



Oregon

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September 14, 2010

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Lowell Cage, Trustee
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Houston, TX 77507

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E. Room 2A
Washington, DC 20426

Kevin Moynahan
Corps of Engineers, Portland District
P.O. Box 2946
Portland, OR 97208-2946

Re: **Bradwood Landing LNG Import Terminal and Natural Gas Pipeline
Federal Consistency Decision**

Dear Mr. Tow, Mr. Cage, Secretary Bose and Mr. Moynahan:

The Department of Land Conservation and Development (DLCD), through its federally-recognized Oregon Coastal Management Program (OCMP), has completed its review of the federal consistency certification for the Bradwood Landing LNG Import Terminal and Natural Gas Pipeline project. DLCD conducted its review as part of the Federal Energy Regulatory Commission (FERC) and U.S. Army Corps of Engineers (Corps) application review process. Sections 3 and 7 of the Natural Gas Act govern the FERC's authority to issue authorizations required for this project. Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 govern the Corps' authority to issue permits for this project.

The project is described in the applications made to the FERC and Corps, as well as in the applicant's federal consistency certification documents dated October 23, 2007. Briefly, the federal authorizations for this project would allow the applicant to construct a Liquefied Natural

Gas import terminal at river mile 38.5 of the Columbia River in Clatsop County, Oregon, and an associated natural gas sendout pipeline. The terminal site and a small portion of the pipeline are located within Oregon's approved coastal zone boundary.

Consistency Decision: *The DLCD objects to the applicant's consistency certification because the applicant has failed, following DLCD's written request, to supply the information necessary to demonstrate consistency with Oregon's enforceable policies. 15 CFR 930.63(c). In the alternative, DLCD objects because the proposed activity is inconsistent with the enforceable policies of Oregon's coastal management program. 15 CFR 930.63(b).*

1. PROCEDURAL ISSUES

1.1 Stay Agreement

The Coastal Zone Management Act provides the state management agency six months to review a complete consistency certification and issue a decision, or the federal agency may presume the state's concurrence. However, the regulations for consistency review provide an opportunity to stay state review with the applicant's agreement. 15 CFR 930.60(b). DLCD and the applicant entered into the first of six stay agreements on April 9, 2008. DLCD and the applicant subsequently entered into five more stay agreements, with the final agreement terminating on September 1, 2010. Prior to the end of the sixth stay agreement DLCD made multiple attempts to contact the applicant, and later the bankruptcy trustee, to discuss continuing the stay. DLCD received no response and thus, with the end of the sixth stay agreement, this consistency decision is due on or before September 15, 2010.

1.2 Deemed Withdrawal of Army Corps Section 404 Permit Application

The applicant's consistency certification is applicable to both FERC approval and the Army Corps Section 404 permit. The two decisions are intertwined, and the 404 permit is an express condition of FERC approval. In May of 2010 the Corps determined that the applicant had not provided critical information needed to process and approve the Section 404 permit. The Corps gave the applicants 30 days to provide the required information. The applicant failed to respond. Acting under the authority of 33 CFR 325.2(d)(5), the Corps deemed the application to have been withdrawn by the applicant by operation of law on June 28, 2010.

15 CFR §930.51(f) provides that if an applicant withdraws its application to the federal agency, the consistency process is terminated. DLCD interprets the Corps decision on June 28, 2010 as also withdrawing the application for the consistency certification. Any other interpretation would be inconsistent with the Corps's authority under its regulations and would lead to a result where the application and proposed certification submitted pursuant to 15 CFR §930 are inaccurate and inconsistent with the legal position of the applicable federal agency.

Assuming the Corps withdrawal is effective, under 15 CFR §930 DLCD is still required to continue the consistency certification process for the FERC applications. If for any reason a reviewing agency or court should determine that the deemed withdrawal is not effective, this objection is applicable to both the Corps and the FERC applications.

2. DLCD FEDERAL CONSISTENCY REVIEW

DLCD conducted its consistency review pursuant to Section 307 of the Coastal Zone Management Act and attendant regulations of 15 CFR 930.50 et. seq. The Act and regulations require that federal license or permit activities affecting any coastal use or resource within a state's coastal zone must be consistent with the enforceable policies of that state's federally approved coastal management program.

Oregon's federally approved program is a "networked" coastal management program that integrates authorities of local governments and other state agencies. The essence of the program's federal consistency review is to assure that the applicant obtains approvals or conditional approvals from local government and state agencies with regulatory authority for the project. Accordingly, in order to be consistent with the OCMP, the proposed project must be consistent with three plan components: 1) the applicable acknowledged local government comprehensive plan and land use regulations; 2) the statewide land use planning goals; and 3) specific state regulatory authorities (e.g. the Department of State Lands' removal-fill law and the Department of Environmental Quality's water quality certification). The enforceable policies are discussed further below.

3. OBJECTION BASED ON INSUFFICIENT INFORMATION

DLCD objects to the applicant's consistency certification because the applicant has failed, following DLCD's written request, to supply necessary information pursuant to 15 CFR 930.58 and other information necessary to demonstrate consistency with Oregon's enforceable policies. 15 CFR 930.63(c).

Before issuing this consistency determination DLCD made multiple written information requests, providing the applicant ample notice that the consistency determination is lacking necessary information. Prior to the applicant filing the consistency certification, DLCD encouraged the applicant to "either delay filing of the information required for a complete consistency certification until after the required state and local government approvals have been received or recommend a set of conditions to assure consistency with applicable local and state permits and other approvals." January 5, 2007, Letter to Michael Campbell, Re: Consistency Determination, p.6. The letter further explained that "... permits or other approvals must either be obtained before completion of the consistency review process or there must be adequate evidence that the permit or other approvals will be obtained..." *Id.*

The applicant did not delay filing of additional information or suggest a set of conditions, and instead submitted a consistency certification on October 23, 2007. DLCD began this consistency review despite technical completeness issues, with the understanding that these technical issues would be resolved early during the six-month consistency review period. In a Nov. 21, 2007, letter to the applicant's legal counsel, DLCD indicated:

"As outlined below, we find that the certification does not include all necessary data and information required by 15 CFR §930.58(a) for technical reasons, but that the agency's six-month review period has begun. We are waiving the completeness requirements as outlined

in 15 CFR §930.60(a) (2) an[d] note that these requirements must be satisfied prior to the end of our six month review period or we may object to the consistency certification for insufficient information.” November 21, 2007, Letter to Michael Campbell Re: Bradwood Landing Consistency Certification, p. 1.

The letter further stated:

“The Department of State Lands and Department of Environmental Quality have determined that applications are not complete for several reasons, including requirements for a Land Use Compatibility Statement (LUCS) and Planning Affidavit. These LUCS/Affidavit requirements are essential elements that link state agency review to local and statewide planning requirements in order to assure a consistent and coordinated project review. Since the applicant is seeking local approvals that directly relate to the LUCS/Affidavit requirements, we are waiving this completeness issue with the expectation that the local government will be able to provide a LUCS and Affidavit prior to the end of the State’s six month review period.

As outlined above, these agency approvals are enforceable policies of the Oregon Coastal Management Program and must be issued for the project to be consistent.” *Id.*

The letter concluded with a list of incomplete state applications, including applications to the Department of State Lands for a removal-fill permit and proprietary authorizations, and the Department of Environmental Quality for water quality certification (Section 401 certification), Air Contamination Discharge Permits (ACDP), National Pollutant Discharge Elimination System (NPDES) permits for process, cooling, and storm water discharges, and Water Pollution Control Facility (WPCF) permits for sanitary wastes, hydrostatic testing and fire suppression system testing. *Id.*

DLCD again wrote the applicant on May 9, 2009, requesting the following information:

- “an up-to-date project description and related corrections to the October 23, [2007] draft of your consistency certification (e.g. changes to the project status, size, location, design, operation and effects);
- adopted Clatsop County land use decisions/findings and resulting changes to the consistency certification, including a status report on LUBA appeals;
- evidence that Oregon Department of State Lands (DSL) and Oregon Department of Environmental Quality (DEQ) permit applications for the project are complete and include the DSL Planning Affidavit and DEQ Land Use Compatibility Statement;
- updated information related to the Oregon Water Resources Department authorizations necessary for the project;
- the revised Biological Assessment/Effects Analysis required by the FERC and Corps;
- the revised Mitigation Plan required by the FERC and Corps;
- other updated/supplemental FERC and Corps application materials; and
- any additional supporting information related to the project, its coastal effects and its consistency with OCMP enforceable policies that you believe is important to our review.” May 9, 2008, Letter to Michael Campbell, Re: Information Request, p.2-3.

The applicant has yet to respond with the requested information. Further, due to the three-year time lapse since submittal, as well as the deemed withdrawal of the Section 404 application, the 2007 consistency determination is substantially out of date. During the series of stay agreements mentioned above DLCDC and the applicant were operating with the understanding that the applicant would submit an updated consistency certification prior to DLCDC issuing a decision. The applicant has not done so, leaving DLCDC without the information necessary to determine consistency with the enforceable policies contained in: 1) the acknowledged local government comprehensive plan and land use regulation; 2) statewide planning goals; and 3) state agency authorities.

3.1 Insufficient Information Re: Acknowledged Local Government Comprehensive Plan and Land Use Regulations

Oregon has a comprehensive system of statewide land use regulation. It is based largely on statewide land use requirements called "goals," which have been implemented by more specific rules of the Land Conservation and Development Commission. *See* OAR 660-015. Local governments must implement these goals and their implementing rules through their land use plans and zoning regulations. For purposes relevant to this consistency certification, amendments to local land use plans and zoning regulations may not be relied upon until they have been determined to comply with the statewide goals, a process called "acknowledgement." Similarly, state agency decisions in programs that have been found to affect land use must comply with the statewide goals and be compatible with acknowledged local land use plans and regulations. As two examples relevant to this consistency review, the Department of State Lands requires a local planning affidavit pursuant to its state agency coordination program, and the Department of Environmental Quality requires a Land Use Compatibility Statement (LUCS) pursuant to its state agency coordination program.

This project requires local government amendments to the acknowledged Clatsop County comprehensive plan and land use regulations, as well as authorizations implementing the comprehensive plan and land use regulations. Amendments to "acknowledged" comprehensive plans and land use regulations such as Clatsop County's are subject to the "post acknowledgement" requirements of ORS Chapter 197.610-197.625, which provide an opportunity for Land Use Board of Appeals (LUBA) review of those land use decisions to determine goal compliance issues. Comprehensive plan and land use regulation amendments are not "acknowledged" until the LUBA and appellate review is complete, and the local decision is affirmed. Correspondingly, until the amendments are "acknowledged," the local government and state agencies normally may not treat the amendments as final or effective. The local planning affidavit required by DSL, as well as the LUCS required by the DEQ, are both dependent on acknowledgement of the county's plan amendments.

Clatsop County made its land use decision for this project on March 20, 2008, approving certain zoning and comprehensive plan map amendments. However, the decision was appealed to the Land Use Board of Appeals (LUBA). LUBA remanded to the county for further findings regarding the scale of the proposed project and protection of resources. *See* LUBA No. 2008-052. The County subsequently adopted supplemental findings and reaffirmed its initial approval.

The County's decision was again appealed to LUBA, LUBA again remanded, after concluding that the County's decision was not consistent with Goal 16, a statewide goal protecting estuarine resources. The case is now pending before the Oregon Court of Appeals. *See* LUBA No. 2009-100, Oregon Court of Appeals A145336.

Until the Court of Appeals affirms Clatsop County's land use decision, or other final action is taken to resolve the statewide planning goal compliance issues, the amendments are not considered acknowledged, and the prior provisions remain in effect. Absent information to support a conclusion that the amendments are or will be "acknowledged," and without issuance of the required planning affidavit and LUCS, there is insufficient information to determine whether the project is consistent with the acknowledged local comprehensive plan and land use regulations. Thus, DLCD objects to the applicant's consistency certification based on insufficient information.

3.2 Insufficient Information Re: Statewide Planning Goals

The statewide planning goals are the framework for Oregon's land use program and local comprehensive plans. The goals are listed at Oregon Administrative Rules (OAR) 660-015; text of the goals can be found online at www.lcd.state.or.us. The statewide planning goals are generally applied through locally adopted, comprehensive land use plans and land use regulations (i.e., ordinances, review standards, planning and zoning maps). In the absence of an "acknowledged" comprehensive plan and land use regulations, the goals apply directly. In addition, when a local government has not applied a provision of state land use statute, land use goal, or implementing rule into its local comprehensive plan and/or land use regulations, the provisions apply directly to land use decisions (*See* ORS 197.646).

The applicant's certification contains an analysis of the project for compliance with the statewide planning goals (*See* Certification, pp. 234-244). This analysis primarily focuses on the Clatsop County comprehensive plan and land use regulations implementing the statewide planning goals, and the application of the goals to the Clatsop County plan amendments the applicant sought.

The county's final land use decision, adopted findings and conditions are not included with the certification, nor will they be complete until the appeal process described above has reached a conclusion. Thus, DLCD objects to the following goals based on insufficient information:

Goal 2 – Land Use Planning: Goal 2 requires that government actions related to land use be consistent with the acknowledged comprehensive plans and land use regulations adopted by Oregon's cities and counties. As discussed above, the amendments are not acknowledged because the appeal process has not been resolved. Therefore, DLCD must object to the consistency certification due to insufficient information.

Goal 5 – Natural Resources, Scenic & Historic Areas, Open Spaces: Goal 5 requires the inventory and protection of a variety of natural and cultural resources through the local planning process. Without "acknowledged" amendments to the county plan and land use regulations, and additional information relative to the DEQ and DSL permits for the project, there is substantial

uncertainty as to the treatment of Goal 5 resources. Thus, DLCD must object due to insufficient information.

Goal 6 – Air, Water, & Land Resources Quality: Goal 6 contains a general but important requirement to maintain and improve the quality of Oregon’s air, water and land resources. As the DEQ is the lead state agency for protection of air, land and water quality, local land use decisions implementing Goal 6 rely on DEQ permits to assure compliance. The DEQ is reviewing the project for a Section 401 water quality certification, Air Contamination Discharge Permits (ACDP), National Pollutant Discharge Elimination System (NPDES) permits for process, cooling, and storm water discharges, and Water Pollution Control Facility (WPCF) permits for sanitary wastes, hydrostatic testing and fire suppression system testing. These applications are incomplete due to the uncertain nature of the LUCS, and the record does not otherwise contain adequate information to demonstrate that Goal 6 issues will be resolved. Thus, DLCD must object due to insufficient information.

Goal 7 – Areas Subject to Natural Disasters & Hazards: Goal 7 requires the protection of people and property from hazards (floods, landslides, earthquakes, tsunamis, coastal erosion and wildfires). Information related to natural disasters and hazards has not yet been completely resolved in applicable state agency permits. While the local decision deals with natural disaster and hazard planning issues, the decision is on appeal and these issues are not yet resolved. Thus, DLCD must object due to insufficient information.

Goal 11 – Public Facilities & Services: Goal 11 requires the timely, orderly and efficient provision of public facilities and services to serve as a framework for urban and rural development. Primary public facility and services issues relate to fire and public safety services. Goal 11 issues are addressed in the Clatsop County review of the project and will be reflected in the LUCS and planning affidavit. Until the county plan and land use regulation amendments are “acknowledged,” DLCD has insufficient information to make a determination with regards to Goal 11 compliance and must object for lack of information.

Goal 14 – Urbanization: Goal 14 provides for an orderly and efficient transition from rural to urban land use, and requires cities and counties to develop urban growth boundaries to identify and separate urban from rural land use. The certification indicates that Bradwood is not within or adjacent to an Urban Growth Boundary (UGB). The primary issue for this project is the intensity of an industrial use located outside of a UGB. While there is considerable information that indicates Bradwood is appropriate for water dependent industrial development, there are unanswered questions related to the scale of this development described in the Bradwood Subarea Plan. Additionally, the county decision related to this provision is under appeal. There is insufficient information regarding goal compliance until the appeals are resolved and thus DLCD must object due to insufficient information.

Goal 16 – Estuarine Resources: Goal 16 covers the protection and development of estuarine resources. The county’s decision related to Goal 16 is under appeal, and DSL and DEQ have not yet made decisions for the portions of the project within the estuary. These decisions are important elements of the state’s coastal management program protecting estuarine resources.

The relationship between DSL and DEQ decisions and the county decision is complex. Some of the Goal 16 issues are tied to the county's land use decision through the DSL planning affidavit and the DEQ LUCS that the county issues for the project. However, DSL and DEQ have statutory authorities for protecting the estuary that go beyond those contained in the county's land use decision and are key components of the state's coastal management program. Until all of the county and state regulatory agency decisions in the estuary are resolved, OCMP does not have sufficient information to make a determination and must object for lack of information.

Goal 17 – Coastal Shorelands: Coastal shorelands include the lands adjacent to the Ocean shore, estuaries, and the islands within estuaries. Goal 17 mandates that the management of coastal shoreland areas be compatible with the characteristics of adjacent waters. Except in limited circumstances, the requirements of Goal 17 are applicable through the local government's acknowledged comprehensive plan and land use regulations. Similar to Goal 16, the county-issued planning affidavit and LUCS will provide essential information to determine consistency of the project with the county land use requirements implementing Goal 17. Also similar, DSL and DEQ have statutory authorities for protecting the estuary and adjacent shoreland uses and resources that go beyond those contained in the county's land use decision and are key components of the state's coastal management program. Until all of the county and state regulatory agency decisions in the estuary and adjacent shoreland areas are resolved, DLCD does not have sufficient information to make a determination and must object for lack of information.

3.3 Insufficient Information Re: State Agency Authorities

The networked nature of the OCMP draws in state agency authorities to manage specific natural resources, and those authorities are part of the state's enforceable policies. The primary agency authorities at issue in this consistency determination derive from the Department of Environmental Quality (DEQ) and the Department of State Lands (DSL). DEQ is reviewing applications for Section 401 water quality certification, Air Contamination Discharge Permits (ACDP), National Pollutant Discharge Elimination System (NPDES) permits, and Water Pollution Control Facility (WPCF) permits. Oregon Department of Fish and Wildlife requirements also are linked to the DEQ and DSL permits. DEQ permits require a Land Use Compatibility Statement, while DSL permits require a planning affidavit. Neither will be issued in a final form until the land use appeal has been fully resolved. Without the affidavit and LUCS, the applications to DSL and DEQ are incomplete.

The project also requires groundwater and surface water rights from the Oregon Water Resources Department (WRD). The WRD has not yet issued the authorizations, nor has the applicant provided DLCD with updated information regarding the water right applications.

Additionally, the applicant has not provided DLCD with updated versions of the Biological Assessment (BA) and Mitigation Plan. While the BA is a federal consultation requirement, the information it contains is an essential element of the state's review. The effects of the project as related to DEQ, DSL and ODFW requirements are the same issues that will be contained in the BA.

Due to the missing LUCS and planning affidavit, the applicant's certification and record do not contain complete applications for required state agency permits. Nor does the certification and record contain updates regarding water rights or key environmental materials. As noted above, the applicant did not supply evidence of complete permit applications or environmental documents when requested. Because of the incomplete status of the local and state agency review process, as well the lack of key environmental documents, the DLCDC objects to the applicant's certification based on insufficient information.

3.4 Conclusion Regarding Insufficient information

The three aspects of the enforceable policies are interrelated, and the linkages between local government comprehensive plans, statewide planning goals, and state agency authorities are central to the OCMP. The combined requirements of Statewide Planning Goal 2, which requires that government actions related to land use be consistent with local government comprehensive plans, together with the state agency coordination provisions of ORS 197.180, provide the foundation of Oregon's enforceable policies. Because the applicant has failed to provide necessary information related to all three components of the OCMP, DLCDC objects to the consistency certification based on lack of necessary information.

4. OBJECTION BASED ON INCONSISTENCY WITH ENFORCEABLE POLICIES

In the alternative to DLCDC's objection based on lack of necessary information, DLCDC objects pursuant to 15 CFR 930.63(b) because the project is not consistent with the enforceable policies discussed below.

4.1 Acknowledged Comprehensive Plan and Land Use Regulations; Statewide Planning Goals

The project is inconsistent with the Clatsop County Comprehensive Plan as it is currently acknowledged. The project proposal includes a turning basin for LNG tankers that is located within a Conservation Management Unit, as described in Statewide Planning Goal 16 (Estuarine Resources) and the Columbia River Estuary Management Plan. Dredging required to construct the turning basin is not authorized within the Conservation Management Unit. The applicant sought a plan amendment in order to reconcile this inconsistency, but the plan amendment is still under appeal. *See* CA A145336. Without approval, the project is inconsistent with the Goal 16 and County Plan requirements that are enforceable policies of the OCMP.

Clatsop County's initial approval of the project was conditioned on the receipt of a number of permit authorizations that are enforceable policies of the OCMP. These authorizations include: a shoreline monitoring plan; a park and ride site plan; a mitigation plan; an erosion control plan; a pipeline riparian vegetation restoration plan; a dredge material and disposal plan; a decommissioning plan; and a road improvement plan for Clifton and Bradwood roads. The "Conditional Use Permit" applications had been filed for these authorizations, but local review was suspended at the time of the bankruptcy filing. Without issuance of these permits, the project is inconsistent with these enforceable policies of the OCMP.

4.2 State Agency Authorities

As discussed above, this project requires the following permits from the Oregon Department of Environmental Quality: a Section 401 Water Quality Certification; Air Contamination Discharge Permit; NPDES permits for cooling water and stormwater discharges (1200C and 1200Z); and Water Pollution Control Facility (WPCF) permits for sanitary wastes, hydrostatic testing and fire suppression system testing. The 401 Water Quality Certification is directly tied to the U.S. Army Corps of Engineers permits under §10 of the Rivers and Harbors Act and §404 of the Clean Water Act. Since the Corps has withdrawn the applications for these authorizations, DEQ is faced with similar issues in Section 401 certification process, which was initially based on applications for both FERC approval and the Corps Section 404 permits. None of the other DEQ applications are complete for processing due to the applicant's failure to obtain an affirmative Land Use Compatibility Statement (LUCS) for the project.

In addition to DEQ permits, the project requires a Department of State Lands removal-fill permit and proprietary authorization. The removal-fill permit is part of a "Joint Permit Application" that parallels the Corps of Engineers process. DSL requires the applicant to provide a "Planning Affidavit" ensuring that the project is consistent with the local comprehensive plan. Unresolved local land use issues have prevented the applicant from providing DSL with a planning affidavit. Thus the applications for the DSL removal fill permit and for required proprietary authorizations have not been completed, and without complete applications the project is not consistent with the state's removal fill law or state leasing requirements.

Finally, the project requires authorizations from the Water Resources Department. These include water rights for groundwater used during construction and for hydrostatic testing, and a surface water right to use Columbia River water for weekly fire suppression testing. These authorizations are enforceable policies of the OCMP and have not yet been issued by the Water Resources Department. Until the authorizations are issued, the project is inconsistent with these enforceable policies of the OCMP.

4.3 Conclusion Regarding Required State and Local Authorizations

The OCMP is a "networked" coastal management program which relies on issued permits from network partner agencies for consistency with enforceable policies. Although the certification generally describes the relevant local government and state agency requirements, the certification does not contain copies of complete applications for all of the required authorizations. The DLCD waived completeness issues for some of the above applications because the applicant and agency believed the technical deficiencies would be resolved before the end of the six month review period. Despite six different stay agreements, the technical deficiencies have not been resolved. The same issues that lead to a conclusion that the certification lacks sufficient information to issue a consistency determination are substantive deficiencies that support the conclusion that the project is not consistent with enforceable policies. Without complete applications and a resolution of the legal issues in the pending appeal of the initial Clatsop County land use decision, the project is facially inconsistent with enforceable policies that implement Statewide Planning Goal 16 (Estuarine Resources). In addition, without complete local and state permits, DLCD has no evidence (i.e. necessary data and information required by

15 CFR §930.58(a)) to support a conclusion that the project is or can be consistent with OCMF enforceable policies.

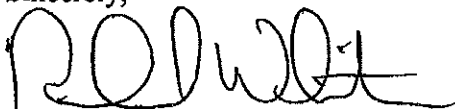
5. RIGHT OF APPEAL

Copies of this CZM decision and findings are provided to the Applicant, the FERC, the Corps and the Director of the Office of Ocean and Coastal Resource Management in the U.S. Department of Commerce in accordance with 15 CFR §930.63(a).¹

As required by 15 CFR §930.63(e), we provide the following statement:

“Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the Oregon coastal management program and the federal permitting or licensing agency. The secretary may collect fees from you for administering and processing your request.”

Sincerely,



Richard Whitman

Director

Oregon Department of Land Conservation and Development

cc:

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Jason M. Rudd, Diamond McCarthy LLP

Steven Gagnon, Army Corps

Paul Friedman, FERC

Ed Wegner Jr., Clatsop County

¹ In addition, the applicant and other parties as defined in ORS 183.310(6) may request review of this coastal zone decision by the Land Conservation and Development Commission pursuant to OAR 660-035-0040(11) and 660-035-0080(1). Review by LCDC of a petition does not preclude the FERC, the Corps, DLCD, or the Governor from seeking Secretarial mediation under 15 CFR 930 Subpart G or appeal to the Secretary under 15 CFR 930 Subpart H. A petition for LCDC review must be filed within fifteen (15) days of the Department's consistency decision.

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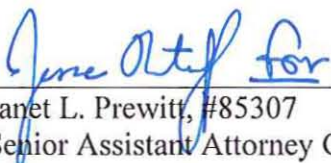
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served by electronic mail, and for those parties for which service is not specified at an electronic mail address, by U.S. mail, first class postage prepaid, the foregoing document on all parties listed on the official service list complied on this proceeding.

Date: September 14, 2010.

#04394



Janet L. Prewitt, #85307
Senior Assistant Attorney General

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