

December 20, 2019

Director Jim Rue
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301
Via email

Dear Director Rue,

Thank you for participating in our meeting last week and your participation in the meeting between staff from the Oregon Department of Land Conservation and Development (“DLCD” or the “Department”), Oregon Department of Justice (“DOJ”), National Oceanic and Atmospheric Administration (“NOAA”) and Jordan Cove on November 15, 2019.

We ultimately found the meetings to be productive. However, we remain concerned that certain DLCD representatives may have predetermined the outcome of our Consistency Determination as evidenced by their obstructive and often misleading representations. Additionally, we have been navigating what we believe are unnecessary and unexplained delays in the process, coupled with an ongoing lack of clarity as to the applicable DLCD standards and approval processes, including DLCD’s transference of its mandate for review by deferring almost completely to other networked agency processes.

As you are aware, Jordan Cove provided DLCD a draft copy of our Coastal Zone Management Act (“CZMA”) consistency determination application on April 29, 2018, and then worked with DLCD for almost an entire year to ensure the application addressed all required information. Jordan Cove submitted a final copy of its application to DLCD on April 12, 2019. This submission was made in collaboration and agreement with DLCD, and was deemed complete, with all necessary data and information, by your Department on May 13, 2019. Since that time, we have been meeting monthly, or more often as needed, to work collaboratively with you and your staff. Our November 15, 2019 meeting was specifically set out to discuss the yet unresolved matter of the appropriate use of “conditions” in Jordan Cove’s CZMA consistency determination. Including NOAA in this meeting was necessary as a result of the following previous communications with DLCD which were, in part, focused on understanding, discussing and resolving this issue:

- Meetings with DLCD on May 2, June 13, July 16, August 19, September 5, October 1 and October 7, 2019.

- Phone calls or emails with DLCD on May 6, July 25, August 16, September 17 and October 17, 2019.
- Letter from Jordan Cove to Oregon Attorney General on September 4, 2019, and subsequent response from Oregon Attorney General on September 6, 2019.

Through the above communications, DLCD staff have expressed to Jordan Cove staff on numerous occasions their position that our CZMA consistency determination could not be conditioned for a variety of reasons, most of which centered around the Department's assertion that federal regulations prohibited the conditioning of the consistency determination. When asked for the basis of this belief, DLCD and DOJ staff initially indicated that in a staff training session conducted by NOAA, it had been communicated to the Departments that NOAA advised against conditioning. In the face of this information, which contradicted our understanding of the applicable statutes and regulations, we spoke with representatives from NOAA who confirmed there was no regulatory or legal impediment to conditioning, but rather that conditioning was at the discretion of the State.

In our meeting on November 15, 2019, NOAA again conveyed its position, stating there was no legal or regulatory impediment to conditioning. For clarity, NOAA did convey that States could not condition based on local land use permits, a point with which we concur. The remainder of the conditioning decisions, NOAA communicated, were a matter of State discretion. DLCD then acknowledged that the previous communication was in error, acknowledging the Department's "unfortunate" choice of words in previous meetings with Jordan Cove, and finally confirmed that conditioning Jordan Cove's CZMA consistency determination was not a matter of whether they could condition, but whether they chose to. While we appreciate the final clarification, after over six months and seven meetings spent trying to understand the State's position on this issue, we find it deeply troubling that the Department essentially conceded misrepresenting the federal policy position and then attempted to recharacterize this misrepresentation as an errant word choice.

Following this confirmation, we proceeded to discuss DLCD's November 4, 2019 Memo Regarding JCEP Federal Consistency Review, which detailed the Department's view on which permits could be included as conditions in the CZMA consistency determination. Through this conversation, DLCD staff indicated they were currently discussing conditioning with various partner agencies, and that for some permits, DLCD believed they were beholden to other agencies to agree to including those permits as conditions. Additionally, DLCD indicated that some of the permits that your November 4, 2019 Memo had indicated could not be conditioned, were actually "maybes" based on these

ongoing discussions. Conditioning a CZMA consistency determination removes no authority from these partner agencies or DLCD. As such, it is unclear to us why this is a concern for DLCD. However, in a further effort to work collaboratively with DLCD, we have agreed to a meeting with DLCD and the Oregon Department of Environmental Quality (DEQ) during the first week in January to resolve any conditioning issues with respect to DEQ permits. A list of the DEQ permits and attendees from Jordan Cove was emailed to you on December 13, 2019. We look forward to a resolution of this matter at the upcoming meeting.

We also discussed at our November 15, 2019 meeting the list of Enforceable Policies and Permits, which required Jordan Cove working for over a year with DLCD to resolve prior to submission of our final application on April 12, 2019. In fact, obtaining the list from DLCD was the result of over 30 individual meetings, phone calls and emails. In the course of our discussion on November 15, DLCD staff made representations that the list of non-permit Enforceable Policies, or State-wide Planning Goals, was still subject to change, notwithstanding the current decision date for our application of February 28, 2020. As certainty of regulatory requirements and process is crucial for any project applicant, we greatly appreciated confirmation from DLCD that the previously provided list of Enforceable Policies was now deemed to be the final list, but are still left with no explanation of why it took a year and more than 30 meetings to produce. As noted during our December 12, 2019 meeting, we are unclear as to DLCD's purpose in stating in its November 4, 2019 Memo that the EPs applicable to the Coos County Blue Ridge conditional land use approval "will be identified when appeal concluded and applied to review." DLCD committed during our December 12, 2019 meeting to provide an explanation for this language as it contradicts earlier statements made by DLCD.

As we have explained on numerous occasions, the nature of our project prohibits us from obtaining certain permits relevant to the CZMA consistency determination until we are much closer to construction, or in some instances, until well after the start of construction. Further, our ability to obtain certain other permits is contingent on significant capital expenditure. Additional expenditure at this juncture is simply not a responsible financial decision – this is common practice for developments such as Jordan Cove at this stage in the regulatory process. We expect that the Department would appreciate the enormous environmental and economic benefit that Jordan Cove will bring to Oregon.

Our experience working with DLCD is that your response to this communication will attempt to distract from discussing substantive issues. To that end, we expect your response to raise the following concerns that do not contribute to constructively resolving the only outstanding issue between us, which is conditioning of the CZMA

consistency determination. We offer the following to preemptively address such concerns.

Concern: our application as submitted was incomplete and/or missing information required by DLCD to make a fulsome assessment of our consistency with the CZMA.

Response: our application was deemed complete by DLCD on May 13, 2019. If our application was indeed not complete, the Department should not have deemed it such.

Concern: our application should not have been submitted prior to receipt of all other state permits. Jordan Cove should have waited to receive all other permits until submitting our CZMA consistency determination application. Had this been done, the issue of conditioning, which is the only remaining substantive issue to be resolved, would not exist.

Response: Not only is DLCD's position inconsistent with federal law, *see* 15 C.F.R. § 930.58(a)(2), but our application was submitted in collaboration with DLCD, subsequently deemed complete, and the Department was well aware of the status of our other permits. Further, and most importantly, as we have shared with DLCD previously, it is common practice in other states for applicants to submit CZMA consistency determination applications in parallel with other required state permit applications. To suggest that an applicant must expend significant capital resources in order to obtain all other required permits in advance of applying for a CZMA consistency determination, and then effectively leave the fate of a ten billion dollar investment in the hands of one state Department, defies not only common practice in virtually every other state, but any reasonable, sound business practice on development projects of this magnitude that are subject to oversight from Boards of Directors and accountable to company shareholders. And as noted above, this position conflicts with federal law.

Concern: Jordan Cove did not respond to DLCD information requests in a timely and/or complete manner.

Response: after submitting our application on April 12, 2019, Jordan Cove received our first request for information from DLCD three months later on July 12, 2019. We responded to this request fully on July 31, 2019. Jordan Cove received our second request for information from DLCD on August 15, 2019. We responded to this request fully on August 23, 2019 and included a table to further confirm our responsiveness to the Department's two information requests. Our responses to DLCD were timely and complete, notwithstanding the fact that some of the information requested by DLCD stood well outside of the Department's mandate and regulatory authority. Since providing these responses, DLCD has provided no indication of further need for additional information to conduct their review.

After our joint meeting with NOAA, and the Governor's recent public statements about ensuring a fair process based on science and not activism, we hope you can assure us moving forward that certainty of process and communication from DLCD will improve. We thank DLCD and the networked agencies of the Oregon Coastal Management Program for their efforts on our CZMA consistency determination and remain committed to working collaboratively and productively on this endeavor. As Department Director, we hope we can work productively to resolve the outstanding issues before us through your leadership.

We do look forward to our future meetings with DLCD and partner agencies such as the Oregon Department of Environmental Quality and the Oregon Department of State Lands to reach resolution on the conditioning of our CZMA consistency determination.

Sincerely,



Mike Koski
Vice President, External Affairs

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
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