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Clatsop County Board of Commissioners
c/o Clatsop County Transportation & Development Services
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Via Email and Fax

RE: Reconsideration of Oregon Pipeline, LLC, d/b/a Oregon LNG, Consolidated Application

Dear Board of Commissioners,

On behalf of Columbia Riverkeeper and the Northwest Property Rights Coalition (collectively "Riverkeeper"), this letter provides the reasons the Board of County Commissioners ("Board") should deny Oregon LNG's pipeline application. County Staff Reports and extensive public comments recommend that the Board deny Oregon LNG's application because it does not comply with the law. The Board has full authority to reject Oregon LNG's pipeline proposal based on abundant evidence in the record, and the reasons stated in the Staff Reports and public testimony.

Oregon LNG does not appreciate this Board's authority to uphold the laws of the county. Oregon LNG has gone to the extraordinary steps of claiming this Board cannot reevaluate the previous Board's decision. The Land Use Board of Appeals ("LUBA") recently rejected Oregon LNG's pleas: LUBA found that this Board has full authority to review Oregon LNG's application and approve or reject it in accordance with the law. *Columbia Riverkeeper et al. v. Oregon Pipeline Company, LLC et al.*, LUBA No. 2010-109 (Feb. 17, 2011). In attempting to keep this decision out of this Board's hands, Oregon LNG accused this Board, county staff and Mr. Jeff Bennett of lying to Oregon LNG, to which Mr. Bennett responded that Oregon LNG is "full of it."

Oregon LNG continued its desperate attempts to block this Board's vote at the February 9th Board hearing, accusing three newly elected commissioners of bias and undisclosed ex parte communications. The Board should not fall for Oregon LNG's attempts to evade review. Instead, the Board should carefully review the evidence, County law, and the Staff Reports. Based on this review, the Board should deny Oregon LNG's application because it fails to comply with the law.

First, there is extensive evidence in the record that supports the denial of Oregon LNG's pipeline application. Consistent with the Staff recommendation, expert testimony, and the extensive comments and exhibits submitted by public entities and concerned citizens, Oregon LNG's application fails to comply with County law.

Second, Oregon law gives County Commissioners' broad discretion in reviewing development applications and interpreting your local law. In fact, if Oregon LNG challenges a denial, LUBA will review whether the county's interpretation of your code is "plausible." *Siporen v. City of Medford*, 231 Or. App. 585, 599, 220 P.3d 427, 434 (2009). As the Oregon Court of Appeals explains, LUBA must defer to a county's interpretation "even if another interpretation might be 'better' or more sensible or persuasive." *Id.* "LUBA's task . . . is not to determine whether the . . . [municipality's] interpretation of its code was 'correct' in some absolute sense of choosing among various plausible interpretations." *Id.* There are many instances in county law where the elected Commissioners need to make a value judgment. For example, are there adequate emergency services to handle a pipeline emergency or not? As long as the county's decision is "plausible," LUBA must uphold.¹

In short, the County has the right to reconsider Oregon LNG's inadequate application and reviewing courts will give strong weight to the County's interpretation of its laws.

This is an important decision. The high-pressure, 36-inch diameter, 41-mile long Oregon LNG pipeline would have immediate and long-lasting impacts on Clatsop County citizens and the environment. The Board must ensure that the interests of Clatsop County are protected. For example, the Board should not approve this pipeline without an Emergency Response Plan. Nothing in County law requires that the Board to approve the pipeline without first having the benefit of reviewing a complete Emergency Response Plan.

In addition, this Board should not make the same mistakes the former Board made with Bradwood Landing, which led to unacceptable financial risk and strongly-worded opinions from the Land Use Board of Appeals ("LUBA") and the Oregon Court of Appeals rejecting the County's blind approval of the Bradwood LNG proposal. Bradwood Landing filed bankruptcy with no assets and left Clatsop County with at least \$186,492.70 in debt. The former County Board, therefore, cost Clatsop County taxpayers at least \$186,492.70 when it approved Bradwood Landing without protecting County funds.² The Board was irresponsible then and repeating this error now with Oregon LNG is simply unacceptable. The Bradwood Landing land use appeal process also provides a lesson that Board decisions that simply parrot the LNG applicant's company line are not always legally sound or in the County's best interest.

¹The County's decision need only be based on "substantial evidence" in the record. "Substantial evidence" is evidence that a reasonable person would rely on to make a decision. *City of Portland v. Bureau of Labor & Ind.*, 298 Or 104, 690 P2d 475 (1984).

²In comparison, Cowlitz County Commissioners did not put their County in debt because they required Bradwood Landing to produce Emergency Response Plans and sign binding financial assurances that the County would not have to pay for costs.

Oregon LNG's application was approved by a Board with a consistent track record of approving LNG applications at all costs—including the astounding decision to characterize Bradwood's mega LNG terminal as a "small to medium" sized project. Oregon LNG will argue that this Board should retain the former Board's decision on the Oregon LNG application, including its adoption of the Hearings Officer's findings. However, this Board should be wary of relying on the Hearings Officer's findings: the Hearings Officer was selected by the County under the previous Board's tenure and wrote findings consistent with the Board's previous actions. Moreover, the Hearings Officer himself acknowledged that, in many instances, application of County law to the land use application was a matter of opinion.

In fact, the Hearings Officer failed to consider adequately the pipeline's impacts on Clatsop County's public safety, rural communities, forests, agricultural land, rivers, and creeks. For example, the Hearings Officer stated point blank: "There are significant risks to the estuary from HDD [horizontal direction drilling]." Hearings Officer Findings at 76. Despite concluding that HDD poses "significant risks" to the estuary, the Hearings Officer consistently assumed that HDD would pose no threat to the estuary. This is simply wrong.

Moreover, even when the Hearings Officer acknowledged that Oregon LNG's application failed to comply with County law, the Hearings Officers consistently deferred compliance to a future date. County law does not require this "blind approval" approach. Instead, the County should require Oregon LNG to comply with the law at the time it asks for the County's approval. This Board made a prudent decision to reconsider the former Board's approval. We urge the Board to deny Oregon LNG's application for the reasons set forth below.

For the Board's convenience, Riverkeeper organized this letter consistent with the October 13, 2010 Staff Report. This letter focuses on the top five reasons the application fails to meet County law. We have provided additional reasons in previous letters. If the Board finds the application does not comply with any section of county law, the Board must deny the application.

I. COMPATIBILITY WITH SURROUNDING USES.

The Board should deny the application because there are inadequate public facilities and services necessary to ensure that the community is safe from a pipeline emergency or operation of a high-pressure pipeline. The Board cannot approve the pipeline unless it is sure that adequate "facilities and services" exist. LWDUO 5.015(2). The County attorney already determined that facilities and services include adequate emergency response, such as rural fire departments, first responders, and safety equipment. The evidence in the record overwhelmingly shows that there are not adequate services in Clatsop County. In fact, Oregon LNG has not even provided a complete Emergency Response Plan for leaking gas, explosions, or fires. There are also outstanding questions of the County's financial liability for a pipeline emergency. Because Oregon has not agreed to pay for pipeline-related emergencies, Clatsop County may be left picking up the check for all response costs.

Excerpt from 10/18/10 Staff Report:

Appeal Item Number	Page	Zoning	Description
3	2	Residential Agriculture Zone (“RA-5”)	Sub-issue #3: Does the proposal conflict with L5.015(2)(D) because the proposed use is not compatible with surrounding uses?

Reasons to Deny Oregon LNG’s Application Under LWDUO 5.015.

- **The Board should deny Oregon LNG’s application because there are not adequate public services and facilities for the pipeline.** Overwhelming evidence in the record demonstrates that Oregon LNG failed to meet the requirements of LWDUO 5.015(2)(C)(2) and LWDUO 5.015(2)(D). Oregon LNG failed to demonstrate that “[t]he site under consideration is suitable for the proposed use considering . . . [t]he adequacy of public facilities and services necessary to serve the use.” LWDUO 5.015(2)(C)(2).

The Board should deny the application because the Board has not received an Emergency Response Plan for leaking gas, explosions, or fires associated with the pipeline. Therefore, the Board cannot possibly determine that the public facilities and services, including emergency services, are adequate. LWDUO 5.015(2). The Board cannot in good conscience approve the largest pipeline ever constructed in Clatsop County without reviewing an Emergency Response Plan. The Board must review a plan prior to approval. The previous Board was fond of issuing “conditions of approval” that let the LNG companies proceed without providing necessary information. A condition of approval is entirely inappropriate here. Nothing in the Code requires the County to issue a “condition of approval.” Oregon LNG fails to meet the code’s requirements, so the County has full authority to deny the application today.

- **Oregon LNG Failed to Supply the Board with a Complete Emergency Response Plan for the Pipeline.** At the October 20, 2010 hearing before the Board, Oregon LNG’s attorney misled the Board and the public by stating that Oregon LNG completed an Emergency Response Plan and signed a Memorandum of Understanding (“MOU”) with the Oregon Department of Energy for the pipeline. Neither was true. The Board directed County Staff to review Oregon LNG’s filings and report back to the Board. Based on this in-depth review, County Staff concluded that Oregon LNG’s testimony was simply wrong because it had not completed an Emergency Response Plan for the pipeline. *See* Technical Memorandum from Jennifer Bunch, County Planner, to Board (Oct. 25, 2010). The Technical Memorandum states: “Upon review of the DRAFT ERP (Exhibit A) it is apparent that the ERP only applies to the LNG terminal and tanker transit route, not the 41-mile pipeline within Clatsop County’s jurisdiction.”
- **Don’t Let Clatsop County Get Stuck with the Cost.** County law requires that the Board consider “[t]he adequacy of public facilities and services necessary to serve the use” prior to approving the pipeline. LWDUO § 5.015(2)(C)(3), (2)(D). In this case, that means

evaluating whether there are adequate fire and emergency services (ambulance, hospitals, burn victim services) for the pipeline. The Elsie-Vinemaple Fire District stated to the Board that it did not have the necessary resources. The Board should listen to the experts at the Fire Districts, not Oregon LNG, and find that the fire and emergency services are not adequate.

II. FARM/FOREST ISSUES.

The Board should deny Oregon LNG’s application under L5.015(2)(C)(4) and (2)(D) and S3.509(2)(A)-(B). Oregon LNG failed to meet its burden of proof to demonstrate that: (1) the proposed pipeline is compatible with existing and projected uses in the Agriculture-Forestry Zone (“AF”), and (2) the pipeline will not force a significant change in forest practices or significantly increase fire hazard, fire suppression costs, or risk of fire suppression personnel pursuant to S3.509(2)(A)-(B).

Excerpt from 10/18/10 Staff Report:

Appeal Item Number	Page	Zoning	Description
14	8	AF	Sub-issue #4: Is the proposal inconsistent with L5.015(2)(C)(3) and (2)(D) because it is not compatible with existing and projected uses considering site suitability?
17	10	F-80	Sub-issue #5: Does the proposal fail to satisfy S3.509(2)(A)-(B) because it will force a significant change in forest practices or significantly increase fire hazard, fire suppression costs, or risk of fire suppression personnel?

Reasons to Deny Oregon LNG’s Compliance with RA-5 Zone Requirements

- **Like the RA-5 zone, the Board should deny Oregon LNG’s application because there are not adequate public facilities and services for the pipeline in the AF zone.** The Board must determine that “[t]he site under consideration is suitable for the proposed use considering . . . [t]he adequacy of public facilities and services necessary to serve the use” in the AF zone.

For the reasons explained in Section I above, Oregon LNG failed to meet its burden of proof to demonstrate that there are adequate public facilities and services in the AF zone. Oregon LNG failed to provide an Emergency Response Plan or other evidence to demonstrate that the AF zone is suitable for its high-pressure natural gas pipeline considering the public facilities and services necessary to serve the pipeline.

- **Absent a complete Emergency Response Plan or other supporting evidence, Oregon LNG failed to meet its burden to demonstrate that its pipeline will not significantly increase fire hazard, fire suppression costs, or risk to fire suppression personnel.** Oregon LNG failed to demonstrate that its pipeline will meet the requirements of S3.509(2)(B). Standards Document Section S3.509, states:

Certain uses in the F-80, AF and EFU zones may only be approved subject to these standards:

...

- (2) A use proposed on forest land requiring compliance with this section may be approved only where the County finds that the use will not:
 - (A) Force a significant change in, or significantly increase the cost of accepted farm or forest practices on agriculture or forest lands or;
 - (B) Significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks of fire suppression personnel.
- (3) An applicant for a use requiring compliance with subsection (1) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

For the reasons explain in Section I and II, Oregon LNG failed to submit evidence to demonstrate that its pipeline will not “significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks of fire suppression personnel.” S3.509(2)(B). Evidence in the record demonstrates the serious risk of fire from a high-pressure pipeline. While the Standards Document allows the County to issue a condition of approval for compliance under S3.509(1), which addresses proposed uses on agricultural land, this is not the case for the required findings under S3.509(2)(B).

III. TRANSMISSION/DISTRIBUTION.

The LNG transmission pipeline is not allowed in the Forest-80 (“F-80”) zone. Therefore, the Board must reject the LNG transmission pipeline in these zones. The Board should reject Oregon LNG’s labored attempt to read between the lines when, in fact, the Code simply does not authorize “transmission” gas pipelines in the F-80 zone.

Excerpt from 10/18/10 Staff Report:

Appeal Item Number	Page	Zoning	Description
15	8	F-80	Sub-issue #3: Is the proposed pipeline a “transmission” line? L3.550 authorizes “distribution” lines

Reasons to Deny Oregon LNG’s Compliance with the F-80 zone

- **Deny Oregon LNG’s conditional use request for the F-80 zone (L3.550) because the F-80 zone does not authorize “transmission” pipelines.** This is a simple issue. Either the Clatsop County code allows the Oregon LNG pipeline in a specific zone or it does not. The LWDUO does not allow transmission pipelines on the F-80 zone. L3.550 *et seq.* LWDUO 3.554(5) states the following lines are allowed:

New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width subject to the standards in Section S3.509.

The LWDUO allows new gas *distribution* lines as a conditional use, but does not allow a gas transmission line. The question, therefore, is whether the Oregon LNG pipeline is a distribution line (allowed) or a transmission line (not allowed). The LNG pipeline is not a distribution line because it has no distribution point in the F-80 zone or even in Clatsop County. Therefore, it is **physically impossible** for the LNG pipeline to serve a forest use or an accessory use. The LNG pipeline will carry gas from the LNG terminal to an *interstate* pipeline in Molalla, Oregon and an interconnect with the Mist storage field, which is located in Washington County.

- **Oregon LNG’s application acknowledges that the pipeline is a “natural gas transmission pipeline.”** The application makes clear that: (1) the pipeline is a transmission, not distribution, pipeline; and (2) there are no distribution points in Clatsop County. Oregon LNG’s application states:

The Oregon Pipeline Company, LLC (doing business as Oregon LNG) proposes to construct and operate a 36-inch-outside-diameter (36-inch-OD) natural gas *transmission* pipeline (Pipeline) across approximately 41 miles of rural Clatsop County (see Figure 1-1). This 41-mile segment is part of Oregon LNG’s proposal for an overall natural gas *transmission* pipeline, which extends approximately 121 miles southwest from the City of Warrenton, *to its terminus at Molalla in Clackamas County* (see Figure 1-2). Specifically, the proposed Pipeline will originate within a liquefied natural gas (LNG) receiving terminal (Terminal) proposed for the East Bank Skipanon Peninsula (ESP) near the confluence of the Skipanon and Columbia rivers in the City of Warrenton. The proposed Pipeline then extends southwest from the Terminal *to interconnections with the existing interstate natural gas transmission system at the Molalla Gate Station, located in Clackamas County.*

Application at 1 (emphasis added). All of the gas is transmitted to an interstate pipeline in Clackamas County or NW Natural’s storage and pipeline in Washington County. Oregon LNG, therefore, is only transmitting gas through the F-80 zone, not distributing it. Because transmission pipelines are not allowed, this Board must deny the transmission pipeline in the F-80 zone. If Clatsop County wants to authorize transmission pipelines in this zone, the County could amend the Code. But the Board cannot ignore the plain language of the Code.

- **Oregon LNG’s admission that the pipeline is a transmission pipeline is consistent with the definition of “transmission line.”** LWDUO 1.035 provides a hierarchy for defining terms in the LWDUO. Because the LWDUO and the comprehensive plan do not define transmission line, we must turn to “any statute or regulation of the State of Oregon.” L1.035. ORS 215.276, which describes county planning, zoning, and housing codes, provides the applicable definition of transmission line.

“Transmission line” means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations,

to the point at which the utility product is transferred to distribution lines for delivery to end users.

The Oregon LNG pipeline is clearly a transmission line because it transfers gas in bulk from the point of origin (Oregon LNG terminal) to the point at which the gas is transferred to distribution lines (Molalla), which is well outside of Clatsop County. *See* Application at 1. The Oregon LNG pipeline is not permitted in the F-80 zone because LWDUO 3.510 *et seq.* only allows gas distribution, not transmission, lines.

- **The Board should reject Oregon LNG’s legal theory that the Code authorizes the company’s transmission pipeline based on the Code’s distinction between “new distribution” lines and “local distribution lines.”** Given that the Code clearly does not allow “transmission” gas pipelines in the F-80 zone, Oregon LNG developed a contorted legal theory to avoid asking the County to amend its Code to expressly allow “transmission” pipelines. The Board should reject this theory because the Code simply fails to authorize transmission pipelines.
- **The Board is not required to apply the previous Board’s findings for the Bradwood Landing pipeline.** The Board is not obligated to apply the same legal reasoning employed by the previous Board, which adopted the findings submitted by Bradwood’s attorneys. Even the Hearings Officer acknowledged that the County is not obligated to follow the misguided approach of the previous Board.

IV. WATER-RELATED/WATER-DEPENDENT ISSUE.

Both County Staff and the Hearings Officer concluded that Oregon LNG’s pipeline is not water-related or water-dependent. This is a critical determination. County law prioritizes water-dependent and water-related uses in the Aquatic Development (AD), Aquatic Conservation-2 (AC-2), and Aquatic Natural (AN) zones.

The Code sets a very high bar for uses that are not water-dependent or water-related. Oregon LNG never demonstrated that it could meet this high bar.

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Excerpt from 10/18/10 Staff Report:

Appeal Item Number	Page	Zoning	Description
23	13	AD	Sub-issue #3: Does the pipeline conflict with the purpose of the AD zone L3.742 because it will “foreclose options for future higher priority uses” and “limits potential more intensive use of the area”?
25	14	AD	Sub-issue #4: Does the pipeline fail to meet S4.243(2)(B) the water-dependent and water-related use criteria because the applicant failed to demonstrate alternative locations outside the estuary were not chosen?
28	15	AD	Sub-issue #5: Has the applicant failed to demonstrate that the pipeline, a non-water dependent use, will not preclude future water dependent uses in the area?
30	16	AC-2	Sub-issue #6: Is the application inconsistent with L5.830(10), which requires “[d]emonstration that non-water dependent uses will not preempt existing of [sic] future uses of the area”?
34	18	AN	Sub-issue #7: Is the pipeline inconsistent with P20.7(1) “Filling Aquatic Areas and Wetlands” because it requires a 50-foot permanent easement in the AN zone that would preclude future development of water-dependent resources?
35	19	AN	Sub-issue #8: Does the project conflict with P20.15(1) because the pipeline is neither water-dependent nor water-related and because the 50-foot permanent easement could preclude future development of water-dependent uses?
48	25	n/a	Sub-issue #9: Does the application fail to meet the water-related use criteria in S2.243(2)(B) because the applicant has not demonstrated that the natural gas would suffer a loss of quality if it were not located under the Lewis & Clark River?

Reasons to Deny Oregon LNG’s Pipeline Application based on Water-Related/Water-Dependent Issues

- **The Staff Reports and Hearings Officer agree that the pipeline is not a water-dependent use or a water-related use.** In Finding 114, the Hearings Officer determined that the proposed pipeline is not a water-dependent or water-related use. However, the Hearings Officers erroneously concluded that the depth of the pipeline would not preclude or pose any significant conflicts with existing or future water-dependent uses.

- **County Staff correctly determined that the pipeline could preclude future development of water-dependent uses.** County Staff recommended denial under Sub-issues 3 – 9. The June 24, 2010 Staff Report Addendum concluded that Oregon LNG’s pipeline could preclude future development of water-dependent uses. An excerpt of the June 24 Staff Report Addendum is provided below:

B. Compliance with Aquatic Zones

1. The Adequacy of the Impact Assessment.

STAFF RESPONSE: Staff has had an opportunity to review the Applicant’s June 9th submission and has found that the Applicant has provided all information requested by Staff related to the County’s aquatic zones. However, Staff contends that the Impact Assessment is deficient with regard to L5.830(10) which requires, *“Demonstration that non-water dependent uses will not preempt existing or future water-dependent utilization of the area.”*. The applicant has failed to provide evidence that water-dependant uses will not be forestalled by the pipeline or restrictions within the easement area. Unless the Applicant can demonstrate that there are **no** restrictions on development around the pipeline or within the easement area there is the potential that the presence of the pipeline and the function of the easement will have the effect of preempting future water-dependant uses. Therefore, staff has determined the proposed use does not comply with L5.830(10).

The June 24 Staff Report Addendum further states:

Staff agrees with the applicant that the use of HDD will reduce impacts within the aquatic zones and thus assists in demonstrating compliance with the purpose statements of the AN and AC-2 zones. However, the purpose statement of the AD zone is clear; non water-dependant or water-related uses are allowed only if they do not *“foreclose options for future higher priority uses”*. Again, unless the Applicant can demonstrate that there are **no** restrictions for development and use around the pipeline or within the pipeline easement area, the proposed pipeline will limit options for higher priority water-dependant and water-related uses.

Staff Report at 4. The June 24th Staff Report further states:

STAFF RESPONSE: Staff disagrees with the Applicant's assertion that our interpretation is too restrictive. The standard is clear that the use "**shall not**" (emphasis added) preclude or unduly conflict with non water-dependant uses in the vicinity. The applicant admits that there will be use restrictions near the pipeline within the easement area. In the Applicant's June 9th memorandum entitled, "Oregon Pipeline, LLC – Consolidated Pipeline Application Response to Clatsop County Staff Report, Dated June 3, 2010" prepared by Paul Seilo, the applicant states that all uses in the aquatic zones can occur, "with a few minor exceptions". These "minor" exceptions relate to pile driving and geotechnical drilling with 30 feet of the proposed pipeline. This restriction has the potential to preclude or unduly conflict with water dependent uses such as docks, piers, and water-related pipelines, cables and utility crossings. Staff has determined that the proposed non water-dependant use could conflict with future water dependant development and, therefore, does not meet this standard.

In response to Oregon LNG's assertion that its pipeline will not "preempt" water-dependent uses, the June 24th Staff Report states:

STAFF RESPONSE: Staff again disagrees with the applicant's assertion that the proposed use will not conflict or preclude water-dependent uses. That applicant also asserts that because the pipeline is an allowed use in the aquatic zones that it should be allowed regardless of the water-dependent criteria. Staff agrees pipelines are allowed in the aquatic zones if those pipelines are water-dependent. However, the applicant has stated many times in its own application documents that the proposed pipeline is not water-dependent. Moreover, if thye County were to adopt the Applicant's position, it would ignore S4.203(1), which it cannot do.

- **Evidence submitted by Oregon LNG after the last Staff Report (June 24, 2010) failed to demonstrate that its pipeline would not "preempt" future water-dependent uses of the area.** Oregon LNG increased the HDD depth in some areas. Regardless, Oregon LNG's pipeline still requires use restrictions within the easement. Oregon LNG failed to demonstrate that the natural gas pipeline will not preempt future water-dependent uses of the area. As the County's experts, Harper Houf Peterson Righellis Inc., stated in their report to the County: "The need to preserve an easement for the pipeline will certainly preclude future development with in this area of the easement." HHPR Report at 18 (Exhibit 5 to June 24, 2010 Staff Report).

V. ESTUARY/RIPARIAN/WETLAND ISSUES.

The County Code and Comprehensive Plan provides much-needed protection and oversight of development within the Columbia River Estuary. Oregon LNG's pipeline application fails to meet the minimum requirements for development within the Aquatic Natural (AN), Aquatic Conservation 2 (AC-2), and Aquatic Development zones.

Oregon LNG proposes using horizontal directional drilling (“HDD”) to mitigate for and minimize impacts on the aquatic zones. HDD is a process for installing the pipeline that allows trenchless construction across an area. HDD requires drilling a hole and pulling the pipeline through the predrilled borehole.

HDD poses significant threats to the estuary. Expert testimony from the Columbia River Estuary Study Taskforce (“CREST”) and extensive evidence submitted by Riverkeeper demonstrates that Oregon LNG’s pipeline may result in fish kills and degraded water quality and habitat.

Excerpt from 10/18/10 Staff Report:

Appeal Item Number	Page	Zoning	Description
24	13	AD	Sub-issue #3: Does the applicant fail to satisfy L3.754(1) and (2) because it “failed to provide a complete analysis of the conditions or steps that would minimize adverse impacts to the Estuary”?
27	15	AD	Sub-issue #5: Does the proposal conflict with L5.045 because the Impact Assessment and Resource Capability Determination are deficient?
29	15	AC-2	Sub-issue #3: Does the applicant fail to satisfy L3.754(1) and (2) because it “failed to provide a complete analysis of the conditions or steps that would minimize adverse impacts to the Estuary”?
31	16	AC-2	Sub-issue #5: Does the proposal conflict with L5.045 because the Impact Assessment and Resource Capability Determination are deficient?
33	18	AN	Sub-issue #9: Does the proposal conflict with L3.810 and S4.504(1) because the applicant failed to demonstrate that the proposed pipeline must be located in or adjacent to the Lewis & Clark River?
42	22	n/a	Sub-issue #16: Does the proposal fail to meet the requirements of L5.830(9) that requires “the project’s potential benefits will equal or exceed the expected adverse impacts”?

Reasons to Deny Oregon LNG’s Compliance with Aquatic Zone Requirements

- **Oregon LNG failed to demonstrate that the estuary could not be avoided.** After submitting its incomplete Impact Assessment, Oregon LNG submitted a Technical Memo describing its alternatives analysis for routing the pipeline through the estuary. Both Staff Reports conclude that Oregon LNG failed to meet its burden of proof to demonstrate that the estuary could not be avoided. The June 24th Staff Report explains:

- D. **Columbia River Estuary Shoreland and Aquatic Use and Activity Standards.**
1. **The Staff proposes an overly restrictive interpretation of S4.203(1).**
 2. **The Applicant adequately addressed the water quality maintenance requirements in S4.242.**
 3. **The pipeline is a water-related use under S4.243(2).**

STAFF RESPONSE: Staff continues to disagree that the pipeline is a water-related use. The criterion in S4.243(2) requires compliance on two fronts. S2.423(2)(A) states that the use must provide “goods and/or services that are directly associated with water-dependant uses”. Staff has determined that the proposed natural gas pipeline is directly related to the water-dependent LNG facility. However, it is the criterion set forth in S2.423(2)(B) that the Applicant fails to meet. To be water-related the Applicant needs to demonstrate that the natural gas that would be delivered by the transmission line would suffer a loss of quality if it were not located under the Lewis & Clark River. There is no evidence that the pipeline can’t be constructed at a location outside the estuary. In fact, the applicant provided alternate routes in its Alternatives Analysis which avoid the estuary, but has chosen to pursue the route through the estuary without explaining why the estuary location is needed to avoid “a public loss of quality” in the natural gas, considering “economic, social and environmental values.” Staff also disagrees with the Applicants conclusion that because they are unable to route the pipeline through the Lewis and Clark National Park that the only other reasonable alternative was through the Lewis & Clark River and the estuary.

The Board should deny Oregon LNG’s application because the company failed to demonstrate that the Lewis & Clark River and the estuary could not be avoided.

- **Oregon LNG’s Impact Assessment and Resource Capability Determination are deficient.** The County and its expert consultants concluded that Oregon LNG’s Impact Assessment and Resource Capability Determination were deficient. Oregon LNG had many opportunities to demonstrate compliance with the Code. Instead, Oregon LNG chose to stick to the company line and failed to disclose how HDD, or alternatives to HDD if attempts fail, would impact the aquatic zones. The Board should deny Oregon LNG’s application under L3.754(1) and (2) because the company “failed to provide a complete analysis of the conditions or steps that would minimize adverse impacts to the Estuary.”
- **Even the Hearings Officer criticized Oregon LNG’s failure to disclose the impacts of HDD.** Following the County and Riverkeeper’s critique of Oregon LNG’s deficient Impact Assessment, Oregon LNG had the opportunity to make things right. Instead, Oregon LNG continued to understate the true risks of HDD. The Hearings Officers Findings state:

From the evidence in the record, it appears frac-outs are possible, if not likely, even when the most sophisticated and carefully operators are engaging in HDD. The evidence makes clear that they certainly are not as rare as the Applicant contends. It is not apparent that they occur when the operator is negligent.

Hearings Officer Findings at 74. Despite Oregon LNG's post-Impact Assessment filings, evidence in the record demonstrates that Oregon LNG fails to meet the requirements of L3.754(1) and (2) and L5.045. Therefore, the Board must deny Oregon LNG's application.

- **The pipeline poses serious risks to the AN, AC-2, and AD zones.** HDD does not avoid all impacts, and in fact can result in serious negative impacts if it fails. For example, the Oregon Department of Fish and Wildlife ("ODFW") commented on HDD impacts for a similar project, particularly with regard to potential aquatic impacts that could occur. ODFW wrote,

HDD has failed at a number of pipeline stream crossings over the past several years. A couple of specific locations where HDD failures have occurred have been along the Coos County Pipeline in the Coquille watershed and along the South Mist Pipeline in northwestern Oregon. These past HDD failures have involved releases of large amounts of bentonite (clayish material) into streams and wetlands. *Both the bentonite releases and the clean-up actions have resulted in highly damaging impacts to aquatic resources.* ODFW requests that Pacific Connector provide geotechnical evidence that HDD is anticipated to be successful in the three planned HDD locations. In addition, ODFW recommends that aquatic surveys be conducted pre-HDD at these three stream crossing locations to determine baseline conditions so that adequate restoration, back to baseline conditions, could be accomplished in the event of a damaging frac-out event. (emphasis added)

State of Oregon Comments on FERC DEIS for Pacific Connector Pipeline at 24 (emphasis added). Oregon LNG's application does not include adequate plans for frac-out mitigation, including potential locations for alternate HDD locations. Additionally, if HDD attempts fail altogether, Oregon LNG will have to shift to another crossing method, such as a wet crossing (a trench cut in-water, while the river is flowing).

- **Potential public benefits of the pipeline do not equal or exceed expected adverse impacts.** Under L5.830(9), Oregon LNG must demonstrate "that the project's potential public benefits will equal or exceed the expected adverse impacts." The record demonstrates that Oregon LNG has not met this standard.

The record does not support Oregon LNG's claims of a "potential public benefit." Oregon LNG asserts a large public benefit from jobs at the LNG terminal and "much-needed" natural gas supplies. These claims are not supported by the record. This Board can and should rule that the benefits of an LNG pipeline in Clatsop County are very slim.

For example, the Oregon Department of Energy ("ODOE") concluded that North American gas supplies will be adequate to meet the region's needs. Indeed, ODOE concluded that LNG would be more expensive than North American gas supply options. The Oregon Citizens Utility Board ("CUB") also concluded that Oregon does not need LNG. In fact, CUB found that imported LNG could pose a risk to ratepayers. ODOE and CUB both found that any gas demand growth could easily be met in the Northwest using North American sources at less cost and less environmental harm to Oregon's environment.

Extensive evidence in the record demonstrates expected adverse impacts from HDD. For example, ODFW has specifically identified the Lewis & Clark River and its tributaries as being important for Coho salmon, Fall Chinook, and Winters Steelhead. *See* Lower Columbia River Conservation and Recovery Plan for Oregon Populations of Salmon and Steelhead. CREST identified serious risks and potential setbacks in restoration efforts in the estuary. *See* CREST Letter to County (July 1, 2010). If the HDD fails, releasing large amounts of drilling fluids and bentonite into the stream, this is likely to increase the turbidity and temperature of the stream. Furthermore, if the HDD becomes unworkable, and Oregon LNG is forced to use an alternative crossing method, this will severely impact riparian habitat and increase aquatic impacts.

On balance, Oregon LNG's "public benefit" claims are not supported by the weight of evidence in the record. In contrast, there is extensive evidence demonstrating the "expected adverse impacts" associated with pipeline drilling, even through using HDD. Therefore, the Board should deny Oregon LNG's application.³

- **Oregon LNG's criteria for rejecting pipeline routes that would avoid or minimize estuary impacts are inconsistent with the requirements of L5.800.** Oregon LNG's Impact Assessment and supplemental documents fail to satisfy the requirements of L5.830(11). The LWDUO requires Oregon LNG to provide a "[d]etermination of methods for mitigation and accommodation of the proposed development, base on items (1) through (10) above, in order to avoid or minimize preventable adverse impacts." The Staff Report notes that Oregon LNG's Impact Assessment made reference to FERC criteria or National Park Service decision-making requirements. The Staff Report concludes:

However at no point does analysis refer to the criteria set forth in L5.830 or L5.840, nor does it explain how the proposed uses and activities and their potential impacts were utilized in the applicant's route selection decisions to "avoid or minimize preventable adverse impacts" as required by L5.830(11) or to "identify reasonable alterations or conditions that will eliminate or minimize to an acceptable level expected adverse impacts" as required by L5.840(2).

Despite Oregon LNG's supplemental filings, the Applicant still fails to meet the requirements of L5.830(11). Oregon LNG restricted its avoidance and minimization analysis by relying on FERC and National Park Service standards, rather than the County's Code. In essence, Oregon LNG argues that federal law preempts the County's land use requirements. *See* Oregon LNG Staff Report Response at 23. Specifically, Oregon LNG argues:

The Staff fails to recognize that the National Park Service and FERC restrictions and requirements are based on federal law. FERC has the primary authority under the Natural Gas Act (NGA) with respect to the siting, construction, and operation

³Notably, even the Hearings Officer recognized that Oregon LNG's assertion that the benefits exceed the adverse impacts was a close call.

of the pipeline project. Federal restrictions and requirements are legitimate bases for demonstrating that the estuary cannot be avoided.

Notably, Oregon LNG does not cite to any authority for the proposition that federal restrictions are legitimate bases for ignoring Clatsop County land use requirements. Oregon LNG's criteria for rejecting pipeline routes that would avoid or minimize estuary impacts are inconsistent with the requirements of L5.800.

VI. CONCLUSION.

The Oregon LNG pipeline does not comply with Clatsop County law. The pipeline threatens public safety, property rights, and the environment. For the reasons explained above and detailed in Riverkeeper's comments and appeal, Oregon LNG failed to demonstrate that its pipeline complies with County law. In turn, Oregon LNG's application must be denied.

If this Board denies Oregon LNG's pipeline application, Columbia Riverkeeper stands ready to submit findings in support of a denial. We look forward to the opportunity to address the Board at the March 9th public hearing.

Sincerely,



Lauren Goldberg
Staff Attorney, Columbia Riverkeeper
*On behalf of Columbia Riverkeeper and the
Northwest Property Rights Coalition*