



Oregon

John A. Kitzhaber, MD, Governor

Oregon Coastal Management Program
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March 29, 2012

Colonel John W. Eisenhower, P.E.
U.S. Army Corps of Engineers
Portland District
P.O. Box 2946
Portland, OR 97208-2946

Re: CZMA Consistency Concurrence for the 2012 Reissuance of Nationwide Permits

Dear Colonel Eisenhower:

The Oregon Department of Land Conservation and Development (DLCD) has reviewed the U.S. Army Corps of Engineers (Corps) 2012 Nationwide Permits for consistency with the Oregon Coastal Management Program (OCMP). The Corps announced the nationwide permits, general conditions, and definitions in the February 21, 2012, *Federal Register*, and the Portland District issued final Regional Conditions on March 19, 2012. DLCD reviewed the nationwide permits, together with the general and regional conditions, pursuant to Section 307(c)(1) of the Coastal Zone Management Act and attendant regulations of 15 CFR Part 930.

DLCD is the state's designated coastal zone management agency, and conducts consistency reviews to ensure that federal agency activities affecting any coastal use or resource are consistent to the maximum extent practicable with the enforceable policies of Oregon's federally-approved coastal management program. Oregon's federally-approved program, the OCMP, is a "networked" program that integrates authorities of local governments and other state agencies as the enforceable policies of the OCMP. As such, the enforceable policies of the OCMP include: 1) the statewide planning goals; 2) the applicable acknowledged city or county comprehensive plan and land use regulations; and 3) selected state agency authorities (e.g. those governing removal-fill, proprietary leasing, water quality, fish and wildlife protections, and ocean shore regulations).

I would like to extend my thanks to the Portland District Regulatory Branch staff for working with DLCD and partner agencies throughout the reauthorization process. DLCD appreciates the Portland District's willingness to ensure that activities authorized by the nationwide permits are consistent with the enforceable policies of the OCMP, by incorporating appropriate coastal considerations into the regional conditions and by attaching the standard OCMP coastal zone conditions to nationwide permit authorizations.

Except for the two classes of permits noted below, DLCD conditionally concurs with the Corps determination that the nationwide permits are, to the maximum extent practicable, consistent with the enforceable policies of the OCMP. Consequently, except for the two classes of permits noted below, DLCD grants advance concurrence to activities authorized by the nationwide permits

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provided the Corps attaches and applies the Standard OCMP Coastal Zone Conditions to each issued nationwide permit.

DLCD does not extend advance concurrence to, and will require individual review of, the following two classes of permits:

- Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), except for projects permitted under NWP 1: Aids to Navigation.
- Any project utilizing NWP 29 or NWP 39 that requires a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

The attached discussion provides additional guidance, and DLCD staff are available to assist in this determination.

If you have any questions or concerns regarding this federal consistency review or the coastal management program, please contact Juna Hickner of my staff at 503-373-0050 ext. 253 or by e-mail at: juna.hickner@state.or.us.

Sincerely,



Patricia L. Snow,
Coastal Program Manager

Cc via electronic delivery:

Shelly Hansen, USACE
Judy Linton, USACE
Yvonne Vallette, EPA
Pete Anderson, DEQ

Standard Oregon Coastal Management Program (OCMP) Coastal Zone Conditions

The federal Coastal Zone Management Act provides that federal actions affecting any use or resource of the coastal zone,* including projects permitted by the U.S. Army Corps of Engineers (USACE), must be consistent with the enforceable policies of a State's federally approved coastal management program. Oregon's approved program, the Oregon Coastal Management Program (OCMP), is a "networked" program that integrates authorities of local governments and other state agencies. The coastal zone conditions contained in this document reflect the networked nature of the OCMP, and reference the specific applicable enforceable policies.

In addition to all USACE national and regional permit conditions, permitted projects in Oregon's coastal zone must comply with the following coastal zone conditions.

If an applicant chooses not to follow one or more of the coastal zone conditions, DLCD will object to the permit issuance pursuant to 15 CFR § 930.63(e). In that instance, the permittee may appeal the state's objection by requesting that the Secretary of Commerce override the objection pursuant to 15 CFR 930, subpart H, within 30 days of receipt of the letter informing the applicant of the OCMP's objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the OCMP and the USACE. The Secretary may collect fees from the permittee for administering and processing the override request.

*Oregon's coastal zone generally includes the area lying between the Oregon/Washington border on the north, to the Oregon/California border on the south, seaward to the extent of the state's jurisdiction as recognized by federal law, and inland to the crest of the Coast Range Mountains, excepting:

- (a) The Umpqua River basin, where the coastal zone extends to Scottsburg;
- (b) The Rogue River basin, where the coastal zone extends to Agness; and
- (c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

CZ Condition 1. Consistency with Local Comprehensive Plans

(1) Permitted projects must be consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, including the applicable estuary management plan, or the statewide land use planning goals where applicable. Permittee must obtain required permits or other authorizations from the applicable local government before initiating work under any USACE permit. Permittee must provide USACE and the OCMP with verification of the local jurisdiction's approval in the form of a completed block seven (7) of the Joint Permit Application. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the OCMP coastal zone conditions.

[Enforceable Policy: ORS Chapter 197, Comprehensive Land Use Planning Coordination]

CZ Condition 2. Consistency with Removal-Fill Law

(1) Permitted projects must be consistent with or not subject to the state requirements governing removal-fill in waters of the state. Permittee must obtain required permits or other authorizations from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) Projects requiring a DSL removal-fill permit must compensate for reasonably expected adverse impacts by complying to the full extent with DSL's compensatory mitigation requirements.

(3) Where DSL finds a project not subject to the Removal/Fill Law, permittee must submit to DSL any changes in project design or implementation that may reasonably be expected to require application of the Removal/Fill Law.

(4) All conditions placed on a Removal-Fill permit by DSL are incorporated by reference into the the OCMP coastal zone conditions.

[Enforceable Policy: ORS Chapter 196, Removal of Material; Filling]

CZ Condition 3. Leases of State Lands

(1) Permitted projects must be consistent with or not subject to state requirements governing use of state lands. Permittee must obtain any required lease, license, or other authorization for the use of state lands or waters from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by DSL are incorporated by reference into the OCMP coastal zone conditions.

[Enforceable Policy: ORS Chapter 274, Submersible and Submerged Lands]

CZ Condition 4. Department of Environmental Quality

(1) Permitted projects must be consistent with or not subject to the state requirements governing water quality. Permittee must obtain certification, if required, from the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process before any regulated work may begin.

(2) All conditions placed on a license, permit, or authorization by DEQ are incorporated by reference into the OCMP coastal zone conditions.

[Enforceable Policy: ORS Chapter 468B, Water Quality]

CZ Condition 5. Ocean Shore

(1) Permitted projects must be consistent with or not subject to state requirements governing use of the ocean shore. Permittee must obtain, if required, an ocean shore permit from the Oregon Parks and Recreation Department (OPRD) before any regulated work may begin.

(2) All conditions placed on an Ocean Shore permit by OPRD are incorporated by reference into the OCMP coastal zone conditions.

[Enforceable Policy: ORS Chapter 390, Ocean Shores]

CZ Condition 6. Aquaculture

(1) Permitted projects must be consistent with or not subject to state requirements governing commercial aquaculture or mariculture cultivation of oysters, clams, and mussels. Permittee must obtain, if required, authorization from the Oregon Department of Agriculture (ODA) for use of state submerged and submersible lands for aquaculture purposes.

(2) All conditions placed on an aquaculture or mariculture operation by the ODA are incorporated by reference into the OCMP coastal zone conditions.

[Enforceable Policy: ORS Chapter 622, Shellfish]

Guidance: Permits Requiring Individual Review

The Oregon Department of Land Conservation and Development (DLCD) has not extended advance concurrence to, and will require individual review of, the following two classes of permits:

1. Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), except for projects permitted under NWP 1: Aids to Navigation.
2. Any project utilizing NWP 29 or NWP 39 that requires a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

The District Engineer shall be responsible for determining when proposed projects meet either of these circumstances. The discussion below provides additional guidance, and DLCD staff are available to assist in this determination. For projects not afforded advance concurrence, DLCD will undertake an individual review of the project to ensure consistency with the Oregon Coastal Management Program (OCMP).

Territorial Sea

Oregon's Territorial Sea extends from the shoreline seaward for a distance of three (3) nautical miles. Except for projects permitted under NWP 1: Aids to Navigation, DLCD must individually review any project which occurs on or under the Territorial Sea, or on or beneath the sea bottom, for consistency with the OCMP. In addition, DLCD will individually review any project which results in new or increased activity or impacts on or under the Territorial Sea.

Examples of projects requiring an individual review include:

- Construction of an offshore structure or platform;
- Installation of water-based renewable energy devices and related infrastructure;
- Installation of a buried or exposed cable;
- A new or expanded port facility which increases ship traffic in the Territorial Sea;
- A new or relocated shipping channel in the Territorial Sea.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.

NWP 29 and 39

DLCD must individually review any project authorized by NWP 29 or 39 **and** requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. Block seven (7) of the Joint Permit Application identifies such projects.

Examples of projects requiring an individual review include projects where block 7 indicates one of the following:

- The project is **not** consistent with the comprehensive plan;
- The project would require an amendment to a comprehensive plan;
- The project would require a change in zoning;
- The project would require an exception to a Statewide Planning Goal.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.

