

1                               BEFORE THE LAND USE BOARD OF APPEALS

2                               OF THE STATE OF OREGON

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4                               SOUTHERN OREGON PIPELINE  
5                               INFORMATION PROJECT,  
6                               OREGON SHORES CONSERVATION  
7                               COALITION, NUTE NEMETH,  
8                               CITIZENS AGAINST LNG and  
9                               JODY McCAFFREE,  
10                              *Petitioners,*

11  
12                              vs.

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14                              COOS COUNTY,  
15                              *Respondent,*

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17                              and

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19                              OREGON INTERNATIONAL  
20                              PORT OF COOS BAY,  
21                              *Intervenor-Respondent.*

22  
23                              LUBA No. 2008-016

24                              ORDER

25               On February 12, 2008, LUBA received a letter from the county attorney advising  
26               LUBA that the “county declines to participate” in this appeal. On February 25, 2008,  
27               petitioners filed objections to the record that the county filed in this appeal. On March 3,  
28               2008, LUBA received a letter from the county planning department. Along with that letter,  
29               LUBA received labels, replacement pages, a “Supplemental Volume 12” and a copy of a  
30               February 27, 2008 letter from the county planning department to petitioner’s attorney  
31               responding to the record objections. For the reasons explained below, we have set all of  
32               those documents aside for the time being.

33               Under OAR 661-010-0075(6) the county may only appear in this appeal through an  
34               attorney. Under OAR 661-010-0026 “[a] party may, within 14 days from the date of service  
35               of a record objection, file a response.” Any such response to petitioners’ record objections  
36               must be filed by the county’s attorney. The county’s attorney has not filed a response to

1 petitioners' record objection, and based on the county attorney's February 12, 2008 letter we  
2 assume the county does not intend to do so. We do not treat the planning department's  
3 February 27, 2008 letter as a response to the record objection under OAR 661-010-0026. If  
4 the county attorney wishes to file a response to petitioner's record objection, it may have  
5 until March 12, 2008 to do so.

6 If the county wishes to limit its participation in this appeal to submitting the record  
7 that is required by OAR 661-010-0025, and the county does not wish to appear in this appeal  
8 to challenge petitioners' record objection, the county may so limit its participation. We also  
9 do not see any reason why the planning department cannot consult with petitioners' attorney  
10 and attempt to resolve those record objections by agreement. If that consultation convinces  
11 petitioners to withdraw or modify their record objections, petitioners can advise LUBA of  
12 any such withdrawals or modifications. But unless petitioners request that LUBA proceed  
13 otherwise, sometime after the deadline for filing a response to petitioners' record objection  
14 expires, we will issue an order to resolve petitioner's record objections. In issuing that order,  
15 we will not consider the February 27, 2008 letter from the county planning department to  
16 petitioner's attorney as a response to petitioner's record objection.

17 The county planning department should not transmit or serve any additional  
18 documents for inclusion in the record unless it first reaches an agreement with all parties that  
19 such additional documents should be submitted as a supplemental record or unless LUBA  
20 issues an order that requires the county to do so.

21 Dated this 5<sup>th</sup> day of March, 2008.  
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29 Michael A. Holstun  
Board Chair