October 1, 2019

VIA EMAIL DICK@CI.CANNON-BEACH.OR.US AND VIA CERTIFIED MAIL TO CITY HALL/FOREDUNE, PO BOX 368, CANNON BEACH, OR 97110

Cannon Beach City Council
163 E. Gower Avenue
Cannon Beach, OR 97110

Re: Testimony for October 7, 2019 City Council Hearing on ZO 18-01, CP 18-01 Cannon Beach Request for Comprehensive Plan and Zoning Ordinance Text Amendments Regarding the Foredune Management Plan

Dear Mayor Steidel and Members of the City Council:

Please include this testimony in the record of the above-referenced proceeding and provide us notice of the final decision.

1. Property Location

Our clients, 564 Oak Street II, LLC and Cannon Beach LLC, own properties in Cannon Beach that are located in the “Chapman Point Dune Management Region” identified on Figure 33 of Council’s Exhibit A-1, Beach and Shoreline Dynamics in Cannon Beach Littoral Cell: Implications for Dune Management; “Allan Report;” Final Addition (the “Allan Report”).1 Figure 33 is attached as Exhibit 1 for your convenience.

The properties are:

- 564 Oak Street, Cannon Beach – Chapman Point Lots 13 and 14, outlined in blue on the attached map. Exhibit 2, annotated Figure 3 of FMP.
- 528 Ash Street, Cannon Beach – This lot is not included in the Chapman Point subdivision, and is outlined in red on the attached map. Exhibit 2, annotated Figure 3 of FMP.

Collectively, we refer to these areas as the “Properties,” and when described individually, we refer to the property by its address.

1The Allan Report is included as Exhibit A-1 in the City Council’s packet, and can be accessed at https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/28011/sp-49.pdf.
2. **Summary of Request**

We support the City’s efforts to update its foredune management policies based upon current data and science, but some additional changes are needed so that the proposal complies with state law. We request that the City amend the FMP and proposed Comprehensive Plan amendments so that the Chapman Point Dune Management Region is included in the Breakers Point Sand Management Area.  

Without the requested amendment, the City’s proposal does not comply with Goal 18 or the City’s Comprehensive Plan Policies, and it is not supported by an adequate factual base. The entirety of the Chapman Point Dune Management Region experiences the most significant sand accretion in the Cannon Beach littoral cell, so if the City adopts a foredune management plan, its geographic range must include all of the Chapman Point Dune Management Region.

The condition of approval and plat note on the Chapman Point subdivision which provide that “foredune grading for view enhancement shall be prohibited” is irrelevant to, and should not influence, the City’s proposal. Inclusion of the Chapman Point Dune Management Region within the scope of the FMP and proposed Comprehensive Plan amendments will not negate or override any restrictions set forth in the subdivision approval and final plat. Foredune grading in the Chapman Point subdivision would be allowed only if several subsequent approvals are obtained. The existing restrictions and possibility of future approvals should not affect the City’s long term foredune management planning effort and there is no reason to exclude the Chapman Point Dune Management Region from those efforts. Furthermore, the 528 Ash Street property is outside of the Chapman Point subdivision and not subject to any such condition of approval or plat note, yet it not included in the Breakers Point Sand Management Area.

3. **Background and Summary of City Documents Under Consideration**

a. **Allan Report**

The Allan Report is authored by the Oregon Department of Geology and Mineral Industries (DOGAMI) and is a scientific background report upon which the proposed Comprehensive Plan and Zoning Ordinance Text Amendments and Foredune Management Plan are based.

Cannon Beach is a single littoral cell, which the Allan Report divides into 10 subregions in order to analyze areas of sand accretion and areas erosion analysis. The unrefuted scientific evidence is that the Chapman Point Dune Management Region, which is where the Properties are located,
has experienced the most significant sand accretion and increased dune height in the littoral cell. The volume of sand accreted in Chapman Point is almost 10x greater than the next largest increase seen in another subarea, and the height of the dunes near the Properties increased 3 to 4 m (9.8 to 13.1 ft) during the 1997 to 2001 and 2009 to 2016 measurement terms. See Allan Report Table 5 (attached as Exhibit 3) and Figures 35 and 36. The Allan Report summarizes the situation as:

“Large positive sediment gains have occurred in all areas north of Tolovana Park, with the largest accumulation having occurred north of Ecola Creek in the Chapman Point dune management region. This region alone has accumulated ~225,080 m³ (294,390 yards³) of sediment since 1997.” Allan Report, 1 (emphasis added).

Foredune management is a tool that accomplishes several goals, including (1) sustaining adequate sand volume to provide erosion and storm protection; (2) maintain weak points in the dune system and increase stability; (3) providing habitat for a wide range of plants and animals; and (4) maintain views of the ocean, “particularly [in] areas undergoing rapid vertical growth and backed by properties behind the dunes such as at Chapman Point.” Allan Report, 68.

The Allan Report concluded that:

“In response to the large amount of sand buildup [and presence of European beach grass which has contributed to vertical dune buildup], the City of Cannon Beach initiated a process to evaluate their existing dune management plan on the basis of updated scientific information on physical processes and coastal geomorphology occurring along the Cannon Beach littoral cell. The overarching objective is to use the updated information to help establish new guidelines for the relocation of excess sand that periodically builds up along the coastline. This buildup of sand within the dunes is presently affecting the views of local residents, while sand blowing inland has become a nuisance, migrating where it has begun to inundate buildings and properties.”

Allan Report, 78.

b. Cannon Beach Foredune Management Plan (the “FMP”)³

The FMP builds upon the Allan Report to update the City’s foredune management plan and was “written based on a consideration of the factors affecting the stability of the shoreline and includes sand management directions within each portion of the City’s foredune area.” FMP,

³ See Exhibit A-2 in the City Council’s packet, City of Cannon Beach Foredune Management Plan (2018), which can be accessed at https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/28011/attachment-b-foredune-management-plan-cc-clean.pdf
Preface. The goals of foredune management in the FMP reflect and elaborate upon those identified in the Allan Report. FMP, 1.

The FMP is “focused on measures to temporarily reduce view impacts without sacrificing the erosion and flood hazard mitigation benefits provided by the foredunes.” FMP, 2. Accordingly, the overall strategy of the FMP is the “plan includes limited foredune grading in areas where growth in the height of the foredune area has continued on a regular basis. In eroded foredune areas, provisions are made for nourishment through bypassing or backpassing.” FMP, 2.

Despite the stated focus and strategy of the FMP, the entirety of the Chapman Point Dune Management Region, the subarea of the littoral cell that is most impacted by sand accretion and vertical dune building up, is not included in the FMP. The FMP includes four “Management Unit Strategies.” The furthest north is the “Breakers Point Sand Management Area.” FMP, 13-15. Figure 3 of the FMP illustrates the geographic scope of the Breakers Point Sand Management Area, which does not include the properties between the Breakers Point and Chapman Point subdivisions (specifically, 524 Ash Street and 528 Ash Street), nor 564 Oak Street or any area adjacent to the Chapman Point subdivision. See Exhibit 2. No explanation is provided for excluding the northern portion of the Chapman Point Dune Management Region that was analyzed in the Allan Report, although the entirety of the Chapman Point Dune Management Region was determined to be a foredune area subject to an accretion problem.

c. Comprehensive Plan\(^4\) and Zoning Ordinance\(^5\)

In order to adopt the FMP, the City’s Comprehensive Plan and Zoning Ordinance must be amended. The five objectives of foredune management identified in the FMP are included in the proposed Comprehensive Plan amendments, including “to maintain dunes at a particular height by dune scraping in order to retain views of the ocean and to minimize sand blowing inland among properties where it can become an expensive nuisance.” Sand Dune Construction and Foredune Management Policies, Policy 14, emphasis added. Despite this objective, like the FMP, the draft Comprehensive Plan excludes the northern portion of the Chapman Point Dune Management Region from the Breakers Point sand management area without explanation. See, for example, Sand Dune Construction and Foredune Management Policies, Policy 10.

Excluding the northern portion of the Chapman Point Dune Management Region from the Comprehensive Plan and FMP, despite it being a foredune area subject to an accretion problem,

\(^4\) The draft Comprehensive Plan amendments recommended by the Planning Commission are dated 12/3/2018, are included as Exhibit A-3 in the City Council’s packet, and can be accessed at [https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/28011/attachment-c-comp-plan-policies.pdf](https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/28011/attachment-c-comp-plan-policies.pdf)

\(^5\) The draft Zoning Ordinance amendments recommended by the Planning Commission are dated 11/20/2018, are included as Exhibit A-4 in the City Council’s packet, and can be accessed at [https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/28011/attachment-d-zoning-ordinance-amendments.pdf](https://www.ci.cannon-beach.or.us/sites/default/files/fileattachments/planning/page/28011/attachment-d-zoning-ordinance-amendments.pdf)
is significant because the proposed code allows foredune grading to “maintain views or to prevent sand inundation” only if the area is included in the FMP and Comprehensive Plan. ZOCB 17.42.060.A.3, emphasis added.

4. Chapman Point Subdivision Background

The nineteen lot Chapman Point subdivision (Sub 94-03; App 95-03) was filed in 1994 and approved on May 17, 1995. The final plat was recorded in two phases. The preliminary plat approval included condition of approval 21, which provides, “foredune grading for view enhancement shall be prohibited.” The condition is reflected in an identical required final plat note on both phases of the subdivision. Chapman Point’s CC&R's, which are a private contract, are silent about foredune grading.

In 2014, the Chapman Point subdivision’s homeowner’s association filed an application to modify the prior subdivision approval and final plat to eliminate condition of approval 21 and the related plat note (SUB 14-01). The Planning Commission tentatively voted to deny the modification request and the application was withdrawn. While there is no final land use decision on the modification request, the information in modification application’s staff report is informative. Planning staff’s May 22, 2014 staff report, attached as Exhibit 4, details (a) the many processes that must occur in order for foredune grading to be allowed; (b) an explanation of why condition of approval 21 and the plat note were required at the time the subdivision was approved; and (c) the modification application’s compliance with all applicable approval criteria.

a. The many processes that must occur in order for foredune grading to be allowed

Page 2 of the May 22, 2014 staff report describes the impact of the “current proposal” to modify condition of approval 21 and the plat notes as not allowing grading at Chapman Point. Instead, the following steps were needed in order for grading to be allowed:
Those prerequisites to grading adjacent to the Chapman Point subdivision are still applicable. The only difference since May 2014 that the City is currently considering amending the Goal 18 element of the Comprehensive Plan (and implementing amendments to the Zoning Ordinance) related to dune grading; step 3 in the above summary. As drafted, the proposed amendments do not include the Chapman Point Dune Management Region. If the Comprehensive Plan amendment is revised to include the Chapman Point Dune Management area, as we request, grading would not be allowed at Chapman Point. The other approval steps (amending the subdivision, modifying the plat, gaining City approval of dune grading and obtaining all other agency approvals) would still be required.

b. Explanation of why condition of approval 21 and the plat note were required

Page 6 of the May 22, 2014 staff report quotes all of the findings from the original Chapman Point subdivision approval (94-03) related to foredune grading. Those findings explain that condition 21 and the plat note were imposed to ensure compliance with approval criteria related to flood hazards, and were consistent with the subdivision application’s 1994 Peratrovich, Nottingham & Drage report on dune erosion and dune overtopping (the “PND report”).

The findings describe the limitation as including “no manmade alteration to the sand dunes” “during the construction of the subdivision and individual homes.” The conditions of approval and findings do not address view maintenance; only view enhancement. The conditions and findings also do not anticipate, or address sand accretion or vertical dune buildup that far exceeds flood elevation lines.
c. The application’s compliance with all applicable approval criteria

The May 22, 2014 staff report provides a detailed analysis of all applicable approval criteria and finds that they are all met. When analyzing the 1995 rationale for imposing condition 21, staff concludes that the findings at that time supported the condition. The reliability or appropriateness of condition 21 to address flood concerns is questioned, however, by staff because:

The conclusions that can be drawn today from the PND report are limited. The report is nearly twenty years old. The condition of the beach has changed, and technical knowledge of beach erosion and accretion processes have substantially increased.

5. Proposal’s Legal Deficiencies

The proposed amendments to the Comprehensive Plan, including the adoption of the FMP, must be consistent with the Statewide Planning Goals and the City’s Comprehensive Plan policies. Excluding portions of the Chapman Point Dune Management Region from the FMP and Comprehensive Plan violates Goal 18 and Comprehensive Plan Sand Dune Construction Existing Policy 6 and Proposed Policies 9 and 10a. Chapman Point subdivision’s prior condition of approval and plat note are irrelevant to, and not affected by, the City’s long range foredune management planning effort.

a. Goal 18/Comprehensive Plan Sand Dune Construction, Existing Policy 6 and Proposed Policies 9 and 10a

Goal 18 establishes specific requirements for foredune management plans in Implementation Requirement 7 and Guideline H, which the City implements through its Comprehensive Plan Sand Dune Construction Policies. As relevant here, the Goal, Implementation Requirement and Guideline provide (emphasis added):

Goal 18: Beaches and Dunes

* * *

Implementation Requirement 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. A foredune grading plan shall include the following elements based on consideration of factors affecting the
stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

(a) Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;

* * *

Guideline 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. Plans should also address in detail the findings specified in Implementation Requirement (1) of this Goal with special emphasis placed on the following:

- Identification of appropriate measures for stabilization of graded areas and areas of deposition, including use of fire-resistant vegetation;
- Avoiding or minimizing grading or deposition which could adversely affect surrounding properties by changing wind, ocean erosion, or flooding patterns;
- Identifying appropriate sites for public and emergency access to the beach.

Similarly, Proposed Comprehensive Plan Sand Dune Construction Policies 9 and 10a, as recommended by the Planning Commission, provide (italicized emphasis added, underlined and strikeout text reflects Planning Commission’s 12/3/18 redline):

9. Foredune Management: 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. The City’s foredune management plan covers all foredunes, from the south city limits to the north city limits.

---

6 The existing Comprehensive Plan Sand Dune Construction Policy 6a is proposed to be amended by dividing it into proposed Policies 9 and 10 adding some text. The portion of the policy that requires a foredune grading plan to “cover an entire beach and foredune area subject to an accretion problem,” is not altered by the proposal, and is verbatim to Goal 18, Implementation Requirement 7. The provisions of the Comprehensive Plan quoted in this section are as recommended by the Planning Commission on 12/3/18.
The plan allows grading to maintain views in the Presidential Streets sand management area, and in the Breakers Point sand management area, as shown on the maps with these names. Grading to maintain views outside of these two areas may be allowed subject to a Comprehensive Plan amendment.

10. Foredune Management: A foredune grading plan must be adopted as a Comprehensive Plan Amendment prior to permitting foredune grading outside of the Breakers Point sand management area or the Presidential Streets sand management area. The foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

a. Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading

Goal 18 and the Comprehensive Plan’s existing and proposed Sand Dune Construction Policies require that if a foredune grading plan is adopted that allows for the maintenance of views and prevention of sand inundation, it is mandatory that the plan include the “entire beach and foredune area subject to an accretion problem,” because piecemeal management is ineffective. Proposed Comprehensive Plan Policy 9 requires an even more expansive geographic reach, and requires the FMP to include all foredunes within the City.

The FMP and implementing Comprehensive Plan and Zoning Ordinance do not comply with the mandatory elements of Goal 18, Implementation Measure 7(a) because they exclude a portion of the Chapman Point Dune Management Region, notwithstanding the fact that the Allan Report and other evidence in the record indisputably demonstrate that the entire area is subject to an accretion problem. Simply put, the Allan Report establishes that the entirety of the Chapman Point Dune Management Region experiences the most significant sand accretion in the Cannon Beach littoral cell, so if the City adopts a foredune management plan, its geographic range must include all of the Chapman Point Dune Management Region. Moreover, the City’s Comprehensive Plan requires the FMP to include all foredunes in the City, including those in Chapman Point. Not only does the City’s proposed FMP and Comprehensive Plan amendments fail to comply with the applicable law, but excluding a portion of Chapman Point Dune Management Region is not supported by findings, substantial evidence or an adequate factual base.

Based upon the Allan Report and other evidence in the record, the only way for the FMP, Comprehensive Plan and Zoning Ordinance to comply with Goal 18 and the City’s
Comprehensive Plan is to include all of the Chapman Point Dune Management Region into the Breakers Point Sand Management Area.

b. The Chapman Point subdivision condition of approval and plat note are not bases for excluding the Chapman Point Dune Management Region

Chapman Point’s decades old condition and plat note that “foredune grading for view enhancement shall be prohibited” is irrelevant to the City’s current long-range planning effort and do not provide a rationale for excluding the Chapman Point Dune Management Region from the FMP and Comprehensive Plan amendments.

i. Legislative actions cannot be limited by prior conditions of approval

The proposal before the City is legislative, which is the process whereby the City evaluates and amends its policies as part of a long-range planning effort that applies to a large geographic area. The City’s legislative decision is not bound by prior quasi-judicial approvals or conditions, and prior approvals and conditions cannot be relied upon to avoid compliance with applicable approval criteria such as Goal 18.

If the FMP and Comprehensive Plan are amended to include the Chapman Point Dune Management Region, as required by Goal 18, the Chapman Point subdivision will remain subject to condition 21 and the plat note. The amendments under consideration simply update the City’s fordune management plan and policies to reflect current data and science, and our request applies those updates to the entire beach and fordune area subject to an accretion problem. In order for fordune grading to occur adjacent to the Chapman Point subdivision, the other permitting steps detailed in section 4.a of this letter would still be required.

ii. Foredune grading is for purposes unrelated to views, and view enhancement is different than view maintenance

Condition 21 and the plat note provide that “foredune grading for view enhancement shall be prohibited.” Goal 18, the FMP, and related Comprehensive Plan amendments allow fordune grading for multiple reasons, such as sustaining adequate sand volume to provide erosion and storm protection and maintaining weak points in the dune system and increase stability. Maintaining views of the ocean is a “secondary benefit.” Allan Report, 68. Therefore, fordune grading can be pursued for reasons other than view maintenance.

Foredune grading in Condition 21 and grading pursuant to Goal 18 are directed at different activities. The condition relates to enhancement, whereas Goal 18 relates to maintenance. Specifically, the precise terms used in condition 21 and the final plat (“view enhancement”) as compared to Goal 18, Implementation Measure 7, the FMP, Comprehensive Plan Sand Dune
Construction Policies 7, 9 and 14 and ZOCB 17.42.060.A.3 (“maintain views,” “retain views” or “retain or restore views”) are material and distinct. An ocean view is enhanced when it is improved over the baseline condition. Maintaining, retaining and restoring an ocean view means returning a dune to its prior shape or height.

Chapman Point subdivision condition 21 and the final plat note limit only grading for view enhancement. Goal 18, the FMP and related Comprehensive Plan amendments address grading activities associated with view maintenance and non-view related objectives. View enhancement is not permitted by Goal 18, the FMP and related Comprehensive Plan amendments, so condition 21 and the final plat note are not relevant to the City’s proposal.

iii. Portions of the Chapman Point Dune Management Region are not subject to Chapman Point condition 21 or plat note

For the reasons provided above, inclusion in the Chapman Point subdivision does not disqualify a property from being included in the FMP and Comprehensive Plan. However, the implications of condition 21 and the Chapman Point plat note are irrelevant to portions of the Chapman Point Dune Management Region that are not included in the Chapman Point subdivision. For example, the property located at 528 Ash Street is not a part of the Chapman Point subdivision, but it is also excluded from the Breakers Point Sand Management Area. See Exhibit 2. No findings, evidence or adequate factual base has been offered to explain why 528 Ash Street has been excluded.

6. Conclusion

Our clients support the City’s proposal, condition upon the City amending the FMP and proposed Comprehensive Plan amendments so that the Chapman Point Dune Management Region is included in the Breakers Point Sand Management Area.
Very truly yours,

Allison J. Reynolds

AJR:nlj
Enclosures:  Exhibit 1:  Figure 33 of the Allan Report
Exhibit 2:  Annotated Figure 3 of FMP
Exhibit 3:  Table 5 from the Allan Report
Exhibit 4:  May 22, 2014 staff report for SUB 14-01, application to modify
the Chapman Point subdivision

cc:  Jeff Adams, Cannon Beach Community Development Director
    Bill Kabeiseman, Cannon Beach City Attorney
    Dana Krawczuk, Stoel Rives
    Clients
Exhibit 1: Allan Report, Figure 33

Figure 33. Beach sand volume compartments identified for the Cannon Beach littoral cell showing the net sand volume change from 1997 to 2016. Green indicates accretion, red denotes erosion. Sand volumes are calculated for the area above the 4 m (13 ft) contour to the back edge of the dunes, physical features such as concrete paths, back edge of gravel berms, or the bluff toe.
Exhibit 2:  Annotated Figure 3 of FMP
### Exhibit 3: Allan Report, Table 5

Table 5. Net volume change estimates derived from analyses of 1997, 1998, 2002, 2009, and 2016 lidar data for discrete shoreline compartments. The sand volume baseline is relative to 1997. Sand volumes are calculated for the area above the 4 m (13 ft) contour to the back edge of the dunes, physical features such as concrete paths, back edge of gravel berms, or the bluff toe.

<table>
<thead>
<tr>
<th>Region</th>
<th>Year</th>
<th>Volume Change (m³)</th>
<th>Volume Change (yd³)</th>
<th>Region</th>
<th>Year</th>
<th>Volume Change (m³)</th>
<th>Volume Change (yd³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapman Point</td>
<td>1997</td>
<td>0</td>
<td>0</td>
<td>Silver Point</td>
<td>1997</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>19,228</td>
<td>25,150</td>
<td></td>
<td>2002</td>
<td>930</td>
<td>1,216</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>119,310</td>
<td>156,051</td>
<td></td>
<td>2009</td>
<td>-868</td>
<td>-1,136</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>225,078</td>
<td>294,390</td>
<td></td>
<td>2016</td>
<td>-1,657</td>
<td>-2,167</td>
</tr>
<tr>
<td>Presidential</td>
<td>1997</td>
<td>0</td>
<td>0</td>
<td>Arcadia Beach</td>
<td>1997</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>345</td>
<td>451</td>
<td></td>
<td>2002</td>
<td>-12,872</td>
<td>-16,836</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>13,138</td>
<td>17,184</td>
<td></td>
<td>2009</td>
<td>-13,174</td>
<td>-17,231</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>24,287</td>
<td>31,766</td>
<td></td>
<td>2016</td>
<td>-9,672</td>
<td>-12,651</td>
</tr>
<tr>
<td>Haystack Rock</td>
<td>1997</td>
<td>0</td>
<td>0</td>
<td>Hug Point</td>
<td>1997</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>-9,765</td>
<td>-12,772</td>
<td></td>
<td>2002</td>
<td>-2,769</td>
<td>-3,621</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>-3,895</td>
<td>-5,095</td>
<td></td>
<td>2009</td>
<td>-2,945</td>
<td>-3,852</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>1,770</td>
<td>2,315</td>
<td></td>
<td>2016</td>
<td>-5,067</td>
<td>-6,627</td>
</tr>
<tr>
<td>Tolovana North</td>
<td>1997</td>
<td>0</td>
<td>0</td>
<td>Arch Cape</td>
<td>1997</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td>-11,050</td>
<td>-14,453</td>
<td></td>
<td>1998</td>
<td>-9,552</td>
<td>-12,494</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>-15,834</td>
<td>-20,710</td>
<td></td>
<td>2002</td>
<td>13,952</td>
<td>18,248</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>-10,665</td>
<td>-13,948</td>
<td></td>
<td>2009</td>
<td>14,743</td>
<td>19,283</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>-4,356</td>
<td>-5,697</td>
<td></td>
<td>2016</td>
<td>9,184</td>
<td>12,013</td>
</tr>
<tr>
<td>Tolovana South</td>
<td>1997</td>
<td>0</td>
<td>0</td>
<td>Falcon Cove</td>
<td>1997</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td>-1,359</td>
<td>-1,777</td>
<td></td>
<td>1998</td>
<td>5,326</td>
<td>6,966</td>
</tr>
<tr>
<td></td>
<td>2002</td>
<td>-23,813</td>
<td>-31,146</td>
<td></td>
<td>2002</td>
<td>2,365</td>
<td>3,093</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>-13,266</td>
<td>-17,351</td>
<td></td>
<td>2009</td>
<td>-4,967</td>
<td>-6,497</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>-17,539</td>
<td>-22,940</td>
<td></td>
<td>2016</td>
<td>-12,808</td>
<td>-16,752</td>
</tr>
</tbody>
</table>
Exhibit 4: May 22, 2014 staff report for SUB 14-01, application to modify the Chapman Point subdivision

(Exhibit 4 follows this page)
Exhibit 4: May 22, 2014 Staff Report for SUB 14-01, Application to Modify the Chapman Point Subdivision

Cannon Beach Planning Commission

STAFF REPORT

PUBLIC HEARING AND CONSIDERATION OF SUB 14-01, REQUEST BY CHAPMAN POINT
HOMEOWNERS ASSOCIATION FOR MODIFICATION OF THE PLAT AND APPROVAL
CONDITIONS FOR CHAPMAN POINT

Agenda Date: May 22, 2014
Prepared by: Mark Barnes, City Planner

BACKGROUND

The applicant, Chapman Point Homeowners Association, requests modification of the approval conditions for Chapman Point, and modification of the approved final subdivision plat. The purpose of the request is to remove restrictions on dune grading which were recorded on the plat, and were adopted by the City as approval conditions for the Chapman Point subdivision. The proposed amendment creates no new lots or streets; nor does it alter the configuration of existing homesites, lots, or streets in the subdivision.

Chapman Point is a 19-lot subdivision located along the oceanfront north of the Breakers Point development, and west of Laurel Street. All Chapman Point lots front on Oak Street or Oak Court. The subdivision has about 1,700 linear feet of oceanfront. It is in the Residential Lower Density (RL), Residential Medium Density (R2), and Open Space (OS) zones. The Flood Hazard Overlay zone (FHO) and Oceanfront Management Overlay zone (OM) also affect the subdivision.

Subdivision approvals can be relatively complex, as shown by this chronology of the milestones in the City’s approval of Chapman Point:

- December 1994: Scanlon-Kemper-Bard submits tentative plan for 19-lot subdivision on behalf of the land owner, the estate of John Yeon.
- March 7, 1995: Planning Commission approves SUB94-03, the tentative plan for Chapman Point.
- May 15, 1995: on appeal, City Council upholds Planning Commission’s approval.
- February 20, 1996: City signs final plat for Chapman Point (lots 1 through 7).
- March 1, 1996: Final plat for Chapman Point recorded.
- May 23, 1996: City signs final plat for Chapman Point No. 2 (lots 8 through 19).
- June 3, 1996: Final plat for Chapman Point No. 2 recorded.

The City’s approval of the Chapman Point preliminary plan included 27 conditions (attached). Only condition 21 is the subject of the current request:

“21. Foredune grading for view enhancement shall be prohibited.”

The subdivision was completed in two phases, so two final plats were recorded. Both Chapman Point and Chapman Point No. 2 have the following restriction on the final plat: “FOREDUNE GRADING FOR VIEW ENHANCEMENT SHALL BE PROHIBITED.” This restriction is on sheet 5 of 5 for Chapman Point No. 2, and sheet 4 of 4 for Chapman Point; copies of these sheets are attached. The current request seeks to remove these plat restrictions.

In 1996, when Chapman Point was approved, dune grading for view enhancement was not allowed anywhere in the City. In 1997, after development began at Chapman Point, the City amended the comprehensive plan to establish a procedure for evaluating dune grading proposals. The 1997 comprehensive plan amendment has been subsequently amended to address dunes at specific locations. Cannon Beach currently allows dune
grading for view enhancement as a conditional use in two places: the Breakers Point development; and between Washington and Jackson Streets. The City extended the latter area about fifty feet to the south of Jackson Street via a Comprehensive Plan amendment approved in December 2013.

The City’s comprehensive plan does not allow dune grading at Chapman Point, and the current proposal by itself does not change this situation. The applicant will need to complete several steps before dune grading can be permitted at Chapman Point. These are summarized below.

| Amend SUB94-03 to remove or amend condition 21. | The current proposal; requires Planning Commission hearing and approval; subject to appeal to City Council. |
| Amend plats for Chapman Point and Chapman Point No 2 to remove the plat restriction on foredune grading. | The current proposal; requires Planning Commission hearing and approval; subject to appeal to City Council. |
| Amend the Goal 18 element of the Comprehensive Plan to allow dune grading at Chapman Point. | Not part of the current proposal; requires public hearings before the Planning Commission and City Council. |
| Conditional use permit for dune grading. | Not part of the current proposal; requires public hearings before the Planning Commission; subject to appeal to the City Council. |
| Other agency approvals. | Not part of the current proposal; administrative processes involving the Oregon Parks & Recreation Department, Oregon Department of State Lands, and/or US Army Corps of Engineers. |

**ANALYSIS/INFORMATION**

Applicable criteria are in the subdivision ordinance (chapter 16 of the Municipal Code), and in the zoning ordinance (chapter 17). These criteria are addressed below, followed by findings.

**Section 16.04.130, Subdivisions, Applicable Standards.** The introductory paragraph to this section reads as follows:

In making its decision, the planning commission shall determine whether the proposed subdivision or partition complies with the applicable standards of this code and the policies of the comprehensive plan, in conformance with the requirements of Section 17.68.110. Where this chapter imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control. Pursuant to ORS 197.195(1), the city has determined that the following comprehensive plan policies are applicable standards for a proposed subdivision or partition.

Since the subdivision has already been found to comply with applicable plan policies when it was approved in 1994, and the proposed amendment affects only those aspects of the approval related to dune grading, the Planning Commission can confine its evaluation to policies related to dune grading. These are reproduced below.

Northside Policy 1. The Northside area, the area north of Ecola Creek, shall remain primarily residential in character. Development should take place only in a manner that is compatible with sensitive lands, steep slopes, active foredunes, areas subject to flooding, wetlands and stream banks.

The proposal does not conflict with Northside policy 1 because it does not, by itself, allow development that might be incompatible with sensitive lands, steep slopes, active foredunes, flood-prone areas, wetlands or stream banks. Active dune development is controlled by the Oceanfront Management Overlay Zone, which remains in place at Chapman Point. The applicant will need to demonstrate compliance with this policy before the City can amend the comprehensive plan to allow foredune grading.
Northside Policy 2. Chapman Point is recognized as an important scenic and natural area of Cannon Beach and shall be protected by a zoning designation which permits only those uses which are consistent with the maintenance of its scenic character.

The zoning designations at Chapman Point are shown on the attached zoning map. The proposal does not affect base or overlay zoning on Chapman Point itself, or in the Chapman Point subdivision. The applicant will need to demonstrate compliance with this policy before the City can amend the comprehensive plan to allow foredune grading.

Northside Policy 3. (cited in section 16.04.130.B.2) Active foredunes shall remain in their undeveloped state in order to provide a buffer from ocean and wind erosion (please refer to hazards section of the plan).

The proposal does not conflict with this policy because it does not, by itself, authorize development on active foredunes. If maintaining foredunes in an undeveloped state precludes dune grading, then this policy may conflict with dune grading. If, on the other hand, the policy is intended to prevent construction of permanent facilities on active foredunes, then it may be possible to conduct dune grading without violating this policy.

Area-Specific Hazards Policy 3. Beach Frontage:

a. Excavation of sand from the beach shall be prohibited. This practice oversteepens sections of the seaward slope of the dunes and exposes them to erosion by storm waves, and to a lesser extent, by high tides. The blowing of sand up onto Ocean Avenue could better be controlled by maintaining adequate vegetation cover between the street and the sand buffer. Removal or destruction of vegetation in this area shall be strictly prohibited.

b. In order to control foot traffic across protective dune barriers and to reduce blowing onto the street and adjacent property, access trails to the beach shall be maintained and clearly marked.

The proposal does not change this policy’s applicability to the beach at Chapman Point. Dune grading, where and when it is allowed, is distinguished from excavation: done grading does not remove sand from the beach, excavation does. Revegetation of disturbed areas is required when dune grading is allowed. The proposal does not affect beach access through the Chapman Point development. If dune grading is allowed as a result of a subsequent conditional use permit, revegetation and protection of beach access points will be required.

Sand Dune Construction policy 1. The City shall prohibit residential development and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Permitted uses in these areas shall be those which are of very low intensity (such as raised wooden walkways), uses which do not cause the removal of sand or vegetation, and which could be easily removed in the event of ocean flooding, erosion or other hazard.

The proposal does not change the policy’s prohibition on beach or foredune development. Homesites at Chapman Point are designated on the plat, and are outside of the areas addressed by this policy. The proposal, would not result in any new residential development or commercial or industrial buildings on beaches, active foredunes, conditionally stable foredunes, or inter dune areas.

Sand Dune Construction policy 5. The developer or party initiating action in sand areas shall be responsible for preventing adverse impacts from wind erosion on adjacent property, City streets, or utilities. Where necessary, the City may cause such impacts to be corrected at the expense of the developer.

Revegetation is required when the City permits dune grading. The proposal does not change this requirement.

Sand Dune Construction Policy 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. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

a. Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;

b. Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is 4 feet above the 100 year flood elevation;

c. Identify and set priorities for low and narrow dune areas which need to be built up;

d. Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities, and

e. Prohibit removal of sand from the beach-foredune system. Before construction can begin, the foredune grading plan must be adopted as an amendment to the Comprehensive Plan.

The proposal to remove dune grading restrictions from the plat and the City’s subdivision approval is a necessary first step toward the “overall plan for managing fore dune grading” mentioned in this policy. The plan is not before the Planning Commission at this time, but will be needed before the applicant can apply for a conditional use permit for dune grading. The current proposal does not violate policy 7.

Sand Dune Construction Policy 8. The City, through its Zoning Ordinance, shall regulate sand movement or alteration and vegetation control on City lands not identified in the Dune Classification System (the ADBO Zone).

The City no longer uses the Active Dune and Beach Overlay Zone; instead, the regulations described in this policy are in the Oceanfront Management Overlay Zone, which replaced the ADBO. The proposed plat and approval condition amendment does not conflict with the regulation of sand movement or alteration through the zoning ordinance.

Hazards Policy 1. The City shall make reasonable efforts to protect life and property from natural disasters and hazards. Measures employed by the City shall be the Plan, Zoning and Subdivision Ordinances, and other City Ordinances.

One of the measures the City takes to implement this policy is the regulations pertaining to dune grading embodied in the zoning ordinance, especially in the Oceanfront Management Overlay Zone. The regulations help protect dunes, which in turn protect oceanfront property from ocean flooding and wave undercutting. The proposed approval condition and plat amendment do not alter the City’s current framework of protection measures.

Chapter 17.10. Residential Lower Density Zone. Most of the Chapman Point subdivision is in the RL zone. The City’s 1996 approval of the subdivision was, and remains, consistent with the requirements of the RL zone. There are no restrictions or standards in the RL zone text that would require an approval condition or plat restriction prohibiting dune grading. If dune grading is approved for the subject property, it will in all likelihood be outside of the RL zone. The proposal does not conflict with the requirements or standards of the RL zone.

Chapter 17.14. Residential Medium Density Zone. A small part of the Chapman Point subdivision is in the R2 zone: a portion of lot 14, and all of lot 19. The City’s 1996 approval of the subdivision was, and remains, consistent with the requirements of this zone. There are no restrictions or standards in the R2 zone text that would require an approval condition or plat restriction that prohibits dune grading. If dune grading is approved for the subject property, it will be outside of the R2 zone. The proposal does not conflict with the requirements or standards of the RL zone.
Chapter 17.34. Open Space Zone. The purpose of the OS zone is "to preserve areas in their natural condition." A portion of the dunes likely to be graded for view enhancement are in this zone. The OS zone does not include any standards, restrictions, or decision-making criteria applicable to this proposal. The current proposal does not conflict with OS zone requirements or standards.

Chapter 17.38. Flood Hazard Overlay Zone. A portion of the area likely to be graded for view enhancement is in the Flood Hazard Overlay Zone; more specifically, in the FHO's VE zone. If grading is approved, four feet above the VE zone's flood elevation will be used to establish an elevation benchmark for grading. The current proposal to amend the subdivision's approval condition and plat condition has no effect on the application of FHO standards to a future dune grading project. The proposal does not conflict with the FHO.

Chapter 17.42. Oceanfront Management Overlay Zone. This overlay zone covers the area likely to be affected by a future proposal for dune grading. Several requirements and standards applicable to a future dune grading project are established in the OM overlay zone. Section 17.42.030.C.3 allows foredune grading as a conditional use. Section 17.42.060.A.3 establishes specific standards for foredune grading:

Foredune Grading. Grading or sand movement necessary to maintain views or to prevent sand inundation, may be allowed for structures in active dune areas only if the area is committed to development and only as part of an overall plan for managing foredune grading. A foredune grading plan prepared by a qualified expert shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

a. Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion or accretion as a result of dune grading;

b. Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is four feet above the one hundred year flood elevation established in the "Flood Insurance Study, City of Cannon Beach, Oregon, March 1978";

c. Identify and set priorities for low and narrow dune areas which need to be built up;

d. Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities; and

e. Prohibit removal of sand from the beach-foredune system.

f. Foredune grading plans may be submitted to the soil and water district for their comments.

g. The foredune grading plan must be adopted as an amendment to the comprehensive plan before construction can begin.

Both the conditional use permit and the comprehensive plan amendment must be approved by the City before Chapman Point foredunes can be legally graded. The current proposal does not conflict with OM zone standards or requirements. The OM zone does not establish standards or criteria applicable to the current proposal to amend a subdivision approval condition and a plat restriction.
1996 Chapman Point Approval Findings. The City adopted findings for approval of the Chapman Point subdivision in 1995. A copy of these findings are attached as Exhibit B. Some of the findings are relevant to the current proposal. A finding at the bottom of page 16 (Exhibit B) reads as follows (emphasis added):

"We find the V-zone is mapped (1979 at an elevation of 27 feet for all areas south of 7th. For the area north of 7th, on all but Lots 1, 2 and 3, the area of wave runup has been conservatively set at 37 feet, on Lot 2, 34 feet, and on Lot 3, 30 feet. All Homesite Locations are substantially above this area. Thus, during construction of the subdivision and the individual homes there will be no manmade alteration of the sand dunes. The applicant has committed to a condition of no grading for view in the V-zone which we find the only potentially damaging alteration of foredunes. Any other activity in the dunes in the V-zone will be regulated by the requirements of the oceanfront management overlay zone (Chapter 17.42)."

A finding near the middle of page 32 (Exhibit B) reads as follows (emphasis added):

"We find that the City has mapped the location of the active and conditionally stable dunes on this site. This map is titled Active and Conditionally Stable Dunes, Cannon Beach, May 1993 (Leach Line). The map was used as the basis for locating active dune areas, including active foredunes, on the site. As demonstrated by the applicant’s report entitled Geotechnical Engineering Services, Proposed Chapman Beach Development, Cannon Beach, Oregon, all proposed homesite locations are east of the Leach Line, and therefore no development will occur on active foredunes. Conditions require staking the Leach Line, prohibit development outside the Homesite Locations, serpentining the beach access, a wind erosion control plan and prohibit grading on active foredunes.

A portion of a findings near the middle of page 38 (Exhibit B) reads as follows:

"To assure that dunes will provide maximum protection from wave run-up, we have required as a condition and deed restriction that there be no grading of the foredunes for ocean view purposes."

These findings all support imposition of condition 21: “Foredune grading for view enhancement shall be prohibited.”

1994 Peratovich, Nottingham & Drage report on dune erosion and dune overtopping. A report was submitted with the original Chapman Point subdivision application addressing dune erosion and dune overtopping. A copy is attached as exhibit E; several large maps and poorly-reproduced photographs are not included. Statements in the report appear to confirm that the dune as it existed in 1994 was large enough to provide protection from 100-year ocean flooding.

"The cross sections show that the volume of sand in the frontal dune far exceeds that accepted as the minimum to maintain dune integrity during the theoretical 100-year ocean flooding event.” (top of page 5, exhibit E.)

The report also includes language supporting condition 21 and the plat restriction on dune grading:

"It is also emphasized that the dune is the first and best line of defense of the land against ocean processes. By that reason, dune grading or destruction of dune vegetation is strongly discouraged.” (bottom of page 6, exhibit E.)

The conclusions that can be drawn today from the PND report are limited. The report is nearly twenty years old. The condition of the beach has changed, and technical knowledge of beach erosion and accretion processes have substantially increased.
RECOMMENDED ACTION

That the Planning Commission approve, modify, or deny the request.

ATTACHMENTS

“A” Approval Conditions for Chapman Point
“B” Approval Findings for Chapman Point
“C” Sheet 5 of 5 for Chapman Point No. 2
“D” Sheet 4 of 4 for Chapman Point
“E” Peratrovich, Nottingham & Drage report, 1994