



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 986-5200  
FAX (503) 378-4844  
[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

November 12, 2019

RL600/60697

JORDAN COVE ENERGY PROJECT LP  
ATTN: NATALIE EADES  
111 SW 5TH AVE STE 1100  
PORTLAND OR 97204

**State Land Board**

Kate Brown  
Governor

Re: DSL Removal-Fill Permit Application No. 60697-RF  
Jordan Cove Energy Project, Multiple Counties

Bev Clarno  
Secretary of State

Dear Ms. Eades:

Tobias Read  
State Treasurer

The Oregon Department of State Lands' (Department) 60-day public review period closed for the above-referenced permit application on February 3, 2019. Public and agency comments submitted and other investigative work by the Department have raised various issues for which the Department needed additional information. Those substantive issues and comments raised during public review were identified in a letter to Jordan Cove dated April 10, 2019. In response to that April 10, 2019 public review issues letter Jordan Cove prepared two separate responses to the public and agency comments. The first was received on May 9, 2019 and the second submittal received on September 4, 2019. The Department has reviewed those responses and attachments and offers the following letter identifying substantive issues remaining for the decision-making process, including those that Jordan Cove is anticipating submitting to the Department for further consideration in the coming months.

## Overview of Decision Process and Need for Additional Information

Specific applicable portions of the Department's Oregon Administrative Rules (OAR) are discussed in the narrative below in order to help Jordan Cove Energy Project, L.P. (Jordan Cove) understand the Department's permit decision process and why additional information is needed.

OAR 141-085-0550 addresses the level of documentation used by the Department to make decisions:

- Section (4) provides that "The applicant is responsible for providing sufficient detail in the application to enable the Department to render the necessary determinations and decisions. The level of documentation may vary depending upon the degree of adverse impacts, level of public interest and other factors that increase the complexity of the project."
- Section (7) provides that "The Department may request additional information necessary to make an informed decision on whether or not to issue the authorization."

The Department analyzes a proposed project using the factors and determination criteria set forth in Oregon Revised Statute (ORS) 196.825 and OAR 141-085-0565. The applicant bears the burden of providing the Department with all information necessary for the Department to consider the factors and make the determinations.

- Section (1) of the OAR provides that "The Department will evaluate the information provided in the application, conduct its own investigation, and consider the comments submitted

during the public review process to determine whether or not to issue an individual removal-fill permit."

- Section (2) of the OAR provides that "The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request." This application was deemed complete for public review and comment on December 6, 2018. OAR 141 Division 85 contains the standards and criteria that will be considered throughout the review of this application.
- Section (3) of the OAR provides that "The Department will issue a permit if it determines the project described in the application:
  - (a) Has independent utility;
  - (b) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990, and
  - (c) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation."
- Section (4) of the OAR provides that "In determining whether to issue a permit, the Department will consider all of the following:
  - (a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the Department may accept and rely upon the public body's findings as to local public need and local public benefit;
  - (b) The economic cost to the public if the proposed fill or removal is not accomplished;
  - (c) The availability of alternatives to the project for which the fill or removal is proposed;
  - (d) The availability of alternative sites for the proposed fill or removal;
  - (e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety;
  - (f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations;
  - (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion;
  - (h) Whether the proposed fill or removal is for stream bank protection; and
  - (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.600."
- Section (5) of the OAR provides that "The Department will issue a permit only upon the Department's determination that a fill or removal project is consistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the preservation of the use of the waters of this state for navigation, fishing and public recreation. The Department will analyze a proposed project using the criteria set forth in the determinations and considerations in sections (3) and (4) above (OAR 141-085-0565). The applicant bears the burden of providing the Department with all information necessary to make this determination."

## Summary of Substantive Public Comments

DSL previously reviewed all public comments received on this application. The Department's summary of the substantive public comments identified in the April 10, 2019 letter are restated

topic by topic (below in bold italics) followed by the Departments response on the adequacy of the May 9<sup>th</sup> and September 4<sup>th</sup> public comment responses. The intent is to provide the current status of our review and provide clarity on which issues or information is still needed for making our determinations on this application.

***Summary of public comment: Jordan Cove failed to demonstrate the project is in the public interest, Jordan Cove failed to demonstrate a public need. (ORS 196.825(3)(a)):*** *Comments received on this topic stressed that the Department must affirmatively determine that the project would address a public need consistent with Citizens for Resp. Devel. In the Dalles v. Walmart 295 Or App 310 (2018). With a privately sponsored project of this scale and complexity, the Department must consider public need in a transparent and comprehensive analysis that weighs all the relevant impacts and alleged benefits of the project.*

**Department response:** We have enough information to consider this factor.

***Summary of public comment; Jordan Cove failed to demonstrate the project is consistent with the protection, conservation, and best use of Oregon's waters. (ORS 196.825(1)(a)):*** *Commenters are concerned that the project would likely do unnecessary harm and damage to water quality in Oregon and suggest the applicants have failed to demonstrate that the project is consistent with the protection, conservation and best use of the water resources of this state. The proposed project will likely impair designated beneficial uses, threatening drinking water supplies and fish habitat. It will also likely further degrade stream segments in which water quality is already impaired for temperature, dissolved oxygen, pH, turbidity, mercury, and sedimentation.*

**Department response:** The applicant is reliant on future issuance of the ODEQ 401 Water Quality Certification (WQC) to demonstrate consistency with state water quality standards. ODEQ denied Jordan Cove's last application for water quality certification. Adherence to FERC guidelines and procedure manuals does not equate to adequately demonstrating consistency with state water quality standards or provide assurances that water quality will be protected.

**Please advise, what is Jordan Cove's anticipated resubmittal date to ODEQ 401 WQC? In the absence of a complete application before ODEQ, we would need to make those independent determinations regarding water quality impacts. We currently do not have adequate information to make those determinations.**

***Summary of public comment; The project (removal/fill activities) does not conform to sound policies of conservation and will likely interfere with public health and safety (ORS 196.825(3)(e)):*** *The Department received comments with concerns that the applicant has failed to demonstrate that the project will not interfere with public health and safety. Potential risks to public health and safety include natural hazards, such as floods, tsunamis, wildfires, landslides, and earthquakes, identified under Statewide Planning Goal 7. The potential for high-flow events that expose the pipeline or inadvertent drilling fluid releases (frac-outs) during construction at proposed stream crossings may result in increased risks to public health and safety. Failure at any of the major waterbody crossings claiming avoidance by using either Hydraulic Directional Drill (HDD) method, conventional bore or direct pipe method would have detrimental impacts to waters of the state and potentially contaminate state waters. Several risks to public health and safety were raised during public review that need to be addressed by the applicant, such as the list provided below. Please address these adverse impacts of this project:*

- *An accidental explosion of a fully loaded Liquefied Natural Gas (LNG) ship or at the terminal, including the worst-case scenario for the immediate area;*

- *How are the Federal Aviation Administration (FAA) presumed hazard determinations being addressed by Jordan Cove?;*
- *Tsunami risks increasing from the project dredging activities;*
- *Improper facility siting, Society for International Gas Tanker and Terminal Operators (SIGTTO) standards not followed (i.e., on the outside bend of the navigation channel, near other terminal users, near population centers);*
- *Impacts on municipal drinking water sources, private wells, irrigation sources and agricultural uses;*
- *Increased wildfire risks as construction season coincides with the in-water work period which also coincides with fire season; and*
- *Impacts of massive scale clearing and grubbing with pipeline installation on water quality, land stability, erosion and turbidity of doing these activities during the rainy winter seasons, all water flows downhill.*

**Department response:** Applicant is reliant on ODEQ 401 WQC to demonstrate compliance with state water quality standards yet ODEQ denied the last application from Jordan Cove. No reapplication has been made to ODEQ but is highly recommended to add weight to the applicant's assertions that those standards can and will be met through future issuance of a 401 WQC. Applicant is also reliant on the project and its mitigation proposals being consistent with ODFW Habitat Mitigation Policy which, based on ODFW's comments on the record, they currently are not. Applicant relies heavily on the federal siting rules and regulations which are the sole responsibility of FERC to ensure public health and safety, yet no FERC decision has been made on this project. Emergency Response Plans (ERP) are required by FERC prior to construction but future development and implementation does not adequately address public safety concerns. We currently do not have adequate information to make a determination on this issue.

**Summary of public comment; The project would interfere with navigation, fishing, and public recreation:** *Comments received on this topic addressed that the Department must conduct a weighing of the public benefits of the project against interference with factors including navigation, fishing, and public recreation (See Citizens for Resp. Devel. In the Dalles v. Walmart, 295 Or App 310 (2018)). As part of this weighing of public benefits, the Oregon Legislature has clearly demonstrated that it is the State's "paramount policy" to preserve Oregon waters for navigation, fishing, and public recreation. ORS 196.825(1).*

*The comments indicate that the applicant has failed to demonstrate that the project will not unreasonably interfere with navigation, fishing, and public recreation in this application.*

*Potential conflicts include but are not limited to:*

- *Crabbing, fishing and all types of recreational uses in and around Coos Bay;*
- *Safe bar passage issues/LNG tanker bar crossings only at high tides conflict with recreational fishers and the commercial fleets that also cross the bar at high slack tides for safety reasons should be evaluated;*
- *Exclusion zones required around LNG tankers while the LNG tanker is in transit will impact the recreating public crabbing via the ring method. This is reportedly the most common recreational crabbing method in Coos Bay. High slack tides are optimum for crabbing and if an LNG tanker must transit only at high tides, given the security and exclusion zones, there is interference with existing recreational uses within Coos Bay; and*
- *Impacts on the commercial fisheries uses of Coos Bay and adjacent ocean resources.*

**Department response:** The applicant acknowledges that there will be interference with waterway users but assumes not unreasonable interference due to the short duration and timing

of the conflict or impact. Those conflicts can be avoided by either moving or scheduling around the LNG ship activities while in transit.

We have enough information to make a determination on this issue.

**Summary of public comment; Jordan Cove failed to demonstrate independent utility (OAR 141-085-0565(3)(a)):** Commenters assert that the project is connected to the Coos Bay Channel Modification (CBCM) Project. The applicant would be the primary benefactor from the proposed widening and deepening of the federal navigation channel as part of the CBCM project or similar efforts to expand the navigation channel. Further, there are serious questions about the feasibility of LNG vessels transiting the federal navigation channel under the dredging currently proposed as part of this application. Oregon Department of Fish and Wildlife (ODFW) contends that the Jordan Cove Energy Project and Port of Coos Bay Channel Modification project are connected actions and should be evaluated that way. The applicant has failed to demonstrate that the project has independent utility as required under OAR 141-085-0565(3)(a).

**Department response:** The applicant contends the project has independent utility and does not rely on the Coos Bay Channel Modification (CBCM) project proposed by the Port of Coos Bay as evidenced by the USCG letter of recommendation outlining the size and dimension of appropriate sized LNG ships that could safely navigate the Coos Bay channel. The USCG authorization letter is based on existing channel conditions with the NRI's and without the CBCM project.

We have enough information to make a determination on this issue.

**Summary of public comment; Jordan Cove failed to demonstrate a comprehensive analysis of alternatives to the project (OAR 141-085-0550(5), ORS 196.825(3)(c) and (d)):** Commenters outline that the applicant has failed to demonstrate a comprehensive analysis of alternatives to the project, and therefore, the Department does not have the information to consider the availability of alternatives both for the project and for proposed fill and removal sites. Also, the Department was not able to determine that the project is the practicable alternative with the least adverse impacts on state water resources. Comments detail that through a flawed, overly narrow purpose and need statement, the resulting biased alternative analysis prevents the Department from considering a reasonable range of alternatives to the project.

**Department response:** The May 9<sup>th</sup> and September 4<sup>th</sup> responses do not demonstrate the purpose and need. The applicant has provided conflicting responses to the question of demonstrating LNG buyers to show need or demand for the proposed project output of 7.8Mtpa of LNG export. Named companies (JERA and ITOCHU) only account for 3.0 Mtpa of the 7.8 Mtpa proposed for annual export. The May 9<sup>th</sup> response indicated that negotiations continue with other LNG buyers for the balance of the marketed plant capacity. The September 9<sup>th</sup> response states that identification of the remaining buyers (with agreements totaling an additional 8Mtpa) must be withheld due to non-disclosure agreements in place with those buyers. The May 9<sup>th</sup> response repeatedly indicates that Jordan Cove has proposed a project production capacity of 7.8Mtpa, which is economically feasible and allows for the reliability of supply to customers to meet the purpose and need. The increase in output from previous applications is result of design optimization and adjusting site-specific ambient temperatures. This statement lacks the justification on who the customers are and why the 7.8Mtpa is the needed design capacity showing demand or need for the project as proposed.

The response provides expanded alternatives analysis for the fixed elements of the project, the

LNG terminal design capacity and the pipeline intersection at the GTN and Ruby Pipelines. No justification is provided on how or why the production capacity is fixed? All presented parts of the alternative analysis are predicated on meeting the project purpose which is to export a maximum of 7.8Mtpa with average of 7.5Mtpa export, anything less doesn't meet the purpose and need for the project. PCGP has applied to FERC for authorization to install a 36-inch pipeline. This pipeline limitation will allow 7.8Mtpa of natural gas to reach the LNG Terminal. Economic analysis favored 5 liquefaction trains (7.8Mtpa) production at the LNG Terminal. In order to export an average of 7.5Mtpa of LNG, the two storage tanks must each be emptied soon after they are filled with newly processed LNG. Each LNG carrier will be capable of loading approximately one storage tank of LNG, creating a process where one LNG storage tank is being filled with newly processed LNG while the second is being emptied to fill an LNG carrier. Delays associated with waiting for needed weather conditions would mean that the LNG storage tanks are not emptied on schedule (as they are filled) and natural gas liquefaction processing would have to be slowed for a period equal to the LNG carrier delay. This condition would not allow the project to achieve export an average of 7.5Mtpa thus the NRI's are needed.

We do not have enough information to make a determination on this issue.

**Department Response:** Please address how elements of the project became fixed. Without proper justification of need for the project, this alternatives analysis is incomplete.

***Summary of public comment; Navigation Reliability Improvements (NRI) Dredging:***

*Comments indicate that there is no documented need for the 590,000 cubic yards to dredge the four corners outside the existing Federal Navigation Channel (FNC). Comments also state that Jordan Cove can export 99.5% of the anticipated annual output of the LNG facility (7.8 million tons) without the NRI dredging, which leaves the question, is there a 'need' to excavate 590,000 cubic yards of material for a nominal gain in transport capacity to allow Jordan Cove to travel at higher wind speeds than the current channel configuration could safely allow. Comments further suggest this minor economic benefit to only Jordan Cove does not equate to a 'need' to impact trust resources of the State of Oregon. The adverse impacts are understated or not explained in terms of the salinity impacts and hydrologic changes that will result from widening the existing navigational channel. The potential tsunami run-up impacts are not well explained either, nor are any hydrodynamic changes that would likely result or any analysis on potential increases to bank erosion adjacent to the proposed NRI channel improvements. The need should be substantiated, and a robust alternatives analysis prepared to address these issues and justify the dimensions and depths needed with supporting documentation in the form of simulation modelling showing that the current channel is insufficient for Jordan Cove.*

**Department response:** The May 9<sup>th</sup> and September 4<sup>th</sup> responses explain that in order to export an average of 7.5Mtpa of LNG, the two storage tanks must each be emptied soon after they are filled with newly processed LNG. Each LNG carrier will be capable of loading approximately one storage tank of LNG, creating a process where one LNG storage tank is being filled with newly processed LNG while the second is being emptied to fill an LNG carrier. Delays associated with waiting for needed weather conditions would mean that the LNG storage tanks are not emptied on schedule (as they are filled) and natural gas liquefaction processing would have to be slowed for a period equal to the LNG carrier delay. This condition would not allow the project to achieve export an average of 7.5Mtpa thus the NRI's are needed.

Please address how elements of the project became fixed. Without proper justification of need for the project, this alternatives analysis is incomplete.

**Summary of public comment; Pile Dike-Rock Apron:** Comments raised concerns that no alternatives were presented regarding the proposed 6,500 cubic yards (cy) of rock riprap proposed to protect the existing pile dike against erosion from the slip and access channel location, depth and dimensions. With no alternatives presented on the dimensions or design alignment of the slip and access channel, no reasonable range of alternatives can be considered. There is no discussion on impact avoidance, minimization, and/or mitigation to offset any adverse impacts to waters of the state. Please address:

- Why 6,500 cy?
- Why not more?
- Why not less?
- Why any at all?

**Department response:** Alternatives analysis was presented, but there are eelgrass and intertidal impacts which should be categorized according to ODFW habitat mitigation policy. Also, appropriate mitigation must be provided in consultation with ODFW.

We are satisfied with the comment response. However, habitat categorization issues exist, consistency with the habitat mitigation policy issues exist, and both need to be resolved prior to decision.

**Summary of public comment; Dredged Material Disposal (DMD) transfer of materials to APCO 1 & 2 from the NRI dredging:** Comments received raised the following questions, please answer:

- How will the rock be excavated and transferred to the DMD site? Vague alternatives analysis presented, leaves more questions than answers.
- What types of equipment will be used to excavate the NRI's?
- Which works best in what type of materials (bedrock, rock, sand or silts), which has least environmental impacts depending on the material encountered?
- How will the rock be dredged? Different equipment?
- Can rock be transferred to a DMD site via slurry line as the application states? Inadequate discussion on alternatives, leaving the details to the contractor is insufficient.

**Department response:** We are satisfied with the comment response.

**Summary of public comment; Slip and Access Channel:** Comments raised the concern of a lack of discernable alternative analysis for the precise dimensions and location of the slip and access channel. The slip and access channel are designed for a ship class of 217,000 cubic meters, yet the Coast Guard Waterway Suitability Analysis recommends allowing ships no larger than 148,000 cubic meters. Please answer the following questions and concerns:

- Why design a slip to accommodate a ship class that is not currently allowed nor physically capable of navigating into Coos Bay given the constraints of the Coos Bay bar and currently authorized limitations of the federal navigation channel?
- The application claims the stated depth needed for the slip and access channel is to maintain 'underkeel clearance' while an LNG ship is at dock. This is misleading as an LNG ship can only safely navigate the current channel at a high tide advantage, above 6ft tides to get through the channel to the slip before the tide recedes which would strand the vessel if it is not safely docked in the slip. Any LNG ship, 148,000 cubic meter class ship, would not be able to transit Coos Bay except periods of high tide, there would be no way for a ship to exit the slip at any lower tidal elevation as the ships draft would exceed navigational depth of the channel which could pose huge safety concern in the event of a tsunami.
- Water quality concerns from the 'sump effect' of having the proposed 45ft Mean Low Low Water (MLLW) deep slip and access adjacent to and on the outside bend of the 37ft MLLW

*navigation channel need to be addressed.*

- *What are the sedimentation impacts, salinity impacts, temperature and dissolved oxygen impacts that would likely result from a deep-water pocket created for the slip?*

*Questions were raised over whether the access channel dimensions can change, as no alternatives discussion exists, it is just one option, take it or leave it. Any reduction in the size of the slip or access channel would reduce water impacts and reduce the required mitigation. Any reduction in size or depth would also reduce adverse impacts associated with this project. The need should be substantiated, and a robust alternatives analysis prepared to address these issues.*

**Department response:** We currently do not have adequate information relating to the purpose and need to make a determination on this issue.

**Summary of public comment; DMD Alternatives:** *Commenters would also like to know why Jordan Cove will move 300,000 cubic yards of sand to the Kentuck site when other alternatives exist that would have less impact than transferring a line all the way across Coos Bay to Kentuck slough. The log spiral bay could accommodate more than 300,000 cubic yards, it is much closer to the dredge sites and would have significantly less impacts than the Kentuck proposal, yet it is dismissed. Please explain more thoroughly the alternatives that were considered and why those alternatives were dismissed within the greater DMD plan.*

**Department response:** We are satisfied with the comment response.

**Summary of public comments; APCO DMD Site:** *Commenters have concerns over the capacity of the APCO site. Does this site have the capacity for the initial dredging and maintenance dredging over the lifespan of this project? Commenters also have site stabilization and liquefaction concerns over a mountain of sand piled up adjacent to Coos Bay in an earthquake and tsunami zone. There is safety, engineering, project feasibility, and water resources concerns that must all be addressed.*

**Department response:** Comment responses indicate that the APCO site has adequate capacity for the project and does not include maintenance dredging. Final engineering and designs will be reviewed/approved prior to construction as condition of the FERC authorization according to the comment response. Applicant relies heavily on the federal siting rules and regulations which are the sole responsibility of FERC to ensure public health and safety, yet no FERC decision has been made on this project. Final engineered designs and advanced geotechnical reports are required by FERC prior to construction but future development and implementation does not adequately address public safety concerns. We currently do not have adequate information to make a determination on this issue.

**Summary of public comment; The project does not conform with existing land use laws (ORS 196.825(3)(g)):** *Commenters indicate that the applicant has failed to demonstrate that the project conforms with existing land uses designated in the applicable comprehensive plan and land use regulations. They also mentioned that the applicant has failed to provide the Department with the information necessary to make the determinations required by ORS 196.825(3)(g) that the applicant's proposed fill or removal is compatible with the requirements of the comprehensive plan and land use regulations for the area in which it will take place. Current, up-to-date Land Use Consistency Statements are required for all parts of this project in all jurisdictions with an explanation of the current status, pending or resolved local issues, processes, or appeals status.*

*Further, commenters are concerned the applicant has failed to obtain land use permits for the project in Coos Bay. Because of the reasons adopted by the Land Use Board of Appeals (LUBA) in remanding the prior land use application are directly related to the inconsistency of the proposed dredge and fill in wetlands and in the Coos Bay Estuary with the Coos Bay Estuary Management Plan, the project cannot be conditioned on a future land use approval to meet this criterion.*

*In January 2019, the Douglas County Circuit Court Judge reversed the Douglas County extensions from December 2016 and 2017 that approved the Pacific Connector Gas Pipeline as a conditional use. Because the pipeline will require a new application for conditional use permit and utility facility necessary for public service, the applicant has not met its burden to demonstrate to the Department that the project conforms to Douglas County's acknowledged comprehensive plan and land use regulations.*

*The comments received indicate that the applicant has not met their burden to demonstrate to the Department that the project conforms to Jackson County's acknowledged comprehensive plan and land use regulations.*

**Department response:** The September 4<sup>th</sup> response indicates that for any previously submitted inconsistent LUCS, the applicants will provide revised LUCS that list the approvals that are required. Jordan Cove anticipates submitting the revised LUCS on or about October 15<sup>th</sup>, 2019. Only Jackson County LUCS was received.

**Updated Land Use Consistency statements for the project should be submitted to the Department prior to our decision.**

**Summary of public comment; Insufficient Mitigation-Kentuck Compensatory Wetland Mitigation (CWM) Site:** *Concerns were raised about the lack of a discernable alternative analysis on many components of the Kentuck mitigation proposal to see what alternatives were considered and on what basis were rejected. The mitigation proposal itself is the largest wetland impact in this project proposal. Please answer the following questions:*

- *Why import 300,000 cubic yards of sand?*
- *Why not more or less materials?*
- *Why not use more suitable materials native to the area?*
- *Why sand vs. native cohesive clay soils for use as fill?*
- *What are the alternatives to move the sand to the site?*
- *Why were upland routes dismissed without reasonable justification?*
  - *Trucking the materials is a viable option with no impact to waters of the state.*
- *What other mitigation sites or options have you looked at addressing the following concern?*
- *The Kentuck site is already a freshwater wetland and has increased its functions in the past 10 years to the point that the current mitigation strategy might be inappropriate to offset functional losses. Please answer these questions as well:*
  - *Why is the dike so big, long, and wide?*
  - *Why is there no justification given to support dimensions of the proposed dike?*
  - *Why are there no alternatives are presented to evaluate the adverse effects of the dike and mitigation strategy?*
  - *Address the landowner concerns regarding the Kentuck Mitigation proposal and the Saltwater Intrusion impacts on adjacent lands.*
  - *Further address the concerns of flooding and impacting agricultural activities and existing farm uses.*
  - *Why is the pipeline proposed under a proposed mitigation site?*

- *Where is the avoidance and/or impact minimization, especially given that each impact reduces the overall size of the mitigation project, therefore diminishing its potential function and values? Concerns were raised about the suitability of having a pipeline under the mitigation site that is supposed to be protected in perpetuity.*

**Department response:** We have enough information to make a determination on this issue.

**Summary of public comment; Insufficient Mitigation-Eelgrass CWM Site:** *Comments raised concerns about the lack of a discernable alternative analysis on many components of the eelgrass mitigation proposal. The CWM citing was found not to be in-kind or in proximity mitigation which would replace similar lost functions and values of the impact site. Disturbing existing mudflats and adjacent eelgrass beds is likely to have additional adverse impacts from construction. The proposal is inconsistent with ODFW Habitat Mitigation Policy. Alternatives should be considered, in consultation with ODFW, that favor impact avoidance to adjacent high value habitats (mudflats and adjacent eelgrass beds) and seek out appropriate in-kind, in proximity mitigation. The project impacts are to eelgrass beds adjacent to deep water habitats, while the proposed mitigation is near the airport runway and in shallow water habitats a considerable distance from deep water habitats. There are likely unforeseen FAA issues with the proximity of the mitigation site to the airport runway, this should be explored in detail with the FAA. The location of the eelgrass CWM site is situated in a portion of the Coos Bay Estuary classified as "52-Natural Aquatic" in the Coos Bay Estuary Management Plan where dredging is not allowed. This issue needs to be clarified by Coos County with respect to land use consistency.*

**Department response:** This comment has not been addressed. ODFW comments that this proposal is inconsistent with the habitat mitigation policy. The areas proposed for impacts are habitat type 2 (both eelgrass and mudflats) and they raised the issue of the site not being in kind or in proximity mitigation. Jordan Cove was to submit an eelgrass functional assessment to start the discussion on impact avoidance and minimization by September 20th, 2019 but has not submitted that information to date.

The correct habitat classification needs to be established in agreement with ODFW and then work through the mitigation policy consistency issues for the proposed eelgrass mitigation site. Alternative sites and or concepts may need to be explored. The Department is requesting confirmation from ODFW that their comments have been resolved and that the mitigation as proposed is now consistent with the habitat mitigation policy prior to a decision on the application.

**Summary of public comment; Insufficient Mitigation-Stream Impacts:** *Comments assert that the project will impact many waterways' beneficial uses, water quantity and quality will be further impaired from construction of this project. Potential impacts include but are not limited to increased water temperatures, dissolved water oxygen, turbidity, etc. from riparian shade removal in 303(d) listed waterways and other waters. Disruption of fluvial processes, increased erosion and downstream sedimentation and turbidity from construction activities, impacts on spawning and rearing habitats, impacts on fish migration and passage.*

*Many people have raised concerns that Federal Energy Regulatory Commission (FERC) procedures are vague and will not provide assurances that water quality/quantity standards will be protected. Stream risk analysis, alternative ways to avoid and minimize impacts for each water crossing are not possible on properties with denied access. How are any reasonable alternatives considered if access is denied and unattainable without a FERC Order granting*

*condemnation authority? Alternatives are not fully explored or explained to avoid and minimize impacts at every opportunity.*

**Department response:** Temporary impacts mitigation is insufficient and inconsistent with the ODFW Habitat Mitigation Policy for streams crossed by the pipeline. The Department understands that discussions between the applicant and ODFW on this issue are ongoing. The Department recommends that the applicant provide DSL with ODFW's final recommendations.

***Summary of public comment; ODFW Habitat Mitigation Policy Inconsistencies:***

*Commenters expressed that the applicants should work with ODFW to appropriately categorize each wetland and waterway impact from start to end along the proposed pipeline route. Once the appropriate habitat category has been assigned in agreement with ODFW, appropriate mitigation can be discussed based on resources impacted. Currently, temporary impacts mitigation is insufficient and inconsistent with the ODFW Habitat Mitigation Policy for streams and wetlands crossed by the pipeline.*

**Department response:** The applicants should work with ODFW to appropriately categorize each wetland and waterway impact from start to end along the proposed pipeline route. Once the appropriate habitat category has been assigned in agreement with ODFW, appropriate mitigation can be discussed based on resources impacted. Currently, temporary impacts mitigation is insufficient and inconsistent with the ODFW Habitat Mitigation Policy for streams and wetlands crossed by the pipeline. The Department is requesting confirmation from ODFW that their comments have been resolved and that the mitigation as proposed is now consistent with the habitat mitigation policy prior to a decision on the application.

***Summary of public comment; Fish Passage-Coastal Zone Management Act (CZMA) and Non-CZMA Streams:*** *Comments expressed concern that fish passage has not been addressed by the applicant. According to ODFW, applications for fish passage have not been submitted and this is critical to the Department for impact analysis determinations yet to be made. Fish passage applications may need to include a contingency method for crossing each waterway. For instance, if any of the HDD's fail, what is next, certainly not open trench, wet cut methods that are not currently being evaluated as alternative crossing methods under consideration.*

**Department response.** Fish passage applications for streams within the Coastal Zone Management Act (CZMA) areas have been submitted to ODFW for review and approval. The streams in the non-CZMA portion of the pipeline have not been submitted that the Department is aware. These applications should be submitted for processing by ODFW. The Department may require as a condition of approval that all fish passage approvals within the CZMA and non CZMA streams, and other fish passage applications relative to the Kentuck mitigation project, be submitted to ODFW and approved prior to construction.

***Summary of public comment; Wetland Delineations/Concurrence:*** *Public comments point out that some of the wetland delineation reports have either expired or are about to expire, see C4, C5, C9 and C10 of the application.*

**Department response:** WD2019-0338 concurrence is required prior to issuance if removal or fill occurs within this delineated area. Please confirm concurrence has been received.

## **Additional Information Requested by the Department**

***Summary of Department comment; Delineation-status for JCEP/PCGP:*** *To allow adequate*

*review time of the wetland delineation report in order to meet the decision deadline, please submit the following data requests by the dates requested.*

- 1) *By April 17, 2019: GIS shape files of the new routes and re-routes so DSL can finish the initial review and provide any additional review comments in time to address this summer (involving additional field work, if needed);*
- 2) *End of April 2019: Responses to the initial delineation review questions and delineation maps (prototype subset of each map series for completeness review);*
- 3) *June 7, 2019: Responses to GIS review questions;*
- 4) *Last week of June 2019: Site visits (possible); and*
- 5) *August 9, 2019: Everything due: responses to all remaining requests for information based on site visits, GIS review responses and follow-up review requests, all final delineation maps, and all supporting materials for the concurrence.*

**Department response:** The final data request (#5 above) for the properties where access has been obtained is yet to be addressed by the applicant. Jordan Cove estimated that all required and requested materials relative to the pipeline delineation review will be submitted on or about October 20<sup>th</sup>, 2019.

The Department cannot issue a permit until there are delineation concurrences for properties where access has been obtained.

**Summary of Department comments; Bonding Requirements:** *Prior to any permit issuance, a performance bond should be negotiated and put in place for the Eelgrass and Kentuck CWM projects. Bonds are required for non-public agencies that have permanent impacts greater than 0.2 acre. Proposed financial instruments need to demonstrate consistency with OAR 141-085-0700.*

**Department response:** Comment not addressed. Applicants state they are prepared to issue a performance bond that is consistent with OAR 141-085-0700 prior to permit decision. Amount of bonding required still to be negotiated.

**Summary of Department comments; Administrative Protections Required for Eelgrass and Kentuck CWM projects:** *Administrative protection instruments need to demonstrate consistency with OAR 141-085-0695.*

**Department response:** Comment not addressed, the applicants are currently identifying a third-party long-term steward and will provide draft deed restrictions to the Department on or about October 15<sup>th</sup>, 2019.

**Summary of Department comments; Oregon Department of State Lands, Land Management Issues:** *Any proposed uses or activities on, over, or under state owned lands requires Department proprietary authorizations.*

**Department response:** Applicants must have the required authorizations in hand before construction on each state-owned parcel. The Department may require as a condition of approval that all proprietary authorizations be obtained prior to construction.

**Summary of public comments; Extensive Comments-Detailed response requested.** *The Department requests that the applicant respond to all substantive comments. Certain commenters provided extensive, detailed comments. The Department would like to call these comments to the applicant's attention to ensure that the applicant has time to sufficiently address them.*

- *Mike Graybill;*
- *Jan Hodder;*
- *Rich Nawa, KS Wild;*
- *Stacey Detwiler, Rogue Riverkeepers;*
- *Jared Margolis, Center for Biological Diversity;*
- *Jodi McCaffree, Citizens Against LNG;*
- *Walsh and Weathers, League of Womens Voters;*
- *Wim De Vriend;*
- *The Klamath Tribes, Dawn Winalski;*
- *Tonia Moro, Atty for McLaughlin, Deb Evans and Ron Schaaf;*
- *Regna Merritt, Oregon Physicians for Societal Responsibility;*
- *Oregon Women's Land Trust;*
- *Sarah Reif, ODFW;*
- *Margaret Corvi, CTLUSI;*
- *Deb Evans and Ron Schaaf;*
- *Maya Watts; and*
- *Steve Miller.*

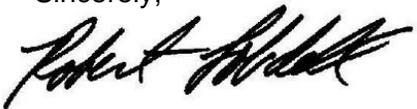
**Department response:** The May 9<sup>th</sup> response did not address these comments. The September 4<sup>th</sup> response provided a summarized guide to the comment response locations throughout all the submitted documents and reports instead of responding to the comments individually as we requested for ease of review. The Department requests the applicant respond to each of the requested commenters extensive comments for the Departments consideration.

**New information provided by JCEP- Modified Pipeline Routes requested by FERC.** The applicant provided information in the September 4<sup>th</sup> response that indicates FERC is likely to select certain routes as the preferred route in the FEIS. Jordan Cove presents the Pacific Crest Trail and the East Fork Cow Creek modified route information. Updates to the application will be necessary if this is the selected pipeline route.

**ODFW comments to truncate the In-Water Work Period for Coos Bay.** ODFW recommended the truncation of the in-water work period for Coos Bay to limit impacts to herring spawning in the lower bay to October 1-February 1 instead of the 15<sup>th</sup> of February. JCEP needs to incorporate this information into project timelines, tables, and descriptions throughout the application where estuary removal fill work will occur as that timing would likely be conditionally authorized to follow ODFW recommendations for this truncated in water timing.

The Department will make a permit decision on your application by January 31, 2020, unless Jordan Cove requests to extend that deadline. Please call me at (503) 986-5282 if you have any questions.

Sincerely,



Robert Lobdell  
Aquatic Resource Coordinator  
Aquatic Resource Management

RL:jar