

Identification of Local Land Use Provisions Applicable to Columbia River Channel Improvement Project

This exhibit is submitted by the sponsoring ports as an exhibit to the Corps of Engineers application for 401 water quality certification for the Columbia River Channel Improvement Project (the "Project"). This exhibit identifies the specific provisions of the appropriate Oregon local land use plan and implementing regulations that are applicable to the proposed project. It describes the relationship between the proposed project and each of the provisions and discusses the potential direct and indirect relationship to water quality of each of the identified provisions.

The Project implicates land use plans and regulations in three Oregon jurisdictions: Clatsop County, Columbia County and Multnomah County. Each of those jurisdictions' comprehensive plans and implementing regulations were reviewed to identify potential applicable provisions and those provisions were analyzed to describe the relationships between the Project and the applicable provisions, addressing the relationship to water quality of the provisions. The results of that analysis are set forth below.

CLATSOP COUNTY

Potentially Applicable Requirements and Analysis

The specific provisions of the Clatsop County Comprehensive Plan and Zoning Ordinance, which incorporates the Dredged Material Management Plan (DMMP) prepared by the Columbia River Estuary Study Team (CREST), that are applicable to the project are identified and analyzed in the Consistency Determination submitted to the Department of Land Conservation and Development.

The Consistency Determination notes that the Miller Sands site identified in the DMMP is smaller than that which has actually been used by the Corps of Engineers and that the Welch Island site, which has been used since the 1970s, is not formally designated in the DMMP. The Determination further explains that the DMMP states that it "is not intended to be an exhaustive list of possible disposal sites and in no way restricts the disposal of dredged materials to designated sites only." CREST has recently revised the DMMP so that it is consistent with actual site usage at Miller Sands and Welch Island. These revisions have not yet been adopted by Clatsop County; however, the site designation issues and the continued use of these upland deposal sites do not appear to present water quality issues that have not been previously considered. The Department of Environmental Quality most recently certified that the use of these sites for disposal complied with state water quality standards on June 5, 2000.

The Consistency Determination also identifies flowlane disposal at depths up to a maximum of 65 feet and proposes a plan exception under the procedures outlined in OAR 660-004-0020 for disposal at greater depths.

COLUMBIA COUNTY

Potentially Applicable Provisions

The Columbia County land use planning program is implemented through the Columbia County Comprehensive Plan (“CCCP”) and the Columbia County Zoning Ordinance (“CCZO”).

The CCZO addresses dredging only in a manner unrelated to water quality (in the context of the Flood Hazard overlay zone, by defining “development” to include dredging and requiring that any “development” not increase the base flood level). The CCZO does not otherwise regulate dredging in the Columbia River in any manner that implicates water quality.

The CCCP does address water quality issues in Part XVI, which implements statewide planning goal 5 addressing the protection of natural resources, and in Part XVII, which implements statewide planning goal 6, addressing water quality.

The portion of Part XVI applicable to this project is that portion dealing with “riparian areas,” which classifies this portion of the Columbia River as a “Class I” river.¹ Part XVI notes that “the majority of potentially conflicting land use activities are regulated by state and federal agencies . . . [and], to limit the consequences of conflicting uses and [to] protect the riparian area, the County is relying on these state and federal programs.” However, the County has adopted an overlay zone to protect riparian vegetation within the area and on adjacent lands.

Section 1170 of the CCZO implements the “riparian areas” of Part XVI and an “area of riparian vegetation” extending 50 feet landward of the ordinary high-water mark. No structures (except fences and signs) are allowed in the riparian vegetation area, unless the Department of Fish and Wildlife is consulted and the vegetation does not actually extend all of the way to the proposed structure. Section 1170.3 sets standards requiring that “no more of a tract’s existing vegetation shall be cleared from the setback and adjacent area than is necessary,” and that construction activities shall occur so as to avoid “unnecessary excavation and/or removal of existing vegetation beyond that required for facilities.” At most, 25 percent of the vegetation may be removed from a riparian area.

Analysis

For the Project’s upland disposal sites, very little clearing will occur. No vegetation clearing will occur at the Sand Island site, a beach nourishment site, the Reichold Chemical site, an existing disposal site, Lower Deer Island, an existing disposal site, Sandy Island, an existing disposal site,² Rainier Beach, a previous dredge disposal site,³ Port Westward, an existing disposal site, and James River, an existing disposal site.

¹ A Class I river is defined as “waters which are valuable for domestic use, are important for angling or other recreation, and/or used by significant numbers of fish for spawning, rearing or migration routes. Stream flows may be either perennial or intermittent during parts of the year.” Class I rivers are shown on Map 47 of the Comprehensive Plan.

² The Sand Island site does have some scotch broom and cottonwood vegetation, which will not be removed prior to placement of dredged material.

³ Rainier Beach also has scotch broom, which will not be cleared prior to placement of dredged material.

Only incidental grubbing and clearing is required for Glacier NW/Lonestar to accommodate a 7500' pipeline from the mouth of Santosh Slough to the depleted gravel pit. No more of the vegetation will be cleared than is necessary to establish the pipeline. Similarly, only minor brush and blackberry brush exist at the Railroad Corridor site, almost entirely beyond the riparian area. Dibbley Point, an existing disposal site, will require some light clearing, but none within the riparian area, as defined by the CCCP. Lord Island, an existing disposal site, will require clearing, as trees and brush have begun growing on the site; however, no clearing will occur in the riparian area. Crims Island, an existing disposal site, will require some minor brush clearing, but none in the riparian area.

The dredging itself does not affect the riparian area. Disposal of the dredged materials on upland sites could affect the riparian area; however, each of the upland sites is currently being used for the disposal of dredged materials and the effects from disposal of materials from the deepening project will be the same as the effects from the current disposal of materials from maintenance dredging. No additional vegetation should be removed or otherwise affected by the disposal at the upland sites.

The one disposal site not currently in use as a disposal site is the Lonestar site. It is located on the southeastern corner of a large open pit mining area. The proposed disposal would fill only a small portion of the mining area where no riparian vegetation exists. As such, there is no riparian vegetation on the site that would be affected by the disposal of dredged materials.

The portion of Part XVII of the CCCP that applies to water quality issues relies mainly on federal and state programs. The only applicable water quality policy from the CCCP provides as follows: “[W]ork with the appropriate state and federal agencies to ensure that state and federal water . . . quality standards are met.” As such, there are no other specific provisions of the Columbia County Comprehensive Plan or Zoning Ordinance directly or indirectly related to water quality that are applicable to this project.

MULTNOMAH COUNTY

Potentially Applicable Provisions

The Multnomah County Framework Plan (“MCFP”) contains a section on “Natural Environment Policies” and Policy 13 specifically addresses “Air, Water and Noise Quality.” The introductory section of Policy 13 discusses the fact that the federal government has taken the lead role in requiring regional solutions to environmental problems, but recognizes that state and local initiatives may be necessary in the future to mitigate different types of pollution, including water pollution. The text of Policy 13 addresses only noise pollution; however, the strategies to implement Policy 13 do include specific water quality provisions. In particular, Strategy 2 recognizes that water quality “enforcement should be provided by the appropriate Federal and State agencies. Policy 1(a) requires the County to maintain staff capability to advise the legislative body and its representatives on Federal and State water quality standards and programs, and 1(b) requires cooperation in regional efforts to maintain and improve water quality.

Policy 33B, on the Marine Transportation System, recognizes that the 40-foot Columbia River shipping channel is an integral part of the national transportation system, which has significant economic and social impacts on the County, as well as Portland and the rest of the State. That

policy is designed to ensure that the County takes appropriate actions to provide for needed marine transportation system facilities in the County, and discusses the federal government responsibility to maintain and improve the navigation channel.

MCC 11.15.6406(C), exempts “customary dredging and channel maintenance” and “uses legally existing on November 17, 1994” from the requirement for a permit.

Analysis

Multnomah County has no specific water quality requirements applicable to any features of the Project.

The only upland disposal site in Multnomah County is the West Hayden Island site, which is currently used as a dredged material disposal site and has been since at least 1994. The West Hayden Island site is in Multnomah County, but zoning and planning for the site are administered by the City of Portland under an intergovernmental agreement. No permit is required for the site because of the exemption under MCC 11.15.6406(C).

CONCLUSION

For the reasons noted above, the Project conforms to the applicable water quality regulations of the affected local jurisdictions. Neither Columbia nor Multnomah County’s comprehensive plan or implementing regulations directly or indirectly deal with the actual dredging of the river. Instead, they rely on federal and state programs to ensure appropriate water quality. For the upland sites, each of the sites conforms to all applicable water quality related plan provisions and regulations. For Clatsop County, the DMMP addresses most of the water quality related issues from the Project. With the exception noted in the Consistency Determination, the Project will conform to all applicable water quality provisions required by Clatsop County. Accordingly, there are no local land use regulatory impediments to the issuance of a 401 Certification for the Project.