

Fact Sheet

Oregon International Port of Coos Bay Oregon Gateway Marine Terminal Removal-Fill Permit Decision December 21, 2011

Permit No. 37712-RF
Oregon Department of State Lands

The Oregon International Port of Coos Bay submitted a removal-fill permit application for excavating an access channel and slip adjacent to the Coos Bay Navigation Channel. The permit authorizes removal of approximately 1.75 million cubic yards of material from dredging; impacts to 12.9 acres of intertidal habitat requiring mitigation; and disposal of dredge spoils on approximately 0.1 acres of freshwater wetland, also requiring mitigation.

The slip will be constructed on upland, which DSL does not regulate. A berm will separate construction of the slip from the Coos Bay estuary. Slip construction will not impact waters or wetlands. After construction of the slip is complete, the berm will be removed to connect the slip to the access channel.

The port's stated purpose is to develop a multi-berth, multi-purpose shipping facility that will accommodate large vessels. Such a facility does not currently exist in Coos Bay. The facility will be suitable for inbound and outbound movement of bulk commodities, in addition to wood products and LNG.

DSL received the application for the project on Nov. 15, 2010. After receiving additional information from the port in response to public comments received (2,600 total), DSL approved the permit on Dec. 21, 2011. At the port's request, the permit expiration date was changed to Dec. 21, 2016, which changed the permit approval date to Dec. 29, 2011.

DSL is responsible for regulating removal and fill in "waters of the state" which include wetlands. The agency's decision is limited to considerations and determinations under state law regulating fill, alteration or removal of material (ORS 196.800-990). DSL's administrative rules (chapter 141, Division 85) govern the agency's process for making permit decisions.

Under ORS 196.800-990, DSL has no authority over activities on upland (land outside waters of the state) except as that authority may relate to requiring protective buffers, erosion control and other measures to minimize impacts to adjacent waters of the state. The agency also has no authority to determine whether a particular project is good for the State of Oregon. DSL's permitting authority is designed to ensure the protection, conservation and best use of Oregon's water resources, not to evaluate the business decision that underlies a proposed development project.

The proposed project impacts about 12.9 acres of Coos Bay from dredging the access channel and spoil disposal (10.47 acres of mud flat and 2.43 acres of eelgrass bed impacted by dredging, and less than 0.1 acres of freshwater wetland impacted by spoil disposal). Total impacts from the proposed project amount to approximately 0.1 percent of the total estuary size.

The compensatory mitigation plan meets DSL’s requirements under the Removal-Fill Law. The proposed estuarine mitigation will re-establish tidal connections on approximately 31.41 acres of historic intertidal mudflat/low marsh habitat between Kentuck Inlet and the Kentuck Golf Course to allow tidal exchange between the two areas. The mitigation also will create approximately 7.30 acres of eelgrass beds south of the west end of the Coos Bay-North Bend Airport runway. Impacts from dredging disposal are minimal, affecting 0.1 acre of freshwater wetland on the North Spit, which will be mitigated on-site.

The ongoing success of the mitigation will be further ensured through permit conditions regarding success criteria, ongoing maintenance and long-term management of the mitigation sites.

Why the permit was approved

DSL must consider several things when analyzing permit applications, notably:

- 1. Public need:** ORS 777.065 states that “development and improvement of port facilities suitable for use in world maritime trade at the [Port of] Coos Bay.....is declared to be a state economic goal of high priority. All [state] agencies are directed to assist in promptly achieving the creation of such facilities by processing applications for necessary permits.....”

The port demonstrated the public will derive significant economic benefits from the proposed removal and fill: Even if an LNG facility never materializes, the port needs a multi-berth slip to sustain and reinvigorate maritime trade in the Coos Bay Harbor.

ORS 196.825(2)(a) provides in relevant part that “When the applicant for a permit is a public body, the director may accept and rely upon the public body’s finding as to local public need and local public benefit.”

Economic cost to the public: According to information submitted by the Port of Coos Bay, the estimated jobs and economic impacts from the slip construction include 76 direct and 196 indirect jobs, and \$26.2 million in associated payroll earnings over 18 months. Additional impacts over time could amount to more than a thousand construction and permanent jobs, and wages nearing \$300 million. If the project is not built, the cost to the Coos Bay area of the missed economic opportunity would be significant.

- 2. Impacts to Oregon waters, conservation considerations:** The port studied alternative designs and construction methods for the project, and the selected

option is the practicable alternative with the least impact to the water resources of the state. The Oregon Gateway Marine Terminal site is almost entirely upland, with no wetlands or rare habitat that would be impacted, and is over a mile from the nearest residence.

The site has no transit navigation restrictions, minimizes vessel transit distance, and vessels would be positioned so that they are less vulnerable to collision (i.e., striking of a moving vessel against a stationary vessel that is at anchor, aground, etc. or fixed object such as piers, wharves, etc.) from in-bound deep draft vessels.

- 3. Compatibility with local comprehensive plan and land-use regulations:** A conditional use permit has been approved by the county. The project has been approved by the City of Coos Bay (for the estuarine mitigation site) and Coos County (for the slip, access channel, disposal locations and Kentuck Golf Course mitigation site). The project is located in areas that are currently zoned for industrial uses or designated as available for water-dependent industrial uses under the Coos Bay Estuary Management Plan.

After these considerations, DSL has determined that:

- The project has independent utility, which means it accomplishes its intended purposes without the need for further phases or other projects requiring removal-fill activities. The port supplied sufficient information to demonstrate that this project is not speculative, and that issuing a permit is not likely to result in a “speculative removal or fill” in waters of the state.
- The project is consistent with the protection, conservation and best uses of the water resources of the state. The port chose the alternative with the least adverse effects on waters of the state.
- The project does not interfere with the preservation of the state’s waters for navigation, fishery or public transportation. The project also conforms to federal and state standards for hazardous materials and transportation safety requirements.

Appeals: State law allows any person to submit to DSL a written request for appeal within 21 days after the date of the decision – the last possible day to submit an appeal is Jan. 19, 2012. If the DSL director finds that the person making the request has a legally protected interest which is adversely affected by the granting of this permit, the director will set the matter for hearing within 30 days after the receipt of the request. The hearing would be conducted as a contested case hearing before an administrative law judge.

Additional Information

This is the largest estuarine removal-fill project DSL has permitted in terms of volume removed. As a comparison:

- The Port of Coos Bay project proposes 1.75 million cubic yards of removal, impacting about 12.9 acres of Coos Bay.
- The NOAA project in Newport had a DSL permit to remove 56,000 cubic yards of material, impacting about 5.8 acres.
- The New Carissa removal north of Coos Bay had a DSL permit to remove about 13,000 cubic yards of material, impacting about 0.25 acres within the Pacific Ocean.

What are the next steps in the process? The applicant needs to secure the necessary easements over public land owned by DSL, including a conservation easement over the eelgrass mitigation site to serve as long-term protection. Additional permits and authorizations from, or consultation with, a variety of state and federal agencies, likely will be required. Agencies include the US Army Corps of Engineers, the US Fish and Wildlife Service, the National Marine Fisheries Service, the Oregon Departments of Environmental Quality and Land Conservation and Development, and potentially the Federal Energy Regulatory Commission.

More information about the project and proposed facility is available from:

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Detailed information about the permit decision is in the DSL document, *Findings for Oregon International Port of Coos Bay Permit Application No. 37712*.

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