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April 4, 2002

Colonel Randall J. Butler
Portland District
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 97208-2946

Dear Colonel Butler,

**SUBJECT: Corps Public Notice NWPOP-CRA-F02-001,
Maintenance Dredging at Mouth of the Columbia River**

The Department of Land Conservation and Development (DLCD), as the State of Oregon's designated agency for purposes of implementing the federal Coastal Zone Management Act (CZMA, 16 U.S.C. 1451 et. seq.), has completed its review of the above referenced federal project notice. This letter provides the Oregon Coastal Management Program's (OCMP) federal consistency decision and additional recommendations regarding the Corps of Engineers updated dredging and disposal plans for the Mouth of the Columbia River (MCR) project.

The OCMP has reviewed various aspects of the MCR project over the years. Our focus at this point in time is not with determining whether maintenance dredging at MCR can or should occur. The MCR navigation project has previously been determined to be consistent with the OCMP, and we note that it corresponds with the deep-draft designation for the Columbia River estuary established under Statewide Planning Goal 16-Estuarine Resources (Oregon Administrative Rules, 660-015). Maintenance of the river entrance clearly remains in the public interest considering the on-going importance of navigation to the Columbia River region and the notorious dangers of crossing the Columbia River bar. Therefore, our current review focused on proposed management actions to ensure continued compliance with the policies of the OCMP.

The Corps public notice included the standard dredging depths, volumes, and areas at MCR and announced that the following disposal sites would be used in 2002: North Jetty (NJ) site, site A, shallow water site (i.e., expanded Site E), site F, deep water 103 site, Benson Beach, nearshore placement site (WA side), and south jetty (SJ) site (OR side). Of these sites, the Benson Beach, nearshore placement, and SJ sites have not seen previous use for disposal. During the review process, the Corps announced that two sites proposed in the public notice – the nearshore placement site and the SJ site are no longer proposed for use in 2002. The Corps cited the need to continue working with the states and other stakeholders to determine if they should move forward with those two sites for future years.

Based upon review of the Corps public notice and other documentation provided by the Corps, public comments received during the public hearing held on February 12, 2002 or otherwise submitted to the OCMP, and input from coastal program partner agencies, the OCMP has reached the following decision. **The Corps proposal for maintenance of the MCR project for 2002 can be carried out consistent with the OCMP provided the following conditions are met.** This decision, including the following conditions, is based on the limited options for disposal of MCR materials in 2002 and the need to avoid and minimize potential impacts to uses and natural resources of Oregon's coastal

zone per the OCMP. More specifically, these conditions are primarily based upon statewide planning Goal 19-Ocean Resources (Oregon Administrative Rules 660-015) and the Oregon Territorial Sea Plan (adopted by reference, Oregon Administrative Rules 660-036). We believe that these conditions are compatible with Corps authorities, the federal Marine Protection Research and Sanctuaries Act as it addresses ocean disposal, and the recommendations found in the Independent Federal Review Team report of October 2001 for the MCR project.

Coastal Zone Management Conditions

(1) *Dredged materials from the MCR project shall be placed within existing disposal sites (NJ, A, shallow water, and F) and at the proposed Benson Beach site unless the collective use of these sites for MCR materials would result in unacceptable risk to navigational safety. Top priority shall be given to the shallow water, NJ, and Benson Beach sites because the sites are generally dispersive in nature but also to maximize the potential contribution of dredged sediments to the littoral system. Secondary priority shall be given to sites A and F because they are generally not dispersive in nature.*

Rationale: These disposal sites, with the exception of Benson Beach, have been impacted by previous dredged material disposal. Additionally, DLCD finds that more is known about the physical and biological parameters of these sites compared to the proposed deep water 103 site. Of these sites, use of the NJ site, shallow water site, and Benson Beach would best address concerns about loss of Columbia River materials from the littoral drift. We do note that the Corps has stated some preference for use of the NJ and shallow water sites ("Utilization of MCR ODMDs During 2001 and Recommendations for 2002"). Regarding Benson Beach, we include this site given the strong support for the site evident from the State of Washington, Columbia River ports, and other organizations. We, of course, defer to the State of Washington regarding management and monitoring of the Benson Beach project. Sites A and F have been shown to be subject to mounding, and the mounding at site F could not be remedied given the depth of the site. Also, we note that in past years the Corps has described site A as unsuitable for further disposal use, and site A is not even addressed in the draft MMP.

(2) *The Corps "103" designation of a disposal area within the vicinity of the area commonly referred to as the "proposed deep water site" shall be limited as follows:*

-The deep water 103 site shall be used only as a contingency site for disposal of MCR materials. The Corps shall not use the 103 site in the absence of a federal determination that collective use of the NJ, shallow water, A, F and Benson Beach sites would result in unacceptable risk to navigational safety.

- The Corps shall provide additional, written justification for the exact size and location of the 103 deep water site. The site size shall be the minimum necessary to function as a contingency site for 2002 and up to 5 years (2002-2006) of contingency use for MCR project maintenance. The final 103 site location shall be selected to avoid or minimize possible impacts to natural resources and conflicts with ocean users, as supported by an assessment of biological and physical resources and ocean uses present in the area.

- *Any disposal of MCR materials within the deep water 103 site shall be by repetitive, "pinpoint" dumping to minimize the footprint of the disposal area.*
- *The 103 site shall be re-evaluated for compliance with the OCMP after 5 years.*

Rationale: The information provided by the Corps in support of the Year 2002 disposal plans describes a situation where the collective use of the disposal sites listed in condition (1) could potentially result in unacceptable and in some cases irreversible impacts to navigational safety. Therefore, we conclude that we have no choice but to agree with establishment of a contingency 103 site. But since we find that less is known about the physical and biological parameters of the deep water area compared to the other disposal sites, we cannot provide unqualified support for the 103 site. Baseline studies that were planned for the proposed deep water site have largely been stalled in federal processes, and therefore, we have not gained the information necessary to address the Department's previously stated concerns about a deep water disposal site. (See the OCMP's 1999 response to the Corps' consistency determination for the channel deepening project.) Full characterization of a 103 site will be impossible to achieve prior to the Corps proposed schedule for establishment of the site. Characterization of the site may also be impossible to achieve prior to use of the site if delays continue or if use of other sites is restricted for navigational safety reasons in 2002 or 2003.

Within the materials provided for review by the Corps, we have not found sufficient justification for the size or location of the proposed 103 site. The draft management and monitoring plan (MMP, p. 15) does indicate that dredged material placement at the 103 site would be restricted to a small area that would be filled to a maximum 40 ft. height before disposal operations move to a different spot in the site. This is contrasted by the proposed size of the 103 site at 7000 x 7000 ft. with an active 3000 x 3000 ft. disposal area. Also, the criteria used to select the location of the 103 site are not clear, and we cannot determine whether the proposed location is the best choice for avoiding and minimizing possible impacts to natural resources and conflicts with ocean users. The final 103 site size and location need to be justified, i.e. based on contingency use and supported by an assessment of biological and physical resources and ocean uses present to demonstrate that possible impacts have been considered and avoided or minimized. At a minimum, the Corps should request input from ocean users and conduct bottom trawl sampling to determine areas of high or low abundance of fish and crab. The request for bottom trawl sampling is supported by the review of side scan sonar data for the deep water area conducted by the Oregon Department of Fish and Wildlife. That review suggests the presence of numerous fish schools not identified as such in the side scan sonar report provided to the Corps by the contractor.

The above limitations are based on this lack of information and the need to avoid and minimize impacts in light of this lack of information. The above limitations are also compatible with the stated goal of the Corps, State of Washington, and others for keeping the maximum amount of dredged material in the nearshore vs. wasting it in deep water. Five-year re-evaluation of the 103 site establishment and use is consistent with the OCMP determination on the proposed designation of a permanent (102) deep-water site, which also mandated a five-year re-evaluation.

(3) Prior to the start of dredging for 2002, the Corps shall provide to the OCMP for each disposal site a written, consolidated list of proposed disposal site use criteria (e.g. site use priority, preferred locations, timing restrictions, disposal schedule for alternating between sites, physical and

biological monitoring plans, etc.). The Corps shall also include as part of each list a section detailing proposed response thresholds (e.g., maximum accumulation, weather conditions, coordination protocols, time of year, etc.) with anticipated management responses if any given threshold is likely to be or has been reached.

Rationale: This information is necessary to demonstrate that disposal impacts will be avoided or minimized and to clearly explain how the Corps will make decisions before, during, and after dredging seasons to ensure minimal impacts. This information can be found to some degree in various Corps documents but without the necessary clarity and not in a consolidated manner. These lists would then guide individual Corps management and monitoring decisions, such as shifting between sites, deciding when and what to monitor, or permanently curtailing disposal in any given site, that must be made within the dredging season or otherwise. We believe that this condition is fully supported by the recommendations of the Independent Federal Review Team report on MCR. (p. vi, Executive Summary). The requested information on site use criteria, response thresholds, and anticipated management responses should be detailed in the federal MMP for the MCR project. The draft MMP contains some of this information but is rather generic vs. detailed and specific to the MCR project. The lists, like the rest of the MMP, should be updated as necessary to adapt to new information or changing circumstances after full review by the states and other interested parties.

(4) Prior to the start of dredging for 2002, the Corps shall provide to the OCMP a written explanation of the criteria it will use to determine when contingency use of the deep-water 103 site is justified to avoid unacceptable risk to navigational safety.

Rationale: This condition is obviously linked to the information requested under Condition (3). The Corps is the entity with the expertise and resources to manage and monitor for navigational safety impacts but needs to clearly explain to all interested and/or potentially affected parties how unacceptable risk to navigation is defined and how the Corps responsibilities to avoid such risks will be implemented. We believe that this condition is fully supported by the recommendations of the Independent Federal Review Team report on MCR. (p. vi, Executive Summary). This information should be included in the federal MMP for the MCR project and should be updated as necessary to adapt to new information or changing circumstances after full review by the states and other interested parties. Again, the draft MMP contains some of this information, but the draft MMP tends to be rather generic vs. detailed and specific.

(5) The Corps shall condition dredging orders and contracts to ensure that the Corps can 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.

Rationale: This information is necessary to demonstrate that disposal impacts will be avoided or minimized, to ensure that disposal is occurring within the areas specified, to explain Corps management and monitoring decisions or recommendations, and to clearly explain how the Corps will have sufficient information to make the necessary decisions before, during, and after dredging

seasons to ensure minimal impacts. We suggest that the yearly reports be added as appendices to the MMP for the project. This would ensure that relevant and related information could be accessed within that guiding document.

(6) The 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 project. (See Conditions (3), (4), and (5).)

Rationale: The OCMP continues to view the ocean disposal taskforce or some comparable forum as a necessary tool for cooperative, informed management and monitoring of MCR disposal actions. We see a clear need for a formalized, continuing forum for discussion and resolution of MCR-related issues, and this forum needs to allow for open discussion and gathering of input to inform management and monitoring decisions. The forum must be more than a place for the federal government to brief stakeholders about decisions that have already been made. DLCD offers its assistance to the Corps with respect to re-engaging with taskforce members and optimizing the effectiveness of the taskforce or some similar forum. The Corps initially agreed with formation of the taskforce and hosted several taskforce meetings. But the overall, long-term commitment of the Corps to the taskforce had become unclear in the last year or so. We are encouraged to hear from Corps staff recently that the agency is still committed to stakeholder involvement and wants to explore ways to maximize the effectiveness of the taskforce. We will continue to work with Corps staff and other interested parties on these issues.

(7) The Corps shall begin coordination with the OCMP for the next year's disposal plans as soon as is practical but no later the end of each dredging season.

Rationale: Continuing coordination with the OCMP is required. Early coordination is especially important to ensure sufficient time for review of any new information or changing circumstances or where the Corps otherwise requires specific input from the OCMP. This condition is not intended to independently create a requirement for formal review under the CZMA for the on-going MCR project if no additional, substantial changes are proposed for future dredging seasons. However, if new sites will be proposed for use, if other significant changes become necessary, or if significant, new information or issues must be addressed, then formal review under the CZMA would be required. For example, the OCMP recommends that coordination begin immediately if the Corps wants to pursue use of a nearshore disposal site on the Oregon side of the river entrance within the next year or even next several years. (See also later recommendations regarding possible beneficial use sites.)

(8) The Corps shall obtain and comply with the 401 water quality certification issued by the Oregon Department of Environmental Quality (DEQ), as applicable.

Rationale: The CZMA requires that state water quality authorities for implementing the federal Clean Water Act be linked to the state's federally approved coastal management program. However, DEQ, not DLCD, has the responsibility for determining if the Corps proposal is in compliance with these state water quality authorities. DLCD defers to DEQ's 401 decision in this matter.

If the Corps of Engineers has a serious disagreement with DLCD's decision and does not intend to comply with the conditions of concurrence to achieve consistency with the OCMP, then the Corps has the option of pursuing Secretarial mediation from the U.S. Department of Commerce as described in 15 CFR Part 930 Subpart G. A copy of Oregon's decision has been sent to the Office of Ocean and Coastal Resource Management in the U.S. Department of Commerce in accordance with 15 CFR 930.42 (c). Please keep in mind 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.)

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

Additional Recommendations

South Jetty Site: The Corps originally proposed the SJ site to "prevent potential undermining of the south jetty from active erosion" (Dec. 21, 2001 public notice). Protection of the south jetty, if necessary, would be a beneficial use of dredged material. As such, the OCMP would be willing to work with the Corps and other interested parties to explore a disposal option to address erosion of the south jetty. The Corps will need to take the lead with respect to information gathering and outreach and also needs to be clear about the primary objective for the site, i.e. to stabilize the south jetty vs. beach nourishment. The SJ site, as originally proposed by the Corps, is not likely to be the best location for a pilot project on the Oregon side if the primary objective is to nourish Oregon beaches on the Clatsop Spit.

Oregon Beach Nourishment: The OCMP is also willing to work cooperatively with the Corps and all other interested parties to explore the potential for a disposal pilot project on the Oregon side of the river entrance with the objective of nourishing beaches on the Clatsop Spit. Please note that our intent here is not to compete with or take away from the Benson Beach project but instead to consider additional disposal options that might provide for a beneficial use while providing another alternative to deep-water disposal. Our interest in this is supported by a recommendation from the Oregon Department of Geology and Mineral Industries (DOGAMI) that the Corps give high priority to the use of nearshore disposal sites that can be shown to effectively contribute to beach nourishment in Oregon or Washington. DOGAMI has explained that the Columbia River no longer acts as a source of sand for ocean beaches and that in time this could result in beach erosion on the Oregon side of the river, possibly similar to what is occurring on the north side of the river. We support DOGAMI's recommendations for the Corps to conduct a bathymetric survey of the lower Columbia River estuary, which we understand the Corps has agreed to undertake, and sediment transport studies for the Columbia River littoral system as necessary steps to developing effective beach nourishment strategies.

Permanent Deep Water Site: We understand that the Corps and EPA plan to move forward with permanent designation of the deep water and shallow water sites as proposed in the Final Environmental Impact Statement (FEIS) for the Columbia River channel deepening project. However, we must note that the federal government has not made much progress since release of the FEIS in moving forward with the design, planning, and execution of baseline data collection and special studies in support of a permanent designation. We have been told that the use of an independent panel to design and plan baseline or other studies, as was originally proposed by the OCMP and others and we believe strongly supported by the ocean disposal taskforce, is not viewed as feasible by the federal government. However, we still must recommend that the Corps and EPA obtain the assistance of outside expertise in the design and planning of studies and that the taskforce be included in the process to the extent possible. Also, the Corps needs to update the taskforce on the status of its efforts and explain why very little progress appears to have been made with respect to these studies to date. Having said that, the Corps and EPA need to consider the below stated recommendations as part of your pending determinations regarding the appropriate scope of baseline data collection and special studies

The Corps has indicated that proposed changes in the deepening project could greatly reduce construction and maintenance material from the river that would go to the deep-water site. The size of the proposed deep-water site was originally defended by the federal government based on the maximum possible disposal from channel deepening, river maintenance, and the MCR project. The Corps and EPA need to address the changing ocean disposal volumes associated with the deepening project and river maintenance, adjusting the size of the proposed site accordingly.

Also with respect to permanent designation of a deepwater site, we continue to believe that the Corps and EPA must look at the deep-water site as a contingency site and not the primary disposal site for Columbia River materials. (See also our previous response to the channel deepening FEIS.) Disposal in areas that provide for beneficial uses, such as beach nourishment and protection of jetties, should be given top priority to the maximum extent feasible with respect to navigational safety and other possible management issues. To ensure that beneficial uses are pursued, we recommend a reduction in the proposed size of the deep-water site to better equate with contingency use. Alternatively, we request that the Corps and EPA establish small, defined areas within a deep-water site for placement of dredged materials. Disposal outside the defined areas would need to be prohibited unless or until, after a reasonable period of time and concerted effort led by the federal government, regional consent on alternative, beneficial use sites has not materialized. Such a strategy may allow the federal government to scale back the scope of baseline data collection to a smaller area of massive deep-water site – which would be more in line with currently available resources for studies and future resources for monitoring. Additionally, the federal government would likely be viewed by many interested stakeholders as better addressing the issues of disposal within the littoral system vs. wasting of sand and potential widespread but uncertain impacts to biological resources and commercial fisheries from disposal in the proposed deep water site.

Summary: We see a real need to move beyond standard approaches to management of Columbia River dredged material disposal and what has become a yearly crisis, particularly for the MCR project, about where to place dredged materials. We suggest that development of a comprehensive regional plan for disposal actions, i.e., not a project-by-project approach, is warranted. Through a comprehensive planning process, we could work together as a region to move beyond the status quo,

April 4, 2002

to examine opportunities and constraints for new beneficial use sites, and to better engage stakeholders in the management process. A regional plan would also allow for the consolidation and updating of information currently contained in many separate but related federal documents for Columbia River navigation projects and would provide a solid foundation for year-to-year decisions, longer-term strategic planning, funding requests, inter-jurisdictional partnerships, and issues resolution. We strongly encourage the Corps to begin thinking along these lines. The OCMP offers its assistance and expertise in long-term planning to such an effort.

We are available to discuss the conditions and recommendations found in this letter with the Corps at the convenience of you and your staff. While the OCMP is an extremely small program with limited resources, we will commit staff time and other resources to the maximum extent possible to assist the Corps in matters of CZM compliance and moving forward with the recommendations presented in this letter. Please have your staff continue to work with Christine Valentine of my staff as your key OCMP contact for dredging and disposal issues. She can be reached at 503-373-0050 X250 or christine.valentine@state.or.us.

Thank you for your continuing coordination with the OCMP.

Sincerely,



Nan Evans, Manager
Oregon Coastal Management Program

cc.

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