



FINDINGS OF FACT STAFF REPORT

Date: 07/12/2016 OPRD Ocean Shore Specialist: Calum Stevenson

OPRD File Number: 2067 County: Tillamook Applicant: Microsoft Infrastructure Group, LLC.

Project Location: On the ocean shore at the western terminus of Pacific Avenue within Pacific City, Tillamook County, Oregon. Township 4 S, Range 11 W Sec. 25 TL 500TC. GPS coordinates Lat. N45-12.1380 Long. W123-58.0290.

Brief Project Description: Proposal to install a new trans-Pacific undersea fiber optic telecommunications cable system from Chongming in China to the west coast of the United States in Pacific City, Oregon.

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 proposed fiber optic cable is part of a global network being installed to meet the increasing demand for worldwide connectivity. It will contribute to the upgrading of telecommunications between China and the lower 48 states and this demand is driven by the growth of the Internet and expansion of wireless and other bandwidth-intensive applications. By necessity, the cable must cross the ocean shore at the landing site.

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

The proposed cable will be buried to a minimum depth of 20 feet below the beach and will not affect public rights of recreation or ownership. If maintenance or repair is required within the OPRD Ocean Shore Area, permittee shall follow and adhere to the Oregon Parks and Recreation Department OARs 736-020 – Beach Construction/Alteration Standards and submit a repair permit for any future work performed on the Ocean Shore.

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

The Tillamook County Planning Department has certified that the project is in compliance with the Tillamook County Comprehensive Plan and Land-Use Code. The Department of State Lands (DSL) is currently reviewing a submitted fill/removal permit application for the seafloor and other possible wetland/waterway issues. A proprietary easement agreement will also be required from DSL and a condition of an OPRD alteration permit will finalize the agreement prior to installation of the cable on the ocean shore.

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 site at the west terminus of Pacific Avenue in Pacific City was chosen due to its proximity to facilities that can support the increased capacity of the new ultra high speed cable technology without expanding existing shore facilities that are currently in place on the Oregon coast. The offshore cable route was chosen with input from representatives of the Oregon Fishermen’s Cable Committee and according to ocean bottom profiles appears to be the best option.

Because this is a cable landing from sea to land, there is no alternative but to cross the ocean shore. This differs from a north-south route along the beach, where there may be viable upland options. The design and installation method proposed for the beach crossing is compatible with public uses, and should cause no issues to the public.

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.

Public costs will be minimal, as the cable and conduits will be buried and will not infringe on public recreation. In this case the method of burial will be a directional bore, with no need for excavation or heavy equipment use on the beach. Costs of maintaining and repairing the cable will be the responsibility of the permit applicant and subsequent owners of the cable.

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.

Tillamook County 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 compatibility with the Statewide Planning Goals.

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 cable and conduits will be buried beneath the beach and will not be visible. The scenic attraction of the beach and dunes will therefore be retained.

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

The cable installation will not affect any existing vegetation on the ocean shore.

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

The cable facilities will be installed underground, and will have no permanent impact on existing views of the ocean and beaches. A temporary obstruction will occur from the drill platform, but will be removed after completion of the project.

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

The cable and additional conduits will be completely hidden from view, and will not affect the scenery of the area.

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 cable and additional conduits will be hidden from view and buried to a minimum depth of 20 feet below the beach, so that there will be no impacts to traditional recreational uses on the beach.

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.

All staging of equipment and drilling work will occur upland of the OPRD Ocean Shore jurisdiction and will be located on Tillamook County managed property. The upland Tillamook property serves as a public beach access for vehicles and pedestrians. The beach access at the terminus of Pacific Avenue in Pacific City will be temporarily impacted with the staging of horizontal directional drilling (HDD) equipment. The HDD staging area map provided in the application shows the project will attempt to provide a narrow beach access on the north side of the staging area. This obstruction of the beach access will be temporary with a planned restriction at this access of 30 days barring any unforeseen events. The permit application states that “public access to the beach over the dune shall be maintained throughout the HDD operations.”

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 conduit is extremely durable, and will be buried to a depth of at least 20 feet below beach level. The cable will be encased in a 5-inch double armored submarine conduit. The size and strength of the conduit will prevent future structural collapse of the pipe and the resultant movement of geological features.

Conduit specifications and depth of pipe will minimize ocean damage and prevent conduit from becoming exposed during storm events. If, due to unforeseen circumstances the cable becomes exposed, a condition of the permit approval will require that the owners of the cable re-install the cable to an adequate depth to eliminate any hazardous or detrimental condition.

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

Conduit specifications and depth of pipe will minimize obstruction hazards and will prevent conduit from becoming exposed during storm events. If, due to unforeseen circumstances the cable becomes exposed, a

condition of the permit approval will require that the owners of the cable re-install the cable to an adequate depth to eliminate any hazardous or detrimental condition.

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

The project may have temporary adverse effects on neighboring private property and a small business. During the 30-day drilling construction phase of the project the property immediately south of the equipment staging area will potentially be restricted from accessing their private property and small business. This may create a safety issue for the owners and customers. The private property owner has a beach horse riding business that requires a safe access to their property with large trailered vehicles as well as customer parking. Two property accesses are required to safely maneuver the vehicles with large trailers to prevent backing vehicles from the public roadway. The current equipment staging plan will severely impact the property and business owner from safely accessing their property.

The project will not increase ocean erosion on the ocean shore as the cable will be located 20' under the surface of the beach and will be bored by use of horizontal directional drilling methods that have been proven safe.

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.

Project is not a shoreline protection structure.

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.

The project will be completed without any visible alterations to the beach environment. In its response to the permit application notice, U.S. Department of Fish and Wildlife recommended that a frac-out contingency plan be in place to address possible pollution issues. A frac-out response plan has been submitted and will be a condition of the permit. OPRD received no other comments from agencies responsible for fish and wildlife issues. There was no indication that there would be any impact to wildlife habitat values on the ocean shore .

Estuarine values and navigation interests.

The project will not be located in an estuary. The Oregon Department of State Lands and the Corps of Engineers have reviewed fishing and navigation issues for the installation of the cable on the seafloor. The project will have no affect on fishing or navigation interests within the ocean shore area, which extends between the line of extreme low tide and the vegetation line.

Historic, cultural and archeological sites.

The part of the project that will be located under the OPRD managed ocean shore will have a drilling depth between 20' below the surface and most likely will not affect historical, cultural or archaeological sites within that jurisdiction. The State Archaeologist has reviewed this project and determined that previous surveys have been completed near the proposed project area, but the "project area lies within an area generally perceived to have a high probability for possessing archaeological sites and/or buried human remains. An inadvertent discovery plan is recommended to outline procedures for the discovery of an archaeological site.

Natural areas (vegetation or aquatic features).

The method of boring the conduits below the ocean shore will prevent any disturbance of natural areas or vegetation. Some disturbance will take place at the upland drilling site, which is outside of the ocean shore boundaries.

Air and water quality of the ocean shore area.

There is the possibility of a frac-out occurring on the ocean shore which may have an adverse effect on the water quality of the ocean. To limit the impact of a frac-out occurrence a response plan has been submitted addressing pollution measures to be taken. No air quality issues appear to be a concern on the immediate ocean shore area as the drilling will be 20' underground with no equipment operation on the ocean shore.

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

The local geology at the Pacific City site is unconsolidated sand that is fine to medium grained with quartz, chert, plagioclase, and basaltic components. The project will have minimal impact on geologic, fossil, or ancient forest resources in the immediate area of construction.

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 installation of the conduits and cable will not affect vegetation on the ocean shore.

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, adjacent property owners and individuals on OPRD's ocean shore mailing list.

Three written comments and one verbal comment were received regarding the project:

Written comment from neighboring private property and small business owner concerning property access for large trailered vehicles used in their small business.

Written comment from SHPO concerning cultural, historical, and archaeological issues.

Written comment from ODFW concerning fish and wildlife issues.

Verbal comment via telephone concerning beach access and the fact that access to the beach with a vehicle is usually done on the south side of the access because of lower dunes. The commenter believed that the equipment staging area as proposed would limit vehicle access on a public beach.

VII. Findings Summary

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 type="checkbox"/>	<input checked="" 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:

1. There is a need for the proposed cable and conduits to cross the ocean shore. The facility will allow the physical landing of the telecommunications cable. The cable installation will provide needed infrastructure to meet the increased demands for global connectivity.
2. The proposed cable landing facility complies with the policy of OAR 736-020-0040 which prohibits the use of the ocean shore as a north-south utility corridor.
3. The cable and associated conduits will be bored to a depth of at least 20 feet below the beach level. No excavation will take place on the ocean shore; therefore there will be no adverse impacts to recreation, natural resource, or scenic values. Permit conditions will require maintenance of the facility and reburial if an unforeseen event causes any of the facility to be exposed in the future.
4. A neighboring property issue remains unresolved that may require negotiations with the private property and small business owner to alleviate impacts to their business and access to their property. As of the completion of this findings-of-fact the applicant has not addressed the issues with the property owner requiring either a delay in approval of this application, an approval with restrictive conditions, or potential denial of application. Staff recommendation is approval with a strict condition to resolve issue.

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

Ocean Shore Specialist Calum Stevenson