9

Oregon

John A. Kitzhaber, MD, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregonstatelands.us

State Land Board

John A. Kitzhaber, MD
Governor

Kate Brown
Secretary of State

Ted Wheeler
State Treasurer

May 8, 2014

JG410\43010-OE
REEDSPORT OPT WAVE PARK, LLC
CHARLES F DUNLEAVY
1590 REED ROAD
PENNINGTON NJ 08534

Re: 43010-OE Removal of the Floating Gravity Based-Anchor (FGBA) Assembly Recovery Work Plan, October 2013

Dear Mr. Dunleavy:

On April 3, 2014, the Department received notice from Reedsport OPT Wave Park, LLC (OPT) that they were abandoning the site authorized by state Temporary Use Permit 43010-OE in the territorial sea. It is understood that OPT will complete removal of associated structures and site restoration by October 15, 2014. The Department received and reviewed the Ocean Power Technology Floating Gravity Base Assembly Recovery Work Plan, dated October 15, 2013 (Anchor Recovery Plan).

The purpose of this letter is to reiterate the requirement for OPT to complete removal of project-related structures on or over state-owned land in the territorial sea, and to maintain adequate financial surety until the removal is complete and your Temporary Use Permit is closed by the Department.

Pursuant to Section 4 of your Temporary Use Authorization, abandoning the site triggers the requirement for OPT to among other things, **'...substantially restore the premise to original condition...'** Section 12 of your authorization requires adequate financial surety that conforms to the terms of the authorization, including site abandonment/restoration.

The Anchor Recovery Plan only provides a single scenario for the recovery. Your cover letter accompanying the Anchor Recovery Plan included conditions that the anchor can be made operational and that additional authorizations from federal, state and judicial agencies will be attained. These conditions appear to limit the validity of the Anchor Recovery Plan.

As we near the beginning of the approved work window of June 15 – October 15 for anchor removal, the Department seeks written verification from OPT that the anchor removal will occur as documented in the Anchor Recovery Plan. Specifically, the Department seeks verification that the anchor removal schedule will occur as described in Section 2.1.2 of your plan.

20140508-5060 FERC PDF (Unofficial) 5/8/2014 11:42:01 AM

A second matter related to the anchor recovery concerns the financial surety. Two points need to be addressed:

1. OPT must adjust the expiration date of their financial surety, PNC Bank 18120299-00-000, to be later than October 15, 2014 – the close of the recommended work window. This letter of credit is currently set to expire on August 30, 2014.
2. The OPT cover letter accompanying the Anchor Recovery Plan qualifies the removal of the anchor based on certain conditions (such as the anchor being made operational prior to removal). The inability to meet these conditions will likely increase the cost of removal, which increases the amount of financial surety required to meet the terms of state authorization 43010-OE, OAR 141-0140-0080, and ORS 274.867.

The Department requires that OPT provide written affirmation that the anchor and related structures shall be recovered from state-owned land in the territorial sea and the site will be restored to conditions acceptable to the Department before October 15, 2014. The Department requires that OPT amend their financial surety referenced above to extend the expiration date and verify that the current amount remains adequate to complete the removal by October 15, 2014, regardless of the operational status of the anchor, and assuming work will be within the approved use area. These deliverables must be provided to the Department by Friday, May 30, 2014.

Finally, we request that OPT provide copies of the applicable video footage of pre- and post-removal conditions at the anchor recovery site as verification for the site restoration requirement of state authorization 43010-OE.

If you have any questions, please contact Land Manager Jim Grimes at 503-986-5223 or jim.grimes@dsl.state.or.us.

Sincerely,

Mary M Abrams

Mary M. Abrams, Ph.D.
Director

Reference: Oregon Revised Statutes and Oregon Administrative Rules
ORS 273.185 – investigation of trespasses
ORS 274.040 – leasing of submerged and submersible lands
ORS 274.867 – wave energy; financial assurance; rules
ORS 274.992 – civil penalties
OAR 141-140-0080 – general terms and conditions
OAR 141-140-0100 – termination of a temporary use authorization or energy facility lease
OAR 141-140-0130 – enforcement actions; civil penalties; and other remedies