



August 13, 2020

Mr. Adam Dilts
Chief, Oceans and Coasts Section
NOAA Office of the General Counsel
1305 East-West Highway
SSMC4, Room 6111
Silver Spring, Maryland 20910

Ref: *Jordan Cove LNG Export Facility and Pacific Connector Gas Pipeline*
State of Oregon
ACHP Project Number: 012529

Dear Mr. Dilts:

On July 10, 2020, the Advisory Council on Historic Preservation (ACHP) received your correspondence regarding the administrative appeal pending before the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to the Coastal Zone Management Act (CZMA). NOAA has requested that the ACHP comment on the status of the review of the Jordan Cove LNG Export Facility and the Pacific Connector Gas Pipeline in Oregon under Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). The ACHP provides its response to the topics specified in NOAA's letter in the following.

The Section 106 review for the Jordan Cove LNG Export Facility and Pacific Connector Gas Pipeline was formally completed on July 17, 2020, when a Programmatic Agreement (PA) was executed by the Federal Energy Regulatory Commission (FERC), the Oregon State Historic Preservation Officer (SHPO), and the ACHP. The PA sets forth the steps to avoid, minimize, and mitigate the adverse effects of the undertaking on historic properties. The PA includes provisions for completing identification of historic properties that may be affected by the undertaking and developing or finalizing and implementing Treatment Plans to resolve adverse effects in consultation with all consulting parties. The PA also requires finalizing Historic Property Management Plans (HPMP) for Jordan Cove and the Pacific Connector. The execution of the PA and implementation of its terms evidences that FERC and the other federal agencies have taken into account the effects of the undertaking and afforded the ACHP an opportunity to comment.

NOAA has also requested additional information regarding the ACHP's guidance regarding "pausing" certain Section 106 deadlines during the COVID-19 pandemic, and how such "pausing" may affect the timing of any new or ongoing government-to-government consultations related to the Jordan Cove Energy Project. Our guidance recommends that federal agencies consider pausing timelines within a Section 106 review when a federally recognized tribe may be unable to respond to requests to comment or consult in a timely way due to the closure of tribal government offices or reduced staffing and work schedules as a result of the COVID-19 pandemic. We note that FERC provided an opportunity for consulting parties to comment on the draft agreement document in December 2019 and January 2020.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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The ACHP provided comments that were all incorporated into the revised agreement. As we understand, FERC's consultation regarding finalizing the PA for this undertaking was challenged by its *ex parte* regulations and requests for a rehearing after the order was issued on March 19, 2020. Once the requests for rehearing were dismissed, FERC reengaged with consulting parties to finalize the agreement. However, the window for further comment was constricted by the COVID-19 pandemic as well as expectations for completion of the Section 106 process arising from the inclusion of the undertaking on the FAST-41 permitting dashboard as both a covered project and a Major Infrastructure Project. Nevertheless because the executed PA requires ongoing consultation with all consulting parties including federally recognized tribes, the ACHP believes that FERC met its responsibilities to conclude the Section 106 process.

Please note that subsequent correspondence from NOAA should be sent to Mr. Reid Nelson, Director, Office of Federal Agency Programs. This will ensure our timely response to future notifications.

We appreciate the opportunity to respond to NOAA. Should you have any questions regarding our comments, please contact Dr. John Eddins at (202) 517-0211 or via email at jeddins@achp.gov.

Sincerely,



Jaime Loichinger
Assistant Director
Office of Federal Agency Programs
Federal Permitting, Licensing and Assistance Section