



FINDINGS OF FACT STAFF REPORT

Date: 12/13/05 OPRD Coastal Land Use Coordinator: Calum Stevenson

OPRD File Number: BA-601-05 County: Coos Applicant: Bureau of Land Management

Project Location: T30S R15W Sec28 TL900
Langlois, Oregon

Brief Project Description: The project proposes to mechanically breach on the New River Spit to alleviate seasonal flooding. The project will be performed in two phases.

Phase I: Pre-breach work will be performed prior to fall rains and subsequent high flows. Pre-breaching will involve removal of the majority of sand from east side (landward) of the fore-dune according to channel dimensions on attached plan drawings. Sand removal during pre-breach will cease on east side of fore-dune prior to creating an actual breach in the fore-dune. This action will effectively create a "plug" that may readily be breached either naturally by a high flow event, or manually under permit conditions. The work will be accomplished using a bulldozer or similar equipment. All sand removed during pre-breach will be placed adjacent to the work site and will not be transported off site. All heavy equipment will be removed upon completion of work.

Phase II - In the event that certain required conditions below are met, the remaining "plug" from the west side of the fore-dune will be removed causing a breach which will alleviate flood damage to the applicant and neighboring properties.

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 breaching is a cooperative effort between the Bureau of Land Management and private ranch owners to achieve several goals on New River. A five-year OPRD Ocean Shore Permit was issued to a private ranch owner in 2000 to breach New River to alleviate pasture flooding and reduce economic loss. That permit expired in 2005 and a new permit application has been submitted by the Bureau of Land Management (BLM)

and the ranchers. BLM manages the New River Area of Critical Concern (ACEC) at the former Storm Ranch and is working cooperatively with the ranchers to reduce impacts to the natural resources while sustaining a balance between the economic needs of the ranchers and the New River ACEC.

New River is approximately 9 miles long with an extensive dune system on the west side of the river. The natural mouth has been steadily migrating north as introduced European beach grass has built-up the dunes and blocked potential outlets. Before the introduction of European beach grass the river had multiple stream mouths with outlets for several creeks and watersheds (Floras Creek, New Lake, and Croft Lake). All of these outlets have been closed and have become one river system. To benefit the estuary system the breaching will flush out the system and produce a deepened channel to improve water quality. In addition, excessive algae blooms and plant life have choked the river during the summer reducing the water quality. With greater river-ocean connectivity and deeper river channels the excessive plant life will be reduced and salmon habitat may increase.

Oregon Department of Fish and Wildlife (ODFW) and BLM concur that a natural breach at the south bend of the river near Floras Creek would be detrimental to the creek and the system. Heavy bank erosion and scouring occurs on Floras Creek during rapid dewatering of the river system. Fish become stranded on ranch land and are unable to return to the river channel. Controlled breaches farther north will slow the output of water and reduce the impacts to the river system.

The ranchers would experience an economic loss with long-term seasonal flooding including cattle and sheep losses due to drowning; reduced production of pasture/hay, loss of native tree plantings in riparian zones, degradation and temporary elimination of road use (Knapp Lane, Bono Road, other spur roads that access ranch land); destruction of riparian fencing; degradation of pasture grasses; loss of wood bridges; and increased cost to purchase hay for summer feed.

Adequate justification has been met providing both natural resource and economic benefits for a project to occur on the ocean shore.

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

The proposed project will result in a breach and create an outlet or river mouth across the ocean shore. This may temporarily require the public to cross the breach mouth or cause minor impediment to pedestrian travel north and south along the beach. Natural mouths of rivers would create a similar obstruction during the high winter flow season. Due to the remote location and distance from public access, the public's use of this section of beach on New River Spit is relatively low and will not result in adverse effects to the public's use or rights along the beach. The breach will have closed by the time that recreational traffic occurs in the summer season.

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

The original permit issued in 2000 went through an extensive compliance review with federal, state, and local agencies. An updated review was instituted with verification from various agencies as to compliance to laws and regulations. The U.S. Army Corps of Engineers determined the project was not subject to federal jurisdiction under the Clean Water Act or Rivers and Harbors Act. The National Marine Fisheries Service (NMFS) stated that the 1999 review requested by BLM would suffice. BLM has requested NMFS assistance in their continuing work on New River and potential impacts to marine fisheries. U.S. Fish and Wildlife Service have been consulted and BLM will work with that agency concerning effects to critical habitat.

State of Oregon laws and regulations have been addressed under this permit review. ODFW has determined the effects of the project, although measurable, would be acceptable. DLCDC has also determined the effects of the project, although measurable, would be acceptable. They also state the project is consistent with Goal 18,

Implementation Requirement 6 (breaching of fore-dunes), as it is triggered when necessary for emergency flood control and draining of farmlands and is consistent with sound principals of conservation, as demonstrated, in the Environmental Assessment.

The Coos and Curry County Planning Departments determined the project is consistent with the local comprehensive plan subject to meeting the requirements of other affected agencies.

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 only other alternative is to have no action allowing continued flooding and natural breaching at the Floras Creek bend. The no action alternative was not acceptable since it would not allow the river channel to be deepened or flushed of algae. Water quality would remain at status quo and the possibility of creating better salmon habitat would be eliminated. A natural breach at the bend near Floras Creek would also increase erosion and scour of the river banks created by the rapid dewatering of the system. Fish would be flushed into the ocean early in their development and could potentially reduce the population. Flood damage to property along New River would continue with economic consequences to landowners. The project as proposed is a result of significant coordination between the property owners and state/federal resource agencies and represents the preferred alternative. Other alternatives considered would not better protect the public rights, reduce or eliminate the detrimental affects on the ocean shore, or avoid long-term cost 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.

There are no significant Oregon public costs as the applicant will pay for all costs associated with breaching.

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.

DLCD determined the effects of the project, although measurable, would be acceptable. The purpose of Statewide Planning Goal 18, Beaches and Dunes, is to conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dunes areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas. Goal 18 allows for temporary breaching of fore-dunes to drain farmlands and alleviate flood hazards if breaching and restoration after breaching is consistent with sound principles of conservation. One of the purposes of the proposed project is to alleviate flood hazards on ranch lands, improvements, and livestock by conducting a temporary breach (if flooding occurs) in a location that may restore resources and may benefit the New River system. The proposed breach may result in creation of additional Western snowy plover habitat through the localized removal of European beach grass. Additionally the breach may result in an increase in channel depth improving both drainage and fish habitat. As with all previous natural and man-induced breaches, the proposed breach is expected to close naturally during the spring or summer and thus would not require "active" restoration effort. The permit will be conditioned to require restoration of the fore-dune in the event the breach does not naturally close by summer.

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 sand alteration and effects of a breach on New River Spit will create a localized disturbance to European beach grass covered sand dunes similar to that caused by natural breaches and wash-over which have historically occurred and will continue to occur along New River Spit. Breaches and wash-over occur naturally and are part of the scenic attraction and key natural features found on New River Spit.

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

The project site vegetation is dominated by European beach grass, a non-native species introduced in the 1930's. Introduction of European beach grass is the primary cause of loss of Western snowy plover habitat and responsible for successional changes in Oregon's coastal dune ecosystem which have modified landscape and scenic values. European beach grass has aggressively replaced the native American beach grass along virtually all dune-backed beaches on the Oregon coast. European beach grass is not considered vital to scenic values.

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

Not Applicable

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

Not Applicable

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 project will not result in a detriment to public recreation use opportunities nor preclude any current existing use by the public. The nearest public beach access is several miles south or north of the proposed breach sites. Due to the remote location and distance from public access, the public's use of this section of beach on New River is relatively low and will not result in adverse effects to the public's use or rights along the beach (wet or dry sand west of the fore-dune). The primary sand alteration activities will occur on BLM or private property east of the fore-dune and would not affect public recreation use opportunities.

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 nearest public beach access point is several miles south or north of the proposed breach sites and will not be affected.

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.

Not Applicable

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

The project will result in a breach creating a temporary "river mouth" flowing across the beach. This may temporarily require pedestrians to cross the "river mouth" or cause minor impediment to pedestrian travel north and south along the beach similar to the many previous natural and man-induced breaches. Due to the remote location of the project site and distance from the nearest public access pedestrian/recreation use is relatively low. Motor vehicles are prohibited along this portion of the ocean shore. The proposed project minimizes obstruction to pedestrians to the extent possible.

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

The project sites have been selected to avoid and minimize any erosion or safety problems for neighboring properties. The proposed breach sites are located on ranch lands and/or BLM property. These sites are located in a remote area of New River and sufficient distance from any 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.

Not Applicable

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.

Appropriate measures have been integrated into the proposed project to avoid and minimize any impact to fish and wildlife resources and their habitats. For example, breaching will be restricted to after September 15 and before March 15 to avoid potential conflict with nesting Western snowy plovers. A breach would result in a localized reduction of European beach grass and may result in improved Western snowy plover (WSP) habitat in the vicinity of the breach. While the breach mouth remains open WSP predators are isolated from the New River Habitat Restoration Area reducing predation by fox and other mammals during the early nesting period. If the mouth of the breach does not close until late summer it may have an impact on the feeding movements of WSP fledglings. This may reduce the food supply and area to feed. Past experience has shown that the breach has closed naturally in the Spring particularly on those breaches located in the coarse sand area to the south. As proposed the breaches will be rotated up and down the spit with impacts changing from year-to-year.

Chinook salmon smolts utilize the New River estuary later in spring and summer then enter the ocean between June and October. Potential impacts to Chinook salmon are therefore avoided since Chinook salmon do not inhabit the area near the breach points during the proposed work period. The locations for the breach were carefully selected to avoid adverse affects on wintering Coho salmon and steelhead in the Floras Creek confluence thereby minimizing any chance of stranding fish or creating a "flushing effect" forcing fish out of the estuary and into the ocean.

A New River Health Environmental Assessment EA OR 128-03-11 was completed in 2003 outlining the potential impacts of mechanical breaching to the system. The assessment considered geology, hydrology, fisheries, wildlife, botany, soil, recreation, and cultural resources,

Estuarine values and navigation interests.

Breaching in the selected sites will result in an increase in channel depth improving both drainage and fish habitat. Estuarine values and navigation interests are sufficiently protected and may benefit from the proposed project.

Historic, cultural and archeological sites.

The State Historical Preservation Office does not have previous cultural resource surveys completed near the proposed project area. The project, however, lies within an area generally perceived to have a high probability for possessing archaeological sites and/or buried human remains. If any cultural material is discovered during construction activities, all work should cease immediately until a professional archaeologist can assess the discovery.

Natural areas (vegetation or aquatic features).

Aquatic features will not be adversely impacted, as all work will occur above ordinary high water on the New River side of the spit and above mean high tide on the ocean side of the spit. No adverse impact on native vegetation will occur. The project site vegetation is dominated by European beach grass, a non-native species introduced in the 1930's. Introduction of European beach grass is the primary cause of loss of Western snowy plover habitat and responsible for successional changes in Oregon's coastal dune ecosystem and has modified the natural flora and fauna. European beach grass has aggressively replaced the native American beach grass along virtually all dune-backed beaches on the Oregon coast. A breach would result in a localized removal of European beach grass and may allow for native species such as pink sand verbena or American beach grass to become established.

Air and water quality of the ocean shore area.

No adverse effect on air and water quality of the ocean shore will result from the proposed project.

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

No areas of geologic interest, fossil beds, or ancient forest remnants are known to occur at the project 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 proposed project will result in a localized removal of non-native vegetation. No plans for introduction of native plants.

VI. PUBLIC COMMENT

Notice of the proposed project was posted at the BLM New River ACEC and Floras Lake area near the Boice County Park. Notification was posted 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.

One request for information on the project was received by mail. No other requests for a public meeting were received and no public meeting was scheduled as fewer than ten people requested a meeting as per OAR 736-020-0003 (5 & 6).

VII. FINDINGS SUMMARY

1. The proposed project has been extensively coordinated with state and federal resource management agencies and with neighboring property owners. The project integrates protection/enhancement of natural resources with economic stability for flood prone ranches.
2. A New River Health Environmental Assessment has been completed outlining impacts to natural resources in the New River system.
3. Adequate need exists to allow breaching of the fore-dune to enhance the natural resources and alleviate flooding of private property.
4. The proposed project alleviates prolonged flood inundation and the need for OPRD to issue an Emergency Permit under Oregon Revised Statute 390.650 (6).
5. The proposed project may result in potential benefits to fish and wildlife habitats.

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

Coastal Land Use Coordinator

Calum Stevenson