

## **ORDINANCE NO. 521**

**AN ORDINANCE CHANGING THE COMPREHENSIVE PLAN DESIGNATION OF APPROXIMATELY 3.3 ACRES FROM 52-NA TO DDNC-DA; CHANGING TEXT IN THE COMPREHENSIVE PLAN TO TAKE A REASONS EXCEPTION TO STATEWIDE PLANNING GOAL 16 TO AUTHORIZE THE PROPOSED MAP AMENDMENT; AUTHORIZING AN ESTUARINE AND COASTAL SHORELINE USES AND ACTIVITIES PERMIT FOR "NEW AND MAINTENANCE DREDGING" IN THE DDNC-DA ESTUARINE ZONE; AND AUTHORIZING 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.**

**WHEREAS**, The Jordan Cove Energy Project L.P. (JCEP) submitted to the City of Coos Bay land use application 187-18-000153 for changes to the Coos Bay Comprehensive Plan and Estuarine permits; and,

**WHEREAS**, The Coos Bay Planning Commission reviewed the project application at a duly noticed public hearing on March 21, 2019, closed the public hearing, and consistent with ORS 197.763(6)(a), left the record open for a first period of time for written comments on any issue related to the project until Thursday, April 25, 2019. A second open record period was from April 26, 2019 to May 16, 2019 for public comment on issues raised during the first comment period. The applicant responded to public comments on May 23, 2019; and

**WHEREAS**, The Coos Bay Planning Commission extended their review of the project application to May 30, 2019; however, the May 30, 2019 meeting was rescheduled for Tuesday, July 23, 2019; and

**WHEREAS**, The Coos Bay Planning Commission completed their review of the project application on July 23, 2019 and recommended approval to the City Council; and

**WHEREAS**, At a duly noticed City Council public hearing on Tuesday, August 27, 2019 the Coos Bay City Council considered the Planning Commission's recommendation, all comments submitted for Planning Commission review, written comments received for Council consideration and new public testimony. The City Council closed the public hearing but consistent with ORS 197.763(6)(a), left the record open for written comments on any issue related to the project from August 27 to September 27, 2019 (first review period) , from September 28 through Thursday, October 31, 2019 for comments received in the first review period and from November 1 to November 15, 2019 for the applicant's response; and

**WHEREAS**, The City Council on August 27, 2019 determined their next date of deliberation on the project application to be Tuesday, January 21, 2020. Subsequently, the Council met on October 15, 2019 and modified the January 21 date to a January 7, 2020 date for deliberation.

**WHEREAS**, At a duly noticed public meeting, the City Council on January 7, 2020 reviewed the project application record and took action to approve the project with the findings and exhibits found on Exhibit A attached hereto.



**NOW THEREFORE**, the City Council of City of Coos Bay ordains the following:

1. The City of Coos Bay Comprehensive Plan is amended to re-designate approximately 3.3 acres from 52-NA to DDNC-DA as noted in Exhibit A and subject to the findings in Exhibit B.
2. The City of Coos Bay Comprehensive Plan text is amended to take reasons to exception to statewide planning Goal 16 to authorize the proposed map amendment as noted in Exhibit A and subject to the findings in Exhibit B.
3. Approval of an Estuarine and Coastal Shoreline Uses and Activity Permit for "New and Maintenance dredging" in the DDNC-DA Estuarine zone subject to the findings in Exhibit B and the Conditions in Exhibit C.
4. Approval of Estuarine and Coastal shoreline uses and activities permit to allow an accessory temporary dredge transport pipeline in the 52-NA, 52-CA, 54-DA and 55-CA Estuarine zones subject to the findings in Exhibit B and the Conditions in Exhibit C.

This ordinance shall take effect 30 days after enactment by the Council and signature of the Mayor.


The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 7<sup>th</sup> day of January 2020 by the following vote:

Yes: Mayor Benetti and Councilors Stephanie Kilmer, Phil Marler, and Rob Miles.


No: Councilors Lucinda DiNovo, Drew Farmer, and Carmen Matthews.

Absent: None.

Abstain: None.

  
\_\_\_\_\_  
Joe Benetti  
Mayor of the City of Coos Bay  
Coos County, Oregon

ATTEST:

  
\_\_\_\_\_  
Nichole Rutherford  
City Recorder of the City of Coos Bay  
Coos County, Oregon



## **Exhibit A**

### **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 # 27) 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).

##### **"MANAGEMENT OBJECTIVE:**

"This unit shall be regularly maintained to authorized depths as the deep-draft navigation channel. Conflicting uses and activities are not permitted."

\* \* \* \*

AND

AMENDMENT TO COOS BAY COMPREHENSIVE PLAN 2000, VOLUME III, PART 3, TO ADD EXCEPTION #27 - AQUATIC UNIT 52-NA/DEVELOPMENT UNIT DDNC-DA - NAVIGATION RELIABILITY IMPROVEMENTS

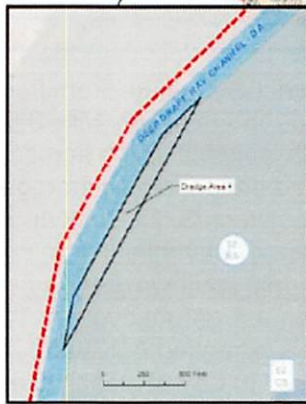


# COOS BAY ESTUARY MANAGEMENT PLAN

## LEGEND

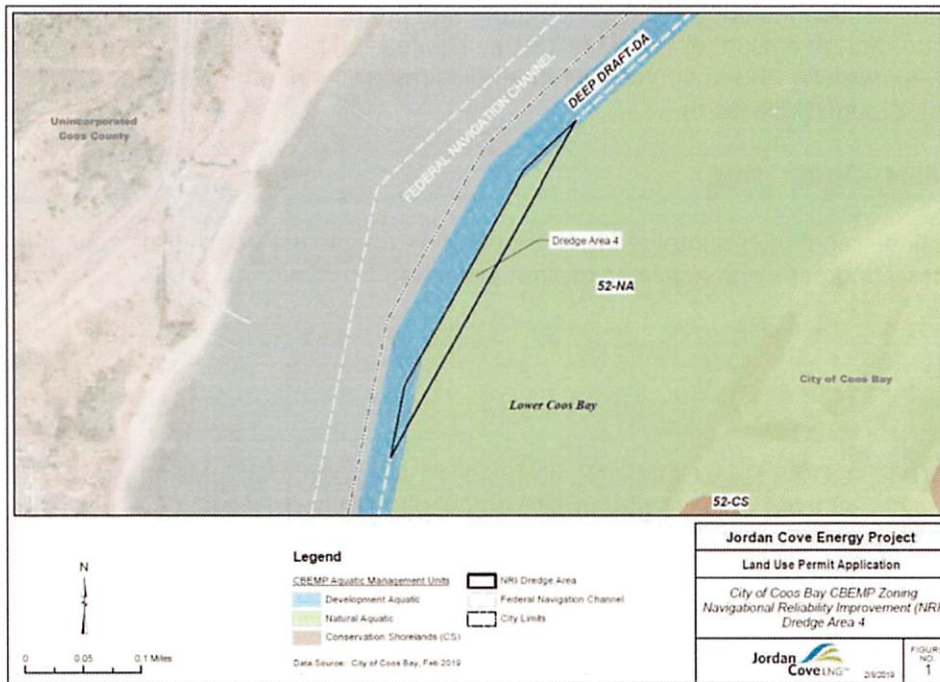
### COOS BAY ESTUARY MANAGEMENT PLAN

- SHORELAND OR UPLAND UNIT DESIGNATION
- AQUATIC UNIT DESIGNATION
- CITY LIMITS



Disclaimer:  
This document is produced using a Geographic Information System (GIS).  
The data contained herein is intended to be a graphical representation only  
and is to be used as an office source or map interpretation tool.  
The City of Coos Bay provides this data in good faith and makes no warranty,  
guarantee or representation of any kind after acquisition or display, as  
to the content, accuracy, completeness or validity of this data.

REVISED 06/2012



## Legend

### CBEMP Aquatic Management Units

- Development Aquatic
- Natural Aquatic
- Conservation Shorelands (CS)

- NRI Dredge Area
- Federal Navigation Channel
- City Limits

Data Source: City of Coos Bay, Feb 2019

## Jordan Cove Energy Project

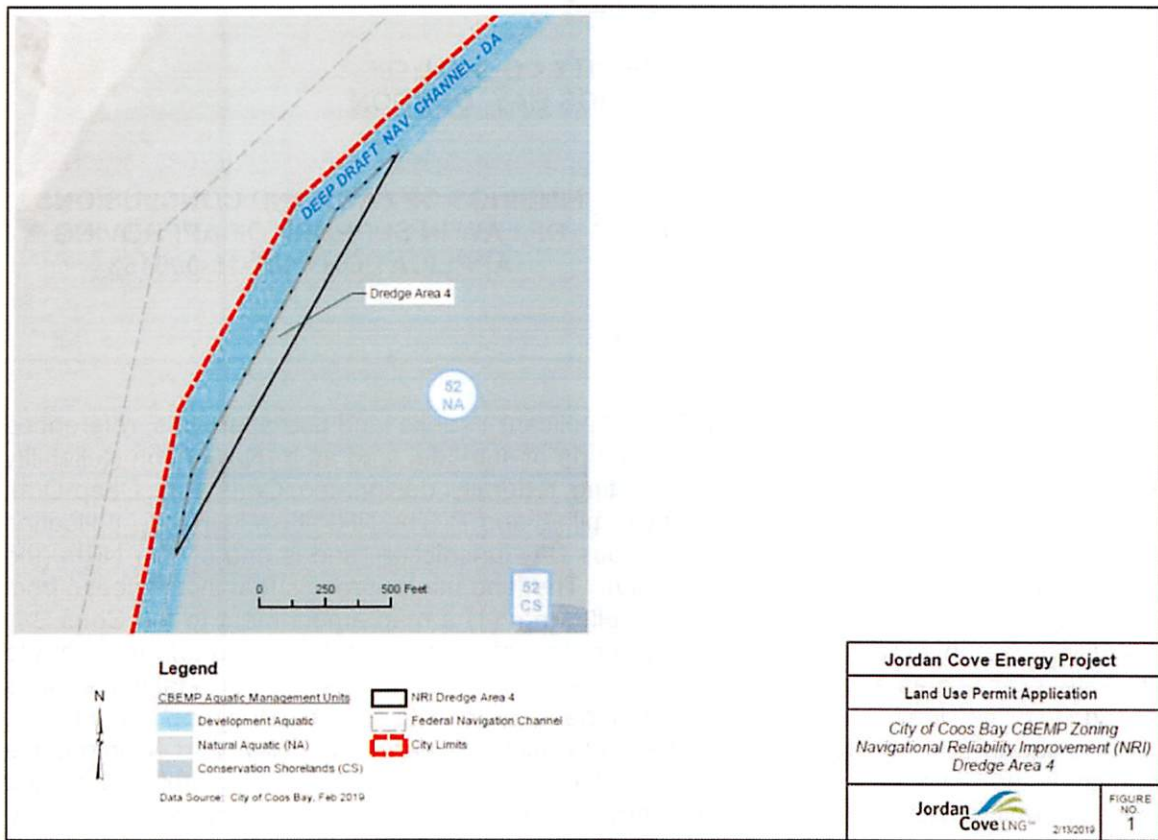
### Land Use Permit Application

City of Coos Bay CBEMP Zoning  
Navigational Reliability Improvement (NRI)  
Dredge Area 4

Jordan Cove LNG™ 20/2019

FIGURE  
NO. 1







## **Exhibit B**

### **BEFORE THE CITY COUNCIL OF THE CITY OF COOS BAY, OREGON**

**In the Matter of LAND USE  
APPLICATION #187-18-000153 – Jordan  
Cove Energy Project - Navigation  
Reliability Improvement**

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW IN SUPPORT OF APPROVING  
APPLICATION #187-18-000153**

#### **I. INTRODUCTION**

Jordan Cove Energy Project L.P. ("JCEP" or "Applicant") seeks land use approvals, referenced below, to allow dredging of a 3.3 acre narrow strip of sub-tidal land as a "Navigation Reliability Improvement" or "NRI" adjacent to the existing federally designated Coos Bay Deep-Draft Navigation Channel ("Channel") between river mile 6 and 7. The NRI at issue in the Application (aka "NRI #4") is located within the City of Coos Bay jurisdiction, and is one of four NRIs (the other three being located in Coos Bay County). The land use approvals that JCEP seeks from the City of Coos Bay for NRI #4 include the following: (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 (collectively, "Application").

The Coos Bay 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 in Coos Bay. 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.



Approving the Application will improve navigability for vessels transiting Coos Bay by dredging one of the turning areas (NRI #4) of the Channel that has historically limited vessel transit during various weather and environmental conditions. This will improve the efficiency of the level of vessel transit for all current and future vessels using the Channel and the Oregon International Port of Coos Bay ("Port"). The proposed dredging and maintenance dredging (every three to five years) will occur in a narrow strip located immediately adjacent to the existing Channel, which the U.S. Army Corps of Engineers has been routinely dredging for the past 100 years. The area of the proposed activity is shown in JCEP's Application, Exhibit 1.

While many public comments focused on other aspects of the Jordan Cove LNG Project ("Project"), the limited issue before the City Council involves compliance with the applicable approval criteria for rezoning and proposed dredging related to NRI #4 and related dredge lines. Accordingly, the assessment of information, potential impacts (specific or cumulative), and mitigation must similarly focus on activities only with regard to NRI #4 and related dredge lines.

## **II. PROCEDURAL HISTORY**

The Application has been through an extensive and thorough public review process, including the following key procedural milestones:

- November 21, 2018 - City receives Land Use Application from Perkins Coie, the applicant's representative. Following submittal, City of Coos Bay staff contract with LCOG to help process the Application. A 30-day completeness review of the Application ensues.
- December 20, 2018 – LCOG issues a "letter of incompleteness" requesting clarification and additional information with respect to their submittal.
- February 4, 2019 – Applicant's representative submits the additional information and clarification on items requested. Staff reviewed the information.
- February 12, 2019 – LCOG issues a "letter of completeness" for Land Use Application #187-18-000153.
- February 12, 2019 - The City provided a notice of the Application to the Department of Land Conservation and Development.
- March 1, 2019 - The City mailed notice of the Planning Commission initial evidentiary hearing to affected landowners.
- March 21, 2019 – First evidentiary public hearing held in front of City of Coos Bay Planning Commission. The public hearing was closed. A request for the record to be left open was requested and granted.
- March 22 – April 25, 2019 - First open record period.
- April 26 – May 16, 2019 – Second record period limited to issues raised during the first open record period.
- May 23, 2019 – Applicant files its final written arguments in support of the Application.



- July 23, 2019 – City of Coos Bay Planning Commission meeting to review testimony received and deliberate on the matter. Staff present a revised staff report. At the conclusion of its deliberations, the Planning Commission approved a series of motions recommending that the City Council approve the Application, subject to staff's recommended conditions of approval.
- August 7, 2019 - The City mailed notice of the City Council initial evidentiary hearing to affected landowners.
- August 27, 2019 - City of Coos Bay City Council public hearing for the Application. The City Council closed the hearing but left the record open to accept additional written testimony.
- August 27 - September 27, 2019 - First open record period.
- September 28 - October 31, 2019 - Second open record period.
- November 15, 2019 - Applicant files its final written arguments in support of the Application.
- January 7, 2020 - Coos Bay City Council meeting to review testimony received and deliberate on the matter. Staff present a revised staff report. At the conclusion of its deliberations, the City Council voted to the Application, subject to minor revisions to staff's recommended conditions of approval.

**1. Applicant has Followed the Type III Procedure pursuant to CBDC 17.130.100.**

**FINDINGS:** Pursuant to Coos Bay Development Code (CBDC) 17.360.020, initiation of amendments of the comprehensive plan text or map, zoning map, or this title may be initiated by the following:

- (1) A Type III application, CBDC 17.130.100, Type III procedure, by one or more owners of the property proposed to be changed or reclassified consistent with the adopted comprehensive plan; or
- (2) A Type IV legislative process, CBDC 17.130.110, Type IV procedure, by motion of the planning commission and adoption by the city council.

The underlying landowner of the NRI #4 property, the Oregon Department of State Lands ("DSL"), authorized submittal of the Application. See JCEP Application, Exhibit 8. CBDC 17.130.100 ("Type III procedure") provides that a Type III application "will be considered at one or more public hearings before the city's planning commission." A Type III application does not as a matter of course go before the City Council. See CBDC 17.130.130(5)(c) (providing for City Council consideration of a Type III application but only in event of appeal). However, state law requires the local governing body to take final action to approve any post-acknowledgment comprehensive plan amendment before it can become final. *Housing Land Advocates v. City of Happy Valley*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2016-031, May 23, 2016). The Application includes a request for an exception to Goal 16, which is a request for a plan text amendment. Therefore, pursuant to *Housing Land Advocates*, the City scheduled the Application for final action by the City Council after the Planning Commission's decision to recommend approval of the Application.

Based upon the procedural history (summarized in Section II, above), the City Council finds that the Application has correctly followed all requirements of the Type III procedure.



### **III. SUBSTANTIVE FINDINGS RE: APPROVAL CRITERIA**

#### **A. Post-Acknowledgement Plan Amendment: Rezone**

##### **1. Comprehensive Plan Amendment under CBDC.**

**FINDING:** JCEP is seeking a Post-Acknowledgement Plan Amendment ("PAPA") to amend the City of Coos Bay Comprehensive Plan ("CBCP") and zone map for NRI #4 from current 52-NA zoning to DDNC-DA. The CBDC, Chapter 17, establishes the process and approval criteria for reviewing and approving map and text amendments to the Coos Bay Estuary Management Plan ("CBEMP"). The Application complies with all applicable approval criteria, as follows.

#### **A. Comprehensive Plan Map Amendment**

##### **1. CBDC - 17.360.010<sup>1</sup> Comprehensive plan amendment.**

**(1) The boundaries of the comprehensive plan map designations and the comprehensive plan text may be amended as provided in CBDC 17.360.020.**

**(2) 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.**

##### **1. Cumulative Effects have been Considered Pursuant to CBDC 17.360.010(2).**

**FINDING:** The Applicant submitted information into the record that addresses the potential cumulative effect on all of the listed areas in CBDC 17.360.010(2) including on other zoning districts and uses within the general area;<sup>2</sup> sufficiency of capital facilities services;<sup>3</sup>

---

<sup>1</sup> CBDC Chapter 17.215 (as cited in the JCEP Application) was re-codified by Ordinance of the City Council to Chapter 17.360.

<sup>2</sup> JCEP provided evidence that potential effects from dredging NRI #4 on adjacent uses raised by other public comments (including, e.g., recreation, fishing, clamming, boating, paddling) would not be significant based on the small area of NRI #4 (compared to the 20 square miles of Coos Bay available for other activities), the limited duration of the dredging, and evidence that NRI #4 area is not used as a significant eelgrass, clamming, crabbing or fishing area. See **Comment 39**, **Exhibit HH** (*Technical Memorandum, Recreation, Baseline Information, Potential Impacts and Mitigation*); and **Exhibit AA** (2018 *Eelgrass and Bathymetry Surveys Coos Bay*); **Exhibit EE** (*Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation*); **Exhibit FF** (*Technical Memorandum, Fish Baseline Information, Potential Impacts and Mitigation*); **Exhibit GG** (*Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation*), **Exhibit II** (*Technical Memorandum, Marine Mammals Baseline Information, Potential Impacts and Mitigation*); **Exhibit JJ** (*Technical Memorandum, Birds (e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl) Baseline Information, Potential Impacts and Mitigation*).

<sup>3</sup> JCEP Final Written Argument (Planning Commission) noting there is no evidence in the record that the activities under the Application will have any effect on the City's budgeting, funding or planning for capital facilities services.



transportation;<sup>4</sup> and zone and location compatibility.<sup>5</sup> Various opponents expressed concerns about potential cumulative effects of the Application, many of which addressed components of the JCEP Project outside the immediate area of NRI #4. Pursuant to CBDC 17.36.010(2), the City must only “consider” the cumulative effects of the proposal under review; i.e., the activities subject to the comprehensive plan map amendment.

By conducting the hearing, taking and reviewing public comment on the issue of “cumulative effects,” and by the Planning Commission issuing a recommendation, the City Council finds that it has appropriately considered the cumulative effects in compliance with CBDC 17.36.010(2).

#### **CBDC - 17.360.060 Approval Criteria**

1) For a Type III or Type IV review, the city council shall approve the proposal upon findings that:

(a) 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;

FINDING: The City Council finds that the Application to change the CBCP designation of NRI #4 from 52-NA to DDNC-DA is consistent with the applicable policies of the Coos Bay Comprehensive Plan, and the Application is consistent with the specific policies, as addressed below.

3. **The Application is Consistent with the Approval Criteria in 17.360.060(1)(a).**  
**CBCP Policies; 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**

---

<sup>4</sup> See **Comment 39, Exhibit W** (US Army Corps of Engineers Environmental Assessment, confirming historic use of Channel for navigation and historic annual maintenance dredging); **Comment 32** (Letter from Capt. George Wales, Coos Bay Pilots Association - confirming that the average size of vessels transiting Coos Bay has increased over the past 20 years to present and NRI #4 will increase transportation safely and efficiently for vessels under a wider range of environmental and weather conditions).

<sup>5</sup> JCEP provided various evidence confirming that the 3.3-acre area of NRI #4 is deep sub-tidal habitat which has not been identified as having any significant fish, crustacean, shellfish, or eelgrass habitat. See **Comment 39, Exhibit AA** (2018 Eelgrass and Bathymetry Surveys Coos Bay); **Exhibit EE** (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation); **Exhibit FF** (Technical Memorandum, Fish Baseline Information, Potential Impacts and Mitigation); **Exhibit GG** (Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation); **Exhibit PP** (Response to Removal-Fill Comments). The record further demonstrates that no significant impacts on marine mammals or birds are anticipated based on the temporary duration of dredging, the limited area involved, and lack of proximity of NRI #4 to significant marine mammal or bird nesting or critical feeding areas. See **Comment 39, Exhibit II** (Technical Memorandum, Marine Mammals Baseline Information, Potential Impacts and Mitigation); **Exhibit JJ** (Technical Memorandum, Birds (e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl) Baseline Information, Potential Impacts and Mitigation). Further, the entire western side of NRI #4 has been annually dredged for decades by the US Army Corps of Engineers, and so the proposed dredging at NRI #4 is compatible with the historic use of the area for navigation dredging. See **Comment 39, Exhibit W**. Nonetheless, the City may also consider the mitigation which will be implemented to minimize the temporary and localized cumulative effects of dredging at NRI #4 and the ability of this habitat to naturally recover between dredging events. See **Comment 39, Exhibit AA** (Technical Memorandum, Dredging Locations, Methods, Equipment, Frequency, Volumes, Dredge Spoil Deposition, Potential Impacts and Mitigation); **Exhibit EE** (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation); **Exhibit PP** (Response to Removal-Fill Comments).



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.

**A. The Application Complies with Policy NRH.8.**

**FINDING:** The City Council finds that policy NRH.8 concerns preservation and protection of "riparian vegetation" including during development, and the record shows no riparian vegetation will be impacted within the City of Coos Bay with regard to the Application. The City Council notes that the NRI #4 temporary dredge line will come in proximity to shoreline habitat (and potentially riparian vegetation) at two upland sites located in the City of North Bend (referred to as APCO 1 and APCO 2). However, because the APCO 1 and 2 sites are located outside the City of Coos Bay jurisdiction, any such impacts are not subject to review under the Application. Further, NRH.8 does not affirmatively obligate Applicant to take any action, but rather obligates the City to "encourage" preservation of riparian vegetation "by placing buffer strips along waterways, along designated HUD floodways, with the exception of navigable waterways." Because there are no applicable actions required, the Application complies with Strategy NRH.8.

**Policy NRH.9 - Coos Bay shall cooperate with local, state, and federal agencies in conserving and protecting fish and wildlife habitat, open spaces, and aesthetic and scenic values encompassed by areas enclosed by the Coos Bay-North Bend Water Board, Empire Lakes, and Mingus Park. This strategy is not intended to prohibit development in these areas, but rather to ensure that if development occurs it takes into consideration the ability of the land to support such development, i.e., soils, topography, habitat, natural processes, etc. This strategy recognizes that these areas are particularly sensitive and valuable resources.**

**B. Policy NRH.9 does not Apply to the Application.**

**FINDING:** The City Council finds that Policy NRH.9 addresses City cooperation with other local, state and federal agencies and creates no affirmative obligations for an applicant and, therefore, the Application complies with the policy.

**7.5 ECONOMIC DEVELOPMENT**

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

**C. The Application Complies with Goal 1, Policy 1.5.**

**FINDING:** The Application requests authorizations to create a navigation reliability improvement for the Channel which will enhance navigation of larger vessels by size and weight (both of which have both increased over the past 20 years) and improve navigation of the Channel which is currently limited during certain weather windows based on the narrow Channel at the proposed NRI #4 location. Although the Port is located outside the City limits, 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 throughout Coos Bay and southwest Oregon.



While several public comments expressed doubt about whether NRI #4 would provide economic benefits (and/or questioned whether NRI #4, alone, would provide the improved vessel transit and corresponding economic growth), these comments did not provide any substantive evidence in support of the positions. Correspondingly, there is persuasive evidence in the record that facilitating NRI #4 will support community businesses and regional partners and encourage economic growth. See Comment 32 - Captain George Wales, Coos Bay Pilots Association; Comment 35 - Jon Barton; Comment 36 - Randy Hoffine, Pacific Properties; and Comments 37 and 38 - Dale Sause and Cory Sause, Sause Bros. Inc.; Application, Exhibit 3 (letters of support from Roseburg Forest Products and Coos Bay Pilots Association); Comment 39, Exhibit CC.9(b) (*Public/Economic Benefit*); and Exhibits G.1, G.2 and G.3 (*EcoNorthwest Economic Analysis Reports*); Exhibit OO (*Public Need and Social, Economic, and Other Public Benefits*). The City Council acknowledges, however, that the projected economic benefits will not likely accrue unless all four NRIs are constructed and, accordingly, finds that the Application complies with Goal 1, Policy 1.5 subject to Condition of Approval #15 (requiring the other three Coos County NRIs to also be authorized prior to dredging of NRI #4).

**Goal 6, Policy 6.1, 6.2 Maximize the potential uses and benefits the waterfront and deepwater 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.**

**D. The Application Complies with Goal 6, Policy 6.1 and 6.2.**

FINDING: The Application meets the central purpose of Goal 6, Policy 6.1 and 6.2 (maximizing the potential uses and benefits of the International Port of Coos Bay) by providing more efficient transit for cargo vessels. Construction of NRI #4 will widen a currently constrictive turning area, thereby facilitating vessel navigation during a wider weather-window. For current shipping, this will reduce off-shore idling time, enhance maneuverability of vessels, and also promote increased future cargo traffic into the International Port of Coos Bay. See Comment 32 - Captain George Wales, Coos Bay Pilots Association; Comment 35 - Jon Barton; Comment 36 - Randy Hoffine, Pacific Properties; and Comments 37 and 38 - Dale Sause and Cory Sause, Sause Bros. Inc.; Application, Exhibit 3 (letters of support from Roseburg Forest Products and Coos Bay Pilots Association). The City Council finds that the Application complies with Goal 6, Policy 6.1 and 6.2.

**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 this Plan.**

**E. The Application Complies with the Policies in CBCP, LU.4.**

FINDING: The Applicant asserts that the Application does not involve a "major revision" to the CBCP under LU.4 as there will be no widespread or immediate impact beyond the area of NRI #4; and the text amendment only directly affects the NRI #4 site, which is approximately 3.3 acres in size and is located at an isolated, undeveloped strip of submerged land adjacent to the Channel. In their submitted testimony, the OSCC challenges the applicant's claim that its proposal is not a "major revision" to the CBCP and suggests that the request to change a zone from a Natural Aquatic Management unit is meant to be managed to preserve natural resources



to a unit that allows more intensive uses, constitutes a major change. In their final written arguments dated May 23, the applicant notes that the proposal only impacts a 3.3-acresite that is located at an isolated, undeveloped strip of submerged land adjacent to the Channel. The Applicant submitted numerous technical memos (Comment 39, Exhibits AA, EE, FF, II, JJ, HH, GG, and others) asserting that the area of NRI #4 is deep subtidal habitat (with no identified significant eelgrass, crustacean or shellfish populations) and will remain deep subtidal habitat after dredging activities. As confirmed by these technical memos, the effect of dredging will be limited in duration and limited in impact to the immediate NRI #4 area. Further, the Applicant asserts that NRI #4 is already acclimated to annual navigation and maintenance dredging by the US Army Corps of Engineers based on the location of NRI #4 immediately adjacent to the federal navigation Channel. See Comment 39, Exhibit W. Based on the evidence that impacts from dredging will be limited to the narrow sub-tidal area at NRI #4, the City Council finds that the Application does not seek a "major revision" under CBCP, Policy LU.4.

**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.**

**F. The Application Complies with the Policies in CBCP, LU.5.**

As noted above for LU.4, the Application request approval to make navigational improvements to an isolated, undeveloped strip of submerged land that is approximately 3.3 acres in size. The OSCC contends in written testimony that Applicant has not provided evidence sufficient to state "approval of the Application will not, from a land development/conservation standpoint, have a widespread, immediate, or significant impact beyond the NRI site, and it will not require additional changes to the Plan."

The OSCC and several individual comments assert (without specific factual or scientific evidence) that there will be significant impacts beyond the immediate area of NRI #4 including degradation and loss of eelgrass, increased water temperature, turbidity, noise pollution, loss of Dungeness crab, and impacts to several species Salmon populations. The Applicant, correspondingly, asserts that the need and justification for the Application has been demonstrated in the record including evidence that the Application will improve navigation and provide economic opportunities for enhanced vessel traffic in Coos Bay. See Comment 32 - Captain George Wales, Coos Bay Pilots Association; Comment 35 - Jon Barton; Comment 36 - Randy Hoffine, Pacific Properties; and Comments 37 and 38 - Dale Sause and Cory Sause, Sause Bros. Inc., JCEP Application, Exhibit 3 (letters of support from Roseburg Forest Products and Coos Bay Pilots Association); Comment 39, Exhibit CC.9(b) (Public/Economic Benefit); and Exhibits G.1, G.2 and G.3 (EcoNorthwest Economic Analysis Reports).

From a land development perspective, the Applicant's scientific experts have provided a range of Technical Memoranda confirming that the Application will not have a widespread or significant impact beyond the NRI #4 area which studies/surveys show is deep subtidal habitat (with no identified significant eelgrass, crustacean or shellfish populations) and will remain deep subtidal habitat after the dredging activity is conducted. See Comment 39, Exhibit AA (2018 Eelgrass and Bathymetry Surveys Coos Bay); Exhibit EE (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation); Exhibit FF (Technical Memorandum, Fish Baseline Information, Potential Impacts and Mitigation); Exhibit GG (Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation). Impacts from dredging will be localized and temporary. See Comment 39, Exhibit BB (Dredging



*Pollution Control Plan*); Exhibit D (Dredge Materials Management Plan @ 3391 through 3625).

Based on the evidence the City Council finds that the Application requests “minor changes” to the CBCP under LU.5.

**LU.7 Coos Bay shall anticipate that conflicts may arise between the various plan implementation strategies contained in this 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.**

**G. The Application Complies with the Policies in CBCP, LU.7.**

**FINDING:** Applicant’s Final Written Argument dated May 23 reiterates that the Application will not cause any conflicts between various CBCP implementation strategies, and points to evidence currently in the record which addresses and finds consistent with all applicable policies of the CBCP, and the Goal 16 exception. Neither opponents nor City Staff identified any specific and objective conflicts between implementation strategies. Accordingly, the City Council find that the Application complies with the policies of the CBCP in LU.7.

**CBMC 17.360.060(1)(b).** The proposed amendment is in the public interest; and

**4. The Application is In the Public Interest under 17.360.060(1)(b).**

**FINDING:** The Applicant provides evidence that dredging NRI #4 is in the public interest because it will result in increased navigational safety and efficiency for large vessels transiting the Channel, which will further allow increased economic input and output to flow through the Channel and Port, which, in turn, will be an economic benefit to the City and the region. Although opponents have generally asserted that the benefits of the NRI #4 accrues only to JCEP, the record provides multiple economic studies and comments supporting the prospect that there will be transportation, safety and economic benefits of improved navigation at NRI #4 for all vessels navigating the Channel with and without the future development of the JCEP project. See **Comment 32 - Captain George Wales, Coos Bay Pilots Association**; **Comment 35 - Jon Barton**; **Comment 36 - Randy Hoffine, Pacific Properties**; and **Comments 37 and 38 - Dale Sause and Cory Sause, Sause Bros. Inc.** Application, **Exhibit 3** (letters of support from *Roseburg Forest Products* and *Coos Bay Pilots Association*); **Comment 39, Exhibit CC.9(b) (Public/Economic Benefit)**; and **Exhibits G.1, G.2 and G.3 (EcoNorthwest Economic Analysis Reports)**. Opponents also suggest that dredging NRI #4 will cause widespread harm to the Coos Bay Estuary and negatively impact major sectors of the regional economy, including commercial and recreational fishing and crabbing and, accordingly, contend that the proposal is not in the public interest.

Opponents provide no site-specific evidence of eelgrass, crustacean, fish or other marine species at the NRI #4 area, nor do any opponents explain why considerably more extensive annual maintenance dredging by the US Army Corps of Engineers in the federal navigation Channel (located at effectively the same location as NRI #4) has not caused widespread impacts to Coos Bay. Correspondingly, Applicant has submitted numerous Technical Memoranda and evidence that the Application will not have significant impacts beyond the NRI #4 area and that this area does not support significant eelgrass, crustacean, fish, shellfish or other populations that will be seriously impacted. See **Comment 39, Exhibit AA; Exhibit EE; Exhibit FF; Exhibit**



GG; Exhibit BB; Exhibit D.

After weighing the evidence, the City Council finds that the Application on balance provides a net public interest benefit and meets the above criterion.

**CBMC 17.360.060(1)(c).** 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).

**5. The Application Meet the Approval Criteria in 17.360.060(1)(c).**

Finding: There is no evidence in the record indicating that approving the Application will result in a decrease in the level-of-service for any identified capital facilities and/or services in the Coos Bay capital improvement plan. Therefore, the City Council finds that the Application complies with this criterion.

**2. Statewide Planning Goals**

Post-acknowledgment plan amendments must be in compliance with the Goals. ORS 197.175(2)(a); *1000 Friends of Oregon v. LCDC*, 301 Or 447, 724 P2d 268 (1986). The rezoning is a post-acknowledgment plan amendment. Therefore, the City's decision must explain why the rezoning is in compliance with the Goals. Alternatively, if a Goal is not applicable, the City must adopt findings explaining why that Goal is not applicable. *Davenport v. City of Tigard*, 22 Or LUBA 577, 586 (1992). The responses below provide findings explaining why the Application is in compliance with the Goals, or alternatively, why the Goals are not applicable to the 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.**

FINDING: Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in all phases of the planning process. The City has adopted such a program for PAPAs, and it is incorporated within the CBDC and has been acknowledged by LCDC. Among other things, the City's program requires notice to citizens, agencies, neighbors, and other interested parties followed by multiple public hearings before the City makes a decision on the Application. Upon compliance with the City's notice and hearing procedures, the City complies with Goal 1. See *Wade v. Lane County*, 20 Or LUBA 369, 376 (1990).

As cited previously, The City scheduled this Application for City Council review and final action following the Planning Commission's review and recommendation process in accordance with the City's Type III process in CBMC17.130.100 (with the addition that the City provided a hearing and final decision on the Application by the City Council). The City provided opportunity for citizen involvement in all phases of the Application. Consistent with ORS 197.763, at the close of the public hearing before Planning Commission on March 21, a request to leave the record open for the submittal of additional testimony was granted by the Planning Commission for an open record period up to April 25, 2019. At the conclusion of the first open record period, a second open record period commenced, limited to responding to issues raised during the first open record period. The second open record period closed on May 16, 2019. At the close of



the first open record period the applicant submitted an approximately 17,000-page document with the intention of including comprehensive evidence into the record. Opponents also submitted thousands of pages of written comments and evidence. To allow the public time to review the extensive record, the City postponed the May 30 Planning Commission meeting by approximately 60 days and pushed back the City Council Hearing by approximately 90 days. Appropriate notice of these changes was sent and published. The City Council finds that this additional time was sufficient to allow hearing participants time to access, review, and respond to issues raised during earlier open record periods. Further, even to the extent that parties did not raise issues at the Planning Commission, the delay in the proceedings allowed them time to formulate their arguments and responses for consideration by the City Council, which accepted new argument and evidence. Upon request of the Applicant, the City Council agreed to move its decision date up two weeks to January 7, 2020. Although some commenters opposed this decision asserting potential violations of Goal 1, the City Council finds that this schedule adjustment only affected the timing of the City Council's review, did not limit or shorten the opportunity for public testimony, did not limit or shorten the opportunities for the public to submit written comments via the first or second open record periods, and did not prejudice the City Council's ability to fully review the record and render a decision in accordance with the City's Type III process.

The City Council finds that the process for the Application complies with Goal 1.

## **Goal 2: Land Use Planning.**

**To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

**FINDING:** Goal 2 requires the City establish a land use planning process and policy framework and an adequate factual base for all land use decisions. The provisions of the CBDC and the ORS establish the land use planning process and policy framework for considering the Application. As outlined in this *Findings and Order of City Council*, the City Council finds that the Application satisfies all applicable approval criteria. As such, there is an adequate factual base for the City's decision under Goal 2. Goal 2 also requires that the City coordinate its review and decision on the Application with appropriate government agencies. In its review of the Application, the City provided referral notice to the general public and potentially affected agencies with an opportunity to comment on the proposal including notices to: 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 the Coquille Tribe. Comments were received suggesting that the Application might violate Goal 2 by failing to demonstrate concurrent (or prior) approval of other state, federal and local authorizations (including the DEQ 401 Water Quality 401 Certification, 404 Permit, DSL removal-fill application, and the three related NRIs in Coos County). However, prior approval of all related land use authorizations is not required to comply with Goal 2.

The Application satisfies Goal 2 by providing the land use planning and policy process (outlined above). The City Council has further imposed Condition of Approval #1 (requiring evidence of the DEQ 401 Water Quality Certification) and Condition of Approval #4 (requiring all necessary state and federal authorizations) prior to commencement of dredging activities. Accordingly, City Council finds that the Application satisfies Goal 2.



### **Goal 3: Agricultural Lands.**

**To maintain and preserve agricultural lands.**

FINDING: Goal 3 concerns agricultural lands. The NRI #4 site does not include any agricultural lands, and approval of the amendments will not impact any agricultural lands. Therefore, the City Council finds that Goal 3 is not applicable to the Application.

### **Goal 4: Forest Lands.**

**To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

FINDING: Goal 4 concerns forest lands. The NRI #4 site does not include any forest lands, and approval of the amendments will not impact any forest lands. Therefore, the City Council finds that Goal 4 is not applicable to the Application.

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

**To protect natural resources and conserve scenic and historic areas and open spaces.**

FINDING: Goal 5 protects certain types of inventoried resources. The NRI #4 site does not include any inventoried Goal 5 resources, and approval of the Application will not impact any Goal 5 inventoried resources. Therefore, the City Council finds that Goal 5 is not applicable to the Application.

### **Goal 6: Air, Water and Land Resources Quality.**

**To maintain and improve the quality of the air, water and land resources of the state.**

FINDING: In a post-acknowledgment plan amendment proceeding, in order to satisfy Goal 6, the City is only required to find that it is reasonable to expect that federal and state environmental standards will be met in the future when permits for the dredging are sought. *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016). The City should find that it is reasonable to expect that JCEP's proposed dredging will satisfy federal and state environmental standards. JCEP has applied for state and federal approval of dredging activities at the NRI #4 site, and there is no indication that Applicant is precluded as a matter of law from obtaining approval of the Application. Further, 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. To further ensure compliance with Goal 6, the City Council has expressly conditioned approval of the Application on receiving evidence of DEQ 401 Water Quality Certification and FERC Certificate/NEPA (Condition of Approval #1) USACE 404/AO Authoritarian (Condition of Approval #2), and evidence of an approved Final Environmental Impact Statement (Condition of Approval #13).

For the above reasons, the Application complies with Goal 6.



## **Goal 7: Areas Subject to Natural Hazards.**

### **To protect people and property from natural hazards.**

FINDING: Goal 7 requires local governments to identify and plan for natural hazard areas and coordinate their natural hazard plans and programs with state agencies. Several opponents made comments that NRI #4 might enhance natural hazards such as flooding or tsunamis but provided no technical or expert support for this proposition. Applicant, correspondingly, provided an expert Technical Memorandum providing evidence that NRI #4 would not cause any increased risk to people and property from natural hazards. See Comment 39, Exhibit KK (Technical Memorandum, Natural Hazards (Tsunami, Earthquake, Flooding, Storm Surge) Baseline Information, Potential Impacts and Mitigation: Navigation Reliability Improvements; with regard to the City of Coos Bay NRI Applications). The City Council finds that the Application complies with Goal 7 based on the evidence in the record.

## **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.**

FINDING: Applicant asserts that Goal 8 does not apply to the Application because the area of NRI #4 does not involve recreation or inventoried recreation areas, facilities, or opportunities. Several public comments assert that the dredging work at NRI #4 will significantly impact recreational activities in Coos Bay. The Applicant provided a summary of the recreational activities that take place in the Coos Bay Estuary and noted that all three boat ramps that provide access to the estuary will remain open during the proposed dredging activities and would provide notification to the boating community via a local notice to mariners provided via the United States Coast Guard. See JCEP Application, Attachment A, Exhibit 5 (Page 10).

OSCC submitted comments calling out the importance of the Coos Bay Estuary in the area where NRI #4 NRI is proposed as being of critical importance to the recreational needs of the citizens and visitors to Coos Bay and that recreational boating and other outdoor activities would likely suffer significant impacts as a result of the construction and ongoing maintenance dredging.

The Applicant's report (referenced above) addresses methods to minimize impacts on recreational uses in the Estuary. In its Final Written Argument to the Planning Commission, Applicant further submitted Comment 39, Exhibit HH which cites multiple documents and studies in the record where JCEP has considered and addressed potential recreational impacts. The Applicant also provided evidence in the form of Technical Memoranda (see Comment 39, Exhibit EE and Exhibit FF) which confirm that dredging NRI #4 will not interfere with recreational crustacean/shellfish gathering and fishing. These reports further establish that while studies within the Channel are limited, the March 2019 Draft Environmental Impact Statement (DEIS) found that none of the NRI sites are located in known clamming or crabbing areas, or shrimp or oyster habitat.

The Applicant also provided technical review of Dr. Yamada's study "Potential Impact of Jordan Cove LNG Terminal Construction on the Nursery Habitat of Dungeness Crab," noting that the NRIs are not eelgrass habitat and so dredging these areas would not cause the impacts asserted by Dr. Yamada. Further, Applicants experts noted that the Chang and Levings (1978) study (relied upon by Dr. Yamada to form her conclusion that dredging causes mortality in Dungeness



crab) is not relevant to the Application as Chang and Levings examined potential effects of burial of crabs from open water dumping of dredge spoils; and JCEP plans to dispose of dredged materials from NRI #4 at an upland site (the APCO site) located in the City of North Bend.

Based on the evidence in the record, the City Council finds that the Application complies 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.**

FINDING: Applicant has provided evidence that the purpose of the Application is to complete NRI #4 which, in turn, will facilitate a broader operational window and increase safety and efficiency of vessel transit in the Channel, which will result in increased economic opportunities for the City and the region by making the Channel more efficient for vessel traffic that will bring more cargo calls (and related revenue) to the International Port of Coos Bay and the region. See Comment 32 - Captain George Wales, Coos Bay Pilots Association; Comment 35 - Jon Barton; Comment 36 - Randy Hoffine, Pacific Properties; and Comments 37 and 38 - Dale Sause and Cory Sause, Sause Bros. Inc.; Application, Exhibit 3 (letters of support from Roseburg Forest Products and Coos Bay Pilots Association); Comment 39, Exhibit CC.9(b) (*Public/Economic Benefit*); and Exhibits G.1, G.2 and G.3 (*EcoNorthwest Economic Analysis Reports*); Exhibit OO (*Public Need and Social, Economic, and Other Public Benefits*).

While several commenters asserted that the increased navigation improvement would not bring economic benefits, these comments were not supported by substantial evidence in the record. Accordingly, the City Council finds that the Application complies with Goal 9.

#### **Goal 10: Housing.**

**To provide for the housing needs of the citizens of the state.**

FINDING: The City Council finds that Goal 10 does not apply to the Application because the Application does not involve or affect housing needs of the citizens of the state.

#### **Goal 11: Public Facilities and Services.**

**To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

FINDING: The City Council finds that Goal 11 does not apply to the Application because the Application does not involve or affect public facilities and services as a framework for development.

#### **Goal 12: Transportation.**

**To provide and encourage a safe, convenient and economic transportation system.**

FINDING: Applicant notes that Goal 12 directs local governments to plan transportation systems that consider all modes of transportation, including water, that facilitate the flow of goods and services in an economic manner. The evidence establishes that the Application furthers these



goals by supporting safer and more efficient use of the Channel for water transportation via improved vessel transit at NRI #4. See **Comment 32** - Captain George Wales, Coos Bay Pilots Association; **Comment 35** - Jon Barton; **Comment 36** - Randy Hoffine, Pacific Properties; and **Comments 37 and 38** - Dale Sause and Cory Sause, Sause Bros. Inc.; Application, **Exhibit 3** (letters of support from Roseburg Forest Products and Coos Bay Pilots Association); **Comment 39**, **Exhibit CC.9(b)** (*Public/Economic Benefit*); and **Exhibits G.1, G.2 and G.3** (*EcoNorthwest Economic Analysis Reports*); **Exhibit OO** (*Public Need and Social, Economic, and Other Public Benefits*). Further, approval of the Application will conserve energy that is currently wasted when, outside the Channel's operational window, vessels wait outside the Channel, using fuel and adding time and expense to transit. See **Comment 39**, **Exhibit MM** (*Technical Memorandum, LNG Carrier Transit Energy Conservation with NRI's in Place: Navigation Reliability Improvements; Coos County File Nos. AM-18-011/RZ-18-007/HBCU-18-003 with regard to the Coos County NRI Applications*). The City Council finds that the Application meets Goal 12.

### **Goal 13: Energy Conservation.**

#### **To conserve energy.**

**FINDING:** Goal 13 directs local governments to manage land use so as to maximize the conservation of all forms of energy. The Application will facilitate energy conservation by increasing the safety and efficiency of vessel transit of the Channel, and by increasing the Channel's operational window, which will reduce the amount of time vessels spend waiting to enter and navigate the Channel, due to environmental conditions that exceed those required by the Pilots for a safe vessel transit. See **Comment 39**, **Exhibit MM** (*Technical Memorandum, LNG Carrier Transit Energy Conservation with NRI's in Place: Navigation Reliability Improvements; Coos County File Nos. AM-18-011/RZ-18-007/HBCU-18-003 with regard to the Coos County NRI Applications*). The City Council finds that the Application meets Goal 13.

### **Goal 14: Urbanization.**

#### **To provide for an orderly and efficient transition from rural to urban land use.**

**FINDING:** Goal 14 does not apply to the Application, which does not involve urban development on rural land. Accordingly, the City Council finds that Goal 14 does not apply to the Application.

### **Goal 15: Willamette River Greenway.**

#### **To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.**

**FINDING:** Goal 15 applies to lands along the Willamette River, and the Application does not concern such lands. Therefore, the City Council finds that Goal 15 does not apply to the 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.**

FINDING: Goal 16 requires that local governments divide all estuaries that Goal 16 protects into, at a minimum, the above "management units" - Natural, Conservation, and Development. The CBEMP complies with Goal 16 by creating and maintaining three "Aquatic Management Units" and seven "Shoreland Management Units" including the baseline Natural, Conservation, and Development management units that Goal 16 requires. The NRI #4 area is currently zoned 52-NA (a natural aquatic unit). The Application seeks to amend the CBEMP to apply the DDNC-DA (a development aquatic) management unit to the NRI #4 area in order to allow dredging necessary to complete the NRI. Such dredging is not allowed in natural management units. Therefore, a Goal 16 exception is required to rezone the NRI Site to DDNC-DA, as further addressed below. Because the Applicant has provided justification for the Goal 16, exception, the City Council finds that the Application meets Goal 16.

#### **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.**

FINDING: Goal 17 regulates coastal shorelands. The NRI #4 site does not include any designated coastal shorelands. Moreover, the proposed amendments will not impact any designated coastal shorelands. Therefore, the City Council finds that Goal 17 is not applicable to the Application.

#### **Goal 18: Beaches and Dunes.**

**To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and**

**To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.**

FINDING: Goal 18 concerns beaches and dunes. The NRI #4 site does not include any designated beaches or dunes. Moreover, the proposed amendments will not impact any designated beaches or dunes. Therefore, the City Council finds that Goal 18 is not applicable to the Application.



## **Goal 19: Ocean Resources.**

**To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.**

**FINDING:** Goal 19 addresses conservation of ocean resources. The NRI #4 site does not include or abut any ocean resources, and the proposed amendments will not impact any ocean resources. Therefore, the City Council finds that Goal 19 is not applicable to the Application.

### **A. Goal 16 Exception.**

**FINDING:** Goal 16 (Estuarine Resources) divides areas into "Natural," "Conservation" and "Development" management units and provides permissible uses within each area. While all three units allow some form of dredging (i.e., "Natural" allows *"Dredging necessary for on-site maintenance of existing functional tide gates and associated drainage channels and bridge crossing support structures"*; "Conservation" allows *"new dredging for boat ramps and marinas," "minor navigational improvements," "dredging necessary for mineral extraction,"* and *"Aquaculture requiring dredge or fill or other alteration of the estuary"*; and "Development allows *"Dredge or fill, as allowed elsewhere in the goal," "Water transport channels where dredging may be necessary"*), and the City Council finds that the degree and type of dredging allowed in the 52-NA ("Natural") management unit requires an exception to Goal 16 to complete NRI #4. Pursuant to ORS 197.732, a local government may adopt an exception to a goal if the following standards are met:

#### **ORS 197.732(2)(c):**

(A) **Reasons justify why the state policy embodied in the applicable goals should not apply;**

(B) **Areas that do not require a new exception cannot reasonably accommodate the use;**

(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; and**

(D) **The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.**

**FINDING:** The above criteria are incorporated into OAR 660, Division 4 (administrative rules implementing ORS 197.732), which provide the following approval criteria for the standards in ORS 197.732(2)(c)(A) through (D), as follows:

#### **(i). Reasons Exception (ORS 197.732(2)(c)(A); OAR 660-004-0020(2)(a)).**

(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;**



**FINDING:** The Applicant provides evidence that the 3.3-acre NRI #4 site located adjacent to the Channel is in need of improvement in order to facilitate safer and more efficient navigation. The Applicant states that the proposed use must be located where mapped because this is the specific "turning area" where the navigational reliability improvement is needed. Based on the substantial evidence available in the record and specifically the general "reasons exception" language, Applicant's detailed description and discussion of the purpose, need, and location of the proposed NRI #4 in the Application and the analysis set forth below, the City Council finds that a Goal 16 exception is justified.

For purposes of compliance with ORS 197.732(2)(c)(a). The City Council relies upon the Applicant's demonstration of compliance with OAR 660-004-0022(8)(b), "Other Alterations and Uses," and in the alternative, OAR 660-004-0022(1)(a) "Uses Not Specifically Provided" as support for the conclusion of compliance with the criteria as discussed below:

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

**FINDING:** Based upon the arguments presented, the City Council finds that it must adopt findings that interpret the meaning of this provision, and following that, adopt findings addressing whether there is credible, unrebutted evidence that supports the conclusion that the provision, as interpreted, is satisfied.

First, regarding the meaning of this provision, the City Council finds as follows: The reasons exception for dredging in OAR 660-004-0022(8)(b) applies to dredging to "*permit continuation of the present level*" of navigation. The terms "continuation," "present" and "level" are not defined in OAR 660-004-0022(8)(b), and so they may be given their plain/dictionary meanings. See *Potter v. Schlessner Company, Inc.*, 335 Or 209 (2003). Merriam Webster (online Dictionary, 2019) defines these terms as follows:

**"continuation":** 1: the act or fact of *continuing* in or the prolongation of a state or activity. 2: resumption after an interruption. 3: something that continues, increases, or adds.

**"present":** 1: now existing or in progress. 2a: being in view or at hand. b: existing in something mentioned or under consideration. 3: constituting the one actually involved, at hand, or being considered. 4: of, relating to, or constituting a verb tense that is expressive of present time or the time of speaking.

**"level":** the magnitude of a quantity considered in relation to an arbitrary reference value broadly: magnitude, intensity.

Applying these definitions to OAR 660-004-0022(8)(b), the terms mean "continuation" (*continuing, resuming or something that increases or adds*) of the "present" (*now existing or in progress*) "level" (*magnitude, intensity*) of navigation.

Second, regarding the evidence, the City Council adopts the following findings:

The Application proposes dredging to maintain adequate depth to permit continuation of the present level of navigation at NRI #4. The record shows that 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. See **Comment 39, Exhibit W** (*US Army Corps of Engineers Environmental Assessment*); **Comment 32** (*Letter from Capt. George Wales, Coos Bay Pilots Association*). Over the past 20 years, the size and weight of vessels transiting Coos Bay has increased such that the average size of vessels transiting Coos Bay has increased, e.g., from 193.8 ft. (length) and 45,422 lbs. (dead weight) to 200.6 ft. (length) and 52,894 lbs. (dead weight), with the largest vessel call at 229 feet (length) and 62,800 lbs. (dead weight).



weight). See **Comment 32** (*Letter from Capt. George Wales, Coos Bay Pilots Association*).

While Coos Bay is currently suitable for navigation, including large vessels, as confirmed 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 (see JCEP Application, **Exhibit 4**), periodic environmental and weather conditions, including wind, fog, and currents have caused the Pilots to impose ever more limiting restrictions on when vessels may safely transit the Channel during such weather/environmental conditions. See **Comment 32**. One of the areas that must be restricted to transit during such conditions (due to depth) is the NRI #4 “turning area” of the Channel. *Id.* While the NRI #4 area does not pose a substantial impediment to vessel transit during typical “good” weather, that same area restricts vessel transit during poor weather conditions.

Thus, combining the definitions with the facts of the proposal, dredging NRI #4 will ensure that the *quantity or frequency* of navigation *now existing* will be *continued* during a wider range of weather conditions in the dredged NRI #4 area. As transiting vessels at the current frequency, i.e. “...present level...” become larger in size, as the trend over the past 20 years indicates, dredging NRI #4 will facilitate continuation of vessel transit in Coos Bay. The City Council finds that the proposed activities are consistent with the “reasons” permitting an exception to Goal 16 to allow dredging.

Although opponents contend that this rule only permits maintenance dredging and does not allow an expansion into new areas designated for natural aquatic management, the City Council denies this contention because it would effectively nullify the “reasons” set forth in this provision from ever being used to justify an exception to Goal 16. This is so because existing areas that allow dredging are typically already planned and zoned for such and no exception to Goal 16 is needed. Because no exception would be needed, local governments would never need to rely upon the “reasons” in this provision as justification. In short, opponents’ contention renders this provision meaningless.

Further, although opponents contend that the actual purpose of the dredging activities is to facilitate an increase in vessel traffic and an increase in the size of vessels transiting the Bay, the City Council denies this contention. As set forth on page 2 of **Comment 32**, Captain Wales testified that the improvements are designed to “improve safety and efficiency of navigation for existing deep draft vessels by reducing the existing navigation constraints at four key turns in the Channel.” He further testified that “completion of the NRIs will increase the operational window to safely transit any vessel by approximately 20%.” *Id.* The City Council finds Captain Wales to be particularly persuasive on this issue due to his role as a Pilot, where he has gained firsthand knowledge of the Bay, the Channel, and navigating vessels during various local weather conditions. The City Council finds that a reasonable person would rely upon Captain Wales’ testimony to support the conclusion that the dredging activities will support more efficient travel for existing vessels.

Finally, although opponents speculate that dredging at NRI #4 will actually result in less safe conditions because it will result in more vessels traveling at higher wind speeds, the City Council denies this contention because it is not accompanied by any evidence. Moreover, it has been rebutted by the persuasive testimony from Captain Wales in **Comment 32** quoted above.



The City Council finds that the proposed activities are consistent with the “reasons” permitting an exception to Goal 16 to allow dredging.

**(f) In each of the situations set forth in subsections (7)<sup>6</sup>(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.**

**FINDING:** The Goal 16 exception must also demonstrate that the activity will be carried out in a manner that minimizes certain impacts as outlined in OAR 660-004-0022(8)(f), above. For a Goal 16 “reasons exception” involving navigation improvement dredging, the primary criterion is to minimize adverse impacts on aquatic and shoreland areas and habitats.

To address potential turbidity from dredging NRI #4, the Applicant plans to perform the 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 Coos Bay. Additionally, related to dredging practices and methods, the Applicant will use various dredging methods to minimize the effects of dredging NRI #4 on water turbidity within the Bay, including cutter head suction, clamshell, and hopper dredging and, as a result of those methods JCEP expects any increased water turbidity as a result of the NRI #4 to be temporary and limited to the immediate vicinity of dredging operations. See *Technical Memorandum, Dredging Locations, Methods, Equipment, Frequency, Volumes, Dredge Spoil Deposition, Potential Impacts and Mitigation* (**Comment 39, Exhibit LL**) which provides references to multiple documents and pages in the record addressing these issues, including an NRI-specific *Dredge Pollution Control Plan (Navigation Reliability Improvements, Kentuck, APCO) (April 2019)* (**Comment 39, Exhibit BB**); *Technical Memorandum - Water Quality Considerations – Implications for Clean Water Act Sections 401 and 404 Permitting (Feb. 2018)* (**Comment 39, Exhibit J**); *Attachment G: 401 Water Quality Certification (October 2017)* (**Comment 39, Exhibit V**).

Applicant will also use best management practices to avoid and minimize spills or discharges during dredging operations and dredged material transport. Any accidental spills will be addressed through an appropriate Spill Prevention Control and Countermeasure (SPCC) plan. See **Comment 39, Exhibit A.4** at 394; **Exhibit DD**; **Exhibit J** (*Technical Memorandum - Water Quality Considerations – Implications for Clean Water Act Sections 401 and 404 Permitting*).

Dredging equipment and material transport vessels related to the proposed NRI site may generate temporary noise disturbances; however, evidence in the record shows that noise from dredging NRI #4 will be localized to the immediate dredging area and will not have more than temporary effects on marine mammals, fish and birds. See *Technical Memorandum, Marine Mammals Baseline Information, Potential Impacts and Mitigation* (**Comment 39, Exhibit II**); *Technical Memorandum, Fish (e.g., Salmon, Sturgeon, Herring, Candlefish) Baseline Information, Potential Impacts and Mitigation* (**Comment 39, Exhibit FF**); *Technical Memorandum, Birds (e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl) Baseline Information, Potential Impacts and Mitigation* (**Comment 39, Exhibit JJ**). With regard to marine mammals

---

<sup>6</sup> The City Council reads the reference in the Secretary of State Administrative Rules to “(7)” as a potential typographical error that was intended to reference section “(8)” and will review the rules accordingly.



With respect to the comments regarding a reduction in the IWWW to end on February 1 rather than February 15 (to protect spawning herring), the evidence in the record does not support reduction of the IWWW from the currently ODFW-established period of October 1 through February 15 because: the area of NRI #4 is not eelgrass habitat; herring do not spawn in the area of NRI #4 before February 16; herring spawning studies from Yaquina Bay are not relevant to Coos Bay herring life-cycles, and (if present) herring quickly acclimate to in-water noise. See *2018 Eelgrass and Bathymetry Surveys Coos Bay, Oregon* (Nov. 2018) (**Comment 39, Exhibit AA**); *Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation: Navigation Reliability Improvements; Coos County File Nos. AM-18-011/RZ-18-007/HBCU-18-003, (Comment 39, Exhibit N); Exhibit 39.CC-7; Technical Memorandum - Response to Comments - Land Use Application #187-18-000153 - ODFW Recommendation to Restrict In-water Work Window to February 1 (October, 2019)*(**Comment 19**, City Council Exhibit CBCC-8).

Accordingly, the City Council finds that Applicant's efforts to minimize impacts are fully addressed in the record and the "reasons exception" criteria in OAR 660-004-0022(8) are met subject to Conditions of Approval #1, #2, #4, #5, #6, #8, and #13.

In the alternative, the City Council finds that the catchall "reasons exception" in OAR 660-004-0022(1)(a) for a "use not specifically provided in this division" are also satisfied as addressed below.

(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;

(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

\*\*\*

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

**FINDING:** Applying the above criteria, the "demonstrated need" for the NRI under the Goals is found in Goal 9 (Economic Development) to provide "*opportunities ...for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens,*"<sup>7</sup> Goal 12 (Transportation) "*[t]o provide and encourage a safe, convenient and economic transportation*

---

<sup>7</sup> See **Comment 32** - Captain George Wales, Coos Bay Pilots Association; **Comment 35** - Jon Barton; **Comment 36** - Randy Hoffine, Pacific Properties; and **Comments 37 and 38** - Dale Sause and Cory Sause, Sause Bros. Inc.; *JCEP Application, Exhibit 3* (letters of support from Roseburg Forest Products and Coos Bay Pilots Association); **Comment 39, Exhibit CC.9(b)** (*Public/Economic Benefit*); and **Exhibits G.1, G.2 and G.3** (*EcoNorthwest Economic Analysis Reports*).



system" in Coos Bay<sup>8</sup>, and Goal 13 (Energy Conservation) "to conserve energy" through avoiding ship transit delay, and thus more efficient transit opportunities.<sup>9</sup> NRI #4 has "special features" because the location is based on physical restrictions at a fixed vessel turning area in the Channel (identified by the Coos Bay Pilots Association) which currently restricts navigation during various weather conditions. See **Comment 32**. Accordingly, the proposed dredging activities requiring an exception can only occur at the specific NRI location identified in the Application.

Applicant has designed the extent of dredging at NRI #4 at the minimum possible area to achieve the needed increase in navigational efficiency. The City Council gives substantial weight to the written testimony of Captain George Wales, Coos Bay Pilots Association, who provides evidence that NRI #4 is currently a restrictive turning area that is preventing safe and efficient transit in the Channel and forcing ships to idle<sup>10</sup> offshore burning fuel until transit conditions improve which, in turn, is limiting both economic opportunities and safe and efficient vessel transportation. Captain Wales further provides evidence that, if approved, the NRIs will increase economic opportunities for vessel traffic by 20%. While there are other comments in the record questioning whether the NRIs will promote economic growth (under Goal 9) or provide safe, convenient and economic transportation (Goal 12), or energy efficiency (Goal 13), no substantive evidence was submitted contradicting Captain Wales' testimony regarding the activities of this location for the NRI improvements, or testimony is offered to channel transit efficiency and no evidence demonstrated that widening another location within the City of Coos Bay will provide the transportation and economic benefits obtained at NRI #4.

The City Council finds that the Channel, as currently configured, is hindering the City's Goal 9, Goal 12 and Goal 13 goals by limiting transit of all large vessels currently entering the Channel, causing unnecessary idling and loss of energy and limiting economic growth opportunities. Correspondingly, the City Council finds that approving the Application will provide a net social benefit under Goal 9, Goal 12 and Goal 13. The City acknowledges, however, that the full navigation efficiencies, economic growth, and energy efficiency opportunities will not be realized unless all four of the NRIs are constructed. Accordingly, the City Council finds that the Application satisfies the "reasons exception" criteria in OAR 660-004-0022(1)(a), if applicable, subject to Condition of Approval 15 (requiring evidence of approval of the three Coos County NRIs prior to commencing construction of NRI #4).

(iii). "Areas that do not require a new exception cannot reasonably accommodate the use" (ORS 197.732(2)(c)(B); OAR 660-004-0020(2)(b)).

**FINDING:** The record demonstrates that the proposed NRI #4 is location-specific. Its purpose is to improve navigational efficiency at a specific turning area in the Channel and there are, accordingly, no other areas that could accommodate the use (nor have any alternative areas in Coos Bay been identified in any opposition comments). See **Comment 32**. This analysis does not change under the evaluation criteria in OAR 660-004-0020(2)(b)(A) which focuses on "possible alternative areas" that do not require an exception and OAR 660-004-0020(2)(b)(B) which asks about other possible areas that do not require an exception or accommodating the

---

<sup>8</sup> See **Comment 32** - Captain George Wales, Coos Bay Pilots Association; **Comments 37 and 38** - Dale Sause and Cory Sause, Sause Bros. Inc.

<sup>9</sup> See **Comment 39**, **Exhibit MM** (Technical Memorandum, LNG Carrier Transit Energy Conservation with NRIs in Place).

<sup>10</sup> See **Comment 39**, **Exhibit MM** (Technical Memorandum, LNG Carrier Transit Energy Conservation with NRIs in Place).



use on non-resource lands. This record contains no evidence that criterion does not apply because NRI #4 is entirely site-specific, and no alternative location could achieve the "reason" for the exception (*i.e.*, providing a wider window/or vessel transit within the Channel). See **Comment 32**. Accordingly, the City Council finds that "areas that do not require a new exception cannot reasonably accommodate the use" and the criterion is satisfied.

(iii). *"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"; (ORS 197.732(2)(c)(C); OAR 660-004-0020(2)(c)).*

**FINDING:** For this approval criteria, OAR 660-004-0020(2)(c) provides some additional guidance:

**(c) \* \* \*** 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.

**FINDING:** The record shows that NRI #4 is the only location in the City of Coos Bay where Applicant can make the improvements necessary to maintain the efficiency of vessel navigation in the Channel, including, for larger vessels in the future at the same frequency, as documented by the testimony of Pilot Captain George Wales. See **Comment 32**. The NRI #4 area is a restrictive, but unavoidable, turn in the Channel. This turn, together with three additional locations proposed for improvement before Coos County, is responsible for significant delays in vessel transit in certain weather conditions. The record demonstrates that the specific NRI #4 area is the critical area within the city which poses the described existing constraints to the present level of navigation, and, accordingly, at which navigation efficiencies can be achieved. Therefore, the City Council finds that there are no alternative sites requiring a Goal exception, or otherwise, the described vessel where transit efficiencies can be achieved, and the criterion is met.



(iv). *"The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts"; (ORS 197.732(2)(c)(D); OAR 660-004-0020(2)(d)).*

**FINDING:** For this criterion, 660-004-0020(2)(d), provides the following additional guidance: **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.**

**FINDING:** The record shows that NRI #4 is located immediately adjacent to the existing federal navigation Channel. Accordingly, compatibility of NRI #4 with deep-draft navigation is the dominant use of the adjacent area and the primary purpose of the NRI (improving navigation efficiency) is compatible with such navigation/transportation. Further, there is no evidence in the record indicating incompatibility with the "uses"<sup>11</sup> allowed in the 52-NA zone (which include "Bridge Crossings," "Research and Education Observation Structure," "Low-intensity Utilities," "Mitigation," "Passive Restoration," and "Vegetative Shoreline Stabilization"). Other uses that may be allowed subject to Special Conditions include: "Airport Lighting," "Aquaculture," "Bridge Crossing Support Structures and dredging necessary for their installation," "New Dredging," "Rip-rap Shoreline Stabilization," "Temporary Alterations," and "Waste Water/Storm Water Discharge." Again, there is no evidence in the record suggesting incompatibility with any such uses in the 52-NA zone.

While many comments focused on the natural aquatic habitat (shellfish, crabs, clams, eelgrass, fish, birds, marine mammals) as the "uses" that the Application is allegedly in conflict with, the definition of "use" in the City of Coos Bay Comprehensive Plan does not include natural biota. Rather, "uses" are human activities in the zone and (as cited above) no evidence was offered to show incompatibility with such uses by dredging NRI #4. With regard to compatibility, it is also significant that the 52-NA zone shares its entire western border with the Channel. The City previously recognized the Deep-Draft Navigation Channel as a compatible adjacent use and area by virtue of locating the 52-NA zone immediately next to the Channel and DDNC-DA zone boundary. The DDNC-DA management objective states: "This unit shall be regularly maintained to authorized depths as the deep-draft navigation channel. Conflicting uses and activities are not permitted." The DDNC-DA zone allows dredging and maintenance dredging (consistent with the management objective) as an immediately adjacent use. Accordingly, the limited additional dredging of NRI #4 alongside ongoing Channel dredging would not be incompatible.

Opponents' claims of incompatibility offer no evidence that 52-NA uses or resources have been substantially harmed by the proximity to vessel traffic and annual maintenance dredging of the Channel (which has been ongoing since before the zone districts were drawn). That noted, Appellant nonetheless adequately addresses public comments on compatibility with aquatic biota. For example, evidence shows that the area around NRI #4 is deep subtidal habitat (and will remain deep subtidal habitat after dredging). See **Comment 39**, **Exhibit I**, **Exhibit N**, **Exhibit W**. Based on expert reports, adverse impacts on the aquatic biota is not anticipated, studies show that NRI #4 has not been identified as having any significant fish, crustacean, shellfish, or

---

<sup>11</sup> "Use" is defined in the City of Coos Bay Comprehensive Plan as "The end to which a land or water area is ultimately employed. A use often involves the placement of structures or facilities for industry, commerce, habitation, or recreation. An accessory use is a use incidental and subordinate to the main use of the property and located on the same lot or parcel as the main use."



eelgrass habitat, periodic adjacent dredging has not caused significant impacts, and mitigation efforts will be used as a precautionary measure. See **Comment 39**, **Exhibit AA** (2018 Eelgrass and Bathymetry Surveys Coos Bay); **Exhibit EE** (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation); **Exhibit FF** (Technical Memorandum, Fish Baseline Information, Potential Impacts and Mitigation); **Exhibit GG** (Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation). The record further demonstrates that no significant impacts on marine mammals or birds are anticipated based on the temporary duration of dredging, the limited area involved, mitigation and lack of proximity of NRI #4 to significant marine mammal or bird nesting or critical feeding areas. See **Comment 39**, **Exhibit II** (Technical Memorandum, Marine Mammals Baseline Information, Potential Impacts and Mitigation); **Exhibit JJ** (Technical Memorandum, Birds (e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl) Baseline Information, Potential Impacts and Mitigation). To the extent, however, that there are any potential impacts on potential adjacent natural resources, the record confirms that impacts to species and habitat are expected to be temporary, non-significant and JCEP will implement appropriate measures to mitigate such impacts. See **Comment 39**, **Exhibit BB** (Dredging Pollution Control Plan); **Exhibit D** (Dredge Materials Management Plan @ 3391 through 3625); **Exhibit PP** (Response to Removal-Fill Comments); **Exhibit W** (US Army Corps of Engineers Environmental Assessment) (and as further discussed in Section III, below).

Opponents contrasting testimony that dredging NRI #4 will have substantial impacts on aquatic biota is largely opinion and not supported by clear foundational evidence. One expert report submitted is Dr. Yamada's brief study "Potential Impact of Jordan Cove LNG Terminal Construction on the Nursery Habitat of Dungeness Crab,"<sup>12</sup> however, the Applicant provided evidence to rebut Dr. Yamada's conclusions noting that NRI #4 has not been identified as containing either eelgrass or Dungeness crab habitat, the Chang and Levings (1978) study relied upon by Dr. Yamada to conclude that dredging may cause mortality to Dungeness crabs is not persuasive as that study examined effects of burial of crabs from open water dumping of dredge spoils (whereas the Application proposes upland disposal of dredge materials at a location in City of North Bend). See **Exhibit EE** (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation). Based on the above, the City Council finds that NRI #4 is compatible with adjacent uses and resources.

**(3) If the exception involves more than one area for which the reasons and 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.**

**FINDING:** The Application seeks a Goal 16 exception for one NRI site in the City, and therefore the City Council finds that the Application is not subject to this criterion.

**(4) For the expansion of an unincorporated community described under OAR 660-022-0010, including an urban unincorporated community pursuant to OAR 660-022-0040(2), the reasons exception requirements necessary to address standards 2 through 4 of Goal 2, Part II(c), as described in of subsections (2)(b), (c) and (d) of this rule, are modified to also include the following:**

**(a) Prioritize land for expansion: First priority goes to exceptions lands in proximity to an unincorporated community boundary. Second priority goes to land designated as marginal land. Third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority is given to land of**

---

<sup>12</sup> See **Comment 7**.



lower capability site class for agricultural land, or lower cubic foot site class for forest land; and

(b) Land of lower priority described in subsection (a) of this section may be included if land of higher priority is inadequate to accommodate the use for any of the following reasons:

(A) Specific types of identified land needs cannot be reasonably accommodated on higher priority land;

(B) Public facilities and services cannot reasonably be provided to the higher priority area due to topographic or other physical constraints; or

(C) Maximum efficiency of land uses with the unincorporated community requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.

FINDING: The Application does not seek to expand an unincorporated community and therefore, the City Council finds that these approval criteria do not apply to the Application.

## **B. Approval for Estuarine and Coastal Shoreland Uses and Activities Permit**

### **1. CBDC - 17.370.010 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.

FINDING: CBDC 17.370.010 makes the general and special conditions of the CBEMP approval criteria for the Application. The DDNC-DA CBEMP zone allows new and maintenance dredging, which the Application seeks approval for, subject to general conditions (CBEMP Policies #17 and #18) and a special condition (mitigation of adverse impacts - CBEMP Policy #5). As addressed below, CBEMP Policy #5, in turn, triggers consideration of CBEMP Policies #4 and #4a. The City Council finds that the Application satisfies these policies as addressed below.

JCEP also requests approval of an accessory temporary dredge line in the 52-NA, 53-CA, 54-DA, and 55-CA CBEMP management units. The dredge line is described in the DEA memo included in JCEP Application at Exhibit 5 and it is depicted in the figures included in JCEP Application Exhibit 6. JCEP further requests approval of an accessory buoy in the 52-NA management unit, which is located south of the Channel and is depicted in JCEP Application, Exhibit 7. The City Council finds that the Application meets the approval criteria for these accessory uses as addressed below.

### **DDNC-DA Zone - General Conditions For Approval of “New and Maintenance Dredging” 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 “Shoreland Values.”

This strategy shall be implemented through:

A. plan designations and use and activity matrices set forth elsewhere in this



Plan that limit uses in these special areas to those that are consistent with protection of natural values; and

B. through use of the "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. 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.

**1. CBEMP Policy #17 does not Apply to the Application.**

**FINDING:** Pursuant to the official Shoreland Values map, there are no inventoried resources at the NRI #4 site for which Policy #17 requires protection. Therefore, the City Council finds that CBEMP Policy #17 does not apply to the Application.

**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, reintering 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 the 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 ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable cultural resources.

**2. CBEMP Policy #18 does not Apply to the Application, but Measures will be Implemented to Address Cultural Resources.**

**FINDING:** The City has not inventoried any historical, cultural, and archaeological resources in the area of NRI #4, and therefore, there are no known inventoried resources in this location to consider under this policy. See **Comment 39**, **Exhibit A.6**, **Exhibit CC.9(a)**, and **Exhibit D**. Notwithstanding the lack of inventoried resources, the City understands that Applicant acknowledges there may be unanticipated discovery of cultural resources, remains, and/or objects. To address this possibility, Applicant has coordinated with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians to enter a memorandum of agreement ("MOA") addressing these circumstances, and more broadly, CBEMP Policy #18.

A copy of the signed MOA is included in JCEP Application, **Exhibit 9**. The MOA incorporates a Cultural Resources Protection Agreement entered between JCEP and the Tribes ("CRPA"). The CRPA provides a process for the exchange of project-related information, confidentiality requirements, commitments to mitigation, monitoring agreements, agreements for the treatment of unanticipated discovery of cultural resources, site access agreements, and cost recovery agreements. The CRPA, in turn, incorporates an Unanticipated Discovery Plan ("UDP"), which provides procedures in the event of an unanticipated discovery of historic properties, archaeological objects, archaeological sites or human remains, funerary objects, sacred items, and items of cultural patrimony, during the construction and operation of the Pipeline. The CRPA and UDP are attached as exhibits to the MOA in JCEP Application, **Exhibit 9**. In the MOA, JCEP and the Tribes expressly agreed that the CRPA and the UDP constitute appropriate measures under CBEMP Policy #18 that would protect the cultural, historical, and archaeological values of this development site, **Exhibit 12**.



The City Council finds that Applicant's compliance with the MOA and its attachments is an appropriate (although voluntary) condition of approval of the Application and such condition will comply with CBEMP Policy #18.

**DDNC-DA Zone - Special Condition For Approval of "New and Maintenance Dredging"**

**CBEMP Policy #5 - Estuarine Fill and Removal**

**Dredging and/or filling shall be allowed only:**

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

B. If no feasible alternative upland location exists; and

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

D. If adverse impacts are minimized; and

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 and Section 404 of Federal Water Pollution Control Act (P.L.92-500).

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 (DSL), 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 (DEQ) for approvals of new aquatic log storage areas only; or

C. The Department of Fish and 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.

**3. The Application is Consistent with CBEMP Policy #5.**

**FINDING:** Applicant's new and maintenance dredging activities at NRI #4 must be consistent with CBEMP Policy #5. The DDNC-DA zone allows new and maintenance dredging. Furthermore, because the Application includes a Goal 16 exception, Policy #5 requires only that the Application complies with criteria D. and E., above.



Policy #5 directs that an applicant demonstrate compliance with criterion D. of Policy #5 (identification and minimization of adverse impacts) pursuant to the procedure set forth in CBEMP Policy #4a. Furthermore, Special Conditions for approval of new and maintenance dredging in the DDNC-DA zone provide that such dredging is allowed only "subject to finding that adverse impacts have been minimized."

The record demonstrates that Applicant will minimize adverse impacts as summarized below, in response to CBEMP Policies #4 and #4a, and as further discussed in the record. See *JCEP Application*, Exhibit 5; **Comment 39**, Exhibit AA (2018 Eelgrass and Bathymetry Surveys Coos Bay); Exhibit EE (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation); Exhibit FF (Technical Memorandum, Fish Baseline Information, Potential Impacts and Mitigation); Exhibit GG (Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation); Exhibit II (Technical Memorandum, Marine Mammals Baseline Information, Potential Impacts and Mitigation); Exhibit JJ (Technical Memorandum, Birds (e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl) Baseline Information, Potential Impacts and Mitigation); Exhibit BB (Dredging Pollution Control Plan); Exhibit D (Dredge Materials Management Plan @ 3391 through 3625); Exhibit PP (Response to Removal-Fill Comments)(and as further discussed in Section III, below, concerning "Effects" on Aquatic Community, Recreation, and of Dredging).

As cited in the above exhibits, Applicant will use various dredging methods to minimize the effects of NRI #4 on turbidity within the bay. Applicant 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, any increased water turbidity should be temporary and limited to the vicinity of dredging operations. Furthermore, while Applicant does not anticipate oil spills or toxic discharges to occur when constructing the NRIs, the record confirms Applicant will use precautions to avoid either through appropriate spill prevention planning. 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, including the implementation of spill prevention, control and countermeasure plans. See **Comment 39**, Exhibit A.4 at 394. JCEP plans to perform 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. See, **Comment 39**, Exhibit BB (Dredging Pollution Control Plan); Exhibit D (Dredge Materials Management Plan @ 3391 through 3625).

Criterion E. of Policy #5 requires that NRI #4 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 and Section 404 of the Federal Water Pollution Control Act (P.L.92-500)." The Application is consistent with the objectives of Goal 16 (Estuarine Resources Goal) because it protects the economic values of the estuary while minimizing adverse impacts of the dredging activity. 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 ORS 541.615 (which is now ORS 196.810) as ORS 196.810 requires a permit from DSL to remove any material from the beds or banks of waters of the state. Applicant acknowledges such obligations, and all necessary DSL and Federal Section 404 authorizations will be included as conditions precedent to dredging.

Accordingly, the City Council finds that Application is consistent with CBEMP Policy #5.



Alternatively, the City Council finds that CBEMP Policy #5 is not applicable to the Application pursuant to state law because 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 v. Marion County*, 59 Or LUBA 323, 350-351 (2009), *aff'd* 233 Or App 488, 227 P3d 198 (2010). In this decision, the City Council grants an exception to Goal 16 to facilitate dredging in a natural management unit. The last sentence of CBEMP Policy #5 clearly states, the purpose of this policy is to implement Goal 16: "This strategy recognizes that Goal #16 limits dredging, fill, and other estuarine degradation in order to protect the integrity of the estuary." Accordingly, pursuant to the appellate decisions in *Friends of Marion County*, the City Council finds that CBEMP Policy #5 is not applicable to the Application.

#### **#4 Resource Capability Consistency and Impact Assessment**

Local government concludes that all proposed actions (approved in this Plan) which would 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
- New or expanded log storage
- Rip-rap
- Water intake or withdrawal and effluent discharge

##### **C. Development Management Units**

- Aquaculture
- Bulkheading (except for Aquatic Units #3-DA, 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.**

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 renewal resources, natural biologic productivity, recreational and aesthetic values, and aquaculture.

An 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.

#### **4. The Application is Consistent with CBEMP Policy #4.**

**FINDING:** As required by CBEMP Policy #5, “[i]dentification and minimization of impacts shall follow the procedure set forth in Policy #4. Although neither of the activities in Policy #4a (“aquiculture” and “log storage dredging”) apply, the record confirms that Applicant intends to pursue myriad methods to minimize impacts. See JCEP Application, Exhibit 5; **Comment 39**, Exhibit AA (2018 Eelgrass and Bathymetry Surveys Coos Bay); Exhibit EE (Technical Memorandum, Crustacean and Shellfish Baseline Information, Potential Impacts and Mitigation); Exhibit FF (Technical Memorandum, Fish Baseline Information, Potential Impacts and Mitigation); Exhibit GG (Technical Memorandum, Eelgrass Baseline Information, Potential Impacts and Mitigation); Exhibit II (Technical Memorandum, Marine Mammals Baseline Information, Potential Impacts and Mitigation); Exhibit JJ (Technical Memorandum, Birds (e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl) Baseline Information, Potential Impacts and Mitigation); Exhibit BB (Dredging Pollution Control Plan); Exhibit D (Dredge



*Materials Management Plan @ 3391 through 3625); Exhibit PP (Response to Removal-Fill Comments); Exhibit A.4 at 394 (Spill Prevention Control and Countermeasure Plan).*

For 1.f, the Goal 16 exception and related procedures will comply with the "Estuarine Resources Goal" and the record shows that Applicant will need to ensure that the NRIs are consistent with other requirements of state and federal law, including (permits already applied for), e.g., Section 404 of the Federal Water Pollution Control Act, ORS 541.615, which is now ORS 196.810, requiring a permit from DSL to remove any material from the beds or banks of waters of the state as conditions of approval.

Policy #4a also references Policy #4 "assessment of impacts" which 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 requires the City to perform the impacts assessment consistent with CBEMP Policy #4 (which the City has already conducted through review of the Application, public comments, and the record with regard to proposed impacts and proposed mitigation) and the City Council concludes that no significant impacts will accrue. See Staff Report, Attachment A, Exhibit 5.

The City Council further finds that CBEMP Policy #4 is not applicable to the Application pursuant to state law. 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. In this decision, the City Council grants 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: "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." Accordingly, pursuant to the appellate decisions in *Friends of Marion County*, CBEMP Policy #4 is not applicable to the Application.

#### **#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 & Wildlife (ODFW) in writing of the request, 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 (20) day period, local government shall presume consistency of the proposal with the resource 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 LCDG 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.

**5. The Application are Consistent with CBEMP Policy #4a.**

**FINDING:** As discussed above, 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 requires the City to perform the impacts assessment consistent with CBEMP Policy #4. The City has completed that assessment as discussed, above. See Staff Report, Attachment A, Exhibit 5.

In any event, the City Council finds that CBEMP Policy #4a is not applicable to the Application. 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. In this decision, the City Council grants an exception to Goal 16 to facilitate dredging in a natural management unit. As the last sentence of CBEMP Policy #4a clearly states, the purpose of this policy is to implement Goal 16: "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." Accordingly, pursuant to the appellate decisions in *Friends of Marion County*, CBEMP Policy #4a is not



applicable to the Application.

#### **IV. OTHER ISSUES**

##### **A. Project Components outside NRI #4 and City of Coos Bay.**

The Application addresses only approvals related to NRI #4. The broader Jordan Cove LNG Project is proposed to be located on the North Spit in unincorporated Coos County and includes various improvements and activities spread across multiple counties and cities. Many opponents directed their testimony at the Project at large or potential impacts of specific Project components (outside the jurisdiction of the City of Coos Bay) such as the other three NRI locations or the dredge material disposal at APCO 1 and APCO 2. The City Council finds that the scope of the Application is limited to the specific requests made by Applicant pertaining to NRI #4, including the portion of the accessory temporary dredge transport line in the City. All other aspects of the Project are outside the scope of this proceeding, and for that matter, most are located outside of the City limits altogether. As a result, opponents' contentions directed at these Project components that are not included within the Application do not provide a basis to deny or further condition the Application.

##### **B. In-Water work window ("IWWW").**

The City Council finds that there is no basis in its local approval criteria to shorten the IWWW from the typical closing date of February 15 to February 1. As support for this conclusion, the City Council relies upon the arguments and evidence cited in Applicant's final written argument to the City Council dated November 15, 2019. In short, this testimony provided that the City's local approval criteria do not address establishing or modifying the IWWW, and, in fact, ODFW guidance establishes a different IWWW. It also explained how evidence in the record supports the conclusion that NRI #4 is not eelgrass habitat and refutes the contention that herring spawning occurs at NRI #4 in February. For these reasons, the City Council finds that the standard IWWW should apply in this instance.

##### **C. Sediment and Erosion.**

Some commenters alleged that the widening of NRI #4 may cause increased sedimentation and erosion in the vicinity of NRI #4 and downstream thereof. Evidence from the FERC Draft Environmental Impact Statement (DEIS) and Applicant's experts, however, provided technical opinions and studies supporting the conclusions that sedimentation from NRI #4 will be temporary, minimal and limited to the immediate area and the dredged material does not contain hazardous substances above regulatory levels. See Comment 39, Exhibit Z (FERC DEIS); Exhibit S (*Technical Memorandum, Dredging Locations, Methods, Equipment, Frequency, Volumes, Dredge Spoil Deposition, Potential Impacts and Mitigation*); Exhibit J (*Technical Memorandum - Water Quality Considerations – Implications for Clean Water Act Sections 401 and 404 Permitting*). Correspondingly, the City Council finds that the Application will have no significant effect on sediment and erosion in Coos Bay.

##### **D. Salinity and Hydrographic Effect of NRI #4 Dredging.**

Some commenters suggested that dredging NRI #4 will create increased hydrodynamic (or telegraphic) effects on tidal currents in Coos Bay which, in turn, could increase the intrusion of saltwater into the bay and impact benthic organisms. Other commenters suggested that dredging NRI #4 will increase the potential run-up effect of Tsunamis and increase sediment transport throughout Coos Bay. None of these comments provided any studies or evidence in support of the opinions offered. Correspondingly, Applicant provided evidence that construction of all four proposed NRIs would have no cumulative effect on salinity (see Exhibit CBCC-2, *Technical Memorandum, Project Impacts on Salinity*); would have no effect on future Tsunami



run-up (see Exhibit CBCC-3, *Tsunami Modeling - Impacts of Navigation Reliability Improvements*) and would not impact Coos Bay currents in any significant manner (see **Comment 39**, Exhibit X, *Technical Memorandum, Hydrodynamic Studies – Hydrodynamic Analysis* & Exhibit Y, *Technical Memorandum, Hydrodynamic Studies – Sediment Transport Analysis*). Correspondingly, the City Council finds that the Application will have no effect on salinity, Tsunami run-up, or hydrographic movement in Coos Bay.

#### **E. Birds.**

Several commenters alleged possible impacts to birds and diving waterfowl from noise caused during construction of NRI #4 and from reduction of feeding habitat. However, Applicant provided un rebutted expert reports that NRI #4 would not cause any significant impacts on birds based on dredging outside of nesting seasons, depth of NRI #4 is below feeding habitat, limited duration of dredging activity, acclimation of birds to annual Channel dredging, and options for birds to forage over other vast areas of Coos Bay Estuary. See **Comment 39**, Exhibit Q (*Technical Memorandum, Birds, e.g., Snowy Plover, Blue Heron, Marbled Murrelet, Diving Waterfowl, Baseline Information, Potential Impacts and Mitigation: Navigation Reliability Improvements*). Accordingly, the City Council finds that there will be no significant impact on birds from approving the Application.

#### **F. Navigation.**

Some comments suggested, without analysis, that constructing NRI #4 would unreasonably interfere with commercial and recreational vessel navigation in the Channel. Applicant provided evidence via a Technical Memorandum demonstrating that dredging (including the NRIs) would not cause any unreasonable interference with navigation. See Exhibit NN, (*Navigational Servitude Assessment Revision*). Accordingly, the City Council finds that there will be no significant impact on navigation from approving the Application. The City Council further notes that Conditions of Approval #9, #10 and #11 will mitigate impacts on recreational and commercial navigation.

### **V. INCORPORATION OF DOCUMENTS**

As additional findings in support of approval of the Applications and in support of denial of opponents' contentions, the City Council incorporates Applicant's 48-page final written argument to the Planning Commission dated May 23, 2019. In the event of a conflict between these findings and that final written argument, these findings shall control.

### **VI. CONDITIONS OF APPROVAL**

See the following for Applicants requested condition of approval modifications:

- S. Pfeiffer letter to City Council dated 8/27/2019; and
- Applicant's final written argument dated 11/15/2019.

In addition, the Applicant proposes the following additional condition:

#15 This authorization shall be effective only upon approval by Coos County of the remaining proposed navigational reliability improvements (NRI #1-3) located at three additional locations adjacent to the Channel outside the City of Coos Bay.



## **Exhibit C**

**AUTHORIZATION OF COMPREHENSIVE PLAN AMENDMENTS:** This Council authorization changes the Comprehensive Plan designation of approximately 3.3 acres from 52-NA to DDNC-DA and changing Comprehensive Plan text to take a reasons exception to statewide planning goal 16 to authorize the proposed map amendment.

**AUTHORIZATION OF PERMITS:** Subject to the conditions stated below, approval of Permit 183-18-000153 grants an Estuarine and Coastal Shoreline Uses and Activities Permit for "New and Maintenance Dredging" in the DDNC-DA Estuarine Zone; and 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 . Approval is granted only for the use as herein stated; any proposed changes shall require approval of amendments to this authorization by the City of Coos Bay .

**EFFECTIVE DATE:** This Ordinance shall take effect on the thirtieth day following enactment and the authorized activity shall not commence except with the adoption of the conditions of approval.

**EXPIRATION DATE:** The authorized permits will expire four years from the effective date from the effective date of the authorized Comprehensive Plan amendments. Time extension requests for the permits may be considered by the City pursuant to CBMC section 17.130.160.

The property owner and the applicant (if different) shall sign this authorization and compliance agreement as follows:

I have read and understood, and I will comply with all applicable requirements of any law or agency of the State, City of Coos Bay and any other governmental entity related to the subject authorization. The duty of inquiry as to such requirements shall be my responsibility. I agree to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the project; or my failure to comply with conditions of approval related to the authorization of permits. This agreement shall be binding on all successors and assigns.

---

JCEP  
Applicant



**Conditions related to the permit authorization are indicated below have been deemed to be of a substantive nature by the Coos Bay City Council.**

Condition of Approval #1: Prior to the commencement of any dredging activities, JCEP shall provide the City of Coos Bay evidence of an approved Section 401 Water Quality Certification permit and evidence of an approved Federal Energy Regulatory Commission (FERC) certificate, and shall comply with any conditions imposed by FERC.

Condition of Approval #2: Prior to the commencement of any dredging activities, JCEP shall receive written 404 authorization including ESA Section 7 compliance to perform the proposed dredging from the U.S. Army Corp of Engineers, in accordance with applicable agency requirements. Proof of such authorization shall be submitted to the City of Coos Bay prior to the commencement of dredging activities.

Condition of Approval #3: Prior to and during the commencement of any dredging associated with an Estuarine and Coastal Shoreline Uses and Activities permit, JCEP shall comply with the requirements of 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 applicable 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, and comply with all conditions of approval contained in the referenced permits.

Condition of Approval #5: As a general condition, 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, This condition shall remain in effect for all dredging periods that may span multiple years and multiple IWWWs.

Condition of Approval #7: During the conduct of all activities authorized under the Estuarine and Coastal Shoreline Uses and Activities Permit, JCEP shall comply with all Best Management Practices, as referenced in the Dredge Pollution Control Plan and Dredge Materials Management Plan.

Condition of Approval #8: During the conduct of all activities authorized under the Estuarine and Coastal Shoreline Uses and Activities Permit, JCEP shall comply with all applicable Best Management Practices included in the Dredging Pollution Control Plan (Navigation Reliability Improvements, Kentuck, APCO) (April 8, 2019), and particularly such BMPs related to turbidity, and with BMPs set forth in the Technical Memoranda submitted by the applicant.

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: JCEP shall be responsible for costs of City review of information and monitoring associated with project conditions, including but not limited to: investigations of non-compliance with conditions of approval by third parties, and/or investigations undertaken by the City of Coos Bay Staff for compliance regardless of notice of non-compliance by third parties.

Condition of Approval #13: Prior to the commencement of any activity authorized under the Estuarine and Coastal Shoreline Uses and Activity Permit, JCEP shall provide the City of Coos Bay evidence of an approved Final EIS.

Condition of Approval #14: 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. Consistent with the testimony offered by JCEP, the proposed dredging activity shall not impact this existing utility.

Condition of Approval #15: This authorization shall be effective only upon approval by Coos County of the remaining proposed navigational reliability improvements (NRI #1-3) located at three additional locations adjacent to the Channel outside the City of Coos Bay.

END