



## OCEAN SHORE ALTERATION PERMIT

Application Approved with Conditions:

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Application Denied:

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Date: February 28, 2025

Applicants: Laude John A Sr Tstee & Renee E Tstee

OPRD File Number: 3059-25  
3061-25

County: Lincoln

**Project Location:** The project is located at 7907 HWY 101N, Yachats, Oregon. The property is identified in Lincoln County's Assessors Map as tax map: 14-12-11-BA, tax lots 200 and 300

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:** Construction of a riprap shoreline protection structure, approximately 150 feet in length, along the ocean shore at 7907 HWY 101N. The proposed shoreline protection structure would have a top elevation near 25 feet NAVD88, a slope of 1.75H:1V, and average width of 30 feet, with a total volume of approximately 2010 cubic yards of armor stone and backfill materials. Associated material and equipment staging for the project is proposed to occur at Colorado Street.

*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

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Seaward of the statutory vegetation line

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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 ☒

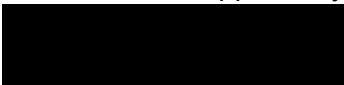
Based on the evaluation of the above standards, staff inspections of the site, and consideration of public and agency comments, the Oregon Parks and Recreation Department:

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Approves your application

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Denies your application

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

Copy: Steven G. Liday, Miller Nash LLP  
Onno Husing, Lincoln County  
Rhiannon Bezore, 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

<b>Date:</b>	February 28, 2025	<b>Ocean Shore Permit Coordinator:</b>	Tyler Blanchette
<b>County:</b>	Lincoln		
<b>OPRD File Numbers:</b>	3059-25 3061-25	<b>Applicants:</b>	Laude John A Sr Tstee & Renee E Tstee

**Project Location:** The project is located at 7907 HWY 101N, Yachats, Oregon. The property is identified in Lincoln County's Assessors Map as tax map: 14-12-11-BA, tax lots 200 and 300

**Brief Project Description:** Construction of a riprap shoreline protection structure, approximately 150 feet in length, along the ocean shore at 7907 HWY 101N. The proposed shoreline protection structure would have a top elevation near 25 feet NAVD88, a slope of 1.75H:1V, and average width of 30 feet, with a total volume of approximately 2010 cubic yards of armor stone and backfill materials. Associated material and equipment staging for the project is proposed to occur at Colorado Street.

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## ADMINISTRATIVE RULE STANDARDS AND RELEVANT FACTS

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### 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.***

Following a call from the landowners seeking an emergency permit, OPRD staff visited the project site on January 5, 2024, to inspect the bluff fronting the home and meet with the landowners. During the inspection, staff verbally informed the applicants that their property did not qualify for an emergency permit as it did not meet the criteria defined by state law. The applicants indicated that they were already underway with the process of hiring an engineering geologist to investigate the site conditions to provide a report for OPRD to consider in conjunction with an ocean shore application. OPRD staff advised the applicants that state law required that the applicants consider relocating the infrastructure away from the hazard prior to submitting an application to the department. The applicants responded that this was likely impossible due to the construction of the residence. This application follows that meeting.

The project site consists of approximately 150 feet of oceanfront bluff. According to Lincoln County records, the project is located on tax lots 200 and 300 at 7907 HWY 101N, Yachats, Oregon. The adjoining property to the north is the United States Forest Service Tillicum Beach Campground, which extends for approximately 1,300 feet of oceanfront, featuring a mix of natural bluff and shoreline armoring. A review of GIS aerial imagery indicates that of the approximately 1,300 feet of oceanfront along the campground, around 600 feet of bluff has been armored. South of the project, towards the Colorado Street beach access, there is a combination of shoreline armoring and natural bluff. A review of GIS aerial imagery shows that of the approximately 1,950 feet from the project site to Colorado Street, around 600 feet of bluff has been armored.

The height of the oceanfront bluff at the site varies between 15-25 feet depending on the sand depth. The Nyhus site survey shows the bluff height nearest to the residence was 32-35 feet NAVD 88 and the beach elevation was 15 feet NAVD 88 at the time of the survey. These measurements suggest a bluff height of approximately 15-20 feet (refer to Application Narrative, page 5), but varies over time. Recently, the bluff has experienced short periods of rapid erosion resulting in mass wasting - chunks of bluff material that fall onto the beach below.

Page 3 of the February 8, 2024 Engineering Geologic Investigation for Project #Y234689B report by H.G. Schlicker & Associates, Inc. (the "HGSA report" or "report") states:

"Based on the history of erosion and recent rapid and severe erosion of the bluff fronting Tax Lot 200, discussed herein, the site would benefit from the construction of an oceanfront protection structure to mitigate the erosion of the bluff in order to protect the existing house, upland infrastructure, and eliminate the hazardous conditions in the back beach area of the public recreation easement. The proposed project is to construct a riprap revetment along the bluff to mitigate undercutting by ocean waves and stabilize the oversteepened bluff. We have provided designs and recommendations for the construction of a riprap revetment, approximately 150 feet long, consisting of approximately 135 feet fronting Tax Lot 200 and approximately 15 feet extending south and wrapping around to the east onto Tax Lot 300 (Figures 4, 5, and 6)."

Page 13 of the HGSA report states: "As discussed above, recent and historical erosion of the shoreline fronting the site has led to frequent large slump and block failures. Currently, the bluff has been undercut and is vulnerable to additional erosion from wind, rain and ocean wave attack. If left unprotected, progressive bluff failures will continue to damage or destroy the upland infrastructure and prolong the hazardous conditions in the back beach area of the public recreation easement." On the same page, the report assumes "an average annual erosion rate of 0.5 feet per year." Figure 3 of the HGSA report shows that the distance from the top of

the bluff to the westernmost corner of the residence is approximately 46 feet. Utilizing the average annual erosion rate information provided in the HGSA report, it can be assumed that it may take as much as 92 years for the house to be undermined by the eroding bluff face. Despite the applicants' claim on page 10 of the Application Narrative that "the patio and house may be undermined on an unknown date in the next six years," this information does not seem reasonably supported given the rate of erosion included in the HGSA report. Nor does the application quantify the threat of erosion to the house distinctly from the threat to the patio. To clarify, these administrative rules do not require that infrastructure be undermined by erosion to qualify for an alteration permit but nevertheless an applicant must provide substantial evidence that there is adequate need for the project to occur on and alter the ocean shore while simultaneously accomplishing a reasonable degree of increased safety for the on-shore property. Neither is demonstrated here.

Regarding staging and equipment access, the report recommends on page 8: "The nearest public access, improved adequately for equipment and material, is the Colorado Street access, approximately 1,950 feet south of the subject site. We recommend construction access to the site occurs at an already improved access road to avoid disturbance associated with any attempt of upland staging or access at the subject site that would cause severe adverse erosion to the already fragile bluff and swale in the area of the subject site." The staging at Colorado Street and haul route north to the project site is illustrated in the Ocean Shores Construction Impacts, Staging, and Public Safety Plan that was included with the application materials.

The department has determined that the application does not establish an adequate justification for the combined level of impact of this proposal. The applicants have failed to establish that alternatives to the proposed activity or project modifications that would reduce the effects on the ocean shore are not reasonable. Considered together, the application materials do not adequately justify:

- The project's proposed design and use of riprap shoreline armoring as a necessary technique to accomplish a reasonable degree of increased safety for the on-shore property to be protected.
- The projects proposed use of on-the-beach staging at the Colorado Street beach access that would utilize OPRD-owned fee title lands (TL 14-12-11-BD-03400-00) upon the ocean shore and likely cause temporary blocking off or obstructing public access routes within the ocean shore area.
- The projects proposed use of at least 1,950 feet of material hauling and the resulting likely affects to public recreation use opportunities within the ocean shore area.
- The projects proposed use of an estimated 30 to 35 days of on-beach construction work and the resulting likely affects to the public recreation use opportunities within the ocean shore area.

Therefore, OPRD cannot find that the applicants have presented 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 structure would be located entirely on privately owned land that is subject to the public's customary use of the ocean shore recreation area.

The presence of the shoreline armor would not affect public ownership or use easement rights on the ocean shore. However, considering the projects proposed size, alignment, and placement, staff finds that the applicants have not demonstrated that the proposed project and associated impacts would not be a long-term detriment to public recreational customary use. "The proposed vegetative revetment structure, including the backing slope, will occupy an approximately 5,700 square-foot area of the beach along the approximately 150 foot frontage of the privately owned tax lot." (HGSA report page 20) This area is ocean shore (OAR 736-020-0002(13)) and available for recreational use. Because of the project's proposed alignment and size, with approximately 100 percent of the proposed structure west of the line of established upland shore vegetation

(OAR 736-020-0002(11)), and a project area of 5,700 square feet, the department finds this to be an inadequate level of protection to the public's long term customary use and rights to recreation on the ocean shore when considered with the lack of justification for the project as proposed. Therefore, OPRD is unable to determine that the application demonstrates compliance with this standard.

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

OPRD received two Land Use Compatibility Statements (LUCS) from the applicants, signed by Lincoln County planning staff on February 13, 2024, for tax lots 200 and 300 where the project is proposed.

The LUCS for tax lot 200 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, "Floodplain development permit case file 05-FP-24 submitted."

The LUCS for tax lot 300 determined that the property does not meet Goal 18 eligibility, and confirming, "This project has been reviewed and is not consistent with the local comprehensive plan and zoning ordinance." The comments also noted, "14-12-11-BA-00300 not goal 18 eligible. Not developed prior to 1/1/1977."

The applicants claims no permit is required by any other agency, besides the County Floodplain Development Permit. Thus, review of this permit application by OPRD should satisfy the identified State of Oregon requirements.

The applicants explain on page 23 of the application narrative, "While the County concluded that Lot 300 is ineligible, the proposed 15 feet of revetment on this lot is allowed under state and local law because it is necessary to protect the Goal 18 eligible area of the Property. The County also approved a floodplain development permit for the project (05-FP-24)." OPRD concurs that the applicants have affirmatively demonstrated that the project is in compliance with local comprehensive plan and zoning ordinances. Therefore, OPRD can determine that the application could demonstrate compliance with this standard if there was an established need for the project.

***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 applicants have provided a construction plan that proposes the use and methods of construction upon the ocean shore state recreation area during the installation of the proposed revetment. This plan includes staging on OPRD fee-owned lands adjacent to the Colorado Street beach access, as well as the storage and transportation of materials and rock along the ocean shore for at least 1,950 feet north to the project site. The applicants conclude that this proposal represents the alternative with the least impact.

The applicants contend in a letter sent via email to OPRD dated October 29, 2024 (and included with the application) that use of the applicant's upland property and constructing a beach access at the property where the project is proposed is not a reasonable alternative. They cite the following reasons:

"The relocation of the staging area south of Colorado Street is the only 'reasonable alternative' to the proposed construction logistics plan that would better protect public rights or reduce detrimental effects to the ocean shore."

A) The relocation of the staging area south of Colorado Street is a reasonable alternative.

B) Wetlands restrictions preclude the construction of new beach access on the applicants' property.

C) The construction of new beach access is not a "reasonable" alternative.

D) A restriction on the use of public beaches to haul materials during the construction of a revetment is inconsistent with OPRD's long-standing policies and practices, which cannot be changed outside of formal rulemaking."

In response, relocating the staging area from the north to the south of Colorado Street may be considered a less impactful alternative, as OPRD staff explained to the applicants prior to the submission of the application. This is because the lot north of Colorado Street contains a residence, while the lot south of Colorado Street is vacant. This project modification could help minimize the "obstruction of existing views of the ocean and beaches from adjacent properties (OAR 736-020-0015(3))." However, the department does not consider this supposition by the applicants to be sufficient to demonstrate that, beyond this minor modification, there are no reasonable alternatives that would better protect [ocean shore resources], in accordance with the standard.

The applicant's letter contends that the reestablishment of a drive-on beach access at the property, as visible from 1967 aerial imagery, is not feasible and includes a statement from Josh Goldsmith, a wetland ecologist for DSL, who notes (*italics added for emphasis*), "From your pictures and description of your client's site, it is *very likely* that there are wetlands located on the property. There is also *a very good possibility* that any wetlands on the property would be considered jurisdictional by the State of Oregon." However, this information appears to be speculative and not conclusive enough for OPRD to determine that there are protected wetlands, which could preclude this as a potential alternative.

While the applicants maintain that the reestablishment of a drive-on beach access at the property, as visible from 1967 aerial imagery, is financially burdensome (at least \$155,000 according to the letter) and "a restriction on the use of the public beaches to haul materials during the construction of a revetment is inconsistent with OPRD's long-standing policies and practices," this testimony does not respond to this administrative rule, which requires the department to determine that "[t]here are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental effects on the ocean shore, or avoid long-term cost to the public." Under this standard, project costs to the applicants are not a consideration. The department frequently discusses with applicants the benefits of shorter haul routes and upland staging as necessary to permit a project, so that the department may affirmatively conclude there are no reasonable alternatives. Therefore, the department cannot concur with the applicants that the proposed construction methods represent the least impact alternative and "[t]here are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental effects on the ocean shore, or avoid long-term costs to the public."

Regarding the proposed construction of erosion control on pages 14-16 of the HGSA report, the author explores a review of non-structural solutions. These measures include improving stormwater control, vegetation stabilization, slope stabilization by regrading, beach filling or nourishment, and dynamic structures. However, the author determined these methods to be infeasible or incapable of providing adequate protection to the upland property and infrastructure. This is summarized by the application narrative on page 23-24, which concludes:

"The HGSA Geologic Report outlines the other conceptual protective measures that could be considered as an alternative to the proposed riprap structure. Each of these alternatives were determined to be infeasible and/or ineffective for protection of the Property bluff. As discussed above, relocation of the home is not reasonably feasible and would only accomplish a small increase in the distance between the home and bluff edge. Further, as set out in the HGSA Geologic Report and the supplemental response letter, the slope and width of the revetment are dictated by modern design standards. The footprint cannot be moved east without impacting the structural integrity and effectiveness of the revetment."

However, the author acknowledges on page 15 of the HGSA report that beach filling or nourishment "can temporarily protect the exposed bluff from continued ocean wave attack." Furthermore, "beach nourishment may need to be repeated every year, or after every large or prolonged storm event, which can result in ongoing

impacts to the public.” While this repetitive approach could lead to recurring short-term impacts, it may also offer a long-term, less impactful alternative that better protects public rights, reduces or eliminates detrimental effects on the ocean shore, and avoids long-term costs to the public. The application does not address this alternative in depth, and does not establish that this alternative is not reasonable.

Regarding the application’s analysis of hazard avoidance alternatives, as required in OAR 736-020-0003(2)(b), the applicants maintain on permitting the project as proposed but fails to meet the review standard, relying on speculation about the infeasibility of relocating the existing infrastructure. The HGSA report (page 16) repeatedly notes (*italics added for emphasis*):

“Relocation of the existing house *does not appear* to be feasible:

“According to Lincoln County records, the house's septic system is located in the eastern portion of Tax Lot 200. Based on our understanding of the minimum separation distances from drain lines required by the county, there *is likely not adequate room* to relocate the house to the east.”

And:

“The house's masonry construction, stone facing, and basement-style foundation *appear to limit the ability for the house to be moved* without significant structural damage.”

Furthermore, on page 17 of the application narrative, “The existing driveway bridge would *likely* also need to be relocated or replaced to match the new driveway orientation. Applicants contacted multiple house movers and were *unable to obtain a firm estimate of the cost to relocate the home* or an assurance that the home would not experience significant structural damage during the move” (*italics added for emphasis*). However, this correspondence does not appear to be included with the application materials. Furthermore, the Surfrider Foundation and Oregon Shores Conservation Coalition submitted a joint public comment opposing the proposal during the 30-day notice period, which states:

“[T]he Applicant implicitly acknowledges that cost is a factor in their determination of the feasibility of moving the buildings by describing what moving the building would require and stating that the process would be “difficult and expensive.” Where cost is one of the factors in determining that moving a building is not feasible, the application must “include cost estimate(s) from licensed contractors specializing in building relocation.” OAR 736-020-0003(2)(b). The Applicant here states that they were unable to get cost estimates without further explanation.”

The department concurs that pursuant to OAR 736-020-0003(2)(b) an application for an oceanfront protective structure must include an analysis of hazard avoidance alternatives, such as relocating existing buildings or increasing setbacks for new buildings and this analysis must explain:

“why hazard avoidance alternatives are not feasible, or if tried, why they were not successful. Relevant factors may include topographic limitations, limits of area for relocation, or cost. If the cost of moving a building or infrastructure is listed as a factor which makes hazard avoidance unfeasible, then the application shall include cost estimate(s) from licensed contractors specializing in building relocation”.

Absent such cost estimates, the department finds that the application does not establish that this standard is met.

In accordance with OAR 736-020-0003(6), the department received 10 or more requests for a hearing, prompting a public hearing held on January 16, 2025. This hearing is publicly available on the OPRD YouTube channel, and copies of any written testimony can be requested from the department. Following the hearing, the applicants submitted a post-hearing comment letter to OPRD on January 22, 2025. In the letter, the applicants contend that relocating the Laude's home is not a viable hazard avoidance option, primarily due to the siting of



the septic drain field and stating, “In short, there is no other location on the Property that a new drainfield could be constructed.” Other potential septic disposal systems are not evaluated. Despite the lack of hazard avoidance documentation presented by the applicants, relocating any facilities at this time seems unwarranted given the current erosion rate and (lack of) threats to the property or infrastructure.

Therefore, the department finds that the applicants have not established that there are no reasonable alternatives or project modifications that would better protect public rights, reduce detrimental effects on the ocean shore, or avoid long-term public costs, and there are likely reasonable alternatives to the proposed activity or project modifications that would better protect [ocean shore resources], in summary:

- Proposed on-the-beach staging at Colorado Street beach access on OPRD-owned lands, causing temporary public access obstruction, 1,950 feet of material hauling, and 30 to 35 days of on-beach construction work, all of which will likely impact public recreation use within the ocean shore. Potential alternative could include the use of upland staging and beach access at the project site.
- Proposed design of a robust riprap shoreline armoring structure occupying a large area of the ocean shore, contended to be necessary to achieve a reasonable degree of increased safety for the on-shore property. Potential alternative could include a reduced size structural alternative which may afford adequate toe protection for the life of the project that would not extend beyond the Statutory Vegetation Line or beach filling/sand nourishment.
- The feasibility of non-structural solutions – including relocation of buildings or a no-action alternative.

Under OAR 736-020-0005, the department evaluates ocean shore permit applications based on site-specific conditions and public interests, considering natural resource protection, physical characteristics, land use, and access needs. Public opinion and legislative intent guide decisions on “granting, an ocean shore permit, or denying, or modifying the ocean shore permit application when the level of impact is determined to be unacceptable.” With this administrative rule in view, the department finds the applicants have not established that the proposed level of impact is acceptable.

Because the applicants have failed to balance the need to provide a reasonable degree of increased safety for the on-shore structure and simultaneously give consideration to alternative project designs or construction methods that would reduce or eliminate the detrimental effects on the ocean shore caused by the project, 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 applicants would pay all costs associated with the proposal. However, potential public costs as outlined in this administrative rule authorizing construction of a riprap structure include the loss of beach area, heavy equipment activity on the beach during construction, and the visual presence of additional riprap.

The applicants have explored alternatives such as non-structural solutions. Page 13 of the HGSA report estimates the revetment's lifespan to be 60 years. However, it lacks recommendations for the structure's removal once it is no longer needed (and it currently does not appear to be necessary). Additionally, the application does not propose mitigation measures for potential project damages to public interests. Potential measures which might reduce or eliminate significant public costs include: 1) no action due to the absence of threat to the on-shore property at this time, 2) reduced construction activity on the beach, and 3) a smaller-scale non-structural or structural alternative that provides adequate toe protection and potentially protects the bluff without extending west of the Statutory Vegetation Line. Without demonstrating consideration of these measures prior to submission of the application, OPRD cannot determine that 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.***

See “Public Laws” above. Lincoln County Planning Department has determined that the project complies with the County’s Comprehensive Plan and Land Use Code, which are acknowledged by LCDC as meeting the Statewide Planning Goals including Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces; Goal 17: Coastal Shorelands; and Goal 18: Beaches and Dunes. Consistency with these goals is further, but indirectly evaluated and addressed in the standards below. 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 site has limited natural features, excluding the beach. Significant landforms or natural features such as headlands, cliffs, sea stacks, tide pools, streams, bedrock formations, fossil beds, or ancient forest remains will not be affected.

The use of riprap as shoreline armoring is not uncommon along this stretch of beach. The project narrative accurately describes the intermittent and general use of riprap as shoreline protection within the vicinity of the project.

The project will involve the use of construction equipment on the ocean shore for an estimated 30-35 workdays, covering approximately 1,950 feet along the oceanfront from Colorado Street to the project site. This construction-related impact is expected to be temporary, ensuring that the scenic attraction will be retained upon project completion. 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 currently minimal to no vegetation on the ocean shore at the project site because the existing dune and bluff slope has eroded to the line of established upland shore vegetation, which is the ocean shore jurisdictional boundary at this location.

There is vegetation presently at the subject property upon the upland. The design of the riprap structure includes the covering of sand and planting of new vegetation above 22 ft NAVD 88 or the high wave swash line or as determined by HGSA at the time of construction. The footprint of the structure is west of the vegetated bluff where currently no vegetation exists (reference Figure 5 of HGSA report). This standard is met.

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

Except for temporary construction activity adjacent to Colorado Street (see “Project Modifications” above, p.4), the project would not affect existing views of the ocean and beach from adjacent properties because the top of proposed erosion control is not designed to extend above the top of the bluff. Since all components of the riprap structure would be located below the existing bluff, there would be no impact on ocean and beach views from the subject or adjacent properties. This standard is met.

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

Riprap shoreline armoring is not uncommon in the Tillicum Beach area. The proposed riprap at the subject location would be similar to those along this stretch of shoreline and does not significantly deviate from the existing pattern of riprap and other shoreline modifications. The addition of a sand covering with vegetation would help blend the riprap with the existing shoreline scenery. 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.***

According to the HGSA report on page 17, “The proposed revetment will be located entirely on the western portion of privately owned properties (Tax Lots 200 and 300)”, however, the land described therein is located entirely upon the ocean shore which is subject to the public’s customary use rights. The project will extend approximately 20 feet beyond the statutory vegetation line for the length of the project (HGSA report, Figure 4 & 5), and “will potentially extend up to approximately 38 feet west of the current location of the base of the bluff”.

During construction, heavy equipment operation and activities would impact the recreation use for a proposed 30-35 days, for at least 1,950 feet of ocean shore from the Colorado Street beach access and north to the project site.

Considering the project's robust design - extending beyond the statutory vegetation line for the length of the project and use of riprap and pit-run fill to protect the entire face of the bluff fronting the on-shore property, the department has determined that the project as proposed and its associated construction impacts could significantly and adversely affect long-term public recreational use. The proposed revetment structure is reported to "occupy an approximately 5,700 square-foot area of the beach along the approximately 150-foot frontage of the privately-owned tax lot" (HGSA report, page 20), which is currently ocean shore state recreation area available for public use.

Given the proposed width of the project, with approximately 100 percent of the structure positioned west of the established line of upland shore vegetation, and with a project area of 5,700 square feet, combined with the anticipated short-term impacts of hauling and staging from a secondary project location, the department find this level of impact and detriment to public recreational use of the ocean shore to be unreasonable, particularly as the need for the proposed project currently appears unjustified.

The application has failed to balance the need to provide a reasonable degree of increased safety for the on-shore property and simultaneously give consideration to reasonable design alternatives that would reduce the detrimental effects to recreation use on the ocean shore caused by the project; Therefore, OPRD is unable to determine that 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 area overlaps with the Oregon Coast Trail.

If the project were to be constructed, wave run up would reach the riprap structure during high tides and storm events and periods of low sand elevations; However, wave run up during storms and higher tides already

reaches the base of the eroding bluff, which restricts north-south travel during these events, regardless of the placement of a shoreline protective structure. Nevertheless, the installation of the project, occupying a 38 feet of beach width extending for 150 feet along the shoreline would further restrict this access, including for users of the Oregon Coast Trail.

Given the project's robust design—extending beyond the statutory vegetation line for its entire length and utilizing riprap and pit-run fill to protect the bluff fronting the on-shore property—the department has concluded that the proposed project and its associated construction impacts could significantly and adversely affect long-term public recreational access along the ocean shore and the Oregon Coast Trail.

Due to the project's proposed alignment and size—entirely west of the line of established upland shore vegetation and covering 5,700 square feet—along with the anticipated short-term impacts from hauling and staging at the Colorado Beach access, the department has determined that the applicants have not satisfactorily considered alternatives to avoid obstructing public access routes within the ocean shore area and the Oregon Coast Trail. Therefore, the department finds the impact on recreational access to be unreasonable, particularly as the project currently appears unjustified, at this time.

The application has failed to balance the need to provide a reasonable degree of increased safety for the on-shore property and simultaneously give consideration to reasonable design alternatives that would reduce or avoid the detrimental affects to recreation access on the ocean shore caused by the project. OPRD is unable to determine that 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 proposed riprap revetment project was designed by a certified engineering geologist in the State of Oregon. The purpose of the project is to provide bank stability and protect the bluff from erosion. The HGSA report recommends using strong, durable materials during construction. This standard is met.

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

The project area overlaps with the Oregon Coast Trail.

If constructed, wave run-up during high tides, storm events, and periods of low sand elevations would reach the riprap structure. However, wave run-up already reaches the base of the eroding bluff, restricting north-south travel regardless of a shoreline protective structure. Installing the project would result in a 38-foot loss of beach width along 150 feet of the shoreline, further obstructing pedestrians and vehicles along the ocean shore. The proposed staging at Colorado Street would likely also obstruct pedestrians and vehicles going onto or along the ocean shore state recreation area, at least temporarily.

Given the project's design—entirely west of the upland shore vegetation line and covering 5,700 square feet—along with the short-term impacts from hauling and staging at the Colorado Beach access, the department finds that the applicants have not substantially demonstrated alternatives to avoid obstructing pedestrians or vehicles going onto or along the ocean shore area and the Oregon Coast Trail. As a result, the department finds the application has not established that the impact on recreational access to be reasonable, especially as the project currently appears unjustified.

While similar levels of encroachment have been found acceptable in some cases for other riprap projects, the applicants for this project have not submitted adequate information to justify the need or establish that the obstructions have been minimized. Since, the need has not been adequately justified at this time, the amount of obstruction caused by the project and the associated construction activity that would result from the project is unnecessary. The application has not balanced the need to provide a reasonable degree of increased safety for the on-shore structures and simultaneously give consideration to reasonable design alternatives that would reduce the obstructional hazards on the ocean shore caused by the project over time. Therefore, OPRD is unable to determine that this standard is met.

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

Pages 14, 21, and 22 of the HGSA Report address the effects of the project on neighboring properties. The project has been designed to taper into the bluff to accommodate a stable configuration of armor stone and reduce “end affects” to the neighboring properties. As described,

“The proposed riprap revetment will increase the stability of the bluff slope at the subject site and will protect the bluff from continued ocean wave erosion. Because the proposed revetment's ends will be curved and tapered into the bluff, end-effects on the subject and adjacent properties will be minimized.”

However, because the application has not established a need for the proposed project to alter the ocean shore state recreation area at this time, OPRD accordingly cannot find that the application has established that this project, which may increase ocean erosion or safety problems for neighboring properties due to “end effects,” is warranted at this time. As a result, 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.***

Construction of the proposed riprap revetment would provide long-term protection to the subject property and its existing infrastructure using one of the strongest and most secure erosion control techniques available. The proposed shoreline armoring would surely provide increased safety for the on-shore property.<sup>1</sup>

However, the standard is to design these projects to “accomplish a reasonable degree of increased safety” for qualified properties. In this case, the applicants have failed to balance the justification for the project against the design requirements – to accomplish a reasonable degree of safety. Instead, as described on page 22 of the HGSA report, “[t]he proposed revetment is intended to reduce the chance of erosion continuing further than the existing bluff slope”, and “will protect the bluff from continued ocean wave erosion” (p. 14). The author continues on page 14, “There will essentially be no erosion below the elevation of the top of the revetment if the revetment is well maintained and repaired.”

OPRD does not find a design that halts erosion at the existing bluff face necessary at this time to accomplish a reasonable degree of increased safety for the on-shore property, particularly when the application does not demonstrate consideration of a reduced size structural alternative which may afford adequate toe protection – a smaller structural alternative may offer a reasonable degree of erosion protection to the bluff while also minimizing the project area and limit encroachment beyond the Statutory Vegetation Line.

Because the applicants have failed to balance the need to provide a reasonable degree of increased safety for the on-shore property and simultaneously give consideration to alternative project designs or construction methods that would reduce or eliminate the detrimental effects on the ocean shore caused by the project, OPRD is unable to determine that this standard is met.

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<sup>1</sup> For purposes of this rule, “Property” means “an upland building, road, street, highway, sewer or water line, or other infrastructure improvement.” OAR 736-020-0002(15).

## **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 Oregon Department of Fish and Wildlife (ODFW) 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 the State Historic Preservation Office (SHPO) notice of the application. SHPO advised that there were no reports of historic, cultural, or archeological sites at this location, however, the general vicinity is sensitive for archaeological resources. If construction were to take place, SHPO recommended having an Inadvertent Discovery Plan in place. This standard is met.

***Natural areas (vegetation or aquatic features).***

There is no existing significant vegetation or aquatic features that would be impacted by the proposed riprap project. The revetment design includes the planting of new vegetation over the upper portion of the riprap structure. Construction activities would not occur on vegetated areas of the ocean shore and aquatic areas would not be impacted because the revetment is designed to protect the toe and face of the bluff, away from vegetation and aquatic features. This standard is met.

***Air and water quality of the ocean shore area.***

The project would result in protection of the ocean fronting bluff at the project site. 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 and HGSA report 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. The applicants plan to plant a portion of the project area with beach grass as described in *Shoreline Vegetation* section above. 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. Individual notification and a copy of the application were mailed 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, 25 requests for a public hearing were received among a total of 27 written comments. Of all written responses:

- 1 comment was from SHPO.
- 0 comments were in support of the permit application request.
- 0 comments were undeterminable.
- 26 comments were in opposition to the permit application request.

Pursuant to OAR 736-020-0003(6) and ORS 390.650(3), the department held a hearing. Notice of the public hearing was posted for an additional 28 days. An online, virtual public hearing was held on January 16, 2025. At the public hearing:

- 18 persons registered for the hearing.
- 8 registered persons did not attend.
- 7 persons provided oral testimony, plus the applicants' attorney who provided an overview of the project.
- All 7 individuals who testified were in opposition to the request.

After the close of the hearing, the record was held open until January 22, 2025, to allow the submission of final written testimony and rebuttal to testimony given at the hearing. An additional 4 comments were submitted while the record was held open:

- 2 comments were in opposition to the permit application request.
- 2 comments were in support of the permit application request.

All public testimony, whether written or oral, 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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Structural Safety	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Protection of Public Rights	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Obstructional Hazards	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>	Property Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Public Costs	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>	Use of Native Plant Species when Necessary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recreation Access	<input type="checkbox"/>	<input checked="" 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

Tyler Blanchette  
 Ocean Shore Permit Coordinator