

# **COASTAL ZONE MANAGEMENT ACT CONSISTENCY DETERMINATION**

**Submitted by the U.S. Army Corps of Engineers  
Portland District, Civil Works**

For Actions Related to the

**Baker Bay Pile Dike Repairs**

Clatsop County, Oregon

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# 1. Introduction

The U.S. Army Corps of Engineers, Portland District (Corps) is proposing repairs to the existing Baker Bay West Pile Dike System (BBWPDS). The purpose of the project is to stabilize shoals in the Baker Bay West (BBW) Federal Navigation Channel (FNC), halt erosion of West Sand Island, and reduce the need for maintenance dredging. BBW FNC is located in the Columbia River estuary from river mile 0.28 to 0.86, in Clatsop County, Oregon (Figure 1). West Sand Island is owned by the U.S. government and managed by the Corps. Repairs to the BBWPDS are urgently needed to halt erosion of West Sand Island and reduce the need for maintenance dredging.



**Figure 1. Map of the Baker Bay Pile Dike System.**

## 1.1 Purpose of the Baker Bay West Pile Dike System

The Baker Bay West Pile Dike system focuses tidal currents through the Baker Bay West FNC.

The system sustains authorized depths for navigation and maintains the configuration of nearby Jetty A Shoal and the West Sand Island shoreline. Years of deferred maintenance, erosion, and sedimentation has led to loss of pile dike function, increased frequency of dredging events in the FNC, and larger volumes of material removed per dredging event (Figure 2). The purpose of this project is to restore the hydraulic function of the BBWPD system. The project is needed to provide reliable navigation to channel users including recreationalists, the Port of Ilwaco, and a U.S. Coast Guard Station.



**Figure 2. Deteriorated Condition of Baker Bay Pile Dike (October 2017)**

In the past several decades, the West Sand Island shoreline has eroded by as much as 2,000 feet, at a rate of roughly 25 feet per year. Figure 3 shows the change in the location of the shoreline over time. Because of the erosion, BB0.56 and BB0.28 are no longer connected to the shore. In fact, the original shore end of BB0.28 is now 1,400 feet waterward of the present-day shoreline of West Sand Island. Water flowing around the shoreward end of the dike has accelerated scour near the shoreline.

Although the average rate of shoreline erosion has decreased in recent years, episodic storms pose a high risk of future erosion, with some individual events predicted to cause up to 50 feet of shoreline recession. These events have the potential to breach the dune, expose the interior of the island to erosion, and endanger the stability of the entire island.



**Figure 3. Erosion of West Sand Island Shoreline, 1938 to 2019**

## 1.2 Description of Proposed Activities

The proposed action consists of the following major activities (Figure 4):

- 1) Removal of the timber piles and existing enrockment from BB0.28 West. Enrockment from this location will be placed along BB0.28 East to re-use materials and reduce cost.
- 2) Removal of the timber piles from BB0.28 East, repair of the existing rock of BB0.28 East, and extension of the existing dike to the present-day shoreline of West Sand Island. The new enrockment would include notches that have been engineered to allow juvenile fish passage along the shoreline during low water.
- 3) Construction of a material-transition zone (above mean higher high water) between the dike and the existing sandy dune on West Sand Island.
- 4) Reinforcement of a low point in the dune near the landward end of BB0.28 by placing material (such as brush, root masses, logs, branches, or sand) grubbed incidentally from the construction footprint. This reinforcement will be in the shape

of a berm, up to 500 feet long by 30 feet wide, with an elevation of up to 17 feet NAVD88.

- 5) Installation of eight marker piles to provide warning of submerged hazards as an aid to navigation (ATON) because the crest of the enrockment will frequently be below the surface of the water. Marker piles will be fitted with bird deterrents to prevent birds from using the piles as perching areas to prey on fish.
- 6) Construction of access facilities, as needed, and a staging area. Site access will be via barge. Barges will transport all equipment and material to and from the site and serve as staging platforms for in-water construction. Land based work will also be necessary for construction in areas where the water is too shallow for barges. Equipment may operate directly on the beach, but in areas where the sand is too soft, the contractor may import materials (such as dredged sand and gravel, sand from the staging area, or crushed rock) to create a temporary access road. At the end of the construction period, the contractor will be required to remove any imported access road material and restore the staging and access areas to original condition.

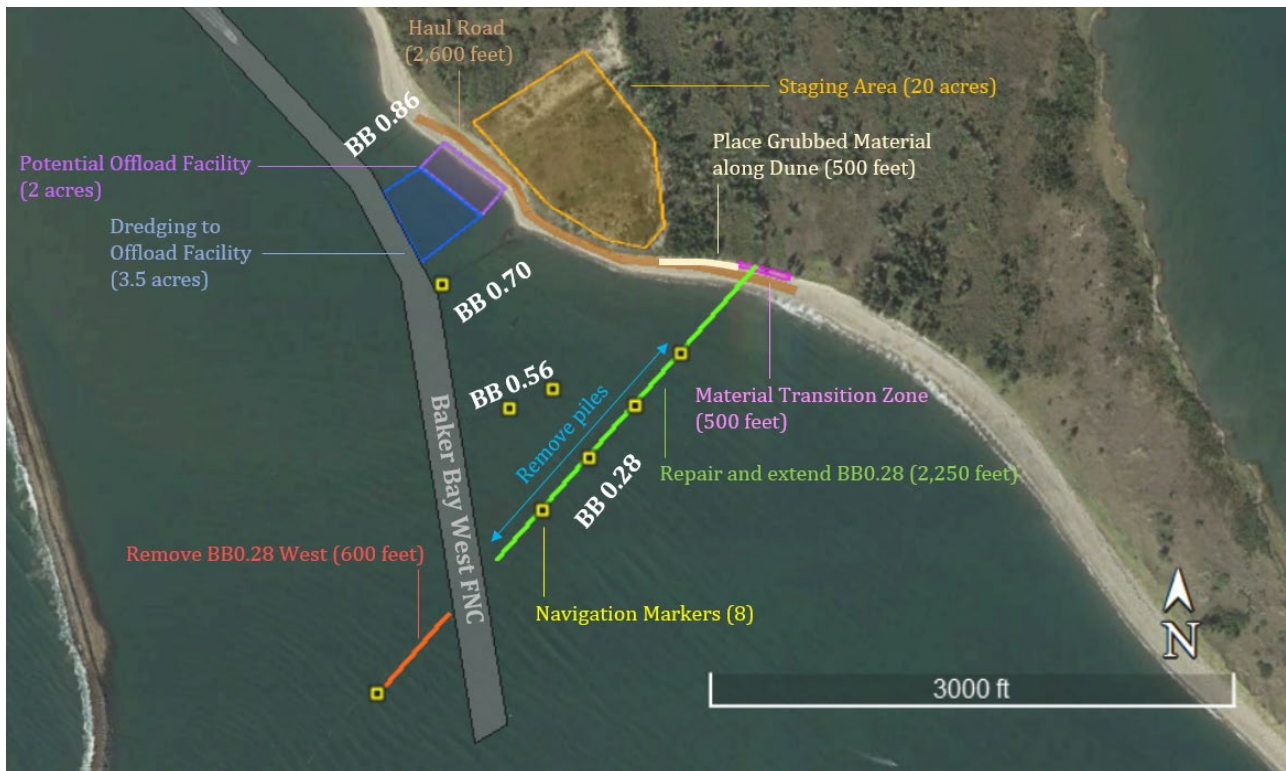


Figure 4. Proposed Action (Plan View)

### 1.3 Construction Equipment

The project will employ standard marine equipment to accomplish in-water construction. The contractor will use material and transport barges and cranes or excavators mounted on individual barges. The crane/excavator barge will likely be involved in nearly every critical-path activity, such as removing piles, removing rock, loading and unloading materials, placing rock, and driving piles. A crane or excavator can be permanently attached on a barge that is manufactured for the purpose, but they are most often large, lattice-boom cranes secured to the deck of a flat deck barge. Often, these are crawler-type cranes and are clamshell dredges that a contractor also uses on land when not actively dredging. The crane barges typically have capacities from 80 to 200 tons but may have capacities in the thousands of tons. It is possible, though unlikely, that a contractor will opt to have two on site to accomplish the work faster. It is more likely that the contractor will use a second, land-based crane for loading material onto barges, so that the barge crane is freed up for active construction. Cranes and excavators used for rock placement and pile driving will be equipped with survey grade positioning software to ensure precision during placement.

Material barges will transport all material to the site and will also serve as staging platforms to the crane barge. Material barges are typically large, flat-deck barges equipped with a wall to contain materials. These barges will likely be assisted by a tugboat but could be self-propelled. Barge size may vary but will typically range from 100 to 250 feet in length, drafting up to 20 feet when fully loaded. Some include long steel spuds dropped to the river bottom to anchor the barge in position. An alternative method of securing a barge is to apply anchors or cables attached to an onshore object or to the seafloor. The method of securing barges will be left to the contractor.

The tugboat(s) will likely have 2,000 to 3,000 horsepower engines, though a smaller tug may be used for short day-to-day activities to conserve fuel when high horsepower is not needed. The project will use tugs throughout the duration of the project, that is, each construction day from July through October, for both the first and second construction years.

The project will require the use of standard land-based construction equipment, consisting of bulldozers, loaders, excavators, or cranes. This equipment will mobilize to West Sand Island by barge. The equipment will add rock and scour protection to features of the project that occur in areas that are too shallow for marine equipment. The equipment will also be used to create haul roads and staging areas.

The contractor will provide temporary utilities as needed including electrical power, water, telephone, and compressed air. The contractor must also provide portable, temporary sanitary facilities.

### 1.4 Duration and Timing

The proposed action is estimated to require two construction seasons of approximately four months each; likely in 2023 and 2024, or 2024 and 2025, depending on timing of contract award that is based on funding. The ODFW in water work window for the Columbia River (including the action area) is November 1 through February 28; however, in developing the in-



water work schedule, the Corps need to balance several constraints, including the presence of ESA-listed species, and most importantly, the unsafe sea conditions and weather that pose a risk to workers during much of the year, especially in the winter months. Construction cannot occur when temperature is 32 °F or lower, daily total precipitation is 0.50 inches or greater, or wind speed is 25 mph or greater. When of any the above conditions occurs frequently (lasting hours per day), then construction must shut down until the conditions become favorable. The Corps works with contractors to plan seasonal coastal construction that avoids poor weather and frequent shut-downs. To that end, the Corps prefers to perform such work from May through September. However, to avoid impacts to ESA-listed species, no in water work is proposed during the months of March through June, and pile driving work is proposed for October.

Considering the timing limitations for both listed species and safe coastal construction, the Corps proposes to perform in water work from July through October or November.

### 1.5 Public Participation

A public notice of the draft Environmental Assessment (EA) is anticipated to be released in June 2022. The public comment period is expected to be 15 days. Announcements are made on the US Army Corps of Engineers Portland District Website <https://www.nwp.usace.army.mil/Media/Public-Notices/>.

The Corps is applying for a Section 401 Water Quality Certification (WQC) from the Oregon Department of Environmental Quality (DEQ). DEQ will issue public notice of the draft WQC, likely in summer of 2022. The Corps will comply with all conditions in the WQC.

### 1.6 Best Management Practices

Multiple conservation measures will be implemented as part of the project to ensure protection of resources from construction activities and are described below.

#### 1.6.1 Construction Best Management Practices

The construction contractors would be required to conduct construction activities using best management practices (BMPs) for in-water and land-based work. BMPs include but are not limited to:

- Fueling and lubrication of equipment will be conducted in a manner that affords the maximum protection against spill and evaporation. Fuel, lubricants, and oil will be managed and stored in accordance with all Federal, State, Regional, and local laws, and regulations. BMPs will be employed to prevent petroleum products, chemicals, or other deleterious waste materials from entering waters. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., will undergo frequent inspection for drips or leaks, and

shall be maintained to prevent spills into waters.

- To avoid the need for emergency response a USACE Government Quality Assurance Representative will be always on-site or available by phone throughout construction. Emergency erosion/pollution control equipment and best management practices will be on site at all times; USACE staff will conduct inspections and ensure that hazardous material containment booms and spill containment booms are available and accessible to facilitate the cleanup of hazardous material spills, if necessary.
- Construction waste material used or stored will be confined, removed, and disposed of properly.
- A description of spill containment and control procedures will be on-site.
- Upon completion of the work, any barge landing pilings will be removed, and the area will be re-graded according to best management practices to minimize the risk of wake stranding.
- Erosion and sediment control measures will be implemented.
- Wetland areas will be avoided.
- BMPs to minimize and monitor turbidity will be implemented.
- Pile driving work would start no sooner than 30 minutes after sunrise and would stop no later than 30 minutes before sunset, to avoid impacts to marine mammals.

#### 1.6.2 Noise Impact Reduction

Mitigation for noise impacts associated with pile driving activities to reduce injury include:

- A soft-start procedure for pile installation will be used to provide a warning and/or give wildlife in close proximity to pile driving a chance to leave the area prior to a pile driver operating at full capacity thereby, exposing fewer wildlife to loud underwater and airborne sounds. A soft start procedure will be used at the beginning of each day when in-water pile driving, or any time pile driving has ceased for more than 30 minutes.
- Noise dampeners, also called pile cushions or caps, will be used during all pile installations with an impact hammer and are estimated to reduce SPLs by 10 dB. Driving shoes will also be used to facilitate driving and reduce driving time.
- Bubble curtains were considered as an additional method for decreasing noise impacts. The Corps recently completed a test project, during which it was determined that the currents were too strong to employ bubble curtains. Therefore, the use of bubble curtains are not be feasible for this project.

## 2. Coastal Effects

In accordance with the CZMA, as amended, Section 307(c)(1), the Corps has determined that the proposed activity, located at the Baker Bay West Pile Dike System will be consistent with

enforceable policies and goals under the OCMP and would not adversely affect the coastal zone. In coordination with the Oregon Department of Land Conservation and Development (DLCD), the Corps is requesting a review of statements of consistency to ensure that the proposed project is consistent with the OCMP.

As defined in Section 304 of the CZMA, the term “coastal zone” does not include “lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government.” West Sand Island is owned by the U.S. government and managed by the Corps and, therefore, is excluded from the coastal zone. The Corps recognizes that Federal actions on land excluded from the coastal zone may affect uses and resources within the coastal zone. Accordingly, the Corps analyzed the impacts of the proposed activity on the coastal zone by looking at reasonably foreseeable direct and indirect effects on the coastal uses or resources. Also analyzed were relevant management program enforceable policies.

Under the CZMA, applicants must “demonstrate that the activity will be consistent with the enforceable policies of the management program” showing “adequate consideration of policies which are in the nature of recommendations” 15 C.F.R. § 930.58(a)(3). According to the 1987 OCMP, the enforceable policies of the OCMP include: (1) Oregon’s Statewide Planning Goals, (2) the applicable acknowledged county or city comprehensive plans and land use regulations, and (3) selected state authorities (e.g., the Oregon Department of State Lands, the Oregon Department of Environmental Quality, etc.).

The proposed activity will have no long-term effects on species or critical habitat. Implementing standard construction BMPs – such as a spill prevention and cleanup plan – will avoid or minimize the potential for accidental releases of fuels/oils during construction. Implementing noise reduction BMPs – such as soft starts to work and noise dampeners – will avoid or minimize the potential for take in species.

## 2.1 Effects to Natural Resources

### 2.1.1 Effects to Water Quality

The proposed project is anticipated to reduce water quality temporarily in the localized area due to increased turbidity. These impacts are not likely to result in permanent or substantial degradation of designated critical habitat. The project activities would include BMPs for in-water and land-based work. The Corps is requesting Section 401 WQC from DEQ. All required conditions will be followed. BMPs to minimize impacts of the project are outlined in section 1.5.2 Construction Best Management Practices.

### 2.1.2 Effects to Species including ESA-Listed Species

The Corps will submit a Biological Assessment to National Marine Fisheries Service (NMFS) in March 2022 for anticipated adverse effects to aquatic ESA-listed species. The Corps will submit a Biological Assessment to US Fish and Wildlife Service (USFWS) in spring of 2022 and anticipates informal consultation because the proposed action is not likely to adversely affect terrestrial ESA-listed species.

The proposed activity is located within Essential Fish Habitat (EFH) as defined by NOAA Fisheries for Pacific Coast salmonids in Amendment 14 to the *Pacific Coast Salmon Plan*, which was approved in September 2000. During construction activities, temporary impacts to EFH species may occur due to habitat modification, displacement, and construction noise. However, most common wildlife in the area, such as shorebirds, are highly mobile, and effects would be minimal. Temporary displacement of wildlife is likely to occur during construction of all phases of the project. Displacement impacts to wildlife would be short-term, lasting only as long as the construction period.

The Endangered Species Act of 1973 (ESA) 16 U.S.C. § 1531 et seq. provides for the conservation of the endangered and threatened species of fish, wildlife, and plants, and for other purposes. Section 7 of the ESA of 1973, as amended, requires that federal agencies ensure that their actions are, "not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" [16 USC Section 1536(a)(2)]. "Effects of the action" includes all consequences to listed species or critical habitats that are caused by the proposed action including the consequences of other activities that are caused by the proposed action (50 CFR 402.17). A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur.

The anticipated impacts on the species of the proposed action are summarized in Table 1 below.

**Table 1. ESA Listed Species and Potential Affects**

Species	Potential Affects
Salmon and Steelhead	Noise disturbance during construction, temporary localized turbidity, and loss of prey due to burial of benthic organisms during rock placement.
Eulachon	Noise disturbance during pile driving and general displacement due to construction.
Green Sturgeon	Noise disturbance during pile driving and general displacement due to construction.
Southern Resident Killer Whales, Humpback Whales, and Other ESA-Listed Marine Mammals	Noise disturbance during pile driving and possible temporarily altered behavior.
Leatherback Sea Turtles	Noise disturbance and disruption of prey species due to pile driving noise.

### 2.1.3 Effects on Critical Habitat

In general, critical habitat for NMFS ESA-listed species could be temporarily adversely affected by the proposed project due to pile and rock installation, the effects are expected to be

insignificant in terms of the effects to essential features identified below. Pile dikes presently exist in the same location as where the new pile dike structures would be located. Therefore, effects on critical habitat essential features are going to be of low magnitude and would not significantly alter critical habitat from the status quo situation.

The effects on the critical habitats within the proposed action area are summarized in Table 2 below:

**Table 2. ESA-Listed Species Critical Habitat**

Species	Essential Features	Effects
Salmonid and Steelhead	<ol style="list-style-type: none"> <li>1. Freshwater Rearing Sites</li> <li>2. Freshwater Migration Corridors</li> <li>3. Estuarine Areas</li> <li>4. Marine Areas</li> </ol>	Minor short-term adverse effects expected during construction. Long-term preservation of habitat expected.
Eulachon	<ol style="list-style-type: none"> <li>1. Adequate Substrate for Freshwater Spawning and Incubation</li> <li>2. Food for Freshwater Migration</li> <li>3. Adequate Water Quality</li> <li>4. Proper water temperatures</li> <li>5. Adequate flow</li> </ol>	Minor short term adverse effects expected during construction. Long-term preservation of habitat expected.
Green Sturgeon	<ol style="list-style-type: none"> <li>1. Forage</li> <li>2. Water Quality</li> </ol>	Minor short term adverse effects expected during construction.
Leatherback sea turtle	<ol style="list-style-type: none"> <li>1. Occurrence of prey species</li> <li>2. Migratory pathway conditions</li> </ol>	Minor short term noise disturbance during construction.

## 2.2 Cultural Effects

Prior to implementation of any project or action, the Corps must comply with several Federal laws and regulations. The cultural resources laws and regulations that must be complied with include the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the Antiquities Act, and the Archaeological and Historic Preservation Act.

The Corps has determined, in accordance with 36 CFR Part 800, Section 106 implementing the NHPA, that the proposed project has potential to effect historic properties and as such is determined to be an undertaking. The Corps determined the area of potential effect (APE) for the project and sent consultation letters to Oregon SHPO, Cowlitz Indian Tribe, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Siletz Indians, Nez Perce Tribe, Shoalwater Bay Tribe, Confederated Tribes of the Umatilla Indian Reservation,

Confederated Tribes of the Warm Springs Reservation of Oregon, and Confederated Tribes and Bands of the Yakama Nation on February 19, 2020. Oregon SHPO concurred with the APE on March 12, 2020 (built resources) and March 16, 2020 (archaeology). Additionally, the Confederated Tribes of the Warm Springs Reservation of Oregon concurred with the APE on March 19, 2020.

Archaeological survey was completed on 95.47 acres in areas where there will be ground disturbance on West Sand Island (staging area, access route, barge landing area, etc.). The survey recorded four new archaeological resources. The Corps determined the archaeological resources are not eligible for the National Register of Historic Places (NRHP) and submitted the survey report and letters with the determination to the same consulting parties on January 29, 2021. The Confederated Tribes of the Warm Springs Reservation of Oregon concurred with the finding. No other consulting parties responded.

The Baker Bay Pile Dike System was evaluated for the NRHP and was determined eligible under Criteria A by the Corps with a local significance in the areas of maritime history, transportation, commerce, and industry. The National Park Service National Register of Historic Places Registration Form for the Baker Bay Pile Dike System was submitted to the consulting parties on February 1, 2021. Oregon SHPO concurred with the determination on March 2, 2021. No other parties responded.

In addition to the archaeological survey and the NRHP evaluation of the Baker Bay Pile Dike system, the Corps also submitted an archaeological site form for eight historic fishing weirs (site WSI-1) along the shoreline of West Sand Island. The fishing weirs were determined eligible for the NRHP under Criteria A by the Corps. The Corps submitted the site form and a request on NRHP eligibility concurrence to Oregon SHPO on March 31, 2021. Oregon SHPO did not respond.

The Corps determined the Baker Bay Pile Dike Rehabilitation project would have an adverse effect to historic properties, specifically the Baker Bay Pile Dike System and site WSI-1. Letters with the determination of effects were sent to the consulting parties on June 23, 2021. No consulting parties responded but concurrence by the Oregon SHPO is assumed per the NHPA 36 CFR 800.5(c).

The Corps notified the Advisory Council on Historic Preservation (ACHP) that the Corps would have an adverse effect to historic properties and would be preparing a memorandum of agreement (MOA) with the Oregon SHPO to stipulate mitigation on July 7, 2021. ACHP responded that they would not be participating in the MOA consultation on July 22, 2021.

The Corps is preparing the MOA with Oregon SHPO to stipulate mitigation for the adverse effects to historic properties. Other consulting parties for the MOA are Washington State Department of Archaeology and Historic Preservation, Confederated Tribes of Siletz Indians, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Umatilla Indian Reservation, Columbia River Maritime Museum, Columbia Pacific Heritage

Museum, Port of Ilwaco, Washington State Parks and Recreation Commission, and the Chinook Indian Nation. A kick-off meeting for the MOA was held December 6, 2021, and a draft of the MOA was submitted to the MOA consulting parties the same day for review and comment. A second draft of the MOA was submitted to MOA consulting parties on January 28, 2022, and a second meeting was held February 8, 2022, to discuss the MOA. A third draft of the MOA was submitted to the MOA consulting parties on February 18, 2022, for review and comment. The Corps anticipates the MOA will be executed with Oregon SHPO by summer 2022. The Corps will then have five years to complete all mitigations stipulated in the MOA.

The proposed action is in compliance with the NHPA.

### 2.3 Coastal Economy Effects

Coastal Economies and Recreation/Public Access - The Columbia River is a major recreational area for a variety of shoreline, on-water, and in-water activities. Recreational use of the Columbia River occurs year-round; river-based tourism and recreation are the driving economic force for many of the towns situated along the Columbia River. Fishing, hunting, swimming, water sports, and sightseeing are among the most popular recreational activities along the Columbia River. Given the wide range of recreational opportunities and large geographic range of the Columbia River, it is difficult to quantify the value of recreation for this region. The proposed action is not anticipated to have long-term effects on the coastal economies nor recreational opportunities. There are some anticipated short-term public access limitations during the construction window.

### 2.4 Effects on Local Aesthetics

The pile dikes in this system are constructed of untreated timber piles and ungalvanized hardware, which is in an advanced state of deterioration, see Figure 3. The proposed repair includes enrockment in lieu of timber piles, and eight marker piles. The proposed design will reduce visibility of timber piles, improving the aesthetics of the project area.

### 2.5 Cumulative Effects

Pile dike construction and maintaining the pile dikes for continued effectiveness will reduce the need for dredging in the BBW FNC and mouth of the Columbia River, which would reduce the frequency and duration of habitat disruption during dredging operations. None of the activities associated with the pile dike repair project are likely to cause substantial adverse impacts on substrate for freshwater spawning and incubation (beyond localized bathymetric disturbance), food sources, water quality, or water temperature. Temporary adverse and beneficial effects caused by construction include:

- Temporary adverse effects due to noise and turbidity during construction.
- Altered river circulation patterns, sediment deposition, and light penetration.
- May form microhabitats that often benefit predators (NMFS, 2016).
- May have beneficial uses for fish in the action area (Diefenderfer, Borde, & Cullinan, 2019) (Corps, Structural and Hydraulic Analysis of Columbia, 2011).

- Stabilize navigation channel and halt periodic shifts in shallow water habitat features.
- Create and/or protect shallow water habitat, ultimately benefitting juvenile salmon (Corps, Structural and Hydraulic Analysis of Columbia , 2011) (Johnson & fourteen others, 2011).

### 3. Consistency with the Enforceable Policies

For purposes of CZMA consistency, the Corps is not required to obtain any local or state permits. Federal actions are exempt from local and state permitting by the Coastal Zone Management Act and by DLCD administrative rules, unless required by other federal law (See 15 CFR 930.39(e) and OAR 660-035-0030). As outlined in 15, CFR 930.39, “Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.” The Corps is not seeking a local development permit or a plan amendment containing goal exceptions, the proposed action meets both local permit and stateside planning goal requirements. Therefore, this action is consistent to the maximum extent practicable with the enforceable policies of the OCMP.

### 4. Analysis of Enforceable Policies

The following section analyzes consistency with the applicable enforceable policies of the OCMP.

#### 4.1 Consistency with Statewide Planning Goals and Local Land Use Regulations

To establish consistency with the OCMP, the Corps must demonstrate consistency with the enforceable policies implemented through Statewide Planning Goals and local land use regulations. Under ORS 197.175, the Statewide Planning Goals are to be implemented by local governments through the adoption of comprehensive plans that are consistent with the goals. In turn, the comprehensive plans are to be implemented through adoption and enforcement of land use regulations. Once the local government adopts, and the LCDC acknowledges, a local government’s comprehensive plan and land use regulations implementing that plan, the local government is to make land use decisions consistent with those acknowledged plan and regulations. Therefore, any proposed activity component approved in a local land use decision as compliant under the applicable local comprehensive plan and implementing land use regulations would by extension make the proposed activity component also consistent with Statewide Planning Goals.

##### 4.1.1 Statewide Planning Goals and Guidance

The following information is a summary of OCMP enforceable policies implemented by Statewide Planning Goals and a brief statement on which policies apply for this project.

Goal 1 Citizen Involvement – Oregon DEQ request public comments on the water quality certification and public scoping will be completed as required for NEPA compliance, as well as this consistency determination. Therefore, the project is *consistent* with Goal 1 of the Oregon



## Statewide Planning Goals.

Goal 2 Land Use Planning - Goal 2 states that land use decisions are to be made in accordance with a comprehensive plan, and that local jurisdictions must adopt suitable "implementation ordinances" to put the plan's policies into effect. The rehabilitation of the pile dike system would not result in a change to land use designation nor the use of the lands. Therefore, the goal is *not applicable* to the project.

Goal 3 Agricultural Lands - *Not applicable* as proposed activities are located only within Coastal Shorelands.

Goal 4 Forest Lands - *Not applicable* as proposed activities are located only within Coastal Shorelands.

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces - The proposed project *is consistent* with this planning goal and has demonstrated that by completing appropriate NEPA processes including entering an MOA with the Oregon State Historic Preservation Office to mitigate any adverse impacts to archaeological and historic resources.

Goal 6 Air, Water and Land Resources Quality – Goal 6 instructs local governments to consider protection of air, water and land resources from pollution and pollutants when developing comprehensive plans. The proposed activity *is consistent* with the goal. The pile driving and general construction activities will be conducted in compliance with the Clean Air Act (CAA) and the State Implementation Plan for Oregon. The project will protect water resources by complying with Sections 401 and 404 of the CWA, as well as the stormwater provisions of Section 402. The impacted upland area is greater than 1 acre and therefore the Contractor will be required to prepare a Stormwater Pollution Prevention Plan and obtain a NPDES Construction General Permit 1200-C from the Oregon DEQ. The Contractor will also prepare and implement an Erosion and Sediment Control Plan that meets the requirements of 40 CFR 122.26 and the Oregon State General Permit for stormwater discharges from construction sites.

Goal 7 Areas Subject to Natural Hazards - Goal 7 requires local comprehensive plans to address Oregon's natural hazards to protect people and property. This goal is *not applicable* to this project as the proposed activity is located within the existing footprint of the pile dikes and will not put people or infrastructure in the way of harm from natural disasters.

Goal 8 Recreational Needs - Goal 8 requires local governments to plan for the recreational needs of their residents and visitors. During construction there may be short-term impacts to recreational boaters. Some recreational activities are expected to be displaced during construction and would result in no lasting changes in the public use of the area after construction is complete. No impact on recreational economies is expected. The proposed action *is consistent* with this goal.

Goal 9 Economic Development - The purpose of Goal 9 planning is to make sure cities and counties have enough land available to realize economic growth and development opportunities. This goal is *not applicable* to this project as the proposed activity does not include nor impact areas which have been identified for economic growth and development opportunities.

Goal 10 Housing - Goal 10 requires planning, at a local level, surrounding "buildable lands," this refers to land inside an urban growth boundary that is suitable and available for residential use. This goal is *not applicable* to this project as the proposed activity does not include lands which have been identified as "buildable."

Goal 11 Public Facilities and Services – Goal 11 requires local governments to protect their public facilities and services including water and sewer services, police and fire protection, health services, recreation facilities, energy and communication services, and services provided by the local government like building permitting or public work. This goal is *not applicable* to this project as the proposed activity will not use, modify, or change public facilities or services.

Goal 12 Transportation - Goal 12 requires cities, counties, and the state to create a transportation system plan that takes into account all relevant modes of transportation: mass transit, air, water, rail, highway, bicycle, and pedestrian. This goal is *not applicable* to this project as the proposed activity will not use, modify, or change transportation.

Goal 13 Energy Conservation - Goal 13 requires local governments to consider the effects of its comprehensive planning decision on energy consumption. The proposed action is *consistent* with this goal; installation of static channel training structures like pile dikes maintain navigation channels by directing river flow toward the main channel, resulting in a reduction of dredging for navigation which is an energy intensive operation.

Goal 14 Urbanization – Goal 14 requires local government to establish an urban growth boundary (UBC) to contain urban development. This goal is *not applicable* to this project as the proposed activity is not within or near a UBC.

Goal 15 Willamette River Greenway – Goal 15 requires planning and developing thoughtfully within the Willamette River Greenway. This goal is *not applicable* to this project as the proposed activity is not within the Willamette River Greenway.

Goal 16 Estuarine Resources –The Columbia River estuary is classified as a "development estuary." This classification allows for uses such as navigation, as well as dredge and fill activities. The proposed pile dike repair does not change the classification of the estuary from a development estuary. A wetland delineation was completed for the proposed activity area. The proposed action will avoid wetlands that were identified on West Sand Island. As a result, the project is *consistent* with state and local land use policies for estuarine habitats.

Goal 17 Coastal Shorelands – Goal 17 seeks to conserve and protect Oregon Coastal Shorelands which protect our water quality, and fish and wildlife habitat. This goal is not applicable because it applies to shorelines; the proposed dredging is in water.

Goal 18 Beaches and Dunes - Goal 18 focuses on conserving and protecting Oregon's beach and dune resources. This goal is *not applicable* because the proposed area is not within areas designated as beaches or dunes.

Goal 19 Ocean Resources - Goal 19 deals with matters such as dumping dredge spoils and discharge of waste products into the open sea and prioritizes the protection of renewable marine resources over the development of non-renewable resources. The proposed activity does not involve dumping dredge spoils nor waste discharges into the sea therefore this goal is

*not applicable* to the project.

## 4.2 Consistency with Local Land Use Regulations – Clatsop County Development Standards

The proposed activity is consistent with Clatsop County land use planning regulations as codified in Clatsop County Standards Document Ordinance 80-14 (as amended in 2018). Below are the key Clatsop County standards applicable to the proposed activity and rationale for the consistency findings per standard. The proposed project is in the area designated as Aquatic Conservation 2 (AC2) and Conservation Shorelands (CS), both designations are in the overarching category of Conservation Other Resources.

### 4.2.1 Section 3.660 Conservation Shorelands (CS)

Purpose: This zone is intended to conserve Columbia River Estuary shorelands which provide important resource or ecosystem support functions and to designate areas for long term uses of renewable resources that do not require major alterations of the estuary, except for the purpose of restoration. They are managed for the protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources, aesthetic values, and recreation. Uses of these shorelands shall be compatible with characteristics and uses of the adjacent estuarine waters.

The following uses and activities and their accessory use and activities, are permitted in the CS zone under a Type II procedure, which allows for use or development for reasonably objective review criteria Section 2.020, when authorized in accordance with Sections 5.040-5.051 Development and Use Permitted with Review, and subject to the provisions of Section 3.670, Development Standards:

- Structural shoreline stabilization.
- Maintenance and repair of existing structures and facilities, including dikes.
- Excavation to create new water surface area.
- Active restoration, mitigation.
- Individual dock or moorage or public recreational boat ramp with minimal on-shore facilities.

The proposed activities are included in the uses and activities, and their accessory uses and activities, outlined above and permitted in the CS zone under a Type II procedure. Type II land use actions are presumed to be appropriate in the zone and generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with conditions of approval to minimize those impacts or ensure compliance with county code. *Therefore, this action is consistent to the maximum extent practicable the objectives of the CS zone.*

#### 4.2.2 Section 3.782 Aquatic Conservation Zone 2 (AC-2)

Purpose: The purpose of the AC-2 zone is to conserve designated areas of the Columbia River Estuary for long term uses of renewable resources that do not require major alterations of the estuary, except for the purpose of restoration. They are managed for the protection and conservation of the natural resources and benefits found in these areas. The AC-2 zone includes areas needed for maintenance and enhancement of biological productivity, recreational resources, aesthetic values, aquaculture, and open water portions of the estuary. The AC-2 zone includes areas of smaller or of less biological importance than those in the Aquatic Natural zone and Aquatic Conservation One zone. Areas that are partially altered and adjacent to existing development of low to moderate intensity which do not possess the resource characteristics of other aquatic areas are also included in this zone.

The following uses and activities, and their accessory uses and activities, are allowed as Review Uses in the AC-2 zone under a Type II procedure, Section 2.020, when authorized in accordance with Sections 5.040-5.051 Development and Uses Permitted with Review. These uses and activities are also subject to the provisions of Section 3.790, Development Standards:

- Individual docks, and boat ramps for public use where neither dredging nor filling for navigation access is needed.
- Pipelines, cables, and utility crossings.
- Maintenance and repair of existing structures or facilities, including dikes.
- Installation of tide gates in existing functional dikes.
- Structural shoreline stabilization.
- Water dependent portions of an aquaculture facility which do not involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks.
- Estuarine enhancement.
- Bridge crossings.
- Piling in conjunction with the review uses (1) through (9) listed above, pursuant to the applicable standards in Section S4.208.
- Dredging in conjunction with the review uses (2) through (11) listed above, pursuant to the applicable standards in Section S4.232.
- Filling in conjunction with the review uses (2) through (7), (10), and (11) listed above, pursuant to the applicable standards in Section S4.235.

The proposed activities are included in the uses and activities, and their accessory uses and activities, outlined above and permitted in the AC-2 zone under a Type II procedure. Type II land use actions are presumed to be appropriate in the zone and generally involve uses or development for which review criteria are reasonably objective, requiring only limited

discretion. Impacts on nearby properties may be associated with conditions of approval to minimize those impacts or ensure compliance with county code. *Therefore, this action is consistent to the maximum extent practicable the objectives of the AC-2 zone.*

### 4.3 Consistency with State Agency Authorities

In addition to demonstrating consistency with applicable Statewide Planning Goals and local land use regulations, the Corps must also demonstrate consistency with the OCMP enforceable policies implemented through applicable provisions of the Oregon Revised Statutes (ORS) and administered by networked state agency authorities.

These policies are outlined below along with narratives and references to pertinent state permits, permit applications, and consultations demonstrating consistency with those enforceable policies. In addition, the Corps will be preparing an Environmental Assessment in accordance with NEPA. Other requirements include:

- CWA Section 401: The Corps is seeking Water Quality Certification from DEQ for work to be performed in Oregon and will implement all conditions that are included.
- CWA Section 404: Pursuant to 33 CFR §335.2 the Corps does not issue itself CWA permits to authorize discharges of dredged or fill material into waters of the of United States for Corps Civil Works projects. The Corps does apply the substantive legal requirements of the CWA including application of Section 404 and seeks a water quality certification for the discharge of dredged or fill material. For Civil Works projects, the Corps is both the authorizing agency for discharges of dredged or fill material for purposes of Section 404 of the CWA and the project proponent. The Corps has determined that the proposed work qualifies for nationwide permit 3.
- ESA Section 7 and Magnuson-Stevens Fishery Conservation and Management Act: The Corps will submit a Biological Assessment to National Marine Fisheries Service in March 2022 for anticipated adverse effects to aquatic ESA-listed species. The Corps will submit a Biological Assessment to US Fish and Wildlife Service (USFWS) in spring of 2022 and anticipates informal consultation because it has been determined that the project is not likely to adversely affect terrestrial ESA-listed species.
- NHPA: The project complies with Section 106 of NHPA. Refer to section 2.2.

ORS 274 – Submersible and Submerged Lands: This statute applies to disposal of dredged material below ordinary high water of navigable state waters.

The Environmental Assessment, CWA Section 401 WQC, and CWA 404 evaluation satisfy the substantive federal requirement of this statute. The proposed action of repairing the pile dike system would occur within the existing footprint of the current pile dike system.

#### ORS 496 – Application, Administration, and Enforcement of Wildlife Laws

The wildlife inventory and impact analysis contained in the Environmental Assessment will describe impacts to wildlife species within the proposed project area and state-listed species are addressed therein. The Corps will initiate consultation with NMFS and USFWS regarding potential impacts to ESA-listed species for this proposed action. Any state-listed species were addressed through either (or both) of these assessments and coordination with regulatory agencies. Through completion of the NEPA compliance and ESA consultation processes, the Corps meets the requirements of this statute.

#### ORS 509 – General Protective Regulations:

The Environmental Assessment, the CWA Section 404 evaluation, and ESA consultations, document several minimization and mitigation measures will be incorporated into the project (see Section 1.6).

#### ORS 468B – Water Quality

The Environmental Assessment and CWA 404 evaluation prepared for this action address the water quality evaluations required by this statute. The Corps is requesting a 401 WQC from Oregon DEQ and will implement all conditions that were included.

#### ORS 196.795-990 – Oregon’s Removal-Fill Law: This statute requires a permit from the Department of State Lands (DSL) to remove or place fill material in waters of the state.

The proposed action does not require a removal-fill permit because it is exempt per administrative rules. Fill or removal for maintenance or reconstruction of water control structures including dikes are exempt, under one of four conditions. This project meets the definition of maintenance under OAR 141-085-0510(57).

## 5. Statement of Consistency

The proposed activity is being evaluated through the Environmental Assessment and in consultation with Oregon SHPO, DEQ, NMFS, USFWS, and others for impacts to historic and culture resources, ESA-listed species, and water quality. The historical and cultural findings, the Biological Assessment, and Joint Permit Application for the WQC are incorporated herein by reference.

Based on the above evaluation in conjunction with evaluations to meet CWA, ESA, NEPA, and NHPA compliance requirements, the Corps has determined that the proposed activity is consistent with the (1) Oregon’s Statewide Planning Goals and Guidance, (2) Clatsop County Development Standards and (3) Clatsop County Land Use Planning. *The action is, therefore, consistent to the maximum extent practicable with the enforceable policies of the OCMP.*