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Friends of Living Oregon Waters (FLOW)
P.O Box 2478 Grants Pass, OR 97528

Louise Solliday
Director, and
Robert Lobdell
Wetlands and Waterways Resource Coordinator-Enforcement
Oregon Department of State Lands
775 Summer Street NE
Salem, OR 97301-1279
louise.c.solliday@state.or.us
robert.lobdell@dsl.state.or.us

Cc:
Michele E. Hanson
Biologist/Regulatory Project Manager
U.S. Army Corps of Engineers
USACE-Portland District
Eugene Field Office
1600 Executive Parkway Suite 210
Eugene, Oregon 97401-2156
Michele.E.Hanson@usace.army.mil

Mary Camarata
Oregon Department of Environmental Quality
Western Regional Office
165 E. 7th Avenue, Suite 100
Eugene, OR 97401
camarata.mary@deq.state.or.us

Paul Henson
Director, and
Monty Knudsen
Assistant Project Leader
Oregon Office
U.S. Fish and Wildlife Service
2600 S.E. 98th Ave, Ste 100
Portland, OR 97266
Paul_Henson@fws.gov
Monty_Knudsen@fws.gov

Michael Kron
Transparency Initiative Counsel
Oregon Department of Justice

1162 Court St NE
Salem, OR 97301
michael.c.kron@state.or.us

(Submitted via email and U.S. mail)

RE: Oregon International Port of Coos Bay Revised Application for Oregon Gateway Marine Terminal and Jordan Cove LNG Project (DSL Application APP0037712; COE Permit Number 2007-00099)

Mr. Lobdell, and Director Solliday,

We are submitting the following comments in addition to our January 3, 2011 and January 12th letters that provided some of our initial concerns and responses to the application (“JPA”) by the Oregon International Port of Coos Bay (“Port”) for the Oregon Gateway Marine terminal (“terminal”). We incorporate our previous comments by reference. We appreciate Oregon Department of State Lands’ (“DSL”) extension of the comment period for this application, but note that 1) the full application was still not made available electronically for several days after the comment period was extended, and only then after repeated written and telephonic requests for access, and 2) the Port has yet to identify the potential uses and customers for the proposed Oregon Gateway Terminal it claims exist other than the proposed Jordan Cove Liquefied Natural Gas (“LNG”) terminal and pipeline.

The proposed terminal would accommodate the proposed Jordan Cove LNG terminal and Pacific Connector Gas Pipeline Project. In our view, the projects are directly linked. The Port has attempted to create a false division between the Gateway terminal and the Jordan Cove Liquefied Natural Gas (“LNG”) project, itself, claiming other projects have expressed an interest in using the terminal. Yet, the Port continues to fail to provide adequate information about non-LNG uses of the terminal.

We also note that Oregon is the only state currently seriously considering permitting an LNG import facility. *See* attached news articles re: failure of LNG proposals across the country. Governor Christie of New Jersey vetoed the last of three LNG proposals in New Jersey this week. California soundly rejected all efforts to construct an LNG facility on or offshore. Every member of the Massachusetts Congressional Delegation opposed siting LNG facilities in Massachusetts, as did the Governors of Massachusetts and Rhode Island. An existing LNG export facility in Alaska announced this week it would close its doors. A Louisiana LNG facility is re-exporting previously imported LNG and has applied to FERC for permission to convert to an export facility. All of these events demonstrate the utter lack of need for LNG facilities in Oregon, indeed in the entire United States.

DSL must deny the permit because:

- **The Port has failed to identify the true purpose of the project.** The terminal depends on the development of the proposed Jordan Cove LNG project. Although the Port refers to potential non-LNG uses of the terminal, the Port has failed to identify specifically non-LNG customers for the eastern berth. Furthermore, the Jordan Cove LNG terminal is dependent on the Pacific Connector gas pipeline. Federal and state law require impacts of the entire project to be analyzed cumulatively. DSL's attempt to piecemeal its review of clearly connected actions – the proposed terminal and the pipeline, is illegal and subjects the agency to a lawsuit.
- **The terminal is not in the public interest.** The only named customer for the proposed terminal is the proposed Jordan Cove LNG project. The Jordan Cove LNG project is demonstrably unnecessary and contrary to the public interest. Oregon agencies (including DSL itself) have noted that the public need for LNG in Oregon has not been established. The construction of the Ruby Pipeline further demonstrates the lack of need for importing gas.
- **The project plans are unclear.** The proposed project's dredge disposal plans, dredging methods, and the extent of mitigation have not yet been fully determined or evaluated by key agencies, including the U.S. Fish and Wildlife Service ("FWS") and National Marine Fisheries Service ("NMFS"). Additionally, the dredged materials management plan fails to fully account for other potential competing dredge disposal activities, such as the Coos Bay Channel Modification Project and routine maintenance of the Coos Bay navigation channel.ⁱ
- **Proposed mitigation is inadequate.** Multiple state and federal agencies have commented that potential mitigation for the Jordan Cove LNG and Pacific Connector Gas pipeline project are inadequate. Because the Jordan Cove LNG and Pacific Connector pipeline are connected actions to the Oregon Gateway terminal, DSL should evaluate whether the full scope of proposed mitigation meets local, state and federal standards.
- **Consideration of the proposed JPA and removal/fill authorization is premature without coordination with other key agencies.** DSL review of the current JPA is confusing to the public. Are the Oregon Department of Environmental Quality ("DEQ"), the U.S. Army Corps of Engineers ("Corps"), NMFS, Federal Energy Regulatory Commission ("FERC"), and FWS considering the same project plan? Most of the underlying support documents for the terminal derive from the Jordan Cove LNG and Pacific Connector gas pipeline proposal. Yet, the Port stubbornly argues that the project is independent of the Jordan Cove LNG project.

- **Key state and federal permits for the proposed Jordan Cove terminal and Pacific Connector Pipeline have yet to be obtained, and the permitting process faces long delays due to significant missing and faulty information.** On January 28, 2011, FWS refused to initiate consultation on the proposed Jordan Cove project citing serious flaws in FERC's 2010 revised Biological Assessment. DEQ and the Corps will not issue necessary Clean Water Act ("CWA") permits without a Biological Opinion from both FWS and NMFS. Consultation is a long and detailed undertaking. Given FWS' denial of FERC's request to initiate consultation, it will be at least another year before the Jordan Cove proposal could possibly receive necessary federal and state authorizations. It is totally premature for DSL to consider permitting the Oregon Gateway terminal, a project dependent upon the Jordan Cove project, without coordinating with other state and federal agencies or ensuring other requisite permits are obtained.

- **The freshwater phase of construction is not exempt from regulation under Oregon's removal/fill law.** The Port asserts that, because a berm will separate initial excavation from Coos Bay, this activity is not regulated under the Clean Water Act and Oregon's removal/fill law. Oregon's law and the Clean Water Act clearly regulate this type of activity, and both DEQ and the Corps have informed DSL that it cannot move forward without the requisite CWA permits.

We have previously provided additional detailed reasons why the permit for the terminal is incomplete, inadequate, and should be denied in our previous comments. The following comments are intended to add to those previous submittals and urge DSL to either deny the application or request additional necessary information.

The application fails to demonstrate the purpose of and need for the Oregon Gateway Terminal and underlying Jordan Cove LNG project.

FLOW does not accept the Port's assertion that the terminal has significant utility without the proposed Jordan Cove LNG project. Multiple state and federal agencies have questioned the need for LNG in Oregon. The Oregon Dept. of Land Conservation and Development commented to FERC in June 2009:

The analysis also ignores the significant reduction of environmental and resource effects of (domestic pipeline) projects because they do not require a ship transit, terminal infrastructure and estuarine alterations for the access channel and ship berth. Issues such as entrainment and dredging are avoided with domestic supply and pipeline options.

See State of Oregon Final Environmental Impact Statement (“FEIS”) for the proposed Jordan Cove Terminal and Pacific Connector Pipeline comments at 33. The Ruby pipeline, which will run from Wyoming to Malin, Oregon, is now under construction and is slated to begin supplying gas to western markets in late 2011. The natural gas supplied by Ruby renders any purported need for the LNG the Jordan Cove LNG terminal and Oregon Gateway terminal would supply demonstrably unnecessary.

As a result of the Port’s failure to provide information about non-LNG uses of the terminal, the JPA is vague and incomplete. The application differs from the JPA originally submitted by the Port to the Army Corps of Engineers which did not ponder extensive export operations from the proposed eastern berth. Additionally, the Port relies on the Biological Assessment (“BA”) for the Jordan Cove LNG terminal and Pacific Connector gas pipeline, without specifying which of the two existing BAs it is referring to, neither of which ponders large-scale export activities.

Moreover, FWS the expert agency charged with ensuring compliance with the Endangered Species Act for wildlife species, has declined to initiate formal consultation with FERC on the 2010 revised BA citing multiple fatal errors with its analysis. See attached FWS denial of consultation letter, January 28, 2011. Just like both FWS and NMFS determined with the previous draft of the BA, the revised BA still fails to contain minimally required information on impacts to ESA listed species in the project’s path. At least 30 species, and designated critical habitat for at least 8 species, will be impacted by the proposed Jordan Cove terminal and pipeline. As discussed below, the impacts to the species in Coos Bay have been largely ignored in the JPA. Without a Biological Opinion from both FWS and NMFS, DEQ cannot issue a Clean Water Act section 401 water quality certification, and without the 401 certification, the Army Corps cannot issue CWA section 404 dredge and fill permits. Without these permits, neither the proposed Oregon Gateway Terminal, nor the Jordan Cove terminal and pipeline can be constructed. It is remarkably premature for DSL to be considering this artificially fragmented application for only a portion of the true project. Failing to consider the cumulative impacts of the project is a clear violation of the National Environmental Policy Act, and subjects DSL to a legal challenge on the validity of any permit the agency may grant.

The incongruities between the JPA currently under DSL review and previous applications to the Army Corps of Engineers, FERC, NMFS, FWS, Oregon DEQ, and other agencies make it difficult for the public to assess whether the project has been explained comprehensively in the JPA. The differences in the project descriptions before the various state and federal agencies also call into question whether any of the permits and approvals received thus far by Jordan Cove will withstand

judicial scrutiny. These agencies are not analyzing the same proposed project. While Jordan Cove is claiming it has received multiple state and federal permits, these permits are subject to challenge on the basis of the varying project descriptions and analyses.

To date, the only named potential customer for the eastern berth of the proposed terminal facility is the proposed Jordan Cove LNG terminal. The public cannot be expected to guess at the purpose and need for the project without additional information regarding non-LNG customers/candidates for the eastern berth of the terminal. DSL must disclose the purpose of the terminal because the use of the terminal will directly influence the impacts of the project on local waterways, and aquatic species during construction and operation. For example, the intake and discharge of ballast water will be fundamentally different for a facility that involves the bulk export of energy-producing materials to Asia than it would be for the importation of LNG cargoes. The mitigation proposals and biological assessments were drafted for the Jordan Cove LNG terminal, not an export facility. The Port claims to have knowledge of non-LNG customers for the eastern berth yet refuses to provide any information on these purported alternative users. This knowledge should be publicly disclosed because it directly impacts both the agencies' and the public's ability to determine the need for and impacts of the proposed terminal.

The Port wrote in its JPA, "In the event the Jordan Cove LNG facility is not developed, the primary candidate to use the eastern berth of the vessel slip is a firm from the Colorado/Utah region that proposes to export bulk a bulk commodity used for power generation." In an effort to discover the purported alternate customer the Port obliquely references in the JPA, FLOW sent a public records request to the Port on December 31, 2010 requesting information about entities who had expressed interest in use of the proposed Oregon Gateway terminal. After emails assuring we would receive a prompt response, on January 24th, 2011 nearly a month after our request was submitted, the Port's attorney, Michael Stebbins, of Stebbins Coffey LLP, sent FLOW a five page letter that attempts to shift the burden to FLOW to identify the customers about whom we were seeking information. The Port seems intent on keeping any information about this purported customer from the public at any cost. Attached is the response FLOW received from the Port's attorney requiring far more information about our organization than is required by the Oregon Public Records law or the Attorney General's 2010 Public Records and Meetings Manual. The public cannot meaningfully comment on the public need and purpose of the project when the Port application includes cryptic statements about potential other

customers and cargoes with no detail, and refuses to clarify the project even after repeated oral and written requests made through formal channels.

As explained in the Oregon Attorney General 2010 Public Records and Meetings Manual:

Government transparency is vital to a healthy democracy. Public scrutiny helps ensure that government spends tax dollars wisely and works for the benefit of the people. Oregon's Public Records and Meetings Laws underscore the state's commitment to transparency. Government records are available to the public, and governing bodies must conduct deliberations and make decisions in the open.

Oregon Attorney General 2010 Public Records and Meetings Manual at xvi.

DSL should require the Port to disclose the basic facts about potential users of the Oregon Gateway terminal before the agencies even begin to consider the application. DSL and the Corps should request and publicize this information. Once the potential customers and commodities are revealed, the public should be afforded an additional opportunity to comment on the application. Without disclosure of the likely users of the Port, it is impossible for the public to comment meaningfully on the need for the project and the project's overall impacts. The Port's response to FLOW's public records request provides evidence that the Port is actively hostile to public involvement in analysis of the terminal application. Furthermore, the Port has denied the public fundamental information about the likely operations of the terminal, such as the proposed activity for export from the "Utah/Colorado" entity referenced in the Port's own JPA.

Our previous comments explain the overwhelming evidence that Oregon does not need LNG. Oregon Dept. of Energy reached this conclusion even prior to the current North American "gas glut" (see FLOW's January 12th comments). By extension, Oregon and Coos Bay do not need the Oregon Gateway terminal for which the only named customer is the Jordan Cove LNG project. Although the Port of Coos Bay is the applicant, the only named client for the eastern berth is the Jordan Cove LNG project. The application makes vague reference to a Utah/Colorado energy firm, but without further information the need for the project cannot be evaluated by the public.

Additionally, our previous comments note that the land ownership arrangements between the Port of Coos Bay and the Weyerhaeuser site remain in flux. The application should be amended and re-submitted to reflect the current land option agreements between the Port of Coos Bay and Weyerhaeuser, the current owner of the proposed dredge disposal site. Without these agreements, it is

difficult to discern whether all areas of the project (such as areas for upland dredge disposal sites) are going to be in the proper ownership for the lifetime of the project.

The project purpose for the terminal is linked to the proposed Jordan Cove LNG terminal. The proposed LNG terminal is a private energy facility whose primary purpose is selling natural gas to the California market. Our previous comments address why this private project does not serve the public interest. Indeed, the State of Oregon and other agencies have appealed FERC's approval of the Jordan Cove LNG project, arguing that the Jordan Cove LNG project had not adequately demonstrated the public need for LNG in Oregon, or even regionally. The applicant has failed to demonstrate a significant social and economic benefit from the project. Rather, the Jordan Cove LNG project and Pacific Connector Gas pipeline are likely to be disruptive to local economic activities such as oyster farms, commercial fishing, and private agricultural and forestry operations, and will cause significant harm to the environment including impacts to 30 species listed as threatened or endangered under the Endangered Species Act.

Furthermore, the proposed pipeline and terminal may be modified in the future to accommodate LNG export activities. Multiple LNG terminals in the U.S. that were originally proposed and constructed as import terminals are now adding export capacity. The potential for LNG export from the Jordan Cove LNG terminal and Oregon Gateway terminal will likely increase energy prices in the U.S.. As a result, there are significant economic benefits to the public if the project does not occur.ⁱⁱ We discuss these economic issues in greater detail in our Clean Water Act Section 401 and 404 comments and DEIS and FEIS comments to FERC, both attachments to our January 12th, 2011 submittal.

The application lacks an adequate analysis of potential alternative dredge disposal sites

The JPA does not provide a clear comparison of the relative benefits of different dredge disposal options. In particular, the consumptive use of dredged sediment for sale off-site and the proposal for deep ocean disposal of maintenance dredge spoils at Site F do not necessarily represent the highest beneficial use of the material. DSL should consider the ongoing consultation with NMFS to evaluate whether the proposed dredge disposal options represent the best use of the dredged material. Furthermore, the current JPA differs from the original application submitted to the Corps in several key respects, including the purpose of the project. The Corps should be fully involved in evaluating dredging activities and dredge disposal options.

Oregon DEQ commented specifically on the proposed use of deep ocean disposal during the FERC siting process. Citing the West Coast Governor's Agreement on Ocean Health Draft Action Plan, DEQ wrote,

Regional sediment management strategies should be in place to require the best re-use of material, limit the amount removed from the system, and protect downstream communities from having to deal with toxics. The proposed Jordan Cove Pacific Connector project would go forward before such requirements were in place and proposes to waste approximately half a million cubic yards of sand resource annually by disposing of maintenance dredging material in the deep ocean site.

State of Oregon DEIS comments at 47. Clearly, DEQ does not consider deep ocean disposal to be the highest beneficial use of dredged material. Additionally, the removal of millions of cubic yards of material for sale outside of the Coos Bay estuary has not been endorsed by DEQ or the Corps.

The JPA also indicates that ocean disposal may be used for construction dredging. The JPA is unclear because it states, "disposal will occur only in upland areas," but states in the same paragraph, "If ocean disposal is used, no more than 0.5 million cubic yards will be placed at Site F." The Dredged Materials Management Plan (Attachment I to the JPA) does not clearly state what conditions would prompt the disposal of materials at Site F. The JPA and Attachment I should be amended to provide a more comprehensive explanation of dredge disposal options. The application fails to evaluate alternative dredge disposal options if proposed disposal sites are used by other dredging activities in the Coos Bay area. The most significant potential competing dredging activities are regular maintenance of the Coos Bay navigation channel and proposed channel modification to facilitate more deep-draft access into Coos Bay. In 2008, the Corps published a *Federal Register* notice for a potential Coos Bay Channel Modification Project, a proposal that would involve drastic alterations to the Coos Bay estuary. The project proposed to deepen and widen the Coos Bay shipping channel significantly, which would generate millions of cubic yards of dredged material that would likely require disposal at Site F and potentially the North Spit, itself. According to the Corps, the proposed Federal actions include the following:

- Dredging of the existing channel to increase channel depth from approximately 37 feet to 51 feet from the entrance at the Pacific Ocean to the railroad bridge located at approximately RM 9.

- Widening of the channel from approximately 300 feet to 600 feet from the entrance at the Pacific Ocean to RM 9.
- Creation of a vessel turning basin.
- Potential modifications to the mouth and entrance and the jetties resulting from the channel widening and deepening.
- Dredge material disposal.
- Ecosystem restoration in the vicinity of Coos Bay.
- Maintenance dredging of the channel and inlet.ⁱⁱⁱ

This wholesale remodeling of the Coos Bay shipping channel would likely impact the availability of dredge disposal capacity for maintenance dredging materials. According to the Dredge Material Management Plan, Attachment I to the JPA, all maintenance dredging spoils are proposed to go to Site F. *See* Attachment I at 11. The Dredge Material Management Plan states that this disposal site is anticipated to be adequate for 20 years. *Id.* However, this calculation does not appear to account for competing dredge disposal activities such as the Channel Modification project. The Port must present contingency plans if Site F is deemed to be unsuitable for either ecological or capacity reasons.

In a July 2009, NMFS questioned the capacity of Site F to absorb the very large amount of dredged material for the proposed project. NMFS wrote:

Material removed during maintenance dredging will be disposed of at the Coos Bay ocean dredge material disposal Site F. The U.S. Environmental Protection Agency (EPA) has expressed concerns about the use of Site F and its capacity to hold the proposed amount of material. The FERC has recommended that JCE develop a maintenance-dredging plan in cooperation with the EPA and the Corps. Until this plan is completed, its effects cannot be accurately assessed. Provide a final maintenance dredging and disposal plan. The analysis provided in the BA for adverse impacts of the dredge disposal material is inadequate both in terms of how this additional material would be integrated into the management of Site F and the adverse impacts of ocean disposal.

NMFS' concerns have not yet been fully addressed. DSL cannot approve the project without first assessing the long-term viability of all dredge disposal options, including the use of Site F for construction and maintenance dredging.

The application lacks an adequate analysis of the impacts of dredging and disposal of dredged material.

The Port proposes a huge volume of dredging and excavation for the proposed terminal. The Port's applications attempt to dismiss the massive impacts of this project by asserting that turbidity and sedimentation will be limited by the particle size of dredged materials. DEQ noted in its comments to the FERC FEIS that turbidity exceedances were likely to occur during construction of the project. Yet, the JPA does not adequately address what DEQ considers to be an allowable exceedance for this project. FERC's authorization for the Jordan Cove project fundamentally erred by not evaluating turbidity issues. According to DEQ:

The Oregon turbidity standard is incorrectly described. The DEIS correctly refers to OAR 340-041-0036, but incorrectly allows 100 feet downstream of construction activities to measure turbidity not to exceed 10% above background. The rule does not specify any distance of allowable exceedances, but rather limits any exceedances to 10% above background. An allowable exceedance is only authorized when all practicable control methods are in place and either, 1) in the event of an emergency which must be coordinated with DEQ and ODFW, or 2) as described in a 401 Water Quality Certification.

See Oregon FEIS comments at 27, attachment to FLOW's January 12th comments. The aquatic impacts of the JPA should be independently evaluated by Oregon DEQ, which has questioned the impact analysis for the project that was presented by the Jordan Cove LNG project and FERC.

The impact analysis for dredging and dredge disposal is also hampered by a lack of clarity in the proposed action. As described above, the analysis of disposal alternatives fails to account for other potential dredge and dredge disposal activities in the same estuary (i.e. Coos Bay Channel modification). Furthermore, the JPA does not clearly describe how the saltwater phase of construction dredging will impact the estuary. The extent of the saltwater phase is unclear. The JPA indicates that the saltwater phase involves 1.8 mcy plus "any material left over" from the freshwater phase, but does not provide a numerical estimate of the volume of material likely to be left over from the freshwater phase. Without more detailed information, DSL cannot accurately evaluate the likely impacts of dredging activities. It should also be noted that the 1.8 mcy involved in the terminal's saltwater phase, alone, exceeds the *combined* proposed construction dredging volumes for the Bradwood LNG and Oregon LNG projects.

The shoaling rate referenced in the Dredge Material Management Plan is inadequately described. See Dredge Material Management Plan, Attachment I, at 9. Does this shoaling rate incorporate increased shoaling that is likely to occur during winters with large storm events? During many years, it is reasonable to expect that shoaling rates will dramatically exceed the projections presented in Dredge Material Management Plan. This will result in more frequent and more extensive maintenance dredging. The JPA characterizes the bathymetry of the area as “stable”, but this stability is unlikely to persist when the North Spit and shipping channel are drastically remodeled with over 5 mcy of dredging and excavation. JPA at 5. The frequency and extent of maintenance dredging is a critical factor in determining the impact of the proposed terminal on protected fish species.

The Dredge Material Management Plan presents the construction and maintenance dredging for the terminal as if only hydraulic dredging will occur. Yet, the JPA itself indicates that mechanical dredge methods might be used. JPA at 5-6. The use of a clamshell mechanical dredging method will significantly differ from hydraulic dredging in its potential turbidity impacts to Coos Bay. The JPA must clearly describe what type of dredging will occur. We discuss this problem in more detail in our January 12th, 2011 submittal.

Additionally, the JPA does not identify the customer and explain the realistic timing of the movement of dredged material to a potential buyer. Until the buyer for the dredged material is identified, the JPA is incomplete. The volume of dredged material that will potentially be stored and stabilized with non-native vegetation will require long-term management if agreements for its export fall through. As a result, the upland storage of dredge spoils could result in a long-term introduction of non-native dune grasses to the Coos Bay ecosystem.

The extent and capacity of upland disposal sites has not been adequately evaluated by the applicant. The Applicant has noted this as a data gap in its own plan. Dredge Material Management Plan at 11. Without definite boundaries and capacity limits for dredge disposal sites, DSL cannot reasonably conclude that the project meets criteria for protecting public trust resources. Furthermore, as noted above, DEQ and NMFS have questioned the dredge disposal methods proposed by the Port and the Jordan Cove LNG project.

The application lacks an adequate analysis of impacts to estuarine resources

The Port asserts that the terminal will mitigate for impacts to shallow habitat. NMFS, DEQ, FWS and DLCD have all questioned the adequacy of proposed mitigation for the Jordan Cove LNG terminal and terminal. See discussion infra. Most importantly, the JPA does not appear to provide a reasonable assessment of the impact on threatened coho salmon, other salmonids, and other aquatic organisms from the permanent impact of ongoing maintenance dredging and armoring of the berth and access channel. DSL should consult with NMFS and DEQ about the likely impacts of permanent conversion of benthic habitats to an armored access channel and turning basin. habitat Shallow defined too narrowly. What about “non-shallow” critical habitat.

The permanent impact of armoring the turning basin and access channel results in loss of natural benthic habitat. The proposed construction and operation of the terminal will impact the productivity of the estuary in this area for benthic invertebrates that are fundamentally important to the fish species that prey on them. The Port must consider the permanent loss of critical habitat for coho, in particular, that will result from the terminal. The Port’s focus on narrowly defined “shallow habitat” for mitigation fails to incorporate areas that involve deeper areas, but are also important to the survival and recovery of coho salmon. DSL should request more information and additional mitigation for these areas that is geographically appropriate, similar in habitat function, and timely deployed.

NMFS noted in its response to the BA for the Jordan Cove project that threatened coho salmon may seek to use the terminal access channel and slip. Rather than avoiding the area, juvenile salmon may be drawn to it and will be subject to increased predation, entrainment, and thermal stresses because of the terminal and LNG vessel operations in the area. NMFS commented that, “the location of the terminal off the main channel will not likely reduce the occurrence of coho salmon. Coho salmon juveniles seek out shallow edge habitat, and may use the slip for velocity refugia from incoming tides.” Ultimately, the terminal will fundamentally alter the quality of habitat in the project area, and could result in permanent loss of habitat function for coho salmon.

The application lacks adequate mitigation for impacts to estuarine resources

As noted above, the JPA and its attached mitigation plan do not provide adequate mitigation for all impacted habitats. The mitigation plans focus on shallower habitats and

eelgrass beds, while largely ignoring the important function of deeper benthic habitats that will be permanently altered by armoring the slip and access channel. DSL and other agencies should request additional mitigation for deeper areas of critical habitat for federally listed coho salmon. Furthermore, mitigation may not be adequate for other species including sturgeon and eucaloon.

The JPA also fails to fully account for the Pacific Connector gas pipeline, which is a connected action and essential for construction of the Jordan Cove LNG terminal (the only named customer for the eastern berth of the terminal). Mitigation plans for the pipeline should also have been incorporated into the JPA. Multiple agencies, including DEQ and NMFS, have criticized the lack of mitigation for stream crossings and late-successional habitat along the pipeline route. DSL cannot move forward with authorization of the project without evaluating the adequacy of mitigation for the connected Pacific Connector pipeline.

Additionally, other mitigation measures for the project are inadequately described in the JPA. For example, NMFS made the following comments on the FERC BA in June 2009:

The compensatory mitigation plan is a draft document that will need to be negotiated and approved by multiple entities. It is reasonably likely that the final approved plan will be significantly different from the draft supplied in the BA...

The compensatory mitigation plan does not fully explain the impacts to the values and functions of SONCC coho salmon critical habitat and OC coho salmon critical habitat...

The value of the compensatory mitigation plan and how it relates to the populations and critical habitat units is not clear.

NMFS June 25, 2009 comment at 8. The final mitigation plan has not yet been determined or approved by key reviewing agencies, such as FWS and NMFS. Indeed, as noted supra, FWS has declined to initiate consultation. DSL lacks adequate complete information to determine the impact of the proposed dredging and excavation activity on public resources such as coho salmon. Additional impacts to coho salmon threaten the fisheries of Oregon's South Coast and present a significant economic risk to the local community. DSL must fully assess these impacts and the lack of adequate mitigation for protected coho.

The Freshwater Phase is not exempt from regulation

As noted previously in comments submitted by the Cascade Resource Advocacy Group (CRAG) on behalf of the Oregon Shores Conservation Coalition, the proposed project will

impact the waters of Coos Bay in both the freshwater and saltwater phases of construction. Both phases are subject to regulation under the Clean Water Act and Oregon's removal/fill statute. The Port proposes to excavate the access channel and slip in two phases. The Port's phased method may accomplish the stated purpose of minimizing impacts on fisheries, reducing the total period of estuary turbidity, and extending the time available for construction. However, the Port offers no support for its assertion that Phase 1 of the project, as proposed, is exempt from regulation under either Section 404 of the Clean Water Act or Oregon's Removal-Fill statute. To the contrary, Oregon's Removal-Fill Statute and administrative rules adopted by the Department clearly contemplate regulation of this type of activity.

The Port proposes to excavate a 22-acre slip behind an existing road/berm. The berm would, in theory, serve to keep excavation activities physically separate from Coos Bay. However, the application does not appear to contain any analysis demonstrating that the berm will be of sufficient strength to maintain physical separation. Additionally, dewatering of dredge spoils and stormwater discharges during the construction phase have been inadequately characterized by the Port and could negatively impact the waters of Coos Bay even during the freshwater phase.

There is apparently no dispute that Coos Bay is a water of the State of Oregon and a water of the United States. The Port, however, asserts that excavating the 22-acre slip behind a construction berm is exempt from the Removal-Fill Statute, despite the fact that the slip will connect to Coos Bay. This is inconsistent with the Removal-Fill Statute and DSL administrative rules.

Oregon Revised Statute 196.800 defines "removal" as the taking of material in any waters of this state or "the movement by artificial means of material within the bed of such waters, including channel relocation." ORS 196.800(12)(b). Channel relocation is defined, in turn, as "a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel." ORS 196.800(1). The excavation of the proposed slip is akin to channel relocation. The slip will be dug and water from the bay will be diverted into the new slip.

The Removal-Fill Statute clearly contemplates jurisdiction over removal activities that move by artificial means material within the beds of state waters, such as will result from dredging the proposed slip. The Port purports to keep its slip construction activities separated

from the bay by use of berm, but the construction of the slip will significantly alter the beds and banks of Coos Bay at this location by removing more than 22 acres of material to convert shoreline to submerged lands. As a result, the proposed removal of material from the bed and banks of Coos Bay is subject to regulation under Oregon's Removal-Fill Statute. ORS 196.810.

Further, even if the excavation of the slip behind the berm could be considered separate from the bay, this removal remains subject to the Removal-Fill Statute. DSL's implementing regulations describe the types of waters of the state that are regulated by the Department. OAR 141-085-0515. Coos Bay is clearly a jurisdictional water body. But so also are artificially created ponds and wetlands. Pursuant to OAR 141-085-0515(6), artificially created ponds are jurisdictional where they are equal or greater than one acre in size or created, in whole or in part, in waters of this state. Excavation of the slip will create an artificial pond of approximately 20 acres in size and consequently be subject to DSL's regulation.

Conclusion: DSL and the Corps must reject the Oregon Gateway Terminal

The materials that are publicly available regarding the proposed Oregon Gateway terminal clearly demonstrate that the project is not in the public interest. The project will harm the natural resources of Coos Bay for an unspecified purpose that may or may not include the Jordan Cove LNG terminal. Additionally, key project elements, such as the location of dredge disposal and the methods for dredging and controlling resulting turbidity, are inadequately presented in the application.

Most importantly, the Port has failed to provide critical information about the true purpose and use of the Oregon Gateway terminal. The only named customer for the eastern berth of the terminal is the Jordan Cove LNG project. This project, in turn, depends on the approval of the Pacific Connector gas pipeline. It is illegal for DSL to undertake a piecemeal review of these clearly connected actions. Indeed, most of the documents referred to in the JPA come directly from the Jordan Cove LNG/Pacific Connector pipeline permitting process. DSL should not accept the Port's clumsy attempt to divorce the terminal from its only committed customer, the Jordan Cove LNG project and Pacific Connector gas pipeline.

DSL should not permit the project until the Port of Coos Bay demonstrates that the project is necessary and in the public interest. Due to the vague and fluctuating description of the proposed project, the agencies should not conclude that the project is in the public interest,

should request further clarification about the proposed dredging, excavation, and construction of the terminal, make that information available to the public in an easily accessible format, and provide adequate time for the public to comment on the new information before even seriously considering granting a permit.

Sincerely,



/s/ Bethany Cotton

On behalf of:

FLOW

P.O. Box 2478

Grants Pass, OR 97528

List of Attachments:

1. National Marine Fisheries Service. June 25, 2009. Comments on FERC Jordan Cove LNG Biological Assessment (BA).
2. New York Times. "U.S. Company, In Reversal, Wants to Export Natural Gas." 1/27/11.
3. Reuters. "Dominion Eyes Cove Point LNG Export." 2/1/11.
4. Federal Register. Notice of Coos Bay Channel Modification Project. 1/11/08.
5. Fish and Wildlife Service Letter Declining to Initiate Formal Consultation, January 28, 2011.
6. FLOW Oregon Public Records Act Request to Port of Coos Bay. December 31, 2010.
7. Port of Coos Bay Attorney Response to FLOW Public Records Request. January 24, 2011.
8. Boston Globe. "Lawmakers set to kill Fall River LNG Plan." August 20, 2010.
9. Alaska Daily News. "Conoco, Marathon to Close Gas Liquefaction Plant on Peninsula." February 2, 2011.
10. Newport Now: "Massachusetts Congressional Delegation Touts "Death Knell" for LNG." August 19, 2010
11. Congressional Press Release: "Frank and McGovern Announce Critical Step To Blocking LNG Facility." August 19, 2010.
12. Associated Press. "NJ Governor Chris Christie Vetoes Liquefied Natural Gas Operation." February 8, 2011.

13. Environmental News Network: "Victory for the Jersey Shore: Governor Vetoes Offshore LNG Port." February 8, 2011.
14. Congressional Press Release: "Kerry, Brown, Reed, Whitehouse Seek to Bar LNG Facility in Fall River." November 4, 2010.

ⁱ The Biological Assessment (BA) and FERC authorization for the Jordan Cove LNG project do not ponder large-scale export activities. However, the Port asserts, in its application, that export activities may occur. Export activities involve fundamentally different biological impacts to the Coos Bay estuary, including the discharge of ballast in the estuary. These issues have not been identified and adequately mitigated because agencies have presumed the presence of the Jordan Cove LNG terminal in the Oregon Gateway terminal.

ⁱ See attached articles, NY Times and Reuters recent reports on LNG import terminals being modified to liquefy and export domestic gas supplies.

ⁱⁱ See attached articles, NY Times and Reuters recent reports on LNG import terminals being modified to liquefy and export domestic gas supplies.

ⁱⁱⁱ <http://www.coosbaychanneleis.com/about.html>