

Ports and Onshore Facilities

Report 6: The Development of Petroleum
Resources from the Outer
Continental Shelf: Legal
Management Problems and
Capabilities in Oregon

by Martha Evans

Ocean Resources Law Program
Law Center
University of Oregon
Eugene, OR 97403

January 1979

NATIONAL SEA GRANT DEPOSITORY
PELL LIBRARY BUILDING
URI, NARRAGANSETT BAY CAMPUS
NARRAGANSETT, R.I. 02882

PORTS AND ONSHORE FACILITIES

*Report to the
Oregon Outer Continental Shelf
Oil and Gas Development Task Force*

The Development of Petroleum Resources
from the Outer Continental Shelf: Legal
Management Problems and Capabilities
in Oregon

Prepared by Martha Evans
Ocean Resources Law Program
University of Oregon
January, 1979

This work was funded with financial assistance provided under the Oregon 305 Outer Continental Shelf Development Grant, provided by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration with funds appropriated under the Coastal Zone Management Act of 1972 as amended, administered by the Oregon Department of Land Conservation and Development.

OREGON OUTER CONTINENTAL SHELF OIL & GAS DEVELOPMENT TASK FORCE REPORTS

- OCS Oil and Gas Development: Jurisdiction, Administration, and Management Systems, by *William Tufts* Report #1
- Federal Pre-Emption, by *Deborah A. Schroth* Report #2
- Federal Consistency, by *James B. Buck* Report #3
- Offshore Pipelines, by *James B. Buck* Report #4
- Oil Spills/Oil Tanker Operations, by *Kenneth Johansen and Richard Parrish* Report #5
- Ports and Onshore Facilities, by *Martha Evans* Report #6
- Liquefied Natural Gas Facilities, by *Matthew Berger* Report #7

Project Consultant, Richard G. Hildreth, Visiting Professor of Law, Ocean Resources Law Program, University of Oregon, Professor of Law, University of San Diego

Project Coordinator, Jon Christenson, Staff. Governor's OCS Oil and Gas Development Task Force, Department of Land Conservation and Development

OREGON OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT TASK FORCE

Fred Miller, Co-Chairman, Department of Energy
Edward T. La Roe, Co-Chairman, Department of Land Conservation and Development (until November 1977)
Jon Christenson, Department of Land Conservation and Development (November 1977-December 1978)
Robert Gay, Department of Environmental Quality
Vern Newton, Department of Geology and Mineral Industries
Floyd Shelton, Department of Economic Development
Dale Snow, Department of Fish and Wildlife
William Wick, Sea Grant Program, Oregon State University
Leonard Wilkerson, Division of State Lands

PREFACE

This report was prepared by Martha Evans of the University of Oregon Ocean Resources Law Program. It is one of a series of reports to the Governor's Outer Continental Shelf Oil and Gas Development Task Force on legal issues associated with the development of petroleum resources and associated facilities. It is intended for the use of the members of the Task Force and other interested persons. Specific views and recommendations are those of the author and not necessarily the views of the Task Force, the Department of Land Conservation and Development, or other persons who provided assistance or information.

PORTS AND ONSHORE FACILITIES

Table of Contents

| | | |
|-----|--|----|
| I | <u>OREGON PORTS AND ONSHORE FACILITIES</u> | 1 |
| | Introduction | 1 |
| II | <u>STATUTORY AUTHORITY OF OREGON PORTS</u> | 3 |
| | Fiscal Authority | 3 |
| | Taxes | 3 |
| | Prepayment of Taxes | 3 |
| | Bonds | 4 |
| | Port Revolving Fund | 5 |
| | Regulatory Powers | 6 |
| | Proprietary Functions | 7 |
| III | <u>ROLE OF PORTS IN LAND USE PLANNING</u> | 15 |
| IV | <u>COASTAL PLANNING GOALS AND THE PORTS</u> | 19 |
| | Goal 16 | 19 |
| | Goal 17 | 22 |
| | Goal 19 | 23 |
| V | <u>ROLE OF PORTS IN THE ENERGY FACILITY SITING PROCESS</u> | 27 |
| VI | <u>CONCLUSION</u> | 31 |
| VII | <u>RECOMMENDATIONS</u> | 33 |
| | <u>NOTES</u> | 39 |

Section I

OREGON PORTS AND ONSHORE FACILITIES

INTRODUCTION

Ports are unique political subdivisions in Oregon's government scheme: they are elected authorities with local navigation and private commercial development as their major focus. Because of this dual local commercial emphasis, ports are competitive among themselves, each trying to attract potential developers.

Oregon ports which presently handle petroleum products and/or crude oil include Portland, St. Helens, Astoria, Newport, Umpqua and Coos Bay. The Port of Portland receives oil tankers carrying Alaskan and other crude oil and refined petroleum products. The tank farm facility operated by Chevron in Portland is part of a petroleum products warehousing and distribution center. The Port of St. Helens has a facility currently being used for offloading and delivery of fuel oil for the Portland General Electric generating plant near Clatskanie. The Port of Astoria receives tankers carrying fuel oil and is playing a major role in the siting of an Outer Continental Shelf (OCS) platform construction facility in Warrenton. Northwest Natural Gas recently constructed and now operates a Liquefied Natural Gas (LNG) storage facility at Newport. This facility is also designed for importation of LNG, but the necessary dock development has not been authorized at this time. The Port of Umpqua, at Reedsport, receives fuel oil barges, and the Port of Coos Bay has five berths serving oil tankers. Coos Bay is also investigating development of a marine industrial park in the North Spit area.

As oil exploration and production increases in the North Pacific, there will be a growing commercial demand for further development of Oregon ports¹. This paper examines ports' potential to promote, influence and regulate activities and development associated with OCS petroleum resources, activities of regional, statewide and national significance.

Section 2

STATUTORY AUTHORITY

OF OREGON PORTS

ORS Chapters 777-778 are the statutory basis for port development activities in Oregon.² The statutes recognize the local nature and concerns of port authorities. Ports are limited geographically; they may be contained in more than one county, but they are not to extend "beyond the natural watershed of any drainage basin."³ Local control is exercised over members of the port authority through biennial elections of residents of the port district.⁴

FISCAL AUTHORITY

TAXES

Most of ports' revenue sources are local. One source of their revenue is a tax on "all real and personal property situated within the port in an amount not to exceed one-fourth of one percent (.0025) of the true cash value."⁵ Ports can also assess special property taxes to pay interest on bonds⁶ and to provide for a sinking fund to repurchase port bonds.⁷

PREPAYMENT OF TAXES

Ports may also be able to take advantage of recent legislative provisions allowing pre-payment of property taxes by developers.⁸ These provisions recognize the potential economic impact of facility development on local government resources and service and allow "the governing body of any taxing unit obligated to furnish services and facilities in the area in which the development is taking place"⁹ to agree with the developer for pre-payment of property taxes which would later be levied on the facility. Ports are clearly a taxing unit obligated to furnish facilities for water

related energy developments, and the term "facility" includes "any building or improvement that is suitable for use for industrial, commercial, manufacturing or warehousing purposes."¹⁰ While the statute specifically mentions thermal and hydroelectric power projects, platform fabrication years, pipeline coating years and other oil and gas development facilities conceivably fall within the broader language. In exchange for the tax pre-payment, the industry can be offered a reduction in the assessed value of the facility which must result in a tax benefit for the facility, equivalent to the total amount of the prepayment plus interest.¹¹ These provisions could allow a port to get the industrial developer to help absorb the cost of the development of other needed related public facilities and reduce the impact on the community.

BONDS

Ports have the power to borrow money and issue bonds,¹² subject to approval by "the voters of the port at a special election to be called for that purpose."¹³ The money raised can only be spent for the purpose approved by the voters,¹⁴ and the statutes describe the procedures necessary to issue refunding bonds.¹⁵

Oregon ports have been able to use this authority to promote industrial development. In 1974, the Court of Appeals sustained the legality of the Port of St. Helens arranging a bond financing scheme which gave Portland General Electric (PGE) a tax advantage in its operation of the pollution control facility associated with the Trojan nuclear power plant.¹⁶ The court found the port's action to be authorized by statutes,¹⁷ and found a public benefit since the facility would "augment the community's total value possession."¹⁸ The Court also said that it "cannot be argued that pollution control facilities serve no public purpose,"¹⁹ indicating

that the test of the propriety was not economic benefit alone.

PORT REVOLVING FUND

A third possible source of port revenue is the Port Revolving Fund administered by the Department of Economic Development.²⁰ Under its administrative rules, it provides monies for loans to port districts to facilitate the location and expansion of

- (a) manufacturing and other industrial production;
- ...
- (i) storage and warehousing facilities;
- (j) product distribution facilities;
- ...
- (l) introduction of new technology or new types of economic development to broaden an area's economic base²¹

Onshore facilities could be included in one or more of these categories making these funds available to the ports to aid the developer.

Much of the port's financial resources comes from the port authority or is subject to community control through election of the members setting the taxing rates and approval of bond issues and repurchasing plans.

Independent of community approval, a port may be able to arrange with a committed developer for pre-payment of taxes to help absorb the economic impact of the development on the port. And, subject to DED approval, general development loans are also accessible to the port.

A final source of port income, fees from vessels using port facilities, will be discussed as a proprietary power of ports in the following sections.

REGULATORY POWERS

Ports have powers and functions which have been described as both governmental (or regulatory) and private proprietary.²² Their regulatory powers include, for example, the authority to make, modify or abolish regulations for the use of navigation.²³ This power is to be broadly construed for the statutes give the port control:

"to the full extent the State of Oregon might exercise control or grant to ports the right to exercise control, a port has full control of all bays, rivers and harbors within its limits and between its limits and the sea..."²⁴

The Attorney General has interpreted this language as placing "unqualified powers in the port district to regulate . . . (navigation) in the same manner that such authority lies in the State of Oregon."²⁵ Under such a broad approach, ports have the power to regulate tanker traffic within the harbor and between the harbor and the sea and to establish docking and loading safety schemes to whatever degree that state could control these activities. If the port wished to require mooring buoys or protective booms for tankers unloading petroleum products or periodic demonstrations of clean-up capabilities, for example, this would be a permissible regulation for the control of navigation.

Ports also have the power to establish tugboat and pilotage services within the district and to charge for these services.²⁶ In Ray v. Atlantic Richfield,²⁷ the U.S. Supreme Court approved state requirements that large tankers which do not meet certain design standards have a tug escort. Under current statutes, Oregon does not have a compulsory pilot law,²⁸ for a ship can refuse a pilot without liability.²⁹ If the ports can, indeed, act as the state, they may have the authority to establish particular tugboat escort requirements or to require experienced pilots for tankers using

Oregon coastal ports and the Columbia River ports.

The extent of these regulatory powers, in comparison with those of other agencies, is not clear. The Oregon Attorney General once stated that whether the State Maritime Board could make a rule overriding a port district rule "is a matter which can only be determined by examination of the rule itself."³⁰ This ad hoc approach might be applied in other conflict situations. The Oregon Courts have never been asked to interpret the limits of the regulatory powers of ports under Oregon law.

PROPRIETARY FUNCTIONS

These governmental regulatory functions of ports have been distinguished from a port's private proprietary powers.³¹ Ports are authorized to acquire property by purchase or condemnation and to lease or otherwise convey such property,³² subject to approval by the Division of State Lands if the land is submerged or submersible.³³ The port can develop the land it acquires: the port may

...construct, maintain or operate seawalls, jetties, piers, wharves, docks, boat landings, warehouses, storehouses, elevators, grain bins, terminals, icing plants facilities for processing agricultural, fish or meat products, bunkers, oil lanes; ferries, canals, lock, tidal basins, power transmission lines, administration buildings, and fishing terminals, and modern appliance and buildings for the economic handling, packing, storing and transportation of freight, and handling of passenger traffic.³⁴

or develop the land for an industrial park.³⁵ Ports also have a broad grant of power to "in general, do such other acts and things...as tend to promote the maritime, shipping, aviation and commercial interest of the port..."³⁶

These statutes appear to give ports the power to build their own OCS related

facilities and lease them to or enter into a joint arrangement with commercial users. Even if such facilities were not on tidelands and did not involve dredge and fill activities, it would still be subject to state agency review in the planning stages.³⁷

A port may collect fees from any vessel using port facilities or wharfage.³⁸ The statute does not require that such fees be commensurate with the actual use made and this provision would seem to allow a port to create its own oil spill mitigation or emergency services fund for the public benefit and protection of the other commercial interests in the port area.

With the exception of the ports' control of tidelands, these private, proprietary functions have been broadly construed by the Oregon courts. Ports have great latitude in their dealings with private industry. In 1933, the Oregon Supreme Court allowed the Port of Astoria to rent its dredge to a private firm³⁹ and indicated that it would not interfere with a port acting in its private capacity unless there was evidence of "manifest abuse of" their discretion or of fraud upon the rights of taxpayers."⁴⁰ The Port of Umatilla's authority to condemn and develop land for lease to a private industry was upheld because the port could demonstrate a public benefit from the development.⁴¹ The test was generous: "The use by the Court. . .of the word 'benefit' at least indicates that though the ultimate test is public use, we are authorized to consider public benefit as relevant to the issue when the taking is by an agency having no private interest whatever."⁴² A challenge to the Port of Astoria's ability to sell revenue bonds to finance the building of wharves and a plant to be leased to an aluminum company was similarly denied in Caruthers v. Port

of Astoria.⁴³ The plaintiff contended that such action was in conflict with the Oregon constitutional provision that "no...municipal corporation... shall...raise money for or loan its credit to, or in aid of any...company, corporation or association."⁴⁴ The Court upheld the port's action after finding a public purpose was being served. "The action of the Port is predicated upon its finding of a general benefit to the economy of the community. This is a public purpose."⁴⁵

The only conflicting case,⁴⁶ disallowing a port's actions in questions other than tideland use and acquisition, is the most recent. In 1978, the Court of Appeals prohibited the Port of Cascade Locks from condemning private property to build an aerial tramway from Cascade Locks to the top of the Columbia River Gorge as a tourist facility. The court found that construction of a recreational facility is not specifically within the enumerated powers of the port, and the more general statutes are to be read as authorizing only activities within the normally expected functions of a port. Although the case is on appeal, this decision may indicate a trend away from the broad public benefit test for activities not within the enumerated port powers.

Limits on port's power are also apparent in conflicts with the Division of State Lands over control of the tidelands within the port district. In 1962 the Attorney General distinguished the port's authority over navigable waters from the State Land Board's authority over tidelands under these waters, stating that DSL can lease such land "subject to the authority of the port to curb, control and improve navigation within their territorial limits of the district."⁴⁷ This question was again presented to the Attorney General in 1972 when he was asked to construe the Division of

State Land's authority to lease tidal land for oil exploration in relation to the port's control of such lands:

The issue may more precisely be stated as whether a port district can impair proprietary interests in exercising its powers. Certainly a port could not take or impair private riparian property while exercising its broad powers . . . Similarly with respect to public proprietary interest, the grant of broad power is not intended as a grant of the public's ownership interest in the submerged and submersible lands, but only as a broad grant of the state's police power in the interest of furthering navigation and commerce . . .

. . . We conclude on this point that a port's authority to interfere with the state's proprietary interest in its submerged and submersible lands without the consent of the state is not greater than its right to interfere with private proprietary interests without consent of the private owner and is strictly limited to those activities necessary to further the public's navigational servitude on navigable waters:⁴⁸

The Division of State Land's (DSL) Statutory authority over dredging and filling of tidelands supercedes the port's specific power to develop lands for industrial uses. Under ORS 541.625 any governmental subdivision planning to dredge and fill must obtain a permit from DSL. The Attorney General established that port districts are political subdivisions of the state and found no conflict between the permit requirement and the state's broad grant of the state's power under ORS 777.120.⁴⁹ "The foregoing statute gives broad powers to ports to make fills as deemed necessary. However, we do not interpret the statute as purporting to delegate to ports without limitation the state's power to protect and conserve the state's water resources and to regulate the public rights in navigable waters."⁵⁰

In permit applications to the Division of State Lands for leasing rights and dredge and fill permits, the Oregon Courts have indicated that ports deserve no special considerations. In Brusco Tugboat v. State Land Board,⁵¹ the issue was the validity of the State Land Board regulations requiring

leases and fees for the use of submerged and submersible lands. The Oregon Court of Appeals interpreted the port's legislative grant of power even more narrowly than the Attorney General, limiting its acts to those within the enumerated powers:

Their powers are limited to those delegated by the legislature either expressly or by necessary implication...The grant to local port districts of the authority to regulate navigation and navigational structures within their boundaries does not necessarily imply a legislative intent to surrender the authority of the state as trustee for the public to charge rental for the use of its land... (T)he lease program is enforceable against the plaintiff port districts to the same extent as it is generally.⁵²

Similarly, the Court of Appeals has required the Division of State Lands to hold ports accountable for any negative environmental impacts of their development activities.⁵³ In reversing a permit granted the Port of Hood River to fill submerged and submersible lands to create an industrial park, the court held the DSL's director to his conclusion that the known fishery value of the estuary was greater than the speculative economic benefit of the industrial park. In a concurring opinion, Justice Thornton suggested that

It appears from a reading of the Director's order that he based his decision to allow the fill on two factors: (1) the Port's 1967 financial commitment to the entire project and (2) the fact that the fishery values now found in West Cove are directly attributable to the Port's work!⁵⁴

Not only were the economic considerations impermissible justification for the permit but "the landowner cannot destroy that habitat simply because it was created in part at least as a result of his original filling of the subject river."⁵⁵ Thus, the court required DSL to treat the port as any other private developer who must demonstrate more than economic benefit from a fall project to be granted a permit.

Recent decisions examining DSL's policy for fill permits have significant implications for port development. A DSL fill permit was granted to extend the North Bend Airport runway into Coos Bay. The Court of Appeals, in Morse v. Division of State Lands,⁵⁶ reversed DSL's decision as inconsistent with the criteria for review of permit applications.⁵⁷ The Court interpreted the statutory language

In determining whether or not a permit shall be issued the director shall consider the following: (a) Whether the proposed fill unreasonably interferes with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation;...

(c) Whether the proposed fill is in conformity with existing public uses of the waters,⁵⁸

as codifying the common law public trust doctrine.⁵⁹ In reviewing the substance of this doctrine the Court found the state's obligation was to protect "specified public usages, e.g. navigation, fishing and...recreation,"⁶⁰ and used the term "water related" as descriptive of those uses: "Water-related undertakings are consistent with the trust; upland-related undertakings violate the trust"⁶¹ and "The common law principle that substantial non-water related undertakings are impermissible is specifically codified in ORS 541.625 (2) (a) and (c)..."⁶²

The language the Courts uses raises the question of whether onshore facilities associated with OCS development are appropriately considered water related, that is consistent with the public trust by preserving the waters for navigation, fishing and recreation. The Oregon Coastal Management Program goals use the term "water related" more broadly,⁶³ and include energy production in the more narrow category of water dependent uses.⁶⁴ In order then, for DSL to issue a fill permit for submerged or submersible land to an onshore facility

developer, DSL must assume that the court's use of "water-related" is to be read as consistent with the goal's definitions, and not as only equivalent to the more narrow uses included in the traditional public trust doctrine.

The Court of Appeals judgment was appealed to the Oregon Supreme Court and although the decision was affirmed,⁶⁵ the issues were interpreted differently. The Supreme Court analyzed the public trust doctrine and concluded that it does not limit the state to authorizing fills only for water-related uses; the doctrine only prohibits the state from alienating its authority to govern lands which it holds in trust for the public. According to the majority opinion, DSL's statutory criterion for granting fill permits⁶⁶ is a demonstration of a public need which outweighs the interference with navigation, fishery and public recreation. Because the director of DSL did not make a finding of a public need for the runway extension, the Supreme Court affirmed the Court of Appeals decision. Three justices joined a concurring opinion which would sustain the Court of Appeals decision and its approach of requiring water-related benefit from the fill. A separate concurrence recommended remand to DSL.

None of the opinions address the question of how water-related is to be defined. The majority assumes it synonymous with public uses of navigation, fishery and recreation. The relationship between these public trust uses and the LCDC definitions of water-related uses is yet to be addressed by Oregon courts.

Oregon's statutory scheme gives ports broad latitude to aid industrial development. Their power to regulate navigation within the area has been reaffirmed by the Courts, and their ability to acquire and use land is subject

to a test of either 1) general public economic benefit; 2) consistency with the enumerated powers of the port; 3) a water-related use if fill is necessary; or 4) mitigation of environmental impacts on submerged and submersible lands, depending on the particular land use involved. Port development activities are also constrained by the land use planning requirements of the state.

Section 3

ROLE OF PORTS

IN LAND USE PLANNING

Oregon's comprehensive land use planning statutes mandate that all governmental units participate in establishing comprehensive land use plans.

Coordinative bodies have been identified as the locus of plan development and are counties, with the exception of cities of more than 300,000 people.⁶⁷

Ports are considered "special districts" under ORS 197.015 (9),⁶⁸ and are required to conform their plans to state-wide planning goals. Additionally, the port must coordinate its plan with those of the coordinating county.

The statute⁶⁹ requires that each special district shall enter into a cooperative agreement with the county within whose boundaries the special district operates. The agreement shall include:

- a) a list of tasks needed to bring the district's program into conformity with the statewide planning goals;
- b) a general time schedule of when the tasks will be completed and program adopted; and
- c) a program to coordinate the development of district programs with affected cities and counties.

If a special district fails to coordinate its programs, it can be barred from contesting a request for acknowledgment of a comprehensive plan under ORS 197.254 (2). Similarly if the comprehensive plan does not reflect involvement of the port district, the plan is not coordinated and is appealable.⁷⁰

The port can either incorporate its programs directly into the county's plan and time schedule and endorse it, or the port can develop its own district plan in cooperation with the coordinating county. A port cannot opt out.

of the coordinating planning process, however, and cannot independently develop its own plan for state approval. Once a comprehensive plan is acknowledged by LCDC, it is binding on the port's activities.

Agreements between port districts and local county and city governments are subject to review by LCDC⁷¹ allowing state review of the appropriateness of the plans. For this review to be meaningful, the agreements must be specific and detailed enough to allow LCDC to understand what the port development plans include in terms of plans for specific onshore facility development. Review of the agreements by the Port of Newport and the Port of Tillamook Bay with their coordinating counties reveals different interpretations of the statutory requirements. Rather than providing a functional analysis of port programs to allow state level determination of the consistency of the proposed activities, the agreements use very general language in describing their future plans.⁷²

Any port development activity which involves dredge and/or fill of more than fifty cubic yards would need to have a permit from the Division of State Lands.⁷³ In evaluating applications for such permits, DSL requires that the applicant must show "whether or not the proposed use is consistent with existing land use plans."⁷⁴ Port development involving dredge and fill would therefore, also need to be found appropriate and consistent with statewide goals by DSL.⁷⁵

In order for the port to obtain financing through the Port Revolving Fund for onshore facility development, the port must again demonstrate the consistency of its plan with those of other affected government units. The DFD administrative rule directs that

If the port development project is located within a county or city having a comprehensive plan approved the Land Conservation and Development Commission, the port must certify that the project is consistent with such plan(s). If the port development project is located within a county or city not having such a comprehensive plan, the port must certify that the project is consistent with state-wide goals and guidelines as adopted by the Land Conservation and Development Commission.⁷⁶

Section 4

COASTAL PLANNING

GOALS AND THE PORTS

All of the Pacific Ocean ports in Oregon are bound by the planning requirements of Oregon's federally approved coastal management program and that program's coastal goals.⁷⁷

GOAL 16

Goal 16 on Estuarine Resources places general standards on activities for estuarine development, including a requirement that

- dredge and fill or other reduction or degradation of these natural values by man shall be allowed only:
- (1) if required for navigation or other water-dependent uses that require an estuarine location; and
 - (2) if a public need is demonstrated; and
 - (3) if no alternative upland location exists; and
 - (4) if adverse impacts are minimized as much as feasible.⁷⁸

This general prohibition of nonwater-dependent development is reiterated in the specific provisions of the goal planning requirements. The goal suggested three divisions: natural, conservation, and development.⁷⁹ An administrative rule adopted by LCDC⁸⁰ subdivided the development category into shallow draft and deep draft. These classifications indicate the most intensive level of development or alteration allowable within each estuary. Shallow draft development covers estuaries with maintained jetties and a main channel (not entrance channel) maintained by dredging at 22 feet or less. Deep draft development estuaries are those with maintained jetties and a main channel maintained by dredging at depths of more than 22 feet.

Table 1 gives the estuary classifications arrived at by LCDC.

| Table 1: ESTUARY CLASSIFICATION | | | |
|---------------------------------|------------------|----------------|----------------|
| Natural | Conservation | Shallow Draft | Deep Draft |
| Sandlake | Necannicum River | Tillamook Bay | Columbia River |
| Sixes River | Netarts Bay | Depoe Bay | Yaquina Bay |
| Salmon River | Nestucca River | Suislaw River | Coos Bay |
| Elk River | Siletz Bay | Umpqua River | |
| Pistol River | Alsea Bay | Coquille River | |
| | Winchester River | Rogue River | |
| | | Checto River | |

The LCDC rule guiding development of these estuaries (and therefore the port districts covering the estuaries) states that:

"Both shallow and deep draft development estuaries will be managed to provide for navigation and other identified needs for public and commercial and industrial water dependent uses consistent with overall Estuarine Goal Requirements."⁸¹

Water dependent uses are defined in the goals as "A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production or source of water."⁸² The proposed 1978 energy facility planning process amendments to the Oregon Coastal Management Program contain a table⁸³ evaluating the water dependency of various types of energy facilities. Of those connected with OCS petroleum development the following types of facilities are considered to be water-dependent: oil/gas exploration offshore, oil/gas production offshore, oil/gas tanker traffic, oil/gas port and terminals, marine pipelines, OCS platform construction and OCS support bases. LNG plants are classified as nonwater-dependent facilities.

The result of considering the LCDC estuary classifications together with the classification of water-dependency in the proposed amendments is reflected in Table 2.

Table 2: POTENTIAL FACILITY DEVELOPMENT OF COASTAL PORTS

| Estuaries | Offshore Exploration/Production | Pipeline Landfalls | OCS Support Bases | Ports/Terminals | Production Facilities | Platform Construction |
|---------------|---------------------------------|--------------------|-------------------|-----------------|-----------------------|-----------------------|
| Tillamook Bay | Yes | Maybe | X | No | No | No |
| Depoe Bay | Yes | Maybe | X | No | No | No |
| Suislaw | Yes | Maybe | X | No | No | No |
| Umpqua | Yes | Maybe | X | No | No | No |
| Coquille | Yes | Maybe | X | No | No | No |
| Rogue | Yes | Maybe | X | No | No | No |
| Columbia | Yes | X | X | X | X | X |
| Yaquina Bay | Yes | X | X | X | X | X |
| Coos Bay | Yes | X | X | X | X | X |

Pipeline land falls may be permitted in shallow draft estuaries if they do not require dredging beyond 22 feet. Only ports with deep draft development estuaries are available for full development of OCS oil and gas related facilities.

The implementation requirements of the estuarine goal also limit the activities which a port can plan. If dredge and fill are permitted (for a water dependent energy facility) "their effect shall be mitigated by creation or restoration of another area of similar biological potential to ensure that the integrity of the estuarine ecosystem is maintained."⁸⁴ This requirement means that if wetlands are to be filled, an alternative area must be provided which will serve the same biological purpose.⁸⁵

Another implementation requirement of the Estuarine Goal which may affect port planning concerns consolidation of facilities within the harbor:

Local government and state and federal agencies shall act to restrict the proliferation of individual single purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dry-land storage and launching ramps shall be investigated and considered.⁸⁶

The implications of this requirement are first that an energy facility must be compactly situated within the port, sharing its docks and wharfage space if possible. Second, it would appear that a port could not build its own facility and lease it to industry, unless it were very clear about the intended use to be made of the facility and limited its size to that specific use.

GOAL 17

The planning requirements of Goal 17, Coastal Shorelands, are also relevant to port development. Plans for coastal areas adjacent to the ocean or an estuary shall "establish policies and uses for coastal shorelands in accordance with standards set forth below." Ports would be included in the standards for shorelands in urban and urbanized areas:

Shorelands in urban and urbanizable areas especially suited for water-dependent uses shall be protected for water-dependent recreational, commercial and industrial uses.⁸⁷

Goal 17 also establishes general priorities for the overall use of the shoreland area, (in descending order):

- (1) Promote uses which maintain the integrity of estuaries and coastal waters;
- (2) Provide for water-dependent uses;
- (3) Provide for water-related uses;

...

- (6) Permit non-dependent, non-related uses which cause a permanent or long-term change in the features⁸⁸ of coastal shorelands only upon demonstration of public need.

The effect of these planning requirements is that onshore facilities which are considered water-dependent are a high priority use, as are facilities which are water-related. Comprehensive plans which include these activities would be consistent with Goal 17. Energy facility development considered nondependent and nonrelated would fall within the lowest priority and would be permissible only after demonstration of a public need. The estuarine goal, however, has limited estuary development to water-dependent activities, so it is unlikely that ports would find Goal 17 compliance to be an added burden beyond Goal 16.

GOAL 19

The Ocean Resources Goal (Goal 19) places specific requirements and duties on ports during the implementation of any activity affecting the continental shelf and nearshore ocean resources. The overall statement requires that all local, state and federal "plans and activities shall give clear priority to the proper management and protection of renewable resources"⁸⁹ and specifically includes "navigation" in the list of renewable ocean resources and uses.⁹⁰ The inventory requirements of the goal require development of

inventory information necessary to understand the impacts and relationship of the proposed activity to continental shelf and nearshore ocean resources. As specific actions are proposed, inventory information shall be gathered by the unit of government considering the action with assistances from those agencies and governments which use or manage the resources. The inventory shall be sufficient to describe the long-term impacts of the proposed action on resources and uses of the continental shelf and nearshore ocean.

The implication of these requirements is twofold. When a port development activity affects navigation, the port will gather the information necessary to inventory the impact of such activity on navigation. Ports, as the government unit managing navigation, are also to assist in developing the

inventories whenever a proposed activity affects navigation. The nature of the inventory is not to be complete, but must insure that the action is based "upon a sound understanding of the resources and potential impacts."⁹²

The implementation requirement also specifically states that

"Each . . . special district . . . as necessary (i) determine the impact of the proposed projects or actions; and (ii) for the sound conservation of ocean resources; shall: . . . Navigation and Ports. . . (ii) Maintain appropriate navigation lanes and facilities free from interference by other uses to provide safe transportation along and to the Oregon Coast."⁹³

Under ORS 777.120, ports have control over navigation within the port and between the port and the sea. As offshore and onshore OCS related facilities are proposed, it will be the responsibility of the port to develop an inventory of the existing and projected use patterns and to determine navigation lanes for safe transportation. Any development activity which would tend to increase shipping, including increased tanker traffic within three miles of the Oregon coast, may activate these Ocean Resources Goal inventory and implementation requirements.

The implementation requirements also list under Navigation and Ports the requirement that the appropriate state agency shall "determine for the state as a whole the navigation needs for the coast of Oregon. Such needs will reflect, in part, the capability of each port to handle differing types of ship traffic consistent with other statewide planning goals."⁹⁴ The implication is that the Ports Division of DED has this responsibility. DED, in cooperation with LCDC, has already begun a two-year study of Oregon ports to develop economic and cargo information to assist in determining future land and water requirements.

The effect of Oregon's coastal goals on port planning is significant. Various development options (e.g. for nonwater-dependent uses) have been prohibited (unless specific exceptions are made), and permissible development has been limited according to the estuary classification scheme. The consistency of port plans with these requirements will be established by LCDC and reflected in the affected county's comprehensive plans.

Section 5

ROLE OF PORTS IN THE

ENERGY FACILITY SITING PROCESS

The process of approval of a port site for onshore facilities varies with the nature of the facility. The Energy Facility Siting Council has the responsibility to conduct site suitability studies and the authority to grant binding site permits for oil and gas pipelines greater than specified diameters and longer than five miles.⁹⁵ ORS 469.310 establishes the policy the EFSC is to use in evaluating site permit applications. Siting and construction must be consistent with

"protection of the public health and safety and in compliance with the energy policy and any water, solid waste, land use and other environmental protection policies of this state. It is therefore the purpose...[of these statutes] to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution."⁹⁶

The EFSC becomes the lead agency in a coordinated application process, for their decision is binding on all political subdivisions in the state whose permits are to be issued subject only to any conditions the EFSC has set. In considering permit applications, the EFSC's administrative rule⁹⁷ lists general standards including evidence that:

- (1) There will be a need for the proposed facility...
- (2) Risk of injury to the public health and safety...will be reduced to the extent that is reasonable practicable...
- (3) Reasonably foreseeable disruption to and adverse impact upon the environment...including but not limited to, those caused by discharge of chemicals, waste, heat, moisture, sanitary wastes and radioactivity...will be reduced to the extent which is reasonably practicable.
- ...
- (5) ...siting...will be carried out in conformance with

statewide planning goals and in conformance with comprehensive land use plans...of political subdivisions in which the facility is to be located.

...
(7) The requirements for water used in construction and operation of the facility can be met without infringing upon the existing water rights of other persons.

...
(10) (a) The applicant has identified the major and reasonably foreseeable socioeconomic impacts on individuals and communities located in the vicinity of the proposed facility resulting from construction and operation, including, but not limited to, anticipated need for increased governmental services or capital expenditures.

(b) The affected area can absorb the projected industrial and population growth resulting from construction and operation of the facility.

For example, ports which are considering siting marine pipelines subject to the EFSC jurisdiction will need to consider these standards. Conformance with (5) means that pipelines are allowable in shallow-draft and deep-draft development estuaries. Requirements (3), (7) and (10) (a) mandate the developer to consider the impact of the facility on the environment and on commercial development, including possible interference with other navigation and commercial fishing needs, in the port area. Under Goal 19, port authorities are the agency to assess the impact of the pipeline on navigation, and ports might act to facilitate negotiations between the facility developer and the local commercial users of the waters. Requirements (2) and (5) can be used by the EFSC to insure that appropriate safety regulations will accompany the facility. The EFSC decision could put conditions on the permit requiring the developer and the port to agree on navigation safety requirements.

The EFSC also has the authority to review any rules made or rescinded by any state agency relating to energy facility development, and can order changes necessary to conform to state policy.⁹⁸ Any independent navigational rule concerning the pipeline placement and use which a port might adopt would be included in the rules reviewed by the EFSC.

The energy facility siting process is not as streamlined for facilities which do not fall under the EFSC's jurisdiction. Various permits would be required⁹⁹ depending on the specific needs of the facilities. The applications would typically be made by the industrial user, but the port might act in its stead in applying for dredge and fill permits or to lease any submerged or submersible land from the state, and then the port would charge the developer.

Negotiations for the OCS platform fabrication yard proposed by Pacific Fabricators (Brown & Root) illustrate the role a port can play in the facility siting process. The Port of Astoria has agreed to acquire any necessary lands which it does not own (presumably including leasing submerged and submersible lands from DSL), and to lease the land to Brown & Root.¹⁰⁰ The port is also participating in the local interagency task force that is planning for the local impacts of the proposed facility. Approval of Brown & Root's fill and removal application requires mitigation of damages by creation of biologically productive wetlands similar to those being destroyed by the facility. The port is lending its support and expertise by directing its research and planning agency to collect the technical data necessary to develop a mitigation proposal.¹⁰¹ However, no relevant permit or certificate currently requires the developer to address absorption of local, social and economic impacts by the county and surrounding communities. The proposed lease between Brown & Root and the Port of Astoria provides that the developer can make improvements on the site, and that any buildings or other improvements which have not been removed at the expiration of the lease will pass to the Port.¹⁰² The port is acting as a liaison between the industrial developer and DSL and, for the economic benefit to the community, is trying to facilitate and promote the siting of the OCS facility in Warrenton.

Section 6

CONCLUSION

Port districts are in a unique position in the development, promotion and mitigation of impacts from siting onshore facilities. They are committed to public gains and benefits to their community and will act competitively to attract energy facilities to their port. They will develop mitigation expertise as well as aid the developer in reducing the undesirable impacts of the facility. As a government unit, they are subject to the statewide planning goals and the EFSC certificate standards, and must coordinate their activities with the counties surrounding the port. Thus, ports cannot act independently of other governmental agencies. Their broad statutory powers to aid commercial development are tempered by the review and consistency requirements of the land use planning process in Oregon.

RECOMMENDATIONS

1. ORS 469.300(10) should be amended to increase the EFSC's jurisdiction over onshore siting of OCS development facilities. The definition of facility should be expanded to include petroleum refineries, tanker ports and terminals, LNG facilities and OCS platform construction facilities. There would be multiple benefits from such an amendment:

- a) The EFSC's general siting standards would be applicable to these onshore facilities. Only the EFSC is now permitted to weigh more than the environmental impact of an onshore facility. It can also insist on mitigation of the economic and social consequences of such development on the community, absorbing such impacts. OCS platform construction facilities will employ thousands of people and potentially have a much greater social and economic impact on the locale than the much smaller numbers necessary to supervise a pipeline landfall, for example. The broader implications of such a major development activity should be explored before any development permits are granted.
- b) If jurisdiction is extended, the EFSC could conduct site suitability studies for LNG marine terminals and oil refineries. LNG marine terminal siting must consider not only the environmental impact, but safety requirements, which may suggest placement in isolated or unpopulated coastal areas.
- c) Columbia River ports, which are not covered by the LCDC coastal goals, would have their OCS related development activities subjected to a state level comprehensive review.
- d) A coordinated permit application process would be available to potential developers of all major energy facilities. Although the developer is responsible for applying for the necessary state permits, the binding nature of the EFSC approval would provide the developer with a coordinated comprehensive presentation of the evidence necessary to secure a balanced review

of individual permits.¹⁰³

2. LCDC should consider recommending the designation of onshore facility siting as an activity of statewide significance under ORS 197.405. The commission then

may designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area or both.¹⁰⁴

Such authority would allow LCDC to require more detail in coordinated plan agreements between the ports and their affected counties, allowing a more meaningful review by LCDC. LCDC could also develop or require development of procedures to insure negotiations and communication between the facility developers and commercial fishermen in the area. Onshore development may have potentially serious impacts on the harbor space, water quality, and water use which will affect the area's fishery.

3. The OCS Task Force or LCDC should study the need for a policy of consolidation of energy facilities on the Oregon coast. Such an articulated policy would have the advantage of making consolidation a clear statewide priority and affirming the implications of Goal 19 for consolidation of facilities within the port area. It also may be easier to determine the adverse air and water quality impacts from centralized development than from scattered facilities. Alaska¹⁰⁵ and California¹⁰⁶ have each adopted a policy of consolidating energy facilities along their coasts. The disadvantages of adopting such a policy should also be considered. The estuary classifications may already limited the sprawl of energy facilities on the coast and have the effect of a consolidation policy. Environmental impacts will be less in each particular estuary if facilities are not consolidated in one or two locations. Safety factors must also be considered. For example, the location

of the proposed GATX tanker off-loading facility at St. Helens means that crude oil will be transported by rail past the Trojan Nuclear Power plant, increasing the magnitude of the effects of a fire in that location. Another LNG facility is being considered for siting on Cottonwood Island in the Columbia River across from Trojan. The potential for increased hazards from such consolidation of facilities is clear, and any articulated policy would need to be flexible enough to accommodate exceptions necessary for safety reasons.

4. A state level review procedure should be established for port rules concerning tanker traffic, oil transfer and harbor safety. The Oregon Ports Study by ICDC and DED should explore navigation safety issues and recommend actions port authorities can take to minimize navigational problems, such as collisions. Ports should be encouraged to establish their inventories under Goal 19 and estimates of the navigation rules based on effect of future vessel traffic within the port. For example, the Port of Newport should review the need for regulating the transportation of LNG within Yaquina Bay. If EFSC's jurisdiction is expanded to include more petroleum related facilities, such rules would be subject to review, and standards for such review should be developed. California has adopted safety requirements for tanker terminals which are to be designed and constructed to

(a) minimize the total volume of oil spilled in normal operations and accidents.

(b) minimize the risk of collision from movement of other vessels.

(c) have ready access to the most effective feasible oil spill containment and recovery equipment.

(d) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.¹⁰⁷

5. The State of Oregon should review the need to adopt pilotage or tug requirements for tankers in hazardous areas. If this is not done on a statewide level, ports should be encouraged to evaluate the need for such requirements for vessels within their jurisdictional areas. And such rules should be reviewed for intra-port consistency at the state level.

6. Onshore and offshore related oil and gas support facilities should be added to ORS 777.120 enumerating the types of development a port may participate in. Such facilities might be read into the general grants of power to ports, but given the courts' recent tendency to limit port development activities to those specially listed, the statute should be more clear. The port has a strong potential to accommodate industrial development to state land use guidelines. This potential should be reinforced and strengthened by allowing the port to deal with industrial developers from a position of clear legal authority to acquire, construct and maintain appropriate facilities.

7. Oil and gas support facilities should be specifically added to ORS 311.855 listing the types of energy facilities for which the local government can arrange for pre-payment of property taxes. Again, although such a facility may be covered by the statute's general language, amending the statute would give the port clear authority to enter into such an arrangement. Extra funds would then be available to the port to provide the necessary services and facilities to promote the development.

8. As recommended elsewhere in these reports, the state should review the value of a centralized emergency services and oil spill mitigation fund. Port authorities need to be consulted and their role in the collection from

and distribution to port users of an oil spill and emergency services fund should be recognized. Ports have the authority to establish their own spill and emergency response program under ORS 777.220 using ports' users fees from vessels. The port could also coordinate dispersal of any compensation fund to fishermen and landowners damaged in the event of a spill or accident.

NOTES

- 1 See Mathematical Science Northwest, Inc., Energy Facilities in the Oregon Coastal Zone (1978), for further description of current port activities.
- 2 The Port of Portland is governed by separate provisions, Chapter 778, granting the port powers beyond those governing other ports.
- 3 ORS 777.137.
- 4 ORS 777.135.
- 5 ORS 777.430(1).
- 6 ORS 777.430(2).
- 7 ORS 777.520.
- 8 ORS 311.850-890.
- 9 ORS 311.850.
- 10 ORS 311.855(5).
- 11 ORS 311.860.
- 12 ORS 777.410.
- 13 ORS 777.415.
- 14 Id.
- 15 ORS 777.455-485.
- 16 Port of St. Helens v. Geiser, 19 Or. App. 87, 526 P.2d 626 (1974).
- 17 ORS 200(1).
- 18 Port of St. Helens v. Geiser, 19 Or. App. 87,89.
- 19 Id.
- 20 ORS 777.850-890.
- 21 OAR 123-30-010.
- 22 Seafeldt v. Port of Astoria, 141 Or. 418, 16 P.2d 943 (1933).
- 23 ORS 777.120(1)(g).
- 24 ORS 777.120(1).

25 30 Op. Att'y Gen. 452, 457 (1962).

26 ORS 777.125.

27 Rayv. Atlantic Richfield Company, 46 USLW 4200,8 ELR 20257
(March 6, 1978).

28 28 Op. Att'y Gen. 246, 249 (1958).

29 ORS 776.435.

30 31 Op. Att'y Gen. 35 (1962).

31 Id. 36 Op. Att'y Gen. 150,210 (1972).

32 ORS 777.116.

33 See text at notes 46-63, infra.

34 ORS 777.210.

35 ORS 777.250.

36 ORS 777.250.

37 See text at notes 65-70, infra.

38 ORS 777.220.

39 Seafeldt v. Port of Astoria, 141 Or. 418, 16 P.2d 943 (1933).

40 Id. at 425.

41 Port of Umatilla v. Richmond, 212 Or. 596, 321 P.2d 338 (1958).

42 Id. at 611.

43 249 Or. 329, 438 P.2d 725 (1968).

44 Or. Cont. Art. 9, 59.

45 Carruthers at 411.

46 Harrison et ux v. Port of Cascade Locks, 37 Or. App. 391 (1978)
Appeal Pending.

47 31 Op. Att'y Gen. 104, 106 (1962).

48 36 Op. Att'y Gen. 150, 211 (1972).

49 38 Op. Att'y Gen. 844.

50 Id. at 890.

51 31 Or. App. 491 (1977), appeal pending.

52 Id. at 532.

53 Moe v. Division of State Lands, 31 Or. App. 3, 569 P.2d 675 (1977).

54 Id. at 8.

55 Id.

56 34 Or. App. 853 (1975).

57 Id. at 868.

58 ORS 541.625(2).

59 Morse, at 859, 868.

60 Id. at 860.

61 Id. at 862.

62 Id. at 868.

63 Oregon Coastal Management Program 1976 (OCMP), at p. 216, defines water related as "Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. . .".

64 Water-dependent is "a use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production or source of water." Id.

65 Morse v. Division of State Lands, 285 Or. 197 (1979).

66 ORS 541.625(2), see text at Note 58.

67 ORS 197.190.

68 ORS 197.015(a) ". . .special districts. . .include. . .port districts. . ."

69 ORS 197.185(2).

70 38 Op. Att'y Gen. 1713, 1716 (1978).

71 ORS 197.185(2).

72 For example, the cooperative agreement between the Port of Newport, Lincoln County and the City of Newport lists the district actions affecting land use as:

1. Harbor improvements
2. Authority over harbor, wharf lines, and navigation

3. Engagement in and financing of commercial activities
4. Actions authorized by ORS 777.105

Such a broad description gives no indication of future plans for the LNG facility in Yaquina Bay or other facility siting programs.

- 73 OAR 141-85-105(1).
- 74 OAR 141-85-205(e).
- 75 Oregon Land Conservation and Development Commission, Oregon Coastal Management Program 1976, hereafter cited as OCMP.
- 76 OAR 123-30-005(6).
- 77 OCMP.
- 78 Id. at 185.
- 79 Id. at 186-187.
- 80 Administrative Rule Classifying Oregon Estuaries, adopted by the Land Conservation and Development Commission, Oct. 1977.
- 81 Id.
- 82 OCMP p. 216.
- 83 Appendix A, Table 3.
- 84 OCMP, p. 189.
- 85 See, for example, In Re: Port of Astoria before the Division of State Lands, Dec. 29, 1976, Moe v. Division of State Land, 31 Or. App. 3, 569 P.2d 675 (1977) for discussions of specific fill mitigation plans which were found insufficient to replace the affected wetlands.
- 86 OCMP at 189.
- 87 Id. at 197.
- 88 Id. at 198.
- 89 Id. at 207.
- 90 Id.
- 91 Id.
- 92 Id. at 208-9.
- 93 Id. at 211.
- 94 Id. at 209.

- 95 ORS 469.020(6).
- 96 ORS 469.310.
- 97 OAR 345-75-025.
- 98 ORS 469.520(2).
- 99 See Mathematical Science Northwest, Inc., Energy Facilities in the Oregon Coast, Vol. II, Table 21, p. 70 for a compilation of likely needed state permits.
- 100 Option Agreement between Port of Astoria and Pacific Fabricators, Inc., §4.2.
- 101 The Daily Astorian, Oct. 13, 1978, at 1.
- 102 §8.4.
- 103 Such a procedure would more closely parallel the review: California's Master Plan approach. Initially, it requires the port to develop a master plan which includes:

1. Proposed land and water uses, where known;
2. Projected design and location of port, land and water areas, navigational rights, etc.;
3. Estimate of development's effect on marine environment -- a review of existing water quality, habitat area, quantity and quality biological inventory, and proposals to mitigate the port's effect;
4. Proposal of the categories that will be appealable to the Coastal Commission; and
5. Provisions for public hearing and participation. (PRC 30711)

Once the port plan is reviewed and certified by the Coastal Commission, the port has final permit authority for development, with appeals allowable to the Coastal Commission in areas of statewide and national interest:

1. Development for storage, transmission, and processing of LNG and crude oil in quantity with a significant impact upon oil and gas supply of the state and nation;
2. Certain wastewater treatment facilities;
3. Roads and highways not principally for internal circulation;
4. All buildings not principally developed to administer the port;

5. Oil refineries; and
6. Petrochemical production plants. (PRC 37015)

The effect of these appealable classifications is that permits for development associated with OCS petroleum resources will not be granted by the port, but the binding decision will be made by a central authority, the Coastal Commission. For further explanation, see U.S. Depart. of Commerce, Office of Coastal Zone Management, State of California, Coastal Management Program and Final Environmental Impact Statement (August, 1977).

104 ORS 197.405.

105 Policies of the State of Alaska Concerning the Onshore and Nearshore Aspects of OCS Development adopted by the Alaska Coastal Policy Council 1/13/78 include:

Policy 2. Consolidation. Major petroleum related facilities shall be consolidated to the maximum extent feasible unless consolidation produces greater adverse environmental or social consequences.

106 California PRC 30260 reads "Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites. . . However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accomodated consistent with other policies of this division, they may nonetheless be permitted. . .".

NATIONAL SEA GRANT DEPOSITORY
PELL LIBRARY BUILDING
URI, NARRAGANSETT BAY CAMPUS
NARRAGANSETT, RI 02882

RECEIVED
NATIONAL SEA GRANT DEPOSITORY
DATE: APR. 6 1988