

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 CHAPMAN POINT HOMEOWNERS ASSOCIATION
5 and BREAKERS POINT HOMEOWNERS ASSOCIATION,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF CANNON BEACH,
11 *Respondent,*

12
13 and

14
15 OREGON COAST ALLIANCE,
16 *Intervenor-Respondent.*

17
18 LUBA Nos. 2020-043/044

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Cannon Beach.

24
25 Timothy V. Ramis and Allison J. Reynolds filed the joint petition for
26 review and joint reply briefs. Also on the brief were Jordan Ramis PC and Stoel
27 Rives LLP. James D. Howsley argued on behalf of petitioner Breakers Point
28 Homeowners Association.

29
30 William K. Kabeiseman filed a response brief and argued on behalf of
31 respondent. Also on the brief was Bateman Seidel Miner Blomgren Chellis &
32 Gram, P.C.

33
34 Sean Malone filed a response brief and argued on behalf of intervenor-
35 respondent.

36
37 ZAMUDIO, Board Member; RUDD, Board Chair; RYAN, Board
38 Member, participated in the decision.

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AFFIRMED

03/02/2021

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

2 **NATURE OF THE DECISION**

3 Petitioners challenge city council ordinances amending the city's
4 comprehensive plan and municipal code to update and implement the city's
5 Foregone Management Plan (collectively, 2020 FMP).

6 **BACKGROUND**

7 The ordinances that implement the challenged 2020 FMP are post-
8 acknowledgement plan amendments and, therefore, are subject to compliance
9 with applicable statewide planning goals. Of particular relevance is Statewide
10 Planning Goal 18 (Beaches and Dunes), which is:

11 "To conserve, protect, where appropriate develop, and where
12 appropriate restore the resources and benefits of coastal beach and
13 dune areas; and

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

16 "Coastal comprehensive plans and implementing actions shall
17 provide for diverse and appropriate use of beach and dune areas
18 consistent with their ecological, recreational, aesthetic, water
19 resource, and economic values, and consistent with the natural
20 limitations of beaches, dunes, and dune vegetation for
21 development."

22 Under Goal 18, local governments are required to inventory beach and
23 dune areas and "describe the stability, movement, groundwater resource, hazards
24 and values of the beach and dune areas in sufficient detail to establish a sound
25 basis for planning and management." Based on those inventories, a local

1 government must establish policies and uses for beach and dune areas consistent
2 with Goal 18.

3 The Statewide Planning Goals and Guidelines provide the following
4 definitions of “dune” and “active foredune”:

5 **“DUNE.** A hill or ridge of sand built up by the wind along sandy
6 coasts.

7 “* * * * *

8 **“FOREDUNE, ACTIVE.** An unstable barrier ridge of sand
9 paralleling the beach and subject to wind erosion, water erosion, and
10 growth from new sand deposits. Active foredunes may include areas
11 with beach grass, and occur in sand spits and at river mouths as well
12 as elsewhere.” (Boldface in original.)

13 A city may allow grading or sand movement to maintain views or to protect
14 structures from sand inundation if the city adopts a foredune grading management
15 plan for an area within an acknowledged urban growth boundary. However, Goal
16 18 does not require a city to allow such grading. Goal 18, Implementation
17 Requirement 7.¹ Dune grading generally involves using a bulldozer to move dune

¹ Goal 18, Implementation Requirement 7, provides:

“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

1 sand seaward and deposit the sand along the seaward face of the foredune.

2 Weather, waves, and wind move the exposed, seaward sand. Record 48.

3 Goal 18, Guideline H, provides:

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

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.”

1 Under the former FMP, the foredunes in the city were divided into several
2 foredune “management units.” Record 44. The former FMP allowed grading to
3 (1) protect structures from sand inundation, (2) maintain beach access, and (3)
4 preserve residential ocean views (grading for views). Record 44-45.

5 In 2016, the city began the process of updating its FMP. The city
6 contracted with Dr. Jonathan Allan of the Oregon Department of Geology and
7 Mineral Industries. In 2018, Allan produced a report titled Beach and Shoreline
8 Dynamics in the Cannon Beach Littoral Cell: Implications for Dune Management
9 (the Allan Report).² In 2017 and 2018, the planning commission held a number
10 of work sessions and public hearings on the FMP update process. Record 17. On
11 November 20, 2018, the planning commission recommended that the city council
12 adopt the updated FMP and the Allan Report as appendices to the Cannon Beach
13 Comprehensive Plan (CBCP), as well as amendments to the CBCP and the
14 Cannon Beach Municipal Code (CBMC) to implement the updated FMP. Record

² No party provides a definition of “littoral cell,” which we understand to be a geomorphological term of art used in the Allan Report and incorporated into the 2020 FMP. The Statewide Planning Goals and Guidelines define “littoral drift” as “[t]he material moved, such as sand or gravel, in the littoral (shallow water nearshore) zone under the influence of waves and currents.” In the context of this appeal, we understand “littoral cell” to mean an area of ocean and beach within which sand is transported by natural forces of erosion and deposition driven by weather, waves, and wind. Petitioners point to and reproduce in their petition for review a map of the Cannon Beach littoral cell, which spans from Falcon Cove in the south to Chapman Point in the north and is broken into 10 distinct management units. Record 1172; Petition for Review 27.

1 82. The city council held five public hearings in 2019 and 2020 and, on April 6,
2 2020, approved the 2020 FMP.

3 The Allan Report explains the city's motivation to update its FMP:

4 "In response to considerable sand buildup north of Ecola Creek, the
5 City of Cannon Beach initiated a process to evaluate their existing
6 dune management plan on the basis of updated scientific
7 information on physical processes and coastal geomorphology
8 occurring along the Cannon Beach littoral cell. The overarching
9 objective is to use the updated information to help establish new
10 guidelines for the relocation of excess sand that periodically builds
11 up along the coastline. This sand buildup within the dune is
12 presently affecting the views of local residents, while sand blowing
13 inland has become a nuisance, migrating where it has begun to
14 inundate buildings and properties." Record 1013.

15 The city found:

16 "The City Council chose to look beyond the 'management unit'
17 system that had broken down the City's beaches into smaller
18 management unit areas and, instead, approach the entire Cannon
19 Beach Littoral Cell as a single management area that works as one
20 dynamic system." Record 12.

21 Importantly for these appeals, the 2020 FMP significantly limits dune
22 grading, eliminates grading for views, and does not recognize any "vested" or
23 "grandfathered" right to grade, including grading for views. Record 44. The 2020
24 FMP allows three types of grading: remedial, preservation, and
25 emergency/access. "'Remedial grading' refers to the clearing of sand necessary
26 to maintain the function of a structure * * * or any public facility, utility or
27 infrastructure." Record 45. Remedial grading requires an approved
28 administrative development permit. Preservation grading allows repairs of dune

1 erosion and maintenance of facilities, including public beach accesses.
2 Preservation grading requires an approved conditional use permit (CUP),
3 prohibits removing sand from the beach-foredune system, and limits grading
4 under each CUP to an annual cumulative volume that does not exceed 2,500 cubic
5 yards. Record 29-30.

6 Emergency/access grading allows for dune grading when “structures,
7 facilities, utilities, public Rights of Way, or infrastructure is inundated or access
8 compromised.” Record 47. In those instances, a public or private entity may
9 move the sand and apply for the required development permit after the emergency
10 situation is mitigated. *Id.*

11 The 2020 FMP requires that areas disturbed by grading or other sand
12 removal be planted with beach grass. The 2020 FMP identifies three beach grass
13 species. European beach grass (EBG) is a non-native species that was first
14 introduced to the west coast in the late 1800s as a sand stabilizer. Oregon beach
15 grass (OBG) is native to the Pacific Northwest and American beach grass (ABG)
16 is non-native from the East Coast. Record 48 n 7. EBG outcompetes native beach
17 plants. “As a result, the Oregon and Washington coastlines are now largely
18 lacking intact native foredune plant communities.” Record 830. EBG is currently
19 prevalent throughout the dunes in the city, and has been for decades. EBG has a
20 dense, vertical growth form that has a high rate of sand capture that results in tall
21 and narrow dunes. In contrast, OBG and ABG have less dense, horizontal growth

1 forms that result in less sand capture and the formation of shorter and wider
2 dunes. Record 49.

3 The Allan Report recommended not using EBG to stabilize dunes because
4 the higher dunes that result from EBG affect ocean views from shorefront homes.
5 Record 1014. The city chose not to follow that recommendation and explained in
6 the 2020 FMP that OBG has a lower transplant survival rate than EBG and dies
7 back in the winter. Record 50. Revegetation projects aim for a very high
8 transplant survival rate of approximately 98%. Thus, the 2020 FMP allows
9 replanting with a combination of EBG, ABG, and OBG, or another revegetation
10 plan approved by the planning commission. Record 30.

11 Petitioners are two homeowners associations for residences within the
12 city's Northside area, which is the area of the city north of Ecola Creek. Ecola
13 Creek moves north and then curves west and south into an estuary that meets the
14 ocean. Les Shirley Park is a public park situated along the north bank of Ecola
15 Creek and adjacent to Northside residential areas. The Northside area includes
16 Chapman Point, which the CBCP recognizes "as an important scenic and natural
17 area of Cannon Beach." CBCP Northside Policy 2.

18 Petitioners wish to maintain the historical practice of grading for views and
19 depositing sand removed from the dunes along the north bank of Ecola Creek. As
20 explained further below, petitioners' challenge to the 2020 FMP reduces to an
21 argument that the city should have allowed grading for views as a foredune
22 management practice in the 2020 FMP. Petitioners argue that the 2020 FMP will

1 result in dune growth through sand accretion and vegetative capture, that those
2 natural processes are less natural than mechanical grading for views and, thus,
3 the city was required to continue to allow grading for views. In large part,
4 petitioners' arguments express a dissatisfaction with the city council's policy
5 decisions embodied in the 2020 FMP about how to manage the city's foredunes.
6 For the reasons explained below, we affirm the 2020 FMP.

7 **ASSIGNMENTS OF ERROR**

8 Petitioners' assignments of error include overlapping arguments under the
9 statewide planning goals, CBCP policies, and CBMC provisions, asserting that
10 the city misconstrued the applicable law and that the city's findings are
11 inadequate and not supported by substantial evidence. For purposes of analysis
12 and disposition, we group similar arguments together. We start by identifying the
13 applicable standard of review.

14 **A. Standard of Review**

15 The challenged decisions are legislative decisions. We explained the
16 applicable standard of review in *Restore Oregon v. City of Portland*:

17 "LUBA's standard of review of a decision that amends a
18 comprehensive plan is set out at ORS 197.835(6). LUBA is required
19 to reverse or remand the amendment if 'the amendment is not in
20 compliance with the goals.' *Id.* LUBA is also required to reverse or
21 remand a decision that amends a land use regulation if, as relevant
22 here, '[t]he regulation is not in compliance with the comprehensive
23 plan.' ORS 197.835(7)(a).

24 "Because the challenged decision is a legislative rather than a quasi-
25 judicial decision, there is no generally applicable requirement that

1 the decisions be supported by findings, although the decision and
2 record must be sufficient to demonstrate that applicable criteria were
3 applied and ‘required considerations were indeed considered.’
4 *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16,
5 n 6, 38 P3d 956 (2002). With respect to evidence, Statewide
6 Planning Goal 2 (Land Use Planning) requires that a decision that
7 amends a comprehensive plan or land use regulation must be
8 supported by an adequate factual base. An ‘adequate factual base’ is
9 equivalent to the requirement that a quasi-judicial decision be
10 supported by substantial evidence in the whole record. *1000 Friends*
11 *of Oregon v. City of North Plains*, 27 Or LUBA 372, 378, *aff’d*, 130
12 Or App 406, 882 P2d 1130 (1994). Substantial evidence exists to
13 support a finding of fact when the record, viewed as a whole, would
14 permit a reasonable person to make that finding. *Dodd v. Hood River*
15 *County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of*
16 *Portland*, 305 Or 346, 351-52, 752 P2d 262 (1988).” ___ Or LUBA
17 ___, ___ (LUBA Nos 2018-072/073/086/087, Aug 6, 2019) (slip op
18 at 6-7), *aff’d*, 301 Or App 769, 458 P3d 703 (2020).

19 The Goal 2 required “adequate factual base” for a challenged legislative
20 decision may be satisfied if the decision is supported by either (1) findings
21 demonstrating compliance with applicable legal standards, or (2) argument and
22 citations to facts in the record, in respondents’ briefs, which are adequate to
23 demonstrate compliance with applicable legal standards.
24 *Redland/Viola/Fischer’s Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563-
25 64 (1994). There is no general requirement that legislative decisions be supported
26 by findings; however, “there are some instances where controlling statutes, rules,
27 or ordinances specifically require findings to show compliance with applicable
28 criteria.” *Citizens Against Irresponsible Growth*, 179 Or App at 16 n 6.

29 We must defer to the city’s interpretation of its own plan or regulation if
30 that interpretation is not “inconsistent with the express language of the

1 comprehensive plan or land use regulation” or inconsistent with the underlying
2 purposes and policies of the plan or regulation. ORS 197.829(1); *Siporen v. City*
3 *of Medford*, 349 Or 247, 243 P3d 776 (2010) (applying ORS 197.829(1)). In
4 order for that deferential standard to apply, the local government’s interpretation
5 must be explicit or implicit in the challenged decision. *Green v. Douglas County*,
6 245 Or App 430, 438-40, 263 P3d 355 (2011). We are not required to defer to an
7 interpretation presented for the first time in the response brief.

8 “If a local government fails to interpret a provision of its comprehensive
9 plan or land use regulations, or if such interpretation is inadequate for review,
10 [LUBA] may make its own determination of whether the local government
11 decision is correct.” ORS 197.829(2). In such circumstances, the deferential
12 standard of ORS 197.829(1) is inapplicable “because there is no local
13 interpretation to which deference can be accorded.” *Alliance for Responsible*
14 *Land Use v. Deschutes Cty.*, 149 Or App 259, 264-65, 942 P2d 836 (1997), *rev*
15 *dismissed*, 327 Or 555 (1998). LUBA is not required to interpret an applicable
16 standard on its own and may instead remand the decision to the local government
17 to provide an interpretation in the first instance. *Green*, 245 Or App at 440-41.

18 Comprehensive plan goals and policies often contain competing policy
19 objectives. A local governing body is generally entitled to balance competing
20 policies. *Columbia Pacific Building Trades Council v. City of Portland*, 76 Or
21 LUBA 15, 27-28 (2017), *aff’d in part, rev’d in part, and rem’d*, 289 Or App 739,
22 412 P3d 258, *rev den*, 363 Or 390 (2018). A petitioner challenging the city

1 council’s application of comprehensive plan policies “must do more than simply
2 disagree with the city’s conclusions.” *Id.* A petitioner “must demonstrate that the
3 city council failed to meaningfully consider a reasonably specific and pertinent
4 goal or policy.” *Id.*

5 **B. Statewide Planning Goals**

6 **1. Goal 18 does not require additional findings.**

7 Again, Goal 18 is “[t]o conserve, protect, where appropriate develop, and
8 where appropriate restore the resources and benefits of coastal beach and dune
9 areas; and [t]o reduce the hazard to human life and property from natural or man-
10 induced actions associated with these areas.”

11 The city council found that the 2020 FMP satisfies Goal 18:

12 “Importantly, nothing in Goal 18 or Implementation Requirement 7
13 requires the City to allow foredune grading or sand movement; it
14 simply addresses the requirements should a city or county decide to
15 allow this activity in the foredune areas. However, if foredune
16 grading is allowed, it must be done pursuant to a plan and, as
17 required later in Implementation Requirement 7, that plan must
18 ‘cover an entire beach and foredune area subject to an accretion
19 problem.’ In addition, the plan must include ‘adjacent areas
20 potentially affected by the changes in flooding, erosion or accretion
21 as a result of dune grading’ and specify certain standards and
22 priorities. None of these amendments affect these implementation
23 measures. The amendments do not restrict or limit the City’s ability
24 to comply with statewide planning goal 18.” Record 16.

25 As noted above, there is no generally applicable requirement that local
26 government legislative decisions be supported by findings; however, “there are
27 some instances where controlling statutes, rules, or ordinances specifically

1 require findings to show compliance with applicable criteria.” *Citizens Against*
2 *Irresponsible Growth*, 179 Or App at 16 n 6.

3 Goal 18, Implementation Requirement 1, provides:

4 “Local governments * * * shall base decisions on plans, ordinances
5 and land use actions in beach and dune areas * * * on specific
6 findings that shall include at least:

7 “(a) The type of use proposed and the adverse effects it might have
8 on the site and adjacent areas;

9 “(b) Temporary and permanent stabilization programs and the
10 planned maintenance of new and existing vegetation;

11 “(c) Methods for protecting the surrounding area from any adverse
12 effects of the development; and

13 “(d) Hazards to life, public and private property, and the natural
14 environment which may be caused by the proposed use.”

15 Petitioners argue that Goal 18, Implementation Requirement 1, specifically
16 requires findings, and that the city’s findings fail to address adverse effects on
17 adjacent areas, methods for protecting the surrounding area, and hazards to
18 private property. Petitioners do not argue that the city was required to make
19 findings regarding the uses that are *allowed* under the 2020 FMP—preservation
20 and remedial grading and revegetation. Petitioners also do not argue that the 2020
21 FMP adopts any specific dune “stabilization programs” that require findings.
22 Instead, petitioners argue that the 2020 FMP disallows grading for views and that
23 the city must evaluate the impacts of the cessation of that practice.

1 We agree with the city that prohibiting grading for views is not a “use” or
2 “development.” Thus, the city was not required to make any specific findings
3 under Goal 18, Implementation Requirement 1.

4 Goal 18, Guideline H, provides, in part:

5 “Plans which allow foredune grading should be based on clear
6 consideration of the fragility and ever-changing nature of the
7 foredune and its importance for protection from flooding and
8 erosion. * * *

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

12 “* * * * *

- 13 “• Avoiding or minimizing grading or deposition which could
14 adversely affect surrounding properties by changing wind,
15 ocean erosion, or flooding patterns;
- 16 “• Identifying appropriate sites for public and emergency access
17 to the beach.”

18 Petitioners argue that, under Goal 18, Guideline H, the city was required
19 but failed to make findings addressing whether and how sand accretion at
20 Chapman Point due to limitations on dune grading will adversely affect
21 surrounding properties and obstruct beach access.

22 The Goal 18 guidelines are advisory and do not contain mandatory
23 standards. *Reading v. Douglas County*, 70 Or LUBA 458, 464-65 (2014) (citing
24 ORS 197.015(9); *Downtown Comm. Assoc. v. City of Portland*, 80 Or App 336,

1 772 P2d 1258 (1986)). Accordingly, petitioners’ argument under Guideline H
2 provides no basis for reversal or remand.

3 Goal 18 does not require additional findings.

4 **2. Goal 17**

5 Statewide Planning Goal 17 (Coastal Shorelands) is:

6 “To conserve, protect, where appropriate, develop and where
7 appropriate restore the resources and benefits of all coastal
8 shorelands, recognizing their value for protection and maintenance
9 of water quality, fish and wildlife habitat, water-dependent uses,
10 economic resources and recreation and aesthetics. The management
11 of these shoreland areas shall be compatible with the characteristics
12 of the adjacent coastal waters; and

13 “To reduce the hazard to human life and property, and the adverse
14 effects upon water quality and fish and wildlife habitat, resulting
15 from the use and enjoyment of Oregon’s coastal shorelands.”

16 The city council found that “[G]oal 17 is implemented through the
17 [CBCP], the zoning map, the Oceanfront Management Overlay Zone, and the
18 Flood Hazard Overlay. * * * [N]one of [the 2020 FMP] amendments otherwise
19 affect these implementation measures. The amendments do not restrict or limit
20 the City’s ability to fulfill its obligations under * * * [G]oal 17.” Record 15.

21 Petitioners argue that the city council’s conclusion that the 2020 FMP
22 complies with Goal 17 is not supported by adequate findings or an adequate
23 factual base. Petitioners argue that the city’s findings are conclusory and fail to
24 address adverse impacts on wildlife caused by EBG monocultures. Petitioners
25 emphasize evidence that EBG creates a monoculture that is unsuitable habitat for

1 native plants, invertebrates, mammals, and birds. Record 229, 722, 826, 841,
2 1008-11. Because the 2020 FMP allows the planting of EBG, petitioners argue
3 that they do not “reduce * * * adverse effects upon * * * wildlife habitat” and
4 therefore do not comply with Goal 17.

5 Intervenor-respondent (intervenor) responds, and we agree, that the 2020
6 FMP does not cause an EBG monoculture. EBG is prevalent in dunes throughout
7 the city and its presence predates the 2020 FMP. The 2020 FMP requires
8 revegetation of graded areas and allows planting with EBG, but it also allows
9 revegetation using other types of beach grasses. Petitioners do not argue that Goal
10 17 requires the city to prohibit revegetation using EBG or requires revegetation
11 using only native plants. Petitioners’ Goal 17 argument provides no basis for
12 reversal or remand.

13 The city’s decision does not violate Goal 17.

14 **C. Public Access**

15 Goal 18, Guideline E, provides:

16 “Where appropriate, local government should require new
17 developments to dedicate easements for public access to public
18 beaches, dunes and associated waters. Access into or through dune
19 areas, particularly conditionally stable dunes and dune complexes,
20 should be controlled or designed to maintain the stability of the area,
21 protect scenic values and avoid fire hazards.”

22 CBMC 17.42.060(A)(8) implements Goal 18, Guideline E, and provides:

23 “Public Access Provision. A development (e.g., subdivision or
24 planned development) that includes ten or more dwelling units, shall
25 provide common beach access trails or walkways open to the

1 general public. At a minimum, there shall be one beach access for
2 each four hundred feet of beach frontage. This requirement is in
3 addition to access provided by existing street-ends.”

4 Petitioners argue that the city council’s decision misconstrues those
5 provisions because, while those provisions require certain developments to
6 provide beach access, the 2020 FMP effectively requires those developments to
7 abandon previously established beach access when it becomes inundated by sand.
8 Petitioners explain that CBMC 17.42.060(A)(8) requires the Breakers Point
9 Homeowners Association to provide two beach access staircases. Petitioners
10 assert, without citing any evidence in the record, that maintaining those staircases
11 will require grading “tens of thousands of cubic yards of sand” and, because the
12 2020 FMP allows only up to 2,500 cubic yards of preservation grading each year,
13 the 2020 FMP precludes petitioners from maintaining required beach access. The
14 entire Chapman Point area accretes 15,000 cubic yards of sand each year. Record
15 1013. Petitioners argue that overall annual accretion of 15,000 cubic yards of
16 sand and removal of a maximum of 2,500 cubic yards per year will result in dune
17 growth of 12,500 cubic yards per year. Petition for Review 34, 49. Petitioners do
18 not point to any evidence of the volume of sand that must be moved to maintain
19 any particular beach access.

20 As explained above, the Goal 18 guidelines do not provide mandatory
21 standards. Moreover, the city points out that petitioner’s argument is not factually
22 accurate. As explained, the entire Chapman Point area accretes 15,000 cubic
23 yards of sand each year. Each beach access point is a small fraction of that area.

1 Under the 2020 FMP, petitioners may apply for a CUP to annually grade up to
2 2,500 cubic yards of sand at each access point. CBMC 17.42.060(A)(3); Record
3 29-30.³ Thus, petitioners have not demonstrated that the 2020 FMP will preclude
4 grading to maintain existing beach access.

5 CBCP Area Specific Hazards Policy 3(b) provides: “In order to control
6 foot traffic across protective dune barriers and to reduce blowing onto the street
7 and adjacent property, access trails to the beach shall be maintained and clearly
8 marked.”

9 Petitioners argue that the 2020 FMP does not comply with the requirement
10 that beach access trails be maintained because the 2020 FMP will lead to the
11 continued inundation of beach access staircases at Chapman Point. The city

³ An applicant for a preservation grading CUP must, among other things, establish that “[t]he annual cumulative volume of preservation grading does not exceed 2,500 cubic yards.” CBMC 17.42.060(A)(3)(h)(2). An applicant must submit a grading plan and monitoring report that includes the following:

“(1) the area, volume, and location of grading;

“(2) the area(s) where graded sand was deposited;

“(3) erosion control measures;

“(4) revegetation measures;

“(5) impacts on wildlife habitat, including razor clam habitat;

“(6) any other requirements of the approved grading plan; and

“(7) any conditions of approval imposed by the Planning Commission.” CBMC 17.42.060(A)(3)(d), (f).

1 responds, and we agree, that the 2020 FMP authorizes preservation grading to
2 maintain access trails to the beach. Petitioners have not demonstrated that the
3 2020 FMP conflicts with CBCP Area Specific Hazards Policy 3(b).

4 **D. Ecola Creek Erosion and Restoration**

5 As described above, Ecola Creek runs to the ocean between the city's
6 downtown area and the Northside area, including Chapman Point and Breakers
7 Point. Historically, sand removed from the dunes to grade for views was
8 deposited along the north bank of Ecola Creek, which resulted in fairly level
9 beach access from Les Shirley Park along the creek's north bank, except when
10 erosion removes the path.

11 As explained in further detail later in this decision, petitioners argue that
12 the 2020 FMP is inconsistent with a number of CBCP policies based on the
13 premise that the new prohibition on grading for views will impede public beach
14 access via the graded trail along the north bank of Ecola Creek that has
15 historically been created from sand deposited from grading for views. Petitioners
16 argue that members of the public who wish to access the beach from Les Shirley
17 Park will have to hike up a hill and then over dunes.

18 The city responds, and we agree, that the 2020 FMP does not prohibit
19 deposition of sand near the north bank of Ecola Creek. The Allan Report
20 explained:

21 "There is some concern that the placement of large volumes of sand
22 scraped from the Chapman Point dunes could exacerbate problems
23 in Ecola Creek, potentially contributing to increased erosion near

1 Larch Street, modifications to the creek’s flow regime, and possibly
2 even changes to the biology of the creek. With respect to the first
3 two items, such effects are probably short-lived as early fall rains
4 can be expected to flush out the creek mouth. Furthermore, these
5 processes have clearly been ongoing since the 1930s, without any
6 apparent long-term impact to the ability of the creek to flow.”
7 Record 1188.

8 As the city points out, “[t]here is no reason that sand displaced from
9 preservation grading or remedial grading cannot be used in the estuary nor, for
10 that matter, that sand from other locations outside of Cannon Beach could be
11 used.” Respondent’s Response Brief 35. Accordingly, petitioners’ arguments
12 regarding beach access along the north bank of Ecola Creek are based on an
13 incorrect premise that the 2020 FMP prohibits maintenance of that beach access.

14 For that reason, we reject petitioners’ argument that the 2020 FMP violates
15 CBCP Ecola Creek Estuary Plan Policy 12 and CBCP Area Specific Hazards
16 Policy 3(b). We discuss petitioners’ other Ecola Creek beach access arguments
17 below and reject them for the same reason.

18 **E. Comprehensive Plan Policies**

19 **1. Hazard Policies**

20 **a. Hazards Policy 1**

21 **i. Natural Seasonally Cyclical**

22 CBCP Hazards Policy 1 provides that “[t]he City shall make reasonable
23 efforts to protect life and property from natural disasters and hazards. Measures
24 employed by the City shall be the Plan, Zoning and Subdivision Ordinances, and
25 other City Ordinances.” The city council found that, “[b]y allowing the dunes

1 system to function in a natural seasonally-cyclical manner the City furthers its
2 commitment to the Hazard Policies.” Record 14.

3 Petitioners argue that the city council’s conclusion is not supported by an
4 adequate factual base. Petitioners argue that the Allan Report demonstrates that
5 the dune system in the city is not “seasonally cyclical” because EBG has
6 contributed to continuous accretion of sand at Chapman Point and, thus, no
7 reasonable person could conclude that prohibiting grading for views promotes
8 the “natural seasonally-cyclical” function of the dune system. Petition for Review
9 15.

10 In response, the city and intervenor (collectively, respondents) identify the
11 “natural seasonally-cyclical” dune system function to which the city’s finding
12 refers and argue that finding is supported by an adequate factual base. We agree.
13 The Allan Report explains that storm waves erode sand from the dune system.
14 Record 1133. During the relatively calmer summer season, when wave heights
15 are lower, wave and wind processes return sand to the beach, where the sand
16 accumulates and dunes rebuild. *Id.* That same section of the Allan Report
17 explains that dunes play an important role in protecting coastal infrastructure and
18 properties from wave erosion and storm surge flooding because “dunes serve [as]
19 a critical yet flexible barrier to wave runup and ultimately wave overtopping,
20 providing a natural stockpile of sand, which is periodically drawn on during times
21 of storm wave attack.” *Id.* The evidence that petitioners emphasize, that EBG
22 results in sand accretion, does not so undermine the evidence of seasonal cyclical

1 dune function such that a reasonable person could not conclude that the city’s
2 dune system functions in a seasonally cyclical manner, and that limiting dune
3 grading is consistent with the requirement in Hazards Policy 1 that the city “make
4 a reasonable efforts to protect life and property from natural disasters and
5 hazards.” The city’s finding that the 2020 FMP is consistent with Hazards Policy
6 1 is supported by an adequate factual base.

7 **ii. “FEMA Plus 5”**

8 Under Goal 18, Implementation Requirement 7(b), foredunes may not be
9 graded lower than four feet above the 100-year flood elevation, which is
10 calculated by the Federal Emergency Management Agency (FEMA) as the Base
11 Flood Elevation. That limitation is intended to “ensure that an adequate sand
12 volume remains to withstand erosional effects of extreme storms and to minimize
13 any potential for wave overtopping and inundation of the backshore.” Record 12.
14 To account for sea-level rise and the changing climate effects that are beginning
15 to alter seasonal dynamics of oceans, tides, and storms, the 2020 FMP adds an
16 additional foot to this minimum after-grading dune height (FEMA Plus 5).
17 Record 12, 43. The city concluded that FEMA Plus 5 adds a one-foot safety factor
18 that is responsive to changing systems and dynamics that affect the dune system
19 and the potential for natural hazards to property and infrastructure behind the
20 dunes. Record 43.

21 Petitioners do not challenge that conclusion. Instead, petitioners argue that
22 there is no evidence that prohibiting grading for views above FEMA Plus 5

1 results in any additional hazard protection. In other words, as we understand it,
2 petitioners argue that the FEMA Plus 5 standard is sufficient to protect backshore
3 property and infrastructure, so petitioners should be permitted to grade for views
4 above FEMA Plus 5. The problem with that argument is pervasive throughout
5 the petition for review. Petitioners cite nothing that requires the city to allow
6 grading for views. Petitioners’ argument regarding FEMA Plus 5 provides no
7 basis for reversal or remand.

8 **b. Potential Impacts to Public Facilities and Services**

9 The city council found that, “[b]y going above and beyond the FEMA
10 standards, * * * the Comprehensive Plan amendments further its Flood Hazard
11 Policies and lessen potential impacts to Public Facilities and Services and other
12 areas of the Comprehensive Plan.” Record 14-15.

13 Petitioners argue that the city council’s conclusion that the 2020 FMP will
14 protect public facilities and services is not supported by an adequate factual base.
15 Intervenor responds, and we agree, that petitioners have not identified any
16 applicable CBCP policy that requires such a finding. Accordingly, this argument
17 provides no basis for reversal or remand. *Richards-Kreitzberg v. Marion County*,
18 32 Or LUBA 76, 92 (1996) (citing *Waite v. Marion County*, 16 Or LUBA 353,
19 361 (1987)) (“Findings that are not necessary to support an applicable criterion
20 provide no basis for reversal or remand even if those findings are in error.”).

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c. Area Specific Hazards Policy 3

We rejected petitioners’ argument under CBCP Area Specific Hazards Policy 3(b) above. Area Specific Hazards Policy 3(a) provides:

“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.”

Petitioners argue that, because the 2020 FMP allows the planting of EBG, which creates “steeper” dunes, the amendments do not comply with the prohibition on practices which “oversteepen[]” dunes in Area Specific Hazards Policy 3(a). Respondents respond, and we agree, that policy by its own terms limits only “excavation” which oversteepens dunes, not all decisions that may result in steeper or taller dunes. The 2020 FMP does not implicate, let alone violate, Area Specific Hazards Policy 3(a).

2. Resource Policies

CBCP Recreation, Open Space, Natural, Visual, and Historic Resource Policy (Resource Policy) 1 provides that “[t]he City shall promote a recreation system for all age and interest groups.” Resource Policy 2 provides that “[t]he City recognizes the importance of the beach as a recreation and economic resource to the area.” Resource Policy 8 provides that “[t]he City shall carry out a program of providing public access to the ocean beach and Ecola Creek by,” in

1 relevant part, designing some access points “to permit access for persons with
2 limited mobility.”

3 The city council found that the 2020 FMP furthers the Resource Policies
4 “by providing all community members with unimpeded year-round access to the
5 beach, while lessening the risk of those seeking recreational opportunities at a
6 time of ‘grading activity.’” Record 15.

7 Petitioners argue that the city council’s conclusion is not supported by
8 substantial evidence. Petitioners point to testimony that seniors with limited
9 mobility already have difficulty accessing the beach from the Breakers Point
10 development due to sand inundation of beach access staircases. Record 752, 980-
11 81. Petitioners argue that the 2020 FMP prohibits dune grading on the scale
12 necessary to maintain the two public beach access staircases on the Breakers
13 Point property and the graded trail from Les Shirley Park along the north bank of
14 Ecola Creek.

15 As explained above, petitioners’ argument that the 2020 FMP does not
16 allow an adequate volume of sand to be graded to maintain beach access is based
17 on an incorrect interpretation of how much preservation grading is permitted
18 under the 2020 FMP. The 2020 FMP does not cap overall preservation grading
19 to 2,500 cubic yards of sand *per year*. Instead, preservation grading is limited to
20 2,500 cubic yards of sand *per CUP*, per year. CBMC 17.42.060(A)(3); Record
21 29-30; *see n 3*. Thus, a CUP may be available for preservation grading at each
22 access point up to 2,500 cubic yards of sand per year. Moreover, petitioners do

1 not cite any evidence that supports a conclusion that grading 2,500 cubic yards
2 of sand per year is inadequate to maintain any particular beach access point. As
3 noted above, petitioners do not point to any evidence of the volume of sand that
4 must be moved to maintain any particular beach access.

5 With respect to the beach access trail from Les Shirley Park, it may be that
6 maintaining the graded trail along the north bank of Ecola Creek historically
7 involved deposition of more than 2,500 cubic yards of sand per year, given the
8 erosional force of the creek removing sand from that area. However, petitioner
9 does not make that argument. Moreover, we do not understand petitioners to
10 argue that the 2020 FMP prohibits the *deposition* of more than 2,500 cubic yards
11 of sand per year to maintain beach access. The 2020 FMP regulates grading and
12 deposition as distinct activities. As we explained above, while the 2020 FMP's
13 prohibition on grading for views may limit the locations from which sand may
14 be obtained, the 2020 FMP does not prohibit deposition of sand along the north
15 bank of Ecola Creek.

16 Petitioners also argue that the city council's conclusion that the 2020 FMP
17 complies with the Resource Polices is not supported by substantial evidence
18 because the planting of EBG will lead to the continued erosion of sand from other
19 beaches in the littoral cell, making those beaches unsafe and preventing them
20 from serving as recreation and economic resources. Petitioners have not cited any
21 evidence in the record that the erosion of sand from some beaches in the littoral

1 cell makes those beaches unsafe or prevents them from serving as recreation and
2 economic resources.

3 Petitioners have not established that the 2020 FMP violates the Resource
4 Policies relating to public physical access to the beach. The city council's
5 conclusion that the 2020 FMP complies with the Resource Policies is supported
6 by substantial evidence.

7 **3. Northside Policies**

8 **a. Northside Policy 2**

9 CBCP Northside Policy 2 provides that "Chapman Point is recognized as
10 an important scenic and natural area of Cannon Beach and shall be protected by
11 a zoning designation which permits only those uses which are consistent with the
12 maintenance of its scenic character." The city council found that, by limiting dune
13 grading, the 2020 FMP furthers the maintenance of the scenic character of
14 Chapman Point.

15 Petitioners argue that the city council's conclusion that the 2020 FMP
16 complies with Northside Policy 2 is not supported by an adequate factual base.
17 Petitioners argue that, because planting EBG causes "unnatural" dune growth,
18 and because the 2020 FMP allows the planting of EBG but limits dune grading
19 to combat that growth, the 2020 FMP will not protect Chapman Point as a
20 "natural area."

21 The city responds that Northside Policy 2 applies only to decisions that
22 amend the Chapman Point "zoning designation," which the 2020 FMP does not.

1 The city’s interpretation is consistent with the express language of that policy.
2 Accordingly, because the 2020 FMP does not amend any zoning designation in
3 Chapman Point, petitioners’ argument under Northside Policy 2 provides no basis
4 for reversal or remand.

5 Moreover, to the extent that the city council found that the 2020 FMP is
6 consistent with the maintenance of the scenic character of Chapman Point, we
7 agree. The city responds that the city council implicitly interpreted the term
8 “natural” in the policy to refer to the dune system in its current form—including
9 EBG, which has existed at Chapman Point for almost 70 years. Record 1135. We
10 agree with the city that that interpretation is implicit in the city council’s decision.
11 That interpretation is consistent with the plain meaning of the term “natural,” and
12 we affirm it. *Siporen*, 349 Or 247. The fact that EBG is a non-native species does
13 not mean that it is “unnatural” or that its effect on the dunes are “unnatural.”
14 Vegetation which is not “native” is nonetheless “natural” and related dune
15 impacts are consistent with the maintenance of the scenic character of the
16 Chapman Point area.

17 Prohibiting grading for views also maintains the scenic character of
18 Chapman Point. The city council received testimony regarding the adverse
19 impacts of dune grading on the scenic character of Chapman Point:

20 “This summer, we were shocked when we saw photographs of
21 previous dune-grading episodes in Cannon Beach. To us, the dunes
22 in those photos looked like barren construction sites, flat-topped and
23 balding, even with the subsequent grass-planting. From the beach

1 (the viewpoint of most tourists and visitors), the post-dune-graded
2 view is even worse, revealing far more of the buildings and their
3 hardscaping, and less of the natural wind & sea-shaped contours and
4 slopes that draw people here from all over the world.” Record 550,
5 552.

6 A reasonable person could conclude that allowing EBG and limiting dune
7 grading protects Chapman Point as a “scenic and natural area.”

8 While the city is not required to adopt any finding that the 2020 FMP is
9 consistent with Northside Policy 2, we agree with the city that the 2020 FMP is
10 consistent with Northside Policy 2.

11 **b. Northside Policy 1**

12 CBCP Northside Policy 1 provides that “[t]he Northside area, the area
13 north of Ecola Creek, shall remain primarily residential in character.
14 Development should take place only in a manner that is compatible with sensitive
15 land, steep slopes, active foredunes, areas subject to flooding, wetlands and
16 stream banks.”

17 The city council found that, “[a]lthough the elimination of grading for
18 views may affect some properties, most notably those in the Breakers Point
19 development, those properties will continue to be able to maintain the structures
20 and properties and meet the city’s housing needs.” Record 14. The city council
21 did not make specific findings regarding Northside Policy 1.

22 Petitioners argue that, by prohibiting grading for views, the 2020 FMP will
23 prevent the Northside area from remaining “primarily residential in character.”
24 Petitioners’ argument ignores remedial grading allowed by the 2020 FMP to

1 protect structures. The 2020 FMP does not change the residential character of the
2 Northside area.

3 Petitioners also argue that the 2020 FMP will allow the dunes to
4 accumulate in a manner that is itself not “compatible” with “natural, active
5 foredunes.” Petition for Review 10. The city responds, and we agree, that the
6 2020 FMP does not authorize any “development” that is incompatible with active
7 foredunes. The parties do not point to any definition of “development” in the
8 CBCP or CBMC. The CBCP General Development Policies refer to
9 “development” in the context of structures such as single-family dwellings and
10 restaurants and active uses such as excavation, grading, and filling. Allowing
11 sand to accumulate is passive and does not constitute “development.”

12 While the city is not required to adopt any finding that the 2020 FMP is
13 consistent with Northside Policy 1, we agree with the city that the 2020 FMP is
14 consistent with Northside Policy 1.

15 **4. Economic Policies**

16 CBCP Economy Policy 3 provides:

17 “The vitality of all the major sectors of the City’s economy is
18 dependent in large part on the city’s physical location, its natural
19 amenities and the attractiveness of its residential and commercial
20 areas. The presence of the visual and performing arts and
21 opportunities for life long learning are also important to the health
22 of the local economy. The City’s economic development strategy
23 will focus on the protection and enhancement of these factors. The
24 objective is to strengthen the local economy in a manner that retains
25 the community’s small town character and benefits the entire
26 community.”

1 The city council found that, “[b]y providing the same grading standards,
2 based on preventive, remedial and emergency measures, rather than ‘grading for
3 views’, in select locations, or in specific management unit areas, the City furthers
4 its commitment to the entire Cannon Beach community, as stated in Goal 3 of the
5 Economy Policies.” Record 14.

6 Petitioners argue that the city council’s conclusion that the 2020 FMP
7 “protect[s] and enhance[s]” the city’s “natural amenities” is not supported by
8 substantial evidence. Petitioners argue that EBG and its impact on dune
9 morphology are not “natural.” The city again responds that the city council
10 implicitly interpreted the term “natural” in the policy to refer to the existing dune
11 system, including EBG, and just because EBG is not native to Oregon does not
12 mean that it and its impacts on the dunes are not “natural.” We agree with the city
13 that that interpretation is implicit in the city council’s decision. Petitioners have
14 not demonstrated that that interpretation is inconsistent with the term “natural”
15 or inconsistent with the underlying purpose of Economy Policy 3. We affirm the
16 city council’s interpretation. ORS 197.829(1); *Siporen*, 349 Or 247.

17 Petitioners also argue that the 2020 FMP does not protect and enhance the
18 “attractiveness” of the city’s residential areas because prohibiting grading for
19 views will result in lost beach access, lost ocean views, and declining property
20 values in residential areas behind the dune system.

21 The city responds that the city council implicitly interpreted the phrase “the
22 City’s economy” in Economy Policy 3 to include all economic interests, not only

1 residential property values. That interpretation is consistent with Economy Policy
2 2, which defines “the city’s economy” as including “tourism, the second home
3 industry, and retirement.”⁴ The city explains that graded dunes are unsightly and
4 adversely impact the beauty of the city’s beaches, which negatively impacts
5 tourism. Dune grading exposes sand to wind carry, adversely impacting adjacent
6 homeowners. The city also responds that fluctuations in property values are not
7 necessarily due to dune growth. In any event, the city argues that the city council
8 was entitled to weigh the adverse impacts of dune grading on tourism and
9 adjacent homeowners against any potential decline in residential property values
10 due to sand accretion and larger dunes in certain residential areas of the city. We
11 agree. The city is entitled to balance the economic interests identified in the
12 Economic Policies. Petitioners have not demonstrated that the city council’s
13 interpretation of “the city’s economy” is inconsistent with that phrase or the
14 underlying purpose of Economy Policy 3. We therefore defer to the city’s
15 interpretation of its own comprehensive plan. ORS 197.829(1); *Siporen*, 349 Or
16 247.

⁴ CBCP Economic Policy 2 provides:

“The three major sectors of the city’s economy are tourism, the second home industry and retirement. The city anticipates that these sectors will continue to constitute the majority of the city’s economy. The city’s efforts will be directed toward enhancing these economic sectors in a manner that results in the desired balance between the residential and resort elements of the community.”

1 Finally, petitioners point to findings in the Allan Report that the accretion
2 of sand at Chapman Point due to EBG is offset by the erosion of sand from other
3 beaches in the Cannon Beach littoral cell. Record 1172. Petitioners argue that the
4 erosion of sand from some beaches adversely impacts the attractiveness of the
5 residential and commercial areas adjacent to those beaches. In response, the city
6 points to other findings in the Allan Report that, while more sand is currently
7 being driven towards Chapman Point, over the long-term there is “a zero net
8 longshore sand transport.” Record 1191-94.

9 We agree with the city that a reasonable person could conclude that
10 allowing EBG planting and limiting dune grading protects and enhances the
11 city’s natural amenities and the attractiveness of its residential and commercial
12 areas and strengthens the local economy. The city council’s conclusion that the
13 2020 FMP complies with Economy Policy 3 is supported by substantial evidence.

14 **5. Unaddressed CBCP Policies**

15 Petitioners argue that the city council failed to adopt findings regarding
16 multiple CBCP policies. Petitioners request remand for the city to either find that
17 the 2020 FMP complies with those policies or make findings explaining why they
18 do not apply. The city responds, and we agree, that petitioners’ argument relies
19 on an incorrect standard of review. In the challenged legislative decision, the city
20 was not required to make specific findings that certain CBCP policies are
21 inapplicable to the 2020 FMP. However, we also agree with the city’s alternative

1 response that the CBCP policies raised by petitioners are inapplicable, as
2 explained below.

3 **a. General Development Policy 4**

4 CBCP General Development Policy 4 provides that “[t]he City shall
5 control excavation, grading, and filling in order to: avoid landslides and other
6 geologic hazards; protect adjacent property and structures; provide for
7 appropriate drainage improvements; minimize the extent of vegetation removal;
8 minimize erosion and sedimentation; and protect the aesthetic character of the
9 City.”

10 Petitioners argue that the 2020 FMP is inconsistent with General
11 Development Policy 4 because it fails to protect adjacent property and structures
12 and the aesthetic character of the city. That is so, petitioners argue, because it
13 allows planting of EBG and prohibits grading for views, which petitioners argue
14 will lead to unnatural dune heights at Chapman Point, unchecked inundation of
15 beach accesses, and unchecked erosion of the north bank of Ecola Creek.

16 The city responds that General Development Policy 4 requires the city to
17 regulate excavation, grading, and filling activities and does not govern impacts
18 from disallowing grading for views. We agree. Petitioners do not argue that the
19 grading allowed by the 2020 FMP violates that policy. Instead, petitioners’
20 argument is directed at the 2020 FMP’s prohibition on grading for views and the
21 permitted revegetation of graded areas with EBG. The city responds, and we
22 agree, that General Development Policy 4 does not apply as asserted by

1 petitioners. Accordingly, petitioners’ argument regarding General Development
2 Policy 4 provides no basis for remand.

3 Respondents also argue that, even if General Development Policy 4 does
4 apply, the 2020 FMP is consistent with that policy and demonstrates that the city
5 meaningfully considered that policy. The 2020 FMP protects property and
6 structures by maintaining a stable, vegetated dune system to protect landward
7 development from wave run-up and overtopping, while specifically authorizing
8 grading to protect structures from sand inundation. In addition, the city argues
9 that the 2020 FMP protects the aesthetic character of the city because EBG is,
10 and has long been, part of the natural aesthetic of city’s dune system. Finally, as
11 explained above, while the 2020 FMP’s prohibition on grading for views may
12 limit the locations from which sand is obtained to restore the north bank of Ecola
13 Creek, the 2020 FMP does not prohibit the city from approving sand deposition
14 or other erosion-control measures on the north bank of Ecola Creek.

15 Even assuming that General Development Policy 4 does apply to the 2020
16 FMP, petitioners have not demonstrated that the city failed to “meaningfully
17 consider” that policy or that the 2020 FMP is inconsistent with that policy.
18 *Columbia Pacific Building Trades Council*, 76 Or LUBA at 27-28.

19 **b. Sand Dune Construction Policy 2**

20 CBCP Sand Dune Construction Policy 2 provides:

21 “Before a building permit is issued for construction involving the
22 removal of vegetation in areas with sand soils, a satisfactory wind
23 erosion prevention plan will be submitted which provides for

1 temporary and permanent sand stabilization and maintenance of new
2 and existing vegetation. The vegetation program shall return the area
3 to its original level of stability.”

4 Petitioners argue that, because EBG has led to the accretion of thousands
5 of cubic yards of sand at Chapman Point each year, and because the 2020 FMP
6 allows the planting of EBG, the amendments will not return the area to its original
7 level of stability and therefore do not comply with Sand Dune Construction
8 Policy 2.

9 The city responds, and we agree, that Sand Dune Construction Policy 2 is
10 not applicable to the 2020 FMP. That policy requires an applicant for a building
11 permit in areas with sand soils to ensure that the area is as capable of withstanding
12 wind erosion after construction as it was before construction. The 2020 FMP does
13 not approve or regulate sand dune construction.

14 The assignments of error are denied.

15 **CONCLUSION**

16 For all of the reasons explained above, petitioners have not demonstrated
17 that the 2020 FMP is not in compliance with the statewide planning goals, CBCP,
18 or CBMC. ORS 197.835(6); ORS 197.835(7)(a). In addition, the decision and
19 record are sufficient to demonstrate that applicable criteria were applied and
20 required considerations were considered.

21 The city’s decision is affirmed.