



## Public Works & Community Development

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### NOTICE OF PLANNING COMMISSION RECOMMENDATION

**APPLICATION:** Land Use Application #187-18-000153

**APPLICANT:** Jordan Cove Energy Project L.P. (JCEP)

#### PROPOSAL:

- (1) A map amendment to the Coos Bay Estuary Management Plan and zoning map 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.

**RECOMMENDATION:** On Tuesday, July 23, 2019, the Planning Commission recommended, with the following motions/votes, findings and conditions, City Council approval of Land Use application #187-18-000153.

#### Motions and Votes

##### Motion #1

**Motion** made by Commissioner Miller and seconded by Commissioner Marineau:

I move to recommend Council approve the proposed 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.

**Discussion:** Hood asked if the current motion is related to the OAR's.

**Yes:** Commissioners Berg, Davis, Miller and Marineau

**No:** Commissioners Hood and Aguirre

##### Motion #2

Motion made by Commissioner Miller and seconded by Commissioner Marineau:

I move to recommend Council approve the proposed 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.

**Discussion:** Mr. Callister requested clarification that a motion to approve or deny implies that the Commission used the "Approval" or "Denial" column as outlined in the Staff Report Summary to support the decision.

**Amended Motion:** I move to recommend Council approve the proposed 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. with the noted facts and findings under approval.

**Yes:** Commissioners Berg, Davis, Miller and Marineau

**No:** Commissioners Hood and Aguirre

### **Motion #3**

Motion made by Commissioner Marineau and seconded by Commissioner Davis:

I move to recommend Council approve the proposed estuarine and coastal shoreline uses and activities permit for “New and Maintenance Dredging” in the DDNC-DA Estuarine Zone based on the facts and findings as noted in the matrix grid under approval.

**Yes:** Commissioners Berg, Davis, Miller and Marineau

**No:** Commissioners Hood and Aguirre

### **Motion #4**

Motion made by Commissioner Marineau and seconded by Commissioner Miller:

I move to recommend Council approve the proposed 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. based on the facts and findings as noted in the matrix grid under approval.

**Discussion:** Commissioner Miller clarified that the motion applies only to the 3.3. acres within the City of Coos Bay.

**Yes:** Commissioners Berg, Davis, Miller and Marineau

**No:** Commissioners Hood and Aguirre

### **Motion #5**

Motion made by Commissioner Miller and seconded by Commissioner Marineau:

I move that Motion #1 be amended to include the clarification that the approval is based on the facts and findings as noted on Matrix page 5 & 6 for OAR 66-004-0020(d), OAR 660-004-0022(1)(a), OAR 660-004-002(8)(b) for approval.

**Yes:** Commissioners Berg, Davis, Miller and Marineau

**No:** Commissioners Hood and Aguirre

### **Motion #6**

Motion made by Commissioner Miller and seconded by Commissioner Marineau

I move that Motions #1 through #4 include Conditions of approval 1-14, as referenced on pages 8 and 9 of the July 23, 2019 “Conditions of Approval Summary for application 187-18-000153.

**Yes:** Commissioners Berg, Davis, Miller and Marineau

**No:** Commissioners Hood and Aguirre

### **Findings and Conditions of Approval**

The subject findings and conditions of approval referenced in Motion #6 include:

#### **Findings:**

**Finding #1. Pursuant to the requirements of CBMC 17.360.060 (A)(2),** the proposed amendment is in the public interest because the authorized amendment will result in a safer and more efficient navigation in the Bay and this affects the public interest in a net positive way.

**Finding #2. With consideration to Statewide Planning Goal 2 – Land Use Planning** requiring assurance of a factual basis for land use decision, the proposal is consistent with Goal 2 subject to conditions of approval that the project will meet all state and federal requirements.

**Finding #3. With consideration to Statewide Planning Goal #6 - Air, Water and Land Resources Quality;** it is reasonable to anticipate that the environmental quality standards can be met subject to securing an ODEQ Water Quality Certification Permit and a finding of no impact or mitigatable impact(s) in the Final Environmental Impact Statement.

**Finding #4. With Consideration to OAR 660-004-0020 (d)** which states that the proposed uses are to be compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts; the project will occur adjacent to the existing 52-NA designation area; however the CBEMP does not identify the marine organisms in area 52-NA as “uses.”

**Finding #5. With consideration to OAR 660-004-0022 (1)(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. The exception to Goal 16 is necessary based on Goal 9 (Economic Development) and Goal 12 (Transportation) in that the proposal will bring about economic benefits and development and the NRIs will decrease transit delays and increase navigational safety for all transiting vessels in the Bay.

**Finding #6. With consideration to OAR 660-004-002(8)(b),** Dredging to maintain adequate depth to permit continuation of the present level of navigation in the area to be dredged. The requested Goal 16 exception is necessary based on Goal 9 (Economic Development) and Goal 12 (Transportation) in that the proposal will bring about economic benefits and development and the NRIs will decrease transit delays and increase navigational safety for all transiting vessels in the Bay.

**Finding #7. With consideration to CBEMP Policy 5-E (Consistent with other requirements of state and federal law);** it is reasonable to assume the proposal can meet the requirements of state and federal law. The proposal is consistent with the requirements of Goal 16 (Estuarine resources) because it represents a balance of estuary uses, protecting economic values of the estuary while minimizing adverse impacts and the approval of the Goal 16 exception is conditioned on completion of a Final EIS and the applicant obtaining all necessary DSL and Federal Section 404 Authorizations prior to any dredging activity.

## **Conditions of Approval**

**Condition of Approval #1:** Prior to the commencement of any dredging activities, JCEP shall provide the City of Coos Bay Community Development Administrator evidence of an approved Section 401 Water Quality Certification permit and evidence that the dredging complies with FEIS requirements and all other state and federal requirements.

**Condition of Approval #2:** JCEP shall receive written authorization to perform the proposed dredging from the National Marine and Fisheries Service in accordance with NMFS agency requirements. Proof of such authorization shall be submitted to the Coos Bay Community Development Administrator prior to the commencement of dredging activities.

**Condition of Approval #3:** Prior to the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall comply 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.

**Condition of Approval #4:** 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 ODEQ, DSL and Federal Section 404 authorizations. JCEP shall provide the City with copies of these approved authorizations for the record.

**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.

**Condition of Approval #13:** Prior to the issuance of an Estuarine and Coastal Shoreline Uses and Activity Permit, JCEP shall provide the City of Coos Bay Community Development Administrator evidence of an approved Final EIS.

**Condition of Approval #14:** The 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.