



Oregon

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November 5, 2004

Colonel Richard W. Hobernicht
District Commander
Corps of Engineers, Portland District
P.O. Box 2946
Portland, OR 97208-2946

Dear Colonel Hobernicht,

**SUBJECT: Repair of the Columbia River South Jetty
Coastal Zone Management Decision**

The Department of Land Conservation and Development (DLCD) has completed its review of the revised Corps of Engineers (Corps) proposal for the Repair of the South Jetties at the Mouth of the Columbia River, Clatsop County, Oregon. This project is being reviewed as a federal activity pursuant to section 307(c)(1) of the Coastal Zone Management Act.

The Corps of Engineers Circulated a Public Notice for this project beginning July 9, 2004. The notice included an Environmental Assessment, Section 404(b)(1) Evaluation, Oregon Department of Environmental Quality 401 Water Quality Certification, Coastal Zone Management Program Public Notice and a Coastal Zone Management Consistency Determination Report. The related project for the Columbia River North Jetty and required Washington Coastal Zone Management and Water Quality certification documents were circulated at the same time as the South Jetty project

Project Description

The Corps of Engineers Public Notice indicates that the Corps intends to rehabilitate and repair portions of the North and South Jetties at the Mouth of the Columbia River. The Jetties were constructed in the late 1800s and early 1900s to provide a Federal Navigation Channel through the entrance to the Columbia River. Both jetties have experienced damage to jetty heads and along the jetties at several locations. The purpose of this action is to rehabilitate and repair critical trunk portions of the jetties in order to prevent further deterioration and limit the potential for a catastrophic breach. Due to funding limitations, the project is focused on the most severe problem areas. A major rehabilitation is dependent on adequate future funding.

The South Jetty is approximately 6.6 miles long and was last repaired in 1982. Approximately 4,000 feet of the jetty head have been lost due to impacts of harsh ocean conditions and loss of sand that forms the foundation for the jetty.

The purpose of the project is to repair critical trunk portions of the jetties and when future funding is available to rehabilitate the remaining critical sections of both jetties. Information in the consistency determination indicates a high probability of a catastrophic breach if repairs are not made. Such a breach would necessitate an expensive emergency repair and could impact shipping activities. In the event of a breach, there would be considerable movement of sediment into the navigation channel, requiring dredging to restore channel depth.

U.S. Army Corps of Engineers Consistency Determination

The Corps has completed a detailed review of the project against the enforceable policies of the Oregon Coastal Management Program and concludes that the project is consistent with Coastal Zone Management requirements. The Corps worked closely with the staff at DLCD and Clatsop County to identify applicable state and local requirements for the project.

To be consistent with the Oregon Coastal Management Program (OCMP), the proposed project must be consistent with: (1) the statewide planning goals; (2) the applicable requirements of city or county comprehensive plans and land use regulations approved by the Land Conservation & Development Commission as being in compliance with the statewide planning goals; and (3) selected state authorities (e.g. those governing removal-fill, water quality, ocean shore permits, and fish & wildlife protections).

Applicable policies for this project include local comprehensive plan and land use regulation requirements; statewide goal requirements; and DEQ 401 water quality certification requirements.

Process Note: The U.S. Fish and Wildlife Service (USFWS) and Oregon Department of Fish and Wildlife (ODFW) have suggested that the Corps leave staging areas and haul road areas in an un-vegetated state following completion of the rehabilitation work in order to create habitat for the Western Snowy Plover. In addition, the USFWS has suggested that the Corps remove additional vegetation in the project vicinity in order to create additional habitat for the Western Snowy Plover. Clatsop County expresses opposition to the creation of habitat for the Western Snowy Plover as part of this project. The County indicates that it has a policy related to Statewide Planning Goal 5 that would not allow the creation of habitat in this area.

In our review of the project, we note that the Corps clearly indicates that all areas disturbed by the project will be restored and re-vegetated. The project under public review provides no indication to the public and other agencies that additional habitat enhancement efforts are part of the project. Therefore, the consistency determination submitted with the project does not address habitat enhancement activities against mandatory coastal zone management policies. If such an action is contemplated in the future, the Corps is required to provide a new project description, environmental assessment and federal consistency determination. The Corps is required to identify the proposed activities and their impact on coastal uses and resources. A

consistency determination must assess whether such activities are consistent with the mandatory enforceable policies of the Oregon Coastal Management Program.

The Clatsop County Comprehensive Plan contains specific policies related to the removal of vegetation in beach and dune areas. The county's beach and dune policies limit the removal of stabilizing vegetation within dune areas. Beach and Dune policy 12 states, "Removal of vegetation which provides wildlife habitat shall be limited. Unnecessary removal of shoreline vegetation shall be prohibited." Other policies limit the size of vegetation removal in dune areas and require re-vegetation of dune areas following the completion of a project. Policies support the stabilization of dune areas in order to return areas to preconstruction levels of stability.

Because habitat enhancement is not addressed in the Corps documents, this concurrence determination does not authorize Snowy Plover habitat enhancement in the staging area, haul road or adjacent beach and dune areas. Since the project description does not include this activity, there is no need to object to or condition this CZM consistency review.

The Corps analysis of the project for impacts on coastal uses and resources addresses the following OCMP provisions:

Goal 16-Estuarine Resources: Portions of the project may include temporary alterations for the construction of a barge offloading facility and dredging adjacent to the platform or installing dolphins to temporarily moor barges used for direct placement of jetty stone in areas adjacent to the jetty. These temporary alterations are authorized by the goal, subject to a resource capabilities test. The Corps has reviewed the project to determine compliance with the Goal 16 resource capabilities test (i.e. That the impacts are either not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education). The Environmental Assessment concludes that there are not significant impacts to estuarine species, habitats, biological productivity and water quality for the Columbia River estuary due to the location outside areas of high quality aquatic habitat near the jetties.

Goal 17-Coastal Shorelands: This goal requires the project to be designed to minimize adverse impacts on water currents, erosion, and accretion patterns. The goal expresses a preference for non-structural solutions to erosion and flooding. This project involves a significant structure that protects the navigation channel. Jetties represent a significant public investment and perform a critical safety function. The analysis describes the alternatives and consequences of various options. The consistency determination finds that the catastrophic impacts of a jetty breach are outweighed by the relatively insignificant impacts of the project. The project is within the historical footprint and does not create new impacts.

Goal 18-Beaches and Dunes: This goal includes provisions to protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce hazards to human life and property from natural or man-induced actions.

As noted above, the Corps indicates that it will restore and re-vegetate disturbed beach and dune areas used for staging areas and the haul road following completion of the project.

The Corps notes that Goals 16 through 18 are not directly applicable to this project, but provisions of the Clatsop County Plan that implement the goals are applicable. Since the Corps is not required to apply for local permits for this project, the Corps assesses compliance with the applicable provisions of the county plan and land use regulations as a matter of comity.

Goal 19-Ocean Resources: The goal requires a use and effects analysis in order to protect beneficial uses of ocean resources. Navigation, including important jetty structures is one of the uses protected by Goal 19.

The Corps has submitted a Goal 19 use and effects analysis that addresses the project impacts on coastal uses and resources within the project area. The Corps analysis provides extensive information about the project location and potential resource and use impacts. The analysis concludes that environmental impacts will be minor because the rehabilitation work is to an existing structure within a limited area located within the original jetty footprint. Impacts of a breach would be significantly more damaging to coastal uses and resources.

The Corps also provides information relative to environmental standards applicable to the project. Although some short-term loss of microhabitat may occur, the habitat will be replaced by the completed project. The long-term benefits of the project include protection of beneficial navigation uses.

Clatsop County Plan Requirements: Based on assistance and advice from the county planning staff, the Corps identifies enforceable policies from the Clatsop County Comprehensive Plan; the Clatsop County Land and Water Development and Use Ordinance; and the Standards Document that apply to the project. There are two significant issues related to applicable county requirements. The first issue relates to re-vegetation of the staging area and haul road. As outlined above, county policies require these areas to be restored following completion of the project. The consistency determination states, “The temporary staging areas, as stated above, will be for storage of construction material and stone for the duration of the project. At completion of the project, the staging area will be returned to its previous state by the contractor.” (Page 11)

The second issue relates to disposal of dredged material associated with the potential barge offloading facility. The Corps will authorize the contractor to remove approximately 4,000 cubic yards of material for barge access adjacent to the offloading platform as one of three alternative methods of transporting jetty stone to the site. The consistency determination does not describe the specific disposal area for this dredged material, although it indicates that material may be used for the haul road or placed on the beach. The Clatsop County Comprehensive Plan contains a dredged material disposal element, which identifies approved disposal sites, consistent with statewide goal requirements. Construction of the haul road for the project is an acceptable use of the material as a temporary facility. Direct placement of dredged material on the beach is not authorized by the plan and other county requirements. The Corps indicates that the haul road, staging areas and barge offloading facility will be restored following its use for the project.

Mandatory CZM Condition

Any dredged material from the construction of the barge offloading facility, other than material used for construction of the haul road, shall be disposed of within approved dredged material disposal sites identified in the Clatsop County Comprehensive Plan or as otherwise approved by Clatsop County.

Other State Agency Program Authorities

The Department of Environmental Quality (DEQ) water quality requirements are a mandatory enforceable policy of the Oregon Coastal Management Program. DEQ is currently reviewing this project for compliance with provisions of Section 401 of the Clean Water Act.

Mandatory CZM Condition

This CZM decision is contingent upon compliance with the DEQ requirements. Any DEQ conditions are incorporated herein by reference as CZM conditions.

Public Comments

As part of the CZM review process, DLCD received four comment letters.

The **Port of Portland** indicates that the project is consistent with the requirements of the state's coastal management program as outlined in the public notice. The Port indicates that "the jetty repair will reduce potential hazards to human life and property and prevent the substantial adverse impact jetty failure could have on marine uses of the area in and around the mouth of the Columbia River." The Port further indicates "Repair and rehabilitation of the jetties is vital to significant sectors of the Oregon and Washington economies, including tourism, recreational and commercial fishing and international trade."

The **Columbia River Crab Fisherman's Association (CRCFA)** indicates that, "CRCFA believes that Jetty rehab is a necessary action to maintain a safe and efficient Columbia River Entrance. Minimal impacts to natural resources should occur if the operation is carried out in a similar manner to the prior repairs. We would urge the Portland District Corps of Engineers to proceed with full repair including re-building the loss of the jetty seaward head ASAP."

Clatsop County indicates that the county "is supportive of the project's goals and understands the importance and necessity of repairing the jetties in a timely manner. However, it is also important to the County that the project is completed in a manner consistent with the applicable zoning policies and regulations of the County." The County letter raises the following issues:

Issue 1-Improper Project Description. The county indicates that the Corps has inaccurately characterized the jetty as a navigational aid rather than a navigational structure.

Response-Although the Corps has incorrectly identified the use as a navigational structure, the project is authorized as a “temporary estuarine alteration” in the county’s plan and regulations.

Issue 2-Dredging and Aquatic Fill. The county is concerned with the dredging portion of the project and the construction of a bulkhead as part of the barge offloading facility. The county indicates that its standards document allows the dredging only if it is specifically allowed by the applicable zone and required for one or more of the plan’s authorized uses. The county further indicates that dredging “will be considered consistent provided that the standards are met.”

County standards require the project to be allowed within the applicable aquatic zone or meet a four-part temporary alteration test. This test requires: a need for the project; that the project does not unreasonably interfere with public trust rights; that there is no feasible alternative upland location; and that adverse impacts be minimized.

Response-At a meeting with county planning staff to address concerns expressed in the County’s comment letter, the Corps addressed the specific design and reasons for both dredging and a use of a bulkhead structure for the offloading facility. The Corps reviewed its environmental assessment and consistency documents against the requirements of the county plan that had been previously identified by the county and DLCD.

The offloading facility is clearly authorized as a temporary estuarine alteration in county planning documents within the applicable aquatic zone. The Corps Consistency Determination clearly demonstrates a need for the barge offloading facility as one option for transportation of jetty stone in conjunction with the required rehabilitation project. The project does not interfere with any identified public trust rights. Although the contractor will have the choice of using upland transportation alternatives, the feasibility of such an option and the potential interference with other traffic during the Lewis and Clark bicentennial celebration may necessitate the barge offloading option. The Corps has clearly addressed environmental impacts within its environmental assessment document and has designed the project to minimize impacts on estuarine resources. As a temporary estuarine alteration, the area will be restored to its pre-project conditions.

The Corps also discussed the need for a bulkhead, rather than a pile supported structure for the offloading platform. The Corps indicates that the bulkhead structure will have minimal environmental impacts and as a temporary structure can be more easily constructed and removed.

Issue 3-Mitigation. The county indicates that the project requires mitigation for the aquatic fill and dredging.

Response: As a temporary estuarine alteration, the project does not require mitigation. The Corps documents indicate that the area used for barge offloading, if that option is employed by the contractor, will be restored to pre-project conditions following completion of the rehabilitation and repair work.

Issue 4-Dredged Material Disposal. The county raises concerns with the appropriate disposal of dredged material and the use of approved disposal sites. The County indicates that use of

dredged material disposal sites that are not identified in the county plan require review and approval as a conditional use.

Response: Although the Corps is not required to obtain such local conditional use approvals, the lack of a specific identified site for the disposal of dredged material (other than for haul road construction) cannot be properly evaluated against applicable plan and ordinance criteria. Should the Corps indicate a need for disposal at other sites, the Corps or contractor is required to seek local approval or submit a revised consistency determination for this element. As indicated in the above conditions, the contractor is required to use approved disposal sites.

Issue 5-Installation of 3' culvert and upgrading existing roads. The county indicates that these project elements must be consistent with Conditional Use Requirements. Approval of a conditional use requires the project to be located within an area that is suitable for the proposed use; be compatible with existing and projected uses on surrounding lands; not interfere with normal use of coastal shorelands; and not cause unreasonably adverse effects to aquatic and coastal shoreland areas.

Response-The Corps has submitted an environmental assessment that addresses suitability, interference, and environmental impacts. The Corps has not gone through the conditional use process, but documentation is adequate to address the county approval criteria and to support the project. The haul road will be located in such a way to minimize impacts on both resources and other park uses during the project. The area will be restored following project completion.

Issue 6-Creation of habitat for the Western Snowy Plover. The county is concerned that the Corps may construct habitat for the Western Snowy Plover as suggested by comments from the USFWS and the Oregon Department of Fish and Wildlife.

Response-As indicated in the above documentation, the project does not include the creation of habitat for the Western Snowy Plover. The county policies do not allow vegetation removal in beach and dune areas for habitat creation. Should this element be added, the Corps is required to submit a revised consistency determination that addresses applicable county policies.

Issue 7-Proposed Conditions. The county suggests six conditions to assure project consistency with its Comprehensive Plan and Land Use Regulations. Suggested conditions include:

1. Bottom sediments in the dredging area shall be characterized prior to dredging.
2. Dredging will be coordinated with local fishing groups, specifically the Columbia River Crab Fisherman's Association, to minimize impacts to those fisheries
3. Any disturbed riparian vegetation shall be replanted.
4. EITHER demonstrate that it is not feasible to construct the barge off-loading platform on pilings, OR include a mitigation plan for the estuarine aquatic area fill
5. In-water construction activity in aquatic areas shall follow the recommendation of state and federal fisheries agencies with respect to project timing to avoid unnecessary impacts on migratory fish.

6. Any additional mitigation requirements required by other state or federal agencies made a part of this project would be subject to further review by the County for consistency to County goals, policies and regulations.

Response:

Suggested Condition 1. If the contractor selects the barge offloading option, the sediments will be required to meet DEQ standards for water quality and proper disposal. The condition requiring compliance with DEQ water quality certification requirements is adequate to assure this issue is resolved. There is no need for a specific additional condition for this issue.

Suggested Condition 2. The Corps will provide appropriate notification to mariners of the activities associated with the project. There is no need for a specific condition for this issue. The location of the area proposed for dredging is small and located outside areas normally used for navigation by fishing interests.

Suggested Condition 3. The Corps consistency documentation indicates that the project site will be restored. Appropriate re-vegetation of the project site is described as a requirement of project. There is no need for a specific condition for this issue.

Suggested Condition 4. The Corps and DLCD are treating the barge offloading facility as a temporary estuarine alteration under county plan provisions. These provisions are consistent with the requirements of Goal 16 authorizing temporary alterations subject to a resource capabilities test. We do not believe that mitigation is required for temporary alterations. The area will be restored at the completion of the project. There is no need for a specific condition for this issue.

Suggested Condition 5. The Corps is coordinating the project with appropriate state and federal wildlife agencies. The requirements of federal law are adequate to assure the proper coordination of project elements impacting fish and wildlife with federal authorities. We also note that NOAA Fisheries has reviewed the project and issued an ESA Section 7 Consultation, Biological Opinion and Conference Opinion and a Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation. There is no need for a specific condition for this issue.

Suggested Condition 6. We presume that this condition is in response to county concerns relative to the creation of Snowy Plover habitat. As indicated above, the project does not include habitat creation. The Corps is required to submit a modified consistency determination if the project is significantly changed. Significant changes are subject to additional review under the Federal Coastal Zone Management Act.

The **Columbia River Estuary Study Team (CREST)** submitted comments on the project. CREST indicates that it is supportive of the project and understands the importance and necessity of repairing the jetties in a timely manner. The letter notes the difficulty in reviewing a project where a contractor may select among several alternatives for transporting jetty stone to the site. The letter raises many of the same concerns as the county letter, which CREST prepared on the

county's behalf. CREST does not specifically raise Snowy Plover Habitat issues, but does support re-vegetation of any disturbed wetland and riparian areas. CREST raises an additional concern related to coordination of this project with beneficial dredged material use projects at the MCR (Mouth of the Columbia River). This comment does not specifically raise CZM issues, but rather is directed at the Corps. CREST suggests that the Corps continue to explore beneficial uses of MCR dredged material to stabilize and protect the jetty.

Response: CREST has raised a number of valid concerns. Ongoing coordination on beneficial use of sediments from the MCR and the potential to use dredged material to protect the integrity of the jetty are good suggestions, but do not require specific CZM conditions. Other issues are addressed above, in the response to Clatsop County concerns. CZM Conditions require disposal of dredged material in approved disposal sites. The Corps will re-vegetate and restore any areas disturbed by construction of the barge offloading facility, staging areas and the haul road.

Other Comments

Several additional comment letters were submitted directly to the Corps, but not sent to DLCD as CZM comments. Since these letters are directed to the Corps and are not Coastal Zone Management comments we will not address them directly.

DECISION: Based on the above summary, DLCD conditionally concurs with the Corps' consistency determination that the proposal for the Repair of the South Jetty at the Mouth of the Columbia River in Clatsop County, Oregon can proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the Oregon Coastal Management Program (OCMP).

Mandatory Conditions:

- **Any dredged material from the construction of the barge offloading facility, other than material used for construction of the haul road, shall be disposed of within approved dredged material disposal sites identified in the Clatsop County Comprehensive Plan or as otherwise approved by Clatsop County.**
- **This CZM decision is contingent upon compliance with the DEQ requirements. Any DEQ conditions are incorporated herein by reference as CZM conditions.**

Appeals

Copies of the associated consistency certification documents are available for review at the DLCD Salem Office indicated above.

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 for LCDC review 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 me, at (503) 373-0050 x260.

Sincerely,

Dale Blanton, AICP
Oregon Coastal Management Program

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