BEFORE THE HONORABLE CITY COUNCIL

OF THE CITY OF BANDON, OREGON

Bandon Beach Ventures, LLC & Perk Development Group, LLC, Applicants.	Application No. 23-045 Applicants' Combined Responses to Both Notices of Appeal

I. INTRODUCTION

A. The Property and Project

This land use appeal concerns a proposed application for a development in the City of Bandon called "Gravel Point". A map of the proposed location of Gravel Point (the "subject property") is included on the next page. The Gravel Point Development is located along and east of Beach Loop Dr., south of Face Rock Rd., north of Three Woods Dr., and west of the Carter St. dead end.[1] The site area is approximately 23.2 acres.[2]

The Applicants are Bandon Beach Ventures, LLC (the Property Owner) and Perk Development Group, LLC (the Developer). The subject property is located in Bandon's Controlled Development 1 (CD-1) Zone, the purpose of which is that "a mix of uses would be permitted, including residential, tourist commercial and recreational." Bandon Municipal Code ("BMC") 17.20.010.

Gravel Point is a proposed development with a mix of uses, including tourist commercial and recreational. It includes two lodges (the Meadow Lodge and the Dune Lodge) and 32 motel villa suites (divided into two sets: the Meadow Suites and the Ridge Line Suites). The Meadow Lodge will include 110 hotel rooms, a spa, and guest breakfast room. The Dune Lodge will include meeting rooms, a lounge, bar, and dining facilities. The proposed development will be one of the premier tourist destinations on the Oregon Coast.

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[1] Township 28 South, Range 15 West, Section 36C, Tax Lots 400, 500, 600, 700, 1500.

[2] The subject property along with the existing public rights of way that the Applicants propose to vacate are approximately 24.2 acres. After the Applicants dedicate some new public rights of way (approximately 1.6 acres) pursuant to the updated design, the subject property will be approximately 23.2 acres.

Conceptual Rendering

Location

B. Current Application

The current application is a Type III combined application. As a result, it must follow the City's Type III procedures. It is a "combined application" in that it asks for combined land use approvals:

> A Conditional Use Permit (a "CUP") request including a request to allow a portion of the development to exceed 28' in height (up to 35' in height); and
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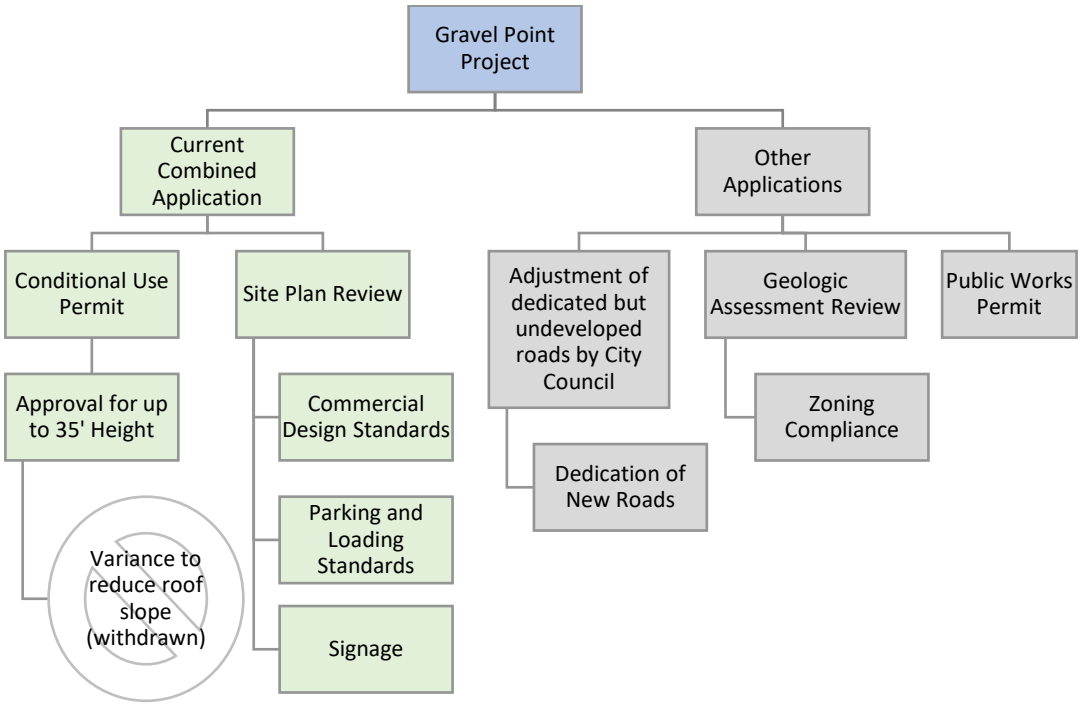
> Site Plan Review (including for commercial design standards, parking and loading standards, and signage).

The Applicants have submitted a "restated application" to the City Council because there have been some minor modifications to the original Gravel Point Development proposal that was submitted to and approved by the City of Bandon Planning Commission. Those minor modifications are detailed in the restated application.

The proposed development will necessitate a series of land use and development applications to the City of Bandon:



The background of the application is as follows. The City Planning Staff deemed the application complete. After two public hearings, the Planning Commission voted to approve the subject application subject to 52 conditions of approval. The Planning Commission's Notice of Decision is attached hereto as **Exhibit "A"**.

Two appeals have been filed. One by the Oregon Coastal Alliance ("ORCA") and another by Mr. Bruce Spencer. Herein, ORCA and Mr. Spencer are collectively referred to as the "Appellants". Their Notices of Appeal are attached hereto as **Exhibit "B"** and **Exhibit "C"**, respectively.

Below the Applicants list the issues raised in the Notices of Appeal and provide detailed responses. Ultimately, the Appellants fail to raise any issues demonstrating that reversal is required. As a result, the City Council should issue findings of fact supporting the Planning Commission's Notice of Decision, make findings concerning the appeals, and ultimately deny the appeals so that the proposed development can move forward.

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III. TABLE OF EXHIBITS

IV. STANDING

The Applicants agree that the Oregon Coast Alliance ("ORCA") and Mr. Bruce Spencer have standing to appeal the Decision pursuant to BMC 16.04.070(E)(1)(b) because they testified orally or in writing during the public hearing before the Planning Commission prior to the close of the public record.

V. STATEMENT OF THE APPLICATION

A. Nature of Relief Sought

The Applicants request that the appeals be denied, and that the subject application be approved as modified.

B. Summary of Arguments

Combined, the two Notices of Appeal raise approximately 25 issues on appeal. Importantly, BMC 16.04.070(E) requires each appellant to identify the issues being appealed. In *Miles v. City of Florence*, 190 OR App 500, 510 (2003), the Oregon Land Use Board of Appeals ("LUBA") held that in such circumstances, the issues on appeal are limited to those stated in the notices of appeal. As a result, no other issues can be raised.

The Applicants agree with ORCA on two points:

> Issue 1: The City Council should adopt findings of fact to support the Planning Commission's Notice of Decision and
>
> Issue 14: In the Notice of Decision, Condition 1 (which states, "All proposals of the applicant shall become conditions of approval") should be amended to be more specific.

The bulk of ORCA's appeal is directed towards the variance proposal to decrease the Meadow Lodge roof slope. However, as noted in the Restated Application, the Applicants have withdrawn the requested variance. As a result, those arguments are now moot. The remainder of ORCA's arguments are detailed and responded to below.

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VI. JURISDICTION

The Bandon City Council has jurisdiction over this appeal pursuant to BMC Table 16.04.020, which states that a Conditional Use Permit ("CUP") is initially reviewed by the Planning Commission and appealed to the City Council.[3] The issuance of the Planning Commission's Notice of Decision and the filing of the Notices of Appeal and fees conferred jurisdiction on the City Council.

VII. RESPONSE TO ISSUES APPEALED BY ORCA

Below the Applicants outline the issues raised on appeal by ORCA and provide individualized responses. Importantly, the issues raised by ORCA are either moot and no longer relevant or do not provide a valid basis for appeal.

1. **"The decision is not accompanied by any findings demonstrating whether criteria have been satisfied, and, if they have been satisfied, what evidence is relied upon."** ORCA Notice of Appeal at 2.

Applicants' Response: The Applicants agree that findings must be adopted by the City demonstrating that the various criteria have been satisfied and what evidence the City has relied on. The remedy is for the City Council to adopt written findings based on the Planning Commission's record except on those issues raised in the Notices of Appeal, whereby the City Council should make findings *de novo* based on the new record created before it. This is not a basis to deny the application and it can be cured.

2. **"The applicant has also failed to make findings related to the Geotech Review criteria, and that failure prejudices appellant's substantial rights."** ORCA Notice of Appeal at 2.

Applicants' Response: It is unclear as to what criteria ORCA is referring to. The Geotech Review is discussed below. The Geologic Assessment Review is a separate Type II application pursuant to BMC Chapter 17.78 and not part of the subject application. BMC 16.04.090 grants the Applicants discretion as to whether to consolidate the applications, but the Applicants have not consolidated them.

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[3] Because this is a Combined Application and because it includes a CUP request, the entire application is reviewed using the Type III procedures pursuant to BMC Table 16.04.020 even though other components of the Application are normally reviewed using Type I or Type II procedures.

3. **"ORCA also questions as to why there is no signature accompanying the decision."** ORCA Notice of Appeal at 2.

Applicants' Response: The lack of a signature on the Decision is not a legal basis for appeal. The Seal of the City of Bandon is affixed to the Notice of Decision, and it is therefore a binding decision of the City. Further, there is no argument that the Decision was *not* issued by the City. However, if there was an issue then the remedy would be for the Mayor to sign the City Council's Decision.

4. **"The city misconstrued applicable law and made inadequate findings not based on substantial evidence regarding the variance criteria".** ORCA Notice of Appeal at 2.

Applicants' Response: As part of the Applicants' voluntary commitment to engage the public in the design process, the Applicants hereby withdraw their request for a variance to the roof slope.

In the original application, the Applicants proposed to construct the Meadow Lodge at 35-feet in height, which was taller than the CD-1 Zone standard 28-foot height limitation. The City of Bandon has a relatively unique provision prohibiting buildings from being taller than 28 feet in the CD-1 Zone except that the City can allow an increase to 35 feet in height subject to certain conditions. *See generally* BMC 17.20.090(B) (Height of Buildings and Structures).[4] One of the conditions for increasing height above 28 feet is that the roof be sloped to at least 3:12.[5]

The Applicants have requested an increase in height to 35 feet. Contemporaneously, the Applicants had requested a variance pursuant to BMC 16.36.040(B) to eliminate the roof slope requirement so that they could build a green roof, which requires a more moderately sloped pitch. This was part of the Applicants' commitment to the local environment. Unfortunately, ORCA has made it clear that they intend to appeal any such environmental considerations to the Oregon Land Use Board of Appeals ("LUBA"), which necessitates the Applicants withdrawing the requested and approved variance.

Because the requested variance has been withdrawn, the lack of any findings for

[4] BMC 17.20.090(B)(1) states: "With the specific approval of the Planning Commission, a building or structure may exceed a height of twenty-eight (28) feet, up to a maximum height of thirty-five (35) feet."

[5] BMC 17.20.090(B)(1)(a)(4) states: "All portions of any roofs above 28 ft. shall be sloped a minimum of 3:12 and must slope down and away from the highest point of the structure."

the variance is no longer relevant.

5. **"ORCA also agrees with staff that '[t]he applicant did not provide evidence that the setbacks have been increased to meet criterion #5.'"** ORCA Notice of Appeal at 8.

Applicants' Response: ORCA does not cite any particular code provision. However, the issue may concern BMC 17.20.090(B)(1)(a)(5) ("Height of Buildings and Structures"), which states:

> "*For each one (1) foot, or portion thereof, that the highest point of the structure exceeds twenty-eight (28) feet, the minimum required front, side, and rear setbacks, as defined in 17.02 Definitions, shall each be increased by one (1) foot*." [BMC 17.20.090(B)(1)(a)(5)].

For example, if the highest point of the structure is thirty-five feet, then the minimum front, side, and rear setbacks will increase by seven feet. The base requirements for the minimum front, side, and rear setbacks for the CD-1 zone are found in BMC 17.20.070. It states:

> "*Except as provided in Section 17.104.060, yards in the CD-1 zone shall be as follows*:
>
> "A. *The front yard shall be a minimum of twenty (20) feet.*
>
> "B. *Each side yard shall be a minimum of five feet, and the total of both side yards shall be a minimum of thirteen (13) feet, except that for corner lots, a side yard abutting a street shall be at least fifteen (15) feet.*
>
> "C. *The rear yard shall be at least ten (10) feet except that in such a required rear yard, storage structures (less than fifty (50) square feet), and other non-habitable structures may be built within five feet of the rear property line, provided that they are detached from the residence and the side yard setbacks are maintained. Such structures shall not be used as or converted for habitation, shall not be connected to any sewer system and shall not exceed sixteen (16) feet in height.*
>
> "D. *Where a side yard of a new commercial structure abuts a residential use, that yard shall be a minimum of fifteen (15) feet.*
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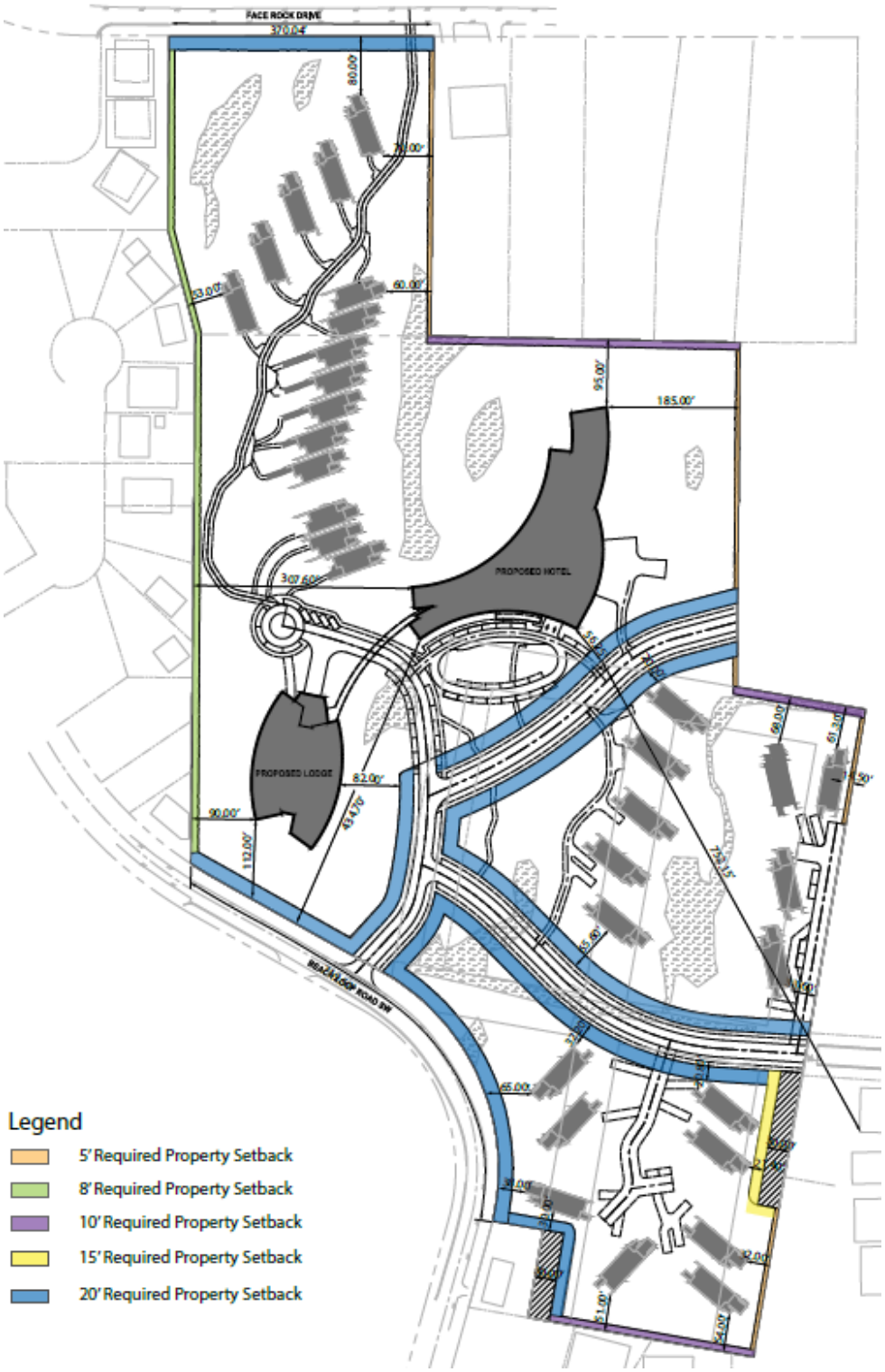
> "E. *A rear yard abutting Beach Loop Drive shall be a minimum of fifteen (15) feet*." [BMC 17.20.070].

The updated site plans have been submitted with the Combined Restated Application as Exhibit "A" (*See* that Exhibit "A", page 7 for the setback map, which is reproduced below):



Dimensioning & Property Setbacks

The site plan map demonstrates that all the structures satisfy the height-based setback requirements in BMC 17.20.070 and BMC 17.20.090. The setback from the Meadow Lodge (with two elevator shaft overruns that could reach 35') to the proposed new public road is 56.25'. That is greater than the 20' required setback. The other property line setbacks for the Meadow Lodge are 95' at the North, to the East is 185', and to the West is 307.6'. The rear yards have at least 10 feet of setbacks: the nearest Ridgeline Suite is 80' from the northern property line, the Meadow Lodge is 95', and the nearest Meadow Suite is 61.30'.

BMC 17.104.060 is not applicable. Therefore, this criterion was satisfied.

6. **"The very fact that the applicant is requesting a variance from the height standard indicates that the proposal is not consistent with the purpose and dimensional standards of the zone."** ORCA Notice of Appeal at 9.

Applicants' Response: Because the requested variance has been withdrawn, there is no basis to find that the proposal is not consistent with the purpose and dimensional standards of the zone.

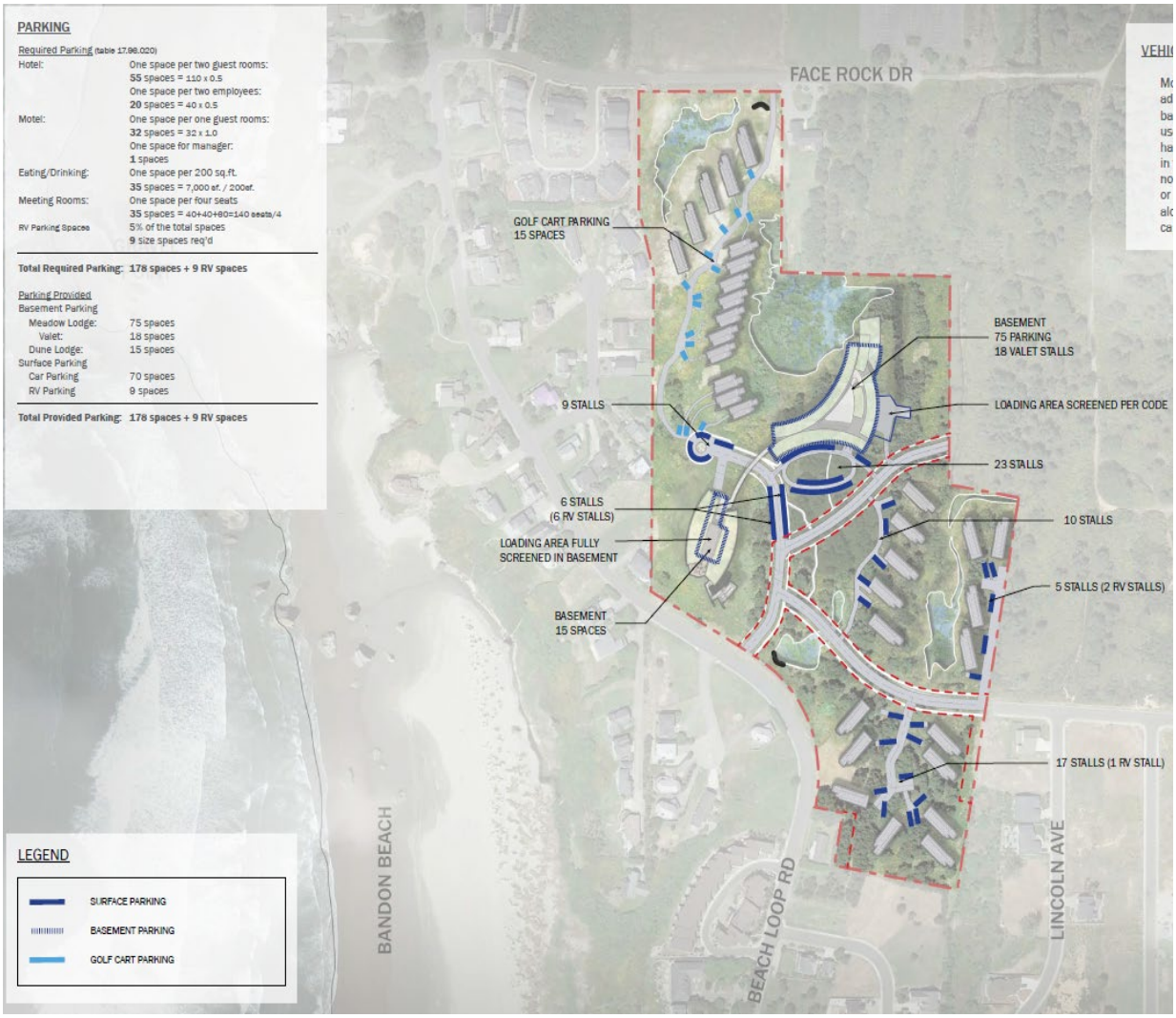
7. **"Moreover, if the applicant is attempting to either avoid the RV parking standard or place the RV parking elsewhere, off-site, then the site is not adequate in terms of size and dimension."** ORCA Notice of Appeal at 9.

Applicants' Response: Procedurally, ORCA does not cite any code provisions and therefore this argument is not adequately developed for the Applicants to be able to respond. The applicants' site plan (reproduced on the next page)[6] shows the RV parking spots. The RV parking standards are unrelated to the site being of adequate size and dimension. Therefore, this criterion was satisfied.

Substantively, and to the extent that this issue could conceivably be construed as stating that the site plan does not include the required number of RV parking spaces, that is incorrect. BMC 17.96.050(L) states, "*For parking lots for motels, restaurants or retail businesses of more than twenty (20) spaces, five percent of the total number of spaces will be R.V. spaces at least ten (10) feet wide by thirty (30) feet long*." BMC 17.96.050(L). The subject application includes motel villas and a restaurant and includes a proposed 178 regular parking spaces, which is more than

[6] See also the Restated Combined Application's Exhibit "A" at page 9.

20 spaces.[7] As a result, this provision is applicable.



Parking Exhibit

The math is as follows: 5% of 178 spaces is 8.9 spaces, which is rounded up to 9 RV parking spaces. 178 total spaces – 9 RV spaces = 169 non-RV parking spaces. The applicants' site plan shows the 9 required RV parking spots on the subject property, each of which is at least ten (10) feet wide by thirty (30) feet long.[8] It also shows

[7] Importantly, the Applicants' proposal of 164 spaces exceeds the minimum parking requirements required by the BMC.

[8] ORCA argues that off-site parking is not permitted. This contradicts BMC 17.96.040(E), which permits non-dwelling parking to be located within 500'. Nevertheless, the Applicants are not proposing such a configuration.

more than 169 non-RV parking spaces. No parking spaces are located off-site.[9] Therefore, this provision is satisfied.

8. **"The decision is also not consistent with BMC 16.12.040(D) * * * because the traffic will create adverse impacts to local residents. The size and dimensions do not provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses."** ORCA Notice of Appeal at 10.

Applicants' Response: It is unclear exactly what ORCA is arguing because they do not explain how the proposal does not satisfy the relevant provision. BMC 16.12.040(D) does not prohibit the creation of any adverse impacts. Instead, that provision relates to mitigation, suitability, adequate capacity, and precluding the use of surrounding properties. BMC 16.12.040(D) ("Approval standards for conditional uses") states as follows:

> "*The approval of all conditional uses shall be consistent with*:
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> * * *
>
> "D. *That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses*;" [BMC 16.12.040(D)].

This code provision has nothing to do with traffic. Indeed, ORCA does not explain how a change in traffic will adversely affect the use of surrounding properties. Even if it did, the site has been designed to mitigate possible adverse effects from traffic to surrounding properties. The site design includes placing the main hotel lodge in the center of the property, having multiple entrances and exits for vehicles, dedicating substantial public rights of way, having an efficient traffic flow plan to minimize disruptions, and designing parking areas to minimize visual impact on neighboring properties. As a result, the provisions of BMC 16.12.040(D) have been satisfied.

9. **"The decision is also not consistent with BMC 16.12.040 * * * (E) * * * because the traffic will create adverse impacts to local residents. * * *. The characteristics of the site are not suitable given the size, shape, and location, topography and natural features, especially in light of the increased traffic."** ORCA Notice of Appeal at 10.

[9] The Applicant disagrees that the BMC prohibits parking spaces from being located off-site. *See* BMC 17.96.040(E), which contains no such prohibition for non-dwellings.

Applicants' Response: It is unclear exactly what ORCA is arguing because they do not explain how the proposal does not satisfy the relevant provision. BMC 16.12.040(E) has nothing to do with traffic. Instead, it relates to site characteristics being suitable for the proposed use such as size, shape, location, topography, and natural features. BMC 16.12.040(E) ("Approval standards for conditional uses") states as follows:

> "*The approval of all conditional uses shall be consistent with*:
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> * * *
>
> "E. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features*;" [BMC 16.12.040(E)].

ORCA also appears to be arguing that the subject property is not suitable for the proposed use. This position is unsupported and inconsistent with the text of the BMC. The Controlled Development 1 (CD-1) Zone "is intended that a mix of uses would be permitted, including residential, tourist commercial and recreational." BMC 17.20.010. Indeed, the City's Comprehensive Plan states at page 138: "Future development in the CD-1 and CD-2 zones will be 90% residential and 10% commercial/other. This 10% allotment is made because both controlled development zones allow some commercial uses conditionally." That is, the CD-1 Zone is mixed use. The proposed development satisfies that standard and the expected ratio of residential to commercial development.

Further, the Comprehensive Plan states at page 139: "In addition to the acreage in commercial zones, another 15 acres may be considered available in the Controlled Development (CD) zones of the Jetty and Beach Loop Road areas. The City estimates that 10% of the buildable land in the CD zones will go to commercial uses. Such uses will likely be tourism related." That is, the Comprehensive Plan anticipates that 10% of the land in the CD zones will be allocated to commercial uses. There are currently only five commercial establishments in the CD-1 zone: Table Rock, Sunset, Lord Bennett's, Best Western, and Windermere. Those businesses comprise less than 10% of the land inventory and overall uses. Therefore, the proposed use also satisfies the Comprehensive Plan in terms of the commercial component and is not incompatible.

The subject property is large in size (23.2 acres) and sufficient in shape for the proposed development. The subject property is appropriate in shape for the proposed use. It is approximately 950' wide at its widest point and approximately 328' wide at its narrowest point. It is approximately 1,390' long at its longest point and approximately 928' long at its shortest point. It does not have an unusual or inappropriate shape for the proposed use. It is in a good location with adequate

public utilities. Further, the geological and environmental reports all support the siting of the project at this location.

10. **"The decision is also not consistent with BMC 16.12.040 * * * (F) * * * because the traffic will create adverse impacts to local residents. * * * All required public facilities and services do not have adequate capacity to serve the proposal, especially in light of the increased traffic."** ORCA Notice of Appeal at 10.

Applicants' Response: All required public facilities and services have adequate capacity to serve the proposed use. BMC 16.12.040(F) ("Approval standards for conditional uses") states as follows:

> "*The approval of all conditional uses shall be consistent with*:
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> * * *
>
> "F. *All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant*;" [BMC 16.12.040(F)].

The evidence in the record overwhelmingly shows that the required public facilities and services have adequate capacity for the proposed use.

Electricity: The City Engineer has placed comments in the record indicating that the utility facilities are adequate for the proposed use. *See Planning Commission Record, Staff Report at page 5 of 41*. Further, no issues have been raised so as to indicate that the City's electrical grid has insufficient capacity to serve the proposed use.

Water: The City's engineers have verified that the City's water system has the capacity to serve the proposed development. *See Planning Commission Record, Staff Report at pages 5-6 of 41*. This is confirmed by the City's Water Master Plan, which states that the current system is sufficient to meet the City's demands (including the projected population increases) through the year 2041. Bandon Water Master Plan at 1-2. Importantly, the Water Master Plan anticipates the growth of "a mix of residential, tourism and recreational uses" in the Controlled Development Zone 1 (CD-1), which is where the project is proposed.

The concerns raised by some community members appear to have stemmed from some misconceptions and prior miscommunications concerning the water system. The primary challenges identified by the City's engineers and the Water Master Plan are related to increased turbidity and sediment in the system, not insufficient capacity. It says:

"*One of the two clarifiers at the WTP is aged, is not functioning correctly, and cannot be relied on for normal operation. Replacing the clarifier will provide redundancy to the system and would facilitate continued water treatment while completing maintenance tasks on the unit in service. This improvement would also allow the City of Bandon to treat larger volumes of water and prepare for possible future expansion. The bond issue the City passed in 2019 included monies for a new second clarifier.*"

"*The existing raw water clarifier currently in service is a glass fused to steel bolted steel tank blue in color. The tanks surfaces exposed to sunlight rise in temperature causing an inversion within the tank during the warm summer months. This inversion creates a thermal movement of settled particles from the bottom of the tank to the surface. The net result is turbidity to the plant which increases or creates problems with treatment. The City installed an exterior barrier on the south side of the tank in 2019 thus greatly reducing the temperature inversion.*" Bandon Water Master Plan at 8-5.

The City is actively addressing the sediment / turbidity issues through ongoing initiatives aimed at improving water quality and system efficiency.

Another issue identified by the City concerning the Water System relates to raw water storage in late summer months. *See Planning Commission Record, Staff Report at pages 6 of 41*. This does not mean that there is not sufficient capacity to serve the existing development—merely that the City has made plans to increase its raw water storage to accommodate future population growth. Importantly, the Applicants wish to donate some land to the City to establish a new water storage tank near the subject properties, which is already planned by the City, to ensure that the City is able to satisfy its water system plans.

As a result, as indicated by every expert on the subject and in the record, the City has sufficient water system capacity to service the proposed use.

Sewer & Wastewater: The City Engineer comments on the record stated the sewer system is adequate for the proposed use. *See Planning Commission Record, Staff Report at pages 6 of 41*. No issues have been raised indicating that this is incorrect.

Streets & Traffic: The Applicants have included a traffic assessment in the record demonstrating that there is sufficient capacity on the public streets for the traffic generated by the development. The opponents have provided no comparable scientific analysis to demonstrate why the traffic assessment is incorrect.

11. **"The decision is also not consistent with BMC 16.12.040 * * * (G) * * * because the traffic will create adverse impacts to local residents. * * *. [T]he proposed use will <u>not</u> alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding prpoaties [sic] for the permitted uses listed in the underlying zoning district. The traffic will impair the neighboring residential uses due to the dramatically increased traffic from the proposed use. * * * Numerous comments from neighbor residents have expressed concern about the impact of the proposed use, including increased traffic, sewer, water, lack of infrastructure."** ORCA Notice of Appeal at 10-11 (emphasis added).

Applicants' Response: The Applicants agree with ORCA that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district. This satisfies the standards of BMC 16.12.040(G) ("Approval standards for conditional uses"), which states as follows:

> "*The approval of all conditional uses shall be consistent with*:
>
> * * *
>
> "G. *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district*;" [BMC 16.12.040(G)].

ORCA also argues: "Numerous comments from neighbor residents have expressed concern about the impact of the proposed use, including increased traffic, sewer, water, lack of infrastructure." However, there has been no explanation as to how the mere existence of the use—which is permitted in the CD-1 Zone—would impair the existing "use" of the residences. ORCA has not claimed that the proposed use would mean that the surrounding properties could no longer have homes or that people would be prevented from living in them. The argument is inadequately developed such that the Applicant is unable to respond any further.

[*This space intentionally left blank*]

12. **"Testimony has been submitted that indicates that the increased height will negatively impact views from surrounding, residential properties. See BMC 17.20.090(B)(1)(a)(1)."** ORCA Notice of Appeal at 10.

Applicants' Response: BMC 17.20.090(B)(1)(a)(1) ("Height of Buildings and Structures") states:

> "*In order to maximize the ocean view potential of lots in the CD-1 zone*:
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> * * *
>
> "B. *East of Beach Loop Drive and south of Seventh Street SW, except as otherwise permitted in 17.20.100 Exceptions to height limitations, or pursuant to 17.20.090.B.1 (below), no portion of any building or structure shall exceed a height of twenty-eight (28) feet, measured as provided in 17.02 Definitions, "Height of building or structure."*
>
> "1. *With the specific approval of the Planning Commission, a building or structure may exceed a height of twenty-eight (28) feet, up to a maximum height of thirty-five (35) feet.*
>
> "a. *Review Criteria*
>
> "*In deciding whether to approve or deny a request for the additional height, the Planning Commission shall consider and require conformance with the following review criteria. It shall be the applicant's responsibility to provide sufficiently detailed plans, data, and all other information necessary for the Planning Commission to determine whether the proposed additional height complies with the applicable review criteria.*
>
> "(1) *The additional height shall not negatively impact the views from surrounding properties*." [BMC 17.20.090(B)(1)(a)(1)].

The subject property is East of Beach Loop Drive and south of Seventh Street SW and therefore this provision is applicable. The Applicants have requested approval from the city to increase the height of the proposed Lodge structures to a maximum height of thirty-five feet. ORCA argues that the additional eight feet in height will negatively impact the views from the surrounding properties in violation of this provision. However, ORCA does not say which neighboring properties will be negatively impacted nor provide any evidence to support this contention.

The site has been designed to minimize the impact on views of neighboring property owners in every way. For example, instead of locating the proposed Lodge on the elevated portion of the property, it has been set back on a relatively flat portion, away from neighbors. There is no evidence in the record that the additional eight feet in height will negatively impact the views from the surrounding properties.

13. **"8 RV parking spaces are required and there is no allowance in the code for those to be provided anywhere but the subject property."** ORCA Notice of Appeal at 11.

Applicants' Response: The applicants' site plan shows 9 RV parking spaces on the subject property, which is more than 8. Therefore, this criterion is satisfied.

14. **"Some of those conditions of approval are contrary to law. Condition 1 that states that "[a]ll proposals on the applicant shall become conditions of approval." It is not clear what consists of "all proposals." The condition is so vague as to be unenforceable. Specific conditions must be tied to specific conditions. For example, the applicant proposes a "green roof," but that needs to be explicitly defined in a condition of approval – if the application could be approved."** ORCA Notice of Appeal at 11.

Applicants' Response: The Applicants agree that the City Council should amend the Conditions of Approval in the Decision to specify the individual proposals that are applicable. The Applicants would be fine with "green roof" being defined.

The issue otherwise lacks the specificity necessary to permit the Applicants to properly respond. As a result, any further arguments concerning the conditions of approval are waived.

15. **"* * * under Rhyne v. Multnomah County, 23 Or LUBA 442, 447 (1992), the current application cannot be approved until the separate application is approved. The City must impose a condition that requires the separate application review, and that process must provide all of the substantive and procedural steps provided here."** ORCA Notice of Appeal at 11-12.

Applicants' Response: *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992) has no such holding. *Rhyne* concerned Planned Development Districts in Multnomah County, the approval of which occurred in two stages: Stage One included a public hearing and participation process to determine whether there was

sufficient evidence to determine whether the proposal complied with or could feasibly comply with the approval criteria, and the government can impose conditions of approval; Stage Two included a non-public process for ensuring those conditions of approval are complied with by government staff. There was no holding by LUBA that a separate application must be approved before the Conditional Use Permit can be approved.

The Applicants concur that there will need to be a Geologic Assessment Review, which is a separate Type II application pursuant to BMC 17.78 and 16.04. The Applicants respectfully contend that approval of the Geologic Assessment Review will occur pursuant to the Zoning Approval Application. It is not relevant for purposes of the subject application (which concerns the CUP and site plan review). The development standards of the Hazards Overlay Zone are located in BMC Chapter 17.78.

VIII. RESPONSE TO ISSUES APPEALED BY MR. SPENCER

Below the Applicants outline the issues raised on appeal by Mr. Spencer and provide individualized responses. Importantly, the issues raised by Mr. Spencer are either not relevant to the subject application or do not provide a valid basis for appeal.

16. **"I therefore appeal the Planning Commission's decision based on 16.04.070B.2.b, required information pertaining to the location of the meeting was not included on the Notice of Public Hearing dated September 7th, 2023."** Spencer Notice of Appeal at 1.

Applicants' Response: This is not a proper basis for reversal. BMC 16.04.07(B)(2)(b) states, in relevant part: "*Content of Notice. Notice of a Quasi-Judicial hearing to be mailed and published per subsection 1 above shall contain all of the following information: * * * The date, time, and location of the scheduled hearing*". Mr. Spencer argues that "It was brought up during the public meetings by multiple parties that homeowners who expected to be notified of the meetings were not".

First, Mr. Spencer does not argue that he did not receive notice. Nor does he argue that the Notice of Hearing was in any way deficient. Instead, he argues that other, unknown people did not receive notice. Note that there is no argument the City failed to mail such notice. *See generally Brodersen v. City of Ashland*, 66 Or LUBA 369 (2012). Any lack of noticing was a mere technical violation that has not prejudiced Mr. Spencer's substantial rights.

Second, the participation of such people in the hearing before the Planning Commission cured any technical deficiencies that may have occurred. Indeed, attendance at a public hearing show that they received actual notice.

Third, the re-notice by the City of the hearing before the City Council also cures any technical deficiencies. Therefore, this is not a basis for reversal.

17. **"In addition, I appeal the Planning Commission's decision based on 16.04.070B.2.d, whereas the notice did not include required wording disclosing information pertaining to appealing to the City Council or Circuit Court."** Spencer Notice of Appeal at 1.

Applicants' Response: Procedurally, Mr. Spencer does not explain how or when this issue was raised below and therefore it is waived.

Substantively, Mr. Spencer is incorrect. The Notice of Public Hearing, which is found in the Planning Commission Record, does contain the required wording concerning appeals. BMC 16.04.07(B)(2)(d) states, in relevant part:

> "*Content of Notice. Notice of a Quasi-Judicial hearing to be mailed and published per subsection 1 above shall contain all of the following information: * * * A disclosure statement that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the City Council, Land Use Board of Appeals, or Circuit Court, as applicable, on that issue, and that only comments on the relevant approval criteria are considered relevant evidence*".

In turn, the Notice of Public Hearing dated September 7, 2023, states on page 2:

> "*Oregon law states that failure to raise an objection concerning this application, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion*".

That is, the Notice of Hearing provides an explanation of appeal rights. Lastly, even if it did not specify that appeals are made to the City Council, it would be a mere technical violation that did not prejudice Mr. Spencer's substantial rights given that he actually filed an appeal to the City Council. It is therefore not a valid basis for reversal.

18. **"16.08.040A requires 'pre-planning of large sites in conjunction with … ', and further provides the purpose of the pre-planning as being for the critical reasons of ensuring projects of this magnitude do not overwhelm city resources or place undue harms on its residents."** Spencer Notice of Appeal at 1.

Applicants' Response: BMC 16.08 is not applicable to the present application. BMC Chapter 16.08 is titled "Land Divisions and Property Line Adjustments". This demonstrates that the chapter is not applicable to the current application, which has nothing to do with property divisions or line adjustments.

BMC Chapter 16.08 includes regulations for subdivisions, partitions, and property line adjustments. It also includes purposes related to carrying out the City's Comprehensive Plan, encouraging the efficient use of land resources, promoting public health, etc. Mr. Spencer appears to argue that these are applicable criteria. However, these are not independent standards of approval applicable to this application. Instead, they are purpose statements, providing aspirational policies and context for interpreting the remainder of the chapter. *See Rouse v. Tillamook County*, 34 Or LUBA 530 (1998) (appellants must explain why they believe purpose statements are applicable criteria); *see also Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) ("Absent some language to the contrary, a zoning district purpose statement that is a general expression of the goals and objectives of the local government in adopting a land use regulation does not play a role in reviewing permit applications."). No language in the BMC renders the purpose statement mandatory approval criteria for land use applications.

Mr. Spencer goes on to argue that BMC 16.08.040's requirements concerning Pre-planning for Large Sites should apply to the subject application because the subject property is a "large site". This is incorrect. BMC 16.08.040(A)&(B) state as follows:

> "A. <u>Purpose</u>. *Section 16.08.040 requires the pre-planning of large sites in conjunction with requests for annexation, and applications for phased subdivisions and master plan developments; the purpose of which is to avoid piecemeal development with inadequate public facilities.*
>
> "B. <u>Applicability</u>. *This section applies to land use applications and annexations affecting more than 40 acres of land under the same contiguous ownership, even where only a portion of the site is proposed for subdividing. For the purposes of this section, the same contiguous ownership means the same individual, or group of individuals, corporations, or other entities, controls a majority share of ownership*." [BMC 16.08.040(A)&(B)].

This means the purpose of BMC 16.08.040 is to require "the pre-planning of large

sites in conjunction with requests for annexation, and applications for phased subdivisions and master plan developments." The present application does not include a request for annexation, proposed subdivisions, or master plan development. Indeed, the text of BMC 16.08.040 states that it is limited to applying to annexations "affecting" more than 40 acres of land under the same contiguous ownership. It also applies to land use applications for either for phased subdivisions or master plan developments "affecting" more than 40 acres of land under the same contiguous ownership.

The subject property is 24.8 acres in size. There are contiguous properties under the same ownership which are approximately 90 acres in size. However, the subject application is not for an "annexation" or a "phased" subdivision. Therefore, the properties other than the subject property are not "affect[ed]" by the subject application. That is, the application, if approved, will not permit those properties to be developed. This makes sense given that those properties are not within the city limits. Nor is the subject application a "master plan development" given that the BMC does not define what a "master plan development" is and this application does not appear to fall within the commonly understood meanings of that phrase. This is a combined application for a Conditional Use Permit, site plan review, and height increase approval for a hotel and associated amenities.

Mr. Spencer reads BMC 16.08.040(B) by itself and without context as meaning that the chapter applies to all land use applications on properties larger than 40 acres under the same contiguous ownership. This ignores both the text, context, and purpose of the chapter and relevant sections. He also argues that this application is a "multi-phased development" because the Applicants have expressed a desire to submit future applications to the City for other pieces of property. That does not make the subject application an application for multiple phases. Multi-phased developments are when an application details multiple phases. This application does not. As a result, BMC Chapter 16.08 does not apply to the subject application.

Nevertheless, the City should make a concurrent finding that even if it were determined that BMC 16.08.040 was applicable, the subject application satisfies the criteria.

19. **"I appeal the Planning Commission's decision based on the developer not applying for, nor complying with, the conditional use permit for VRDs."** Spencer Notice of Appeal at 2-3.

Applicants' Response: This is incorrect; the proposed villas do not qualify as Vacation Rental Dwellings under the City Code. Mr. Spencer argues:

> "The developer's proposal includes thirty-two individual, stand alone, unattached [sic] units, each with two full baths, one powder room (half bath), kitchen and laundry facilities, and a spa on the patio. These units are not hotel rooms. The applicant has responded to previous objections that they are hotel rooms because they are part of a development plan for a hotel. However, the applicant also notes 'The Villa/Suites are residential in nature'. In addition, no internet search or dictionary definition supports their position that these are hotel rooms. These units are temporary single family residences, as defined in 17.02 as well as the 'Definitions' section of 16.12.090K. 16.12.090K further states Vacation Rental Units (VRDs) are a conditional use in the CD-1 zone, and further defines rules and regulations for conditional use permits."

That is, Mr. Spencer argues that because the villas are unattached with their own bathrooms, kitchen, laundry, and spa, that they cannot qualify as hotel or motel rooms.

However, the BMC demonstrates that they do quality as hotel/motel rooms. BMC 16.12.090(K) states:

> "Vacation Rental Dwellings. *Vacation rental dwellings (VRDs) are a conditional use in the CD-1, CD-2, CD-3, and C-3 zones, and are subject to the requirements of this chapter. Conditional use permits are a discretionary decision by the City subject to review by the Planning Commission.*" BMC 16.12.090(K).

That is, vacation rental dwellings are conditional uses in the CD-1 zone. Further, BMC 17.02 (Definitions) defines vacation rental dwellings as:

> "*an existing single-family detached dwelling which is rented or is available for rent (whether advertised or not) for a period of less than one month to a family, group or individual. A VRD is considered to be a commercial use.* (Ord. 1625, 9/18)". BMC 17.02 (emphasis added).

That is, a vacation rental dwelling must be an "existing" single-family detached dwelling. The proposed villa hotel rooms are not "existing" but are proposed for development and therefore cannot be classified as vacation rental dwellings. Nor are they intended to be single-family dwellings. The intent of this provision is to ensure that single family dwellings cannot be converted into vacation rental dwellings without authorization—not to annihilate the ability of developers to propose detached hotel/motel rooms in Bandon.

Instead, the villas conform to the definitions of "Motel". BMC 17.02 defines a "Motel" as: "a building or group of buildings on the same site containing guest units

with separate entrances directly to the exterior and consisting of individual sleeping quarters, detached or in connected rows, for rental to transients." BMC 17.02. Here, the villas and the hotel are a group of detached buildings on the same site containing guest units with separate entrances to the exterior consisting of individual sleeping quarters for rental to transients. Therefore, the villas are properly classified as motel rooms, which have the same standards in the CD-1 zone as a hotel. This issue of appeal should be denied.

20. **"16.40.020 lists requirements for bonds, cash, or other financial security. I appeal the Planning Commission's decision based on the applicant not providing proof of their ability to finance, bond, and insure the completion of this project."** Spencer Notice of Appeal at 3.

Applicants' Response: BMC 16.40.020 is not a condition that the Applicants must satisfy. BMC 16.40.010 states in part:

> "*Before approval of a subdivision final plat or partition map, the developer shall either install required improvements and repair existing streets and other public facilities damaged in the development of the property or execute and file with the city manager an agreement between himself or herself and the city, specifying the period within which required improvements and repairs shall be completed* * * *." BMC 16.40.010.

That is, BMC Chapter 16.40 states that a developer must either install required improvements or enter into a development agreement with the City when applying for a subdivision or partition. This application does not include either and therefore it is not applicable. Even if it was applicable, it can feasibly be satisfied and would therefore need to be made a condition of approval. Therefore, this is not a proper basis for reversal.

21. **"I appeal the Planning Commission's decision due to the promotion of the economic well-being of the city and its residents not being fully addressed as outlined in 17.04.020N."** Spencer Notice of Appeal at 3.

Applicants' Response: Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

Substantively, this is not a proper basis for appeal or reversal. BMC 17.04.020(N) states: "The purposes of this title are: * * * To promote the economic well-being of the city and to provide areas needed for economic development". This is not an independent standard of approval applicable to this application. Instead, it is a

purpose statement for BMC Chapter 17.04, providing aspirational policies and context for interpreting the remainder of the chapter. *See Rouse v. Tillamook County*, 34 Or LUBA 530 (1998) (appellants must explain why they believe purpose statements are applicable criteria); *see also Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) ("Absent some language to the contrary, a zoning district purpose statement that is a general expression of the goals and objectives of the local government in adopting a land use regulation does not play a role in reviewing permit applications."). No language in the BMC renders the purpose statement mandatory approval criteria for land use applications.

If the City Council finds that this provision is applicable, the Council can find based on the substantial evidence in the record that the proposed development will promote the economic well-being of the city and provide the area with needed economic development. Mr. Spencer's arguments that building too quickly will increase the cost of living are incorrect. Bandon has sufficient infrastructure to support development of this size, as demonstrated throughout the record. Further, it would be unlawful for the city to unilaterally apply a moratorium on development to this application. As a result, this is not a proper basis for reversal.

22. **"I appeal the Planning Commission's decision based on this project taking away from adequate space for housing as outlined in 17.04-020O."** Spencer Notice of Appeal at 3.

Applicants' Response: Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

Substantively, this is not a proper basis for appeal or reversal. BMC 17.04.020(O) states: "The purposes of this title are: * * * To provide adequate space for housing". This is not an independent standard of approval applicable to this application. Instead, it is a purpose statement for BMC Chapter 17.04, providing context for interpreting the remainder of the chapter. *See generally Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) ("Absent some language to the contrary, a zoning district purpose statement that is a general expression of the goals and objectives of the local government in adopting a land use regulation does not play a role in reviewing permit applications."). No language in the BMC renders the purpose statement mandatory approval criteria for land use applications.

If the City Council finds that this provision is applicable, the Council can find based on the evidence in the record that the proposal does not take away adequate space for housing. The City has more than enough sufficient land in its urban growth boundary to accommodate a 20-year supply of housing pursuant to Oregon Administrative Rule ("OAR") 660-024-0040 and the proposed development does not reduce this below an "adequate" standard. The city cannot require the Applicants to

develop alternative projects on this property. Therefore, this is not a proper basis for reversal.

23. **"I appeal the Planning Commission's decision based on the proposed facility discouraging the orderly growth of the city as outlined in 17.04-020H."** Spencer Notice of Appeal at 4.

Applicants' Response: Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

Substantively, this is not a proper basis for appeal or reversal. BMC 17.04.020(H) states: "The purposes of this title are: * * * To encourage orderly growth of the city". This is not an independent standard of approval applicable to this application. Instead, it is a purpose statement for BMC Chapter 17.04, providing context for interpreting the remainder of the chapter. *See generally Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) ("Absent some language to the contrary, a zoning district purpose statement that is a general expression of the goals and objectives of the local government in adopting a land use regulation does not play a role in reviewing permit applications."). No language in the BMC renders the purpose statement mandatory approval criteria for land use applications.

If the City Council finds that this provision is applicable, the Council can find based on the evidence in the record that the proposal does encourage the orderly growth of the city given that it satisfies the relevant provisions of the Comprehensive Plan and BMC. The argument that the local economy does not have enough workers to support further economic development does not support a conclusion that further economic development should be legally restricted. Further, the argument that the proposed development will "take away" jobs from current Bandon businesses is not a legal basis to deny the proposal. As a result, this is not a proper basis for reversal.

24. **"I appeal the Planning Commission's decision based on the fact that it does not conform to 17.04.020G as it relates to avoiding congestion, and 16.08.010C as it pertains to public health and safety." 17.04-020H."** Spencer Notice of Appeal at 4.

Applicants' Response: Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

Substantively, this is not a proper basis for appeal or reversal. BMC 17.04.020(G) states: "The purposes of this title are: * * * (G) To avoid congestion; (H) To encourage orderly growth of the city". This is not an independent standard of approval applicable to this application. Instead, it is a purpose statement for BMC

Chapter 17.04, providing context for interpreting the remainder of the chapter. *See generally Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) ("Absent some language to the contrary, a zoning district purpose statement that is a general expression of the goals and objectives of the local government in adopting a land use regulation does not play a role in reviewing permit applications."). No language in the BMC renders the purpose statement mandatory approval criteria for land use applications.

If the City Council finds that these provisions are applicable, the Council can find based on the evidence in the record that the proposal does avoid congestion and it encourages orderly growth. In particular, the traffic report in the record demonstrates that the proposal will have no more than a minimal impact on traffic and certainly will not cause "congestion". Indeed, the analysis conducted by an Oregon certified traffic engineer indicates that the proposed development will create less traffic than if the subject property was filled with single family dwellings. The argument that this development will cause more speeding, stop sign running, and uncourteousness is without any factual support whatsoever. Further, as noted above, the proposal does encourage the orderly growth of the city given that it satisfies the relevant provisions of the Comprehensive Plan and BMC. As a result, this is not a proper basis for reversal.

25. **"I appeal the Planning Commission's decision based on 17.04.020J, and instead suggest the City Council only consider the application if the developer achieves Platinum LEED Certification."** Spencer Notice of Appeal at 5.

Applicants' Response: Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

Substantively, this is not a proper basis for appeal or reversal. BMC 17.04.020(J) states: "The purposes of this title are: * * * To protect important natural resources, including open space, mineral and aggregate sources, energy sources, fish and wildlife resources, scenic views and sites, water areas, wetlands, and historical and archaeological sites". This is not an independent standard of approval applicable to this application. Instead, it is a purpose statement for BMC Chapter 17.04, providing context for interpreting the remainder of the chapter. *See generally Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) ("Absent some language to the contrary, a zoning district purpose statement that is a general expression of the goals and objectives of the local government in adopting a land use regulation does not play a role in reviewing permit applications."). No language in the BMC renders the purpose statement mandatory approval criteria for land use applications.

There is no argument from the appellants that the proposed LEED Gold or

equivalent certification does not satisfy BMC 17.04.020(J). The only argument is that it "appears less impressive". This is meaningless and is not a lawful basis on which to deny the application. No building in Bandon has achieved LEED Gold status and the idea that the city should punish the Applicants for attempting to go above and beyond for the benefit of the community does not withstand scrutiny. This is not a proper basis for reversal.

IX. CONCLUSION

As a result, the Appellants have not raised any adequate issues to deny the application. The City should deny the appeals and approve the restated combined application with accompanying findings and conditions of approval.

Respectfully submitted,

O'CONNOR LAW, LLC

/s/ Garrett West
Garrett K. West, OSB No. 174890
west@PacificLand.law

NOTICE OF DECISION

CITY OF BANDON PLANNING COMMISSION

On November 2nd, 2023, the Planning Commission of the City of Bandon approved with conditions Planning Action 23-045, a request for approval of a conditional use permit to construct 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites. Approval of a variance to design feature regulating height, and plan review for commercial design standards, parking, and signage. You have received this notice because you participated in the Public Hearing.

Property Owner:	Bandon Beach Ventures, LLC
Applicant(s):	Coos Curry Consulting, Sheri McGrath
Property Location:	0 Beach Loop Drive Map Number: 28S-15W-36BC, TL 219 & Map Number: 28S-15W-36C /TL 400, 500, 600, 700, 1500
Proposal:	Approval of a conditional use permit to construct 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites. Approval of a variance to design feature regulating height, and plan review for commercial design standards, parking, and signage.
Applicable Criteria List: (Bandon Municipal Code)	16.12, Conditional Uses 16.36, Adjustments & Variances 17.20, Controlled Development 1 (CD-1) 17.90, Signs 17.94, Commercial Design Standards 17.96, Off-Street parking & Loading

Date of Decision:	Thursday, November 2nd, 2023
Date of Mailing:	Tuesday, November 7th, 2023
Appeal Deadline:	Wednesday, November 22nd, 2023
Date Decision is Final:	Thursday, November 23rd, 2023

Materials concerning this decision are available to review online through the Planning Department's webpage at www.cityofbandon.org. Copies may be purchased from Bandon City Hall located at 555 Hwy 101, Bandon, Oregon.

This decision may be appealed to the City Council within 20 days following the date of decision. Appeals must be submitted in writing and all fees paid no later than **Wednesday, November 22nd, 2023**. If the application is not appealed, the decision will become final on **November 23rd, 2023.**

If you would like to appeal this decision, the following standards must be met and steps completed:

1. **Who May Appeal:** The applicant or owner of the subject property or any other person who testified orally or in writing during the subject public hearing before the close of the record.
2. **Notice of Appeal:** Any person with standing may appeal a Type III Quasi-Judicial Decision by filing a Notice of Appeal according to the following procedures.
3. **Content of the Appeal:** The Notice of Appeal shall be accompanied by the required filing fee ($250) and shall contain:
   a. An identification of the decision being appealed, including the date of the decision;
   b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
   c. A statement explaining the specific issues being raised on appeal; and
   d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.

If you need additional information or have questions about the appeals process, please contact the Planning Department at (541) 347-7922 or via e-mail at planning@cityofbandon.org.

Figure 1 Subject Property

After holding duly noticed public hearings, the City of Bandon Planning Commission approved application 23-045 with the following conditions of approval on November 2nd, 2023:

STANDARD CONDITIONS OF APPROVAL

1. All proposals of the applicant shall become conditions of approval.
2. Approval of the plan is based on information provided by the applicant. No other approvals are expressed or implied. Any changes to the approved plan shall be submitted, in writing, and approved by the Planning Department prior to implementation.
3. All state, federal, and city permits associated with this approval shall be obtained by the applicant prior to operation.
4. The applicant shall submit for zoning compliance approval prior to any ground disturbance.
5. Unless otherwise stated in this document, all four property corners must be located and properly marked prior to the first City inspection.
6. No preparation of the subject lot shall be allowed prior to issuance of a City Grading and Fill permit, signed by the authorizing designee of the City of Bandon.
7. All construction materials and equipment shall be staged on site. No construction materials shall be stored in the City right-of-way.

8. No construction work shall be performed on Sundays or city holidays, except that a person may perform construction work on the person's own property, provided such construction activity is not carried on for profit or livelihood, between the hours of ten (10:00) a.m. and five (5:00) p.m. on Sundays and city holidays. No construction work shall be performed on Saturday before nine (9:00) a.m. or after seven (7:00) p.m. No construction work shall be performed before seven (7:00) a.m. or after seven (7:00) p.m. on weekdays (exclusive of holidays).

Electric:

9. Electrical equipment must be installed per the requirements listed in the Electric Department Bid Packet.
10. The meter shall be installed at curbside on a post, or on the structure, facing the vehicular access and no more than 5 feet down the side of the structure nearest the vehicular access.
11. The electric meter shall be stainless steel and shall not be enclosed.
12. Electric meter must be accessible at all times, without locked doors, gates, enclosures, boxes or covers which deny access, including the keeping of animals in such a manner that access is denied or hazardous.
13. Any cost for new or modified utility upgrades will be borne by the developer.

Public Works:

14. Public Works Permit and Right-of-Way Permit must be obtained prior to any work commencing within right-of-way.
15. Repair costs of any damage to City property, or right-of-way, as a result of use during construction shall be the responsibility of the property owner and/or applicant.
16. A construction timeline shall be submitted and approved by the Public Works Director, prior to any construction, grading or preparation of the site.
17. Driveway and fill specifications shall be provided and approved by the Public Works Director and/or City Engineer prior to any preparation of the site.
18. A staging plan for construction of the foundation system and the structure shall be provided and approved by the Public Works Department prior to any construction, grading or preparation of the site.
19. Any necessary repairs to City property, infrastructure or right-of-way, must be submitted and approved by the Public Works Department prior to the commencement or repair work.
20. An Erosion Control Plan shall be provided and approved by the Public Works Director prior to any preparation of the site.

With development of the site:

21. Any changes to the approved preparation, construction or final stages of the approved plan shall be submitted, in writing, and approved by the Planning Department prior to implementation.
22. The parking lot approach shall be paved or concrete from the edge of the City street to a minimum of one foot (1') inside the property line.
23. Parking lot approach, trenching, service connections, cleanouts and other underground construction shall be constructed in accordance with APWA standards and must be inspected and approved by the Public Works or Electric Departments.
24. Parking lot approach forms must be inspected and approved by the Public Works Department prior to pour.
25. The applicant shall be responsible for preparation and maintenance of the site to prevent tracking of soil or construction material or debris onto any rights-of-way. All public streets must be kept clean during the construction period. Clean-up costs shall be the responsibility of the property owner.
26. Property lines shall be clearly marked during all phases of ground preparation and construction.

Prior to certificate of occupancy:

27. Certificate of Occupancy must be issued by the City prior to occupancy of the structure. This approval is required prior to receiving occupancy from the Coos County Building Department.
28. Certificate of Occupancy shall not be issued until conformance of all conditions of approval has been verified.
29. Certificate of Occupancy will not be issued until repairs, as required by the City, to the City infrastructure or right-of-way are completed and acceptable by the Public Works Department.
30. Certificate of Occupancy will not be issued until all meter placements have been approved, in writing, by a representative of the Electric Department.
31. Certificate of Occupancy shall not be issued until Final Construction and drainage is approved by the Public Works Director.

Other:

32. All utilities are considered temporary until a Certificate of Occupancy has been obtained through the City. Utility service lateral installation is the responsibility and cost of the applicant. Only one water service shall be permitted.
33. Applicant must adhere to all conditions and requirements set out by the Coquille Indian Tribe, State Historic Preservation Office (SHPO) or both if required.

PROJECT SPECIFIC CONDITIONS OF APPROVAL

34. The conditional use permit shall become void two years from the date the decision is final unless a zoning compliance permit has been issued.
35. Metal-sided buildings shall be prohibited anywhere on the site.
36. Areas used for parking vehicles and for maneuvering shall have durable and dustless surfaces maintained adequately for all weather use and so drained as to avoid flow of water across sidewalks.
37. Parking spaces along the outer boundaries of a parking lot shall be contained by a bumper rail or by a curb which is at least four inches high, and which is set back a minimum of four and one-half feet from the property line.
38. Parking shall be provided in accordance with the parking provisions of the Bandon Municipal Code (BMC) for said use. Specifically, a total of 152 parking stalls measuring 8.5’ (W) x 19’ (L) shall be designated for passenger vehicles, and a minimum of two (2) parking stalls measuring 10’ (W) x 30’ (L) shall be designated for recreation vehicles. In lieu of designating a total of eight (8) parking stalls for recreational vehicles as required by the BMC, the project applicant shall be permitted to provide shared parking for both passenger vehicles and recreational vehicles accommodating up to twelve (12) passenger vehicles and six (6) recreational vehicles at any given time. This is a total of 164 standard parking spaces and two (2) RV spaces. All of the required parking stalls referenced herein shall be provided and contained on-site and in no instance shall off-site parking be permitted in association with the subject development and/or this entitlement. All parking lots will meet requirements of the Americans with Disabilities Act.
39. All proposed vehicular access streets located in city rights-of-way shall be public and meet the City’s street design standards unless otherwise modified by the City Council.
40. Parking spaces along the outer boundaries of a parking lot shall be contained by a bumper rail or by a curb which is at least four inches high, and which is set back a minimum of four and one-half feet from the property line.
41. Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons and employees only, and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting business or use.
42. The applicant shall sign an anti-remonstrance agreement to the formation of an LID for the construction of a future sidewalk system along Beach Loop Drive for the section that abuts their property.

43. Artificial lighting which may be provided shall be so deflected as not to shine or create glare in any residential zone or on any adjacent dwelling. A photometric study shall be prepared to minimize residual light pollution and/or glare impacts to adjacent properties.
44. All site lighting shall be dark sky compliant as proposed by the applicant in their September 28th submittal.
45. A final landscaping plan shall be reviewed and approved, prior to issuance of zoning compliance. Trees shall be planted such that the tree trunk is at least 3 ft. from any curb or paved area.
46. A final landscaping plan shall clearly demonstrate that planted area will cover 50% within 1 year and 90% within 5 years.
47. Prior to issuance of zoning compliance, applicant shall obtain approval of screening materials for electrical equipment from City electrical department or their designee.
48. A 6-foot-tall fence or screen shall be required on the property lines abutting a residential zone.
49. The applicant shall be required to submit a resource protection plan prior to commencement of ground-disturbing activities that may affect wetlands or riparian corridors.
50. One Phase Construction – the subject project shall be constructed in its entirety, including the completion of all related conditions of approval, in one singular phase.
51. Gold LEED Certification – in accordance with the project applicant's public testimony remitted during the Planning Commission meeting dated October 5, 2023, the subject project shall be designed and constructed as a "Gold" certified green building pursuant to Leadership in Energy and Environmental Design (LEED) standards. Specifically, the subject development shall be required to meet the "Gold" standard of development and obtain the required LEED certification prior to the City's issuance of a final Certificate of Occupancy (C of O).
52. Public Improvements – the project applicant shall be required to comply with the development standards and public improvement requirements of the City of Bandon including, but not limited to, the installation of sewer, water, and electric utilities as well as the construction of public sidewalks, street curbs, gutters and drainage improvements. All public improvements shall be completed prior to the City's issuance of a final Certificate of Occupancy (C of O) and the cost of said improvements shall be borne solely by the project applicant.
53. Construction Traffic Mitigation Plan – the project applicant shall be required to devise a traffic mitigation plan for regulating truck traffic during construction for the purpose of reducing truck traffic impacts to the surrounding sensitive residential land uses that exist in the subject area. The traffic mitigation plan shall be subject to the City's review and final approval shall be obtained by the project applicant prior to the issuance of building permits. Further, construction vehicles shall be required to be staged and all building materials shall be off-loaded on the subject property. Violations of this condition of approval shall result in the issuance of a stop work notice; whereas repeat offences totaling three (3) or more within a twelve (12) month period may result in the revocation of City issued entitlements, permits and/or approvals.
54. Approval of the variance shall be conditioned upon Gold LEED Certification of the structures, as proposed by the applicant.

Sean T. Malone

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Eugene, OR 97440 seanmalone8@hotmail.com

November 21, 2023

Via Email

City of Bandon Bandon
Planning Commission
555 Highway 101
Bandon OR 97411
(541) 347-2437
planning@cityofbandon.org

Re: Oregon Coast Alliance Notice of Appeal, Gravel Point Consolidated Request, 23-045 (Bandon Beach Venture)

On behalf of Oregon Coast Alliance, please accept this Notice of Appeal of the Planning Commission's November 2, 2023, decision that approved with conditions Planning Action 23-045, a request for approval of a conditional use permit to construct 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites (Type III Quasi-Judicial Decision).

Oregon Coast Alliance is the appellant, and Oregon Coast Alliance testified in writing during the public hearing before the close of the record, dated September 28, 2023, and October 5, 2023. Appellant Oregon Coast Alliance has standing to appeal the decision because Oregon Coast Alliance participated in writing before the Planning Commission. *See* Attached written testimony.

The $250 appeal fee has been paid by check on November 20, 2023.

As noted above, the decision being appealed is the Planning Commission's November 2, 2023, decision approving with conditions Planning Action 23-045, a request for approval of a conditional use permit to construct 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites (Type III Quasi-Judicial

Decision). The decision and notice of decision are attached, and the final day to appeal is November 22, 2023. This appeal is therefore timely filed.

ORCA requests a *de novo* hearing, pursuant to BMC 16.04.070(E)(3)(c). The decision is not accompanied by any findings demonstrating whether criteria have been satisfied, and, if they have been satisfied, what evidence is relied upon. The approval or denial of an application must be based on the applicable standards and criteria. ORS 215.416(8), 227.173(1). The decision must be accompanied by findings of fact (ORS 215.416(9), 227.173(3)), and must be supported by substantial evidence in the record (ORS 197.835(9)(a)(C)). *See also* BMC 16.36.040(B) ("The Reviewing Body through a Type III may approve a Variance upon *finding* that it meets all of the following criteria: …") (emphasis added). The applicant has also failed to make findings related to the Geotech Review criteria, and that failure prejudices appellant's substantial rights. Appellant believes that the City has prejudiced ORCA's substantial rights and violated state law by failing to have a decision that address the applicable criteria. ORCA also questions as to why there is no signature accompanying the decision. Therefore, the City must provide for a *de novo* hearing because the City failed to follow the applicable procedures prescribed by state law.

BMC 16.04.070(E)(2)(c)(3) and (4) require "[a] statement explain the specific issues being raised on appeal" and "a statement demonstrating that the appeal issues were raised during the comment period." The issues identified for appeal are as follows and the issues are accompanied by identification of where the issues were raised in the record. Specifically, the issues were raised in ORCA's testimony dated September 28, 2023, and October 5, 2023, and the Schroeter testimony dated October 18, 2023, all of which are attached hereto:

<u>The city misconstrued applicable law and made inadequate findings not based on substantial evidence regarding the variance criteria</u>

The City's decision does not address the applicable approval criteria for a variance, despite approving the variance. ORCA addressed the variance criteria in its testimony dated September 28, 2023, and October 5, 2023.

The applicant is requesting a Conditional Use Permit to develop and operate a hotel and restaurant. As a part of the application, the applicant is simultaneously requesting Approval for the increase of height from 28' to 35' for the Meadow Lodge and a minor variance to the Height of Buildings in BMC 17.20.090, specifically for a "Flat Roof" instead of a "3:12 Pitched Roof." Not only does the applicant not satisfy the

variance criteria, but the city cannot approve a variance for a request for a conditional use permit. The code provides as follows:

> "16.12.050 Conditional use cannot grant variances. A conditional use permit shall not grant variances to the regulations otherwise prescribed by this title."

In its simplest terms, the code does not allow the city to grant a variance to a request for a conditional use permit. The code is clear in its prohibition, and, therefore, the application cannot be approved as it is currently proposed. ORCA believes this issue is dispositive, and there is no need to address the application further, unless it is significantly amended to the point of no longer needing a variance.

The applicant's contention that it can obtain a variance through BMC 16.12.020(B) is unavailing. The plain language of BMC 16.12.020(B) provides that conditions may include "[l]imiting the height of the building(s)." The code already limits the height of the building, and the proposed variance would be an expansion of the existing limitation. A condition limits a proposal, it does not expand it. What the applicant asks for is contrary to what is permitted by the code in BMC 16.12.020(B). The conditional use criteria cannot be used to otherwise grant a variance, especially when doing so is expressly prohibited. The applicant can comply with the code *and* utilize a green roof if it desires, but the applicant must scale back its development accordingly.

The applicant also cites to BMC 16.12.020(I), which provides for conditions "[r]equiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust[.]" Where a variance is necessary, the applicant cannot obviate that process through conditions, especially where variances are prohibited. Minimizing a design feature is different than expanding an existing limitation. That requires a variance. The city cannot do an end-around the variance criteria. Moreover, the applicant has not demonstrated how the variance would minimize "noise, vibration, air pollution, glare, odor, and dust." The applicant is capable of using a roof that does not create noise, vibrations, air pollution, glare, odor, or dust, and if the applicant believes only a "green roof" could satisfy that requirement, then the applicant essentially argues that the code is inconsistent in the absence of a "green roof." The applicant's proposal is conclusory as to how it allegedly satisfies that provision. As noted above, the applicant cannot obtain a variance through alleged conditions. The applicant has also not shown how and to what degree the property will be protected over-and-above those protections that are already in the code. If the applicant is, indeed, committed to these principles, then the applicant can do so in compliance with the code.

Variances are "generally approved only in extraordinary circumstances and should not be used in place of the normal legislative process of amending zoning regulations." *Lovell v. Planning Com of Independence*, 37 Or App 3, 7 (1978). If the City wants to address the issue of impervious surfaces or green roofs or height limitations, it must do so through the legislative process[1], not the piecemeal process of granting variances. Impervious surfaces are inherent in virtually all development. Granting this variance would set a precedent to allow a variance in any circumstances where impervious surfaces are proposed as part of a development.

The applicant has not satisfied BMC 16.36.040(B)(1)[2]. The decision approving the variance misconstrues the standard and contains inadequate findings not supported by substantial evidence. As noted above, state law requires findings, and the city's decision fails to provide those findings.

The alleged green roof is not a special or unique circumstance of the subject site, is not compelled by existing development patterns, and it is not related to adjacent land uses. BMC 16.36.040(B)(1). The applicant admits in its testimony that "[i]t is the desire of the developer to maintain a natural environment and reduce the need for impervious surfaces." *See* Staff Report at 8 of 41 ("[The applicant] assert[s] that the 35' height request is to reduce the overall amount of impervious surface on the site and preserve the existing natural landscape. They state that a roof pitch of 3:12 is impractical due to topography and natural features and that it is necessary for a green roof."). A variance is not granted for a "desire." Instead, a variance is based upon a necessity due to unique or special circumstances. Impervious surfaces are always present with development, especially development of this scale, and the applicant has not demonstrated that there is anything unique or special about the physical circumstances of the site, as compared to

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[1] Staff addressed this issue and the fact that the "unique physical circumstances" criterion may not be satisfied:

> "We have discussed before that the design standards do not allow for more modern housing types, even though we are seeing more interest in this style each year. The Planning Commission might find that the request is a stretch to meet the 'unique physical circumstances,' requirement because the need for a more modern housing style is not dependent on any physical circumstances."

Staff Report 9 of 41.

[2] BMC 16.36.040(B)(1) requires as follows: "The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance[.]"

other similarly situated sites, that compels a variance.[3] Impervious surfaces are not "unique" or "special" (BMC 16.36.040(B)(1)[4]), and the green roof is not a "physical circumstance of the subject site," *id.* Granting a variance for impervious surfaces would set a precedent wherein all development would be granted the variance because all development entails impervious surfaces. The Planning Commission would be effectively legislating if it were to grant this variance. A green roof is not a necessary component of the development, here, and a variance cannot be given when the proposed variance could be true of any development.

The green roof is necessary only to the degree that the applicant is requesting a particular size and style for the proposed development. Just because the applicant would like a green roof and an underground parking area does not make it necessary. It is a desire of the applicant for a particular sized development. The applicant has not demonstrated that the green roof will benefit or aid in the restoration of the wetlands on the property.

The staff report also contains an alternative justification for BMC 16.36.040(B)(1), noting that:

> "the Planning Commission may alternatively find[5] that the green roof proposal, which staff assumes only functions in the proposed configuration, is necessary to mitigate storm drainage on this site that contains wetlands and limited existing storm drainage infrastructure. In the interest of protecting the natural resources and limiting site impact through the construction of additional grey infrastructure, the applicants have proposed a more compact, yet taller, design that allows the

[3] For example, the wetlands are not significant on the site, according to the city. It is more likely that significant wetlands would be "special" or "unique" physical circumstances. Regardless, the applicant has not demonstrated and the city has not found that the wetlands on the property are unique or special in the area. While ORCA believes wetlands are important features that should be enhanced, ORCA does not believe they are the type of "special" or "unique" required of the code to justify a variance.

[4] BMC 16.36.040(B)(1) requires as follows: "The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance[.]"

[5] The Planning Commission, notably, did not make any findings of compliance, aside from conditions of approval.

> 'unique' wetlands to continue functioning in that area without being affected greatly by this development."

Staff Report 9 of 41. First, the above allegation contains the unsubstantiated assumption that "the green roof proposal" "only functions in the proposed configuration." The applicant could easily use a green roof and comply with height and pitch criteria. Again, the variance is only necessary to the degree that the applicant had a preexisting proposal that does not satisfy the criteria. There is simply nothing about the proposal that is unique or special as compared to other lands.

Second, wetlands are not a unique physical resource, and there has been no showing that a development without a green roof would not protect the landscape and/or wetlands, especially when they are not significant under the code and comprehensive plan. If that were the case, then the city would have to concede that its code does not protect these resources (apparently in the absence of a green roof, which is not well-defined in the notice of decision). If the wetlands were significant, as noted elsewhere, then it is possible they could be considered unique or special, but, as noted by the staff report, "[t]his site does not contain significant wetlands." The applicant has not demonstrated that – in the absence of a green roof – that the wetlands would be negatively impacted by the development.[6] There is no evidence in the record that a roof that complies with the code would adversely affect the non-significant wetlands to the point of granting a variance.

Under BMC 16.36.040(B)(2)[7], the variance is not the minimum necessary because it is not necessary at all. The applicant cannot eliminate impervious surface areas from the development because it is inevitable in a development. The applicant's generalized notion of addressing *some* impervious surface area but not all impervious surface area

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[6] The staff report concedes that the non-significant wetlands are located at the borders of the resort:

> "The applicant's plan set includes locations of wetlands, which by nature provide undeveloped open space. These wetlands are located at the borders of the resort property, which create a buffer for the surrounding neighborhoods. The applicants have shown that building footprints account for only 8.5% of the total site, while nearly 78% remains open space (other space includes roads and infrastructure). Staff finds that the site size and proposed layout provides adequate treatment to mitigate the effects of the use of the property as a hotel."

Staff Report 5 of 41.

[7] BMC 16.36.040(B)(2) requires as follows: "The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site[.]"

demonstrates that it is neither unique nor necessary. In other words, the fact that the applicant is only proposing to justify a variance on one building with a green roof demonstrates that it is not a necessity and therefore also not the minimum necessary.[8] As with BMC 16.36.040(B)(1), again, there is no "special or unique physical circumstances related to the subject site." The wetlands are not significant, and stormwater occurs with all development. The goal of minimizing stormwater impacts is not a justification for a variance.

Under BMC 16.36.040(B)(3)[9], the variance cannot be granted because the variance is self-imposed. The applicant desires a green roof on one building in the development. If the green roof were necessary, then green roofs would be included on the entire development, not just a single building. In other words, the very fact that green roofs are not necessary on all buildings demonstrates that the green roof is a desire of the applicant, not a necessity. If the justification for a variance is that a developer wants a particular feature, then the variance is self-imposed. The applicant has not identified any special or unique circumstances of the site that necessitate the variance to the height and pitch of the roof for a single building. The applicant could satisfy all criteria without applying for a variance, but the applicant wants a particular feature for a particular building and at a particular scale. The applicant cannot justify a variance based upon costs, yet the applicant has presented that very justification below:

Under BMC 16.36.040(B)(4), there must be a finding that "[t]he Variance does not conflict with other applicable City policies or other applicable regulations[.]" Here, granting a variance would plainly conflict with BMC 16.12.050, which prohibits granting a variance pursuant to a conditional use permit. There is simply no basis for granting a variance for this application.

Under BMC 16.36.040(B)(5), the variance cannot result in "foreseeable harm to adjacent property owners or the public." Public comments have noted that some residences have not been taken into consideration by the applicant in its analysis of whether the proposal will negatively affect their views. ORCA concurs with the staff report's statement that:

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[8] At the September 28, 2023, hearing, the applicant's representative indicated that there could be more than one "green roof," but it is not clear that is part of the request. This type of information should have been finalized in written findings.

[9] BMC 16.36.040(B)(3) provides as follows: "The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or land division approval previously granted to the applicant)[.]"

> "[t]he applicant states that the additional height will not negatively impact views from surrounding sites and will not cut off any sunlight but has not provided any evidence other than a statement. The applicant has stated that they own the land to the east, however there are other parcels abutting the project site that may be affected. Further, this code is intended to take into account future development, and there is no guarantee that these property owners will continue to own the abutting site after this approval. They have also stated that the views from surrounding sites will be improved as they will be looking at a green roof, however the height section specifically states that the purpose of regulating height is, "*to maximize the ocean view potential of lots.*" The applicants have not provided evidence that ocean views are not impacted."

ORCA also agrees with staff that "[t]he applicant did not provide evidence that the setbacks have been increased to meet criterion #5." These issues were raised in the October 5, 2023, testimony.

The applicant's allegation that not allowing a green roof "would eliminate an important component of our sustainable approach of being good environmental stewards" is illusory. Not only does this also demonstrate that the applicant is seeking a variance based on its desire – which makes the requested variance self-created – but the applicant can use a green roof in compliance with the height standard. The applicant simply refuses to do so because the applicant refuses to scale back its development accordingly. The applicant is not entitled to a variance simply because the applicant wants a particular development. The applicant has presented a choice between a metal roof and a green roof when the applicant can very well use a green roof without changing the height standard.

In the applicant's rebuttal, the applicant argues that it should be able to obtain a variance because it is the alleged "highest and best use" and "be too expensive" in the absence of a variance:

- "Gravel Point is proposing an increase in height limit from 28' to 35' for the Meadow Lodge. The remainder of the structures will comply with the 28' height limit. This will allow a reduced building footprint to assist in maintaining the natural character of the site. The more compact footprint allows for the utilization of a single basement for parking to avoid surface parking lots. This extra level and basement in the Meadow Lodge reduces the site's impervious coverage by almost 85,000 square feet. The highest-and-best use for this development requires this approach. The 35' height

limit will allow design to maintain the value of the site and allow the financial model to justify the development. The appropriateness of this height request is demonstrated by the positioning of the Meadow Lodge building deep into the site so that the dunes will screen it from view for the neighbors to the west, trees will screen it from view for the neighbors to the north and south, and the neighbors to the southeast are also beyond this glade of trees and over an eighth of a mile away. There are no neighbors to the east." Applicant Rebuttal.

- "The Oregon Coast Alliance has called for our proposal to either be scaled back to a size that would not justify any development of the property or that large swaths of the property be paved over, and the proposed building footprints be radically expanded. Reducing the size or height of the development would render the property back to its unbuildable state. It would simply be too expensive to develop and there would be insufficient returns to justify development. Further, the elimination of the wetlands and habitats would likely render the property incompatible with development because it would reduce the natural attractiveness of the property. Therefore, we satisfy all the requirements necessary to grant this minor variance." Appellant's Rebuttal.

The applicant's rebuttal is not founded on the criteria for a variance. Instead, the applicant is alleging that other cost and the best use mandate the variance. The applicant must satisfy the requirement for a variance through the criteria, not irrelevant considerations.

Conditional Use Criteria

Appellant addressed the BMC 16.12.040(B) and (C) in their September 28, 2023, testimony (attached hereto). Under BMC 16.12.040(B) and (C), any approval must be consistent with "[t]he purpose and dimensional standards" and "that the size and dimensions provide adequate area for the needs of the proposed use." The very fact that the applicant is requesting a variance from the height standard indicates that the proposal is *not* consistent with the purpose and dimensional standards of the zone. Moreover, if the applicant is attempting to either avoid the RV parking standard or place the RV parking elsewhere, off-site, then the site is not adequate in terms of size and dimension.[10]

[10] Also, the applicant has not requested a variance or adjustment to the RV parking standard.

The property is also identified on the list of significant view sites, BL-8 (Wetland/Dune on Strawberry Drive). If the site were more than adequate, then the applicant could provide for all required parking (including parking for RVs[11]), then a variance to the height and RV parking requirements would not be necessary.

The decision is also not consistent with BMC 16.12.040(D), (E), (F), and (G) are also not satisfied because the traffic will create adverse impacts to local residents. The size and dimensions do not provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses. The characteristics of the site are not suitable given the size, shape, and location, topography and natural features, especially in light of the increased traffic. All required public facilities and services do not have adequate capacity to serve the proposal, especially in light of the increased traffic. Finally, the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding prpoaties for the permitted uses listed in the underlying zoning district. The traffic will impair the neighboring residential uses due to the dramatically increased traffic from the proposed use.

Height of Structures in the CD-1 Zone

Testimony has been submitted that indicates that the increased height will negatively impact views from surrounding, residential properties. *See* BMC 17.20.090(B)(1)(a)(1). Appellant raised BMC 17.20.090(B)(1)(a)(1) in its October 5, 2023, testimony. Moreover, the requirement that "[a]ll portions of any roofs above 28ft. shall be sloped at a minimum of 3:12 and must slope down and away from the highest point of the structure." The slope is intended to ameliorate the impacts to views of surrounding properties and avoid a box-like building. Such a building would "result in foreseeable harm to adjacent property owners and the public" because of its box-like shape that the code was intended to avoid. BMC 16.36.040(B)(5)[12]. If the applicant wants a "green roof," the applicant may do so in accordance with the height requirements, not contrary to them. The applicant's allegation that "[t]he height exception will improve the views of the surrounding properties by providing Green Roofs" is not based on substantial evidence. A green roof does not inherently improve views. And not complying with the code will do the opposite by detracting from views.

[11] The supplemental staff report notes that "[t]he applicant has required only two RV parking spaces when the code requires 8."
[12] The variance criteria were raised in the September 28, 2023, and October 5, 2023, written testimonies.

Under BMC 16.12.040(G), "[t]he proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district." Numerous comments from neighboring residents have expressed concern about the impact of the proposed use, including increased traffic, sewer, water, lack of infrastructure.

RV Parking Standards

Appellant raised the issue of RV Parking in its September 28 and October 5, 2023, testimony. As to the RV parking, the code requires 8 RV parking spaces. The applicant alleges that: "It is a rare occasion when an RV will visit a Hotel, and the applicant believes that the parking requirement is specific to a tourist area of town where shopping, dining and beach-going is relevant." Whether the applicant believes it is a "rare occasion" is irrelevant. 8 RV parking spaces are required and there is no allowance in the code for those to be provided anywhere but the subject property. The applicant has not sought a variance or adjustment to the RV parking requirements. Finally, even assuming the applicant could provide for off-site parking through a lease, that would require an additional application.

Conditions:

The conditions were not adopted until the decision/notice of decision. There was no opportunity to raise this issue below because it was adopted as a condition in the final decision. While the final decision does not contain findings, it does contain conditions of approval. Some of those conditions of approval are contrary to law. Condition 1 that states that "[a]ll proposals on the applicant shall become conditions of approval." It is not clear what consists of "all proposals." The condition is so vague as to be unenforceable. Specific conditions must be tied to specific conditions. For example, the applicant proposes a "green roof," but that needs to be explicitly defined in a condition of approval – if the application could be approved. It is not clear what is meant by a "green roof," and that prevents the enforcement of a condition of approval. The "green roof" is the cornerstone of the applicant's variance arguments, and, therefore, the "green roof" must be specifically defined and conditioned.

Landslide Hazards and Geotech Review

Appellant raised landslide hazard compliance and geotech review compliance in its October 5, 2023, testimony; it was also mentioned in the staff report. Appellant submitted a landslide susceptibility map, and therefore that the Hazard Overlay applied.

The staff report notes that the "site does contain an area of high landslide susceptibility, which will require either an exemption request or a Geologic Assessment Review. *See* also BMC 17.78.020 (applicability), BMC BMC 17.78.010 (purpose); BMC 17.78.030 (Geologic Review Assessment); BMC 17.78.040 (Geologic Report (Engineering Geologic Report and Geotechnical Engineering Report) Standards); BMC 17.78.050 (Decisions of Geological Assessment Reviews); BMC 17.78.060 (Development Standards for Uses Subject to Review). The applicant first alleged that would submit a separate application for review."[13] As noted in prior testimony, under *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992), the current application cannot be approved until the separate application is approved. The City must impose a condition that requires the separate application review, and that process must provide all of the substantive and procedural steps provided here. Moreover, various criteria here cannot be determined until the geologic assessment is available for review. Late in the process before the Planning Commission, the applicant has submitted an alleged Geotech Review, ORCA does not believe that Geotech Review satisfies all relevant criteria[14].

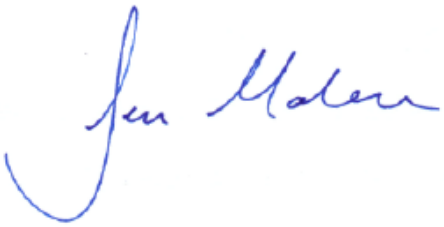
According to the testimony of Bob Schroeter, dated October 18, 2023 (attached hereto), the Geotech Review contains basic and fundamental flaws. For example, the Schroeter letter notes that the Geotech Review contains leftover allegations from a prior application. The Geotech Review alleges that the site is 80 miles inland, which is false. The Geotech Review misconstrues the tsunami zone, an issue of great importance to coastal residents. The boring holes are overlaid on a site plan that is unrelated to the project at issue here (*e.g.*, a development containing 54 houses, 9 cottages, a clubhouse and golf practice area, a hotel with pool and terrace and a completely different road system layout). This is not a serious attempt at a Geologic Review, and it does not satisfy the criteria for a Geotech Review. The Geotech Review also fails to include a B5 boring hole, permability testing for P6 and P7, assuming it is even relevant to the subject site. The Geotech Review also alleges that there is high groundwater on the eastern side of the property, a development needs sump pumps to keep the water level below the level of the building footings.

[13] The staff report plainly contradicts the applicant's narrative, which states that "[t]he site is not identified as a high landslide or high liquefaction area as identified by DOGAMI."

[14] Not only are there no findings demonstrating that the approval criteria for the geotech review have been satisfied, but the geotech review was not even submitted until late in the process.

For the foregoing reasons, ORCA respectfully requests a *de novo* appeal hearing given the failure to prepare a decision that contains findings and addresses the approval criteria. ORCA also requests that the appeal be upheld and the application be denied based upon the above issues for appeal.

Sincerely,



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September 28, 2023

Via Email

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Re: Oregon Coast Alliance Testimony for the Gravel Point Consolidated Request, 23-045 (Bandon Beach Veanture)

Dear Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this testimony on the Gravel Point Consolidated Request. The request is located on a 24.8-acre (6 tax lots combined) parcel zoned CD-1, situated East of Beach Loop Drive, South of Face Rock Drive, and North and West of the existing Carter Street terminus. The Request includes a 110-room hotel building (Meadow Lodge) with guest rooms and amenities including a secondary building (Dune Lodge), spa, guest breakfast room, and valet. A pedestrian skybridge will connect to Dune Lodge with 3 meeting rooms, a lounge, bar, dining facilities and valet; plus 32 Villas/Suites of 2 different configurations (Meadow Suites and Ridge Line Suites). ORCA respectfully requests that the Planning Commission deny the application for the reasons provided below.

The applicant is requesting a variance to the height limitation, from 28 feet to 35 feet. Not only does the applicant not satisfy the variance criteria, but the City cannot approve a variance for a request for a conditional use permit. The code provides as follows:

> "16.12.050 Conditional use cannot grant variances. A conditional use permit shall not grant variances to the regulations otherwise prescribed by this title."

In its simplest terms, the code does not allow the city to grant a variance to a request for a conditional use permit. The code is clear in its prohibition, and, therefore, the application cannot be approved as it is currently proposed. ORCA believes this issue is dispositive, and there is no need to address the application further, unless it is significantly amended. However, to the extent the remaining issues must be addressed, ORCA addresses those below.

ORCA expressly disagrees with the applicant's contention that it can circumvent the variance criteria by allowing a green roof, pursuant to BCC 16.12.020. A variance can only be addressed through the variance criteria. The conditional use criteria cannot be used to otherwise grant a variance, especially when doing so is expressly prohibited. The applicant can comply with the code *and* utilize a green roof. The applicant simply needs to scale back the proposal.

Apart from its basic prohibition, the requested variance does not meet the relevant criteria. The applicant alleges that the variance is necessary because a green roof must be used. However, the green roof is necessary only to the degree that the applicant is requesting a particular size and style for the proposed development, including a green roof. In other words, just because the applicant would like a green roof for the size of the development requested does not make it necessary. Moreover, it has not been shown that the green roof will benefit or aid in the restoration of the wetlands on the property. The requested variance does not satisfy all necessary criteria under Bandon City Code (BCC) 16.36.040(B).

BCC 16.36.040(B)(1) requires a finding that:

> "1. The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance[.]"

The alleged green roof is not a circumstance of the subject site, is not compelled by "existing development patterns," and it is not related to "adjacent land uses." The staff report notes that:

> "[The applicant] assert[s] that the 35' height request is to reduce the overall amount of impervious surface on the site and preserve the existing natural landscape. They state that a roof pitch of 3:12 is impractical due to topography and natural features and that it is necessary for a green roof. The green roof is intended to be used for storm water impact mitigation and is a design feature that reduces negative impacts to the neighboring properties, including noise, vibration, glare and dust."

Staff Report at 8 of 41. A green roof is not a necessary component of the development, here, and a variance should not be given when the proposed variance could be true of any development: "to reduce the overall amount of impervious surface on the site and preserve the existing natural landscape." The variance process is not a means by which to disagree with the basic policy of the code.

Moreover, proposing a green roof is fully within the applicant's control, and to the extent the green roof is intended for "mitigation and … reduces negative impacts to the neighboring properties," those arguments are not sufficient justification under the code. If the code has become "impractical," then that entails a legislative decision to be made about the code. For example, staff understands that the solution here is to "modernize" the code:

> "We have discussed before that the design standards do not allow for more modern housing types, even though we are seeing more interest in this style each year. The Planning Commission might find that the request is a stretch to meet the 'unique physical circumstances,' requirement because the need for a more modern housing style is not dependent on any physical circumstances."

Staff Report 9 of 41. The Staff Report, however, also entertains an alternative:

> "the Planning Commission may alternatively find that the green roof proposal, which staff assumes only functions in the proposed configuration, is necessary to mitigate storm drainage on this site that contains wetlands and limited existing storm drainage infrastructure. In the interest of protecting the natural resources and limiting site impact through the construction of additional grey infrastructure, the applicants have proposed a more compact, yet taller, design that allows the 'unique' wetlands to continue functioning in that area without being affected greatly by this development."

Id. This alternative, however, is not consistent with the code. First, is an unsubstantiated assumption that "the green roof proposal" "only functions in the proposed configuration."

There has been no showing that that is the case, here. Second, wetlands are not a unique physical resource, and there has been no showing that a development without a green roof would not protect the landscape and/or wetlands. Indeed, if that were the case, then the City would have to concede that its code does not protect these resources (apparently in the absence of a green roof) and that interpretation would be contrary to Goal 5. Indeed, the staff report notes that "[t]his site does not contain significant wetlands," though the record is not clear because the DSL delineation has not been completed. Staff Report 4 of 41. The non-significant wetlands on the property are at the edges of the property and there is no indication that the wetlands would be negatively impacted by a development that did not contain a green roof:

> "The applicant's plan set includes locations of wetlands, which by nature provide undeveloped open space. These wetlands are located at the borders of the resort property, which create a buffer for the surrounding neighborhoods. The applicants have shown that building footprints account for only 8.5% of the total site, while nearly 78% remains open space (other space includes roads and infrastructure). Staff finds that the site size and proposed layout provides adequate treatment to mitigate the effects of the use of the property as a hotel."

Staff Report 5 of 41. Staff's proposed finding is not contingent upon a green roof but rather the amount of open space provided. The non-significant wetlands are open-space and at the borders of the property. There is no evidence in the record that a roof that complies with the code would adversely affect the non-significant wetlands

BCC 16.36.040(B)(2) requires that "[t]he Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site[.]" This criterion is not satisfied because there is no discernible or objective criteria by which the applicant can measure the "minimum necessary" criterion. The applicant concedes this point, noting that no actual mitigation, restoration, and rehabilitation have been proposed as of yet and even if it had, there is no direct connection to those proposals and the alleged necessity of a green roof. Indeed, the applicant concedes that "The developer is working with Parametrix to prepare the necessary permits for wetland mitigation, restoration and rehabilitation including the addition of canopy trees and removal of gorse and other invasive species." Staff Report, 52 of 100. In other words, the applicant's proposed mitigation/restoration/rehabilitation is nothing more than hortatory or aspirational. There are no concrete means by which to measure this alleged mitigation/restoration/rehabilitation. If the end-goal is to allegedly protect the landscape and mitigate stormwater impacts, there are other ways in which to accomplish this goal, aside from requesting a variance, which has been shown to be categorically prohibited for

a conditional use request. The applicant has not provided enough information to demonstrate that a green roof is the minimum necessary.

Under BCC 16.36.040(B)(3), there must be a finding that "[t]he need for the Variance is not self-imposed by the applicant or property owner." Here, the alleged need (and it is not a need but rather a desire) for the variance is self-imposed because the applicant is entirely capable of presenting a development that does not require a taller roof. The applicant has not shown that it cannot reduce the size of the development to comply with the height standard.

Under BCC 16.36.040(B)(3), there must be a finding that "[t]he Variance does not conflict with other applicable City policies or other applicable regulations[.]" Here, granting a variance would plainly conflict with BCC 16.12.050, which prohibits granting a variance pursuant to a conditional use permit. There is simply no basis for granting a variance for this application.

Under BCC 16.36.040(B)(5), the variance cannot result in "foreseeable harm to adjacent property owners or the public." Public comment has noted that some residences have not been taken into consideration by the applicant in its analysis of whether the proposal will negatively affect ocean views.

The applicant also makes numerous allegations about the wetland delineation and how the delineation will allegedly inform satisfaction of other criteria. For example, in order to satisfy numerous criteria (17.102.020(B), (E), (F), (G), (H), (I), (J)) related to mitigation/restoration/rehabilitation, the City must apply non-clear and objective criteria, wherein the applicant must demonstrate compliance with BCC 17.102.020(J), which do not appear to be clear and objective, and, therefore, must be approved or denied in the quasi-judicial context at a later time. *See Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992); *see Stockwell v. Benton County*, 38 Or LUBA 621 (2000) (deferred findings of compliance must observe statutory notice and hearing requirements); *Holbrook v. Rockaway Beach*, __ Or LUBA __ (LUBA No. 2008-064, Jan 15, 2009) (Slip op *6). In light of the applicant's questionable ability to satisfy the criteria and the discretionary nature of the criteria, the issue cannot be reserved for an administrative or ministerial step. The City must either deny the application or impose a condition of approval requiring that the City provide notice, opportunity to comment, a hearing, and opportunity to appeal i.e., all of the procedural safeguards offered in the present proceeding. Because the applicant has not demonstrated compliance and the City has not imposed a condition of approval to satisfy the discretionary criteria that are necessarily dependent upon the DSL delineation, the application has not satisfied all relevant criteria.

Under the conditional use criteria, the applicant similarly falls short of compliance. Under 16.12.020(b), the code suggests conditions to limit the heigh of buildings, yet the applicant, here, is proposing to *increase* the height. Regardless, the code clearly prohibits variances for conditional use permits. The applicant's proposal to address "noise, vibration, air pollution, glare, odor, and dust," pursuant to BCC 16.12.020(I), through a green roof can still be accomplished without the variance. The applicant has also not shown how and to what degree the property will be protected over-and-above those protections that are already in the code. If the applicant is, indeed, committed to these principles, then the applicant can do so in compliance with the code.

Under BCC 16.12.040(B) and (C), any approval must be consistent with "[t]he purpose and dimensional standards" and "that the size and dimensions provide adequate area for the needs of the proposed use." The very fact that the applicant is requesting a variance from the height standard indicates that the proposal is *not* consistent with the purpose and dimensional standards of the zone. Moreover, if the applicant is attempting to either not have to be subject to the RV parking standard or place the RV parking elsewhere, off-site, then the site is not adequate in terms of size and dimension. The property is also identified on the list of significant view sites, BL-8 (Wetland/Dune on Strawberry Drive). The Planning Commission should make a finding that the site is not adequate considering it is a listed significant site, under the comprehensive plan. If the site were more than adequate, then the applicant would not be requesting a variance to the heigh and RV parking requirements.

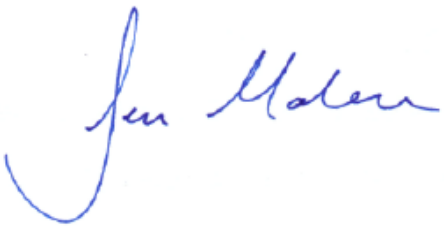
Under 16.12.040(G), "[t]he proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district." Numerous comments from neighboring residents have expressed concern about the impact of the proposed use, including increased traffic, sewer, water, lack of infrastructure.

Questions have also been raised as to whether the proposal should be subject to BCC 16.12.090(K) because the Villa/Suites resemble Vacation Rental Dwellings, given that they have 2 full baths, one powder room, and kitchen and laundry facilities. As such, there must be a determination as to whether the proposal falls within the purview of the Vacation Rental standards.

Finally, ORCA respectfully requests that the record be left open for seven days to allow for additional testimony and evidence.

For the foregoing reasons, ORCA respectfully requests that the application be denied.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

Sean T. Malone

Attorney at Law

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Eugene, OR 97440

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seanmalone8@hotmail.com

October 5, 2023

Via Email

City of Bandon Bandon
Planning Commission
555 Highway 101
Bandon OR 97411
(541) 347-2437
planning@cityofbandon.org

Re: Oregon Coast Alliance Testimony for the Gravel Point Consolidated Request, 23-045 (Bandon Beach Veanture)

Dear Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this supplemental testimony on the Gravel Point Consolidated Request. ORCA respectfully requests that the Planning Commission deny the application for the reasons provided below. The Planning Commission must also impose conditions requiring the satisfaction of criteria that the applicant has not yet attempted to satisfy.

As to the variance, they are "generally approved only in extraordinary circumstances and should not be used in place of the normal legislative process of amending zoning regulations." *Lovell v. Planning Com of Independence*, 37 Or App 3, 7 (1978). If the City wants to address the issue of impervious surfaces or green roofs or height limitations, it must do so through the legislative process, not the piecemeal process of granting variances.

The applicant admits in its additional testimony that "[i]t is the desire of the developer to maintain a natural environment and reduce the need for impervious surfaces." A variance is not granted for a "desire." Instead, a variance is based upon a

necessity. Impervious surfaces are always present with development, especially development of this scale. Impervious surfaces are not "unique" or "special" (BCC 16.36.040(B)(1)). Granting a variance for impervious surfaces would set a precedent wherein all development would be granted the variance because all development entails impervious surfaces. The Planning Commission would be effectively legislating if it were to grant this variance.

The variance is not the minimum necessary because it is not necessary at all. Moreover, the applicant cannot eliminate impervious surface areas from the development because it is inevitable in a development. The applicant's generalized notion of addressing *some* impervious surface area demonstrates that it is neither unique nor necessary.

Moreover, if the variance is tied to the generalized notion of protecting wetlands, which are already protected under the code[1], then the wetlands delineation and DSL review needs to be completed prior to addressing the variance criteria. The Planning Commission, therefore, cannot make a decision on the variance at this time.

As to the RV parking, the code requires 8 RV parking spaces. The applicant alleges that: "It is a rare occasion when an RV will visit a Hotel, and the applicant believes that the parking requirement is specific to a tourist area of town where shopping, dining and beach-going is relevant." Whether the applicant believes it is a "rare occasion" is irrelevant. 8 RV parking spaces are required and there is no allowance in the code for those to be provided anywhere but the subject property. Even assuming the applicant could provide for off-site parking through a lease, that would require an additional application.

The applicant's contention that it can obtain a variance through BCC 16.12.020(B) is unavailing. The plain language of BCC 16.12.020(B) provides that conditions may include "[l]imiting the heigh of the building(s)." This does not indicate or imply that it can be "expanded." A condition limits a proposal, it does not expand it. What the applicant asks for is contrary to what is permitted by the code in BCC 16.12.020(B). The applicant also cites to BCC 16.12.020(I), which provides for conditions "[r]equiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust[.]" Where a variance is necessary, the applicant cannot obviate that process through conditions. Moreover, the applicant has not demonstrated

[1] Notably, the applicant has not demonstrated why the code is inadequate in its protection of wetlands.

how increased height would minimize "noise, vibration, air pollution, glare, odor, and dust." The applicant is well-capable of using a roof that does not create noise, vibrations, air pollution, glare, odor, or dust. The applicant's proposal is conclusory as to how it allegedly satisfies that provision. The applicant cannot obtain a variance through alleged conditions.

Testimony has been submitted that indicates that the increased height will negatively impact views from surrounding, residential properties. *See* BCC 17.20.090(B)(1)(a)(1). Moreover, the requirement that "[a]ll portions of any roofs above 28ft. shall be sloped at a minimum of 3:12 and must slope down and away from the highest point of the structure." The slope is intended to ameliorate the impacts to views of surrounding properties and avoid a box-like building. Such a building would "result in foreseeable harm to adjacent property owners and the public" because of its box-like shape that the code was intended to avoid. BCC 16.36.040(B)(5). If the applicant wants a green roof, the applicant may do so in accordance with the height requirements, not contrary to them. The applicant's allegation that "[t]he height exception will improve the views of the surrounding properties by providing Green Roofs" is not based on substantial evidence. And, indeed, not complying with the code will do the opposite by detracting from views.

The applicant's allegation that not allowing a green roof "would eliminate an important component of our sustainable approach of being good environmental stewards" is illusory. Not only does this also demonstrate that the applicant is seeking a variance based on its desire – which makes the requested variance self-created – but the applicant can use a green roof in compliance with the height standard. The applicant simply refuses to do so because the applicant refuses to scale back its development accordingly. The applicant is not entitled to a variance simply because the applicant wants a particular development. The applicant has presented a choice between a metal roof and a green roof when the applicant can very well use a green roof without changing the height standard.

The notion that the applicant is proposing to be a good environmental steward is also without merit. The applicant is proposing significant construction on wetlands. The applicant cannot develop wetlands and laud itself as an environmental steward by proposing a green roof in order to maximize its development. The applicant is capable of scaling back its development proposal to avoid wetlands and use a green roof in compliance with the height standard.

The staff report notes that the "site does contain an area of high landslide susceptibility, which will require either an exemption request or a Geologic Assessment Review. The applicant has chosen to submit a separate application for review."[2] As noted in prior testimony, under *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992), the current application cannot be approved until the separate application is approved. The City must impose a condition that requires the separate application review, and that process must provide all of the substantive and procedural steps provided here. Moreover, various criteria here cannot be determined until the geologic assessment is available for review.

ORCA attaches hereto the landslide susceptibility map from DOGAMI, which demonstrates high landslide susceptibility. As a result, the Hazard Overlay provisions are implicated:

"17.78.020 Applicability

> The following areas are considered potentially geologically hazardous and are therefore subject to the requirements of this section:
>
> A. All lands partially or completely within 'high' or 'very high' landslide susceptibility areas as mapped in DOGAMI Open File Report 0-16-02, 'Landslide susceptibility overview map of Oregon[.]'"

The purpose of these provisions is to:

> "protect people, lands and development in areas that have been identified as being subject to geologic hazards and to apply review standards to all proposed development activity within the areas subject to geologic hazards by:
>
> A. Identifying areas subject to natural hazards (Landslide, Coastal Erosion, and Liquefaction);
>
> B. Assessing the risks to life and property posed by new development in areas of known natural hazard susceptibility; and
>
> C. Applying standards to the siting and design of new development on lands subject to natural hazards that will reduce the risk to life and property from these hazards[.]"

[2] The staff report plainly contradicts the applicant's narrative, which states that "[t]he site is not identified as a high landslide or high liquefaction area as identified by DOGAMI."

BCC 17.78.010. As of now, the applicant has entirely failed to prepare a geologic review, which is necessary to an understanding of the application, its affects, and how it can satisfy relevant criteria. *See* BCC 17.78.030 (Geologic Review Assessment); BCC 17.78.040 (Geologic Report (Engineering Geologic Report and Geotechnical Engineering Report) Standards); BCC 17.78.050 (Decisions of Geological Assessment Reviews); BCC 17.78.060 (Development Standards for Uses Subject to Review). This application is premature because other criteria are contingent upon completion of the Geologic Review and Assessment.

Under BCC 17.96.040(B), the staff report notes that the "spa amenity was not considered in developing the parking requirement," yet also states that "[t]he applicant has shown delineated parking spaces meeting the off-street parking and loading requirements." At the very least, this is contradictory and needs to be addressed further by the Planning Commission. Either the requirements have been met or not. Therefore, the proposed parking.

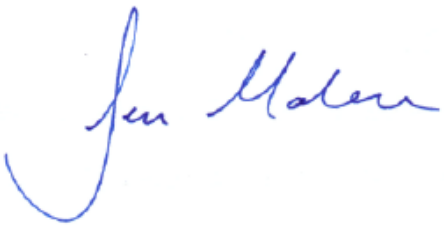
ORCA concurs with the staff report's statement that:

> "[t]he applicant states that the additional height will not negatively impact views from surrounding sites and will not cut off any sunlight but has not provided any evidence other than a statement. The applicant has stated that they own the land to the east, however there are other parcels abutting the project site that may be affected. Further, this code is intended to take into account future development, and there is no guarantee that these property owners will continue to own the abutting site after this approval. They have also stated that the views from surrounding sites will be improved as they will be looking at a green roof, however the height section specifically states that the purpose of regulating height is, "*to maximize the ocean view potential of lots.*" The applicants have not provided evidence that ocean views are not impacted."

ORCA also agrees with staff that "[t]he applicant did not provide evidence that the setbacks have been increased to meet criterion #5." To the extent attempts to submit new information or evidence as to these and other requirements, the Planning Commission must leave the record open for 7 days to allow a response.

For the foregoing reasons, ORCA respectfully requests that the application be denied.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

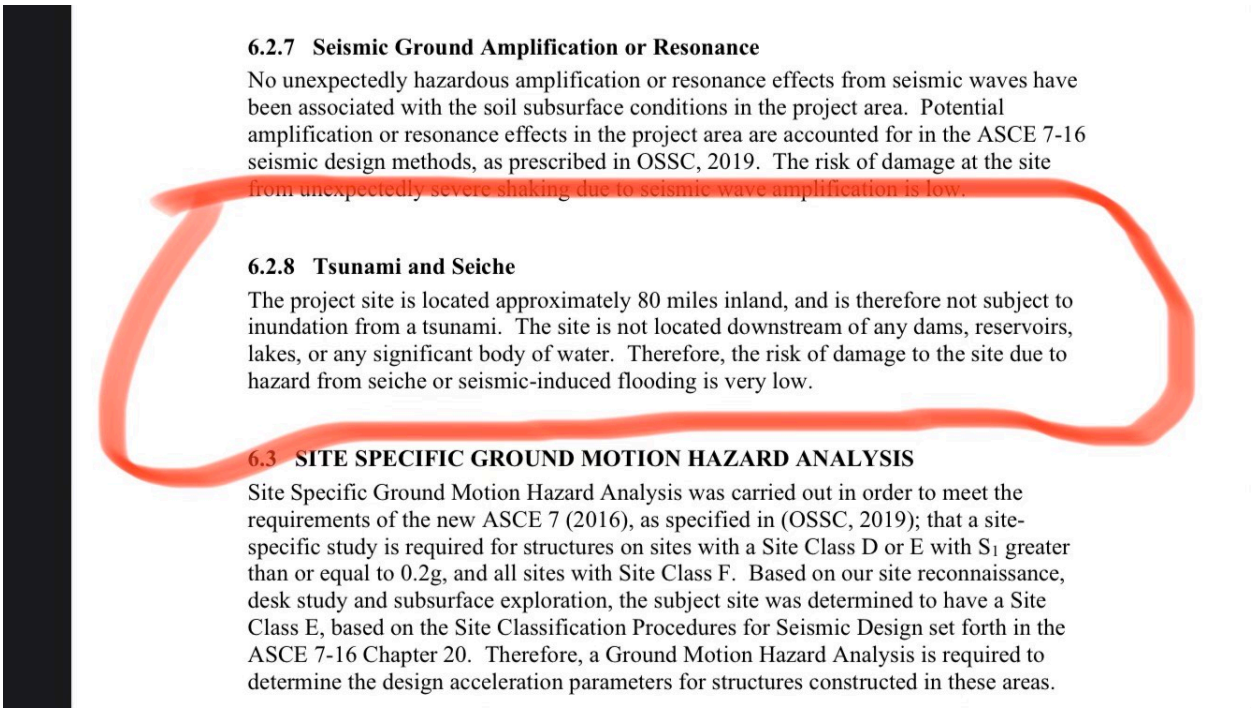
October 18th, 2023

City of Bandon
Bandon Planning Commission

RE: App #23-045 Bandon Beach Venture, LLC; Gravel Point Resort

The following are some additional comments in regards to the Geotechnical report for the Gravel Point Resort development.

1). On page 9 of the report under 6.2.8 Tsunami and Seiche it states that the "project site is located approximately 80 miles inland and is therefore not subject to inundation from a tsunami". According to the Oregon tsunami mapping the project site (drawn in red on map below) is within the local tsunami zone and is less than 1/4 mile from the Pacific Ocean (even during the last Ice Age the project site would have been located only 25 miles inland from the Pacific Ocean - so for the project site to be located inland 80 miles maybe the Geotechnical report writer must referring to a different geologic time period such as the time of the dinosaurs or before then).



6.2.7 Seismic Ground Amplification or Resonance

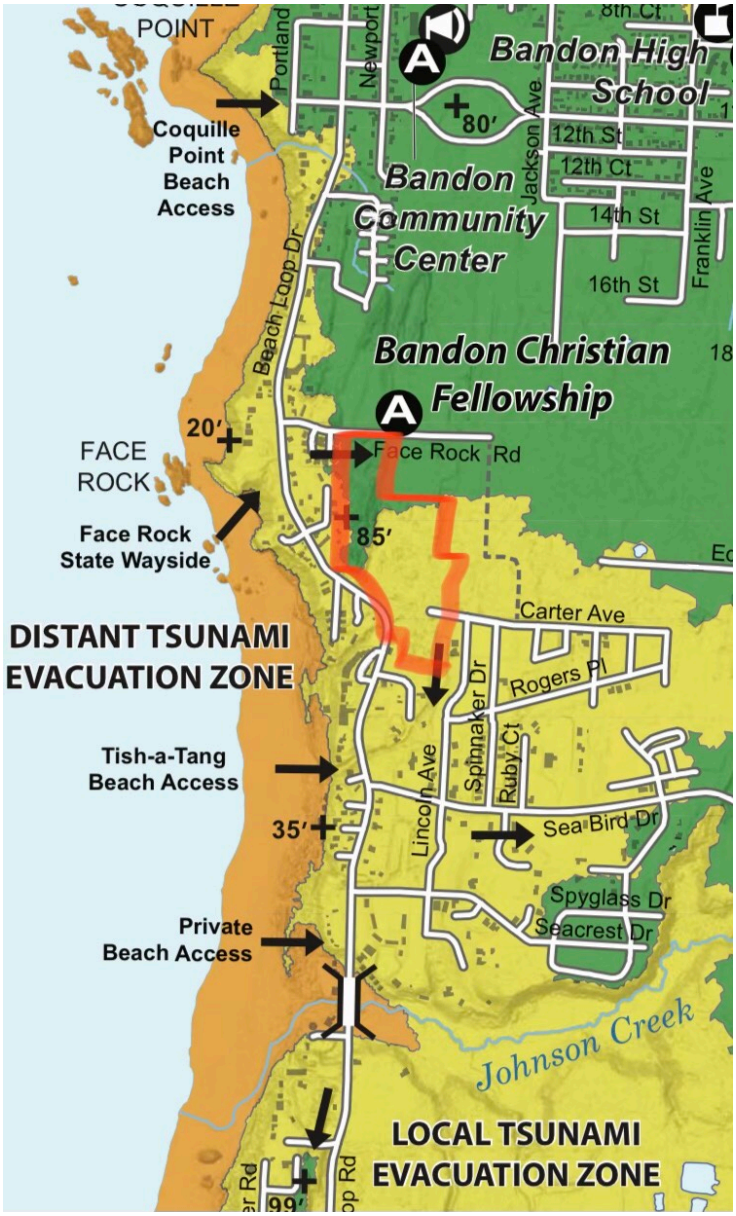
No unexpectedly hazardous amplification or resonance effects from seismic waves have been associated with the soil subsurface conditions in the project area. Potential amplification or resonance effects in the project area are accounted for in the ASCE 7-16 seismic design methods, as prescribed in OSSC, 2019. The risk of damage at the site from unexpectedly severe shaking due to seismic wave amplification is low.

6.2.8 Tsunami and Seiche

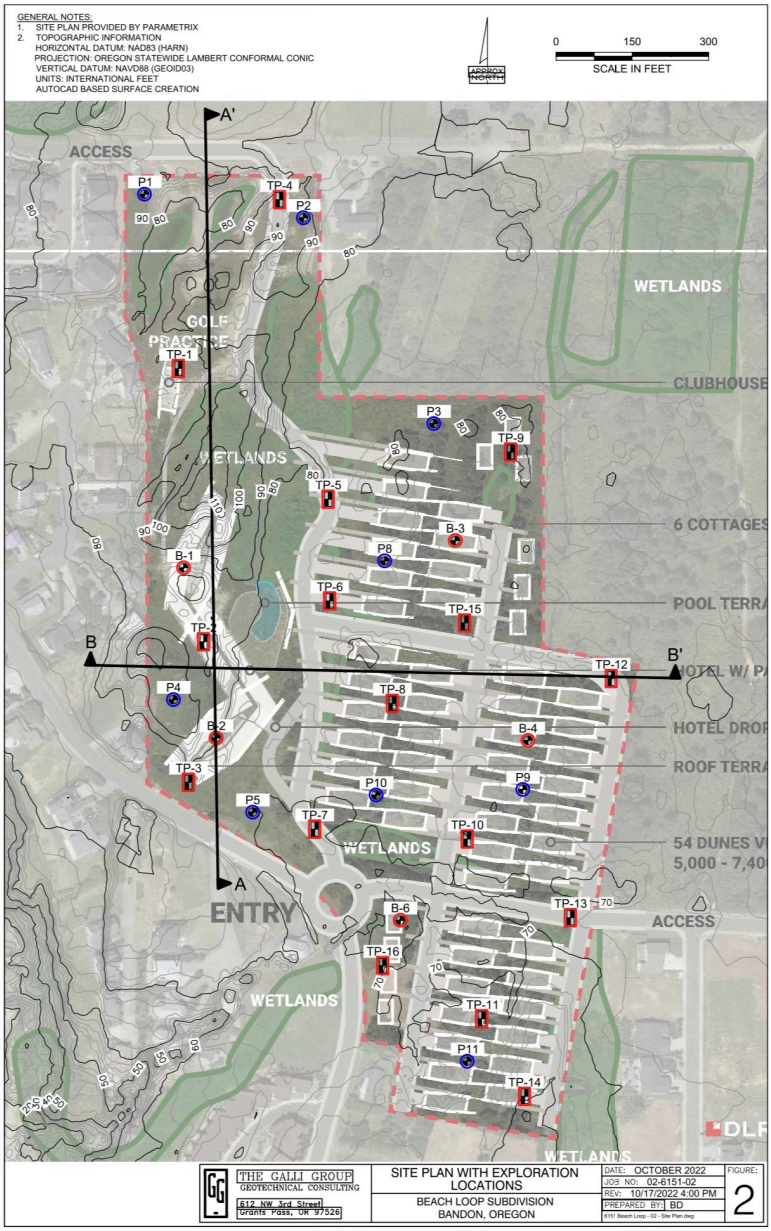
The project site is located approximately 80 miles inland, and is therefore not subject to inundation from a tsunami. The site is not located downstream of any dams, reservoirs, lakes, or any significant body of water. Therefore, the risk of damage to the site due to hazard from seiche or seismic-induced flooding is very low.

6.3 SITE SPECIFIC GROUND MOTION HAZARD ANALYSIS

Site Specific Ground Motion Hazard Analysis was carried out in order to meet the requirements of the new ASCE 7 (2016), as specified in (OSSC, 2019); that a site-specific study is required for structures on sites with a Site Class D or E with S_1 greater than or equal to 0.2g, and all sites with Site Class F. Based on our site reconnaissance, desk study and subsurface exploration, the subject site was determined to have a Site Class E, based on the Site Classification Procedures for Seismic Design set forth in the ASCE 7-16 Chapter 20. Therefore, a Ground Motion Hazard Analysis is required to determine the design acceleration parameters for structures constructed in these areas.



2.) In figure 2 - the Site Plan with Exploration Locations on page 46 it appears the exploration locations are overlayed on a site plan that is unrelated to the actual proposed Gravel Point resort developed that has been submitted. The site plan on the exploration locations map shows a development containing 54 houses, 9 cottages, a clubhouse and golf practice area, a hotel with pool and terrace and a completely different road system layout. Where the hotel with pool and terrace are shown is where the Gravel Point resort restaurant and bar were proposed to be located. It seems like it might be more appropriate for the Geotechnical report to show the actual proposed site plan in relation to the exploration locations and not some unrelated development.



3). In figure 2 - the Site Plan with Exploration Locations on page 46 there are 5 Boring hole locations shown on the map (B1-4 and B6). Was there not a B5 boring hole? If there was a B5 boring hole is there a reason it wasn't included on the map? In the data for the Boring holes in Appendix A, there is only data listed for B1-4 boring holes. Is there a reason why the data for Boring holes B5 and B6 not included in the report data?

4). In figure 2 - the Site Plan with Exploration Locations and in Appendix C (the Permeability testing results) the map shows and data contains information for P1-5 and P8-11. Was there not P6 and P7? If there was a P6 and P7, was there a reason why it wasn't included on the map and in the results data?

5). In the Geotechnical report it is mentioned that the ground water comes within 2 feet of the surface in the eastern portion of the project site. A number of the Test Pit logs show the soil to be moist even when the pits and bore holes were dug during the driest part of the year (August and September, 2022). The report mentions in order to build in those areas the the top 2 feet of organic material would need to be removed down to the native soil for the building footings. Because of the high water table the report also mentions that the site would need to be dewatered (page 20 and 21 in the report) by installing sump pumps to keep the ground water level below the level of the building footings.

It seems the need to dewater the site in order to build conflicts with the stated goal of the Gravel Point development to enhance the areas wetlands on the site as it might hard to maintain the wetlands if one is pumping ground water out of the site and lowering the water table in the area.

Sincerely,
Bob Schroeter

NOTICE OF DECISION

CITY OF BANDON PLANNING COMMISSION

On November 2nd, 2023, the Planning Commission of the City of Bandon approved with conditions Planning Action 23-045, a request for approval of a conditional use permit to construct 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites. Approval of a variance to design feature regulating height, and plan review for commercial design standards, parking, and signage. You have received this notice because you participated in the Public Hearing.

Property Owner:	Bandon Beach Ventures, LLC
Applicant(s):	Coos Curry Consulting, Sheri McGrath
Property Location:	0 Beach Loop Drive Map Number: 28S-15W-36BC, TL 219 & Map Number: 28S-15W-36C /TL 400, 500, 600, 700, 1500
Proposal:	Approval of a conditional use permit to construct 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites. Approval of a variance to design feature regulating height, and plan review for commercial design standards, parking, and signage.
Applicable Criteria List: (Bandon Municipal Code)	16.12, Conditional Uses 16.36, Adjustments & Variances 17.20, Controlled Development 1 (CD-1) 17.90, Signs 17.94, Commercial Design Standards 17.96, Off-Street parking & Loading

Date of Decision:	Thursday, November 2nd, 2023
Date of Mailing:	Tuesday, November 7th, 2023
Appeal Deadline:	Wednesday, November 22nd, 2023
Date Decision is Final:	Thursday, November 23rd, 2023

Materials concerning this decision are available to review online through the Planning Department's webpage at www.cityofbandon.org. Copies may be purchased from Bandon City Hall located at 555 Hwy 101, Bandon, Oregon.

This decision may be appealed to the City Council within 20 days following the date of decision. Appeals must be submitted in writing and all fees paid no later than **Wednesday, November 22nd, 2023**. If the application is not appealed, the decision will become final on **November 23rd, 2023.**

If you would like to appeal this decision, the following standards must be met and steps completed:

1. **Who May Appeal:** The applicant or owner of the subject property or any other person who testified orally or in writing during the subject public hearing before the close of the record.
2. **Notice of Appeal:** Any person with standing may appeal a Type III Quasi-Judicial Decision by filing a Notice of Appeal according to the following procedures.
3. **Content of the Appeal:** The Notice of Appeal shall be accompanied by the required filing fee ($250) and shall contain:
   a. An identification of the decision being appealed, including the date of the decision;
   b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
   c. A statement explaining the specific issues being raised on appeal; and
   d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.

If you need additional information or have questions about the appeals process, please contact the Planning Department at (541) 347-7922 or via e-mail at planning@cityofbandon.org.

Figure 1 Subject Property

After holding duly noticed public hearings, the City of Bandon Planning Commission approved application 23-045 with the following conditions of approval on November 2nd, 2023:

STANDARD CONDITIONS OF APPROVAL

1. All proposals of the applicant shall become conditions of approval.
2. Approval of the plan is based on information provided by the applicant. No other approvals are expressed or implied. Any changes to the approved plan shall be submitted, in writing, and approved by the Planning Department prior to implementation.
3. All state, federal, and city permits associated with this approval shall be obtained by the applicant prior to operation.
4. The applicant shall submit for zoning compliance approval prior to any ground disturbance.
5. Unless otherwise stated in this document, all four property corners must be located and properly marked prior to the first City inspection.
6. No preparation of the subject lot shall be allowed prior to issuance of a City Grading and Fill permit, signed by the authorizing designee of the City of Bandon.
7. All construction materials and equipment shall be staged on site. No construction materials shall be stored in the City right-of-way.

8. No construction work shall be performed on Sundays or city holidays, except that a person may perform construction work on the person's own property, provided such construction activity is not carried on for profit or livelihood, between the hours of ten (10:00) a.m. and five (5:00) p.m. on Sundays and city holidays. No construction work shall be performed on Saturday before nine (9:00) a.m. or after seven (7:00) p.m. No construction work shall be performed before seven (7:00) a.m. or after seven (7:00) p.m. on weekdays (exclusive of holidays).

Electric:

9. Electrical equipment must be installed per the requirements listed in the Electric Department Bid Packet.
10. The meter shall be installed at curbside on a post, or on the structure, facing the vehicular access and no more than 5 feet down the side of the structure nearest the vehicular access.
11. The electric meter shall be stainless steel and shall not be enclosed.
12. Electric meter must be accessible at all times, without locked doors, gates, enclosures, boxes or covers which deny access, including the keeping of animals in such a manner that access is denied or hazardous.
13. Any cost for new or modified utility upgrades will be borne by the developer.

Public Works:

14. Public Works Permit and Right-of-Way Permit must be obtained prior to any work commencing within right-of-way.
15. Repair costs of any damage to City property, or right-of-way, as a result of use during construction shall be the responsibility of the property owner and/or applicant.
16. A construction timeline shall be submitted and approved by the Public Works Director, prior to any construction, grading or preparation of the site.
17. Driveway and fill specifications shall be provided and approved by the Public Works Director and/or City Engineer prior to any preparation of the site.
18. A staging plan for construction of the foundation system and the structure shall be provided and approved by the Public Works Department prior to any construction, grading or preparation of the site.
19. Any necessary repairs to City property, infrastructure or right-of-way, must be submitted and approved by the Public Works Department prior to the commencement or repair work.
20. An Erosion Control Plan shall be provided and approved by the Public Works Director prior to any preparation of the site.

With development of the site:

21. Any changes to the approved preparation, construction or final stages of the approved plan shall be submitted, in writing, and approved by the Planning Department prior to implementation.
22. The parking lot approach shall be paved or concrete from the edge of the City street to a minimum of one foot (1') inside the property line.
23. Parking lot approach, trenching, service connections, cleanouts and other underground construction shall be constructed in accordance with APWA standards and must be inspected and approved by the Public Works or Electric Departments.
24. Parking lot approach forms must be inspected and approved by the Public Works Department prior to pour.
25. The applicant shall be responsible for preparation and maintenance of the site to prevent tracking of soil or construction material or debris onto any rights-of-way. All public streets must be kept clean during the construction period. Clean-up costs shall be the responsibility of the property owner.
26. Property lines shall be clearly marked during all phases of ground preparation and construction.

Prior to certificate of occupancy:

27. Certificate of Occupancy must be issued by the City prior to occupancy of the structure. This approval is required prior to receiving occupancy from the Coos County Building Department.
28. Certificate of Occupancy shall not be issued until conformance of all conditions of approval has been verified.
29. Certificate of Occupancy will not be issued until repairs, as required by the City, to the City infrastructure or right-of-way are completed and acceptable by the Public Works Department.
30. Certificate of Occupancy will not be issued until all meter placements have been approved, in writing, by a representative of the Electric Department.
31. Certificate of Occupancy shall not be issued until Final Construction and drainage is approved by the Public Works Director.

Other:

32. All utilities are considered temporary until a Certificate of Occupancy has been obtained through the City. Utility service lateral installation is the responsibility and cost of the applicant. Only one water service shall be permitted.
33. Applicant must adhere to all conditions and requirements set out by the Coquille Indian Tribe, State Historic Preservation Office (SHPO) or both if required.

PROJECT SPECIFIC CONDITIONS OF APPROVAL

34. The conditional use permit shall become void two years from the date the decision is final unless a zoning compliance permit has been issued.
35. Metal-sided buildings shall be prohibited anywhere on the site.
36. Areas used for parking vehicles and for maneuvering shall have durable and dustless surfaces maintained adequately for all weather use and so drained as to avoid flow of water across sidewalks.
37. Parking spaces along the outer boundaries of a parking lot shall be contained by a bumper rail or by a curb which is at least four inches high, and which is set back a minimum of four and one-half feet from the property line.
38. Parking shall be provided in accordance with the parking provisions of the Bandon Municipal Code (BMC) for said use. Specifically, a total of 152 parking stalls measuring 8.5’ (W) x 19’ (L) shall be designated for passenger vehicles, and a minimum of two (2) parking stalls measuring 10’ (W) x 30’ (L) shall be designated for recreation vehicles. In lieu of designating a total of eight (8) parking stalls for recreational vehicles as required by the BMC, the project applicant shall be permitted to provide shared parking for both passenger vehicles and recreational vehicles accommodating up to twelve (12) passenger vehicles and six (6) recreational vehicles at any given time. This is a total of 164 standard parking spaces and two (2) RV spaces. All of the required parking stalls referenced herein shall be provided and contained on-site and in no instance shall off-site parking be permitted in association with the subject development and/or this entitlement. All parking lots will meet requirements of the Americans with Disabilities Act.
39. All proposed vehicular access streets located in city rights-of-way shall be public and meet the City’s street design standards unless otherwise modified by the City Council.
40. Parking spaces along the outer boundaries of a parking lot shall be contained by a bumper rail or by a curb which is at least four inches high, and which is set back a minimum of four and one-half feet from the property line.
41. Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons and employees only, and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting business or use.
42. The applicant shall sign an anti-remonstrance agreement to the formation of an LID for the construction of a future sidewalk system along Beach Loop Drive for the section that abuts their property.

43. Artificial lighting which may be provided shall be so deflected as not to shine or create glare in any residential zone or on any adjacent dwelling. A photometric study shall be prepared to minimize residual light pollution and/or glare impacts to adjacent properties.
44. All site lighting shall be dark sky compliant as proposed by the applicant in their September 28th submittal.
45. A final landscaping plan shall be reviewed and approved, prior to issuance of zoning compliance. Trees shall be planted such that the tree trunk is at least 3 ft. from any curb or paved area.
46. A final landscaping plan shall clearly demonstrate that planted area will cover 50% within 1 year and 90% within 5 years.
47. Prior to issuance of zoning compliance, applicant shall obtain approval of screening materials for electrical equipment from City electrical department or their designee.
48. A 6-foot-tall fence or screen shall be required on the property lines abutting a residential zone.
49. The applicant shall be required to submit a resource protection plan prior to commencement of ground-disturbing activities that may affect wetlands or riparian corridors.
50. One Phase Construction – the subject project shall be constructed in its entirety, including the completion of all related conditions of approval, in one singular phase.
51. Gold LEED Certification – in accordance with the project applicant's public testimony remitted during the Planning Commission meeting dated October 5, 2023, the subject project shall be designed and constructed as a "Gold" certified green building pursuant to Leadership in Energy and Environmental Design (LEED) standards. Specifically, the subject development shall be required to meet the "Gold" standard of development and obtain the required LEED certification prior to the City's issuance of a final Certificate of Occupancy (C of O).
52. Public Improvements – the project applicant shall be required to comply with the development standards and public improvement requirements of the City of Bandon including, but not limited to, the installation of sewer, water, and electric utilities as well as the construction of public sidewalks, street curbs, gutters and drainage improvements. All public improvements shall be completed prior to the City's issuance of a final Certificate of Occupancy (C of O) and the cost of said improvements shall be borne solely by the project applicant.
53. Construction Traffic Mitigation Plan – the project applicant shall be required to devise a traffic mitigation plan for regulating truck traffic during construction for the purpose of reducing truck traffic impacts to the surrounding sensitive residential land uses that exist in the subject area. The traffic mitigation plan shall be subject to the City's review and final approval shall be obtained by the project applicant prior to the issuance of building permits. Further, construction vehicles shall be required to be staged and all building materials shall be off-loaded on the subject property. Violations of this condition of approval shall result in the issuance of a stop work notice; whereas repeat offences totaling three (3) or more within a twelve (12) month period may result in the revocation of City issued entitlements, permits and/or approvals.
54. Approval of the variance shall be conditioned upon Gold LEED Certification of the structures, as proposed by the applicant.

Bruce Spencer
1349 Strawberry Drive
Bandon, OR 97411

Bandon City Council
555 Highway 101
Bandon, OR 97411

RE: Appeal of Planning Action 23-045 approval of conditional use permit, November 2nd, 2023

November 21st, 2023

Dear Council Members,

I submit this appeal of the decision referenced above to the Bandon City Council, having standing to appeal based on my previously raising written concerns to the Bandon Planning Commission during the public hearings. The specific issues of my appeal of this decision were all brought up during the Planning Commission's proceedings regarding this application, and include but are not limited to:

1. It was brought up during the public meetings by multiple parties that homeowners who expected to be notified of the meetings were not. ***I therefore appeal the Planning Commission's decision based on 16.04.070B.2.b***, required information pertaining to the location of the meeting was not included on the Notice of Public Hearing dated September 7th, 2023. In addition, I appeal the Planning Commission's decision based on 16.04.070B.2.d, whereas the notice did not include required wording disclosing information pertaining to appealing to the City Council or Circuit Court.

16.08.040A Section 16.08.040 requires the pre-planning of large sites in conjunction with requests for annexation, and applications for phased subdivisions and master plan developments; the purpose of which is to avoid piecemeal development with inadequate public facilities.

16.08.040B This section applies to land use applications and annexations affecting more than 40 acres of land under the same contiguous ownership, even where only a portion of the site is proposed for subdividing.

2. ***I appeal the Planning Commission's decision based on the following.*** As noted above, 16.08.040A requires 'pre-planning of large sites in conjunction with … ', and further provides the purpose of the pre-planning as being for the critical reasons of ensuring projects of this magnitude do not overwhelm city resources or place undue harms on its residents.

I have been informed the Planning Commission did not consider my previous testimony to them regarding this issue because they interpreted my objection as not conforming to this code section, predominantly because the application is not requesting a land division or property line adjustment. However, I would argue the following:

- The 16.08 chapter heading 'Land Divisions and Property Line Adjustments' does not fully encapsulate the purposes and applications outlined within the chapter.
- 16.08.010 Purpose includes subsections C, D, and E, which are independent of and irrelevant to sections A and B. Those subsections encourage efficient use of land resources, promoting public

health, safety, and general welfare through orderly and efficient urbanization, and providing of adequate transportation, water supply, sewage, fire protection, pollutions control, among other things.

- Applicant's Consolidated Request opens with the statement 'Gravel Point will be located on a 24.8 acre (6 tax lots combined) parcel'. They have indicated their intention to treat multiple lots as a single unit.
- Applicant's response in Project Narrative and Proposed Findings of Compliance to 17.94.090H continued to page 35 states the applicant's plan 'includes 90 acres of contiguous ownership', and future development is planned for additional acres than the 24.8 acres in the current proposal. This exceeds the contiguous ownership of 40 acres in 16.08.040B. While 16.08.040B states 'even where only a portion of the site is proposed for subdividing', there are multiple arguments this wording does not preclude applicants from the Pre-Planning for Large Sites reporting requirements. For example, no, or 0% subdivision is less than 1% subdivision. In addition, the wording 'master plan developments' by definition includes multi-phased developments, which the applicant has attested to having in store for the additional acreage above the 24.8 included in the current application.
- A qualified, properly drafted and executed Pre-Planning for Large Sites Report would provide the city much more information than it has now to address many of the city's departments and constituents' concerns, including but not limited to:
    - Utilities, especially sewage
    - Accessibility
        - Plans for direct access from 101
    - Traffic
        - Beachloop, Carter, Lincoln, Seabird, etc.
    - Support and emergency services
        - Police
        - Fire
        - Health
    - Public health, safety, and general welfare
        - Several communities have rejected projects of similar scope and magnitude based on the negative impacts expected to public health, safety, and general welfare
        - It is not just traffic that will be affected on the above mentioned streets, impacts will also be to pedestrians, dog walkers, cyclists, joggers, etc.
    - Orderly growth
- ***The City Council should reject this application until the applicant submits a conceptual master plan with pre-application materials for the project or proposal as outlined under section 16.08.040C and D, or at a minimum until the City Council feels the applicant has met the burden of proof on the items noted above for their future plans for their full 90 acres, not just the current 24.8 acres.***

3. The developer's project is in Bandon's CD-1 zone, and is for the purpose of developing and operating a hotel and restaurant. The developer's proposal includes thirty-two individual, stand alone, unattached units, each with two full baths, one powder room (half bath), kitchen and laundry facilities, and a spa on the patio. These units are not hotel rooms. The applicant has responded to previous objections that they are hotel rooms because they are part of a development plan for a hotel. However, the applicant also notes 'The Villa/Suites are residential in nature'. In addition, no internet search or dictionary definition supports their position that these are hotel rooms. These units are temporary single family residences, as defined in 17.02 as well as the 'Definitions' section of 16.12.090K. 16.12.090K further states Vacation Rental Units (VRDs) are a conditional use in the CD-1 zone, and further defines rules and regulations for

conditional use permits. ***I appeal the Planning Commission's decision based on the developer not applying for, nor complying with, the conditional use permit for VRDs.***

a. *In addition to the above, if the City Council does not decide to reverse the Planning Commission's decision, for Utility and SDC purposes these units should be counted as a full unit each vs the 1/3 unit applied to hotel/motel rooms.*

4. *An abandoned partially completed project would be detrimental to the community, and provide an unstructured environment that would lead to decay, trash, overgrowth, and other undesirable impacts, including partially built structures encouraging homeless encampments.* Whether the developer had the financial capability to complete the project once started was brought up as testimony during the Planning Commission's proceedings. The developer, Perk Development Group LLC, currently has four projects listed on their web site. I have some concerns with this:
    a. I am unable to find Perk Development Group LLC on the Oregon Secretary of State (SOS) web portal. If that is correct, this precludes them from doing any business in the state of Oregon, including paying bills (or submitting applications such as the one we are now addressing).
    b. The nearest listing to Perk Development Group LLC that I can find is Brett Perkins Construction LLC under the Oregon Construction Contractors Board (not the Oregon SOS, still unable to conduct business in the state). This entity is bonded for $20,000 which is not adequate for a proposal of this size. The entity's insurance is listed as $1,000,000, again, not adequate for a development of this size.
    c. Regardless of Oregon SOS status, it has not been determined that the developer has the necessary funds to commit to the complete development of this project. Additional concerns are Gravel Point is one of four current projects, all robust in scope, and the developer's web site is soliciting investments to fund its projects.

    16.40.020 lists requirements for bonds, cash, or other financial security. ***I appeal the Planning Commission's decision based on the applicant not providing proof of their ability to finance, bond, and insure the completion of this project.***

17.04.020 of the Bandon Municipal code lists several areas that were addressed during the Planning Commission's proceedings.

5. While bringing tourism funds into Bandon is an important part of our economy, building too quickly, without the resources to support the growth, will increase the cost of living to all Bandon residents, and take away the much-needed services required of the existing residents and businesses. This only serves to increase the cost of living for Bandon residents, and further price Bandon residents out of both permanent (home ownership) and temporary (rental) housing. ***I appeal the Planning Commission's decision due to the promotion of the economic well-being of the city and its residents not being fully addressed as outlined in 17.04.020N.***

6. The Bandon Transportation Refinement Plan, Table 2, reflects a total of 423 acres, of which 133 are buildable, to the combined CD, CD-1 and CD-2 zones. Ultimately this project will cover 90 acres, consuming 21% of all available land as of the date of the refinement plan. ***I appeal the Planning Commission's decision based on this project taking away from adequate space for housing as outlined in 17.04-020O.***

7. The existing hospitality, restaurant, and retail options in Bandon cannot find and retain talent to adequately run their businesses. Help wanted signs are prevalent. So are signs requesting patron's patience as lack of personnel is affecting customer service. Businesses have had to curtail operating hours during tourist season. Restaurants have had to cancel reservations due to staffing and supply issues. The existing hotels are constantly seeking housekeeping, maintenance, and other support staff. 'No Vacancy' signs have not necessarily meant there are no rooms available, but instead have sometimes meant no staff available at the front desk or to service the existing available rooms. The applicant states 'The Gravel Point Project forecasts up to 60 long-term jobs'. Many of these jobs will be taking away from the existing pool of talent from the current Bandon businesses, and that is if they can fill them. The developer has also stated he expects a 'long lead time for labor' when referencing how long the development is expected to take to complete. ***I appeal the Planning Commission's decision based on the proposed facility discouraging the orderly growth of the city as outlined in 17.04-020H.***

8. With additional traffic in the area, both during construction and after completion, we will see more speeding, more running stop signs, less being courteous to pedestrians, dog walkers, joggers, and bicyclists, specifically on Beach Loop, but also around the other access points to the development. The safety of residents and other respectful tourists is a unique quality to this area. Adding the number of people and vehicles proposed to this area, as well as the types of vehicles especially during construction, of drivers who in general do not have the experience of driving in Bandon, or do not have the experience of conducting themselves under the ordinances of our town, will negatively impact the safety of the rest of our community***. I appeal the Planning Commission's decision based on the fact that it does not conform to 17.04.020G as it relates to avoiding congestion, and 16.08.010C as it pertains to public health and safety.***
    a. The applicant has argued that their application should not be penalized by the city's lack of access they will require in order to build and operate the development. I counter the city should not be penalized for the developer trying to force their project into an area that is not suitable for it.
    b. The applicant has provided studies that suggest the amount of traffic generated by the development will meet Highway Capacity Manual LOS and ODOT limits. Many testimonies have disputed the studies provided by the applicant, that they do not meet the burden of proof required to offset the traffic congestion impact in this section. In addition, the traffic engineer who generated the applicant's traffic assessment used the term 'we' several times during the Planning Commission 10/19/23 meeting, in the context she was part of the development team. <u>The City Council should consider whether the reports used in the Gravel Point Consolidated Application are unbiased, and conduct their own, independent, traffic study of the area surrounding the development tailored to the specific circumstances of the area.</u>
    c. <u>I further argue the application's approval should be dependent on the applicant/developer providing and implementing a viable solution to a more feasible direct access to the development from 101.</u>

9. The applicant is pursuing LEED certification at the Gold level. LEED is a green building rating system that provides a framework for healthy, efficient, and cost-saving green buildings. Gold LEED Certification is awarded to 50% of the projects that apply for LEED certification. Platinum LEED Certification is only awarded to the top 10% of LEED certification applicants. Gold LEED Certification appears less impressive in this context than in the applicant's plans. Platinum LEED

> Certification would further enhance meeting the highest level of compliance with 17.04.020J. ***I appeal the Planning Commission's decision based on 17.04.020J, and instead suggest the City Council only consider the application if the developer achieves Platinum LEED Certification.***

I will close with reminding the City Council that under 16.04.070E.3 in a non-public hearing the council can determine the scope of appeals. I encourage the council to have that meeting and consider all options, giving special attention to the option of a de novo hearing, which would help ensure all important issues regarding this project get appropriate attention. As I stated in my letter to the City Council at the November 6th, 2023 City Council meeting, I suspect if this decision ends up appealed to LUBA, they are likely to only consider the technical aspects of the appeals. They will not have the context or narrative of knowing this area, living here, raising families here, having vested interests here, more fully understanding the impacts of a project of this magnitude on this community. Thank you for your attention to my concerns.

Sincerely,
Bruce Spencer