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State denies Coyote Island Terminal permit application

Salem – The Department of State Lands (DSL) today announced the removal-fill permit for the Coyote Island Terminal at the Port of Morrow in Boardman was rejected. The decision was communicated to the applicant in a letter sent by email.

“As many people know, this permit application has taken hundreds of staff hours to review,” said Mary Abrams, DSL director. “From reading more than 20,000 public comments to carefully analyzing technical documents and plans, this application has been scrutinized for months. We believe our decision is the right one, considering our regulatory parameters laid out in Oregon law, and the wealth of information we have received from the applicant and the public.”

DSL regulates filling and removing material from “waters of the state” which include wetlands, rivers and streams. The Coyote Island Terminal removal-fill permit application proposes 572 cubic yards of permanent fill (in the form of pilings) in the Columbia River on submerged land owned by the Port of Morrow.

Elements of the proposed work include construction staging; construction of an elevated, fixed dock and conveyor system; construction of an elevated, fixed-operation walkway with 12 supports; and construction of nine multi-pile structures (‘dolphins’) installed adjacent to the walkway for vessel mooring.

DSL first received the permit application for the terminal in February 2012. Three public review periods and eight decision deadline extensions occurred over the two-and a-half-year process. In general, the extensions allowed the applicant, Ambre Energy, to respond to issues raised in public comment periods, and to the state’s questions and requests for clarification.

Oregon Revised Statute (ORS) 196.825 directs the DSL director to “issue a permit.... if the director determines that the project described in the application: (a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905; and (b) Would not unreasonably interfere with the paramount

policy of this state to preserve the use of its waters for navigation, fishing and public recreation.”

The department also uses a set of criteria that includes, but is not limited to: what alternatives were considered in the project planning (avoiding waterway impacts); economic, social and other public benefits of the proposed project; if the project is consistent with existing local land-use plans and adjacent land and waterway uses; and what the applicant proposes to mitigate unavoidable waterway impacts.

In reviewing this application and supporting materials, DSL considered the above factors and determined that while the proposed project has independent utility, it is not consistent with the protection, conservation and best use of the state’s water resources, and that the applicant did not provide sufficient analysis of alternatives that would avoid construction of a new dock and impacts on tribal fisheries.

In the department’s decision to deny the permit, Director Abrams stressed that the decision was reached after extensive deliberation, research and legal advice. “We used data provided by a wide array of parties, and weighed this information against what Oregon law says we must take into consideration in making removal-fill permit decisions. We fully believe that our conclusion to deny the Coyote Island Terminal permit is the right one.”

Abrams also noted that the department’s removal-fill regulatory authority is vested in the agency director, not the State Land Board.

The applicant may appeal the decision, which would include a hearing before an administrative law judge through the contested case process.

More information: http://www.oregon.gov/dsl/PERMITS/Pages/cit_permit_application.aspx

The State Land Board consists of Governor John Kitzhaber, Secretary of State Kate Brown and State Treasurer Ted Wheeler. The Department of State Lands administers diverse natural and fiscal resources. Many of the resources generate revenue for the Common School Fund, such as state-owned rangelands and timberlands, waterway leases, estates for which no will or heirs exist, and unclaimed property. Twice a year, the agency distributes fund investment earnings to support K-12 public schools. The agency also administers Oregon’s Removal-Fill Law, which requires people removing or filling certain amounts of material in waters of the state to obtain a permit.

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