



Staff Report

City of Bandon Planning Department

Bandon, Oregon 97411

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FILE NUMBER: 21-039
APPLICATION TYPE: **Conditional Use Permit**
REQUEST: To designate an existing single-family dwelling as a Vacation Rental Dwelling on property zoned CD-2 in the City of Bandon.

STAFF LEAD: Megan Lawrence, City Planner

**PROPERTY OWNER:
AND APPLICANT** Christopher Sinkinson
3040 SE Yamhill Street
Portland, OR 97214

LOCATION: 1057 4th Street SW
28S-15W-25BD / TL 5400, 5700, 5802

ZONE: CD-2 (Controlled Development 2)

HEARING DATE: June 17, 2021

An application requesting approval of a Conditional Use Permit was received by the Bandon Planning Department on May 11, 2021. The application was deemed complete on May 11, 2021, and noticed in accordance with the requirements of Section 17.120.060 of the Bandon Municipal Code.

AUTHORITY:

The Planning Commission of the City of Bandon has the authority to act as decision makers on Conditional Use permit and consolidation land use applications pursuant to Chapter 2.24.080 of the Bandon Municipal Code.

APPEAL PROCEDURE:

Pursuant to Chapter 17.124, any Applicant or any other person with standing may, within ten days after the Notice of Decision of the Planning Commission has been mailed, file a written request with the City Recorder appealing the decision to the City Council. The written request appealing the decision of the Planning Commission shall state specific reasons for the appeal based upon the substantive, applicable criteria of the application, subject to the appeal requirements contained in Chapter 17.124. The Conditional Use fee is billed at the actual cost of the application with a \$ 1,000.00 deposit. The fee for appeal of this decision will be the actual cost of the appeal, with a \$ 1,000.00 deposit.

I. **REQUEST:** Approval of a Conditional Use Permit to designate an existing single-family dwelling as a Vacation Rental Dwelling (VRD) on property zoned CD-2 (Controlled Development 2) in the City of Bandon.

II. **BACKGROUND**

A. **General**

A 696 square foot, one-story, single-family dwelling, and shop exist on the property with date of construction listed as 1970 by the Coos County Assessor’s Office. The City has no record of original construction and considers the subject property and its improvements to be non-conforming. The subject property and structures have been used as a primary residence since the 1980’s.

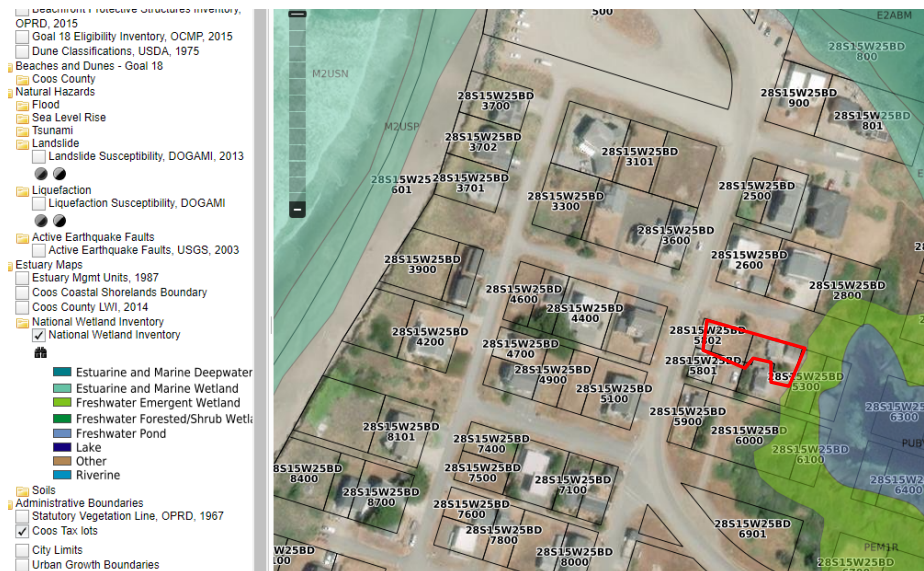
B. **Characteristics of the Property**

The subject property consists of three separate tax lots in common ownership. Tax lot 5400 contains the house and shop building, tax lots 5700 and 5802 are vacant. All three tax lots abut 4th street SW in the South Jetty Neighborhood, which is located in the City’s floodplain and CD-2 zone. The property is bordered to the east by Port of Bandon owned property that is heavily impacted with inventoried wetlands, and Redmon Pond. The subject property’s neighborhood is primarily residential, however, there are several existing VRDs within close proximity.

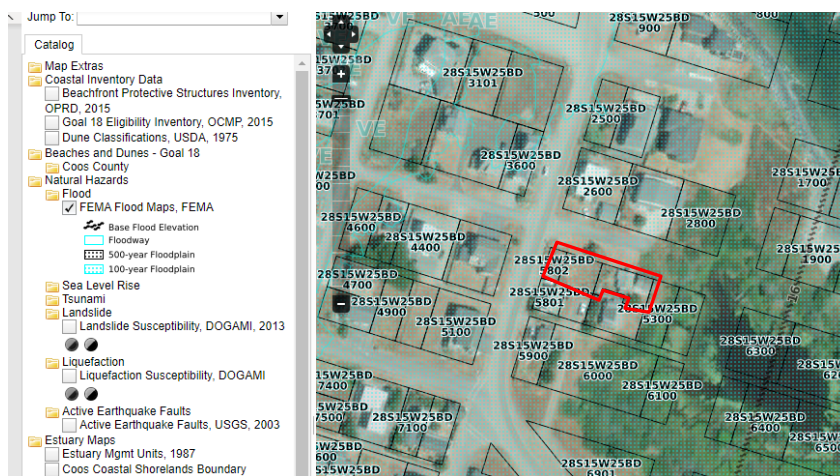


1. **Location:** The subject property is located at the end of 4th Street SW, off of Lincoln Avenue, in the CD-2 Zone and is known as 1057 4th Street SW.
2. **Zoning and Plan Designation:** The subject property is zoned Controlled Development 2 (CD-2).
3. **Size:** The combined subject property is approximately 0.16 acres (7,048 square feet) in size.
4. **Access:** Access to the subject property is from 4th Street SW.
5. **Public Utilities:** City water, sewer and electric are currently connected to the subject property.

6. **Natural Hazards:** The subject property is located in the FEMA floodplain and is within extremely close proximity to Redmon Pond and inventoried wetlands.



National Wetlands Inventory (<https://www.coastalatlant.net/coos-all-hazards/>)



FEMA Floodplain (<https://www.coastalatlant.net/coos-all-hazards/>)

7. **Existing Land Use:**

- On Site:** The property has been used as a primary residence since its construction in 1970.
- Surrounding:** The subject property is surrounded by CD-2 zoned properties of mixed residential and commercial use.

8. **Land Use Designation:**

- Comprehensive Plan:** Controlled Development 2
- Zone District:** CD-2

- c. **Overlay:** Floodplain, Wetlands
- 9. **Notification:** All related public parties have been duly notified in accordance with Section 17.120.090 of the Bandon Municipal Code.
- 10. **Comments:** At the writing of this report there were no comments submitted.

III. CONFORMANCE WITH APPLICABLE CRITERIA AND REQUIRED BURDEN OF PROOF

THE FOLLOWING ARE THE CRITERIA WHICH ARE APPLICABLE TO THIS APPLICATION:		
1. TITLE 17 – CHAPTER 17.24 – CONTROLLED DEVELOPMENT 2 (CD-2) ZONE		
1.1	17.24.030	Conditional Uses
2. TITLE 17 - CHAPTER 17.92 - CONDITIONAL USES		
2.1	17.92.010	Authorization to grant or deny conditional uses.
2.2	17.92.020	Authorization to impose conditions.
2.3	17.92.040	Approval standards for conditional uses
2.4	17.92.090 (K)	Standards governing conditional uses; Vacation Rental Dwellings
4. TITLE 17- CHAPTER 17.104 – SUPPLEMENTARY PROVISIONS		
4.1	17.104.050(B)	General exception to lot size requirements

1.1 BMC 17.20.030; Conditional Uses

Vacation Rental Dwellings are conditional uses in the CD-2 Zone and require Planning Commission approval through a Public Hearing.

Finding: A Conditional Use Application was submitted to the City on May 11, 2021.

2.1 BMC 17.92.010; Authorization to grant or deny conditional uses

Conditional uses are those which may be appropriate, desirable, convenient or necessary in the zoning district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed. Applications for uses designated in this title as conditional uses may be granted, granted with modifications or denied by the planning commission in accordance with the standards and procedures set forth in this chapter.

Finding: The Planning Commission has the authority to grant, deny, or condition Conditional Uses.

2.2 BMC 17.92.020; Authorization to impose conditions

The City of Bandon may impose additional discretionary conditions, if the City considers the additional conditions necessary to assure that the requested conditional use is compatible with other uses in the vicinity, and to protect the city as a whole. Additional conditions may include (but are not limited to): changes in required lot size or yard dimensions; building height limitations, controlling the location and number of vehicle access points; requiring additional right-of-way areas or changing the street width; requiring public improvements such as street, sidewalks, water/sewer line extensions and/or bike paths; changing the number of off-street parking and loading spaces required; limiting the number, size and location of signs; requiring diking, fencing, screening or landscaping to protect adjacent or nearby

property; requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust; limiting the hours, days, place and manner of operations; limiting or setting standards for the location and intensity of outdoor lighting; setting requirements on the number, size, location, height and lighting of signs; requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas and drainage areas.

Finding: In approving an application for a conditional use, the Planning Commission may impose additional conditions necessary to assure that the use is compatible with other uses in the vicinity and to protect the community.

2.3 BMC Chapter 17.92.040; Approval standards for conditional uses

A. The comprehensive plan;

The applicant did not provide any relevant information or finding that request is consistent with the Comprehensive Plan.

Finding: Staff finds this criteria met.

B. The purpose and dimensional standards of the zone except as those dimensional standards have been modified in authorizing the conditional use permit;

The applicant did not provide any relevant information or finding that request is consistent with the purpose and dimensional standards of the zone.

Finding: Staff finds this criteria to be met.

C. That the site size and dimensions provide adequate area for the needs of the proposed use;

The applicant states “the location is currently at 16% saturation (less than 30%), and the lot (7000 sq ft) and cottage (850 sq ft) provide adequate space for this conditional use.”

Finding: Staff finds this criteria to be met.

D. That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses;

The applicant states, “It is tucked away from other homes being at the far end of the Jetty against the lake and at the very end of 4th St SW, where there is space for three cars to park next to the house, off the street.”

Finding: Staff finds this criteria to be met.

E. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;

The applicant did not provide any relevant information or finding that characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features.

Finding: The site is similar in size, shape, location, topography, and natural features to surrounding properties which are a mixture of residential dwellings and VRDs. Staff finds this criteria to be met.

F. All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant;

Finding: No new services have been proposed. Staff finds this criteria to be met.

G. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district;

The applicant did not provide any relevant information or finding that the request 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 zone.

Finding: The South Jetty neighborhood consists of a mixture of residential and tourist commercial uses with public beach access and several VRDs within close proximity. Staff finds this criteria to be met.

H. All other requirements of this title that apply.

Finding: Staff finds this criteria to be conditionally met.

2.4 BMC 17.92.090 (K) Vacation Rental Dwellings

Vacation Rental Dwellings. Vacation rental dwellings (VRDs) are a conditional use in the CD-1 and CD-2 and CD-3 zones, and are subject to the requirements of this chapter. Conditional use permits are a discretionary decision by the City subject to review by the Planning Commission. VRD's are not an outright permitted use in the CD-zones. All vacation rental dwelling shall comply with the following provisions.

1. The single-family detached dwelling proposed for the VRD shall be at least three years old, calculated from the date of issuance of a certificate of occupancy;

2. Less than 30% of the single-family detached dwellings within 250 feet of the subject property, and

located in a zone where VRD's are allowed, are VRD's;

3. In the CD-1 zone, single-family detached dwellings proposed for VRD status may be located only in the VRD-overlay zone as indicated on the attached map. VRD's are allowed as a conditional use in all areas of the CD-2 and CD-3 zones;

4. The VRD Conditional Use Permit is valid for the named applicant of record and is not transferable to a new applicant. Upon change in named applicant due to sale, transfer, or other reason, the CUP shall become null and void. A new applicant shall apply for a new conditional use permit;

5. Tsunami Preparedness – all VRD's shall post the Bandon Tsunami Evacuation Route map in a conspicuous location within the dwelling;

6. No more objectionable traffic, on-street parking, noise, smoke, light, dust, litter or odor is emitted from the VRD than a normal neighborhood dwelling;

7. VRD's without private beach access shall provide written permission from all persons with an interest in a private beach access to be used by the VRD or positive action to notify renters of the location and required use of public beach access points shall be taken;

8. VRD's using a joint access driveway shall provide evidence that all other owners of property utilizing the private access agree to the proposed vacation rental dwelling using the private access;

9. VRD's will be maintained at or above the level of surrounding dwellings in the neighborhood, including landscaping, signage and exterior maintenance;

10. VRD's shall have one off-street parking space for each bedroom in the VRD, but in no case have less than two off-street parking spaces. A bedroom is defined as an enclosed sleeping area with a built-in closet. Approved off-street parking areas shall be available to accommodate full occupancy of the VRD without the use of on-street parking;

11. Evidence shall be provided ensuring that there is regular garbage removal from the premises;

12. There shall be an owner or designated local management person immediately available to handle complaints and problems on a 24-hour basis. The name and contact information of the designated local management person shall be kept on file in the Police Department and Planning Department. The owner or management person shall be available by phone and physically able to respond to the VRD within a reasonable time period;

13. Compliance with all reporting and accounting requirements of the transient occupancy tax ordinance shall be done in accordance with the City of Bandon requirements;

14. If the VRD activity ceases for a period of one year, or fails to be rented for more than 10 nights within a calendar year, as determined by the transient occupancy tax receipts and rental documentation, the VRD permit becomes null and void with no further proceedings;

15. Occupancy of any VRD shall not exceed 3 people per bedroom up to a maximum of 10 people. The Planning Commission shall determine the maximum occupancy of the VRD based upon bedrooms,

parking, overall home floor plan and site plan, and other factors determined by the Commission based upon neighborhood characteristics outlined in item 6 above and others deemed significant. The occupancy determined by the Planning Commission may be less than the maximum allowed

16. VRD's require a conditional use permit (CUP). All criteria for a CUP must be addressed and included as part of the application materials. The applicant shall also address the surrounding neighborhood and provide information how the proposed VRD is appropriate given the specific characteristics of the neighborhood.

17. The applicant shall provide an annual report to the Bandon Planning Department showing compliance with all conditions and ordinance requirements. Failure to provide such report shall result in revocation of the Conditional Use Permit.

18. Smoke detectors shall be provided in all potential and actual sleeping areas, whether or not such detectors are required by the building code.

The applicant states "The cottage has a bedroom on the ground floor and a loft bedroom, sleeping 4 total / max. The cottage's Airbnb rental options will range from a weekend stay (minimum) to two weeks or a month, for longer term interest. I will be adhering to the standards and provisions outlined by the city of Bandon in the following ways. The location is currently at 16% saturation (less than 30%), and the lot (7000 sq ft) and cottage (850 sq ft) provide adequate space for this conditional use. It is tucked away from other homes being at the far end of the Jetty against the lake and at the very end of 4th St SW, where there is space for three cars to park next to the house, off the street. I will have information on site for proper beach entry points as well as tsunami preparedness info including location, evacuation route and instructions. I will also provide discrete exterior signage so that visitors can easily find the place without disturbing neighbors and will be landscaping and making improvements on the property's exterior all summer to enrich the visitors experience. Garbage removal will happen on schedule. Smoke detectors and carbon monoxide sensors are present on the property. I will provide an annual report to the city of Bandon showing compliance with all conditions and ordinance requirements."

Finding: Staff finds these criterion to be conditionally met.

4.1 BMC 17.104.050(B); General exception to lot size requirements

If a property owner desires to proceed with constructing an improvement on all or part of a parcel or contiguous subdivision lots, no portion of the property amounting to less than the whole property, shall be sold, divided or separated without the written permission of the City. This requirement shall be set forth in a Real Property Covenant and Restriction document which shall be filed at the County as a deed restriction.

Finding: The subject property currently utilizes unimproved right-of-way for parking, with no delineated off-street parking for the single-family dwelling. The applicant has proposed to continue using unimproved 4th Street right-of-way for VRD parking, which does not meet the off-street parking requirements for VRDs. Staff recommends the Planning Commission require the property owner to delineate off-street parking on the subject property and file a deed restriction with the Coos County Clerk's Office prior to operation.

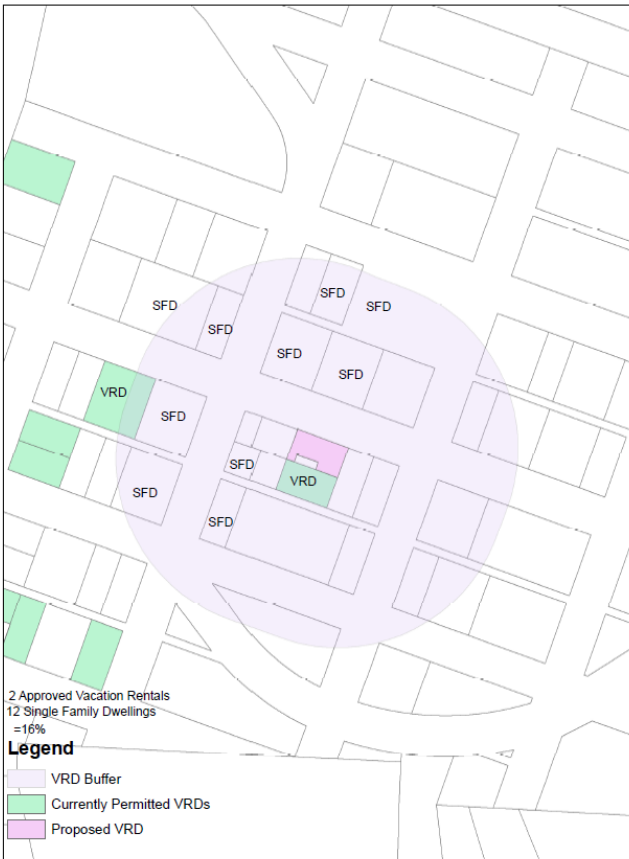
IV. Discussion

Upon review of the application, Staff discovered several critical issues for the Planning Commission’s review, in consideration of the current application and future conditional use permit applications requesting approval to operate as a VRD.

1. SATURATION CALCULATION:

The applicant requested a VRD saturation calculation for 1057 4th Street SW from the Planning Department in March 2021. Using the City’s VRD records and Coos County Assessor’s GIS files, the Planning Department calculated a VRD density of 16%; however, upon purchasing the property, a CUP application inclusive of two additional tax lots abutting 1057 4th Street SW, not factored into the original neighborhood density calculation, was submitted. During the completeness review of the Conditional Use Permit application staff discovered an error in the original calculation, which omitted a nearby VRD, due to a data error in the County’s GIS files. With the omitted VRD added into the calculation for 1057 4th Street SW, the neighborhood density increases to 25%. The VRD saturation calculation for the subject property as proposed by the applicant, and as recommended by staff for approval with conditions due to off-street parking requirements, exceeds the maximum VRD saturation at 31.25%.

1057 4th Street SW Saturation



(16% VRD Saturation from 1057 4th Street)



(Corrected 25% VRD Saturation from 1057 4th Street)



(31.25% VRD Saturation calculation from the project site)

2. BEDROOM DESIGNATIONS:

The applicant has requested approval for a two-bedroom VRD; however, the single-family dwelling exists as a single-story, one bedroom structure. Use of the loft, which has no door or railings and is accessed by a ladder, as a second bedroom is questionable. Should the Planning Commission find that this space meets the legal characteristics of a bedroom, Staff recommends adding a condition of approval that the space must be brought up to current fire/life/safety standards and evidence of such be provided to the City prior to advertisement or operation of the dwelling. Alternatively, the Planning Commission could require the property owner to remove the ladder access to the space and restrict the number of bedrooms to one, with a maximum occupancy of the VRD to three persons.



(Proposed second bedroom; Picture from realtor.com)

3. ACCESSORY STRUCTURES:

1057 4th Street SW is a 696 square foot, single-story, single-family detached dwelling with a detached shop outbuilding. The City has no land use or floodplain development record of the shop building being converted or used as a dwelling unit, and staff recommends that should the Planning Commission find this application approvable, a condition be added that the shop portion of the property remain an inhabitable space, and that use or conversion of the shop into a dwelling unit shall render the CUP null and void with no further proceedings.

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(Shop exterior; Picture from realtor.com)

© 2021



(Shop interior; Picture from realtor.com)

4. BUILDING AND LIFE SAFETY INSPECTION:

With the 2018 Vacation Rental Ordinance update, requiring VRDs be at least three years old prior to applying for a CUP, the Planning Department has seen an increase in CUP applications requesting VRD approval for older homes. Because CUPs are discretionary decisions and the Planning Commission has the authority to impose any condition deemed necessary to approve a request, Staff has recommended in past applications that property owners obtain a satisfactory “whole home inspection” for the subject property prior to final approval of the CUP, to ensure the home is safe for commercial use as a vacation rental. Due to the age and location of the subject property, Staff recommends adding this condition as a condition of approval, should the Planning Commission find the application approvable.

V. Recommendation

Should the Planning Commission determine that the subject property exceeds the 30% maximum allowed VRDs within 250 feet, Staff recommends denial of Planning Permit #21-039, Conditional Use Permit for 1057 4th Street SW, due to oversaturation of VRDs in the subject property’s neighborhood.

Should the Planning Commission determine that the neighborhood density does not exceed the 30% maximum saturation, Staff recommends approval of Planning Permit #21-039, Conditional Use Permit for 1057 4th Street SW with the following conditions:

Proposed Conditions of Approval:

1. A parking plan delineating two standard, off-street parking spaces shall be submitted to the Planning Department for approval prior to the advertisement and operation of the VRD.
2. A Real Property Covenant and Restriction (deed restriction) shall be filed with the Coos County Clerk’s Office, combining the three tax lots together for use as a VRD and its required off-street parking.
3. The shop shall remain an inhabitable space. Use or conversion of the shop into a dwelling unit shall render the CUP null and void with no further proceedings.
4. Approval of the CUP shall be subject to a satisfactory whole home inspection by a certified licensed Oregon home inspector. The purpose of the inspection is to determine the conformance of the dwelling with the requirements of the Oregon State Building Code. Prior to advertisement and operation of the VRD, the property owner shall make all necessary alterations to the dwelling required by the Oregon State Building Codes Division.
5. The number of the 24-hour local contact shall be posted in a conspicuous place within the dwelling.
6. A notice shall be posted in a conspicuous place informing guests of the nearest public beach access.
7. The Bandon Tsunami Route map shall be posted in a conspicuous location within the dwelling.
8. The number of guests is restricted to 3.
9. Trash shall be enclosed at all times.

10. Exterior lighting shall be limited to the existing fixtures, which shall be modified to point directionally downward if not currently downward facing.
11. Transient Occupancy Tax shall be paid, and annual reporting shall be completed as required; if the Transient Occupancy Tax account is not current, no rental shall be allowed while the account is in arrears.
12. Use of the dwelling for transient occupancy prior to licensure by Coos Health and Wellness and registration with the City's Finance Department shall result in revocation of the Conditional Use permit.
13. Failure to conform to the conditions of approval shall result in revocation of the Conditional Use permit.
14. All state, federal, and county permits associated with this approval shall be obtained and maintained for the life of the Vacation Rental Dwelling prior to registration of the with City Finance.
15. Prior to advertisement or operation as a Vacation Rental Dwelling, the applicant shall provide a copy of their Traveler's Accommodations License, issued by Coos Health and Wellness, to the City of Bandon.
16. Approval of the application is based on information provided by the applicant.
17. Agreements or statements of the applicant on the application materials or testimony shall become conditions of approval.

Alternatively, the Planning Commission may wish to discuss additional conditions, or make amendments to staff's proposed conditions of approval, or take additional action not listed herein.