

ORS 183.390 PETITION TO THE OREGON PARKS AND RECREATION COMMISSION TO
PROTECT MILL BEACH IN CURRY COUNTY

Petitioner, Macklyn Cove Condominium Association.

Street address is 200 Macklyn Cove Drive Units 1 through 14, Brookings, OR 97415.

Petitioners have formed an alliance to protect against risks to public health, public safety, and marine ecosystems, along Oregon’s ocean shore. Petitioners are requesting under ORS 183.390 that the Oregon Parks and Recreation Commission (“Commission”) initiate rulemaking to amend OAR 736.030-0020 “Prohibition of Camping” to protect Mill Beach similar to many other beaches.

Petitioners propose adding one new word to the current rule as shown underlined and red below:

OAR 736-030-0020

Prohibition of Camping

Overnight camping, including overnight sleeping in tents, driftwood shelters, sleeping bags, recreational vehicles, trailers or automobiles, on the ocean shore within the city limits of Cannon Beach, Lincoln City, Seaside, Newport, Bandon, Gold Beach, Brookings, Rockaway Beach and Manzanita is prohibited.

Camping is also already prohibited outside city limits in areas of Clatsop and Tillamook Counties under OAR 736-030-0095 and OAR 736-030-0100. An alternative would be to enact a new rule similar to OAR 736-030-0095 and OAR 736-030-0100 prohibiting camping in all of Curry County.

BACKGROUND

Several photos¹ of camping on Mill Beach are below:



¹ Throughout this document, faces of campers are redacted to respect their privacy.



Petitioners are the legal owner of the dry sand area between the tide and vegetation lines of some of the beachfront property (in front of the Macklyn Cove Condominiums) called “Mill Beach” located within the city limits of Brookings, Oregon and within Curry County. This property is subject to the public easement according to an unbroken custom per *State ex rel. Thornton v. Hay*, 254 Or 584, 462 P.2d 671 (1969). The public easement is controlled and regulated exclusively by the State of Oregon through the Oregon Parks and Recreation Commission. Although this property is located within the city limits of Brookings, the State (not City) controls regulation of the public easement on this beach.

Brookings owns the parking lot and street that comes down to and publicly accesses Mill Beach. In the parking lot, Brookings built a facility housing public restrooms with toilets and hand-washing sinks. However, Brookings closed these restrooms approximately six (6) years ago, and these restrooms have remained closed continuously since then due to drug paraphernalia and trash being flushed into and clogging the plumbing. Below is a picture of the gates and bolted chains evidencing closure of this restroom facility.



Petitioners are aware of no other beaches along the Oregon Coast in Curry County that claim to allow camping. The nearby Harris Beach State Park does not allow camping on the beach. Harris Beach State Park has an adjacent camping ground with sanitary facilities, including toilets, handwashing, and trash disposal, and charges a fee to camp. Chetco Point, a Brookings City Park abutting the Oregon Coast nearby, is closed from one-half hour after sunset until one-half hour before sunrise and prohibits camping pursuant to Brookings Municipal Code 12.25.010, 12.25.012, and 12.25.020(B) as quoted in relevant part below. Curry County Code, Article Six, Division Eleven, at 6.06.053(d) prohibits camping within 250 feet of the ocean and other waterways.

Petitioners request that the Commission, vested with sole authority and control to regulate public access/easement along Oregon’s Ocean Shore, make necessary OAR changes to prohibit camping on Mill Beach.

EVIDENCE OF NEED AND POTENTIAL IMPACTS

This petition to add Mill Beach within Brookings to the regulatory prohibition of camping along the Oregon shore not only aligns with statute and rule but also is necessary for the preservation of the health, safety, and welfare of the public’s easement/use of Mill Beach. Camping on Mill Beach has caused a demonstrable harm to public health, safety, and welfare, which will be alleviated by the proposed amendment. Foreseeable risks and hazards can only be alleviated by a camping prohibition on Mill Beach.

1. With the closure of the City’s necessary sanitary, restroom, and washing facilities bordering Mill Beach for the better part of the past decade, camping on Mill Beach creates a public health hazard. Campers have no choice but to urinate and defecate on Mill Beach. Below is a censored picture of a camper in the process of pulling down his pants and about to poop on the beach next to his camp. Camping cannot be healthy, safe, or sanitary without required sanitary facilities. See above photograph of chains bolting restrooms shut and closing them to the public. This public health hazard, by itself, necessitates a camping prohibition on Mill Beach.



- Inadequate trash disposal services & facilities to accommodate the waste caused by campers on Mill Beach creates an additional hazard to public health. Campers on Mill Beach have amassed loads of garbage. Historically, there have been inadequate, trash-disposal services to accommodate this waste. Given the inability by local service to dispose of and handle this trash accumulation, the burden of responsibility and expense for such trash disposal has fallen on the Oregon State Rangers at nearby Harris Beach State Park. Below and attached are pictures of State Rangers removing truckloads of trash on Mill Beach for disposal. These State Rangers are assigned to Harris Beach State Park and are unavailable, on a daily basis, to monitor and address the trash disposal requirements caused by campers on Mill Beach.



This trash accumulation includes rotting food products, broken bottles/plastics and crushed cans buried in the sand, as well as putrid refuse which expose the beachgoers on Mill Beach to illness, infestations, and stench. This causes more than a nuisance and rises to the level of a serious, health hazard to the public using Mill Beach. It also is hazardous for the marine ecosystem.



- Park employee support. Petitioners have been in contact with Adan Jones, Park Manager Harris Beach State Park, Management Unit, Oregon Parks and Recreation Department, 1655 Highway 101 N, Brookings, OR 97415, and Kelsie Bradfield, Assistant Park Ranger Harris Beach State Park. These public servants have communicated to Petitioners that they support prohibiting camping on Mill Beach. Petitioners urge the Commission to talk with on-the-ground agency staff at Harris Beach State Park about the need for this rule amendment. The Commission should also consider agency cost/time savings.

4. High tides and unpredictable, rogue waves and currents can wash campers away and threaten campers' life, health, and safety. Many campers have found their camping equipment or themselves swamped by the ocean tides, currents, and sneaker waves causing a risk of harm to both person and property. Attached and below are pictures depicting this harm on Mill Beach to camps swamped by the sea. Quite simply and clearly, it is unsafe to camp on Mill Beach. Campers face the foreseeable and already demonstrable risk of drowning while sleeping.



5. Camping on Mill Beach creates a fire hazard to public health and safety. Unattended and/or abandoned campfires cause a fire hazard. Although fires are prohibited, in reality campers on Mill Beach have invariably built camp fires on the beach for warmth and cooking and then go to sleep and/or leave without dousing the fire. Everyone is on notice that campers historically have not observed or obeyed signage prohibiting campfires. The below and attached photographs depict these smoking, unattended/abandoned campfires. Where local services have been unable to properly and timely respond to and handle the fire hazards this has caused on Mill Beach, the Oregon Park Rangers from nearby Harris Beach State Park have had to shoulder the responsibility and concomitant expense of responding to calls requesting emergency response to this fire hazard. The foreseeable risk and concomitant duty to address these fire hazards continue so long as camping is allowed on Mill Beach.

When fires are sparked in the middle of the night or very early morning, they might spread while people are sleeping/unaware of the alarm caused by unattended fires and, thus, unable to call for emergency assistance until it is too late to save persons from perishing in the fire and destruction of property burned from such campfires.



Campfires on Mill Beach not only harm public health and safety but also property surrounding the beach. The dense willows, driftwood, and severed tree trunks/logs framing the vegetation line of Mill Beach are susceptible to forest fires which can easily and quickly spread up the hillside surrounding the beach and reach the homes, residential neighborhoods, and businesses above and surrounding Mill Beach.

6. Placement of camping tents/shelters/sleeping bags or other sleeping equipment restrict public access to Mill Beach. The public cannot freely walk the beach, fly kites, play frisbee, or otherwise access the beach as they cannot traverse through a tent/shelter nor trample a sleeping bag. This is no different than erecting a fence denying public access to a portion of the beach as proscribed in *State ex rel. Thornton v. Hay*, 254 Or 584, 462 P.2d 671 (1969).
7. Illegal Activities on Mill Beach create a harm to public health, safety, and welfare. Illegal activities have been documented. For example, Petitioners have seen and taken pictures of drug users on Mill beach injecting drugs intravenously and persons indecently exposing themselves on Mill Beach.² To turn a day-use beach such as Mill Beach, into a bedlam of nefarious activity prompted by camping not only fails to serve the public interest but creates a risk to public health, safety, and welfare.
8. The proposed OPRD ban on camping at Mill Beach poses no conflict to Brookings's Municipal Codes. In fact, it would be completely consistent with Brookings' Code Section 12.25.012 (A)(1) (quoted below) prohibiting camping in each and all city parks.

The beach at Harris Beach State Park, a few meters north on Highway 101, is open only from one-half hour prior to sunset until one-half hour after sunset, making it a day-use beach. Mill Beach (like Harris Beach State Park & all City of Brookings Parks) should be day use only, closing one-half hour after sunset until one-half hour before sunrise with a prohibition against camping.

Brookings Municipal Code ("BMC") 12.25.012 prohibits camping in all City Parks in Brookings. BMC 12.25.012 entitled "Rules and regulations specific to city-owned parks" provides: "The following activities and uses are prohibited in all city parks, except by city park employees, volunteers or contractors in the performance of authorized maintenance or construction: 1. Camping . . ." (emphasis added).

9. The Oregon Coast Trail does not abut or come near to Mill Beach. This proposed amendment/enactment of a new regulation to add Mill Beach within Brookings to the Commission's regulatory list of no-camping beaches along the Oregon Shore has no effect on hikers along the Oregon Coast Trail. In Brookings, the Oregon Coast Trail follows highway 101 and abuts the City of Brookings' Azalea Park.

As Oregon Coast Trail hikers cannot camp in City Parks abutting the Trail, a like proscription of camping on Mill Beach (that does not abut the Trail) effects no change to, and actually maintains, the status quo.

² To keep this document PG, these pictures are not included. They can be provided upon request.

10. Consistency of proposed amendment with other state statutes and local government regulations. Statutes and case law recognize the public's easement and access over the ocean beaches of the state which are vested exclusively in the State of Oregon to hold and administer. *State ex rel. Thornton v. Hay*, 254 Or 584, 462 P.2d 671 (1969); ORS 390.610. In this regard, this petition for Mill Beach to be treated in the same manner (by prohibiting camping) as the other beaches along the Oregon Shore listed in OAR 736-030-0020 and OAR 736-030-0095 would manifest consistency with not only these state statutes and regulations but also with local municipal and county codes banning camping on all city parks and county beaches in the same area. As such, the proposed amendment or addition to ORPD regulation as sought herein to prohibit camping on Mill beach is consistent, not conflicting, with other comparative state law as well as Brookings municipal ordinances. After all, the Oregon Supreme Court recognized that "Ocean-front lands from the northern to the southern border of the state ought to be treated uniformly." *State ex rel. Thornton v. Hay*, 254 Or 584, 595, 462 P.2d 671, 676-77 (1969).

For further comparison, ORS 195.520 providing for camping in vehicles on property of religious institutions requires that the provider, at subsection (3), "must also provide access to sanitary facilities, including toilet, handwashing and trash disposal facilities." At Mill Beach such sanitary facilities are no longer provided and have not been so provided for more than a half decade. The absence of sanitary facilities at Mill Beach, by itself, requires a prohibition of camping. When coupled with the other demonstrated hazards to public health, safety, and welfare as detailed above, such proscription becomes more compelling, if not mandated.

11. Avoiding agency liability risks. Failing to exercise reasonable care to prevent these sorts of hazards creates unjustifiable risks to public safety for beach goers, neighbors, and campers alike. This is a liability risk for the Oregon Parks and Recreation Department. See *Mark v. State ex rel. Dep't of Fish & Wildlife*, 191 Or App 563, 573, 84 P.3d 155, 161 (2004) (citing *Mark v. Dept. of Fish and Wildlife*, 158 Or App 355, 362, 974 P.2d 716, *rev. den.*, 329 Or 479, 994 P.2d 127 (1999) (Oregon Department of Fish and Wildlife's failure to take reasonable steps to prevent offensive nudity in a wildlife area was sufficient to constitute a claim for nuisance). The agency can and should limit its own liability exposure by amending rules to prohibit camping.

12. A positive economic impact on businesses will result from the proposal. The proposed rule amendment reduces unsanitary hazards to public health and fire hazards that could destroy surrounding businesses as well as homes, and which will further obviate/reduce crime & unlawful activity. This can only benefit everyone and positively impact the health, safety, and welfare of the general public.

This proposed amendment will reduce the costs and human resources expended by the OPRD's Park Rangers to dispose of trash, put out fires, make service calls, and respond to crime at Mill Beach perpetrated by and upon campers. Technology and economic conditions all fit within the mosaic of opportunity for maximum public enjoyment of the Oregon shore to include Mill Beach and for reduced state costs to administer/handle incidents posing threats to health and safety on Mill Beach. The reality of tidal conditions, currents, epic storms, and rogue waves along the Pacific Ocean at Mill Beach, creating a perfect storm of drowning risk to campers, should be of paramount importance in banning camping on Mill Beach.

The existing rules prohibiting camping at other beaches are important and needed. The existing rules are straightforward, enforceable, and consistent with other laws and regulations. In order to further the substantive goals of the existing rules based on the evidence of problems since the existing rule's adoption highlighted by this petition, Petitioners merely ask that the rules also include one new word "Brookings" to protect public safety and marine ecosystems at Mill Beach. Alternatively, a rule similar to OAR 736-030-0095 and OAR 736-030-0100 could protect all beaches in Curry County consistent with the County Code, Brookings' Code, and the rule already protecting Gold Beach.

Petitioners urge the Commission to seek additional public comment and agency staff comment on the need for this rule amendment. Per OAR 137-001-0070(1), other interested persons are assumed to be City of Brookings (898 Elk Drive Brookings, OR 97415) and Curry County (94235 Moore Street, Gold Beach, OR 97444), as well as the Harris Beach State Park employees noted above.

Below are pictures showing a few of the many recent camps on Mill Beach:











Below are pictures showing a few more of the many times that Oregon State Rangers from nearby Harris Beach State Park have needed to clean up trash left by campers on Mill Beach:



Our firm represents Macklyn Cove Condominium Association, which is the petitioner per ORS 183.390 and ORS 183.310(8). Under OAR 137-001-0070(1), this petition is signed on behalf of our client. Macklyn Cove Condominium Association did most of the work to prepare this petition.

Yours truly,

/s/ Steve Elzinga

Steve Elzinga on behalf of Macklyn Cove Condominium Association
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