



**Coos County Planning Department**  
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(541) 396-3121 Ext.210  
FAX (541) 396-2690 / TDD (800) 735-2900

PATTY EVERNDEN

PLANNING DIRECTOR

RECEIVED

JAN 07 2008

**NOTICE OF DECISION**

PERKINS COIE

January 3, 2008

Re: Application of Oregon International Port of Coos Bay, Coos County Planning Dept.  
File: #HBCU-07-03 Coos County Order No. 07-12-309PL

Dear Property Owner, Affected Unit of Government, or Participant:

This letter is to inform you that on January 2, 2008, the Board of Commissioners adopted and signed the above-referenced order approving conditional use #HBCU-07-03 for an industrial and port facility, new and maintenance dredging, shoreline stabilization, and storm water discharge (Oregon Gateway Marine Terminal) on property described as T.25, R.13W, S.05/08, tax lot 200.

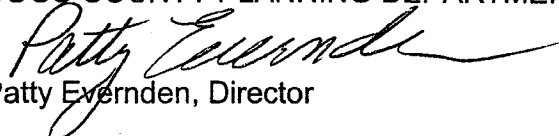
The adopted order, together with all exhibits adopted as part of the order, including the findings and conditions, may be reviewed at the **Coos County Planning Department, 290 N. Central, Coquille, Oregon**, Monday through Friday from 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.

The adoption of the above-referenced order may be appealed to the Land Use Board of Appeals (LUBA), pursuant to ORS 197.830 to 197.845, by filing a Notice of Intent to Appeal within 21 days of the date the Board adopted and signed the order approving the application. LUBA may be contacted by phone at 503-373-1265, or in writing at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301-2552.

If you have any questions pertaining to this notice or the adopted ordinances, please contact the Planning Department at (541) 396-3121 or 756-2020, extension 210.

Sincerely,

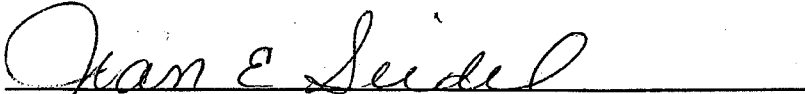
COOS COUNTY PLANNING DEPARTMENT

  
Patty Evernden, Director

## CERTIFICATE OF MAILING

I hereby certify that on January 3, 2008, I deposited the attached NOTICE OF ADOPTION into the U.S. mail, in an envelope with first class postage affixed thereto.

Dated: January 3, 2008.

A handwritten signature in cursive script that reads "Jean E. Seidel". The signature is written in black ink and is positioned above a horizontal line.

Jean Seidel  
Office Specialist II

BEFORE THE BOARD OF COMMISSIONERS  
OF THE COUNTY OF COOS, OREGON

In the Matter of a Conditional Use HBCU-07-03 )  
Applied for by the Oregon International Port of ) FINAL DECISION AND  
Coos Bay to allow an Industrial & Port Facility, ) ORDER 07-12-309PL  
New & Maintenance Dredging, Shoreline )  
Stabilization, & Storm Water Discharge (Oregon )  
Gateway Marine Terminal) )

NOW BEFORE THE Board of Commissioners is the matter of Conditional Use Application #HBCU-07-03 for an industrial and port facility submitted by the Oregon International Port of Coos Bay on shoreland sites as T.25, R.13, S.05/08, tax lot 200;

AND IT APPEARING to the Board that the use and activities are subject to administrative conditional use review by the Planning Director, and Pursuant to Section 1.3.980, the Board of Commissioners pre-empted the permit review process and appointed a hearings officer to hear and consider the application and provide a recommendation to the Board;

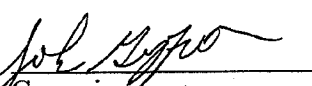
AND IT FURTHER APPEARING that the Board deliberated toward a decision on the record on December 4, 2007 and on that date reached a decision accepting the hearings officer's findings in part and staff's recommendation of approval, and directed staff to prepare draft conditions for further Board consideration;

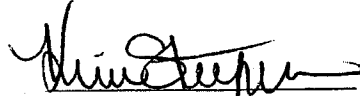
AND IT FURTHER APPEARING that the Board approved the conditions on December 12, 2007, and continued the matter to December 19, 2007, to review the draft findings. At the December 19, 2007, hearing the Board moved to continue the hearing to January 2, 2008, to allow additional time to review the draft findings.

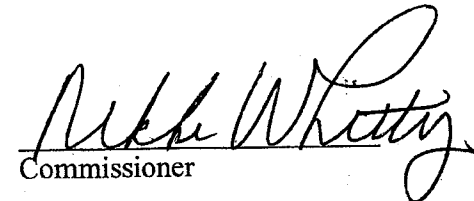
NOW, THEREFORE, IT IS HEREBY ORDERED that application # HBCU-07-03 for the industrial and port facility (Oregon Gateway Marine Terminal) is APPROVED subject to the conditions listed in Exhibit "B". THE BOARD ADOPTS THE FINDINGS OF FACT AND CONCLUSIONS OF LAW ATTACHED AS EXHIBIT "A" WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE.

ADOPTED this 2nd day of January, 2008.

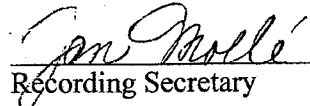
BOARD OF COMMISSIONERS

  
Commissioner

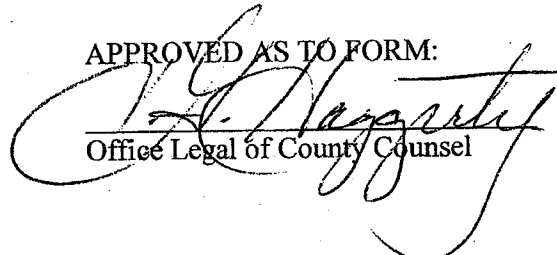
  
Commissioner

  
Commissioner

ATTEST:

  
Recording Secretary

APPROVED AS TO FORM:

  
Office Legal of County Counsel

FINAL DECISION AND  
ORDER 07-12-309PL

**FINDINGS OF THE COOS COUNTY BOARD OF COMMISSIONERS  
APPROVING ADMINISTRATIVE CONDITIONAL USE PERMIT  
FOR THE OREGON GATEWAY MARINE TERMINAL**

**I. INTRODUCTION**

These findings support Coos County Ordinance No. 07-12-309PL, which approves the Oregon International Port of Coos Bay's application for an administrative conditional use permit to allow development of the Oregon Gateway Marine Terminal. The Board of Commissioners (Board) has reviewed the hearings officer's recommendation dated November 27, 2007, and accepts that decision except as modified by the Board at its deliberations on December 4, 2007 and as stated in these findings. Specific errors in the hearings officer's decision are addressed in Section V of these findings. The Board specifically adopts and incorporates the hearings officer's findings and conclusions (as modified) as part of this final decision, as well as the findings and conditions set forth in this document. To the extent there is any discrepancy between the hearings officer's findings and the Board's findings, the express findings in this document shall govern.

**II. PROJECT AND SITE DESCRIPTION**

The Oregon International Port of Coos Bay (Port) proposes to modernize the Port's facilities to accommodate new water-dependent industrial uses appropriate for world maritime trade. Coos Bay is one of only three of Oregon's twenty-one estuaries that are designated by the Oregon Land Conservation and Development Commission (LCDC) as a deep draft development estuary allowing for the presence of navigational channels deep enough to accommodate worldwide maritime trade. Known as the Oregon Gateway Marine Terminal (Marine Terminal), it will provide a multi-purpose Port Slip and berths for ocean-going ships, with related industrial docks, moorage facilities for tugs and ocean-going vessels, and direct access to the Coos Bay deep-draft navigation channel. The Port also proposes compensatory mitigation to offset environmental impacts due to the development of the Marine Terminal.

The Port's new Marine Terminal, consisting of the subcomponents the Port Slip and Access Waterway (also previously referred to as the "Access Channel"), will be located within the boundaries of the Coos Bay Estuary Management Plan (CBEMP) on a portion of the North Spit's western shoreline in the Lower Bay at approximately MP 7.5 south of the railroad bridge. This portion of the North Spit's shoreland and its adjacent aquatic areas are identified by the CBEMP as appropriate for water-dependent and related aquatic development uses and activities. The new Port Slip and Access Waterway are being designed to provide a safe harbor to large ocean-going vessels through excavation of an existing upland area to create the Port Slip (6-WD) on the North Spit and related dredging (6-DA and 5-DA) to create the Access Waterway for access to the Port Slip from the existing Coos Bay deep-draft navigation channel (DDNC-DA).

The Port's proposed Marine Terminal meets the definition of "Industrial (Uses) and Port Facilities" in the Coos County Zoning and Land Division Ordinance (ZLDO). Industrial and Port Facilities are allowed as administrative conditional uses within zoning districts 6-WD (the upland area being excavated to create the proposed Port Slip) and 6-DA and 5-DA (the adjacent

aquatic areas being dredged to create the related Access Waterway). The Port's conditional use application for the Port Slip and Access Waterway (as an Industrial and Port Facilities use) includes the related activities of new and maintenance dredging, shoreline stabilization, storm water discharge (activities allowed under administrative conditional use procedures, subject to general and special conditions), and excavation to create the new water surface and fill for the Port Slip (permitted activities, subject only to general conditions).

The application also requests approval to allow related fill and dredged material disposal (DMD) in CBEMP zoning district 7-D (the Weyerhaeuser Linerboard Site). Material excavated from the upland area of 6-WD to create the Port Slip and dredged from 5-DA and 6-DA for the Access Waterway will be placed as fill and DMD in portions of 7-D. Both fill and DMD are permitted in 7-D as administrative conditional uses. Dredged material will also be disposed of in the county-designated "Beachfront DMD" site located on Bureau of Land Management land, with dredged material from future maintenance dredging to be disposed of in the county-designated "Coos Bay Offshore Site F." Other excavated material will also be placed as fill in two locations: Industrially (IND) zoned property adjacent to zoning district 7-D and the Jordan Cove Energy Project (JCEP) site upland from the Marine Terminal. Therefore, in addition to seeking administrative conditional use approval for fill and DMD in district 7-D, the application also seeks a county determination of zoning consistency for the DMD to be placed on the county-designated Beachfront DMD site and Offshore Site F, and for the fill and DMD to be placed in the Industrially zoned (IND) property where it is an outright permitted use. No action is requested as part of the Port's application for the placement of fill on the JCEP site which has been approved as part of the JCEP application, in Coos County Order No. 07-11-289PL.

The application also seeks a county determination of zoning consistency that the permitted activity of mitigation proposed by the Port on the Lyons Site in district 30B-RS is consistent with the general conditions for that zoning district. The application is being coordinated with another application in the City of Coos Bay in which the city approved a zoning consistency determination for a similar estuarine review for the Port's related eelgrass bed mitigation site located in CBEMP district 52-NA in the City of Coos Bay. See City of Coos Bay Notice of Decision of June 12, 2007 approving Estuarine Review of Mitigation Activity in zoning district 52-NA.

### **III. APPLICABLE STANDARDS AND CRITERIA**

This section of the findings addresses the relevant approval criteria under the Coos County Zoning and Land Development Ordinance (ZLDO) and the Coos Bay Estuary Management Plan (CBEMP). Applicable standards are set out in italics with responsive findings immediately below. Section IV includes findings addressing specific issues raised by opponents of the application, including issues that are not relevant to applicable approval standards.

#### **A. ZLDO Section 2.1.200 – Definitions**

The Board finds that the application for the proposed Oregon Gateway Marine Terminal implicates the following ZLDO definitions, and is consistent with those definitions as explained in the following findings:

**Coastal Shoreland:** *Those areas immediately by oceans and land next to estuaries.*

The Board finds that the application seeks development of a water-dependent Industrial and Port Facilities use within the Coastal Shoreland.

**Development Aquatic Area (DA):** *An aquatic management unit (see Vol. II, Part I, Section 3.5 of the CBEMP).*

The Board finds that the application relates to uses and activities in development aquatic areas 5-DA and 6-DA.

**Development Management Unit:** *In estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration, areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, sub-tidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alterations of the estuary not included in "Natural and Conservation" management units.*

The Board finds that the Coos Bay Estuary is recognized as a "Deep-Draft Development Estuary" by the local governments, which is consistent with the overall Oregon Estuary Classification (OAR 660-17-000, as amended). See CBEMP Policy #1 (Estuary Classification). The Port's application proposes dredging in the Development Aquatic Management Units (5-DA and 6-DA) as necessary to allow access to the Port's water-dependent Port facilities proposed on the adjacent shorelands (in district 6-WD) and to allow fill and dredged material disposal (in district 7-D) associated with the creation of the Port Slip and Access Waterway.

**Development Shoreland Area (D).** *A shoreland management unit (See Volume II, Part I, Section 3.5).*

The Board finds that the application proposes fill and dredged material disposal in portions of zoning district 7-Development Shorelands (7-D).

**Docks and Moorage:** *A pier or secured float or floats for boat tie-up, fishing, or other water-dependent use, often associated with a specific land use on the adjacent shoreland, such as a residence, or group of residences, but not exceeding five berths. Small commercial moorages (five berths or less) with minimal shore-side services and no solid break water are included in this category. Float houses, which are used for boat storage, net-drying and similar purposes are also included in this category.*

The Board finds that the Port's proposed Marine Terminal includes new docks and moorages associated with water-dependent uses on the adjacent shorelands in zoning district 6-WD.

**Dredged Material Disposal:** *The deposition of dredged material in aquatic or upland areas. Methods of disposal include, in-water disposal, beach and land disposal, and ocean disposal: (1) In-Water Disposal is the deposition of dredged material in a body of water; (2) Ocean Disposal is the deposition of dredged materials in the ocean; (3) Beach Disposal is the deposition of dredged materials in beachfront areas west of the foredunes; (4) Land Disposal is the deposition of dredged materials landward of the line of non-aquatic vegetation, in "upland" areas.*

The Board finds that the application requests authorization for dredged material disposal in a portion of zoning district 7-D. This application also requests a zoning consistency determination for such disposal in the county-designated "Beachfront" DMD site, in the Industrial (IND) zone adjacent zoning district 7-D, and, for future maintenance dredging, in Coos Bay Offshore Site F.

**Dredging:** *The removal of sediment or other material from a stream, river, estuary or other aquatic area: (1) Maintenance Dredging refers to dredging necessary to maintain functional depths and maintained channels, adjacent to existing docks and related facilities; (2) New Dredging refers to deepening either an existing authorized navigation channel or deepening a natural channel, or to create a marina or other dock facilities, or to obtain fill for the North Bend airport runway extension project.*

The Board finds that the application requests approval for new dredging to create the Port's new dock facilities and access Waterway, and for periodic maintenance thereafter for dredging for the Port's docks and related facilities.

**Dune, Younger Stabilized:** *A wind stable dune with weakly developed soils and vegetation.*

The Board finds that the application proposes development in the area of a younger stabilized dune in the upland portion of zoning district 6-WD.

**Excavation to Create New Water Surface:** *Excavation of shorelands that create a new water surface directly connected to other tidal or non-tidal waters. The most common examples are creation of moorage space, fish ponds, or restoration/mitigation from uplands.*

The Board finds that the Port proposes to create a new multi-user Port Slip for ocean-going vessels through the excavation of a portion of upland shorelands in zoning district 6-WD to create a new water surface directly connected to the Bay for use as a multi-user Port Slip and berths for ocean-going vessels.

**Fill:** *The placement by man of sand, sediment, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land. Except that "fill" does not include solid waste disposal or site preparation toward development of an allowed use which is not otherwise subject to the special wetland, sensitive habitat, archeological, dune protection, or other special policies set forth in this Plan (solid waste disposal, and site preparation on shorelands, are not considered "fill"). "Minor Fill" is the placement of small amounts of material as necessary, for example, for a boat*