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Jill Rolfe, Planning Director

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## STAFF REPORT

Tuesday, April 14, 2015

**APPLICANT:** Richard Allan, Marten Law, representing Pacific Connector Gas Pipeline, LP

**TYPE OF APPLICATION:** Administrative Conditional Use (ACU) Application for Conditional Use Permit Extension.

**FILE NUMBER:** ACU-15-07

**DECISION:** Approved with conditions

**APPEAL DEADLINE** Thursday, April 30, 2015

### I. RELEVANT CRITERIA:

Coos County Zoning and Land Development Ordinance (CCZLDO)

- § 5.2.600 Expiration and Extensions of Conditional Uses.
  - § 5.2.600(1) Extensions on Farm and Forest (Resource) zone property.
  - § 5.2.600(2) Extensions on all non-resource zoned property.

**II. PROPERTY LOCATION:** The original conditional use application was approved for a natural gas pipeline and associated facilities on approximately 49.72 miles extending from Jordan Cove Energy Project's LNG Terminal upland from the Port's Marine Terminal to the alignment segment in adjacent Douglas County

**III. BACKGROUND:** The applicant requested approval for a two (2) year extension of the development approval period for County File No. HBCU-10-01 (REM-11-01). The conditional use application was approved for a natural gas pipeline and associated facilities on approximately 49.72 miles extending from Jordan Cove Energy Project's LNG Terminal upland from the Port's Marine Terminal to the alignment segment in adjacent Douglas County.

On September 8, 2010, the Board of Commissioners (Board) adopted and signed Order No. 10-08-045PL (File No. HBCU-10-0) approving a conditional use permit for the development of a natural gas pipeline and associated facilities, subject to conditions. The decision was subsequently appealed to the Land Use Board of Appeals which resulted in a remand back to the County for additional review. On March 13, 2012, the Board addressed and resolved two grounds for the remand, and approved findings supporting approval of a valid conditional use permit by adopting Order No. 12-03-018PL (File No. REM-11-01). The decision was finalized after the 21 day appeal period expired without any further appeals.

On March 7, 2014, Pacific Connector filed a request to extend its original ACU approval for two additional years from April 2, 2014 to April 2, 2016. Due to reasons for which the applicant was not responsible, Pacific Connector has been unable to obtain all federal approvals necessary to begin construction. The Planning Department approved the extension request on May 12, 2014

and it was subsequently appealed (AP-14-02). The final decision approving the extension for an additional year was adopted by the Board of Commissioners on October 21, 2014, Final Decision and Order No. 14-09-063PL for a one-year extension expiring April 2, 2015. On November 12, 2014, Jody McCaffree and John Clarke (Petitioners) filed a Notice of Intent to Appeal the Board's decision to LUBA. On January 28, 2015, the deadline for Petitioners to file their Petition for Review, Petitioners instead voluntarily withdrew their Notice of Intent to Appeal, and LUBA dismissed Petitioners' appeal. McCaffree v. Coos County, (LUBA No. 2014-102). Accordingly, the Board's decision to extend Pacific Connector's conditional use approval until April 2, 2015 is final and not subject to further appeal.

#### **IV. FINDINGS TO THE CRITERIA:**

##### **SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES**

Any conditional use not initiated within the time frame set forth in subsection (3) of this section may be granted an extension provided that an applicant has made a request and provided the appropriate fee for an extension prior to the expiration of the conditional use permit approval. Such request shall be considered an Administrative Action and shall be submitted to the Director.

1. Extensions on Farm and Forest (Resource) Zoned Property shall comply with OAR 660-033-0140 Permit Expiration Dates which states:
  - a. Except as provided for in subsection (e) of this section, a discretionary decision, except for a land division, made after the effective date of this section approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period.
  - b. Coos County may grant one extension period of up to 12 months if:
    - i. An applicant makes a written request for an extension of the development approval period;
    - ii. The request is submitted to the county prior to the expiration of the approval period;
    - iii. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
    - iv. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
  - c. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

**FINDING: The request covers both the resource and non-resource zoning districts. This section only covers the resources portion of the approval; however, the applicant has**

requested the conservative approach and requests a one-year extension for the entire ACU. **The applicant made a written request for the extension of the Pacific Connector Gas Pipeline development. The applicant submitted the application for an extension on March 16, 2015, prior to the expiration date of April 2, 2015. The applicant has provided the reasons that prevented the applicant from beginning or continuing development within the approval period.**

**The applicant has explained that the reason that the project has not begun is because the Federal Energy Regulatory Commission's (FERC) final authorization has not been completed. The applicant provides a detailed explanation of the FERC process and the anticipated decision date for that permit. The project cannot begin construction without a final decision from FERC as well as other permitting agencies as listed in the applicant's Exhibit E. The fact that the project is unable to obtain all necessary permits to begin prior to the expiration of a conditional use approval is sufficient to grant the applicant's requested extension.**

**The last consideration for the extension of a conditional use approval in the resource zone is that the criteria for the decision have not changed. The application criteria pursuant to which the approval was originally granted have not changed. There has been some additional language added to the resource section of the ordinance as well as some renumbering but the language of the criteria has not been altered.**

**Therefore, the application as presented meets the criteria.**

2. Extensions on all non-resource zoned property shall be governed by the following.
  - a. The Director shall grant an extension of up to two (2) years so long as the use is still listed as a conditional use under current zoning regulations.
  - b. If use or development under the permit has not begun within two (2) years of the date of approval and an extension has not been requested prior to the expiration of the conditional use then that conditional use is deemed to be invalid and a new application is required.
  - c. If an extension is granted, the conditional use will remain valid for the additional two years from the date of the original expiration.

**FINDING: The request covers both the resource and non-resource zoning districts. This section only covers the non-resources portion of the approval; however, the applicant has requested the conservative approach and requests a one-year extension for the entire ACU.**

**The applicant made a written request for the extension of the Pacific Connector Gas Pipeline development. The applicant submitted the application for an extension on March 16, 2015, prior to the expiration date of April 2, 2015.**

**The pipeline crosses both resource and non-resource zones, requiring the applicant to request an extension under both subsection one and two of CCZLDO § 5.2.600. In non-**

**resource the extension is for up to two years as long as the use is still listed as a conditional use under the current zoning regulations. The use is still a listed conditional use in the relevant non-resource zones and the applicant requested the extension prior to the expiration. Therefore, the application request complies with the criteria the requested one-year extension shall be granted on all non-resource zoning districts the pipeline was approved to cross.**

V. CONCLUSION:

The ACU authorizes the Pipeline to be developed on both resource-zoned and non-resource zoned land. Therefore, the applicant has taken the conservative approach and requests a one-year extension for the entire ACU.

For the reasons set forth in this staff report and based on the evidence and documentation presented by the application, incorporated herein as Attachment A, the Planning Director approves the one year extension request made by the applicant.

All conditions remain in effect unless otherwise amended.

*Jill Rolfe* Planning Director

Coos County Staff Members

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