



CITY OF COOS BAY
Community Development Department

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STAFF REPORT

Type III – Land Use Process Jordan Cove Energy Project – Navigational Reliability Improvements

STAFF: Henry Hearley, Assistant Planner, Lane Council of Governments (LCOG)
Jacob Callister, Principal Planner, LCOG
Carolyn Johnson, Community Development Administrator, City of Coos Bay

REVIEW BODY: Planning Commission

HEARING DATE/TIME: Thursday, March 21, 2019 at 6:00 p.m.

LOCATION: Coos Bay City Council Chambers, 500 Central Avenue, Coos Bay, Oregon

APPLICANT/OWNER: Jordan Cove Energy Project L.P. (JCEP)
Attention: Meagan Masten, 111 SW 5th Avenue, Suite 100, Portland, OR, 97204

APPLICANT'S REPRESENTATIVE: Perkins Coie LLP, 1120 NW Couch Street, Tenth Floor, Portland, OR 97209
Attention: Seth King

SUBJECT PROPERTY: T 25S R 13W Sections 8, 17, 19, 30; T 25R 14W Sections 25, 35, 36.

SUBJECT: LAND USE APPLICATION #187-18-000153 – Jordan Cove Energy Project
Navigation and Efficiency and Reliability of the Coos bay Deep Draft Navigation Channel

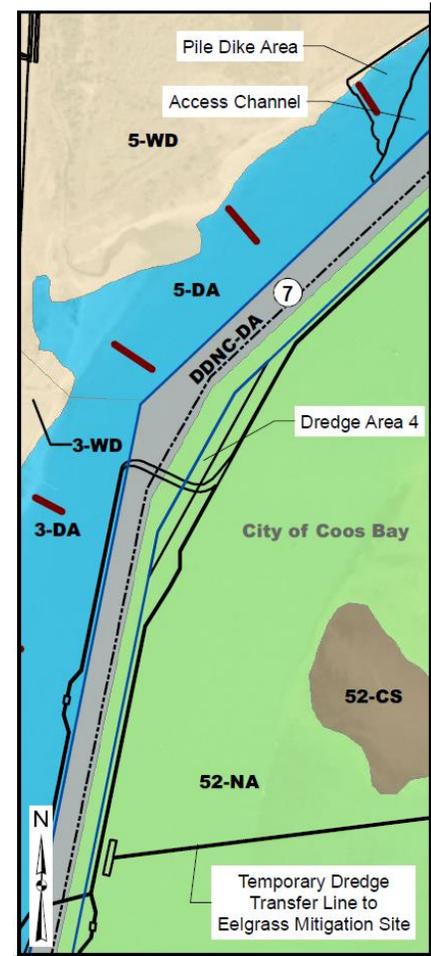
I. BACKGROUND/CONTEXT

The Coos Bay Deep Draft Navigation Channel (Channel) serves a vital purpose in providing the only safe vessel access to and from Coos Bay and the Pacific Ocean for marine terminals located along the Bayfront. The Channel was initially authorized in 1899 and since then has undergone ten modifications. Most recently, the Channel was expanded from -35 feet to -37 feet in 1997 to allow for the safe navigation and transit of Coos Bay for the size of ships prevalent during that time period. Over the last 20 years the dimensions and tonnage of ships serving terminals in Coos Bay has increased. The size of vessels typically calling on Coos Bay terminals has increased from an average of 45,422 Metric Tonnes to an average of 52,894 Metric Tonnes with a projected near-term vessel size of 70,400 Metric Tonnes. Currently, environmental conditions, including wind, fog, and currents, coupled with the increasing ship size explained above, have caused the Coos

Bay Pilots Association (“Pilots”) to impose more limiting restrictions on when vessels may safely transit the Channel. These restrictions, in turn, cause significant delays and increased pressure on the Pilots to navigate ships through the Channel. Delays are measured in the total transit time, from the time the vessel arrives off the coast of Coos Bay until it returns offshore after calling at its local Coos Bay destination. These delays generally decrease the efficiency and competitiveness of maritime commerce on a global scale, thereby jeopardizing continued success for maritime commerce in Coos Bay. Minimizing delay is a pressing need because companies that utilize the port of Coos Bay have identified potential new customers in Asia that desire to export cargo using bulk carriers that are slightly larger than the ships typically calling today. Various marine terminal businesses within Coos Bay require assurances that terminals can efficiently accommodate larger dimension bulk carriers in the future.

The Coos Bay Estuary Management Plan (CBEMP)

To comply with Statewide Planning Goal 16 Estuarine Resources, Coos County, City of Coos Bay and City of North Bend developed the CBEMP. It was adopted and acknowledged in 1984. Goal 16 requires that all areas within an estuary be classified into management units in the estuary management plan. There are three “aquatic” management units in the CBEMP: Natural Aquatic (NA), Conservation Aquatic (CA) and Development Aquatic (DA). This application proposes an amendment to change an area of the Coos Bay Estuary from Natural Aquatic (NA) to Development Aquatic (DA).



According to the CBEMP, Natural Aquatic areas are managed for resource protection preservation and restoration. They place severe restrictions on the intensity and types of uses and activities allowed within them. Natural Aquatic areas include tidal marshes, mud-sand flats, seagrass and algae beds that, because of a combination of factors such as size, biological productivity and habitat value, play a major role in the functioning of the estuarine ecosystem. Natural Aquatic areas also include ecologically important subtidal areas.

Development Aquatic areas are managed for navigation and other water-dependent uses, consistent with the need to minimize damage to the estuarine system. Some water-related and other uses may be allowed, as specified in each respective unit. Development Aquatic areas include areas suitable for deep or shallow-draft navigation (including shipping and access channels or turning basins), sites and mining or mineral extraction areas, and areas adjacent to developed or developable shorelines which may need to be altered to provide navigational access or create new land areas for water-dependent uses.

Dredging

Dredging, or “Navigational Reliability Improvements” (NRIs), could increase the operational window to safely transit any vessel through the Channel. The NRIs, which are described in more

detail below, are designed to increase the environmental operating windows for all ships entering Coos Bay by softening critical turns, relocating aids to navigation and reducing the required Channel directional changes. The NRIs are designed to reduce entry and departure delays and allow for more efficient vessel transits through the Channel for the size of vessels entering the Port today.

All work associated with the NRIs will take place during the approved in-water work period for Coos Bay (October 1 to February 15). The applicant notes that JCEP will place initial and future dredged material derived from the NRI Sites at the APCO 1 and 2 sites near the southern terminus of the U.S. Highway 101 McCullough Bridge. These sites are located in the City of North Bend; JCEP will file a separate application with that City to authorize disposal of these dredge spoils in these locations. If dredging by hydraulic methods, JCEP will utilize a 24- to 36-inch temporary dredge pipeline to transport the dredged material to the disposal sites on the bottom or horizontal extent of the Channel to reduce potential conflicts with vessel navigation. The maximum distance from the NRIs to the APCO sites is approximately 8.3-miles. The dredge line is illustrated in Attachment A, Exhibit 6. Booster pumps would be required to move the material to the disposal sites through the pipeline.

The NRIs will facilitate economic opportunities, including access to emerging opportunities to export products with today's larger vessels, including bulk carriers. Although log export vessels serving the upper bay are smaller, the proposed enhancements also benefit these vessels by broadening the tidal and environmental windows for transiting the Channel, providing an enhanced margin of safety and improved efficiency in the loaded vessel departure schedule. Both Roseburg Forest Products and the Pilots have submitted letters of support for the NRIs. See Attachment A, Exhibit 3. For JCEP and its LNG terminal, the NRIs will allow for transit of LNG vessels of similar overall dimensions to those listed in the July 1, 2008 United States Coast Guard ("USCG") Waterway Suitability Report, the USCG Letter of Recommendation dated May 10, 2018 and USCG letter confirmation dated November 7, 2018 see Attachment A, Exhibit 4, but under a broader range of weather conditions, specifically higher wind speeds. As a result, JCEP estimates that, upon completion of the NRIs, JCEP will be able to export the full capacity of the optimized design production of the LNG Terminal on a consistent annual basis.

II. APPLICANT'S REQUEST

JCEP proposes dredging at four locations in the Channel. Three of the proposed NRIs are within Coos County and one (Dredge Area #4) is within the City of Coos Bay. The applicant is proposing the following application to that end:

- (1) A map amendment to the Coos Bay Estuary Management Plan to change the designation of approximately 3.3 acres from 52-NA to DDNC-DA;
- (2) A text amendment to the City of Coos Bay Comprehensive Plan to take a reasons exception to Statewide Planning Goal 16 Estuarine Resources to authorize the map amendment;
- (3) An estuarine and coastal shoreline uses and activities permit for "New and Maintenance Dredging" in the DDNC-DA Estuarine Zone; and
- (4) An estuarine and coastal shoreline uses and activities permit to allow an accessory temporary dredge transport pipeline in the 52-NA, 53-CA, 54-DA, and 55-CA Estuarine Zones.

III. APPLICABLE CRITERIA

Coos Bay Development Code (CBMC) (Page 5, Page 21)

- 17.360.010-Comprehensive Plan Amendment*
- 17.360.020-Initiation of Amendment*
- 17.360.060-Appeal Criteria*
- 17.352.010-Estuarine/Coastal Shore Activities*

Coos Bay Comprehensive Plan (CBCP) (Page 6)

- Section 7.1 Natural Resources and Hazards Strategies NRH.8 and NRH.9*
- Section 8.3 Land Use and Community Development Planning Strategies LU.4, LU.5 and LU.7*
- Section 7.5 Economic Development*

Coos Bay Estuary Management Plan (CBEMP) Policies (Page 13, Page 21)

- DDNC-DA Zone – General Conditions for Approval of “New and Maintenance Dredging”*
- DDNC-DA Zone – Special Conditions for Approval of “New and Maintenance Dredging”*
- CBEMP Policy #17 – Protection of “Major Marshes” and “Significant Wildlife Habitat” in Coastal Shorelines*
- CBEMP Policy #18 – Protection of Historical and Archaeological Sites within Coastal Shorelands*
- CBEMP Policy #5 – Estuarine Fill and Removal*

Statewide Planning Goals (Page 8)

- Goal 1: Citizen Involvement*
- Goal 2: Land Use Planning*
- Goal 6: Air, Water and Land Resources Quality*
- Goal 9: Economic Development*
- Goal 12: Transportation*
- Goal 13: Energy Conservation*
- Goal 16: Estuarine Resources*

Reasons Exceptions (Oregon Revised Statute and Oregon Administrative Rules) (Page 14)

- ORS 197.732 – Goal Exceptions*
- OAR 660-004-0020- Criteria for Goal 16 exceptions*
- OAR 660-004-0022- Criteria for Goal 2 exceptions*

IV. NOTICES AND REFERRALS

Notice:

On March 1, 2019 notice was mailed to surrounding property owners along the shoreline adjacent to the proposed NRIs site. The CBMC doesn't outline specific noticing requirements for a subject property located in a body of water. City staff mirrored the notice approach used by Coos County for the three associated NRI dredge sites being concurrently evaluated. The County mailed notice to bayfront properties adjacent to the proposed NRIs. The City mailed notice to bayfront properties within the City Limits.

Notice was also sent to concerned parties that contacted city staff indicating they would like to receive notice. Notice was also published in *“The World”*, on February 28, 2019.

Staff provided required notice to DLCD for a post acknowledgement plan amendment on February 12, 2019. Staff have also been in touch with DLCD's Goal 16 specialist, Matt Spangler.

Referrals:

On March 1, 2019, referral notice was sent to the following governmental/utility/tribal agencies for a request for comment on the application: Department of Land Conservation and Development (DLCD), Department of State Lands (DSL), Coos Bay North Bend Water Board, NW Natural, Pacific Corp, Coos County, City of Coos Bay, Oregon International Port of Coos Bay, and Confederated Tribes of Coos, Lower, Umpqua and Siuslaw Indians and Coquille Tribe.

City of Coos Bay Public Works issued a comment indicating that the proposed dredging appears to be at or near Station 280+00 (Figure 1 of 9). The City has an existing utility line at or near this station installed under the Bay. Staff recommends the proposed dredging shall not impact this existing utility line; this requirement is noted as a condition of approval in Section VIII of this staff report.

City of Coos Bay Public Works also requested that it be the responsibility of the applicant to ensure that all applicable resource agency permits and approvals are obtained prior to commencement of any work. Staff recommends the condition to obtain appropriate permits prior to any proposed dredging activities (Page 25). This and all conditions of approval can be found in Section VIII of this staff report.

V. CRITERIA FOR COMPREHENSIVE PLAN MAP AMENDMENT

17.360.010 Comprehensive Plan Amendment

A. The boundaries of the Comprehensive Plan map designations and the Comprehensive Plan text may be amended as provided in CBMC 17.360.020 of this title.

Staff Response: The subject property lies within the Coos Bay Estuary, and falls under the ownership of the DSL, the applicant has requested and received permission to file this land use application with the City of Coos Bay. The DSL letter is included in the application (Attachment A) as Exhibit 8, Page 1 of 4. The application includes a request for an exception to Goal 16, requiring a comprehensive plan text amendment.

B. The City may amend its Comprehensive Plan and/or plan map. The approval body shall consider the cumulative effects of the proposed Comprehensive Plan and/or map amendments on other zoning districts and uses within the general area. Cumulative effects include sufficiency of capital facilities services, transportation, zone and location compatibility, and other issues related to public health and safety and welfare the decision making body determines to be relevant to the proposed amendment.

Staff Response: The applicant notes that the cumulative effects of such an amendment would include facilitating an increase in safety and efficiency of navigation in the Channel. Another cumulative effect of the applicant's proposal is to augment transportation in the bay. The application is not expected to have cumulative effects on the sufficiency of capital facilities services, or health and welfare. Staff notes that it is unclear to what extent the approval body must "consider" cumulative effects. Staff also notes that, due to the requirement only to "consider" cumulative effects, the application could not be denied based solely on a potential finding that the amendment has associated cumulative effects.

17.360.020 Initiation of Amendment

Amendments of the Comprehensive Plan text or map, zoning map, or this title may be initiated by the following:

- A. A Type III application, CBMC 17.130.100, Procedures, by one or more owners of the property proposed to be changed or reclassified consistent with the adopted Comprehensive Plan; or**
- B. A Type IV legislative process, CBMC 17.130.110, Procedures, by motion of the Planning Commission and adoption by the City Council.**

Staff Response: The underlying landowner of the subject property is DSL, which has given the applicant permission to file this application as seen in Attachment A, Exhibit 8, Page 1 of 4. The application is quasi-judicial in nature because it involves a single landowner, a limited geographic area, is not City-initiated, and concerns the application of existing policies to a specific set of facts. Because state law requires local governing bodies to take final action to approve any post-acknowledgment (text) plan amendment (*Housing Land Advocates v. City of Happy Valley, Or LUBA (LUBA No. 2016-031, May 23, 2016)*), and the final decision on the application must be rendered by the Coos Bay City Council (after a hearing before the Planning Commission). Following the Planning Commission public hearing, City Council will hold a public hearing on the application.

17.360.060 Approval Criteria

A. For a Type III or Type IV review, the City Council shall approve the proposal upon findings that:

- 1. The proposed amendment is consistent with the applicable policies of the Comprehensive Plan or that a significant change in circumstances requires an amendment to the plan or map,**

Staff Response: The application to change the CBCP designation of the NRI Site from 52-NA to DDNC-DA is consistent with the applicable policies of the Coos Bay Comprehensive Plan. Consistency with specific applicable policies is outlined below:

Section 7.1, Natural Resources and Hazards, Strategy NRH.8

Coos Bay shall encourage the preservation and protection of riparian vegetation as an important fish and wildlife habitat and as a viable means of flood control by enactment of appropriate property development ordinances providing protection by establishing buffer strips along waterways, along designated HUD floodways, with the exception of navigable waterways. This strategy recognizes that such land use practices are necessary (1) to preserve the area's natural resources, and (2) to eliminate unnecessary drainage and erosion problems often accompanying development.

Staff Response: The proposal does not include any impacts to City of Coos Bay shoreline habitat or riparian areas. The applicant anticipates possible temporary, but not permanent, impacts to shoreline habitat, including to riparian vegetation in the areas where the applicant plans to offload dredged material for processing, but they are not located within the Coos Bay city limits. The applicant notes that they will comply with any regulations the

City has implemented in accordance with its obligation to “encourage” preservation of riparian vegetation.

Section 7.5 Economic Development

Goal 1, Policy 1.5 – Support and cooperate with community and regional partners to encourage economic growth.

Staff Response: Approval of the proposed NRIs will primarily benefit large vessels that are navigating to and from the International Port of Coos Bay (Port). The Port itself is located outside of city limits, but is an important regional entity that facilitates mass export and import of goods and commodities overseas and thus serves as a key driver of economic development for Coos Bay and regions beyond. The proposed NRIs support community and regional partners and economic growth as the goal describes.

Goal 6, Policy 6.1, 6.2 – Maximize the potential uses and benefits the waterfront and deep-water port offers to the city and region as a whole; Support the Port of Coos Bay In its development efforts for transportation linkage and to develop a deep-draft channel to accommodate large cargo vessels and increase shipping activities and water-dependent uses.

Staff Response: Staff concur with the applicant’s assertion that the purpose of this application is to facilitate increased navigational safety and efficiency for large vessels in the Channel. Increased safety and efficiency maximize the Channel’s economic benefits for the City and region as a whole by allowing increased economic input and output.

Section 8.3 Land Use and Community Planning Strategy LU.4

Coos Bay shall not make major revisions to this Comprehensive Plan more frequently than every two years, if at all possible. “Major revisions” are those that have widespread and immediate impact beyond the subject area under consideration. The city recognizes that wholesale approval of frequent major revisions could ruin the integrity of the Plan.

Staff Response: Staff concurs with the applicant’s assertion that the proposal does not constitute a “major revision” to the CBCP. The proposed text amendment directly addresses only the NRI site. The proposal will not, from a land development/conservation aspect have a widespread and immediate impact beyond the dredge site.

Section 8.3 Land Use and Community Planning Strategy LU.5

Coos Bay may make minor changes to this Comprehensive Plan on an infrequent basis as need and justification arises. “Minor changes” are those which do not have significant impact beyond the immediate area of the property under consideration. The city recognizes that wholesale approval of frequent minor changes could ruin the integrity of this Plan.

Staff Response: The proposed changes relate exclusively to an isolated and undeveloped area and can be considered “minor changes.” The staff report presents the argument that the need for the amendments has been justified.

Section 8.3 Land Use and Community Planning Strategy LU.7

Coos Bay shall anticipate that conflicts may arise between the various plan implementation strategies contained in the Plan when applying the policies to specific situations. To resolve these conflicts, if and when such may occur, Coos Bay shall consider the long term environmental, economic, social, and energy consequences expected to result from applying one strategy in place of others, then to select and apply the strategy that results in maximum public benefit as supported by findings of fact. This strategy is based on the recognition that a viable conflict resolution process is essential to the success of any comprehensive plan.

Staff Response: The application will not cause conflicts between CBCP implementation strategies. The application is consistent with all policies of the CBCP.

2. The proposed amendment is in the public interest; and

Staff Response: The proposed amendment to the CBCP serves the public interest by creating safer and more efficient navigation in the Channel, thereby promoting economic activity in the City of Coos Bay consistent with Comprehensive Plan Goal 1 Policy 1.5 and Goal 6, Policies 6.1 and 6.2. Promoting navigational safety and efficiency has support beyond the applicant, as indicated through letters of support submitted with the application materials (Attachment A, Exhibit 3). The applicant has provided a response addressing environmental concerns potentially associated with the public interests (Attachment A, Exhibit 5)). Staff agrees with the applicant's assertion that the long term economic, environmental, social and energy consequences of dredging elsewhere do not present materially different outcomes.

3. Approval of the amendment will not result in a decrease in the level-of-service for capital facilities and services identified in the Coos Bay Capital Improvement Plan(s).

Staff Response: Staff agree with the applicant's assertion that the application will not result in a decrease in the level-of-service for any identified capital facilities and/or services identified in the Coos Bay capital improvement plan.

Statewide Planning Goals

Statewide Planning Goals noted below are pertinent to the subject application.

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.

Staff Response: The City of Coos Bay has adopted, within its Development Code, a program for post-acknowledgment plan amendments. The CBMC has been acknowledged by LCDC. This staff report has touched on the required notice that has been issued. That program also includes the hearings that will take place to address the application.

As noted earlier state law requires the local governing body to take final action to approve any post-acknowledgment comprehensive plan amendment before it can become final. The City will schedule the application for final action by the City Council after the Planning Commission's initial recommendation. The City plans to apply its Type III process in CBMC 17.30.100 to review and decide upon the Application, subject to also providing for a hearing

and final decision on the Application by the City Council. Upon doing so, the City will have complied with Goal 1. These procedures provide opportunity for citizen involvement in all phases of the application.

Goal 2: Land Use Planning – to establish a land use planning process and policy framework as basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Staff Response: 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 CBMC and the ORS establish the land use planning process and policy framework for considering the application. Further, the applicant has submitted materials, including narrative and supporting documentation, in the application asserting consistency with applicable approval criteria.

Goal 2 requires that the City coordinate its review and decision on the application with appropriate government agencies. In its review of the application, the City has provided referral notice to affected government agencies with an opportunity to comment on the proposal.

Goal 3: Agricultural Lands – to maintain and preserve agricultural lands.

Staff Response: The NRI site does not include any agricultural lands. Goal 3 is not applicable to this application.

Goal 4: Forest Lands

Staff Response: The NRI site does not include any forest lands. Goal 4 is not applicable to this application.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

Staff Response: Based on the information available to staff, the NRIs do not include any inventoried Goal 5 resources.

Goal 6: Air, Water and Land Resources Quality – To maintain and improve the quality of the air, water and land resources of the state.

Staff Response: There are no administrative rules governing Goal 6; it relies entirely on state and federal regulations for direction and implementation. Staff believe it is reasonable to find that the applicant will comply with federal and state environmental standards in the future if and when federal and state permits for dredging are secured. The applicant's narrative indicate that JCEP has applied for state and federal approval of dredging activities at the NRI site. Staff agree with the applicant that there is no indication that JCEP is precluded as a matter of law from obtaining approval of these applications.

The applicant also notes that the proposed map amendments do not alter existing City protections provided by the CBEMP restricting dredging activities, which protections have been previously deemed consistent with Goal 6.

Additionally, the applicant has submitted a biological assessment completed by the consultant David Evans and Associates (DEA). In its report (Attachment A, Exhibit 5), DEA indicates Best Management Practices (BMPs) will be employed. The applicant identifies BMPs that will be utilized with the proposed dredging as a way to minimize impacts, a discussion of the BMPs can be found in Attachment A, Exhibit 5 (Page 7).

Goal 7: Areas Subject to Natural Hazards. – To protect people and property from natural hazards.

Staff Response: Goal 7 requires local governments to identify and plan for natural hazard areas and coordinate their natural hazard plans and programs with state agencies. The proposed uses and activities will not increase the likelihood of damage to people or property. The level of risk for equipment and lives, with respect to natural hazards is perhaps lower, but certainly no greater than the current activities associated with the Port and the Bay.

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.

Staff Response: The proposed NRI site does not involve recreation or inventoried recreational areas, facilities or opportunities. Staff note that Coos Bay supports recreational activities. The applicant provided a summary of the recreational activities that take place in the Coos Bay Estuary, and indicated that all three boat ramps that provide access to the estuary will remain open during the proposed dredging activities, as well as an announcement to the boating community via a local notice to mariners provided through notification to the United States Coast Guard. The report in its entirety can be found in this staff report as Attachment A, Exhibit 5 (Page 10). The application is consistent with Goal 8.

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.

Staff Response: The applicant is proposing NRIs to one site within the City’s jurisdiction that in turn will facilitate a broader operational window, and increase safety and efficient of transit, in the Channel. The navigational reliability improvements have the ability to offer economic prospects to the City and region as a whole. The application is consistent with this goal.

Goal 10: Housing – To provide for the housing needs of the citizens of the state.

Staff Response: Goal 10 is not applicable to this application.

Goal 11: Public Facilities and Services –

Staff Response: The applicant’s proposal does not involve or affect public facilities and service as framework for development. Goal 11 is not applicable to this application.

Goal 12: Transportation – To provide and encourage a safe, convenient and economic transportation system.

Staff Response: The applicant’s proposal is consistent with Goal 12 because it advances the Goal 12 objective of facilitating the flow of goods and services in an effort to strengthen the local and regional economy. In the case of the applicant, the NRIs help the flow of goods and services by reducing transit time of goods to the market, the decrease of time vessels wait off-shore for Port conditions to improve, the reduction of fuel, and overall safety and efficiency. The application is consistent with this goal.

Goal 13: Energy Conservation – To conserve energy.

Staff Response: The applicant’s proposal is consistent with Goal 13 because the proposed NRIs increase the safety and efficiency of vessel transit through the Channel, and thus increase the operational window. The increase of the operational window reduces the time vessels spend waiting to enter the Channel which increases the efficiency of material transportation and reduction of energy waste from inefficiency of transportation. The application is consistent with this goal.

Goal 14: Urbanization – To provide for an orderly and efficient transition from rural to urban land use.

Staff Response: Goal 14 is not applicable to this application.

Goal 15: Willamette River Greenway

Staff Response: Goal 15 is not applicable to this application.

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.

Staff Response: The Coos Bay Estuary Management Plan (CBEMP) is a refinement plan to the Coos Bay Comprehensive Plan and implements Goal 16 for the City of Coos Bay. The CBEMP divides all estuaries into three aquatic management units: Natural, Conservation, and Development. The proposed NRI site is currently zoned 52-NA, which is a natural aquatic unit. In the 52-NA natural aquatic zone, dredging is not a permitted use. The applicant seeks to amend the CBEMP to apply the DDNC-DA (a development aquatic unit) designation to the proposed NRI site in order to allow the dredging necessary to complete the NRIs. A Goal 16 exception is required to rezone the NRI site to a DDNC-DA development site. The requested goal exception is specifically addressed on Page 14 of this report.

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.

Staff Response: The proposed NRI site does not include any designated coastal shorelands. The proposed dredge transport pipeline will not impact shorelands within the City of Coos Bay. Goal 17 is not applicable to this application.

Goal 18: Beaches and Dunes –

Staff Response: The proposed NRI site does not include any designated beaches or dunes. Goal 18 is not applicable to this application.

Goal 19: Ocean Resources -

Staff Response: The proposed NRI site does not include or abut any ocean resources.

Specific Proposed Amendments to the CBEMP

The following are the exact text amendments the applicant is proposing to the CBEMP.

CITY OF COOS BAY TEXT AMENDMENTS ASSOCIATED WITH JORDAN COVE ENERGY PROJECT L.P. APPLICATIONS FOR NAVIGATION RELIABILITY IMPROVEMENTS

(1) AMENDMENT TO COOS BAY ESTUARY MANAGEMENT PLAN

“5. DESIGNATION OF SITE-SPECIFIC MANAGEMENT SEGMENTS, USES AND ACTIVITIES

“AUTHORIZED NAVIGATION CHANNELS

“LOWER BAY/UPPER BAY AQUATIC UNIT

“DEEP-DRAFT NAVIGATION CHANNEL (35' authorized draft) MANAGEMENT CLASSIFICATION – DA

“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 45-foot deep channel with ‘suitable’ width across the Entrance Bar, a 35-foot deep by 300-foot wide channel to the railroad bridge, an Anchorage Basin at Bay Mile 3.5 (southwest of Sitka Dock), a Buoy Storage Area between Sitka Dock and Pigeon Point (not part of federal project), a Turning Basin north of Empire at Bay mile 6.0, a widened turn area from Lower Jarvis Range to Jarvis Turn Range channels southwest of Bay mile 7.0 to a 41-foot deep MLLW elevation (including 37-foot deep channel, two-foot over-dredge allowance, and two-foot advanced maintenance allowance) (see EXCEPTION #), and the Anchorage Basin southwest of Roseburg Lumber Co. 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 segment.

“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 35 feet deep by 300 to 400 feet wide, and Turning Basins at North Bend (Mile 12.0) and Coalbank Slough (Mile 14.5).

As a result of the applicant’s request a small amendment will be required in the Coos Bay Comprehensive Plan that references the approved site-specific exception:

(2) AMENDMENT TO COOS BAY COMPREHENSIVE PLAN 2000, VOLUME III, PART 3, TO ADD EXCEPTION #__ - AQUATIC UNIT 52-NA/DEVELOPMENT UNIT DDNC-DA - NAVIGATION RELIABILITY IMPROVEMENTS

Chapter 3.2, Site-Specific Exceptions, is hereby amended by adding Exception #__ as follows:

[INSERT FINDINGS UPON ADOPTION]

VI. CRITERIA FOR GOAL 16 REASONS EXCEPTION

OAR 660-004-0020

(1) If a jurisdiction determines there are reasons consistent with OAR 660- 004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

Staff Response: In their application the applicant requests an exception to Goal 16 for the proposed NRI dredge site# 4. The applicant must meet four standards of Goal 2 (Part II(c), outlined below (2) (a) –(d). A discussion of the reasons justifying a Goal 16 exception for the proposed dredging activity (consistent with OAR 660-004-0022) follows, on Page 17. The applicant has advanced a finding that calls out the “extremely restrictive, unavoidable turn” associated with proposed NRI site as the “*special features or qualities that necessitate its location on or near the proposed exception site.*” The applicant has submitted testimony in the form of “letters of support” that are in favor of the proposed use for the issues indicated in this staff report.

(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) “Reasons justify why the state policy embodied in the applicable goals should not apply.” The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

Staff Response: The applicant has identified the “reasons” that “*justify why the state policy embodied in the applicable goals should not apply.*”

The applicant asserts that the proposed 3.3 acre NRI site located in the Channel is in need of improvement in order to facilitate safer and more efficient navigation. The applicant indicates that the proposed use must be located where mapped because this is where the navigational reliability improvements are most needed.

Staff discussion of exception reasons is included in detail on Page 17of this report, in the response to OAR 660-004-0022.

(b) “Areas that do not require a new exception cannot reasonably accommodate the use.” The exception must meet the following requirements:

Staff Response: Applicant identifies the proposed NRI site as location-specific. The proposed location of the NRI site is the only site JCEP can make the proposed necessary improvements to increase safety and efficient of vessel navigation in the Channel. The applicant asserts that the identified site is at a location in the Channel where there is an extremely restrictive, unavoidable turn in the Channel. This turn is responsible for significant delays in vessel

transit in the Channel. The applicant states in their narrative, that JCEP could widen other areas of the Channel to improve navigational efficiency, but the proposed navigational reliability improvement site, is the location most in need of improvement to achieve the results in improved efficiency and safety of navigation required within the Channel. There are no other areas that could accommodate the proposed use/activity.

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

Staff Response: As explained above, the proposed NRI area is location-specific and the applicant indicates it would not be possible to locate them anywhere that does not require a new exception. A map of the proposed NRI is included as “Dredge Area 4” in Attachment A, Exhibit 1, Page 1 of 4.

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on resource land that would require an exception, including the destiny of uses on non-resource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to non-resource uses not allowed by the applicable goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provisions of a proposed public facility or service? If not, why not?

Staff Response: The applicant states the proposed NRI areas are location-specific. These are the specific geographic locations where the channel is constrained. The applicant notes that in any case, it is not possible for JCEP to locate them anywhere that does not require a new exception. The proposed use does not relate to a public facility in the Channel, and will not require any additional public facilities or services to construct.

(C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of

a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Staff Response: The Applicant has indicated, and staff agrees, that the proposed NRI area is location-specific, as such; it is not possible for JCEP to locate them anywhere that does not require a new exception.

(c) "The long-term environmental, economic, social and energy consequences resulting from the use 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 in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

Staff Response: The long-term economic, environmental, social and energy costs of widening other areas of the Channel that JCEP could feasibly widen are not materially different from the same consequences of making the improvements at the identified location.

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Staff Response: The proposed NRI site is located immediately adjacent to the existing Channel. The adjacent uses to the Channel are transit of large vessels that currently call on the Port. The adjacent land use designation is Deep Draft –Development Aquatic (DA) unit.

According to the CBEMP, DA units “include areas suitable for deep or shallow-draft navigation (including shipping and access channels or turning basins), sites and mining or mineral extraction areas, and areas adjacent to developed or developable shorelines which may need to be altered to provide navigational access or create new land areas for water-dependent uses.” Additionally, the applicant’s consultant (DEA) has submitted an environmental impacts report (Attachment A, Exhibit 5) that outlines plans to reduce adverse environmental impacts upon the waters of the Bay and Channel. This includes performing capital and maintenance dredging during the ODFW-approved in-water work window (October 1 to February 15) to reduce impacts to sensitive life stages of fish in the bay, using various dredging methods to minimize the effects on water turbidity within the bay, and applying best management practices associated with dredging (including cutter head suction, clamshell, and hopper dredging) to reduce turbidity effects. As a result of those methods JCEP expects increased water turbidity as a result of the NRIs to be temporary and limited to the immediate vicinity of dredging operations. The application is consistent with this criterion.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

Staff Response: The applicant’s proposal seeks an exception to Goal 16 for one NRI site within the City’s jurisdiction. The remaining three sites fall outside of City jurisdiction. To see a map of the proposed navigational reliability areas see Attachment A, Exhibit 1, Page 1 of 4, included in this staff report. This criterion does not apply.

ANALYSIS OF OAR 660-004-0022

OAR 660-004-0022 addresses, in greater detail, the “types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands.” Consistency with any one of the ten alternatives outlined in OAR 660-004-0022 provides sufficient justification for a “reasons” exception. In seeking an approval of a Goal 16 exception as requested in this application, the applicant’s representative advances two avenues in which a Goal 16 exception may be approved. The applicant proposes that the application meets the criteria for a goal exception under the general exceptions as indicated in OAR 660-004-0020(1); The applicant proposes that the application also meets the criteria for a goal exception through a second avenue under OAR 660-004-0022(8)(b).

Following is the staff response for both of these criteria.

OAR 660-004-0022

Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the

establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040.

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

Staff Response: Under OAR 660-004-0022(1) the applicant must demonstrate a need for the proposed use/activity based on requirements of one or more State Planning Goals 3 to 19. In the applicant's case, the demonstrated need for the proposed NRI site is based primarily on Goal 9 (Economic Development) and 12 (Transportation). As explained in the applicant's narrative, structural restrictions on the Channel cause significant transit delays and unduly increase directional changes during transit through the Channel. Delays are measured in the total transit time, from the time the vessel arrives off the coast of Coos Bay until it returns offshore. Minimizing delay is a pressing need because companies that utilize the Port have identified new customers in Asia that desire to export cargo using bulk carriers that are slightly larger than the ships typically calling on the Port today. The Applicant points out there are various marine terminal businesses within Coos Bay that require assurances that terminals can efficiently accommodate larger dimension bulk carriers in the future. The proposed NRIs will allow companies to secure emerging opportunities to export products using today's larger vessels, including bulk carriers of up to 299.9 meters (983.3 feet) in length, 49 meters (160.8 feet) in beam, and 11.9 meters (39 feet) in draft. The applicant has included, in its application, a letter from the US Coast Guard to JCEP, indicating Coos Bay Pilots can safely and successfully maneuver carriers of up to 299.9 X 49m X 11.9 dimensionally while transiting the Channel. The letter is included in this staff report as Attachment A, Exhibit 4 (Page 15).

In their narrative, the Applicant asserts that JCEP and the Coos Bay Pilots believe the proposed navigational reliability improvement site is essential to achieve the required number of LNG vessel transits needed to lift the JCEP design annual LNG production volume. Excessive delays in LNG carrier transit in the Channel, to and from the LNG terminal, could result in a shore storage tank topping situation, requiring JCEP to curtail LNG production. The Coos Bay Pilots letter of support for the proposed NRI is included in this staff report as Attachment A, Exhibit 3, (Page 2). The proposed NRI will fulfill a demonstrated need for

continued and enhanced shipping within the Bay; consistent with the policy objectives of Goals 9 and 12.

(8) Goal 16 – Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water-dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS chapter 196, in any of the circumstances specified in subsections (a) through (e) of this section:

Staff Response: The applicant also provided a response to the reasons exception alternative OAR 660-004-0022(8)(b). This is a specific exception to the requirement limiting dredging in an area that is currently designated, in accordance with Goal 16, as a natural management unit. The applicant has indicated the exception is justified because approval of the application will authorize dredging to maintain adequate depth to safely and more reliably permit continuation of the present level of navigation.

(b) Dredging to maintain adequate depth to permit continuation of the present level of navigation in the area to be dredged.

Staff Response: The applicant proposes dredging to maintain adequate depth to permit continuation of the presently authorized level of navigation at the proposed NRI site which is called out as an exception that is justified in subsection (8)(b), above. Most recently, the Channel was expanded from -35 feet to -37 feet in 1997. The proposed improvements are designed to increase the environmental operating window for all vessels entering the Bay by softening critical turns, relocating navigational aids to navigation, and reducing the required Channel directional changes. In turn, the proposed dredging will reduce entry and departure delays and allow for more efficient vessel transits through the Channel for the size of vessels calling on the Port today.

The applicant notes that, for JCEP, the proposed navigational reliability improvements will allow for transit of Liquid Natural Gas (LNG) vessels of similar overall dimensions to those listed in the July 1, 2008 US Coast Guard (USCG) Waterway Suitability Report, the USCG Letter of Recommendation dated May 10, 2018 and USCG letter confirmation dated November 7, 2018, but under a broader range of weather conditions, specifically higher wind speeds. As a result JCEP estimates that upon completion of the proposed navigational reliability improvement site, JCEP will be able to export the full capacity of the optimized design production of the LNG terminal on a consistent basis. For these reasons, the applicant advances a proposal that the dredging associated with the navigational reliability improvement will maintain adequate depth to permit continuation of the presently allowed level of navigation, and allow that navigation to occur more efficiently, safely and reliably. The aforementioned letters are included in this staff report as Attachment A, Exhibit 4.

(f) In each of the situations set forth in subsections (8) (a) to (e) of this rule, the exception must demonstrate that the proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner that minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

Staff Response: The applicant indicates in their application that they will complete the proposed NRIs at the site in a manner that minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats. The applicant plans to perform the proposed dredging during the Oregon Department of Fish and Wildlife (ODFW) approved in-water work window (October 1 to February 15) to reduce impacts to sensitive life stages of fish in the Bay.

Additionally, related to dredging practices and methods, the applicant indicates in their application that JCEP will use various dredging methods (described in Attachment A, Exhibit 5) to minimize the effects of the NRIs on water turbidity within the Bay. JCEP will use best management practices (including cutter head suction, clamshell, and hopper dredging) associated with dredging to reduce turbidity effects, and as a result of those methods JCEP expects any increased water turbidity as a result of the NRIs to be temporary and limited to the immediate vicinity of dredging operations. The applicant notes that dredging and material transport vessels will carry small volumes of petroleum in comparison to large bulk carriers and Panamax vessels that regularly traverse Coos Bay. JCEP will use best management practices to avoid and minimize spills or discharges during dredging operations and dredged material transport.

The applicant has not indicated what specific precautions they will take to minimize the risk of toxic discharges, or oil spills, but has indicated in Attachment A, Exhibit 5, (Page 8) they will take preventative measures such as an implementation of a spill prevention plan. Staff have included a condition of approval relating to the specific measures to be taken by the applicant and/or their dredging contractor in the event of an oil spill or toxic discharge in the form of a spill prevention and response plan.

Condition of Approval #1: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall provide the City of Coos Bay with a Spill Prevention and Response Plan addressing the potential for any unanticipated oil spill or toxic discharge, for review and approval.

Dredging equipment and material transport vessels related to the proposed NRI site may generate temporary noise disturbances; however the noise will be localized to the immediate dredging area. The applicant states they do not anticipate that noise levels will have more than temporary effects on the behavior of aquatic species in the area of the proposed NRI site. The applicant's consultant, DEA has evaluated the proposal and provided additional details on potential adverse impacts associated with the proposed dredging. The report is included in this staff report as Attachment A, Exhibit 5.

VII. CRITERIA FOR ESTUARINE AND COASTAL SHORELAND USES ACTIVITIES PERMIT

CBMC – 17.52.010 General

Uses and activities permitted by the Coos Bay Estuary Management Plan are subject to general and special conditions and policies to comply with statewide planning goals and the Coos Bay Estuary Plan as adopted by the city of Coos Bay. Compliance with these conditions and policies must be verified; therefore, all uses and activities under jurisdiction of the Coos Bay Estuary Management Plan must be reviewed.

Staff Response: The applicant is seeking an Estuarine and Coastal Shoreline Uses and Activities permit to allow New and Maintenance Dredging in the DDNC-DA Estuarine Zone. The existing 52-NA aquatic management unit is located immediately adjacent to the federally authorized DDNC. Additionally, the applicant seeks an Estuarine and Coastal Shoreline Uses and Activities permit to allow for an accessory temporary dredge transport pipeline in the 52-NA, 53-CA, 54-DA, and 55-CA management zones. The dredge line is described in a memo included in this staff report as Attachment A, Exhibit 5, and depicted in Exhibit 6. All of the above mentioned management zones are within the City of Coos Bay's jurisdiction. New and Maintenance dredging in the DDNC-DA are subject to general conditions (CBEMP Policies #17 and #18) and a special condition, the mitigation of adverse impacts as described in CBEMP Policy #5, which as a result triggers the consideration of CBEMP Policies #4 and #4a.

COOS BAY ESTUARY MANAGEMENT PLAN (CBEMP) POLICIES

Below are CBEMP Policies pertinent to the subject application.

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

Local government shall protect major marshes, significant wildlife habitat, coastal headlands, and exceptional aesthetic resources located within the Coos Bay Coastal Shorelands Boundary and included in the Plan inventory, except where exceptions allow otherwise. Local government shall consider:

- A. "major marshes" to include areas identified in the Goal #17 "Linkage Matrix" and the Shoreland Values inventory map;**
- B. "significant wildlife habitats" coastal headlands and exceptional aesthetic resources to include those areas identified, on the map "Shorelands Values."**

This strategy shall be implemented through:

- A. Plan designations and use and activity matrices set forth elsewhere in the Plan that limit uses in these special areas to those that are consistent with protection of natural values, and**
 - B. Through use of the "Shoreland Values" map that identifies 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.**
- A. "major marshes" to include areas identified in the Goal #17 "Linkage Matrix" and the Shoreland Values Inventory map;**
 - B. "Significant wildlife habitats," coastal headlands and exceptional aesthetic resources to include those areas identified on the map "Shoreland Values."**

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.

Staff Response: According to the Shoreland Values map, there are no inventoried resources at the proposed navigational reliability improvement site for which CBEMP Policy #17 requires protection. Despite this preliminary conclusion, staff propose that CBEMP Policy #17 be included as a general condition of approval for dredging associated with the NRI. It is added as a condition under Section VIII.

CBEMP Policy #18 - Protection of Historical and Archaeological Sites Within Coastal Shorelands.

Local government shall provide special protection to historic and archaeological sites located within the Coos Bay Coastal Shorelands Boundary, except where Exceptions allow otherwise. These sites are identified in the section entitled: “Coastal Shoreland Values Requiring Mandatory Protection” and on the “Special Considerations Map.” Further, local government shall continue to refrain from widespread dissemination of site-specific information about identified archaeological sites.

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

The development proposal, when submitted, shall include a site development plan 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 Coos, Siuslaw, Lower Umpqua Tribal Council in writing, together with a copy of the site development plan. The Tribal Council shall have the right to submit a written statement to the local government within ten (10) days of receipt of such notification, stating whether the project as proposed would protect the 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 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 Tribal Council; 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 (8) and (9). Upon receipt of the statement by the Tribal Council, or upon expiration of the Tribal Council's ten-day response period, the local government shall conduct an administrative review of the development proposal 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 Tribal Council, as well as any additional measures deemed necessary by the local government to protect the historical and archaeological values of the site. If the property owner and the Tribal Council 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 historical and archaeological values of the site.**

This strategy recognizes that protection of historical and archaeological sites is not only a community's social responsibility, but is also legally required by Goal #17 and OBS 97.745. It also recognizes that historical and archaeological sites are non-renewable cultural resources.

Staff Response: The applicant notes that the Shoreland Values Map does not indicate any known inventoried resources in this location to consider under this policy. Through correspondence with staff, members of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indian (Tribes), asserted that the Shoreland Values inventory map is old (2002) and that there may be resources in the vicinity of the NRI Site. During the course of the proposed development there may be unanticipated discovery of cultural resources, remains, and/or objects. The applicant has included, in their submission, a copy of a Memorandum of Agreement (MOA) between JCEP and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indian (Tribes) addressing these circumstances, and more broadly, Policy 18. A copy of the signed MOA is included with this staff report as Attachment A, Exhibit 9. The MOA incorporates a Cultural Resources Protection Agreement (CRPA) entered between JCEP and the Tribes in July of 2018. 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 includes an Unanticipated Discovery Plan (UDP), which provides procedures in the event of an unanticipated discovery of historic properties, archeological objects, archaeological sites or human remains, funerary objects, sacred items, and items of cultural patrimony, during the construction and operation of the proposed temporary dredge transport pipeline.

Staff proposes the following condition of approval to ensure compliance with respect to Policy #18

Condition of Approval #2: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall provide evidence of compliance with the requirements of the enclosed MOA, CRPA, and UDP as agreed upon and signed by JCEP and the Confederated Tribes of Coos, Lower, Umpqua, and Siuslaw Indians, as well as consistency with any other provisions of Policy #18 of the CBEMP.

CBEMP Policy #5 – Estuarine Fill and Removal

Staff Response: JCEP’s new and maintenance dredging activities must be consistent with CBEMP Policy #5. The DDNC-DA zone allows new and maintenance dredging. Because the Application includes a Goal 16 exception, Policy #5 requires only that the Application comply with criteria D. and E., because, as expressly noted within the Policy, the findings for the Goal 16 exception suffice for this Application to comply with criteria A - C.

Dredging and/or filling shall be allowed only:

- A. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and**

Staff Response: Staff agrees with the applicant’s finding that Policy #5 indicates if an application includes the request for a goal exception, findings for the goal exception shall be sufficient for this criterion. As indicated earlier in this staff report, the proposed NRIs are required for navigational purposes within the Channel.

- B. If no feasible alternative upland location exists; and**

Staff Response: Staff agrees with the applicant’s finding that Policy #5 indicates if an application includes the request for a goal exception, findings for the goal exception shall be sufficient for this criterion. As indicated earlier in this staff report, the proposed location of the NRIs is the only site JCEP can make the proposed necessary improvements to increase safety and efficient of vessel navigation in the Channel.

- C. If a public need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and**

Staff Response: Staff agrees with the applicant’s finding that Policy #5 indicates if an application includes the request for a goal exception, findings for the goal exception shall be sufficient for this criterion. As indicated earlier in this staff report, the applicant’s proposal serves a public need by creating safer and more efficient navigation in the Channel, thereby promoting economic activity in the City of Coos Bay.

D. If adverse impacts are minimized; and

Staff Response: Compliance with criterion D directs the applicant to demonstrate how adverse impacts will be minimized, pursuant to CBEMP Policy #4a. Strategies, and best practices proposed by the applicant to minimize adverse impacts are mentioned earlier in this staff report. Additionally, the memo included in this staff report as Attachment A, Exhibit 5, outlines in detail, the measures and practices proposed by the applicant to minimize adverse impacts. .

E. The activity is consistent with the objectives of the Estuarine Resources Goal and with other requirements of state and federal law, specifically the conditions in ORS 541.615

Staff Response: Compliance with criterion E directs the applicant to demonstrate that the proposed NRIs are “consistent with the objectives of the Estuarine Resource Goal and with other requirements of state and federal law, specifically the conditions in ORS 541.615 and Section 404 of the Federal Water Pollution Control Act (P.L. 92-500).” The applicant asserts that the NRIs are consistent with the objectives of Goal 16 (Estuarine Resources Goal) because they represent a balance of estuary uses, protecting the economic values of the estuary while minimizing adverse impacts of the dredging activity. Staff concur to the extent that adverse impacts will be minimized as proposed. The application is consistent with other requirements of state and federal law, including the conditions in Section 404 of the Federal Water Pollution Control Act, and the conditions of ORS 541.615 (renumbered ORS 196.810), which requires a permit from the DSL to remove any material from the beds or banks of waters of the state. The applicant asserts that JCEP acknowledges this obligation, and all necessary DSL and Federal Section 404 authorizations will be obtained as a condition precedent to dredging.

Staff proposes the following condition of approval to ensure compliance with Policy #5(E):

Condition of Approval #3: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall obtain, and provide evidence of, all necessary DSL and Federal Section 404 authorizations. JCEP shall provide the City with copies of these approved authorizations for the record.

Policy #5 (continued)

Other uses and activities which could alter the estuary shall only be allowed if the requirements in B, C, and D are met. All portions of these requirements may be applied at the time of plan development for actions identified in the Plan. Otherwise, they shall be applied at the time of permit review.

This strategy shall be implemented by the preparation of findings by local government documenting that such proposed actions are consistent with the Comprehensive Plan, and with criteria “a” through “e” above. However, where goal exceptions are included within this plan, the findings in the exception shall be sufficient to satisfy criteria “a” through “c” above. Identification and minimization of adverse impacts as required in “d” above shall follow the procedure set forth in Policy #4a. The findings shall be developed in response to a “request

for comment” by the Division of State Lands, which shall seek local government’s determination regarding the appropriateness of a permit to allow the proposed action.

“Significant,” as used in “other significant reduction or degradation of natural estuarine values,” shall be determined by:

- A. The U.S. Army Corps of Engineers through its Section 10 and 404 permit processes; or
- B. The Department of Environmental Quality for approvals of new aquatic log storage areas only; or
- C. The Department of Fish & Wildlife for new aquaculture proposals only.

This strategy recognizes that Goal #16 limits dredging, fill, and other estuarine degradation in order to protect the integrity of the estuary.

Staff Response: CBEMP Policy #5 requires that other uses and activities which could alter the estuary only be allowed if the requirements in B, C, and D are met. The local government shall issue preparation of findings that such actions proposed by the applicant are consistent with the Comprehensive Plan, and with criteria “A” through “E” above. However, staff agrees with the applicant’s finding that, where a goal exception is proposed as part of the request, the findings in the exception shall be sufficient to satisfy criteria “A” through “C” above. When addressing criteria “D”, the applicant shall follow the procedure set forth in Policy #4a. Policy #4a outlines how resource capability consistency and impact mitigation is conveyed and insured for uses and activities within management units. Policy #4a is addressed specifically starting on Page 28.

CBEMP Policy #4 – Resource Capability Consistency and Impact Assessment

Local government concludes that all proposed actions (approved in this Plan) which would alter or potentially alter the estuarine ecosystem have been based upon a full consideration of the impacts of the proposed alteration, except for the following uses and activities:

- A. **Natural Management Units**
 - Aquaculture
 - Bridge crossings
 - Log storage
- B. **Conservation Management Units**
 - Aquaculture
 - Bulkheading
 - Dike maintenance dredging
 - High-intensity water-dependent recreation
 - Log storage dredging
 - Minor navigational improvements requiring dredging or fill
 - Rip-rap
 - Water intake or withdrawal and effluent discharge
- C. **Development Management Units**
 - Aquaculture
 - Bulkheading (except for Aquatic Units #3DA, 5DA, and 6DA)

- Dredging
- Fill
- Flow lane disposal of dredged material
- In-water structures
- Mining and mineral extraction
- New or expanded log storage
- Water-related and nondependent, nonrelated uses not requiring fill

- D. Any other uses and activities which require the resource capability consistency test as a condition within a particular management unit or which could affect the estuary's physical processes or biological resources. Unless fully addressed during the development and adoption of comprehensive plans, actions, which would potentially alter the estuarine ecosystem, shall be preceded by a clear presentation of the impacts of the proposed alteration.

Unless fully addressed during the development and adoption of comprehensive plans, actions, which would potentially alter the estuarine ecosystem, shall be preceded by a clear presentation of the impacts of the proposed alteration.

For uses and activities requiring the resource capabilities test, a special condition is noted in the applicable management unit uses/activities matrix. A determination of consistency with resource capability and the purposes of the management unit shall be based on the following:

- A. A description of resources identified in the plan inventory;
- B. An evaluation of impacts on those resources by the proposed use (see impact assessment procedure, below); and
- C. In a natural management unit, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant 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.
- D. In a conservation management unit a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant 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 which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values and aquaculture.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

- A. The type and extent of alterations expected;

- B. The type of resource(s) affected;
- C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and
- D. The methods which could be employed to avoid or minimize adverse impacts.

This policy is based on the recognition that the need for and cumulative effects of estuarine developments were fully addressed during the preparation of this Plan and that, except as otherwise stated above, no additional findings are required to meet Implementation Requirement #1 of LCDC Goal 16.

Staff Response: CBEMP Policy #4 requires findings demonstrating the public’s need and gain that would warrant any modification or loss to the estuarine ecosystem, based upon a clear presentation of the impacts of the proposed alteration, as implemented in Policy #4a. None of the prerequisites to providing notice to state agencies under Policy #4a are triggered. Therefore, this policy, to the extent that it is applicable, requires the City to perform the impacts assessment consistent with CBEMP Policy #4.

The applicant asserts that CBEMP Policy #4 is not applicable to the Application pursuant to state law. The applicant notes that LUBA has held, and the Court of Appeals has affirmed, that “[w]hen a goal exception is taken to facilitate proposed development, any comprehensive plan policies that implement the goal for which the exception is taken no longer govern that development.” *Friends of Marion County, 59 Or LUBA at 350-351, aff’d 233 Or App at 488*. The Applicant requests an exception to Goal 16 to facilitate dredging in a natural management unit. As the last sentence of CBEMP Policy #4 clearly states, the purpose of this policy is to implement Goal 16. Staff agrees with this assertion by the Applicant.

Staff note that this project will require state and federal permits and an assessment of environmental impacts will be done.

CBEMP Policy #4a - Deferral of (A) Resource Capability Consistency Findings and (B) Resource Impact Assessments

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

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

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

- A. **Where aquaculture is proposed as a use, local government shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of the request, together with a map of the proposed site;**

- B. Where log storage dredging is proposed as an activity, local government shall notify the Oregon Department of Environmental Quality (DEQ) in writing of the request, together with a map of the proposed site.**

Within twenty (20) days of receipt of the notification, ODFW or DEQ, as appropriate, shall submit in writing to local government a statement as to whether the proposed use/activity will be consistent with the resource capabilities of the management segment, or if determined to be not consistent, whether the proposal can be made consistent through imposition of conditions on the permit. The appropriate state agency shall also perform the impact assessment required in Policy #4. If no statement is received from the affected state agency by the expiration of the twenty (2) day period, local government shall presume consistency of the proposal with the resources capabilities of the management segment, shall make findings appropriate to the presumption, and shall perform the assessment of impacts required by Policy #4.

For all other uses/activities specified above, local government shall determine appropriate findings whether the proposed use/activity is consistent with the resource capabilities of the management segment and shall perform the assessment of impacts required by Policy #4.

This strategy recognizes:

- A. That resource capability consistency findings and impact assessments as required by LCDC Goal #16 can only be made for the uses specified above at the time of permit application, and**
- B. That the specified state agencies have expertise appropriate to assist local government in making the required finding and assessments.**

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

Staff Response: As noted above, because neither aquaculture nor log storage dredging are proposed, none of the prerequisites to providing notice to state agencies under Policy #4a are triggered. Therefore, this policy requires the City to perform the impacts assessment consistent with CBEMP Policy #4. The City has completed that assessment, including the content of the memo included as Attachment A, Exhibit 5.

As with Policy #4, the applicant asserts that CBEMP Policy #4a is not applicable to the Application pursuant to state law. The applicant notes that LUBA has held, and the Court of Appeals has affirmed, that “[w]hen a goal exception is taken to facilitate proposed development, any comprehensive plan policies that implement the goal for which the exception is taken no longer govern that development.” Friends of Marion County, 59 Or LUBA at 350-351, aff’d 233 Or App at 488. The Applicant requests an exception to Goal 16 to facilitate dredging in a natural management unit. As the last sentence of CBEMP Policy #4 clearly states, the purpose of this policy is to implement Goal 16. Staff agrees with this finding by the Applicant.

VIII. Conditions of Approval

Staff has identified and recommends the following conditions for Planning Commission and City Council consideration and Council action to authorize the project:

Condition of Approval #1: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall provide the City of Coos Bay with a spill prevention and response plan addressing the potential any unanticipated oil spill or toxic discharge for review and approval.

Condition of Approval #2: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall provide evidence to the Coos Bay Community Development Director, of compliance with the requirements of the enclosed MOA, CRPA, and UDP as agreed upon and signed by JCEP and the Confederated Tribes of Coos, Lower, Umpqua, and Siuslaw Indians.

Condition of Approval #3: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall obtain, and provide evidence to the Coos Bay Community Development Director, of all necessary DSL and Federal Section 404 authorizations. JCEP shall provide the City with copies of these approved authorizations for the record.

Condition of Approval #4: City of Coos Bay Public Works has identified an existing utility that is installed under the Bay in the vicinity of the proposed navigational reliability improvements. Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall provide evidence to the Coos Bay Community Development Director, that the proposed dredging activity shall not impact this existing utility.

Condition of Approval #5: As a general condition, and in the event that additional analysis or circumstance reveals relevant and previously unknown or unmapped shoreland resources, all dredging activity must remain consistent with CBEMP Policy #17 - Protection of "Major Marshes" and "Significant Wildlife Habitat" in Coastal Shorelands.

Condition of Approval #6: As a general condition, dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit shall only occur during the ODFW approved in-water work window (IWWW) which occurs between October 1 and February 15. JCEP shall remove all equipment associated with dredging activities at the expiration of the IWWW. This condition shall remain in effect for all dredging periods that may span multiple years and multiple IWWWs.

Condition of Approval #7: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities Permit, JCEP shall submit for review and approval by the City of Coos Bay Planning Department, the Best Management Practices, and compliance with CBMC Chapter 9.20 to minimize impacts.

Condition of Approval #8: Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities Permit, JCEP shall submit for review and approval by the City of Coos Bay Planning Department Best Management Practices that will be employed should turbidity levels remain above ambient background levels greater than 200 feet from dredging operations. _

Condition of Approval #9: As a general condition, JCEP shall ensure all floating and submerged dredging equipment operating in the Bay shall be clearly marked with day signals and light signals at night in accordance with the US Inland Rules of the Road.

Condition of Approval #10: As a general condition, JCEP construction safety inspectors shall be on-site during any time dredging operations are underway and shall be responsible for warning any recreational boaters who enter the construction area. _

Condition of Approval #11: As a general condition, JCEP shall ensure that sections of the pipeline that cross the Federal Navigation Channel (FNC) are submerged on the FNC bottom to allow for vessel passage. The sections of floating pipeline shall be temporarily removed to allow for vessel passage, when necessary. _

Condition of Approval #12: As a general condition, JCEP shall be responsible for costs of City review of information associated with project conditions.

IX. Conclusion

Based on the evidence in the record, it is staff's conclusion that the applicable criteria can be met with the conditions of approval proposed.

X. Attachments

Attachment A: Application(s)

Exhibit 1: NRI (Dredge Detail)

Exhibit 2: Pre-Application Conference Notes

Exhibit 3: Support Letters (Roseburg Forest Products, Coos Bay Pilots Association, Port)

Exhibit 4: Jordan Cove LNG Coast Guard Letter of Recommendation/Analysis

Exhibit 5: Memo describing dredge work and impacts

Exhibits 6 & 7: Site and Context Maps

Exhibit 8: Property Owner (DSL) Certification and Consent

Exhibit 9: Memorandum of Agreement between JCEP and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

Attachment B: Comprehensive Plan Update Map(s)