



FINDINGS OF FACT STAFF REPORT

Date: 05/13/2016

OPRD Ocean Shores Coordinator: Jay Sennewald

OPRD File Number:

#1267-15

County:

Clatsop

Applicant: Breakers Point Homeowners Association

Project Location:

The subject property is located adjacent to the Breakers Point development in Cannon Beach, and partially within common area of the development identified on Clatsop County Assessor's Map #5N-10W-19DA as tax lot 90000. The remaining portion of the project lies on land which has no assigned tax account.

Brief Project Description:

The applicant submitted an Ocean Shore Permit Application for sand alteration, to remove approximately 13,760 cubic yards of sand from the top of the dunes in front of the Breakers Point Condominiums, and deposit it in front (seaward) of the foredune in the coppice dune area. A D-8 Caterpillar or equivalent equipment would be used to move the sand, and the proposed excavation would take place in the western one-half of the foredune complex midway between 5th Street and the Ecola Creek Estuary near the south end of Chapman Beach. The area proposed for dune grading encompasses approximately 1.42 acres. The removed dune sand would be deposited in an area of approximately 180 feet by 900 feet immediately below the foredune.

The application includes a dune restoration plan prepared by Shoalwater Botanical dated June 3, 2015, and titled Dune Prairie Plant Recommendations for Breakers Point Homeowners Association. The revegetation plan includes the use of native plant materials chosen to attract native animal species such as Western snowy plovers and horned larks. The plan provides details of where native plantings would occur, the timing of planting and seeding efforts, the species of plants, and recommendations for sub-areas within the overall area to be revegetated. A copy of the plan is included in the case file record and is available for review.

The application states: "This modest grading plan (is) proposing for the first time to eliminate the use and replanting of non native European dune (sic) grass and instead test the potential to combine dune grading for view shed maintenance with the best available science for habitat development/restoration in support of ESA listed species should be supported".

dune complex as it has grown in volume. According to the submitted application materials, the dunes have grown 250-300 feet in width since the development was established in 1981.

The Horning report states that the unusual accumulation of sand and dune growth is partly a continuation of natural processes that have operated for decades to centuries along the Cannon Beach littoral cell. The report also states that the dunes may be accreting at an abnormal rate at their present location because of the introduction of European beach grass, beginning in the 1950's, which preferentially traps sand within a discrete band along the beachfront.

Since the last dune grading activities authorized under OPRD Permit #BA-596-05, the dunes have reached heights of between 37 to 43 feet in height, with some reaching 47 feet. As a result, views of the ocean and beach have been reduced or lost in some cases, causing a reduction in the value of the affected condominium units. Loss of property value is a concern of unit owners who purchased their units with the expectation that they could see the ocean or beach.

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.

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

Comments received from the Oregon Department of State Lands (DSL) indicate that although there is no tax account associated with the project area, the project does not fall on DSL property for proprietary concern. The ownership of the underlying land at the site is therefore uncertain; however, rights of the public to access the project area are not affected because of its location on the ocean shore seaward of the Statutory Line of Vegetation described in ORS 390.77. After dune grading activities have been completed, easement rights and use by the public would be relatively unaffected, and potentially improved, by the movement of sand and lowering of dune heights. This standard is met.

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

Oregon Administrative Rules 736-20-0005 to 736-20-0030, which pertain to beach construction and alterations, are addressed under this permit review. The City of Cannon Beach has determined that the project is consistent with its adopted sand management plan, which is an element of the Cannon Beach Comprehensive Plan. The Oregon Department of State lands has reviewed the proposal and determined that the request does not require a permit from that agency. All approved OPRD permits include conditions which require that all federal, state, and local laws and regulations be met prior to any dune alteration activities. This standard is met.

Alterations and Project Modifications – There are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental affects on the ocean shore, or avoid long-term cost to the public.

Dune Grading: A “no action” alternative was not considered by the applicant, because according to property owners, the dune growth has had a negative effect on property values and on ocean views from the condominium units. The applicant correctly acknowledges that Statewide Planning Goal 18 rules adopted by the Oregon Land Conservation and Development Commission prohibit removal of sand from the littoral cell, and trucking the excess sand to another location within the littoral cell would be extremely expensive. Relocation of approximately 13,760 cubic yards of sand and placing it in the coppice dune area as done in past

successful grading projects is reasonable and has proven to be a successful location for placement of the excess sand.

Sand management activities at Breakers Point are part of a city-adopted sand management plan that covers the overall Cannon Beach littoral cell. Prior to adoption of the sand management plan, methods such as remedial sand transport and dune fencing have been used, but these methods have only had limited success, and have not resulted in effective solutions to the past problems of sand inundation and blockage of views. Taking no action would allow the problems associated with dune growth to increase. OPRD finds that the continued program of sand grading and stabilization is the most appropriate alternative in sand dune management at this location.

Dune Stabilization: The previously authorized dune grading projects adjacent to Breakers Point have included provisions for fast and effective dune stabilization by replanting the affected area(s) with European beach grass. The current proposal differs significantly from previous proposals at this location, because post-grading treatment to the graded area would not include replanting with European beach grass. Instead, the applicant proposes to restore the graded area with native vegetation as described in the submitted Dune Prairie Plant Community / ESA Listed Species Recovery Restoration Plan. This current proposal constitutes an experiment which represents a significant departure from accepted and proven methods of post-grading dune treatment and stabilization.

Because the proposed area to be graded is fairly large, at 1.42 acres in size, there is potential for blowing sand to affect areas beyond the project boundary. The Horning report states that properties downwind from the excavated area will be at elevated risk of sand inundation, and that sand will possibly blow northeastward into areas that recently have not received annual sand invasions. Horning further states that sand may be able to reach the lawn areas adjacent to the condominiums, and that homeowners located northeast (downwind) will experience at least a modest increase of sand influx over the next few years. The application states that mulching of the graded area will be employed to reduce sand movement, and the area to the north will be maintained in dense (beach) grass until the next grading project, in order to minimize the potential for blowing sand. However, in December of 2015 a large area between the project site and 5th Street was graded by the City of Cannon Beach without authorization and the once-dense stand of beach grass at that location has been removed in violation of ocean shore regulations. As a result, a portion of the dunes located northeast of the project area have been modified and no longer contain the dense dune grass cover identified in the Horning report as available to minimize the potential for blowing sand.

In addition, the dune restoration report acknowledges that Roosevelt elk are very common in the dunes adjacent to the condominiums, and they regularly visit and trample this area while moving between Ecola State Park and Ecola Creek. The plan also states that elk are capable of pulling up newly installed plants and seedlings, so it makes recommendations to construct exclusionary fencing to avoid damage to the newly planted areas and ensure successful plant growth. However, the application materials state explicitly that no fencing is proposed due to conflicts with rights of the public for access to the ocean shore. Therefore, the presence of elk in the project area is likely to disrupt dune restoration efforts and damage sensitive native seedlings and plant starts.

The applicant states: "we are limited in the amount of native seed and native plant starts available and as the plan notes in the attached figure we will focus first on the core areas identified for ease of monitoring and to test the effectiveness of sowing native seed in both a windward and more leeward setting post dune grading". The plan does not provide for aggressive and robust replanting efforts in the disturbed area.

The applicant acknowledges that the proposed planting plan is experimental and offers no assurances that an alternative approach would be employed if the experiment fails, nor mitigation for sand incursion to downwind properties, which is expected, if the planting plan fails.

Based on the above considerations, the application has not established that the proposal to restore the dunes with native plant species will stabilize the disturbed areas, and blowing sand from the project may have detrimental effects on the ocean shore. Staff finds that this standard is not 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 structural components proposed for the project. There are no significant public costs for the project itself, as the applicants would pay for all costs associated with dune grading, vegetative planting and monitoring. 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.

For the purposes of this report, OPRD has reviewed the project against the following goals, pursuant to OAR 736-020-0010(6):

- a. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources:** The Ocean Shore Permit standards evaluated in this report address standards for protection of natural, scenic, and historic resources. The proposed project does not adversely affect identified open space areas, significant scenic views, historical or cultural sites, fish and wildlife habitat, aggregate sites, or other resources listed in Goal 5. The project instead would transfer sand from the foredune to the beach/dune interface to alleviate the problems of view obstruction and reduced property values.
- b. Goal 17, Coastal Shorelands:** The proposed project will not impact coastal shoreland resources or adjacent waterways, wetlands, or riparian vegetation. There are no wetlands within the project area.
- c. Goal 18, Beaches and Dunes:** The purpose of Statewide Planning Goal 18, Beaches and Dunes, is to conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dunes areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas. Fore-dune grading plans are addressed in Goal 18, with emphasis on the need for planning to take place on an area-wide basis rather than a lot-by-lot approach. Guidelines include the identification of appropriate measures for stabilization, avoiding or minimizing adverse effects on adjoining properties, and identifying appropriate sites for public and emergency access to the beach. The sand management plan adopted by Cannon Beach has been acknowledged by the Department of Land Conservation and Development, and the City has determined that the proposal is consistent with its comprehensive plan and zoning ordinance. However, as identified above, the proposal has not established that the proposed dune restoration efforts will result in effective dune stabilization, and therefore the potential exists for adverse effects from blowing sand.
- d. Goal 19, Ocean Resources:** The proposed project will involve the transport of sand and vegetation seaward from the existing dune crest. During extreme high tides and storm surges, wave action will disperse some of the material into the surf zone and within the littoral cell. There will be no direct introduction of material to open ocean waters, and no impacts to ocean resources are anticipated.

Based on the finding in item 'c' above, this standard is not met.

II. SCENIC STANDARDS, OAR 736-020-0015

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

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

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

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

The project site vegetation is dominated by European beach grass, a non-native species introduced in the 1950's. Introduction of European beach grass is responsible for successional changes in Oregon's coastal dune ecosystem which have modified the ocean shore landscape and scenic values. European beach grass has aggressively replaced the native American beach grass along virtually all dune-backed beaches on the Oregon coast.

The submitted plan calls for portions of the graded areas to be replanted with a variety of native plant species identified in the application's dune restoration plan. The applicant states that there is a limited amount of native seed and plant starts available, which will prolong the time frame necessary to effectively restore vegetation in the graded dune area. In addition, the newly planted areas would require monitoring by consultants for a period of 3 years to ensure success of revegetation. The revegetation plan is admittedly experimental, yet offers no alternative assurances or mitigation options should procurement of planting materials prove inadequate or if the experimental plantings fail. This approach is untested, with no certainties provided to guarantee the adequate restoration of vegetation, therefore this standard is not met.

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

The project will serve to protect or in many cases enhance ocean views for the residents in the Breakers Point Condominium development. This standard is met.

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

As indicated above, there is a limited amount of native plants and seed stock available to quickly re-establish dense dune cover and the application has not established that replanting efforts will be successful. In the event that the replanting effort is not successful, the resulting landscape will not blend in with existing shoreline scenery. This standard is not 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.

Currently, the project area is available for the free and interrupted use by the public for recreational purposes. According to the submitted application, restoration of the dune is intended to invite occupation of the site by native animal species including Western snowy plovers and streaked horned larks. However, this area is not identified in the OPRD Habitat Conservation Plan (HCP) for Western snowy plovers, and the high volume of recreational activity by the public in this area will likely conflict with the type of environment attractive to Western snowy plovers for nesting and reproduction.

The dune restoration plan recommends the placement of exclusionary fencing to prevent disturbance of the replanted area by humans and dogs, and wild elk which use the dune complex as habitat. However, the details of the ocean shore permit application indicate that fencing is not proposed. Instead, the applicant proposes to place signs around the restoration area which would discourage pedestrian use that could damage the sensitive native plants and seedlings.

Because exclusionary fencing recommended in the dune restoration plan is not proposed for implementation, and recreational use of the ocean shore would still be permitted, staff finds 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.

Currently, no federally listed species is present at the site. In addition, the site is not identified in the Western Snowy Plover Habitat Conservation Plan as a potential but inactive nesting site. Because no physical obstructions to recreation access are proposed, this standard is met.

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.

The proposal does not include any structural components; therefore this standard is not applicable.

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

The grading and redistribution of sand, once completed, will not create obstructions to pedestrians or vehicles. Sand moved out onto the beach will be quickly re-distributed by wind and extreme high tides. The proposed project would modify the steep and tall dunes which currently present difficulty to pedestrian use and result in a flatter, more pedestrian-friendly environment. This standard is met.

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

Dune grading plans require dune crest elevations sufficient to provide flood and erosion protection (FEMA Base Flood Elevation plus 4 feet). Cross-sections submitted in the application reflect that the graded dunes will meet minimum dune profiles intended to provide protection from these identified hazards. Dune grading

projects are also required under Statewide Planning Goal 5 to provide for stabilization of disturbed areas after grading activities are completed, because well stabilized dunes offer greater protection from erosion and flooding.

The submitted dune restoration plan calls for planting and seeding the area with native plant species. Application materials indicate that a robust planting and seeding schedule to quickly revegetate and stabilize the disturbed area is not proposed. Instead, much of the graded area would be left open and sparsely vegetated for an extended period of time. This approach will likely result in a much less stable dune environment, therefore the project is not designed to minimize the potential problems of ocean erosion and flooding. This standard is not met.

Property Protection – Beachfront property protection projects shall be designed to accomplish a reasonable degree of increased safety for the on-shore property to be protected.

The project does not include a shoreline protection structure such as a seawall, bulkhead, or riprap; 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.

It is important to note that the application materials include a letter from the U.S Fish and Wildlife Service which endorses the proposed dune restoration plan. No protected species, fish, or wildlife habitats have been identified at the site of the proposed project. This standard is met.

Estuarine values and navigation interests.

Estuarine values and navigation interests are sufficiently protected by other state and federal agencies through a separate permitting process. The project will be located over 400 feet to the north of the Ecola Creek estuary, and the excess sand would be deposited above the high tide line of the Pacific Ocean. No detrimental effect on the estuary or navigable waters is likely to occur as a result of the proposed project. Staff finds that this standard is met.

Historic, cultural and archeological sites.

Notice of the application was provided to the State Historic Preservation Office (SHPO), the Confederated Tribes of Siletz, and the Confederated Tribes of Grand Ronde. There were no reports of historic, cultural, or archeological sites at this location. This standard is met.

Natural areas (vegetation or aquatic features).

The project site's vegetation is dominated by European beach grass, a non-native species introduced in the 1950's. European beach grass is responsible for successional changes in Oregon's coastal dune ecosystems and has modified the natural flora and fauna. The project need is based in part on the growth in dune height resulting from the proliferation of the dense beach grass.

The project area is not subject to any special designation as a protected natural area under the Statewide Planning Goals or by the City of Cannon Beach. In addition, the project does not include the direct deposition

of sand into aquatic areas, and would not impact any protected aquatic features such as tide pools or sea stacks. This standard is met.

Air and water quality of the ocean shore area.

The proposed dune restoration plan includes the import of mulch and biochar into the graded area. There is potential for nutrient-rich organic matter to impact water quality at the site and in the immediate area surrounding the project. Potentially adverse effects on water quality of the ocean shore may result from the proposed project, although insufficient details of the dune restoration plan are provided in order to make a positive finding for this standard.

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

No areas of geologic interest, fossil beds, or ancient forest remnants are known to occur at the project site. 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.

The proposed project provides a detailed plan to re-introduce a native plant community to the graded area. However, this approach is not mandatory and not necessary to protect existing plant communities or fish and wildlife habitat at or near the site. This standard is met.

VI. 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. In addition, notice of the application including a complete copy of the application materials was placed on OPRD's website. During the comment period, 15 written requests for a public hearing were received.

Notice of the public hearing was posted for an additional 30 days and a public hearing was held at Cannon Beach City Hall on March 29, 2016. 26 individuals attended the public hearing and of those, 10 persons provided oral testimony which split evenly between proponents and opponents of the request. After the close of the hearing the record was held open for an additional 7 days, for the submittal of final written arguments and rebuttal to testimony given at the hearing.

Testimony from proponents included comments regarding the desire for ocean view and restoration of property values, the potential fire hazard presented by European beach grass, public safety related to steepness of dunes and lack of visibility in interdune areas, the benefits of dune habitat restoration, and precedent of prior dune grading approvals in Cannon Beach.

Testimony from opponents included comments that the Cannon Beach dune management plan is outdated and should not be applicable. Other comments included concerns over visual impacts (with photographic documentation of previous dune grading projects), public safety concerns regarding a reduction of protection from flooding and erosion, the potential for blowing sand, and lack of stabilization of the dunes resulting from implementation of the dune restoration plan after grading has been completed.

All testimony, whether written or oral, is included in the case file record and is available for review upon request.

VII. Findings Summary

1. The proposed project is unprecedented on Oregon’s ocean shore because it involves an experimental effort to replant the impacted area with native plant species. In this effort, there is uncertainty to the outcome and success of the proposed dune restoration plan.
2. Dune stabilization is an extremely important component of dune grading projects, and the proposal has not established that the area disturbed by dune grading can be quickly and effectively stabilized through implementation of the proposed dune restoration plan.
3. The department considered public opinion pursuant to OAR 736-020-0005(2) in the evaluation of the proposal. Except for members of the Breakers Point Homeowners Association and their consultants, most testimony was in opposition to the request.

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 type="checkbox"/>	<input checked="" type="checkbox"/>
Alteration and Project Modifications	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>
Compatibility with Surroundings	<input type="checkbox"/>	<input checked="" 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"/>			

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

Jay Sennewald
 Ocean Shores Coordinator