction in a manner that would otherwise be prohibited by this Ordinance.

26. "WATER DEPENDENT" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

SECTION 4.11.231 LANDS TO WHICH THIS OVERLAY ZONE APPLIES

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

SECTION 4.11.232 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Insurance & Mitigation Administration in a scientific and engineering report entitled "The Flood Insurance Study for Coos County, Oregon and Incorporated Areas" revised March 17, 2014, with accompanying Flood Insurance Maps are hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study is on file at location. The best available information for flood hazard area identification as outlined in Section 4.3-2 shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Section 4.3-2.

SECTION 4.11.233 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

1. *Considered as minimum requirements; and*
2. *Deemed neither to limit or repeal any other powers granted under State statutes.*

SECTION 4.11.234 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of Coos County, any officer or employee thereof, or the Federal Insurance & Mitigation Administration, for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

SECTION 4.11.235 ESTABLISHMENT OF DEVELOPMENT PERMIT

1. *<u>Floodplain Application Required</u>*
   A floodplain application shall be submitted and approved before construction or regulated development begins within any area of special flood hazard established in Section 4.11.232. The permit shall be for all structures including manufactured homes, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS."
2. *<u>Application</u>*
   An application shall be made on the forms furnished by the Planning Department and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
   a. *Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures which may be submitted by a registered surveyor;*
   b. *Elevation in relation to mean sea level of floodproofing in any structure;*
   c. *Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4.11.252; and*
   d. *Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.*

SECTION 4.11.242 DESIGNATION OF THE LOCAL ADMINISTRATOR
The Coos County Planning Department is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

SECTION 4.11.243 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR
Duties of the local floodplain administrator shall include, but not be limited to:

1. *Application Review*
    a. *Reviews all applications to determine that the floodplain requirements of this Ordinance have been satisfied.*
    b. *Review floodplain applications and determine that all necessary permits have been obtained from Oregon State Building Codes agencies from which prior approval was required.*
    c. *Review all requested development to determine if it is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.4 are met.*
2. *Use of Other Base Flood Data (In A and V Zones)*
    When base flood elevation data has not been provided (A and V Zones) in accordance with Section 4.11.232, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the local administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 4.11.252, SPECIFIC STANDARDS, and 4.11.253 FLOODWAYS.
3. *Information to be Obtained and Maintained*
    a. *Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 4.3-2, 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.*
    b. *For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in Section 4.11.243(2):*
        i. *Verify and record the actual elevation (in relation to mean seal level); and*
        ii. *Maintain the floodproofing certifications required in Section 4.11.241(2)(c).*
    c. *Maintain for public inspection all records pertaining to the provisions of this ordinance.*
4. *Alteration of Watercourses*
    a. *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 & Mitigation Administration.*

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Requirement to Submit New Technical Data

a. The property owner shall notify the Planning Department within six months of project completion when a Conditional Letter of Map Revision (CLOMR) has been issued by 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). Copies of this shall be filed with the Coos County Planning Department.

b. The property owner shall be responsible for preparing technical data to support the LOMR application and paying any processing or application fees to FEMA.

c. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement 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.

6. Interpretation of FIRM Boundaries

The Board of Commissioners, Planning Commission or Planning Director may make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.11.244.

SECTION 4.11.244 VARIANCE PROCEDURE

The variance procedures discussed in this section only apply to variance of floodplain standards and do not extend to other variance requests.

Appeal Board

a. In the case of an appeal the process under Section 5.8 shall apply.

b. The hearings body reviewing the appeal shall consider if there is an error in any requirement, decision, or determination made by the county in the enforcement or administration of this ordinance.

c. In passing upon such applications, the hearings body shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

i. The danger that materials may be swept onto other lands to the injury of others;

ii. The danger to life and property due to flooding or erosion damage;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

iv. The importance of the services provided by the proposed facility to the community;

v. The necessity to the facility of a waterfront location, where applicable;

vi. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

vii. The compatibility of the proposed use with existing and anticipated development;

viii. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

d. Upon consideration of the factors of Section 4.11.244(1)(d) and the purposes of this ordinance, the Planning Commission or Board of Commissioners may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

e. The local floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance & Mitigation Administration upon request.

2. <u>Conditions for Variances</u>

This variance language only applies to variance for floodplain standards and does not extend to other type of variance requests.

a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.11.244(1)(d) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

b. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.

c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

e. Variances shall only be issued upon:

i. A showing of good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the

public as identified in Section 4.1-4(4), or conflict with existing local laws or ordinances.

f. Variances, as interpreted in the National Flood Insurance Program, are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

g. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 4.11.244(2)(a), and otherwise complies with Sections 4.11.251(1-3) of the GENERAL STANDARDS.

h. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 4.11.251 GENERAL STANDARDS

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

1. <u>Anchoring</u>

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure; and

b. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

2. <u>Construction Materials and Methods</u>

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

b. All new construction and substantial improvements shall be constructed usingmethods and practices that minimize flood damage; and

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

3. <u>Utilities</u>

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

4. Land Divisions Proposals

a. All land division proposals shall be consistent with the need to minimize flood damage;

b. All land division proposals that are proposing public utilities and facilities such as sewer, gas, electrical, and water systems shall be required to locate and construct them to minimize or eliminate flood damage;

c. All land division proposals that consist of three or more lots shall have adequate drainage provided to reduce exposure to flood damage; and

d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

5. Review of Applications

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

6. AH Zone Drainage

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

SECTION 4.11.252 SPECIFIC STANDARDS

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

1. Residential Construction

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation; and

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered

professional engineer or architect or must meet or exceed the following minimum criteria:

i. *A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;*
ii. *The bottom of all openings shall be no higher than one foot above grade; and*
iii. *Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.*

2. *Nonresidential Construction*

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

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

3. *Manufactured Dwellings*

a. *Manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 4.11.252(1)(b) above;*

b. The bottom of the longitudinal chassis frame beam in A zones, shall be at or above BFE;

c. The manufactured dwelling shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques); and

d. Electrical crossover connections shall be a minimum of 12 inches above BFE.

4. <u>Recreational Vehicles</u>

Recreational vehicles placed on sites are required to:

a. Be on the site for fewer than 180 consecutive days; and

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the requirements of 5.2-3 above and the elevation and anchoringrequirements for manufactured homes.

5. <u>Small Accessory Structures</u>

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

a. Less than 200 square feet and do not exceed one story;

b. Not temperature controlled;

c. Not used for human habitation and are used solely for parking of vehicles or storage of items having low damage potential when submerged;

d. Not used to store toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall unless confined in a tank, that is installed in compliance with this ordinance or stored at least one foot above Base Flood Elevation;

e. Located and constructed to have low damage potential;

f. Constructed with materials resistant to flood damage;

g. Anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;

h. Constructed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect or:

i. provide a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

ii. the bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening;

iii. *openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions without manual intervention; and*

i. *Constructed with electrical and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.*

6. *Below-Grade Crawlspaces*

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

a. *The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas;*

b. *The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade;*

c. *Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE;*

d. *Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters;*

e. *The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade;*

f. *The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas;*

g. *There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained*

soils and drainage systems such as perforated pipes, drainage tilesor gravel or crushed stone drainage by gravity or mechanical means; and

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

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

SECTION 4.11.253 BEFORE REGULATORY FLOODWAY

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

SECTION 4.11.254 FLOODWAY

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

1. *Except as provided in paragraph (3), prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge;*
2. *If Section 4.11.254(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reductionprovisions of Section 4.11.251 et seq;*
3. *Projects for stream habitat restoration may be permitted in the floodway provided:*
   a. *The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023);*
   b. *A qualified professional (a Registered Professional Engineer; or staff of NRCS; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project;*
   c. *No structures would be impacted by a potential rise in flood elevation; and*
   d. *An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.*
4. *Temporary structures placed in the floodway: Relief from no-rise evaluation, elevation or dry flood-proofing standards may be granted for a non-residential structure placed during the dry season (June – October) and for a period of less than ninety (90) days. A plan for the removal of the temporary structure after the dry season or when a flood*

event threatens shall be provided. The plan shall include disconnecting and protecting from water infiltration and damage all utilities servicing the temporary structure; and

5. *Temporary storage of goods and materials, not including hazardous materials, is allowed in the floodway for a period of less than ninety (90) days within the dry season (June – October).*

SECTION 4.11.255 STANDARDS FOR SHALLOW FLOODING AREAS (AO ZONES)
Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

1. *New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified);*
2. *New construction and substantial improvements of nonresidential structureswithin AO zones shall either:*
    a. *Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or*
    b. *Together with attendant utility and sanitary facilities, be completely Flood Proofed to or above that level, so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in section 4.11.252(2)(c).*
3. *Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; and*
4. *Recreational vehicles placed on sites within AO Zones on the community's FIRM either:*
    a. *Be on the site for fewer than 180 consecutive days; and*
    b. *Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or*
    c. *Meet the requirements of Section 4.11.255 above and the elevation and anchoring requirements for manufactured homes.*

SECTION 4.11.256 COASTAL HIGH HAZARD AREAS
Located within areas of special flood hazard established in Section 4.11.232 are Coastal High Hazard Areas, designated as Zones V1-V30, VE, and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting

all provisions in this ordinance and state building code, the following provisions shall also apply:

1. *All new construction and substantial improvements in Zones V1-V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns so that:*

    a. *The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated a minimum of one foot above the base flood level; and*
    b. *The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all buildingcomponents. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in and given year (100-year mean recurrence interval);*
2. *A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (a) and (b) of this section;*
3. *Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1-30, VE, and V, and whether or not such structures contain a basement. The local administrator shall maintain a record of all such information;*
4. *All new construction shall be located landward of the reach of mean high tide;*
5. *Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:*
    a. *Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and*
    b. *The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).*
6. *If breakaway walls are utilized, such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation;*

7. *Prohibit man-made alteration of sand dunes which would increase potential flood damage;*
8. *All manufactured homes to be placed or substantially improved within Zones V1-V30, V, and VE on the community's FIRM on sites:*
    a. *Outside of a manufactured home park or subdivision;*
    b. *In a new manufactured home park or subdivision;*
    c. *In an expansion to an existing manufactured home park or subdivision; or*
    d. *In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood; meet the standards of paragraphs 5.6(1) through (8) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones V1-30, V, and VE on the FIRM meet the requirements of Section 5.2-3.*

9. *Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM either:*
    a. *Be on the site for fewer than 180 consecutive days, if permitted by the zoning district; and*
    b. *Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or*
    c. *Meet the requirements of Section 4.11.241(1) Permitting requirements and paragraphs (1) through (8) of this section.*

SECTION 4.11.257 CRITICAL FACILITY
Construction of new critical facilities shall be, to the extent practicable, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain).

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

TSUNAMI HAZARD OVERLAY ZONE:
4.11.240Tsunami Hazard Overlay Zone
The Tsunami Hazard Overlay zone is designed to serve as the principal implementation mechanism for landuse measures addressing tsunami risk. As the name indicates, it is designed to be applied in the form of an overlay zone, i.e. in combination with underlying base zones. The boundaries of the overlay would correspond to the area of the jurisdiction subject to inundation from a local source tsunami indicated in § 4.11.410 below.

Oregon Statewide Planning Goal 7 envisions a process whereby new hazard inventory information generated by federal and state agencies is first reviewed by the Department of Land Conservation and Development (DLCD). DLCD then notifies the County of the new information, and the County has three years to respond to the information by evaluating the risk, obtaining citizen input, and adopting or amending implementation measures to address the risk. The County has not received notice from DLCD but has taken the proactive role in working with DLCD to address tsunami hazards.

This section of the ordinance places restrictions and limitations on certain categories of uses. These limitations apply primarily to uses which present a high potential for life safety risk, or to uses which provide an essential function during and after a disaster event. ORS 455, which is implemented through the state building code, currently prohibits certain facilities and structures in the tsunami inundation zone as defined by the Oregon Department of Geology and Mineral Industries as indicated in Section 4.11.410 below. The overlay incorporates the requirements thatcan be limited through the land use program. Nothing in this ordinance is meant to conflict with the State Building Code but will focus on integration of development and improvement of evacuation infrastructure into the land use and development review process.

Coos County does not house the building codes program and; therefore, Coos County lacks certain enforcement authority over the Oregon Structural Specialty Code as explained in OAR 632-005-0070 exemption responsibility. This section of the ordinance is not meant to obstruct the authority of the structural code.

These provisions establish requirements to incorporate appropriate evacuation measures and improvements in most new development, consistent with an overall evacuation plan for the community. It is important to note that effectiveness of this component to the overlay is largely dependent up on the development and adoption of an Evacuation Route Plan. Coos County Planning has worked with Coos County Emergency Management in planning for emergency preparedness and developing hazard mitigation plans.

The maps that will be used to implement this section of the Coos County Zoning and Land Development ordinance are the 2012 Tsunami Inundation Maps produced by Oregon Department of Geology and Mineral Industries. The maps will be printed and filed as part of the Coos County Comprehensive Plan.

The series of maps consists of a Small (S), Medium (M), Large (L), Extra Large (XL) and Extra-Extra Large (XXL), with the XXL indicating the worst case scenario. When a size is identified in the section it includes all smaller sizes. For an example if a facility is regulated in an L tsunami inundation event then it includes all M and S tsunami inundation mapped areas.

4.11.245 Tsunami Hazard Overlay (THO) Zone

Definitions those are applicable to the tsunami hazard overlay zone.

As used in tsunami hazard overly zone:

1. **"Essential Facilities" means:**

a. Hospitals and other medical facilities having surgery and emergency treatment areas;
b. Fire and police stations;
c. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
d. Emergency vehicle shelters and garages;
e. Structures and equipment in emergency preparedness centers;
f. Standby power generating equipment for essential facilities; and
g. Structures and equipment in emergency preparedness centers.

2. "Hazardous facility" means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.
3. "Special occupancy structures" means:
   a. Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;
   b. Buildings with a capacity of greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;
   c. Buildings for colleges or adult education schools with a capacity of greater than 500 persons;
   d. Medical facilities with 50 or more resident, incapacitated persons not included subsection (a);
   e. Jails and detention facilities; and
   f. All structures and occupancies with a capacity of greater than 5,000 persons. (Note: The above definitions are taken from ORS455.446)
4. "Substantial improvement" means any repair, reconstruction, or improvement of a structure which exceeds 50 percent of the real market value of the structure.
5. "Tsunami vertical evacuation structure" means a building or constructed earthen mound that is accessible to evacuees, has sufficient height to place evacuees above the level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to withstand the effects of tsunami waves.
6. "Tsunami Inundation Maps (TIMs)" means the map, or maps in the DOGAMI Tsunami Inundation Map (TIM) Series, published by the Oregon Department of Geology and Mineral Industries, which cover(s) the area within Coos County.

4.11.250 Tsunami Hazard Overlay Zone

1. Purpose

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

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

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

2. Applicability of Tsunami Hazard Overlay Zone

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

a. Except as provided in subsection (b), all lands identified as subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section.
b. Lands within the area subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) that have a grade elevation, established by fill or other means, higher than the projected elevation of the XXL magnitude local source tsunami event are exempt from the requirements of this section. Grade elevations shall be established by an elevation survey performed by a Professional Land Surveyor licensed in Oregon.

3. Uses

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

4. Prohibited Uses

Unless authorized in accordance with subsection 6, the following uses are prohibited in the specified portions of the Tsunami Hazard Overlay Zone:

a. In areas identified as subject to inundation from the L magnitude local source tsunami events set forth on the TIM, the following uses are prohibited:
    i. Hospitals and other medical facilities having surgery and emergency treatments area as;
    ii. Fire and police stations;
    iii. Hospital and other medical facilities having surgery and emergency treatment areas;
    iv. Fire and police stations;
    v. Structures and equipment in government communication centers and other

facilities required for emergency response;

vi. Building with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or childcare centers;

vii. Buildings for colleges or adult education schools with a capacity of greater than 500 persons; and

viii. Jails and detention facilities

b. In areas identified as subject to inundation from the M magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:

i. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

ii. Emergency vehicle shelters and garages;

iii. Structures and equipment in emergency preparedness centers;

iv. Standby power generating equipment for essential facilities;

v. Covered structures whose primary occupancy is public assembly with a capacity of greater than 300 persons;

vi. Medical facilities with 50 or more resident, in capacitated patients;

vii. Manufactured home parks, of a density exceeding 10 units per acre; and

viii. Hotels or motels with more than 50 units.

c. Notwithstanding the provisions of Article 5.6 of the Coos County Zoning and Land Development Ordinance, the requirements of this subsection shall not have the effect of rendering any lawfully established use or structure nonconforming. The Tsunami Hazard Overlay is, in general, not intended to apply to or regulate existing uses or development.

5. Use Exceptions

A use listed in subsection (5) of this section maybe permitted upon authorization of a Use Exception in accordance with the following requirements:

a. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.

b. Fire or police stations maybe permitted upon findings that there is a need for a strategic location.

c. Other uses prohibited b y subsection (5) of this section may be permitted upon the following findings:

i. There are no reasonable, lower-risk alternative sites available for the proposed use;

ii. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized;

iii. The buildings will be designed and constructed in accordance with the Oregon Structural Code to minimize the risk of structural failure during the design earthquake and tsunami event; and

iv. Developers of new essential facilities, hazardous facilities and major structures described in subsection (1)(a)(E), (b) and (c) of ORS 455.447 and new special occupancy structures

described in subsection (1)(e)(A), (D) and (F) of ORS 455.447 that are located in an identified tsunami inundation zone shall consult with the State Department of Geology and Mineral Industries for assistance in determining the impact of possible tsunamis on the proposed development and for assistance in preparing methods to mitigate risk at the site of a potential tsunami. Consultation shall take place prior to submittal of design plans to the building official for final approval. The process for construction of certain facilities and structures in tsunami inundation zones including establishment of zones, rules and exceptions are set out in ORS 455.446. The provision of ORS 455.446 does not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas. Decisions made under ORS 455.446 are not land use decisions.

Applications, reviews, decisions and appeals for Use Exceptions authorized by this subsection with the exclusion of subsections iii and iv shall be in accordance with the requirements for an administrative conditional use procedure as set forth in Article 5.2 – Conditional Uses.

6. Tsunami Evacuation Structures
   a. All tsunami evacuation structures shall be of sufficient height to place evacuees above the level of inundation for the XXL local source tsunami event.
   b. Tsunami evacuation structures are not subject to the building height limitations of this chapter.

7. Flexible Development Option
   a. The purpose of the Flexible Development Option is to provide incentives for, and to encourage and promote, site planning and development within the Tsunami Hazard Overlay Zone that results in lower risk exposure to tsunami hazard than would otherwise be achieved through the conventional application of the requirements of this chapter. The Flexible Development Option is intended to:
      i. Allow for and encourage development designs that incorporate enhanced evacuation measures, appropriate building siting and design, and other features that reduce the risks to life and property from tsunami hazard; and
      ii. Permit greater flexibility in the siting of buildings and other physical improvements and in the creation of new lots and parcels in order to allow the full realization of permitted development while reducing risks to life and property from tsunami hazard.
   b. The Flexible Development Option may be applied to the development of any lot, parcel, or tract of land that is wholly or partially within the Tsunami Hazard Overlay Zone.
   c. The Flexible Development Option may include any uses permitted outright or conditionally in any zone, except for those uses prohibited pursuant to subsection 5 of this section.
   d. Overall residential density shall be as set forth in the underlying one or zones. Density shall be computed based on total gross land area of the subject property, excluding street right-of-way.
   e. Yards, setbacks, lot area, lot width and depth, lot coverage, building height and similar dimensional requirements may be reduced, adjusted or otherwise modified as

necessary to achieve the design objectives of the development and fulfill the purposes of this section.

f. Applications, review, decisions, and appeals for the Flexible Development Option shall be in accordance with the requirements for an administrative conditional use procedure as set forth in Article 5 of the Coos County Zoning and Land Development Ordinance.

g. Approval of an application for a Flexible Development Option shall be based on findings that the following criteria are satisfied:

i. The applicable requirements of sub-paragraphs and of this subsection are met; and

ii. The development will provide tsunami hazard mitigation and/ or other risk reduction measures at a level greater than would otherwise be provided under conventional land development procedures. Such measures may include, but are not limited to:

1. Providing evacuation measures, improvements, evacuation way finding techniques and signage;
2. Providing tsunami evacuation structure(s) which are accessible and provide capacity for evacuees from off-site;
3. Incorporating building designs or techniques which exceed minimum structural specialty code requirements in a manner that increases the capacity of structures to withstand the forces of a local source tsunami; and
4. Concentrating or clustering development in lower risk portions or areas of the subject property, and limiting or avoiding development in higher risk areas.

ARTICLE 5.1 PLAN AMENDMENTS AND REZONES

SECTION 5.1.100 LEGISLATIVE AMENDMENT OF TEXT ONLY:

SECTION 5.1.110 Who May Seek Change:

Coos County shall consider the appropriateness of legislative plan text and map amendment proposals upon:

1. *A motion of the Board of Commissioners; or*
2. *A motion of the Planning Commission; or*
3. *The submission of a formal request made by either:*
   a. *The Citizen Advisory Committee; or*
   b. *An application filed by a citizen or organization, accompanied by a prescribed filing fee. If a Measure 56 notice is required the applicant shall be responsible for the payment of all costs associated with that notice.*

ARTICLE 5.2 CONDITIONAL USES

SECTION 5.2.100 CONDITIONAL USES.

Conditional uses are discretionary reviews that involve judgment or discretion in determining compliance with the approval requirements. The review is discretionary because not all of the approval requirements are objective. That is, they are not easily definable or measurable. The

amount of discretion and the potential impact of the request vary among different reviews. Some have less discretion or impact, such as the reduction of a garage setback for a house on a hillside. Others may involve more discretion or potential impacts, such as the Discretionary reviews that must provide opportunities for public involvement by either a public hearing or the right to appeal. All conditions that are placed on an application shall be completed at the cost of the applicant. There are different application types that are considered conditional uses but below are the three most common types of conditional use applications.

1. *Hearings Body Conditional Uses (HBCU or C). A Hearings Body conditional use is a use or activity which is basically similar to the uses permitted in a district but which may not be entirely compatible with the permitted uses. An application for a conditional use requires review by the Hearings Body to insure that the conditional use is or may be made compatible with the permitted uses in a district and consistent with the general and specific purposes of this Ordinance.*

2. *Administrative Conditional Uses (ACU). An Administrative Conditional use is a use or activity with similar compatibility or special conservation problems. An application for an administrative conditional use requires review by the Planning Director to insure compliance with approval criteria.*

3. ***Variance (V)***
   Practical difficulty and unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon, geographic, topographic or other physical conditions on the site or in the immediate vicinity, or, from population density, street location, or traffic conditions in the immediate vicinity. The authority to grant variances does not extend to use regulations, minimum lot sizes or riparian areas within the Coastal Shoreland Boundary.

Discretionary reviews contain approval criteria. Approval criteria are listed with a specific review and findings must be made to address such criteria. The criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties. A proposal that complies with all of the criteria will be approved. A proposal that can comply with the criteria with mitigation measures or limitations will be approved with conditions. A proposal that cannot comply with the criteria outright or cannot comply with mitigation measures will be denied.
Approval criteria have been derived from, and are based on the Comprehensive Plan, Statute, Rule and/or Oregon Statewide Planning Goals or any combination thereof. The Coos County Comprehensive Plan has been acknowledged by the Department of Land Conservation and Development. The identified enforceable policies have been incorporated into the Coos County Zoning and Land Development Ordinance. The county shall use the review criteria set forth in the Coos County Zoning and Land Development Ordinance unless otherwise specified. Fulfillment of all requirements and approval criteria means the proposal is in compliance with the Comprehensive Plan and the implementing ordinance.

When approval criteria refer to the request meeting a specific threshold, such as adequacy of services or no significant detrimental environmental impacts, the review body will consider any proposed improvements, mitigation measures, or limitations proposed as part of the request when reviewing whether the request meets the threshold. All proposed improvements, mitigation measures, and limitations must be submitted for consideration prior to a final decision by a review body.

SECTION 5.2.700 DEVELOPMENT TRANSFERABILITY

Unless otherwise provided in the approval, a land use approval that was obtained through a conditional use process shall be transferable provided the transferor files a statement with the Planning Director signed by the transferee. This document shall be recorded in the chain of title of the property, indicating that the transferee has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation and agrees to fulfill the conditions, unless a modification is approved as provided in this ordinance. The property owner is responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title to alert a purchaser that development was approved subject to conditions and possible restrictions.

Land use permits that are not required to comply with this section if are:

1. *Conditional uses that do not transfer with the property upon sale; and*
2. *Linear Projects as roads, trails, bikeways, sidewalks or utilities.*

SECTION 5.5.200 ~~**temporary Events:**~~ *(Reserved)*

ARTICLE 5.7 PUBLIC HEARINGS

SECTION 5.7.100 REVIEWING AUTHORITY

1. *The Reviewing Authority as used in this section may consist of the Planning Commission, Board of Commissioners, Hearings Officer or Special Hearings Officers.*
2. *An impartial review authority should be free from potential conflicts of interest and prehearing ex-parte contacts as reasonably possible. It is recognized, however, that the public has a countervailing right of free access to public officials:*
    a. *Review Authority members shall disclose the substance of any prehearing ex-parte contacts with regard to the matter at the commencement of the next public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly;*
    b. *A member of the Review Authority shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: the member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two (2) years; or any business with which the member is negotiating for, or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential conflicts of interest shall be disclosed at the meeting of the Review Authority where the action is being taken;*

c. ***Disqualification of a Review Authority member due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote;***

d. ***If all members abstain, or enough members that a quorum cannot be maintained are disqualified, the administrative rule of necessity shall apply. All members present who declare their reasons for abstention or disqualification shall thereby be requalified to act;***

e. ***Staff may confer with the Hearings Officer after the close of the record on technical review or procedural matters, but may not engage in argument or present additional evidence; and***

f. ***Staff may provide a summary of the issues to the Reviewing Authority prior to deliberation but may not present additional argument or evidence.***

3. ***The Review Authority may set reasonable time limits for oral presentations. The Review Authority may determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral testimony if the Review Authority determines that a reasonable opportunity for oral presentations has been provided. No testimony shall be accepted after the close of the public hearing unless the Review Authority sets a deadline for such testimony and provides an opportunity for review and rebuttal prior to making a decision. Counsel for the Review Authority may be consulted solely on legal issues without reopening the public hearing. Objections alleging that counsel is discussing or testifying as to factual matters shall be heard at the discretion of the Review Authority. The presiding officer (Chair) shall preserve order at all public hearings and shall decide questions of order subject to a majority vote of the Review Authority. Persons who become disruptive or abusive may be ejected from the hearing.***

4. ***Decision:***

a. ***Decision: After the record has been closed and all evidence submitted into the record has been reviewed the Review Authority shall:***

i. ***Approve or deny all or part of the application; or***

ii. ***Approve all or part with modifications or conditions of approval.***

b. ***Basis for Decision: An approval or denial of a development action shall be based upon substantial evidence in the record that addresses the pertinent standards and criteria set forth in the applicable provisions of state law, the Comprehensive Plan, Coos County Zoning and Land Development Ordinance and other applicable laws as determined by the Review Authority.***

c. ***Findings and Conclusions: The Review Authority shall provide brief and concise findings of fact, conclusions of law and an order for all development approvals, conditional approvals or denials. The findings and order shall set forth the criteria and standards considered relevant to the decision, state the facts relied upon and briefly indicate how those facts support the decision. In the case of denial, it shall be sufficient to address only those standards upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.***

d. ***Conditions of Approval: The Review Authority may impose conditions on any conditional use approval in compliance with Section 5.0.350.***

e. ***Appeal Deadlines: Appeal deadlines are set out in Section 5.0.900.***

ARTICLE 5.9 ZONING COMPLIANCE LETTER

SECTION 5.9.100 ZONING COMPLIANCE REQUIRED:

Zoning Compliance Letters (ZCL) ***are*** required to be obtained prior to ***obtaining permits from other agencies for building or sanitation installation or modification***. However, there may be other types of reviews required before a ZCL may be issued. A compliance determination form must be submitted to verify compliance with regulations prior to the issuance of a ZCL by the Coos County Planning Department unless the following applies:

1. If the compliance letter is needed for a sewage disposal system permit or evaluation;

2. If a final land use decision covering the property or site has been issued and is still valid; ~~or~~

3. If the use or activity involves a Coos County sign-off for a land use compatibility statement (LUCS) as found on state and federal forms, a ZCL will not be required in addition to that form unless the project involves permits from State Building Codes or sewage disposal system permits from Department of Environmental Quality (DEQ); ~~or~~

4. ***If a ZCL is required to maintain compliance for Medical/Family Hardship Dwellings and Home Occupation/Cottage Industries. These are valid for the specified time period set forth in the zoning district; or***

5. ***If a ZCL letter is required as a condition of approval.***

6. ***It meets one or more of the requirements under Sections 1.1.800.***

The ZCL is valid for two years from the date it is issued *unless it is issued for development or use that was subject to a final land use decision. In that case, the ZCL* ~~*will be valid for the same time length as that decision*~~ ***expire when that final land use decision expires.*** However, if the request for the ZCL has changed a new ZCL will be required prior to obtaining state permits.

If the request otherwise requires land use review (compliance determination, conditional use, variance, partitioning, etc.), a compliance letter shall not be issued unless it is for a sewage disposal system evaluation or replacement of existing on-site system if a land use review has not been completed.

If the requested use or development is permitted in the zone and ***a compliance determination has been completed,*** or is authorized by a final land use approval of Coos County that has not expired, no further land use review is required, and the Planning Department will issue the compliance letter.

If the land use approval includes conditions of approval, the applicant will sign the ZCL with the understanding that the conditions must be met or the authorization will be revoked.

A zoning compliance letter allows the state permitting (sanitation and building) process to begin. A zoning compliance letter will not extend a land use authorization. ***This is not a land use decision but it is the mechanism to inform permitting agencies that the land use process has been completed. Uses or activities that do not require a building or sanitation permit from another agency are not required to obtain a ZCL from the Coos County Planning Department unless otherwise specified by this section of the ordinance.***

ARTICLE 5.10 COMPLIANCE DETERMINATIONS AND REVIEWS

SECTION 5.10.100 COMPLIANCE DETERMINATIONS:

An application for Compliance Determination (CD) ~~are~~ ***is*** required to be submitted to the Planning Department with the elements described in § 5.10.200. Once the application is received the Planning Staff will review the CD against the applicable zoning district to determine if additional reviews or notifications are required.

If the application requires any type of discretionary analysis or interpretation, findings of compatibility or conditions of approval, then the application will be treated as an administrative conditional use and is subject to notice requirements of §5.10.400. ***If a conditional use is required the applicant is responsible for the.*** If the application simply requires a check-off of clear and objective development standards, no administrative conditional use is required and a zoning compliance letter will be issued.

A CD is not required in the following circumstances:

1. If the compliance letter is needed for a sewage disposal system permits or evaluation; or

2. If a final land uses decision covering the property or site has been issued and is still valid; and

3. ***If a compliance determination has previously been completed for the subject property and the request is an Accessory Activity, Use or Structure to that activity and/or use.***

There are two types of CD's: one for Balance of County and the other for Estuary Plans.

ARTICLE 5.11 GEOLOGIC ASSESSMENT REPORTS

SECTION 5.11.100 GEOLOGIC ASSESSMENT REQUIREMENTS

1. ***Applications for a geologic hazard review may be made concurrently with any other type of application required for the proposed use or activity. A review of the property must be conducted prior to any ground disturbance. All geologic hazard assessment reports shall include a description of the qualification of the licensed professional or professionals that prepared the assessment.***

2. ***The applicant shall present a geologic hazard assessment report (geologic assessment) prepared by a qualified licensed professional competent in the practice of geosciences, at the applicant's expense, that identifies site specific geologic hazards, associated levels of risk, and the suitability of the site for the use and/or activity in view of such hazards. The geologic assessment shall include an analysis of the risk of geologic hazards on the subject property including the upslope and downslope properties that may be at risk from, or pose a risk to, the use and/or activity. The geologic hazard assessment shall also address the erosion impacts, any increase in storm water runoff, and any diversion or alteration of natural storm water runoff patterns resulting from the use and/or activity. The geologic hazard assessment shall include one of the following:***
    a. ***A statement that the use and/or activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property resulting from the proposed use and/or activity;***
    b. ***A statement that there is an elevated risk posed to the subject property by geologic hazards that requires mitigation measures in order for the use and/or activity to be undertaken safely sited on the property; or***
    c. ***A certification that there are no geological hazards present on site. If such is certified by a licensed profession then an application is not required. Coos County is not liable for any type of certification that a geological hazard is not present on site.***
3. ***If the assessment identifies any past or present risk then an administrative conditional use is required to evaluate such risk and if mitigation measures are necessary to ensure that proposed development can be safely sited. The assessment shall describe and recommend how the proposed use and/or activity will be adequately protected from geologic hazards, including land sliding and sloughing, soil erosion or deposition, and earthquakes.***

If structural requirements are part of the recommendation, then as a condition of approval, an engineering geologic report consistent with standard geologic practices and generally accepted scientific and engineering principles is required and shall, at a minimum, be consistent with the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon". This shall be supplied to the planning department to be attached to a zoning compliance before a building permit may be obtained.

<u>SECTION 5.11.200 GEOTECHNICAL APPLICATION REVIEWS</u>

An application for a geotechnical review shall be reviewed under an administrative conditional use procedure unless Section 5.11.100.2 applies.

1. *A geologic hazard assessment shall be deemed complete if the geologic report meets the content standards listed in Section 5.11.300.*
2. *Specific recommendations contained in the geologic report shall be incorporated into the approval as conditions. Based on content, recommendations and conclusions of the geotechnical report, the decision maker may apply other reasonable conditions.*
3. *The specific recommendations contained in the geotechnical report, and conditions applied to the geologic hazard permit shall be incorporated into the plans and specifications of the development which is the subject of the development permit.*
4. *The review requires an administrative application and all components shall be submitted with the Coos County Zoning and Land Development Ordinance (CCZLDO) §5.0.150 and Section 5.11.300. This review will be processed in accordance with Article 5.2.*
5. *At the discretion of the decision maker and at the applicant's expense, it may be required to have an evaluation of a geologic assessment by another expert as part of the review of a land use application located in an area subject to this section. The results of that evaluation shall be used in making the final decision on the effected land use application.*
6. *If § 5.11.100.2.b applies then prior to approval of the use and/or activity, the applicant shall provide a mitigation plan specific to the use and/or activity, including land divisions, and the approved geologic hazard mitigation report shall address the following:*
   a. *The mitigation plan must adequately address all issues identified in the geologic hazard mitigation report and must identify any potential appropriate protection methods for the subject property;*
   b. *The mitigation plan shall specify which, if any, measures and improvements must be installed or constructed under the direction of a supervising engineer;*
   c. *The applicant shall, prior to the issuance of any development permits, record on the title to the subject property a notification that includes a description of the measures or improvements and that also specifies the obligation of the property owners to refrain from interfering with such measures or improvements and to maintain them; and*
   d. *A schedule of inspections to be completed by the geologist or engineer to assure compliance with recommendations.*

SECTION 5.11.300 APPLICATION AND DEVELOPMENT STANDARDS FOR GEOTECHNICAL APPLICATIONS:

The review and approval of a conditional use in a Geologic Hazard Special Development Consideration area shall be based on the conformance of the proposed development plans with the following standards. Conditions of approval may be imposed on the development permit to assure that the development plan meets the standards of this section and to prevent the creation of a hazard to public or private property.

1. *All Geologic Assessments are valid as prima facie evidence of the information therein contained for a period of five (5) years. Coos County assumes no responsibility for the*

quality or accuracy of such reports.

2. *The geologic assessment shall include the following:*
    a. *A topographic plot plan that shall include to scale:*
        i. *All adjacent, contiguous and related property identified in the geologic hazard assessment as being at risk from, or posing a risk to, the use and/or activity;*
        ii. *The degree of slope on the subject and adjacent properties;*
        iii. *All features on the subject and adjacent properties that may cause or contribute to mass movement. Such features shall specifically include any landslide, bluff failure or shoreline erosion that could migrate upslope into the subject or adjacent properties;*
        iv. *The location of all identified geomorphic features and micro-topographic features related to the identified geologic hazards;*
        v. *All on site or adjacent features or conditions, which contribute to the hazard or risk from the hazard(s); and*
        vi. *A map that depicts features and conditions associated with any building site or construction site associated with the development activity.*
    b. *A technical analysis and narrative describing the following:*
        i. *The geologic features or conditions of the property as well as those features or conditions which gave rise to the hazard from the use and/or activity;*
        ii. *All features related to earth movement or geologic instability on adjacent touching parcels or lots to the site;*
        iii. *The results of all geologic and/or engineering tests performed on soils, material, and rock type subsurface data from drill holes, or other data obtained from the site investigation with data points clearly identified on a map;*
        iv. *Whether the proposed development activity can be sited in a manner to mitigate the substantial risk to the subject property in view of the geological hazards and risks that have been identified in the geologic assessment;*
        v. *All features related to earth movement or geologic instability on, adjacent to, upslope or downslope from the subject property;*
        vi. *A clear statement of all requirements or conditions on the use and/or activity that the geologist has determined are necessary to mitigate the geologic hazards that require mitigation; and*
        vii. *A schedule of inspections to be completed by the geologist or engineer to assure compliance with recommendations.*

3. *Additional Standards for Oceanfront Development. In addition to the requirements set forth in this subsection, geotechnical assessments for lots or parcels abutting the ocean shore shall include the following information, analyses, and recommendations:*
    a. *Site description:*
        i. *The history of the site and surrounding areas, such as previous riprap or dune grading permits, erosion events, exposed trees on the beach, or other relevant local knowledge of the site;*

ii. Topography, including elevations and slopes on the property itself;
iii. Vegetation cover;
iv. Subsurface materials – the nature of the rocks and soils;
v. Conditions of the seaward front of the property, particularly for sites having a sea cliff;
vi. Description of streams or other drainage that might influence erosion;
vii. Description of any shore protection structures that may exist on the property; and
viii. Presence of pathways or stairs from the property to the beach.

b. Analyses of erosion and flooding potential:
i. Analysis of DOGAMI beach monitoring data for the site, if available;
ii. Analysis of possible mass wasting, including weathering process, land sliding, or slumping;
iii. Calculation of wave run-up beyond mean water elevation that might result in erosion of the sea cliff or foredune (see Stockdon, 2006[5]);
iv. Evaluation of frequency that erosion-inducing processes could occur, considering the most extreme potential conditions of unusually high water levels together with severe storm wave energy;
v. For dune-backed shoreline, use established geometric model to assess the potential distance of property erosion, and compare the results with direct evidence obtained during a site visit, aerial photo analysis, and/or analysis of DOGAMI beach monitoring data;
vi. For bluff-backed shoreline, use a combination of published reports, such as DOGAMI bluff and dune hazard risk zone studies, aerial photo analysis, and field work, to assess the potential distance of property erosion; and
vii. Description of potential for sea level rise, estimated for local area by combining local tectonic subsidence or uplift with global rates of predicted sea level rise.

c. Assessment of potential reactions to erosion episodes:
i. Determination of legal restrictions of shoreline protective structures (Goal 18 prohibition, local conditional use requirements, priority for non-structural erosion control methods); and
ii. Assessment of potential reactions to erosion events, addressing the need for future erosion control measures, building relocation, or building foundation and utility repairs.

d. Recommendations:
i. Use results from the above analyses to establish setbacks (beyond any

[5]Stockdon, Hilary F., Rob A. Holman, Peter A. Howd, and Asbury H. Sallenger."Empirical Parameterization of Setup, Swash, and Runup."Coastal Engineering, 2006, 573-88.Accessed January 14, 2016. https://www.researchgate.net/publication/223784721_Empirical_parameterization_of_setup_swash_and_runup_Coast_Eng.

minimums set by this section), building techniques, or other mitigation to ensure an acceptable level of safety and compliance with all local requirements;

ii. Recommend a plan for preservation of vegetation and existing grade within the setback area, if appropriate;

iii. The applicant may apply for a variance if the recommendations show that a reduction to a property setback on the side of the property opposite the ocean, if this reduction helps to lessen the risk of erosion, bluff failure or other hazard; and

iv. Recommend methods to control and direct water drainage away from the ocean (e.g. to an approved storm water system), or if not possible, to direct water in such a way so as to not cause erosion.

SECTION 6.1.125 LAWFULLY CREATED LOTS OR PARCELS:

Lawfully created parcels or lots are acknowledged pursuant to one or the following:

1. The unit of land was created by an approved and recorded partition or subdivision;
2. A unit of land determined to be a legal lot or parcel though a prior county approval of a land use decision;
3. The unit of land was created by deed instrument or land sales contract recorded prior to December 6, 1962, which was the date of the first official Coos County Subdivision Ordinance. After 1962 there was a legal process adopted by Coos County for land divisions.
4. The unit of land is recognized as a legal lot as the result of court decisions or LUBA final opinion; or the unit of land ~~that~~ was created by a lien foreclosure, foreclosure of a recorded contract of the sale of real property or the creation of cemetery lots;
5. The unit of land was created by the claim of intervening state or federal ownership of navigable streams, meandered lakes, ***or***tidewaters;

6. ~~The unit of land was created asresult of~~ A dedication of a public road (held in fee simple) prior to 1990 may divide property in the following cases:
    a. Between December 6, 1962 and January 1, 1989 (date the ordinance stopped acknowledging roads divide property) there were land division provisions adopted by Coos County. Staff will apply the provisions that were in place at that time the property was deeded to determine if the dedicated public road (held in fee simple) allowed for the road to divide the property; or
    b. If a public dedicated road was held in fee simple prior to December 6, 1962 and the property was bisected by a public dedicated road held in fee simple then the properties were lawfully divided and will be recognized as lawfully created parcels~~; or~~.
7. The unit of land was created by a legal description in deeds or other instruments conveying real property prior to 1986. A deed may describe property as separate parcels but must have a beginning and ending point for each description within that deed.

SECTION 6.1.150 APPLICATIONS ESTABLISHING LAWFULLY CREATED LOTS OR PARCELS:

If a parcel or lot can*be*shown to exist pursuant to LDO Section 6.1.125 Subsections 1 thorough *3 above, then an application and notice is not required.* ***In the case of Subsections 4through7,*** an applicant shall submit evidence to show that the parcel(s) or lot(s) were lawfully created. A map showing the lawfully created parcel(s) or lot(s) shall be submitted with the application.

Staff will review the application based on the criteria in LDO Section 6.1.125; however, the applicant may provide case law to review if there is another applicable circumstance not provided in Section 6.1.125. If County Counsel is required to review information to determine legal status of a parcel or lot, additional fees may be charged.

All notices will be provided in accordance with LDO Section 5.0.

Once it is determined that a lawfully created lot or parcel exists, it shall be separated out on its own deed prior to any reconfiguration such as ***a***property line adjustment. A copy of that deed shall ~~to~~ be provided to the Planning Department ~~to~~ show***ing*** the process has been completed. If there are more than two discrete parcels found ~~in a rural area then~~***to exist*** a road may be required to provide access. The applicable road standards in Chapter VII will apply.

SECTION 6.1.175 VALIDATION OF A UNIT OF LAND NOT LAWFULLY ESTABLISHED

This section does not condone or encourage illegal land divisions, and as a penalty, this process will be charged a triple fee. Road requirements will be at the discretion of the Roadmaster.

1. ***The Planning Director may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:***

    a. ***Is not a lawfully established unit of land pursuant to LDO Section 6.1.125; and***
    b. ***Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.***

2. ***Notwithstanding subsection (1)(b) of this section, the Planning Director may approve an application to validate a unit of land under this section if the Planning Department or Hearings Body approved a discretionary decision for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the Planning Director must determine that the dwelling qualifies for replacement under the criteria listed below.***
    a. ***The dwelling must contain:***
        i. ***Intact exterior walls and roof structure;***
        ii. ***Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;***
        iii. ***Interior wiring for interior lights; and***
        iv. ***A heating system***

3. ***Coos county may approve an application for an Administrative Conditional Use Permit for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:***
    a. ***The dwelling or other building was lawfully established prior to January 1, 2007; and***
    b. ***The permit does not change or intensify the use of the dwelling or other building.***
4. ***An application to validate a unit of land under this section shall be reviewed as an Administrative Conditional Use, pursuant to LDO Article 5.2. An application to Coos county under this section is not subject to the minimum lot or parcel sizes established for the applicable zoning district.***
5. ***A unit of land becomes a lawfully established parcel when the Planning Director validates the unit of land under this section if the owner of the unit of land causes a Final Plat meeting the applicable requirements of LDO Section 6.2.800 FINAL PLAT REGULATION AND REQUIREMENTS to be recorded within 90 days after the date the Planning Director validates the unit of land.***

ARTICLE 6.3 PROPERTY LINE ADJUSTMENTS

SECTION 6.3.100 PROPERTY LINE ADJUSTMENTS:

As set forth in ORS 92.190(3), the common boundary line between lots or parcels may be adjusted in accordance with this section without the replatting procedures in ORS 92.180 and 92.185 or the vacation procedures in ORS Ch. 368. Once a lot or parcel line has been adjusted, the adjusted line shall be the boundary or property line, not the original line. The Director has authority to approve a line adjustment as an Administrative Action ***unless the application is required to correct an encroachment. In that circumstance the only applicable criteria is Sections 6.3.125.1, 6.3.150 and 6.3.175. Encroachments do not require notice.***

SECTION 7.1.475 BICYCLE AND PEDESTRIAN CIRCULATION:

The Transportation Planning Rule specifies that, at a minimum, sidewalks and bikeways be provided along arterials and collectors within urban growth boundaries and unincorporated communities with pedestrian facilities being appropriate in most residential areas as well.

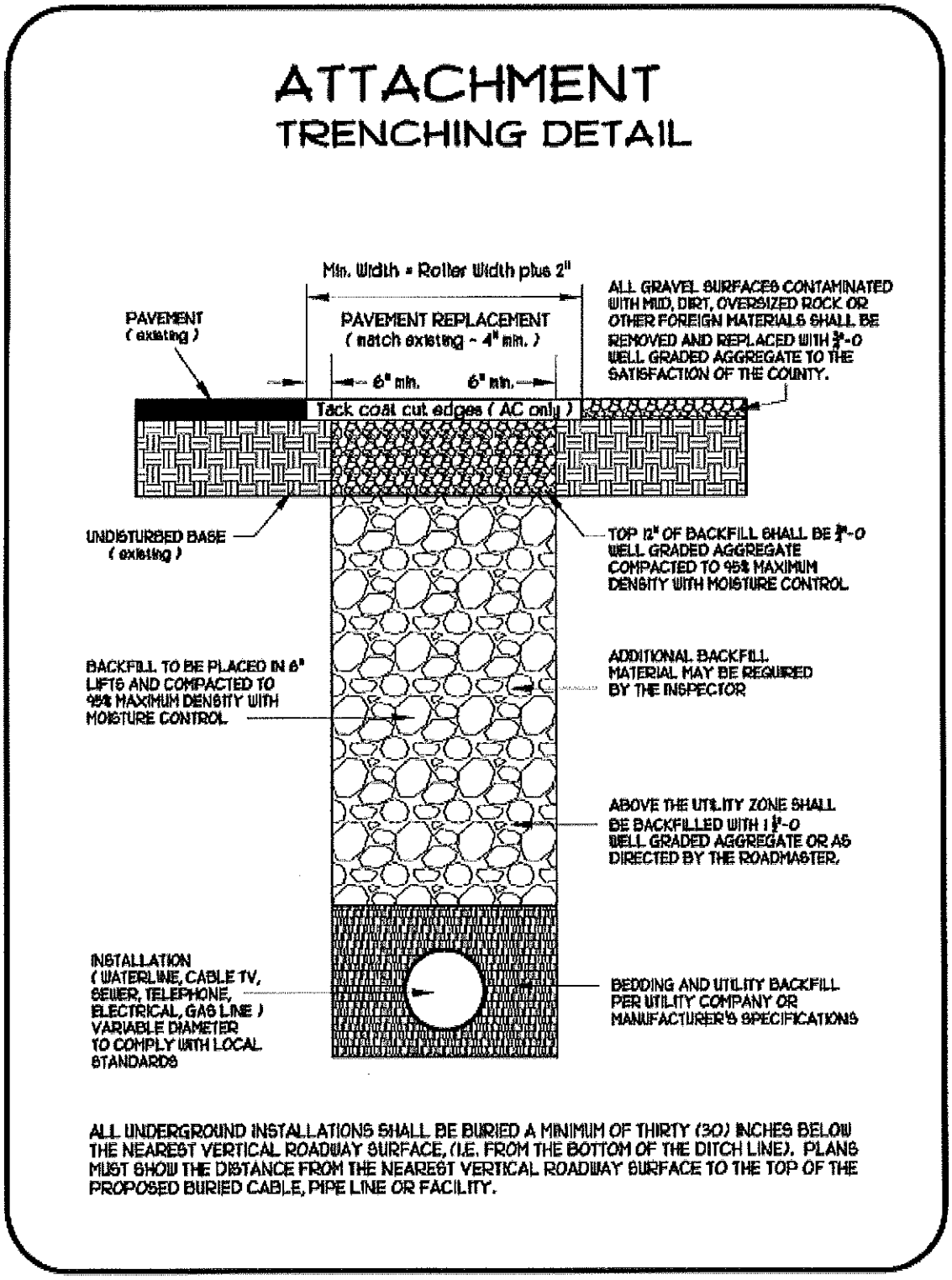
New and enhanced pedestrian trails may be permitted in any zone as long as they are identified in the county, state or federal parks master plan. Private pedestrian trails may be permitted if allowed by the zoning district.

SECTION 7.2.200 REQUIREMENTS FOR ALL NEW ROAD

The following standards shall apply to any proposed new public roads *or modifications of existing* public***roads:*** (only #13 is listed)

13. ***Trenching Requirements – All trenching and back fills must comply with the following detail drawing. All underground installations shall be buried a minimum of thirty (30) inches***

below the nearest vertical roadway surface (i.e.) from the bottom of the ditch line. Plans must show the distance from the nearest vertical roadway surface to the top of the proposed buried cable, pipeline or facility.



In all zones that vacation rentals are permitted as a hearings body conditional use, this use should be moved to an administrative conditional use review. In farm zoned the following section will be deleted

All sections that do not specifically list accessory structure the following definition will be added as permitted outright (in the balance of county zones only): Accessory structures and uses subordinate to any authorized primary use shall be permitted.

Staff is proposing to adopt the land slide information for hazards but defer the adoption of that portion of the hazard map as DOGAMI is working on updates that will be available in January of 2017.

FINAL DECISION AND ORDER NO. 18-11-073PL
ATTACHMENT A

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

PACIFIC CONNECTOR GAS PIPELINE PROPOSAL
(APPEAL OF ADDITIONAL EXTENSION REQUEST
FOR COUNTY FILE NO. HBCU 10-01 / REM 11-01)
COOS COUNTY, OREGON

FILE NO. AP-18-002
(APPEALS OF COUNTY FILE NOS. EXT-18-03)

NOVEMBER 20, 2018

I. INTRODUCTION

A. NATURE OF THE LOCAL APPEAL

The appellant challenges the Planning Director's decisions to allow the applicant Pacific Connector Gas Pipeline, LP (hereinafter the "Applicant" or "Pacific Connector") an additional one-year extension on its development approval for HBCU 10-01, Final Order 10-08-045PL, as amended on remand from LUBA, County File No. REM 11-01, Final Order 12-03-18 PL. The staff decision for the file, which was assigned file No. EXT-18-003 is dated May 21, 2018. Staff assigned County File No. AP 18-002 to the appeal.

Previous one-year extensions are documented as follows:

- File No. ACU 14-08 / AP-14-02, Final Order No. 14-09-063PL (Oct 21, 2014).
- File No. ACU 15-07/ AP-15-01, Final Ord. No. 15-08-039PL (Oct. 6, 2015).
- File No. ACU-16-013 (no appeal filed after staff decision)
- File No. EXT-17-005/ AP-17-004, Final Ord. No. 17-11-046PL (Dec. 19, 2017).

B. CASE HISTORY

In 2010, Pacific Connector submitted a land use application seeking development approval to construct and operate a natural gas pipeline to provide gas to Jordan Cove Energy Project's liquefied natural gas ("LNG") terminal and upland facilities. As established in Pacific Connector's original land use application and subsequent proceedings, the pipeline is within the exclusive siting and authorizing jurisdiction of the Federal Energy Regulatory Commission ("FERC"), requiring a FERC-issued Certificate of Public Convenience and Necessity ("Certificate") prior to construction. Under the federal Coastal Zone Management Act, however, a land use consistency determination is also required within the state's Coastal Zone Management Area ("CZMA"), precipitating Pacific Connector's application for local land use approvals, including the 2010 application to Coos County.

On September 8, 2010, the County Board of Commissioners ("Board") adopted and signed Final Order No. 10-08-045PL, approving Applicant's request for a CUP authorizing development of the Pipeline and associated facilities, subject to certain conditions. The decision was subsequently appealed to, and remanded by the Oregon Land Use Board of Appeals ("LUBA"). On March 13, 2012, the Board addressed and resolved two grounds from remand, and approved findings supporting approval of the CUP for the Pipeline and associated facilities on remand in Final Order No. 12-03-018PL. The March 13, 2012 decision became final when the 21-day appeal window expired and no appeals were filed on April 2, 2012. The 2010 and 2012 approvals are referred to collectively as the CUP. The CUP authorizes construction and operation of a natural gas pipeline and associated facilities on approximately 49.72 linear miles within Coos County, extending from Jordan Cove Energy Project's LNG Terminal to the alignment section in adjacent Douglas County.

Over the past several years, Pacific Connector has been pursuing the necessary approvals for the Pipeline. Pacific Connector received a FERC Certificate on December 17, 2009. *Pacific*

Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP, 129 FERC ¶ 61, 234 (2009). However, due to changes in the natural gas market and Jordan Cove's reconfiguration of its facility from an LNG import facility to an LNG export facility, FERC issued an order on April 16, 2012 vacating Pacific Connector's Certificate despite objections of Pacific Connector. *Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP*, 139 FERC ¶ 61,040 (2012).

Due to FERC's decision to revoke Pacific Connector's FERC Certificate, it was necessary for Pacific Connector to seek new FERC approval for the Pipeline as reconfigured to serve Jordan Cove's proposed LNG export facility. In June 2012, Pacific Connector initiated the mandatory FERC "pre-filing" process to seek a new FERC Certificate. FERC Docket No. PF12-17-000. Following a public scoping process initiated by FERC that lasted until October 29, 2012, Pacific Connector filed a new application with FERC on June 6, 2013. FERC Docket No. CP-13-492-00.

Pacific Connector's CUP originally contained a condition which prohibited the use of the CUP "for the export of liquefied natural gas" (Condition 25). After the initial FERC authorization for the Pipeline was vacated due to the reconfiguration of the Jordan Cove facility, Pacific Connector applied to Coos County on May 30, 2013 for an amendment to the CUP requesting deletion or modification of Condition 25 as necessary for the use of the Pipeline to serve the Jordan Cove LNG export facility. After a revised application narrative was submitted, the application was deemed complete on August 23, 2013, and the County provided a public hearing before the Hearings Officer. On February 4, 2014, the County Board of Commissioners adopted the Hearings Officer's decision and approved Pacific Connector's requested modification of Condition 25. Final Order No. 14-01-006PL, HBCU-13-02 (Feb. 4, 2014).

Project opponents appealed the County's Condition 25 Decision to LUBA, which upheld the County decision on July 15, 2014. *McCaffree et al. v. Coos County et al*., 70 Or LUBA 15 (2014). After further appeal of the LUBA decision, the Oregon Court of Appeals affirmed LUBA's decision without opinion in December 2014.

On August 13, 2013, Pacific Connector submitted an application requesting approval of two alternative segments of pipeline route, known as the "Brunschmid" and "Stock Slough" Alternative Alignments. The Hearings Officer recommended approval of these two route amendments and the Board accepted those recommendations on February 4, 2014. Final Decision and Order HBCU-13-04; Order No. 14-01-007PL.

On November 7, 2014, FERC issued a Draft Environmental Impact Statement (DEIS) for the pipeline, with public comment held open until mid-February 2015. FERC's revised schedule for the project indicated that completion of the Final EIS was scheduled for June 12, 2015, with a FERC decision on Pacific Connector's application expected by September 10, 2015. *Notice of Revised Schedule for Environmental Review of the Jordan Cove Liquefaction and Pacific Connector Pipeline Projects*; Jordan Cove Energy Project, LP, Docket No. CP13-483- 000; Pacific Connector Gas Pipeline LP, Docket No. CP13-492-000 (Feb. 6, 2015).

Meanwhile, in light of the withdrawal of its FERC Certificate and the consequent

impossibility of obtaining all federal approvals necessary to initiate construction within the original two-year County approval period, Pacific Connector filed a request with the County on March 7, 2014 to extend its original CUP approval (i.e. HBCU-10-01- County Ordinance No. 10-08-045PL (Pacific Connector Pipeline Approval, County File No. HBCU-10-01, on remand Final Decision and Order No. 12-03-018PL) for two additional years. The Planning Director approved this request on May 2, 2014, pursuant to extension provisions (then codified at CCZLDO § 5.0.700). The Planning Director's decision was appealed on May 27, 2014 (AP-14-02).

On local appeal, the Board of Commissioners appointed the Hearings Officer to conduct the initial public hearing for the appeal and make a recommendation to the Board. After a public hearing, an extended open record period for written evidence and testimony, and final written argument from the applicant, The Hearings Officer issued his Analysis, Conclusions and Recommendations to the Board of Commissioners, recommending approval of the application on September 19, 2014. In light of limitations contained in OAR 660-033-0140 applicable to extensions in farm- and forest-zoned lands, the Hearings Officer recommended approving the extension request for only one year, extending the CUP approval from April 2, 2014 to April 2, 2015. The Board of Commissioners held a public meeting on September 30, 2014 and voted to accept the Hearings Officer's recommended approval as it was presented. On October 21, 2014, the Board adopted its decision approving an extension of Pacific Connector's conditional use approval for the original alignment for one year, until April 2, 2015.

On November 12, 2014, Jody McCaffree and John Clarke (Petitioners) filed a Notice of Intent to Appeal the Board's decision to LUBA. On January 28, 2014, the deadline for Petitioners to file their Petition for Review, Petitioners instead voluntarily withdrew their Notice of Intent to Appeal, and LUBA dismissed Petitioners' appeal. *McCaffree v. Coos County*, (LUBA No. 2014-102 (Feb. 3, 2015). Accordingly, the Board's decision to extend Pacific Connector's conditional use approval until April 2, 2015 was final and not subject to further appeal.

On January 20, 2015, the Coos County Board of Commissions enacted Final Decision and Ordinance 14-09-012PL. This Ordinance amended Section 5.2.600 of the Zoning Code in a number of substantive ways. Most significantly, it allowed an applicant for a CUP located out of Resource zones to apply for - and obtain - additional extensions to a CUP. It also changed the substantive criteria for extensions.

On March 16, 2015, Pacific Connector filed a request for a second extension of the land use approvals for the original Pipeline alignment. File No. ACU-15-07. Staff reviewed the matter, deemed the application complete on April 8, 2015, and the Planning Director rendered a decision approving the extension request on April 14, 2015. The approval was appealed on April 30, 2015. File No. AP-15-01. After a hearing, the Hearings Officer issued a written opinion and recommendation to the Board of Commissioners that they affirm the Planning Director's decision granting the one-year extension to April 2, 2016. On October 6, 2015, the Board adopted the Hearings Officer's recommended decision and approved the requested extension. Final Decision No. 15-08-039PL. The Board of Commissioners' approval of Pacific Connector's second extension request was not appealed to LUBA, and that decision is final.

On March 11, 2016, FERC issued an Order denying Pacific Connector's application for a certificate of public convenience and necessity. Nonetheless, on March 16, 2016, the applicant's attorney filed for a third extension and it was approved on April 5, 2016 (ACU-16-013). This decision was not appealed and was valid until April 2, 2017. The FERC Order issued on March 11, 2016 was made "without prejudice," meaning Pacific Connector could file again if it wishes to do so. *See* FERC Order dated March 11, 2016 at 21. On April 8, 2016, Pacific Connector filed a request for a rehearing to FERC. FERC issued a denial of that request on December 9, 2016.

On April 11, 2016, Staff approved a one-year extension request for the Brunschmid and Stock Slough alignments, (HBCU-13-04 /ACU-16-003). No local appeal was filed.

Pacific Connector filed a Request for Pre-Filing Approval with FERC on January 23, 2017. FERC approved that request on February 10, 2017. *Id.*

On February 13, 2017, the applicant submitted a second extension request for the Brunschmid and Stock Slough alignments. The Planning Director approved this extension on May 21, 2017. (HBCU-13-04 / ACU-16-003). The opponents did not file an appeal of the Planning Director's decision. The second extension kept the CUP active until February 25, 2018.

On March 30, 2017, the Applicant submitted the fourth extension request for the original pipeline alignment (County File No. EXT-17-005). A notice of decision approving the extension was mailed on May 18, 2017. Opponents filed a timely appeal on June 2, 2017. The Hearings Officer recommended approval of the extension, which was approved by the Board on December 19, 2017 (Final Decision and Order No. 17-11046PL). This fourth extension kept the CUP active until April 2, 2018. No one appealed this fourth extension.

On September 21, 2017, Pacific Connector submitted an application to FERC requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act (NGA) to construct, operate, and maintain certain natural gas pipeline facilities. *See* Letter from FERC to Pacific Connector, dated October 5, 2017. Exhibit 7 to Application.

On February 21, 2018, the Applicant submitted a third extension request for the Brunschmid and Stock Slough alignments. The Planning Director approved this extension on May 18, 2018. (HBCU-13-04 / EXT-18-001). The opponents filed a timely appeal of the Planning Director's decision, which the Board referred to the Hearings Officer for consideration. The Hearings Officer held a duly noticed public hearing on July 13, 2018, wherein the Applicant and the opponents presented arguments and evidence to the Hearings Officer. The Hearings Officer allowed an open record period for both sides to present additional arguments in writing.

On or about March 20, 2018, the Applicant filed the current (fifth) extension request of the original pipeline alignment ("Application"). Staff assigned the number EXT 18-003 to this application, which was timely filed and was submitted with all of the required documents to allow the application to be deemed complete. The Planning Director approved this latest extension request on May 21, 2018, and followed that up with a corrected notice on May 24, 2018. Opponents filed a timely appeal. The Hearings Officer held a duly noticed public hearing

on July 13, 2018, wherein the Applicant and the opponents presented arguments and evidence to the Hearings Officer. The Hearings Officer allowed an open record period for both sides to present additional arguments in writing.

These two cases have not been consolidated. County staff has kept the records separate. The Hearings Officer did allow the audio tapes from AP-18-001 to be added to the record of AP-18-002 and to consider arguments raised in the first proceeding to have also been raised in the second proceeding. Likewise, any person who testified orally in AP-18-001 will be considered to have standing via appearance in AP-18-002.

This decision is the result of that local appeal and the evidence and arguments presented by the parties at the public hearing and during the subsequent open record period.

II. LEGAL ANALYSIS.

A. Procedural Issues.

1. Open Record; Standing.

At the hearing held on July 13, 2018, the Hearings Officer set a schedule for post-hearing submittals. Staff issued a memorandum on July 17, 2018 that further memorialized the schedule in writing. The Hearings Officer left the record open until July 20, 2018 for rebuttal evidence and argument responding to issues raised at the July 13, 2018 hearing. Surrebuttal evidence was due on July 27, 2018, in addition to any final argument submitted by opponents. Consistent with state law, the Applicant was given an additional seven days, until August 3, 2018 to submit final arguments.

Some concern was raised pertaining the standing of the opponents to appeal this extension decision. The Board finds that all parties that have appeared have standing.

2. Allegations of Bias.

At the Board deliberations in this matter on October 24, 2018, Natalie Ranker, JC Williams, and Jody McCaffree contended that Commissioner Sweet was biased and should not participate in the deliberations or decision for the Application. The Board finds that most of these allegations were previously raised and rejected by the Board in a land use proceeding involving a related land use development proposed by Jordan Cove Energy Project L.P. ("JCEP") (County File Nos. HBCU-15-05 / CD-15-152 / FP-15-09, August 30, 2016). Opponents then raised these issues on appeal to the Land Use Board of Appeals ("LUBA"):

> "McCaffree alleges that Chair Sweet was biased in favor of the proposed LNG terminal. According to McCaffree, on April 22, 2016, Chair Sweet sent a letter, on county letterhead, to FERC expressing support for the Jordan Cove LNG terminal and Pacific Connector Pipeline Project applications then pending before FERC. Supplemental Record 527. In addition, McCaffree quotes Chair Sweet as making public statements in support of the Jordan Cove project. *Id.* at 529-30.

> McCaffree contends that the letter and statements demonstrate that Chair Sweet was incapable of deciding the land use application pending before the county with the requisite impartiality."

Oregon Shores Conservation Coalition v. Coos County, __ Or LUBA __ (LUBA No. 2016-095, November 27, 2017) (slip op. at 35). After discussing the high bar for disqualifying bias in local land use proceedings, LUBA denied McCaffree's assignment of error and concluded that then-Chair Sweet was not actually biased:

> "We disagree with McCaffree that Chair Sweet's April 11, 2016 letter, or his public statements, demonstrate that Chair Sweet was incapable of determining the merits of the land use application based on the evidence and arguments presented.
>
> * * * *
>
> "As far as McCaffree has established, Chair Sweet's statements of support of the LNG terminal represent no more than the general appreciation of the benefits of local economic development that is common among local government officials. Those statements fall far short of demonstrating that Chair Sweet was not able to make a decision on the land use application based on the evidence and arguments of the parties."

Oregon Shores Conservation Coalition, __ Or LUBA at __ (LUBA No. 2016-095, November 27, 2017) (slip op. at 36-37). The Court of Appeals affirmed LUBA's decision on this issue. *Oregon Shores Conservation Coalition v. Coos County*, 291 Or App 251, 416 P3d 1110 (2018). The Supreme Court denied review on this issue. *Oregon Shores Conservation Coalition v. Coos County*, 363 Or 481, 291 Or App 251 (2018). The Board finds that none of the challengers explain why a different outcome is warranted in the present case.

The Board denies the current contentions as follows:

Agreement between Applicant and County: The Board denies the contention that the Board members were biased due to a 2007 agreement between the Applicant and the County pursuant to which the Applicant pays the County $25,000 a month. The challengers did not adequately explain the terms of the agreement, how they were related to the specific matter pending before the Board, or how the existence of the agreement would cause any of the Board members to prejudge the Application. As a result, the Board finds that the facts alleged by Ms. McCaffree are not sufficient to establish disqualifying actual bias by any Board members.

Reports of JCEP Funding for County Sheriff's Office: For three reasons, the Board denies the contention that the Board members were biased due to funding by JCEP for the County Sheriff's Office. First, JCEP is not the applicant in this case, so even if there were bias in favor of JCEP, it would not necessarily be bias in favor of Applicant. Second, challengers have not adequately explained how the existence of this funding would cause any Board members to prejudge the Application (which is not related to funding of the Sheriff's Office), and they have not identified

any "statements, pledges or commitments" from any Board members that the existence of the funding has caused them to prejudge the Application. Third, the Sheriff's Office funding is not contingent upon approval of the Application. Therefore, the challengers have not demonstrated that any Board member demonstrated "actual bias" due to this funding.

Letter from Commissioner Sweet to FERC: The Board denies Ms. McCaffree's contention that Commissioner Sweet was biased due to a letter he wrote to FERC in support of the project in April 2016. Ms. McCaffree did not adequately explain the content of the letter, or how it related to the specific matter pending before the Board. Additionally, the Board finds that, even if the facts alleged by Ms. McCaffree are correct and Commissioner Sweet did express general support for the project in the letter to FERC, the requests pending before FERC are not of the same nature as the applications at issue in this proceeding. In other words, the letter does not demonstrate that Commissioner Sweet has prejudged the specific applications pending before the County or that he is unable to objectively apply the County's approval criteria to the Application. Finally, the Board notes that LUBA, the Court of Appeals, and the Supreme Court all previously concluded that the statements in question simply reflected a generalized support for economic development in the community. As a result, the Board finds that the facts alleged by Ms. McCaffree are not sufficient to establish disqualifying actual bias by Commissioner Sweet.

Statements Made by Commissioners in 2014 and 2015: The Board denies the contention that Commissioners Sweet and Cribbins were biased due to statements they made to the media about the project in 2014 and 2015. The facts alleged by the challengers are not supported by substantial evidence because they did not provide enough details about the statements such as their substance, their timing, or their context, or how they demonstrate prejudgment by the Board members. Further, the Board finds that all of these statements appear to predate the filing of the Application and thus they could not relate to the specific matter pending before the Board. Finally, the Board notes that LUBA, the Court of Appeals, and the Supreme Court all previously concluded that the statements in question simply reflected a generalized support for economic development in the community. The Board finds that the facts alleged by the challengers are not sufficient to establish disqualifying actual bias by any Board members.

Private Meetings Between Applicant and Board Members: The Board denies Ms. McCaffree's contention that Board members were biased due to their attendance at private meetings with the Applicant. The facts alleged by Ms. McCaffree are not supported by substantial evidence because she did not provide any details about the meetings such as when and where they occurred, what was discussed, how they related to the matter pending before the Board, or how they would cause the Board members to prejudge the Application. As a result, the Board finds that Ms. McCaffree has not alleged facts sufficient to establish disqualifying actual bias arising from the alleged meetings.

Trip to Colorado: The Board denies the contention that Commissioner Sweet's trip to Colorado in September 2018 caused him to be actually biased in the matter. The record reflects that, on the trip, Commissioner Sweet learned more about the natural gas market and met with elected officials. Challengers did not present any evidence that tied the trip to the Applicant or the specific matter pending before the Board. Challengers also did not identify with specificity why the existence of the trip caused Commissioner Sweet to be biased.

Campaign Contribution by JCEP to Commissioner Sweet: The Board denies the contention that a cash contribution by JCEP to Commissioner Sweet's campaign caused him to be biased. Commissioner Sweet acknowledged the campaign contribution on the record. The challengers did not explain why this disclosure was inadequate or what bearing the existence of the contribution has on the ability of Commissioner Sweet to render an unbiased decision. Under similar circumstances, LUBA rejected a bias claim. *Crook v. Curry County*, 38 Or LUBA 677, 690 n 17 (2000) (mere existence of campaign contribution by a party to a decision-maker does not cause the decision-maker to be biased).

Finally, before taking final action to approve these findings, Chair Sweet stated that he had not prejudged the Application and that he could evaluate the testimony and evidence in the record and make a decision based upon whether the testimony and evidence demonstrates compliance with applicable criteria. Commissioner Cribbins also stated that her comments to the media expressing general support for job creation would not cause her to be biased.

For these reasons, the Board denies the bias challenges alleged in this case.

B. General Statement Summarizing Overall Policy Concern of the Opponents.

Before delving deep into the substance of the approval criteria, the Board would like to document the overarching policy point asserted by the opponents to the Application. First, the opponents state that the delays the applicant has experienced in obtaining the FERC permits is causing severe hardship for property owners who own land in the potential paths of the pipeline. In particular, they argue that the potential for the pipeline to be built inhibits the ability of landowners whose property is in the proposed route to sell their property.

In the case of the original route, the opponents note that it has been eight years since the County granted the original land use approval for the PCGP pipeline. The opponents have therefore asked the County to balance the rights of the landowners against the rights of the pipeline company.

The Board is sympathetic to these concerns. The Board is also sympathetic to the fact that the Applicant faces a very byzantine and inefficient regulatory process for approval of gas pipelines that is going to take time. For purposes of this decision, the Board finds these issues are not relevant to the approval criteria, and has therefore not allowed these policy or political considerations to detract from the mission of applying the facts to criteria as written in the code.

Moreover, the reality is, as the Board correctly noted back in 2010, that the "cloud" affecting these properties will exist so long as the FERC process is active, regardless of the County land use permitting process, which the Board noted was a "sideshow" to the FERC process. *See* Findings of Fact, Conclusions of Law, and Final Decision of the Board of Commissioners dated Sept. 8, 2010, at p. 22. FERC specifically allowed Pacific Connector to reapply for a new certificate, and Pacific Connector has done so. That process will likely take a

few years to work through the federal bureaucracy. In the meantime, nothing the County does in these land use proceedings will cause that "cloud" to disappear.

C. Criteria Governing Extensions of Permits.

Once a development approval has been granted, as happened in this case, an extension may or may not be allowed, based on the criteria found in CCZLDO §5.2.600. Under the terms of CCZLDO §5.2.600, the Planning Director may approve extension requests as an Administrative Action under the local code. Extension decisions are subject to notice as described in CCZLDO §5.0.900(2) and appeal requirements of CCZLDO §5.8 for a Planning Director's decision. The criteria set forth in CCZLDO §5.2.600 are reproduced below.

> ***Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.***
>
> ***1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:***
>
> a. ***Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.***
>
> b. ***Coos County may grant one extension period of up to 12 months if:***
>
> i. ***An applicant makes a written request for an extension of the development approval period;***
> ii. ***The request is submitted to the county prior to the expiration of the approval period;***
> iii. ***The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and***
> iv. ***The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.***
>
> c. ***Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.***
>
> d. ***If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years. An extension of a permit described in subsection (e) of this section shall be valid for two years.***

e. ***For the purposes of subsection (e) of this section, "residential development" only includes the dwellings provided for under in the EFU and Forest zones in Chapter 4.***

f. ***Extension requests do not apply to temporary use permits, compliance determinations or zoning compliance letters.***

2. Extensions on all non-resource zoned property shall be governed by the following.

a. ***The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.***
b. ***If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.***
c. ***If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.***

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

a. ***All conditional uses within non-resource zones are valid four (4) years from the date of approval; and***
b. ***All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.***
c. ***All non-residential conditional uses within resource zones are valid (2) years from the date of approval.***
d. ***For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.***
e. ***Additional extensions may be applied.***[1]

CCZLDO §5.2.600; *see also* OAR 660-033-0140(2). These criteria are addressed individually below.

Note: Applicant's permit authorizes the pipeline to be developed on both resource-zoned and non-resource-zoned land, which would mean that a portion of the pipeline is subject to a two-year extension period while a portion of the pipeline is subject to a one-year extension period. For the sake of administrative convenience, the Applicant takes the conservative approach and requests a one-year extension of the entire permit.

D. Pacific Connector's Compliance with the Applicable Standards for a CUP Extension

[1] The section was modified to add subsection (3)(e) by Coos County Ordinance 14-09-012PL on January 20, 2015.

Request on Farm and Forest Lands

1. The Application Meets the Applicable Criteria Set Forth at § 5.2.600(1)(a).

CCZLDO §5.2.600(1)(a) provides as follows:

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:

a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.

The Board finds that Pacific Connector's application and attachments demonstrate compliance with the code requirements at CCZLDO §5.2.600(1)(a) for granting extension requests for land use approvals on farm and forest lands.

This criterion is met because a timely extension request was filed and the approval criteria have not changed. (See discussion below).

2. **The Applicant Meets the Applicable Criteria Set Forth at § 5.2.600(1)(b).**

a. Pacific Connector has made a written request for an extension of the development approval period.

CCZLDO §5.2.600(1)(b)(i) provides as follows:

> ***b. Coos County may grant one extension period of up to 12 months if:***
>
> ***i. An applicant makes a written request for an extension of the development approval period;***

The Applicant submitted written narratives and applications, which specifically request an extension, on March 20, 2018 (EXT-18-003), which is within the development approval period. CCZLDO § 5.2.600(1)(b)(i).

This criterion is met.

b. Pacific Connector's request was submitted to the County prior to the expiration of the approval period.

CCZLDO § 5.2.600(1)(b)(ii) provides as follows:

> ***b. Coos County may grant one extension period of up to 12 months if:***
>
> ***ii. The request is submitted to the county prior to the expiration of the approval period;***

As noted above, the CUP for the main alignment was operating on the fourth one-year extension request and was set to expire on April 3, 2018 (EXT-18-003). The extension application was filed on March 20, 2018 and thus was timely submitted prior to the expiration of the previously extended CUP. CCZLDO §5.2.600(1)(b)(ii).

This criterion is met.

c. **Pacific Connector was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.**

CCZLDO §5.2.600(1)(b)(iii) and (iv) provides as follows:

> ***iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and***
>
> ***iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.***

To approve this extension application, the Board must find that Pacific Connector has stated reasons that prevented Pacific Connector from beginning or continuing development within the current approval period (*i.e*. since the last extension was applied for and granted), and Pacific Connector is not responsible for the failure to commence development. CCZLDO §5.2.600 (1)(b)(iii) & (iv).

This is the fifth extension request, and this is the fourth time the extension criteria have been addressed by the County. For this reason, the Hearings Officer asked the parties present at the July 13, 2018 hearing to brief the issue of whether the opponents' arguments are barred by the doctrine of issue preclusion, law of the case, collateral attack, or some other similar jurisprudential doctrine. The concern was that some of the arguments seemed to the same as arguments which were resolved in the decision in AP-17-004 as well as other prior extension decisions.

As a preliminary matter, it is important to think about what authority LUBA has for using jurisprudential rule that seek to promote judicial efficiency, such as collateral attack, law of the case, and issue preclusion. Unlike a court, LUBA is a creature of statute, and its authority begins and ends with the statutes that created it. For example, LUBA has stated on many occasions that

it cannot apply equitable doctrines such as laches, because it does not possess the same powers as a court. *See, e.g., Jones v. Douglas County*, 63 Or LUBA 261, 269-70 (2011); *Macfarlane v. Clackamas County*, 70 Or LUBA 126, 131 (2014). As discussed below, at least one statute that governs LUBA has been determined to prohibit a jurisprudential rule that sought to promote judicial efficiency.

In *Macfarlane,* LUBA held for the first time that it "would no longer entertain arguments based on equitable doctrines, unless the proponent first establishes that LUBA has the authority under its governing statutes to reverse, remand or affirm a land use decision based on the exercise of equitable doctrines." The timing of LUBA's pronouncement in *Macfarlane* was notable, as it came directly on the heels of *Dexter Lost Valley Cmty. Ass'n v. Lane* County, 255 Or. App. 701, 300 P3d 1243 (2013).

Dexter Lost Valley Cmty. Ass'n is an interesting case because it indicates how closely the Court of Appeals is willing to scrutinize LUBA's procedural practices for consistency with LUBA's enabling statute. For many years, LUBA had created various procedural practices intended to create efficiency in the review process. One example of this was LUBA's creation of the practice for accepting "Motions for Voluntary Remand." While provisions for voluntary remand are not set forth in the statutes or rules, LUBA had established a framework for voluntary remand through case law. *Hastings Bulb Growers, Inc. v. Curry Co.*, 25 Or LUBA 558, 562 (1993), *aff'd without opinion*, 123 Or App 642, 859 P2d 1208 (1993); *See also Angel v. City of Portland*, 20 Or LUBA 541 (1991), *Smith v. Douglas Co.*, 34 Or LUBA 682, LUBA (1997); *Mazeski v. Wasco Co.*, 27 Or LUBA 45, 47 (1994). LUBA would routinely grant motions for voluntary remand if it concluded that granting the motion was "consistent with sound principles governing judicial review." LUBA believes that such procedure was allowed by ORS 197.805, which states that "[i]t is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review."

However well-settled the practice had been, voluntary remands came to a sudden and unexpected halt when the Court of Appeals issued its opinion in *Dexter Lost Valley Cmty. Ass'n*. The Court of Appeals noted that "[a]n administrative agency cannot act outside of its legislative grant of authority in order to "amend, alter, enlarge or limit the terms of a legislative enactment." The court then looked at what called the "unusually persuasive legislative history" of the statute now codified at ORS 197.830(13)(b) and concluded that the voluntary remand practice is inconsistent with the intent of that statute.

It is unclear how far *Dexter* should be extended in different but related contexts. It is unlikely that other LUBA statutes have legislative history that give such clear guidance as was the case in *Dexter.* Nonetheless, *Dexter* certainly raises the question of how far LUBA can create procedural practices based on common-law doctrines which are based on "judicial economy." As discussed in more detail below, the use of both the "collateral attack" doctrine (aka "waiver") and the application of *Nelson* test for "issue preclusion" have been approved by the Court of Appeals for use in a land use context. As far as the Board can tell, however, no focused challenges were raised in those cases, as happened in *Dexter.* Nonetheless, for now, the answers remain elusive, and given the Court of Appeals case law on the topic, the Board assumes that the

"collateral attack", "law of the case," and "issue preclusion" doctrines are still viable for use by LUBA, and by extension, by the County.

We start with issue preclusion, which in the civil context is a common law doctrine[2] that bars relitigation of an issue in subsequent proceedings in some situations, when the issue has been determined by a valid and final determination in a prior proceeding. *Nelson,* 318 Or at 103. Like the related doctrines of waiver and collateral attack, issue preclusion is a jurisprudential rule that seeks to promote judicial efficiency.

As early as 1969, Oregon courts recognized that a governing body is not necessarily bound to decide a land use matter in the same manner as a previous governing body. In *Archdiocese of Portland v. Washington County*, 254 Or 77, 87-8, 458 P2d 682 (1969), the Oregon Supreme Court stated:

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

See also Okeson v. Union County, 10 Or LUBA 1, 5 (1983) ("There is no requirement local government actions must be consistent with past decisions, but only that a decision must be correct when made. Indeed, to require consistency for that sake alone would run the risk of perpetuating error."); *Reeder v. Clackamas County*, 20 Or LUBA 238 (1990) (same).

Similarly, in *Nelson v. Clackamas County,* 19 Or LUBA 131, 140 (1990), LUBA recognized that Oregon's system of land use adjudication "is incompatible with giving preclusive effect to issues previously determined by a local government tribunal in another proceeding."[3]

In a more recent case, *Green v. Douglas County,* 63 Or LUBA 200, 207 (2011), LUBA stated the following:

> It is not clear that issue preclusion applies generally in land use appeals. In at least two decisions, based on the fifth *Nelson* factor, LUBA has concluded that it does

[2] According to the Oregon Supreme Court, "[i]ssue preclusion can be based on the constitution, common law, or a statute." *Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 103, 862 P2d 1293 (1993) (citing *State v. Ratliff*, 304 Or 254, 257, 744 P2d 247 (1987). The five-part *Nelson* test is based on common law. *Hickey v. Settlemier*, 318 Or. 196, 201, 864 P.2d 372 (1993). In *Nelson*, the Court stated, as an example, that there is a constitutional basis for issue preclusion in a criminal case via the principle of double jeopardy. The Court further noted that the civil common-law doctrine of issue preclusion is based on judicial economy. Finally, the Court cited to ORS 43.130 as an example of a statute setting forth a principle of issue preclusion. *See also Fisher Broadcasting v. Department of Revenue*, 321 Or. 341, 898 P.2d 1333 (1995); *DLCD v. Benton County*, 27 Or LUBA 49, 61 (1994).

[3] *See also Alexanderson v. Clackamas County*, 126 Or App 549, 869 P2d 873, *rev den*, 319 Or 150, 877 P2d 87 (1994); *Douglas v. Multnomah County*, 18 Or LUBA 607, 612-3 (1990); *BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30, 46-47 (1988); *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-712 (1986).

> not. *Lawrence v. Clackamas County*, 40 Or LUBA 507, 519-20 (2001), *aff'd* 180 Or App 495, 43 P3d 1192 (2002); *Nelson v. Clackamas County*, 19 Or LUBA 131 (1990). However, as we noted in *Kingsley v. City of Portland*, 55 Or LUBA 256, 262-63 (2007), the Court of Appeals in *Lawrence* affirmed our decision in that appeal on narrower grounds, and reserved its opinion on whether under the fifth *Nelson* factor the issue preclusion doctrine categorically could never apply to land use proceedings. *Lawrence v. Clackamas County*, 180 Or App 495, 504, 43 P3d 1192 (2002). For purposes of this opinion we will assume without deciding that the fifth *Nelson* factor is present. However, as explained below, two other *Nelson* factors are missing and the issues petitioners raise in this appeal are not barred by issue preclusion.

See also Broderson v. City of Ashland, 62 Or LUBA 329, 338 (2010). That uncertainty remains, but as the case law now stands, LUBA's *Lawrence* decision remains good law according to LUBA. Thus, while some exceptions to this general rule exist,[4] the Board understands that local land use decisions do not create legal precedent that is binding on subsequent land use decision-makers concerning: (1) unrelated property, or (2) new, unrelated land use applications proposing development on the same property as an earlier land use decision, particularly when the prior land use decision has expired or is inconsistent with the newer land use decision.

Unfortunately, neither LUBA nor the courts have ever clearly explained the distinction between issue preclusion and the collateral attack doctrine, nor have they given a clear rule what situations call for the application of one doctrine to the exclusion of the other. Even more surprising, the Board's research reveals that LUBA rarely uses the two phrases in the same case. As far as the Board can tell, in cases where the *issues* raised between earlier and later cases addressing the same property really are the same, the only principled way to distinguish when collateral attack applies and when issue preclusion applies is to limit issue preclusion to situations where the decisions are not sequential (*i.e*. one is not needed to implement the other) and either:

- the first decision expired, or was not otherwise acted upon, and therefore a second application had to be filed. *See Widgi Creek Homeowner's Ass'n v. Deschutes County,* ___ Or LUBA _____(2015), *aff'd without opin.* 273 Or App 821, 362 P2d 1215 (2015); *Broderson v. City of Ashland*, 62 Or LUBA 329, 338 (2010); *Davenport v. City of Tigard*,

[4] LUBA has stated, in dicta, that "[a]rbitrary and inconsistent interpretation of approval criteria in deciding applications for land use permits may provide a basis for remand. *See Friends of Bryant Woods Park v. City of Lake Oswego,* 26 Or LUBA 185, 191 (1993), *aff'd,* 126 Or App 205, 868 P2d 24 (1994) (although local legislation may be susceptible of more than one interpretation, local government may not "arbitrarily * * * vary its interpretation"); *Smith v. Clackamas County*, 25 Or LUBA 568, 570 n1 (1993). For example, when a local government determines that comprehensive plan objectives are mandatory approval standards in one case, it may not later determine that those plan objectives are mere guidelines in a different unrelated case, absent some reasonable explanation for the disparity. *Welch v. City of Portland*, 28 Or LUBA 439, 448 (1994). Nonetheless, LUBA has also stated that the exception is not triggered unless "there is an indication that different interpretations are the product of a design to act arbitrarily or inconsistently from case to case." *Greer v. Josephine County*, 37 Or LUBA 261 (1999). Thus, the exception does not prevent a local jurisdiction from changing previously-stated interpretations; it merely prohibits the arbitrary flip-flopping of interpretations on a case-by-case basis.

27 Or LUBA 243 (1994), or

- the first decision resulted in a denial. *Kingsley v. City of Portland*, 55 Or LUBA 256, 262-63 (2007); *Lawrence v. Clackamas County*, 40 Or LUBA 507, 519-20 (2001), *aff'd,* 180 Or App 495, 43 P3d 1192 (2002), *rev den*, 334 Or 327, 52 P3d 435 (2002); *Nelson v. Clackamas County,* 19 Or LUBA 131,140 (1990).

In these limited situations, under current law articulated in *Lawrence,* issues that were decided in an earlier proceeding can be re-litigated.[5]

In her surrebuttal argument dated July 27, 2018, attorney Tonia Moro argues that the Board should not apply the five-part *Nelson* test for "issue preclusion" because the doctrine does not apply to this proceeding. Ms. Moro states that legal issues decided in County land use decisions should categorically not be given preclusive effect in later land use proceedings. In support of this argument, she cites *Lawrence v. Clackamas County*, 40 Or LUBA 507, 519-20 (2001), *aff'd,* 180 Or App 495, 43 P3d 1192 (2002) *rev den*, 334 Or 327, 52 P3d 435 (2002). *Lawrence* addresses a situation where an applicant seeks to apply for a second land use determination after having been *denied* in a first land use application. *Lawrence* has no applicability here.

Ms. Moro then applies the five-part *Nelson* test to the facts of this case and concludes that the test is not met because, among other reasons, "the issue is more developed," and "it is about the effect [of FERC denying the prior application] and its cause on the ability of the applicant to obtain a FERC permit within a one year extension." With regard to this point, the Board partially agrees with Ms. Moro. The issue is whether the applicant is responsible for the failure to commence development within the current approval period (*i.e.* since the last extension was applied for and granted). Those dates are from April 3, 2017 to April 3, 2018. With regard to events that happened within those time periods, no party can be prohibited from raising issues premised on those time periods. The Board disagrees that the approval criteria require the applicant to prove that it will be able to obtain a FERC permit within a one-year extension and commence development.

Ms. Moro also argued that because the parties are different, the *Nelson* test is not met. If one is correct in applying *Nelson* to this case, that is indeed a relevant factor. But it is not relevant under the collateral attack doctrine, as discussed in more detail below. That is why it so important to know which test to apply.

The Applicant essentially ignores the opponent's *Nelson* analysis, and instead focuses on the doctrine of collateral attack:

> Notwithstanding the Board's careful consideration and resolution of the FERC denial issue in the 2017 Extension Decision, opponents nevertheless attempt to

[5] Another situation where the five *Nelson* factors would apply is when determining whether a Circuit Court proceeding should have preclusive effect in a subsequent LUBA appeal. *See, e.g., DLCD v. Benton County,* 27 Or LUBA 49 (1994).

> resurrect it in the current proceedings. The Hearings Officer should deny opponents' attempt to do so for two reasons. First, opponents' actions is a blatant and impermissible collateral attack on the 2017 Extension Decision. *See Noble Built Homes, LLC v. City of Silverton*, 60 Or LUBA 460, 468 (2010) (a party "cannot, in an appeal of one [local land use decision], collaterally attack a different final [local] land use decision."). Although opponents attempt to frame the question as one of issue preclusion (not collateral attack), they are mistaken. There is simply no authority—and opponents do not cite to any— that permits someone to utilize one land use proceeding to challenge a previous, final, unappealed land use decision.

See Applicant's Final Written Argument, Seth King letter dated August 3, 2018, page 9. Unfortunately, the *Noble Built Homes* case is unremarkable and does not get to the core of the issue presented here.[6]

The Board is not aware of cases that applied the collateral attack doctrine to extensions. It is true that these serial extension requests seem, in a very real sense, to be a continuation of the same case. In a similar context, the Court of Appeals has stated that the "same parties" issue does not matter in a second land use proceeding on remand from LUBA because it is part of the same case. *See Mill Creek Glen Protection Ass'n v. Umatilla County,* 88 Or App 522, 746 P2d 728 (1987):

> Petitioners maintain that, whether or not a law of the case or waiver principle might bar new arguments by parties who participated in an earlier appeal, neither should apply when, as here, different parties bring the second appeal and the appellant in the first was not represented by counsel. We do not think that petitioners' distinction aids them. Although it is true that new parties in a second appeal could not have raised particular issues in the earlier appeal in which they did not participate, it is also true that they did have and did forego the opportunity to participate in the first appeal. A party who did not raise an issue in an earlier proceeding because he chose not to participate in it should be as precluded from later raising the issue as a party who did participate but neglected to raise the issue.

See also Beck v. City of Tillamook, 313 Or 148, 154 n 2, 831 P.2d 678 (1992). This, of course, makes sense, since a party should not be afforded more rights by *not* showing up to a fight than if it had showed up. Logically, that same policy expressed above *should* apply to extension cases as well.

That quote from *Mill Creek* hints at the problem in this case. It is clear that if the Applicant had let these permits expire and was filing an entirely new land use application, then all issues and interpretations would be back on the table. However, unlike other cases in which

[6] The Board notes that the Applicant also contended, in the alternative, that if opponents' contentions were not barred by the various doctrines, the Board should nevertheless deny opponents' contentions on the merits. As explained in this decision below, the Board adopts the Applicant's contentions on the merits, which provides an alternative grounds for denying opponents' challenge and for affirming the Planning Director's decision.

the *Nelson* test has been applied, the opponents fail to acknowledge that both LUBA and the courts have applied two different sets of rules in situations where the previous interpretation is made in the same case / proceeding or, in an earlier phase of a multi-phase development.

This set of facts is closer to *Mill Creek* than to *Lawrence.* In this case, these permit extensions all relate to the same permit (HBCU-10-01), and are in some ways similar to a proceeding on remand. They essentially act to perpetuate the life of the existing permit that would otherwise expire, and denial of an extension must be based on certain facts taking place relevant to the original permit. The question here is when a county decides certain issues in a decision granting a third or fourth extension for a permit, can an opponent get another bite at the apple at the hearing for the fifth extension by raising the same issues that were decided – or could have been raised and decided, in the earlier extension proceeding?

Under the doctrine of "waiver" (aka "law of the case") once a land use decision is remanded by LUBA and a local government adopts a decision on remand, issues that can be raised on remand or in a subsequent LUBA appeal of the second decision are limited to those that could not have been raised in the first LUBA appeal. *Portland Audubon v. Clackamas County*, 14 Or LUBA 433, *aff'd,* 80 Or App 593, 722 P2d 748 (1986).[7] Although nothing in the land use statutes directly calls for use of this doctrine, LUBA noted in *Portland Audubon* that various statutory provisions support its use. *See* ORS 197.805; 198.830(14); 197.835(10); 197.855.

In *Mill Creek Glen Protection Ass'n*, 88 Or App at 526, the Court of Appeals approved of LUBA's use of the "law of the case" doctrine, but stated that the preferred term should be "waiver." The *Mill Creek* Court also clarified that this waiver principle applied even to persons who did not appear in the first proceeding. *Id*. at 527.

In *Davenport v. City of Tigard*, 27 Or LUBA 243, 246-7 (1994), LUBA stated an important limit on the "law of the case" doctrine: as the name implies, it only applies in subsequent stages of the *same case.* In *Davenport,* the applicant was granted approval for a site plan review, but then submitted a new application seeking to modify the approval in minor ways pertaining to landscaping and parking. LUBA stated that the fact that the application is a "new" one prohibits application of the "waiver" doctrine, even though the proposed development differs from the earlier approved decision in only minor details.[8] The Board believes that the key distinction in *Davenport* is that the modification of the plan essentially meant that older aspects of the plan were being abandoned, which is very similar to what would happen if the permit had expired: the modification triggered the ability to revisit old issues that might overwise be off the

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[7] *See also Holland v. City of Cannon Beach*, 154 Or App 450, 962 P2d 701 (1998), *rev den*., 328 Or 115 (1998); *McCulloh v. City of Jacksonville*, 49 Or LUBA 345 (2005); *Halverson-Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 193, 205 (2000); *Dickas v. City of Beaverton*, 17 Or LUBA 578, 582-3 (1989); *Hearne v. Baker County*, 16 Or LUBA 193, 195 (1987), *aff'd*, 89 Or App 282, 748 P2d 1016, *rev den,* 305 Or 576 (1988).

[8] *See also Sequoia Park Condominium Unit Owner's Ass'n v. City of Beaverton*, 36 Or LUBA 317, 326-7 (1999); *Green v. Douglas County*, 63 Or LUBA 200, 205-6 (2011); *Neighbors Against Apple Valley Expansion v. Washington County*, 59 Or. LUBA 153 (2009); *Durig v. Washington County*, 40 Or LUBA 1, 8 (2001), *aff'd*, 177 Or App 453, 34 P3d 169 (2001).

table.

Many LUBA cases refer to the term "collateral attack" but do not make it clear if that is the same thing as the "waiver" doctrine or something doctrinally different. As discussed below, it must be something slightly different. Under the collateral attack doctrine, a local government cannot deny a land use application based on (1) issues that were conclusively resolved in a prior related discretionary land use decision, or (2) issues that could have, but were not, raised and resolved in an earlier related land use proceeding. *Safeway, Inc. City of North Bend*, 47 Or LUBA 489, 500 (2004) (When a city previously approved a "site plan review" decision that decided certain issues but deferred other non-discretionary issues to a later ministerial process, the City cannot revise issues previously decided to "correct" any "mistakes" it might have made which benefited the applicant at the expense of the City); *Carlsen v. City of Portland*, 169 Or App 1, 8 P3d 234 (2000).[9] Unlike the pure "law of the case" doctrine, the "collateral attack" doctrine does not have to apply to the same case.

The "collateral attack" concept has been used in many different contexts, including:

- ❖ goal challenges directed at land use ordinances that were not timely appealed,[10]
- ❖ belated challenges to building permits that inadvertently made land use decisions without undertaking land use procedures,[11]
- ❖ Implementing permits: arguments directed at ministerial permits that should have instead been directed at the preceding land use decisions,[12] and
- ❖ Multi-Phase projects: arguments directed at land use actions that should have been directed at earlier phases of a multi-phase approval process.[13]

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[9] *See also Northwest Aggregate v. City of Scappoose,* 34 Or LUBA 498, 510-11 (1998) *Rocklin v. Multnomah County*, 37 Or LUBA 237, 247-8 (1999); *Dalton v. Polk County,* 61 Or LUBA 27, 38 (2009); *Shoemaker v. Tillamook County*, 46 Or LUBA 433 (2004); *Sahagain v. Columbia County*, 27 Or LUBA 341 (1994); *Louks v. Jackson Co.,* 65 Or LUBA 58 (2012); *Just v. Linn County,* 59 Or LUBA 233 (2009); *ONRC v. City of Seaside,* 27 Or LUBA 679, 681 (1994); *Drake v. Polk County*, 30 Or LUBA 199 (1995).

[10] *Byrd v. Stringer*, 295 Or 311, 316-17; 666 P2d 1332 (1983); *Friends of Neabeck Hill v. City of Philomath*, 139 Or App 39, 49, 911 P2d 350 (1996); *Urquhart v. Lane Council of Governments*, 80 Or App 176, 181, 721 P2d 870 (1986); *Femling v. Coos County*, 34 Or LUBA 328, 333 (1998); *Lowery v. City of Kaiser*, 48 Or LUBA 568 (2005); *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001); *Greenwood v. Polk County*, 11 Or LUBA 230 (1984); *Holloway v. Clatsop Co*., 52 Or LUBA 644 (2006); *Toler v. City of Cave Junction,* 53 Or LUBA 635 158 (2008).

[11] *Ortman v. City of Forest Grove*, 55 Or LUBA 426 (2007); *Ceniga v. Clackamas County*, 32 Or LUBA 273 (1997); *Corbett / Terwilliger Lair Hill Neigh. Ass'n v. City of Portland*, 16 Or LUBA 49, 52 (1987).

[12] *Bullock v. City of Ashland*, 57 Or LUBA 635 (2008); *Sandler v. City of Ashland*, 21 Or LUBA 483 (1991); *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282, 296, *aff'd*, 195 Or App 763, 100 P3d 218 (2004); *Piltz v. City of Portland*, 41 Or LUBA 461 (2002); *Bauer v. City of Portland,* 38 Or LUBA 715, 721 (2000).

[13] *DLCD v. Crook County*, 25 Or. LUBA 625 (1993), *aff'd*, 124 Or App 8, 10, 860 P2d 907 (1993) (discussing County's three-stage PUD approval process); *Safeway, Inc. City of North Bend*, 47 Or LUBA 489, 500 (2004); *Westlake Homeowners Ass'n v. City of Lake Oswego*., 25 Or LUBA 145, 148 (1993); *Headley v. Jackson County*, 19 Or LUBA

Putting aside attacks on legislation, which have no applicability here, in the quasi-judicial context a collateral attack argument only applies to the same property, and it does not apply to previous permit decisions that have expired or abandoned.

The phrase "collateral attack" can be viewed as a type of statutory issue preclusion. It is really nothing more than an informal term describing a series of separate but related statutory requirements embodied in Oregon's land use laws. *See, e.g.,* ORS 197.835(1) (limiting LUBA's scope of review to land use decisions under appeal); ORS 197.625(1)(setting forth rules for when ordinances are deemed to be "acknowledged" and therefore immune from goal challenges); and ORS 197.825(2)(a) (setting forth an "exhaustion of remedies" rule that can trigger application of the collateral attack doctrine).[14]

Various LUBA cases discuss the nature and origins of the "collateral attack" doctrine. For example, in *Butte Conservancy v. City of Gresham,* 47 Or LUBA 282, *aff'd* 195 Or App 763, 100 P3d 218 (2004), LUBA described the doctrine as merely representing the "unexceptional principle that assignments of error that collaterally attack a decision other than the decision on appeal do not provide a basis for reversal or remand." *See also Robson v. City of La Grande*, 40 Or LUBA 250, 254 (2001) (same). Similarly, in *Safeway, Inc.*, 47 Or LUBA at 500, LUBA described one aspect of the collateral attack doctrine as it relates to sequential permits needed for a single phase development, as follows: "As a general principle, issues that were conclusively resolved in a final discretionary land use decision, or that could have been raised and resolved in that land use proceeding, cannot be raised to challenge a subsequent application for permits necessary to carry out that earlier final decision."

In *VanSpeybroeck v. Tillamook County*, 56 Or LUBA 184 (2008), *aff'd*, 221 Or App 677, 191 P3d 712 (2008), LUBA set forth in the limits of the doctrine, by stated that "[i]n our view, to give preclusive effect to an earlier unappealed land use decision and thus bar raising issues in a subsequent decision on a related, but separate permit proceeding, the issue must concern particular development that was proposed, considered and approved in the earlier unappealed decision." *Id.* at 204. Thus, once it has been determined that the issues raised in the subsequent proceeding concern the same particular development that was "proposed, considered and approved" in the earlier unappealed decision, any issues that were decided, or could have been raised and decided, in the earlier unappealed decisions are "beyond LUBA's scope of review." In a very real sense, this makes the earlier decision "precedential" in nature, regardless of the correctness of those earlier decisions, at least in regards to the land for which the earlier decision was issued. That is the very essence of what it means to say that the earlier decision cannot be "collaterally attacked."

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109 (1990); *Edwards Ind. Inc., v. Board of Comm'rs of Washington Co.,* 2 Or LUBA 91 (1980); *J.P. Finley & Son v. Washington County*, 19 Or LUBA 263 (1990).

[14] *See, e.g., Petterson v. Klamath Co*., 31 Or LUBA 402 (1996) (When a planning director rescinds a decision he issued two days earlier, the applicant cannot fail to appeal that rescission and then attempt to challenge that decision as part of a later appeal of a denial of the same permit); *Lloyd Dist. Community Ass'n v. City of Portland*, 141 Or App 29, 916 P2d 884 (1996); *Ortman v. City of Forest Grove*, 55 Or LUBA 426 (2007).

Unlike the waiver doctrine, which is limited to giving preclusive effect to issues raised in the same case / proceeding, collateral attack arises most frequently when challenges are made against discretionary and ministerial permits needed to carry out an earlier land use approval. *See* cases collected at fn 11, *supra*. Collateral attack also plays a role when developments that are approved via multi-phase sequential land use decisions, and issues decided in earlier phases are challenged in the decisions approving later phases. *See* cases collected at fn 12, *supra*. In this regard, the Court of Appeals has stated that "local decisions rendered at the early stages of multi-stage review processes can be final and, if they are, issues that could have been raised in an appeal or review proceeding at an earlier stage are not cognizable in an appeal to LUBA from a later decision." *Carlsen*, 169 Or App at 8.

For example, in *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64, 70-1 (1990), LUBA addressed how the collateral attack doctrine works in the context of a multi-phase development. At the time *Hoffman* was decided, the City of Lake Oswego Code allowed "major developments" to occur in phases. The City's approval process called for the submission of an "Overall Development Plan and Schedule ("ODPS"), which was intended to address the overall plan so as to give the development "reliable assurance of the City's expectations for the overall project as a basis for detailed planning and investment." *Id.* at 68. Once the ODPS was approved, development permits for each successive phase of the development could be issued without revisiting issues determined by the ODPS. The applicant had obtained ODPS approval in 1981, and by 1989 was working on Phase 6 of the plan. Petitioner appealed Phase 6 to LUBA, arguing that even though various Comprehensive Plan policies related to schools had been addressed by the ODPS, circumstances had changed to the point where the schools were no longer adequate to provide the required levels of service needed by Phase 6. LUBA determined that the Code did not necessarily require that all comprehensive plan policies be reapplied each time a new phase of a PUD is approved. *Id*. at 70. LUBA stated that where comprehensive plan compliance issues have been fully resolved for a PUD during the ODPS process, those comprehensive plan issues need not be reconsidered in approving individual phases of the PUD. *Id*. at 72.

In *Edwards Ind., Inc. v. Board of Comm'rs of Washington County*, 2 Or LUBA 91 (1980), LUBA reached the same conclusion interpreting a similar Washington County PUD approval procedure. In *Edwards*, the County granted initial approval of an "outline master plan," subject to a condition that development be phased to allow adjoining roadways to be improved to provide adequate capacity. No party appealed the decision approving the outline master plan. Two years later, a request for subdivision plat approval for one of the approved phases was turned down solely on the basis of concerns over impacts on the road system adjoining the PUD. LUBA concluded that under the county's PUD approval procedures, the submission of the preliminary plat in accordance with the outline master plan could not be used as a vehicle to reopen the issue of impacts on external roadways which was decided in the approval of the outline master plan. *Id*. at 96, n8. *See also J.P. Finley & Son v. Washington County*, 19 Or LUBA 263, 269-70 (1990) (Petitioner participated in first decision but did not appeal it, and was foreclosed from appealing the second decision even though that second process used the wrong (Type I) procedure, because the first decision specified use of the Type I procedure).

Finally, in cases where the collateral attack doctrine applies, the issue preclusion doctrine does not operate to defeat it. For example, in *Doney v. Clatsop County*, 142 Or App 497, 921 P2d 1346 (1996), the Court rejected the county's argument that it could deny an access permit for reasons that would essentially have required the applicant to modify the decision and reapply for a new decision from the City. Citing to "law of the case" case law, including *Beck* and *Mill Creek, supra,* the Court noted that the county could have - but did not - participate in the city's proceedings approving the development or in an appeal to LUBA from the city's decision, and it *could have* raised questions regarding access in that forum. It did not do so. The Court emphasized that: "[t]he county's argument that its denial of the access permit was also a land use decision amounts to nothing more than a collateral attack on the city's decision." *Doney,* 142 Or. App. at 503. While using the "collateral attack" moniker, the fact that the *Doney* Court cited to two cases that address "law of the case" doctrine does tend to blur the distinction between the two doctrines to an extent, and suggests that same policy basis underlies both doctrines.

Whereas the *Doney* court found that the county was bound by a city land use decision even though it did not participate in that decision, *Doney*, 146 Or App at 499, application of the third *Nelson* factor would suggest that the County should not have been precluded from denying the access permit. Thus, *Doney* provides authority for the fact that issue preclusion does not apply where collateral attack / waiver do apply.

As discussed above, these "extension" cases such as this present a situation which is similar, but not exactly the same as, a "multi-phase" development case. Nonetheless, the analysis in permit extension cases should generally be governed by collateral attack, not the *Nelson* factors. Opponents should not get a second bite at the apple to re-litigate issues actually decided in the Board's previous extension decisions. That includes issues that could have been raised and decided, but which were not raised for whatever reason. However, as discussed above, there will be certain issues that could not have been raised in any earlier proceedings because they pertain to facts that had not yet occurred as of the time of the decision.

As previously noted, the code is drafted in a manner that it requires the County to determine, for any given extension request, that the applicant was not "responsible" for the reasons that caused the delay. The *Webster's Third New International Dictionary* (1993) defines the term "responsible" as "answerable as the primary, cause, motive, or agent whether of evil or good." The Board of Commissioners previously interpreted the word "responsible" to be the same as "beyond the applicant's control." Stated another way, the Board determined that the question is whether the applicant is "at fault" for not exercising its permit rights in a timely manner. The Board further found that "[t]he aim of the criterion is to not reward applicants that do not actively pursue their development, while at the same time providing some measure of sympathy and assistance to applicants who are diligently trying to effectuate their permit but who run into unexpected problems that they are not in full control to correct or fix." No party appealed that decision to LUBA, and the Board will continue to apply that same standard. *See* Findings of Fact, Conclusions of Law and Final Decision of the Coos County Board of Commissioners, dated December 19, 2017, at p. 8.

In AP 17-004, the Board of Commissioners adopted examples of factual situations that

might help guide staff's analysis. Reasons that might typically found to be "beyond the control" of an applicant would include:

- Delays caused by construction contractors or inability to hire sufficient workers;
- Unusual delays caused by abnormal weather years, such as in the case of El Nino or La Nina weather patterns;
- Delays in obtaining financing from banks;
- Delays in getting approval from HOA architectural review committees;
- Encountering unexpected legal problems related to the land, such as a previously unknown adverse possession claim;
- Encountering sub-surface conditions differing from the approved plans,
- Exhuming Native American artifacts; and
- Inability to meet requirements imposed by other governmental agencies.

Failures to act which might be considered to be within the control of an applicant include:

- Failing to apply for required permits;
- Failing to exercise due diligence in pursuing the matter;
- Procrastination.

As shown above, this is a highly subjective determination, and judicial review of well-documented reason for granting or denying an extension is likely limited, at best. *See* Findings of Fact, Conclusions of Law and Final Decision of the Coos County Board of Commissioners, dated December 19, 2017, at p. 8.

In proposing this interpretation and providing these examples, the Board intended to set a low bar for extensions. The primary concern for the Board was not wanting to force staff into delving deeply into the underlying causes of various delays affecting development permits, particularly when those delays involved third parties. This is largely due to the fact that such analysis would be very time consuming and not particularly fruitful, which is to say that it would be difficult to correctly ascertain the truth in many cases. Given the chosen formulation, the intent of the Board was to create a relatively clear line for staff to follow, essentially only denying extensions when it was relatively obvious that the permit was not implemented due to some rather blatant and obvious failures that were the responsibility of the applicant.

In this case, the Board finds that the Applicant has not been responsible for the delays that prevent it from building the pipeline. As the Applicant explains, the pipeline is an interstate natural gas pipeline that requires pre-authorization by the Federal Energy Regulatory Commission ("FERC"). Until Pacific Connector obtains a FERC certificate authorizing the Pipeline, Pacific Connector cannot begin construction or operation of the facilities in the County or elsewhere along the Pipeline route. FERC has not yet authorized the Pipeline. Therefore, Pacific Connector cannot begin or continue development of the Pipeline along the alignment authorized by the County's land approval.

It is true that FERC was not persuaded by the applicant's previous presentation, and the applicant has been forced to reapply for a new FERC Certificate. However, the facts surrounding

that process were addressed by the last extension and are not relevant here. Moreover, the legal process for obtaining the plethora of federal, state, and local permits for this facility is lengthy, byzantine, and cumbersome. To get a flavor of the complexity of the project, it must be understood that the following laws apply and have permitting requirements that apply to this pipeline:

- Natural Gas Act
- Section 401 and 404 of the Clean Water Act
- Coastal Zone Management Act (requires consistency determination from the State)
- Clean Air Act
- Rivers and Harbors Act
- National Historic Preservation Act
- National Environmental Policy Act
- Migratory Bird Treaty Act
- Marine Mammals Protection Act
- Northwest Forest Plan, Federal Land Policy Management Act
- Oregon and California Lands Act
- Endangered Species Act
- Magnuson-Stevens Fishery Conservation Act

See Exhibit 4, at p. 4-5. This type of permitting process does not happen overnight, and there is no possible way that any applicant could acquire its permits sequentially, as Ms. McCaffree argues should happen. Rather, it must request the various permit applications concurrently. And during this process, market conditions have changed due to refinement of fracking technology, which has caused the applicant's partner to redesign the LNG gas terminal from an import facility to an export facility. In the meantime, the applicant has been forced into a juggling effort: it has to file concurrent applications and thereby keep as many balls in the air as possible.

In this regard, the Applicant corrected points out that the County previously accepted the "no federal permits in hand" reasoning as a basis to grant a time extension for the pipeline, without getting into a detailed analysis regarding who is "at fault" for not obtaining the needed permits. In a previous extension case for the main alignment, the County found that the lack of FERC approval meant Pacific Connector could not begin or continue development of the project:

> "In this case, the applicant needs federal approval for the gas pipeline project, and the project cannot commence until those federal approvals are forthcoming. Even the primary opponent to the project, Ms. Jody McCaffree, admits the facts that caused the applicant to be unable to begin or continue development during the approval period, i.e., that [FERC] vacated the federal authorization to construct the pipeline."

See Director's Decision for County File No. ACU 14-08/AP 14-02, a copy of which is found at Application Narrative Exhibit 4, at p. 13.

Likewise, in granting a previous extension of an approval for a different alignment of the Pipeline, the County Planning Director stated:

> "The fact that the project is unable to obtain all necessary permits to begin prior to the expiration of a conditional use approval is sufficient to grant the applicant's requested extension."

See Director's Decision for County File No. ACU-16-003 in Application Narrative Exhibit 2 at p.8.

The opponents read the Board's formulation in the exact opposite manner as was intended. Latching on to the subjective nature of the inquiry, the opponents provide evidence intended to convince the Board that Pacific Connector was in fact "responsible" for the delay because they did not actively pursue the permits they needed from FERC. In their estimation, getting denied by FERC is a *per se* example of failure to exercise due diligence.

The opponents argue that Pacific Connector's failure to secure the necessary FERC authorizations was Pacific Connector's own fault. For example, Ms. McCaffree points out that Pacific Connector's application was denied because they failed to provide evidence of sufficient market demand, and because they failed to secure voluntary right-of-way from a majority of landowners on the pipeline route. *See, e.g.,* Letter from Jody McCaffree dated July 13, 2018, at p. 2. Ms. Moro similarly argues that the "FERC specifically found that the applicant had not been diligent." *See* Letter from Tonia Moro dated July 27, 2018, ap. 2. The Board has read the relevant FERC Orders and does not have the same takeaway.

It is certainly true that FERC stated that "Pacific Connector had every opportunity to demonstrate market demand," and it "failed to do so over a three-and-a-half year long period, despite the issuance of four data requests by Commission staff seeking such information." *See* FERC Order Denying Rehearing, dated December 9, 2016, at p. 8. However, the opponents seem to conflate a lack of success with a lack of effort and diligence. It is simply not fair to conclude, based upon the record, that Pacific Connector did not prove market demand because it was not trying very hard or was not exercising diligence. To the contrary, the Board finds that the significant amount of time and money spent by Pacific Connector pursuing permits in various forums for the pipeline reflects diligence.

Beyond that, however, the opponents would have the County delve deeply into FERC's administrative proceedings and assess Pacific Connector's actions and inactions and draw conclusions about same within the context of a complex, multi-party administrative proceeding being conducted by a non-County agency. The Board believes that the opponents are asking the County to get into way too much detail about the reason for the FERC denial.

In this case, the Board continues to find that "it is sufficient to conclude that because the applicant has thus far been unsuccessful in obtaining permits from FERC despite its reasonable efforts, the applicant is therefore *not at fault* for failing to begin construction on the pipeline."

Regardless, what happened in December of 2016 (or before) is information that is not relevant to the *current* extension request, which addresses the events the applicant took during the prior one-year time-period. In its final argument, the applicant discusses the steps it has taken

over the past year to move towards permit approval. The Board finds the Applicant's following arguments to be compelling, and are quoted as length:

> Opponents have not cited any new facts in support of their position that PCGP caused the FERC denial. They also have not identified any legal errors in the Board's earlier decision. There is simply no basis to sustain opponents' contention on this issue.
>
> Opponents' related contentions also fail. For example, although opponents contend that PCGP must now submit evidence that it has cured the deficiencies from the FERC denial (including supplying contracts from end users), the Hearings Officer should deny this contention for four reasons.
>
> First, this contention manufactures a requirement that does not exist in the CCZLDO.
>
> Second, it is inconsistent with the Board's application of CCZLDO 5.2.600.1.b.iv in the 2017 Extension Decision, which concluded that signed contracts were not required because they were necessarily outside of PCGP's control:
>
> > "But, both of these categories of evidence (precedent agreements with end users and agreements with landowners) are bilateral contracts, which require a meeting of the minds between PCGP and a third party. PCGP cannot unilaterally enter a bilateral contract or coerce another party into such a contract."
>
> 2017 Extension Decision at 10.
>
> Third, petitioners' contention ignores the unrebutted new evidence PCGP has submitted in the current proceeding, which includes evidence that PCGP has progressed to holding an "open season" for commitments for firm natural gas pipeline transportation on the Pipeline. *See* Exhibit C to Letter from Perkins Coie LLP dated July 20, 2018 at 5. PCGP never progressed to this stage during the last FERC proceedings. *See* FERC Order dated March 11, 2016. Thus, the only evidence in the record supports the conclusion that PCGP is actively working to cure prior deficiencies identified by FERC.
>
> Fourth, opponents misstate the applicable standard. The correct question, as identified by the Board, is whether PCGP has made "reasonable efforts" to obtain its FERC certificate within the 12- month period since the previous extension and whether PCGP has "exercised steps within its control to implement" the permit. The Hearings Officer should find that PCGP easily meets these standards. The record reflects that in September 2017, PCGP filed an application with FERC requesting authorization for a liquefied natural gas pipeline and export terminal in Coos County. *See* Exhibit 7 to Application narrative. The record also reflects that PCGP has diligently supplemented its application on multiple occasions in

> response to FERC data requests over the course of the year. *See* FERC docket for the certificate application in Exhibit A to the Perkins Coie LLP letter dated July 20, 2018. The record also includes an excerpt of one of the data requests to illustrate the level of detail of both FERC's questions and PCGP's responses. *See* Exhibit B to the Perkins Coie letter dated July 20, 2018. Opponents do not challenge any of this evidence or present any conflicting evidence. Therefore, the Hearings Officer should rely upon this evidence to support the conclusion that PCGP has made "reasonable efforts" to obtain its FERC certificate and has "exercised steps within its control to implement" the County land use approval.
>
> Finally, although opponents contend that PCGP's inability to obtain approval of the now-pending FERC certificate request is not the actual cause of PCGP's delay in building the Pipeline because the now-pending request before FERC does not mirror the alignment approved by the County, opponents' contention lacks merit. In fact, with the exception of about 6-7 miles near the Jordan Cove terminal, the preferred alignment PCGP identified in the new FERC submittal closely tracks the route approved by the County in the Pipeline permit. *See* Exhibit D to the respective Perkins Coie letters dated July 20, 2018. Further, the FERC submittal identifies the Brunschmid/Stock Slough alignment as an alternative. *Id.* Accordingly, FERC approval of the pending certificate would affect the vast majority of the Pipeline alignment. The Hearings Officer should deny opponents' contention on this issue.

See Applicant's Final Written Argument, dated August 3, 2018, page 11. (Appeal Rec. at Exhibit 11).

Mr. King's arguments are persuasive. He is correct that the 2017 extension decision (File No. EXT-17-005/ AP-17-004, Final Ord. No. 17-11-046PL, Dec. 19, 2017) is not subject to collateral attack, at least to the extent that certain issues could have been raised and decided in that forum, as discussed in more detail above. He also accurately characterizes the "reasonable efforts" standard. There is no need to take a deep look into the interactions between Pacific Connector and FERC that have occurred over the past year, as it is reasonably clear that there is a current pending application before the agency and the Applicant is submitting regular submittals of information to FERC and has provided notice that it is providing a binding open season for its proposed pipeline. *See* Appeal Rec. Exhibit 7 (Applicant's July 20, 2018 submittal, Exhibit C, p. 5 of 10).

In her submittal dated July 13, 2017, Ms. Moro argues that the fact that the Applicant applied for a FERC Certificate on September 21, 2017 is not dispositive, because the applicant's preferred alignment proposed in that current FERC application is different than the alignment approved by Coos County. *See* Appellant's Hearing Memorandum dated July 13, 2018, at p. 6-7. This is a new argument that could not have been raised in the local proceedings that resulted in previous extensions, because the Applicant had not submitted the applications at that time. This new argument is therefore not subject to "collateral attack" analysis.

Nonetheless, to the extent the opponents have raised a viable argument, they have simply

not developed it sufficiently to allow the Board to understand how it relates to an approval standard for an extension, or why it should succeed on the merits. As best the hearing officer can tell, the argument is intended to relate to CCZLDO §5.2.600(1)(b)(iii) and (iv), which together require the applicant to state reasons for the delay and requires the county to determine that "the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible." The fact that the applicant may be submitting various other proposed alignments to FERC is not a valid reason to deny the extension request for alignments previously approved by the County. FERC will pick the ultimate route via the NEPA process. Until that happens, no route is off the table, particularly one that fared well during the last NEPA process.

Although Ms. Moro argues that the applicant is responsible for failing to be able to build the pipeline approved in the HBCU 10-01 because if has not applied for a permit to build that particular route, that argument does not reflect a correct understanding the permitting process. It is true that Coos County can only approve or deny whatever pipeline route that is requested by the applicant in a formal land use application. FERC is different, however. FERC has the regulatory authority under NEPA to approve routes that are different from the applicant's "preferred" route. In this regard, it is important to understand a pipeline applicant does not select that actual approved route of the pipeline. Rather, the route is selected by FERC via the NEPA process. The fact that Pacific Connector has sought – at great expense – approval for alternative alignments that deviate from the original alignment approved in 2010 is testament to the fact that Pacific Connector is not in control of the route selection process. It also demonstrates that FERC does not place much, if any, weight on the fact that County approved the original route in 2010. Pacific Connector cannot be faulted to wanting to keep the county permits alive while FERC determines the route that has the least environmental impact. In fact, it is quite possible that FERC could approve the original alignment, perhaps as modified by the County-approved alternatives, or something close thereto.

Ms. Moro further argues that the County may not simply "rely on unsworn statements from the applicant about what actions it has taken to obtain third party approval," and "must obtain evidence from the applicant that demonstrates that it has cured the deficiencies that led to the last denial." *Id*. at p.3. The argument is made without citation to authority, and therefore the Board finds that Ms. Moro has not identified a legal basis for the claim. If this argument is intended to be a substantial evidence challenge, it fails.

The term "substantial evidence" means "evidence that a reasonable person could accept as adequate to support a conclusion." *Constant Velocity Corp v. City of Aurora*, 136 Or App 81, 901 P2d 258 (1995); *Younger v. City of Portland*, 305 Or 346, 360, 752 P2d 262 (1988). The evidence cited by the applicant at Exhibit 7 is unrebutted, and there is nothing that seems facially or inherently unreliable about this evidence that would cause a reasonable decisionmaker to conclude that the applicant has not been diligent in pursuing its FERC permits.

3. <u>The Criteria Governing the PCGP CUP Have Not Changed.</u>

CCZLDO §5.2.600.1.c provides as follows:

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

Opponents contend that the "applicable criteria" for the CUP permit have changed. *See* Letter from Jody McCaffree dated July 13, 2018. *See* Hearing Memorandum from opponents' counsel, Tonia Moro, dated July 31, 2018.

For example, in her memo submitted on July 13, 2018, Ms. Moro argues that since 2013, the following comprehensive map and code changes, among others, were adopted:

- CCZLDO §5.0.175, amended by County File AM 14-11 (Ord. 14-09-012PL dated January 20, 2015, effective April 20, 2015).

- Comprehensive Plan Vol 1, Part 1, §5.11 & Part 2, §3.9 Natural Hazard Maps, amended by County File AM-15-03 and County File AM-15-04 (Ord. 15-05-005PL, dated July 30, 2015, which had a delayed effective date of July 30, 2016 and was again delayed until July 30, 2017).[15]

- CCZLDO §4.11.125 (Special Development Considerations); CCZLDO §5.11.300(1)(Geologic Assessments), County File AM 16-01 (Ord. 17-04-004PL) dated May 2, 2017, effective July 31, 2017.

Each of these three issues is addressed below.

Opponents contend that CCZLDO §5.0.175 constitutes an "applicable criteri[on]" that has changed; however, this contention lacks merit because this provision is a submittal requirement, not an approval criterion. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004); *Frewing v. City of Tigard,* 59 Or LUBA 23 (2008); *Stewart v. City of Salem*, 58 Or LUBA 605 (2008). The term "criteria" is intended to be a term of art: it is a regulatory standard that can form the basis of a denial of a permit. Ms. Moro is correct that the Board has previously ruled that the signature requirement set forth at CCZLDO §5.0.150 is an approval standard because the failure to have signatures could form the basis of denial of an application. That does not make CCZLDO §5.0.175 an approval standard, particularly when it exists as an alternative to CCZLDO §5.0.150.

CCZLDO §5.0.175 is entitled "Application Made by Transportation Agencies, Utilities or Entities." It allows transportation agencies, utilities, or entities with the private right of property acquisition pursuant to ORS Chapter 35 to apply for a permit without landowner consent, subject to following certain procedural steps. Under CCZLDO §5.0.175, the approvals do not become effective until the entity either obtains landowner consent or property rights necessary to develop the property. As discussed above, CCZLDO §5.0.175 is an alternative to

[15] County Ordinance No. 15-05-005PL—which adopted amendments to the Coos County Comprehensive Plan (CCCP) pertaining to natural hazards— had an original effective date of July 30, 2016. However, on July 19, 2016, prior to the effective date of Ordinance No. 15-05-005PL, the board "deferred" the effective date of Ordinance No. 15-05-005PL to August 16, 2017.

the traditional requirement that an application must include the landowner's signature. CCZLDO §5.0.150. As such, even if CCZLDO §5.0.175 could be an application requirement, it is not necessarily "applicable" because an applicant could always opt to file its application pursuant to CCZLDO §5.0.150 rather than CCZLDO §5.0.175. For the same reason, CCZLDO §5.0.175 is not mandatory in nature. As such, it is not properly construed to be a "criteri[on]."

In 2015, the County amended its comprehensive plan and land use regulations to adopt provisions pertaining to natural hazards, but the County has previously determined that these provisions are not "applicable criteria for the decision." *See* Findings of Fact, Conclusions of Law, and Final Decision of the Coos County Board of Commissioners for AP-17-004 ("2017 Extension Decision") at pp.17-23. With regard to the comprehensive plan provisions, the Board previously determined that they were not "approval criteria" for a pipeline permit. *Id.* Raising this issue in this fifth extension is a collateral attack on the 2017 Extension Decision.

Even if the Board was to reach the merits, the opponents do not identify any errors in the Board's previous determination. Therefore, there is no basis for the Board to reach a different conclusion about the comprehensive plan natural hazard provisions in the present case.

In the 2017 Extension Decision, the Board also concluded that the CCCP and CCZLDO §4.11.125(7) natural hazard provisions are not approval criteria that would apply to the Pipeline "decision" because the CCZLDO includes a "grandfather" clause that exempts the Pipeline from compliance with these provisions: "Hazard review shall not be considered applicable to any application that has received approval and [is] requesting an extension to that approval * * *." CCZLDO §4.11.125(7). *See* Findings of Fact, Conclusions of Law, and Final Decision of the Coos County Board of Commissioners for AP-17-004, at p. 21. This determination is not subject to collateral attack in this proceeding. More importantly, pursuant to CCZLDO §4.11.125(7), the natural hazard provisions are not "applicable approval criteria" that have changed.

In her submittal dated July 13, 2018, Ms. Moro attempts to re-litigate issues related CCZLDO §4.11.125(7) natural hazard provisions were raised and decided in 2017 Extension Decision. *Compare* Hearings Memorandum, at p. 9, with the 2017 Extension Decision at pp. 17-23. These decisions are not subject to collateral attack in this proceeding. The argument also fails on the merits for the same reasons that are set forth in the 2017 Extension decision. That portion of the 2017 Extension decision is incorporated herein by reference.

On page 8 of her submittal dated July 13, 2018, Ms. Moro then makes a new argument that was previously not raised: she argues that the county did not have the authority to "grandfather in" existing permits simply by declaring that the new text amendments passed in Ord. 17-04-004PL did not apply to approved permits and permit extensions. Ms. Moro argues that that "[s]uch an act by the County is void because it is merely an attempt to * * * legislate around state law [i.e. OAR 660-033-0140] that requires the county to deny an extension application when applicable criteria have changed."

The argument does not succeed on the merits. Mr. King responds on behalf of the applicant by citing to *Gould v. Deschutes County,* 67 Or LUBA 1 (2013), which appears to be directly on point. In *Gould*, the petitioner argued that the county should have applied OAR 660-

033-0140 rather than the similar, but different, permit expiration standards set out in the County Code. A key difference between the rule and the county permit expiration standards was that the county permit expiration standards expressly tolled the running of the two-year period while there are pending land use appeals; OAR 660-033-0140 does not expressly do so. In *Gould*, LUBA summarized the Deschutes County hearings officer's findings as follows:

> The hearings officer found that because the county's comprehensive plan and land use regulations have been acknowledged, DCC 22.36.010 applies in this case and OAR 660- 033-0140, which is part of the Land Conservation and Development Commission's (LCDC's) administrative rule implementing Goal 3 (Agricultural Lands), does not apply. *Byrd v. Stringer*, 295 Or 311, 318-19, 666 P2d 1332 (1983) ("[O]nce acknowledgment has been achieved, land use decisions must be measured not against the goals but against the acknowledged plan and implementing ordinances."); *Friends of Neabeck Hill v. City of Philomath*, 139 Or App 39, 46, 911 P2d 350 (1996) (same). Petitioner contends *Byrd* is not controlling here because OAR 660- 033-0140 applies specifically to permits on agricultural and forest land and DCC 22.36.010 is a generally applicable permit expiration provision that is not specific to agricultural land.

LUBA affirmed the hearings officer, and therefore, the *Gould* case conclusively resolves the issue against the opponents.

On page 9 of her submittal dated July 13, 2018, Ms. Moro cites to new requirements for geologic assessments, including new reporting requirements *See* CCZLDO §4.11.125(7) CCZLDO §5.11.100, §5.11.200, and CCZLDO §5.11.300(1). The requirement to perform these geologic reviews applies when a landowner proposes to build a "structure," and the Board has previously determined that the applicant is not proposing to build a structure in these areas. *See* Findings of Fact, Conclusions of Law, and Final Decision of the Coos County Board of Commissioners for AP-17-004, at pp. 20. Ms. Moro does not explain why this determination is incorrect, and the Board will not attempt to develop her argument for her. As presented, the argument provides no basis for determining that these new requirements are changes in the law that would constitute approval standards for the applicant.

On page 10 of her Hearings Memorandum, Ms. Moro argues that the County should apply CCZLDO §5.0.500 to deny the extension. She argues that this provision prohibits Coos County from allowing an applicant to submit two different ("alternative") pipeline routes for the same pipeline project. She states, for example, that the South Slough route is a "substitution" of a portion of the original route, and therefore "automatically revokes" the previous.

However, the Planning Director, Ms. Jill Rolfe, testified at the public hearing that this provision has not been amended since 2014, which was when the pipeline's Brunschmid and Stock Slough alternative route were first approved. It is therefore not a "change" in the applicable criteria. This argument could have easily been brought up in the 2014 CUP proceeding that approved these alignments. It constitutes a collateral attack on the original approval and is therefore waived.

Even if this provision was new, this provision does not constitute an approval criterion for an extension of a CUP, nor is it an approval criterion for the original CUP. Instead, it is a provision that explains the consequence of submitting an application that is inconsistent with any previously submitted pending application. It only applies to "previous pending applications" in any event, as opposed to applications which have been approved but not yet implemented. Therefore, it provides no basis for denial of an extension.

Ms. McCaffree also identified a number of issues in her appeal. In many cases, she did not elaborate or further develop the arguments at the hearing or in her written open-record submittals. None of the provisions listed by Ms. McCaffree constitute changed approval criteria that would apply to the Pipeline:

- CCZLDO §5.0.150: In 2014, the County amended this section to require that land use applicants submit either two paper copies or one paper copy and one electronic copy of any land use application. (AM-14-11). This file includes amendments to CCZLDO Chapter 5, including the amendments to CCZLDO §5.0.150 and §5.0.175 addressed above. In general, these amendments involved renumbering, changes to application submittal requirements, and changes to make the CCZLDO consistent with state law. This minor change in submittal requirements does not constitute a change in "applicable criteria."

- CCZLDO §5.2.500: The County amended this provision in 2014 to revise a cross-reference to Chapter 4, which was modified as a result of reformatting. These amendments did not constitute changes in approval criteria because both before and after the amendments, CCZLDO §5.2.500 required compliance with "any other applicable requirements of this Ordinance." The full text of the amendment reads as follows:

  > "An application for a conditional use or an administrative conditional use shall be approved only if it is found to comply with this Article and the applicable review standards and special development conditions set forth in ~~Tables 4.2.a through 4.2 f, and Table 4.3 a~~ ***the zoning regulations*** and any other applicable requirements of this Ordinance."

- CCZLDO §5.2.600(1)(a)(b)(iv) and (c): This citation does not exist in the CCZLDO; however, to the extent it is an attempt to reference one or more subsections of CCZLDO 5.2.600, it does not identify any changed criteria that would apply to a Pipeline conditional use permit. Rather, CCZLDO §5.2.600 concerns criteria for evaluation of extension applications. As mentioned above, the County amended these criteria in January 2015; however, as noted in the Board's decision approving the 2017 extension (AP-17-004), "these amendments did not affect the criteria on which the 'decision' —the initial land use approval—was based." 2017 Extension Decision at p.12, n 1.

- AM-16-01: This file includes the CCZLDO amendments pertaining to natural hazards, which are not "applicable criteria" for the pipeline for the reasons explained above.

- AM-15-04: This file includes the CCCP amendments pertaining to natural hazards, which

are not "applicable criteria" for the pipeline, for the reasons explained above.

- AM-14-01: This file includes amendments to adopt the updated Flood Insurance Maps and Flood Insurance Study completed by the Federal Emergency Management Agency. Even to the extent these amendments affect areas along the pipeline alignment, they do not constitute "changes" in "applicable criteria." The Pipeline decision is subject to a condition requiring floodplain certification for any development in a flood hazard area. *See* Condition of Approval A.15. That condition is not limited the flood hazard areas in effect at the time of the decision; rather, it will include the adopted flood hazard areas in effect when development proceeds. Thus, the condition ensures that the updated maps apply to the Pipeline approval. In this way, the amendments are not "changes" that the Pipeline approval would evade compliance with if it is extended.

- AM-14-10: Ms. McCaffree mentions "Final Ordinance AM-14-10" in her appeal, and states that the proposed pipeline is in the applicant does not meet CCZLDO §4.11.430,[16] §4.11.440[17] and §4.11.445(3) & (6).[18] Her arguments are not developed well enough to

[16] **SECTION 4.11.430 NOTICE OF LAND USE, PERMIT APPLICATIONS AND OVERLAY ZONE BOUNDARY OR SURFACE CHANGES WITHIN OVERLAY ZONE AREA:**

Except as otherwise provided herein, written notice of applications for land use decisions, including comprehensive plan or zoning amendments, in an area within this overlay zone, shall be provided to the airport sponsor and the Department of Aviation in the same manner as notice is provided to property owners entitled by law to written notice of land use applications found in Article 5.0.

[17] **SECTION 4.11.440 PROCEDURES:**

An applicant seeking a land use approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:

1. A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The airport authority shall provide the applicant with appropriate base maps upon which to locate the property.

2. Elevation profiles and a plot plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level (reference datum NAVD 88).

[18][17] **SECTION 4.11.445 LAND USE COMPATIBILITY REQUIREMENTS:**

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of this section as provided herein:

* * * * *.

3. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

* * * * *.

permit adequate review of the issues she seeks to raise. In any event, none of the three cited code sections create approval criteria applicable to a pipeline conditional use permit. CCZLDO §4.11.430 and CCZLDO §4.11.440 represent both procedural requirements and application submittal requirements, not approval standards. CCZLDO §4.11.445(3) might be an applicable approval standard to any structure associated with the pipeline that is located in the airport overlay zone. However, Ms. McCaffree does not identify any evidence in the record that suggests that the applicant has proposed to build any above-ground structures in the airport overlay zone. Therefore, her argument fails.

- AM-14-11: This file included amendments to CCZLDO Chapter 5, including the amendments to CCZLDO 5.0.150 and 5.0.175 addressed above. In general, these amendments involved renumbering, changes to application submittal requirements, and changes to make the CCZLDO consistent with state law.

- AM-12-04: With these legislative amendments, the County attempted to clarify use of the various terms "site plan," "plot plan," and "sketch plan." These amendments also removed site plan review for industrial development. These amendments did not modify the approval criteria that would apply to a conditional use permit for a pipeline.

- CCZLDO 4.11.125:[19] Ms. McCaffree argues that this section applies to the application and constitutes changed criteria. Her arguments are not developed well enough to permit adequate review of the issues she seeks to raise.

E. The Application Complies with the Two-Year Extension Limitation – Non-Resource Land Criteria.

CCZLDO § 5.2.600.2 provides as follows:

> ***2. Extensions on all non-resource zoned property shall be governed by the following.***
>
> ***a. The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.***
> ***b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior***

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6. Communications Facilities and Electrical Interference. Proposals for the location of new or expanded radio, radiotelephone, television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval.

[19] **SECTION 4.11.125 SPECIAL DEVELOPMENT CONSIDERATIONS:**
The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed In the Balance of County zoning. The adopted plan maps and overlay maps have to be examined in order to determine how the inventory applies to the specific site.

to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.

c. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.

The Applicant proposes only a one-year extension due to the fact that the pipeline is located partially on EFU and Forest zoned land. The pipeline is still listed as a conditional or permitted use in all of the CBEMP zones which it traverses. The pipeline is still listed as a conditional or permitted use in rural residential zones.

In her letter dated July 20, 2018, Ms. Jody McCaffree cites to argues that CCZLDO § 5.2.600.2(c) only allows one extension. *See* Letter from Jody McCaffree dated July 20, 2018 at pp. 2-3. She notes that Pacific Connector's original CUP was final on March 13, 2012 and had a two-year expiration date (i.e. March 13, 2014). She argues that the one allowed extension would have expired March 13, 2016, which is two years from the original approval's expiration date.

The problem with Ms. McCaffree's analysis is that it failed to account for the fact that the County amended the code on January 20, 2015 to allow additional extensions. *See* Ordinance 14-09-012PL, dated 20 January 2015. Exhibit 10. This issue is discussed in more detail below.

This criterion is met.

F. <u>Additional Extensions Are Authorized.</u>

CCZLDO § 5.2.600.3 provides as follows:

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

a. All conditional uses within non-resource zones are valid four (4) years from the date of approval; and
b. All conditional uses for dwellings within resource zones outside of the urban growth boundary or urban unincorporated community are valid four (4) years from the date of approval.
c. All non-residential conditional uses within resource zones are valid (2) years from the date of approval.
d. For purposes of this section, the date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.
e. Additional extensions may be applied.

The Pipeline is permitted on EFU lands as a "utility facility necessary for public service" under CCZLDO 4.9.450(C) and ORS 215.283(1)(c). The applicable County criteria at CCZLDO § 4.9.450(C) have not changed since the County's original 2010 decision to approve the CUP.

The pipeline is permitted as a "new distribution line" under CCZLDO § 4.8.300(F) and OAR 660-006-0025(4)(q). The applicable County criteria at CCZLDO § 4.8.300(F) have not changed since 2010. Accordingly, an additional one-year extension may be authorized for the Pipeline pursuant to CCZLDO § 5.2.600(1)(c).

While the County may therefore grant the extension for the prior approvals on Farm and Forest resource lands based *solely* on the absence of any changes to relevant County approval criteria, this is the first extension that Pacific Connector has requested under the amended extension criteria at CCZLDO § 5.2.600.

Opponents argued at the hearing that there is a "cap" on the number of extensions that an applicant may receive. That is, they argued that the applicant has already been granted four extensions on the main alignment, and a fifth extension is not allowed. Opponents' contention fails because it only focuses on CCZLDO 5.2.600.2.a and does not acknowledge, let alone address, CCZLDO 5.2.600.3.e, which expressly authorizes the Planning Director to grant "[a]dditional extensions" for the permit. Further, the case law cited by opponents (*Scovel v. City of Astoria*, 60 Or LUBA 371 (2009)) in support of their interpretation is distinguishable. Unlike the County, the city in *Scovel* did not have a provision expressly permitting "additional extensions" for all permit types. As a result, the holding in *Scovel* is not controlling on or particularly helpful to resolving the issue in this case.

Finally, although opponents correctly note that CCZLDO 5.2.600.1.c expressly authorizes additional extensions of permits on resource land while the parallel subsection applicable to permits on non-resource land (CCZLDO 5.2.600.2) is silent, this fact is not dispositive of the matter for two reasons because as noted, CCZLDO 5.2.600.3.e includes a universally applicable provision allowing the County to grant "[a]dditional extensions" for all permits.

The Board also adopts as findings in this matter the testimony of County Counsel as follows:

> "If CCZLDO § 5.2.600(3)(e) does not modify CCZLDO § 5.2.600(2)(b), then subsection (3)(b) is rendered 'superfluous' and is not given effect. ORS 174.010 provides that 'where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.' Furthermore, there is ample case law to support the basic principle that interpretations that render portions of a statute or other law 'superfluous' or 'meaningless' are to be avoided. *See, e.g., Friends of Hood River Waterfront v. City of Hood River*, 263 Or. App. 80, 90 (2014); *State v. Urie*, 268 Or. App. 362, 365 (2014).
>
> "Subsection (3)(e)'s provision that 'additional extensions may be applied' is rendered meaningless if it does not modify subsection (2) and allow for additional extensions of conditional uses on non-resource zoned property. The word 'additional' is defined by the Oxford English Dictionary as '[a]dded, extra, or supplementary to what is already present or available.' In order to give the word additional effect in subsection (3)(e), it must be read to provide for 'added' or

> 'supplementary' extensions to those extensions already provided for in CCZLDO § 5.2.600 as a whole. The only subsection that could logically be modified by subsection (3)(e) is thus subsection (2), which standing alone only provides for one extension.
>
> "If the intent of subsection (3)(e) was merely to serve a reminder that the extensions under subsections (1) and (2) may serve to modify the initial conditional use time periods specified in subsection (3), this intent could have been accomplished by providing that 'extensions may be applied,' with the word 'additional' omitted altogether. Once again, the word additional makes it clear that subsection (3)(e) is intended to add to the limited extensions in subsection (2). While this is not an example of the most artful drafting, any other interpretation renders subsection (3)(e) meaningless."

See Letter from Nathaniel Johnson, Coos County Counsel at 2. The Board also finds that its past practice has been to interpret this provision to permit serial renewals for conditional use permits on non-resource-zoned properties.

For the foregoing reasons, the Board finds that the Application is not barred due to a cap on extensions because no such cap exists under the CCZLDO.

This criterion is met.

G. Other Issues Raised by Opponents.

1. Discussion Related to the Contention that "Extension Decision Are Not 'Land Use Decisions."

In her letter dated July 20, 2018, Jody McCaffree makes a contention related to the relationship between OAR 660-033-0140(3) and CCZLDO §5.2.600 and whether the Board's decision in this matter is a land use decision. The contention is difficult to follow, and the Board finds that, in any event, it lacks the authority to define for an appellate body what is or is not a land use decision under Oregon law. Further, the Board finds that it has followed the correct procedures in this matter, including providing adequate public notice and providing a full and fair hearing to all parties. Ms. McCaffree's contention does not demonstrate error by the County or provide a basis to deny or further condition the Application.

2. NEPA Compliance.

Ms. McCaffree continually raises the issue of NEPA compliance and the related Environmental Impact Statement (EIS). In this case, she argues that the NEPA process must be completed before land use approvals can be issued. *See* McCaffree Letter dated July 13, 2018, at p. 3. However, Board has rejected that argument on numerous previous occasions. NEPA is not an approval standard for a land use case. These arguments offer nothing new of substance, and do not seem to acknowledge previous holdings from the County on these topics. For example, in her letter dated July 13, 2018, Ms. McCaffree rhetorically the following question:

> How can FERC "have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." [15 USC § 717b(e)(1)] if the Jordan Cove and Pacific Connector project are allowed to continue processing land use permit applications for the previously FERC "denied" Jordan Cove / Pacific Connecter LNG terminal design and pipeline?

Ms. McCaffree posed this exact same question to the Board in a letter dated September 8, 2017, and the Board addressed the issue in its final decision. *See* Case File AP-17-004. The answer remains the same: First, FERC left the door open for Pacific Connector to apply again, and Pacific Connector has done so.

Second, 15 USC § 717b(d) states the following:

> *(d)* ***Construction with other laws. Except as specifically provided in this chapter, nothing in this chapter affects the rights of States under—***
> *(1)* ***the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);***
> *(2)* ***the Clean Air Act (42 U.S.C. 7401 et seq.); or***
> *(3)* ***the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).***

County permitting authority is a mandate of the Coastal Zone Management Act of 1972. If not for the CZMA, the County would have no land use permitting jurisdiction or authority over the pipeline project.

For the reasons stated above, he Board finds that Ms. McCaffree's arguments constitute nothing more than a collateral attack on previously-issued land use decisions and also fail on the merits.

3. <u>Pacific Connector's Right of Condemnation.</u>

As the Board understands the facts, the opponents argue that Pacific Connector's right of condemnation stems from federal law and is premised on the acquisition of a Certificate of Public Convenience and Necessity. They argue that since Pacific Connector lost its certificate, it may no longer file land use applications. *See* Letter from Tonia Moro dated July 27, 2018, at p. 6.

The Applicant argues, with virtually no elaboration, that this argument "is not relevant to determining compliance with any approval criteria for this Application." *See* Final Argument dated Aug. 3, 2018, at p. 13.

Further, the County has previously determined that the owner signature requirement for filing a land use application is not jurisdictional. *See* Findings of Fact, Conclusions of Law, and Final Decision of the Board of Commissioners dated Sept. 8, 2010, at p. 15-17. Pacific Connector is in the process of applying for a Certificate of Public Convenience and Necessity from FERC. The fact that such a Certificate was previously issued to Pacific Connector is at least indicative that it is plausible for another Certificate to be issued to Pacific Connector in the

future. In other words, the Applicant is not precluded as a matter of law from obtaining FERC permits. Although FERC denied a separate application, it did so for reasons that can be remedied by obtaining foreign or domestic contracts for the purchase of natural gas.

The initial land use decision on the pipeline matter was conditioned, by Condition 20, to require the Applicant to obtain landowner signatures in order for the pipeline permit to be effective. The Applicant will need to obtain a FERC Certificate in order to effectuate that condition. Applicant has not yet satisfied Condition 20, and granting the extension does not alter the condition or the requirement that Applicant obtain landowner signatures in order for the pipeline permit to be effective. In short, the question of whether landowner signatures are required in the present case is a moot point because the Board has already determined they are required before the Applicant can develop the pipeline.

Moreover, whatever the merits of this argument, this issue could have been raised in either of the two other land use applications that resulted in permit extensions. The issue is not jurisdictional, and therefore the issue can be, and has been, waived.

4. <u>DOGAMI Comments.</u>

The opponents presented at Exhibit 3 a letter from Oregon's Department of Geology and Mineral Industries ("DOGAMI") that sets forth a punch list for changes that need to be made to certain Resource Reports submitted by Pacific Connector to address geologic hazards along the route. It is not apparent whether the report has any obvious relevance to the approval criteria, but to the extent that it does, that issue has not been raised with sufficient specificity to allow for a response.

III. CONCLUSION.

To summarize, this extension request concerns both resource and non-resource lands.
Under the terms of the relevant criteria, CCZLDO § 5.2.600, there are two different standards for granting an extension. For granting an extension on ***resource lands***, the applicant must show it was unable to begin construction for reasons out of its control. The Board finds that, despite the applicant's diligent pursuit of the federal approvals required, those approvals have not yet been secured, and thus the applicant was unable to commence its development proposal before the expiration date for reasons beyond the applicant's control.

For granting an extension on ***non-resource lands***, CCZLDO § 5.2.600 only requires that an applicant show that none of the relevant approval criteria have changed since the development approval was given. The applicant's use is still listed as a conditional use in the relevant non-resource zones under the current zoning regulations, and thus the Board finds the applicant meets this second criterion as well.

For these reasons, the Board finds and concludes that the Applicant, Pacific Connector, has met the relevant CCZLDO § 5.2.600 approval criteria for a CUP extension of one year, to April 2, 2019. Accordingly, the Board affirms the Planning Director's May 21, 2018 decisions granting the one (1) year CUP in County File No. HBCU-10-01 / REM-11-01, to April 2, 2019

(EXT-18-003), subject to the conditions of approval set forth in Exhibit A to the Planning Director's decision.

Adopted this 20th day of November, 2018.