



## **AGENDA ITEM SUMMARY**

**Date:** September 17, 2019

**To:** City of Coos Bay City Council

**From:** Lane Council Governments (LCOG) Contact:

Henry Hearley, Assistant Planner, 541-682-3089, [hhearley@lco.org](mailto:hhearley@lco.org)

**RE: Land Use Application #187-19-000035 – PLNG – City of Coos Bay Estuarine Permit Application Eelgrass Mitigation in Coos Bay Estuary Management Plan (CBEMP) Aquatic Unit 52-NA.**

### **BACKGROUND/CONTEXT**

As part of the Compensatory Wetland Mitigation Plan (CWMP) associated with the overall Jordan Cove project, the applicants are required to provide mitigation in the estuary to offset impacts from the LNG terminal. The proposed eelgrass mitigation is one of two projects proposed in the CWMP.

Re-contouring of the eelgrass mitigation site is necessary to achieve optimal elevations for a successful transplantation and natural colonization of eelgrass (from an existing elevation of approximately +3 MLLW to a proposed elevation of -1.3 feet MLLW).

To comply with Statewide Planning Goal 16 Estuarine Resources, Coos County, City of Coos Bay and City of North Bend developed the CBEMP. It was adopted and acknowledged in 1984. There are three “aquatic” management units in the CBEMP: Natural Aquatic (NA), Conservation Aquatic (CA) and Development Aquatic (DA). This application proposes to conduct mitigation in the Natural Aquatic unit, in which mitigation is an allowed activity.

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

### **APPLICANT’S REQUEST**

JCEP is requesting approval of an Estuarine Permit from the City of Coos Bay to conduct eelgrass mitigation as an allowed activity within the Coos Bay Estuary Management Plan (CBEMP) Aquatic Unit 52-NA.

Project components include re-contouring an existing un-vegetated sandbar to create an area of optimal habitat, and then transporting eelgrass from a nearby donor site (see Exhibit B, Figure E-4,

in Attachment A on the City’s website) into the mitigation area. The proposed eelgrass mitigation site is an un-vegetated intertidal shoal comprised of medium to coarse sand, located due south of the airport. The proposed mitigation project will reduce and re-contour a boundary area of approximately 9.34 acres to establish approximately 6.78 acres of new habitat that will support a minimum of 2.7 acres of established clustered eelgrass beds (see Exhibit B, Figure E-1, in Attachment A).

The re-contouring process for the Eelgrass Mitigation Site is designed to create optimal depth habitat for eelgrass in the sandy shoal of the mitigation area, which is currently too shallow in areas to support eelgrass. The proposed method of re-contouring is via a shallow-water hydraulic dredge that will excavate the upper/shallow areas of the shoal to create more uniform depth for ideal eelgrass habitat.

### **ANALYSIS & STAFF REPORT**

The City of Coos Bay contracted with the Lane Council of Governments (LCOG) to conduct an analysis and prepare an accompanying staff report for the Eelgrass Mitigation application. Decisions and conclusions on the application ultimately lie with the City’s decision-making bodies. LCOG’s analysis is intended to provide guidance in making findings and conclusions for the applications.

The complete staff report evaluates ALL applicable criteria. Staff has identified key criteria for consideration in the Eelgrass Mitigation proposal. These ultimately involve the Planning Commission providing answers to the following key questions:

- 1. Is Mitigation allowed in the 52-NA zone?**
- 2. Does the Eelgrass Mitigation proposal meet the CBEMP definition for “mitigation”?**
- 3. Is the proposed eelgrass mitigation proposal appropriately characterized as “enhancement” (an approved type of mitigation). More specifically, does the re-contouring of a site to achieve mitigation goals meet the CBEMP definition of “enhancement?”**
- 4. Should all of the proposed activities (including the re-contouring) be captured under a single definition “enhancement.”? In other words, if dredging to re-contour the site is part and parcel of the “improvement of conditions” associated with an “enhancement” at the site, is it appropriate to analyze the dredging as a separate activity?**

Following is a summary of staff’s current conclusions relative to the key questions listed above:

1. “Mitigation” is listed and denoted with an “A” under the 52-NA unit list of activities. Section 3.8 of the CBEMP notes that “A” means the use or activity is allowed “as of right, subject only to Bay-wide Policies and Management Objectives.” The Bay-wide policies are policies that special and general conditions point directly to for specific uses and activities. Mitigation, as a listed allowed activity does not have any special or general conditions associated with it. Staff concludes that mitigation is an allowed use and that no bay-wide policies are applicable as identified by special or general condition.
2. The CBEMP defines “MITIGATION” as follows:

*The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS 541.626).*

Staff concludes that the definition of “mitigation,” as set forth in the CBEMP, aligns with the applicant’s proposed mitigation of eelgrass in that the proposed activity “creates” and “enhances” an estuarine area to maintain functional characteristics and processes of the estuary.

3. The CBEMP defines “Enhancement” as follows:

*The improvement of conditions in an area which remains under estuarine influence but had experienced past degradation or reduction in productivity due to obstruction of flow, sedimentation, log debris, etc.*

The mitigation proposes to convert an existing un-vegetated sandbar into a functioning eelgrass habitat. Staff concludes that the proposed mitigation effort can be considered an enhancement because it improves the conditions of the site by improving the functionality of the existing estuarine habitat. The sandbar has "experienced past degradation," which occurred when spoils associated with dredging for the Federal Navigation Channel between 1948 and 1951 were placed in the Bay and altered channel flows.

4. Staff conclude that the "improvement of conditions" required for mitigation “enhancement “cannot occur without completing the re-contouring. Staff have no evidence that the "improvement of conditions” can occur at the sandbar without the re-contouring (or that similar eelgrass mitigation can occur without some degree of re-contouring). Staff conclude that because the re-contouring is part of the "enhancement,” it does not qualify as prohibited “dredging.” Put another way, re-contouring for enhancement of an estuarine area for purposes of allowed mitigation activities is an implicit exception to the definition of “dredging” and is therefore not prohibited in the 52-NA unit.

## **RECOMMENDED CONDITIONS OF APPROVAL**

The following conditions are currently proposed by staff for approval of the applications:

***Condition of Approval #1: Prior to commencement of any dredging activities associated with eelgrass mitigation to create suitable conditions, JCEP shall provide the City of Coos Bay Community Development Administrator evidence of an approved DSL and US Army Corps of Engineers removal-fill permit.***

***Condition of Approval #2: As a general condition, JCEP shall ensure all floating and submerged dredging equipment, and equipment related to mitigation efforts, 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 #3: As a general condition, installation, operation and removal of the dredge line 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 subsequent installation and operations of the dredge line associated with mitigation efforts that may span multiple years and multiple IWWWs.*

***Condition of Approval #4:*** *During the conduct of all activities authorized under the Estuarine Permit authorizing eelgrass mitigation efforts, JCEP shall comply with the requirements of the MOA, CRPA, and UDP as agreed upon and signed by JCEP and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, as well consistency with any other applicable provisions of Policy #18 of the CBEMP.*

***Condition of Approval #5:*** *As a general condition of approval, approval of an estuarine permit to conduct eelgrass mitigation as an allowed activity in the 52-NA zone, shall expire two (2) years after the effective date of the decision unless, within that time, the applicant or a successor in interest files an application for extension pursuant to CBMC 17.130.140 (2) & (3).*

#### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission carefully review the application itself (attached to the staff report), the application criteria, public comments, and the responses contained within the staff report. Based on the evidence in the record, it is staff's recommendation that the *Land Use Application #187-19-000035 – PLNG – City of Coos Bay Estuarine Permit Application for Eelgrass Mitigation in Coos Bay Estuary Management Plan (CBEMP) Aquatic Unit 52-NA*, be **approved with the proposed conditions.**

The Commission has other options:

- 1) Motion to approve the application with additional conditions (and additional associated findings)
- 2) Motion to deny the application (with additional associated findings)
- 3) Motion to leave the hearing and record open.
- 4) Motion to close the hearing and keep the record open for a date certain (which will functionally postpone deliberation and decision).
- 5) Motion to close the hearing and record (deliberations and decision could continue).
- 6) Motion to close the hearing and record and postpone any deliberation and/or decision
- 7) Motion to continue deliberations to another date (if deliberations have begun but time constraints prevent a decision)



CITY OF COOS BAY  
Public Works/Community Development Department

500 Central Avenue  
Coos Bay, OR 97420

541.269.8918  
[www.coosbay.org](http://www.coosbay.org)

## STAFF REPORT

### Type III – Land Use Process Jordan Cove Energy Project – Eelgrass Mitigation

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

**REVIEW BODY:** Planning Commission

**MEETING:** Tuesday, September 24, 2019 at 6:00 p.m.

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

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

**APPLICANT'S REPRESENTATIVE:** Perkins Coie LLP, 1120 NW Couch Street, Tenth Floor, Portland, OR 97209  
Attention: Steven Pfeiffer

**SUBJECT PROPERTY:** City of Coos Bay, OR, 97420 (County Tax Lot Map #25-13-8)

**SUBJECT:** LAND USE APPLICATION #187-19-000035-PLNG – City of Coos Bay Estuarine Permit Application Eelgrass Mitigation in Coos Bay Estuary Management Plan (CBEMP) Aquatic Unit 52-NA Initial Filing from Jordan Cove Energy Project L.P.

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#### I. BACKGROUND/CONTEXT

##### *Required Mitigation*

As described in the Compensatory Wetland Mitigation Plan (CWM) mitigation is proposed at the eelgrass mitigation site that provides for the required minimum mitigation acreage/credits necessary to meet regulatory requirements. The proposed eelgrass mitigation site is intended to offset impacts to eelgrass habitat resulting from the LNG terminal.

##### *The Coos Bay Estuary Management Plan (CBEMP)*

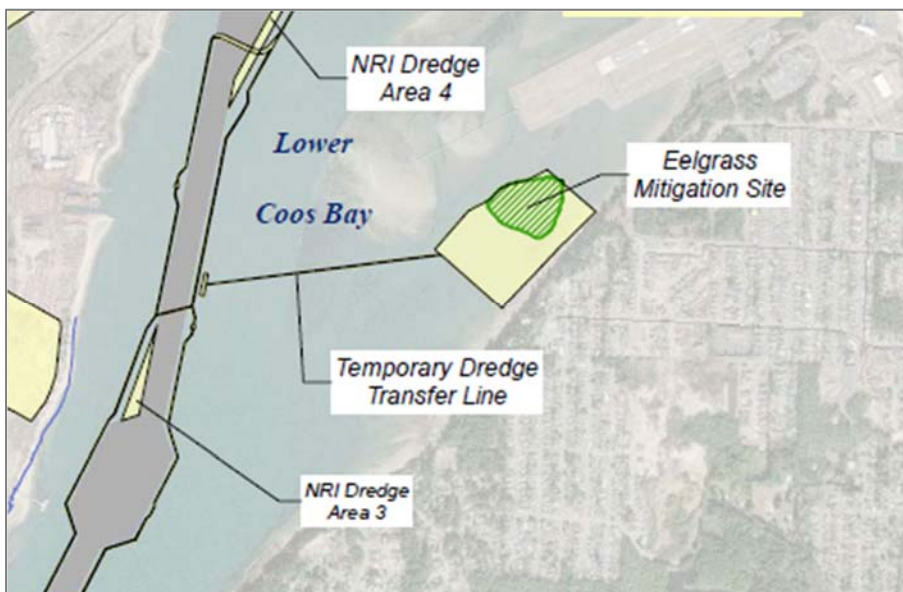
To comply with Statewide Planning Goal 16 Estuarine Resources, Coos County, City of Coos Bay and City of North Bend developed the CBEMP. It was adopted and acknowledged in 1984. There are three “aquatic” management units in the CBEMP: Natural Aquatic (NA), Conservation Aquatic

(CA) and Development Aquatic (DA). This application proposes to conduct mitigation in the Natural Aquatic unit, in which mitigation is an allowed activity.

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

*Temporary dredge transfer line as it relates to eelgrass mitigation*

The temporary dredge transfer line will be used to remove sediment extracted through hydraulic dredging from the existing elevated, un-vegetated eelgrass mitigation site. Re-contouring is necessary to achieve optimal elevations for a successful transplantation and natural colonization of eelgrass (from an existing elevation of approximately +3 MLLW to a proposed elevation of -1.3 feet MLLW).



Installation of the temporary dredge line will occur during the ODFW approved In Water Work Window (IWWW) from October 1 to February 15. The applicant states this window corresponds to the period when eelgrass shoots are naturally dying back and the entire eelgrass bed contracts. Installation, operation, and removal of the dredge line will, therefore, occur during the most optimal period that to reduce impacts to existing eelgrass beds. The dredging will be completed within one fall/winter season and the temporary dredge line will be removed prior to the spring and summer eelgrass growth cycle.

Up to two proposed booster pumps will be utilized to facilitate movement of dredged material through the temporary dredge line. The booster pumps will be installed in a manner to avoid existing eelgrass beds. The booster pumps will also act as an anchor to the dredge line to minimize movement of the dredge line when placed at the bottom of the Bay. The temporary dredge line alignment will be situated in a manner that there is no potential interference with existing airport runway operations, landings or takeoffs of aircraft.

No removal of sediments can occur without the applicant first obtaining an approved removal-fill permit from DSL, and US Army Corps of Engineers. The applicant's removal fill application is currently under technical review, and as a result, staff have proposed a condition of approval (**Condition of Approval #1**) requiring the applicant to secure an approved removal-fill permit prior to the removal of any sediment associated with the proposed eelgrass mitigation.

#### *Potential impacts to eelgrass from the temporary dredge transfer line*

The applicant asserts that potential impacts to eelgrass will be temporary, involving the physical covering of existing blades of eelgrass by the temporary dredge line. The temporary dredge line will be removed by February 15 at the end of the IWWW. The project engineers and consultants indicate a survey will be conducted in the area during the following summer to determine and/or confirm whether eelgrass has recolonized where the dredge line was temporarily located. If eelgrass has not reoccupied the area covered by the temporary dredge transfer line, the area impacted by the temporary dredge transfer line will be added to the total JCEP eelgrass mitigation project. The applicant asserts that potential impacts to eelgrass beds are expected to be minimal because there are not substantial amounts of eelgrass proximal to the proposed eelgrass mitigation site. Fringe eelgrass has been documented in 2016 along the east and south boundary of the site, but a resurvey of this area in 2017 and 2018 showed the area void of eelgrass. If eelgrass is present during dredging, the amount of eelgrass lost will be quantified and added to the total JCEP eelgrass mitigation requirement. The applicant's consultant states, the principle manner in which eelgrass beds may be adversely impacted by excavation and grading would be from the resultant turbidity generated by the hydraulic dredge. Turbidity modeling conducted by JCEP indicates that turbidity will be minor, temporary and localized to the immediate area of the eelgrass mitigation site. Implementation of Best Management Practices (BMPs) will allow for no more than a 10 percent increase in project-caused turbidity background levels. For further details related to potential adverse impacts please refer to the applicant's technical memorandum dated July 22, from Project Engineer, Derek Vowels, contained in Attachment A, Exhibit B of this staff report.

#### *Selection of eelgrass mitigation site*

The proposed eelgrass mitigation site was selected after a review of ten potential sites by David Evans and Associates. The review assessed ten sites throughout the Bay and evaluated each based on ecological conditions suitable for eelgrass growth. The conditions evaluated included: salinity concentrations, moderate flow/circulation, appropriate depths, distance from potential pollution sources, stability and longevity of the eelgrass bed, and the presence of other nearby eelgrass beds. Please refer to Exhibit B, Compensatory Wetland Mitigation Plan, as listed in Attachment A, for details and the criteria that were used to select the proposed eelgrass mitigation site.

#### *Performance measures*

At the proposed eelgrass mitigation site, JCEP seeks to establish a stable population of eelgrass beds at an area of 1.2 times or greater the area (and equivalent densities) as the impact site. The stability of the population size and density will be compared to surrounding beds and overall natural fluctuation of eelgrass populations within the Bay. If performance standards are not being met or are on a path not to be met by the end of monitoring period, then contingency measures will be required. Contingencies measure include, but are not limited to, additional transplanting, monitoring the donor site and a reference site to determine potential course of action, and if not rectifiable, JCEP would then consult with state agencies to then discuss alternative mitigation strategies. Please refer to Exhibit B, Compensatory Wetland Mitigation Plan, as listed in Attachment A, for details and a further explanation.

## II. APPLICANT'S REQUEST

JCEP is requesting approval of an Estuarine Permit from the City of Coos Bay to conduct eelgrass mitigation as an allowed activity within the Coos Bay Estuary Management Plan (CBEMP) Aquatic Unit 52-NA.

Project components include re-contouring an existing un-vegetated sandbar to create an area of optimal habitat, and then transporting eelgrass from a nearby donor site (see Exhibit B, Figure E-4, in Attachment A) into the mitigation area. The proposed eelgrass mitigation site is an un-vegetated intertidal shoal comprised of medium to coarse sand, located due south of the airport. In 2018, the applicant's consultant, David Evans and Associates, conducted eelgrass investigations at the proposed mitigation site and confirmed that the area has no eelgrass or only stray (possibly transient) eelgrass present. The project is intended to offset anticipated impacts to at least 2.3 acres of eelgrass habitat in the Coos Bay estuary from the Jordan Cove LNG Project. The proposed LNG pipeline does not impact eelgrass habitat. To achieve this, the proposed mitigation project will reduce and re-contour a boundary area of approximately 9.34 acres to establish approximately 6.78 acres of new habitat that will support a minimum of 2.7 acres of established clustered eelgrass beds (see Exhibit B, Figure E-1, in Attachment A).

The re-contour process for the Eelgrass Mitigation Site is designed to create optimal depth habitat for eelgrass (-1.0 to -2.0 ft NAVD 88) in the sandy shoal of the mitigation area, which is currently too shallow in areas to support eelgrass. The proposed method of re-contouring is via a shallow-water hydraulic dredge that will excavate the upper/shallow areas of the shoal to create more uniform depth for ideal eelgrass habitat.

The applicant notes that a dredge designed to access and work in shallow water sensitive habitats such as marshes and nearshore areas would be utilized. The dredge would be equipped with a hydraulic dredge pump system mounted on an excavator arm. Dredges of this type are typically relatively small in footprint (14 foot by 48 foot range) and portable/truckable. They can often self-launch from a shallow bank without the assistance of a crane or other equipment. They are equipped with a spud system for positioning and holding the dredge in place, and some may be equipped with hydraulic pontoons or legs to enhance operations in shallow, soft bottom locations. The dredge may also be equipped with low impact self-propulsion systems. Pump sizes can vary, but a range of, 10 to 16 inch diameter discharge line, is typical. Considering the distance the dredge material will need to be pumped and potential site conditions, a 14 inch diameter discharge line is considered for planning. An example of the type of hydraulic dredge being discussed is shown in Figure 3. The contractor will need to take into consideration the impacts from potential wind waves and vessel wakes at the site, during all water levels, when selecting equipment and planning work.

The proposed mitigation work has been designed to avoid and minimize impacts to nearby eelgrass beds or temporary impacts to stray eelgrass that may occur in the grading footprint. Any temporary impacts that are unavoidable, based on the preconstruction survey, will be accounted for in the final planting plan.

The donor site is located approximately 1,500 feet southwest of the eelgrass mitigation site and occupies approximately 18.6 acres of relatively continuous and dense eelgrass beds. The mean



eelgrass density within the donor site was calculated at 53.5 shoots per meter squared. US Army Corps guidelines suggest that harvesting 10 percent of shoots from an existing eelgrass bed will not harm the donor bed habitat. The methodology for transplanting eelgrass will follow best practices as demonstrated by prior Coos Bay eelgrass mitigation projects (the applicant specifically calls out previous eelgrass mitigation efforts undertaken with the airport extension project). The methodology is provided for in Exhibit B of the applicant's initial application (included as Attachment A to this staff report). Given the above description and materials presented in the application and supplemental materials, s

### III. NOTICES AND REFERRALS

#### **Notice:**

On August 30, 2019 notice of the public hearing was mailed to surrounding property owners along the shoreline adjacent to the proposed mitigation site. The CBMC doesn't outline specific noticing requirements for a subject property located in a body of water. City staff mirrored the notice approach recently used by the City for the Navigational Reliability Improvements application, mailing notice to bayfront properties adjacent to the proposal and within City Limits. Notice was also published in "The World", on September 7, 2019.

#### **Referrals:**

On August 30, and September 3, 2019, referral notice was sent to the following governmental/utility/tribal agencies for a request for comment on the application: Department of Land Conservation and Development (DLCD), Department of State Lands (DSL), Oregon Department of Fish and Wildlife (ODFW), Coos Bay North Bend Water Board, US Army Corps of Engineers, NW Natural, Pacific Corp, Coos County, City of Coos Bay, Oregon International Port of Coos Bay, and Confederated Tribes of Coos, Lower, Umpqua and Siuslaw Indians and Coquille Tribe. No referral comments were received as of the completion of this staff report.

### IV. PUBLIC COMMENTS AND TESTIMONY

A number of public comments were received addressing the application. Attachment C is a matrix summarizing the comments (please refer to the City's website at <http://coosbay.org/departments/community-development-department> to view all public comments in their entirety) . Following is a thematic summary of comments received:

#### *Design and placement of the eelgrass mitigation site*

Excavation will create a "sump." As a result, when the tide level leaves water in the excavated area, the remaining water will warm and have a reduced oxygen content. Many studies have shown that low oxygen and high temperatures have negative impacts on eelgrass photosynthesis and growth. These negative impacts are most notable with increasing temperature. Small elevation in temperature over a short period, has resulted in a serious decline in eelgrass cover

Because the applicant has selected a site situated in the middle of a broad, gently sloping intertidal flat, as the tide falls organisms may become stranded in the "sump" including some endangered species.

The proposed compensatory mitigation site holds significant potential to create an eelgrass habitat that lacks important attributes of the habitat to be destroyed.

Success in establishing a new eelgrass bed will be difficult and is dependent on multiple factors. High water column inorganic nitrogen concentrations can promote algae blooms that smother the eelgrass. This additional stressor is of concern as the eelgrass mitigation site is close to the North Bend waste water treatment plant outfall.

The long-term maintenance of the dredged eelgrass mitigation site and the stability of the eelgrass bed after construction is unclear. The proposed permit should be denied on the basis of inadequate design.

#### *Long term maintenance*

The application implies that the Sediment Transport Analysis in Appendix I conducted by Moffatt & Nichol (M&N) includes information about the stability of the eelgrass mitigation site after construction. Appendix I is not about the eelgrass mitigation site. It is about what will happen to the Federal Navigation Channel (FNC) as a result of the dredging.

There is not an analysis of any sediment changes as a direct result of the implementation of the eelgrass mitigation site. Appendix I does not address any short or long term changes to the sediment characteristics of the site as a result of creation of the “sump” or tidal currents.

Although models can provide information on potential outcomes of the proposed mitigation under “normal” conditions they do not take into account effects of unusual, rare, but impactful events. There are many examples of these over the years in Coos Bay.

Because the non-cohesive sand and silty sand sediments in the area are relatively mobile, and because the proposed mitigation site is a “sump” situated in the middle of a large, low-gradient intertidal flat rich in mobile sediments, it is not likely that the excavated sediment surface elevations in the proposed mitigation site will persist on a permanent basis. It is reasonable to anticipate that the dredged area will gradually shallow until it matches or approximates the elevation of the sediments of the surrounding tide flats and become unsuitable for the transplanted eelgrass.

#### *Dredging is not allowed in 52 – Natural Aquatic*

The applicant’s response correctly identifies that planting eelgrass is consistent with the management objective, however the plans to dredge 9.3 acres of the 52-NA area are not consistent with the management objective.

The current and 2007 applications are not the same in that the 2007 application was to shave down the end of two islands to the south and southwest of the airport runway (PDF page 34 and graphic on page 39). It did not involve dredging in the intertidal, a prohibited activity in 52-NA.

The absence of information about the current conditions, functions and values of the existing wetland make it impossible to determine if construction of an eelgrass bed at this location will result in a net increase or decrease in the functions and values of the wetlands at this location.

*Donor and reference site*

A reference site for the comparison of any mitigation actions should be located somewhere where no disturbance actions are undertaken. The donor site is inappropriate.

*Alternative sites for mitigation*

The consideration of alternative sites for the eelgrass mitigation in this application is weak. The applicant's criteria could easily have been expanded to consider other attributes that would have made some of the alternatives more likely to be considered. Dredging upland areas of the dredge islands to appropriate eelgrass depths in the regions adjacent to eelgrass would increase the area of eelgrass in the bay without having to dredge an already productive 52-NA area.

*Salvage of eelgrass from the access channel*

Other related permits suggest that the eelgrass planted in the Jordan Cove temporary site will be dug up after one or two seasons and then relocated to the eelgrass mitigation site adjacent to the airport. If this is the case, and the applicant is planning to use the transplanted eelgrass as part of the donor stock for the eelgrass mitigation site the Coos Bay city permit should reflect this action. It is quite likely that the eelgrass will experience significant shock from being dug up, transplanted for one to two years, dug up again and transplanted to a new site.

*Airport Approval*

The permit application states that "coordination and clearances from the airport may be needed," but does not provide anything further about what is included in such coordination and clearances. This vagueness does not support permit approval. Staff have sent referral notice to the Southwest Oregon Regional Airport for comment on this applicant, and to-date have not received any comment.

**V. APPROVAL CRITERIA**

***Coos Bay Municipal Code (CBMC)***

*17.352 Estuarine and Coastal Shoreland Uses and Activities*

*17.130.140 Expiration and Extension of Decisions*

***Coos Bay Estuary Management Plan (CBEMP)***

*Management Classification for NA-52 (CBEMP 3-142)*

*Management Objective of Natural Aquatic Unit (Segment 52-NA)*

*Activities*

**VI. EVALUATION OF APPROVAL CRITERIA FOR ESTUARINE AND COASTAL SHORELAND USES AND ACTIVITIES PERMIT**

**COOS BAY MUNICIPAL CODE (CBMC)**

***CBMC 17.130.140 EXPIRATION AND EXTENSION OF DECISIONS***

***(1) Except as otherwise expressly provided by the Coos Bay Development Code or the decision in question, decisions made pursuant to this chapter expire two years after the effective date of the decision unless, within that time, the applicant or a successor in interest files an application for an extension of the decision or submits an application for project review or a building permit,***

*or undertakes substantial development of the use authorized by the decision. Approval of a preliminary subdivision or partition shall expire within five years from the date of approval.*

*(2) An application for extension of a decision is subject to a Type I process. An applicant for an extension shall submit the requisite fee, a completed application review form provided for that purpose by the city, and text describing how the application complies with the approval criteria for an extension, and basic facts and other substantial evidence to support the text.*

*(3) The director may approve a single one-year extension of a decision if he or she finds that the relevant facts and the law have not changed substantially since the original approval, or that the application can comply with the law in effect on the date the application for the extension was filed by complying with applicable additional and/or modified conditions of approval, and those additional conditions and/or modifications are adopted. [Ord. 503 § 1 (Exh. B), 2018; Ord. 473 § 3 (Exh. A), 2016].*

**Staff Response:** Consistent with the section cited above, approval of an estuarine permit shall expire two (2) years after the effective date of the decision unless, within that time, the applicant or a successor in interest files an application for an extension pursuant to subsection (2) and (3), cited above.

#### **CBMC 17.352 ESTUARINE AND COASTAL SHORELAND USES AND ACTIVITIES PERMIT**

##### **17.352.010 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. [Ord. 503 § 1 (Exh. B), 2018; Ord. 473 § 3 (Exh. A), 2016. Formerly 17.370.010].*

**Staff Response:** The City of Coos Bay has set a previous precedent that any land use proposals involving Jordan Cove Energy Project would be handled in the public setting so that the public would have an opportunity to provide comment on the application in the form of a public hearing in front of the appropriate decision making body. Staff and the City of Coos Bay elevated this proposal from a Type II process to a Type III to include a public hearing in front of the Planning Commission.

The CBEMP has been acknowledged by the State of Oregon to be consistent with the Oregon Statewide Planning Goals, including Goal 16 Estuarine Resources. The CBEMP lists mitigation as an approved activity for the 52-NA aquatic zone, and not subject to general or specific conditions. The CBEMP also lists dredging as restricted activity in the 52-NA aquatic zone. Mitigation and dredging are discussed in further detail under Section VII.

##### **17.352.020 Initiation.**

*A request to permit these uses and activities may be initiated by a property owner or authorized agent through a Type I review process and application to the community development department.*

**Staff Response:** As part of the completeness review, staff requested a signed authorization from the underlying property owner of the Bay, the Oregon Department of State Lands (DSL). Accordingly, the applicant included a signed DSL authorization form to file this land use application. As previously referenced, given the high level of public interest with projects involving the Jordan Cove Energy Project, staff and the City elevated this application from a Type II to a Type III process. Staff find the applicant has followed the appropriate steps in obtaining authorization for filing this land use application.

**17.352.030 Application.**

***An application may include any or all of the following items at the discretion of the director. The applicant shall provide three copies of the required information.***

***(1) A general location map of the property and a detailed parcel map of the property, each on approximately eight-inch-by-11-inch paper.***

***(2) Address and legal description of the property.***

***(3) Detailed description of the proposed use or activity.***

**Staff Response:** Staff find the applicant has provided a detailed description of the proposed use or activity.

***(4) Statement explaining how the proposed use and/or activity complies with the applicable management plan and title provisions. [Ord. 503 § 1 (Exh. B), 2018; Ord. 473 § 3 (Exh. A), 2016. Formerly 17.370.030].***

**Staff Response:** Staff find the applicant's submittal and completeness items requested adequately address section 17.352.030.

***17.352.050 Conditions. The city may impose conditions if it finds that a use or activity may have an adverse impact on the site itself or nearby property. Conditions of approval, including those identified in Chapter 17.347 CBDC, Conditional Uses, shall be stated in terms that are specific and measurable so that the applicant is fully aware of the intent and justification of the condition and how and when to implement them. [Ord. 503 § 1 (Exh. B), 2018; Ord. 473 § 3 (Exh. A), 2016. Formerly 17.370.050].***

**Staff Response:** Should the City find certain conditions to attach to a recommendation that have the ability to minimize the adverse impacts of the proposed use in the 52-NA zone, the City has the authority to impose conditions of approval pursuant to Section 17.352.050. Any conditions should be clearly identified in this staff report and any subsequent findings of fact, and or resolution. Staff have included conditions of approval associated with their approval recommendation.

## VII. EVALUATION OF CBEMP WITH RESPECT TO PROPOSAL.

### **COOS BAY ESTUARINE MANAGEMENT PLAN, SECTION 5. DESIGNATION OF SITE-SPECIFIC MANAGEMENT SEGMENTS, USES AND ACTIVITIES**

The CBEMP lists uses and activities that are allowed in the 52-NA unit. "Mitigation" is listed and denoted with an "A" under the 52-NA unit list of activities. Section 3.8 of the CBEMP notes that "A" means the use or activity is allowed "as of right, subject only to Bay-wide Policies and Management Objectives." The Bay-wide policies are policies that special and general conditions point directly to for specific uses and activities. Mitigation, as a listed allowed activity does not have any special or general conditions associated with it.

Dredging is listed as an activity in the 52-NA unit. Only certain kinds of dredging are explicitly allowed. For example, new dredging (2a) is only allowed in an identified area, which does not include the proposed mitigation site.

The parties make different arguments about whether the proposed activity qualifies as allowed "mitigation" or prohibited "dredging." Much of that discussion turns on the definitions of those and other terms in the CBEMP. We therefore turn now to those definitions. {Skip to definitions section}

#### **52-NA Unit- Activities**

...

#### **5. Mitigation**

...

**Staff Response:** "Mitigation" is listed and denoted with an "A" under the 52-NA unit list of activities. Section 3.8 of the CBEMP notes that "A" means the use or activity is allowed "as of right, subject only to Bay-wide Policies and Management Objectives." The Bay-wide policies are policies that special and general conditions point directly to for specific uses and activities. Mitigation, as a listed allowed activity does not have any special or general conditions associated with it. Staff conclude that mitigation is an allowed use and that no bay-wide policies are applicable as identified by special or general condition.

...

#### **2. Dredging**

...

**Staff Response:** Dredging is listed as an activity in the 52-NA unit. Only certain kinds of dredging are explicitly allowed. For example, new dredging (2a) is only allowed in an explicit area; an area which does not include the proposed mitigation site.

The proposed mitigation necessarily utilizes hydraulic dredging to reduce the elevation of the site. Staff is compelled by the argument that any meaningful mitigation in pursuit of the management objectives of the 52-NA unit, would require "dredging" as defined in the CBEMP. Mitigation will generally necessitate the "removal of sediment" from the estuary.

The applicant emphasizes the distinction between dredging in pursuit of re-contouring and "enhancement" and dredging as a prohibited activity in the 52-NA unit. The applicant argues that "improvement of conditions" pursuant to enhancement, cannot occur without completing the re-contouring. The applicant argues that because the re-contouring is already part of "enhancement," it cannot also be "dredging." Enhancement is a type of

mitigation which is permitted in the 52-NA zone. The proposal is distinguishable from the "dredging" in the nearby NRI proposal, in that all of the proposed activities from the eelgrass mitigation (including the re-contouring) are captured under a single definition "enhancement."

Staff have no evidence that the "improvement of conditions" can occur at the sandbar without the re-contouring (or that similar eelgrass mitigation can occur without some degree of re-contouring). Staff conclude that because the re-contouring is part of the "enhancement" it can be treated separately than "dredging."

### **COOS BAY ESTUARINE MANAGEMENT PLAN, SECTION 3.2 POLICY DEFINITIONS**

The following definitions are relevant:

***MITIGATION: The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS 541.626).***

As noted, staff agrees with the applicant's statement that the CBEMP management classification for the 52-NA expressly designates "mitigation" as an allowed activity. The applicant asserts that their proposal qualifies as mitigation under this definition, in part because it enhances the estuarine area in the ways required under the definition. The applicant states in Attachment A, Exhibit B:

*"the proposed mitigation will result in a net increase of impacted habitats and, because mitigation habitats will function in a manner equivalent to or better than those habitats being impacted, it is anticipated there would be a net gain in overall functions and values."*

Further as explained by the applicant's consultant, David Evans and Associates, in the Compensatory Wetland Mitigation Plan (Attachment A, Exhibit B), *"the proposed mitigation effort is considered to be an enhancement because it improves the functionality of the existing estuarine habitat."*

***ENHANCEMENT: The improvement of conditions in an area which remains under estuarine influence but had experienced past degradation or reduction in productivity due to obstruction of flow, sedimentation, log debris, etc.***

The applicant asserts that the re-contouring is part and parcel of the improvement of conditions" at the sandbar and is correctly characterized as "enhancement."

**Staff Response:** The applicant proposes to convert an existing un-vegetated sandbar into a functioning eelgrass habitat. The sandbar has "experienced past degradation," which occurred when spoils associated with dredging for the Federal Navigation Channel between 1948 and 1951 were placed in the Bay and altered channel flows. The applicant notes that the enhancement process will involve re-contouring the sandbar to match the depth of adjacent areas where eelgrass beds occur. The re-contouring is necessary because the principal limiting factor for eelgrass in the general vicinity of the sandbar is elevation. Without re-contouring the sandbar to a lower elevation, eelgrass mitigation will not be successful there, i.e., there will not be "improvement of conditions" as contemplated by the definition of "enhancement."

Opponents argue that the earth moving activities qualify as “dredging” and are prohibited activities in the 52-NA unit. Therefore, staff considers the definition of “dredging.”

***DREDGING: The removal of sediment or other material from a stream, river, estuary or other aquatic area. Maintenance Dredging refers to dredging necessary to maintain functional depths in maintained channels, or adjacent to existing docks and related facilities; New Dredging refers to deepening either an existing authorized navigation channel or deepening a natural channel, or to create a marina or other dock facilities; Dredging to Maintain Dikes and Tide gates Refers to dredging necessary to provide material for existing dikes and tide gates; Minor Dredging refers to small amounts of removal as necessary, for instance, for a boat ramp. Minor dredging may exceed 50 cubic yards, and therefore, require a permit***

***Staff Response:*** The CBEMP definition for “dredging” is broad. It identifies the removal of sediment or other materials from the estuary as “dredging.” However, there is support in the CBEMP for instances in which this broad reading of the term “dredging” was not meant to prohibit earth moving such as is proposed in this application. Temporary alteration is allowed in the 52-NA unit, and anticipates the need for dredging or fill, or other estuarine alterations over a short period of time to facilitate an allowed use. This definition specifically calls out alterations necessary to establish mitigation sites.

***TEMPORARY ALTERATION: Dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include: (1) alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance), (2) alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations, and (3) minor structures (such as blinds) necessary for research and educational observation.***

***Staff Response:*** The definition of “Temporary Alteration” provides an example of how the CBEMP contemplates the relationship between mitigation and activities like dredging, filling and other estuarine alterations. Although there is no intention to return the mitigation site to its “previous condition,” the temporary alteration provision recognizes that alterations can be necessary for enhancement as a form of mitigation.

***52-NA Unit – Management Objective.***

***MANAGEMENT OBJECTIVE: This aquatic unit contains extensive eelgrass beds with associated fish and waterfowl habitat and shall accordingly be managed to maintain these resources in their natural condition in order to protect their productivity.***

***Dredging of a small channel on the north side of the proposed airport fill shall be necessary as a form of mitigation to maintain tidal currents.***

***Maintenance only of the existing sewage treatment plant outfall shall be permitted.***



**Staff Response:** The management objective of the 52-NA zone does explicitly call out “eelgrass beds” and that the aquatic unit shall be managed to maintain these resources in their natural condition. The proposal will establish new eelgrass beds in an area of the Bay that has, in recent history been unable to support establishment of eelgrass naturally due to shoaling from dredge spoils, which prevent optimal depth for eelgrass habitat. Accordingly, the applicant is proposing to establish new eelgrass habitat within the 52-NA aquatic zone to ensure productivity of “eelgrass beds with associated fish and waterfowl habitat” which aligns with the management objective.

Staff point out the language of the management objective which states “*maintain these resources in their natural condition in order.*” As noted, one of the allowed activities in 52-NA is “mitigation” which does not have any general or special conditions attached to it. Staff conclude that the proposal is consistent with management objectives.

## VIII. CONDITIONS OF APPROVAL

Staff has identified and recommends the following conditions for Planning Commission to consider if authorization of the proposed eelgrass mitigation proceeds:

***Condition of Approval #1: Prior to commencement of any dredging activities associated with eelgrass mitigation to create suitable conditions, JCEP shall provide the City of Coos Bay Community Development Administrator evidence of an approved DSL and US Army Corps of Engineers removal-fill permit.***

***Condition of Approval #2: As a general condition, JCEP shall ensure all floating and submerged dredging equipment, and equipment related to mitigation efforts, 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 #3: As a general condition, installation, operation and removal of the dredge line 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 subsequent installation and operations of the dredge line associated with mitigation efforts that may span multiple years and multiple IWWWs.***

***Condition of Approval #4: During the conduct of all activities authorized under the Estuarine Permit authorizing eelgrass mitigation efforts, JCEP shall comply with the requirements of the MOA, CRPA, and UDP as agreed upon and signed by JCEP and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, as well consistency with any other applicable provisions of Policy #18 of the CBEMP.***

***Condition of Approval #5: As a general condition of approval, approval of an estuarine permit to conduct eelgrass mitigation as an allowed activity in the 52-NA zone, shall expire two (2) years after the effective date of the decision unless, within that time, the applicant or a successor in interest files an application for extension pursuant to CBMC 17.130.140 (2) & (3).***

### ***Performance Standards***

There are a number of performance items proposed as part of the mitigation process. These are elements that cannot be “conditions of approval” because they evaluate and iterate upon elements of the mitigation itself. This includes the applicant’s assertions around monitoring and adjusting mitigation approaches, as well as adherence to Best Management Practices. Staff find that performance measures and standards for the proposal are addressed through the Jordan Cove Energy Project Compensatory Wetland Mitigation Plan (CWMP) required by state and federal agencies. Staff have identified the relevant sections of the CWMP below:

<b><i>Compensatory Wetland Mitigation Plan (Exhibit B)</i></b>	<b>Attachment A (Application)</b> PDF Page#/Exhibit B Page #
<i>Performance Standards</i>	100/61
<i>Monitoring Plan</i>	107/68
<i>Contingency Plan/Adaptive Management Plan</i>	111/72

**IX. CONCLUSION**

Based on the evidence in the record, LCOG recommends approval, as conditioned, of an estuarine permit to conduct eelgrass mitigation in the 52-NA aquatic zone.

**X. ATTACHMENTS AND EXHIBITS (all attachments are listed on the City's website)**

Attachment A: Initial application submittal

Attachment B: Supplemental materials submitted as part of completeness review

Attachment C: Public Comments Matrix

Attachment D: Applicant Correspondence