



CLATSOP COUNTY BOARD OF COMMISSIONERS

"Neighbor to neighbor, serving Clatsop County with integrity, honesty and respect"

Jeff Hazen, Dist. 1- Chairperson
John Raichl, Dist. 3- Vice-Chairperson
Patricia Roberts, Dist. 2
Dirk Rohne, Dist. 4
Ann Samuelson, Dist. 5
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Regular Meeting

Wednesday, July 8, 2009 – 10:00 am
Judge Guy Boyington Building, 857 Commercial, Astoria

Regular Meeting: 10:00am

The Board of Commissioners, as the Governing Body of Clatsop County, all County Service Districts for which this body so acts, and as the Clatsop County Local Contract Review Board, is now meeting in Regular Session.

FLAG SALUTE

ROLL CALL

AGENDA APPROVAL

BUSINESS FROM THE PUBLIC - *This is an opportunity for anyone to give a 3 minute presentation about any item on the agenda (except public hearings) OR any topic of county concern that is not on the agenda. People wishing to speak during Business From The Public must fill out and sign a Public Comment Sign-in Card.*

CONSENT CALENDAR

- a. Board of County Commissioners May 27, 2009 regular meeting minutes{Page 1}
- b. Board of County Commissioners June 8, 2009 special work session minutes{Page 7}
- c. FY 2009-2010 Web Site Administration{Page 11}
- d. Amendment to Clatsop County Imprest Funds List.....{Page 19}
- e. Tweedle Lane Culvert Replacements{Page 23}
- f. Revised Public Safety Coordinating Council Bylaws{Page 27}

PUBLIC HEARINGS

- a. Bradwood Landing LNG Land Use Board of Appeals remand{Page 31}

COMMISSIONERS' REPORTS

COUNTY MANAGER'S REPORT

ADJOURNMENT

Complete copies of the Current Board of Commissioners Meeting Agenda Packets can be viewed at:
Astoria Public Library - Seaside Public Library - Warrenton Public Library - Board of Commissioners Office

This meeting is accessible to persons with disabilities. Please call 325-1000 if you require special accommodations to participate in this meeting.

Clatsop County Board of Commissioners
Regular Meeting Minutes
May 27, 2009

Chair Jeff Hazen called the meeting to order at 6:00 p.m. in the Judge Guy Boyington Building, 857 Commercial St., Astoria, Oregon. Also present were Commissioners John Raichl, Ann Samuelson and Dirk Rohne; Commissioner Roberts was excused. County Manager Duane Cole and County Counsel Blair Henningsgaard were also present.

Agenda Approval

Raichl made and Samuelson seconded a motion to approve the agenda. Motion carried unanimously.

Business from the Public

There was no business from the public.

Consent Calendar

Rohne made and Samuelson seconded a motion to approve the agenda. Motion carried unanimously.

Public Hearing

Annexation of property into John Day-Fernhill Rural Fire Protection District – Cathie Garber, County Clerk, gave the staff report regarding the request by Curtis Pearce to annex his property located at 92100 Claremont Road into the John Day-Fernhill Rural Fire Protection District.

Raichl asked about properties on Claremont Rd that may want future annexation. Curtis Pearce, 92100 Claremont Rd., Astoria addressed the Board saying when he bought the property he was told the owners had petitioned not to be included and believes his property is exclusive. He said everyone who owns a home there is included in the district. *Raichl moved and Samuelson seconded a motion to approve the annexation. Motion carried unanimously.*

Ordinance

Comprehensive Plan/Zoning Map amendment and goal exception submitted by Mark Barnes on behalf of Corey Eisenbarth (second reading). There were no commissioner conflicts of interest or objections to the jurisdiction of the commission to hear the matter. Michael Weston, Planner, gave the staff report requesting a goal exception to statewide planning goals 3, 4, and 14. He said in doing so there would also be a map amendment changing the zoning from agriculture forestry to residential agriculture 2 on ½ acre land owned by Corey Eisenbarth to allow for two homes; one for Mr. Eisenbarth, and one for his sister and so he can help with the family farm. Weston said there has been no opposition to the project and DLCD is in agreement.

Chair Hazen opened the public hearing.

Mark Barnes, PO Box 569, Astoria, representing Mr. Eisenbarth had no new material to add and said he would be happy to answer the questions of commissioners. The commission had no questions.

1 As there was no further testimony, Chair Hazen closed the public hearing.

2
3 *Samuelson moved to adopt ordinance 09-02 implementing the Planning Commission*
4 *recommendation to conditionally approve the Land Use application as reflected on Map 1, page*
5 *4 of the Planning Commission's Resolution and Order Exhibit 1 and conduct the second reading.*
6 *Raichl seconded the motion and it carried unanimously.* Weston conducted the second reading
7 'Ordinance 09-02, an ordinance amending Clatsop County's comprehensive Plan Zoning Map
8 and taking a Goal Exception to Statewide Planning Goals 3, 4 and 14'.
9

10 **Other Business**

11 Resolution and Order supporting local logging industry

12 Jay Browning, 92429 Claremont, Astoria, a local logger and employer addressed the Board.
13 Browning said the logging industry needs additional support from everyone in the state and
14 across the country. He said the economy is going to create dissent from the industry. Browning
15 said he was employing about 130 people, downsized to 80, and this week went down to 30 due to
16 Weyerhaeuser shutting down. He said the logging payroll in Clatsop County is about \$45
17 million annually and this year will be quite a bit different. Browning said with the price of
18 lumber where it's at, the industry needs help and nobody can even afford to do any thinning. He
19 said he started with Crown Zellerback in 1978 as a private contractor and at that time there were
20 32 logging contractors working and Weyerhaeuser had about 700 people. He said there is a tree
21 farm being logged by 3 or 4 logging contractors that could probably put 15 contractors to work
22 thinning if there was support from the federal government. Browning said it would take federal
23 dollars to make things happen and that the timber industry has never been subsidized. He said
24 they are working with the state creating old growth habitat for the public. He said there is a lot
25 of locked up timber and the county has a problem where people who make \$30,000 -\$50,000 per
26 year cannot build homes. He said at one time his company was a \$1 million a month payroll and
27 could sustain a \$750,000 per month payroll if the price of lumber comes back. He said the forest
28 would have problems if the federal government does not subsidize it. Browning said the TV
29 show became dramatized and that they do practice safe logging. He said the show has shown
30 people the beautiful forests here. Hazen asked Browning if he considers himself an
31 environmentalist. Browning said very much so and tried to drive that point across doing the TV
32 show, but a lot of that ended up on the editing floor. He said he has seen a lot of good changes
33 occur in the industry like stream buffers saying loggers probably do more than anybody to
34 support a healthy forest. Hazen agreed saying loggers are the ultimate environmentalists because
35 they work the land and know it better than anybody in a big city sitting in a high-rise office.
36 Browning said there is still a lot of blow down to clean up but with the price of lumber they will
37 rot. He asked if there could ever be a bottom put on the price of lumber or could the federal
38 government buy lumber to build homes for Habitat for Humanity.
39

40 Herb Olstedt, 42179 Tweedle Ln., Jewel, said his company is supporting half of the 50 families
41 they supported two months ago. Olstedt said they do everything possible to protect the streams
42 and are continually battered. He said logging is the greenest industry on the planet and he is
43 tired of hearing how it is a dying industry and that loggers have done everything to protect the
44 forests. He said there is enough biomass to keep people working in Clatsop County, provide
45 electricity and it would be a real boon to the County. Olstedt said his family have been loggers
46 since the 1870's and are proud of it. He said he appreciates the support of the commissioners.

1 Dan Olstedt, 3190 NW Commercial St., North Plains, explained he was raised in Jewell and
2 educated with District 8 money from the state forestry school and put through school with
3 Olstedt trucking money. He said there is an opportunity to keep the money local; he said this
4 area is one of the largest areas of resilient timber and wishes there was more education regarding
5 logging as there is a bad perception. He talked about deforestation and how he had to explain
6 how loggers reforest the land unlike strip malls. He thanked the Board for their support.

7
8 Steve Olstead, 453 2nd St., Gearhart, said he is no longer a logger, but talked about hunting up
9 above Camp 18 and how the area that was replanted is now 20-year-old green timber. He talked
10 about his wife being a teacher and how people are not educated on logging and suggested
11 stimulus money could be used to educate the school children about logging practices. Hazen
12 shared his experience of planting trees when he was in school and how they don't do that now.
13 Olstedt said people don't realize how many products are made from timber.

14
15 Mike Fluor, 1401 Oster Rd., Gearhart thanked the Board for their support. He talked about how
16 logging practices have changed; how the logs have to be certified and that loggers are
17 environmentalists and have to take annual training. He pointed out with Axe Men they film the
18 days where things don't go well and not the days when things go right. He talked about how
19 there is no stimulus money for logging.

20
21 Dave Samuelson, 80672 HWY 202, Seaside, said there are many generations of his family in
22 logging starting with his grandfather. He said the loggers who spoke employ a tremendous
23 amount of people and if they aren't able to do that people won't be able to pay property taxes,
24 buy cars, etc. He thinks this will bring attention to the number of people employed by the timber
25 industry from the loggers to the people who sell fuel. Samuelson said it looks like there may be
26 another ban on timber and mentioned the timber dollars in Jewell used to build the schools. He
27 felt the state should sell the timber that the county owns regardless of the market and said it is
28 mind boggling the number of people dependent on the logging industry. Samuelson said they
29 don't want to be re-trained they want to work. He said there is a place for logging and fishing in
30 the community but does not see a positive future for either one. He appreciated the Board's
31 support and for listening and welcomes any help. He said the taxing districts need the timber
32 money and the County needs the dollars to keep flowing.

33
34 Martin Nygaard, 285 W. Irving, Astoria said he started in the industry at age 16, 64 years ago
35 picking bark out of the Skipanon. He said he earned money for college and became a logging
36 engineer. He gave a chronology of his timber sales and logging beginning in 1958 and in the
37 year 2000 logging 100 million board feet of lumber until the 10 year plan came that ruined the
38 forests with thinning. He said the way to log is to clear cut and the deer and elk can eat in the
39 clear cut. He reiterated the current plan is ruining the forests in Clatsop and Tillamook Counties.
40 He said they had 130 employees and are now down to 110 employees.

41
42 Discussion followed regarding biomass, supporting the logging industry on a legislative level,
43 how trees growing in Jewell are some of the fastest growing trees in the world, and how
44 education should focus on the importance of timber to the County.

1 Hazen said what touched him is educating the kids and how the mills in his boyhood town of
2 Reedsport are gone. Browning said he has been asked to speak at High Schools and spoke at
3 Cleveland High School where the teachers are educated on the logging industry and have taken
4 the kids to the mills and how refreshing it was to see.

5
6 *Samuelson moved to approve the resolution and order supporting the logging industry in*
7 *Clatsop County and Raichl seconded the motion with discussion.* Raichl said he is supportive
8 but concerned about the numbers in the resolution and order and that it is much more far
9 reaching believing the state's employment numbers are not accurate. Raichl said he wants a
10 handle on the impact it has on the community. Samuelson said Senator Johnson is very much in
11 support of the resolution and order and she recommended sending the resolution and order to
12 Ray Naff at the Governor's office during this legislative session. Hazen asked how the
13 resolution and order should read. *Samuelson amended the motion to leave the number of jobs*
14 *out of the resolution and order.* Prior to reading the resolution and order Hazen called for a few
15 moments of silence in honor of a local log truck operator, Jimmy Parker, who passed away over
16 the weekend. *Chair Hazen read the resolution and order and called for a vote on the motion on*
17 *the table. Motion carried unanimously.*
18

19 Dan Olstedt suggested a representative from the Governor's office tour a logging operation in
20 Clatsop County. Commissioner Samuelson suggested contacting Chip Terhune, who came down
21 for the fishermen. Chair Hazen said they could work on doing that.
22

23 Formation of Marine Reserves Advisory Committee

24 Duane Cole, County Manager gave the staff report providing the by-laws and the make-up of the
25 committee. He said the formation of the committee would provide a forum for discussion at the
26 county level of the formation of any marine reserves off the coast of Clatsop County. He said
27 currently there is a reserve being considered off the coast at Falcon Cove shared with Tillamook
28 County, which is in the process of forming a marine reserve advisory committee. Cole outlined
29 the letter being sent to the Governor and the chair of the Ocean Policy Advisory Council (OPAC)
30 stating that Clatsop County has formed a Marine Reserve Advisory Committee and wants to be
31 included in any coordination of marine reserves off our boundaries; if approved it would be sent
32 over the chair's signature. Rohne said he talked to Senator Johnson who is on the same page.
33 Cole said funding is available from the New Carissa clean up.
34

35 *Rohne made and Samuelson seconded a motion to approve the resolution and order forming a*
36 *Marine Reserves Advisory Committee, motion carried unanimously. Chair Hazen read the*
37 *resolution and order.*
38

39 **Commissioners' Reports**

40 Hazen recognized Assistant County Manager Nicole Williams for acting as the County Manager,
41 the great job she did with the budget and how smoothly the budget hearings went. Hazen said
42 the commission is appreciative of her work and presented Williams with a Bulova desk clock.
43 Raichl mentioned the National Association of Counties (NACo) prescription health plan in the
44 current NACo newsletter and the use of Pay Pal at some counties for the payment of property
45 tax.
46

1 Samuelson reported she attended a Commission on Children and Families youth recognition
2 award lunch. Samuelson said Marti Harris was at the luncheon and she has started a healthy
3 backpack snack program in Cannon Beach and has offered her assistance to start the program in
4 other school districts. She said she has referred several people to Clatsop Behavioral Health
5 (CBH) for services and they have received professional services from CBH; Samuelson said she
6 wanted to give recognition to Nancy Winters and the services she provides.
7

8 Rohne reported there was a massive slide at Aldrich point. He reported they are still working on
9 Warren Slough and Ed Wegner is doing a good job on coordinating people who don't want to be
10 coordinated..
11

12 **County Manager's Report**

13 Cole reported there is an informational meeting on Wauna Mill tomorrow at 10:00 am in the
14 Boyington Building; he said they are looking at options to soften impacts to districts. Cole
15 reported there is a Board of Forestry meeting next week and he will assign staff to attend and
16 support additional harvesting. The final item is John Lampien's retirement after 31 years at the
17 County's public works shop tomorrow at 3:30 p.m.
18

19 Chair Hazen adjourned the meeting at 7:33 p.m. to go into executive session.
20

21 Approved by,
22
23

24

Jeffrey S. Hazen, Chairperson

**Special Work Session
Meeting Minutes
June 8, 2009**

Coalition for support of commercial and sport fisheries on Lower Columbia River

Clatsop County Commissioner Jeff Hazen opened the meeting at 10:06 a.m. in the Judge Guy Boyington Building, 857 Commercial St., Astoria, Oregon and introductions were made.

Pacific County Commissioners: Jon C. Kaino, Norman 'Bud' Cuffel, Clay E. Harwood
Wahkiakum County Commissioners: Lisa Marslya, Dan Cothren
Clatsop County Commissioners: Jeff Hazen, John Raichl, Patricia Roberts, Ann Samuelson, Dirk Rohne
Clatsop County Staff: Duane Cole County Manager, Ed Wegner Director Transportation and Development.

Commissioner Raichl opened the discussion with the introduction of Jim Wells, president of Salmon for All who was available for questions. Raichl thanked commissioners for their attendance and warm reception when he and Commissioner Rohne visited Pacific and Wahkiakum Counties. Raichl said the discussion thus far has been to develop a concept, come to agreement on some general principals such as not being hostile to any one group, an equitable share of the resources and continue to support our commercial fishing industry that impacts the community and to be in control of our destiny and protect our heritage and culture. Raichl asked if conceptually the counties can come together on a position and work with industry groups such as Salmon for All and the group in Washington, whose motto is the right answer is nobody gets cut out, to develop a white paper that could be updated and used as a basis for a continuing resolution for lower river counties when testifying at respective legislatures or industry commissions.

Commissioner Rohne said he wrote something tentatively to express the views and general sentiments. Rohne read his prepared statement for the record:

'As representative of the general populations in and around both sides of the lower Columbia River, we, the county commissions of Clatsop and Columbia counties of Oregon and Pacific and Wahkiakum counties of Washington resolve to support the equitable distribution of our shared resource; the Columbia River Salmon.'

'We welcome all organizations who support equitable distributions of salmon, whether they represent Columbia River fishermen, restaurant owner associations, consumer rights advocates, or any other concerned entity.

'Representing the broadest base of all constituents we represent the consumers right of access to purchase and enjoy locally caught salmon. For those whose access is limited to the local grocery store or fish market, or the local restaurant; we support the equitable catch, processing, distribution and marketing networks that allow our general population, as well as those who visit our shared jurisdictions to enjoy our sustained cultural legacy;

1 the Columbia river salmon.

2
3 'We are in support of the rights of the Consumer, as well as in support of the Columbia
4 River Gillnetters whose economic investments not only support their own families, but
5 also have multiplied positive impact on local support businesses, (i.e. financial sector,
6 insurance, manufacturing, seafood processors, distributors and marketers). We recognize
7 the full extent to which we all benefit from supporting the complex network of cultural
8 and business interests that benefit from the Columbia River salmon. In example we cite
9 significant benefits of tourism in our region.

10
11 'We support and recognize the improvement our local fishing industry has shown in
12 improving the sustainability of our salmon, despite the negative impacts of the things that
13 remain out of our control. Positive contributions would include improved fishing
14 techniques and net pens to rear salmon. Negative impacts may include 40 mile long
15 driftnets in international waters or impacts from dams that negatively effect habitat.

16
17 'We do not support exclusion of any current partners who share the salmon resource. As
18 State legislation may threaten equitable treatment for all, we resolve to organize and
19 share our common interest in protection of this aspect of our cultural and economic
20 heritage.'

21
22 Commissioner Samuelson said Rohne's statement is well spoken; she said she attended a forestry
23 meeting where a group there felt salmon would be threatened by additional harvesting. She
24 suggested understanding the synergy between forestry and fishing saying some legislators do not
25 understand the natural resource relationship with a focus only on the I5 corridor.

26
27 Hazen, referring to Rohne's statement regarding gill-netters, said there are ten bills related to
28 gillnetting that may shut it down. Rohne suggested county staff compress all the items agreed
29 upon from the counties into one document. Commissioner Cothren said the biggest concern he
30 has is going to Olympia and testifying for the commercial fishing industry and getting an
31 allotment for commercial and sport fishing on the Lower Columbia. He said a group has formed
32 to eliminate commercial fishing on the main stem and move sport fishing inland above I5.
33 Cothern said the rural communities, Clatsop, Pacific, Wahkiakum counties and Grey's Harbor
34 are going to be left out saying the coalition will bring a voice to legislators. Rohne agreed saying
35 the strength in the coalition is that it doesn't represent a specific industry and instead represents
36 the general population of a very large piece of real estate which is not looking to further a single
37 interest and would give the group more authority. Samuelson suggested Clatsop County
38 commissioners go to Olympia in a show of regional lobbying.

39
40 Commissioner Kaino said his perception is that everyone is in general agreement on the specific
41 issue of allocation; however, he has some concerns about the focus on what the result should be.
42 Kaino said his perception is it should be a unique lobbying group of elected officials specific to
43 the issue of allocation with other common issues built in. He said his county is a timber county
44 with some logging issues that may not be on the same side as fishing issues; he doesn't want to
45 focus on dams or logging but focus on the allocation. Kaino said Samuelson had a good point
46 lobbying in Olympia with the Oregon side. He said the 19th district does a lot fighting for timber

1 and fish. Kaino said the impact the group could have is using political clout to impart opinions
 2 on the legislature and the Governor to make appointments to commissions that support an
 3 equitable share for each industry.

4
 5 Hazen noted the group's task would be to educate people; Kaino agreed. Roberts concurred
 6 saying people exaggerate their causes and until there is a proportionate for physical size rather
 7 than the number of people it will be difficult to move forward. Kaino said the issue is allocation;
 8 business such as G. Loomis is big on pushing fish into the tributaries as a first step to eliminate
 9 commercial fisheries. Kaino said commercial fishing could be selective just like sport fishing
 10 and that is the message that needs to get out there. Kaino said if this joint group has a good
 11 finger on the pulse of its constituents it should make the changes needed to make the group
 12 heard.

13
 14 Samuelson said the counties would need to partner with industry groups like Salmon for All and
 15 the restaurant lobby. Rohne suggested coming up with a laundry list of organizations to team up
 16 with to maximize the group's impact.

17
 18 Peter Roscoe, Restaurant Association representative, said it is an interesting idea for next year
 19 being that everything is lined up for this year but they would be ready for next year. Roscoe said
 20 the Restaurant Association is reluctant to become involved in political battles saying Portland
 21 was I5 centric until he started banging is foot about having fish in restaurants, which is a
 22 powerful message legislators listen to. He said Oregon salmon in restaurants has become a very
 23 powerful message in Salem and suggested the same occur in Olympia. Following discussion
 24 regarding lobbying, a name for the group and a consistent message, Rohne suggested Clatsop
 25 County staff could generate a white paper to circulate to the coalition. Samuelson said an
 26 important piece of the message would be addressing the cultural heritage of the area.

27
 28 Roscoe noted allocation is a great focus however legislators don't make the decisions; fish and
 29 wildlife make the allocation decisions. Hazen reiterated what Kaino said about lobbying for
 30 appointments to those groups that make the decisions. Roscoe said as far as allocations go he
 31 was able to get the Oregon Restaurant Association to agree to no change and Salmon for All
 32 considered that a win; he said the sport fishing contingent want the gillnetters gone. Rohne
 33 suggested creating a solid linkage between our population, fisherman and consumers and how it
 34 will hurt the general population at large to remove the gillnetters.

35
 36 Jim Wells, Salmon for All President said St. Helens is no longer a good gillnetter port. Raichl
 37 said Columbia County Commissioner Earl Fisher is supportive of no hostility towards other
 38 groups.

39
 40 Wells said Salmon for All has a good relationship with the Oregon Fish and Wildlife
 41 Commission, however, that is not the case with the Washington Commission. Kaino said it is
 42 unfortunate and that the white paper should be one that Salmon for All, seasonal, sport and
 43 commercial groups can support.

44
 45 Les Clark of Chinook, Washington president of the Northwest Gillnetters Association for 15
 46 years and past vice-president of Salmon for All, said he would like to see a body of work under

1 conservation and allocation and under that focus get groups to agree to a fair allocation for all
2 user groups. He explained the current allocations saying the biggest impacts go to the sport
3 fishermen and for the commercial fisherman to survive they need 50% of the impact to supply
4 the public with quality product. He reiterated conservation and than allocation for a fair share
5 for all users under the umbrella.

6
7 Commissioner Harwood said the problem with restaurants is not knowing if you're getting
8 farmed or local caught product; saying imports and farmed raised fish are a problem with
9 commercial industries. Hazen said that is a component of the education message. Following a
10 discussion and explanation of the charter fishing industry, Samuelson reiterated the need to look
11 at economic, cultural, conservation and allocation aspects of the industry.

12
13 Kaino suggested writing a letter to respective governors that generically supports the continuing
14 operation of commercial fishing, quantify the economic impact, address heritage in the
15 community and support a viable charter industry as well; let legislators and governors know
16 counties are all in agreement and all sign off on a position paper.

17
18 Clatsop County Manager, Duane Cole said he would draft a white paper with a focus on Oregon
19 and Washington to include a history section, how the decision structures are different in each
20 state, a look at the current situation, legal aspects, allocation issues and policy covered in two
21 pages and extend it into a four page glossy for a lobbying piece. Cole said the other constructs to
22 work into it are the economic, equity and environment issues as it relates to the culture.

23
24 Hazen summarized the action items as a letter to respective Governors in support of commercial
25 fisherman and second the position paper. Hazen asked that the draft be forwarded to the county
26 clerks in next 30 days for commissioner's review and approval in the next 30-45 days.

27
28 Next meeting: Wahkiakum County. Monday, July 13 and quarterly thereafter.

29
30 Commissioner Hazen adjourned the meeting at 11:30 a.m.

31
32 Approved by,

33
34
35 _____
36 Jeffrey S. Hazen
Chairperson, Clatsop County Board of Commissioners

**Board of Commissioners
Clatsop County**

AGENDA ITEM SUMMARY

Issue/Agenda Title: 2009-10 Web Site Administration

Category: Consent

Meeting Date: July 8, 2009

Prepared By: Lorrie Radu

Department Head OK: **CA OK:**

To Be Presented By: M.L. Robison & Lorrie Radu

Issue Before the Commission: Consideration of a contract with iFOCUS Consulting for continued web site administration and remote hosting in fiscal year 2009-10.

Informational Summary: iFOCUS Consulting will continue to provide custom web application services to enhance the site-wide design and department specific components of this ongoing project. The contract will include ongoing site maintenance, content review and modification, staff training, marketing, and data maintenance.

Alternatives: iFOCUS Consulting is a sole source local contractor under Clatsop County Policy 12.3.4.B. to provide the necessary level of expertise and to ensure continuity for the duration of this project and it is unlikely this contract will substantially diminish competition.

Fiscal Notes: The Web Application Maintenance Plan will be billed at \$2,280 per month, the Server Data Services / Collocation Fee will be billed at \$395 per month; and the Server Maintenance / Security Services will be billed at \$405 per month. The total annual budget is \$36,960.

County's Mission: On-going maintenance of the County's web site will allow the best possible services to the community and those who access the County's site.

Attachment List:

Staff Recommendation: Recommend that the Board approve the contract for Web Site Administration with iFOCUS Consulting and authorize the County Administrator to sign the contract.



CLATSOP COUNTY, OREGON
800 Exchange Street, Suite 310
Astoria, Oregon 97103
An Equal Opportunity Employer

Contract No. C4156

PERSONAL/PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is by and between Clatsop County ("County") and **iFOCUS Consulting** ("Contractor"). Whereas County has need of the services which Contractor has agreed to provide; NOW THEREFORE, in consideration of the sum not to exceed \$36,960.00 to be paid to Contractor by County, Contractor agrees to perform between date of execution and **June 30, 2010**, inclusive, the following specific personal and/or professional services:

See Exhibit "A", *attached hereto and by reference made a part hereof.*

Payment Terms: *Monthly upon receipt of invoice.*

All terms on the reverse side of this document are hereby made a part of this Agreement.

This Agreement will not be effective until approved by the County Administrator.

FOR COUNTY:

Signature

Date

Title

FOR CONTRACTOR:

[Signature]

Signature

6-11-2009

Date

PRESIDENT

Title

iFOCUS Consulting
100 39th Street - Suite 201
Astoria, OR 97103

Social Security No. or

Tax Identification Number: 22-3859149

1. **COMPLETE AGREEMENT.** This Agreement contains the entire understanding of the parties and supersedes all prior agreements, oral or written, and all other communication between the parties relating to the subject matter of this Agreement.
2. **WRITTEN NOTICE.** Any notice of termination or other communication having a material effect on this Agreement shall be served by U.S. Mail on the signatories listed.
3. **GOVERNING LAW/VENUE.** This Agreement shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Agreement shall be in the Circuit Court of Clatsop County. The prevailing party shall be entitled to reasonable attorney fees and costs, including an appeal. All rights and remedies of County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of County according to law.
4. **COMPLIANCE.** Contractor shall comply with all applicable Federal, State, and local laws, rules and regulations. All provisions of ORS 279B.220-235 (Public Contracts and Purchasing) are incorporated herein to the extent applicable to personal/professional service agreements. Specifically, Contractor shall:
 - a. Promptly pay, as due, all persons supplying labor and material for the prosecution of the work provided of in such contract. If Contractor fails to pay any such claim, County may pay the claim and charge the payment against the funds due Contractor, pursuant to ORS 279B.220;
 - b. Pay any required contributions due the Industrial Accident Fund incurred in the performance of the contract;
 - c. Not permit any lien or claim to be filed or prosecuted against County, on account of any labor or material furnished by Contractor;
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167;
 - e. Not employ any person more than 10 hours a day, or 40 hours a week, unless permitted under ORS 279B.235, and any employee working over 40 hours per week shall be paid overtime as provided in ORS 279B.235.
 - f. Pay promptly, as due, any payment for medical surgical or hospital care furnished to employees of Contractor, pursuant to ORS 279B.230.
 - g. If Contractor is a subject employer, Contractor will comply with ORS 656.017.
5. **JUDICIAL RULINGS.** If any provision of this-as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity of enforceability of the Agreement.
6. **INDEPENDENT CONTRACTOR.** Contractor, in carrying out the services to be provided under this Agreement, is acting as an "independent contractor" and is not an employee of County, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties, on other matters, for the duration of this Agreement.
7. **INDEMNIFICATION.** Contractor shall save harmless, indemnify, and defend County for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this Agreement to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.
8. **INSURANCE.** Contractor shall purchase and maintain at Contractor's expense, Comprehensive General Liability, Automobile Liability, and Professional Liability insurance. This insurance is to provide separate coverage for each of the required types of insurance at a minimum of \$500,000 for property damage and minimum of \$600,000 per person for bodily injury and no less than \$1,200,000 for each occurrence. In addition, all such insurance, with the exception of Professional Liability, shall name County, its Commissioners, employees and agents, as an **Additional Insured**. A copy of the policy or certificate of insurance acceptable to County shall be submitted to County. Some, or all, of the required insurance may be waived or modified if approved by County's counsel as follows:

_____(approved by County Counsel)

_____(Contractor's Initials)

W

9. **WORKER'S COMPENSATION.** Contractor shall comply with ORS 656.017 for all employees who work in the State of Oregon. If Contractor hires employees, he or she shall provide County with certification of Worker's Compensation Insurance, with employer's liability in the minimum of \$100,000.
10. **NONDISCRIMINATION.** No person shall be subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision shall be considered a material violation of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part by County.
11. **TERMINATION OF AGREEMENT.** This Agreement may be terminated under the following conditions:
- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
 - b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.
 - c. Immediately on breach of the contract.
12. **SUBCONTRACTING/NONASSIGNMENT.** No portion of this Agreement may be contracted to assigned to any other individual, firm, or entity without the express and prior approval of County.
13. **SURVIVAL.** The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.
14. **FUNDING.** In the event the Board of Commissioners of County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, Contractor agrees to abide by any such decision including termination of service.
15. **STANDARD OF SERVICES AND WARRANTY.** Contractor agrees to perform its services with that standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. It is understood that Contractor must perform the services based in part on information furnished by County and that Contractor shall be entitled to rely on such information. However, Contractor is given notice that County will be relying on the accuracy, competence and completeness of Contractor's services in utilizing the results of such services. Contractor warrants that the recommendations, guidance and performance of any person assigned under this Agreement shall be in accordance with professional standards and the requirements of this Agreement.
16. **COUNTY PRIORITIES.** Contractor shall comply promptly with any requests by County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.
17. **OWNERSHIP AND USE OF DOCUMENTS.** All documents, or other material submitted to County by Contractor shall become the sole and exclusive property of County. All material prepared by Contractor under this Agreement may be subject to Oregon's Public Records Laws.
18. **TAX COMPLIANCE CERTIFICATION.** Contractor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).



EXHIBIT A

Clatsop County Public Web Site Administration 2009/ 2010

Web Application Maintenance Plan

Ongoing Site Maintenance

- Seasonal design tweaks
- Web browser compatibility updates
- Strategic planning
- Miscellaneous administration
- Security auditing
- Upgrade embedded HTML editor

Content Review and Modification

- Review all new and modified content on a weekly schedule
- Analyze code to note and fix problems and errors
- Edit content pages to achieve design uniformity and compliance with W3 standards
- Assure that content pages meet ADA requirements
- Quality check pages to assure internal and external hyperlinks are functional
- Identify area of improvement that can be addressed through staff training

Staff Training

- Provide ongoing staff training
- Provide help-desk support for staff
- Create and distribute Management Console documentation
- Maintain and distribute training materials
- Maintain help files within Management Console
- Post training presentations on the web for staff to review

Marketing

- Search engine submittal procedures
- Submit site to local portals and high traffic sites in region

Data Maintenance

- Remote backup and storage of SQL database and data files
- Provide quarterly site traffic statistics

Total Maintenance Plan/ 24 hours

Web Application Maintenance Plan:	(24 hours @ \$95/hour)	\$2,280/ month
Server Data Services/ Collocation Fee:		\$395/ month
Server Maintenance/ Security Services:		\$405/ month
Annual Total Budget:		\$36,960.00

Detailed monthly statements are provided outlining maintenance and service performed.

ACORD		CERTIFICATE OF LIABILITY INSURANCE		OP ID RR IFOCU-1	DATE (MM/DD/YYYY) 06/03/09
PRODUCER Clackamas Insurance Agency DBA Comp Insurance 39373 Proctor Blvd Sandy OR 97055 Phone: 503-668-0099 Fax: 503-668-0705			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
INSURED IFocus Consulting, Inc. 100 39th St #201 Astoria OR 97103			INSURERS AFFORDING COVERAGE		NAIC #
			INSURER A: The Hartford Insurance Co.		
			INSURER B:		
			INSURER C:		
			INSURER D:		
			INSURER E:		

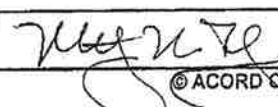
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	52WECKP7955	08/08/09	08/08/10	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500000 E.L. DISEASE - EA EMPLOYEE \$ 500000 E.L. DISEASE - POLICY LIMIT \$ 500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

As per operations of the insured.

CERTIFICATE HOLDER CLATS01 Clatsop County Oregon 503-325-8606 749 Commercial Street Astoria OR 97103	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
--	---

DATE (MM/DD/YYYY)
02/20/09

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

NAIC #

INSURER C:

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as an additional insured as their interest may appear in the named operations according to policy conditions, limitations, and exclusions.

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Janine Johnson

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

Issue/Agenda Title: Amending the Clatsop County Imprest Funds List as shown in Exhibit "A".

Category: Consent Calendar

Meeting Date: July 8th, 2009

Prepared By: Gary Friedman

Department Head OK: CA OK:

To Be Presented By: Gary Friedman

Issue Before the Commission: Approve the amended Clatsop County Imprest Funds List as shown in Exhibit "A", pursuant to ORS 294.465.

Informational Summary: Pursuant to ORS 294.465, the County has an established list of petty cash funds for various County departments and districts. The Fair Board has amended their petty cash to \$15,000 to make funds available for an ATM machine at the fairgrounds. The revised Exhibit "A" reflects an \$11,900 increase to the Fair Board's petty cash fund.

Alternatives: The only alternative is to not allow an increase in petty cash funds therefore not allowing the fairgrounds to install an ATM machine for use by their patrons.

Fiscal Notes: Approval of the amended Exhibit "A" has no fiscal impact on the Fair Board budget for 2009-10.

County's Mission: Approval of the amended Exhibit "A" will maintain compliance with ORS 294.465.

Attachment List: Schedule "A" Amended List of Imprest Funds for Clatsop County

Staff Recommendation: Approve amended Clatsop County Imprest Funds List as shown in Exhibit "A", pursuant to ORS 294.465.

IN THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

**IN THE MATTER OF Amending the Clatsop County
Imprest Funds List as Shown on Exhibit "A"**

WHEREAS pursuant to ORS 294.465, a municipal corporation may establish by Ordinance or Resolution and Order one or more imprest cash accounts for the handling of minor disbursements; and

WHEREAS Resolution and Order No. 83-2-2 established petty cash funds for various Clatsop County departments and districts and said Resolution and Order was rescinded and amended pursuant to Resolution and Order No. 87-1-77; and

WHEREAS it is now necessary to amend Resolution and Order No. 2000010022 in order to increase the petty cash fund for the Fair Board; and

IT IS HEREBY RESOLVED AND ORDERED pursuant to ORS 294.465, that the petty cash funds be amended as listed in Exhibit "A".

IT IS FURTHER RESOLVED AND ORDERED that all provisions of Resolution and Order No. 87-1-77 remain in effect.

DATED this 8th Day of July, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

Jeff Hazen, Chair

EXHIBIT "A"

CLATSOP COUNTY IMPREST FUNDS

<u>DEPARTMENT / DISTRICT</u>	<u>PETTY CASH</u>
ANIMAL CONTROL (2 boxes @ \$60 each)	120.00
ASSESSOR – Assessment	450.00
ASSESSOR – Taxation	400.00
BUILDING AND GROUNDS	50.00
CEDC OFFICE	50.00
CLERK AND ELECTIONS	300.00
COMMISSIONERS / COUNTY ADMINISTRATOR	50.00
DISTRICT ATTORNEY	150.00
FAIR BOARD	15,000.00
4-H & EXTENSION SERVICE	200.00
HEALTH	200.00
JUVENILE	200.00
JUVENILE YOUNGS BAY DETENTION CTR	200.00
COMMUNITY CORRECTIONS	50.00
COMMUNITY DEVELOPMENT	220.00
ROAD / PUBLIC WORKS	100.00
SHERIFF – Criminal	250.00

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

Issue/Agenda Title: Tweedle Lane Culvert Replacements

Category: Consent

Meeting Date: July 8, 2009

Prepared By: Teresa Clute

Department Head OK:  **CA OK:**

To Be Presented By: Ed Wegner, Transportation & Development Director

Issue Before the Commission: The Board is being asked to sign a contract for \$109,808.36 with Ken Kauppi Trucking LLC, the low bidder, for the replacement of two culverts on Tweedle Lane with bridges. Contracts over \$25,000 require Board approval per policy 12.6.4.

Informational Summary: The Upper Nehalem Watershed Council asked the County Transportation & Development Department to participate in a grant funded fish enhancement project on Tweedle Lane. Two culverts will be replaced with bridges to promote fish passage. The project is funded by an Oregon Watershed Enhancement Grant (OWEB), and the County's financial participation will be 25% of the total cost of \$400,000, or approximately \$100,000. Part of that amount will be in-kind services such as administration and project management. It makes sense for Transportation & Development to participate in this project since these culverts would eventually have to be replaced and if is done at this time the grant is paying part of the cost.

The Engineering was provided by Lower Columbia Engineering through an OWEB Technical Assistance Grant.

This contract is for construction services and does not include the price of the bridges, which were ordered previously by OWEB in order to arrive in time for the in-water work period for this stream, which is July 1 to September 15.

There were five bids received:

Ken Kauppi Trucking LLC	\$109,808.36
Big River Construction Inc.	\$138,455.40
Aquatic contracting LLC	\$153,964.00
Lyda Excavating Inc.	\$157,679.50
VB Construction Inc.	\$170,606.80
D & T Excavation Inc.	\$184,878.17

County's Mission: Neighbor to neighbor, serving Clatsop County with integrity, honesty and respect.

Alternatives: The County must participate in order for this project to be completed.

Fiscal Notes: The match and the in-kind services will be provided by the Road Construction and Maintenance account.

Attachment List:

A. Policy 12.6.4.

Staff Recommendation: Approve contract with Ken Kauppi Trucking LLC for \$109,808.36 for the Tweedle Lane Culvert Replacement and authorize County Manager to sign the contract and any amendments after the contract review process.

- 12.6.2 Employees. All County employees are authorized to incur expenses for authorized travel and training while on official County business in accord with Personnel Policy rules.
- 12.6.3 Administration. The County Manager, or his/her designee, may award bids and may enter into contracts or agreements to purchase goods and services, and may enter into intergovernmental agreements provided the amount of the bid, contract, or agreement does not exceed \$25,000. The County Manager or his/her designee may execute any amendment extending the contract period or changing terms other than compensation and may execute an amendment or change order provided the greater of the following is not exceeded:
- A. \$25,000 based on the aggregate amount of the contract, plus all change orders and extra work;
 - B. The amount expressly authorized by the Board at the time the contract or agreement is approved. If this subparagraph is used, the person delegated the authority to authorize the amendments or change order(s) shall formally advise the Board of all change order(s) made prior to completion of the project or within 30 days of the effective date of the amendment or change order, whichever occurs first.
- 12.6.4 Board. The Board of Commissioners must approve any bid award, contract, or agreement or amendment for the purchase of goods and services, or intergovernmental agreement for an amount exceeding \$25,000. Either the Chairperson or County Manager may sign contracts, agreements, deeds, and other documents on behalf of the County after such document has been approved by the Board. The Board of Commissioners may expressly delegate to the County Manager or Chairperson, the authority to approve a specified contract without further Board action.
- 12.6.5 Leases. The County Manager, or his designee, may enter into rental agreements or leases with a term of less than one year and a gross rental value not exceeding \$25,000.
- 6.6 Purchase Orders. All purchase orders must be signed by the County Manager or his/her designee. Those requiring Board approval (over \$25,000) may be signed and issued only after the appropriate Board action.

12.7 TIMBER SALES:

- 12.7.1 Sale of Timber Permitted. Sale of County Timber does not require a Declaration of Surplus property, and the provisions of Section 5 regarding disposition of County personal property do not apply.
- 12.7.2 Contract Authority. The County Manager may authorize timber sales with a gross value of \$25,000 or less. Timber sales with a gross value greater than \$25,000 require the authorization of the Board of Commissioners.
- 12.7.3 Sales of \$5000 or Less. For timber sales with a gross value of \$5,000 or less, then three competitive quotes should be obtained from logging contractors, or the file documented as to why three quotes are unavailable. If County staff cuts and

Board of Commissioners Clatsop County

AGENDA ITEM SUMMARY

Issue/Agenda Title: Revised Public Safety Coordinating Council Bylaws

Category: Consent Calendar

Meeting Date: July 8, 2009

Prepared By: Amy Denny

Department Head OK **CA OK:**

To Be Presented By: Duane Cole, County Manager

Issue Before the Commission: Revision of Public Safety Coordinating Council (PSCC) Bylaws

Informational Summary: During their June 12, 2009 meeting, the PSCC revised its bylaws regarding the number of its citizen members. The language currently requires two lay citizen members of the PSCC. The PSCC seeks language which would allow for "up to two lay citizen members."

Other Alternatives Considered: One of the lay citizen members recently resigned from PSCC. Making this change will allow the PSCC to continue with only one lay citizen member, adding another lay citizen as time and recruitment opportunities permit.

Fiscal Notes: None.

County's mission: This change will not adversely affect the PSCC's ability to perform its function.

Attachment List: Resolution and Order

Staff Recommendation: Approve the amended PSCC bylaws and authorize the chairperson to sign the resolution and order.

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS
2
3 FOR CLATSOP COUNTY, OREGON
4

5 IN THE MATTER OF RESTATING THE)
6 RULES, AUTHORITY, DUTIES AND)
7 RESPONSIBILITIES OF THE PUBLIC) RESOLUTION & ORDER
8 SAFETY COORDINATING COUNCIL)

9 WHEREAS, Oregon Revised Statute 423 calls for the creation of a Public Safety Coordinating
10 Council;

11 WHEREAS, Clatsop County's public Safety Coordinating Council has been meeting since 1995;
12 and

13 WHEREAS, public safety is critical to the vitality, growth and quality of life in Clatsop County;
14 and

15 WHEREAS, ensuring public safety and improving the quality of life for all citizens of Clatsop
16 County is a central priority of the Clatsop County Board of Commissioners; and

17 WHEREAS, the complexities of criminal justice issues demand a comprehensive systematic
18 approach to defining needs, assessing the adequacy of existing programs and developing and
19 implementing new approaches and strategies in a coordinated manner;

20 WHEREAS, the Public Safety Coordinating Council is an effective means to build on
21 accomplishments while ensuring a more comprehensive, collaborative, proactive approach for the
22 future.

23 WHEREAS, the Clatsop County Board of Commissioners approved a Resolution and Order on June
24 8, 2005 restating the rules, authority and responsibilities of the Clatsop County Public Safety
25 Coordinating Council; and

26 WHEREAS, the Clatsop County Board of Commissioners approved a Resolution and Order on
27 October 27, 2007 restating the rules, authority and responsibilities of the Clatsop County Public
28 Safety Coordinating Council;

29 WHEREAS, the Clatsop County Public Safety Coordinating Council approved changes to its
30 bylaws at its meeting of June 12, 2009 subject to the approval of the Clatsop County Board of
31 Commissioners.

32 NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED by the Clatsop County
33 Board of Commissioners that the rules, authority, duties and responsibilities of the Clatsop County
34 Public Safety Coordinating Council are restated as follows:

35 Section I – DUTIES AND RESPONSIBILITIES:

- 36 • Develop and recommend to the county board of commissioners a plan for use of state
37 resources to serve the local offender population.

- Develop and recommend to the county board of commissioners a plan for use of state and local resources to serve the needs of offenders who are at least 15 years of age and less than 18 years of age, which plan must provide for coordination of community-wide services involving prevention, treatment, education, employment resources and intervention strategies.
- Coordinate local criminal justice policy among affected criminal justice entities
- Coordinate local juvenile justice policy recommendations among affected juvenile justice entities.
- In consultation with the local Commission on Children and Families, the Public Safety Coordinating Council will develop and recommend to the County Board of Commissioners a plan designed to prevent criminal involvement of youth. The plan must provide for coordination of community-wide services involving treatment, education, employment and intervention strategies aimed at crime prevention.

Section II – MEMBERSHIP:

A:

- A police chief selected by the police chiefs of the county
- The Sheriff
- The District Attorney
- A state court judge appointed by the presiding judge
- A public defender or defense attorney appointed by the presiding judge
- The Community Corrections Director
- A County Commissioner
- The Juvenile Department Director
- The Health Department Director
- A mental health director
- A Mayor
- A City Manager
- Up to two lay citizens appointed by the County Commission
- One representative from OYA (non-voting member)
- One representative from the State Police (non-voting member)

B: Council members, except those holding statutory office, shall be appointed in accordance with the law for a period of three years. A non-office holding member may not serve more than two consecutive terms in office.

Section III - MEETINGS AND RESPONSIBILITIES:

- The Public Safety Coordinating Council shall meet at the request of the Chairperson as frequently as required to perform its duties, but not less than once every three months.
- Special meetings may be called by the chair or any other three members upon a 24-hour written or telephone notice to members.
- A quorum shall be 50% plus 1 of the statutory and appointed membership. Section 8.4 and all other relevant sections of the Clatsop County Policies shall apply to the Council.
- All meetings of the Council shall be open to the public unless otherwise provided by law.
- The Council may recommend removal of non-statutory members to the appointing authority by a majority vote of all its members. Such removal shall be for cause. A member absent without being excused by the Chair more than three times within a calendar year will be considered to have resigned his or her position.
- The Council shall comply with applicable laws regarding public records (ORS 192), open meetings (ORS 192), and ethics (ORS 244).

- The Council may, if desired, develop bylaws consistent with provisions of Section 8.3.1 of the Board of Commissioners' Policies, which would be subject to approval by the Board of Commissioners.

Section IV – OFFICERS:

- At its first meeting of the calendar new year, the Council shall elect by majority vote a chairperson and vice-chair. A secretary shall also be appointed by the Council either from its membership or one of the staff.
- The duties of the Chair are:
 - Preside at all regular and special meetings.
 - Appoint committees as needed.
 - Act as the official spokesperson for the Council.
 - Notify the Board of Commissioners of all actions taken by the Council.
- The duties of the Vice Chair are:
 - In the absence of the Chair or during his or her incapacity to act, perform the duties of the office.
- The duties of the Secretary are:
 - Work with PSCC Chairperson to prepare meeting agendas. Prepare and distribute PSCC meeting agendas and materials.
 - Take and transcribe PSCC meeting minutes for PSCC approval. Forward approved minutes to County Manager's Office.
 - Maintain PSCC member list and notify County Manager's Office of any membership changes.
 - Prepare and amend PSCC bylaws as directed by the Chairperson for Committee approval. Forward amended bylaws to County Manager's Office for Board of County Commissioners' approval.
 - Organize correspondence as required by the Council by formatting and mailing documents.
 - Other administrative support duties as agreed upon.

ADOPTED this 8th day of July, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

Jeffrey S. Hazen
Chairperson

Board of Commissioners

AGENDA ITEM SUMMARY

Issue/Agenda Title: Bradwood Landing, Proposed LNG Project; Hearing to consider LUBA remand issues.

Category: Public Hearing

Meeting Date: July 8, 2008

Prepared By: Julia Decker

Department Head OK:  **CA OK:** 

To Be Presented By: Ed Wegner, Transportation and Development Director

Issue Before the Commission: The matter before the Commission on remand is to consider modifications to the original findings to address the two issues raised by LUBA in its decision.

Informational Summary: On December 12, 2006, Bradwood Landing LLC made applications related to constructing a liquefied natural gas marine terminal, a natural gas pipeline, and related facilities. The Clatsop County Planning Commission subsequently held hearings on the matter on July 10 and July 17, 2007, deliberated and developed findings on August 29, 2007, and approved findings and made recommendations to the Board of Clatsop County Commissioners on September 28, 2007.

The Board of Clatsop County Commissioners held public hearings on October 22 and November 19, 2007, adopted a resolution and order on March 5, 2008 and adopted findings on March 20, 2008, approving the consolidated application with conditions. On April 8, 2008, Columbia Riverkeeper et al filed Notice of Intent to Appeal the decision with the Oregon Land Use Board of Appeals (LUBA) and filed a Petition to Review with LUBA on October 14, 2008. LUBA issued a final decision, remanding two issues to the Clatsop County Board of Commissioners on January 27, 2009.

In the numerous public hearings cited above, the county created a continuing conversation among members of this community and the broader area on the appropriateness of this development in this location, resulting in over 22,000 pages of information in the official record.

On June 24, 2009, the Board of Commissioners met to set the process to be used to consider the remand issues. The process approved by the Board includes hearing the item on July 8, 2009, receiving written testimony through 12:00 PM—noon, on July 6, 2009, and hearing oral public testimony with a limit of three minutes per person, using the format below:

Written Comments	Received through noon, July 6, 2009. Limited to evidence in the record and issues remanded by LUBA.
Convene the Board on this Item	An active agenda item, public hearing.

Ex Parte Contact and Bias Challenges	An opportunity to disclose ex parte contact and for bias challenges.
Argument by Proponents	Proponents of the project, 15 minutes total. Limited to evidence in the record and issues remanded by LUBA.
Argument by Petitioners	Petitioners on the LUBA petition, 20 minutes total. Limited to evidence in the record and issues remanded by LUBA.
Public Testimony	Three-minute limit each. Limited to evidence in the record and issues remanded by LUBA.
Rebuttal by Proponents	Five-minute limit. Limited to evidence in the record and issues remanded by LUBA. Note: Petitioners and the proponents receive equal time, but the proponents' time is split.
Close the Public Hearing	This ends submission of testimony, oral or written. NO subsequent written or oral argument/testimony for either proponents or opponents after the public hearing is closed.
Consideration of Findings	Staff and legal counsel will answer questions the BOCC may have on the findings. BOCC deliberations on the remand issues, proposed findings and written and oral argument received.
Board Action on Findings	Board decides to take action at the July 8 BOCC meeting or later.

The Oregon Land Use Board of Appeals remanded an appeal of a decision approving comprehensive plan amendments, four zone changes, and development approvals to allow a liquefied natural gas marine terminal, a natural gas pipeline, and related facilities. The remand was based on two of nine items raised by the petitioners; LUBA summarized the remanded items as follows:

1. "The county does not explain why it is permissible under the explicit terms of LWDUO 1.035 to apply the law dictionary definition instead of or in addition to the definition from the statewide planning goals. Not only is the statewide planning goal definition obviously more germane to the meaning of CCP Policy 20.2(1) and CCP Policy 20.8, but LWDUO explicitly requires the county to apply that definition before turning to a law dictionary definition. We conclude that remand is necessary for the county to apply the statewide planning goal definition of 'protect'." LUBA 2008-052 at page 34.
2. "Given that the county erred in its primary conclusion that the scale restriction is a mere restatement of the fill limitation, and because the county erred in limiting the scope of 'development activities' to the upland acres covered by the LNG facility itself, we conclude that remand is necessary for the county (SIC) re-evaluate whether the proposed development activities, considered as a whole comply with the 'small or moderate' scale limitation. LUBA 2008-052 at page 48.

This is not an evidentiary hearing and testimony will be strictly limited to the two remanded issues.

Other Alternatives Considered: The Board of Commissioners has devised a set of hearing procedures that conforms to LUBA requirements and permits the applicant, proponents and persons with standing to participate.

Fiscal Notes: There is a minor cost of notice. The County pays for the notice and receives reimbursement from the applicant.

County's mission: "Neighbor to neighbor, serving Clatsop County with integrity, honesty, and respect." The Board of Commissioners has devised a set of hearing procedures that conform to LUBA requirements and that permit the proponents, petitioners and persons with standing to participate.

Attachment List: 1) Copy of Supplemental Findings submitted by Applicant; 2) June 26, 2009 Memorandum from Jeff Bennett and Andy Jordan, County Counsels, regarding proposed supplemental findings.

Staff Recommendation:

- A. The board is requested to conduct a hearing; receive oral argument regarding the two remanded issues; close the hearing; and deliberate on the proposed supplemental findings.
- B. The BOCC has three options regarding how to make the final decision:
 - 1. Deliberate and take action on July 8 after the public hearing is closed.
 - 2. Deliberate after the July 8 hearing is closed and continue the matter to July 22, 2009 for further deliberation and final action.
 - 3. Decide whether to take action or not after the hearing on July 8.

A final decision must be made on or before September 2, 2009.

**Clatsop County Supplemental Findings
for LUBA No. 2008-052**

June 2009

DRAFT: June 25, 2009

I. SUMMARY

A. Issues

On January 27, 2008, the Land Use Board of Appeals issued its decision in LUBA No. 2008-052, *Columbia Riverkeeper, et al. v. Clatsop County*. As stated in the decision at page 3, petitioners appealed a county decision to allow a liquefied natural gas terminal, natural gas pipeline and related facilities. LUBA remanded the decision to the County to address two Comprehensive Plan ("Plan or CCP") policies, as they related to two assignments of error, stating:

- (1) "The county does not explain why it is permissible under the explicit terms of LWDUO 1.035 to apply the law dictionary definition instead of or in addition to the definition from the statewide planning goals. Not only is the statewide planning goal definition obviously more germane to the meaning of CCP Policy 20.2(1) and CCP Policy 20.8, but LWDUO explicitly requires the county to apply that definition before turning to a law dictionary definition. We conclude that remand is necessary for the county to apply the statewide planning goal definition of 'protect'." LUBA 2008-052 at 34.
- (2) "Given that the county erred in its primary conclusion that the scale restriction is a mere restatement of the fill limitation, and because the county erred in limiting the scope of 'development activities' to the upland acres covered by the LNG facility itself, we conclude that remand is necessary for the county (sic) re-evaluate whether the proposed development activities, considered as a whole, comply with the 'small or moderate' scale limitation." LUBA 2008-052 Record at 48.

B. Summary of this Action

In order to respond to the remand, the County supplements its findings in Ord 08-05 as follows based on evidence contained in the record:

- (1) Explaining how the project complies with policies requiring the protection of traditional fishing areas when disruptive inwater activities occur given the Land Conservation and Development Commission (LCDC) definition of "protect";
- (2) explaining how the project complies with the Comprehensive Plan policy requiring that threatened and endangered species habitat be protected from incompatible development given the LCDC definition of "protect";

- (3) explaining how the scale of the project is “small to medium/moderate” considering, along with the upland area occupied by the terminal, the construction of power lines, gas pipelines and pilings and other structures within the County and necessary to offload LNG ships; and
- (4) directing staff to execute Land Use Compatibility Statements for the terminal and associated facilities stating that the Project is consistent with the Clatsop County land use regulations as reflected in the effective provisions of Ord 08-05 as supported by the original and these supplemental findings.

II. DISCUSSION

A. Background

1. Goals 16 and 17 and Application of the Traditional Fishing Areas Policy.

Goal 16 of the Statewide Planning Goals is

“to recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries.”
OAR 660-010-0000.

Goal 17 of the Statewide Planning Goals is

“to conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and

“to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon’s coastal shorelands.”
OAR 660-010-0000.

The Goal 16/17 element of the Comprehensive Plan implements Statewide Goals 16 and 17 at the local level through its stated policies. The Comprehensive Plan Goals 16/17 Element includes Policy 20.2 Agriculture and Fisheries, Policy No. 1, which provides:

“Traditional fishing areas shall be protected when dredging, filling, pile driving or other potential disruptive inwater activities occur.”

“Protect” is not defined in the Plan or other County regulations. Clatsop County’s Land Water and Development and Use Ordinance (LWDUO) Section 1.035 does, however, address review of unlisted words and phrases. LWDUO 1.035 states in part:

“The definition of any word or phrase not listed in this chapter which is in question when administering this Ordinance shall be defined from one of the following sources. The sources shall be consulted in the order listed.

- “(1) Clatsop County Comprehensive Plan.
- “(2) Any other Clatsop County resolution, Ordinance, codes or regulation.
- “(3) Any statute or regulation of the State of Oregon (including the Uniform Building Code and LCDC Goals and Guidelines).
- “(4) Legal definition from case law or law dictionary.”

In its decision in LUBA Case No. 2008-052, LUBA held that when interpreting policies in the comprehensive plan the County improperly considered a law dictionary definition of “protect” in addition to the LCDC definition, and must rely on the LCDC Goals and Guidelines Definitions in the absence of a definition of “protect” in the LWDUO. “Protect” is defined in the Statewide Planning Goals and Guidelines as “save or shield from loss, destruction or injury or for future intended use.” OAR 660-010-0000.

“Conserve” is defined in the LCDC Goals and Guidelines as “to manage in a manner which avoids wasteful or destructive uses and provides for future availability.” OAR 660-010-0000. Since “conserve” is defined as to avoid destructive uses and Goal 17 calls for both protection and conservation of shorelands, we find that the terms “conserve” and “protect” have different meanings. Conserve means to avoid destructive uses, and protect is broader and encompasses shielding from destructive uses. Protect, as defined by LCDC, does not require complete avoidance of all loss.

2. Application of the LCDC Definition of “Protect” in the Clatsop County Planning Regulations.

In its findings, LUBA stated that “the county apparently understands [protect] to mean using measures that are intended to ‘minimize’ impacts, even if those measures fail to shield the resource from loss and significant adverse impacts still occur. That view may be consistent with the law dictionary definition the County relies upon, but it is not at all clear to us that it is consistent with the statewide planning goal definition.” LUBA No. 2008-052 Record at 33-34. The project is consistent with the applicable plan policies utilizing the LCDC definition of protect as discussed generally and as applied to the Project.

The acknowledged Clatsop County Comprehensive Plan and land use regulations implement the Statewide Planning Goals, including Goals 16 and 17. LUBA 2008-052 Record at 015091. Since LCDC acknowledged the Clatsop County Comprehensive Plan and zoning ordinance and standards document and found them to be consistent with Goals 16 and 17, we interpret the use of these terms so that the use of the word “protect” in these documents is consistent with the LCDC definition.

We concluded that the acknowledged Comprehensive Plan uses the term “protect” in a manner that, consistent with the state definition, includes shielding mechanisms without requiring proof that no loss, destruction or injury will occur. The Comprehensive Plan states that the timing of dredging and dredged material disposal will be coordinated with state and federal resource agencies, local governments and private interests **to protect** aquatic and shoreland resources. Comp Plan Goal 16 Policy 24, N3. Policy 20.19 of the Goal 16/17 element of the Plan identifies policies that **protect** and enhance water quality to include control of non-point sourcewater pollutants by state water quality programs; the Forest Practices Act; administrative rules; no untreated waste discharges into tributary streams, enclosed bays or sloughs; containment and clean up equipment; and appropriate waste disposal receptacles. Again, protection is provided through shielding mechanisms whether in the form of infrastructure or regulation.

The acknowledged zoning ordinance also uses “protect” in a manner consistent with the state definition of protect. “The purpose of the MI zone is to manage Columbia River Estuary shore lands in urban and urbanizable areas and shore lands in rural areas especially suited for water dependent development and to reserve these shore lands for water-dependent industrial, commercial, and high-intensity recreational use.” LWDUO Section 3.622; LWDUO Section 3.634(10). Fence is not defined in the code or the LCDC definitions and a state law definition was not located but fence is defined in *Ballentine’s Law Dictionary*, 3d ed., p. 465, as

“an enclosure about a field or other space, or about any object, especially enclosing a structure of wood, iron, or other material, intended to prevent intrusion from without or straying from within; a visible or tangible obstruction which may be a hedge, ditch, wall, obstacle interposed between two portions of land so as to part off and shut in land and set it off as private property or for the purpose of using it separately from adjacent land of the same owner.”

Development standards governing development in the Marine Industrial (MI) Zone provide fencing will be allowed where necessary to protect property. Similarly, the County’s Beach and Dune Overlay zone protects identified recreational, wildlife habitat and other resources and provides that fencing is permitted to protect vegetation. LWDUO 4.056(4)(C)(5).

Finally, the acknowledged County Standards Document establishes, in general terms, how development will occur in the County and is consistent with defining “protect” as shielding from loss or destruction or injury. Similar to the Comprehensive Plan and the LWDUO, the Standards Document calls for design and construction to be such that fish and wildlife and associated environmental values are protected. The Erosion Control standards are intended to protect the water quality of surface water and improve fish habitat. Storm sewer inlets are

protected by sediment traps and filter barriers. S2.504(b)(5). Fish and wildlife resources are protected by performing instream work during the Oregon Department of Fish and Wildlife (“ODFW”) inwater work window. S2.504(b)(5)(b).

The use of “protect” in the section of the Columbia River Estuary Shoreland and Aquatic Use and Activity Standards that includes policies applicable to dredging and dredged material disposal is consistent with the state definition of “protect.” The timing of dredging and dredged material disposal operations shall be coordinated with state and federal resource agencies, local governments and private interests to protect estuarine aquatic and shoreland resources.

S4.232(4). Dredging operations shall be consistent with state and federal resource agency conditions, the requirements of local governments and concerns of private interests, to ensure that project timing and dredging conditions protect estuarine resources. S4.232(F). Surface runoff from disposal sites is controlled to protect water quality. S4.232(20). Thus, we conclude that the LCDC definition of protect is met by compliance with acknowledged county zoning and standard regulations stating that implementation of particular measures accomplishes protection and by construction of the development and imposition of conditions that will either save or shield the protected resource from the potential harm identified in the policy.

B. *Protection of Traditional Fishing Areas When Disruptive Inwater Activity Actually Occurs*

1. *The Project Protects Traditional Fishing Areas When Disruptive Inwater Activities Occur.*

The Clifton Channel has been identified as a traditional fishing area. About 125 LNG carriers will call at the terminal each year. LUBA 2008-052 Record at 020717. This area will be protected, that is, saved or shielded from loss, destruction or injury or for future intended use, by maintenance of water quality and limiting industrial activities so that they allow for the continued operation of the traditional fishing area when disruptive inwater activities occur.

The provisions in S4.200, *et seq.* apply to development within the Columbia River Estuary, and its standards “are intended to protect the unique economic, social and environmental values of the Columbia River Estuary.” S4.203(2) provides that appropriate landscaping, fencing and/or other buffering techniques shall be used to protect the character of adjacent uses.” The measures proposed by the applicant (described herein and in Chapter 11 of the Ord 08-05 Findings) and required by the state and federal permitting process provide the requisite protection of traditional fishing areas when disruptive inwater activities occur.

Compliance with the Dredging and Dredged Material Disposal policies, for example, shields the traditional fishing areas from injury when disruptive inwater activities occur. Dredging will be performed to create a safe and sufficient turning basin for ships while minimizing ecological impacts. The County’s acknowledged standards implementing Goals 16 and 17 establish that minimization of the impacts provides requisite protection. S2.504(5)(b) provides that instream work protects fish and wildlife resources when it is conducted during the inwater work window defined by the regulating government agencies. S4.232(4) similarly provides that proper timing of dredging operations protects estuarine resources.

To minimize impacts and protect habitat,

- Dredging will be allowed only during an approved inwater work window (November 1 through February 28 time period) established by the ODFW, the National Marine Fisheries Service and the U.S. Army Corps of Engineers, designed to minimize impacts to aquatic life by allowing dredging only during times when low fish populations are present in the river.

LUBA 2008-052 Record at 020896.

Bradwood Landing has designed the dredge footprint area in consultation with numerous agencies to maximize the efficient use of the current basin, minimize the amount of dredging and reduce impacts to fisheries, thereby reducing the area impacted and protecting the habitat as a whole. LUBA 2008-052 Record at 020896.

Upon review of the record, we conclude that as regulated and mitigated, significant adverse environmental impact will not occur and policy identified resources are protected.

“Protect” as defined by LCDC and as used by the County and acknowledged by LCDC in the County planning documents does not require that absolutely no loss occurs. Protection is provided by avoiding those areas to the extent possible and making development sensitive to the environment where it does in fact occur.

Traditional fishing areas are also protected when disruptive inwater work occurs since they are shielded by the Project’s incorporation of additional measures to protect traditional fishing areas including:

- Minimization of turning basin size;
- Siting of turning basin outside the intertidal area;
- Screening of intakes; and
- Upland disposal of materials.¹

LUBA 2008-052 Record at 020863, 005508.

Avoidance of fish entrapment is provided and traditional fishing areas are protected when disruptive inwater activity occurs through the use of fewer, larger vertical piles to minimize the number of piles and allow pile driving within a caisson filled with bubbles to shield fish from impacts. LUBA 2008-052 Record at 20863.

Large vertical piles will be used for inwater structures to minimize the number of piles that must be used and to allow vertical pile driving within a caisson filled with bubbles to avoid or minimize acoustic effects on fish and thus on traditional fishing areas. LUBA 2008-052 Record at 0020863. Safety zones will be established around pile driving and other construction activities to protect marine mammals. LUBA 2008-052 Record at 020896. Vibratory drivers,

¹ See discussion in prior findings of Policy 20.8 as well for a relevant discussion of the use of avoidance and minimization and the mitigation to achieve protection.

which tend to produce lower noise and vibration levels, will be used to the extent possible. LUBA 2008-052 Record at 019970. Lastly, pile driving may occur between the hours of 7 a.m. and 10 p.m. and dredging may occur 24 hours per day. These hours allow the work to be completed under a compressed schedule, reducing the number of construction days needed for pile driving and dredging. LUBA 2008-052 Record at 017663. These actions protect traditional fishing areas when disruption in water activity occurs.

Filling is also conducted so as to protect traditional fishing areas. S4.232(20) provides that water quality is protected by controlling surface runoff from dredge material disposal with disposal runoff water entering the receiving waterway through a controlled outfall at a location with adequate circulation and flushing characteristics. Surface runoff is controlled by the Project to protect water quality when disruptive inwater activity occurs. LUBA 2008-052 Record at 20869. The detailed erosion control plan required as a condition of approval must "contain adequate provisions to ensure that undesirable erosion, sedimentation, increased flood hazard and other changes in circulation will be avoided at the disposal site and in adjacent areas." LUBA 2008-052 Record at 00029. Erosion control is a means of protection recognized in the Code. S.2501. The Bradwood Project, as a condition of approval, must obtain all required state and federal permits and obtain approval of its mitigation plan and erosion plan. 2008 LUBA Record at 00030, 00032. The Erosion Control Development Standards expressly state that the purpose of the section is "to protect the water quality of surface water, improve fish habitat and preserve topsoil by developing and implementing standards to help reduce soil erosion related to land disturbing activities." S2.501. Water quality is protected and fish habitat enhanced through the use of measures that reduce erosion. The use of a sediment fence stops sediment and shields the lower elevations from excessive sediment exposure, protecting the resource. The Erosion Sediment Control standards set out in S2.504 provide that development will "[p]rotect storm sewer inlets and culverts by sediment traps or filter barriers."

The avoidance of fill activity in a substantial amount of wetlands and mitigation for areas filled promotes the health of the estuary as a whole and protects traditional fishing areas by promoting system-wide aquatic health. The filling of the millpond has been acknowledged in a prior Comprehensive Plan Amendment as appropriate to create a unified industrial site. Dredge material will be disposed of on the site with the implementation of erosion control plans as provided in the conditions of approval. The extensive erosion control program will protect surrounding water quality and thus the traditional fishing areas when filling occurs. Traditional fishing areas are protected when disruptive inwater activity occurs.

The southeast entrance to the Clifton Channel is the one usually taken by the boats coming from Westport or Cathlamet. Closure of that entrance would result in boats having to travel around the north end of Tenasillahe Island, increasing the number of miles needed to reach Clifton Channel. Staff concluded that dredging, construction of inwater structures and subsequent security measures may block water access at least some of the time and that some fish entrapment may occur. We conclude that the "traditional fishing area" in Clifton Channel is protected: fish, fish habitat, and both commercial and sport fishing will continue in the area. Other deep draft vessels similar in size to the LNG carriers traverse the Columbia River. While the LNG Carrier (LNGC) is in transit in the navigation channel, its impact on fishers will be like the impact of those other deep draft vessels navigating the river and therefore no different from the routine part of the use of traditional fishing areas. The Clifton Channel access will further be

protected through imposition of a condition of approval limiting its closure. Clifton Channel will remain open and available to users during all periods of construction and operation with entrance and egress into the southeast entrance to Clifton Channel being limited for only the 30 to 45 minutes when a ship is maneuvering at berth, protecting areas identified by Staff as traditional fishing areas.² This corresponds to closure only approximately 2% of the year. As proposed and conditioned, the Project protects the traditional fishing areas when disruptive inwater activity occurs because traditional fishing areas are saved *or* shielded from loss, destruction *or* injury *or* for future intended use when disruptive inwater activity occurs. Traditional fishing areas such as Clifton Channel will generally remain open and accessible to fishermen when the LNGC is berthed. LUBA 2008-52 Record at 00069, 004043, 008288.

We therefore conclude that the Project and related land use actions are consistent with Policy 20.2 and protect traditional fishing areas when disruptive inwater activities occur.

C. *Protection of Threatened and Endangered Species Habitat from Incompatible Development*

1. Identification of Threatened and Endangered Species Policy.

The Goal 16/17 Element of Clatsop County's Comprehensive Plan includes Policy 20.8; Policy 20.8(2) provides:

"Endangered or threatened species habitat shall be protected from incompatible development."

On remand, the County must evaluate this policy using the LCDC definition of "protect." As discussed above, "protect" is defined by LCDC as to "save or shield from loss, destruction or injury or for future intended use." OAR 660-010-0000. We evaluate the compliance of the Project with the policy below.

2. The Project Protects Threatened and Endangered Species Habitat From Incompatible Development.

Federally and state tested threatened and endangered species of salmonids were identified as potentially occurring in the area of the project. LUBA 2008-052 Record at 005022.³ Columbia white tailed deer are included on the federal list of endangered species. *Id.* at 005025. The stellar sea lion is federally listed as threatened. The marbled murrelet and northern spotted owl are listed by both the state and federal governments as threatened. LUBA 2008-052 Record at 005024-25.

²

$$\frac{100 * (45 \text{ minutes maneuvering}) * (1 \text{ arrival} + 1 \text{ departure}) * (125 \text{ ships/year})}{\frac{365 \text{ days}}{1 \text{ year}} * \frac{24 \text{ hours}}{1 \text{ day}} * \frac{60 \text{ minutes}}{1 \text{ hour}}} = 2\% \text{ of the year an LNG carrier will be maneuvering at the site}$$

³ Potential impacts on threatened and endangered species are discussed extensively in the LUBA 2008-052 Record at 005022-50117 and expressly incorporated herein.

The Standards Document generally describes how development will occur in the County. S4.218 requires that permitted fill or dredging activities in intertidal and shallow to medium depth estuarine subtidal areas be mitigated through project design and/or compensatory mitigation (creation, restoration or enhancement of another area) to ensure that the integrity of the estuary ecosystem is maintained. Thus, habitat is protected through the maintenance of the integrity of the ecosystem as a whole. Here, the dredging is designed to protect threatened and endangered species from incompatible development through its location.

County standards include requiring avoidance of impacts where possible, S4.218(2)(A). This protects traditional fishing areas when disruptive in water activities occur by avoiding sensitive areas, saving them for future use. Endangered and threatened species habitat is protected from incompatible development by the decision to dredge in a deep portion of the Columbia River, rather than in the intertidal and shallow to medium depth estuarine subtidal areas in which S4.218 requires dredging to be mitigated. LUBA 2008-52 Record at 00061-62, 64, 005055, 008288, 012062, 012066, 020727, 020933. S4.218 provides for mitigation for “dredging in intertidal and shallow to medium depth estuarine subtidal area” to ensure that the integrity of the estuary ecosystem is maintained. Again, protection is provided in this way by avoiding an area that is critical habitat for juvenile salmonids specifically in less than 20 feet of water, thereby saving it from loss.

The area proposed for dredging for the turning basin at Bradwood Landing is already deeper than 20 feet. Bradwood has intentionally designed the dredge footprint in habitat that is deeper than 20 feet (a depth considered to be deep water habitat) because it has a greatly reduced use by juvenile salmonids. The proposed dredge area is deep water habitat now and would continue to be deep water habitat after construction. Use of this type of habitat by juvenile salmon will be virtually unchanged because they predominantly use the top 10–15 feet of the water column regardless of total depth. We believe testimony on behalf of applicant to the effect that benthic invertebrates (small “bugs” that salmon and other fishes eat) that live in the deeper habitat substrate (surface) have been shown to quickly recover from dredging disturbance. LUBA No. 2008-54 Record at 003265. This is because they are present in high numbers in the area surrounding the disturbed area and they quickly re-colonize (move into) the dredged area. The young fish that would consume these invertebrates do not actually forage on the river bottom in the deep water habitat; they eat those materials and organisms that get suspended and float around closer to the surface of the water, and are constantly in motion from river currents and tidal currents. Bradwood Landing also protects habitat from incompatible development by using suction dredging, a technique that reduces turbidity. A minor increase in turbidity (suspended sediments) that contains these invertebrate food items actually has been shown to stimulate juvenile and adult salmon and other fishes to feed. LUBA 2008-052 Record at 000064-65, 003265-66, 020728, 002755. While the analysis was focused on juvenile Chinook salmonid including subyearling and yearling varieties, we received expert testimony that the analysis should extend to other salmonids. LUBA No. 2008-52 Record at 6009.

The policy providing that endangered or threatened species habitat shall be protected from incompatible development is designed to protect the habitat from “incompatible development.” The policy is not designed to protect habitat from any and all development or loss. The Bradwood site has long been recognized as appropriate for industrial port development. *See, e.g.*, LUBA 2008-052 Record at 003115, Lower Columbia River Ports

Region Study of Ports of Astoria, St. Helens and Portland; ODOT, 1975, LUBA 2208-052 Record at 003134, 003140-41. Habitat is protected from incompatible development through selection of a terminal site that has undergone industrial development since the 1840s rather than a more pristine site. LUBA 2008-52 Record at 005499, 005506.

Further, the Project footprint has been reevaluated and redesigned during the design stage to maximize avoidance of wetland and shoreline areas on the site. LUBA 2008-052 Record at 005499. For example, the facility was designed without a slip, significantly reducing the Project footprint and thus avoiding some impacts. LUBA 2008-052 Record at 005500. This design provides future protection to habitat by avoiding certain areas, saving them for habitat use.

Docked LNG ships will recirculate ballast water through the engines for cooling after the shore-based water supply is turned off and until the ship is ready to leave. LUBA 2008-052 Record at 005054. This avoids additional water intake and discharging heated water within the LNG berth and maneuvering area. LUBA 2008-052 Record at 005054. Heavy directional drilling will be the method for crossing streams known to contain listed salmonids to avoid impacts on listed species. LUBA 2008-052 Record at 005058.

General development standards within the Columbia River estuary require adequate landscaping, fencing and/or other buffering techniques to protect the shore land and aquatic areas. S.4.201. Protection from incompatible development is also provided because required buffer zones will be maintained between construction activities and significant wildlife resources. LUBA 2008-052 Record at 005501. Buffering shields a protected resource from an incompatible use and provides protection as discussed in Section A of these findings.

The Project will be compatible with endangered and threatened species habitat (and therefore the habitat protected from incompatible development) because it will mitigate for reduced habitat quality through restoration of several times as much high quality habitat, promoting and protecting habitat in the estuary as a whole. LUBA 2008-052 Record at 004979.

Given the knowledge that nearshore areas provide important migration habitat for juvenile salmonids and other species, only minor changes are proposed in this area in the form of support piles under the proposed Project, allowing the area's habitat functions to be maintained during terminal operations. LUBA 2008-052 Record at 005502. This saves the area for future use, ensuring protection from incompatible development.

Aquatic and shore land resources were identified in the review process, and these resources will be protected, that is to say shielded from loss, through the use of shielding mechanisms imposed by different state agencies, including statutory and regulatory requirements concerning non-point source water pollutants as well as containment, clean up and adoption of mitigation and erosion plans subject to County review and approval. LUBA 2008-052 Record at 000030, 000032, 017890-91, 020733, 020866-67. Control of non-point source water pollutants is a means of protection recognized in the County Code. (See Section A of these findings.) LWDUO 4.056(4)(C)(5) provides that fencing may be provided on a temporary basis to protect vegetation. LWDUO 3.634(10) provides that in the Marine Industrial Zone fencing will be allowed where it is necessary to protect property of the use concerned or to protect the public from a dangerous condition. Similarly, shielding mechanisms will be used here.

Impacts on Columbia white tailed deer have been avoided by selection of a former industrial site as the terminal location as opposed to a more pristine site. LUBA 2008-052 Record at 005060. The terminal site has also been minimized, reducing potential for encroachment into habitat area. LUBA 2008-052 Record at 005059. Vegetative clearing during construction will be scheduled outside the fawning season. LUBA 2008-052 Record at 005062. Following construction, temporarily impacted forest habitats will be replanted in kind with native trees. LUBA 2008-052 Record at 005094. Replacement habitat will also be secured. LUBA 2008-052 Record at 005094.

Nesting, roosting, feeding and resting areas used by resident and migrating birds are protected. Some concern was raised regarding bald eagles. LUBA 2008-052 Record at 001384, 009195. There are no bald eagle nests within 0.5 miles of the terminal site. LUBA 2008-052 Record at 005100, 013307. Bradwood Landing will minimize construction, operation and maintenance activities within 0.5 miles of any nest (or 0.25 miles if any nest is within line-of-sight of the Project). Bradwood Landing will also avoid removal of potentially suitable bald eagle nest or roost trees (e.g., mature deciduous or coniferous trees that offer an unobstructed view of the surrounding area). LUBA 2008-052 Record at 005099. Other birds' nesting, roosting, feeding and resting areas are similarly protected as set forth in LUBA 2008-052 Record at 005022-050117.

We conclude that the proposed activities will protect endangered or threatened species habitat from incompatible development. Bradwood Landing submitted a revised mitigation plan detailing Bradwood Landing's environmental and mitigation process approach. The mitigation plan outlines how Bradwood Landing has worked its way through the mitigation process to date by first describing the footprint and facility changes that took place to avoid and minimize impacts wherever possible during the design process. Protection through avoidance and minimization did not stop with conceptual design; it has continued (and will into the future) as Bradwood Landing responds to agency and public feedback on the proposal. Avoidance and minimization includes preservation of the most sensitive and highly functional natural resources at the Bradwood site, as well as preservation of existing high quality habitat adjacent to the Svensen Island mitigation area and use of horizontal directional drilling in identified sensitive areas to avoid surface disturbance. LUBA 2008-052 Record at 005502.

Upon review of the record, we conclude that as mitigated and regulated, significant adverse impacts will not occur and policy identified resources are protected.

The County's conditional use process is designed to protect areas from incompatible development. The conditional use permit portion of the code "provides a system of review of such uses so that the community is assured that the uses are compatible with their locations and with surrounding land uses, and will further the purpose of this ordinance and the objectives of the comprehensive plan." LWDUO 5.005. LWDUO 5.025 provides that in permitting a conditional use, conditions may be imposed. These conditions include

- (1) limiting the manner in which a use is conducted, "including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution and odor,"

- (2) requiring diking, screening, landscaping or other facility to protect adjacent property, and
- (3) requiring the protection of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

Conditions are recognized in the code as a means by which neighboring uses may be rendered compatible. Some material was submitted into the record to support the position that dredging operations would block and destroy traditional fishing areas and listed habitat. *See, e.g.,* LUBA 2008-052 Record at 013509-36. Federal and state agencies conduct an independent review of impacts on endangered species and habitat under distinct authority and standards. *See, e.g.,* LUBA 2008-052 Record at 013509. We recognize that separate permitting and review activity exists and our approval is conditioned upon the applicant obtaining the requisite state and federal permits. We also find that documents generated by a state or federal agency and submitted into the local record or the opposition of individuals or groups do not necessarily reflect review of responsive materials submitted at the local level, such as expert analysis submitted concluding that the deepening of the dredge area will not increase water velocity downstream in Clifton Channel or the requirement for approval of a shoreline monitoring plan. LUBA 2008-052 Record at 009192. Thus, while we recognize that the record contains material taking a position counter to our conclusions, we conclude that as conditioned, the Project and remanded land use actions proposed meet the applicable criteria.

Bradwood Landing has redesigned the Project to protect threatened and endangered species from incompatible development. Specific protection measures include:

- Avoiding some areas by reducing the facility footprint and reconfiguring the terminal to lessen fill impacts and restore temporary work areas to highest habitat value;
- Maintaining required buffer zones between construction activities and significant wildlife resources;
- Reducing the number of pier pilings needed by using fewer larger diameter pilings, thus reducing inwater construction time and completing work when the fewest fish are present;
- Locating the turning basin and berth so as to eliminate the need to dredge an access channel;
- Selecting a site that has been historically an industrial development and that has naturally occurring deep water to eliminate the need to dredge in shallow water habitat;
- Using bubble filled caissons to reduce noise and minimize fish impacts during construction of pilings;

- Changing Project design to provide screened water to ships at dock for cooling engines and filling ballast tanks, to shield fish (including listed salmonids) from entrainment;
- Preserving existing shoreline bathymetry in shallow water and near shore areas to maintain migration corridor for juvenile fishes;
- Creating, improving and protecting hundreds of acres of wetlands while only impacting approximately 13 acres of wetlands to construct the LNG terminal;
- Providing compensatory mitigation for wetland and shallow-water fish habitat wetlands;
- Restoring estuarine influence of up to 65 acres of isolated, degraded and diked wetlands;
- Providing functions of pocket estuaries – protected from high flows, gives animals/fish sheltered refuge;
- Restoring habitat complexity and microhabitats that have been lost over time due to filling for dikes, riprap, seawalls, railroad and road building;
- Limiting through use of the tethered tugs the speed of LNG ships on the river to speeds below which most wake stranding occurs; and
- Requiring submittal of a shoreline monitoring plan.

LUBA 2008-052 Record at 005501, 005502, 020727, 020729, 005499, 005500, 005508, 0020897, 009214, 005054.

We find that the requisite protection is provided, utilizing the LCDC definition of “protect” as applied through CCP 16/17 Policies 20.2 and 20.8.⁴

⁴ Further, we note that LUBA has previously recognized that where appropriate, a county may balance policies that could be viewed as contradictory. On page 7-169, under “Navigational Structures,” the standards document states that:

“Federal and state resource agencies have established policies and guidelines for application of their authorities for review of estuarine aquatic area and shoreline development proposals. These review criteria are broad in scope and, generally, emphasize that navigational structures be designed and constructed, based on all feasible development alternatives, to protect fish and wildlife and associated environmental values.”

If a conflict is found here, Clatsop County similarly seeks to balance development with protection. LUBA has held, “When an applicable comprehensive plan policy has overlapping or conflicting policies, it is permissible for a local government to interpret and apply them in a manner that balances those policies. See *Waker Assoc., Inc. v. Clackamas County*, 111 Or App 189, 194-95, 826 P2d 20 (1992) (“a balancing process that takes account of relative
(Continued...)

For all the foregoing reasons, we find that the proposed activity and related land use actions as conditioned do comply with Policy P20.8(2).

D. *Limitation of Development Activities at Bradwood to Small to Moderate Scale*

1. Identification of the Scale Policy.

In the findings in support of Ord 08-05, the County discussed compliance with a Northeast Community Plan policy stating: "Development activities at Bradwood shall be of small or moderate scale, not involving extensive filling to create new land areas."

In its decision, LUBA concluded that the County may conclude that small to moderate scale development is that occupying fewer than 100 acres. LUBA concluded, however, that while it was not clear dredging would properly be considered a part of the acreage, the County should include inwater structures, the power line and the pipeline when evaluating the scale of development against the 100-acre standard. LUBA stated that the focus of the scale limitation is development activities. On remand, the County must address the appropriate components of scale and analyze the Project's compliance with the scale policy.

2. The Development Activities at Bradwood Are of Small or Moderate Scale, Not Involving Extensive Filling to Create New Land Areas.

As discussed in our prior findings in support of Ord 08-05 and incorporated herein by reference to the extent consistent with these supplemental findings, the development activities do not involve extensive fill to create new land areas. We also note that the reference in the policy to creation of new land areas is consistent with our conclusion below that the focus for establishing scale in this context is land-based activities.

We conclude that land-based development activity is small to moderate in scale if it permanently occupies fewer than 100 acres. The Goal 9 inventory is of industrial *lands* and describes the size of Bradwood in the context of its land area. Clatsop County Goal 9 at p. 78,

impacts of particular uses on particular goals and the logical relevancy of particular goals to particular uses is a decisional necessity.').” *Milne v. City of Canby*, 46 LUBA 213, 234 (2004). The County Plan expresses a preference for development of existing port sites such as at Bradwood. CP P20.3. Shorelands with adjacent deep water access, adequate rail or road access shall be reserved for water dependant recreational, commercial and industrial port development. CP P20.3. Bradwood is such a site. The Clatsop County Goal 16 and 17 policies call for the protection of threatened and the protection of endangered species habitat from incompatible development. Traditional fishing areas will be protected when disruptive inwater activities occur. Comprehensive Plan policies also call for preservation of the fishing industry by “the close evaluation of industrial development and other activities to ensure compatibility and maintenance of water quality.” Northwest Community Plan General Policy 2. The policy that traditional fishing areas will be protected when disruptive inwater activities occur presumes that disruptive in water activities may in fact occur. The policy that threatened and endangered species will be protected from incompatible development presumes that development may occur. These policies considered together and balanced are consistent with the LCDC definition of “protect,” and the Plan does not require a showing that threatened and endangered species habitat or that traditional fishing areas will not be affected in any way or incur any loss, but rather promotes sensitive development that results in compatible development.

91.⁵ The Goal 9 element of the Comprehensive Plan states that “[t]he need for industrially zoned *land* is as much a result of local economic policies and economic development strategies as it is market demand. The purpose in providing a supply of manufacturing *land* is to guarantee the economic well-being of a community.” Policy 78 (emphasis added). The plan discusses the activity of the Clatsop County Economic Development Committee (“EDC”) and goes on to state that:

“Nowhere is the lack of a coordinated comprehensive economic planning strategy more apparent than in the area of manufacturing zoned land. Until the EDC took it upon itself to categorize existing vacant land, no single agency had ready access to industrially available vacant land.

“The EDC, with the cooperation of the county and several municipalities, has completed and is currently updating its inventory of county-wide industrially zoned land. A copy of their map follows this section.

* * * * *

“Given the community’s expressed desire to vitalize its riverfront area, this allocation of industrial land seems appropriate, particularly with the favorable per dollar impact that marine oriented activity has on the County’s economy and labor force.

“Unfortunately, the larger industrial tracts due primarily to ownership patterns tend to be available on an all-or-nothing basis. The only client currently capable of utilizing such a large parcel would be a heavy large industrial activity. Due to this restriction, all of the larger parcels are vacant and will, in all likelihood, remain so in the future as they have in the past.”

Id. (emphasis added).

The Industrial Lands Inventory then goes on to state:

“By opening one of the large two hundred plus acre sites for small, industrial usage it may be possible to meet projected demand more efficiently and also ease the task of attracting smaller firms to the area.” *Id.* at 80.

⁵ “The need for industrially zoned land is as much a result of local economic policies and economic development strategies as it is market demand. The purpose in providing a supply of manufacturing land is to guarantee the economic well being of a community.” http://clatsopcounty.us/Assets/Dept_12/PDF/Comp%20Plan%20Goal%209.pdf, p.78.

Elsewhere in the Plan it states:

“The EDC has completed an inventory of County-wide industrial zoned land. As the inventory portrays, Clatsop County has a number of vacant industrial sites throughout the County, several being large tracts of 100-660 acres.

* * * * *

“A problem exists in that the larger industrial tracts tend to be available on an all-or-nothing basis due primarily to ownership patterns. The only client currently capable of utilizing such a large parcel would be heavy large industrial activity. By opening one or more of the large hundred plus acre sites for small industrial usage, it may be possible to meet demands for industrial land more efficiently and also make it easier to attract smaller firms to the area.”

Id. at 12.

The record includes a comparison of the amount of land available at other local marine industrial zoned sites in the County ranging in size from 25 acres to 288 acres. LUBA 2008-52, Record at 003261. The County includes large industrial sites where large scale development may occur. Those land sites are over 100 acres in size.

The repeated references to land, parcels and tracts in the Goal 9 discussion further indicates that the County’s focus is on land area and not water area. We conclude large scale industrial development is that where the developed industrial site occupies more than 100 acres of land.⁶

Given that small to moderate scale occupies fewer than 100 acres of land we must determine the scale of development at Bradwood. The industrial site in this case is the Marine Industrial Zoned site, identified in the Industrial Lands Inventory and as modified by subsequent County action, including applicant’s applications considered in Ord 08-05. As LUBA noted in its decision, development is “any man made change to improved or unimproved real estate, including but not limited to construction, reconstruction, conversion, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, or any use or extension of the use of land.” LWDUO 1.030.⁷ Manmade changes to the MI industrial site include construction of the LNG terminal facility. A structure is anything constructed, erected, portable

⁶ Further, we conclude that even if the dredge area were properly considered part of the development activity, it would not be properly considered part of the 100 acres. The Industrial Lands Inventory describes the deep draft accessibility of the site as a feature of its location rather than as a component of its size. Clatsop County Goal 9 p. 91. We also note that the river is already deep adjacent to the Bradwood MI site, and the Project does not propose a large increase in the depth of the river in this location. LUBA 2008-052 Record at 003265-003266.

⁷ An extension of the use of land relates to an expansion of the permitted timeline for a development (*see, e.g.,* LWDUO 5.030, discussing extensions to conditional use approvals). No extension of use is proposed here.

or located on the ground or water or attached to the ground or to an existing structure, including but not limited to residences, apartments, barns, stores, offices, factories, sheds, cabins, mobile and floating homes and other buildings. *Id.* A building is a “structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.” *Id.* Because development, by definition, includes structures attached to the MI land or the ground or facility, the powerline, pipeline and inwater structures within the County (and thus subject to the County’s jurisdiction) are included in the acreage calculation. Access improvements, such as improvements to the state owned Hwy 30, the County owned Clifton Road or the turning basin are not development activities at the site as intended by the scale limitation or the 100 acres identified in the Industrial Lands Inventory and are not included.⁸

The area to be dredged is also properly excluded for the following reasons. As noted above, LWDUO 1.030 defines “development” as:

“Any man made change to improved or unimproved real estate, including but not limited to: construction, reconstruction, conversion, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, any use or extension of the use of land.”

The proposed dredging is not a man made change to improved or unimproved real estate. Real estate is not defined in the LWDUO or other local regulations so we refer to secondary sources and conclude it refers to land.⁹ Our view of real estate is supported by those LWDUO

⁸ Also, roads are properly distinguished from structures in this case. A county road is an improved travel surface placed within a dedicated right-of-way that has been formally accepted by the county for access purposes and that is maintained by the county. This is distinguishable from a structure that is anything constructed, erected, portable or located on the ground or water or attached to the ground or to an existing structure, including but not limited to residences, apartments, barns, stores, offices, factories, sheds, cabins, mobile and floating homes and other buildings. LWDUO 1.030. In S4.210, the county sets forth standards applicable to the maintenance and construction of roads, bridges and railroads in the Columbia River Estuary and shoreland and aquatic areas and notes that these land transportations should be designed and sited to enhance areas in the Marine Industrial Shorelands. The roads are not identified as part of the industrial use.

⁹ When words are not defined, LWDUO 1.035 requires that the County look to other statute or regulation in the State of Oregon. As such we look to an Appraiser Certification and Licensing Board regulation OAR 161-002-0000(31) where “real estate” is defined as:

“an identified parcel or tract of land, together with any improvements, that includes easements, rights-of-way, undivided or future interests or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.”

ORS 696.010(16) defines real estate to include:

“leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold.”

(Continued...)

identified activities that qualify as changes to real estate. The activity of dredging does not include the “construction, reconstruction, conversion, relocation or enlargement of a structure” and thus is not an improvement in the use of land. Similarly, the dredging is not “landfill” or “land disturbance” because it occurs in water as opposed to on land. The dredging is not “mining” because it occurs in the water.¹⁰ The only possible remaining development activity that could include dredging is “excavation.” “Excavation” is “the removal by man of sand, sediment, or other material from an area of land or water for other than commercial or industrial use.” LWDUO 1.030. The proposed dredging does not qualify as “excavation” because the dredge material will be used to raise the site of the facility and because the dredging will create a turning basin that will be used to access the industrial site and allow the applicant to put the land to an industrial use. The proposed removal is for industrial use because it will allow for industrial access.

If, however, the dredging is considered “development” generally, the County concludes that it does not qualify as “development” at Bradwood. In providing that development at Bradwood will be small to moderate in scale, the context of the Comprehensive Plan establishes the Board of Commissioners’ intent was to limit “development” to that occurring on land. In the section on using the Comprehensive Plan, the Plan states that it contains information, explanation and findings in narrative form and that these statements have significance in clarifying the County’s position on each subject in the Plan. (LUBA 2007-052 Record at 000127.)

The Goal 16 section of the Comprehensive Plan addressing Bradwood states that “[t]his area includes the industrial area at Bradwood, a stretch of steep forested shoreline to the east and portions of the Columbia River. This subarea is in Clatsop County.” The plan goes on to state that the Bradwood industrial site is currently proposed for use as a rock quarry. “It is designated as a dredged material disposal site. Bradwood is privately owned.” (Clatsop County Goal 16, Policy 30.21.) Bradwood is in the subarea and identified here as the industrial site in private ownership. This description of the Bradwood site does not include the river.

The Goal 16 section goes on to state that:

“The Bradwood industrial site offers limited potential for small to medium sized water-dependent industrial development. There is deep water close to shore, some available vacant land, and railroad access. There are constraints to development, however, including poor highway access and the proximity of the wildlife refuge. Future development which would require extensive filling

Both of these definitions suggest that “real estate” does not include activities or man made changes occurring under water.

¹⁰ “Landfill” is not defined. LWDUO 1.030 defines mining as “premises from which any rock, sand, gravel, stone, topsoil, clay, mud, peat or mineral is removed or excavated for sale, or other reasons, and exclusive of excavating and grading for streets and roads and the process of grading a lot preparatory to the construction of a building for which a permit has been issued by a public agency.”

(impacting aquatic areas in excess of 20 acres) along the Columbia River for the purpose of creating additional industrial land is not appropriate. In order to fully utilize the marine industrial shore lands, it would be appropriate to fill the old Bradwood mill pond. This pond covers an area of less than 10 acres.” (Clatsop County Comprehensive Plan Goal 16/17, Policy 30.21.)

This supports our conclusion that land is the concern in the scale of development provision and not the water area since it is the industrial site which is identified as offering limited potential for small to medium sized industrial development.

The 1990 exception for the Bradwood area states that “[t]he exception will allow for water dependent industrial development of the Bradwood Marine Industrial tract. This industrial tract includes 40 to 50 acres of developable shore lands with 3,000 feet of Columbia River Estuary frontage.” (See Clatsop County 12/90 “Exception to Goal 16 Placing An Aquatic Area Adjoining The Marine Industrial Shorelands At Bradwood Into The Aquatic Development Designation.”). The AD expansions would allow for a more “complete utilization of this water dependent industrial tract by allowing for the following range of uses or activities: (1) filling of the old mill pond (2) lateral expansion of the existing dock or the construction of new docks along the Columbia River shoreline; (3) dredging to provide navigational access along the face of the existing dock and future new docks within the AD zone.” *Id.* at 1. “The mill pond in its existing configuration effectively splits Bradwood into two separate developable parcels” with both parcels about 20 acres in size. *Id.* at 2. “Filling the mill pond will significantly enhance the development potential of the Bradwood Marine Industrial tract.” *Id.* The exception notes that filling the mill pond results in the creation of a 50 acre development tract. *Id.* Bradwood is clearly identified here as the industrial tract suggesting, again, that the dredging activities would be excluded.

3. Calculation of Scale

The terminal will have attached to the facility 6.2 miles of pipeline within Clatsop County and a 1.6 mile power distribution line. LUBA 2008-052 Record at 020725. Development activity outside Clatsop County is not part of its land use jurisdiction. The terminal will also have a single berth for mooring and unloading one LNG carrier at a time. Structures associated with the berth will include a wharf and four breasting and six mooring dolphins. “The wharf will extend from the shore to the berth and will be constructed of reinforced concrete beams and slabs. It will consist of an unloading platform at the end where LNG carriers will dock and a combined roadway and pipeway trestle that will connect the unloading platform to the shore. The unloading platform will be approximately 105 feet wide, and the combined roadway and pipeway trestle will be approximately 45 feet wide... . Altogether, the inwater structures will occupy less than one acre of the river.” LUBA 2008-052 Record at 020717-020718.

Manmade changes to the MI site for the construction of the terminal were previously considered in the scale of development and, in fact, the acreage of 40.1 includes the inwater structures in the AD zone.

The operational size of the facility considering the terminal and inwater structures is:

MI	30.5 acres	
F/AN	9.1 acres	(rezoned to MI)
AD	.5 acres	(inwater structures)
	<u>40.1 acres</u>	

LUBA 2008-052 Record at 005128.

The power line right-of-way for operations is 17.8 acres. LUBA 2008-052 Record at 000220.

The length of the pipeline in Clatsop County is 6.2 miles (reference DEIS Table 2.1.4-1, pp. 2-25, LUBA 2008-052 Record at 004751), based on 30' wide maintained pipeline corridor (reference DEIS pp. 4-115, LUBA 2008-052 Record at 004690): $(6.2 \text{ miles} * 5280 \text{ ft/mile}) * 30 \text{ ft} / 43560 \text{ sqft per acre} = 22.55 \text{ acres}$ in pipeline development.

This reflects a total of 40.1 plus 17.8 plus 22.55 acres or 80.4 acres, fewer than 100 acres (conservative since it includes pipeline and powerline areas some distance from the Bradwood industrial site)¹¹, and small to medium/moderate in scale.

As discussed in the County's prior findings, the Goal 9 element of the Comprehensive Plan discusses land sites utilizing 100 acres in size as large. The total maximum area of the terminal site, the pipeline in Clatsop County and the power line is 80.4 acres.¹²

Since the maximum developed area at Bradwood contains fewer than 100 acres, the development is consistent with and meets any applicable scale policy related to development at the Bradwood site being small to moderate in size.

Lastly, if the dredging is considered "development" at Bradwood, it is not large in scale and is therefore also consistent with the plan policy. The 1990 exception for the Bradwood subarea notes that the dredge volumes associated with this prior exception are less than those typically expected at other sites because the water is already deep and close to the navigation channel. Clatsop County 12/90 Exception at 5. Dredge volumes along the dock areas would be minimal due to existing deep water and close proximity to the navigational channel. The self-scouring river characteristics will also reduce the frequency and volume of future maintenance dredging at this site. *Id.* at 5. Similarly, the water to be dredged as part of this application is also already deep and close to the navigation channel, resulting in dredge activity that is not large in

¹¹ LUBA 2008-052 Record at 015856, 015857, 020954.

¹² The permanent pipeline right-of-way is 50 feet wide (reference DEIS p. 2-35, LUBA 2008-052 Record at 004759). The permanent right-of-way is not a disturbed area and should not be considered development. We find, however, that even if it were considered development, the total acreage would remain below 100 acres, and the Project meets the scale policy.

$$40.1 \text{ acres} + 17.8 \text{ acres} + 50' * 6.2 \text{ miles} * \frac{5280 \text{ ft}}{1 \text{ mile}} * \frac{1 \text{ acre}}{43560 \text{ ft}^2} = 95.5 \text{ acres}$$

DRAFT: June 25, 2009

scale. Further, the record shows that in the context of other Columbia River dredging projects, ranging from 5,000 cubic yards to 19,000,000 cubic yards, the proposed dredging is medium or moderate in scale. LUBA 2008-052 Record at 003265-003266. This is moderate and not large.

III. CONCLUSION

For the foregoing reasons, we reaffirm our decision and findings in Ord 08-05 as modified and supplemented by these findings.

MEMORANDUM

TO: Duane Cole and Ed Wegner

FROM: Jeff Bennett and Andy Jordan

DATE: June 26, 2009

RE: Comments on Proposed Supplemental Findings for LUBA No. 2008-052
Submitted by Counsel for Applicants Bradwood Landing LLC and
NorthernStar Energy
File No. 44548-35140

Counsel for applicants Bradwood Landing, LLC and NorthernStar Energy (collectively herein, the "Applicants"), have submitted to the County for consideration a document entitled *Clatsop County Supplemental Findings for LUBA No. 2008-052 (hereinafter, the "Proposed Findings")*. We have reviewed the Proposed Findings and make the following observations:

1. The LUBA remanded the County's initial approval of the Applicant's land use requests for two reasons. The Proposed Findings document properly identifies the two issues LUBA remanded to the County for further action.
2. The interpretations of legal terms and county policies, and the legal arguments set forth in the Proposed Findings document, address all the remand issues identified by LUBA.
3. The interpretations of legal terms and county policies, and the legal argument set forth in the Proposed Findings document, do not appear to rely on evidence that is not in the present record.
4. We have not made an independent determination as to whether the interpretations of legal terms and county policies, and the legal arguments set forth in the Proposed Findings, are legally correct. However, we do believe that the interpretations and arguments presented do reasonably respond to the two issues remanded to the County by the LUBA decision.
5. The decisions as to whether and to what extent the Board of Commissioners agrees with the various interpretations of legal terms and county policies offered by the Applicant in the Proposed Findings, or with the legal arguments stated therein, are reserved to the sole discretion of the Board.

cc: Duane Cole, County Manager

Ed Wegner, Director of Transportation and Development Services

Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet – In Opposition

Rules for Public Comment:

- The maximum time is three (3) minutes per person. People may not "yield their time" to others.
- Public comments are not allowed on any pending land-use application except during stated public hearings on that issue.
- Public comments must be about matters of County concern. The Chairperson will determine whether a subject is a "matter of County concern."
- No comment shall contain profane, obscene, abusive, threatening or slanderous content.
- The public may not direct questions to commissioners or staff during the Public Comment period.
- The Chairperson may eject anyone violating these rules from the meeting.

	Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
1	Lori Durham	398 Atlantic Astoria, OR 97103	Lori Durham
2	Georgie Marinovich	3712 Parker Lane Astoria, OR 97103	Georgie Marinovich
3	Barbara Anderson		
4	Ted Messing	44183 Peterson Ln Astoria, OR	Ted Messing
5	JAN MITCHELL	362 DUANE, ASTORIA	Jan Mitchell
6	Roger Rocka	362 Duane, Astoria	Roger Rocka
7	Opalyn Heller	3892 Franklin, Astoria	Opalyn Heller
8	Andrea Davis	1002 Clamath Creek Longview, WA 99380 Hwy 302	Andrea Davis
9	Wally Eady	Evans 97138	Wally Eady
10	Gayle Kiser	2112 West Side Hwy Kelso, WA 98626	Gayle Kiser

Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet - In Opposition

Rules for Public Comment:

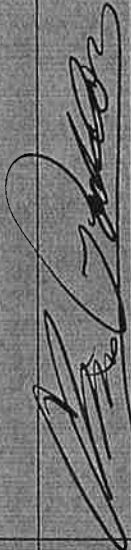


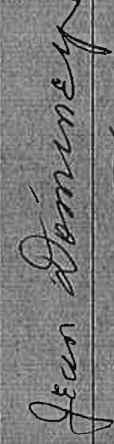


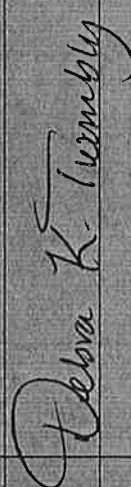
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Name - Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
11 OK Laurie Caplan	166 Lexington ASTORIA OR 97103	Laurie Caplan
12 OK MARC ALLEN BACH	46692 OLD 77 VESPER LN BIRKENFELD OR 97016	MARC ALLEN BACH
13 OK Ned Heavenrich	44218 Anderson lane Astoria OR 97103	Ned Heavenrich
14 OK Doug West	3361 Harrison Ave ASTORIA	Doug West
15 OK Holte Kytr	5253 Ash Street Astoria, OR 97103-2035	Holte Kytr
16 OK Kevin Temple	731 Alameda Astoria	Kevin Temple
17 OK Josh Payne not list	92643 John Day River Astoria	Josh Payne
18 OK LAUREE JOHNSON	1193 HARRISON ASTORIA	Lauree Johnson
19 OK Jim Scheller	32607 Turley LN. Warrenton, OR 97146	Jim Scheller
20 OK CHAL DOMINNEY	3647 WAVE ST. ASTORIA, ORE. 97103	Chal Dominney

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Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
21 D		
22 CHRISTOPHER RADMAN	ASTORIA, OR 97103 91808 YAKIMA RIVER RD.	
23 Stephen Berk ^{not}	89245 Saddle Mt. ASTORIA, OR 97103 199 OSTERVALD RD.	
24 FRANK EYKE	PIGUEE ISLAND, WA 98612	
25 Jean Dominey	3647 Duane Astoria OR 97103	
26 Alan Richards	NAPA, WA 98612 250 Knappton Rd	
27 Sara Meyer	555 Runtan Astoria	
28 Carol Carver	541 W. Bernice St Astoria WA 97103	
29 Debbie Turnbly	44072 Anderson Lane Astoria OR 97103	
30		

Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet – *In Opposition*

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Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
31 Cheryl Johnson	ASTORIA 44183 PETERSON AVE	Cheryl Johnson
32 Jorie Peper	5334 Alder Astoria	Jorie Peper
33 ROBERT CLARK	AGATE ST ASTORIA	Robert Clark
34		
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38		
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- Public comments are not allowed on any pending land-use application except during stated public hearings on that issue.
- Public comments must be about matters of County concern. The Chairperson will determine whether a subject is a "matter of County concern."
- No comment shall contain profane, obscene, abusive, threatening or slanderous content.
- The public may not direct questions to commissioners or staff during the Public Comment period.
- The Chairperson may eject anyone violating these rules from the meeting.

Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
41/ Dawn Gaid 1684 Franklin Ave 97103		
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Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet – In Opposition

Rules for Public Comment:




- The maximum time is three (3) minutes per person. People may not "yield their time" to others.
- Public comments are not allowed on any pending land-use application except during stated public hearings on that issue.
- Public comments must be about matters of County concern. The Chairperson will determine whether a subject is a "matter of County concern."
- No comment shall contain profane, obscene, abusive, threatening or slanderous content.
- The public may not direct questions to commissioners or staff during the Public Comment period.
- The Chairperson may eject anyone violating these rules from the meeting.

Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
94 94 Greg Jacob		
92 92 Olivia Schmitt		
93 93 Kathleen Sullivan		
94 94 Barbara Wilson		
95 95 Stephen Berk		
96 96 Amy Lewis		
97 97 Christi Payne		
98 98		
99		
100		

Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet – In Support

Rules for Public Comment:




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- No comment shall contain profane, obscene, abusive, threatening or slanderous content.
- The public may not direct questions to commissioners or staff during the Public Comment period.
- The Chairperson may eject anyone violating these rules from the meeting.

Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
1 James T. Hodama	1015 Allen St. #1 Kaslo WA 98626	
2 Helen McDaniel	1268 Kensington Astoria	
3 Kirk Dea	15716 Garden Acres Vernon, WA 98577	
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Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet – Petitioner

Rules for Public Comment:

- The maximum time is three (3) minutes per person. People may not “yield their time” to others.
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- No comment shall contain profane, obscene, abusive, threatening or slanderous content.
- The public may not direct questions to commissioners or staff during the Public Comment period.
- The Chairperson may eject anyone violating these rules from the meeting.

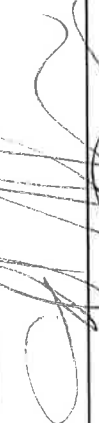


Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
1 Jack Marinovich	37712 Par Ker Lane Astoria, OR 97103	Jack B. Marinovich Jack B. Marinovich
2 Brett Vandenhoven	724 Oak, HR 97031	
3 JOHN DONZER	2964 Keelsake 97138 SARASOTA	
4 Julie Carter - CRITC	729 NE Oregon, #200 Portland 97232	Julie A. Carter
5 Peter Huhtala CRBA	PO Box 682, Astoria, OR	
6		
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Lead

Bradwood Landing LNG Remand Hearing Comment Sign-In Sheet – Applicant

Rules for Public Comment:

- The maximum time is three (3) minutes per person. People may not “yield their time” to others.
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- No comment shall contain profane, obscene, abusive, threatening or slanderous content.
- The public may not direct questions to commissioners or staff during the Public Comment period.
- The Chairperson may eject anyone violating these rules from the meeting.

Name – Please Print	Address (Include city, state and zip)	By signing this sheet, I agree to abide by the above rules.
1 ED SULLIVAN	905 COMMERCIAL ST. ASTORIA OR	
2 MICHELLE RUDD	"	
3 GARY COPPEDGE	"	
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**PUBLIC COMMENT
SIGN-IN CARD**
**Clatsop County Board
of Commissioners**

We welcome your comments.

The Board of Commissioners has set aside a special time on its agenda called Business from the Public for anyone who wishes to make a 3-minute presentation about any item on the agenda (other than a public hearing item) or any topic of county concern that is not on the agenda.

If you would like to testify during a scheduled public hearing, you do NOT need to use this card to sign in. (If a hearing has already been closed, no testimony may be accepted.) If you would like to talk to the Board, please fill out this card, sign the bottom and give it to the Clerk of the Board.

Card must be signed in order to testify. Thank you!

NAME: Jeremy Lippold

ADDRESS: (include number, street, city)

16th & Commercial St.

YOUR TOPIC: (Please briefly describe issue)

If your topic is on the agenda, please note where:

Rules for Public Comment:

- Unless extended or limited by the Chairperson, the maximum time is 3 minutes per person. People may not "yield their time" to others.
- Public comments are not allowed on any pending land-use application except during stated public hearings on that issue.
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