



OCEAN SHORE ALTERATION PERMIT

Application Approved with Conditions:

☐

Application Denied:

☒

Date: March 11, 2025

Applicants: Stacy Niedermeyer

OPRD File Number: 3089-25

County: Clatsop

Project Location: The project is located on two (2) oceanfront properties within the City of Cannon Beach. The site address is 1316 S. Pacific Drive. These properties are identified in the Clatsop County Assessor's Maps as tax lot # 51030DA03400 and 51030DA11800.

OPRD's review included a staff inspection of the site and evaluation of the project against the Ocean Shore Permit Standards, OAR 736-020-0005 through 736-020-0030.

Project Description: This project involves removing sand that has accumulated and is encroaching upon an existing seawall. Sand would be removed over a width of approximately 20 feet along 45 feet of the seawall, down to an elevation of about 5 feet below the top of the seawall (approximately 15' NAVD88). The removed sand would then be deposited in an area measuring approximately 15 feet by 45 feet, with a depth of about 3 feet (top of sand approximately 25' NAVD88), and located up to 35 feet west of the removal site on the beach.

ORS.390.605 (2) defines the "ocean shore" to mean "the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland." In the location of the proposed project the line of established upland shore vegetation is located farther inland.

The project is proposed to be located

☒

Seaward of the statutory vegetation line

☐

Seaward of the line of established upland shore vegetation

and therefore within OPRD's jurisdiction to make a decision on your application.

Submitted plans: Attached ☐

Not Applicable ☒

Based on the evaluation of the above standards, staff inspections of the site, and consideration of public and agency comments, the Oregon Parks and Recreation Department:

☐

Approves your application

☒

Denies your application


Matt Rippee, Deputy Director of Field and Community Services
Oregon Parks and Recreation Department

Copy: Bob McEwan Construction, Inc.
Steve Sokolowski, City of Cannon Beach
Lisa Phipps, DLCD

736-020-0120

Administrative Relief, Appeals, Judicial Review

(1) Where an application for an improvement permit required under ORS 390.640, or a permit for a pipeline, cable or conduit crossing of the ocean shore required under ORS 390.715, or a permit for removal of products from the ocean shore required under ORS 390.725, is denied, the applicant may request a hearing from the Director. Where a permit is issued under ORS 390.650, any person aggrieved by the issuance of the permit or conditions imposed on the permit, may request a hearing from the Director. The application denial or permit approval shall be considered the Director's original order.

(2) Requests for hearing described in section (1) of this rule shall be in writing and shall:

(a) Include a clear statement of the reason(s) for the request;

(b) If the request is being made by a person other than the applicant, include a clear statement of the person's legally protected interest and how that interest is adversely affected by the issuance of the permit; and

(c) Be received by the Director within 30 days of service of the order denying or granting the permit. The date of service shall be the date of delivery of the order in person, or the date of mailing.



FINDINGS OF FACT STAFF REPORT

Date:	March 11, 2025	Ocean Shore Permit Coordinator:	Tyler Blanchette
County:	Clatsop		
OPRD File Numbers:	3089-25	Applicant:	Stacy Niedermeyer

Project Location: The project is located on two (2) oceanfront properties within the City of Cannon Beach. The site address is 1316 S. Pacific Drive. These properties are identified in the Clatsop County Assessor's Maps as tax lot # 51030DA03400 and 51030DA11800.

Brief Project Description: This project involves removing sand that has accumulated and is encroaching upon an existing seawall. Sand would be removed over a width of approximately 20 feet along 45 feet of the seawall, down to an elevation of about 5 feet below the top of the seawall (approximately 15' NAVD88). The removed sand would then be deposited in an area measuring approximately 15 feet by 45 feet, with a depth of about 3 feet (top of sand approximately 25' NAVD88), and located up to 35 feet west of the removal site on the beach.

BACKGROUND:

Foredune grading activities on Oregon's coast are subject to multiple regulations at the local, state, and federal levels. Oregon's Statewide Planning Goal 18, entitled Beaches and Dunes, provides a framework for dune management activities by establishing standards and implementation strategies for dune management plans and activities. A local government may authorize dune management activities within its jurisdiction only if it has approved and adopted a dune management plan as part of its comprehensive plan. In addition, the Oregon Department of Land Conservation and Development (DLCD) must acknowledge the plan as consistent with the provisions of Goal 18.

The City of Cannon (the "city") revised and adopted the City of Cannon Beach Beach Foreddune Management Plan (the "plan" or "foreddune management plan") in 2020 (Ordinance No. 20-04; adopted on April 6, 2020). As described in the executive summary on page 2 of the plan:

"Updates to the plan include allowing limited dune grading; grading is allowed to address sand inundation of structures, maintaining public access and limited emergency situations. Grading is no longer permitted to maintain views."

Since 2020, the city has not supported foredune grading activities for view restoration or enhancement for various reasons expressed in the plan. As described on page 1 of the plan, “Extensive public engagement efforts were carried out to incorporate public input to develop this updated Foredune Management Plan.” Based on its adopted plan, the city issued a remedial grading permit (dated April 11, 2024) to the property at 1316 S. Pacific Drive and signed a LUCS for the project on October 17, 2024. The city’s approval specified that the project be subject to the following conditions:

“1.) The applicant shall coordinate this project with Oregon Parks and Recreation Department and obtain all permits required for this work including beach access for vehicles. 2.) The project shall adhere to the specific standards for remedial dune grading defined in CBMC Section 17.42.040(A)(4).”

An Ocean Shore Alteration Permit is required for sand alteration and foredune grading to occur upon the ocean shore. This staff report addresses the administrative standards necessary for granting or denying an ocean shore permit, pursuant to ORS 390.650(4)(a) and (b).

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.

Before addressing this application directly, the department recognizes that the activity of remedial grading is generally straightforward in its justification, purpose, and outcome. The goal is to remove sand that has accumulated against a home, inundating it or obstructing access, and to restore the use and access to the home with minimal disturbance to the height of the foredune. The graded sand is then deposited back onto the beach, usually directly in front of the home. This process is well-documented along the Oregon Coast, such as in Pacific City (Tillamook County) and the Bayshore Community (Lincoln County) as typically necessary to prevent sand from overtaking and burying these (habitable) structures. Stated concisely, the windblown sand is graded from around the home and returned to the ocean shore. At this project location, the ocean shore means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line (the “SVL”) as described by ORS 390.770. The SVL at this location appears coterminous with the seawall fronting the residence at 1316 S. Pacific Drive.

The applicant has described the project as: “The purpose of the project is to relocate accumulated sand currently encroaching the existing structures and seawall of subject properties. We seek to move sand by grading westward with an excavator.” The applicant has received a permit for remedial grading from the City of Cannon Beach Planning Department for the address at 1316 S. Pacific Drive (tax lot 03400). However, the project, as shown in the application drawings, appears to be fully located on the adjacent seaward property, tax lot 11800. There is no plan to remove sand from around the residence at 1316 S. Pacific Drive, and there is no evidence in the application that there is sand accumulating against the residence currently. The application drawings show intent to grade sand away from the seawall, approximately 20 feet to the west of the seawall, for the entire oceanfront length of the property, which is approximately 45 feet. The sand would then be relocated approximately 35 feet seaward of the seawall, as depicted in the application drawings.

A meeting was held at the proposed project site on July 31, 2024, with the applicant’s representative, Mack Neidermeyer, the City of Cannon Beach Planning Department staff, the applicant’s contractor, and DLCD staff, and after discussions with Mr. Neidermeyer and his contractor, it is well understood by the department what work the applicant desires to do. As explained by OPRD and DLCD staff, that desired activity which is illustrated in the submitted application is not in conformance with the city’s code or foredune management plan. This non-compliance makes the project incompatible with Goal 18 and therefore not permissible by the department. The compliance with Goal 18 is relevant, as discussed further below in the “Compliance with LCDC Goals” section of this report. This application follows that meeting.

The applicant's justification for the project is somewhat unclear. The applicant takes a multi-pronged approach to justify the project, including claims that the buildup of sand may compromise the seawall fronting the property, stating:

“Seawalls, intended to withstand the force of waves and storms, can be compromised when buried under excessive sand. According to the Coastal Research Center, significant sand accumulation can lead to increased pressure on these barriers, risking structural failure (CRC, 2019). This is not merely a theoretical concern; structural failures can lead to costly repairs, potential loss of property, and serious safety hazards for residents. A study from the U.S. Geological Survey highlights that improper sediment management can exacerbate coastal erosion, putting structures at greater risk (USGS, 2020)” (p. 24 of the application).

During the application review, the department found the provided citations difficult to trace and was not able to review the studies or determine the context for the information. Such review is important where the applicant proposes to remove only the top five feet of sand from the seawall rather than fully excavate it. There is no substantial evidence or metrics provided by the applicant to demonstrate how this activity will provide “relief” to the seawall, or how removing five feet (vertical) of sand from against the seawall was selected as the preferred alternative – or more importantly that there are no reasonable alternatives to the proposed activity or project modifications that would better protect [ocean shore resources].

The applicant provides further reasoning for the project which includes a generalization that sand grading on oceanfront properties is necessary to clarify property lines and loss of property rights, safety hazards because of excessive sand build up - which may bury vegetation - and this “altered landscape may attract pests and wildlife that can pose additional risks” (p. 24 of the application). The applicant also contends on page 22 of the application that the seawall “is legally deemed an integral component of our habitable structure.” The department finds these claims fail to provide adequate justification for the project.

The applicant has likely been able to legally grade the sand fronting the seawall under a previous foredune management plan, however, the applicant's current claims that the proposed activity falls under “remedial grading”, appears incorrect. The definition of remedial grading is relevant, as discussed below in the “Public Laws” section of this report.

Because the applicant has not established that the work proposed under the submitted application conforms with the city's code or foredune management plan implementing Goal 18 and the lack of substantial evidence that supports removing sand away from the seawall as currently necessary to protect any infrastructure, OPRD cannot find adequate justification for the proposed project to occur on and alter the ocean shore state recreation area, and as a result, cannot determine that this standard is met.

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

The proposed activity would be located entirely on privately owned land that is subject to the public's customary use of the ocean shore recreation area. The grading of sand away from the seawall, would take place upon an adjacent tax lot 11800 (Jeanette Stevens). OPRD has received a written authorization from Stevens, which satisfies OAR 736-020-0003(13).

The application materials do not establish or claim any property rights over the proposed project area; however, they do state on pages 24 and 25 that:

- “Establishing clear property lines and maintaining the functionality of our barriers can prevent disputes and solidify our claims to the land we own. Failure to act could result in prolonged legal battles and loss of property rights”;

And

- “The inability to clearly define property boundaries could lead to legal complications and further challenges in asserting property rights. A report by the National Oceanic and Atmospheric Administration (NOAA) emphasizes that clear demarcation of property boundaries is vital in coastal zones, particularly where natural features shift (NOAA, 2021). When the state denies our legal right to protect our property, the risk of encroachment and associated disputes escalates, necessitating immediate action to grade the sand and restore clarity to our property lines.”

This information could be true; however, the information provided by the applicant does not address the applicable review standard related to public ownership and easement rights.

Nevertheless, grading sand away from the seawall would not affect public ownership of or use easement rights on the ocean shore. This standard is met.

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

The review of this permit application by OPRD should satisfy any State of Oregon requirements. The applicant state that no permit is required by any other agency, besides the city’s remedial grading permit.

A Land Use Compatibility Statement (LUCS) from the applicant for tax lot 03400 (Niedermeyer), signed by the City of Cannon Beach planning staff on October 17, 2024, accompanied the application materials received by the department. This LUCS follows the city’s remedial grading permit issued April 11, 2024. However, no LUCS was received for the seaward tax lot 11800 (Jeanette Stevens).

The LUCS for tax lot 03400 determined that the property does meet Goal 18 eligibility, and confirming, “This project has been reviewed and is consistent with the local comprehensive plan and zoning ordinance.” The comments also noted, “Development permit #24-07”.

The city’s Development Permit #24-07 was included with the application materials. This permit, and the conditions set forth therein, are crucial for understanding the project and forming the department’s findings. As detailed in the remedial grading permit issued by the city on April 11, 2024:

“Section 17.42.060(A)(4) defines specific standards for remedial dune grading in the Oceanfront Management Overlay zone. Remedial Dune Grading. ‘Remedial grading’ is the clearing of sand necessary to maintain the function of a structure and includes the removal of sand that has built up against exterior walls, doors, or windows of a structure and that blocks access to a residential or commercial structure, or any public facility, utility or infrastructure. Permits for remedial grading may be approved subject to the following requirements:

- a. Rear yard sand may be removed to the level of the top sill of the foundation, as measured from within thirty-five feet of the habitable structure. From the ten-foot line, the graded area shall slope upward to the elevation of the fronting foredune. This slope shall not exceed fifty percent.*
- b. Side yard sand that is landward of the structure may be removed to the top of the sill of the foundations, provided grading in this area does not create a slope in excess of fifty percent with adjacent properties.*
- c. Where the front yard is seaward of the structure, sand may be removed to the level of the top sill of the foundation, as measured from within thirty-five feet of the habitable structure. From the ten-foot line, the graded area shall slope upward of the elevation of the fronting foredune. This slope shall not exceed fifty percent.*
- d. Grading shall not lower the front yard below the level of adjacent streets or roads, except to clear sidewalks or driveways.*

Areas graded more than three feet in height shall be immediately replanted and fertilized. All graded sand must remain within the littoral cell. Graded sand should be used to fill adjacent low dune areas. Graded sand may also be used to nourish identified areas as needed. The height of the foredune shall not be lowered. Fire-resistant species are the preferred stabilizing vegetation within twenty-five feet of existing dwellings or structures. Fire-resistant vegetation shall only be planted when the foreslope and crest of the dune are adequately stabilized to prevent significant accumulation of windblown sand."

So, to meet the city's standards, remedial grading must satisfy all three of the following conditions:

- "The clearing of sand necessary to maintain the function of a structure";

and

- "When the removal of sand that has built up against exterior walls, doors, or windows of a structure";

and

- "That blocks access to a residential or commercial structure, or any public facility, utility or infrastructure".

Pursuant to the city's code and the foredune management plan, remedial grading may be authorized for front yards that are seaward of the (habitable) structure only when all three criteria are met. Relevant to the application, when these criteria are met, the grading permit is subject to the following conditions:

- "Where the front yard is seaward of the structure, sand may be removed to the level of the top sill of the foundation, as measured from within thirty-five feet of the habitable structure. From the ten-foot line, the graded area shall slope upward of the elevation of the fronting foredune. This slope shall not exceed fifty percent."
- "Grading shall not lower the front yard below the level of adjacent streets or roads, except to clear sidewalks or driveways."

The application materials fail to provide substantial evidence that demonstrate that the proposed project meets the criteria described above, as required by the city's code. In summary, the city authorized the proposed project under a remedial grading permit and is therefore subject to and limited by those standards. Any dune grading activities outside of the city's definition of remedial grading, would require a different permit authorization – to make it compatible with the city's code and thus Goal 18. The application has not established that the activity is necessary to maintain the function of a structure, specifically, that sand accumulation has affected the function of the seawall. The application has neither established that sand has built up against exterior walls, doors, or windows of a structure, nor that sand has blocked access to the habitable structure or seawall.

Sand levels were documented through city photographs and staff site visits. These records showed that the sand did not exceed the top sill of the foundation of the habitable structure. Consequently, according to city standards, sand cannot be graded or removed below the top sill of the foundation, since the sand is already below this elevation. No evidence in the application contradicted this observation.

The seawall, where sand is planned to be graded seaward, is located more than 35 feet from the habitable structure. This is not depicted in the application materials. However, a measurement based on data obtained using department GIS tools and aerial imagery indicate that the foundation of the residence is approximately 46 feet from the concrete seawall. No evidence in the application contradicted this observation.

Therefore, OPRD cannot determine that the application demonstrates compliance with all federal, state, and local laws and regulations affecting the project, and as a result, cannot determine that this standard is met.

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 application does not describe any alternatives to the proposed project.

As described in the Background section on page 1, the city's foredune management plan was revised and adopted in 2020. The plan states, "Updates to the plan include allowing limited dune grading; grading is allowed to address sand inundation of structures, maintaining public access, and limited emergency situations. Grading is no longer permitted to maintain views."

As discussed throughout this report, the project does not meet the definition of remedial grading as allowed by the city to address sand inundation of structures. Therefore, it is not compatible with the city's code and foredune management plan, nor with Statewide Planning Goal 18. Without this compliance, the department cannot consider this to be a "reasonable alternative." OPRD is unable to determine that this standard is met.

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 financial costs to implement the project – as the applicant would pay all costs associated with the proposal. However, potential public costs as outlined in this administrative rule authorizing dune grading include the temporary disruption to recreational activity caused by heavy equipment activity on the beach during construction, and the visual presence of equipment.

This standard is met.

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.

During the 30-day public notice period, OPRD received a letter from the DLCD Ocean and Coastal Services Manager in response to the permit application. The letter in its entirety is public record and available upon request. The key takeaways from the DLCD letter are as follows:

"In reviewing the Ocean Shores Alteration Permit 3089, which proposes to grade sand away from a sea wall, DLCD has determined that this action is not remedial grading and therefore is not consistent with the City of Cannon Beach's recently updated Foredune Management Plan." (page 1)

and

"If permitted as proposed, the sand would be pushed 35 feet seaward of the seawall. This not only violates Cannon Beach's own definition of remedial grading and allowable activities under their Foredune Management Plan, but it also might be looked to as precedent to allow the removal of sand from beachfront protection structures and other non-habitable features such as fences and retaining walls in future permitting applications. While this section of coast has a wider beach profile, moving sand away from the seawall impacts the recreational, environmental, and habitat values of the public beach. If the definition of remedial grading is expanded to include beachfront protection structures, it could have impacts on other beach environments along the coast, many of which are already narrow, meaning that the impacts would be felt across an even greater swath of the ocean shore." (page 3)

and

“The city’s development permit lacks adequate findings. Adequate findings identify the applicable law, the evidence relied upon and explain how the evidence led to the conclusion on compliance with approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). The city’s conclusion that the “Community Development Department has reviewed the application and determined that it meets the applicable criteria” lacks any analysis and OPRD should not rely upon it in considering this application.

DLCD believes that OPRD should not permit the proposed dune grading activity in Ocean Shores Alteration Permit 3089 as remedial grading. The grading actions as proposed in this application are not allowed under the Cannon Beach Foredune Management Plan update, meaning that the activity is not permissible and would be in violation of Statewide Planning Goal 18.” (page 4)

Accordingly, OPRD follows the recommendations made by DLCD. The city approves activities carried out consistent with its code; however, as explained by DLCD, what the application actually proposes is not consistent with the remedial grading provisions. OPRD finds that the project would be in violation of Statewide Planning Goal 18. Therefore, OPRD is unable to determine that this standard is met.

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 project will result in the reconfiguration of the foredune but will not remove or reduce the scenic attraction of key natural features. This standard is met.

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

There is no shoreline vegetation on the ocean shore within the project site. This standard is met.

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

Sand graded away from the seawall would be deposited on top of the dune. The sand would be spread to minimize changing the height of the dune and changing the viewshed. This standard is met.

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

If the project were to be completed, the dune would be reconfigured by construction equipment but would soon attain an appearance similar to surrounding dune areas, and the signs of dune modification would be smoothed out by wind and rain. This standard is met.

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 would not result in a detriment to public recreation use opportunities, except for the temporary disruption caused by equipment operation while grading the sand. This activity is expected to take less than one working day. Therefore, this standard is met.

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 project is adjacent to a public beach access point. The project would not cause blocking off or obstructing public access routes within the ocean shore, except that would occur during the brief period of equipment operation while grading the sand adjacent to the beach access. This activity is expected to take less than one working day. Therefore, this standard is met.

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 proposal to relocate sand away from the seawall does not pose a public safety hazard due to the nature of the project and in accordance with the criteria outlined in this administrative rule. This activity is unlikely to present any hazards related to foundation, stability, or project materials, as these elements are not part of the project. Therefore, this standard has been met.

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

The process of grading and redistributing sand would involve placing the removed material on the upper beach. It is anticipated that this sand would be dispersed by wind or wave action, leading to its natural distribution across the surrounding beach environment. During this period, the sand may cause inconvenience or impede pedestrians and vehicles during higher tides or high surf events. However, no long-term obstructions to pedestrians or vehicles on the ocean shore are expected. Therefore, this standard has been met.

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

Statewide Planning Goal 18 requires that a foredune grading plan provides that dune crest elevations be sufficient to provide flood and erosion protection (FEMA Base Flood Elevation plus 4 feet). The application materials do not identify whether the project will meet this provision because the foredune height will be lowered against the face of the seawall but raised on top of the dune fronting the site where the sand will be redistributed; therefore, the department is unable to determine that this standard is met.

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 project does not include the construction of beachfront property protection; therefore, this standard is 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.

The department provided the Oregon Department of Fish and Wildlife notice of the subject application for the project. ODFW did not comment on any reported significant fish and wildlife resources that will be impacted by the proposed project. This standard is met.

Estuarine values and navigation interests.

The project is not adjacent to an estuary and currently does not affect navigable water on the ocean. This standard is met.

Historic, cultural and archeological sites.

The department provided notice of the application to the State Historic Preservation Office (SHPO). SHPO did not respond to the notice as of the date of this report. The Historic Preservation Office for the Confederated Tribes of Grand Ronde Community of Oregon did respond to the notice and requested that an Inadvertent Discovery Plan be in place, should the project proceed. This standard is met.

Natural areas (vegetation or aquatic features).

The proposed project will not impact any vegetation or aquatic features. Construction activities will occur seaward of a seawall on an unvegetated sand dune, ensuring vegetated areas and aquatic features remain unaffected. The sand will be relocated away from the seawall and redistributed upon dune. This standard is met.

Air and water quality of the ocean shore area.

The project narrative outlines that there are expected to be minimal impacts to air and water quality on the ocean shore. Aside from exhaust fumes from heavy equipment during the alteration activities, air and water quality on the ocean shore would be unaffected. This standard is met.

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

The project narrative did not identify any of these features at the site and concludes there are no known areas of geologic interest, fossil beds, or ancient forest remnants. This standard is met.

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.

There are no known protected native plant communities or fish and wildlife habitat on the subject property. This standard is met.

VI. PUBLIC COMMENTS

The department posted notice of the proposed project at the site for thirty (30) days in accordance with ORS 390.650. The department mailed individual notification and a copy of the application to government agencies, tribes, and individuals on OPRD's Ocean Shore mailing list. In addition, notice of the application including a complete copy of the application materials was placed on OPRD's website.

During the comment period, the department received zero requests for a public hearing among a total of one written comment. Of all written responses:

- 0 comments were from SHPO.
- 1 comment was from the Historic Preservation Office for the Confederated Tribes of Grand Ronde Community of Oregon.
- 0 comments were in support of the permit application request.
- 0 comments were undeterminable.
- 1 comment was in opposition to the permit application request.

All public comment is included in the case file record and is available for review upon request.

VII. FINDINGS SUMMARY

FACTORS EVALUATED; OAR 736-20-0005

(1) Each site on the ocean shore presents different conditions and applicants have varying project needs. Evaluations point up the relative significance of the general, scenic, recreational, safety, and other interests of the public. In acting on any application for an ocean shore permit under ORS 390.640, 390.715 or 390.725, the Department shall consider:

(a) Provisions necessary to protect the affected area from any use, activity or practice that is not in keeping with the conservation of natural resources or public recreation;

(b) The public need for healthful, safe, esthetic surroundings and conditions; the natural, scenic, recreational, economic and other resources of the area and the present and prospective need for conservation and development of those resources;

(c) The physical characteristics or the changes in the physical characteristics of the area, and the suitability of the area for particular uses and improvements (This may include bank alignments, topography, shoreline materials and stability, width of the beach, past erosion, storm water levels, sand movement, water currents, adjoining structures, beach access, land uses, etc.);

(d) The land uses, including public recreational use; the improvements in the area; the trends in land uses and improvements; the density of development; and the need for access to particular sites in the area.

(e) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area.

(2) Public opinion in response to public notice or hearings on an application shall be considered in evaluating each proposed ocean shore project.

(3) Considered together, and in accordance with the intent of the Legislature, the factors listed in sections (1) and (2) of this rule assist in the overall decision for granting an ocean shore permit, or denying, or modifying the ocean shore permit application when the level of impact is determined to be unacceptable.

Based on negative determinations for the above permit review standards, the recommendation for *this permit application is for denial*. This does not rule out the possibility that a new permit application could be approved in the future if site conditions change, or if new information is presented to allow affirmative findings to the OPRD permit review standards.

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	☐	☒	Structural Safety	☒	☐
Protection of Public Rights	☒	☐	Obstructional Hazards	☒	☐
Public Laws	☐	☒	Neighboring Properties	☐	☒
Alteration and Project Modifications	☐	☒	Property Protection	☒	☐
Public Costs	☒	☐	Fish and Wildlife Resources	☒	☐
Compliance with LCDC Goals	☐	☒	Estuarine Values and Navigation Interests	☒	☐
Natural Features	☒	☐	Historic, Cultural and Archeological Sites	☒	☐
Shoreline Vegetation	☒	☐	Natural Areas	☒	☐
View Obstruction	☒	☐	Air and Water Quality of the ocean shore	☒	☐
Compatibility with Surroundings	☒	☐	Areas of Geologic Interest	☒	☐
Recreation Use	☒	☐	Use of Native Plant Species when Necessary	☒	☐
Recreation Access	☒	☐			

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

Tyler Blanchette
 Ocean Shore Permit Coordinator