



Oregon Shores Conservation Coalition

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April 25, 2018

David Kimes, Commission Chair
Planning Commission, City of Bandon
John McLaughlin
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VIA Electronic Mail

**Re: Proposed Zoning Code Text Amendment to Modify Bandon
Municipal Code Section 17.20 Controlled Development 1 (CD-1)
(Opposition to Bandon Beach Hotel Proposal)**

To the City of Bandon Planning Commission:

Oregon Shores Conservation Coalition (Oregon Shores) submits the following comments in opposition to the application submitted by Steere Bandon Associates, LLC (applicant) that requests a site-specific amendment to the Bandon Municipal Code (BMC). Please include these comments in the record for the Planning Commission's public hearing set for Thursday, April 26, 2018.

The applicant requests an amendment to BMC Section 17.20 to allow for an increase in the maximum building height from 24 feet to 45 feet, a reduction in side and rear yard setbacks to 5 feet, and an increased allowance of 55% lot coverage with up to 75% impervious surface coverage. The applicant's request to amend the BMC is the first step taken in an effort to construct an unnecessarily imposing four-story hotel with 48 rooms adjacent to property owned by the U.S.

Fish and Wildlife Service that is part of the Oregon Island National Wildlife Refuge at Coquille Point. As explained below, Oregon Shores opposes this text amendment because it is inconsistent with the City of Bandon's Comprehensive Plan (comprehensive plan or BCP) and will result in adverse impacts to the refuge. Because the proposed text amendment is in direct conflict with the text and purposes of the BCP, Oregon Shores contends that the Planning Commission must recommend denial to the City Council.

Oregon Shores was founded in 1971 to protect the public interest in Oregon's beaches and shorelands. The organization's mission encompasses the conservation of the flora and fauna across the entire coastal region, from the crest of coastal watersheds to the edge of the continental shelf. Oregon Shores is dedicated to preserving the natural communities, ecosystems and landscapes of the Oregon coast while conserving the public's access. Oregon Shores pursues these ends through education, advocacy, and engaging citizens to keep watch over and defend the Oregon coast.

I. Procedural Matters

BMC 17.116.010 requires that prior to approving an amendment to the text of the zoning ordinance, the planning commission must hold a hearing, and that public hearing must be held in accordance with BMC 17.120.080. BMC 17.120.080(C) requires that an application for a zoning text amendment and the accompanying staff report "shall be available for public review ten (10) days prior to the scheduled public hearing." Because the scheduled public hearing is set for April 26, 2018, the staff report should have been made publicly available on or before April 16, 2018.

Attorney for Oregon Shores contacted the city on Wednesday, April 18, 2018, inquiring about the availability of the staff report. Shortly thereafter, a city planner left a voicemail with Oregon Shores' attorney indicating that the staff report was not yet available.

Because the city did not follow its own required procedures governing the availability of the staff report, **Oregon Shores requests that the administrative record before the planning commission be left open for an additional 7 days from the date of the close of the record** to remedy any perceived or actual prejudice commenters faced when submitting comments electronically, or via the Postal Service or hand delivery.¹

¹ In addition to failing to follow the BMC requirement regarding timely staff reports, the planning staff has arbitrarily revised the deadline for electronically submitted comments from April 26th to April 25th, while allowing comments to

II. Existing Ecosystem and Historical Efforts to Protect Coquille Point

The text amendment is proposed to apply only to the specific property at 1090 Portland Avenue SW, Tax Lot 1600, consisting of Lots 5 and 6 of Block 27, Plat of West Bandon located at Coquille Point. As indicated on page 4 of the Staff Report, the parcel directly abuts headland property owned and administered by the U.S. Fish and Wildlife Service that is part of the Oregon Islands National Wildlife Refuge. Immediately offshore is a group of rock islands, which are also part of the Oregon Islands National Wildlife Refuge. The headlands of Coquille Point provide a buffer zone between mainland development and shoreline, intertidal and offshore areas. Staff Report at 2.

The refuge is dedicated to the wildlife found on it and for management of the wildlife habitat, and protection and preservation of endangered or rare wildlife. BCP at 168. The refuge is used by several endangered species. *Id.* The California Brown Pelican uses the area from August to November. *Id.* This species suffered a very large population loss, but is now recovering. *Id.* Bald Eagles, Peregrine Falcons, Double Crested Cormorants, Pigeon Guillemots and the Common Murre have all been observed in the area. *Id.* The offshore rocks represent vital habitat to many seabirds who nest there. Burrow nesting species, such as Tufted Puffins and Leach's Storm Petrels, require areas that are inaccessible because their burrows are easily trampled. Human disturbances have been known to cause panic and destruction of young birds in breeding areas. *Id.*

As the staff report notes, this area has a history of successful citizen-led preservation efforts. *Saving Coquille Point: A Year in Citizen Action in Coos County* provides a detailed summary of how committed local citizens took action to ensure that the scenic beauty and natural functions of Coquille Point were preserved. In the late 1980's and early 1990's, Oregon Shores and local opponents fought off a proposed condominium development in the area, and eventually got permanent protection of the scenic headlands. In 1991, the U.S. Fish and Wildlife Service became owners of the westernmost area of the point, and it was designated as the onshore unit of the Oregon Islands National Wildlife Refuge.

The subject property is surrounded on three sides by this federal land. When evaluating any proposed amendments to existing development requirements for the subject property, the Planning Commission should consider the history of

be submitted via the Postal Service and hand delivery through April 26th. The city's error in not providing the staff report in a timely manner makes the April 25th deadline even more difficult to meet, with only a few business days to review the staff report.

the point, and the community's long-standing efforts to preserve the natural values of this area.

We recognize that many details concerning impacts to this protected natural area are more properly dealt with when considering an actual development application, rather than when considering the legality of a text amendment as a technical matter of land use law and regulations. That said, as a matter of context, approval of the proposed text amendment would open the door to a development proposal which, judging from the preliminary plan provided by the applicant, would be highly problematic.

Located immediately adjacent to a wildlife refuge that has the essential purpose of protecting bird life, the hotel as proposed would almost inevitably cause a large number of bird strikes, possibly at disastrous levels. This would be due not only to its size, but to the fact that a large percentage of its surface would be glass. To put it mildly, this would be at cross-purposes with the values represented by the wildlife refuge, and with the values of those visiting Coquille Point and observing the wildlife refuge, since appreciation of birds is a key component of this experience.

The taller structure would also likely cause increased glare into the wildlife refuge at night, which could be particularly disturbing to nocturnal creatures. Natural vegetation is also a key aspect of the refuge. A taller structure allowed under the text amendment would exacerbate an impact already created by the shorter structure presently occupying the site—unnatural shading of the area atop the bluff, altering the character of the vegetation.

Specific arguments about such impacts will have to be considered when a development proposal is under consideration, but the inescapable likelihood that any such development at this site will have impacts on these important public resources should eliminate any presumption that the text amendment will not lead to negative environment effects.

III. The Application

The applicant requests a BMC text amendment in order to site an oversized hotel at 1090 Portland Avenue SW. The text amendment is inconsistent with the City of Bandon's Comprehensive Plan and would negatively impact scenic and natural resources and the Oregon Islands National Wildlife Refuge. If approved, the revised zoning code would effectively allow for the doubling of the development potential of the site. Currently there is a 20-room motel that sits on the site, which was constructed in 1990. The applicant has proposed a 48-room hotel. Staff Report at 3.

A. Existing Code Provisions for the Controlled Development Zone

The applicant seeks to amend Bandon Municipal Code Section 17.20 Controlled Development 1 (CD-1 zone). 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.” BMC 17.20.010. Currently, the BMC requires a development site to retain a 20-foot front yard, a 10-foot rear yard, and a total combined side yard of thirteen feet, with each side yard being at least five feet wide. BMC 17.20.070. Development sites that have side yards abutting streets are required to have a side yard of 15 feet. BMC 17.20.070(B).² Buildings in the CD-1 zone cannot occupy more than 50 percent of the lot. Total impervious surface shall not exceed 65%. BMC 17.20.080.

The applicant’s proposed text amendment is not only inconsistent with the comprehensive plan but is in direct conflict with the general framework of the CD-1 zone, which implements the comprehensive plan. The zoning code includes provisions that apply specifically to this area of the city, and those provisions demonstrate a commitment to preservation of views and predictable step-down height limits based on a property’s proximity to the Pacific Ocean. For example, properties located west of Beach Loop Drive are required to be no higher than 24 feet “[i]n order to maximize the ocean view potential of lots in the CD-1 zone.” BMC 17.20.090. Properties east of Beach Loop Drive are given more flexibility than western properties, with the code allowing for height variances on those eastern properties. Yet even those variance provisions require a tradeoff of a 1:1 increase in front, side, and rear setback minimums for each additional foot of height allowed (*i.e.* for a two-foot increase in height, all setback requirements are increased by two feet). This tradeoff is in acknowledgement of the impact that both height and bulk can have on views. BMC 17.20.090(B)(1)(a)(5). Even for those properties east of Beach Loop Drive, heights are limited to 35 feet. BMC 17.20.090(B)(1). Staff acknowledges that the more restrictive height limits for properties west of Beach Loop Drive coupled with the height variances for properties east of Beach Loop Drive allow for opportunities to gain a view of the ocean over the lower buildings on the west side. Staff Report at 6.

B. The Applicant’s Proposed Text Amendment

The applicant asks for excessive exceptions to all of the above-mentioned dimensional requirements for structures within the CD-1 zone located on its

² The subject property abuts both Portland Avenue and the unvacated portion of 11th Street W. *See* attached Assessor’s Map.

privately-owned property. The applicant is requesting a towering 45-foot height limit, 50% reductions in side and rear yard requirements, and unwarranted increases to allowable lot coverage and total impervious surface.

C. Planning Staff’s Modified Text Amendment

Planning staff reviewed the applicant’s proposed text language, and slightly modified it, allowing only a 40-foot height limit, and added a sunset clause:

“17.20.030 K. Coquille Point Hotel

“1. Notwithstanding other provisions of this Section 17.20, a hotel structure located at Lots 5 and 6, Block 27. Plat of West Bandon, Coos County, Oregon, may:

“(a) Exceed a height of 24 feet, but no portion of any such building or structure shall exceed a height of 40 feet, as measured from the average elevation of the centerline of Portland Avenue as it abuts the property;

“(b) Have side yards not less than five feet each;

“(c) Have a rear yard not less than five feet; and

“(d) Have up to 55% lot coverage, with up to 75% impermeable (impervious) surfacing.

“(e) Contain restroom facilities open to the general public;

“(f) This section K. of the ordinance shall become void five years from the date of final ordinance adoption (insert date), unless a conditional use permit for a hotel has been approved and construction has commenced in a significant fashion.”

IV. The Proposed Text Amendments do not Meet the Applicable Criteria for a Zoning Code Text Amendment

BMC Chapter 17.116 requires a demonstration that the proposed zoning code text amendment:

(a) is consistent with the Bandon Comprehensive Plan;

- (b) does not adversely affect the city's or the developer's ability to satisfy land use, transportation and utility, service needs or capacities; and
- (c) only allows for suitable uses in regards to the slope, geologic stability, flood hazard, wetlands, and other relevant hazard and resource considerations.

BMC 17.116.020. Throughout the comprehensive plan are policies that protect the city's scenic resources. The city's zoning ordinance currently reflects how the city implements the plan policies and the extensive protections offered to scenic resources and views, achieved through dimensional restrictions on development relating to location and lot size.

The staff report misconstrues the applicable criteria, and instead of considering the specific requirements of BMC Chapter 17.116, poses two vague questions: (1) should the zoning ordinance be amended to allow a bigger and taller hotel than is currently allowed, and (2) "Are there potential benefits associated with such a new building and enhanced use that outweigh[] the potential negative aspects of the development?" Staff Report at 10. The latter question simply is not a consideration under the applicable criteria. Rather, the city is obligated to determine whether the *proposed text amendment* will be consistent with the city's comprehensive plan. BMC 17.116.020. The applicable criteria do not include consideration of whether some undefined project proposed by the applicant that may or may not be approved in a future conditional use review would be consistent with the comprehensive plan. Staff's analysis provided in the Staff Report at page 11 should be disregarded. Potential benefits associated with a possible future project are not relevant considerations for a text amendment. The Planning Commission must look at the proposed text language and determine whether that text amendment is consistent with the comprehensive plan.

As explained below, the proposed text amendment is inconsistent with the comprehensive plan, and therefore the Planning Commission needs to recommend denial. The plan has numerous policies addressing the need to preserve scenic resources, which include viewsheds, scenic sites, and secondary views. By almost doubling the height limitation for the subject property and increasing the allowed width and length of any future structure, the applicant's proposed text amendment will allow for an oversized visual obstruction to the natural landscape of Coquille Point, negatively impacting views for numerous users including nearby property owners, and both tourists and local visitors. The proposed text amendment cannot be found to be consistent with the relevant comprehensive plan policies.

Staff appears to be biased in favor of the applicant. Without addressing applicable comprehensive plan policies, specifically policies on scenic resource preservation, staff states that it “is supportive of a hotel building that is significantly taller than that allowed under the current ordinance and we are supportive of the four-story design.” Staff Report at 12. Because of staff’s stated bias, the Planning Commission should disregard the majority of the staff report and determine that the proposed text amendment (including both the applicant’s proposed language, and the staff’s modified language) is not consistent with the comprehensive plan.

A. The Proposed Text Language is inconsistent with Bandon Comprehensive Plan Policies on Scenic and Natural Resources

The subject property is part of a scenic resource because it is located within the Bluff/Beach Loop Area Geographic Viewshed. BCP at 173.³ The comprehensive plan provides a number of policies that protect scenic resources. BCP Policy 1 for Scenic Resources provides that “[t]he City recognizes the importance of dimensional standards in the preservation of scenic resources.” BCP at 10. Policy 2 is that “[t]he City shall encourage the appropriate clustering of development, recognizing that residents of the City will benefit from the provision of open space and view corridors.” *Id.* Policy 7 is that “[t]he city shall coordinate and cooperate with federal, state, and local agencies in order to maintain access to scenic resources and ensure high quality visual experiences for the public.” *Id.* at 11. *See also* BCP at 16-18 (same policies for Natural Resources – Viewsheds). All of these plan policies indicate that significant protection exists for Bandon’s scenic resources, where those resources include scenic view sites, viewsheds, and secondary views.

The staff report refers to the requested change in maximum height to be “the most dramatic” and “most noticeable.” Staff Report at 6. The report further states that properties’ views east of the proposed project would be impacted, and

³ The comprehensive plan identifies the following viewshed:

“The Bluff/Beach Loop Area.

“While this area is most known for the expansive ocean views and sea stack formations, it also includes some wetland/dune areas which contain ecological resources as well as provide significant backdrops for some of the residential development along Beach Loop Drive.”

that the existing 24-foot height restriction west of Beach Loop Drive is intended to maintain the incredible asset of the ocean vistas. Staff Report at 6-7. Staff identified the historical development in the area to be one of “lower profile,” with limits on new construction to that of “no higher than two stories[.]” Staff Report at 7. With this as context, and as explained below, it is clear that changing the zoning code to allow for a four-story building with significantly reduced setbacks is not consistent with the above-mentioned policies and text of the comprehensive plan.

i. The Plan Policies Protect the Entire Viewshed, not Just Particular Vantage Points of Certain Sea Stacks

Oregon’s Statewide Planning Goal 5 (Natural Resource, Scenic and Historic Areas, and Open Space) requires local governments to conserve scenic areas and open spaces. In line with this goal, Bandon adopted Section 12 of its comprehensive plan to ensure adequate protection of the area’s scenic resources. Section 12 acknowledges that the city has identified geographic viewsheds, and also mapped, described and photographed representative sites that demonstrate the significant scenic qualities of Bandon’s scenic resources. The plan identifies certain geographic viewsheds “selected for protection[.]” BCP at 173. One of the three protected viewsheds is “The Bluff/Beach Loop Area.” *Id.*⁴

The applicant appears to fundamentally misunderstand the scope and level of protection the comprehensive plan provides for scenic resources. First, Coquille Point National Wildlife Refuge is listed in the comprehensive plan as a highly significant view site. BCP at 175. The presence of the refuge itself should provide a sufficient reason to deny a text amendment that would allow for an over-sized and out-of-place commercial structure adjacent to the refuge and the natural assets it provides.

Not only is the refuge protected as a scenic view site, but the area’s general viewshed is a protected scenic resource. The applicant appears to be arguing that only scenic views that were inventoried in 2002 receive protection under the comprehensive plan. Applicant’s Narrative Letter at 4–5. The applicant asserts that “we do not have to guess at the scenic values we want to protect; the scenic values we want to protect from the “Masonic Viewpoint” [Former name for Coquille Point] are documented by specific photographs in the record.” *Id.* at 5. The applicant argues that so long as specific vantage points captured in photographs as part of the *City of Bandon Scenic Resources Inventory: Beach Loop Bluff Views*,

⁴ See attached excerpt of the City of Bandon’s Comprehensive Plan describing that Coquille Point (including the subject property) is within the Bluff/Beach Loop Area viewshed. BCP 173; 177–179.

Viewshed Documentation BL-2 are protected, all scenic resources are protected. *Id.* The applicant concludes without meaningful analysis that “[a]ll of these protected views will remain perfectly preserved[.]” *Id.* As explained below, the applicant’s narrow view of scenic resources is not reflected in the policies, purposes or text of the comprehensive plan.

Contrary to the applicant’s statements, nothing in the comprehensive plan indicates that the inventory of representative scenic sites associated with the Bluff/Beach Loop Area Viewshed provides a comprehensive or exclusive list of what constitutes the scenic resource. Rather, the comprehensive plan considers the viewshed (which includes all of Coquille Point and land west of Beach Loop Drive) to be part of the area’s significant scenic resource. BCP at 177. The applicant’s position fails to acknowledge the broad protection the comprehensive plan provides for scenic views and resources. The particular photos in the Resources Inventory simply do not capture all aspects of the scenic resources and views protected by the comprehensive plan. As noted above, the plan identifies certain geographic viewsheds “selected for protection[.]” BCP at 173. The Planning Commission should reject the applicant’s position, because agreeing that the comprehensive plan’s scenic resource protections only apply to specific scenic site examples noted in the inventory would be inconsistent with Statewide Planning Goal 5, and the scenic resource policy protections of the city’s own comprehensive plan.

ii. The Proposed Text Amendment is Inconsistent with the Text and Purpose of the Comprehensive Plan

The comprehensive plan’s Land Use Classification provides that the purpose of zoning lands CD-1 is “to recognize the scenic and unique quality of Bandon’s ocean front and view areas and to maintain the quality of Bandon’s ocean front by carefully controlling the nature and scale of future development in the area.” BCP at 71. The controlled district zone is intended to ensure that “[f]uture development is to be controlled in order to enhance the area’s unique qualities.” *Id.* The proposed text amendment would allow for a significantly taller and bulkier structure that would block views from adjacent and nearby properties and create a significant visual impediment to view scenic resources from Portland Avenue and Beach Loop Drive. Accordingly, the text amendment would not enhance the scenic and unique quality of the ocean front and view areas, and is inconsistent with the text and purpose of the plan.

Moreover, the comprehensive plan identifies the Bluff/Beach Loop Area Viewshed as an important resource for the city that requires protection, and such protection is carried out through dimensional standards:

“The Bluff/Beach Loop viewshed is an area of majestic views of the beaches and Pacific Ocean. It contains visual access to the coastal sea stack formations just offshore, including Face Rock, the Cat and Kittens, and Table Rock. The views of the beaches are an important element of the viewshed, and are readily accessible via a number of public access points.”

BCP at 177. The comprehensive plan explains that secondary views that occur over private property contribute to the significance and importance of the viewshed. The plan highlights that view opportunities are “protected by dimensional standards required by the zone.” BCP at 178. Based on the plan, all of the views beginning at the west side of Beach Loop Drive make up the scenic resources of ocean views and views of sea stacks at the very least. The applicant has not demonstrated that changing the existing dimensional standards required by the zone would effectively protect these scenic resources, as required by the comprehensive plan. A text amendment that would permit a significantly taller and bulkier building than is allowed under the current code is inconsistent with the plan’s stated purpose of using dimensional standards to ensure protection of scenic resources, including views within the Bluff/ Beach Loop Area Viewshed.

The plan provides for actions that protect scenic resources that exist in the Bluff/Beach Loop Viewshed. Those actions include encouraging voluntary view and conservation easements and limiting lot coverage. BCP at 179. Changing the zoning code to allow for a bigger and taller structure within the viewshed is inconsistent with these proposed actions. A bigger and taller structure not only impacts primary views from Beach Loop Drive and Portland Avenue, and secondary views of property owners, residents and visitors, but also impacts the ability to view flight patterns of seabirds in the area. The applicant admitted that the area provides one of the best seabird viewing sites on the West Coast. Applicant’s Narrative Letter at 5. Clearly, views of the seabird population increase the value of the scenic resource for the local community and tourists, and placing an oversized structure directly in front of the refuge negatively impacts the viewing experience throughout the viewshed.

The staff report acknowledges that the 24-foot height limit west of Beach Loop Drive is intended to maintain the scenic resources of the ocean vistas. Staff Report at 7. But then staff asserts, without citing any evidence, that the subject property “is located over two blocks from Beach Loop” and that “should someone choose to drive down 11th Street to catch that spectacular view of the ocean, the views available will not be significantly different when comparing the existing two-story motel with a potential new hotel with a height up to 45 [feet].” *Id.* Oregon Shores is perplexed by these unsupported statements. First, the subject property is located one block from Beach Loop Drive, not “over two blocks.” See attached assessors map (identifying tax lot 1600 separated from Ogden Avenue

(former name of Beach Loop Drive) by Portland Avenue right-of-way and two tax lots). The staff report appears to be improperly adding a block due to the existence of an alley or driveway between nearby abutting parcels. Second, the staff report cannot be correct that there is no significant visual difference between the existing two-story structure and the massive four-story hotel proposed by the applicant. If a 45-foot building does not result in view experiences that are “significantly different” from those views that are experienced with the existing two-story motel, why has the city been mandating 24-foot height restrictions for all property owners west of Beach Loop Drive? The city should admit that the change in height and lot coverage does impact views, respect property owners that have followed the existing height limit requirements, and not give this applicant a free pass from the dimensional requirements that implement plan policies and ensure protection of Bandon’s scenic resources.

The scenic resources of Bandon’s ocean vistas encapsulate the open, expansive and natural qualities of the Pacific coastline. An enormous hotel with a highly reflective surface would be an unsightly obstruction to the viewing of Bandon’s most-prized natural and scenic resources. The proposed increases in height, lot coverage, and impervious surfaces are not in line with the protections offered to the scenic resources that Bandon residents value, and would degrade the quality of the Bluff/ Beach Loop Area Viewshed.

iii. The Applicant has not demonstrated that the Text Amendment and Resulting Maximum Allowable Structure will not have an adverse effect on the functioning of the Refuge.

The comprehensive plan explains the importance of the wildlife refuge and requires a demonstration that nearby development does not affect the refuge’s functioning. Special Policy 2 applies to the subject property because it is within 100 feet of the wildlife refuge, and requires that:

“[T]he applicant shall demonstrate that the proposal will have no adverse impact on the function of the Refuge. This shall be accomplished by supplying detailed plans that include proposed landscaping and vegetation, shielded exterior lighting, and noise minimization. In addition, the applicant shall demonstrate how the proposal enhances an identified scenic resource.”

BCP at 12. The applicant acknowledges that the U.S. Fish and Wildlife Service’s Comprehensive Conservation Plan and Wilderness Stewardship Plan provides that the flat headlands east of the vertical bluff of Coquille Point are intended to buffer and insulate the vertical bluff and offshore rocks from development and to reduce

negative interactions between the public and wildlife. Applicant's Narrative Letter at 7.

Without any meaningful analysis, the applicant asserts that the hotel "will have no adverse impact on the function of the refuge[.]" *Id.* A text amendment that will allow for a hotel that serves alcohol and accommodates twice as many occupants as the prior structure will clearly bring more people to the site, many of whom will not be there to observe nature, and create additional risks of negative interactions with wildlife, both on the headlands and the beach, and below the vertical bluff. Clearly, the applicant cannot demonstrate that this text amendment and any resulting oversized structure will be consistent with Special Policy 2.

In addition, the applicant has not demonstrated that the increase in lot coverage and impervious surfaces is warranted, or that such an increase will not have an adverse impact on the refuge. The comprehensive plan explains that the developable portion in the Bluff/Beach Loop Area is reduced to 65% of the lot size in part because of the existence of large lots. BCP at 178. This particular property consists of two lots. Staff Report at 1. The applicant already enjoys significant development potential due to its ownership of two adjoining lots.⁵ The placement of the applicant's proposed structure across two lots allows for a significantly larger development footprint than would occur if single family homes were built on the two lots. In light of these existing benefits, the applicant has not established why it should be entitled to an even larger footprint. Moreover, allowing even more impervious surface would increase the risk of additional stormwater pollution runoff accessing buffer lands of the wildlife refuge. An increase in lot coverage and impervious surfaces is not warranted.

As noted at the outset of these comments, the conceptual plan for the hotel poses many potential environmental impacts. It would almost inevitably lead to bird deaths, possibly at a disastrous level, due to the large percentage of reflective surface, as well as simply due to the height. The greater height relative to the current structure would mean that more artificial light would shine into the refuge at night, potentially impacting wildlife. There are other such possible impacts. These are more properly the subject of a land use hearing on an application for development, rather than a text amendment hearing, but there is every reason to believe that a larger and more impactful structure on the subject property would

⁵ The applicant also enjoys significant buildable space on the subject property due to its proposed off-site parking location. The applicant's off-site parking plan unfortunately creates even more impervious surfaces (and associated parking lot stormwater runoff impacts), as well as additional negative impacts such as increased noise, and is likely to lead to the improper use of the refuge's parking lot for hotel and café guests.

have a deleterious effect on the resources that both the refuge designation and the comprehensive plan are designed to protect.

B. The Applicant's Emphasis on Tourism Policies in the Comprehensive Plan is Misplaced

On pages 10 through 12 of the applicant's narrative letter, the applicant puts forth a loosely connected argument that a text amendment to height and setback restrictions in the controlled development zone is consistent with the comprehensive plan. The applicant's argument is simply misplaced. The applicant seems to be arguing that a use that is already allowed conditionally in the zone should be allowed to reside in a building larger than envisioned by the development code, because it supports the tourism economy. It is unclear why a change in the dimensional restrictions relates to tourism development generally. The policies cited by the applicant relate to the need for tourism and economic development, and a hotel use is already allowed under the existing code. The applicant cites no plan policy that supports modifying height or setback requirements to achieve a more profitable hotel operation. Rather, as explained above, there are specific policies in the plan that identify why the city has setbacks and height limitations: these dimensional standards ensure protection of the area's scenic resources.

The staff report states that the purpose of the site-specific proposed changes to the zoning ordinance text is "to allow for the demolition of the current motel and construct a new hotel on the property[.]" Staff Report at 3. Based on the application and existing code, it does not appear that a text amendment is necessary to demolish the existing motel and build a hotel. Rather, the applicant is simply trying to maximize profits for its commercial enterprise without any regard to the sensitive nature of the refuge or the existing social contract that exists in Bandon through the established zoning code and dimensional requirements. Other community members in the area have been required to abide by the code's dimensional requirements that are necessary to preserve scenic resources in the area. This applicant should be treated no differently.

V. Conclusion

Approval of this text amendment would set a precedent that Bandon is not concerned with preserving the scenic views of nearby property owners, other residents, and tourists who travel to see the sweeping and open ocean vistas of Bandon. Approval would demonstrate that the city is willing to forego the protections provided in its own comprehensive plan and ignore the impacts to the refuge and seabird habitat, all in order to increase tax revenue slightly. The

applicant should be required to meet the existing dimensional standards that are in place to ensure that the scale of proposed development within the Controlled Development-1 Zone maintains and recognizes the scenic and unique qualities of Bandon's ocean front and nearby areas.

Based on the above arguments, the Planning Commission should recommend denial of the proposed text amendment to the City Council. However, if the city nevertheless decides to support the proposed amendment, Oregon Shores would urge the city to, at the very least, require any approval of the site-specific amendment to only be granted after the applicant demonstrates that it can meet the review criteria at 17.20.090(B)(1)(a), but for provisions relating to the 28-foot height limit, replace that limit with the subject property's existing 24-foot height limit.⁶ Applying these provisions that acknowledge the impact of increased

⁶ BMC 17.20.090 governs height of buildings and structures, and BMC 17.20.090(B)(1)(a) provides additional review criteria for specific approvals for buildings that exceed the stated 28-foot height restriction for properties east of Beach Loop Drive:

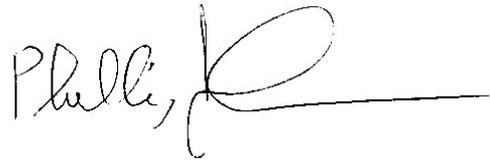
“In deciding whether to approve or deny a request for the additional height, the Planning Commission shall consider and require conformance with the following review criteria. It shall be the applicant's responsibility to provide sufficiently detailed plans, data, and all other information necessary 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.
- “(2) The additional height shall not cut off sunlight onto surrounding properties.
- “(3) The additional height shall not negatively impact the aesthetic character of the neighborhood.
- “(4) All portions of any roofs above 28 ft. shall be sloped a minimum of 3:12, and must slope down and away from the highest point of the structure.
- “(5) For each one (1) foot, or portion thereof, that the highest point of the structure exceeds twenty-eight (28) feet, the minimum required front, side, and rear setbacks, as defined in 16.42.010 Definitions, shall each be increased by one (1) foot.”

height on neighboring properties and provide a compromise to allow for additional height would be the correct direction for the city to follow if attempting to allow what we maintain is an inappropriate height increase.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip Johnson", followed by a long horizontal line extending to the right.

Phillip Johnson
Executive Director
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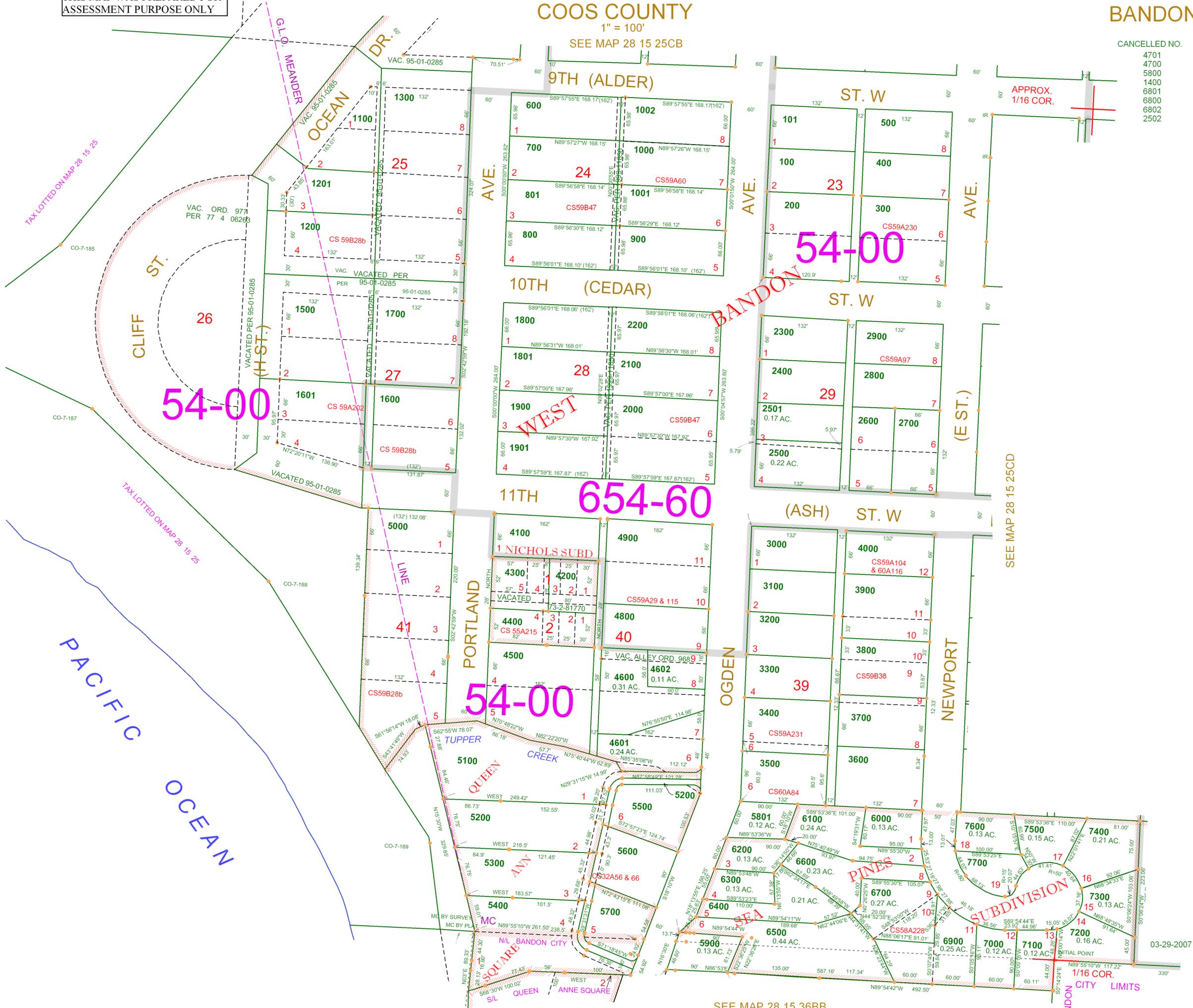
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SW1/4 SW1/4 SEC.25 T28S R15W W.M.
COOS COUNTY

28S 15W 25CC
BANDON

1" = 100'
SEE MAP 28 15 25CB

- CANCELLED NO.
- 4701
 - 4700
 - 5800
 - 1400
 - 6801
 - 6800
 - 6802
 - 2502



SEE MAP 28 15 25CCD

SEE MAP 28 15 36BB

28S 15W 25CC
BANDON

CHAPTER 12: SCENIC RESOURCES



Adopted by Ordinance 1512, 10-06-03

As part of the City of Bandon's Periodic Review Work Program, the City has undertaken a Scenic Resources Inventory utilizing the Goal 5 process. For the purpose of the analysis, geographic viewsheds were identified and sites selected for their significant scenic qualities. Each site was mapped, described by its characteristics, and photographed. The results are contained in Appendix 1. Inventory

Bandon has many scenic resources due to its location on the Pacific Ocean and on the Coquille River in Coos County. Many of the views are already protected through public ownership. The challenge to the City is to determine, with assistance from citizens, which views are the most important ones for preservation. The viewsheds selected for protection should be those which define the qualities that the City chooses to maintain in perpetuity--expansive views of the Pacific Ocean, the Coquille River, the Coquille River Lighthouse, and any other views which contribute to Bandon's uniqueness as a coastal community.

GEOGRAPHIC VIEWSHEDS

There are three identified geographic viewsheds:

The Bluff/Beach Loop Area.

While this area is most known for the expansive ocean views and sea stack formations, it also includes some wetland/dune areas which contain ecological resources as well as provide significant backdrops for some of the residential development along Beach Loop Drive.

The Coquille River and its Lighthouse

The Coquille River and its Lighthouse viewed from the Old Town Waterfront as well as from the Jetty and other points within the city;

The Beach views

The Beach views looking toward the City and the sea stacks, cliffs and bluffs rising abruptly above which make the Bandon coast spectacular.

The ESEE analysis highlights the consequences of prohibiting, limiting or fully allowing conflicting uses in the viewsheds. The potential conflicting activities and uses identified are those currently contained in the zoning ordinance as permitted or conditional uses, as well as the construction, reconstruction and enlargement of buildings and structures on the west side of Beach Loop Drive, on the Jetty, and on the Waterfront north of 1st Street. Statewide Planning Goal 5 requires the City to protect or conserve significant scenic resources.

The Goal 5 process will be completed when the City and its residents determine which viewshed sites are significant, and where conflicting uses will be limited, prohibited, or fully allowed. Alternatively, the City may conduct an ESEE analysis each time a proposal conflicts with scenic views as its existing policy requires. However, this approach is onerous and leaves too much uncertainty for landowners and citizens alike. It is proposed that this be removed entirely.

Beach Loop./Bluff Viewshed

Description

The area encompassed by the Bluff/Beach Loop viewshed includes: Ocean Drive west of 4th St., which turns into 7th St SW, and the length of Beach Loop Drive from the north end south to the City Limits. The scenic nature of the area is derived from its proximity to the Pacific Ocean, and is frequented by tourists and residents alike. Beach Loop Drive runs generally north-south along or inland of the bluff, and is accessible from 4th St. SW, 8th St. SW, 11th St. SW, Seabird Dr., and at Beach Junction on Highway 101.



The uses which occur in the viewshed vary from single family homes, vacation rentals, motels, and restaurants to State and Federal park facilities to the Ocean View Care Center. There are areas of concentrated tourist oriented development in the viewshed including the intersection of 11th St. SW and Beach Loop Drive and the area immediately surrounding the Sunset Motel. In the past few years, more structures are being remodeled and enlarged, and tourist related uses are increasing. To document the variety of scenic opportunities, eight sites, numbered BL-1 through BL-8, were inventoried to illustrate the public accessibility to and scenic values of the viewshed.

Zoning and Ownership

The area is zoned primarily Controlled Development (CD-1), except for the Federal land that makes up Coquille Point, which is zoned Natural Resources and Open Space (NR).

Property in the viewshed is mostly privately owned, with the exception of Coquille Point, Face Rock Wayside, the Ocean View Care center, and the City's parking lot and beach access, as well as all streets and rights-of-way. The beaches in the viewshed are owned by Oregonians and managed for them by the State of Oregon.

Statement Of Significance

The Bluff/Beach Loop viewshed is an area of majestic views of the beaches and Pacific Ocean. It contains visual access to the coastal sea stack formations just offshore, including Face Rock, the Cat and Kittens, and Table Rock. The views of the beaches are an important element of the viewshed, and are readily accessible via a number of public access points. These factors, when taken in combination, constitute a significant scenic resource.

Name: Bluff/Beach Loop Viewshed

Resource Type: Scenic

Bluff/Beach Loop Viewshed:

Three of the top ten views ranked as significant by residents are located along Beach Loop and the Bluff. The City and U. S. Fish and Wildlife currently protect ranked area #1 at the west end of 8th Street, and will continue to protect that resource as development is proposed. The scenic resource from the Sunset Motel to Coquille Point, accessed by the street right-of-way, was ranked as the second most significant scenic resource. The Ocean View Care Center was also ranked as having a significant view. The PUD ordinance and Policy 2 place protection on scenic values at this site.

The Council considered prohibiting, limiting and fully allowing uses which conflict with scenic resources in this area and made the following analyses:

Economic: Most significant views are fully protected in this viewshed. The City policy to support economic interest, tourism, as it relates to scenic resources along Beach Loop and the Bluff and assist in the formation of a land conservancy is the affordable and feasible way to acquire land or scenic resources in the future. While this policy will not preclude increasing property values, it eliminates the necessity for the City to purchase properties with scenic values. It may also help protect the City's major.

Social: The concept of "neighborhood" has already been impacted by tourist commercial uses in this area. It will become more homogenized as few or no low or moderate income residents can afford to live in this part of the City. This area is close to the city center, tourist commercial uses, the beach, and the community center complex and park. Scenic attractions and tourist uses will be enhanced when the master trail plan is completed and implemented. Trails, when well marked, will encourage less vehicular traffic and safer walking areas for residents as well as visitors on Beach Loop Road.

Environmental: The amount of lot coverage for impervious surfaces is reduced to 65%. Some lots on the west side of Beach Loop Road extend to the ocean and appear much larger than the 5400 square feet required for single family dwellings. The "buildable" portion of these lots is much less due to the ocean bluff.

Energy: The maintenance of walking paths which are user-friendly and the protection of the City's right of way along Beach Loop Drive could reduce some traffic and fossil fuels' use in the future. It may become useful to offer a shuttle to and from Old Town and the Coquille Point parking lot to eliminate some vehicular traffic in both areas.

CONCLUSIONS

The area of primary concern in this viewshed is the west side of Beach Loop Drive. The north-south orientation of Beach Loop Drive allows access for the public at a number of sites identified in the Inventory that are publicly-owned and accessible for various ocean views. There are also secondary drive-by glimpses of the ocean and rock formations. While these secondary views contribute to the overall significance and importance of the viewshed, most occur over private property. These secondary view opportunities are partially protected by the dimensional standards required in the zone.

The preceding analysis identifies the economic, social, environmental, and energy (ESEE) consequences of fully allowing, prohibiting, and limiting conflicting uses within the viewshed. In the case of the

Bluff/Beach Loop viewshed, the consequences of prohibiting conflicting uses would entail the condemnation/purchase of property not already developed in order to ensure unobstructed views over these properties. If conflicting uses were fully allowed, the result would most likely be detrimental to the viewshed as a whole, particularly without meaningful height and setback regulations. By limiting conflicting uses, a balance of view access, preservation of the resource, and assurance of development rights, although slightly constrained, will be achieved as proposed below.

Actions to protect and/or ensure access to the resource

Encourage voluntary view/conservation easements, secure right of first refusal for the sale of publicly-owned property, limit street vacations, enhance existing public sites, and limit lot coverage.

