MEMORANDUM

TO: Honorable Mayor and Cannon Beach Council
FROM: Land Use City Attorney, William K. Kabeiseman
DATE: November 8, 2019
RE: Need for a Foredune Management Plan

INTRODUCTION

The City of Cannon Beach (the “City”) is in the process of revising its Comprehensive Plan, including the City’s current Foredune Management Plan, and land use regulations regarding foredune grading. An issue has arisen regarding whether a Foredune Management Plan is required if the City allows “only ‘remedial grading’ for structures inundated by the movement of sand and ‘preservation grading’ for blow-outs, erosion and to maintain public access.” As discussed further below, there is not a definitive answer to this question in Oregon law.

BACKGROUND

Statewide Planning Goal 18 regulates “Beaches and Dunes” in the state; the Goal itself is stated as follows:

“To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

“To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”

The Goal goes on to impose certain requirements and obligations on jurisdictions, such as the City, that contain beaches and dunes.

The first requirement is to inventory the resources on the beach, including identifying and designating beach and dune areas, including foredune areas. The Goal goes on to discuss what uses are allowed

1 The Goals identify three different types of foredunes:
and prohibited in the beaches and dunes. For example, Implementation Requirement 2 requires cities and counties to “prohibit residential developments and commercial and industrial buildings on beaches, active foredunes” and other foredunes. Similarly, Implementation Requirement 5 prohibits “beachfront protective structures” (i.e., riprap or other hard erosion preventing structures) for development that occurred after January 1, 1977.

Grading and sand movement on foredune areas is addressed by Implementation Requirement 7:

“7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if the area is committed to development or is within an acknowledged urban growth boundary and only as part of an overall plan for managing foredune grading. . .”

Importantly, nothing in Goal 18 or Implementation Requirement 7 requires the City to allow foredune grading or sand movement; it simply addresses the requirements should a city or county decide to allow this activity in the foredune areas. However, if foredune grading is allowed, it must be done pursuant to a plan and, as required later in Implementation Requirement 7, that plan must “cover an entire beach and foredune area subject to an accretion problem.” In addition, the plan must include “adjacent areas potentially affected by the changes in flooding, erosion or accretion as a result of dune grading” and specify certain standards and priorities.

The Guidelines for Goal 18 go on to set further requirements for foredune grading plans:

“H. FOREDUNE GRADING PLANS

“Plans which allow foredune grading should be based on clear consideration of the fragility and ever-changing nature of the foredune and its importance for protection from flooding and erosion. Foredune grading needs to be planned for on an area-wide basis because the geologic processes of flooding, erosion, sand movement, wind patterns, and littoral drift affect entire stretches of shoreline. Dune grading cannot be carried out effectively on a lot-by-lot basis because of these areawide processes and the off-site effects of changes to the dunes.”

Guideline H does not distinguish between types of foredunes or reasons for the dune grading, but does note that foredune grading “needs to be planned for on an area-wide basis” and states that “dune grading cannot be carried out effectively on a lot-by-lot basis.”

“FOREDUNE, ACTIVE. An unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits. Active foredunes may include areas with beach grass and occur in sand spits and at river mouths as well as elsewhere.

“FOREDUNE, CONDITIONALLY STABLE. An active foredune that has ceased growing in height and that has become conditionally stable with regard to wind erosion.

“FOREDUNE, OLDER. A conditionally stable foredune that has become wind stabilized by diverse vegetation and soil development.”
DISCUSSION

As noted above, foredune grading is generally permissive under Goal 18; i.e., the City may allow foredune grading, but is not required to allow it. The specific provision allowing for foredune grading is Implementation Requirement 7, but its opening sentence appears to only address “grading necessary to maintain views or to prevent sand inundation” and it goes on to state that a foredune management plan is required when that activity occurs.

The opening sentence of Implementation Requirement 7 could be read to say that foredune management plan is only needed when those two types of grading are allowed and, absent grading for views or to prevent sand inundation, there is no need for a foredune management plan. However, there is other context in the Goal that suggests otherwise. In particular, Guideline H provides guidance about plans that allow foredune grading and that guideline states that “foredune grading needs to be planned for on an area-wide basis” and that “dune grading cannot be carried out effectively on a lot-by-lot basis.” That context suggests that any time a foredune is graded, it must be pursuant to a plan that addresses the entire area and that no dune grading should occur in an ad hoc manner.

Neither LCDC or DLCD has published further guidance on this issue and it has not been the subject to a case before LUBA or the courts, so there is no definitive resolution of this issue. However, a foredune management plan can be adopted whether the City chooses to allow extensive dune grading or none at all. If the City were to largely prohibit dune grading, it could still adopt a foredune management plan to address the very limited grading that would be allowed and avoid a potential appeal of the City’s action.

In practical terms, there is no downside to adopting a foredune management plan if only to explain the City’s choice to keep the status quo in the dunes and limit dune grading. If the City were to allow some form of dune grading and not have a foredune management plan, it would be a potential issue that could be raised in an appeal; by adopting a foredune management plan it would eliminate that potential issue.

CONCLUSION

There is no definitive answer on whether a foredune management plan would be required if grading were limited to “only ‘remedial grading’ for structures inundated by the movement of sand and ‘preservation grading’ for blow-outs, erosion and to maintain public access.” It does not appear that this issue has arisen previously. There is a good argument that, if the City significantly limits grading, then no foredune management plan would be required; however, that argument could be inconsistent with other provisions of Goal 18 and may prove problematic. To the extent the City allows any dune grading at all, no matter how limited, adopting a foredune management plan would prevent having to address this issue at all.