

Summary of the Coyote Island Terminal Permit Decision

August 18, 2014

The Department of State Lands considered the application and information received from the applicant; the comments received from the public during the public comment periods; and our own investigation in making our decision to deny the permit.

The decision was arrived at after extensive research and review: The permit review and decision took hundreds of hours of staff time over more than two years, including review of more than 20,000 public comments; extensive review of technical documents; and careful analysis of how the proposed project met or didn't meet the criteria we must consider when reviewing removal-fill permit applications.

In doing our review, we must use certain criteria for making our decision (these criteria are laid out in Oregon law – ORS 196.825). DSL considers the following:

Public need for and the social, economic or other public benefits likely to result from the proposed fill:

- There is little, if any, public need for this private commercial project (“public need” relates to public safety, health and natural resource issues; economic development is considered separately from public need)
- There was evidence noting the public economic benefits (economic and job benefits from the project to the local counties), though the social, economic and other benefits evidence (except for fisheries) is conflicting, and thus DSL found it inconclusive.
- There was evidence noting adverse public impacts (impacts to fisheries, public health, and drinking water sources) from the proposed fill
- The applicant included information regarding economic benefits across the entire project scope from Morrow County to Columbia County where the transloading would occur
- The opponents included economic costs across the entire project scope if the project is constructed

The economic cost to the public if the fill is not accomplished:

- No information was submitted indicating an economic cost if the fill is not accomplished (DSL considers direct costs of the fill not being accomplished – for example, to prevent flooding; missed economic opportunity is considered with the economic benefits of the proposed fill, rather than as part of the economic cost to the public of not accomplishing the fill)

Possible alternatives to the project and alternate sites for the fill – The applicant did not provide adequate rationale for choosing this alternative which has an impact to the waters of the state vs. transporting the coal by rail to a deep water port and loading it directly for export

Whether the proposed fill conforms to sound policies of conservation and would not interfere with public health and safety:

- The proposed fill was designed with Best Management Practices to avoid impacts
- The opponents contended that even so it would pose risks to public health and safety
- Particular risks to safety for tribal fishermen were noted in tribal affidavits

Whether the proposed fill is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations

- Not in conformance with existing public uses (particularly tribal fisheries),
- is in conformance with land use for adjacent land

Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal (on both the waterway and the fisheries):

- Applicant submitted a mitigation plan for the waterway
- Applicant submitted only a general statement of possible mitigation for the fisheries impacts

Based on the above analysis, DSL determined that the project described in the application:

- **Has** independent utility
- **Is not consistent** with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905. **This is the primary reason for denial of the permit.**
 - The applicant did not adequately rule out alternatives that would avoid construction of a new dock and thus any impact to the waters of the state
 - The project as described in the application had impacts on the water resources of the state particularly on a small but important and long-standing fishery
- **Would unreasonably interfere** with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation – while the project as described would not interfere with navigation or public recreation, it would interfere with fishing. **This is an additional reason for denial of the permit.**