



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

State Land Board

Kate Brown

Governor

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

M E M O R A N D U M

June 11, 2018

To: Governor Kate Brown
Secretary of State Dennis Richardson
State Treasurer Tobias Read

From: Vicki L. Walker
Director

Subject: Jordan Cove Energy Project Application

BACKGROUND

On Nov. 3, 2017, the Department of State Lands (DSL) received a removal-fill permit application for the Jordan Cove Energy Project (JCEP). The application covers the three main elements of the project: 1) the liquefied natural gas (LNG) slip and access channel; 2) the LNG terminal; and 3) the natural gas pipeline.

The application was deemed incomplete by the Department on December 1, 2017. A revised application was received on May 10, 2018. The application was subsequently reviewed and discussed with the applicant.

On June 4, 2018, Jordan Cove LNG requested the Department of State Lands suspend review of their removal-fill permit application and change its status to "suspended awaiting revision." Jordan Cove anticipates providing additional details regarding the Kentuck Slough and eelgrass mitigation sites, as well as updated land use permitting information, by the end of August 2018. The Department agreed to their request.

The purpose of this memo is to clarify both the Department and the State Land Board's role regarding the JCEP application.

PERMITS AND AUTHORIZATIONS

The Department of State Lands issues two types of permits and authorizations:

- **Removal-fill permits** for removal or fill activity in waterways and wetlands
- **Proprietary authorizations** for use of state-owned uplands and waterways

Removal-fill activity on state-owned waterways requires both, and the JCEP is no exception.

State's Removal-Fill Jurisdiction

Oregon's Removal-Fill Law ([ORS 196.795-990](#)) requires people who plan to remove or fill material in wetlands or waterways to obtain a permit from the Department of State Lands. This permit is broadly referred to as the "Removal-Fill Permit." The law applies to everyone, whether private individuals or public agencies, though some projects by federal agencies are exempt from the removal-fill laws.

The purpose of the law, enacted in 1967, is to ensure protection and the best use of Oregon's water resources for home, commercial, wildlife habitat, public navigation, fishing and recreational uses.

The Director of DSL is responsible for issuing (or denying) removal-fill permits under ORS 196.795 to 196.900. The Land Board *does not* have any specific statutory authority over the removal-fill program. While the Land Board does have general authority to set DSL policies and review the actions of the Director (see ORS 273.041 & 273.171), it does not equate to having specific authority over the DSL Director's decision on a removal-fill application.

JCEP Removal-Fill Requests

The JCEP application entails several distinct Removal-Fill activities and a wetland delineation report. The legislature delegated to the Department of State Lands and the Director (or designee) authority to make decisions on removal-fill permits and wetland delineation reports. The legislature did not provide the Land Board with any specific role for the review or decision-making on removal-fill permit applications or wetland delineation reports.

The JCEP proposed removal-fill activities include dredging along a navigational channel, fill at the off-loading facility, fill along Trans Pacific Parkway, and fill for a temporary bridge. The Director (or designee) must make a final permit decision on JCEP's Removal-Fill permit application within 90-days after determining the application is complete, unless the timeline is extended by agreement pursuant to OAR 141-085-0560(6).

The wetland delineation report relates to various wetlands throughout the project site. The Director (or designee) must complete an initial review of the JCEP wetland delineation report within 120 days of receipt of the report, pursuant to OAR 141-090-0040(2).

State's Proprietary Jurisdiction

The state owns submerged and submersible land ("beds and banks") underlying all navigable and tidally influenced waterways pursuant to the Equal Footing Doctrine, ORS 274.025, and ORS 274.710. In most cases, this ownership extends to the line of ordinary high water or high tide, but in some cases the ownership extends to the line of ordinary low water. Ownership lines can be mixed, even along the same waterway. The Department of State Lands is responsible for management of publicly owned submerged and submersible land. The public has rights to use the beds and banks of navigable waterways for any legal activity, such as boating, fishing and swimming, including pulling your canoe or kayak onto the bank. The legislature provided a role for both the Land Board and DSL for the management of state-owned lands, including uplands, submerged lands, and submersible lands in ORS 273.171, ORS 274.040 and ORS 274.710.

JCEP Proprietary Authorization Requests

JCEP has requested proprietary authorizations for a variety of project components, including:

- Easements (e.g., bridges, pipeline, river crossings, storm water outflows and others)
- Upland crossings (Common School Fund Lands)
- Leasing and registration (e.g., wharf certifications and data buoys)
- Mitigation site authorizations (eel grass conservation easement, Kentuck Slough Mitigation Project Conservation Easement and Kentuck Slough Access Agreement)
- Sand and gravel license (e.g., scour apron and access channel and marine slip)

For easements across trust lands and non-trust lands, including state-owned submerged and submersible lands, the Land Board has delegated authority to DSL to make decisions, including term and permanent easements. OAR 141-122-0070. The Director has discretion to refer unusual or controversial easement applications to the Land Board under OAR 141-122-0050(9). For special use authorizations, the Land Board has delegated authority to DSL to issue authorizations and allowed the Director discretion to refer any application for a lease or license to the Land Board. OAR 141-125-0140. For conservation easements, the Land Board has delegated authority to DSL to issue term easements, but explicitly requires Land Board approval for permanent conservation easements. OAR 141-145-0040. For authorizations such as leases, licenses, registrations, and wharf certifications, the Land Board has delegated authority to the Department for authorization decisions. OAR 141-082-0285. Likewise, licenses for removal or use of rock, sand, gravel and silt, the Land Board has delegated authority for the Department for authorization decisions. OAR 141-014-0260 to 0280.

CONCLUSION

The JCEP has applied for various permits and authorizations that are within the jurisdiction of the Department, either under the state's removal-fill jurisdiction or the state's proprietary jurisdiction. For each permit and authorization that is contemplated by JCEP's most recent application, the existing statutes and rules place the obligation on the Department and the Director for deciding whether to approve or deny the applications. The Land Board's role is limited; considering the scope of the most recent application, it is unlikely that any of the decisions will require approval by the Land Board.