

**RECORD OF TYPE III APPEAL  
DECISION OF THE CITY COUNCIL  
FOR THE CITY OF BANDON, OREGON**



**FILE NUMBER:** 23-045

**LOCATION:** 0 Beach Loop Drive  
28S-15W-36BC TL 219 & 28S-15W-36C TL 400, 500, 600, 700, 1500

**APPLICANTS:** Bandon Beach Ventures, LLC & Perk Development LLC

**PROPERTY OWNER:** Bandon Beach Ventures, LLC

**APPELLANTS:** Bruce Spencer  
Oregon Coast Alliance, Sean T. Malone

**REQUEST:** Approval of a conditional use permit to construct a 110-room hotel, two restaurant spaces, meeting rooms, and spa, as well as 32 villas/suites. Approval of a plan review for height, commercial design standards, parking, and signage.

**REVIEWING BODY:** City Council (on appeal)

**APPEAL DECISION HISTORY:** Date application was deemed complete: August 21<sup>st</sup>, 2023  
1<sup>st</sup> Evidentiary hearing (Planning Commission): September 28<sup>th</sup>, 2023  
2<sup>nd</sup> Evidentiary hearing (Planning Commission): October 5<sup>th</sup>, 2023  
Planning Commission Date of Decision: November 2<sup>nd</sup>, 2023  
  
Timely appeals filed: November 21<sup>st</sup>, 2023  
Appeal Hearing (City Council): February 21<sup>st</sup>, 2024  
Signed Final Order: March 6<sup>th</sup>, 2024

**APPLICABLE CRITERIA:** BMC (Bandon Municipal Code) Chapters:  
16.12, Conditional Uses  
17.20, Controlled Development 1 (CD-1)  
17.90, Signs  
17.94, Commercial Design Standards  
17.96, Off-Street parking & Loading

**FINAL ORDER:**

**APPROVED WITH CONDITIONS**

**SIGNED:**

This 6<sup>th</sup> day of March 2024.



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Mary Schamehorn, Mayor

**EXPIRATION:**

**This approval expires two (2) years from the effective date, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permit activity is being regularly conducted on the premises.**

**EFFECTIVE DATE OF DECISION:**

Unless the conditions of approval specify otherwise, the Decision becomes effective 21 days after the City mails the decision notice, unless the decision is appealed.

**Recitals**

1. Bandon Beach Ventures, LLC, an Alaska limited liability company, is the record owner of certain real property located in the City of Bandon at O Beach Loop Drive, and more specifically known as Township 28 South, Range 15 West, Section 36BC, Tax Lot 219 and also Section 36C, Tax Lots 400, 500, 600, 700, and 1500 (collectively the "subject property"). The subject property is located in Bandon's Controlled Development 1 ("CD-1") zone.
2. On July 11, 2023, Bandon Beach Ventures, LLC and Perk Development Group, LLC, a Delaware limited liability company, (collectively the "Applicants") filed a Type III application (the "Application") with the City of Bandon Planning Department for a conditional use permit, variance and plan review for the Gravel Point project, a hotel, and restaurant on property zoned Controlled Development (CD-1).
3. On August 21, 2023, City staff deemed the Application complete.
4. On September 28, 2023, the Planning Commission met for the initial evidentiary hearing for the Application. At that meeting, the City Hall Council Chamber was nearly full, and the online Zoom option reached capacity, so the Planning Commission Chair continued the hearing to October 5th, at 7:00 PM in the City Hall Council Chamber. The record remained open.
5. On October 5, 2023, the Planning Commission held a second evidentiary hearing, allowing for additional testimony from the Applicants and public. The Planning Commission approved a request to keep the record open for an additional seven days, which is permitted by ORS 197.797(6)(a), and a subsequent request to respond to the new testimony. The Applicants were then given seven days to make a final argument and submit a final rebuttal, as allowed in ORS 197.797(6)(e). The record before the Planning Commission was then closed.
6. On November 2, 2023, the Planning Commission held a third hearing. The Planning Commission considered the evidence and arguments in the record and deliberated towards a decision. The

Planning Commission approved the Application in a vote of 4 to 2, with the chair not voting. This included approval of the building height increase and the requested variance to the roof pitch.

7. On November 7, 2023, the City of Bandon mailed a Notice of Decision concerning the Planning Commission's approval of the Application.
8. The City of Bandon received a written Notice of Appeal from the Oregon Coast Alliance ("ORCA") and a separate written Notice of Appeal from Mr. Bruce Spencer of Bandon, both appealing to the City Council for review. The two appeals were found to be valid.
9. The City Council met in a noticed, non-public hearing to determine the scope of the appeal pursuant to Bandon Municipal Code ("BMC") 16.04.070(E)(3), which states: "*Scope of appeal. The reviewing body shall determine, as a non-public hearing item, that the scope of [review and] appeal will be one of the following: \* \* \* c. A de novo hearing on the merits of the appeal*".
10. The City Council determined that the issues on appeal would be reviewed *de novo* on the merits of the appeals.
11. The City Council further determined that the appeals would be consolidated into a single public hearing to occur on February 21, 2024, at 6:00 pm in the Council Chamber before the City Council with members of the public being able to participate online using the Zoom platform.
12. On February 1, 2024, the City timely mailed a Notice of the Type III Appeal Public Hearing, which provided a 20-day comment period for submission of written testimony.
13. On February 13, 2024, the Applicants submitted into the record before the City Council a Response to both Notices of Appeal. The Applicants also filed a Restated Combined Application, which modified their requests in the Application in response to the issues raised in the Notices of Appeal. Their modifications to the proposal are detailed in the record and included reducing the height of the proposed structures to meet the City's height limitation, withdrawing the requested variance to the roof slope, increasing the number of parking spaces including RV spaces, and increasing the lot coverage of certain buildings.
14. Prior to the February 21, 2024, hearing, various Public Comments were submitted into the record before the City Council.
15. On February 21, 2024, approximately three hours before the scheduled City Council hearing, Appellant ORCA submitted 1,200 pages of new material into the record. ORCA simultaneously requested that the City Council keep the record open because testimony had recently been entered into the record.
16. On February 21, 2024, at 6:00 pm in the City Hall Council Chamber the City Council held a duly noticed public hearing, at which time the City Council accepted new evidence and testimony from the Applicants, a representative for Appellant ORCA, Appellant Mr. Bruce Spencer, and various members of the public both in person and on Zoom. All testimony received by the City of Bandon can be found in the Planning Department as part of the record of the decision. A copy of the rules and procedures read into the record is available in the City Offices. The Staff Report evaluated the request against

each of the applicable approval criteria in the Bandon Municipal Code and found the request to meet all the substantive criteria.

17. The City Council denied Appellant ORCA's request to keep the record open because there had been ample opportunity to place evidence into the record and because the evidence before the City Council was sufficient for a decision to be made. The City Council voted unanimously to close the public hearing and record.
18. At the close of the public hearing on February 21<sup>st</sup>, 2024, by a 4:2 vote, the City Council denied the appeals, upheld the Planning Commission's decision to approve the request, and adopted the Procedural Staff Report dated February 21<sup>st</sup>, 2024, as the Findings of Fact, imposing the conditions of approval listed in that Report, along with those stated into the record by staff at the hearing.

**FINDINGS OF FACT AND LAW:**

The following findings and conclusions are based upon the application, plans, and all written testimony for the above-referenced Gravel Point project, submitted before the close of the record on February 21<sup>st</sup>, 2024.

**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. The issuance of the Planning Commission's Notice of Decision and the Appellants' filings of the Notices of Appeal and fees conferred jurisdiction on the City Council. There were no objections.

**Standing:** Appellant Oregon Coast Alliance ("ORCA") and Appellant Mr. Bruce Spencer have standing to appeal the Planning Commission's 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. There were no objections.

**Limited Issues on Appeal:** ORCA requested that the City hold the hearing *de novo* in its Notice of Appeal at page 2. In its letter dated February 21, 2024, from Appellant ORCA's attorney, Sean Malone, ORCA appeared to object to the City Council holding its hearing *de novo*. ORCA further objected to the issues on appeal being limited to either those raised in the written Notices of Appeal filed by the Appellants or to new issues related to the Applicants' requested modifications to the Application. Appellant Bruce Spencer also objects to the issues on appeal being limited, arguing that *Miles v. City of Florence*, 190 OR App 500 (2003), does not apply to the City and because this is a *de novo* hearing.

The objections are overruled. *Miles v. City of Florence*, 190 OR App 500 (2003), is binding on the City of Bandon. Bandon Municipal Code ("BMC") 16.04.070(E) states as follows:

*"Content of notice of appeal. The Notice of Appeal shall be accompanied by the required filing fee and shall contain: \* \* \* 3) A statement explaining the specific issues being raised on appeal; \* \* \*"*. [BMC 16.04.070(E)(2)(c)].

The City Council interprets this to mean that a Notice of Appeal must include the particular issues that are being appealed. It is insufficient for an appellant to file a Notice of Appeal without raising specific issues. Further, issues not raised in the Notices of Appeal are generally not a basis for review by the City Council. Here, both Appellants raised specific issues in their Notices of Appeal.

BMC 16.04.070(E) also states:

- “3. *Scope of appeal. The reviewing body shall determine, as a non-public hearing item, that the scope of review and appeal will be one of the following:*
  - “a. *Restricted to the record of the decision being appealed;*
  - “b. *Limited to the admission of additional evidence on such issues of additional evidence as the reviewing body determines necessary for a proper resolution of the matter;*
  - “c. *A de novo hearing on the merits of the appeal.”* [BMC 16.04.070(E)(3)].

The City Council interprets this code section to mean that as the reviewing body, it was required to choose in a non-public hearing whether to review the appeals on the record with the issues limited to those raised in the Notices of Appeal, or whether it needed to partly reopen the record to the admission of a limited set of evidence for particular issues raised in the Notices of Appeal, or whether it should have a “de novo” hearing “on the merits of the appeal.” The City Council held a non-public hearing and elected for Option (c) to hold a “de novo” hearing, as requested by ORCA in its Notice of Appeal.

The City Council reads BMC 16.04.070(E)(2) and (3) together and interprets them to mean that Type III appeals in the City of Bandon are normally limited to those issues raised in the Notices of Appeal. The term “de novo” as used in BMC 16.04.070(E)(3)(c) does not mean that BMC 16.04.070(E)(2)(c) (“A statement explaining the specific issues being raised on appeal”) is void or invalidated. Nor does the term “de novo” mean to wipe the slate clean so as to eliminate the record created below or to throw open the doors for all issues on appeal without limitation. Instead, it means that when the City’s reviewing body elects to hold a de novo hearing on the merits of the appeal, the record is reopened to allow additional evidence and arguments to be placed before it and the reviewing body reviews the record as a whole without deference to the lower decision-making body.

The BMC does not prohibit the Applicants from making minor modifications to their Application after both the Planning Commission has made its Decision and after a Notice of Appeal has been filed. In fact, the City Council finds that the Applicants’ modifications were requested by the Appellants in their Notices of Appeal. For example, in its Notice of Appeal, ORCA repeatedly objected to the Applicants receiving a variance from the City of Bandon for the roof pitch. See ORCA’s Notice of Appeal at pages 2-6, 10-11. The Applicants complied with ORCA’s request by withdrawing the variance request, reducing the building height, and adjusting the buildings to compensate for the change in height. Further, ORCA raised issue with the Applicants having too few parking spaces. See ORCA’s Notice of Appeal at page 11. The Applicants therefore modified their Application to increase the number of parking spaces. ORCA raised issue with the Applicants’ original Application not satisfying the off-street parking and loading requirements set forth in BMC 17.96.040(B). See ORCA’s Notice of Appeal at page 5. As a result, the Applicants modified their Application to include a loading dock. Lastly, ORCA raised issue with the proposed uses creating traffic, which would be an adverse impact to local residents. See ORCA’s Notice of Appeal at page 10. The Applicants then modified their proposed street layout to better serve the area. Collectively these modifications in turn led the Applicants to make minor increases in the building footprints, square footage of habitable areas, and correspondingly increasing the lot coverage. The City Council finds that these modifications are all minor modifications and were explicitly or implicitly requested by the Appellants. The Appellants cannot both appeal certain issues and then cry foul when the Applicants act to resolve those issues as requested by the Appellants themselves.



Because the Applicants elected to modify their application after the Planning Commission had rendered its decision and after the Appellants filed their Notices of Appeal, the City Council finds that it was necessary to protect the substantial rights of the Appellants and other participants to allow new issues relating to the Application's modifications to be raised before or during the public hearing. In fact, it would prejudice the substantial rights of the Appellants and other participants *not* to allow issues to be raised concerning the modifications to the Application. This is not inconsistent with the BMC's purpose or text because the Appellants or other parties would not have had the opportunity to raise issues with the proposed modifications to the Application below. There was no objection to expanding the issues that could be raised in the appeal to issues related to the modifications to the Application.

The Appellants' rights have not been substantially prejudiced nor has any procedural error occurred. The objections are overruled.

**Record Closure:** In ORCA's letter dated February 21, 2024, at page 6 and in the testimony of ORCA director Cameron LaFollette (City Council Hearing Gravel Point Recording February 21, 2024, at 51:30) ORCA requested that the record remain open because testimony had been submitted recently. The City Council finds that the hearing before the City Council was not an "initial evidentiary hearing" as that term is used in ORS 197.797. The initial evidentiary hearing was before the Planning Commission on September 28, 2023. There has been a total of four local hearings on the matter and the record was left open for several months. The City Council further finds that there was sufficient and substantial evidence in the record for the City to render a final decision in this matter. The request was denied, and the record was closed at the February 21, 2024, hearing before the City Council after all public testimony was exhausted.

**Below the City details the various issues raised during the Appeal and makes Findings to respond to those issues.**

**ORCA Issue 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.

*Findings:* The Applicants agreed that the City should adopt written findings demonstrating whether criteria have been satisfied, and, if they have been satisfied, what evidence is relied upon. To cure any defect that occurred before the Planning Commission, the City makes the findings and conclusions in this instrument and those other documents incorporated by reference. This issue is therefore resolved.

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

*Findings:* This issue is overruled. Pursuant to BMC Chapter 17.78, Geologic Assessment Review is a separate Type II application. While BMC 16.04.090 grants the Applicants discretion as to whether to consolidate the applications, the Applicants here have not consolidated the subject Application with a Geologic Assessment Review. ORCA does not otherwise raise issues with Geotech Review criteria with enough specificity for the City to understand what issue is being raised. Condition of Approval No. PC4 is imposed on this application, requiring the Applicants to receive Geologic Assessment Review approval prior to receiving zoning compliance.

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

*Findings:* This issue is overruled. The Seal of the City of Bandon was affixed to the Planning Commission’s Notice of Decision, and it was therefore a binding decision of the City. There was no argument raised by any party that the Planning Commission’s Decision was not issued by the City. To cure any potential error, the City Council is issuing this Final Order of the City Council, which contains the Mayor’s signature.

**ORCA Issue 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.

*Findings:* The Applicants have withdrawn the requested variance that the Planning Commission approved. As a result, this issue is moot.

**ORCA Issue 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.

*Findings:* This issue is overruled. The Applicants’ Restated Combined Application at pages 13-18 and Applicants’ Exhibit “A” at pages 6-7 detail how the various setbacks are satisfied in the proposed site design. It is also detailed in the Staff Report, which has been adopted by the City Council, at pages 18-19.

The City Council finds that there is substantial evidence in the record that all setback provisions in the BMC have been satisfied for all proposed structures. In particular, there is substantial evidence in the record that the requirement set forth in BMC 17.20.090(B)(1)(a)(5) has been satisfied because the setback from the Meadow Lodge (with two elevator shaft overruns that could reach 35 feet) to the proposed new public road is approximately 56.25 feet. That is greater than the 20-foot required setback.

**ORCA Issue 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.

*Findings:* This issue is overruled. As set forth above in the Findings under ORCA Issue 4, the Applicants have withdrawn the requested variance that the Planning Commission approved. As a result, this issue is moot.

The City Council further finds that the proposal is consistent with the purpose and dimensional standards of the Controlled Development 1 (“CD-1”) zone. The purpose of the zone is set forth in BMC 17.20.10:

*“The purpose of the CD-1 zone is to recognize the scenic and unique qualities of Bandon’s ocean front and nearby areas and to maintain these qualities as much as possible by carefully controlling the nature and scale of future development in this zone. It is intended that a mix of uses would be permitted, including residential, tourist commercial and recreational. Future development is to be controlled in order to enhance and protect the area’s unique qualities.” [BMC 17.20.10].*

The proposal is for a mix of uses including tourist commercial and recreational. Further, it adds to the overall mix of the zoning district. The proposal, which will be environmentally conscious and attain equivalent Gold LEED certified, is well-thought out and is of an appropriate scale and nature for development in the zone. The site design recognizes and protects the scenic and unique qualities of the ocean front and nearby area. The proposed development will enhance and protect the area's unique qualities due to its design. As indicated above under the Findings for ORCA Issue 5, the dimensional standards of the zone are satisfied.

**ORCA Issue 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.

*Findings:* This issue is overruled. Appellant ORCA states at page 9 of its Notice of Appeal: "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 Applicants provided substantial evidence in the record that there will be 9 RV parking spaces at the Restated Combined Application at pages 6, 47, 54, and Exhibit "A" page 9. These parking spaces will be provided on-site.

The requirements for RV parking spaces are set forth in BMC 17.96.050(L), which 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 City Council finds that there will be more than twenty parking spaces on site, and that at least five percent of the total number of parking spaces will be R.V. parking spaces at least ten feet wide by thirty feet long.

**ORCA Issue 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.

*Findings:* This issue is overruled. BMC 16.12.040(D) ("Approval standards for conditional uses") states as follows:

*"The approval of all conditional uses shall be consistent with:*

*\* \* \**

*"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)].*

Findings related to BMC 16.12.040(D) are set forth in the Staff Report at page 7, which has been adopted by the City Council as a part of this decision. The City Council reads BMC 16.12.040(D) to have nothing to do with traffic because it deals with "aesthetic design treatment". Therefore, that sub-issue is overruled.



Concerning the size and dimensions of the site, the City interprets the words “to mitigate possible adverse effect from the use of surrounding properties and uses” to mean that the site should be configured so as to have sufficient area to provide aesthetic designs so as to reduce potential impacts from those uses that occur on surrounding properties. The record indicates that the site design includes placing the main hotel lodge in the center of the property, having other buildings set back from the property boundaries, 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.

The subject property is large in size (23.2 acres) and sufficient in dimensions and shape for the proposed development. It is approximately 950 feet wide at its widest point and approximately 328 feet wide at its narrowest point. It is approximately 1,390 feet long at its longest point and approximately 928 feet long at its shortest point. As a result, the City finds that the size and dimensions of the site provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses. No other arguments related to BMC 16.12.040(D) are raised with enough specificity for the City to be able to respond. Therefore, that sub-issue is overruled.

**ORCA Issue 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.

ORCA further says: “The applicant has not satisfied BMC 16.12.040E, which requires that “[t]he characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features.” Neighboring property owners have indicated that the site is not suitable:

“This development is too large for the location not in the sense of acreage, but in the sense of traffic, impacts on the neighborhoods nearby, overuse of resources – both natural and utilities, and the lack of readily available housing for the many employees it would require.” (Westover Testimony).

“The development will create significant traffic that is not suitable for the neighborhood and overuses city resources that are at or above capacity.” ORCA Testimony letter dated February 21, 2024, at page 3.

*Findings:* This issue is overruled. The City Council finds that the characteristics of the site are suitable for the proposed use, including in terms of 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:*

*\* \* \**

*“(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)].*

The City Council reads this code provision to have nothing to do with traffic and there is no argument from any party as to how it relates to traffic. Therefore, that sub-issue is overruled. If a reviewing body makes

a contradictory conclusion, the City Council finds that the characteristics of the site are suitable for the proposed use in terms of traffic because the proposed dedicated rights of way will ensure proper vehicular circulation, because there are conditions of approval to ensure that traffic does not overly impact the area, and because the area is properly zoned for this type of use. The applicant provided an updated traffic assessment (February 9th, 2024), prepared by Parametrix, Alexandra Atchison, PE, PTOE, which analyzes the potential traffic impacts of the project. The applicant also provided an expert review of the Parametrix report prepared by Southern Oregon Transportation, LLC, Kimberly Parducci, PE, PTOE. The letter, dated February 12th, 2024, concurs with the conclusions of the traffic assessment, which showed that the streets and intersections within the study area will continue to meet ODOT and City performance standards after the project is fully developed.

Concerning the characteristics of the site being suitable for the proposed use, the relevant findings are set forth in the Staff Report at pages 7-8, which has been adopted by the City Council as a part of this decision.

Concerning the argument in the Westover testimony adopted by ORCA related to the proposal being too large for the subject site, the Applicants' Restated Combined Application at Exhibit "A" page 2 indicates that the total building coverage of the site will be approximately 10.2% and the overall coverage will be approximately 18.8%. This demonstrates that the proposal is not too large for the subject site.

Concerning the argument in the Westover testimony adopted by ORCA related to the proposal having too large an impact on the neighborhoods nearby, the issues related to neighborhood impact are addressed below under the Findings for ORCA Issue 11. Concerning the argument that the project will "overuse" natural resources, the argument is so undefined that the City Council is unable to respond. Issues related to utilities are detailed in the Staff Report at pages 8-11, which has been adopted by the City Council as a part of this decision. Those findings establish that there will not be any overuse of utilities. Lastly, concerning the argument in the Westover testimony adopted by ORCA related to there being insufficient housing for the employees of the project, which is not an issue regulated by the BMC. As a result, these issues are overruled.

**ORCA Issue 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.

ORCA further says: "The applicant has not satisfied BMC 16.12.040F, which requires that '[a]ll ... public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant[.]' For example, the both the water and wastewater treatment plants are operating at or above their engineered capacity, and beyond their designed service life. The applicant must demonstrate that, despite the overwhelming evidence, that the public facilities and services have adequate capacity. The attached memorandum and exhibits, prepared by Sheryl Bremmer and Mary O'Dea. Both Bremmer and O'Dea have experience with the City's public facilities and services, and their memorandum clearly demonstrates that the City does not have adequate capacity, pursuant to BMC 16.12.040F." ORCA Testimony dated February 21, 2024, at page 3 (footnotes removed).

Parallel argument was made in the testimony of ORCA director Cameron LaFollette (City Council Hearing Gravel Point Recording February 21, 2024, at 53:00). ORCA argued that Bandon has "deep problems" with

infrastructure, that the “water treatment and wastewater treatment plants are operating at or above their engineered capacity and beyond their designed service life.”

In the “letter of opposition to the Gravel Point development” submitted by Mary O’Dea dated February 18, 2024, at pages 1-2, and cited to by ORCA, the following arguments are made: (i) the wastewater treatment plant was engineered to handle the wastewater for only 5,068 people; (ii) “these systems are functioning outside their engineered parameters”; (iii) there is a “critical lack of water flow for fire suppression in the proposed development area”; (iv) “there is not enough water and sewer capacity to service this project”; (v) there is insufficient workforce for the project; and (vi) there was insufficient notice of the hearing.

In the memorandum dated February 18, 2024, submitted by Sheryl Bremmer and Mary O’Dea, and cited to by ORCA, many arguments were made that parallel those in the Mary O’Dea letter. The memoranda contain the following additional arguments at pages 1-11: (i) the City’s adopted 2022 Revised Water Master Plan cannot be relied upon because it has been adopted by the City Council but not approved by the state; (ii) there is fire hazard; and (iii) fire hydrants near the subject property are inadequate in that there are hydrant flow deficits.

*Findings:* These issues are overruled. BMC 16.12.040(F) (“Approval standards for conditional uses”) states as follows:

*“The approval of all conditional uses shall be consistent with:*

*\* \* \**

*“(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)].*

This provision does not state that if a development creates traffic and if that traffic will create “adverse impacts” on local residents that the City must deny the application. Therefore, that sub-issue is denied.

The City Council finds that there is substantial evidence in the record that all required public facilities and services have adequate capacity to serve the proposal and are available or can be made available by the applicants. Issues related to public facilities are detailed in the Staff Report at pages 8-11, which has been adopted by the City Council as a part of this decision. Those findings establish that there will not be any overuse of utilities. The City Council finds that there is little and certainly not “overwhelming evidence” that the City’s public facilities are inadequate.

The applicant provided an updated traffic assessment (February 9th, 2024), prepared by Parametrix, Alexandra Atchison, PE, PTOE, which analyzes the potential traffic impacts of the project. The applicant also provided an expert review of the Parametrix report prepared by Southern Oregon Transportation, LLC, Kimberly Parducci, PE, PTOE. The letter, dated February 12th, 2024, concurs with the conclusions of the traffic assessment, which showed that the streets and intersections within the study area will continue to meet ODOT and City performance standards after the project is fully developed. As indicated by Southern Oregon Transportation, LLC, “No safety concerns were identified, and the analysis showed that streets and intersections within the study area have adequate capacity to support proposed development.” There was no expert evidence submitted into the record to counter these reports. The City

Council accepts the updated traffic assessment and concurrence and finds them to be sufficient and highly credible.

While the expert evidence indicates that there will be increased traffic, including on Beach Loop Road and Seabird Drive, and at various intersections, the evidence does not indicate that there will be more than minimal congestion. The evidence provided by the two traffic engineers is that these roads are able to support the projected increase in trips. The evidence also indicates that the Seabird Drive and Highway 101 intersection is under ODOT jurisdiction and will be within normal parameters as evaluated by that agency. Indeed, the Parametrix report indicates there will be a traffic volume to capacity ratio of only 0.49 in 2026 once the project is built out.

While there could be some increased traffic along Spinnaker Drive and Lincoln Avenue, the City will study whether to close off Carter Street to the proposed development pursuant to Condition of Approval No. PC33, thereby resolving this issue. The City Council finds that the existing traffic infrastructure has adequate capacity.

Concerning issues related to pedestrian access, the City Council finds that the Applicants will install sidewalks along Beach Loop Road or sign a remonstrance agreement to do so at a later date, and that the Applicants will install publicly accessible walking paths on the subject property. There is also no substantial evidence in the record that the City's infrastructure is insufficient for emergency use.

Concerning issues raised related to the City's water system: Appellant ORCA and opponents argue that the Bandon Water System lacks capacity for the proposal. The issue is denied because there is substantial evidence in the record that the Water System has capacity.

First, Appellant ORCA and opponents argue that the City's adopted 2022 Revised Water Master Plan cannot be relied upon because it has been adopted by the City Council but not approved by the State. The City Council finds that the 2022 Revised Water Master Plan was prepared by the City's licensed engineers, approved by the City Council, and that it can be relied upon. The City therefore relies on the findings in that Water Master Plan as the most up to date information for the City's water system. The City Council notes that the opponents may not use this land use hearing as an opportunity to collaterally attack the City's adoption of the 2022 Revised Water Master Plan. This sub-issue is therefore overruled.

Second, as indicated in the Bremmer / O'Dea Memorandum dated February 18, 2024, at page 1, the "availability of raw water is not a primary concern for the utility". This is correct because the City currently has sufficient raw water for the City and the project. See the 2022 Revised Water Master Plan at page 1-2 ("Based on the projected Maximum Daily Demand (MDD), the City's existing water rights on Ferry Creek and Geiger Creek, assuming the water is available, is sufficient to meet the City's demand through the planning Year 2041").

Third, Appellant ORCA and opponents argue that the City's Water Treatment Plant is operating beyond its engineered lifespan. As indicated in the 2022 Revised Water Master Plan at 8-6, "The [Water Treatment Plant] building overall is in good condition \* \* \*". Appellant ORCA and opponents have not provided or directed the City's attention to any evidence that the Water Treatment Plant is operating beyond its capabilities or lifespan and the City has not been able to locate any such information in the voluminous record. Nevertheless, whether the Water Treatment Plant as a whole is operating beyond its initially projected lifespan has no bearing on whether engineers project that it will continue in operation and is able to continue to provide potable water for the City. Indeed, the water treatment plant has been

relatively free from malfunction thus far in its service life and has been well maintained. It continues to produce quality potable water for the water service population of Bandon. The City has various plans to expand and improve the Water Treatment Plant, as indicated in the 2022 Revised Water Master Plan Chapter 2, but that has no bearing on the Plant's current capabilities.

Fourth, Appellant ORCA and opponents argue that the City lacks the ability to treat enough water. However, the City's Water Treatment Plant has sufficient capacity to produce potable water for its current needs and the project. As indicated in the 2022 Revised Water Master Plan at 8-5: "The maximum day demand is projected to be 1,106,428 gallons per day by Year 2039. The Water Treatment Plant is rated and capable of treating up to 2,000,000 gallons per day in its present condition. Therefore, assuming timely maintenance and upkeep, no major improvements or expansions are anticipated as being required during the next 20-year period." 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. Therefore, there is more than sufficient capacity to produce potable water for both the City's current needs and the project.

Fifth, Appellant ORCA and opponents argue that the water systems are functioning outside their engineered parameters. This bare assertion has not been supported with any evidence and it is therefore denied.

Opponents argue that the wastewater treatment plant was engineered to handle the wastewater for only 5,068 people. This information was cited from the City's 2002 Wastewater System Master Plan, p. 3-14. The City has made improvements to the system since 2002. Further, even if that number was still accurate, as indicated in the Water Master Plan at 6-12, the City of Bandon currently only has a population of approximately 3,344 people. By 2041 the Population Research Center, Portland State University projects the City will have a total population of only about 3,845 people. The sub issue is therefore denied.

Concerning issues raised related to the City's wastewater system: Opponents argue that the Wastewater Treatment Plant is operating beyond its engineered lifespan. This bare assertion has not been supported with any evidence. Even if the Wastewater Treatment Plant was operating beyond its initially projected lifespan that has no bearing on whether engineers project that it will continue in operation and is able to provide services to the City. The City's Wastewater Treatment Facilities Condition Assessment (May 2018) at page 4 shows that "The overall average condition rating for the seven systems assessed fell between Good and Fair." While the system continues to need updates that does not indicate that the system as a whole lacks capacity. Wastewater systems periodically need updates.

As indicated in the Staff Report for the "Annexation of 19-Acre Parcel located in East Bandon and Portion (4334 feet) of Highway 101", added into the Record by Appellant ORCA at page 7: "Bandon's treatment facility "was designed for a population equivalent of 5068 persons. City of Bandon Wastewater Master Plan, p. 3-14. Bandon's current population is just over 3300 persons. The City's Wastewater Master Plan predicted a 2021 population of 4241 persons. Id. P. 2-12. Actual population is well under this figure. Adequate plant capacity is available."

Appellant ORCA and opponents have not provided or directed the City's attention to any evidence that the Wastewater Treatment Plant is operating beyond its capabilities, engineered capacity, or lifespan and the City has not been able to locate any such information in the voluminous record. The City Council therefore finds that there is substantial evidence in the record that the City's wastewater systems have capacity to support the project. There is a lack of evidence in the record to counter this evidence.



Concerning the water systems capacity to provide for adequate water flows, Appellant ORCA and opponents argue that “flows for fire hydrants are dwindling, and that implicates the issue of safety and fire suppression efficiencies. Id. Surrounding properties have hydrant flow deficits.” See ORCA letter dated February 21, 2024, at page 4. The City Council finds that there is adequate water capacity for the project for fire fighting or that the developer can bring the necessary infrastructure up to capacity. For example, if bigger water lines are needed to the project, then the developer will need to install them. This can only be determined once excavation begins, and the size of the current lines can be determined. If the Coos County Building Department and/or Bandon Rural Fire Protection District determine that additional fire reserve storage and/or additional fire hydrants are necessary on the subject property, then the developer will need to install such storage or hydrants. The City Council therefore adds as Condition of Approval No. PC32: “The project shall be required to comply with all applicable building codes and fire department regulations relative to fire flow/life safety measures. These fire flow/life safety measures shall be subject to Coos County Building Department and Bandon Rural Fire Protection District approvals.” The issue is therefore resolved.

The memoranda and exhibits prepared by Sheryl Bremmer and Mary O’Dea, which are in the record, were not prepared by licensed engineers or experts of any kind and are unconvincing and contradict the evidence in the record.

Appellant ORCA submitted a document into the record titled, “City of Bandon situation dire and systems dysfunctional”. The City does not find this document to be credible as it appears to be an opinion piece written on an internet blog with no reliable facts.

Appellant ORCA submitted an article into the record titled “Water treatment plant issues outlined” and dated May 13, 2005. The City finds the information contained therein to be out of date and not reliable.

Appellant ORCA submitted the City’s 1993 Comprehensive Water System Master Plan into the record. The City finds the information contained therein to be out of date and not reliable for this proceeding. Likewise, the Water Master Plan Addendum from 2003 is similarly out of date and not reliable.

Appellant ORCA submitted an article into the record titled “Editorial: Bandon's water problem solvable”. The City does not find this document to be reliable as it appears to be an opinion piece and because it is so out of date.

If ORCA is arguing for a construction moratorium, the City lacks the authority to impose selective moratoria on specific properties pursuant to ORS 197.520.

Lastly, issues were raised in the “letter of opposition to the Gravel Point development” submitted by Mary O’Dea dated February 18, 2024, at pages 1-2, and cited to by ORCA, that there is insufficient workforce for the project; and there was insufficient notice of the hearing. Findings related to workforce are detailed below in the Findings for Spencer Issue 16. Concerning insufficient notice of the hearing, the record indicates that legal notice was sent. That Mary O’Dea submitted the testimony cures any error towards her. These sub issues are therefore overruled.

The issues raised are overruled. All required public facilities and services have adequate capacity to serve the proposal and are available or can be made available by the applicant.

**ORCA Issue 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 not alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding properties [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.

ORCA further says: “The applicant has not satisfied BMC 16.12.040G, which requires 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[.]” Numerous comments from neighboring residents have expressed concern about the impact of the proposed use, including increased traffic, sewer, water, lack of infrastructure, and so forth, which will limit, impair, and preclude use of the surrounding properties for the permitted uses. \* \* \*.” ORCA Testimony dated February 21, 2024, at page 5.

*Findings:* This issue is overruled. The City Council finds 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 their underlying zoning districts. BMC 16.12.040(G) (“Approval standards for conditional uses”) 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)].*

The City Council interprets BMC 16.12.040(G) to mean that the use that is being limited, impaired, or precluded by a proposed development must occur on a “surrounding property” and that such use must be permitted in the underlying zoning district. The record indicates that the surrounding property uses are mostly residential. While increase traffic will occur from the proposed development as detailed in the traffic reports, and while that may alter the character of the neighborhood in a manner contemplated by the Comprehensive Plan, there is not substantial evidence in the record that any increased traffic will limit, impair, or preclude the residential use of surrounding properties, let alone that it will do so “substantially”. The issue is that there is insufficient evidence as to how such neighboring uses will be limited, impaired, or precluded other than that there will be a new development. Therefore, this sub issue is denied.

Nor have opponents detailed a logical nexus between how the project will impact sewer, water, lack of infrastructure and how such impacts will alter the character of the surrounding neighborhood such that permitted uses on surrounding properties are limited, impaired or precluded as detailed in BMC 16.12.040(G). Ultimately the Council is unable to comprehend the argument for this sub issue. As a result, it is denied.

**ORCA Issue 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.

*Findings:* This issue is overruled. 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:*

*\* \* \**

*“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 BMC 17.20.090(B)(1)(a)(1) is applicable. The findings related to BMC 17.20.090(B)(1)(a)(1) are detailed in the Staff Report, which has been adopted by the City Council, at pages 18-20.

The Applicants requested in their original Application for approval from the City to increase the height of the proposed Lodge structures above the zone’s normal twenty-eight feet. This was slightly modified in the Restated Combined Application whereby the Applicants requested to have the Lodge structures reach a maximum height of twenty-eight feet except the elevator overruns would need to reach thirty-five feet. ORCA argues that the additional eight feet in height of the elevator shaft overruns will negatively impact the views from the surrounding properties in violation of this provision. ORCA does not say which neighboring properties will be negatively impacted by the elevator shafts nor provide any evidence to support this contention.

The very fact that a building exists or that portions of a building go up to 35 feet in height does not mean that a neighbor’s views will necessarily be negatively impacted. Nor does seeing a building from another property mean that views will be negatively impacted. Therefore, this issue is overruled.

**ORCA Issue 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.

*Findings:* This issue is overruled. As explained above in the Findings for ORCA Issue 7, the Applicants are proposing 9 RV spaces on the subject property.

**ORCA Issue 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.

*Findings:* This issue is sustained. To cure any error, the City Council deletes the Planning Commission’s Condition No. 1. Neither ORCA nor any other party has raised issue with any other Planning Commission’s conditions of approval nor with any of the proposed conditions of approval contained in the Staff Report, which have been adopted by the City Council. This does not necessitate denying the Application.

**ORCA Issue 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.

**Findings:** This issue is overruled. Condition of Approval No. PC4 is imposed on the subject application, requiring a Geologic Assessment Review prior to receiving zoning compliance. This issue is otherwise detailed above in the Findings for ORCA Issue 2.

**ORCA Issue 16:** “Pursuant to BMC 16.12.040A, the conditional use must be consistent with the comprehensive plan. The application, however, is not consistent with the comprehensive plan. \* \* \* Regardless, there must be a condition of approval that ensures that a street vacation proceeding will occur, and this land use application will not be finalized until that vacation is secured.” ORCA Testimony dated February 21, 2024, at pages 1-2.

*Findings:* This issue is overruled. The record contains overwhelming evidence that the Application is consistent with the Comprehensive Plan. The relevant findings are detailed in the Staff Report at pages 5-6, which has been adopted by the City Council.

The vacation of the existing platted streets has been made a Condition of Approval (No. PC 27). The City Council finds that the vacation of the existing platted streets is feasible. The City Council is the approving authority for street vacations.

**ORCA Issue 17:** “It is imperative that the City include direct access to the development off of Highway 101. \* \* \*. To the extent the refinement plan is encompassed within the comprehensive plan, the proposal is inconsistent with the comprehensive plan.” ORCA Testimony dated February 21, 2024, at page 2.

*Findings:* This issue was not preserved in the Notices of Appeal, nor does it relate to the minor modifications made to the subject Application. Therefore, it is not properly on appeal. As a result, the issue was waived.

If a reviewing body finds that this issue was preserved and/or that it is live on appeal, then substantively the City overrules this issue. ORCA cites to no legal standard requiring or legally permitting the City to impose on the Applicants a requirement that they construct alternative access to Highway 101 on other properties that the Applicants do not own that are outside the City’s jurisdictional limits. Even if there was such a provision, the proposed exaction lacks a rational connection to the land use and is not proportional to the effects of the proposal. The proposed access onto Beach Loop Drive is sufficient.

**ORCA Issue 18:** “The applicant has not satisfied BMC 16.12.040C, which requires 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[.]’ Neighboring property owners have demonstrated that wildlife that frequent the area will be reduced if not eliminated: Along with this added road traffic, we will likely see a decrease in the beautiful wildlife that are home to the Bandon coast. We personally love the deer in our neighborhood (which visit our property daily). This was a major attraction for us in moving to the city of Bandon.” (Hader Testimony). Moreover, their home will be adversely affected by the a 40-foot long by 5-foot-high sign: ‘With the proposed Beach Loop Road entrance to Gravel Point right behind our home, we will have an unwanted, approximately 40-foot-long by 5-foot-high sign polluting the view out our windows. It is unknown whether this signage will be illuminated all night long (which would create added concerns).’ (Hader Testimony).” ORCA Testimony dated February 21, 2024, at pages 2-3.

*Findings:* This issue is overruled. BMC 16.12.040(C) (“Approval standards for conditional uses”) states as follows:

*“The approval of all conditional uses shall be consistent with:*

*\* \* \**

*“That the site size and dimensions provide adequate area for the needs of the proposed Use;”* BMC 16.12.040(C).

The City Council finds that BMC 16.12.040(C) does not state 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[.]” However, Appellant ORCA appears to be referencing BMC 16.12.040(D), which is discussed above under the Findings for ORCA Issue 8.

There is not substantial evidence in the record that wildlife in the area will be reduced or eliminated. The proposal, which will be environmentally conscious and attain equivalent Gold LEED certified, is well-thought out and is of an appropriate scale and nature for development in the zone. The site design recognizes and protects the scenic and unique qualities of the ocean front and nearby area. The proposed development will also enhance and protect the area’s unique qualities due to its design. The subject property is large in size (23.2 acres) and sufficient in dimensions and shape for the proposed development. The Applicants’ Restated Combined Application at Exhibit “A” page 2 indicates that the total building coverage of the site will be approximately 10.2% and the overall coverage will be approximately 18.8%.



This means that approximately 80% of the subject property will remain open space. This demonstrates that the proposal is not too large for the subject site.

Concerning the argument that the project signage is unwanted, this issue was not preserved in the Notices of Appeal, nor does it relate to the minor modifications made to the subject Application. Therefore, it is not properly on appeal. As a result, the issue was waived. If a reviewing body finds that this issue was preserved and/or that it is live on appeal, then substantively the City overrules this issue. The signage satisfies all the relevant provisions of the BMC as detailed in the Staff Report at pages 22-27, which has been adopted by the City. Further, Conditions of Approval PC24 and PC25 constrain the design, require maintenance, and regulate illumination of the signs. Without detailed arguments as to how the signs do not satisfy particular portions of the BMC the City must deny this issue.

**ORCA Issue 19:** “Finally, the record does not contain substantial evidence that adequate water for fire protection is available.” ORCA Testimony dated February 21, 2024, at page 4.

*Findings:* As detailed above in the Findings for ORCA Issue 10, there is substantial evidence in the record that there is adequate water for the development for fire protection. *See also* the letter from City Engineer Steve Major of the Dyre Partnership dated September 19, 2023. In addition, the City imposes condition of approval No. PC32 on the Application, which will require the project to comply with all applicable building codes and fire department regulations relative to fire flow, which would resolve any issue. The City Council finds it is feasible that there is sufficient water for fire protection or that if there is not that it is feasible for the Applicants to increase the water or water pressure for adequate fire protection. This issue is therefore denied.

**Spencer Issue 1:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00); Spencer Letter dated February 20, 2024, at page 1.

*Findings:* This issue is overruled. 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”.* [BMC 16.04.07(B)(2)(b)].

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”.

Mr. Spencer agrees that the City properly mailed notice of the hearings. Spencer Letter dated February 20, 2024, at page 1. Mr. Spencer does not argue that the Notice of Hearing was in any way deficient. Instead, he argues that other, unknown people did not receive notice. Mr. Spencer does not argue that 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. Mr. Spencer received notice of the hearings and therefore any prejudice to his rights has been cured. The participation of other persons 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. Lastly, the re-notice of the hearing before the City Council also cures any technical deficiencies. Therefore, this issue is denied.

**Spencer Issue 2:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00).

*Findings:* Procedurally, Mr. Spencer does not explain how or when this issue was raised below before the Planning Commission and therefore it is waived.

If a reviewing body determines that this issue was not waived, then the City Council finds that 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”.*

The Notice of Hearing provides an explanation of appeal rights. Mr. Spencer’s substantial rights have not been prejudiced given that he filed an appeal to the City Council. The issue is therefore denied.

**Spencer Issue 3:** “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; *see also* Spencer letter dated February 20, 2024, at pages 5-6.

*Findings:* This issue is denied. The City Council finds that BMC 16.08 is not applicable to the present application. BMC Chapter 16.08 is titled “Land Divisions and Property Line Adjustments”. The City Council interprets this to mean that BMC Chapter 16.08 is not applicable to the current application, which is not for 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. These are not independent standards of approval applicable to the 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, 459 (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. Purpose. 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. Applicability. 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)].

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. 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.

The City nevertheless finds that even if it were determined by a reviewing body that BMC 16.08.040 is applicable, the subject application satisfies the criteria in that the site plan was submitted to the Planning Director showing the location of planned streets, utility corridors, parks, open spaces, and land uses for the ultimate buildout of the subject property pursuant to BMC 16.08.040(C). Further, the proposed streets are interconnected to the extent practicable, the site / blocks are walkable in scale, the water, sewer, and storm drainage facilities will logically extend to serve the site at buildout, consistent with adopted public facility plans; and the site plan reserves some land for public use for roads. BMC 16.08.040(D).

**Spencer Issue 3:** “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.

At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mr. Spencer argued that BMC 17.02 (“Definitions”) applies to the subject application. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:45); Spencer letter dated February 20, 2024, at page 6. He argued that the proposed villas do not fall within the definition of “hotels and motels” as conditional uses as applied in BMC 17.20.030(E).

*Findings:* This issue is denied. 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 City Council interprets the requested villas fall within the BMC’s definition of motel rooms and that they are not properly defined as Vacation Rental Dwellings. 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).

The City Council interprets this to mean that a vacation rental dwelling must be an “existing” single-family detached dwelling. The proposed villas 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.

The City Council finds that 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. Mr. Spencer argues this definition is “ambiguous”. Spencer letter dated February 20, 2024, at page 6. 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 meet this definition.

Mr. Spencer argues that the BMC does “not define motel as including or consisting of kitchen and laundry facilities.” Spencer letter dated February 20, 2024, at page 6. However, the BMC does not say that a Motel cannot include kitchens and/or laundry facilities. As a result, that does not mean that the villas cannot qualify as Motels as defined by the BMC.

Therefore, the villas are properly classified as motel rooms, which have the same standards in the CD-1 zone as a hotel. This issue is denied.

**Spencer Issue 4:** “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.

*Findings:* The issue is denied. 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.

The City Council reads BMC Chapter 16.40 to mean that a developer must either install required improvements or enter into a development agreement with the City when applying for a subdivision or partition. The application is not for a subdivision or partition and therefore this provision is not applicable. The City has no requirement that an Applicant demonstrate financial capability for a project prior to granting a land use permit.



**Spencer Issue 4:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00 and 1:10:40); Spencer letter dated February 20, 2024, at page 10.

*Findings:* The issue is denied. Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively this issue is not a proper basis for 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, 459 (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 and the City Council does not read it to be mandatory.

If a reviewing body finds that this issue was adequately preserved and this provision is applicable, the Council finds 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. Bandon has sufficient infrastructure to support development of this size, as demonstrated throughout the record. *See the Findings above under ORCA Issue 10.* As a result, this is not a proper basis for reversal.

**Spencer Issue 5:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00 and 1:10:40); Spencer letter dated February 20, 2024, at page 10.

*Findings:* The issue is denied. Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively this issue is not a proper basis for 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, 459 (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.”). The City Council does not read the BMC as rendering the purpose statement as mandatory approval criteria for land use applications.

If a reviewing body finds that this issue was adequately preserved and that this provision is applicable, the City Council finds based on the evidence in the record that the proposal does not take away or otherwise

negatively impact adequate space for housing. The City cannot require the Applicants to develop alternative residential projects on this property. Further, the City has more than enough 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. Therefore, this is not a proper basis for reversal.

**Spencer Issue 6:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:10:40); Spencer letter dated February 20, 2024, at page 10.

*Findings:* The issue is denied. Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively this issue is not a proper basis for 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, 459 (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.”). The City Council does not read the BMC as rendering this purpose statement as mandatory approval criteria for land use applications.

If a reviewing body finds that this issue was adequately preserved and that this provision is applicable, the City Council finds 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 reasonable and is not a legal basis to deny the proposal. As a result, this is not a proper basis for reversal.

**Spencer Issue 7:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00 and 1:10:40); Spencer letter dated February 20, 2024, at page 10.

*Findings:* The issue is denied. Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively this issue is not a proper basis for 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, 459 (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.”). The City Council does not read the BMC as rendering this purpose statement as mandatory approval criteria for land use applications.

If a reviewing body finds that this issue was adequately preserved and that this provision is applicable, the City Council finds based on the evidence in the record that the proposal avoids congestion and encourages orderly growth. In particular, the traffic report and separate concurrence 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 developed with residential development. 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.

Concerning Mr. Spencer’s reference to BMC 16.08.010(C), as indicated above in the Findings to Spencer Issue 3, the City Council finds that BMC 16.08 is not applicable to the present application. BMC Chapter 16.08 is titled “Land Divisions and Property Line Adjustments”. The City Council interprets this to mean that BMC Chapter 16.08 is not applicable to the current application, which is not for property divisions or line adjustments.

**Spencer Issue 8:** “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. *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00); Spencer letter dated February 20, 2024, at page 10.

*Findings:* The issue is denied. Procedurally, Mr. Spencer does not explain where this was raised in the record below and therefore this issue is waived.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively this issue is not a proper basis for 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, 459 (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 as mandatory approval criteria for land use applications.

If a reviewing body finds that this issue was adequately preserved and that this provision is applicable, the City Council finds based on the evidence in the record that the proposal conforms to BMC 17.04.020(J) because it protects important natural resources, including open space, fish and wildlife resources, scenic views and sites, and wetlands. The proposal, which will be environmentally conscious and attain

equivalent Gold LEED certified, is well-thought out. The proposed development will also enhance and protect the area's unique qualities due to its design. The Applicants' Restated Combined Application at Exhibit "A" page 2 indicates that the total building coverage of the site will be approximately 10.2% and the overall coverage will be approximately 18.8%. This shows that it preserves open space and allows room for wildlife resources. The design itself recognizes and protects the scenic and unique qualities of the ocean front and nearby area. Lastly, the wetlands onsite are to be preserved by the proposed design.

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 would not be a lawful basis to deny the application. No building in Bandon has yet achieved LEED Gold status. This is not a proper basis for reversal.

**Spencer Issue 9:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mr. Spencer argued that BMC 8.04 ("Garbage and Solid Waste") applies to the Application. *See* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:07:50)

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal.

If a reviewing body finds that this issue was adequately preserved and that this provision is applicable, the City Council further finds that substantively this issue is not a proper basis for appeal or reversal because no specific arguments have been made as to how the Application fails to satisfy a particular provision of BMC Chapter 8.04. Without specific arguments, the City is unable to respond.

**Spencer Issue 10:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mr. Spencer argued that BMC 8.0 applies to the subject application and that it relates to "traffic, noise, and other nuisances". *See also* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:08:00).

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively this issue was not developed enough for the City to be able to respond. BMC Chapter 8.0 contains approximately 41 pages of code provisions. This issue is therefore not a proper basis for appeal or reversal because no specific arguments have been made as to how the Application fails to satisfy a particular provision of BMC Chapter 8.0.

Further, if Mr. Spencer is citing to BMC 8.08.160 ("Noise disturbance"), that provision is not applicable to the subject application. BMC 8.08.160 relates to code violations and contains no provisions for land use applications. The City is otherwise unable to understand the nexus between traffic or other nuisances, BMC 8.08, and the subject application. Therefore, the issue is denied.

**Spencer Issue 11:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mr. Spencer argued that BMC 17.02 (“Definitions”) applies to the subject application. *See* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:09:00). He argued that the proposed restaurant does not fall within the meaning of “commercial retail sales and services” set forth in BMC 17.02.030(D). *See also* Spencer letter dated February 20, 2024, at page 6. He argues that restaurants are “commercial food service use”, a category distinct from retail establishments. He cites to business activity codes for this argument.

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively the argument fails. BMC 17.20.030(D) permits “Commercial retail sales and services” as conditional uses in the CD-1 zone. BMC 17.02 defines “Retail Sales and Services” as “a use that sells, leases, or rents new or used products, goods, or services. Excludes recreational or medical marijuana facilities, auto repair, or other uses that are defined separately.” The City Council interprets this provision to include restaurants, like the one proposed in the subject application because restaurants “sell” “goods or services”, which is prepared food. The City Council finds that the proposed restaurant satisfies this definition.

BMC 17.02 does define “Fast Food Restaurant”, but the proposal does not satisfy this definition. A Fast-Food Restaurant is “a business whose principal purpose is the sale of food or beverage served in paper or plastic or disposable containers for immediate consumption inside, outside, or away from the building and including businesses who provide delivery of food for immediate consumption.” There is no evidence in the record that the proposed restaurant meets this definition.

The BMC does not contain a separate use called “commercial food service use”. Further, business activity codes are not binding on the BMC.

**Spencer Issue 11:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mr. Spencer argued BMC 19.08.010 concerns whether a developer has the experience and ability necessary to undertake a project of this scale. *See* testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:10:00).

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively the argument fails. There is no BMC section numbered 19.08.010. Appellant Spencer may be referring to BMC 9.08.010 (“Unsworn falsification”). That provision states: “No person shall knowingly make any false written statement to a public servant in connection with an application for any benefit.” The argument concerning this provision of the BMC and its nexus to the present issue is undeveloped such that the City is unable to respond. The City Council does not find that the Applicant has knowingly made a false statement. Further, this provision has nothing to do with the Applicants having experience and ability. If it did relate, the City Council finds, to the extent applicable, that the Applicants have the experience and ability necessary to develop a project of this scale.

**Spencer Issue 12:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mr. Spencer argued that BMC 17.20.010 (“Purpose”) applies to the subject application. See testimony of Appellant Mr. Spencer (City Council Hearing Gravel Point Recording February 21, 2024, at 1:10:30). In his Letter dated February 20, 2024, at page 10, Mr. Spencer argues the proposal does not satisfy the provision because it is not “carefully controlling the nature and scale of the future development in this zone.”

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal.

If a reviewing body finds that this issue was adequately preserved, the City Council finds that substantively the argument fails. BMC 17.20.010 states:

*“The purpose of the CD-1 zone is to recognize the scenic and unique qualities of Bandon’s ocean front and nearby areas and to maintain these qualities as much as possible by carefully controlling the nature and scale of future development in this zone. It is intended that a mix of uses would be permitted, including residential, tourist commercial and recreational. Future development is to be controlled in order to enhance and protect the area’s unique qualities.” [BMC 17.20.010].*

This is not an independent standard of approval applicable to this application. Instead, it is a purpose statement for BMC Chapter 17.20, providing context for interpreting the remainder of the chapter. See generally *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452, 459 (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 this purpose statement as mandatory approval criteria for land use applications.

If a reviewing body finds that this issue was adequately preserved and that this provision is applicable, the City Council finds based on the evidence in the record that the proposal conforms to BMC 17.20.010 because the proposed design maintain the scenic and unique qualities of Bandon’s oceanfront and nearby areas as much as possible by carefully controlling the nature and scale of future development. It does this because it will be environmentally conscious and attain equivalent Gold LEED certified. The Applicants’ Restated Combined Application at Exhibit “A” page 2 indicates that the total building coverage of the site will be approximately 10.2% and the overall coverage will be approximately 18.8%. This shows that it is of controlled scale. The design itself recognizes and protects the scenic and unique qualities of the ocean front and nearby area. Therefore, the design is of a controlled nature.

**Spencer Issue 13:** In his Letter dated February 20, 2024, at page 2, Appellant Mr. Spencer raises issue with the City’s roads being damaged and that the roads are not designed for additional vehicles.

*Findings:* The issue is denied. Procedurally, this issue relating to the City roads possibly being damaged was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that the condition of approval No. 14 relating to the Applicant repairing any damaged City property or right of way and PC 29 relating to a Construction Traffic Mitigation Plan resolve any issues.



The issue relating to traffic is addressed above under the Findings for ORCA Issue 10.

**Spencer Issue 14:** In his Letter dated February 20, 2024, at page 3, Appellant Mr. Spencer raises issue with the subject property needing direct access to Highway 101.

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that the BMC does not require the Applicant to purchase land outside the City to make direct access to Highway 101 for the development. Even if there was such a provision, the proposed exaction lacks a rational connection to the land use and is not proportional to the effects of the proposal.

**Spencer Issue 15:** In his Letter dated February 20, 2024, at page 3, Appellant Mr. Spencer raises issue with whether the water system and sewer system are sufficient for the proposed project.

*Findings:* This issue is detailed above under the Findings for ORCA Issue 10. The issue is denied.

**Spencer Issue 16:** In his Letter dated February 20, 2024, at pages 4-5, Appellant Mr. Spencer raises issue with whether the City will receive enough taxes from the project if approved.

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that the BMC has no provision requiring an applicant to pay the city a sufficient amount of taxes to develop their own land.

**Spencer Issue 16:** In his Letter dated February 20, 2024, at pages 8-9, Appellant Mr. Spencer raises issue with whether the project will steal employees from other existing establishments and whether there is sufficient housing for said employees.

*Findings:* The issue is denied. Procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that the BMC has no provision prohibiting new businesses to be established in the City of Bandon merely because some employees may prefer to work at one establishment or another. Further, issues with housing are detailed above under the Findings for ORCA Issue 9. There is no provision of the BMC requiring the City to determine whether there currently exists sufficient housing in the City for an applicant's future employees.

**Issues raised by Sheryl Bremmer:** In a letter dated February 17, 2024, Sheryl Bremmer argued on page 1 that there must be drainage management on the project and generally raised issue with public utilities.

*Findings:* The issue is denied. The adequacy of public utilities is discussed above under Findings for ORCA Issue 10. Concerning drainage management of the project, this is resolved by Conditions of Approval No. 19 relating to an Erosion Control Plan and No. PC 30 relating to a Storm Drainage Mitigation Plan.

**Issues raised by Lynn and Andrew Christensen:** In a letter dated February 15, 2024, Lynn and Andrew Christensen raised issue with: (i) the water and sewer systems being too old and needing work; (ii) whether people on wells and septic systems will have their water availability reduced; (iii) there being insufficient housing for the workers of the project; (iv) that the proposed villas are too close to each other and that the proposal will harm other vacation rentals in the area; (v) the roads near the subject property are not able to handle heavy equipment or traffic, and (vi) the development is inappropriate and risky for the area.

*Findings:* The issues are denied:

(i) The adequacy of public utilities is discussed above under Findings for ORCA issue 10.

(ii) Concerning people with wells and septic systems, procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. If a reviewing body finds that this issue was adequately preserved, the City finds that the argument concerning wells and septic systems is not developed sufficiently to enable it to respond.

(iii) The adequacy of housing for workers is discussed above under Findings for ORCA Issue 9.

(iv) Concerning the villas being too close to each other, procedurally, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. If a reviewing body finds that this issue was adequately preserved, the City finds that there is no provision of the BMC relating to how close the villas can be to each other. Further, there is no provision of the BMC preventing development because it will act as a competing business.

(v) The adequacy of the roads to handle the traffic is discussed above under Findings for ORCA Issue 10. The adequacy of the roads to handle heavy equipment is discussed above under the Findings for Spencer Issue 13.

(vi) Concerning the argument that the development is inappropriate for the area, which is discussed above under Findings for ORCA Issues 8 through 11. Further, the riskiness of a project is not a standard or criteria of the BMC.

**Issues raised by Rick Coddington:** In a letter dated February 18, 2024, Rick Coddington raised issue with: (i) the increased traffic on Beach Loop Road; (ii) heavy equipment would deteriorate the roads; (iii) there would be noise from construction traffic; (iv) tourists at the hotel would create noise; (v) the villa suites should be regulated as Vacation Rental Dwellings (“VRDs”); (vi) some of the proposed buildings and pathways are “in the backyard of the current residents on the east side of Strawberry”; and (vii) there will be a strain on infrastructure.

*Findings:* The issues are denied:

- (i) The adequacy of public utilities and traffic is discussed above under Findings for ORCA Issue 10.
- (ii) The adequacy of the roads to handle heavy equipment is discussed above under Findings for Spencer Issue 13.
- (iii) Concerning noise from construction traffic, the City Council finds that the Condition of Approval No. 7, which restricts the time in which construction work may occur, and No. PC 29 relating to a Construction Traffic Mitigation Plan resolve any issues. The City Council finds that there is not substantial evidence in the record that the proposed project's construction would cause substantially more noise than any other construction project.
- (iv) Concerning tourists at the hotel potentially creating noise, there is not substantial evidence in the record to support this conclusion. Nuisances are already regulated by the BMC and the operators of the project will need to comply with those provisions.
- (v) The villas are not Vacation Rental Dwellings, as detailed above under the Findings for Spencer Issue 3.
- (vi) Concerning some of the proposed buildings and pathways being "in the backyard of the current residents on the east side of Strawberry", the proposed buildings satisfy all required setbacks in the BMC. The City lacks the legal authority to otherwise prohibit all development on portions of private property.
- (vii) The adequacy of the public infrastructure is discussed above under Findings for ORCA issue 10.

**Issues raised by Laurie Friedman:** In an email dated February 15, 2024, Laurie Friedman raised issues with: (i) the City's water and sewer capacity; (ii) traffic issues; (iii) that the developer should construct a new road to Highway 101; and (iv) that there are not enough workers for the project.

*Findings:* The issues are denied:

- (i) & (ii) The adequacy of the public infrastructure and traffic is discussed above under Findings for ORCA Issue 10.
- (iii) The proposal to require the developer to construct a new road to Highway 101 is discussed above under the Findings for ORCA Issue 17.
- (iv) Concerning the sufficiency of workers for the project, is discussed above under Findings for Spencer Issue 6.

**Issue raised by Catherine Jappe:** In an email dated February 19, 2024, Catherine Jappe raised issue with Seabird Drive being unsafe for traffic and pedestrians.

*Findings:* The issue is denied. Findings related to the adequacy of the public infrastructure and traffic is discussed above under Findings for ORCA Issue 10.

**Issues raised by Sara Michael, Steven Robb, Nancy Bailey, and Bruce Williams:** In an email dated February 20, 2024, Sara Michael, Steven Robb, Nancy Bailey, and Bruce Williams raised issue with BMC 16.12.040 in that (i) there are insufficient public facilities and services; (ii) the project will create traffic and transportation problems through R1 zoned streets; and (iii) “Conditional Use Criteria (F)”.

*Findings:* The issues are denied:

- (i) The adequacy of public utilities is discussed above under Findings for ORCA Issue 10.
- (ii) Issues concerning traffic are discussed above under Findings for ORCA Issue 10.
- (iii) There is no “Conditional Use Criteria (F)” in the BMC and therefore the argument is not sufficiently developed for the City to be able to respond.

**Issue raised by Sara Michael:** In an email dated February 20, 2024, Sara Michael raised issue with water capacity for the project.

*Findings:* The issue is denied. The adequacy of water capacity is discussed above under Findings for ORCA Issue 10.

**Issues raised by Jean & Honani Polequaptewa:** In an email dated February 17, 2024, Jean & Honani Polequaptewa raised the following issues: (i) Beach Loop Road and Carter Street SW are not prepared for increased vehicular traffic; (ii) connecting Carter Street SW to the development would violate BMC 17.12.010 (“Purpose”) in that it would “create excessive road congestion”; and (iii) that the developer should be required to create a direct entrance off of Highway 101.

*Findings:* The issues are denied:

- (i) The adequacy of public utilities is discussed above under Findings for ORCA Issue 10.
- (ii) The application of BMC 17.12.010 (“Purpose”) was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that 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, 459 (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 as mandatory approval criteria for land use applications. If a reviewing body finds that this issue was adequately preserved and that it is applicable, the City Council finds that not connecting Carter Street SW to the development would

violate the City's transportation plans. There is no provision of the BMC that prevents roads in different zones from connecting to each other. Further, there is not sufficient evidence in the record that such a connection in this instance would create excessive road congestion. Indeed, the City Council finds that connecting Carter Street SW to the development would not create excessive road congestion. Lastly, Condition of Approval PC33 has been added to satisfy this objection. It will require the Applicant to contribute \$20,000 to the possibility of closing or restricting Carter Street to emergency vehicles only, subject to City approval.

(iii) The proposal to require the developer to construct a new road to Highway 101 is discussed above under the Findings for ORCA Issue 17.

**Issues raised by Nancy Post and Mark Post:** In an undated letter submitted to the record, Nancy Post and Mark Post raised issue with (i) the safety and infrastructure of Beach Loop Road and (ii) the sufficiency of the Traffic Reports. Further, at the February 21<sup>st</sup>, 2024, hearing before the City Council, Nancy Post again raised issue with (iii) the scenic resources of Beach Loop Drive, (iv) the traffic, and (v) the Traffic Reports not addressing the condition of the roadway. See testimony of Nancy Post (City Council Hearing Gravel Point Recording February 21, 2024, at 1:51:30).

*Findings:* The issues are denied:

(i) The adequacy of public infrastructure is discussed above under Findings for ORCA Issue 10.

(ii) & (v) The City Council finds the Traffic Reports to have been prepared and stamped by Oregon Licensed Engineers. The reports evaluate traffic volumes, roadway safety conditions, estimated PM peak hour trips, and traffic operations for existing and future conditions. The conditions of the roads are described on page 4 of the Traffic Assessment dated February 9, 2024.

(iii) Concerning the scenic resources of Beach Loop Drive, this issue was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that it is unable to understand how the argument relates to specific standards and criteria applicable to the Application.

(iv) The adequacy of public infrastructure and traffic is discussed above under Findings for ORCA Issue 10.

**Issue raised by Catherine Mills:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Catherine Mills requested that if the City connects Carter Avenue to the proposed development, that it be blocked off or gated like Madison Avenue. See testimony of Catherine Mills (City Council Hearing Gravel Point Recording February 21, 2024, at 1:20:30).

*Findings:* Condition of Approval PC33 has been added to satisfy this objection. It will require the Applicant to contribute \$20,000 to prepare a traffic circulation route study to evaluate the possibility of closing or restricting Carter Street to emergency vehicles only, subject to City approval.

**Issue raised by Sandra Shroeder:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Sandra Shroeder raised issue with (i) the impacts of a construction project, (ii) whether Seabird Drive is adequate for emergency evacuation, and (iii) that the project is too large for the City's utilities. See testimony of Sandra Shroeder (City Council Hearing Gravel Point Recording February 21, 2024, at 1:23:00).

*Findings:* The issues are denied:

(i) Issues related to the impacts created by the construction of the project were not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that the Conditions of Approval will mitigate the impacts.

(ii) The adequacy of public infrastructure for traffic is discussed above under Findings for ORCA Issue 10.

(iii) The adequacy of public infrastructure is discussed above under Findings for ORCA Issue 10.

**Issue raised by Tim Terry:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Tim Terry raised issue with (i) the increased traffic in the neighborhood and (ii) requested that an additional road be constructed from the subject property to Highway 101. See testimony of Tim Terry (City Council Hearing Gravel Point Recording February 21, 2024, at 1:26:00).

*Findings:* The issues are denied:

(i) The adequacy of public infrastructure for traffic is discussed above under Findings for ORCA Issue 10.

(ii) The proposal to require the developer to construct a new road to Highway 101 is discussed above under the Findings for ORCA Issue 17.

**Issues raised by Robert Shroeder:** In a letter dated February 20, 2024, Robert Shroeder raised issue with (i) traffic congestion; and (ii) that there should be a traffic light at the intersection of Seabird Drive and Highway 101. Further, at the February 21<sup>st</sup>, 2024, hearing before the City Council, Robert Shroeder raised issue with congestion on Beach Loop Drive, (iii) that visitors will not know how to slow down on Beach Loop Drive, (iv) that the proposed trail system on the subject property will not help pedestrians on Beach Loop Drive, (v) requested a financial commitment in excess of \$20,000 to unspecified improvements, (vi) requested that ODOT and the City review a traffic light on Seabird Drive, and (vii) requested an easement through the subject property for an extension of Edna Street to Highway 101. See testimony of Robert Shroeder (City Council Hearing Gravel Point Recording February 21, 2024, at 1:29:00).

*Findings:* The issues are denied:



(i) The adequacy of public infrastructure for traffic and traffic congestion is discussed above under Findings for ORCA Issue 10.

(ii) & (vi) The issue related to a traffic light at the intersection of Seabird Drive and Highway 101 was not raised in the Notices of Appeal and there is no argument that it relates to the modifications made to the Application. Therefore, it is not properly at issue in this appeal. If a reviewing body finds that this issue was adequately preserved, the City Council finds that the intersection with Seabird Drive and Highway 101 is controlled by the Oregon Department of Transportation (“ODOT”) and ODOT is not requiring a traffic light at this intersection. Nor do the traffic engineers’ letters in the record recommend a light at this intersection. This is not a basis on which to deny the subject application.

(iii) There is substantial evidence in the record that Beach Loop Drive is sufficient to handle the traffic generated by the project.

(iv) The City Council finds that the proposed trail system on the subject property will be accessible to pedestrians.

(v) The City Council has no power to require the Applicants to donate money.

(vii) Public rights of way will be dedicated on the subject property, negating the need for an easement.

**Issue raised by Rick Morris:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Rick Morris raised issue with the traffic in the neighborhood, emergency access, and access to Highway 101. *See* testimony of Rick Morris (City Council Hearing Gravel Point Recording February 21, 2024, at 1:32:00).

*Findings:* The issues are denied. The adequacy of public infrastructure for traffic is discussed above under Findings for ORCA Issue 10. The proposal to require the developer to construct a new road to Highway 101 is discussed above under the Findings for ORCA Issue 17.

**Issue raised by Steve Rinkle:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Steve Rinkle raised issue with the traffic on Spinnaker Drive and Lincoln Avenue, recommended adding a barrier to Carter Street, and asked for a post-construction mitigation plan. *See* testimony of Steve Rinkle (City Council Hearing Gravel Point Recording February 21, 2024, at 1:41:30).

*Findings:* The issues are denied or resolved by conditions of approval. The adequacy of public infrastructure for traffic is discussed above under Findings for ORCA Issue 10. Condition of Approval No. PC 33 will require a Traffic Circulation Route Study to evaluate the possibility of closing or restricting Carter Street to emergency vehicles only, subject to City approval.

**Issue raised by Mike Claassen:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Mike Claassen raised issue with traffic and pedestrian access on Seabird Drive and Beach Loop Drive. *See* testimony of Mike Claassen (City Council Hearing Gravel Point Recording February 21, 2024, at 1:44:30).

*Findings:* The issues are denied. The adequacy of public infrastructure for traffic and pedestrians is discussed above under Findings for ORCA Issue 10.

**Issue raised by Kay Harden:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Kay Harden raised issue with what other projects the developer has completed. See testimony of Kay Harden (City Council Hearing Gravel Point Recording February 21, 2024, at 1:47:20).

*Findings:* The issue is denied. This is discussed above under the Findings for Spencer Issue 11.

**Issues raised by Jen Procter Anders:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Jen Procter Anders requested that the City negotiate a community benefits package with the developer, raised issue with the community impacts and traffic. See testimony of Jen Procter Anders (City Council Hearing Gravel Point Recording February 21, 2024, at 1:54:45).

*Findings:* The issues are denied. The adequacy of public infrastructure for traffic is discussed above under Findings for ORCA Issue 10. The City has no power to require the Applicants to give moneys or other things of value to the City in exchange for granting approval.

**Issues raised by Kam Jensen:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Kam Jensen raised issue with traffic on Beach Loop Road, emergency access, emergency evacuations along Beach Loop Road, and access points. See testimony of Kam Jensen (City Council Hearing Gravel Point Recording February 21, 2024, at 1:57:45).

*Findings:* The issues are denied. The adequacy of public infrastructure for traffic is discussed above under Findings for ORCA Issue 10. The City Council imposes Condition of Approval No. PC 33 will require a Traffic Circulation Route Study to evaluate the possibility of closing or restricting Carter Street to emergency vehicles only, subject to City approval. The City Council finds that there are sufficient access points to the proposed development.

**Issues raised by Kammy Bunez:** At the February 21<sup>st</sup>, 2024, hearing before the City Council, Kammy Bunez raised issue with access of the subject property to Highway 101, the scale of the proposed development, the number of parking spaces being too big, the developer's donation of \$20,000 to the City being too low and requesting a community development package. See testimony of Kammy Bunez (City Council Hearing Gravel Point Recording February 21, 2024, at 2:01:15).

*Findings:* The issues are denied. The proposal to require the developer to construct a new road to Highway 101 is discussed above under the Findings for ORCA Issue 17. The scale of the development is discussed above under the Findings for ORCA Issue 6. The number of parking spaces complies with the standards in the BMC. Issues relating to donations from the Applicants and a community development package are addressed above under the Findings for the Issues raised by Jen Procter Anders.

**IN THE MATTER OF THE APPEAL OF THE PLANNING COMMISSION'S DECISION IN FILE NO. 23-045 IT IS HEREBY ORDERED THAT THE APPEALS ARE DENIED AND THE PLANNING COMMISSION'S DECISION IS AFFIRMED, SUBJECT TO THE FOLLOWING MODIFIED CONDITIONS OF APPROVAL:**

**STANDARD CONDITIONS OF APPROVAL**

1. 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.
2. All state, federal, and city permits associated with this approval shall be obtained by the applicant prior to operation.
3. The applicant shall submit for zoning compliance approval prior to any ground disturbance.
4. Unless otherwise stated in this document, all four property corners must be located and properly marked prior to the first City inspection.
5. 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.
6. All construction materials and equipment shall be staged on site. No construction materials shall be stored in City rights-of-way.
7. 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:**

8. Electrical equipment must be installed per the requirements listed in the Electric Department Bid Packet.
9. The meter shall be installed at curbside on a post, or on the structure, facing the vehicular access and no more than five feet down the side of the structure nearest the vehicular access.
10. The electric meters shall be stainless steel and shall not be enclosed.
11. Electric meters 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.
12. Any cost for new or modified utility upgrades will be borne by the developer.

**Public Works:**

13. A Public Works Permit must be obtained prior to any work commencing within rights-of-way.
14. 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.
15. A construction timeline shall be submitted and approved by the Public Works Director, prior to any construction, grading or preparation of the site.
16. 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.
17. 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.

18. 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.
19. 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:**

20. 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.
21. Parking approaches shall be paved or concrete from the edge of the City street to a minimum of one foot (1') inside the property line.
22. Parking approaches, 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.
23. Parking approach forms must be inspected and approved by the Public Works Department prior to pour.
24. 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.
25. Property lines shall be clearly marked during all phases of ground preparation and construction.

**Prior to Certificate of Occupancy:**

26. 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.
27. Certificate of Occupancy shall not be issued for a structure until conformance of all relevant conditions of approval have been verified.
28. 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.
29. Certificate of Occupancy will not be issued until all meter placements have been approved, in writing, by a representative of the Electric Department.
30. Certificate of Occupancy shall not be issued until Final Construction and drainage is approved by the Public Works Director.

**Other:**

31. 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.
32. 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

### PROCESS

- PC1. Conditional Use - The conditional use permit shall become void two years from the date the decision is final unless a zoning compliance permit has been issued.
- PC2. Wetlands- 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.
- PC3. 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.
- PC4. Geologic Assessment Review - The property owner shall be required to receive Geologic Assessment Review approval prior to receiving zoning compliance.
- PC5. Sidewalks - The applicant shall sign an anti-remonstrance agreement to the formation of a Local Improvement District for the construction of a future pathway system along Beach Loop Drive for the section that abuts their property.

### PARKING

- PC6. 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.
- PC7. 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.
- PC8. Parking shall be provided in accordance with the parking provisions of the Bandon Municipal Code (BMC) for said use. Specifically, a total of 178 parking stalls measuring 8.5' (W) x 19' (L) (or compact where applicable) shall be designated for passenger vehicles, and a minimum of nine (9) parking stalls measuring 10' (W) x 30' (L) shall be designated for recreation vehicles. In lieu of designating a total of nine (9) 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 190 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.
- PC9. 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.
- PC10. 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.
- PC11. One third of the required spaces may be compact spaces. Compact spaces shall be eight feet by sixteen (16) feet.

## LIGHTING

- PC12. 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.
- PC13. All site lighting shall be dark sky compliant as proposed by the applicant in their September 28<sup>th</sup> submittal.

## LANDSCAPING AND SCREENING

- PC14. 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.
- PC15. A final landscaping plan shall clearly demonstrate that planted area will cover 50% within 1 year and 90% within 5 years.
- PC16. All bare earth shall be covered with bark, mulch, landscape rock, or other similar landscaping material to prevent dust and soil erosion.
- PC17. Dense landscaping and/or architectural treatment shall be provided to screen features such as storage areas, trash enclosures, transformers, generators, propane tanks, and other appurtenant structures.
- PC18. Landscaping shall be installed and subsequently maintained in good condition and in perpetuity by the owner of the property. Maintenance shall include, but not be limited to, watering, pruning, trimming, mowing, debris and weed removal, and if necessary, replanting or replacement of failed landscape elements. Failure to maintain the landscaping in good condition shall be considered a nuisance and subject to citation to Municipal Court under Section 8.08 of the Bandon Municipal Code.
- PC19. Prior to issuance of zoning compliance, applicant shall obtain approval of screening materials for electrical equipment from City electrical department or their designee.
- PC20. A 6-foot-tall fence or screen shall be required on the property lines abutting a residential zone.

## BUILDING DESIGN

- PC21. Metal-sided buildings shall be prohibited anywhere on the site.
- PC22. All rooftop mechanical equipment, including satellite or other telecommunications equipment, shall be screened from public view at building grade.
- PC23. The applicant shall show conformance with BMC 17.94.090(H) as part of an application for zoning compliance from the City of Bandon.

## SIGNS

- PC24. All signs shall be of professional quality and shall be well-maintained.
- PC25. Nuisances or Hazardous Conditions prohibited:
- a. The illumination of signs shall be designed to eliminate negative impacts on surrounding right-of-way and properties.
  - b. No sign or light source shall create a distraction, hazard, or nuisance.
  - c. Signs shall not be used at a location or in a manner so as to be confused with, or construed to be, traffic control devices.



PC26. All signs shall be securely fastened to their supporting surface or structure.

#### STREETS & IMPROVEMENTS

PC27. Rights-of-Way - The property owner shall be required to dedicate the rights-of-way proposed by this application, found in Exhibit A, pages 6 & 7 of the applicant's materials, or as otherwise required by the City. This shall occur after the existing streets have been vacated by the City Council, but prior to the commencement of construction.

PC28. 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.

PC29. A. 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 offloaded on the subject property. Violations of this condition of approval shall result in the issuance of a stop work notice; whereas repeat offenses totaling three (3) or more within a twelve (12) month period may result in the revocation of City issued entitlements, permits and/or approvals.

B. Post-Construction Vehicular Circulation Plan - Within six (6) months of obtaining a final Certificate of Occupancy (C of O) from the City, the project applicant shall be required to prepare a traffic/vehicular circulation plan to mitigate potential adverse traffic impacts to a level of insignificance, subject to City approval.

PC30. Storm Drainage Mitigation Plan - The property owner shall provide a storm drain plan to be approved by the City Engineer prior to Zoning Compliance approval.

#### PROPOSALS OF THE APPLICANT

PC31. 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, or equivalent, prior to the City's issuance of a final Certificate of Occupancy (C of O).

PC32. Fire Flow/Life Safety Measures - The project shall be required to comply with all applicable building codes and fire department regulations relative to fire flow/life safety measures. These fire flow/life safety measures shall be subject to Coos County Building Department and Bandon Rural Fire Protection District approvals.

PC33. Traffic Circulation Route Study - The project applicant shall allocate \$20,000 for the preparation of a traffic circulation route study. The study aims to investigate the feasibility of establishing an east/west vehicular connection and to evaluate the possibility of closing or restricting Carter Street to emergency vehicles only, subject to City approval.