

February 27, 2008

TO:

Clatsop County Board of Commissioners

FROM:

Mitch Rohse, AICP, for Clatsop County Community Development Department

SUBJECT:

Staff Comments on Draft Findings from Bradwood Landing

On December 13, 2007, the Clatsop County Board of Commissioners voted to approve, with certain conditions, the consolidated application from Bradwood Landing, LLC, for land-use permits and approvals needed to develop an LNG marine terminal, natural gas pipeline, and related facilities at Bradwood. The applicant then prepared draft findings in support of the board's action.

The applicant submitted those draft findings to the Clatsop County Community Development Department on February 5, 2008. The 326-page draft is titled:

**DRAFT FINDINGS OF APPROVAL OF
CORE ELEMENTS OF THE CONSOLIDATED APPLICATION
FROM BRADWOOD LANDING, LLC,
FOR PERMITS AND DEVELOPMENT APPROVALS TO DEVELOP AN
LNG MARINE TERMINAL, PIPELINE, AND RELATED FACILITIES AT
BRADWOOD, CLATSOP COUNTY, OREGON
ADOPTED BY
CLATSOP COUNTY BOARD OF COMMISSIONERS
FEBRUARY 2008**

The board now must decide whether the draft findings fully and accurately express the board's rationale in approving this application. The findings must clearly describe the board's decisions, the reasoning behind them, the criteria applied, and the evidence relied on. The board will consider the draft findings on Wednesday, March 5, 2008, at which time it may adopt them. The board also may choose to modify the draft findings, and we recommend that they do.

The Community Development Department has carefully reviewed the draft findings. This memo describes the results of our review. For reasons described below, we suggest some modifications to the draft, to resolve certain inconsistencies, improve communication, and better express the board's reasoning and conclusions. **We therefore recommend that the board amend the draft findings to incorporate the modifications proposed herein.**

1. OVERVIEW OF FINDINGS

The draft findings submitted by the applicant build on the September 29, 2007, Bradwood findings adopted by the county's planning commission. The draft findings for the board repeat perhaps 80 percent of the planning commission's findings. The draft board findings then add to or modify the planning commission document so as to reflect board actions and also to address evidence and issues that developed after the planning commission made its recommendations. For the sake of convenience in this memo, we refer to these additions and modifications as "new material." By this, we mean recently written text not in the planning commission findings and not in the staff reports. We do not mean new evidence.

The draft board findings also use a great deal of material from the county's staff reports of June 28, 2007, and August 23, 2007. The findings are organized under the same numbering system used by staff throughout the planning commission and board reviews. For example, discussion of the proposed LNG storage tanks and marine terminal is found in Section 10 of the draft board findings, just as it is in the two staff reports and the planning commission findings.

The most significant new material occurs in these areas:

- **Section 4, Dredging**, where the applicant added several pages of material explaining the board's decision to rezone 46 acres from AC-2 to AD;
- **Section 10, LNG Storage Tanks and Gasification Plant**, where the applicant added several pages of material dealing with policy issues related to the size of the proposed development;
- **Section 24, Pipeline Segment in OPR Zone**, where the applicant added several pages on the board's action to make pipelines a conditional use in the OPR Zone;
- **Section 27, Consistency with Statewide Planning Goals**, where the applicant added several pages of material affirming the application's compliance with state goals;
- **Section 28, Land Use Compatibility Statement**, a new one-page section not present in the planning commission's findings;
- **Appendix 6, Text of Comprehensive Plan Amendment (including Exhibits 1 and 2)**, which contains 18 pages of new material not present in the planning commission's findings.

In this memo, we describe a few broad concerns in Section 2, "General Issues." Then, in the third and final section ("Detailed Review"), we proceed page-by-page to identify specific passages where:

- (a) material appears to have been omitted;
- (b) wording may not clearly express the board's action; or
- (c) a typographical error appears to have occurred.

We identify only those errors that might affect meaning. We have not identified other minor typos. That is, we have reviewed the draft findings for substance, not for form.

Since we received the draft findings on February 5, the staff has conferred with Bradwood Landing's legal counsel several times to ask questions about the draft. Bradwood's counsel responded promptly, and, as we note below, answered our questions and proposed some text to amend certain findings. We have not had sufficient time to discuss with the applicant all of our questions, however, and Bradwood Landing has had no opportunity to discuss or rebut our conclusions in this memo.

2. GENERAL ISSUES

We identify as “general issues” six areas in the findings, as summarized below. We describe them as “general” because they involve large portions of the document or multiple passages rather than just a word or sentence. Whether these “general issues” require modifications to the draft findings is, of course, for the board to decide.

2.1 Quality of Bradwood Landing’s Mitigation Efforts

The findings periodically express qualitative judgments about Bradwood Landing’s mitigation efforts, declaring them, for example, to be “state of the art.” The most prominent examples of such judgments occur on page 41, but similar conclusions are found at several other places in the findings. We quote material from page 41 below, with qualitative judgments shown in italic:

Bradwood Landing is *committed to sustainable development and a lasting legacy of environmental, economic and community health*. Its project includes an *environmental commitment* that ensures a *significant net benefit to salmon productivity and the lower Columbia ecosystem*.

Each of the components of the Bradwood environmental commitment *goes beyond the established norm and exceeds all applicable standards* and includes:

- *State-of-the-art measures* to avoid and minimize construction impacts;
- *Innovative design* and operational measures that will effectively avoid fish impacts at the facility;
- *Mitigation that more than compensates* for unavoidable impacts to shallow water habitat, wetlands, and other sensitive areas; and
- A \$46 to \$59 million Salmon Enhancement Initiative (SEI) for top priority salmon and ecosystem restoration efforts identified by watershed and estuary groups.

Taken as a whole, the components of the Bradwood Landing Environmental Commitment – *state of the art* avoidance and minimization, *robust* compensatory mitigation, and the Salmon Enhancement Initiative – add up to *a significant and sustained net benefit for salmon and the Lower Columbia ecosystem*.

The county has not reviewed the mitigation plan submitted by Bradwood Landing. It therefore is unclear to us how the board could reach such conclusions. Moreover, the county reviews materials submitted by the applicant only for compliance with county policies and ordinances. The county does not compare application materials such as mitigation plans with similar plans used elsewhere. Hence, county officials would have little basis for rendering qualitative judgments such as declaring the mitigation plan to be “state of the art.”

Likewise, the county does not, and cannot, evaluate total costs and benefits. It therefore would have no basis for finding that Bradwood Landing’s mitigation will bring a “significant net benefit” to salmon and the entire lower Columbia.

Finally, the county has no way to know the applicant's commitment to "sustainable development" or "a legacy of environmental, economic and community health."

We do not assert that the qualitative judgments mentioned above are necessarily wrong. We simply say that Clatsop County lacks the ability to determine whether such statements are accurate, and it need not do so. The most Clatsop County can say about the mitigation effort is that applicant's submittal of a suitable mitigation plan, as required by a condition of approval, will be sufficient to satisfy applicable county policies and standards. **For that reason, we recommend that the qualitative judgments be removed from the findings.**

2.2 Approval of Only Two LNG Storage Tanks

The staff, planning commission, applicant, and board all agree that the county's approval of the Bradwood application extends only to construction of two LNG storage tanks, not three. The applicant confirms this at several places in the findings. On page 99, the next to last sentence on the page says this: "This recommendation for Project approval is conditioned upon the approval being limited to two tanks." And on page 127, condition 7 says:

The number of LNG storage tanks approved is limited to two (2). If applicant wishes to develop a third tank at some future date, applicant must obtain all development permits required for development of the third tank at that time.

We have two concerns, however, with relying on a condition to determine the number of tanks approved. One concern is that there remains a possibility that FERC could override local conditions of approval. If it did so, a three-tank development might be affirmed in spite of the county's intent to approve only two tanks. The other problem is that the condition alone does not address the question of whether the application materials, especially the resource reports, constitute evidence in support of a two-tank or a three-tank scenario.

As we have noted elsewhere, the application materials speak of both scenarios. (See the last paragraph on page 91 of our June 28, 2007, staff report.) It thus has never been clear to us whether applicant's data and evidence on matters such as emissions, noise, erosion, etc., were based on a two-tank or three-tank scenario. A condition requiring a separate review and permits for a third tank does not resolve that. If the current application is viewed as sufficient to justify a third tank, then the applicant could simply re-submit the same application materials when applying to develop a third tank.

We do not believe that the staff, planning commission, or board ever has found the present application sufficient to justify a third tank. We believe that point ought to be expressed in these findings.

We therefore suggest that the last paragraph on page 99 of the draft findings be deleted and replaced with the following paragraph:

Some passages in the application materials describe an LNG terminal that would have three LNG storage tanks. Other passages describe a terminal with only two tanks, and space for a third. It thus is unclear whether the application's data and analysis on matters such as noise, air pollution, runoff, etc., pertain to a two-tank or three-tank development. For some variables, the number of tanks may make no difference, but for others, a three-tank development might have impacts significantly different from a two-tank development. We find the evidence in this record adequate to justify approval of an LNG terminal with two tanks. We make no finding regarding the sufficiency of that evidence to justify approval of an LNG terminal with three tanks. If applicant seeks to construct a third tank at some point in the future, applicant must apply for and obtain all necessary permits and approvals from the county, and submit suitable evidence showing the likely effects and impacts of a third tank.

2.3 Findings on Draft State Agency Comments on DEIS

From the last paragraph on page 130 through most of page 132, the draft findings address preliminary state agency comments on the Bradwood DEIS. There is some question, however, whether such analysis should be in these findings. The findings are intended to present the board's conclusions and reasoning, and the board decided *not* to consider the preliminary comments from the state agencies. Chair Lee said, "The state made the EIS draft report for FERC and not for the County's process and they [the board] should move forward." Commissioner Hazen agreed "that the county process needed to be followed." The board then voted not to extend its deliberations to allow consideration of final agency comments, due to be finished later in December.¹

We note also that the findings regarding the agencies may contain some errors. On page 131, the first sentence declares that a December 3, 2007, letter "makes clear" that "the state" said the draft agency comment document was "incomplete and should not have been released and should not be relied upon." Likewise, the citation at the end of the quoted material indicates the author of the letter was "State of Oregon." The letter in question presumably is the December 3 letter from ODOE's director to Margaret Kirkpatrick. We are not aware of any evidence in the record to indicate that ODOE's director was speaking for the "State of Oregon."

We therefore recommend that the first seven paragraphs on page 131, including the paragraph mentioned above, be deleted from the findings.

¹ Minutes of the Clatsop County Board of Commissioners Meeting of December 13, 2007, page 2.

2.4 Mitigation Plan

At several places in the findings, language about Bradwood's mitigation plan is ambiguous or conflicting. In some places, such as the first line of the last paragraph on page 136, the applicant's mitigation plan is described as "final." In other places, as on page 135, the plan is discussed in the future tense, as a document that *will* be submitted for review by staff.

The applicant submitted a mitigation plan marked "final" late in the county's review process. The staff has not reviewed it, and we remain uncertain whether Bradwood intends to submit a different plan at some later date. The staff and planning commission recommended, and the board approved, the following condition (page 137, condition 1):

Applicant will submit a suitable mitigation plan to the County for review and approval through a Type IIa review procedure.

On page 137, the second sentence of the paragraph under the heading "11.5 Development Standards" says, "Staff did not complete review of final mitigation plan for compliance with those [development] standards within the time provided." This is confusing because it was never clear that the mitigation plan the county received was in final form. The staff could not review a work in progress, and as the findings observe on page 135, "Applicant continues to confer with responsible federal agencies to finalize the [federal] mitigation plan."

Staff conferred by telephone with Bradwood legal counsel Michelle Rudd about this issue. She agreed to submit revised wording about the status of the mitigation plan. In a February 15, 2007, email message to Mitch Rohse, she proposed that the following wording be used in the findings:

During the County process, Bradwood Landing submitted to the County copies of mitigation plans marked "draft" that Bradwood Landing had submitted to federal regulators. We understand that the August 2007 mitigation plan submitted to the County is in the process of being reviewed by the following governmental agencies: NMFS, USFWS, Corps, EPA, DLCD, ODFW, DEQ, DSL, ODOE, with potential review also by OWRD, ODF, and in WA: Cowlitz County, Ecology, WDFW, and WDNR.

In response to staff's conclusion that it was unable to review a mitigation plan designated "draft", Bradwood Landing committed to, at a minimum, perform all the mitigation set forth in the plan submitted in August 2007. Bradwood Landing labeled that plan "Final Mitigation Plan." The "final" label was applied because Bradwood Landing had committed to treat that plan as final for County purposes.

The County agrees with the analysis provided by Bradwood Landing establishing that federal and state mitigation standards meet or exceed County

standards. We recognize that Bradwood Landing's mitigation program *has been* [is being?] reviewed as part of the federal government's development of a draft Environmental Impact Statement for the project and the County agrees with the conclusion in the draft Environmental Impact Statement that it is possible to construct the project with adequate mitigation.

Staff concluded, however, that due to time and expertise constraints it was unable to advise the County concerning the consistency of the plan designated "Final Mitigation Plan" with the County's standards. The County, in approving the Project, finds that solutions consistent with the County regulations addressing mitigation are possible, likely and reasonably certain to succeed and that it is therefore feasible for the mitigation plan to be developed in a manner consistent with the Clatsop County regulations. Given, however, that staff was not able to advise the Board on the specifics of the "Final Mitigation Plan" submitted at the time of the Board's action in this case, the Board has decided to impose a condition of approval requiring Type IIa review of a Bradwood Landing Mitigation Plan. We understand that subsequent to issuance of these findings, Bradwood Landing will submit to the County for Type IIa review a mitigation plan for the required, detailed review and approval. This plan may incorporate the feedback Bradwood Landing received from federal regulators since August 2007.

Staff believes that the above paragraphs accurately describe the status of the mitigation plan and should be inserted in the findings. Note that in the third paragraph, we put the words "has been" in italic, followed by "is being" in brackets. It is our understanding that the federal review has not been completed, so the present-tense wording ("is being") seems preferable. Michelle Rudd indicated via email on February 26 that she agrees with use of the present tense.

2.5 Land Use Compatibility Statements (LUCS)

Section 28, on LUCS, consists of one paragraph on page 292 of the findings:

As part of its consolidated action, Bradwood Landing requested that the County instruct staff to sign land use compatibility statements for the project. Land use compatibility statements are forms prepared by state agencies which include a place for local governments to sign off, indicating whether the proposed action requiring a state permit or other authorization, is consistent with local land use provisions. If the local government has determined that local land use provisions are met, staff checks the affirmative box and attaches a copy of the underlying decision. Based upon the findings herein, we find the consolidated application to be consistent with the applicable Clatsop County land use provisions and instruct County staff to, upon receipt of LUCs forms from Bradwood Landing, indicate on the form that the Project is in compliance as set forth in the attached findings and attach thereto a copy of this County decision.

This is new material that was not in the planning commission's findings. Among other things, this finding instructs staff to respond to all LUCS requests by indicating on the form that "the Project is in compliance" with applicable county land use requirements. We believe that this simplistic directive is too prescriptive and may have unintended consequences. It fails to give staff latitude necessary to respond appropriately to agency LUCS requests.

A nuanced response to such requests is important to the county and to the applicant. Recent case law from LUBA illustrates this point. In the combined case of *Wolfgram v Douglas County*, LUBA Nos. 2006-165 and 2006-207, LUBA considered Douglas County's first response to a DEQ LUCS request regarding a proposed subdivision to be a land use decision and remanded it. When the Douglas County reconsidered the same DEQ LUCS request, the county responded differently. LUBA considered that second response *not* to be a land use decision and dismissed the complaint against it. LUBA said:

However, the LUCS that is the subject of this appeal did not affirmatively (or negatively) decide whether the proposed activities to be conducted under the required permit comply with all applicable local land use requirements. Instead, the county listed the applicable zoning for the property, informed DEQ that the property has been *tentatively* approved for a subdivision, referencing the applicable planning file number, noted that the tentative subdivision approval has been appealed to LUBA, and confirmed that residential uses are allowed in the applicable zoning district. The LUCS decision technically concerns application of the county's zoning ordinance, and therefore would qualify as a land use decision under ORS 197.015(11)(a) if one of the exceptions in ORS 197.015(11)(b) does not apply.⁴ However, the county merely stated certain facts about the property's zoning and the status of the county's subdivision approval process to DEQ. Petitioners do not argue that those statements of fact required the county exercise any policy or legal judgment, and we do not see that they did. Therefore, we conclude that the LUCS that is the subject of the present appeal falls under the ORS 197.015(11)(b)(A) exception to the definition of a "land use decision," because it did not require interpretation or the exercise of policy or legal judgment.

[See pages 4-5 at <http://www.oregon.gov/LUBA/docs/Opinions/2007/04-07/06165.pdf>]

We therefore recommend that the last clause of the paragraph on page 292 of the draft findings be modified thus: ". . . instruct County staff to, upon receipt of LUCs forms ~~from for Bradwood Landing, indicate on the form that the Project is in compliance as set forth in~~ **enter the appropriate responses based on** the attached findings and attach thereto a copy of this County decision."

2.6 Attachment 6 and Excerpts from Draft EIS

Attachment 6 (pages 305 to 324) of the draft findings is titled "Text of Comprehensive Plan Amendment." The attachment consists of three pages of text as well as "Exhibit 1" (a map) and "Exhibit 2" (14 pages of material

excerpted from the Bradwood draft environmental impact statement (DEIS)). We have three concerns about including Exhibit 2 in the findings.

First, the DEIS was introduced into the record by Bradwood Landing in November, but none of it has been reviewed by staff, the planning commission, or the board. The board's December 13, 2007, deliberations indicated that a majority of board members consider the DEIS (and Oregon state agency comments on it) to be directed toward FERC and therefore outside the scope of the county's review. The board therefore made no findings regarding any of the DEIS material, including the excerpts in Exhibit 2.

Second, Exhibit 2 contains several passages regarding the Palomar pipeline (at pages 310, 313, 314, 319, and 322). Many commenters at the public hearings urged the planning commission and the board to consider the Palomar pipeline in their review of the Bradwood application. The county has consistently stated, however, that the Palomar pipeline should not be considered in this application. This is reflected in the draft findings at pages 288-289, which end with these words: **“We conclude that impacts on (sic) the Palomar line are not properly considered as part of this application review.”** [Bolding in the original] Given that strong statement, it seems contradictory to include the above-cited passages on that pipeline in these findings. (Note: the word “on” in the bolded sentence should “of.”)

Third, we find little material in Exhibit 2 that pertains to the plan amendment. **For all of these reasons, staff therefore recommends that Exhibit 2 be removed from the findings.**

With regard to the three pages of narrative in Attachment 6 on the plan amendments, we see two lesser concerns. On page 307, in the third paragraph from the bottom of the page (beginning with the word “Further”), the second sentence speaks of avoiding development on “approximately three acres of wetland . . . to the north of the site.” The acreage cited here conflicts with the earlier finding on page 118, which speaks of “4.7 acres of MI zoned wetlands being avoided.”

On pages 307- 308, the last paragraph of the plan amendment narrative in Attachment 6 says:

This change was requested to facilitate a water dependent industrial development on the site. The proposed facility is undergoing federal review and a draft Environmental Impact Statement for the project was prepared. The cumulative impact analysis in the dEIS considered geology and soils, waterbodies and wetlands, vegetation and wildlife, land use, recreation and special interest areas, and visual resources, socioeconomics (economy and employment, housing, infrastructure and public services, transportation and

traffic (including road and ship traffic), cultural resources, air quality and noise, reliability and safety. **For purposes of this amendment, the County accepts the conclusions concerning cumulative effects set forth in that dEIS and attached in Exhibit 2.** [Emphasis added]

As we noted above, the county has not reviewed the draft EIS. For that reason, we believe the findings should neither draw on the DEIS for evidence nor declare that the county accepts its conclusions. **We therefore recommend that the last sentence of the paragraph be deleted.**

3. DETAILED REVIEW

The bolded subheadings for each staff comment below describe the specific page or place in the draft findings toward which the comment is directed. The comments start with the cover page of the findings document and proceed through the document page by page.

Cover Page, last line –

After the board acts, this entry (“February 2008”) should be changed to indicate the day on which the board adopted the findings.

Page 1, second paragraph –

The third sentence mentions that “a commenter” submitted a letter dated December 12, 2007. The paragraph then goes on to respond to issues raised in that letter. Similar references to unnamed commenters appear at several other places in the findings. It would be helpful to specify the names of such commenters so that they and others reading the findings understand which commenters and comments the findings are responding to.

Page 3-4, Table 1 –

The middle column should be titled “Permits or Approvals Requested” rather than “Permits and Approvals Acted on by Board.” **Reason:** The board did not act on all permits and approvals listed in that column. For example, the second entry in the middle column describes applicant’s request to consider the proposed concrete batch plants as “water-dependent uses” allowed outright in the MI Zone. The board did not act on that request, however, because it found the batch plants to be “water-related uses” and therefore issued a condition use permit for them.

The third column should be titled “Board Action” rather than “Action.” **Reason:** Adding the word “Board” would eliminate any possibility of misunderstanding that the specified actions were taken by the planning commission or staff.

In the fifth entry in the third column, the word “dredging” should be changed to “dredged material disposal.” **Reason:** The present wording makes it seem that “dredging” was approved outright, which is incorrect. Rather, it is “dredged material disposal” that was approved outright.

Page 7, first condition listed for Clifton and Bradwood Roads –

Following the first word, “Improvements,” insert the word “are.” **Reason:** The verb was omitted from the sentence. In that same entry, insert the word “All” at the beginning of the sentence, and delete the final two words, “are approved.” **Reason:** These changes would make the sentence match the condition adopted by the board. See condition 1 on page 153.

Page 9, “ODE” –

Change to “ODOE.” **Reason:** “ODOE” is the abbreviation used by the state for its Oregon Department of Energy.

Page 19, last three sentences of first paragraph in Subsection 1.7 –

The sentence that begins “Having found that . . .” seems to have no subject. It may be that the two sentences are intended to be one and the comma is intended to be a period. We suggest recasting the two sentences to read as follows:

The board ~~Having~~ found that, subject to the conditions of approval set forth herein, Bradwood Landing’s application satisfies applicable County standards. Staff **therefore** is instructed to issue the land use compatibility statements for the Project with the applicable land use provisions and attach these Findings thereto. (*See also* Section 28 of these Findings.)

Page 19, last sentence on page –

This sentence calls for an “emergency clause” to expedite the land use compatibility statements. Legal counsel and staff recommend against the use of an emergency clause in the adoption ordinances. If those ordinances do not contain an emergency clause, then this sentence should be deleted. **Reason:** The deletion would make the findings consistent with the adoption ordinance.

Page 21, last paragraph –

The paragraph cites “a letter from an engineer” and a different “engineer’s letter.” These citations, as well as footnote 25, need to be more specific and should include at least a date and the engineer’s name. **Reason:** Findings are intended to demonstrate precisely which evidence the board relied on in making its decisions. These citations are too imprecise to accomplish that. Also, all evidence “in the record” must have been submitted before the official closing of that record. Without dates, it is unclear whether the letters in question were timely submitted.

Page 25, next to last paragraph –

This paragraph cites “a letter from David Glessner” in response to an “allegation.” It does not specify which of several communications from Mr. Glessner is meant, and it does not describe who made the allegation or when. Such citations lack sufficient detail to serve as adequate findings.

Page 36, middle of page –

Three paragraphs of new quoted material end with the citation, “See Columbia Channel Deepening Web page.” The citation seems too vague. We suggest that the actual URL be cited instead, along with a description of the organization or agency from which the quoted material comes.

Page 38, last sentence of next-to-last paragraph –

The sentence “We believe it does” should be changed to “We believe they do.”

Reason: A plural pronoun (“they”) is needed for the plural antecedent (“actions”) in the preceding sentence.

Page 38, last paragraph, sentence that begins “Pursuant to L1.035” –

The quotation marks in that sentence need to be deleted. **Reason:** The words paraphrase L1.035; they do not quote it.

Page 40, last paragraph –

In the long sentence that begins with the words “Disturbance of benthic invertebrates . . . ,” the first two words “Disturbance of . . .” should be deleted.

Reason: The deletion would clarify that benthic invertebrates are the subject of the sentence, and it would make the sentence grammatical by establishing a plural subject to match the plural verb.

Page 42, first line of main paragraph in middle of page –

The paragraph starts with these words: “Bradwood is proposing to mitigate for *unavailable* impact at four sites: . . .” We assume the word “unavailable” was inadvertently used where the word “unavoidable” was intended.

Page 42, bulleted paragraph at bottom of page –

This paragraph starts with the assertion that “Bradwood Landing will go well beyond conventional compensatory mitigation to: . . .” We recommend deleting the seven words following “will.” Likewise, in the next paragraph, we recommend that the finding be reworded to remove qualitative judgments about the mitigation “improving” salmon productivity and “overall ecosystem health.”

Reason: See discussion of this issue in Subsection 2.1 above.

Page 45, footnote 36 –

The footnote refers to a photograph in Appendix D. We find no photo and no Appendix D in the draft findings.

Page 47, second and third lines –

These lines say that Bradwood’s mitigation will occur “at *three* geographically distinct locations in Oregon and Washington.” Findings on page 42, however, say, “Bradwood is proposing to mitigate for unavailable [unavoidable] impacts at *four* sites.” As we understand it, mitigation is proposed at Peterson Point; Svensen Island; Hunt Creek; and Delameter Creek (WA). A fifth site, the Marshland Triangle, is mentioned on page 129 of the draft findings. The findings need to be modified to reconcile these discrepancies.

Page 53, after the second paragraph –

The first two paragraphs on this page discuss the application’s compliance with standards from the county’s estuarine and coastal shorelands element. The rest of page 53 and the first half of page 54 appear to deal with some other subject related to Goal 16. It appears that a heading or perhaps some text has been omitted.

Page 54, second “Approve” statement at the bottom of the page –

We suggest that the sentence be reworded to say “Approve applicant’s request to rezone the turning basin (**the 46.4 acres shown as Area 5 in Attachment 4**) and amend the Comprehensive Plan as discussed in these Findings, including the attachments and authorize dredging therein.” **Reason:** Addition of the parenthetical comment will clarify what area and how many acres are to be rezoned.

Page 58, middle of the second paragraph –

Delete the quotation marks after the words “DMD planning and policies.”

Reason: The quotation goes on to include the next sentence, which already has a “close quote” at its end.

Page 79, last line on the page –

After the period at the end of the last sentence on the page, insert a “close quote.”

Reason: The quotation ends there.

Page 80, second line –

Insert the word “ratio” between “v/c” and “is.” **Reason:** The word “ratio” has been omitted.

Page 80, the first “condition 1,” regarding a stop sign –

After the words “County Engineer,” insert a comma and delete the word “to.”

Reasons: The comma is needed for grammatical reasons. The “to” is superfluous. The two changes together make the condition stated here match the same condition (#4) stated on page 82.

Page 80, the second “condition 2,” regarding vegetation clearance –

Replace this wording with Condition 3 on page 82. **Reason:** These are supposed to be the same condition, but the draft words them differently. The wording of Condition 3 on page 82 is preferable.

Page 80, next to last paragraph, starting “With the conditions . . .:” –

Change the second word (“these”) to “the.” After the next word (“conditions”), insert the words “set forth on pages 82-83 below.” **Reason:** There’s some difference between the conditions discussed on page 80 and those officially stated on page 82. This change would help make clear which wording is to prevail.

Page 82, condition 2 –

One of the conditions recommended by staff and approved by the board in Section 7 (on the park-and-ride lot) was to require a flagger for controlling traffic on narrow Rulyville Road. On page 82 of the draft findings, however, that condition has been replaced by a new one: “2. The applicant shall widen the travel lane on Rulyville Road so that two vehicles can pass.” The applicant apparently prefers to widen the road rather than use a flagger, and the staff has no objection to that. The board, however, needs to decide whether it agrees with that.

Pages 88-89 –

The formatting on these two pages does not enable a reader to distinguish between the five county policies quoted there and the finding that follows each. We therefore suggest that the policies be printed in italics.

Page 101, paragraph numbered “3” –

The last clause of the sentence seems to be missing some words and probably is not needed. We suggest the sentence be modified to read, “Amend County planning and zoning maps to rezone 5.35 acres from AN to MI, **and** redesignate the area ‘Development.’ ~~and appropriate Comprehensive Plan Amendment to Statewide Planning Goal 16, *Estuarine Resources*, to allow such rezoning.”~~

Page 112, second paragraph under “Proximity to Wildlife Refuge” –

We suggest deleting the first sentence of the paragraph (“There will be a substantial net gain in habitat function”). We don’t believe the county has made or can make such a finding. See our discussion of this issue in subsection 2.1 above.

Page 112, first and second sentences under “Salmon Enhancement” –

We suggest deleting “that ensures a significant net benefit” in the first sentence and “significantly improves and” in the second sentence. We don’t believe the county has made or can make such findings. See our discussion of this issue in subsection 2.1 above.

Page 114, fourth bullet –

This bullet says, “A very small (0.27 percent) increase in the amount of MI zoned land to be utilized.” Our calculations produced a different result (1.1 percent), so we asked Bradwood how they arrived at the figure. From our email exchange with Michelle Rudd, we learned that the percentage had not been recalculated to reflect a recent minor change in the acreage of one wetland (from 5.19 to 4.7 acres). Using that more recent figure, the 0.27 percent would change to 1.1 percent. In an email message of February 25, 2008, from Ms. Rudd to Mitch Rohse, Ms. Rudd suggests that the bullet be changed to say, “The increase in used MI acreage is minimal.” Staff agrees with that suggestion.

Page 114, last paragraph, first two sentences and fourth sentence –

We suggest that the first two sentences and the fourth sentence be deleted as shown here:

~~Staff's expansive reading of the "small to medium" language inappropriately transforms it into approval criteria. The Planning Commission action rejects this approach.~~ The County specifically adopted policies relating the scale of development to the amount of fill. The Project is consistent with those policies. Other issues staff has raised concerning items such as proximity to the wildlife refuge and the scale of the dredging are addressed by other policies the County chose to adopt and are the appropriate mechanism for determining whether the scale of the Project is appropriate. ~~The broader approach suggested results in creation of new criteria and is impermissible.~~ As discussed, the Project is consistent with the applicable policies and therefore consistent with the "small to medium" size narrative language.

Reason: The sentences in question seem inaccurate for three reasons. First, staff did not "transform" the "small to medium" language into an approval criterion. The language in question *is* an approval criterion – a mandatory policy from the NE Community Plan. Second, the planning commission did not "reject this approach." In fact, the planning commission discussed the "small to medium size" question at great length and eventually concluded that the proposed development satisfies the policy in question. Likewise, the board also devoted considerable time to the size criterion. Since the planning commission and board both considered project size relevant, a finding that the staff "inappropriately transformed" the small-to-medium wording into an approval criterion seems incorrect.

Page 118, first complete paragraph, next to last line –

The "is" following "terminal results" should be changed to "in." **Reason:** to correct typo.

Page 118, second complete paragraph, first sentence –

This sentence says that, "Oregon LNG either does not understand the Project or intentionally misrepresents it." This sentence should be deleted. **Reason:** These findings are meant to express what the *board of commissioners* concludes about the Bradwood application. The board did not discuss Oregon LNG's understanding of the Bradwood project or evaluate Oregon LNG's intent, so the quoted sentence seems inappropriate.

Page 118, footnote 88 –

The second sentence of the footnote says, "None of these needs can be served in an economical manner by the Oregon LNG project proposed in Warrenton, and environmental impacts would increase with the additional pipeline length

required.” This sentence should be deleted. **Reason:** The board did not evaluate the Oregon LNG site.

Page 119, footnote 89 –

Our calculations (4.7 divided by 1.7 acres) suggest that the figure should be 2.76, not 2.5.

Page 120, last sentence of the large paragraph in center of page –

We suggest placing a period after the second “wetlands” and deleting the words “that will provide a net benefit to the estuarine system.” **Reason:** We don’t believe the board has made or can make such a finding. See our discussion of this issue in subsection 2.1 above.

Page 121, second sentence of next to last paragraph –

The sentence declares that “The existing public police, fire, and medical services will likely rarely be called upon and are adequate to serve the Project.” It is our understanding that the board found some public emergency services to be currently *inadequate* to serve the project unless they are augmented with additional funding and resources. We suggest that the sentence be modified to add these words at the end: “if additional funding and resources are provided by the applicant.”

Page 123, last sentence of the large paragraph in center of page –

This sentence declares, “Thus, both industrial development and aquatic resources will benefit from the zone changes.” We suggest that the sentence be deleted.

Reason: As we have noted in Section 2.1 above, the county is able to determine only whether an application meets applicable approval criteria. Its review does not enable it to make broad qualitative judgments about net benefits.

Page 130, first complete sentence on the page (“Because the . . .”) –

We suggest the sentence be deleted. **Reason:** It speaks of a “substantial net gain in habitat function.” As we have noted in Section 2.1 above, the county is able to determine only whether an application meets applicable approval criteria. Its review does not enable it to make broad qualitative judgments about net benefits.

Page 136, first line of last paragraph –

We suggest deleting the word “final” in the phrase “final mitigation plan.”

Reason: See Subsection 2.4 above.

Page 145, last sentence on page –

We suggest that this sentence be deleted. **Reason:** It repeats information already stated in the first sentence of the paragraph, and it is an incomplete sentence, lacking a verb.

Page 147, first complete sentence –

Add the year “2007” to the phrase “July 16 drawings.” **Reason:** Bradwood Landing has submitted a large number of drawing and diagrams over a period of several years. Adding “2007” to this phrase would eliminate any possibility of confusion about which drawings are meant.

Page 151, first sentence of fourth paragraph –

This sentence states, “The foregoing provisions of Standards Document Section 6 demonstrate that the basic argument supporting Bradwood Landing’s assertions are untrue.” We are unsure what this sentence was intended to say, but it appears to be missing one or more key words (perhaps “not”). We presume that applicant intended to declare that the provisions of Section 6 “*do not* demonstrate . . . that Bradwood Landing’s assertions are untrue.”

Page 154, first two lines –

The “close quote” at the end of the sentence should be placed after the word “Construction.” **Reason:** The quoted title of Chapter S600 does not include the six words at the end of the sentence (“except as provided by County variance”).

Page 168, end of first paragraph under heading “Rulyville Road,” etc. –

The last sentence of this paragraph needs to end with a “close quote.”

Page 171, footnote at the end of “See conditions under Chapter 13” –

This footnote (“134”) seems to be left over from a “cut and paste” operation. It should be deleted.

Page 181, third full paragraph, second sentence –

The sentence says, “These resource where outlined in detail in Bradwood Landing’s letter to Mr. Wegner of October 19, 2007.” The third word, “where,” should be changed to “were.”

Page 182, first sentence of first full paragraph –

This sentence observes that “Clatsop County will not incur any net cost to service the [public safety] needs of Bradwood Landing.” We are unsure whether the board made such a finding. It is our understanding that some matters of funding for public safety services are still being discussed. To the extent that all dollar amounts have not been settled, it would seem that no finding about net cost can be made yet.

Page 192, last sentence of last paragraph –

This sentence finds that “the pipeline is not generally a water-dependent use *though in some instances it may be.*” [Emphasis added] We suggest that the six words beginning with “though” be deleted and replaced with these words:

“though we find that the MI-zoned segment may be considered water-dependent at the point where it connects with the LNG terminal. See Section 19, pages 199-200 for details.”

Reason: The current wording in the draft seems ambiguous and likely to raise questions about whether the county may regard the entire natural gas pipeline as “water-dependent.” We understand the staff, planning commission, and board all agree that no part of the pipeline is water-dependent beyond the point where it connects to the LNG facility in the MI Zone.

Page 229, last line on page –

The reference to page numbers 111-130 is no longer correct. The correct page numbers are 121-122 and 281.

Page 230, sentence in middle of page beginning “Based on our analysis” –

In the bolded passage at the end of the sentence, the word “the” should be deleted from the phrase “we find that *the* all ordinance provisions . . .”

Page 240, first complete sentence “Goal 13” bullet –

The number in “Statewide Planning Goal 12” should be changed to “13.”

Page 253, second complete paragraph from bottom of page –

Near the end of the paragraph the word “in” should be inserted before the words “Resource Reports 11 and 13.”

Page 256, last sentence on page –

This sentence suggests that an erosion control plan already submitted by the applicant has been found by the board to be in “compliance with applicable standards.” This is incorrect. No erosion control plan has been reviewed by the county or found to be in compliance with applicable standards. In fact, one of the conditions of approval adopted by the board is that the applicant “must prepare an erosion control plan that satisfies all applicable requirements . . .”² We recommend that the sentence be reworded to indicate that the county has not yet reviewed or approved an erosion control plan.

Page 260, end of first complete paragraph –

The last four words say “in these consolidated cases.” We are unsure what “cases” are meant. It may be that the applicant means “this consolidated application” or “in the case of a consolidated application such as this.”

Page 260, last three lines –

We suggest that the phrase “a number of hearings” be changed to “two.” We further suggest that the words “two more” be inserted after “October 19, 2007.”

² See condition at bottom of page 257 of the applicant’s proposed findings.

Reason: Such changes would make it clear that a total of four public hearings were held, two before the planning commission, and two before the board.

Page 270, second paragraph –

The last sentence of this paragraph declares that the board believes “it has been demonstrated that adequate public services for fire protection, police, emergency medical services, and roads will be available, especially during the three years when the LNG terminal is being built.” We understand the board to have found that adequate public services will *not* be available, and that Bradwood Landing therefore must provide additional resources for certain service providers and also provides its own on-site resources and emergency services. Applicant has agreed to do both. Our concern here is that the quoted passage may inadvertently suggest the board determined that public agencies will have the necessary capacity now without any help from Bradwood.

Page 271, section on Goal 2 –

Unlike several other sections regarding compliance with statewide planning goals, this section has no conclusion. We suggest that a sentence be added simply declaring that “Goal 2 has been met” or “The application therefore complies with Goal 2.”

Page 274, end of section on Goal 5 –

Unlike some other sections regarding compliance with statewide planning goals, this section has no conclusion. We suggest that a sentence be added simply declaring that “Goal 5 has been met” or “The application therefore complies with Goal 5.”

We make the same comment with regard to findings for Goal 6 (p. 276); Goal 7 (p. 276); Goal 8 (p. 277); Goal 9 (p. 278); and Goal 10 (p. 278).

Page 284, first complete paragraph –

The next-to-last sentence refers to “impact of fisherman.” We suggest that it be changed to read “impact on fishermen.” **Reason:** It is the impact of the project *on* fishermen (plural), not the impact *of* a fisherman (singular) on the project, that is addressed here. Also, the board may wish to use the word “fishers,” a gender-neutral term, in place of the word “fishermen.”

Page 284, last sentence of third complete paragraph (“The science . . .”) –

The paragraph quotes material concluding that “ecosystem restoration measures” associated with the Columbia navigation channel deepening will “leave the river better than it was before the project.” The next sentence then declares “The same is true here” (presumably of the Bradwood project). We believe that the board cannot make such a finding about Bradwood. The county’s review of the Bradwood application is for the purpose of determining compliance with

applicable county policies and ordinances. Although the Bradwood project perhaps could “leave the river better than it was before,” we are not aware of evidence in the record that would enable the board to make such a finding now.

Page 285, fourth paragraph from bottom, beginning “over 99 percent” – There appear to be one or more words missing from the first sentence’s phrase “for the turning basin the area juvenile salmonids frequent.”

Page 285, last sentence on page (continuing on to p. 286) – This sentence declares that “None of these needs can be served in an economical manner by the Oregon LNG project proposed in Warrenton and environmental impacts would increase with the additional pipeline length required.” Because the county has not reviewed the Oregon LNG project, we do not believe the board can make this finding.

Page 286, first complete sentence – This sentence speculates that there may be “a risk of contaminated dredge materials” at the Oregon LNG site in Warrenton. Because the county has not reviewed the Oregon LNG project, we do not believe the board can make this finding.

Page 292, on Land Use Compatibility Statements – See Subsection 2.5 above for discussion about LUCS.

Page 296, entry 4 – The “narrative” cited here should have a date.

Page 298, first and only sentence under “conclusion” – The sentence states, “We conclude that impacts **on** the Palomar line are not properly considered as part of this application review.” [Bolding in the original] The word “on” should be changed to “of.” **Reason:** The subject being discussed is how the Palomar line might affect the county – i.e., impacts *from* or *of* the Palomar line.

Diagram of Property in Attachment 3 – The title of this page is “Diagram of Bradwood Property.” The diagram, however, shows only about a third of the entire 411 acres referred to as “the subject property” or “the Bradwood property” throughout the Bradwood application. We therefore believe a more accurate title would be “Diagram of Bradwood LNG Terminal Site and Surrounding Wetlands.”

Page 320, First paragraph under “Economy and Employment” – The second sentence of this paragraph says, “The Bradwood Landing

Project expects to employ up to 750 workers during the peak construction months.” This figure, from the Bradwood draft EIS, is almost half-again as large as the work-force estimate submitted by Bradwood Landing to Clatsop County. For example, Bradwood’s December 12, 2006, *Terminal Narrative* at page 14 says, “The estimated average daily construction workforce will be 331, and the estimated peak workforce will be 526.” This estimate is repeated on page 12 of the draft findings.

For reasons explained in Subsection 2.6 of this memo above, we believe that *all* of Attachment 6, including page 320, should be removed from the findings. If the attachment is not removed, then the significant difference between a peak workforce estimate of 526 workers (cited on page 12) and a workforce of 750 workers (cited on page 320) must be reconciled.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "Mitch Rohse", followed by a horizontal line extending to the right.

Mitch Rohse, AICP
