



FINDINGS OF FACT STAFF REPORT

Date: January 27, 2011

OPRD Ocean Shores Coordinator: Tony Stein

OPRD File Number: BA-669-10 County: Lincoln Applicant: Lot Owners in Sea Woods Park (Lots 1, 2, 3, 4, 8, 9, 13, 15, 16, 17, 18, 20, 21, 23, 24, and 25)

Project Location: Tax Lot 600 (owner, Jean Weakland), Sea Woods Park, Lincoln County. A perpetual easement that is over and across a portion of Tax Lot 600 (Lot 14), described as a strip of land 10 feet in width running from the southwesterly corner of Lot 14 as it joins the street known as Sea Woods Terrace, as depicted on the Plat of Sea Woods Park, along the Southwesterly line of lot 14 which extends along the Northwesterly extension of the Southwesterly line of said Lot 14 beyond the westerly border of the Plat from the westerly end of the Private Walk Way depicted on the Plat to the northerly boundary of the Weakland Property. A detailed description which includes references to a triangular piece of land (Tax Lot 4100) can be found at the Lincoln County Clerk's Office, referenced Deed Description: MF 380, Page 0627. Lincoln County Assessor's Map # T13S, R12W, Section 25AB, Tax Lot 600.

Brief Project Description: During the mid 1950s, a private wooden stairway and landing supported on a large concrete bulkhead with stairs was built on the ocean shore fronting Tax Lot 600. Ocean waves and storm surges in the fall of 1991 damaged the stairway and terminated beach access. In early December of 1991, OPRD issued an Emergency Permit to place riprap across Tax Lot 600, 601, and other properties to the north to protect the properties from ocean and river erosion. Sand backfill was placed at the base of the bluff, and the beach area was permanently altered by the placement of the riprap revetment and filling of the upper sandstone bluff.

On September 6, 1995, OPRD received an Ocean Shore Improvement Permit application to replace the original stairway with a new design of concrete stairs that was proposed to be built within the existing riprap structure. OPRD issued Lin Craft a conditionally approved Ocean Shore Improvement Permit (BA# 367-95) on December 20, 1995 for construction of a stairway through the easement over Tax Lot 600. The OPRD Permit decision was contested by the underlying and the adjacent property owners in 1996, and a series of legal actions and litigations ensued until 2009. On June 24, 2009, the Lincoln County Circuit Court issued an "Appellate Judgment and Supplemental Judgment", affirming that the Lot Owners in Sea Woods Park had legal right to the easement, and a right to construct and maintain improvements including, but not limited to, a stairway

down to the beach to access the ocean shore. As the original permit (BA # 367-95) period had expired, OPRD requested that a new application be submitted to identify each individual lot owner in Sea Woods Park who benefited from the perpetual easement, and to update project information.

The application represents lot owners in Sea Woods Park who have the right to the easement to access the ocean shore. Those landowners have submitted an updated application requesting the replacement of the private beach stairway with a new stairway design ending on the top of the existing riprap. The applicant is not the underlying property owner of Tax Lot 600. The subject wood stairway leads from a 10' easement over and across TL 600 and down the bluff ending at the riprap revetment. The proposed stairway would make the private beach access safe, available and negotiable for the owners, guests and visitors.

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.

The applicants propose the project in order to restore access to the beach, to serve those residents of Sea Woods Park Subdivision who have access to the stairway by a ten foot wide easement from the street (Sea Woods Terrace) across Lot 14 of the subdivision.

The project is located on 23 foot high sandstone bluff and section of beach known to have periods of dune accretion and erosion, and fluctuating beach sand levels. A riprap revetment structure currently exists at the site, and extends onto Tax Lot 601 to the south and an estimated 1300 feet to the north of the subject property. Currently, there is no viable and safe access to the beach over the bluff and riprap structure. The proposed stairway would make the private beach access safe, available and negotiable for owners, guests and visitors. No riprap would be removed and the majority of the proposed stairway will be built above the revetment structure. The applicant is requesting a stairway replacement to provide direct beach access for the lot owners of Sea Woods Park.

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

The bottom of the proposed stairway will extend an estimated 4 feet over the top of the exposed riprap and the overall structure will occupy an estimated 143 square feet of the beach and upper bluff area. The majority of the structure is located on the upper bluff from the top of the riprap to the top of the vegetated bluff. The lower section of the stairway will not extend past the western footprint of the riprap and will not affect public easement rights or use on the ocean shore.

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

The Lincoln County Department of Planning and Development has signed the City/County Planning Department Affidavit form and has determined that the project has been reviewed and is consistent with the

local comprehensive plan and zoning ordinances. State laws and regulations are being addressed through this permit review. A building permit will be required by the Lincoln County Department of Planning and Development.

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 concrete stairway is 3' 6" wide by 35' 0" feet long, with a mid point landing that is 8' 6" in width. The stairway structure will only take up a small area above the existing riprap revetment and is located within the footprint of the original stairway. A public beach access approximately 570 feet to the south consists of an unimproved trail with no stairs or handrails, and with a section of trail over loose gravel and a steep incline. Another public access stairway is located approximately 400 feet to the north of the proposed project, but would require walking east to Highway 101 and back into the Seaview Homesites subdivision for a total distance of approximately 2,000 feet.

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 significant public costs anticipated for this project. Lot Owners in Sea Woods Park would be responsible for the construction costs and long-term maintenance of the stairway, or its removal, should it become a safety hazard or public nuisance.

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.

For this permit, the Lincoln County Department of Planning and Development has certified that the proposed project is compatible with the acknowledged local comprehensive plan and land use regulations. This certification meets the Department's obligation to ensure compliance with the Statewide Planning Goals under ORS 197.180.

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.

The proposed beach access will result in a permanent stairway structure across and above the existing riprap revetment and upper bluff, but will not significantly affect the scenic attraction of the ocean shore. A stairway and adjacent riprap revetment structure are present to the north, and existing homes already impact the scenic qualities of the coastal bluffs in this area. No key natural features will be affected.

Shoreline Vegetation – The project shall retain or restore existing vegetation on the ocean shore when

vital to scenic values.

After the construction of the riprap revetment in 1991, European beach grass and some native plants were planted and established on the bluff by the upland owners. The proposed stairway design requires minimal disturbance of all existing vegetation, including trimming vegetation to protect root systems within the stairway footprint, installing soil anchors utilizing hand methods and minimal equipment, and if necessary, re-vegetating any disturbed soil with jute matting to prevent erosion. As with any type of construction project on steep bluffs, there is generally some ground and vegetation disturbance. This area has established vegetation that was planted over an artificial shoreline protection structure with upland fill, and thus has a high potential for re-vegetative success from any construction disturbance.

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

The stairway will not affect or obstruct ocean or beach viewing opportunities from adjacent properties.

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

In general, the shoreline along this part of Waldport is a developed area with residential homes, shoreline armoring and an existing stairway nearby. The proposed stairway would be noticeable to beach users, but will not be a significant departure from the existing visual setting.

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 stairway is located four feet west of the top of the existing rip rap revetment on the ocean shore, and will not be a detriment to public recreation. At current sand dune levels, the project will occupy only a small area of the beach, and will not affect typical recreation uses such as sunbathing, walking, kite flying, sandcastle building, or beachcombing.

Overall, the extensive riprap placed in the surrounding area has reduced usable beach area to some degree, but the subject stairway has only placed material above the existing riprap. The proposed stairway will not extend further seaward than the footprint of the existing riprap revetment.

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.

The stairway will not protrude out beyond the existing riprap revetment, and will not interfere with public access up and down the beach.

IV. SAFETY STANDARDS, OAR 736-020-0030

The project shall be designed to avoid or minimize safety hazards to the public and shoreline properties. The following safety standards shall be applied, where applicable, to each application for an ocean shore permit.

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 proposed stairway is well designed to stand over and above the existing riprap revetment and bluff face. The stairway is located in an area with periodic high wave surges and wave attack, with the potential for large rocks or logs being hurled into the structure. This design appears to have adequate structural integrity and is an appropriate design for beach access. If the stairway is damaged, or rendered unusable, the applicant and subsequent property owners will be required to repair, remove or relocate the structure. This issue will be addressed through permit conditions.

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

The width of the beach in this area can fluctuate, and generally narrows during the winter months. During episodic storm events, waves will wash up to the small dune fronting the riprap, causing erosion and lowering the beach profile and exposing the riprap revetment. The stairway will not protrude out beyond the existing riprap revetment, and therefore will not interfere with pedestrian or vehicle travel on the ocean shore. The beach access stairway over and above the riprap will help to provide and maintain private access to the ocean shore. Under normal conditions, this project will not create an obstruction to pedestrians or vehicles.

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

There are riprap revetments on adjoining properties to the north and south. The proposed stairway does not result in any type of a surface that could reflect significant wave energy on neighboring properties. Based on these considerations, the project is not anticipated to affect erosion rates or water currents or have adverse impacts on adjoining properties.

There has been some testimony that the proposed stairway may have a detrimental effect on the strength or integrity of the existing riprap revetment. A letter from an engineering geologist that advises against moving or altering the rocks in the revetment was submitted by the owner of the property immediately east of the proposed stairway. Based on the application however, OPRD finds that the proposed project is designed to avoid or minimize ocean erosion problems for 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.

The proposed project is not for a beachfront property protection. The purpose of the stairway is to provide a safe access route down the bluff, over the riprap, and onto the built up sand dune. The application contains two geologic reports: 1) Shorelands Solutions, dated September 10th, 1997, from the original application (BA# 367-95), and 2) Scott Burns, Professor of Geology and Consultant, dated September 14, 2010. Shorelands Solutions states that the stairway would not present a significant impact on the stability of the oceanfront lot and adjacent upland, and any vegetative disturbance associated with construction would be minimal. In the more recent report, Scott Burns states that the site is very stable, based on the lack of erosion of the sea cliffs and the mature development of vegetation consisting of shore pines and salal bushes. Burns also states that “the stairway design is a low impact design that minimizes the need for excavation of the sea cliff and the riprap which needs to be preserved. It is durable and designed to minimize any potential damage from storm waves. It has no impact on the existing riprap and keeps much of the vegetation on the slope intact. The design does not affect the strength and integrity of the protective abilities of the revetment. There is little increase in the erosion potential for that portion of the bluff where the staircase will reside”.

During the public comment period, OPRD also received two updated engineering reports from: 1) Scricker Engineering dated December 22, 2010, and 2) Willamette Engineering and Earth Sciences dated December 14, 2010. In the Scricker report, he states that “it would seem appropriate to cantilever the stairs over the rocks and run the stair treads below the sand line”. Scricker also notes that “it is important to make sure that there are no potential issues that would compromise the present condition and effectiveness of the revetment or create any hazards for future repair of the revetment”. Robert Slyh of Willamette Engineering states “ While Burns may be correct in his assertions regarding wave erosion based on the improved revetment and fore dune structure for the short term, erosion of the sea cliff is inevitable, and may be exacerbated by the construction of the stairs”.

There is concern that the project could compromise the effectiveness of the existing riprap and increase the threat of erosion to the residence located east of the proposed project. Stairways of similar design have been constructed, although in these cases the stairs were built over the revetment by the upland homeowner. In this case, the revetment is under different ownership than the subject stairway, and was built by the upland property owner with the intent of controlling erosion and protecting the existing residence. Any proposed beach access alterations that could affect the integrity or strength of the revetment are of concern to the adjoining homeowner. Alternately, any proposed alterations to the existing riprap that could affect the integrity or strength of the proposed stairway would be of concern to the lot owners of Sea Woods Park.

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.

Estuarine values and navigation interests.

The project is not adjacent to an estuary, and does not affect navigable water 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 have a high probability for possessing archaeological sites, buried human remains, or both. Extreme caution has been recommended for construction of the stairway and any future repairs or ground disturbing activities.

Notice of the application was provided to the State Historic Preservation Office, and to the Confederated Tribes of the Siletz and Grand Ronde Indians. There were no reports of historic, cultural, or archeological sites at this location.

Natural areas (vegetation or aquatic features).

The beach dune has accreted since the construction of the riprap revetment, and European Beach Grass has established itself in the frontal dune and over the lower bluff area. Above the riprap, there is established beach grass and native vegetation. There are no aquatic features that will be impacted by the proposed stairway.

Air and water quality of the ocean shore area.

The subject stairway does not adversely affect either air or water quality on the ocean shore.

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

None of these features have been identified 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.

The site is located within a developed residential area just south of Waldport. There are no protected native plant communities or fish and wildlife habitat on or adjacent to the subject property.

VI. PUBLIC COMMENT

OPRD posted notice of the proposed project at the site for 30 days in accordance with ORS 390.650. OPRD mailed individual notification and a copy of the application to government agencies and individuals on OPRD's ocean shore mailing list.

OPRD posted notice of the proposed project 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. During this initial comment period, OPRD received more than ten requests for a public hearing. OPRD held a public hearing on December 13, 2010, and 15 people attended. Seven individuals testified, with one opposed and six in favor of the application request. In addition to the written submittals from the applicants and their representatives, 39 written comments were received, including 31 letters in support of the permit application, and eight letters in opposition.

Opponents raised the following concerns: 1) property ownership as stated in the application, 2) adjacent ownership and application notification, 3) lack of survey information and location of the stairway, 4) lack of analysis on the stairway's impacts to the upland property, 5) stairway structural design and integrity issues were not adequately addressed in the geologic report; 6) inaccurate tax lot assessor's map, 7) easement rights of certain owners in Sea Woods Park, 8) no project need, 9) a reasonable alternative exists, and 10) inaccuracies and omissions exist in the application.

This report addresses those issues that opponents adequately raised either at the public hearing or in the submitted letters and documents and that are related to the permit application.

VII. FINDINGS SUMMARY

Project Need –

The proposed project involves the replacement of a private beach stairway that was constructed in the mid-1950s in the community of Sea Woods Park near Waldport. Following damage to the structure during the fall/winter of 1991, the remaining stairs were dismantled. Currently, this location has no viable and safe access to the beach over the bluff without the need to scale down the embankment and over the existing riprap revetment. The proposed stairway would make the private beach access safe, available and negotiable for the property owners, guests and visitors in Sea Woods Park. No riprap will be removed and most of the proposed wood stairway will be built above the revetment structure.

The property is located within an urban residential area, with beach structures in the near vicinity, including stairways and riprap revetments.

Structural Safety

The proposed stairway with handrails is designed by a professional engineer to meet standard building codes and appears structurally sound for its intended purpose (see HLB otak report). The stairway will enable pedestrian beach access over the easement and down the bluff without the safety and mobility limitations of a nearby beach trail. The application contains two submitted geologic reports that address concerns of bluff stability, property damage, and the structural integrity of the stairway.

Protection of Property

A riprap structure that supports the toe of the bluff and the upper bluff from bank sloughing to protect an upland home site and the bluff face. Since the installation of the riprap in 1992 and subsequent vegetative planting there has been little observed erosion and soil movement at the site. Any future damage to the integrity or stability of the riprap structure will generally be because of significant storm surges and wave attack, or a lack of maintenance by the landowner.

The proposed design would have minimal direct impacts, if any, to the existing riprap revetment or adjacent riprap structures. Riprap structures are generally damaged when high ocean waves coupled with tidal surges scour the toe of the revetment, or cause rocks to shift, move or be plucked from the face of the structure. Riprap revetments are also damaged when waves wash over the top of the riprap, saturating the fill material in back of the structure. It appears from photos submitted during the public comment period that the riprap was placed over a layer of sand and then built-out using standard riprap construction practices. The presence of sand as a fill material may cause rapid deterioration of the structure should wave overtopping occur. In this type of situation, the stairway posts may cause some minor scour to occur, but generally would not be the main cause of any structural damage to the revetment. OPRD concludes that opponents have not established that the proposed project imperils the protection of upland property.

Based on the above considerations, OPRD finds that there is adequate justification for the project to occur on and alter the ocean shore area.

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

Tony Stein
Ocean Shores Coordinator