



**US Army Corps
of Engineers**
Portland District

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT FUNDS FROM
JORDAN COVE ENERGY PROJECT, L.P.

Issue Date: 01 Dec 2015

Expiration Date: 04 Jan, 2016

Corps Reference: PM-F-JCLNG-2015

30-Day Notice

This Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers (Corps), Portland District, to accept funds from Jordan Cove Energy Project, L.P. (JCLNG) to review potential effects to the Coos Bay Federal Navigation Channel, in accordance with 33 USC 408 (Section 408). This public notice supercedes the previous notice published in January 2015. Portland District would allocate funds internally to facilitate the Department of the Army processing of a Section 408 request for JCLNG to construct and operate a Liquefied Natural Gas (LNG) terminal on the bay side of the north spit of Coos Bay in Coos County, Oregon. An access channel would be constructed from the Coos Bay Federal Navigation Channel to the proposed terminal marine slip. The project also includes the construction and operation of an underground natural gas pipeline from Klamath County to the proposed terminal. This Section 408 review will evaluate whether any Corps authorized civil works projects may be affected by the proposed marine slip and access channel.

As currently proposed, the project would require authorization from the Corps, pursuant to 33 USC 408 (Section 408). Section 408 provides authority to the Secretary of the Army to grant permission for the alteration or modification of Corps federal civil works projects when in the judgment of the Secretary such alteration or modification will not be injurious to the public interest and will not impair the usefulness of the project.

Portland District would allocate funds internally and to other supporting Corps districts to expedite the Department of the Army processing of a proposed request to construct an access channel adjacent to a federally authorized navigation channel in accordance with Section 408, subject to a series of limitations specified below.

The Corps may accept and expend these funds pursuant to Section 214 of the Water Resources Reform Development Act of 2014 (WRRDA 2014, Public Law No. 106-541) and EC 1165-2-216, amended Appendix G, which provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-federal public entity, natural gas companies, or public utility company to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. In doing so, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits, either substantively or procedurally. Section 1006 of Water Resources Reform and Development Act (WRRDA), enacted after being signed by the President on June 10, 2014, eliminated the sunset date from the Section 214 authority for non-Federal public entities.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including district commanders of the U.S. Army Corps of Engineers.

Authorized representatives of the Portland District Commander will be negotiating an agreement with JCLNG to accept and expend funds to expedite review and evaluation of a Section 408 request for alterations to Corps Federally authorized civil works projects.

Definition of Natural Gas Company: Natural gas companies are defined for Section 214 purposes as a company engaged in the transportation of natural gas in intrastate or interstate commerce or the sale of such gas in interstate commerce for resale. The transportation of natural gas in interstate commerce is subject to Federal regulation outside of USACE authorities dating from the 1930's because Congress determined that such activities affected the public interest. Section 408 requests reviewed under a Section 214 agreement with a natural gas company will be limited to alterations involving the transportation of natural gas (inclusive of gas gathering lines, feeder lines, transmission pipelines, and distribution pipelines) and any attendant storage facilities, as these projects serve a public purpose. JCLNG engages in the operation of interstate and intrastate pipelines for the transport of gas, as well as the operation of gas extraction, processing, and gas-fired power generation facilities. The gas transported by its pipelines, processed or extracted at its facilities, or used to generate power at its gas facilities all results in the distribution into commerce of gas and/or power for retail purposes. Therefore, JCLNG meets the definition of a Natural Gas Company, its activities inherently, by statute, "affect the public interest."

How the Portland District's acceptance of funds from JCLNG is expected to expedite the processing of JCLNG's request to modify a federal project. The Corps' Operation and Maintenance funds for the Inspection of Completed Works program and the project condition survey program are funded through the Corps' Civil Works program in the annual federal budget. Funding within these two programs is insufficient to completely fund the technical and policy reviews required for the approval of the proposed project. The Portland District would receive additional funds from JCLNG and would add those funds to the Operation and Maintenance budgets of the Portland District, dedicated to review of the JCLNG 408 request, in accordance with the provisions of Section 214 of WRRDA 2014.

Activities for which funds will be expended: Funds would be expended on the direct labor and overhead of Corps' civil works personnel evaluating the engineering plans, specifications and reports prepared by engineering consultants to the JCLNG project. Such review and processing activities would include, but not be limited to, the following: technical analyses and writing, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of GIS data, site visits, travel, coordination activities, additional personnel (including support/clerical staff), technical contracting, environmental documentation preparation and review. Funds will not be used for drafting, negotiating, or issuing any necessary real estate instruments.

Funds provided by JCLNG that remain unexpended at the Corps' acceptance of the completed modification will be returned by the Corps to JCLNG. If at any time during the review process, JCLNG wishes to withdraw their Section 408 request, the Corps will return unexpended funds to JCLNG.

Procedures to be used to ensure impartial decision-making: Determination of whether a Section 408 approval is necessary will be made by the Portland District. If Section 408 approval is required, the decision of whether to approve or deny the request may need to be made by the Director of Civil Works. To ensure the funds will not impact impartial decision-making, the following procedures would apply:

- a. No funds received under a Section 214 agreement shall be expended for the District Commander or the Division Commander's consideration and recommendation to the Director of Civil Works regarding the Jordan Cove Energy Project's potential to modify a Corps' project regulated under Section 408.
- b. Draft technical documents, draft decision and recommendation documents resulting from the use of funds obtained from JCLNG under Section 214 will be reviewed and signed by a reviewer who is not funded by the funds received under Section 214 for the Jordan Cove Energy Project Section 408 request.
- c. All final decisions for cases where Section 214 funds are used will be made available on the Portland District website.
- d. The Corps will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application request under consideration.
- e. The Corps will comply with all applicable laws and regulations.
- f. Section 214 funds will only be expended to provide priority review of the participating non-federal entity's Section 408 request. If approval is required and granted, Section 214 funds may also be expended to monitor construction activities.

Impacts to the Civil Works Program: The Corps does not expect priority review of the Jordan Cove Energy Project Section 408 review to negatively impact the District's civil works programs, or to increase the time for evaluations of other projects.

Consideration of Comments: The Corps is soliciting comments specific to this proposal to accept funds under Section 214 of WRRDA 2014 from the public, Federal, state and local agencies and officials, and other interested parties. Comments will be part of the record, and considered in determining whether it would be in the public interest to proceed with this action. If the Portland District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of WRRDA 2014 and is not otherwise contrary to the general public interest, the Portland District will implement Section 214 of WRRDA 2014 through a signed Memorandum of Agreement (MOA) and accept the funds from JCLNG. A second informational public notice will be issued regarding the final decision on this matter.

Provided that the purpose for accepting funds remains the same as that described in this notice, a new public notice is not required in the event that the MOA is amended to extend the term of the agreement; to modify the list of priority projects identified in the MOA; or to adjust the terms of the annual advance payment contemplated under the MOA.

Comments: Interested parties may submit, in writing, any comments directed specifically to this proposal to accept funds under Section 214 of WRRDA 2014, and not to other regulatory processes administered by the Corps or other government agencies pertaining to the JCLNG Project. Comments should refer to Proposed Acceptance of Funds for the JCLNG project (PM-F-JCLNG2015) and the date of this Public Notice, and be postmarked by the comment due date. Comments must be sent to the U.S. Army Corps of Engineers, Portland District, ATTN: Ms. Marci E. Johnson, 333 SW 1st Ave, Portland, OR 97204-3440 or P.O. Box 2946, Portland, Oregon 97208-2946. Alternatively, comments

can be sent electronically to: marci.e.johnson@usace.army.mil, message subject MUST SAY: Public Notice PM-F-JCLNG-2015

For additional information, please call Ms. Marci Johnson at (503) 808-4765. This public notice is issued by the U.S. Army Corps of Engineers, Portland District.