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**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY**

**Jordan Cove Energy Project,
L.P. Amendment Application**

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FR Docket No. 12-32-LNG

**CONFEDERATED TRIBES OF THE COOS, LOWER UMPQUA, AND SIUSLAW
INDIANS' MOTION TO INTERVENE AND COMMENTS**

(Submitted May 9, 2018)

In accordance with 10 C.F.R. § 590.303, the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians ("CTCLUSI" or "Tribe") move to intervene and submit comments in the matters of the Jordan Cove Energy Project ("JCEP"), docket number 12-32-LNG.

A. Communications and Service

Service of process and other communications should be made via electronic communications to:

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B. IDENTITY AND INTEREST OF INTERVENOR

The Tribe is a federally recognized Indian tribe headquartered in Coos Bay, Oregon. The Tribe is deeply committed to the protection of its sovereignty and its culture. Jordan Cove, the Coos River Estuary, and the surrounding areas lie squarely within the Tribe's aboriginal territory. All said, the Tribe's ancestral homeland encompasses approximately 1.6 million acres of resource-rich lands lying along a 75-mile long (as the Raven flies) section of the Oregon coast, and extending inland across the Coast Range to Oregon's interior valleys. Since time immemorial, the Tribe's members have served as the stewards and caretakers of all these lands, waters, and sacred places. If the Projects are approved, they will directly impact the Tribe's numerous cultural resources within Jordan Cove and the surrounding areas, and along the PCGP route that traverses the Tribe's ancestral homeland.

For more than a decade, the Tribe has fought to protect these same lands, waters, and sacred places from disturbance, damage, and destruction threatened by prior iterations of these Projects. For example, the Tribe has fought to protect the cultural resources and the final resting places of our ancestors within Jordan Cove from the proposed drilling, grading, dredging, vibro-compaction and other seismic work. The Tribe must guard these finite, irreplaceable cultural resources for this generation of tribal members, and for generations to come. These efforts include the Tribe's current pursuit of a listing/eligibility determination for Coos Bay as a Traditional Cultural Property ("TCP") under the National Historic Preservation Act ("NHPA").

C. STANDARD FOR INTERVENTION

Intervention is proper if a party demonstrates (1) the position taken by the movant, to the extent known, together with the basis in fact and law for the position and (2) the movant's

interest in the proceeding. 10 C.F.R. §§ 590.303(b), (c). As set forth below, the Tribe is entitled to intervene in these proceedings because the Tribe has interests in the proceeding that may be directly affected by the outcome of the proceedings, and because the Tribe's participation is otherwise in the public interest.

D. GROUNDS FOR INTERVENTION

Here JCEP seeks the approval of the Department of Energy to increase its volume of LNG exports—to the equivalent of 395 Bcf/yr (1.08 Bcf/d) of natural gas—as approved in its Conditional Non-FTA Authorization (DOE/FE Order No. 3413) and as requested in its Non-FTA Application. JCEP states that the purpose of this Amendment is to conform its requested export volume to the proposed production capacity of the LNG Terminal in JCEP's current application at the Federal Energy Regulatory Commission ("FERC"). On September 21, 2017, JCEP filed an application at FERC (FERC Docket No. CP17-495-000) requesting authorization to site, construct, and operate the LNG Terminal with a proposed maximum capacity of 7.8 million metric tons per annum of LNG, equivalent to 395 Bcf/yr of natural gas. JCEP states that this FERC application reflects changes to the production capacity of its proposed facilities at the LNG Terminal, as well as additional engineering analysis.

As stated, this amendment is linked to JCEP's proposal before FERC to develop an LNG Terminal. The cumulative impacts of the Amendment and the proposed Terminal's triggers the protections of various federal law. The Amendment is subject to review under section 106 of the NHPA, which expressly affords the Tribe a right to participate in the assessment of any Project impacts to NHPA listed or eligible resources. *See* 36 C.F.R. Part 800. Also, 43 C.F.R. § 10 applies to federal projects, federal agencies, federal actions, and federally funded projects.

The Department of Energy's own policy recognize the agency's trust responsibility and consultation obligation to the Tribe in this matter, as well as its own obligations to consult with the Tribe. Specifically, the Policy recognizes:

The DOE will be diligent in fulfilling its federal trust obligations to American Indian and Alaska Native governments in policy implementation and program management activities. The DOE will pursue actions that uphold treaty and other federally recognized and reserved rights of the Indian nations and peoples. The Department recognizes that some Tribes have treaty-protected and other federally recognized rights to resources and resource interests located within reservation boundaries, aboriginal territories, and outside reservation and jurisdictional boundaries, and will, to the extent of its authority, protect and promote these treaty and trust resources and resource interests, and related concerns in these areas.

When internal policies, regulations, and statutes, or other barriers prohibit or hinder the DOE trust protection actions or participation in eligible program initiatives, the Secretary will direct the agency to seek corrective protection measures, and tribal government program inclusion.

...

The DOE will establish protocols for communication between tribal leaders, the Secretary, and federal officials.

...

The Department will consult with any American Indian or Alaska Native tribal government with regard to any property to which that tribe attaches religious or cultural importance which might be affected by a DOE action. With regard to actions by DOE in areas not under DOE control or when an action of another federal agency takes place on DOE land, DOE will consult with tribes in accordance with this Policy. Such consultation will include tribal involvement in identifying and evaluating cultural resources including traditional cultural properties; facilitating tribal involvement in determining and managing adverse effects; collaboration in the development and signing of memoranda of understanding with DOE, when appropriate.

Departmental consultation will include the prompt exchange of information regarding identification, evaluation and protection of cultural resources. To the extent allowed by law, consultation will defer to tribal policies on confidentiality and management of cultural resources. Consultation will include matters regarding location and management methodology; repatriation and other disposition of objects and human remains; access to sacred areas and traditional

resources located on DOE lands, consistent with safety and national security considerations; and cultural resources impact assessment of potential loss to tribal communities.

The DOE will comply with current and forthcoming cultural resource protection laws and Executive Orders including Native American Graves Protection and Repatriation Act; Archaeological Resources Protection Act; American Indian Religious Freedom Act; National Historic Preservation Act; National Environmental Policy Act; Freedom of Information Act; Privacy Act; Indian Sacred Sites Executive Order 13007, May 24, 1996; Consultation and Coordination With Indian Tribal Governments Executive Order 13084, May 14, 1998; Government to Government Relations With Native American Tribal Governments Executive Memorandum, April 29, 1994; Tribal Colleges and Universities Executive Order 13021; Executive Order 12898 on Environmental Justice.

Department of Energy American Indian and Alaska Natives Tribal Government Policy (January 20, 2006).

In addition, NEPA and CEQ regulations require that effects of agency actions be considered on all aspects of the “human environment.” Pursuant to Executive Order 12898, agencies should avoid disproportionate adverse environmental and cultural impacts to low-income and minority populations. The seat of the Tribe’s government is only a few miles from the JCEP proposed Terminal site, the Tribe owns other properties that are in close proximity to the JCEP Project site, and several of the Tribe’s members live and work within close proximity to the site.

Finally, the Department of Energy, as an agency of the United States has a trust responsibility under Federal law to protect tribal interests and resources. 18 C.F.R. § 2.1(b), (e); *see also* Department of Energy American Indian and Alaska Natives Tribal Government Policy (January 20, 2006). Intervention by the Tribe will assist the Department of Energy in assuring that the Agency meets its trust obligations to the Tribe.

Therefore, intervention by the Tribe is appropriate because the Tribe has or represents an interest which may be directly affected by the outcome of the proceeding. *See* 10 C.F.R. § 590.303(b). The Tribe has significant, legally recognized interests in the natural and cultural resources of Jordan Cove which may be directly affected by the outcome of these proceedings and the interconnected FERC proceeding, and seeks to intervene to protect these interests. No other party can adequately represent these unique, legally recognized interests.

E. COMMENTS ON AMENDMENT APPLICATION

The Tribe is encouraged by the progress and discussions with Pembina, the new owner of this application. Specifically, we have made great progress in negotiating a comprehensive Cultural Resources Protection Agreement. Pembina appears to be committed to the vital matters of cultural and natural resource protection. In addition to seeking intervention in this matter, the Tribe offers the following comments for consideration. Note that these comments do raise concerns, but the Tribe has faith that Pembina will meet these obligations.

1. Consultation and Trust Obligation.

As stated above, the Department of Energy has an obligation to consult with the Tribe on the impacts of this proposal and a trust obligation to ensure that the Amendment does not adversely impact tribal members or tribal resources, including property. The Tribe hereby requests full, fair and meaningful government-to-government consultation with the Agency concerning the significant impacts this Amendment will have individually and cumulatively on numerous tribal cultural resources and other tribal interests.

2. Cumulative Impacts.

The Department of Energy has a duty under NEPA to adequately consider the cumulative impacts of the proposed Amendment, including the impact of this Amendment in consideration with the proposed LNG Terminal and pipeline. Cumulative impacts are:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.¹

Thus, the Agency must give fair consideration to each of these impact categories, macro and micro environmental concerns alike. Given the vast fuel capacity and output of the project, the stated purpose of international export, and the accessibility of global data, the scope of the analysis should also include international concerns. At a minimum, the Agency must consider the impacts of the Amendment cumulatively with the proposals before FERC and with the swath of other fossil fuel proposals in the Pacific Northwest.

Cumulative impacts that must be examined include cultural and archaeological resources, impacts to tribal health and economy, increase in vessel traffic and impacts to tribal fishermen, greenhouse gas emissions, ocean temperature changes, ocean acidification, and ocean noise levels.

3. Cultural and Archeological Resources.

Jordan Cove was vital to our tribal ancestors. The historical record, including field notes from Euro-Americans and testimony from Coos elders, confirms that our ancestors made extensive use of Jordan Cove. Reminders of this past now litter the sands of Jordan Cove. Archaeological sites include village sites with burials, shell middens, debitage scatter indicative of a processing site, myth tale story sites, ceremonial sites, historic tribally affiliated

¹ 40 C.F.R. § 1508.7.

homesteads such as Barrett, Jordan, and Henderson Ranch, a stagecoach line which ran mail, supplies, and passengers from Coos Bay to Florence, Reedsport, and Scottsburg, traditional use/gathering, and religious sites for ceremonies. There are also historic roads within the APE and that could have a viewshed impact resulting from the project. Such roads include Jordan Cove Rd, Trans Pacific Pkwy, and Hwy 101/McCullough Bridge.

Some of cultural, historic, and archeological sites are documented, and are even located within the Project's large footprint. Many more are undocumented for one reason or another.

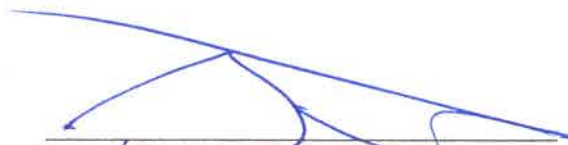
Prior to approving the Amendment, the Department of Energy must consider the impact of this proposal individually and cumulatively on the cultural and historic resources and archaeology of Jordan Cove and properly avoid or mitigate the Project's impacts.

F. CONCLUSION

For the reasons stated above, the Tribe requests that the Department of Energy grant the Tribe's motion to intervene and consider the comments submitted above in the JCEP matter, FR Docket No. 12-32-LNG.

Respectfully submitted this 9th day of May, 2018.

OFFICE OF THE CTCLUSI GENERAL COUNSEL



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General Counsel