# Sean T. Malone

## Attorney at Law

PO Box 1499 Tel. (303) 859-0403

Eugene, OR 97440 seanmalone8@hotmail.com

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November 21, 2023

Via Email

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff Report 9 of 41.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff Report 5 of 41.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conditional Use Criteria

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

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

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

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

Height of Structures in the CD-1 Zone

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

[11] The supplemental staff report notes that "[t]he applicant has required only two RV parking spaces when the code requires 8."

[12] The variance criteria were raised in the September 28, 2023, and October 5, 2023, written testimonies.

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

RV Parking Standards

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

Conditions:

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

Landslide Hazards and Geotech Review

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

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

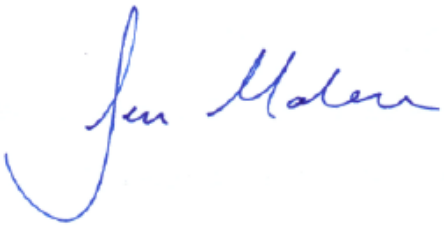
According to the testimony of Bob Schroeter, dated October 18, 2023 (attached hereto), the Geotech Review contains basic and fundamental flaws. For example, the Schroeter letter notes that the Geotech Review contains leftover allegations from a prior application. The Geotech Review alleges that the site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

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

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

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

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

# Sean T. Malone

## Attorney at Law

PO Box 1499

Eugene, OR 97440

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

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September 28, 2023

Via Email

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

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

Dear Planning Commission,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

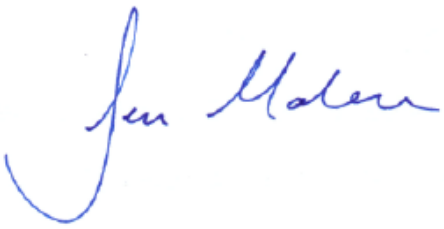
Under 16.12.040(G), "[t]he proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district." Numerous comments from neighboring residents have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

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

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

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

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

# Sean T. Malone

## Attorney at Law

PO Box 1499

Eugene, OR 97440

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

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October 5, 2023

Via Email

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

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

Dear Planning Commission,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"17.78.020 Applicability

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

The purpose of these provisions is to:

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

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

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

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

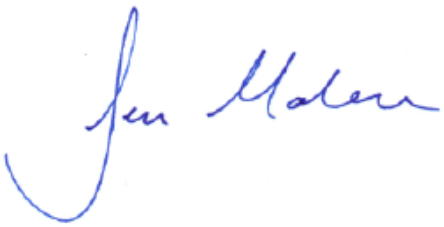
ORCA concurs with the staff report's statement that:

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

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

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

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

October 18th, 2023

City of Bandon
Bandon Planning Commission

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

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

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

**6.2.7 Seismic Ground Amplification or Resonance**

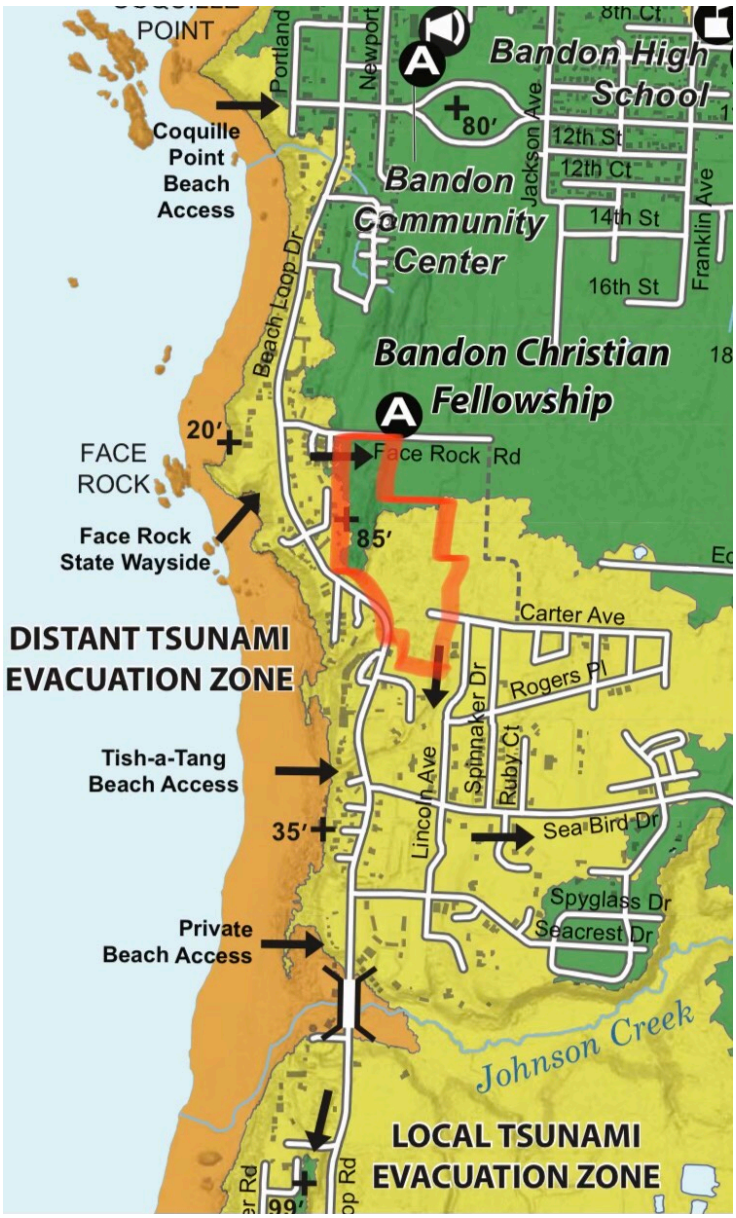
No unexpectedly hazardous amplification or resonance effects from seismic waves have been associated with the soil subsurface conditions in the project area. Potential amplification or resonance effects in the project area are accounted for in the ASCE 7-16 seismic design methods, as prescribed in OSSC,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

**6.2.8 Tsunami and Seiche**

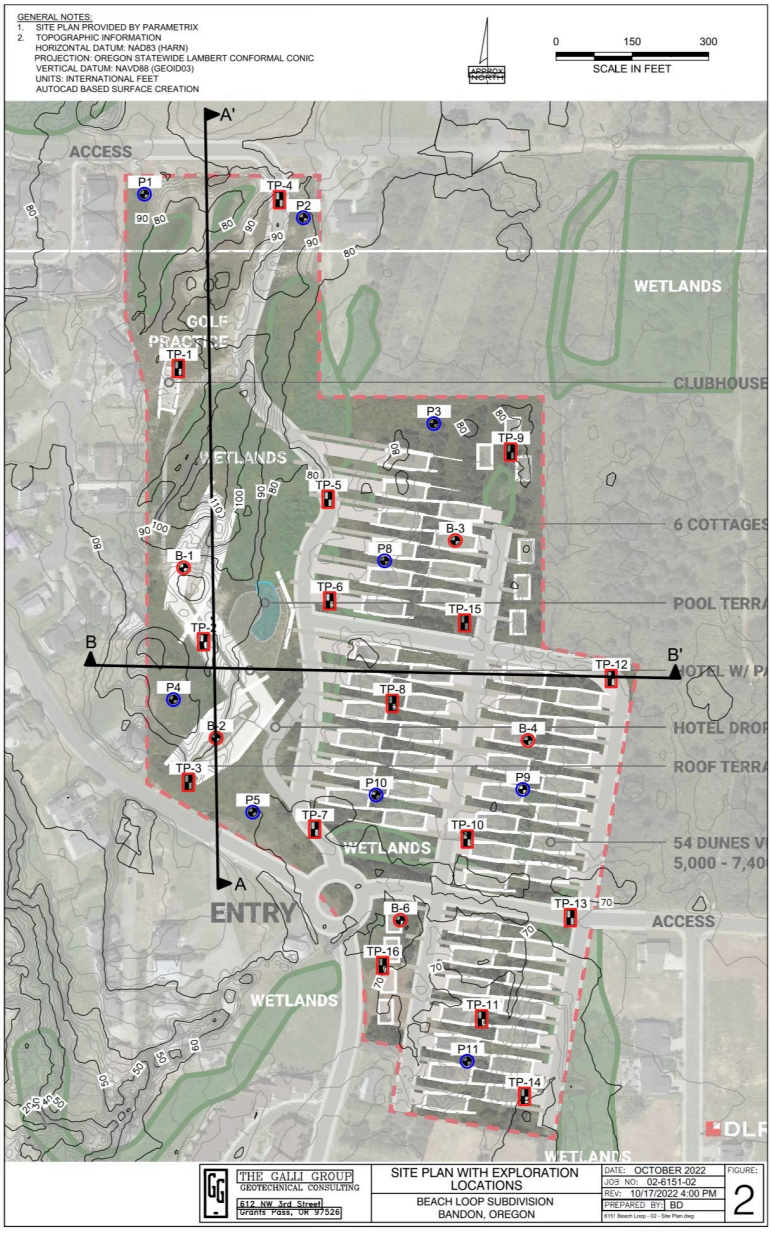
The project site is located approximately 80 miles inland, and is therefore not subject to inundation from a tsunami. The site is not located downstream of any dams, reservoirs, lakes, or any significant body of water. Therefore, the risk of damage to the site due to hazard from seiche or seismic-induced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

**6.3 SITE SPECIFIC GROUND MOTION HAZARD ANALYSIS**

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




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




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

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

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

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

Sincerely,
Bob Schroeter

# NOTICE OF DECISION
## CITY OF BANDON PLANNING COMMISSION

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

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

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

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

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

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

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

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


*Figure 1 Subject Property*

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

**STANDARD CONDITIONS OF APPROVAL**

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

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

**Electric:**

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

**Public Works:**

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

**With development of the site:**

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

**Prior to certificate of occupancy:**

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

**Other:**

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

**PROJECT SPECIFIC CONDITIONS OF APPROVAL**

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

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