



Oregon

Tina Kotek, Governor

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To: Chair Susan Chambers
OPAC Members

From: Lisa Phipps, Oregon Coastal Program Manager &P
Andy Lanier, Marine Affairs Coordinator
Marcus Chatfield, Undersea Cable Coordinator

CC: Director Brenda Ortigoza Bateman, PhD.
Deputy Director Kirstin Greene

RE: Outstanding issues regarding implementation of House Bill 2603 (2021)



Dear Chair Chambers and members of the Oregon Ocean Policy Advisory Council,

In May 2022, the Oregon Ocean Policy Advisory Council (Council) convened the Territorial Sea Plan Part Four (Uses of the Seafloor) Workgroup, as mandated by 2021 House Bill 2603 (HB 2603), to review and draft amendments to this chapter of the Plan. Section 2 of HB 2603 identified several elements to be considered during the review by the Council. Over the course of eight meetings, Oregon Coastal Management Program staff and partners provided information to the Workgroup on the needs of the undersea cable industry and discussed potential permitting gaps to address resource impact concerns to state resources or uses in the territorial sea and ocean shore. State agencies represented on Council identified potential improvements in permitting processes, measures to address the concerns, and the group reached consensus on most topics.

The state agencies, with consensus from the workgroup, developed new sections of Part Four that incorporates the requirement for early permitting process coordination via the creation of a joint agency review team (JART). The requirement to form a JART is accompanied by new sections of the chapter that requires the completion of a Resource Inventory and Written Effects Evaluation that will be essential for understanding the potential impacts and risks associated with proposed development actions. The changes to the TSP in the proposed Part Four amendment address the directives from the following sections of HB 2603:

- Section 2(2)(a), “a coordinated permitting process for the placement of undersea cables that allows for coordination between appropriate state agencies, tribal governments and local governments”;
- Section 2(2)(e), “requirements for public information meetings or other methods for engaging communities, tribal governments, ocean users and industries affected by a proposed undersea cable”;
- Section 2(2)(g), “an application process that may include:
 - (A) A needs analysis that takes into account the socioeconomic and environmental needs of the area;
 - (B) A geological study conducted by a registered professional geologist experienced in coastal processes;

- (C) Consultation with Oregon sea floor experts, such as an expert affiliated with an Oregon university; and
- (D) A detailed drilling, mitigation and accident response plan”;
- Section 2(2)(h), “requirements for interagency preapplication process meetings”;
- Section 2(2)(j), “coordination with tribal governments on potential impacts of undersea cables on cultural and traditional resources.”

Additionally, per Section 2(2)(i), “standards for undersea cables in the States of California and Washington”, the Oregon Department of State Lands presented case studies to the Workgroup and a report, “Undersea Cable Services Best Practices Study”, was authored by Ryan Wopschall Consulting and shared with the Workgroup.

However, through the Workgroup discussions, state agencies raised questions around four directives outlined in HB2603 that were deemed outside the jurisdiction of the Territorial Sea Plan. Summaries of the Workgroup considerations and the agencies determinations of need are captured below:

1. **Fee structures:** Section 2(1), “Fee structures”, and Section 2(2)(d), “Changes to fees structures and financing associated with administrative costs and the protection and management of the territorial sea and ocean shore”.

Fees associated with authorizations required for undersea cables were discussed by the Workgroup, but changes to those fees and fee structures are beyond the jurisdiction of the Territorial Sea Plan. Pursuant to ORS 758.010, cable crossings outside of city limits are not subject to a fee, including utility crossings in the Territorial Sea. As such, DSL would require legislative action to amend current statute to allow DSL to charge for utility crossings in the Territorial Sea. Additionally, implementing the JART requirements in Part Four would require rule changes by DSL to two separate OARs, OAR 141-083 and 141-123. DEQ's 401 dredge and fill program recovers review costs using a fee structure in OAR 340-048-0055. DEQ is supportive of the JART process but reserves the right to consider means to cover additional costs required by participation in the JART and review process.

2. **Permitting:** Section 2(1), “state and federal review processes, including permitting processes, for the placement of undersea cables on state-owned submerged or submersible land within the territorial sea and under the ocean shore”, and Section 2(2)(a), “A coordinated permitting process for the placement of undersea cables that allows for coordination between appropriate state agencies, tribal governments and local governments,” and Section 2(2)(c), “The impact of other state agencies, laws, zoning requirements or statewide planning goals on potential undersea cable sites.”

Although these processes were examined by Workgroup members, there is necessarily an onshore component which could not be fully addressed in the proposed amendments. The establishment of the JART process allows for state agencies to include affected onshore jurisdictions, once identified, in the coordination process, but more work to identify a mechanism for coordination and planning on lands not in the territorial sea may be needed.

3. **Onshore landing sites:** Section 2(1) review and permitting processes for the “siting of associated landing sites”, and Section 2(2)(b), “Suitable landing sites, including a mapping analysis of opportunities, limitations, and requirements for landing sites.”

The siting of cable landings onshore is often outside the jurisdiction of the TSP. Responsible siting of onshore cable landings is directly tied to a proposed project's engineering success and minimization of impacts on natural resources and coastal communities. In partnership with DLCD, the Department of Geology and Mineral Industries (DOGAMI) conducted a comprehensive study of regional-scale landing site suitability with a geologic focus, and the geotechnical analysis was presented to the Workgroup. The DOGAMI study compiled data from the Oregon Territorial Sea and an equivalent distance (~ 3 nm) inland, while the suitability analysis only addressed characteristics of the marine portion and a distance 250 m (800 ft) inland where most cable landing manholes are located. Complete cable landing projects include infrastructure constructed farther inland which is outside the scope of the suitability study. State agencies are interested in working with local land use authorities to identify ways to perform this evaluation under a separate process or mechanism when cable routing occurs landward of the territorial sea.

4. **Horizontal directional drilling:** Section 2(2) OPAC shall evaluate (f), “The impact of drilling on biological resources, including migratory species, and on resources that are of economic, aesthetic, recreational, social or historic importance to the people of this state”, and (g) an application process that may include (D) “A detailed drilling, mitigation and accident response plan”.

Although horizontal directional drilling (HDD) is the preferred installation method of cables and utilities under the shoreline and for connecting offshore infrastructure to infrastructure in the terrestrial system, impacts can occur and should be minimized. The workgroup review of TSP Part Four discussed this topic but drilling in geographic areas outside the jurisdiction of the territorial sea cannot be evaluated through the standards and policies of the Plan. While recognizing that fact, DLCD believes that the study of coastal geology performed by DOGAMI, and funded by this legislation, utilizes the best available information at a regional scale to inform future evaluation of planned drilling activities. The working group added language in the TSP amendments requiring site-specific geotechnical studies as a means to avoid inadvertent impacts to resources in shoreline areas. The state agencies are interested in identifying ways to perform this evaluation under a separate mechanism.

As the agency responsible for staffing this review and evaluation of the undersea cable siting process, DLCD believes it has met all of the directives of HB 2603 that could be addressed. With recognition that some aspects of the mandates outlined in HB 2603 are outside the jurisdiction of the territorial sea, DLCD is committed to working with our agency partners to address the concerns associated with the permitting of infrastructure adjacent to the territorial sea and within coastal jurisdictions.

The Council will be considering the proposed amendments along with this memo at the May 23rd meeting, although we ask that no decisions be made at this meeting. To meet Secretary of State filing requirements, the Council will need to reconvene prior to September 11th to address any issues raised through Tribal consultation, the impact statement process, the Department of Justice review, the

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outstanding items listed above, and any other issues identified by the Workgroup that may require additional attention by the Council.

We want to take a moment to acknowledge the hard work and commitment of the Workgroup and state agencies that developed the proposed amendments and outlined the actions that may require additional work outside of the scope of this effort. Thank you for your individual and collective commitment to this work.