



# City of Coos Bay

## Public Works & Development Dept.

500 Central Ave., Coos Bay, Oregon 97420 • Phone (541) 269-8918  
Fax (541) 269-8916

RECEIVED

JUN 18 2007

PERKINS COIE

### FINAL ORDER NOTICE OF PLANNING COMMISSION DECISION AND ORDER

**APPLICATION:** Estuarine Activity #ZON2007-00034 - Mitigation

**APPLICANT:** Oregon International Port of Coos Bay  
PO Box 1215, Coos Bay, OR 97420

**OWNER:** Oregon Department of State Lands  
775 Summer Street NE, Salem, OR 97301

**AGENT:** Mark Whitlow, Perkins Coie  
1120 NW Couch Street, 10<sup>th</sup> Floor  
Portland, OR 97209-04128

**LOCATION:** T. 25, R. 13, S. 08: 700 feet and 1,200 feet south and southwest of the Airport runway, and 3,400 feet southwest of the runway.

**ORDER:** Approved on Tuesday, June 12, 2007  
Planning Commission Final Vote:  
**Yea:** Chairman Bruce Harlan, Commissioners Jim Berg, Chris Coles, Chris Hood, Rex Miller, and Steve Donovan  
**Nay:** None      **Abstain:** None

**APPEAL PROVISIONS:** See page 2.

**DECISION CRITERIA AND THE ADOPTED FINDINGS OF FACT AND CONCLUSIONS:**  
See pages 3 - 5

---

#### FINAL ACTION

The Planning Commission verified that mitigation activity is allowed outright in aquatic unit 52-NA of the Coos Bay Estuary Management Plan, as consistent with the Management Objective of aquatic unit 52-NA and approved Estuarine Activity Application #ZON2007-00034, based on findings, conclusions and the applicant's submitted evidence, to allow approximately 1.15 acres of intended mitigation in aquatic unit 52-NA. The exact location for the eelgrass creation or enhancement is yet to be determined. Any mitigation activity to be performed is subject to approval of a Joint Permit Application by the DSL and USACE. The decision to approve will become final at **5:00 PM on July 2, 2007** unless an appeal is filed.

---

## **APPEAL PROVISION**

A decision by the Planning Commission may be appealed to the Coos Bay City Council by an affected party. The party must file a letter of intent to appeal with the City Recorder, which includes the required fee, within fifteen (15) days from the date of the decision. A notice of appeal shall contain all of the following:

1. Identification of the decision to be reviewed.
2. Statement of the interest of the appellant and whether the appellant has "standing to appeal." An individual is said to have "standing to appeal" if the person:
  - a. appeared before the Planning Commission orally or in writing, and
  - b. the person's interests are adversely affected by the decision.
3. Reasons the appellant feels aggrieved by the decision, and how the Planning Commission erred in its decision.

The scope of the review shall be limited to the issues raised in the request for appeal. The Hearings Body will consider evidence in the record, evidence submitted at the appeal hearing which is relevant to the issues under review, and oral or written arguments submitted at the time of the appeal hearing addressing those issues.

Questions regarding the appeal procedure may be directed to the Public Works and Development Department, City Hall, 500 Central, Coos Bay, Oregon or phone (541) 269-8918.

## DECISION CRITERIA, FINDINGS & CONCLUSIONS

Under Coos Bay Land Development Ordinance 5.10, Estuarine and Coastal Shoreland Uses and Activity, uses and activities permitted by the Coos Bay Estuary Management Plan (CBEMP) are subject to the relevant CBEMP management objectives and, where applicable, to general and special conditions and policies to comply with statewide planning goals. Compliance with the management objectives, conditions and policies must be verified.

The following is a list of the decision criteria applicable to the request. Each of the criteria is followed by findings or justification statements which may be adopted by the Planning Commission to support their conclusions.

Although each of the findings or justification statements specifically applies to at least one of the Decision Criteria any of the statements may be used to support the Commission's final decision.

Based on their conclusions, the Commission must approve, approve with conditions, or deny the application. Conditions may be used by the Commission in order to address specific concerns about the request.

### DESCRIPTION OF PROPOSED MITIGATION PROPOSED UNDER A JOINT PERMIT APPLICATION

The mitigation activity discussed below is conceptual in nature and is presented for informational purposes only. The proposed conceptual mitigation activity is subject to modification during the evaluation of the Joint Permit Application being reviewed by the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (USACOE).

The Port proposes to establish a one-to-two acre mitigation site in CBEMP aquatic unit 52-NA located in the Lower Bay of the Coos Bay Estuary. The mitigation site is located due south to the west end of the airport runway adjacent to existing eelgrass beds that were established as part of the Airport's mitigation associated with its runway extension in the 1980s. See *Attachment A-11*.

This site was selected by the Port's environmental consultants in coordination with the Oregon Department of Fish & Wildlife (ODFW), the South Slough National Estuarine Reserve and the Coos Bay Watershed Council.

The mitigation area is situated in three (3) possible subareas so that a minimum of 1.15 total acres of low-to-high density eelgrass beds will ultimately be established. Generally, two subareas are inter-tidal sand bars, referred to as "islands" in the applicant's submitted information, located approximately 700 feet and 1,200 feet to the south and southwest of the airport runway. These areas are to be shaved down to a mean lower water elevation to connect with existing adjacent eelgrass habitat. The Port proposes to excavate, or shave the inter-tidal sand bar areas, the first year and allow the site to stabilize over one winter storm season. In the second year the site will be planted with eelgrass from an adjacent donor site. This is the same method that was used by the Airport for mitigation for the runway extension project conducted in the 1980s. All earthwork will take place during the in-water work period, which occurs between October 1<sup>st</sup> and February 15<sup>th</sup>.

The third possible subarea is located approximately 3,400 feet southwest of the runway in a deeper water area to be filled to the mean lower water elevation to connect with adjacent eelgrass habitat.

The purpose of the mitigation is to compensate for the loss of eelgrass beds expected to occur during dredging between a proposed multi-purpose marine shipping berth and the existing navigation channel.

All mitigation work will be done under a Joint Permit from DSL and USACOE.

### DECISION CRITERIA AND FINDINGS

1. The Coos Bay Land Development Ordinance (LDO) establishes an estuarine review procedure to verify allowed uses and activities within the aquatic areas of the CBEMP. The Plan lists mitigation as an allowed activity in aquatic unit 52-NA.

#### FINDINGS:

- A. Estuarine uses and activities are defined by the CBEMP. Allowable, conditional, and prohibited uses and activity within these areas shall be consistent with the Plan and shall be subject to the general and special conditions of the Plan, its policies, inventory document, and maps, in addition to development standards of the Coos Bay Land Development Ordinance.
- B. The CBEMP has been acknowledged by the State to be consistent with the Statewide Planning Goals, including Goal 16, Estuarine Resources. As verified in this application, the CBEMP identifies mitigation in the 52-NA unit as an allowed use ("A"), not subject to general or special conditions. Therefore, because the proposed mitigation is consistent with the CBEMP, which has already been acknowledged by the Land Conservation and Development Commission to be in compliance with Statewide Planning Goals, no further demonstration of compliance is required. Aquatic unit 52-NA is at *Attachment B*.
- C. A letter was received from the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians dated April 19, 2007, stating there are no known cultural resources in the project area. Therefore, the Tribes have no objections to the proposed project. The Tribes' letter is at *Attachment C*.
- D. The activity proposed is mitigation intended to offset impact to the estuary from a development activity.

2. Mitigation is listed as an allowed activity in the Lower Bay aquatic unit 52-NA, subject only to the management objective of this unit and any applicable general and special conditions. The Management Objective is provided below. There are no general or special conditions.

*Management Objective:*

*This aquatic unit contains extensive eelgrass beds with associated fish and waterfowl habitat, and shall accordingly be managed to maintain these resources in their natural condition in order to protect their productivity.*

*Dredging of a small channel on the north side of the proposed airport fill shall be necessary as a form of mitigation to maintain tidal currents.*

**FINDINGS:**

- A. Two areas where mitigation will take place are located approximately 700 feet and 1,200 feet to the south and southwest of the Airport runway. These areas, or islands, are to be shaved down to a mean lower water elevation to connect with existing adjacent eelgrass habitat. The Port proposes to excavate, or shave the inter-tidal sand bar areas, the first year and allow the site to stabilize over one winter storm season. In the second year the site will be planted with eelgrass from an adjacent donor site. This is the same method that was used by the Airport for mitigation for the runway extension project conducted in the 1980s. All earthwork will take place during the in-water work period, which occurs between October 1<sup>st</sup> and February 15<sup>th</sup>.
- B. A third area where mitigation will take place is located approximately 3,400 feet southwest of the runway in a deeper water area to be filled to the mean lower water elevation to connect with adjacent eelgrass habitat.
- C. A minimum of 1.15 total acres of low-to-high density eelgrass beds will be established by the mitigation.

**EFFECTIVE DATE OF APPROVAL:**

Unless a different time limit has been established by Commission action, approval shall be withdrawn if the authorized construction or use is not commenced within one year or is not pursued diligently to completion, or, if authorized occupancy or use has been discontinued for over 120 consecutive days.

The effective date of the permit may be delayed if substantive conditions are attached to the approval. The Commission may grant an extension of time for a period not to exceed one year if circumstances beyond the control of the applicant cause delays.



Laura Barron  
Planning Administrator

DATE: June 15, 2007

Attachments: A - Applicant's submitted information  
B - CBEMP Aquatic Unit 52-NA  
C - Letter dated April 19, 2007, from Confederated Tribes

c: Jeffrey Bishop, Oregon International Port of Coos Bay  
Mark Whitlow, Perkins Coie  
Department of State Lands  
South Slough National Estuarine Reserve  
City of North Bend  
Oregon Department of Fish and Wildlife  
Coos County  
Department of Environmental Quality  
Jody McCaffree  
US Army Corps of Engineers  
US Fish & Wildlife Service  
National Marine Fisheries Service  
Dave Perry, DLCD  
Camby Collier  
David Lohman  
Marcella Weaver  
Dennis Phillips

G:\DCS\PLANNING\Final Orders\2007\FO07-034 Est Activity.doc