



FINDINGS OF FACT STAFF REPORT

Date: February 25, 2008 OPRD Coastal Land Use Coordinator: Tony Stein
OPRD File Number: BA-635-07 County: Tillamook Applicant: Netarts Oceanside Sanitary District

Project Location: Ocean shore immediately west of 5390 Netarts Hwy NW, Netarts.
Tillamook County Assessor's Map #1S-10W-Section 30, tax lot 4400.

Brief Project Description: The project involves the installation of an effluent outfall pipeline for the Netarts Oceanside Sanitary District (NOSD). A 14 inch high density polyethylene sewer outfall pipe will be installed beneath the ocean shore through a tunnel that is bored using a horizontal directional drilling method. The ocean outfall pipe will convey treated wastewater from the upland NOSD Wastewater Treatment Plant to a submerged rock outcrop located approximately 3, 900 feet offshore. The subject pipe will be fused together onshore and floated out to the discharge point, then pulled through the bore tunnel to the upland NOSD property, located east of Netarts Highway.

ADMINISTRATIVE RULE STANDARDS AND RELEVANT FACTS

- I. **PIPELINES OR CONDUITS UNDER THE OCEAN SHORE: POLICY - 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 sewer outfall line will be installed underneath the beach in an east-west direction. This route will not result in the ocean shore being used as a north-south utility corridor.

- II. **PIPELINES OR CONDUITS UNDER THE OCEAN SHORE: JUST COMPENSATION; OAR 736-020-0040- Prior to the issuance of any permit under these rules and regulations, the Department shall receive from the prospective permittee, payment of just compensation for the use of the ocean shore. The amount of just compensation shall be at the discretion of the Department. Factors the Department may consider in setting the amount of just compensation may include:**

- (a) The length and width of the ocean shore occupied by the proposed pipeline, cable or conduit crossing;*

- (b) Any surface manifestations of the pipeline, cable or conduit crossing on the ocean shore;***
- (c) Potential impacts to unusual or scenic land forms;***
- (d) Potential impacts to fish and wildlife and their habitats;***
- (e) Potential impacts to recreation use or access to the ocean shore or to public recreation facilities adjacent to the ocean shore that may be affected by the pipeline, cable or conduit crossing;***
- (f) The safety features and practices to be employed by the applicant during construction, through out the life of the facility, and in the event of a break, rupture, exposure or other hazardous circumstance;***
- (g) Benefits that will accrue to the public from the proposed project such as sewer, gas, or electric service, phone or other communication service, or beach access mitigation;***
- (h) Benefits that accrue to private individuals, companies, organizations or corporations from the proposed project; and***
- (i) Administrative costs to the State of processing the application, issuing the permit, and monitoring the project for permit compliance.***

In no case shall just compensation be less than the Department's administrative costs as calculated under the fee provisions in OAR 736-020-0004.

The existing ocean outfall and effluent line is essential to the Netarts Oceanside Sanitary District's sewage disposal system. OPRD shall waive administrative costs and just compensation for this public project as it benefits the general public and the communities of Netarts and Oceanside.

III. GENERAL STANDARDS, OAR 736-020-0010

- (a) Project Need – There shall be adequate justification for a project to occur on and alter the ocean shore area.***

The application states that the project is needed as part of the overall Netarts Oceanside Sanitary District Wastewater Treatment Facility. The proposed project replaces the existing ocean outfall pipeline which was constructed in 1978. The existing outfall is at the end of its useful life, and the DEQ is requiring the District to replace the existing pipeline and diffuser. The outfall is needed to safely discharge treated wastewater and to protect the public's health. The existing pipe is periodically clogged with sand which results in treated effluent being discharged to a small creek adjacent to the plant. The replacement pipeline will eliminate the periodic discharge to the creek where the flow mixes with the surface water and then enters the ocean after flowing across the beach. The public will benefit from reduced potential exposure to treated effluent.

A finding of project need follows the review of all other applicable standards and is included in the findings summary at the end of this report.

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

The proposed pipeline will be installed beneath the ocean shore and at a depth of 35 to 40 feet below beach level and will not affect public rights of recreation or ownership.

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

The Tillamook County Planning Department has certified that the project is consistent with the local government comprehensive plan and zoning ordinance.

The Division of State Lands and Army Corps of Engineers are currently reviewing a joint permit for the ocean installation. An easement agreement from the State Land Board for the pipeline route is also currently pending. A condition of approval will require that the easement agreement and all required permits from the Division of State Lands and the Corps be finalized prior to installation of the pipeline on the ocean shore.

The Oregon Department of Environmental Quality (DEQ) reviews the ocean outfall discharge and wastewater treatment facility under a National Pollutant Discharge Elimination System (NPDES) permit. Compliance with this permit will be required as a condition of approval.

(d) 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 DEQ and the District have executed a Mutual Agreement Order that requires the District to install a new outfall or to make major improvements to the existing outfall. One alternative was to open, slipline and extend the existing outfall. This alternative was eliminated because it would impact the beach and would have a shorter useful life. The District believes the best alternative is to construct a new outfall using the horizontal directional drilling method of construction. The original outfall was installed eight feet below the beach surface and then lay on the surface of the sea floor extending 2,700 feet from the shoreline. Over the years, sand migration in the area of the outfall has been very significant. The District's most recent survey suggests that the outfall is currently buried in about 10 feet of sand.

The new replacement system will allow for the safest and most appropriate method of treated effluent disposal. The method of installation will be to bore the route for the effluent pipe beneath the ocean shore, causing no adverse impacts to the beach. Based on this and the above considerations, OPRD finds that the proposed project represents the most appropriate system for effluent disposal, with the least possibility for adverse impacts to the public and the ocean shore environment.

(e) 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 effluent pipeline will be buried below the ocean shore and will not infringe on public recreation. Aside from the public investment in this infrastructure project, external public costs relating to ocean impacts will be non-existent. Costs of maintaining and repairing the pipeline over the long term will be the responsibility of the Netarts Oceanside Sanitary District or future owners of the pipeline.

(f) 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.

For this permit, the Tillamook County Planning Department certified that the proposed project is compatible with the acknowledged local comprehensive plans and land use regulations. This certification meets the Department's obligation to ensure compatibility with the Statewide Planning Goals administered by the local governments.

IV. 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.

(a) 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 pipeline will be buried beneath the beach and will not be visible. The scenic attraction of the beach, shoreline bluffs, and adjoining riparian areas will therefore be retained.

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

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

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

The pipeline will be installed underground, and will have no impact on existing views of the ocean and beaches.

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

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

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

(a) 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 pipeline will be hidden from view and buried to a depth exceeding 35 feet below the beach, so that there will be no impacts to traditional recreational uses on the beach.

(b) 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.

There will be no above ground facilities on the ocean shore that could cause an obstruction to recreation access along the ocean shore.

VI. 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.

(a) 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 high density polyethylene sewer pipeline will be buried to a depth of 35 to 40 feet below beach level. If, due to unforeseen circumstances the pipeline becomes exposed due to shoreline retreat or other factors, a condition of the permit approval will require that the Netarts Oceanside Sanitary District or future owner remove the installation from the ocean shore to eliminate any hazardous or detrimental condition.

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

Across the entire width of the ocean shore, the project is limited to a subsurface installation; therefore there will be no obstructions to beach access or to pedestrian or vehicle travel along the ocean shore.

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

The pipeline will be located under the beach. There are no associated safety hazards to the public and surrounding property owners from this buried infrastructure.

(d) 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 proposed project is not for beachfront property protection.

VII. 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:

(a) Fish and wildlife resources including rare, threatened or endangered species and fish and wildlife habitats.

Drilling operations will be staged at an upland site. The project will not affect the ground surface of the ocean shore, and will have no impacts on fish and wildlife that inhabit the ocean shore.

(b) Estuarine values and navigation interests.

The project will not be located in an estuary. The project will have no affect on fishing or navigation interests within the ocean shore area, which extends between the line of extreme low tide and the vegetation line.

(c) Historic, cultural and archeological sites.

Notice of the application was provided to the State Historic Preservation Office, and to the Confederated Tribes of the Siletz and Grand Ronde Indians. The State Historic and Preservation Office and the Confederated Tribes of the Grand Ronde Community reported that the area has high potential for possessing archaeological sites and /or buried human remains. A Cultural Resource Survey will be required from the Confederated Tribes of the Grand Ronde Community prior to conducting the work.

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

The method of boring the pipeline route below the ocean shore will prevent any disturbance of natural areas or vegetation on or near the ocean shore.

(e) Air and water quality of the ocean shore area.

The subsurface pipeline installation will cause no long-term air or water quality impacts to the ocean shore. Effects of the effluent discharge into the ocean are reviewed under a separate permit process by the Oregon Department of Environmental Quality.

(f) Areas of geologic interest, fossil beds, ancient forest remnants.

The area is comprised of small sand dunes at the base of a low bluff along the shoreline, and none of these features will be affected by the pipeline installation.

(g) 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.

Work on the ocean shore will be limited to subsurface boring, and will not affect vegetation within the ocean shore boundaries.

VIII. PUBLIC COMMENT

Notice of the proposed project was posted at the site for 30 days in accordance with ORS 390.650. Individual notification and a copy of the application were mailed to government agencies and individuals on OPRD's ocean shore mailing list. No requests for a public hearing were received. No comments were received in opposition to the project.

IX. Findings Summary

Project Need – The proposed ocean effluent discharge pipeline and diffuser is necessary, according to the application, to enable the Netarts Oceanside Sanitary District to replace its existing effluent discharge pipeline and eliminate the periodic discharge of treated effluent onto the ocean shore. This will provide much better dilution and greatly reduce the exposure to people recreating on the ocean shore, when compared to the existing effluent structures and current operating conditions.

Because the project will be located more than 35 feet beneath the beach level, there will be no visible encroachment on the ocean shore, and no impacts to ocean shore resources.

Based on the above considerations, OPRD finds that there is adequate justification for the project to occur on the ocean shore area.

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

Tony Stein,
Coastal Land Use Coordinator