

# Oregon Territorial Sea Plan

Adopted 1994



## **PART TWO:**

# **Making Resource Use Decisions**

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### **C. LOCAL GOVERNMENT CONSULTATION**

#### **1. Context**

The 1991 Legislature directed OPAC to create a "mandatory consultation process, as necessary, among local governments, the Governor, and state agencies on major ocean-development activities or actions" (ORS 196.465(2)(f)). The purpose of the consultation process is to ensure that the (Ocean) plan and the Territorial Sea Plan are compatible with the comprehensive plans of adjacent coastal counties and cities.

#### **2. Consultation Process Described**

The mandatory process for state agencies to consult with local governments consists of three basic parts:

- Agencies inform local governments of the opportunity to comment regarding a major ocean development;
- Agencies respond in writing to local government comments;
- Agencies offer assistance to local governments if appropriate.

#### **3. Mandatory Policies**

##### **a. Purpose**

Major ocean developments can have significant effects, even if secondary. Affected local government's only role in the approval of such offshore actions is to provide comment. This can be frustrating to local governments when the approving state or federal agency neither acknowledges nor explains its disagreement with received comments. Consequently, another purpose of the mandatory consultation process could be to raise the level of state and federal agencies' responses to received comments from local governments. This would not be a veto authority, but only an elevation of the current consultation process.

## **b. Major Ocean Development Activities**

For purposes of the "local consultation process" mandated by ORS 196.465, the term "major ocean developments" means any of the following:

- 1.) Any ocean development that involves the siting of an onshore facility in a coastal county or city.
- 2.) Any ocean activity that results in a Joint Review Panel.
- 3.) Federal or state ocean leasing for oil/gas or hard mineral exploration or development (not geological or geophysical testing or sampling).
- 4.) Any ocean activity or action for which state or federal law requires approval from the Governor.
- 5.) Designation of any restricted ocean-use area, whether for resource protection (e.g., marine sanctuary) or for development (e.g., kelp lease). Included in this category are any future amendments, deletions, or additions to the rocky-shore site planning designations in the adopted Territorial Sea Plan, and future adoptions of rocky-shore site-management plans whether those actions are made by OPAC or any other state agency empowered by the plan to do so.

## **c. Eligible Local Governments**

Any local coastal city or county that submits written comments to a relevant state or federal agency regarding a major ocean development is eligible for this mandated consultation process. The local government's comments shall describe how the proposed major ocean development would be:

- 1.) Compatible or incompatible with specific provisions in the local comprehensive plan applicable to land-use decisions within the local government's land-use planning jurisdiction;

OR

- 2.) Contrary or beneficial to the interests of the community; that is, would have secondary or indirect adverse or beneficial effects which are not covered by the local comprehensive plan.

## **d. Agency Response To Comments**

**1.) State Agency Coordination Rules.** LCDC's existing "state agency coordination" rule regarding agency compatibility with local plans, OAR 660-30-070, is applicable to agency actions under this policy.

**2.) Agencies That Must Respond.** This mandatory consultation process applies to the Governor's Office, any other state agency, or federal agency that is:

- (a) Proposing a major ocean development; or
- (b) Approving a major ocean development; or
- (c) Funding a major ocean development; or
- (d) In the case of state government, the "lead" or "coordinating" agency formulating a "state" response to a major ocean development.

Such agencies must "consult" with eligible local governments as described below.

**3.) Duty To Inform.** Agencies shall inform local coastal governments regarding major ocean developments.

- (a) Informing the local governments shall occur as soon after the agency learns of the development as is practical. This may mean informing the local governments before the agency is required by law to issue public notice for whatever permitting or decision-making process in which the agency is involved.
- (b) Agencies shall give local governments an adequate opportunity to comment to the agency on the proposed major ocean development.
- (c) Whatever methods are used by agencies shall be sufficient to inform the local governments of the following:
  - i. The nature and location of the major ocean development;
  - ii. That the "mandatory local government consultation" process is commencing;
  - iii. The opportunity for the local governments to submit comments regarding compatibility with the local comprehensive plan as provided in Subsection 2.c "Eligible Local Governments" above; and
  - iv. The name, address, and phone number of the appropriate agency staff person(s) to contact for more information or to whom comments may be sent.

**4.) Agency Response--Local Plan Compatibility.** The responding federal or state agency must provide a written response to each coastal city and county government which comments on whether the proposed major ocean development would be compatible with the local comprehensive plan.

- (a) If the agency agrees with the local government's interpretation, then the agency shall acknowledge that agreement.
- (b) If the agency disagrees with the local interpretation, then the agency shall prepare a written explanation of the agency's determination.
- (c) If the agency determines that the proposed major ocean development will be incompatible with the local plan, then the agency may, or request the proponent to, do one of the following, in addition to other options in law:
  - i. Terminate the proposed development.
  - ii. Revise the proposed development to be compatible with the local comprehensive plan.
  - iii. Provide technical assistance to the local government to help remove the incompatibility; such as, mitigating adverse effects; amending the local comprehensive plan to accommodate the onshore effects of the proposed development.
- (d) If the agency determines that the proposed major ocean development will be compatible with the local plan, but the local government disagrees or determines that the proposed development will be adverse to the interests of the community, then the agency is encouraged to assist the local government in mitigating any adverse effects from the development. Such mitigating actions may include:
  - i. Revising the proposed development,
  - ii. Allowing the local government sufficient time to amend its comprehensive plan and land-use ordinances to address or accommodate the onshore effects of the development, or
  - iii. Working with local officials to conduct educational and informational workshops that address the expressed community concerns.

**5.) Agency Response--Local Community Interest.** The agency is not required to provide a written response to local governments regarding any effects of the proposed development on the interests of the local community. However, the agency is encouraged to assist the local government in mitigating any of the development's adverse effects on local community interests.

**6.) Tribal Governments.** Agencies shall notify and consult with relevant tribal governments as required by this Part 2.C. for coastal city and county governments. Relevant tribal governments are those described for purposes of the state's archeological-resources protection statutes (ORS 358.905 et seq.) and whose archeological-resource administrative boundaries border or include the Pacific Ocean.

**7.) Other Groups.** Agencies are encouraged to notify other local government groups and groups other than local governments. In responding to written comments from these groups, the agency is encouraged to provide at least a single written response that aggregates and responds to clusters of common comments.

**8.) No New Inventory Requirements.** OPAC's "ocean framework" policies already require the resource inventory and effects evaluation for all proposed ocean developments to include the onshore effects of proposed offshore activities. Consequently, the consultation process does not create a new requirement for the proponent of a major ocean development to generate information on local community effects.

#### **e. Local Plan "Compatibility"**

Current state statute (ORS 201.370(2)) prohibits local coastal governments from exercising their planning authorities in Oregon's territorial sea, which essentially extends seaward from the low water line. Consequently, the issue of major ocean development decisions being compatible with local comprehensive plans becomes an issue of the offshore development's onshore land-use effects, both direct and indirect.

Local governments may need assistance evaluating proposed major ocean developments for plan compatibility, or appropriately amending their plans to adequately address the onshore effects of major ocean developments. The following types of technical assistance might be useful to local governments:

**1.) Education.** Some local officials and agency staff people subject to the local consultation process may need assistance to determine whether an ocean development action is compatible with a local comprehensive plan. For example, how does one know which proposed ocean developments need to be evaluated for compatibility; when is consultation needed and when is it not; what aspects of a local plan need to be examined and evaluated; what does it mean for a plan to be "silent" regarding a proposed development; what are the potential secondary effects; why is it useful for the local plan to describe the "community interest" in relation to offshore development? OPAC and DLCD, perhaps working with the League of Oregon Cities and the Association of Oregon Counties, could provide this type of information and assistance on a continuing basis. Such information could include written materials, workshops, and hands-on assistance.

**2.) Model Plan Amendments.** If desired by local governments, there may be standardized, boiler plate language that could be amended into local plans in advance of

major ocean development proposals. One purpose for such standardized language might be to describe whatever restrictions that existing laws place on local governments and local comprehensive plans to affect proposed ocean developments. An example of a restricting law is ORS 469.503 which limits local governments' land-use planning authorities in favor of the state Energy Facility Siting Council regarding certain energy facilities. Such language could be added to plan inventories, policies, or implementing ordinances. Working with local governments and others, OPAC could use its local plan amendment recommendation authority (ORS 196.465(3)) to develop model language for incorporation in local comprehensive plans.

**3.) Specific Plan Amendments, Mitigation.** A local government may wish to amend its comprehensive plan to accommodate the onshore effects of a proposed major ocean development. If needed, the agency making the ocean-development decision should work with DLCD and the local government to develop an understanding of the proposed development's specific onshore land-use effects, and to suggest potential land-use solutions to mitigate or accommodate the effects.