



**OCEAN SHORE
ALTERATION PERMIT**

Application Approved with Conditions:



Application Denied:



Date: March 26, 2019

Applicant:

Michael Johnson/Edge Cable Holdings USA, LLC

OPRD File Number: 2900-18

County: Tillamook

Project Location:

The proposed project is located on the ocean shore fronting a vacant lot between 5865 Irish Ave. and 28790 Sandlake Road in Tierra Del Mar, approximately 3 miles north of Pacific City. The vacant lot is identified on Tillamook County Assessor's Map 4S-11-01DD as tax lot 3200.

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:

Edge Cable Holdings USA, LLC proposes to install an undersea fiber optic telecommunication cable, the Jupiter cable, which will provide a large capacity direct link between the continental United States and Asia (Japan and the Philippines). The project involves horizontal directional drilling under the ocean shore, from an upland vault to an offshore location, and installation of conduit to accommodate placement of the cable. Details of the project are included in the submitted application materials, which have been made available for public review and comments.

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 statutory vegetation line 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 (See Condition _)

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
for installation of a fiber-
optic telecommunications cable.



Denies your application

Conditions:

1. This approval does not affect any obligation the Permittee might have to other persons or agencies, local, state or federal regulations, including the acquisition of necessary permits from Tillamook County, the Oregon Department of State Lands and U.S. Army Corps of Engineers, prior to initiating the project. This permit shall not be valid until all other necessary permits have been awarded allowing installation of the complete fiber optic line system both seaward and landward of the ocean shore.
2. This Ocean Shore Alteration Permit (#2900-18) does not allow for trenching or other work to be performed on the ocean shore when future maintenance or repair is required. A new Ocean Shore Alteration Permit process must be completed for any future maintenance/repair work that may require equipment trenching or horizontal directional drilling on the ocean shore.
3. The Permittee shall finalize any required proprietary easement agreement from the Oregon Department of State Lands prior to installation of the cable and conduit on the ocean shore or waters of the state.
4. Prior to construction, the Permittee or subsequent owners shall file with the Tillamook County Clerk, a Declaration of Conditions and Restrictions. A form is provided by OPRD for use in satisfying this condition. The Permittee shall pay any filing and recording costs. Upon recording, certified copies shall be submitted to OPRD as proof of compliance with this permit condition. Failure to provide OPRD with said certified Declaration of Conditions and Restrictions shall nullify this permit and all authorizations contained herein.
5. Permittee shall provide OPRD conduit and cable installation plans prepared by a registered Professional Surveyor verifying that the proposed conduit and cable route does not cross private property not owned by the Permittee, including privately owned land on the ocean shore. If the proposed conduit and cable route crosses private property not owned by the Permittee, this permit will be suspended until the Permittee provides proof of an easement or other acceptable form of owner permission to cross the affected property.
6. Prior to project start, the location of the statutory line of vegetation as described by ORS 390.770 shall be located and monumented by a registered Professional Surveyor. Temporary signs shall be placed along the boundary of the line which state: "OCEAN SHORE BOUNDARY - NO VEGETATION REMOVAL OR GROUND DISTURBANCE BEYOND THIS POINT". The signs shall remain in place during project construction.
7. No vegetation removal or ground surface disturbance shall occur seaward of the statutory line of vegetation described in ORS 390.770.
8. The Inadvertent Drilling Fluid Release Plan submitted with the application materials shall be available on-site at all times when horizontal directional drilling activities are underway, and all employees engaged in the horizontal directional drilling operation shall be familiar with the plan. All appropriate equipment will be kept available on-site to respond in the event of an inadvertent drilling fluid release.
9. In the event of inadvertent drilling fluid release, the mitigation plan shall be followed immediately. Any inadvertent drilling fluid release shall be reported to OPRD as soon as possible, but no later than 12 hours from the time the release is discovered. Contact Ocean Shores Coordinator Jay Sennewald, at (541) 563-8504.
10. In the absence of cellular telephone service at the project site, the Permittee shall have available at all times, a ready-to-use satellite-based telephone in the event an emergency situation arises from project construction activities. Prior to project construction, Permittee shall provide to OPRD evidence

that the satellite telephone service is available and operational, including provisions for two-way communications.

11. If an unforeseen erosion event or other phenomena occurs that causes the cable or conduits to be exposed, constitutes a hazard to the public or is in any way detrimental to the preservation of the economic, scenic, and recreational value of the ocean shore, the permittee or subsequent owner of the cable and related facilities shall, at the request of the Department, re-install the conduit and cable to an adequate depth to eliminate such exposure, hazard or detrimental condition.
12. The project shall be completed prior to March 29, 2020. If it appears that, due to unforeseen circumstances, the project cannot be installed by the expiration date, the Permittee or authorized representative may request a permit extension. A time extension may be granted based on the submission of a revised construction schedule.
13. If the project requires use of equipment or vehicles on the ocean shore a separate permit from OPRD will be required. Use of public beach access routes, construction of any roads or other temporary access improvements, and timing of inspections shall be subject to conditions of the Equipment Access Permit. Contact Ocean Shores Coordinator Jay Sennewald at (541) 563-8504 prior to construction for the necessary permit.
14. The contractor or Permittee shall notify OPRD prior to commencing work and when the project is completed. Contact Ocean Shores Coordinator Jay Sennewald at (541) 563-8504.
15. Upon completion of project construction, Permittee shall provide OPRD with post-construction drawings prepared by a licensed Professional Surveyor showing "as-built" alignment, depth, and location of the conduit and cable route. As-built drawings shall be submitted to Ocean Shores Coordinator, Jay Sennewald, within 30 days after completion of conduit installation.
16. In no event shall the issuance of the permit be construed as a sale, lease, granting of easement or any form of conveyance of the state recreational area, ocean shore or submerged lands.
17. The Permittee shall provide to OPRD a copy of a State Historic Preservation Office (SHPO)-recommended Inadvertent Discovery Plan (IDP) prior to initiating drilling operations, in case any cultural artifacts are found during project construction.
18. The Permittee shall comply with the provisions of ORS 390.235 through 390.240, ORS 358.905 through 358.955 and OAR 736-051-0060 through 736-051-0090 as these statutes and rules affect the discovery, excavation, salvage, removal and disposition of archaeological resources and the permitting requirements for these activities as they affect archaeological sites on public and private land. If archeological objects are encountered during the project, all work must stop immediately, and work may not proceed until an archeological permit is issued under ORS 390.235
19. If the Permittee fails to comply with the conditions provided herein and otherwise imposed by OPRD, OPRD shall exercise its authority under Oregon Revised Statutes 390.661 through 390.676; 390.990 through 390.995; and the provisions of OAR 736-020-0200 to cease any further activity by the Permittee on the ocean shore except as directed by OPRD. In such circumstances OPRD may assess a civil penalty according to the provisions of OAR 736-080-0005 through 736-080-0070.
20. The Permittee shall agree to save and hold harmless the State of Oregon, the Oregon Parks and Recreation Commission, and its members, and all officers, agents and employees of the Oregon Parks and Recreation Department, from any claim, suit or action whatsoever for damages to property, or injury or death to any person or persons due to negligence of Permittee(s), their officers, agents or employees, and arising out of the performance of any work or project covered by the granting of a permit.

21. In issuing this permit, OPRD makes no representation regarding the quality or adequacy of the Permitted projects design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapter 390 and related regulations.

Trevor Taylor
Stewardship Manager
Oregon Parks and Recreation Department

Copy: Edge Cable Holdings USA, LLC
Cameron Fisher
Blake Helm, DSL
Sarah Absher, Tillamook County

Appeal Process

Any person aggrieved or adversely affected by the grant of a permit or the conditions imposed on the permit may file a written request for a hearing with the Parks and Recreation Director. The request must be received within 30 days of the date of the permit. The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470



FINDINGS OF FACT STAFF REPORT

Date: 03/26/2019 OPRD Ocean Shores Coordinator: Jay Sennewald
OPRD File Number: 2900-18 County: Tillamook Applicant: Edge Cable Holdings USA, LLC

Project Location: The proposed project is located on the ocean shore fronting a vacant lot between 5865 Irish Ave. and 28790 Sandlake Road in Tierra Del Mar, approximately 3 miles north of Pacific City. The vacant lot is identified on Tillamook County Assessor's Map 4S-11-01DD as tax lot 3200.

Brief Project Description: Edge Cable Holdings USA, LLC proposes to install an undersea fiber optic telecommunication cable, the Jupiter cable, which will provide a large capacity direct link between the continental United States and Asia (Japan and the Philippines). The project involves horizontal directional drilling under the ocean shore, from an upland vault to an offshore location, and installation of conduit to accommodate placement of the cable. Details of the project are included in the submitted application materials, which have been made available for public review and comments.

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.

To meet the demand of internet services worldwide, the applicant proposes to install the Jupiter Cable System, a high speed fiber-optic cable system. According to the submitted application, the Jupiter undersea fiber-optic cable will provide large capacity direct link between the continental United States and Asia, crossing the Pacific Ocean. An Ocean Shore Alteration Permit is necessary because the cable route must cross the ocean shore to land the cable at the proposed terrestrial landing location. The proposed fiber-optic cable will be installed using horizontal directional drilling from a vacant lot on Sandlake Road in Tierra Del Mar community. The proposed horizontal directional drilling activities are located away from the ocean shore, on residentially-zoned land subject to separate review and land-use approval of a Conditional Use Permit from the Tillamook County Community Development Department. Horizontal directional drilling will continue beyond the ocean shore and under the seafloor bed and waters of the State of Oregon, requiring a separate Removal-Fill Permit from the

Oregon Department of State Lands. A Nationwide #12 Permit is required from the U.S. Army Corps of Engineers to install the Jupiter cable out to 200 miles from shore.

Because the proposed conduit and cable must cross the shoreline near its terminus, the need for an ocean permit is inherent and therefore adequate justification exists for the project to occur.

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

The proposed cable will be placed in buried conduit, installed through the method of horizontal directional drilling well below beach level. The installation of the conduit and cable avoids the need for equipment and materials on the ocean shore and therefore will not affect public rights of recreation, and the project would not result in the loss of publically-owned land. As indicated above, the project requires a separate permit and easement from the Oregon Department of State Lands, for the portion of the project which crosses state-owned land, tidelands, and the Pacific Ocean out to 3 miles from shore.

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

The Tillamook County Planning Department has indicated in Section 9 of the Ocean Shore Permit Application that compatibility of the project with the local comprehensive plan and zoning ordinances cannot be determined until a Conditional Use Approval and Development Permit have been obtained by the Applicant. At the time of this report and decision, an application for local land-use approval has been submitted to Tillamook County but no decision by the county has been made. Approval of the Ocean Shore Permit will be contingent on the Permittee's ability to obtain local government approvals before construction.

The Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (COE) are concurrently reviewing separate permit applications for the portions of the project within their jurisdictions. A proprietary easement agreement will also be required from DSL, and a condition of an Ocean Shore Alteration Permit will require finalization of permits, easements, and agreements from those agencies prior to installation of the conduit and cable under the ocean shore.

As a condition of approval, the applicant will be required to first obtain all required permits and approvals from Tillamook County, DSL, and the COE.

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.

Costs of the project are the sole responsibility of the Applicant and not the public.

By their nature, undersea cables must cross the ocean shore in order to reach a terrestrial terminus. In this case, the site at Tierra Del Mar was chosen after consultation with the Oregon Fishermen's Cable Committee (OFCC), who recommended the proposed cable landing location in order to avoid offshore rocky reefs and sensitive commercial fishing grounds where the presence of a cable could conflict with fishing operations and gear. Testimony provided by OFCC at the February 12, 2019 public hearing indicates that the proposed project appears to be the best option for a cable landing in the Pacific City area in general.

The application materials indicate that horizontal drilling under the ocean shore will avoid impacts to the beach. Alternatively, deep-trenching and placement of conduit from the surface of the beach and dune-backed shoreline would have significant detrimental effects on the beach and recreational use, while leaving the

conduit more vulnerable to exposure and damage from erosional events. Exposure of buried cables and pipeline beach crossings has occurred at other ocean shore locations in the past, creating public safety and other ocean shore conflicts requiring difficult remedies. Instead, the proposal calls for the conduit and cable will be installed remotely, through horizontal directional drilling, to a depth of between 30 and 75 feet below beach level. Remote installation by horizontal directional drilling will avoid safety-related conflicts between heavy equipment use and public recreation while installation activities are underway.

Because this is a cable landing from sea to a terrestrial location, there is no alternative but to cross the ocean shore. It appears that placement of the conduit and cable well beneath the ocean shore is the best alternative of installation method to protect public recreation rights and reduce or eliminate detrimental effects on the ocean shore.

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.

The costs of installing, maintaining and repairing the cable will be the responsibility of the Permittee and subsequent owners of the cable system. In this case, the method of burial will be with a horizontal directional drilling operation, with no need for excavation or heavy equipment use on the beach. In addition, because the conduit and cable will be buried, they will not infringe on public recreation or result in a loss of recreation area on the ocean shore.

If, for any reason in the future, the cable becomes obsolete or in a state of disrepair, The Permittee will be required to remove it from the ocean shore.

Compliance with LCDC Goals – The proposed project shall be evaluated against the applicable criteria included within Statewide Planning Goals administered by the Department of Land Conservation and Development.

Tillamook County has certified in Section 9 of the application that the proposed project will require a Conditional Use Permit and a Development Permit prior to construction. The review criteria cited by the county is Tillamook County Land Use Ordinance Section 3.530: Beach and Dune Overlay Zone. Tillamook County's Comprehensive Plan and Zoning Ordinance have been acknowledged by the Department of Land Conservation as consistent with the provisions of Statewide Planning Goal 18, Beaches and Dunes. A Conditional Use Permit requires a land-use decision by the county, and therefore the county is responsible for reviewing the horizontal drilling operations in a residential setting, through that process. As a condition of approval, the Permittee will be required to obtain land-use approval of the required Conditional Use Permit and Development Permit from Tillamook County, prior to project implementation.

The Oregon Department of State Lands (DSL) requires a Fill/Removal Permit for the portion of the project affecting Oregon's Territorial Sea, and therefore is the state agency primarily responsible for reviewing the proposal for conformance with Statewide Planning Goal 19: (Ocean Resources).

OPRD defers to Tillamook County and to DSL, through their necessary permit reviews, for a more thorough evaluation of project compliance with the Statewide Planning Goals.

II. SCENIC STANDARDS, OAR 736-020-0015

Projects on the ocean shore shall be designed to minimize damage to the scenic attraction of the ocean shore area.

Natural Features – The project shall retain the scenic attraction of key natural features, for example, beaches, headlands cliffs, sea stacks, streams, tide pools, bedrock formations, fossil beds and ancient forest remains.

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

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

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

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

The cable and conduit facilities will be installed underground, and therefore they will have no impact on existing views of the ocean and beaches from adjacent properties.

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

The conduit and cable will be installed underneath the ocean shore and completely hidden from view, and will not directly affect the scenery of the shoreline. Site preparation and drilling operations at the manhole site will require clearing and vegetation removal, although no clearing is proposed on the ocean shore. OPRD has no authority to apply this criterion to privately-owned upland property landward of the statutory line of vegetation.

III. RECREATION USE STANDARDS, OAR 736-020-0020

Recreation Use – The project shall not be a detriment to public recreation use opportunities within the ocean shore area except in those cases where it is determined necessary to protect sensitive biological resources such as state or federally listed species.

The cable and conduit will be hidden from view and buried below the beach level, so there will be no impacts to traditional recreational uses on the beach.

Recreation Access – The project shall avoid blocking off or obstructing public access routes within the ocean shore area except in those cases where it is determined necessary to protect sensitive biological resources such as state or federally listed species.

All staging of equipment and drilling work will occur on private property upland of the OPRD Ocean Shore jurisdiction, on residentially-zoned land where Tillamook County has the responsibility for reviewing the project under a Conditional Use Permit process and criteria.

Because drilling operations will be staged landward of the ocean shore boundary, and because the conduit and cable will be installed deep below the ocean shore, there will be no obstruction of public access routes within the ocean shore area as a result of the project.

IV. SAFETY STANDARDS, OAR 736-020-0030

Structural Safety – The project shall not be a safety hazard to the public due to inadequate structural foundations, lack of bank stability, or the use of weak materials subject to rapid ocean damage.

Due to the cost of the project, and to insure its long-term reliability, its design has been engineered for long-term structural stability and use. The cable conduit will be buried to a suitable depth below beach level to ensure it will not suffer damage from ocean conditions including storm-caused erosion. The horizontal directional drilling and installation will be implemented in a “drill and leave” manner. This entails drilling with 5-inch diameter steel drill pipes and leaving them in place once the bore is completed. The size and strength of the conduit will prevent future structural collapse. If, due to unforeseen circumstances the conduit/cable becomes exposed, a condition of the permit approval will require that the owners of the cable re-install the cable to an adequate depth to eliminate any hazardous or detrimental condition.

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

Conduit specifications and depth of the project under the ocean shore will completely avoid any obstruction of vehicles and pedestrians. This standard is applied to the condition of the site after installation, not the temporary conditions created during installation.

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

The proposed conduit and cable will be located under the ocean shore at a depth of 30-75 feet, so its presence will not be apparent to ocean shore visitors engaging in recreational use activities. In addition, its presence underground will be static in nature and therefore should not affect, or cause ocean erosion or present safety problems for neighboring properties after installation is complete.

Installation of the project from the residentially zoned tax lot 3200 is subject to a separate review process by Tillamook County, for a Conditional Use Permit and a Development Permit. Potential for safety problems stemming from horizontal directional drilling activities should be addressed through Tillamook County’s land-use review process, since the installation will occur from, and on, residentially-zoned, private property outside of OPRD’s jurisdiction. OPRD’s statutory authority over the ocean shore was created to “preserve values adjacent to and adjoining such areas” (Oregon Revised Statute 390.641 (1)), but the agency’s jurisdiction is explicitly limited in this same statute “to control and regulate improvements **on the ocean shore**” (emphasis added). Many public concerns raised during OPRD review of this permit application relate to temporary and permanent effects outside of the agency’s ocean shore jurisdiction. OPRD can respond to those concerns through conditions that make an ocean shore permit contingent on review and approval of associated permits issued by other jurisdictions, and by sharing public comment verbatim with other agencies responsible for those reviews and approvals.

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 is not a shoreline protection structure and 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.

Comments from the Oregon Department of Fish and Wildlife (ODFW) indicate that anticipated impacts to fish and wildlife in the nearshore area, intertidal zone, beach, and dunes from horizontal directional drilling are less than those that would be incurred by surface trenching, and therefore horizontal directional drilling is the preferred approach for cable crossings of the shore from the standpoint of resource impacts.

There are no reports of any rare, threatened, or endangered species of fish or wildlife at the site.

Estuarine values and navigation interests.

The project will not be located in an estuary; the Sand Lake Estuary is approximately 2 miles north. The Oregon Department of State Lands and the U.S. Army Corps of Engineers and Oregon Department of State Lands have responsibility for the review of fishing and navigation issues for the installation of the cable on the sea floor. The project will have no affect on fishing or navigation interests within the ocean shore area, which extends between the line of extreme low tide and the statutory line of vegetation.

Historic, cultural and archeological sites.

Notice of the application was provided to the State Historic Preservation Office (SHPO), to the Confederated Tribes of Siletz, and to the Confederated Tribes of Grand Ronde.

The State Archaeologist has reviewed this project and determined that there have been no previous archaeological surveys completed within the project area, but archaeological sites are known to exist in the surrounding area. SHPO states that the project area is located on a landform perceived to have a high probability for possessing archaeological sites and buried human remains. SHPO has suggested that the applicant contact a professional archaeologist to conduct an archaeological pedestrian survey with subsurface probing of the project area.

Additional comments from the Confederated Tribes of Grand Ronde have requested that an Inadvertent Discovery Plan (IDP) be in place, and if archaeological and/or cultural resources are discovered during the project, that representatives of the tribes be contacted immediately by phone.

As a condition of permit approval, the applicant shall be required to comply with all laws affecting the discovery, excavation, salvage, removal and disposition of archaeological resources.

Natural areas (vegetation or aquatic features).

The method of horizontal directional drilling and placing the conduit beneath the ocean shore will avoid any disturbance of natural areas or vegetation within OPRD's ocean shore jurisdiction. Any ground disturbance or vegetation removal will take place at the upland horizontal directional drilling site, which is outside of the ocean shore boundaries.

Air and water quality of the ocean shore area.

The project will most likely be completed without any visible alterations to the beach environment. However, horizontal drilling operations require the use of drilling mud, consisting of bentonite clay material, which is necessary to lubricate the drill bit while drilling operations are underway. There is a very small risk of an inadvertent release of drilling fluid to the surface of the ground or tideland through a fracture in the bedrock below the ground surface, a circumstance referred to as a "frac-out".

Comments provided by ODFW suggest that the distance from the intertidal zone to the nearest sensitive rocky reef habitat should provide a degree of protection in the unlikely event of an inadvertent drilling fluid release, due to the rapid dilution of suspended clay that would occur in ocean currents.

The safety of bentonite is a disputed matter in the testimony and comments received in OPRD's permit review. Nonetheless, it is a generally accepted practice to use bentonite drilling fluid as a lubricant during horizontal directional drilling operations within industry standards.

To limit the impact of a potential frac-out occurrence, the application materials include an Inadvertent Drilling Fluid Release Plan, which is incorporated into these findings by reference. The plan identifies pollution mitigation measures to be taken, if necessary due to an inadvertent drilling fluid release, including detection, corrective actions, containment, and cleanup provisions. In the unlikely event of a drilling fluid release and implementation of the Inadvertent Drilling Fluid Release Plan, exposure of the material to the environment or the public would be minimized and the material immediately removed. Because the risk of frac-out is very small, and because the Applicant will have the Inadvertent Drilling Fluid Release Plan in place during project installation, OPRD finds this risk acceptable and the proposed environmental protections to be adequate to meet this standard. Having the contingency plan and implementation measures ready at the project site during the course of drilling operations will be a condition of permit approval. The plan will take into account limited wireless communications available at the work site.

No air quality issues appear to be a concern on the immediate ocean shore area as the conduit and cable will be located deep underground, with no equipment operations necessary on the ocean shore. Air quality conditions on the private lot where drilling machinery will be stationed are beyond the jurisdiction of OPRD.

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

The area is comprised of sand dune-backed shoreline, and none of these features will be affected by the conduit and cable installation.

When necessary to protect native plant communities or fish and wildlife habitat on the subject or adjacent properties, only native, non-invasive, plant species shall be used for revegetation.

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

VI. PIPELINES OR CONDUITS UNDER OCEAN SHORE: POLICY, COMPENSATION (OAR 736-020-0040)

Pursuant to ORS 390.610(4), it is the policy of the Department to prohibit the use of the ocean shore as a north-south utility, communication, transshipment or conveyance corridor. This prohibition applies to pipelines, conduits, cables, wires, towers, transmission, relay or booster stations and other continuous or intermittent facilities for moving material or services, or transmitting data, information, energy, or other commodity whether for private or public use or benefit. The Department, in its discretion, may make exceptions to this policy in cases of emergency or when need is demonstrated for the project to occur on and alter the ocean shore.

The proposed conduit and cable alignment is generally perpendicular to the ocean shore, and therefore it complies with the policy of OAR 736-020-0040 which prohibits the use of the ocean shore as a north-south utility corridor.

VII. PERMITS FOR PIPE, CABLE OR CONDUIT ACROSS OCEAN SHORE, STATE RECREATION AREAS AND SUBMERGED LANDS (ORS 390.715)

The State Parks and Recreation Department may issue permits under ORS 390.650 to 390.659 for pipelines, cable lines and other conduits across and under the ocean shore, state recreation areas and the submerged lands adjacent to the ocean shore, upon payment of just compensation by the permittee. A permit issued under this subsection is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

The Applicant has made payment of just compensation to OPRD as the application fee for this permit review and decision.

Whenever the issuance of a permit under subsection (1) of this section will affect lands owned privately, the State Parks and Recreation Department shall withhold the issuance of the permit until the permittee obtains from the private owner an easement, license or other written authorization that meets the approval of the State Parks and Recreation Department, except as to the compensation to be paid to the private owner.

This standard is applicable whenever a pipeline, cable or conduit project crosses privately-owned property, requiring an easement from the legal property owner for the placement of the pipeline, cable, or conduit. It does not apply to lands near the proposed cable route. Staff has been unable to determine if the proposed route will affect any privately-owned land other than that owned by the Applicant, but a condition of approval will require that prior to installation of the conduit and cable, the Applicant must provide to OPRD, documentation from a licensed, Professional Surveyor which demonstrates that no privately-owned land, other than that identified as the subject property (tax lot 3200) is along the proposed cable route across the ocean shore. If the proposed route does cross private property not owned by the applicant, any award of this permit will be suspended until the Applicant either: a) provides proof of permission to cross the affected property, or b) submits an alternative route that avoids crossing private property not owned by the applicant.

All permits issued under this section are subject to conditions that will ensure safety of the public and the preservation of economic, scenic and recreational values and to rules promulgated by state agencies having jurisdiction over the activities of the grantee or permittee.

As explained under **Section IV. Safety Standards** above, OPRD has jurisdiction limited to the ocean shore in this permit review. According to the definitions section of OAR 736-20-0002 (13), "Ocean Shore" — means 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.

The proposed conduit and cable placement by horizontal directional drilling will be conducted from a location landward of both the statutory vegetation line as described by ORS 390.770 and the actual line of upland shore vegetation. These activities will occur on residentially zoned land subject to separate permit review by the Tillamook County Community Development Department, and not OPRD. The permit review in this report is focused on the preservation of economic, scenic and recreational values of the ocean shore and not on residentially-zoned land, or state/federal waters beyond the ocean shore boundary as defined in the OARs. By evaluating the impacts of the project installation at a location other than the ocean shore would exceed OPRD's jurisdiction and would be inconsistent with this statute. As such, this review is primarily in consideration of the portion of the project which will be between 30 and 75 feet underground as it crosses the ocean shore.

VIII. PUBLIC COMMENT

Notice of the proposed project was posted at the site for 30 days in accordance with ORS 390.650. In addition, a copy of the application was posted on the OPRD website, along with a statement that written comments public hearing requests can be sent to the Ocean Shores Coordinator for the project. Individual notification and

a copy of the application were mailed to government agencies, tribes, adjacent ocean front property owners and individuals on OPRD's ocean shore mailing list who have requested ocean shore permit public notices.

OPRD received 22 public hearing requests, and extensive written comments were received regarding the project.

Based on the number of public hearing requests, OPRD posted a 30-day public notice for this and the related Case File #2906-19, for a public hearing held on February 12, 2019. Approximately 50 persons attended the public hearing including representatives of the applicant, OPRD staff, and members of the public, but primarily residents and owners of property in Tierra Del Mar. Public testimony was presented by 12 individuals, after a short slide show presentation by Subcom on behalf of the Applicant.

The vast majority of public comments expressed opposition to the proposed project, based on concerns over likely and potential impacts of the conduit and cable installation activities on the surrounding residential uses and Tierra Del Mar neighborhood. Issues of temporary concern included noise, vibration, and potential damage to homes, septic systems, propane tanks, Sandlake Road, and public/private infrastructure. These issues, and others related to project installation were raised many times as common reasons for objections to the project. Other concerns included potential impacts to the Sand lake Estuary, which is a natural and pristine estuary, lack of cellular communications ability in the area (a safety issue), use and potential inadvertent release of bentonite drilling lubricant and potential associated health risks, limited water supply for the community, potential loss of property values, loss of rental income, potential delays in emergency vehicle response providers due to traffic congestion, and others were raised. The common theme of the objections were that the horizontal drilling operations necessary to install the conduit and cable would temporarily disrupt the tranquil nature of the area and have overall negative, unacceptable impacts to the residential use and residential character of the neighborhood.

There were no objections to the request by the Oregon Department of Fish and Wildlife or any other state or federal agency.

As indicated above, extensive written comments were received and are also included in the case file record. An audio file of the public hearing was recorded and is incorporated into the record by reference, and remains available for public review at the time of this report. All comments and testimony are included in the case file record and incorporated into this report by reference, and remain available upon public records request.

To summarize overall public comment and testimony provided, most objections were directed toward the portion of the project not within OPRD's ocean shore jurisdiction as defined above. OPRD's jurisdictional authority is limited to the ocean shore and impacts upon it, by review of the criteria identified in this report. By virtue of OPRD's limited authority to make decisions as they affect the ocean shore, the agency must defer to the Tillamook County Community Development Department to consider the impacts of the horizontal directional drilling component of the overall project on the Tierra Del Mar community and its residents. OPRD strongly encourages thorough county review of the extensive public comments raised by its residents and property owners during evaluation of this ocean shore permit application.

IX. Findings Summary

1. There is a need for the proposed cable and conduits to cross the ocean shore. The facility will allow the physical landing of the telecommunications cable. The cable installation will provide needed infrastructure to meet the increased demands for global connectivity.
2. The proposed cable landing facility complies with the policy of OAR 736-020-0040 which prohibits the use of the ocean shore as a north-south utility corridor.

3. The cable and associated conduits will be bored below the beach level. No excavation will take place on the ocean shore; therefore there will be no adverse impacts to recreation, natural resources, known cultural resources, or scenic values.
4. In the unlikely event of an inadvertent release of drilling fluid, the Applicant has proposed a contingency plan to ensure that an environmental damage or exposure to the public will be minimized and temporary in nature.

The following checklist summarizes whether the application satisfies the general, scenic, recreation, safety and natural and cultural resource standards as defined in OAR 736-020-0010 through 736-020-0030:

Standard	Yes	No	Standard	Yes	No
Project Need	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Structural Safety	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Protection of Public Rights	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Obstructional Hazards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public Laws	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Neighboring Properties	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alteration and Project Modifications	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Property Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Public Costs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fish and Wildlife Resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compliance with LCDC Goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Estuarine Values and Navigation Interests	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Natural Features	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Historic, Cultural and Archeological Sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shoreline Vegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Natural Areas	<input checked="" type="checkbox"/>	<input type="checkbox"/>
View Obstruction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Air and Water Quality of the Ocean Shore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Compatibility with Surroundings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Areas of Geologic Interest	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recreation Use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Use of Native Plant Species when Necessary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recreation Access	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

X. 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

Jay Sennewald
Ocean Shore Coordinator