



# Oregon

Theodore R. Kulongoski, Governor

## Ocean and Coastal Management Program

Department of Land Conservation and Development

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July 1, 2004

Lt. Col. Charles S. Markham  
District Commander  
Corps of Engineers, Portland District  
P.O. Box 2946  
Portland, OR 97208-2946

Dear Lt. Col. Markham,

**SUBJECT: Repair of North and South Jetties at Tillamook Bay  
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 North and South Jetties at Tillamook Bay in Tillamook County, Oregon. The project is described in the Corps Environmental Assessment and Consistency Statement supporting the project issued on April 7, 2004. 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 April 7, 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.

### Project Description

Tillamook Bay is located on the Oregon Coast about 47 miles south of the Columbia River. The bay is a tidal estuary encompassing approximately 12 square miles. Two jetties protect the entrance to the bay. The north jetty was authorized in 1912 and completed in 1917. The last repair was in 1991 and focused on the jetty head. The structure has experienced deterioration and a loss of 384 feet from its constructed length. The south jetty was authorized in 1965 and was completed in 1979. No repairs have been made to the south jetty, which has lost approximately 666 feet from its constructed length.

The jetties serve to confine tidal currents in order to scour the Tillamook Bay bar and entrance channel. Erosion of the jetties has increased over the past seven years, leaving the jetties vulnerable to damage and increased potential for failure or a breach. The sand dune at the north



jetty has progressively eroded, endangering the foredune and the root structure at the interface with the shoreline. Should a breach occur, sediments would likely enter the channel through the area of the breach, impacting safety of navigation between Tillamook Bay and the ocean.

Funding is currently available to construct a revetment that would enhance the structural integrity of the north jetty and reduce the potential for a catastrophic breach. Further work on the trunks and heads is subject to additional funding, but could be completed as early as 2006. The proposed alternative is intended to minimize the potential for a breach.

#### 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 Tillamook County to identify applicable 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; DEQ 401 water quality certification requirements; and OPRD Ocean Shore permit requirements. The project must meet requirements for an "Exception" to statewide Goal 18 (Beaches and Dunes). Without an exception, Goal 18 prohibits the construction of a beachfront protective structure in this particular area. Without an exception, rehabilitation work would be limited to the existing and historic footprint of the jetty.

*Process Note: A goal exception normally requires a local government land use decision to incorporate the exception within the applicable comprehensive plan. In this particular case, the consistency determination indicates that the project is consistent with the applicable exception requirements but the Corps is not required to obtain a local approval under the Coastal Zone Management Act because federal law does not specifically mandate such local approval. The Corps indicates that its action is still subject to the equivalent substantive requirements (comity). Tillamook County has reviewed the Corps consistency determination and exceptions analysis and supports the conclusions.*

*An argument can be made that without the incorporation of an exception within the county plan, the project is not fully consistent with OCMP requirements. As outlined in the CZMA, federal actions must be consistent with mandatory policies of the OCMP to the maximum extent practicable. This case presents some complex issues in this regard. The Corps has addressed the exception requirements as mandatory policies from a substantive perspective, but determined that the procedural requirements to seek county approval are not mandatory because federal law does not require the Corps to apply for such local permits. DLCD believes the project meets the exceptions standards and therefore is consistent with substantive OCMP requirements. Although*



*the Corps is not applying for an exception through Tillamook County, the Corps has jointly applied for an Ocean Shores Permit from the State Parks and Recreation Department, with the county as a co-applicant. This action is facially inconsistent with the decision to assert federal exemptions from the procedural aspects of the local planning process. Given the timing of the project and potential for loss of funding if the project does not proceed by August of 2004, the likelihood that Tillamook County could not process the required amendments within this time frame, and the potential for substantial harm to the local economy and safe navigation in the event of a breach, we believe the circumstances for review of this project may also represent an "exigent circumstance" which limits complete adherence to the procedural requirements of the OCMP. If viewed as an exigent circumstance, this deviation would likely represent the minimum deviation from the OCMP requirements to address the exigent circumstances. Any procedural inconsistencies could be fully resolved by County integration of an appropriate exception within the plan at the earliest opportunity. Notwithstanding Corps assertion of its federal authority as outlined above, we note that the application for an Ocean Shore Permit from the Oregon Parks and Recreation Department may involve further review for consistency with the statewide planning goals and compatibility with the Tillamook County Comprehensive Plan.*

The Corps' consistency determination circulated with the April 7, 2004 Public Notice addresses each of the applicable policies of the OCMP. The analysis concludes that the project is consistent with the enforceable policies of the OCMP.

The analysis addresses the following OCMP provisions:

**Goal 16-Estuarine Resources**-Portions of the project will involve temporary alterations that are authorized by the goal, subject to a resource capabilities test. The Corps concludes that the temporary alterations will not create significant impacts primarily due to the location outside areas of high quality aquatic habitat near the jetties.

**Goal 17-Coastal Shorelands**-Primary requirements for this goal require 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 carefully describes the alternatives and consequences of various options. Essentially, the consistency determination finds that the catastrophic impacts of a breach are outweighed by the relatively insignificant impacts of the revetment. Other portions of the project are clearly maintenance of the existing structure within its footprint and do not create new impacts.

**Ocean Shore Permit Requirements**-The consistency determination addresses each of the requirements for an Ocean Shore Permit. OPRD is currently processing an application for this beachfront protective structure, but has not completed that process at this time. Notice has been issued and it is likely that OPRD will conclude its review by the end of July 2004.

The Corps' Ocean Shore Permit analysis indicates that the revetment will have some impacts on public recreational use and access, but that the project will serve to stabilize beach areas in a manner that is more stable and aesthetically appealing than the current use of sand bags. The



project will protect the area from a catastrophic breach that would significantly alter the area, resulting in greater impacts to recreational use and access. In combination with proposed jetty head stabilization measures, the revetment should be effective for 10 to 20 years. The project includes restoration of any vegetation impacted by the revetment. USFWS and NOAA Fisheries have been consulted on the project and have issued required clearances. The Corps has determined that there are limited biological impacts associated with the project. The Corps has concluded that the revetment will “neither increase or decrease erosion to neighboring properties.”

#### **Mandatory CZM Condition**

**Since the OPRD has not yet completed its review of the project, this CZM decision is contingent upon compliance with the OPRD requirements. Any OPRD conditions are incorporated herein by reference as CZM conditions.**

**Goal 18-Beaches and Dunes**-The goal requirements prohibit the construction of a beachfront protective structure (revetment) unless the area is inventoried as “developed” as of January 1, 1977. The goal’s definition of development does not include jetties or public lands such as the county park area involved in this project. Therefore, the Corps’ consistency determination addresses requirements for an exception. The Corps concludes that the potential for a catastrophic breach of the jetty and the important role of the jetty in marine navigation demonstrates the need for this project. This need is consistent with the designation of Tillamook Bay as a “shallow draft development estuary” in the Land Conservation and Development Commission’s estuary classification rule (OAR 660-Division 17). The Corps concludes that there are no feasible alternatives that do not require an exception. A smaller non-structural alternative was previously attempted in this area. The structure failed within two storm seasons. The Corps indicates that the size and design of the structure is based on the expected wave and storm conditions in order to “reliably” protect the jetty. The Corps evaluates consequences and concludes that the project is intended to avoid the consequences of a jetty breach. Although there will be some impacts on currents, sediment transport and erosion-accretion patterns, such impacts are significantly less severe than a jetty breach. Finally, the Corps concludes that the project is compatible with the adjacent park, Coast Guard tower and parking uses.

**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 analysis provides extensive information about the project location and potential resource and use impacts. The Corps also provides information relative to environmental standards applicable to the project. The Corps concludes that the environmental impacts associated with the action are minor and, for the most part, confined to areas within the existing footprint of the jetty. 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 will include protection of beneficial navigation uses.

**Tillamook County Comprehensive Plan**-The Corps addresses applicable provisions of the County Comprehensive Plan and Land Use Regulations as identified by county planning staff. The project is located in a beach and dune overlay zone and includes requirements for beachfront protective structures, consistent with Statewide Goal 18. The primary need for the project is to



stabilize and protect the jetty from a catastrophic breach. Design of the structure is intended to be the minimum necessary to protect the jetty. The project is designed to be compatible with adjacent uses. The Corps will plant required beach grass on the structure and will maintain the project along with the jetty. The County coordinates closely with OPRD on actions requiring an ocean shores permit.

The Corps also addresses Tillamook County Estuary Policies and requirements.

The Consistency Determination states: "Federal actions are exempt from local and state permitting by the Coastal Zone Management Act and by LCDC administrative rules, unless required by other federal law (See CFR 930.39(e) and OAR 660-035-0030(5)(b). However construction of the revetment and the jetty repairs have been coordinated with the Oregon State Parks and Recreation, Tillamook County and LCDC."

The Consistency Determination further concludes: "...this repair complies with the Tillamook County Comprehensive Plan, applicable provisions of Goals 2 (Land Use Planning) for goal exceptions, Goal 18 (Beaches and Dunes and goal 19 (Ocean resources and OPRD requirements. Goals 16 and 17 are not directly applicable, however they do apply through the county comprehensive plan and land use regulations. The action is, therefore, consistent to the maximum extent practicable with the enforceable policies of the Oregon Coastal Management Program (OCMP)."

**Water Quality Certification (Department of Environmental Quality)**-The Department of Environmental Quality (DEQ) has authority for review and certification of the project for water quality requirements. Although the DEQ requirements are folded into the Oregon Coastal Management Program, the DEQ has independent federal authority for its review. A separate water quality public notice was circulated with this project and the DEQ has completed its certification of the project for compliance with the 401 Water Quality Program. The certification contains a number of conditions to protect aquatic life movements, turbidity and erosion, deleterious waste materials, planting/revegetation, storm water runoff, buffer zones, and other conditions to protect water quality.

#### **Mandatory CZM Condition**

**This CZM decision is contingent upon compliance with DEQ's 401 certification. The DEQ water quality conditions are incorporated herein by reference as CZM conditions.**

#### **Public Comments**

Based on the CZM public notice, DLCD received one comment from the Bureau of Land Management. The comment pointed out information on ownership of an area near the south jetty was incorrect. The letter indicates that the area in question is "owned by the United States and it was withdrawn for use by the Corps of Engineers in 1901. The withdrawn lands are administered by the Corps of Engineers for purposes of construction, operation and maintenance navigational works such as jettys (sic). BLM currently does not have any administrative or management responsibilities for the land."

Response: The Corps has corrected the language.

**DECISION:** Based on the above summary, DLCD conditionally concurs with the Corps' consistency determination that the proposal for the Repair of the North and South Jetties at Tillamook Bay in Tillamook County, Oregon can proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the Oregon Coastal Management Program (OCMP). DEQ has completed its 401 water quality certification for this project and has conditioned its approval. DEQ conditions are incorporated herein as CZM conditions. Since OPRD has not completed its review of the project, this consistency concurrence is contingent on OPRD approval. Any conditions imposed by OPRD shall be incorporated 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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