

PROCEDURAL BACKGROUND

On **September 16, 2022**, at least 45 days prior to the final public hearing to be held to consider the adoption of the moratorium, the city provided written notice to the Department of Land Conservation and Development.

This notice was provided via email to Brett Estes, North Coast Regional Representative, Department of Land Conservation and Development, and Meg Reed, Ocean Shores Specialist, Department of Land Conservation and Development. Staff was provided with an email response from Mr. Estes on September 19, 2022, indicating that the notice was sufficient. On November 9, 2022, the city held a public hearing.

PROPOSED SCOPE OF THE MORATORIUM

While the Moratorium is in effect, the City shall not consider or approve any permit for view grading as defined in the Manzanita Zoning Ordinance 95-4, Section 3.085.6.

This Moratorium shall continue in effect until expiring on **March 9, 2023**, unless revoked by the City Council or extended in accordance with ORS 197.520(4).

DEFINITIONS

“Affected geographical area” includes all properties within the beaches and dunes overlay zone. This land is “urban or urbanizable land” within the meaning of ORS 197.520.

PROPOSED FINDINGS IN SUPPORT OF THE MORATORIUM

Pursuant to ORS 197.520, the City of Manzanita finds as follows:

1. The City’s current Foredune Management Plan (“Plan”), reflected in Manzanita Development Code 3.080, is 25 years old, and a number of things have changed since the Plan was adopted. The plan does not reflect the current status of the foredune system or best practices with respect to management. For instance, the amount of sand in the dune system has grown substantially over time. This has made it virtually impossible to grade to the dune profile dimensions specified in the Plan. Additionally, more regulatory agencies have indicated to the City that they need to be more closely involved in grading activities. For example, disposal of excess sand in the intertidal zone may need to be reviewed and modified, and a separate Corps of Engineers permit may need to be obtained. The Plan also does not take into account today’s tidal flooding and erosion conditions.
2. Because the Plan is out of date and does not reflect current conditions or best management practices, allowing view grading under the existing Plan may result in irrevocable public harm as follows:

- a. Sand being distributed from private property onto the public ocean shore recreation area, or sand being disturbed in the ocean shore recreation area for the benefit of one or a small number of private landowners, despite:
 - i. Minimal to no public need or justification for view grading and,
 - ii. Overwhelming public opposition to recent applications for view-grading projects.
 - b. Negative impacts to the public enjoyment of the dunes during view grading activities.
 - c. Destabilization of the vegetated dunes from unsupported view grading of the dunes which could lead to impacts to both private and public development and infrastructure.
 - d. Unknown impacts on coastal shoreland resources such as razor clam and western snowy plover habitat from sand redistribution.
 - e. Unknown impacts on ocean resources by sand displacement into the intertidal zone from sand redistribution.
 - f. Establishment of additional European beach grass (which is allowed under the existing Plan) in the foredune area, rather than native beach grasses.
 - g. Un-studied impacts on public resources and nearby private properties relating to current and future anticipated seasonal tidal events, flooding and erosion.
3. Existing development ordinances, regulations, and other applicable law is inadequate to prevent irrevocable public harm from development in the affected geographical area.
4. The moratorium is sufficiently limited to ensure that a needed supply of housing types, commercial and industrial facilities within or in proximity to the City are not unreasonably restricted by the moratorium. For instance, the delay in view grading pending adoption of a new masterplan does not prohibit remedial dune grading (movement of inundating sand within 30 feet of building foundations) and construction grading on vacant lots for site development purposes.
5. The alternative methods for achieving the objectives of the moratorium are unsatisfactory. View grading requires permits and approvals are issued by agencies other than the City. Those processes require the City to acknowledge that applications for grading in the foredune management area meet the requirements of the Plan. Because the Plan is outdated, the City may be obliged to acknowledge compliance, despite the City's significant concerns about view grading's negative impacts on storm surge protections, flooding and erosion, wildlife, long-term dune management, recreation, and other public harms.
6. Because the moratorium restricts view grading only and does not prohibit construction grading for new development, remedial grading, or sand alteration for public access or public safety:

- a. This moratorium is not anticipated to have adverse effects on other local governments due to shifts in demand for housing or economic development.
- b. This moratorium is not anticipated to have adverse effects on public facilities and services and buildable lands in other jurisdictions.
- c. This moratorium is not anticipated to have adverse effects overall on population distribution.

But even if such impacts existed, the City finds that the public harm that would result from view grading in the foredune would outweigh those concerns. Specifically:

- a. The long-term effects of grading in the foredune area, for view purposes only, according to an outdated plan will have significant adverse effects on the City of Manzanita, its citizens, and its visitors as described in Section 2, while only benefitting a small number of people.
- b. The long-term effects of grading in the foredune according to an outdated plan will have greater adverse effects on other local governments than the moratorium because of the potential unknown impacts on the public beach and coastal resources.

7. Based on the foregoing there is a compelling need for the moratorium.