



FINDINGS OF FACT STAFF REPORT

Date: OPRD Coastal Land Use Coordinator: Calum Stevenson

OPRD File Number: BA-609-06 County: Curry Applicant: Robert & Karen Tillery

Project Location: 105 Tanbark Circle
Brookings OR 97415

Brief Project Description: Repair of a small section of an existing private beach access that was originally installed without an Ocean Shore permit.

ADMINISTRATIVE RULE STANDARDS AND RELEVANT FACTS

I. GENERAL STANDARDS, OAR 736-020-0010

Project Need – There shall be adequate justification for a project to occur on and alter the ocean shore area.

As described in the permit application, the closest public access is located at Chetco Point a distance of approximately one-mile. Access to the beach at the permit applicant's property is difficult due to rocky headlands and tidal considerations.

A finding of project need follows the review of all other applicable standards and is included in the findings summary at the end of this report.

Protection of Public Rights – Public ownership of or use easement rights on the ocean shore shall be adequately protected.

The proposed project will not impact public ownership or use easement rights on the ocean shore because very little of the construction is on the beach.

Public Laws – The applicant shall comply with federal, state, and local laws and regulations affecting the project.

State of Oregon regulations are addressed under the review process for this permit. The City of Brookings Planning Department has indicated that the project has been reviewed and is consistent with the local comprehensive plan and zoning ordinance. Federal regulations could potentially involve a U. S. Corps of

Engineers permit; however, a Corps permit is usually not required for this type of project. A condition of the OPRD permit will require that the applicants obtain any required permits from the Corps, if applicable.

Alterations and Project Modifications – There are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental affects on the ocean shore, or avoid long-term cost to the public.

The proposed beach access steps are being built at the expense of the private property owner for the purpose of providing access from the upland property to the beach. The beach/cove the stairway is accessing is isolated and is an inaccessible beach during high tide periods due to rocky headlands. Impact to the ocean shore itself will be limited as the stairway will minimally project onto the beach. The stairway on the bluff/cliff has already been constructed and is technically outside of the ocean shore.

Public Costs – There are no reasonable special measures which might reduce or eliminate significant public costs. Prior to submission of the application, the applicant shall consider alternatives such as nonstructural solutions, provision for ultimate removal responsibility for structures when no longer needed, reclamation of excavation pits, mitigation of project damages to public interests, or a time limit on project life to allow for changes in public interest.

There are no foreseen public costs associated with this project. The permit applicants will be responsible for maintenance of the beach access improvements and if the steps are not maintained, and become a safety hazard or detriment to ocean shore resources, the permittee or future owners of the stairway will be responsible for removing the facility to alleviate the safety hazard or detriment to the ocean shore.

Compliance with LCDC Goals – The proposed project shall be evaluated against the applicable criteria included within Statewide Planning Goals administered by the Department of Land Conservation and Development.

The City of Brookings has certified that the project is in compliance with the Comprehensive Plan and Land Use Code, which are acknowledged by LCDC as meeting the Statewide Planning Goal requirements.

II. SCENIC STANDARDS, OAR 736-020-0015

Projects on the ocean shore shall be designed to minimize damage to the scenic attraction of the ocean shore area.

Natural Features – The project shall retain the scenic attraction of key natural features, for example, beaches, headlands cliffs, sea stacks, streams, tide pools, bedrock formations, fossil beds and ancient forest remains.

Minimal impact will occur with very little encroachment of the structure on the ocean shore. The part of the structure that is constructed on ocean shore blends in with the natural rock structures and vegetation. The part of the structure that is not on the ocean shore is constructed of wood and is visible from the beach.

Shoreline Vegetation – The project shall retain or restore existing vegetation on the ocean shore when vital to scenic values.

Vegetation on the ocean shore and the bluff will be retained.

View Obstruction – The project shall avoid or minimize obstruction of existing views of the ocean and beaches from adjacent properties.

The beach access stairway will not adversely affect existing views from adjacent properties.

Compatibility with Surroundings – The project shall blend in with the existing shoreline scenery (type of construction, color, etc.).

The part of the project on the ocean shore is canopied by natural vegetation with natural rock facing used to blend in with the natural surroundings. Material used for the part of the structure not on the ocean shore is a natural wood color. The upper structure, even though it is made of wood, is highly visible from the beach. However, the access stairway has already been constructed and requiring removal due to scenic values may not be defensible.

III. RECREATION USE STANDARDS, OAR 736-020-0020

Recreation Use – The project shall not be a detriment to public recreation use opportunities within the ocean shore area except in those cases where it is determined necessary to protect sensitive biological resources such as state or federally listed species.

The proposed beach access steps will not affect recreation use opportunities on the beach as the structure only extends less than 4 feet onto the ocean shore and is canopied by large willows.

Recreation Access – The project shall avoid blocking off or obstructing public access routes within the ocean shore area except in those cases where it is determined necessary to protect sensitive biological resources such as state or federally listed species.

With limited encroachment onto the beach, the project will not block or obstruct public access routes along the ocean shore.

IV. SAFETY STANDARDS, OAR 736-020-0030

Structural Safety – The project shall not be a safety hazard to the public due to inadequate structural foundations, lack of bank stability, or the use of weak materials subject to rapid ocean damage.

The part of the structure on the ocean shore is a natural rock and does not present a safety hazard. The concrete/rock stairs that lead to the ocean shore is in need of repair as it was damaged during winter storms. The new repair will include rebar set into solid rock and spaced every 6 to 9 inches to strengthen the concrete and will be faced with natural rock. No safety hazard to the public is apparent from the damaged stairway that is located on the ocean shore. No other damage to the upper wood structure occurred and is not in need of repair.

Obstructional Hazards – the project shall minimize obstructions to pedestrians or vehicles going onto or along the ocean shore area.

The proposed stairway base will not create an obstruction to pedestrians.

Neighboring Properties – The project shall be designed to avoid or minimize ocean erosion or safety problems for neighboring properties.

Where the beach access meets the ocean shore it is natural bluff rock and will not produce adverse erosion by the ocean to neighboring properties. The repair work is also recessed and will not impact neighboring properties.

Property Protection – Beachfront property protection projects shall be designed to accomplish a reasonable degree of increased safety for the on-shore property to be protected.

This project is a beach access and not a beachfront property protection project.

V. NATURAL AND CULTURAL RESOURCE STANDARDS, OAR 736-020-0030

Projects on the ocean shore shall avoid or minimize damage to the following natural resources, habitat, or ocean shore conditions, and where applicable, shall not violate state standards:

Fish and wildlife resources including rare, threatened or endangered species and fish and wildlife habitats.

There are no reported fish and wildlife resources that will be impacted by the proposed project. Oregon Department of Fish & Wildlife stated that the project would have no adverse impact.

Estuarine values and navigation interests.

The project is not adjacent to an estuary and does not affect navigable waters on the ocean.

Historic, cultural and archeological sites.

According to the State Historic Preservation Office, the project area lies within an area generally perceived to be a low probability for possessing archaeological sites and/or human remains. All work will cease immediately if any cultural material is discovered during construction activities until an archaeological permit is obtained.

Natural areas (vegetation or aquatic features).

Bluff vegetation has been minimally impacted by the construction of stairway. Vegetation has been retained where the bluff meets the ocean shore.

Air and water quality of the ocean shore area.

The project will take place above the ordinary high tide line and will not cause foreign materials or pollutants to enter water. The proposed project will not adversely affect water quality on the ocean shore. Air quality will not be affected.

Areas of geologic interest, fossil beds, ancient forest remnants.

These features are not known to be present at the site.

When necessary to protect native plant communities or fish and wildlife habitat on the subject or adjacent properties, only native, non-invasive, plant species shall be used for revegetation.

VI. PUBLIC COMMENT

Notice of the proposed project was posted at the site for 30 days in accordance with ORS 390.650. Individual notification and a copy of the application were mailed to government agencies and individuals on OPRD's ocean shore mailing list. Two comments from the public were received concerning the project. One stated that since the area the construction is to take place was undeveloped in 1977 that shoreline protection structures are not allowed. The other comment expressed concerns that the project is not structurally sound and in their opinion the foundation and anchoring is not adequate as installed by the contractor. Two comments were received from agencies including Department of Land Conservation & Development and the Oregon Department of Fish & Wildlife. Both stated that the project would have no adverse effect.

Maintenance responsibilities: OPRD will require maintenance of the stairway as a condition of approval, and removal of the structure from the ocean shore if it becomes damaged and constitutes a safety hazard, or if it becomes a detriment to ocean shore resources. Most of the project is located above the statutory vegetation line and the natural vegetation line. That part of the stairway in the Ocean Shore jurisdiction is native rock with

repairs being performed on the lowest concrete stairway. The repair is in an area of high impact from winter storms, but with the least impact to the beach if it fails. The upper wood structure is outside of the Ocean Shore jurisdiction, but would impact OPRD managed areas on the beach in the event of failure. Quick removal of debris would be required. The upper wood structure with an anchoring system in bedrock has endured several winter storm seasons and is intact and at this time does not need to be repaired.

VII. Findings Summary

The permit application is a request to perform repair work on a small part of the total structure. The location of the repair is near the bottom of the bluff and involves repair of a small portion of the lower concrete steps. The upper part of the access is a wood structure and is outside the boundary of the ocean shore. The beach access has not been reviewed in the past for Ocean Shore compliance and this is an after-the-fact permit application. The owner of the property did not know he had to obtain a permit from OPRD and was informed by the City of Brookings building inspector that the city does not issue permits for beach access construction. The City of Brookings has since stated that they will require engineering drawings for any structures constructed within the city boundaries.

The Ocean Shore application is for the construction of a beach access and has no shoreline protection components. As such, the project does not need to comply with "Goal 18: Beaches and Dunes" where the property must have been in development prior to January 1, 1977.

Access to the beach in this location is limited as the beach is inaccessible during high tide periods. The closest public access is more than one-mile and accessing the beach adjacent to the owner's property would be impossible during high tide due to rocky headlands.

Since the structure is already in place, and the major part of the construction that does not require repair is above the ocean shore boundary, there appears to be no justification for requiring immediate removal of the stairway due to general, scenic, recreation, safety, or natural/cultural resource impacts. An OPRD permit should be issued with conditions.

The following checklist summarizes whether the application satisfies the general, scenic, recreation, safety and natural and cultural resource standards as defined in OAR 736-020-0010 through 736-020-0030:

Standard	Yes	No	Standard	Yes	No
Project Need	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Structural Safety	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Protection of Public Rights	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Obstructional Hazards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public Laws	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Neighboring Properties	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alteration and Project Modifications	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Property Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public Costs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fish and Wildlife Resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with LCDC Goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Estuarine Values and Navigation Interests	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Natural Features	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Historic, Cultural and Archeological Sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shoreline Vegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Natural Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>
View Obstruction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Air and Water Quality of the ocean shore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compatibility with Surroundings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Areas of Geologic Interest	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recreation Use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Use of Native Plant Species when Necessary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recreation Access	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>

VIII. STAFF RECOMMENDATION:

Based on an analysis of the facts and in consideration of the standards evaluated under OAR-736-020-0005 through OAR 736-020-0030, I recommend the following action:

- Approval
- Approval with conditions
- Denial

Calum Stevenson
Coastal Land Use Coordinator