



Oregon

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June 23, 2003

Colonel Richard W. Hobernicht
U.S. Army Corps
Portland District
P.O. Box 2946
Portland, OR 97204-2946

Dear Colonel Hobernicht,

SUBJECT: Proposed Deepening of the Columbia River Federal Navigation Channel Coastal Zone Management Decision

The Department of Land Conservation and Development (DLCD), as Oregon's lead coastal zone management agency pursuant to the federal Coastal Zone Management Act (CZMA), has completed its review of the revised Corps of Engineers (Corps) proposal for channel deepening and subsequent maintenance of the Columbia River federal navigation channel. The project is described in the Corps revised consistency determination and supporting documentation. Briefly, the navigation channel would be deepened by 3 ft. (plus standard 5 ft. overdepth and 100 ft. overwidth dredging) from Columbia River Mile 3 to 106.5. A disposal plan for dredged materials resulting from deepening and the next twenty years of channel maintenance has been provided. Ecosystem restoration projects have also been included as part of the proposed project.

The purpose of DLCD's coastal zone management (CZM) review has been to evaluate the consistency determination and supporting information submitted by the Corps for the proposed deepening project against the policies of the federally approved Oregon Ocean-Coastal Management Program (OCMP). The policies of the OCMP are found in: (1) the Statewide Planning Goals; (2) applicable coastal city or county comprehensive plans and local land use regulations acknowledged by the Land Conservation and Development Commission (LCDC) as complying with the goals; and (3) certain other state statutory authorities. The consistency determination submitted by the Corps states that the proposed federal action, with one exception, would be consistent to the maximum extent practicable with the OCMP.

The Department's decision is based on careful review of the Corps CZM submittal, applicable policies of the OCMP, and public comments received during the review process. Findings supporting this decision are enclosed and incorporated herein by reference. The findings document provides the detailed explanation of the reasons for and information supporting the Department's CZM decision. The findings document also contains a summary project description (Appendix A) and a record of the documentation submitted by the Corps for DLCD's consideration in the CZM review (Appendix B).

DECISION: Subject to the following limiting conditions, DLCD hereby concurs with the Corps determination that the channel deepening project can proceed in a manner consistent to the maximum extent practicable with the OCMP. DLCD briefly summarizes within this decision letter the rationale for

the CZM conditions and identifies the specific policies behind the conditions. The findings document explains in detail why these conditions are necessary to ensure consistency with the OCMP. Again, the findings document is incorporated by reference.

I. MANDATORY CONDITIONS – ADAPTIVE MANAGEMENT PROCESS

(1) The Corps shall develop and implement an adaptive management program for the Project to address the potential for coastal zone effects and to cooperatively ensure continued compliance with the OCMP over the life of the Project. The adaptive management program shall be implemented through the procedures specified below. The adaptive management process shall be used to address potential, long-term effects of dredging and dredged material disposal on estuarine habitats, and biological estuarine resources.

Where conditions of this concurrence decision require adaptive management, an Adaptive Management Team (AMT) will be used to review and/or develop data, information or issues, and to arrive at a consensus regarding how to respond. The AMT will consist of three teams: a technical team, a management team and a dispute resolution team.

- a) ***The Technical Team:*** The technical team will review research, monitoring and other data, information and issues relevant to the adaptive management conditions, and determine actions to be taken in response to such data, information and issues. In addition, the technical team will coordinate with the federal adaptive management process created under the Biological and conference opinions. The technical team will act by consensus. In the event that the team is unable to achieve a consensus within a reasonable time under the circumstances, any member of the team may refer the matter to the management team.
- b) ***The Management Team:*** The management team will review matters referred by the technical team and provide oversight to the technical team and the Corps in order to help coordinate the requirements of the state and federal agencies related to the Project. The management team will act by consensus. In the event that the team is unable to achieve a consensus within a reasonable time under the circumstances, any member of the team may refer the matter to the dispute resolution team.
- c) ***The Dispute Resolution Team:*** The dispute resolution team will review matters referred by the management team. The dispute resolution team will act by consensus. In the event that the team is unable to achieve a consensus within a reasonable time under the circumstances, the matter in question shall be resolved by the federal or state agency or agencies with regulatory jurisdiction.
- d) ***Membership of Teams:*** Each team will include one or more members from DLCD, Oregon Department of Environmental Quality (DEQ), Washington Department of Ecology (WDOE), and the Corps. The members of the dispute resolution team will be the Directors of the state agencies, and the Commander of the Portland District of the Corps. The members of the other teams will be designees of the state agencies and the Commander of the Portland District of the Corps. The state agencies will designate one person to coordinate the activities of the teams, which responsibility will be rotated between the two states over time. The teams will consult with local governments, Indian Tribes, other state and federal agencies, and involve the public, as appropriate under applicable state and federal laws and policies.

- e) **Consensus:** A group may act by consensus where no member of the group formally opposes the particular action in question.
- f) **Savings Provision:** No provision of this condition is intended to or does alter or supercede the authorities or duties of the DLCD, DEQ, or WDOE relating to the Project. In addition, this condition is not intended to, and does not alter, limit, or repeal any authorities of DEQ, DLCD or WDOE to revoke, suspend, or modify their respective §401 water quality certifications or CZM decisions, or to request remedial action, seek mediation, or to request supplemental coordination with respect to the construction and continued operation of the Project.

Rationale: The purpose of an adaptive management program is to provide further assurance that: (a) the Project will not have coastal zone effects greater than those anticipated by the Corps, (b) that any unanticipated Project effects or changes in environmental conditions will be addressed, (c) that the conditions on this concurrence decision will be implemented, (d) that the conditions of this concurrence decision will have the expected effects, and (e) to address the 20 year timeframe of the Project.

Policies: Goal 16, 17, 19, Clatsop County policies P20.5(1), (2), (4), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

II. MANDATORY CONDITIONS – ESTUARY DREDGING AND DISPOSAL

(1) Implementation of the following conditions shall be addressed through the adaptive management program specified in Condition I (1), above:

Rationale (for (a)-(f) below): This condition addresses current scientific uncertainties and risk regarding potential impacts to sturgeon, Dungeness crab, smelt, salmonids, physical parameters, and estuarine habitats over the projected 20-year life of the Project. This condition will ensure that impacts to estuarine resources and habitats are avoided and minimized to the extent possible over time and that any significant, unavoidable impacts are appropriately addressed. Actions required under sub-conditions (a) – (f) must use the adaptive management process described in Condition I (1), above, as a means of coordinating between DLCD and the Corps to address the uncertainties inherent in the proposed long-term activities of the Corps regarding dredging and disposal work in the estuary. The actions required under this condition will ensure continued compliance with estuarine policies of the OCMP.

- a) **Dungeness Crab:**
- (i) **The Corps will conduct additional study of crab entrainment to assess seasonal variations and salinity influence on entrainment rates, and to assess differences among various class sizes (e.g. age O+, 1+, 2+).**
 - (ii) **The Corps shall continue with its efforts to develop a crab distribution and salinity model and shall use the best available model as a management tool for scheduling dredging and disposal in the lower estuary to avoid and minimize entrainment and adverse effects of disposal.**
 - (iii) **The Corps will develop and adhere to a crab mitigation strategy designed to avoid and minimize entrainment of Dungeness crab. The strategy shall specify impact thresholds and compensatory mitigation contingencies for unavoidable impacts to Dungeness crab, and shall be developed through the adaptive management process specified in Condition I (1), above.**

- (iv) **Hydraulic dredging and flow-lane disposal occurring below river mile 17 and in known or suspected areas of overall high crab abundance, shall be conducted during seasons or river conditions of least crab abundance. The seasons or river conditions of least abundance shall be determined through entrainment sampling at dredging sites correlated with real-time flow and salinity data or through application of a salinity-crab model once a final, scientifically rigorous model is available.**

Policies: Goal 16, Clatsop County policies P20.5(1), (2), (4), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

b) Sturgeon:

- (i) **The Corps shall continue to utilize the bi-state sturgeon work group to identify and carry out appropriate mitigation measures pending various sturgeon study outcomes.**
- (ii) **The Corps shall adjust dredging and disposal operations as appropriate, and as indicated utilizing the adaptive management process specified under Condition I (1), if results of the on-going sturgeon telemetry studies indicate negative response in sturgeon behavior to dredging and disposal operations.**
- (iii) **The Corps shall study the long-term response of sturgeon to habitat changes in deepwater habitat areas (>50 ft. depth) generated or reasonably likely to be generated from planned flow-lane disposal.**

Policies: Goal 16, Clatsop County policies P20.5(1), (2), (4), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

c) Eulachon (Smelt):

- (i) **No in-water disposal should occur during the period of peak eulachon outmigration (between the 8th and 20th weeks of the year) downstream from identified spawning areas (river miles 35-75). If in-water disposal is essential during the period of peak outmigration, then the Corps shall further study the potential for eulachon losses as a result of dredged material disposal impacts as determined through the adaptive management process required under Condition I (1). Appropriate mitigation measures shall be developed based on the study outcomes, as determined through the adaptive management process required under Condition I (1).**

Policies: Goal 16, Clatsop County policies P20.5(1), (2), (4), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

d) Salmonids:

- (i) **The Corps shall comply with the Best Management Practices, including timing windows, for dredging and disposal identified in the project Biological Assessment and referenced in the federal ESA Biological Opinions for the project, unless modified through the federal adaptive management process to further avoid and minimize impacts to salmonids.**
- (ii) **In the event that substantial, unauthorized deviations from the Best Management Practices occur during dredging and disposal operations, the Corps shall document**

the occurrence(s) along with the response and remedies implemented. This information will be made available upon request and will be shared through the adaptive management process.

- (iii) The Corps shall provide DLCD with all reports, meeting notices, monitoring and research data, management findings, and other similar information generated under the federal adaptive management process outlined in the project Biological Assessment, the Biological Opinions issued by NOAA Fisheries and U.S. Fish and Wildlife for the project, and the Implementation Plan for the Biological Opinions.**
- (iv) The Corps shall provide at least 30 days prior notice regarding issues and actions coming before the federal adaptive management team so that it is possible for the state to provide meaningful input to the federal adaptive management process outlined in the project Biological Assessment, the Biological Opinions issued by NOAA Fisheries and U.S. Fish and Wildlife for the project, and the Implementation Plan for the Biological Opinions. In addition, the Corps will report in a timely manner on all issues considered and actions taken through the federal adaptive management process.**

Policies: Goal 16, Clatsop County policies P20.5(1), (2), (4), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

e) Sediment Budget/Habitat:

- (i) Bathymetric data collected by the Corps as part of project monitoring (Corps monitoring action #MA-3) shall be assessed for temporal and spatial bathymetric changes in the estuary region with respect to potential impacts on sediment budget and estuarine habitats. The cross-sectional and longitudinal coverage of the data collection shall be sufficient to allow for analysis of these potential impacts. The Corps shall report in writing on its findings at least once during construction and after completion of data collection in year 3 after construction. Should any unanticipated, negative impacts become evident, the adaptive management program specified in Condition I (1) will be used to determine an appropriate response.**
- (ii) The Corps shall pursue a regional sediment management program that encompasses the Project as well as other Columbia River navigation projects. High priority will be given to development of nearshore dredge disposal sites that can be shown to effectively contribute to the littoral sediment budget. When available for use, such nearshore sites should be given priority over estuarine in-water disposal and deepwater ocean disposal as a way to minimize potential disposal impacts to coastal zone resources.**

Policies: Goal 16, Clatsop County policies P20.5(1), (2), (4), (9), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

f) Mitigation and Monitoring:

- (i) Adaptive management actions shall occur within the framework of the mitigation sequence: avoid impacts first, minimize impacts second, and compensate for any significant, unavoidable impacts. Impact thresholds that would trigger compensatory mitigation and appropriate and feasible compensatory mitigation options shall be established through the adaptive management process specified in Condition I (1).**

- (ii) **In addition to the proposed assessment of monitoring data with respect to indicators for salmonids, the Corps shall to the maximum extent possible assess monitoring data generated under Corps monitoring actions MA-1, MA-2, MA-3, MA-4, and MA-5 with respect to potential, long-term effects of dredging and dredged material disposal on other coastal zone species, such as sturgeon, smelt, and Dungeness crab. DLCD will be informed of such monitoring results or changes in monitoring recommended by the federal adaptive management team related to these monitoring actions. {The indicators listed in Term and Condition 4e are basic parameters that have relevance to issues broader than salmonid impacts.}**
- (iii) **Progress on planned studies, monitoring, and other project-related data collection shall be discussed within the adaptive management process specified in Condition I (1). The Corps shall provide at least 30-day notice of opportunities to comment on proposed actions. Final study results and data shall be assessed by the Corps for any implications with respect to entrainment impacts, disposal impacts, potential use of timing windows for maintenance dredging & disposal affecting sturgeon and Dungeness crab, effects of any salinity changes on Dungeness crab, and other potential impacts to estuarine habitats and species.**
- (iv) **The Corps shall explain in writing to DLCD the significance of any new information developed or discovered in these efforts for potential project effects on estuarine species and habitats. All data and summary reports shall be made available to DLCD within a reasonable amount of time, not to exceed 30 days, after completion.**

Policies: Goal 16, Clatsop County policies P20.5(1), (2), (4), (10), (11), P20.12, Clatsop County standards S4.232(14)-(17), S4.239(3)-(4).

(2) The Corps shall provide copies of final dredge contracts and orders to DLCD upon request. Copies shall be provided in a reasonable amount of time (not to exceed 30 days) after receipt of the DLCD request.

Rationale: Monitor dredging and disposal actions as necessary to ensure adherence to plans submitted to and reviewed by DLCD, including the best management practices for dredging and disposal operations as proposed in the CZM submittal.

Policies: Goal 16, Goal 17, Clatsop County policies P20.5(1), (2), (10), (11), P20.12, Clatsop County standards S4.232(16)

(3) The Corps shall monitor its use of upland disposal sites to ensure dredged material placement is within site boundaries such that estuarine aquatic areas are not converted to uplands. Monitoring shall be accomplished by comparing currently available information on site conditions with aerial photos taken periodically at the same tidal level and at a scale of 1:24,000 or larger. No measurable conversion of estuarine aquatic areas to upland is authorized under this decision.

Rationale: This condition is necessary to ensure that estuarine habitat area is not lost over-time through the practice of dredged material disposal.

Policies: Goal 16, Goal 17, Clatsop County policies P20.5(2), (4), (9)

(4) Flow-lane disposal shall be restricted as follows:

- a) **Flow-lane disposal within Oregon waters in areas deeper than 65 ft. around Columbia River Mile 5 and between Columbia River Miles 27 to 42 is not authorized. The Corps shall not conduct flow-lane disposal of materials from the construction of this Project, or of subsequent maintenance materials from this Project, in estuarine waters deeper than 65 ft. until and unless an exception or change to the Clatsop County depth policy has been granted by the county.**
- b) **Flow-lane disposal within Washington waters in areas deeper than 65 ft. between Columbia River Miles 27-42, 54-56, and 72-73 shall not be conducted unless it is carried out in accordance with applicable regulatory decisions of the State of Washington. Flow-lane disposal in this vicinity shall be modified or halted if monitoring or research findings indicate negative impacts to sturgeon, an Oregon coastal zone resource, through direct disposal impacts or long-term changes in bottom habitats. If such impacts are documented, modified flow-lane disposal shall be allowed only as determined through the adaptive management process specified in Condition I (1).**

Rationale: Sturgeon use of deepwater areas in general and crab use in the vicinity of CRM 5 are particular concerns. The Clatsop County depth restriction on flow-lane disposal addresses protection of deepwater habitats and estuarine species from the potential negative impacts of dredged material disposal in deepwater locations. The condition ensures proper consideration of the Corps interests in dredged material disposal in deepwater flow-lane areas through the appropriate governmental process. This condition also acknowledges that the State of Washington has primary jurisdiction over coastal zone management and water quality impacts in Washington waters while preserving Oregon's rights to address impacts to coastal zone resources that move across state boundaries. Furthermore, this condition ensures that flow-lane disposal within the estuary will be monitored in order for the Corps to avoid and minimize impacts to estuarine habitats and resources.

- c) **All flow-lane disposal shall be monitored to assess at a minimum: changes in estuarine sedimentation and bathymetry and potential direct and indirect effects of disposal on estuarine species. The Corps shall also monitor the effects of flow-lane disposal at CRM 5 and 27-42 to ensure that in-water disposal does not have adverse hydraulic affects. The Corps will use the adaptive management process under Condition I (1) to report monitoring results and to develop any necessary actions to ensure that there are no significant adverse effects from flow-lane disposal.**

Rationale: This condition is required to ensure that potential impacts to estuarine species and habitats are identified and (if identified) avoided and minimized over time

Policies: Goal 16, Clatsop County policies P20.5(2), (4), (10), (11), Clatsop county standards S4.232(14), (16), (17)

(5) The Corps shall develop and implement a communication and coordination program focused on avoiding and minimizing conflicts between dredging and disposal operations and in-river commercial and recreational fishing. A copy of the communication and coordination program shall be provided to DLCDC for its review, prior to construction of the Project.

Rationale: This condition is required to ensure that potential conflicts between existing and continuing in-river uses (i.e. dredging and disposal for navigation and commercial/recreational fishing) are acknowledged, avoided and minimized.

Policies: Goal 16, Clatsop County policies P20.5(1), (3), (11), Clatsop County standards S4.206(7), S4.232(4), (15)

(6) The Corps shall obtain a final §401 water quality certification for the proposed project from the Oregon Department of Environmental Quality (DEQ). The Corps shall comply with any conditions placed on the §401 certification. The Corps shall not proceed with any part of the proposed project that requires §401 certification prior to receipt of a final certification from DEQ, including project maintenance after year 3.

Rationale: This condition is required to ensure that dredging and disposal actions are carried out in a manner that does not result in unauthorized impacts to estuarine water quality. Based on the record, including DEQ's statement to DLCD that it has preliminarily determined that the proposed federal action will (with appropriate conditions) comply with Oregon water quality statutes, DLCD concludes that the Corps's Project can comply with Goal 6 and the water quality related components of Goal 16 and with other elements of the OCMP relating to water quality, and that compliance will be ensured if DLCD's decision is conditioned upon the §401 certification and the Corps' compliance with the conditions of that certification.

Policies: Goal 6, 16, ORS chapter 468B, Clatsop County policies P20.5(1), (2), (10), (11), Clatsop County standards S4.232(5), (14), (16), City of Astoria policies CP.150, CP.185, City of Astoria standards Section 4.050, 4.070

(7) The Corps and DLCD shall meet annually to review implementation of the Project and the status of compliance with the conditions of the CZM decision. The agencies may mutually agree to an alternative meeting schedule.

Rationale: Provide a forum for continued discussion of dredging and disposal work in the estuary and to ensure continued compliance with this CZM decision

Policies: Goal 16, Goal 17

(8) After construction of the deepened channel has been completed and no later than the 5th year of Project maintenance, the Corps shall update its dredged material disposal plan. The Corps dredged material disposal plan will then be updated at least ever 5 years there after for the life of the Project unless DLCD and the Corps agree to an alternative schedule. Disposal plan updates shall cover:

- **disposal site use to date in terms of volumes placed and locations used,**
- **verification that disposal of dredged material has occurred within site boundaries and in accordance with the conditions of this concurrence decision**
- **remaining disposal site capacities,**
- **estimated disposal volumes for the upcoming 5-year interval,**
- **any relevant monitoring and research data regarding disposal impacts to estuarine habitats and species, and**
- **changes in disposal plans resulting from the federal or state adaptive management processes.**

Rationale: This condition is required to ensure that the dredged material disposal plan incorporates best management practices for future disposal operations and to ensure that modifications to disposal plans are disclosed and discussed, and that, if necessary, appropriate CZMA reviews are completed. An updated disposal plan is necessary to reflect new information and to allow for adaptive management in response to new information and unforeseen circumstances.

Policies: Goal 16, Goal 17, Clatsop County policies P20.5(2), (4), (10), (11), Clatsop County review standards S4.232(14), (16), (17)

(9) The Welch Is. and Miller Sands disposal sites shall be addressed as follows: Welch Is. may not be used as sites for disposal of dredged material as a result of this Project until Clatsop County has completed the update of the Columbia River Dredged Material Management Plan (CRDMMP) to designate the site as an upland disposal site. Miller Sands shall not be utilized as a result of the Project beyond the footprint of the currently designated site until Clatsop County has completed the update of the CRDMMP to fully designate the site as an upland disposal site.

Rationale: This condition is necessary to align past disposal actions and proposed disposal use of these two sites with the requirements of Statewide Planning Goals 16, 17 and the associated county management program for the Columbia River estuary.

Policies: Goals 16, 17, Clatsop County policies

(10) The Corps shall submit a supplemental consistency determination for activities encompassed within the Project that are, or are planned to be, modified in a manner such that the potential effect of the modified action on coastal uses or resources will be substantially different than those effects considered by DLCD in this 2002-2003 review of the Project. Substantially different coastal zone effects are reasonably foreseeable if:

- **The Corps makes a substantial change in a proposed activity that is relevant to the policies of Oregon’s coastal management program; or**
- **There are significant new circumstances or information relevant to the proposed activity and the proposed activity’s effect on any coastal use or resource.**

DLCD reserves the right to require a supplemental consistency determination if, after consultation with the Corps, we determine that major modifications are proposed that could have substantially different coastal zone effects.

Rationale: While DLCD’s conditional concurrence establishes an adaptive management process {Condition I (1)} that is designed to respond to uncertainty and new information, it does not remove the requirements under federal and state law for modifications to the Project that meet the thresholds for supplemental coordination through normal public processes for such changes. This condition is intended to ensure that the procedural requirements of federal and state law are met as the Project is carried out over time.

Policies: Statewide Planning Goals 2 and 16 {Note: These requirements are also directly applicable to the Corps through 15 CFR 930.31(e) and 930.46.}

(11) The Corps shall keep DLCD informed of the initiation of and outcomes of other state and federal regulatory reviews for channel maintenance actions. The Corps shall specifically address any implications of these reviews and associated regulatory decisions in terms of the anticipated coastal zone effects of the project or the Corps compliance with this decision.

Rationale: DLCD understands that the NOAA Fisheries Biological Opinion for the maintenance project is scheduled for review in 2004 and that the §401 water quality certification for channel maintenance requires renewal by DEQ in 2005. This condition provides for continued discussion of dredging and disposal work in the estuary to ensure continued compliance with this CZM decision and will ensure that modifications to dredging and disposal plans are disclosed and can be discussed. This process will facilitate the update of dredging and disposal plans as necessary based on developing information.

Policies: Goal 6, Goal 16, Goal 17, ORS chapter 468B

(12) In the event that any condition of this concurrence decision is found to be invalid by a court or agency with jurisdiction to review this concurrence decision, the concurrence decision is revoked when the order of such court or agency becomes final and any pertinent appeal periods have ended.

Rationale: Goal 16 and county policies implementing Goal 16 provide for protecting and maintaining the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries. Applying Goal 16 and the policies implementing it necessarily requires consideration and balancing of environmental, economic, and social effects of a proposed action. If a particular condition or set of conditions is invalidated, DLCD will need to reassess this balance and determine whether the decision remains consistent with Goal 16 and the state and local policies implementing Goal 16.

Policies: Goals 2, 16, 17, 19.

III. MANDATORY CONDITIONS - ECOSYSTEM RESTORATION PROJECTS

(1) Placement of dredged materials at the Miller-Pillar ecosystem restoration site is not authorized under this decision. The Corps shall dispose of the dredged material slated for the Miller-Pillar site at an alternative location or locations. The Corps shall notify DLCD in writing of the alternative site or sites selected, and a supplemental consistency determination shall be submitted for any alternative site or sites that is subject to the OCMP and that has not been evaluated through this review.

Rationale: This condition avoids placement of dredged material in the estuary in conflict with applicable CZM policies while acknowledging the availability of other disposal alternatives that would be consistent with applicable CZM policies. The Miller-Pillar project conflicts with Goal 16 and county policies regarding protection of the resource capabilities of the aquatic conservation area and commercial fishing. In addition, the Corps has identified at least one feasible alternative – ocean disposal in a “deepwater” site - to the placement of dredged material in this estuarine location. The Corps may also consider the use of existing estuarine upland sites, existing estuarine in-water sites, Benson Beach, the “deepwater” ocean disposal site (“103” or “102”), or reduced dredging of the estuary as alternatives to the proposed activity at the Miller-Pillar site. In the event that the Corps wishes to pursue other alternatives not already evaluated through this review, DLCD strongly suggests that the Corps consult with state and local interests before committing substantial resources to such alternatives.

Policies: Goals 16, 17, 19, Territorial Sea Plan, Clatsop County policies P20.2(1), P20.6(2), P20.12, S4.206(6), S4.209(2), S4.232(1),(15).

(2) The Corps may complete the estuarine enhancement component of the Project at Lois Island, subject to the following requirements:

- a) **The estuarine enhancement component of the Project at Lois Island must be carried out as described in the following documents, except as specifically modified by the terms of this condition: the Plan Elements for Restoration of Tidal Marsh Habitat at Lois Island Embayment/Response to Oregon Division of State Lands, 6/2/2003; the Implementation Plan (for meeting the terms and conditions contained in the Biological Opinion), 3/2003; chapter 4 of the FSEIS; and section 8 of the Biological Assessment, 12/2001. In the event of**

a conflict between the requirements of these documents, they shall take precedence in the order listed.

- b) Pipeline dredging of material from the temporary construction sump to the Lois Island enhancement component of the Project will occur during the November 1 through February 28 in-water work period.
- c) The overall goal of the Lois Island enhancement component of the Project is to enhance 191 acres of habitat, as intertidal marsh suitable for salmonid rearing. In carrying out this component of the Project, the Corps must achieve a long-term improvement of existing estuarine functional characteristics, while also ensuring that the existing biological productivity of the estuary is maintained. The primary functional characteristics that must be improved for this component of the Project are habitat for juvenile salmonid rearing. The biological productivity and functions that must be maintained are the productivity and functions that result from the Select Area Fishery program at Tongue Point.
- d) The overall goal of the Lois Island enhancement component of the Project will be achieved when, using the following success criteria, as measured over a one-year period at least two years after completion of construction of this component of the Project:
 - (i) dredged material is placed at a target elevation of approximately 6.5 feet mean lower low water (MLLW); final elevations will be based on elevation surveys of existing tidal marsh habitat (control area) adjacent to the enhancement area, as set forth in ERF 1 of the Implementation Plan;
 - (ii) tidal marsh plant cover is at least 75 percent of the plant cover at control sites, as set forth in ERF 1 of the Implementation Plan;
 - (iii) benthic invertebrate productivity is at least 75 percent of the levels measured at control sites, as set forth in ERF 1 of the Implementation Plan;
 - (iv) juvenile salmonid/fisheries occurs at levels at least 75 percent of the level at control sites, as set forth in ERF 1 of the Implementation Plan;
 - (v) the biological productivity of the Select Area Fishery program in the at Tongue Point has been maintained, by increasing spring chinook production at the Young's Bay and Blind Slough terminal fisheries sites by 500,000 smolts at each site, by distributing the existing coho salmon production at Tongue Point between the Young's Bay and Blind Slough sites, by evaluating water quality and conducting a test fishing sampling program at the potential future select area fishery site in Grant Slough (directly upstream of the current Blind Slough site), and by supporting the relocation of the fishery for a ten year time period as specified in the letter from ODFW to DLCD and DEQ dated May 30, 2003.
- e) **Monitoring.** Final identification of elevations, staging, construction plans and control sites will be provided at least three months prior to the start of construction of this component of the Project. A pre-project report for baseline success criteria (ii)-(iv) at control sites, per (d) above, shall be provided at least three months prior to the start of construction of this component of the Project. A post-construction report of at least three cross-sections for as-built elevations shall be provided within three months following the completion of construction of this component of the Project. Following completion of the construction of

this component of the Project, monitoring reports for each of the success criteria (ii)-(iv), per (d) above, shall be provided in at least years 2, 6, and 10 as provided in ERF 1 of the Implementation Plan.

- f) **Adaptive Management. In the event that one or more of the success criteria have not been achieved within six years of completion of construction of this component of the Project, the Corps will, within 6 months, present proposed actions to achieve the criteria, which actions may include (but which are not limited to) those actions set forth in ERF 1 of the Implementation Plan. The Corps will develop its proposed actions using the adaptive management framework set forth in condition 1 of this decision. If, following that process and any other process required by law, DLCD determines that the proposed actions will not achieve the success criteria, the state's consistency concurrence is revoked.**
- g) **In the event that the Corps elects not to proceed with the Lois Island component of the Project, it shall dispose of the dredged material slated for the Lois Island site at an alternative location or locations. The Corps shall notify DLCD in writing of the alternative site or sites selected, and a supplemental consistency determination shall be submitted for any alternative site or sites that is subject to the OCMP and that has not been evaluated through this review.**

Rationale: This condition will avoid placement of dredged material in the estuary except where conflicts with aquaculture and commercial fishing are adequately addressed. Without the conditions set forth above, DLCD is not able to concur that implementation of the Lois Island project as proposed by the Corps would conserve biological resource functions or economic and social benefits provided by the existing embayment while also providing for future availability of estuarine resources and uses. Other disposal alternatives that would be consistent with applicable CZM policies are available, including ocean disposal. We suggest that the Corps also consider the use of existing estuarine upland sites, existing estuarine in-water sites, Benson Beach, the “deepwater” ocean disposal site (“103” or “102”), or reduced estuarine dredging as alternatives to the Lois Island project if the Corps does not intend to implement the Lois Island project in accordance with all conditions of this concurrence decision. In the event that the Corps wishes to pursue other alternatives not already evaluated through this review, DLCD strongly suggests that the Corps consult with state and local interests before committing substantial resources to such alternatives.

Policies: Goals 16, 17, 19, Territorial Sea Plan, Clatsop County Policies P20.2(5), P20.12, S4.209(2), S4.232(1)

(3) The Corps's use of the temporary sump at River Mile 18-20 in connection with the Lois Island component of the Project is allowed as a temporary alteration, under Goal 16, only if it is carried out subject to the following conditions:

- a) **The temporary sump may be utilized for short-term disposal of dredged material only in connection with the Lois Island component of the Project;**
- b) **Dredged material may be disposed of in the sump for a period of time not to exceed three years; and**
- c) **When the dredged material is moved to Lois Island, the affected area within the sump must be restored to its previous condition.**

Rationale: These conditions are necessary to ensure that this component of the Project is carried out in a manner that is consistent with the limitations on temporary alterations under Goal 16.

Policies: Goal 16; Statewide Planning Goal Definition of “Temporary Alteration.”

(4) The Corps shall notify DLCD and Clatsop County in writing if and when it determines that the long-term phase of the Tenasillahe Is. restoration project will proceed. Additional coordination with DLCD and Clatsop County may be required prior to implementation of long-term phase to ensure long-term functions and values of shoreland habitats are maintained or enhanced.

Rationale: This condition will ensure the state and county are notified of Corps intent to proceed to the long-term phase. Ensure that the long-term phase is carried out in compliance with applicable shoreland policies.

Policies: Goal 17, Clatsop County policies P20.4(1), P20.8(3)

(5) The Corps shall coordinate with the DEQ and obtain any necessary state approval prior to initiating herbicide application as part of the Purple Loosestrife control project. In the event that the sponsoring ports take on responsibility for this work, then they shall obtain any necessary state permit prior to initiating the work.

Rationale: This condition will ensure herbicide application is carried out in a manner that does not result in unauthorized impacts to estuarine water quality.

Policies: Goal 6, Goal 16, Goal 17, ORS chapter 468B, Clatsop County standard S4.242(6)

IV. MANDATORY CONDITIONS - OCEAN DISPOSAL

(1) DLCD shall be notified in writing of any use of the “deepwater” ocean disposal site, whether the current “103” site or a future “102” site, to occur in association with construction for channel deepening or maintenance of the deepened navigation channel.

Rationale: Limited use of deepwater ocean disposal is not precluded under the conditions of this concurrence decision. The Corps may dispose of dredged materials from construction or maintenance of the Project in the ocean and will need to inform DLCD of such use.

Policies: Goal 19, Territorial Sea Plan

(2) Use of the “deepwater” ocean disposal site (“103” or “102”) by the Corps shall be in compliance with the following CZM conditions regarding ocean disposal. These conditions are based on DLCD’s previous responses to ocean disposal as found in the December 1, 1999 decision for channel deepening and April 4, 2002 decision for maintenance dredging at the river mouth:

(a) Any use of the “deepwater” ocean disposal site shall be limited to materials dredged as part of the channel deepening and subsequent maintenance of the lower Columbia River (i.e., up to river mile 30).

(b) The Corps shall not dispose of any materials deemed unsuitable for in-river disposal (i.e., contaminated materials) at the “deepwater” ocean disposal site. Additional CZM review shall be required prior to disposal of any contaminated materials at the “deepwater” ocean disposal site.

(c) Use of “deepwater” ocean disposal for this project in no way removes the Corps responsibility to comply with coastal zone management conditions previously placed on ocean disposal associated with the maintenance project at the mouth of the Columbia River (MCR). (The Corps shall continue to give top priority to use of the shallow water, North Jetty, and Benson Beach sites for disposal of MCR materials with the deepwater site used only as a contingency site for disposal of MCR materials.)

(d) Any disposal of channel deepening materials (construction or maintenance) within the deepwater site shall be by repetitive, “pinpoint” dumping to minimize the footprint of the impacted disposal area.

(e) The Corps shall continue with biological data collection for the “deepwater” site to confirm its expectations about biological impacts and to further establish scientific understanding of the ocean area to be impacted by dredged material disposal. The Corps shall provide at least 30 day written notice of opportunities for comment on matters that are related to data collection for the “deepwater” site. All data and summary reports shall be made available to DLCD within a reasonable amount of time, not to exceed 30 days, after completion.

(f) The Corps shall develop, in consultation with the State, a monitoring program that addresses potential physical and biological impacts associated with any use of a “deepwater” disposal site for the project. The monitoring program shall be implemented no later than 1 year after site use occurring in conjunction with the project.

(g) The Corps will coordinate with DLCD regarding site management and shall acknowledge the need for periodic re-evaluation of this coastal zone decision for ocean disposal. (DLCD previously determined that a one-time coastal zone consistency decision for long-term use of ocean disposal off the Columbia River cannot be made due to a lack of sufficient information to assess resource and use impacts over the 20 to 50 year timeframes referred to in Corps project documents.)

(h) The Corps shall implement procedures for coordinating ocean disposal work with fishermen and other mariners. The Corps should also compensate fishermen for gear losses resulting from interaction with Corps or contract dredges.

(i) The Corps shall condition dredging orders and contracts to ensure that it can adequately control the location and manner of dredged material placement and will receive the data necessary to determine when disposal site use criteria and response thresholds have been met. Copies of these conditions and all data generated in association with these conditions, including the geographic locations given to the dredges for disposal areas and the GPS coordinates of actual dumps performed by the dredges, shall be provided to the OCMP when available. Real-time sharing of information should continue as necessary as should the Corps preparation of a consolidated, yearly report including recommendations for the next year.

(j) An ocean disposal taskforce or some alternative, comparable form of stakeholder involvement shall be used for discussion of the information requested above as well as other dredged material disposal issues potentially impacting on the MCR and channel deepening projects.

Rationale: This condition will ensure that any use of ocean disposal for this project is consistent with applicable ocean policies. Minimize ocean resource impacts and conflicts between ocean uses. Ensure impacts to ocean resources are avoided and minimized to the extent possible over time. Clarify scope of this concurrence decision regarding use of “deepwater” ocean disposal site.

Policies: Goal 19, Territorial Sea Plan

V. MANDATORY CONDITIONS - ASTORIA TURNING BASIN

(1) Dredging of the Astoria turning basin shall occur during the standard in-water work window of November 1 through February 28 unless a waiver of the standard timing window is approved by DLCD after consultation with relevant agencies.

Rationale: This condition will ensure impacts to estuarine resources are avoided and minimized to the extent possible. Provide consistency with past CZM decisions for dredging of facilities in Astoria.

Policies: Goal 16, City of Astoria policies CP.150, CP.185, City of Astoria standards Section 4.050, 4.070

(2) Sediments from within the Astoria turning basin shall be tested in accordance with the Dredged Material Evaluation Framework (DMEF) prior to dredging. Sediment testing results shall be provided to DLCD, DEQ, City of Astoria, and Port of Astoria prior to dredging. Any materials exceeding DMEF thresholds shall be disposed of at an upland site approved by DEQ and in accordance with any other applicable local, state, and federal requirements.

Rationale: The Corps did not have sediment testing data for the turning basin available for consideration during the CZM review. Sediment testing is required prior to dredging to ensure dredging and disposal actions are carried out in a manner that does not result in unauthorized impacts to estuarine water quality and to ensure impacts to estuarine resources are avoided or minimized to the extent possible.

Policies: Goal 16, City of Astoria policies CP.150, CP.185, City of Astoria standards Section 4.050, 4.070

(3) Dredged materials from the Astoria turning basin that are deemed suitable for in-water disposal shall not be disposed of in a location or manner that is contrary to the conditions of this concurrence decision.

Rationale: This condition will ensure that dredged material disposal of turning basin materials is done in a manner consistent with the OCMP as specified in this decision document.

Policies: Goals 16, 17, Clatsop County and City of Astoria policies for dredged material disposal

(4) The Corps shall coordinate the final dredging and disposal plans, including the work schedule, for the Astoria turning basin with DLCD, DEQ, City of Astoria, and Port of Astoria prior to the work commencing.

Rationale: This condition will ensure that the Corps informs key parties of the final plans for work at the turning basin

Policies: Goal 16, City of Astoria policies CP.150, CP.185, City of Astoria standards Section 4.050, 4.070

CZM-Related Advisories

- DLCD strongly supports the recommendations made directly to the Corps by the Oregon Department of Geology and Mineral Industries (DOGAMI) and others regarding long-term monitoring of dredging

and disposal for impacts on littoral processes. We strongly encourage the Corps to again review the following document and then to develop a program to move forward with those recommendations: Kaminsky, G.M, and Allan, J.C., 2002, Columbia River Channel Improvement Project Sand Management Plan, 5 p. (an unpublished document prepared by George M. Kaminsky, Washington Department of Ecology and Jonathan C. Allan, Oregon Department of Geology and Mineral Industries) and the June 26, 2002 letter from Oregon Department of Geology and Mineral Industries responding to the Corps' Technical Memorandum on sediment impact analysis included as Exhibit J of the SDEIS.

- DLCD recommends that the Corps consider biological sampling and/or additional studies to further assess the presence or absence of lamprey (larval form) in the navigation channel sediments.
- DLCD encourages the Corps to continue with its on-going efforts to address avian predation of salmonids within the estuary.
- Final plans and engineering specifications for the tidegate work at Blind Slough and Warren Slough should be provided to DLCD and Clatsop County. Please be advised that tidegate work often requires federal, state, and local permits. In the event that the sponsoring ports take on responsibility for the tidegate work, then the sponsoring ports will need to obtain any necessary permits prior to initiating the work.
- In the event that the Corps decides to implement the Lois Island component of the project in accordance with the conditions of this concurrence decision, then the Corps should coordinate directly with the owners of the Tongue Point industrial facilities to ensure that they are informed of construction plans and to avoid and minimize the potential for any impacts to Tongue Point uses associated with use of the temporary sump.
- Please be advised that the federal CZMA and associated federal regulations mandate that federal projects be fully consistent with the enforceable policies of state coastal programs unless full consistency is specifically prohibited by other federal law or if found by the President of the United States to be in the paramount interest of the nation. If the Corps believes other federal law in any case precludes full consistency with the OCMP, then the Corps must specifically explain in writing to DLCD those legal requirements and exactly how full consistency is precluded. Please note that a lack of appropriations is not a legal basis for non-compliance with the OCMP. (See CZMA §307(c)(1)(B) and 15 CFR 930 Subpart C.) Any costs associated with federal CZM compliance should be included in the overall project cost.

Appeals

In accordance with federal regulations, DLCD hereby provides notification that should the requirements of 15 CFR 930.4 not be met or should the Corps otherwise object to any of the conditions of this decision, then the Department's decision letter shall be treated as an objection pursuant to 15 CFR Part 930-Subpart C. (See specifically 15 CFR 930.43.)¹ DLCD requests that the Corps promptly review this coastal zone

¹ If the Corps treats the Department's decision letter as an objection, federal regulations (15 CFR 930.4) appear to require in all circumstances that the Department provide the following notice:

“Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this 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 Oregon management program and the federal permitting or licensing

management and immediately notify the Department if the conditions of concurrence are not acceptable. In the event the Corps has a serious disagreement with DLCD's coastal zone decision, the Corps may request mediation services provided by the Office of Ocean and Coastal Resource Management and the Secretary of the U.S. Department of Commerce as provided for in 15 CFR 930 Subpart G. DLCD or the Governor of Oregon may also request such mediation services.

Copies of this CZM decision letter and the associated findings document have been sent to the Director of the Office of Ocean and Coastal Resource Management in the U.S. Department of Commerce in accordance with 15 CFR 930.43(c).

The Corps and other parties as defined in ORS 183.310(6) may request review of this coastal zone decision by the LCDC pursuant to OAR 660-035-0040(11) and 660-035-0080(1). Review by LCDC of a petition does not preclude the Corps, DLCD, or the Governor from seeking mediation under 15 CFR 930 Subpart G. A petition must be filed within fifteen (15) days of the Department's consistency decision.

In closing, the Department thanks the Corps for its continuing coordination and cooperation with the OCMP. If you have any questions about our decision or the OCMP, please contact Robert Bailey, Manager of the OCMP at 503-373-0050 X281.

Sincerely,

///SIGNATURE????

Nan Evans, Director

Enclosure –June 23, 2003 Compliance Findings w/ Appendices A-C

CC w/Enclosures:
Eldon Hout, OCRM Director
Helen Westbrook, Clatsop County Board of Commissioners
Veronica Smith, Clatsop County Planning Dept.
City of Astoria
Russell Harding, DEQ
Bill Wyatt, Port of Portland

CC Decision Letter Only:
Public Participants
John Malek, EPA - Region 10
Doris McKillip, Corps
Doug Young, USFWS – Portland
Cathy Tortorici, NOAA Fisheries – Portland
Tom Byler, Governor's Office

agency. The Secretary may collect fees from you for administering and processing your request. 15CFR 930.63(e)."

Patty Snow/Roy Elicker, ODFW-Portland
Larry Devroy/Steve Purchase, DSL
Jonathan Allan, DOGAMI-Newport
Loree Randall, Washington Dept. Ecology
Senator Joan Dukes
Senator Betsy Johnson
Congressman David Wu
Congressman Ron Wyden
Congressman Gordon Smith