



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

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January 10, 2020

Mr. Mike Koski
Jordan Cove Energy Project, LP
Pacific Connector Gas Pipeline, LP
Email: MKoski@pembina.com



Project: Jordan Cove Energy Project/Pacific Connector Gas Pipeline
US Army Corps Federal Permit No.: NWP-2017-41
FERC Docket Nos: CP17-495-000 and CP17-494-000

Applicants: Jordan Cove Energy Project, LP and Pacific Connector Gas Pipeline, LP

Location: Coos Bay, Oregon and Pipeline Route within Coastal Zone

Re: **Response to Letter Dated December 20, 2019**

Dear Mr. Koski:

Thank you for your letter to the Department of Land Conservation and Development (DLCD), dated December 20, 2019, regarding your concerns about the federal consistency review of the Jordan Cove Energy Project (JCEP). The goal of DLCD's response to your letter is to communicate DLCD's position on conditioning state permits and to provide clarification to several inaccuracies and misconstrued points from your letter. DLCD hopes that this response will provide you with the clarity you are seeking so that DLCD may continue and complete the unbiased review of the proposed project.

DLCD plans to honor the agreement to condition state permits under the authority of the Oregon Water Resources Department and State Historic Preservation Office, due to the recognition that these permits cannot be issued until closer to construction. These permits include three limited licenses and four state archeological permits. However, DLCD is under no obligation to condition any other state permits as part of the JCEP federal consistency review and doing so would be in direct conflict with state administrative rules. DLCD maintains that issued state permits or authorizations are the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers (OAR 660-035-0050). **DLCD's final position is that no other state permits shall be conditioned as part of the JCEP federal consistency review.**

To be clear, the following state permits and authorizations must be issued to JCEP and Pacific Connector Gas Pipeline (PCGP) in order to proceed to a decision of concurrence from DLCD:

- ODEQ: Air Contaminant Discharge Permit (JC)
- ODEQ: CWA Section 401 Water Quality Cert (JC and PCGP)
- ODEQ: 1200-C Construction Stormwater (JC Terminal)
- ODEQ: 1200-C Construction Stormwater (Kentuck Slough)
- ODEQ: 1200-C Construction Stormwater (US HWY 101/TPP)

- ODEQ: NPDES General Permit 1200C (PCGP)
- ODEQ: 1200-C Construction Stormwater (APCO)
- ODEQ: Individual WPCF- Hydrostatic Testing (PCGP) in CZ
- ODEQ: NPDES- Wastewater Treatment Plant
- ODFW Fish Passage Plans Kentuck/APCO
- ODFW Fish Passage Plan Access Road Steam Crossing in CZ
- ODFW Fish Passage Plans Pipeline Stream Xings in CZ
- DSL Removal-Fill Authorization (All)
- DSL Proprietary Authorizations: Easements (JC)
- DSL Proprietary Authorizations: Sand and Gravel Licenses (JC)
- DSL Proprietary Authorizations: Waterway Use (JC)
- DSL Proprietary Authorizations: Mitigation (JC)
- DSL Proprietary Authorizations: State-owned land Xing's (PCGP)
- DSL Proprietary Authorizations: Special Use
- ODOE Energy Facility Siting Certificate or Executed Memorandum of Agreement

DLCD believes that it is in the State of Oregon's best interest to not condition the above listed permits. In addition to the fact that doing so is in direct conflict with administrative rules, it is also unclear how such conditions could be enforced and subsequently litigated in the event of a lack of enforcement by the Federal Energy Regulatory Commission (FERC). It is DLCD's understanding that DLCD may have very little recourse in the event that an applicant does not receive all conditioned state permits. DLCD exercises its authority under the CZMA to not condition any additional state permits or authorizations. DLCD and the State have deemed the above list of state permits and authorizations as critical, and believe conditioning these permits would not be a responsible environmental and public welfare decision.

Further, DLCD would like to clarify some of the inaccuracies or misrepresentations provided in your letter, as follows:

- DLCD disagrees with JCEP that the agency has not provided clarity about the standards and process of federal consistency review. DLCD has communicated clearly on the process, provided recommendations on how that process should go, what actions the applicant should or should not take, and why it was in the applicant's best interest to sign a stay agreement.
- There is a misunderstanding on what is required for an application to be deemed complete and the ability of the agency to request additional information as necessary to complete its review. While "necessary data and information" are required to deem an application complete and initiate review, it is important to distinguish that this information is the *minimum* amount of information required to do so. However, federal regulations also provide for a coastal program to request additional information as necessary. These are not one and the same. Because DLCD's review is closely tied to other state agency authorizations and subject matter expertise, DLCD coordinates with those state agencies on information needs they have in order for them to provide recommendations to DLCD on the project's compliance with the enforceable policies of the Program. DLCD has been diligently coordinating with state agency partners on

information requests because there have been clear information deficits that prevented the agencies from being able to conduct their reviews and offer recommendations to DLCD.

- DLCD disagrees that staff acknowledged that the department “essentially conceded misrepresenting the federal policy position and then attempted to recharacterize this misrepresentation as an errant word choice”. DLCD never communicated that NOAA had an explicit policy position regarding concurrence with conditions. DLCD has never and will never speak on behalf of a federal agency, especially as it relates to a policy stance of said agency. DLCD has also never misrepresented federal regulation and refutes JCEP’s claim that the agency did so. DLCD performs a multitude of federal consistency reviews annually and conveys the same regulatory information to all applicants, and provides further context on regulations as requested by the applicant.
- As it relates to JCEP’s comment that “DLCD believed they were beholden to other agencies to agree to including those permits as conditions”, DLCD agrees with this comment. DLCD is not the entire Oregon Coastal Management Program (OCMP). While DLCD is the lead state agency for the OCMP, the OCMP includes ten additional state agencies
 - Oregon Department of State Lands
 - Oregon Parks and Recreation Department
 - Oregon Department of Fish and Wildlife
 - Oregon Water Resources Department
 - Oregon Department of Energy
 - Oregon Department of Agriculture
 - Oregon Department of Forestry
 - Oregon Department of Environmental Quality
 - Oregon Department of Geology and Mineral Industries
 - Oregon Watershed Enhancement Board

DLCD is the lead agency responsible for conducting independent and individual federal consistency reviews, and takes project assessments done by our state agency partners extremely seriously. DLCD leaves each state agency to exercise their own respective authorities with their own staff because they hold the subject matter expertise to determine compliance with their respective programs and policies. The networked nature of our program enables us to rely on our state agency partners’ expertise and authorities.

- JCEP’s comment that “*conditioning a CZMA consistency determination removes no authority from these partner agencies or DLCD*” is inaccurate. DLCD is under no obligation to issue a consistency determination with conditions. DLCD in coordination with agency partners and the Oregon State Governors Office has the right to determine whether or not conditioning its decision on the issuance of a state permit is in the best interest of the State of Oregon. DLCD would not be doing its job if it did not proceed with this request cautiously and understand all pros and cons to conditioning and to weigh those carefully.

- DLCD must clarify that non-permit enforceable policies include policies that come from statewide planning goals, statute, and local plans and regulations. DLCD has always communicated that the list of enforceable policies was subject to change in the event that new information was provided to the agency or if the applicant made substantial changes to the project and that these changes implicated existing enforceable policies that were not previously identified. DLCD has never implied that the agency was changing the standards or criteria that DLCD would use for federal consistency review. If no new information becomes available and the applicant does not make substantial changes to the project, this should not be an issue. It is unreasonable for the JCEP to expect DLCD to take any other stance. Federal regulation provides that any application for a federal license or permit must be fully consistent with all of the enforceable policies of the state coastal management program. Therefore, although the list of applicable enforceable policies is determined in consultation with applicants, all projects must be consistent with all state enforceable policies.
- JCEP states that “we expect that the Department would appreciate the enormous environmental and economic benefit that Jordan Cove will bring to Oregon”. DLCD would expect that JCEP would appreciate that DLCD must weigh all impacts from the project, not just perceived benefits. DLCD is required under the CZMA to review the project as it relates to not only the enforceable policies of the OCMP, but also the associated coastal effects. Coastal effects include direct, secondary, and cumulative impacts of the project.
- In regards to DLCD’s communications with the JCEP, DLCD communications have been clear and vetted by the Department of Justice (DOJ). Additionally, DLCD has met its communication requirements as outlined in the federal regulations and have communicated above and beyond what is legally required.
- Federal law does not prevent DLCD from recommending that applicants wait to submit for federal consistency until they have the necessary permits and authorizations in hand. DLCD recommends this approach to all applicants, JCEP did not receive an exception. While DLCD makes this recommendation in order to create a more efficient review process for both the agency and the applicant, we cannot enforce it under federal law, which is why the JCEP review was, in fact, initiated. DLCD has no obligation to make exceptions to an applicant because our process does not align with the timeline needs or business purposes of the applicant or their board of directors. It is unreasonable for an applicant to expect such from a state agency.
- DLCD staff have been transparent with the applicant about the federal consistency review process. It is unclear why the applicant is implying that the process of federal consistency review is “uncertain”. Further, all work by DLCD is based on science and regulations, and not, as you suggest, activism. DLCD’s federal consistency review is based on the best available information, subject matter expertise, and peer-reviewed science. It includes a policy analysis and coastal effects analysis. If the process does not seem clear or certain to the JCEP, it is likely due to the fact that the applicant is requesting DLCD to change how it implements its federal consistency review.

- It is unclear why the JCEP is implying that communication from DLCD needs to improve. DLCD continues to coordinate with its networked agency partners and has continued to go above and beyond to meet with the applicant, provide additional documentation to the applicant upon request, and move forward within the review. DLCD suggests that JCEP continue to put any requests of DLCD in writing and to specify what exactly is being requested in an effort to eliminate any possible confusion. To date, DLCD has responded to all of the JCEP's requests. If there are outstanding requests, DLCD requests that JCEP explicitly list those and provide the list to DLCD.

In light of these clarifications, DLCD recognizes that timelines for other state agency permits do not align with the current schedule of the JCEP federal consistency review, of which DLCD's decision is due on or before February 28, 2020. Under 15 CFR § 930.60(b), applicants and DLCD may mutually agree in writing to stay our federally mandated six-month review period.

DLCD is committed to making science-based decisions that are in the best interest of Oregonians and Oregon's natural resources. The agency appreciates you communicating your concerns and that we have been able to provide you with more clarification. Please provide me with any further questions in writing to jim.rue@state.or.us.

Sincerely,



Jim Rue

Director

Department of Land Conservation and Development

Cc: Jason Miner, Natural Resources Policy Manager, Office of Governor Kate Brown
Nik Blosser, Chief of Staff, Office of Governor Kate Brown
Senator Arnie Roblan
Senator Betsy Johnson
Representative Caddy McKeown
Director Curt Melcher, Oregon Department of Fish and Wildlife
Director Richard Whitman, Oregon Department of Environmental Quality
Director Vicki Walker, Oregon Department of State Lands
Adam Dilts, Chief, Oceans and Coasts Section, Office of the General Counsel, NOAA
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Steve Shipsey, Oregon Department of Justice
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